

PREVENTION AND  
PUNISHMENT OF  
TORTURE BILL

2009

Report of the  
National  
Conference on the  
Prevention of  
Torture Bill, 2008  
as drafted by the  
Government of  
India



ASIAN CENTRE FOR HUMAN RIGHTS



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# I. An Open Letter to the Members of Parliament of Lok Sabha and Rajya Sabha

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Dear Honourable Members of Parliament,

Asian Centre for Human Rights on behalf of the participants of the National Conference on the Prevention of Torture Bill, 2008 (as drafted by the government of India) is writing this letter to seek your intervention with the Honourable Prime Minister of India to place the Prevention of Torture Bill after ensuring compliance with the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).

India is the largest democratic country in the world. Yet, torture remains a routine practice. The National Human Rights Commission (NHRC) in its Annual Reports recorded the custodial deaths of 16,836 persons or an average of 1203 persons per year during 1994-2008. These included 2,207 deaths in police custody and 14,629 deaths in judicial custody as given below:

Year	Police Custody	Judicial Custody	Total
1994-1995	111	51	162
1995-1996	136	308	444
1996-1997	188	700	888
1997-1998	193	819	1,012
1998-1999	183	1,114	1,297
1999-2000	177	916	1,093
2000-2001	127	910	1,037
2001-2002	165	1,140	1,305
2002-2003	183	1,157	1,340
2003-2004	162	1,300	1,462
2004-2005	136	1,357	1,493
2005-2006	139	1,591	1,730
2006-2007	119	1,477	1,596
2007-2008	188	1,789	1,977
TOTAL (1994-2008)	2,207	14,629	16,836

However, these custodial deaths represent only a fraction of the incidence of torture in India. There is no record of torture that does not result in custodial death. The Supreme Court's guidelines in the case of *D.K.Basu Vs State of West Bengal* or NHRC's Guidelines to report custodial death and rape cases within 24 hours are failing to end the practice of torture. In fact, the number of custodial deaths in India have been rising consistently with 1,037 custodial deaths in 2000-2001; 1,305 in 2001-2002; 1,340 in 2002-2003; 1,462 in 2003-2004; 1,493 in 2004-2005; 1,730 in 2005-2006; 1,596 in 2006-2007 and 1,977 in 2007-2008.

Failure to legislate against torture, other cruel, inhuman or degrading treatment or punishment sends an unfortunate message. It opens the possibility to abuse that will eventually lead to torture and death. The civil society organisations, the NHRC as well as the United Nations have been urging the Government of India to ratify the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). India signed the UNCAT in 1997 but has not ratified the same so far.

In order to “*ratify the said Convention and to provide for more effective implementation*”,<sup>1</sup> in 2008 the Ministry of External Affairs, Government of India, has drafted the Prevention of Torture Bill, 2008. The Bill contains three operative paragraphs relating to (1) definition of torture, (2) punishment for torture and (3) limitations for cognizance of offences.

The Asian Centre for Human Rights organized the “National Conference on the Prevention of Torture Bill, 2008” at India International Centre, New Delhi on 24-25 June 2009. The National Conference reviewed the Bill and made specific recommendations as summarised below.

The National Conference on the Prevention of Torture Bill, 2008 recognised that the issue of torture is complex and prevention of torture and protection from torture require numerous legal mechanisms. If the end goal of the Prevention of Torture Bill, 2008 is to comply with the UNCAT then the Bill, as drafted, must be considered to have failed, not only in terms of the substance but equally by significant omission. The Bill not only falls short of the UNCAT but also the existing national standards on the administration of justice in India.

The National Conference on the Prevention of Torture Bill, 2008 unanimously agreed that the government of India should expand the definition of torture to conform to the obligations of the UNCAT. Despite the widespread prevalence of death resulting from torture as cited above, the Prevention of Torture Bill, 2008 makes no reference to death as a result of torture. This means acts of torture resulting in death, if prosecuted at all, will be treated as a murder and may not incorporate the gravity of the crime of torture committed as part of the crime.

The National Conference on the Prevention of Torture Bill, 2008 expressed concerns that there is no reference to “other cruel, inhuman or degrading treatment or punishment” anywhere in the Prevention of Torture Bill, 2008. Nor is intimidation and coercion included in the Bill. This means that acts of serious violence – that do not constitute torture - will not be covered. It equally means that death threats including to a victim’s family may not be covered. The Bill does not conform to Article 16 of the UNCAT which requires India to undertake measures to prevent acts of cruel, inhuman or degrading treatment or punishment.

The National Conference on the Prevention of Torture Bill, 2008 unanimously agreed that the punishment for torture provided in the Prevention of Torture Bill, 2008 is inadequate. The Bill proposes a maximum of 10 years imprisonment. This opens the possibility that the courts can award a trivial sentence for what is a grave crime. The Prevention of Torture Bill, 2008 equates crimes by the law enforcement personnel such as torture with ordinary crimes. Law enforcement personnel exercise the sovereign power of the State. They are entrusted to carry out duties of state and are empowered with special powers and have higher level of responsibility. Hence the crimes by the law enforcement personnel should be considered more seriously and harsher punishment than what is provided in the Indian Penal Code is called for. For India to comply with the UNCAT the Convention is clear that punishment should reflect the gravity of the crime committed (Article 4.2).

The National Conference on the Prevention of Torture Bill, 2008 expressed grave concerns that excessive statutory limitations in the Prevention of Torture Bill, 2008 contradict existing Indian law. It states that “no court shall take cognizance of an offence under this Act unless the complaint is made within six months from

1. Prevention of Torture Bill, 2008 as drafted by the government of India

the date on which the offence is alleged to have been committed”. This limitation is less than what is provided under the Criminal Procedure Code. For example, in its definition, the Prevention of Torture Bill includes ‘grievous hurt’ as part of infliction of torture. But there is no statutory limitation for taking cognizance of offences of ‘grievous hurt’ under the Criminal Procedure Code.

The National Conference on the Prevention of Torture Bill, 2008 expressed concern about the failure of the Prevention of Torture Bill, 2008 to fully comply with the requirement of the UNCAT that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture”. At present, Section 197 of the Criminal Procedure Code and other special laws make prior sanction from the government mandatory for prosecution of the accused public servants responsible for torture and other human rights violations. The permission is rarely given. It implies that in practice government of India allows for ‘exceptional circumstances’ through the need for prior permission for prosecution. International law including the UNCAT is very clear about the need to avoid exceptional circumstances, as this is precisely where violations take place. Provisions like Section 197 which provide legal space for exceptional circumstances have been responsible for increasing human rights violations; violations that are compounded by the absence of investigation afforded by the exception.

