

HANDBOOK ON TORTURE

The practice of torture has been widespread and predominant in India since time immemorial. Unchallenged and unopposed, it has become a 'normal' and 'legitimate' practice all over. In the name of investigating crimes, extracting confessions and punishing individuals by the law enforcement agencies, torture is inflicted not upon the accused only, but also on bona fide petitioners, complainants or informants amounting to cruel, inhuman and degrading treatment, grossly derogatory to the dignity of the human person. Torture is also inflicted on the women and girls in the form of custodial rape, molestation and other forms of sexual harassment.

Surprisingly, in most of the cases of torture, it is the poor and vulnerable sections of the society which are victimized. Apart from that, most torture cases go unreported because the victims fear further prosecution and suffer in silence. As a matter of fact, in India, the perpetrators are rarely prosecuted and in the process anarchy and lawlessness are promoted. This contributes to prevalence of torture in India. Under such circumstances, it becomes very crucial on the

part of India to have a specific legislation to combat torture. Unfortunately, India neither has one nor it has ratified the UN Convention against Torture (CAT). There has been a continuous effort of the National Human Rights Commission (NHRC) to pursue the Government of India to ratify the Convention against Torture so that a new domestic legislation thereafter can be brought into place. But the effort has gone till date without success. However, absence of a specific law, the Supreme Court of India has condemned torture through various judgments which have contributed to create a national jurisprudence in cases of combating torture. In such a state of affairs, it becomes important to ratify the CAT and to have specific legislation on torture.

1.What is torture?

Torture is the intentional infliction of severe mental or physical pain or suffering by or with the consent of the state authorities for a specific purpose. The aim of torture is to break down the victim's personality and is often used to punish, obtain information or a confession, take revenge on a person or create terror and fear within a population. Torture is distinguished from other forms of ill-treatment by the severe degree

of suffering involved. It encompasses many forms of suffering, both physical and psychological, which are remarkably similar worldwide.

2. What are the different forms of torture?

Some of the most common methods of physical torture include beating, electric shocks, stretching, submersion, suffocation, burns, rape and sexual assault. It is important not to forget about psychological forms of ill-treatment which very often have the most long-lasting consequences for victims. Common methods of psychological torture include: isolation, threats, humiliation, mock executions, mock amputations, and witnessing the torture of others. Apart from these, 1) police authorities are not taking the complaints from the victim of torture; 2) extra-judicial killings; 3) enforced evictions using police force without proper rehabilitation; 4) victims of torture are under continuous threat where there is no police action; 5) indiscriminate lathi-charge; 6) Indiscriminate firing; 7) Detention in police custody more than 24 hours without production before magistrate; 8) unhygienic & improper remand houses; 9) women & children are being kept in police station; 10) in the name of search, police are breaking house, destroying properties,

looting, stealing, etc. 11) Handcuffing or roping an ordinary accused while production before court and/or returning from court; are also considered to be torture.

3. Who are subjected to torture?

Anyone can be a victim of torture – mainly the marginalized section, children as well adults, young or old, religious or atheist, intellectual or not. Victims of torture do not suffer alone. In many cases, the victims' families and friends are also affected. The broader society may also be indirectly affected.

4. What are the consequences of torture?

The consequences of torture reach far beyond immediate pain. It leads to

- ✍ Loss of life
- ✍ Loss of property
- ✍ Permanent / temporary loss of human organ (s)
- ✍ Loss of dignity / self respect
- ✍ Loss of faith upon rule of law
- ✍ Encouraging people to take law into their own hands

Many victims suffer from post-traumatic stress disorder (PTSD), which includes symptoms such as flashbacks (or intrusive thoughts), severe anxiety, insomnia, nightmares, depression and memory lapses. Torture victims often feel guilt and shame, triggered by the humiliation they have endured. Many feel that they have betrayed themselves or their friends and family. All such symptoms are normal human responses to abnormal and inhuman treatment.

