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Preface

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WHY INDIA STILL LACKS AN ANTI-TORTURE LAW: POLITICAL RELUCTANCE, INSTITUTIONAL RESISTANCE, OR LEGAL REDUNDANCY?

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Abstract

India is a country with a lot of people and it is supposed to follow the rules of the United Nations Convention Against Torture that it signed in 1997. India has not made this convention a law in its own country yet. This paper is going to look at why India has not done this. There are a reasons. One reason is that the government does not want to do it because it is worried about its power. Another reason is that the police and security people do not want to follow rules. Some people also say that India already has laws that prevent torture so it does not need an one. The paper looks at what the lawmakers have done in the past what the judges have said, what human rights groups have reported and what other countries have done. It says that none of these reasons are enough on their own to explain why India has not made a law against torture. It is because all these reasons are connected and support each other that India has not done anything. The paper says that India not having a law against torture is not something that happened by mistake. It is something that has been chosen. It is a big problem for the country and its people especially those who are already vulnerable. India needs a law, against torture to protect its citizens and follow the rules of the United Nations Convention Against Torture.

Keywords: United Nations Convention Against Torture, Torture Prevention, Human Rights, Custodial Violence, Police Brutality, Anti-Torture Law, Legislative Failure, Judicial Response, Vulnerable Communities, International Obligations.

1. Introduction

Torture is something that has been around for a long time and people all over the world say it is wrong. The Geneva Conventions and the Rome Statute, the Universal Declaration of Human Rights and other human rights agreements all say that torture is not allowed¹ and this rule cannot be changed. The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which was agreed to in 1984 and started being used in 1987² is the complete international agreement on this topic. It requires countries that sign it to make torture a crime look into complaints and help victims.

India signed the United Nations Convention Against Torture on October 14 1997³. India has not officially agreed to it in over 27 years. Importantly India has not made a law that specifically says torture is a crime. This is not because people do not know about the issue. Reports from the Law Commission discussions in Parliament orders from the Supreme Court⁴ and campaigns by civil society groups have talked about it many times. The law still does not exist. This paper is trying to answer the question of why this the case. There are three reasons that people talk about in academic, legal and policy discussions. The first reason is that the government does not want to make a law that would limit what the state can do. The second reason is that the police and security forces do not want to change because they do not want their people to be held accountable for their actions. The third reason is that some people think the laws India already has are enough to deal with torture so a new law is not needed.

This paper will look at each of these reasons study the history of the issue and compare it to what other countries have done. It will argue that Indias failure to make a law against torture is a choice, not something that happened by accident. The paper will show that Indias decision not to make a law against torture is a choice that is deeply embedded in the system. Torture is an issue and Indias failure to make a law, against it reflects a deliberate choice. The issue of torture is complex. The paper will examine it carefully to understand why India has not made a law against torture.

¹ Universal Declaration of Human Rights, art. 5, 1948; Rome Statute of the International Criminal Court, art. 7, 1998.

² United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted Dec. 10, 1984, entered into force June 26, 1987.

³ United Nations Treaty Collection, Convention Against Torture Status Report, India Signatory Status (1997).

⁴ Law Commission of India, 273rd Report on Implementation of United Nations Convention Against Torture, 2017.

2. Defining the Problem: What Is Torture and What Does the Law Require?

2.1 The International Legal Definition

The United Nations Convention Against Torture which is also called UNCAT says that torture is when someone does something to cause a lot of pain or suffering to a person. This pain or suffering⁵ can be physical or mental. It has to be done on purpose. The reason for doing this can be to get information from the person or from someone. It can also be to punish the person for something they did or something they are suspected of doing. Another reason can be to scare the person or force them to do something. This can also be done to someone because of who they are. The people who do this have to be working for the government or have the governments permission. There are three things that have to happen for it to be considered torture: the person has to be in a lot of pain this has to be done on purpose and it has to be done by someone who works for the government or with their permission. UNCAT says that countries have to make torture against the law. They have to punish people who do this. They have to make sure that anyone who does this can be punished, no matter where they are, from. They have to help the people who have been tortured.

2.2 India's Constitutional Obligations

The Indian Constitution has Article 21 that says people have the right to life and to be free. The Supreme Court made some decisions in the cases of Francis Coralie Mullin v. Union Territory of Delhi and D.K. Basu v. State of West Bengal. These decisions said that Article 21 also means that people have the right to be free from torture and violence when they are in custody.