Finally, the Prevention of Torture Bill, 2008 also fails to address the following obligations for compliance with the UNCAT. The Bill fails to address compliance with the following obligations under the UNCAT:

- ensuring that an order from a superior officer or a public authority may not be invoked as a justification of torture (Article 2);
- establishing jurisdiction over acts of torture committed by or against a party's citizens (Article 4);
- ensuring that torture is an extraditable offence (Article 8);
- establishing universal jurisdiction to try cases of torture where an alleged torturer cannot be extradited (Article 5);
- providing mechanism to promptly investigate any allegation of torture (Articles 12 & 13);
- providing an enforceable right to compensation to the victims of torture (Article 14);
- Banning the use of evidence produced by torture in the courts (Article 15); and
- Barring deportation, extradition or refoulement of any person where there are substantial grounds for believing she/she will be subjected to torture (Article 3).

Civil society organisations are aware that there is strong opposition to the criminalization of torture in India. Eleven years after signing of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the government of India has not taken concrete steps to ratify the CAT and adopt a domestic law against torture. Terrorism and national security are often cited as the reasons for such opposition.

But the evidence gathered by the Asian Centre for Human Rights suggests that the use of torture is employed as a routine practice. A significant majority of the 16,836 custodial deaths, especially 2,207 persons killed in police custody in the last 14 years were summoned, detained or arrested for petty offences and succumbed to torture. And a disturbingly high proportion of those killed are poor or belong to the Scheduled Castes or the Scheduled Tribes.

The security argument is unsubstantiated. Rather, there is evidence that human rights violations are counter productive. It is an open secret that gains made through democracy and relative good governance in many



insurgency affected areas including Jammu and Kashmir have been repeatedly nullified by human rights violations including torture by the security forces. Indeed, in recognition of this fact, in July 2009, Mr Ashiq Hussain Peer, a soldier with the 160<sup>th</sup> Territorial Army Battalion was dismissed from services within four hours to ensure fair trial and to find out if he was involved in the death of Ms Amina Masoodi on 9 July 2009 in Kupwara, Jammu and Kashmir.

Again, there are few who support the security argument that would deny that the American symbols of Abu Ghraib and Guantanamo Bay have acted as powerful recruitment tools by the terrorists. Respect for human rights must be a central part of the response to fight terrorism and insurgency. The Americans cannot point to evidence that the use of torture has been an effective weapon in defeating terror, and President Barack Obama's decision to end these practices confirms this.

The largest democratic country, India, must not only commit to but take measures to ensure 'the rule of law, individual freedom, personal liberty and security enshrined in Indian polity'. This includes ratifying the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and enacting an effective national anti-torture law.

The Asian Centre for Human Rights on behalf of the participants of the National Conference urges the Honourable Members of Parliament of both the Lok Sabha and Rajya Sabha to urge the government of India, in particular the Honourable Prime Minister of India, to:

1. Revise the draft "Prevention of Torture Bill, 2008" to ensure conformity with India's obligation with the UN Convention Against Torture before the next session of the parliament;
2. Consider the recommendations made in the "National Conference on the Prevention of Torture Bill" contained in this report while revising the Bill;
3. Place the Bill before the relevant Parliamentary Standing Committee which shall hold consultations with all the relevant stakeholders including the NGOs before placing the same for adoption by the both Houses of Parliament; and
4. Enact the "Prevention and Punishment of Torture Act" by 2009.

With kind regards,

Yours sincerely

**Suhas Chakma**

Convenor, National Conference on Prevention of Torture Bill, 2008  
Director, Asian Centre for Human Rights

Place: New Delhi

Date: 21st July, 2009

## II. Recommendations of the National Conference on the Prevention of Torture Bill, 2008 New Delhi, 24-25 June 2009

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### 1. Title of the Act

Title of Act

This Act may be called as “Prevention and Punishment of Torture Bill, 2009”.

No justification for torture

### 2. No justification for torture

“No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture”.

Definition of torture

### 3. Definition of torture and other cruel, inhuman or degrading treatment or punishment

Complying with Article 1 and Article 16 of the Convention Against Torture (CAT).

Whoever, being a public servant or being abetted by a public servant or with the consent or acquiescence of a public servant, does any act or omission which causes, hurt, pain or suffering, whether physical or mental, or death for a purpose including but not limited to:

- (a) obtaining from him/her or a third person information, a statement or a confession,
- (b) punishing him/her for an act he/she or a third person has committed or is suspected of having committed,
- (c) intimidating or coercing him/her or a third person,
- (d) extortion; or
- (e) for any reason based on discrimination of any kind, or
- (f) treating with cruelty, inhumanely or giving inhuman or degrading treatment or punishment

is said to inflict torture and other cruel, inhuman or degrading treatment or punishment.

#### Explanation:

‘Public servant’ shall have the same meaning as ‘Public servant’ as in Section 21 of Indian Penal Code, 1860.

‘Torture and other cruel, inhuman or degrading treatment or punishment’ shall include but limited to the offences provided in Schedule I of this Act.

Criminal Liability of Torture

**4. Criminal liability for torture and other cruel, inhuman or degrading treatment or punishment**

Complying with Article 4 of the CAT

(1) Torture and other cruel, inhuman or degrading treatment or punishment as defined under this Act shall be a cognizable criminal offence.

(2) Whoever being a public servant participates, solicits, incites, recommends, capitulates or encourages, whether implicitly or explicitly, by act or omission, in the infliction of torture and other cruel, inhuman or degrading treatment or punishment, shall be liable for committing an offence under the Act.

(3) An order from a superior officer or from a superior in the office or public authority shall not be invoked as a justification of torture and other cruel, inhuman or degrading treatment or punishment.

Liability of the Commanding Officer

**5. Liability of superior officers/commanding officers**

Complying with Article 4 of the CAT

Whosoever is the immediate superior officer/commanding officer of the law enforcement personnel or the immediate senior public servant shall be held liable as accessory to the crime for any act of omission or negligence on his/her part that may have led to the commission of torture and other cruel, inhuman or degrading treatment or punishment by his/her subordinates.

Punishment for torture

**6. Punishment for torture**

Complying with Article 4 of the CAT

(1) Whoever being public servant and having power, control or authority over a person, participates, solicits, incites, recommends, capitulates or encourages, whether implicitly or explicitly, by act or omission, in the infliction of torture and other cruel, inhuman or degrading treatment or punishment shall be punished –

- (i) with either description of rigorous life imprisonment and shall also be liable to fine for torture resulting in the loss of life or custodial rape;
  - (ii) with rigorous imprisonment of either description for a term of a minimum of fifteen years which may extend to life imprisonment and shall also be liable to fine for torture resulting in permanent disability;
  - (iii) with rigorous imprisonment of either description for a term of minimum of fifteen years which may extend to life imprisonment and shall also be liable to fine for grievous forms of torture;
- (2) Whoever, being a public servant or being abetted by a public servant or with the consent or acquiescence of a public servant, and having power, control or authority over a person commits an act of other forms of torture, cruel, inhuman or degrading treatment or punishment shall be punished with either description of imprisonment for a term minimum of six months, which may extend to 10 years and shall also be liable to fine.
- (3) Whoever being a public servant willfully neglects his/her duties required to be performed under this Act or malafidely or knowingly gives incorrect, incomplete or misleading information, or destroys information for adjudication under the Act shall be punishable with imprisonment for a term minimum of six months and which may extend to three years.
- (4) Whoever being a public servant is convicted of offences under this Act shall not be entitled to hold any public office.
- (5) In case a public servant is convicted of offences under this Act, the senior most officer in the concerned department shall tender an apology in writing to the victim or his/her relatives and a copy of the apology shall be placed before the Court which convicted the accused public servant.

