United Nations Convention against Torture

Why in the news?

Recently High Court of Justice in London ruled against the extradition of Sanjay Bhandari.

What is United Nations Convention against Torture (UNCAT)?

- **UNCAT** - The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "Torture Convention") was adopted by the UN General Assembly in 1984 and entered into force in 1987.
- **Definition of Torture** - The convention defines "torture" as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for purposes such as obtaining information or a confession, punishing an act, or intimidating or coercing a person.
- **Prohibition of torture** - States are obligated to criminalize and prosecute torture under their domestic law and to ensure that evidence obtained through torture is inadmissible in legal proceedings.
- **Non-Refoulement** - States are prohibited from returning (refouler) or extraditing a person to a country where there are substantial grounds for believing that they would be in danger of being subjected to torture.
- **Monitoring mechanism** - The UN Committee against Torture (CAT) monitors the implementation of the convention by its State parties.
- **Obligations of States Parties** - States are required to prevent torture within their jurisdiction, investigate and prosecute alleged acts of torture, and provide redress to victims
- **India's Status** - India signed the UNCAT in October 1997 but has not yet ratified it.

What are the implications of not ratifying the convention?

- **Hindrance in extradition cases** - Courts in foreign countries may continue to deny extradition requests citing India's poor record on torture.
- **Erosion of democratic and constitutional values** - Failure to criminalize torture contradicts India's commitment to human rights and justice.
- **Damage to India's global reputation** - Non-ratification of UNCAT places India among authoritarian regimes like Sudan and North Korea.
- **International criticism** - Non-ratification exposes India to criticism from international human rights organizations and the United Nations, which may affect its diplomatic relations and credibility on human rights issues.
- **Weakens legal framework** - Despite constitutional protections and Supreme Court rulings against torture, the *absence of a specific anti-torture law* has weakened India's legal framework.

- **Domestic accountability issues** - The absence of a binding commitment to prevent torture limits avenues for accountability within India, allowing impunity for law enforcement and public officials involved in torture practices.
- **Impact on victims** - Victims of torture and custodial violence lack legal recourse, which can perpetuate cycles of abuse and discourage reporting of such incidents due to fear of reprisals

What are the challenges in enacting an anti-torture law?

- **Legislative Hurdles** -India requires the enactment of national legislation, specifically the Prevention of Torture Bill, before ratifying international treaties.
- **Political and bureaucratic apathy** - Despite multiple judicial and expert recommendations, no concrete action has been taken.
- **Police brutality and lack of accountability** - Widespread use of torture in interrogations continues due to weak enforcement of existing laws.
- **Weak institutional mechanisms** - The lack of independent oversight of custodial violence contributes to impunity.
- **Fear of international scrutiny** - Ratifying the UNCAT would require India to submit to international human rights monitoring, which some policymakers resist.

What are the constitutional and legal framework against torture in India?

- **Article 21** - Protects the *right to life* and *personal liberty*, which includes freedom from torture.
- **Article 20(3)** - Provides protection against *self-incrimination*, indirectly discouraging *forced confessions* obtained through torture.
- **Article 22** – It safeguards against arbitrary arrest and detention, ensuring that individuals are informed of the grounds for arrest, have the right to consult a lawyer, and are produced before a magistrate within 24 hours.
- **Article 32 –** It guarantees the "Right to Constitutional Remedies," empowering citizens to approach the Supreme Court for enforcement of their fundamental rights if they are violated.
- **Judicial enquiry** - In custodial deaths, Magistrate is empowered to hold inquiry under Section 196 of the Nagarik Suraksha Sanhita, 202313.

India has ratified several other international treaties against torture, including the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1976).

What are the judicial rulings against custodial violence ?

- **D.K. Basu vs. State of West Bengal (1997)** – The Supreme Court of India laid down guidelines to prevent custodial violence and ensure the rights of arrested individuals, including the right to legal representation and medical assistance.
- The guidelines laid down in the case have been incorporated in the Criminal Procedure Code, 1973 by the Code of Criminal Procedure (Amendment) Act, 2008

- **Puttaswamy Judgment (2017)** - Reinforced the idea that human dignity and privacy are fundamental rights.
- **Nambi Narayanan (2018)** - In 2018, the Supreme Court exonerated Nambi Narayanan, a former ISRO scientist, in the ISRO espionage case, awarding him ₹50 lakh in compensation for the mental cruelty he endured.
- **Sunil Batra v. State (UT of Delhi)** - The Supreme Court of India struck down the provisions of separate confinement in the Prisoners Act on the grounds of arbitrary and violative of prisoners right to life and personal liberty guaranteed under Article 21 of the Constitution of India.
- **People's Union for Civil Liberties v. State of Maharashtra(2014)** - The Supreme Court held that the inquiry in the cases of death by police torture must be invariably conducted by Judicial Magistrate.

In Ashwani Kumar Case (2019), despite recognizing the need for an anti-torture law, the Supreme Court has declined to direct the legislature to enact the act.

What lies ahead?

- Torture in State custody irretrievably dents democracy's soft power.
- National Human Rights Commission has been requesting the Government of India to ratify the Convention Against Torture
- The Law Commission of India in its 273rd report Commission submitted a draft Prevention of Torture Bill, 2017 which defines acts that should constitute torture and prescribed punishments for such acts.
- Enactment of a strong anti-torture law and ratification of UNCAT would strengthen India's global credibility and commitment to human rights.
- It will ensure better oversight and strict enforcement of laws against custodial violence.
- Special monitoring bodies can be setup to investigate and prosecute cases of custodial torture.

References

[The Hindu | Torture shadows India's justice system]

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