

## WHY A SEPARATE ANTI-TORTURE LAW?

Relevant for: Developmental Issues | Topic: Rights Issues - Human Rights and NHRC

A banner condemning the killing of Jayaraj and Benicks hangs near the Kamaraj statue in Sattankulam. | Photo Credit: [A. SHAIKMOHIDEEN](#)

The alleged torture of a father-son duo in Sattankulam town in Tamil Nadu has once again given rise to the demand for a separate law against torture. It is therefore essential to examine whether the existing law is inadequate to deter incidents of custodial torture.

Torture is not defined in the Indian Penal Code, but the definitions of 'hurt' and 'grievous hurt' are clearly laid down. Though the definition of 'hurt' does not include mental torture, Indian courts have included psychic torture, environmental coercion, tiring interrogative prolixity, and overbearing and intimidatory methods, among others, in the ambit of torture. Voluntarily causing hurt and grievous hurt to extort confession are also provided in the Code with enhanced punishment. Under the Code of Criminal Procedure, a judicial magistrate inquires into every custodial death.

Also read | [Sattankulam custodial deaths — When protectors turn perpetrators](#)

The National Human Rights Commission has laid down specific guidelines for conducting autopsy under the eyes of the camera. The Supreme Court judgment in *DK Basu v. State of West Bengal* was a turning point in the evolving jurisprudence on custodial torture. The Court's decision in *Nilabati Behera v. State of Orissa* made sure that the state could no longer escape liability in public law and had to be compelled to pay compensation. Similarly, the Court has held in many cases that policemen found guilty of custodial death should be given the death penalty. Therefore, there is neither a dearth of precedents nor any deficiency in the existing law.

However, a fresh draft of the Prevention of Torture Bill was released in 2017 for seeking suggestions from various stakeholders. The Bill was not only vague but also very harsh for the police to discharge its responsibilities without fear of prosecution and persecution. It was inconsistent with the existing provisions of law. It included 'severe or prolonged pain or suffering' as a form of torture but that was left undefined.

The proposed quantum of punishment was too harsh. Though the 262nd Law Commission Report recommended that the death penalty be abolished except in cases of 'terrorism-related offences', the Bill provided for the death penalty for custodial deaths. While most countries have deleted or are deleting the death penalty from their statute books, for India to enact fresh legislation with the death penalty as the ultimate form of punishment shows its continuing passive mindset towards human life.

In the Bill, the proposed registration of every complaint of torture as an FIR and blanket denial of anticipatory bail to an accused public servant was not reasonable. The bail can be refused in appropriate cases, but excluding an investigating officer, struggling every day to meet the challenges of emerging crime, from availing such an opportunity shall be no less than putting him on the highest pedestal of mistrust. Overall, the proposed Bill was not a reformative one. It was vague, harsh and retributive in nature.

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In 2017, the Central government admitted in the Supreme Court that it was seriously considering

the [273rd Report of the Law Commission](#) that [recommended ratification](#) of the [U.N. Convention against Torture and other Cruel, Inhumane or Degrading Treatment \(CAT\)](#). CAT was signed by India, but is yet to be ratified. However, except for minor discrepancies, the prevalent law in India is adequate and well in tune with the provisions of CAT.

Retired Supreme Court Justice Deepak Gupta said that we first need to implement the law as we have it. “The investigations, the prosecutions are not fair; these must be rectified first,” he said. He exhorted that the police need to be trained better. The temptation to use third-degree methods must be replaced with scientific skills. Thus, the need of the hour is to strike at the root cause of the problem and implement recommendations of various commissions to bring in necessary reforms.

*R.K. Vij is a senior IPS officer of Chhattisgarh. Views are personal*

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