Section 302 of IPC relating to murder provides for punishment with death or life imprisonment.

Section 331 of IPC provides for punishment of either description for a term which may extend to ten years and shall also be liable to fine.

Section 109 of the Indian Penal Code provides the same punishment for the prime accused and the abettor unless otherwise specified.

Criminal offence of using information derived from torture

#### **7. Criminal offence of using information obtained through torture**

Complying with Article 15 of the CAT

- (1) Whoever being public servant uses information which he/she ought to have known was obtained or alleged to have been obtained through torture and other cruel, inhuman or degrading treatment or punishment commits an offence and liable to imprisonment for a term of minimum of seven years or upwards and fine.

(2) It shall not be an offence to use information obtained through torture in connection with any judicial proceedings against a public servant accused of torture.

**Illustration:**

A tortures B

C is provided information about torture of B.

C shall not be held liable for prosecuting A based on the information received regarding/through torture of B.

Prohibition on deportation or extradition to torture

**8. Prohibition on deportation or extradition to torture and other cruel, inhuman or degrading treatment or punishment**

Complying with Article 3 of the CAT

(1) Notwithstanding anything contained in the Foreigners Act of 1946 or the Extradition Treaties, no public servant shall expel, return, 'refoule' or extradite any person to another country where there are substantial grounds for believing that he/she would be in danger of being subjected to torture.

(2) For the purposes of determining whether the grounds referred to in subsection (1) exist, the same shall be determined by the competent court under whose jurisdiction the person normally resides.

(3) Where the Government of India receives a request by or on behalf of the Government of any State for the extradition of any person, accused or convicted of the offence of torture as defined under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Minister in charge of External Affairs shall, on behalf of the Government of India, forthwith inform the Government of the requesting State, of the measures which the Government of India has taken, or proposes to take, for the prosecution or extradition of that person, for that offence.

Right to medical examination

**9. Right to medical examination**

(1) The State Government or the Union Territory Administration shall appoint a Judicial Medical Officer (JMO), who shall be a public servant, in each district to conduct examination/inquiries in medico legal cases and submit the reports for consideration by the courts.

(2) Any person who claims to have been tortured during arrest, detention or under custodial investigation or in other situations shall have the right to demand a medical examination by the JMO or an independent registered medical practitioner of his/her own choice. If the arrested person is a female, the medical examination shall be made only by or under the supervision of a female JMO and in case the female JMO is not available, by a female registered medical practitioner.

(3) The medical report, *inter alia*, shall include

- (i) Circumstances of the medical examination: name of the subject and name and affiliation of those present at the examination; exact time and date; location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g., detention centre, clinic or house); circumstances of the subject at the time of the examination (e.g., nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanour of those accompanying the prisoner or threatening statements to the examiner); and any other relevant factors;
- (ii) History: detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, times when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms;
- (iii) Physical and psychological examination: record of all physical and psychological findings on clinical examination, including appropriate diagnostic tests and colour photographs of all injuries;
- (iv) Opinion: interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment and/or further examination shall be given;

Provided that where the medical report opines no injuries or marks of violence upon the victim, the JMO shall provide colour photographic evidence of the victim's body parts.

(4) In case of death in custody, family members and/or relatives of the deceased shall be informed immediately and the post-mortem of the body of the deceased shall be conducted as per the format contained in the Guidelines of the National Human Rights Commission by a panel of independent and registered medical practitioners including the District Judicial Medical Officer or by registered medical practitioners of the choice of the family members of the deceased.

(5) The proceedings of the post-mortem shall be videographed and a family member or their representative shall have the right to remain present during the post-mortem. Copies of report of the post-mortem and the videotape shall be supplied to the family member or their representative within 7 working days from the conduct of the post-mortem.

The NHRC Guidelines on Custodial Deaths and Custodial Rapes provides for mandatory video recording of the post mortems

(6) For the purpose of reviewing the videographs relating to death in custody, the State government with the concurrence of the Chief Justice of the High Court, by notification, shall constitute the District Judicial Medical Review Committee which shall be headed by the designated judge of the District Human Rights Court established under the Protection of Human Rights Act, 1993 or the Principal District and Sessions Judge of each district where the Human Rights Courts are not designated. The District Judicial Medical Review Committee shall include a senior lawyer who is familiar with human rights work, a senior panel lawyer from the District Legal Services Authority, two medical experts from different fields of medicine and an expert in visual communication.

(7) All the videographs relating to death in custody shall be reviewed by the District Judicial Medical Review Committee once in every month or as and when required to provide observations in each case and where the video taping do not correlate to the medical report provided by the panel of doctors headed by the Judicial Medical Officer, the Committee shall have the powers to summon the panel of doctors who performed the post mortem and undertake measures including ordering for a fresh post mortem or fresh medical examination by an independent panel of at least three doctors having expertise on autopsy and forensic science.

(8) Victims of torture or their bonafide representatives including civil society organizations shall have the right to appeal before the District Judicial Medical Review Committee with regard to any dispute pertaining to post mortem and their appeal shall be considered within one week in full conformity with the principles of natural justice.

(9) In cases of death in custody or as a result of torture, the body of the deceased shall be preserved until the District Judicial Medical Review Committee approves the autopsy report.

(10) For the purpose of the videography, videographers shall be approved and authorized by the Chairman of the District Judicial Medical Review Committee.

Mandatory registration of FIR

**10. Re gistration of FIR/complaints/report of torture and other cruel, inhuman or degrading treatment or punishment (authority to receive/register FIR)**

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 as amended till date, whenever a complaint of torture and other cruel, inhuman or degrading treatment or punishment is received, the authorities shall register the First Information Report (FIR) mandatorily.

(2) Any gazetted officer or head of a Village Panchayat may receive complaints of torture and other cruel, inhuman or degrading treatment or punishment and forward such complaints without any delay to the Officer-in-Charge of the police station in whose jurisdiction the offence has taken place for initiating necessary actions.

For the aforesaid purpose, no gazetted officer or head of Village Panchayat shall receive a complaint if the said complaint is against him/her or if any complaint of torture and other cruel, inhuman or degrading treatment or punishment is pending against him/her.

Procedures of investigation, inquiry and trial

**11. Procedures of investigation, inquiry and trial –**

Complying with Article 12 of the CAT

Any offence under this Act shall be investigated, inquired and tried in accordance with the provisions of the Code of Criminal Procedure 1973, as amended till date.

