

# Law Commission Report Summary

## Implementation of United Nations Convention against Torture

- The Law Commission of India (Chairperson: Dr. Justice B. S. Chauhan) submitted its report on “Implementation of ‘United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment’ through legislation” to the Ministry of Law and Justice on October 30, 2017. India signed the convention on October 14, 1997 but has not ratified it so far.
- The matter was referred to the Law Commission in July 2017, following a recommendation by the Supreme Court. This recommendation was made while the Court was hearing a case related to torture in death sentence.
- **Objective of the convention:** The convention seeks to ensure that countries put in place various institutional mechanisms to prevent the use of torture. Each country that is party to the convention is required to carry out certain steps such as (i) legislative, administrative, judicial or other measures to prevent torture, and (ii) ensure that torture is a criminal offence, among others. In order to meet these obligations, the Commission recommended amendments to the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872. In addition, the Commission submitted a draft Prevention of Torture Bill, 2017 which defines acts that should constitute torture and prescribed punishments for such acts.
- **Ratification of convention:** The Commission observed India has faced problems in extradition of criminals from foreign countries. This is because the convention prevents extradition to a country where there is danger of torture. It recommended that this issue should be resolved by ratifying the convention.
- **Definition of torture:** The Commission observed that there is no definition of torture in the current Indian laws. According to the draft Prevention of Torture Bill, 2017, any public servant or an individual authorised by him indulges in an act of torture if they inflict on another person: (i) grievous hurt, (ii) danger to life, limb, or health, (iii) severe physical or mental pain, or (iv) death for the purpose of acquiring information or punishment.
- **Punishment for acts of torture:** In order to deter the use of torture, the Commission recommended stringent punishments for individuals who commit such acts. According to the draft Prevention of Torture Bill, 2017, punishment for torture includes imprisonment up to 10 years and fine. In case torture leads to death, the punishment includes death or life imprisonment in addition to fine.
- **Protection for individuals:** The Commission recommended that an effective mechanism be put in place to protect victims of torture, complainants, and witnesses against possible violence and ill-treatment. The draft Prevention of Torture Bill, 2017 makes state governments responsible for protecting these individuals. The state government will provide such protection from the time of submission of complaint till conclusion of trial for the offence.
- **Compensation for torture:** The Commission recommended amendments to the Code of Criminal Procedure, 1973 to allow for payment of compensation in case of torture. It made this recommendation citing that courts have previously awarded compensation for various forms of torture including illegal detention, and custodial torture.
- The Commission recommended that courts should determine compensation on the basis of nature, purpose, and extent of injury caused to a person, among other factors. Further, courts should keep in mind the socio-economic background of the victim to ensure that the compensation covers medical treatment and rehabilitation.
- **Custodial injury:** The Commission recommended amendments to the Indian Evidence Act, 1872 to ensure that in case a person sustains injuries in police custody, it will be presumed that these have been inflicted by the police. The burden of proof shall lie on the police authorities to explain such injuries.
- **Sovereign immunity:** Sovereign immunity is the principle that the government is not responsible for the actions of its agents (such as police forces). The Commission states that courts have rejected this principle in various cases and therefore agents of the government cannot engage in torture. The Commission reiterated that citizens are entitled to constitutional rights such as the right to life and personal liberty.

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