India's Silent Acceptance of Torture Has Made It a 'Public Secret'

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The prevention of torture has been one of the key human rights developments in the last decade. With India’s strong stake for a seat at the security council, the issue has assumed importance. However, India’s commitment to preventing and abolishing torture as well as punishing its perpetrators is extremely weak.

One year ago, at the United Nations (UN), India’s Attorney General, Mukul Rohtagi had said that “Ours (India) is a land of Gandhi and Buddha.” Rohtagi had led an 18-member Indian delegation to the UN, during India’s 3rd Universal Periodic Review (UPR), a review of India’s human rights record, and stated:

We believe in peace, non-violence and upholding human dignity. As such, the concept of torture is completely alien to our culture and it has no place in the governance of the nation. (Mitra 2017)

There is a general trend among the leaders of the country to deny the existence of torture. Recently, when Vijay Mallya told the courts in the United Kingdom (UK) about the poor conditions and torture meted out to prisoners in Indian jails, External Affairs Minister Sushma Swaraj “slammed” the UK court’s stance to verify the conditions in Indian prisons.
(Chaudhary 2018). At another press conference, Swaraj also said: “Prime Minister Modi told British Prime Minister Theresa May that the British courts asking about the condition of Indian jails is not right, as these are the same prisons where they (British colonial rulers) had jailed our leaders like (Mahatma) Gandhi and (Jawaharlal) Nehru” (Roche 2018).

However, institutions like the National Human Rights Commission (NHRC) have not shied away from reporting the reality of torture in India. The NHRC and Indian courts have been dealing with many complaints on custodial torture since time immemorial.

The 2015-2016 NHRC Annual Report states:

Custodial violence and torture continue to be rampant in the country. It represents the worst form of excesses by public servants entrusted with the duty of law enforcement.

The Supreme Court of India’s judgement in the case of Munshi Singh Gautam and others vs the State of Madhya Pradesh (deceased) (2005) [9 Supreme Court cases 631)] perhaps summarises the best how Courts have expressed concern about violence in custody over the years:

The dehumanising torture, assault and death in custody which have assumed alarming proportions raise serious questions about the credibility of the rule of law and administration of the criminal justice system... the concern which was shown in Raghbir Singh case more than two decades back seems to have fallen on deaf ears and the situation does not seem to be showing any noticeable change. The anguish expressed in Gauri Shanker Sharma vs State of UP, Bhagwan Singh vs State of Punjab, Nilabati Behera vs State of Orissa, Pratul Kumar Sinha vs State of Bihar, Kewal Pati vs State of UP, Inder Singh vs State of Punjab, State of MP vs Shyamsunder Trivedi and the by now celebrated decision in D K Basu vs State of West Bengal seems not even to have caused any softening of attitude in the inhuman approach in dealing with persons in custody.

The aforementioned statements by these institutions are enough to believe the existence of torture in the country. But as the Supreme Court judgment indicates that despite formulation of different guidelines and stress of various judgments that protection from torture is a fundamental right enshrined under Article 21 (Right of Life) of the Indian constitution - State and its forces including police have remained adamant to continuously inflict torture on persons in custody. Neither the Indian State is interested in documenting the cases nor has it been concerned to take measures towards prevention and prosecution in incidents of torture.
Torture: Some Facts and Figures

One of the reasons that the Government of India (GOI) is ignorant about torture is because there has been no consistent documentation of torture-related complaints. The National Crime Records Bureau (NCRB) does not document cases of custodial torture. The NHRC does deal with cases of torture in custody, but the annual figures related to such cases do not get reported in its reports.

The following table has been collated from two of the answers in the Parliament about the facts regarding use of torture reported by the NHRC.

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<td>366</td>
<td>303</td>
<td>431</td>
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<td>1,668</td>
<td>1,616</td>
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To further verify the general trend of occurrences of torture, I collated the English language news reports available on the internet between September 2017 and June 2018. In this ten-month period news reports noted 122 incidents of custodial torture resulting in 30 deaths. In several cases among these 122 incidents, there were multiple victims.