Provided that notwithstanding anything contained in the Code,

(1) an offence under this Act shall be investigated by a police officer, not below the rank of a Deputy Superintendent of Police from another Sub-Division where the offence has taken place.

Similar provision already provided under the SCs/STs Prevention of Atrocities Act and Information Technology Act, 2000

(2) any public servant accused of an offence under this Act shall be immediately suspended from the time of registration of the First Information Report and such suspension shall remain in effect until the conclusion of the investigation and no promotion, award or reward or any other benefit shall be given to the accused until the conclusion of the trial.

In a significant step in July 2009, Ashiq Hussain Peer, a soldier with the 160<sup>th</sup> Territorial Army Battalion was relieved from services within four hours to ensure fair trial.

(3) any inquiry initiated under this Act shall be completed within three months from the date of registration of the First Information Report.



(4) any court which takes cognizance of an offence under this Act shall mandatorily conclude the trial within six months from the date of taking cognizance.

(5) trial of the cases shall be conducted on a day to day basis unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

(6) no court which takes cognizance of an offence under this Act shall hold trial by video-conferencing.

(7) Section 438 of the Criminal Procedure Code, 1973 as amended till date, shall not apply to persons accused of committing an offence under this Act.

(8) Section 360 of the Criminal Procedure Code, 1973 as amended till date or the provisions of the Probation of Offenders Act, 1958 shall not apply to persons convicted under this Act.

(9) a victim of torture and other cruel, inhuman or degrading treatment or punishment or his/her representatives shall be provided a lawyer by the District Legal Services Authority for assistance/representation at every stage of the proceeding including investigation, inquiry, medical examination, bail, trial of the case or hearing on miscellaneous petitions in relation to the case.

(10) whenever it is brought to the attention of the trial court by the victim of torture that another criminal case has been registered against him/her in the same or another police station which is related to the same ground or charge, or which has been registered incidental to the complaint of torture filed by him/her, the trial court shall call for the case records in the said connected case and hold trial in both cases simultaneously.

(11) The trial court judge shall submit monthly report in writing to the Principal District and Sessions Judge, who shall further submit a monthly report in writing to the Chief Justice of the concerned High Court about strict compliance with the provisions of this Act.

**Special Public  
Prosecutor**

## **12. Special Public Prosecutor**

For every Court functioning under this Act, the State Government shall by notification in the official gazette, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

Monitoring places of detention

### 13. Monitoring of places of detention

(1) The designated judge of the District Human Rights Court established under the Protection of Human Rights Act, 1993 or the Principal District and Sessions Judge of every district where Human Rights Courts are not designated, shall make at least two surprise visits every month to detention centres and submit reports about the situations of the detainees to the Chief Justice of the High Court.

(2) Whenever the designated judge of the District Human Rights Court established under the Protection of Human Rights Act, 1993 or the Principal District and Sessions Judge of every district where Human Rights Courts are not designated, receives specific information/complaints of torture and other cruel, inhuman or degrading treatment or punishment during surprise visits or otherwise in writing, it shall be the duty of the said designated Judge to initiate *suo motu* proceedings under this Act.

Provided that where persons are detained in 'non recognized' institutions, surprise visits shall be undertaken immediately following the receipt of reliable information about 'torture' in such institutions.

#### Explanation:

Place of detention shall mean all places where persons are deprived of life and liberty including police stations, prisons, administrative detention facilities, military detention centres, juvenile detention centres and social care institutions such as psychiatric hospitals.

Burden of proof

### 14. Burden of proof -

Whoever being a public servant is accused, charged or prosecuted for committing torture or abetting commission of offences under this Act, the burden of proving that the accused had not committed an offence under this Act shall lie with the accused.

The Law Commission in its 152nd Report on 'Custodial Crimes' recommended that in case of custodial death the onus of proving of innocence be fixed on the police. Further Section 8A of the Prohibition of Dowry Act puts the burden of proof in certain cases on the accused.

No prior sanction required

**15. No need for prior sanction for prosecution of accused public servant –**

Notwithstanding anything contained in Section 197 of the Code of Criminal Procedure 1973 or any other law for the time being in force, a court competent to take cognizance of offences punishable under this Act shall not be required to take prior permission from the concerned government for trial of the offences under this Act.

Section 24(1) of the Right to Information Act, 2005 provides that the information pertaining to the allegations of corruption and human rights violations shall not be excluded from exemption provided to the intelligence and security organisations specified in the Second Schedule.

Protection of victims and witnesses

**16. Protection to victims of and witnesses**

(1) It shall be the duty, responsibility and liability of the Investigating Officer for making arrangements for the protection of victims of torture, complainants and witnesses against all kinds of ill-treatment or violence, threats of violence or any other form of intimidation that may arise pursuant to his/her complaint or investigation. Any such protection shall be made from the time of submission of the complaint to conclusion of the trial.

Article 13 of the CAT

(2) Protection under this section shall mean *inter alia* the provision of physical security, their maintenance including food, clothing and shelter including through the services of non governmental organizations.

(3) The Investigating Officer shall inform the concerned Court about the protection provided to any victim, complainant or witnesses under this section.

(4) It shall be duty of the court trying the offences under this Act to protect the victim, complainant and witnesses against all kinds of ill-treatment or intimidation as a consequence of his/her complaint or any evidence given and to periodically review the protection services being offered to the complainant, victims and witnesses under this Section.

Article 13 of the CAT

Right to compensation

**17. Compensation to and rehabilitation of victims of torture**

Notwithstanding anything contained under Section 357A of the Code of Criminal Procedure, 1973 as amended till date, a victim of torture shall have the right to fair and adequate compensation, and rehabilitation as provided under the following provisions:

Complying with Article 14 of the CAT

(1) A victim of torture shall have the right to interim compensation and rehabilitation for pecuniary and non-pecuniary damages suffered due to torture and other cruel, inhuman or degrading treatment or punishment, and the quantum of reparation including immediate medical treatment shall be determined taking into consideration the following factors:

- (i) the grievous nature of physical or mental torture or other cruel, inhuman or degrading treatment or punishment alleged to have been suffered by the victim;
- (ii) lost opportunities, including employment, education and social benefits;
- (iii) material damages and loss of earnings, including loss of earning potential;
- (iv) the age, familial responsibility and condition of the victim's dependents;
- (v) expenses incurred or likely to be incurred during treatment of the alleged torture-related injuries and psychological and social services;
- (vi) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

(2) A victim of torture shall have the right to final restitution, compensation, rehabilitation, guarantees of non-repetition torture and other cruel, inhuman or degrading treatment or punishment necessary to secure the victim's health, property and security and the same shall be determined based on the factors provided in the aforesaid section.

(3) The amount of financial compensation shall be recovered from the accused public servant.

Provided that such compensation should not seriously risks the right to life of the dependents of the accused public servant. In case such compensation seriously risks the right to life of the dependents of the accused public servant, the State shall pay such compensation for restoring the victim's health, property, security and dignity.