5. Who are the perpetrators of torture?

Those most likely to be involved in torture and other forms of ill-treatment are:

- ✍ The police
- ✍ The military
- ✍ Paramilitary forces
- ✍ State-controlled contra-guerrilla forces
- ✍ But perpetrators may also include:
- ✍ Judiciary
- ✍ prison officers
- ✍ death squads
- ✍ any government official

- ✍ Government run health system
- ✍ health professionals
- ✍ co-detainees acting with the approval or on the orders of public officials
- ✍ In the context of armed conflicts, torture and other forms of ill-treatment could also be inflicted by:
 - ✍ Opposition forces
 - ✍ The general population

6. What are the rights of a victim of torture?

- ✍ Right to be protected from torture
- ✍ Right to make a complaint, to have it impartially investigated, and to be protected from retaliation for making complaints
- ✍ Right to a speedy and fair trial
- ✍ Right to obtain redress, fair compensation, including rehabilitation
- ✍ Perpetrators to be awarded punishment

7. What will you immediately do when there is a case of torture?

- ✍ Rush to the Hospital/ Health Centre
- ✍ Ensure proper medical care.
- ✍ Record the injuries, both internal and external- nature and age of injuries
- ✍ Name the perpetrators.
- ✍ Mention the place of occurrence.
- ✍ Get an official copy of the medical report.
- ✍ Get a statement from the examining doctor which includes any statements that victim made to the doctor (i.e. where patient states to doctor the identity of the perpetrator, place/time of occurrence, etc.)
- ✍ Preserve any clothes worn by the victim during the incident for forensic examination and chemical analysis
- ✍ Make a complaint to the nearest police station

- ✍ In cases of custodial death, ensure that the judicial magistrate immediately initiates an inquiry
- ✍ In cases of death resulting from police firing, ensure that a criminal case is initiated
- ✍ In cases of encounter deaths, ensure that a criminal case is initiated and that NHRC guidelines regarding encounter deaths are followed

8. What are the authorities to be approached when a person is tortured?

When a person is tortured, you may proceed as follows:

- ✍ File a complaint in the police station against the perpetrators, as provided for under section 154 Cr.P.C.. If the complaint is not accepted, then forward it to the respective SP of the district.
- ✍ Additionally, it is possible to submit a complaint before a judicial magistrate. The magistrate can take cognizance of the complaint and act accordingly, as per section 190 Cr.P.C..

- ✍ Initiate a private complaint before the Court.
- ✍ If torture occurred inside a police station, bring it to the attention of the trying magistrate and demonstrate the injuries to the court.
- ✍ You can also file a writ petition in the respective High Courts or the Supreme Court.
- ✍ If no action is initiated, prefer a complaint before the appropriate Commission: NHRC, SHRC, Women's Commission, SC Commission, ST Commission, etc..
- ✍ Approach such authorities to ensure that the torture survivor is provided adequate psychological support against the trauma he/she suffers from.
- ✍ Approach a local human rights organization for assistance with any of these matters.

9. What can be done for the rehabilitation of a victim of torture?

The aim of rehabilitation is to empower the torture victims to resume as full a life as possible. The rehabilitation of torture victims requires addressing

their needs in a broader context. Ensure that torture survivors are taken to Rehabilitation centres which offer multi-disciplinary support and counseling including:

- ✍ medical attention and psychotherapeutic treatment
- ✍ trauma treatment and psychosocial support
- ✍ legal services, restitution and redress
- ✍ social reintegration

If you come across any case of torture, please bring it to our notice. Our contact details are provided at the end of this handbook.