Johson, caught for drunken behavior, was tortured on September 18, 2017 at a police station near Kochi. He passed away in a private hospital a week later. His post mortem report clearly mentioned the injuries he sustained. (Hindu 2017)

Medical examination of Suggalal Vaish, tortured by Bargawan police on September 26, 2017, at Singrauli’s Nehru Hospital established that a foreign body was inserted in his anal canal causing internal injury to intestines. Vaish was picked up because police found ganja under his bed. (Singh 2017)

“Naeem Ahmad was subjected to third degree torture by UP police for refusing to fetch water for them.” (Rai 2017)

Torture is not just confined to police custody, but is also perpetrated in otherwise assumed...
to be “safer” custodial institutions like judicial custody (prisons), juvenile homes, de-addiction centers etc.

“SHRC confirmed that prisoners of Parappana Agrahara jail were tortured for exposing the undue privileges received by V K Sasikala.” (Yadav 2017)

“Secretary of the Association K Sudheesh in a letter to acting Principal District Judge M. Christopher the place where the remand prisoners were admitted and their details gathered, in front of the blocks and on terrace, where there were no cameras, they were assaulted with wooden logs and pipes. They were forced to do 500 sit-ups without break and kneel down for a long time. A few of them were tonsured and abused as well”. (Hindu 2018)

“A news reported that convicts in Uttar Pradesh's Hamirpur District Jail have been mercilessly whipping undertrials with leather belts even as the jailor watches without intervening.” (Mirror Now 2018)

“An inspection by DLSA in a juvenile home in Noida's Phase 2 revealed several serious issues like torture, extortion, inhuman living conditions.” (Alam 2017)

DLSA in its report to Delhi High Court submitted that residents of de-addiction centers are being physically and sexually assaulted. (Rao 2018)

In our country, the procedure to deal with children in conflict with law is different from the routine procedure of criminal justice system. But the following incidents show that children have been subjected to torture in police custody:

From eastern Uttar Pradesh's Maharajganj district, a teenaged boy, accused of theft, is seen being assaulted in a police station compound by two policemen despite pleading for mercy. He begs for mercy but the brutality of the officers only grows. Both cops first place a piece of wood on the boy's legs and stand on it at both ends. (Pandey 2017)
15 years old Ajay Kumar caught for theft was tortured in police
custody in the presence of his family. He died, later... (*Times of
India*, October 2017).

Students of class 8th were beaten up in Anandnagar, Rajasthan
after their teacher alleged theft. (*Times of India*, December 2017).

A 12-year-old boy was tortured and beaten up on the charge of
theft. The accused cops put petrol on the private parts of the boy
and confined him in a room for an hour. (The incident happened in
Kotwali PS, Bathinda, Punjab) (Bhasin 2018).

On 14 May 2018, a 14 year old girl was illegally detained and
tortured in Salarpur police chowki, Noida, UP on allegation of theft
by her employers at whose house she worked as a domestic
worker (Saba 2018).

On 6 May 2018, two sisters were forcefully taken to Nayapally PS
(Odisha) and physically assaulted. (*Hindu* May 2018).

Two young sisters were tortured in police custody overnight on 8
October 2017 in Mancherial district, Telangana during probe into
their mother's murder. (*New Indian Express* 2017).

Some incidents of torture also break-down the stories of valour projected by the police
during encounter killings. A petition in the Hyderabad high court highlighted the injuries
found and has challenged the police story by demanding videography of autopsy of the
bodies of eight persons killed in allegedly an anti-Naxal encounter operation (*Deccan
Chronicle* 2017). A report of Citizens Against Hate (CAH) have stated that in several
instances families has received tortured and mutilated bodies of their kin indicating
abduction, torture in custody and then killing instead of exchange of fire in encounter as
being projected by UP police (Vatsa 2018). A fact-finding report on two incidents of
encounters which took place in Gadchiroli, Maharashtra says that families of those killed
strongly believe that their kin were tortured before they were killed (Newsclick 2018).

The use of excessive force including torture is also specifically used to target marginalised
communities and control people participating in movements or propagating ideologies
which the state perceives as opposed to its stature.

