

Colin Gonsalves
Senior Advocate

611-21

CT-1-16

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) No. 738 OF 2016

26/9/2018

9/1/2017

for four weeks

IN THE MATTER OF:

Dr. Ashwani Kumar

...Petitioner

Vs

Union of India

.....Respondents

WITH

I.A. NO. _____/2016

APPLICATION SEEKING PERMISSION TO APPEAR AND
ARGUE MATTER IN PERSON

PAPER BOOK

(FOR INDEX KINDLY SEE INSIDE)

VOL - I

PETITIONER IN-PERSON : DR. ASHWANI KUMAR

RECORD OF PROCEEDINGS

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ITEM NO.13

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s) (Civil) No.738/2016

DR ASHWINI KUMAR

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(With appln.(s) for permission to appear and argue in person)

Date : 18-09-2017 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

Mr. Colin Gonsalves, Sr. Adv. (A.C.)
Mr. Fazal Abdi, Adv.

For Petitioner(s) Mr. Roushan Tara, Adv.
Dr. Ashwani Kumar, Petitioner-in-person

For Respondent(s) Mr. Ranjit Kumar, SG
Mr. Maninder Singh, ASG
Mr. Abhinav Mukerji, Adv.
Mr. Rupesh Kumar, Adv.
Mr. B. Krishna Prasad, AOR

Ms. Anindita Pujari, AOR
Ms. Kakita Bhardwaj, Adv.

Ms. Shobha, AOR
Ms. Joyshree B., Adv.

UPON hearing the counsel the Court made the following
O R D E R

Let the matter be listed in the last week of
November, 2017, as prayed for by Mr. Wasim A Qadri, learned
counsel appearing for the Union of India.

Signature Not Verified
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CHETAN KUMAR
Date: 2017.09.23
17:07:08 IST
Reason: —

(Chetan Kumar)
Court Master

(Shakti Parkash Sharma)
Assistant Registrar

ITEM NO.30

COURT NO.1

SECTION PIL(W)

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No(s).738/2016

DR ASHWINI KUMAR

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(With appln.(s) for impleadment as petitioner and permission to appear and argue in person and office report)

Date : 05/05/2017 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

Mr. Golin Gonsalves, Sr. Adv. (A.C.)

Mr. Kabir Ali Zia Choudhary, Adv.

For Petitioner(s) Dr. Ashwani Kumar, in-person
Ms. Sangeeta Bharti, Adv.
Mr. Ashish Kumar, Adv.
Mr. Krishanu Adhikary, Adv.

For Respondent(s) Mr. Ranjit Kumar, SG
Mr. Maninder Singh, ASG
Ms. Binu Tamta, Adv.
Mr. Rupesh Kumar, Adv.
Mr. Abhinav Mukerji, Adv.
Mr. S.W.A. Qadri, Adv.
Mr. B. Krishna Prasad, Adv.

Ms. Vrinda Grover, Adv.
Ms. Anindita Pujari, Adv.
Ms. Ratna A., Adv.
Ms. Mangla Verma, Adv.

Ms. Shobha, Adv.
Mr. Bonny Mehra, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Digitally Verified
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SARITA P. KHAT
Date: 2017.05.11
11:16:05 IST
Reason: I am the author of this
document.

1. We have been made to understand, that the issue has
been engaging the attention of the Parliament for some

.2/-

.2.

years now. The legislative determination is essentially within the domain of the Parliament, and as such, it may not be proper for us, to issue any direction in that behalf.

2. We are, however, informed, that the monsoon session of the Parliament, is likely to be held in July, 2017, and as such, we would consider it just and appropriate to post the hearing of this case for a date, after the monsoon session.

3. List after the conclusion of the monsoon session.

4. Mr. Ranjit Kumar, learned Solicitor General, shall inform the Court, the further developments in the matter on the next date of hearing.

(Sarita Purohit)
Court Master

(Renuka Sadana)
Assistant Registrar

ITEM NO.27

COURT NO.1

SECTION PIL(W)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s) (Civil) No(s).738/2016

DR ASHWINI KUMAR

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(With appln.(s) for impleadment as petitioner and permission to appear and argue in person and office report)

Date : 24/04/2017 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

Mr. Colin Gonsalves, Sr. Adv. (A.C.)

Mr. Kabir Ali Zia Choudhary, Adv.

For Petitioner(s)

Dr. Ashwani Kumar, In-person

Mr. Krishanu Adhikary, Adv.

Mr. S. Ratna Joshi, Adv.

For Respondent(s)

Mr. Ranjit Kumar, SG

Mr. Maninder Singh, ASG

Mr. Rupesh Kumar, Adv.

Mr. S.W.A. Qadri, Adv.