The Indian Constitution also has Article 20(3) that protects people from saying things that can be used against them. Article 22⁶ is there to make sure that people are not detained without a reason. Just because something is in the Indian Constitution does not mean it is against the law to do it. If someone's rights are violated they can get some help like a writ petition. They can get some money or the person who did it can get in trouble at work. However the Indian Constitution, by itself does not make something a crime that the police can investigate or that someone can go to jail for the law has to say that it is a crime.

⁵ United Nations Convention Against Torture, art. 1.

⁶ Constitution of India, arts. 20(3), 21 & 22.

2.3 The Legislative Gap⁷

India does not have a law that specifically says what torture is and how it should be punished. The country is missing a law that:

- Says what torture is and makes it a crime
- Says how badly someone who does torture should be punished
- Makes a special team to look into complaints about torture in police custody⁸
- Gives people who are tortured the right to get money for what happened to them
- Makes sure that officers in charge are responsible when torture happens
- Does not let police use things people say when they are being tortured as evidence, in court

3. The Scale of the Problem: Custodial Violence in India

Before analyzing causes, it is necessary to establish the scale of the problem that the absence of law enables.

3.1 National Crime Records Bureau Data

According to the National Crime Records Bureau India had 2,544 deaths in custody and 215 deaths in police custody from 2010 to 2020. These numbers are official. Many think they are not the whole story. The real number of people killed in custody is likely much higher because there are no strict rules, for reporting such cases and not all incidents are documented. Custodial torture happens a lot. Most cases do not end in death and go unreported. The National Crime Records Bureau data is often seen as not complete. India's judicial and police custody deaths are tracked by the National Crime Records Bureau.

3.2 Human Rights Documentation

The National Campaign Against Torture and Human Rights Watch and Amnesty International and the Asian Centre for Human Rights have found out about thousands of cases of torture in states. They have seen that the police use bad methods to hurt people. The police beat people for a time and give them electric shocks. They also hang people in uncomfortable positions. The police do

⁷ Law Commission of India, 273rd Report on Implementation of UNCAT, ¶¶ 4.1–4.7 (2017).

⁸ National Crime Records Bureau, Prison Statistics India 2010–2020.

not let people sleep. They even attack people in a bad way. The police also threaten the family members of the people they are hurting. The people who are tortured are mostly from the Dalit community and the Adivasi community. Some people who are tortured are not from the religion in India. The people who are tortured are also very poor. Some people who are tortured are mentally ill. The National Campaign Against Torture and Human Rights Watch and Amnesty International and the Asian Centre for Human Rights are all worried about the people who are tortured. The United Nations Special Rapporteur on Torture is also worried about the people who are tortured in India. He has said times that he is worried about how India treats people in custody. The United Nations Special Rapporteur on Torture has said that the laws in India do not protect people. He said this again in 2020. The National Campaign Against Torture and Human Rights Watch and Amnesty International and the Asian Centre for Human Rights all want the laws, in India to change so that people are protected from torture⁹.

3.3 The Impunity Architecture

What makes torture by the police keep happening is that they are almost never punished for it. The law says that to take a government employee to court for something they did at work you need permission from the government first¹⁰. This means that police officers are often protected from being taken to court. When something bad happens the police department investigates itself. The people who are asked to tell what they saw are often police officers. The people who are hurt by the police do not have the money or the power to fight back. They are scared of being hurt again. When someone tries to file a complaint against a police officer it is often not accepted and even when it is the officer is rarely found guilty. This is not something that happens by accident. It is actually part of the way the law works in India. The fact that India does not have a law against torture makes it even easier for the police to get away with it. Torture by the police is a problem and it keeps happening because the police are not held accountable for their actions. The lack of a law, against torture and the fact that the police are almost never punished for it makes it very difficult to stop torture by the police.

⁹ United Nations Special Rapporteur on Torture, India Report, 2020.

¹⁰ Code of Criminal Procedure, 1973, § 197.

4. The First Explanation: Political Reluctance

4.1 Sovereignty and Security Discourse

In India the people in power have always looked at laws about torture in a way. They think about how it affects the safety of the country. India has had problems with violence in places like Kashmir and the Northeast. There are also some areas where Left Wing Extremism's a big issue. Because of this many politicians say that if we limit the ways we can interrogate people it will hurt our ability to fight terrorism and violence. This is basically the same as saying that torture is okay if it can help us stop a problem from happening. It mixes up getting information with investigating crimes and thinks of torture as something we need to do than something that is always wrong. The people in power think about rights in a way that puts the countries needs first rather than following international rules. Indias laws about torture and the Indias approach, to rights are influenced by this way of thinking about national security and torture.