Gorkha Jankmukti Morcha leader Barun Bhujel passed away in prison custody after being
beaten up mercilessly at the time of arrest and being denied health treatment (*The Indian
Express* 2017).
Anti-GAIL protestors in Kozhikode (Hindu 2017), dalits protesting against violence during Bhima Koregaon celebrations (Ferreira and Gonsalves 2018), organisers and participants of Bharat Band call given on April 2, 2018 by dalit-bahujan groups (Jain 2018) and anti-Sterlite protestors in Tuticorin - all were subjected to illegal detentions, mass arrests and torture in police custody (Ananth 2018).

Advocate Rajarathinam was illegally detained and tortured in Tirunelveli (Times of India 2017), and in another instance cartoonist G Bala was subjected to similar treatment in Chennai (Hindu 2017).

An NHRC investigation confirmed that in Bhopal Central Prison, around 21 muslim undertrial (except for 1) prisoners are being subjected to torture, solitary confinement and limited and surveillanced access to family and lawyers. The NHRC’s report also stated that while their Quran was thrown away, they were being forced to chant "Jai Shri Ram" in order to receive food. They were not allowed to sleep for more than few hours in the name of attendance ("khairiyat"). The NHRC recommended action against jail officials including prison doctors (Ghatwai 2018).

Around 18 Kashmiri inmates in Tihar Jail were beaten up in November last year, and one of the inmates released after spending 12 years in jail reported that they were "forced to drink urine and eat human waste along with bread. Rats were put in their trousers. As if it was not enough, he said, pigs were let loose to lick their mouth and face. At the same time, cops used to push water and bread into our mouth. We thought since we were Kashmiris and Muslims, it was the only reason for facing such torture (Mujtaba 2017)."

Multiple incidents of torture were reported from within Kashmir. Nasrullah Khan and Manzoor Khan, who worked as daily wage labourers, were detained and tortured by 27 Rashtriya Rifles (Jain 2018). Undertrials and detenues were being tortured and kept in solitary confinement in Jammu jail of Kot Balwal (Greater Kashmir 2017). In different incidents, Sajad Ahmad Niay of Naidkhai Sumbal, Ghulam Mohi Ud Din Khan and Meraj ud din Paray were subjected to torture by Sumbal PS in Baramulla district, (Free Press Kashmir 2018). Akhtar Hussain succumbed to his injuries sustained during custodial torture by Kishtwar police, (Daily Excelsior 2018). Jahangir Ahmed Pala was tortured in 34 RR Camp in Kulgam, (Kashmir Life 2018). Wali Mohammad was brutally tortured by police in Kupwara, in April 2018 (Greater Kashmir 2018).

Due to limited scope of the incidents collated here, it would not be wrong to estimate that the number of incidents of torture in the country is much greater than 122. But, these incidents are enough to understand the gravity of the situation and the related patterns, like the routine nature of torture infliction; torture victims include supposedly protected groups, children, women, and inmates of judicial custody, juvenile homes and de-addiction centres; torture being a tool to target persons from marginalised communities and those participating in people’s movements and democratic protests; and, the high occurrence of
torture in conflict areas like Kashmir.

The government can keep denying the state’s role in enabling torture practices, one should not be alarmed by the distrust of foreign courts towards the prison conditions in India and the insistence of various countries on India during UPR procedure over the past 12 years to enact mechanisms for torture prevention.

**India’s Half-hearted Interest in Policy Against Torture**

India signed the UN Convention against Torture or Other Cruel, Inhuman, or Degrading Treatment or Punishment (UNCAT) in 1997. However, ratifying (which is the most crucial aspect of the commitment and implies taking legal steps to make Indian laws correspond to the UN convention commitments) is yet to be done.

In 2008, a Prevention of Torture Bill was brought in Parliament, but due to its weak provisions it was sent to a select committee. The select committee draft was presented in the upper house in 2010, but it remained stuck ever since. In 2016, the former Union minister of law filed a petition in the Supreme Court for India’s compliance to UNCAT. During the hearing of the case, the Law Commission of India submitted its 273rd report recommending government to ratify the UNCAT and also proposed the Prevention of Torture Bill 2017. In response to a question asked with regard to steps taken to prevent custodial cruelty, in Parliament in March 2018, the Ministry of Home Affairs responded that the government has proposed amendments in Sections 330 and 331 of the Indian Penal Code (IPC).