Education and information for prevention of torture

## 18. Education and Information for Prevention of Torture

Complying with Article 10 of the CAT.

The Central Government, the State Governments and administration of the Union Territories in consultation with the National Human Rights Commission and other relevant Commissions shall take necessary measures for providing education and information regarding the prohibition of torture including (i) training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment; (ii) revising the rules or instructions issued in regard to the duties and functions of any such person and (iii) periodically reviewing interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Limitations

## 19. Limitations for cognizance of offences

The limitations contained in the Code of Criminal Procedure, 1973 shall apply for taking cognizance of offences under this Act.

Act to override

## 20. Act to override

Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

Provided in the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act

Duty of the government

## 21. Duty of the government for effective implementation of the Act

(1) Subject to such rules as the Central Government may make, the State Governments and Union Territory Administrations shall take such measures as may be necessary for the effective implementation of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such measures may include,-

(i) the provision for adequate facilities, including legal aid to the victims of torture and other inhuman or degrading treatment or punishment to enable them to avail themselves of justice;

Provided in the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act

- (ii) the provision for travelling and maintenance expenses to witnesses, including the victims of torture and other inhuman or degrading treatment or punishment during investigation and trial of offences under this Act;
  - (iii) the provision for the economic and social rehabilitation of the victims of torture and other inhuman or degrading treatment or punishment;
  - (iv) the appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions of this Act;
  - (v) the setting up of committees at such appropriate levels as the State Government may think fit to assist that Government in formulation or implementation of such measures;
  - (vi) provision for a periodic survey of the working of the provisions of this Act with a view to suggesting measures for the better implementation of the provision of this Act;
- (3) The Central Government shall take such steps as may be necessary to co-ordinate the measures taken by the State Governments under sub-section (1)
- (4) The Central Government shall, every year, place on the table of each House of Parliament a report on the measures taken by itself and by the State Governments in pursuance of the provisions of this section.

Power to make rules

## **22. Power to make rules**

- (1) Subject to such rules as the Central Government may make, the State Governments and Union Territory Administrations shall take such measures as may be necessary for the effective implementation of this Act.
- (2) The Central Government shall, by notification in the official gazette, make rules for carrying out the purpose of this Act.

Provided in the  
Scheduled Castes  
and Scheduled  
Tribes Prevention of  
Atrocities Act

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

## Schedule I. Torture and other cruel, inhuman or degrading treatment or punishment

For purposes of this Act, torture shall include but not be limited to the following:

### A. Physical Torture:

- a) beatings, head-bangings, punching, kicking, striking with truncheons, rifle butts, rolling rods/lathis on the body, jumping on the stomach; Phallanga
- b) food deprivation or forcible feeding with spoiled food, animal or human excreta or other food not normally eaten by the victim;
- c) electric shocks;
- d) cigarette burning, burning by electrically heated rods, hot oil, acid, by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices directly on the wounds;
- e) the submersion of the victim's head in water or water polluted with excrement, urine, vomit and/or blood;
- f) being tied or forced to assume fixed and stressful bodily positions;
- g) rape and sexual abuse, including the insertion of foreign bodies into the sex organs or rectum or electrical torture of the genitals;
- h) mutilation, such as amputation of the essential parts of the body such as the genitalia, ears, tongue, etc.;
- i) dental torture or the forced extraction of the teeth;
- j) harmful exposure to the elements such as sunlight and extreme cold;
- k) the use of plastic bags and other materials placed over the victim's head to the point of asphyxiation; and,
- l) other forms of aggravated and deliberate cruel, inhuman or degrading physical treatment or punishment such as forcing him or her to strip or to engage in acts reprehensible to his or her religion or belief system.

Under section 319 of Indian Penal Code (IPC) hurt means "bodily pain, disease or infirmity to any person.

Under Section 320 of IPC grievous hurt means

"First - Emasculation,

Secondly - Permanent privation of the sight of either eye,

Thirdly - Permanent privation of the hearing of either ear,

Fourthly - Privation of any member or joint,

Fifthly - Destruction or permanent impairing of the powers of any member or joint,

Sixthly - Permanent disfiguration of the head or face,

Seventhly - Fracture or dislocation of a bone or tooth,

Eighthly - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits."

### B. Mental/Psychological Torture:

- a) blindfolding;
- b) threatening the victim or his/her family with bodily harm, execution or other wrongful acts;



- c) confining a victim incommunicado, in secret detention places or other forms of detention;
- d) confining them in solitary cells or in cells put up in public places;
- e) confining them in solitary cells against their will or without prejudice to their security;
- f) prolonged interrogation of victims so as to deny the person normal length of sleep and/or rest;
- g) maltreating a member of the victim's family;
- h) witnessing the torture sessions by the victim's family or relatives;
- i) denial of sleep/rest;
- j) degrading treatment such as stripping the victims naked, parading them in public places, shaving their heads or putting marks on their bodies against their will;
- k) preparing the prisoner for a show trial, with an end view of ending or even reversing the political effectiveness of the prisoner;
- l) inculcation of generalized fear among certain sections of the population; and,
- m) other forms of deliberate and aggravated cruel, inhuman or degrading mental treatment or punishment.

C. Pharmacological Torture:

- a) administration of drugs to induce confession and/or reduce mental competency;
- b) the use of drugs to induce extreme pain or certain symptoms of diseases; and,
- c) other forms of deliberate and aggravated cruel, inhuman or degrading pharmacological treatment or punishment.

### III. Statement of Objects and Reasons

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*“Whereas India is a signatory to the United Nations Convention Against Torture;*

*And whereas it is considered necessary to ratify the said Convention and to provide for more effective implementation.....”*

– Preamble of the Prevention of Torture Bill, 2008 as drafted by the government of India.

**Scale and intensity of torture in India:**

1. India faces widespread and systemic practice of torture. This has been well-documented in the civil society reports, information/complaints submitted before the National Human Rights Commission (NHRC) and the rulings of various courts including the Supreme Court of India.
2. In recognition of the scale of the problem, 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 hours of their occurrence. The NHRC warned that “Failure to report promptly would give rise to the presumption that there was an attempt to suppress the incident”.
3. 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 as given below:

Year	Police Custody	Judicial Custody	Total
1994-1995	111	51	162
1995-1996	136	308	444
1996-1997	188	700	888
1997-1998	193	819	1,012
1998-1999	183	1,114	1,297
1999-2000	177	916	1,093
2000-2001	127	910	1,037
2001-2002	165	1,140	1,305
2002-2003	183	1,157	1,340
2003-2004	162	1,300	1,462
2004-2005	136	1,357	1,493
2005-2006	139	1,591	1,730
2006-2007	119	1,477	1,596
2007-2008	188	1,789	1,977
<b>TOTAL (1994-2008)</b>	<b>2,207</b>	<b>14,629</b>	<b>16,836</b>

4. However, these statistics of custodial deaths represent only a fraction of the incidence of torture in India. Torture is a crime but a part of informal institutional practice and its use is obviously not recorded. There is no obligation to record torture that do not result in custodial death. The term custodial death is, in itself, unhelpful. The NHRC, as well as other official bodies, do not differentiate between deaths in custody resulting from legitimate causes, for example old age, and grave crimes such as torture. Moreover, the NHRC has no mandate to investigate or record human rights violations perpetrated by military and

paramilitary forces. The NHRC often reports that there were no custodial death resulting from torture in conflict afflicted states. This assertion lies uneasily with the highly credible cases of custodial killings documented in most of those states.<sup>3</sup> The failure to differentiate between natural causes and grave crimes, and the manner in which torture is falsely represented in conflict afflicted states is a challenge to the legitimacy of the institution.