4.2 The Non-Ratification of UNCAT

India made a decision not to agree to the United Nations Convention Against Torture even though they signed it 27 years ago. This shows that the politicians are not really willing to do something about it. The government has given reasons for this over the years. They say they are worried about what's considered torture and what is not. They are also concerned about countries getting involved in Indias business. Additionally they think the laws they already have are good enough. The reason they give about the definition of torture is very interesting. People who speak for the government say that the United Nations Convention Against Torture only talks about people who work for the government hurting others. They think this does not cover all the violence that happens in India. This is actually the wrong thing to complain about. The United Nations Convention Against Torture is specifically made to stop the government from hurting people, which's something that the laws, in India do not do a good job of addressing.

4.3 Legislative History: The Prevention of Torture Bill

The Prevention of Torture Bill was introduced¹¹ in the Lok Sabha in 2010. It got passed by the Lok Sabha. Then sent to a special group in the Rajya Sabha. This group gave a better report in 2010.

¹¹ Select Committee of the Rajya Sabha, Report on the Prevention of Torture Bill, 2010.

The bill did not become a law because the 15th Lok Sabha ended in 2014. It has not been introduced again since then. The groups report suggested some changes. It said the definition of torture should be clearer. The group also said that the government should not have to agree before someone can be prosecuted for torture. They wanted compensation for people who are tortured. The group accepted these suggestions. They were not made into law. This happened without any explanation, to the public. It shows that some people did not want this law. The Prevention of Torture Bill is still not a law. The Prevention of Torture is still not protected.

4.4 Electoral Calculus

There is also an more realistic reason for this. The Indian National Congress and the Bharatiya Janata Party do not want to pass a law against torture because it would be bad for them. The police and paramilitary are very important for getting votes. They are like big organizations that help the parties in power. If there is a law against torture the police and paramilitary might get angry because they could be punished. The people who are tortured like the poor and those in jail do not have a voice in politics. So from a point of view it does not make sense for the parties to make a law against torture. This is not about one party it is about all of them. Both the Indian National Congress and the Bharatiya Janata Party have been in power in the country since the United Nations Convention Against Torture was signed in 1997. Neither of them has done anything to make the law real. The fact that both parties agree on not doing anything, about torture shows that this is a decision they make because of how politics works not because of what party they belong to. The Indian National Congress and the Bharatiya Janata Party are. The same when it comes to torture laws.

5. The Second Explanation: Institutional Resistance

5.1 The Police Establishment

The Indian police force is one of the largest in the world. It works under rules made a time ago in 1861 when India was under British rule¹².

- * The police force is set up in a way and has many connections in politics.
- * It does not like being checked or held responsible for its actions.

¹² Police Act, 1861.

The police do not want laws against hurting people during questioning. They think these laws would make it hard for them to do their job. These new laws would make police officers answer for things they do during questioning. This would be a change from how things are now where police officers often do not get in trouble. Police groups have been talking to politicians about this. They say that if they cannot use ways to question people

- * It will be harder to solve crimes
- * Bad people will get away
- * It will not be safe for the public.

Some people disagree with the police. They say that countries with laws against hurting people do not have worse results when solving crimes. Still the police argument seems to be working in politics. The police force and its culture are not used to being accountable. The idea of accountability is a threat to how they work. The police do not want to change from a culture of getting away with things to one where they have to answer for their actions. They are against laws that would make them accountable for hurting people during questioning. The police think these laws would be a problem, for them. They do not want to be held responsible. The police force wants to keep doing things their way.

5.2 The Paramilitary and Armed Forces

The situation is really bad when it comes to the forces and central paramilitary forces. They are operating under the Armed Forces Special Powers Act¹³ in areas that're not very safe. The Armed Forces Special Powers Act is in force in some parts of Jammu & Kashmir and the Northeast. This act gives a lot of protection to the people in the forces. It is very hard to prosecute them without the Central Government saying it is okay. When you combine this protection with the fact that we do not have a law against torture it creates a situation where the armed forces can do much what they want in areas where there is conflict. The people in charge do not want to change this situation. They have been against making any changes, for a time. The defence and home establishments have always supported them strongly.

¹³ Armed Forces (Special Powers) Act, 1958, §§ 4–6.

