

India's government tables loophole-filled anti-torture law

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The Lok Sabha, the lower house of India's parliament, has approved a bill titled "The Prevention of Torture Bill" that will ostensibly bring India—a country whose police and security forces are notorious for their human rights abuses—in accordance with the 1984

UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).

India's government signed UNCAT in 1997, thirteen years after it was adopted by the UN General Assembly and ten years after the convention came into force. But due to foot-dragging by successive Bharatiya Janata Party- and Congress Party-led governments, India has yet to pass the requisite enabling legislation.

This foot-dragging exemplifies the indifference of the Indian elite, which boasts incessantly that India is the "world's largest democracy," to fundamental human rights.

India's security forces routinely use torture against those designated enemies of the state, including alleged separatist insurgents in Kashmir and the north-east, Naxalite (Maoist) guerrillas, and reputed Islamist terrorists. Torture is also widely practiced by police in mundane criminal investigations.

"It is common knowledge that in India torture is professionally sanctioned and practised as a potent means of criminal investigation," conceded the *Hindu* in an April 21 editorial. "There are honourable exceptions of course but in an alarming number of cases, the police and also paramilitary and military forces resort to this barbaric practice as a tool for extracting information from those in custody."

A bloody by-product of the authorities' routine use of torture is a huge number of incarceration deaths—deaths police and prison authorities frequently try to pass off as suicides.

According to India's National Human Rights Commission (NHRC), a government body, the average *annual* number of custodial deaths was 1,203 between 1994 and 2008. Moreover, under the current Congress Party-led United Progressive Alliance (UPA) government the number of

custodial deaths has risen every year, reaching 1,977 in 2007-2008, 515 more than deaths than in 2003-2004.

The anti-torture legislation that has been passed by the Lok Sabha and now awaits action by India's upper house, the Rajya Sabha, is a public relations exercise, meant to boost the reputation of India, which touts itself as a model to other developing nations, on the world stage. It is full of legal loopholes thus ensuring that torture will continue to be routinely practiced.

These include:

- a definition of torture that is much more restricted than that in UNCAT.

The UNCAT definition says torture has been committed when public servants or persons acting on their behalf intentionally "impose severe pain or suffering, whether physical or mental" on someone "for such purposes as obtaining from him or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind." India's Prevention of Torture Bill, by contrast, limits torture to acts that cause "grievous hurt" or "danger to life, limb, or health (mental or physical)" while seeking to elicit information or a confession.

- a stipulation that complaints about torture must be lodged within six months of the date of the alleged offence.

Thus in India, the offence of torture will have a statute of limitations far shorter than virtually any other crime.

The government has tried to justify this on the grounds that there is a danger people will defame police and security officials.

In reality, this provision places officials who commit torture in a powerful position to threaten and otherwise intimidate persons whom they have tortured into silence, since in many cases their victims will remain in detention if not under their direct authority in the ensuing six months. (Under India's anti-terrorism laws, for example, the state can for detain people without charge for up to 180 days.)

- a stipulation that India's courts can proceed with charges of torture against an official only if the government or authority that has the power to fire the said official sanctions such a prosecution.

- the absence (in contradistinction to UNCAT) of any specific clause barring officials from invoking as a justification for their commission of torture their superiors' orders.

- the lack of a ban on the use of information obtained through torture in the courts.

- the lack of any mechanism to ensure prompt investigation of torture allegations and of any enforceable right to compensation for victims of torture.

The Indian state is notorious for passing laws that provide impunity to security forces. Under laws like the "Armed Forces Special Powers Act" India's security forces have committed horrifying atrocities, including torture, especially in India's north-east and in Jammu and Kashmir, with the confidence that they cannot be prosecuted because these crimes were committed in the name of upholding the authority of the Indian state.

The anti-torture legislation makes no mention of these laws. This can only be taken to mean that the impunity they provide remains unfettered.

UNCAT, it need be noted, specifically excludes exceptions. It outlaws torture and abuse of anyone in government custody under all circumstances, including war, insurgency, terrorism, political instability or other security threats."

The UPA government's current anti-torture bill—all three pages of it—closely follows a draft bill it introduced in 2008 that was severely criticized by human rights organizations.

Suhas Chakma, the director of the Asian Center for Human Rights, denounced the 2008 bill, saying it was "not intended to address [the] liberal use of torture in India" but was rather "window dressing to address international criticism."

The same must be said about the current bill.

Yet even this phony exercise has met considerable opposition from within the Indian elite, with many arguing that the passage of such an act would "demoralize" India's security forces at a time when that have been ordered by the UPA government to mount a massive counter-insurgency war against a Maoist-led tribal rebellion.

On May 5, the *Times of India* an article titled "Rules on evidence forcing cops to dress up cases?". It argued that India's supposedly "rigid" laws regarding how evidence can be collected and used are "forcing" police investigators to cook up evidence. It quoted a former chief of India's Intelligence Bureau as saying "If David Coleman Headley [a former US government asset who recently pleaded guilty to US terrorism charges for his involvement in the 2008

Mumbai terrorist attack] is extradited to India today and tried under normal criminal laws, theoretically he could go scot-free. Because there is no material evidence available in India to prove Headley's role in 26/11 attacks, and Headley could retract his confessions in court."

The same report quoted another former high official of India's intelligence agency as saying, "In terror cases, if you tell the truth it is not an evidence [sic]. You have to create evidence that is acceptable to the court. As a result, it is not the most honest of investigators who get a terrorist punished by court but [the] one who was most efficient in creating evidence."

The "efficient" methods employed by India's police and intelligence agencies include beatings, sleep deprivation, and the fabrication and planting of evidence.

Another insidious practice that has been used by Indian police and security forces for years against both terrorist suspects and those reputed to have been involved in high-profile crimes is "narco-analysis". This involves forcibly injecting potent drugs into a suspect's body in order to extract the "truth". On May 5, India's Supreme Court ruled that the practice is unconstitutional.

In November 2008, the Andhra Pradesh state government admitted that 21 Muslim men who had been detained after a series of bombings in the state capital, Hyderabad, the year before, had been tortured by police. The men has been stripped, hung upside down, beaten, and subjected to electric shocks with the aim of forcing them to confess. Each of the 21 was given \$600 in compensation for his pain and suffering. It has since emerged that at least some of the bombings—which authorities were quick to proclaim were the work of Islamist terrorists—were in fact carried out by Hindu supremacists.



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