5. The courts in India led by the Supreme Court also took cognizance of the threat of torture and have delivered landmark judgments. In its landmark 1996 judgment in the case of *D.K. Basu Vs State of West Bengal*, the Supreme Court laid down specific guidelines to be followed while making arrests with specifically aimed at eliminating violations of human rights in police custody.
6. While the reports of the District Magistrates and Superintendents of Police of every district to the NHRC on custodial deaths have been helpful to understand the scale of torture, these did not have desired effect to reduce torture and custodial violence. In fact, reports of custodial deaths to the NHRC have been rising each year with 1,039 custodial deaths in 2000-2001; 1,307 in 2001-2002; 1,340 in 2002-2003; 1,463 in 2003-2004; 1,493 in 2004-2005; 1,734 in 2005-2006; 1,597 in 2006-2007 and 1,977 custodial deaths in 2007-2008.
7. There has been widespread national and international concerns for India's poor human rights record and impunity. *First*, with regard to prosecution for human rights violations including torture, law enforcement personnel continue to enjoy virtual impunity as their prosecution requires prior permission of the government under Section 197 of the Criminal Procedure Code, 1973 and various Special laws. *Second*, India continues to maintain a reservation to Article 9 of the International Covenant on Civil and Political Rights. It states that under the Indian legal system there is no enforceable right to compensation for persons claiming to be victims of unlawful arrest or detention against the State. While the courts in India and National Human Rights Institutions have awarded compensation for human rights violations including torture, India is yet to adopt any legislation recognizing the right to compensation for human rights violations. It is clear that Indian *juris prudencia* has annulled this reservation and therefore, there is no reason to maintain the reservation.
8. The Government of India took a significant step when it signed the UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment (UNCAT) in October 1997. The Government of India stated:

*“The Convention corresponds to the ethos of Indian democracy, rule of law, individual freedom, personal liberty and security enshrined in Indian polity. Signature of the Convention Against Torture by India is an important milestone in the process of India's continued commitment to fundamental and human rights of all persons and directive principles of national policy. Ratification of the Convention is to follow.”*
9. Despite holding the view that the UNCAT corresponds to the Indian ethos of democracy, the rule of law and individual freedom, India has failed to implement this clear commitment for the last eleven years despite ongoing use of torture, the repeated interventions of the NHRC, civil society organizations and repeated rulings by the Courts. Nonetheless, in 2004-2005, the Government of India established an Inter-Ministerial Group of the Ministry of External Affairs, Ministry of Home Affairs and the Ministry of Law and Justice on the question of early ratification of the CAT.<sup>4</sup> In South Asia, Nepal and Sri Lanka have already ratified the CAT.
10. On the specific recommendation by the UN Human Rights Council during examination of India's human rights record under the Universal Periodic Review in April 2008 to expedite ratification of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the government of India stated that *“The ratification of the Convention against Torture is being processed by Government of India”*.<sup>5</sup> While the Inter-Ministerial Group has made no public recommendations the

Ministry of External Affairs has drafted the Prevention of Torture Bill, 2008 for the ratification of the UNCAT.

### **Critique of the Prevention of Torture Bill, 2008:**

11. The Prevention of Torture Bill, 2008 as drafted by the Government of India states in the preamble that the law is being enacted “*to ratify the Convention and to provide for more effective implementation*”. While recognition of torture as a criminal offence is welcome, the Bill contains ONLY three operative paragraphs relating to (1) definition of torture, (2) punishment for torture and (3) limitations for cognizance of offences. It excludes many of the key provisions of the UNCAT.

These three provisions also fall far short of obligations that the ratifying parties to the UNCAT must undertake and existing national standards on administration of criminal justice system.

#### **Restrictive definition of torture:**

Section 3 of the Prevention of Torture Bill, 2008 provides

*“3. Whoever, being a public servant abetted by a public servant or with the consent or acquiescence of a public servant, intentionally does any act which causes – (i) grievous hurt to any person; or (ii) danger to life, limb or health (whether mental or physical) of any person is said to inflict torture*

*Provided that nothing contained in this section shall apply to any pain, hurt or danger as aforementioned caused by any act, which is justified by law.*

*Explanation:- For the purpose of this section ‘public servant’ shall without prejudice to section 21 of the Indian Penal Code, also include any person acting in his official capacity under the Central Government or the State Government.”*

The above definition is narrow and restrictive and does not capture the spirit and essence of the UNCAT. Despite widespread prevalence of custodial death as a result of torture, it makes no reference to death as a result of torture. This means acts of torture that result in death is likely to be prosecuted as a murder and may not incorporate the gravity of the crime of torture committed as part of the death. To limit the definition is to give space for violations.

There is no reference to other cruel, inhuman or degrading treatment or punishment” anywhere in the Bill. Nor intimidation and coercion are included in the Bill. This means that acts of serious violence – that do not constitute torture - will not be covered. It equally means that death threats including to a victim’s family may not be covered. The Bill does not conform to the requirement in article 16 of UNCAT which requires that India undertake to prevent acts of cruel, inhuman or degrading treatment or punishment. Failing to legislate against cruel and inhuman treatment sends an unfortunate message. It opens the possibility to abuse that will eventually lead to torture. The United States has provided very good evidence of this in recent years. The US permitted some forms of torture and discovered that these limits were being routinely exploited in practice.