10. What are the important decisions of the Supreme Court in safeguarding victims of torture?

Following are some of the decisions of the Supreme Court which safeguard the victims of torture:

- ✍ Every illegal detention irrespective of its duration, and custodial violence, irrespective of its degree or magnitude, is outright condemnable and per se actionable. Remedy for such violation is available in civil law and

criminal law. (**Sube Singh v. State of Haryana and Ors., AIR 2006 SC 1117**)

- ✍ Detail guidelines on arrest (**D.K. Basu v. State of West Bengal, AIR 1997 SC 610**)
- ✍ Torture is not merely physical; there may be mental torture and psychological torture calculated to create fright and submission to the demands or commands. When the threats proceed from a person in Authority and that too by a police officer the mental torture caused by it is even graver. (**Arvinder Singh Bagga v. State of Uttar Pradesh, AIR 1995 SC 117**)
- ✍ Where the State or its servant in purported exercise of their powers contravenes fundamental right, the aggrieved person can claim enforcement of fundamental right by resort to remedy in public law under Articles 32 and 226 of the Constitution. (**Smt. Nilabati Behera @ Lalita Behera v. State of Orissa and Ors., AIR 1993 SC 1960**).
- ✍ The Court reiterated right to legal aid to under trial and convicted persons and laid down

certain direction issued by Supreme Court for providing fast and efficient legal assistance to prisoners in jail and to provide protection to women prisoners in lock-ups. (**Seela Barse v. State of Maharashtra, AIR 1983 SC 378**)

- ✍ Right against torture within the prison walls (**Francis Coralie Mullin v. Union Territory of Delhi, AIR 1981 SC 746**)
- ✍ The State, at the highest administrative and political levels, will organize special strategies to prevent and punish brutality by police methodology. (**Raghubir Singh v. State of Haryana, AIR 1980 SC 1087**)
- ✍ Handcuffing cannot be made routinely. It has to be made on reasonable grounds alone and the escorting officer has to get approval of the Judicial Officer concerned. (**Prem Shankar v. Delhi Administration, AIR 1980 SC 1535**).
- ✍ Solitary confinement is unconstitutional (**Sunil Batra v. Delhi Administration, (I), AIR 1978 SC 1675**).

11. How can you take action against combating torture?

- ✍ Organize campaigns with community groups, women's organizations, religious groups, trade unionists, human rights organizations and others, to take intensive action to prevent torture.
- ✍ Make sure that the complaints of torture are investigated and those responsible brought to justice.
- ✍ Take action for the reparation, including compensation and rehabilitation of the torture survivors.
- ✍ Ensure that the relatives, lawyers and doctors should be given access to prisoners, and all detainees brought before a judge, without delay.

List of Addresses

National Project on Preventing Torture in India

National Office:

People's Watch

6, Vallabai Road, Chokkikulam,
Madurai 625 002 Tamil Nadu
Ph: +91-452-2531874, 2539520
Fax: +91-452-2539520
E-Mail: no2torture@pwn.org,
Website: www.pwn.org

State Offices:

S.No.	State Name	Address	User ID/official
1.	Andhra Pradesh	Door. No: 6-1-69/4/2 Lutheran Church Road, Lakdi-Ka-Pool, Hyderabad-500 004 Andhra Pradesh	ap@pwn.org
2.	Bihar	L-1/1, Shri Krishna Puri, Patna – 800 001, Bihar	bihar@pwn.org

S.No.	State Name	Address	User ID/official
3.	Karnataka	C/O SICHREM No –35, Ground Floor, Anjanappa Complex, Hennur Main Road, Lingarajapuram, Bangalore – 560 084 Karnataka	karnataka@pwtn.org
4.	Kerala	3/354, Chirathara, Muttada P O, Trivandrum-695 025 Kerala	kerala@pwtn.org
5.	Orissa	294 – A, Ground Floor, Sahid Nagar, Bhubaneswar – 751 007 Orissa.	orissa@pwtn.org
6.	Rajasthan	Sasvika Sangatan, Sameeksha Campus, Near Pavansuth Colony, Opp. T.T. College, Jaipur Road, Mirshali, Ajmer – 305 001 Rajasthan	rajasthan@pwtn.org
7.	Tamil Nadu	6, Vallabai Road, Chokkikulam, Madurai-625 002 Tamil Nadu	tamilnadu@pwtn.org
8.	Uttar Pradesh	S-6/ 25-26, Police Line, Pakki Bazar, Varanasi-221 002 Uttar Pradesh.	up@pwtn.org
9.	West Bengal	C/O MASUM, 26, Guitendal Lane, Howrah – 711 001 West Bengal	masumindia@pwtn.org