5.3 Intelligence Agencies

In India the people who work in the Intelligence Bureau, Research & Analysis Wing and other intelligence agencies at the state level do their jobs without being answerable to rules. Indias intelligence agencies, like the Intelligence Bureau, Research & Analysis Wing¹⁴ and other state-level intelligence agencies do not have to follow a lot of laws. There are no laws that control what Indias intelligence agencies can do or how they are watched or what happens when they make mistakes. If Indias government makes laws against torture it will be a change, for Indias intelligence agencies because they will have to follow these laws. This will limit what Indias intelligence agencies can do. Indias intelligence agencies will probably not like these laws and they will try to stop them from being made but they will do this quietly behind the scenes rather than telling people about it in public.

5.4 The Bureaucratic-Judicial Interface

There is another kind of resistance that happens within the system. When police officers or other public servants are accused of hurting people in their care it is really hard to get them in trouble. First the police have to agree to take the case. Then they have to investigate, which can be a problem if they are investigating themselves. After that the government has to say it is okay to go with the case. Finally the case goes to court, where people who are supposed to testify're often too scared to say anything. Even if nobody is officially trying to stop it the system can still move slowly that it makes any new laws useless.

6. The Third Explanation: Legal Redundancy

6.1 The Official Position

People say that India does not have a law against torture because the laws it already has are enough to deal with the problem. The government lawyers, judges and some experts say that making a law is not necessary. We need to think about this reason. It has some truth to it. It also has some wrong ideas that we need to separate from the truth. Indias laws against torture are an issue and the claim that existing laws are enough is something that people are talking about. India needs to think about what its laws against torture mean and if they are really working. The idea that Indias existing laws

¹⁴ Ujjwal Kumar Singh, *The State, Democracy and Anti-Terror Laws in India* (Sage Publications, 2007).

are enough is an idea that's worth looking at closely especially when it comes to Indias laws, against torture.

6.2 Existing Penal Provisions

The Indian Penal Code, 1860 has a lot of rules that deal with violence.

* **Section 323** is about when someone gets hurt on purpose and Section 325¹⁵ is about when someone gets really badly hurt and these rules apply when the police are the ones doing the hurting.

* **Section 330** is a rule that says it is a crime to hurt someone to make them say something they do not want to say. The person who does this can go to jail for up to seven years.

* **Section 331** is similar to Section 330. It is about when someone gets really badly hurt to make them say something they do not want to say.

* **Section 348** says it is a crime to keep someone in a place they do not want to be in order to make them say something they do not want to say.

* **Section 376** is about when someone's sexually assaulted.

These Indian Penal Code rules are real. They are important. The Indian Penal Code rules are not good enough, for many reasons. The Indian Penal Code rules need to be better.

6.3 Why Existing Law Is Inadequate

First the law does not properly define what torture is. The law says that if someone is hurt to make them confess it is a crime. It does not cover all types of torture like mental torture or torture used to punish or discriminate against someone or torture that is not used to get a confession. The law about torture that is the law about torture is not good enough because it does not include all these things.

Second, to prosecute someone who works for the government the government has to give permission. This ever happens. If we had a law against torture that is a special law against torture it could change this or create a new way to prosecute people that does not need the governments permission.

Third the law does not say that someone in charge can be held responsible if their employees commit torture and they know about it or let it happen. This is something that is usually included

¹⁵ Indian Penal Code, 1860, §§ 323 & 325.

in laws against torture in countries, laws against torture.

Fourth people who are tortured do not have the right to get money to help them that is money to help them under the law. They have to go to a court or the Supreme Court and ask for it which is expensive and takes a long time. Most people cannot do this most people who are tortured cannot do this.

Fifth there is no group that investigates when someone says they were tortured. The National Human Rights Commission¹⁶ can say that someone should get money to help them. It cannot make anyone do anything it cannot make anyone do anything. Its suggestions are suggestions, suggestions that do not have to be followed.

Sixth the law says that if someone confesses to a police officer that confession cannot be used in court. But this law is often ignored and it does not help people who were tortured for reasons than to make them confess it does not help people who were tortured for reasons other than to make them confess. The law about evidence that is the law, about evidence is not good enough.

6.4 Judicial Remedies Are Not Legislative Substitutes

The Supreme Court made an important decision in the D.K. Basu v. State of West Bengal case in 1997. This decision said that the police have to follow rules when they arrest someone. These rules include making a written note doing a check and telling the persons family what is happening.