Mr. Abhinav Mukherjee, Adv.

For Mr. B. Krishna Prasad, Adv.

Ms. Vrinda Grover, Adv.

Ms. Anindita Pujari, Adv.

Mr. Raina A., Adv.

NHRC

Ms. Shobha, Adv.

Mr. Bonny Mehra, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Post for hearing on 5.5.2017.

Signature Not Verified

Digitally signed by
SARITA PUROHIT
Date: 2017.04.24
17:18:14 IST
Reason: 

(Sarita Purohit)
Court Master

(Renuka Sadana)
Assistant Registrar

ITEM NO.29

COURT NO.1

SECTION PIL(W)

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No(s).738/2016

DR ASHWINI KUMAR

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(With appln.(s) for impleadment as petitioner and permission to appear and argue in person and office report)

Date : 20/03/2017 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

Mr. Colin Gonsalves, Sr. Adv. (A.C.)

For Petitioner(s) In-person

For Respondent(s) Mr. B. Krishna Prasad, Adv.

Ms. Anindita Pujari, Adv.

Ms. Shobha, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Post for hearing after four weeks.

(Sarita Purohit)
Court Master

(Renuka Sadana)
Assistant Registrar

WP (C) No. 738/16

1

ITEM NO. 4

COURT NO. 1

SECTION PIL (W)

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Civil) No(s). 738/2016

DR ASHWINI KUMAR

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(With appln.(s) for permission to appear and argue in person and office report)

With

I.A.No.2 (Appln.for impleadment as petitioner)

Date : 13/02/2017 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE N.V. RAMANA

Amicus Curiae(s)

Mr. Colin Gonsalves, Sr.Adv.
Mr.Choudhary Zia Ali Kabir, Adv.

For Petitioner(s)

Dr.Ashwani Kumar, Petitioner-in-person

For Respondent(s)

Mr.Ranjit Kumar, SG
Mr.Rupesh Kumar, Adv.
Mr.W.A.Qadri, Adv.
Mr.Abhinav Mukherjee, Adv.
Mr. B. K. Prasad, Adv.

For NHRC

Ms.Shobha, Adv.
Mr.Bonny Mehra, Adv.

For Impleader

Ms.Vrinda Grover, Adv.
Ms.Anindita Pujari, Adv.
Ms.Mangla Verma, Adv.
Ms.Ratna A., Adv.

Upon hearing the counsel the Court made the following
O R D E R

Signature Not Verified
Digitally signed by
SATISH KUMAR YADAV
Date: 2017.02.13
18:35:10 ICT
Reason:

Learned Solicitor General representing respondent No.1

states, that his instructing counsel has furnished a copy of the counter affidavit to the learned counsel for the petitioner. He

seeks permission to file the counter affidavit in the Registry of this Court, within one week from today. Liberty is granted to the Union of India to file the counter affidavit, in the Registry of this Court, within one week from today.

2. Learned counsel representing the National Human Rights Commission states, that she would make all endeavour to file a counter affidavit, within one week from today, and would positively file the same, if two weeks' time is granted to her.

3. In view of the above, learned counsel is granted two weeks' time to file a counter affidavit on behalf of the National Human Rights Commission.

4. List for hearing after three weeks.

(SATISH KUMAR YADAV)
AR-CUM-PS

(RENUKA SADANA)
ASSISTANT REGISTRAR

ITEM NO.16

COURT NO.1

SECTION PIL(W)

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Civil) No(s). 738/2016

DR ASHWINI KUMAR

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(with appln. (s) for permission to appear and argue in person and office report)

Date : 09/01/2017 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

HON'BLE MR. JUSTICE L. NAGESWARA RAO

For Petitioner(s) Dr. Ashwini Kumarm in person

For Respondent(s) Mr. Ranjit Kumar, SG
No.1(UOI) Mr. Maninder Singh, ASG
Mr. S.W.A. Qadri, Adv.
for Mr. B.K. Prasad, AOR

Mr. B. K. Pal, Adv. (Not present)

UPON hearing the counsel the Court made the following
O R D E R

Mr. Ranjit Kumar, Solicitor General of India has entered appearance on behalf of respondent no.1 - Union of India.

None appears on behalf of respondent no.2 - National Human Rights Commission, though respondent no.2 has been duly served.

The Registry is directed to serve a notice of this petition on Ms. Shobha, Advocate, who normally appears for the National Human Rights Commission, who may obtain instructions in the matter.

Signature Not Verified

Digitally signed by
PARVON KUMAR
Date: 2017.01.09
16:52:52 IST
Reason: —

We are of the view, that the issue projected in the instant petition deserves a holistic view as well. We therefore request Mr. Colin Gonsalves, Senior Advocate, to assist this Court as an amicus curiae. Mr. Colin Gonsalves, Senior Advocate has graciously accepted our request.