National and State Human Rights Institutions

1) National Human Rights Institutions

National Human Rights Commission

Faridkot House, Copernicus Marg,
New Delhi-110001, Ph: 011 – 23382747
Fax No: 011 – 23384863(Admn) 23386521(Law)
For Complaints-filing /status, General queries
MADAD : 91-11-23385368 Mobile: +919810298900
E.Mail: nhrc@ren.nic.in Website: www.nhrc.nic.in

National Commission for Women

4, Deen Dayal Upadhyaya Marg,
New Delhi-110 002.
Ph: 91-11-23237166, 91-11-23236988
Fax : 91-11-23236154
Complaints Cell : 91-11-23219750
Email : ncw@nic.in Website : www.ncw.nic.in

National Commission for SC's

National SC Commission, 5th Block, 11th Floor,
Lok Nayak Bhavan, New Delhi – 110 003.
Phone No : 011 – 4620969
Fax No : 011 – 4625378

National Commission for ST's

The Director, National Commission for Scheduled Tribes,
91, Satya Nagar, Bhubaneshwar – 751 007, Orissa State.
People's Watch-NPPT

National Commission for Minorities

5th Floor, Lok Nayak Bhavan,
Khan Market,
New Delhi -110 003
Fax : 011-24693302, 24642645, 24698410
Website: www.ncm.nic.in

2) State Human Rights Commissions(SHRC)**Andhra Pradesh**

The Chairperson
"Gruhakalpa", M.J. Road,
Hyderabad-500001,
E-Mail: aphumanrights@ap.nic.in.
Tele(o):24601571, Fax:24601573,
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Assam

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Chhattisgarh

The Chairperson Near Mantralaya,
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Himachal Pradesh

The Chairperson Pines grove Building, Shimla-171002,
STD: 0177, Fax: 224908.

Jammu&Kashmir

The Chairperson Dawn building, Dalgate, Srinagar-119001.
STD: 0194, Fax: 454046, Tele(o):2481802, 2454046,
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Kerala

The Chairperson M.P. Appan Road, Vazhuthacaud,
Thiruvananthapuram-695014
Tele(o): 0471-2337145 Fax: 0471-2337148, E-
Mail: kshrctvpm@vsnl.net.

Madhya Pradesh

The Chairperson Paryavas Bhawan, Arera Hills, Jail Road,
Bhopal-462001, STD: 0755, Tele(o):2764505,
Fax: 574028, E-Mail: mphrc@sancharnet.in,

Manipur

The Chairperson Courts complex, Lamphel, Imphal -
795004, STD: 0385, Fax: 2410472, E-
Mail: mhrc@man.nic.in.

Maharashtra

The Chairperson 9, Hajarimal Somani Marg, Near CST
Railway Station, Mumbai-400001. Fax: 022-2885858,
22091804. Tele(o):22071155/22073434

Orissa

The Chairperson Orissa State Guest House, Room No. 1,2,3,4 Ground Floor, Bhubaneswar, Orissa. Tele(o): 0674-23611334, FAX:0674-2405094

Punjab

The Chairperson SCO NO. 20-21-22, Sector 34A, Chandhgarh, Tele(o): 0172-2608520, Fax: 0172-2608520,

Rajasthan

The Chairperson State Secretariat, Jaipur, Tele(o): 0141-2227868 Fax: 2227738, E-Mail: rshrc@raj.nic.in.

Tamil Nadu

The Chairperson Thiruvarangam Maligai,143, P.S. Kumaraswamy Raja Salai,Greenways Road, Chennai - 600 028.

Uttar Pradesh

The Chairperson 1/183, Vineet Khand, Gomati Nagar, Lucknow – 226010. Tele(o):0522-2726742 , Fax: 0522-2726743, E-Mail: uphrc@sancharnet.net.

West Bengal

The Chairperson Bhabani Bhavan, Alipore, Kolkata-700027, Tele(o): 033-24797259, Fax: 033-24799633, E-Mail: wbhrc@cal3.vsnl.net.in