On the court helped people who were tortured by giving them compensation because of what it says in Article 21. These court decisions are very important. They do not replace the need for laws. The Supreme Court and High Courts can only help people on a case by case basis. This means that only people who can get to these courts can get help. It does not create a system that holds people accountable for their actions. Even though the Supreme Court has said times that torturing people in custody is against Article 21 it is still happening. This is because the courts decisions alone cannot stop it. We need laws to make it clear that this behaviour is not acceptable. Some people say that we already have protection so we do not need to do anything else. If you look closely this is not true. Saying that we already have protection is just an excuse, for not doing anything.

¹⁶ Protection of Human Rights Act, 1993.

7. Comparative Perspective: How Other Democracies Have Legislated

7.1 South Africa

South Africa has a law called¹⁷ the Prevention and Combating of Torture of Persons Act 2013. This law provides a set of rules to prevent and fight against torture. It defines torture in a way that matches the United Nations Convention Against Torture or UNCAT for short. The law says that if someone commits torture they can go to jail for up to 15 years. If the person being tortured dies the person doing the torture can even get life in prison. The law also says that South Africa can punish people for torture no matter where in the world it happened. This is called jurisdiction. The law also states that evidence obtained through torture is not allowed in court. People who have been tortured have the right to get money as compensation for what happened to them. The Act is very clear that in times of national emergency or national security torture is never okay. The Prevention and Combating of Torture of Persons Act 2013 is a step for South Africa, in fighting against torture. The law helps to protect people from being tortured.

7.2 The United Kingdom

The UK used the Criminal Justice Act in 1988. The Human Rights Act in 1998 to follow UNCAT rules. These acts included the European Convention on Human Rights Article 3. The UK also agreed to the Optional Protocol to UNCAT also known as OPCAT. This agreement led to the creation of a National Preventive Mechanism. This mechanism is independent. Watches, over places where people are detained.

7.3 Nepal

Nepal is a democracy that's much younger than India. It also has institutions.

* Nepal made a law in 2017¹⁸ called the Torture and Cruel Inhuman or Degrading Treatment Act. This law was made as per the countries constitution. The law makes torture a crime. It also gives money to victims. The law creates a way to prosecute people who torture others. This special way does not need the governments approval to start a case. The Torture and Cruel, Inhuman or Degrading Treatment Act helps to protect people from torture, in Nepal. The Act is a step for Nepal to prevent torture.

¹⁷ South Africa, Prevention and Combating of Torture of Persons Act, 2013.

¹⁸ Nepal, Torture and Cruel, Inhuman or Degrading Treatment Act, 2017.

7.4 The Lesson for India

The experience shows that laws against torture can work in countries. These countries have governments, economies and safety issues. The countries with laws are not all peaceful; many have had big security problems. They agree that the law should control what the government does and make sure they are accountable, for their actions.

8. The Interaction of the Three Explanations

We need to look at how each of these reasons works and supports the others. The fact that politicians do not want to deal with this issue creates a situation where institutions can resist changes easily. The police do not want laws against torture and this matters because politicians already do not want to do anything about it. On the hand institutions resisting change gives politicians a reason. They say it is necessary for their work. For not wanting to do anything. The idea that we already have laws for this problem is used by both politicians and institutions to justify doing nothing. This way politicians can say they care about torture. We have laws against it. In reality they do nothing to stop people from getting away with it. It also helps the courts avoid dealing with the lawmakers by treating the solutions in the constitution as enough instead of making new laws, against torture.

So these three reasons work together to make sure nothing gets done. To change this we need to challenge all three at the time: show that our current laws are not good enough make politicians want to do something through constant public and electoral pressure and create ways to hold institutions responsible that the security people cannot stop.

9. The Constitutional Dimension

9.1 Torture as a Constitutional Wrong

The Supreme Court has always said that when the police hurt people in their custody it is against Article 21. The Court made this clear in the case of Nilabati Behera v. State of Orissa back in 1993. They said that the government has to pay money to people when their fundamental rights are broken. The Court said this again in the case of Peoples Union for Civil Liberties v. Union of India in 1997. They made it clear that the police cannot be brutal with people because it goes against what the constitution says. There is a big problem. Just because the constitution says something it does not mean that people actually get the protection they need. The laws to protect people only

work for those who know what their rights are. They have to be able to get help from a lawyer. They have to be brave enough to go against the people who hurt them. For people, in India who are tortured these laws do not really help them. They are ideas, not something that really happens.