**The Prevention of Torture Bill 2017**

Though, provisions under IPC dealing with injury, hurt, hurt to extract confessions, malicious/corrupt confinement, wrongful confinement and the Code of Criminal Procedure’s (CrPC) provisions with regard to confession, medical examination of the person in custody and production before court during custody are currently in place to deal with instances of torture.

But these are not enough.

The NHRC, Law Commission and Supreme Court of India have recommended on different occasions to the Government of India to enact a special law against torture. The UN Committee on the CAT explains that a special law will necessitate that torture and ill-treatment is defined and criminalised distinctly from assault or other crimes by alerting everyone, including perpetrators, victims and the public to the special gravity of the crime of torture.

The Law Commission’s bill must be brought in the parliament for discussion and measures need to be taken towards its swift enactment. Even though, this bill has certain loopholes
which will impede prevention of torture and justice to torture victims.

**Definition of torture:** As recommended by the select committee draft of 2010, the definition of torture should be broadened to include discrimination of any kind as one of the purposes of torture. It is widely recognised that discrimination based on religion, caste and association with ideas does have an impact on the incidence and extent of torture. This is included in Article 1 of UNCAT. Further, definition of torture should include mental agony and tension arising from coercion. Perpetrators of torture have been using such methods of torture that do not leave any physical marks to show as evidence, and among those methods is the harming of the mental health of the victim. There have been cases where such harassment to mental health has led the victim to end commit suicide. The definition of torture should not have the exception: “Pain ... arising from ... any act committed in accordance with the procedure established by law,” as this will leave scope for the state to enact new laws that may qualify any form of torture as a legal act.

**Punishment:** Given the fact that there is a possibility of a range of acts that can be committed under torture, cruelty and ill-treatment leading to differing severity of harm—the punishment prescribed should have further gradation. Also, death penalty should not be included as the punishment.

**Compensation:** As per the 2010 draft, the 2017 bill should enlist possible factors based on which the calculation of compensation should be devised.

**Time restriction:** The legal justice system is an intimidating and resource intensive system. On top of this, to expect a victim of torture to be swift enough to file a case against the all-powerful state forces is tantamount to further oppression. The six-month restriction for filing the complaint should be removed. Similarly, the requirement of prior sanction from the government should be removed as trends show the reluctance of the governments to give sanction and then it is further harassment for the victims to go to court against the denial of sanction.

**Medical examination:** The provision of a medical examination should be further specified as this forms the most crucial evidence in custodial violence cases. Also, in addition to submitting the medical reports to the court, it should be mandatory for the medical practitioners themselves to furnish these reports to the victim or the family immediately.

**Is There Hope?**

Looking at the history of denial of torture and delay in bringing legislature, it is unlikely that change will occur soon. The case filed by former union minister of law Ashwani Kumar’s petition to ensure a law compliant with the UN Torture Convention in the Supreme Court was dismissed. The Supreme Court said that the judiciary cannot compel the government to make new law (Baxi 2017).
Our country has witnessed a strange discourse on torture. On the one hand, there is an overt and covert public denial of existence of torture by the state actors, and on the other there is a silent acceptance of torture in the society. Thus, torture has become a “public secret,” (Jinee Lokaneeta 2014). There’s another tendency that should alarm us, which is that in the post 9/11, “war on terror” regimes, in the name of prevention of terrorism, society has accepted any kind of treatment towards people of certain identities that are part of the “dangerous other” (Julia Ekert 2008). And this terrorism discourse has added Muslims and other minorities into this category. In addition to this, the state has always resorted to stigmatise followers of different ideologies and those participating in people’s movements—to create an “unruly miscreants”— image in the larger society.

If we want to continue to refer to our land as that of M K Gandhi and Gautam Buddha, or if we want to call ourselves the world’s largest democracy, we have to address the ways in which inequalities continue to exist and question the nature of our criminal justice system which turns a blind eye to torture.

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