#### **Lenient punishment for torture:**

Section 4 of the Prevention of Torture Bill, 2008 relating to “punishment for torture” states,

*“4. Where the public servant referred to in section 3 or any person abetted by or with the consent or acquiescence of such public servant, tortures any person –*

*(a) for the purpose of extorting from him or from any other person interested in him, any confession or any information which may lead to the detection of an offence or misconduct.*

*(b) on the ground of his religion, race, place of birth, residence, language, caste or community or any other ground whatsoever; shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.”*

The Bill foresees a maximum of 10 years imprisonment under the Prevention of Torture Bill, 2008. The Bill does not address the most serious crimes of torture being committed in India today: deaths in custody as a result of torture. The Prevention of Torture Bill equates crimes by the law enforcement personnel as such torture with normal crimes. This is a serious omission considering that law enforcement personnel exercise the sovereign power of the State. They are entrusted to carry out duties of state and are empowered with special powers and have a consequence higher level of responsibility. Hence, the crimes committed by law enforcement personnel should be considered more seriously and harsher punishment that what is provided under the Indian Penal Code is called for. For India to comply with the UNCAT the Convention is clear that punishment should reflect the gravity of the crime committed as stated in Article 4.2 that *“Each state party shall make these offences punishable by appropriate penalties which take into account their grave nature”*

### **Limitation for cognizance of offences:**

Section 5 of the Prevention of Torture Bill provides that:

*“Notwithstanding anything contained in the Code of Criminal Procedure 1973 no court shall take cognizance of an offence under this Act unless the complaint is made within six months from the date on which the offence is alleged to have been committed”.*

Obviously, the Bill puts excessive statutory limitations that go beyond existing Indian law. The limitation of six months for taking cognizance is less than other comparable crimes under the Criminal Procedure Code. For example, in its definition, the Prevention of Torture Bill, 2008 includes ‘grievous hurt’ as part of infliction of torture. But for normal crimes of grievous hurt - i.e. not committed by an agent of the state - there are no limitation under the Criminal Procedure Code. Instead, the Bill relies on Section 199(5) of the Indian Penal Code relating to defamation to justify the limitation!

12. The Prevention of Torture Bill fails to address the requirement of the UNCAT that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture”. At present, Section 197 of the Criminal Procedure Code and other special laws make prior sanction from the government mandatory for prosecution of the accused public servants responsible for torture and other human rights violations. The permission is rarely given. It implies that in practice government of India allows for ‘exceptional circumstances’ through the need for prior permission for prosecution. International law including UNCAT is very clear about the need to avoid exceptional circumstances, as this is precisely where abuse takes place.
13. The Prevention of Torture Bill, 2008 as drafted by the Government of India also does not include any text pertaining to the following provisions of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:
  - ensuring that an order from a superior officer or a public authority may not be invoked as a justification of torture (Article 2);
  - establishing jurisdiction over acts of torture committed by or against a party’s citizens (Article 4);
  - ensuring that torture is an extraditable offence (Article 8);

- establishing universal jurisdiction to try cases of torture where an alleged torturer cannot be extradited (Article 5);
- providing mechanism to promptly investigate any allegation of torture (Articles 12 & 13);
- providing an enforceable right to compensation to the victims of torture (Article 14);
- Banning the use of evidence produced by torture in the courts (Article 15); and
- Barring deportation, extradition or refoulement of any person where there are substantial grounds for believing he/she will be subjected to torture (Article 3).

### **Human rights as the unifying factor:**

14. Civil society organisations are aware that there is strong opposition to the criminalization of torture in India. Eleven years after signing of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the government of India has not taken concrete steps to ratify the CAT and adopt a domestic law against torture. Terrorism and national security are often cited as the reasons for such opposition.
15. But the evidence gathered by the Asian Centre for Human Rights suggests that the use of torture is employed as a routine practice. A significant majority of the 16,855 persons in police and judicial custody between 1994 to 2008 were summoned, detained or arrested for petty offences. And a disturbingly high proportion those detained are poor or belong to Scheduled Castes or the Scheduled Tribes.
16. The security argument is unsubstantiated. Rather, there is evidence that it is counter productive. It is open secret that gains made through democracy and relative good governance in many insurgency affected areas including Jammu and Kashmir have been repeatedly nullified by human rights violations including torture by the security forces.
17. Again there are few who support the security argument that would deny that the American symbols of Abu Ghraib and Guantanamo Bay have acted as powerful recruitment tools for terrorist actions. Respect for human rights must be a central part of the response to fight terrorism and insurgency. The United States cannot point to evidence that the use torture has been an effective weapon in the defeating terror and President Obama's decision to end these practices confirms this.
18. The government of India while signing the UNCAT stated: "The Convention corresponds to the ethos of Indian democracy, rule of law, individual freedom, personal liberty and security enshrined in Indian polity. Signature of the Convention Against Torture by India is an important milestone in the process of India's continued commitment to fundamental and human rights of all persons and directive principles of national policy. Ratification of the Convention is to follow."
19. The government of India led by the United Progressive Alliance which drafted the "Prevention of Torture Bill 2008" must keep the promise to ratify the UNCAT and amend the Bill in line with the changes recommended by the National Consultation on the Prevention of Torture Bill, 2008 on 24-25 June 2009 and adopt the **Prevention and Punishment of Torture Bill, 2009** by 2009.

### **Endnotes**

3. "Torture in India 2008: A State of Denial" by Asian Centre for Human Rights, New Delhi, available at: <http://www.achrweb.org/reports/india/torture2008.pdf>
4. Annual Report of NHRC 2004-2005
5. UN Document No. A/HRC/8/26/Add.1

# IV. Prevention of Torture Bill, 2008 as drafted by the Government of India

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## PREVENTION OF TORTURE BILL 2008

### A BILL

To provide punishment for torture inflicted by public servants or any person inflicting torture with the consent or acquiescence of any public servant and for matters connected therewith or incidental thereto

Whereas India is a signatory to the United Nations Convention Against Torture;

And whereas it is considered necessary to ratify the said Convention and to provide for more effective implement;

#### Short Title and Commencement

- 1 (1) This Act may be called as the Prevention of Torture Act 2008.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date the Central Government may by notification in the Official Gazette appoint

#### Definitions

- 2 (1) Words and expressions used in this Act shall have the same meanings assigned to them in the Indian Penal Code.
- (2) Any reference in this Act to any enactment or any provision thereof shall in any area in which such enactment or provision is not in force be construed as a reference to the corresponding law or the relevant law or the relevant provision of the corresponding law, if any in force in that area.

#### Torture

3. Whoever, being a public servant abetted by a public servant or with the consent or acquiescence of a public servant, intentionally does any act which causes –
  - (i) grievous hurt to any person; or
  - (ii) danger to life, limb or health (whether mental or physical) of any person is said to inflict torture :

Under section 319 of Indian Penal Code (IPC) hurt means “bodily pain, disease or infirmity to any person.

Comment: Section 320 of IPC grievous hurt means

“First – Emasculation,

Secondly - Permanent privation of the sight of either eye,

Provided that nothing contained in this section shall apply to any pain, hurt or danger as aforementioned caused by any act, which is justified by law.

Explanation:- For the purpose of this section 'public servant' shall without prejudice to section 21 of the Indian Penal Code , also include any person acting in his official capacity under the Central Government or the State Government.

### **Punishment for Torture**

4. Where the public servant referred to in section 3 or any person abetted by or with the consent or acquiescence of such public servant, tortures any person –

- (a) for the purpose of extorting from him or from any other person interested in him, any confession or any information which may lead to the detection of an offence or misconduct.
- (b) on the ground of his religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.'