9.2 The Directive Principles Dimension

The Constitution has rules that say the State must make sure everyone gets justice and free help from lawyers. One part of the Constitution says the State has to make people respect laws and the promises they make to other countries. When you put these rules with another important part it means the State has to make laws that are much stronger than what we have now. If the State keeps saying no to making laws, against torture some experts who study the Constitution think this could be a failure of the Constitution itself. It is not just a bad decision but the State is actually breaking its promise to protect the basic rights of people.

10. The Role of Civil Society and the National Human Rights Commission

10.1 Civil Society Advocacy

The efforts of groups that support rights have been the main reason why there is some progress towards making torture illegal. Organizations such, as the National Campaign Against Torture the Commonwealth Human Rights Initiative, the Peoples Watch and Lawyers Collective have been documenting cases of torture making reports talking to the UN and meeting with lawmakers. These groups helped create the Prevention of Torture Bill in 2010. The bill did not become a law, which shows that even with groups pushing for it the government still needs to be willing to make it happen.

10.2 The NHRC's Limitations

The National Human Rights Commission, which was set up under the Protection of Human Rights Act, 1993 is in charge of dealing with complaints about torture. However the National Human Rights Commission has limited powers. The National Human Rights Commission can suggest that people get compensation and that action be taken against departments. The National Human Rights Commission cannot prosecute. The suggestions made by the National Human Rights Commission are not final. The National Human Rights Commission cannot look into complaints against the forces. Also the people in charge of the National Human Rights Commission, including a Chief

Justice do not always act independently of the government. Sometimes people say that because the National Human Rights Commission exists we do not need laws against torture. This is not an argument. It mixes up the idea of watching over something with the idea of being accountable, for a crime, which's a mistake. The National Human Rights Commission is often mentioned as a reason why we do not need these laws. This is not a good reason.

11. Path Forward: What Would Adequate Legislation Look Like?

To really stop torture in India the country needs laws that're very strong. These laws should have the following things:

1. A clear definition of what torture's and this definition should include things like mental torture and torture that is not just about getting someone to confess. It should also include torture that is done by people who're not part of the government but who are working with the government.
2. People who torture others should be. The punishment should fit the crime. If someone dies because of torture the person who did the torturing should get a severe punishment, like life in prison.
3. It should be easier to prosecute people who torture others. Now someone from the government has to say it is okay to prosecute but this should not be the case. There should be a group of people who're independent and can decide whether or not to prosecute.
4. If someone in charge knows that their employees are torturing people and they do not do anything to stop it they should also be punished. This is because they are responsible for what their employees do.
5. People who have been tortured should be able to get compensation. This should be easy for them to do. They should not have to go to the Supreme Court or High Court to get it.
6. When someone says they have been tortured there should be an investigation. This investigation should be done by people who are independent and not part of the police or military.
7. If someone confesses to a crime because they were tortured this confession should not be used in court. This is because it is not a way to get someone to confess.
8. These laws should also apply in areas where there is conflict and people who torture others in these areas should not be protected just because they are part of the military or police.
9. India should also agree to follow the rules of the OPCAT, which's a group that tries to

prevent torture and there should be a group of people who check on places where people are being held to make sure they are not being tortured. Torture is a problem, in India and these laws can help to stop India torture. India needs to have these laws to protect people from torture.

12. Conclusion

Indias failure to make a law against torture for 27 years after agreeing to the UNCAT treaty is not just a simple mistake or a disagreement on words. It is because of a combination of the governments unwillingness to act institutions resisting change and the idea that existing laws are enough. The government is hesitant because it thinks the costs of making a law like upsetting the security forces and limiting anti-terrorism actions are more than the benefits since people who are tortured do not have a strong voice. Institutions like the police, paramilitary and intelligence agencies want to keep their freedom to act without being punished. The idea that existing laws are enough is used to justify not doing anything and everyone including lawmakers, courts and civil society uses this as an excuse.

What is at stake is not a small issue of writing a law but a big question about what kind of country India wants to be. A democracy that tortures its citizens and does not try to stop it is going against its principles. The Constitution promises dignity the criminal law claims to treat everyone and India wants to be seen as a moral leader globally but all these require dealing with this failure. The Prevention of Torture Bill from 2010 showed that making a law is possible. Now what is needed is not thinking but brave politics and enough public pressure to make the cost of not acting more, than the cost of reform. The government needs to make a law against torture. Torture has to stop. The people of India deserve better.

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