### **Limitation for cognizance of offences**

5. Notwithstanding anything contained in the Code of Criminal Procedure 1973 no court shall take cognizance of an offence under this Act unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

Thirdly - Permanent privation of the hearing of either ear,

Fourthly - Privation of any member or joint,

Fifthly - Destruction or permanent impairing of the powers of any member or joint,

Sixthly - Permanent disfiguration of the head or face,

Seventhly - Fracture or dislocation of a bone or tooth,

Eighthly - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits."

Comment Section 498A defines cruelty

Explanation-For the purpose of this section, "cruelty" means-

- (a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health whether mental or physical) of the woman; or

Comment: Justified by law occurs in section 79 of the IPC

Comment: Section 330 of IPC: Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, shall also be liable to fine.

Comment: Section 133(a) of ICP (1) Whoever (a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place or birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

Comment: Section 199(5) of Code of Criminal Procedure No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.



# V. United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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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 accordance with article 27 (1)

## **The States Parties to this Convention,**

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

## **PART I**

### **Article 1**

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is 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 a 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 other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

### **Article 2**

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political in stability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

### **Article 3**

1. 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.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

### **Article 4**

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

### **Article 5**

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:
  - (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
  - (b) When the alleged offender is a national of that State;
  - (c) When the victim is a national of that State if that State considers it appropriate.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

### **Article 6**

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State shall immediately make a preliminary inquiry into the facts.
3. Any person in custody pursuant to paragraph I of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.
4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

#### **Article 7**

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.
2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.
3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

#### **Article 8**

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

#### **Article 9**

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph I of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

#### **Article 10**

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.
2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

#### **Article 11**

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

### **Article 12**

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

### **Article 13**

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

### **Article 14**

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

### **Article 15**

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, except against a person accused of torture as evidence that the statement was made.

### **Article 16**

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.
2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

## **PART II**

### **Article 17**

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear

in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.
6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.
7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

#### **Article 18**

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:
  - (a) Six members shall constitute a quorum;
  - (b) Decisions of the Committee shall be made by a majority vote of the members present.
3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.
4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

#### **Article 19**

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within

one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.
3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.
4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph I of this article.

#### **Article 20**

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.
2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.
3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.
4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.
5. All the proceedings of the Committee referred to in paragraphs I to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

#### **Article 21**

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure;
  - (a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party.

Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

- (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
- (c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;
- (d) The Committee shall hold closed meetings when examining communications under this article;
- (e) Subject to the provisions of subparagraph
- (e) the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;
- (f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
- (g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;
- (h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:
  - (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
  - (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

- 2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

## **Article 22**

- 1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its

jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.
3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph I and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned. 5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:
  - (a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;
  - (b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.
6. The Committee shall hold closed meetings when examining communications under this article.
7. The Committee shall forward its views to the State Party concerned and to the individual.
8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph I of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary General, unless the State Party has made a new declaration.

### **Article 23**

The members of the Committee and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph I (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

### **Article 24**

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

## **PART III**

### **Article 25**

1. This Convention is open for signature by all States. 2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.



### **Article 26**

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary General of the United Nations.

### **Article 27**

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

### **Article 28**

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.
2. Any State Party having made a reservation in accordance with paragraph I of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

### **Article 29**

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.
2. An amendment adopted in accordance with paragraph I of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.
3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

### **Article 30**

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by paragraph I of this article with respect to any State Party having made such a reservation.
3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

**Article 31**

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.
3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

**Article 32**

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

- (a) Signatures, ratifications and accessions under articles 25 and 26;
- (b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;
- (c) Denunciations under article 31.

**Article 33**

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

## VI. List of participants of the National Conference on the Prevention of Torture Bill, 2008

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Name	Organization
1. Ms Tripti Kanungo	MARG
2. Mr Babloo Loitongbam	Human Rights Alert, Manipur
3. Mr Mathews Philip	SICHREM
4. Mr Pebam Gunendro	Victim of torture from Manipur
5. Mr Meihoubam Rakesh	HRLN
6. Mr Dino D.G. Dympep	MPHRC
7. Mr R. Laldawngliana	MBDPF
8. Mr Bruno Msha	MBDPF
9. Mr Sabda Ram Rabha	ICITD, NEZ
10. Ms Carol Geeta	Peoples Watch
11. Mr Kishan Gurjar	Peoples Watch
12. Mr Subrato Bhattacharjee	PUCL, Jharkhand
13. Mr Subash Mohapatra	FFDA, Chhattisgarh & Orissa
14. Mr Matthew Berger	International Bridges to Justice
15. Mr Kiri Roy	MASUM
16. Ms Papri Debbarma	ACHR
17. Ms Lisa Debbarma	ACHR
18. Mr Mangal Debbarma	AITPN
19. Mr Uday Kumar	DASHRA
20. Mr Paritosh Chakma	AITPN
21. Mr Tejang Chakma	AITPN
22. Mr Mohan Panda	Liberty Institute
23. Mr Jai Singh	HRLN
24. Mr Rudra Pratap Singh	HRLN
25. Mr Jaspal S. Pamu	MARG
26. Mr Prantap Kalra	Advocate

- |                              |                                 |
|------------------------------|---------------------------------|
| 28. Mr Henri Tiphagne        | Peoples Watch                   |
| 29. Ms Sunila Singh          | Peoples Watch                   |
| 30. Mr Sushil Raj            |                                 |
| 31. Mr Tanwar Ahmad Siddiqui | Peoples Watch                   |
| 32. Mr Swapan Debbarma       | ACHR                            |
| 33. Prof. H M Desarda        | Janhit Pratishtan, Aurangabad   |
| 34. Mr Alban Toppo           | Human Rights Law Network, Delhi |
| 35. Mr Kishore Narayan       | Human Rights Law Network, Delhi |
| 36. Mr Nitesh Kumar Singh    | Advocate                        |
| 37. Ms Nisha Khanna          | Bye Tense                       |
| 38. Mr Suhas Chakma          | ACHR                            |
| 39. Mr Santosh Chakma        | AITPN                           |

**Observer:**

40. Ms Renuka Srinivasan  
Advisor, Delegation of the European Commission to India, Bhutan and Nepal

**Guest of Honour:**

41. Ms Anne Marchal  
Head of Development Cooperation  
Delegation of the European Commission to India, Bhutan and Nepal



Asian Centre for Human Rights is dedicated to promotion and protection of human rights and fundamental freedoms in the Asian region by:

- providing accurate and timely information and complaints to the national human rights institutions, the united nations bodies and mechanisms as appropriate;
- conducting investigation, research, campaigning and lobbying on country situations or individual cases;
- increasing the capacity of human rights defenders and civil society groups through relevant trainings on the use of national and international human rights procedures;
- providing input into international standard setting processes on human rights;
- providing legal, political and practical advice according to the needs of human rights defenders and civil society groups; and
- by securing the economic, social and cultural rights through rights-based approaches to development.

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