Dr. Ashwini Kumar, the petitioner, who appears in person, undertakes to furnish a copy of the entire paper book to Mr. Colin Gonsalves, Senior Advocate.

Post for hearing after four weeks.

Respondent no.1 may file counter affidavit, in the meantime.

(Renuka Sadana)
Assistant Registrar

(Parveen Kumar)
AR-cum-PS

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5.	<u>ANNEXURE P-2:</u> A true and correct copy of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment dated 10.12.1984	33-64
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ANNEXURE P-4:

A True and Correct Copy of the report of the Select Committee on the prevention of Torture Bill, 2010 dated 02.12.2010 (which was presented to the Rajya Sabha on 06.12.2010)

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A/1

PROFORMA FOR FIRST LISTING

SECTION PUBLIC
INTEREST LITIGATION
(PIL)

The case pertains to (Please tick/check the correct box):

- ☒ Central Act : (Title) CONSTITUTION OF INDIA
- ☐ Section : 21, 51, 253
- ☐ Central Rule : (Title) N.A
- ☐ Rule No(s) : N.A
- ☐ State Act : (Title) N.A
- ☐ Section : N.A
- ☐ State Rule : (Title) N.A
- ☐ Rule No(s) : N.A
- ☐ Impugned Interim Order : (Date) N.A
- ☐ Impugned Final Order/Decree : (Date) N.A
- ☐ High Court : (Name) N.A
- ☐ Names of Judges : N.A
- ☐ Tribunal/Authority : (Name) N.A

1. Nature of matter : ☒ Civil ☐ Criminal2. (a) Petitioner/appellant No.1 : DR. Ashwani Kumar(b) e-mail ID: drashwani.kumar.official@gmail.com(c) Mobile phone number: +91 99585 34403. (a) Respondent No. 1: UNION OF INDIA, thr. Ministry of Home Affairs(b) e-mail ID: N.A(c) Mobile phone number: N.A

A/2

4. (a) Main category classification: 08

(b) Sub classification: 0807

5. Not to be listed before: N.A.

6. Similar/Pending matter: N.A.

7. Criminal Matters:

(a) Whether accused/convict has surrendered: ☐ Yes ☒ No

(b) FIR No. N.A. Date: N.A.

(c) Police Station: N.A.

(d) Sentence Awarded: N.A.

(e) Sentence Undergone: N.A.

8. Land Acquisition Matters:

(a) Date of Section 4 notification: N.A.

(b) Date of Section 6 notification: N.A.

(c) Date of Section 17 notification: N.A.

9. Tax Matters: State the tax effect: N.A.


10. Special Category (first petitioner/appellant only): N.A.

☐ Senior citizen > 65 years ☐ SC/ST ☐ Woman/child ☐ Disabled ☐ Legal Aid case ☐ In custody N.A.

11. Vehicle Number (in case of Motor Accident Claim matters): N.A.

12. Decided cases with citation: N.A.

Date: 15/9/16


AOR for petitioner(s)/appellant(s)

(Name) _____

Registration No. _____

B

SYNOPSIS

A Writ Petition in Public Interest under Article 32 of the Constitution of India to ensure an effective and purposeful legislative framework/ law through its enforcement to fulfill the Constitutional promise of human dignity and prevention of custodial torture at all levels and further, to ensure that India meets its constitutional and International commitments with regard to prevention of torture, custodial violence and preservation of human dignity in terms of Articles 21, 51 and 253 of the Constitution and International treaties.

The present Writ Petition is premised on the basis that on 09.12.1975, the United Nations General Assembly adopted The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("*Declaration*"). Subsequently, the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment ("*Convention*") was adopted and opened for signature, ratification and accession by the United Nations General Assembly on 10.12.1984. The Convention was signed by India on 14.10.1997.

Though a signatory to the Convention India has not ratified the same in the absence of a domestic enabling and enforceable legislation in that behalf. As on date, India does not have a standalone legislation dealing comprehensively with or Custodial Torture.

Since, there is no legislation in India dealing with the various aspects of custodial violence and torture to enable the ratification of the Convention, it was felt necessary that the domestic laws of India be brought into

C

conformity with the Convention through a specific comprehensive Legislation addressing various aspects relating to custodial violence and Torture. Thus, "The Prevention of Torture Bill, 2010" (*"Torture Bill"*) dated 19.4.2010 was introduced in the Lok Sabha which was subsequently, passed by the Lok Sabha on 6.05.2010.

The Torture Bill, as passed by the Lok Sabha was referred to a Select Committee of Parliament comprising of 13 members of Rajya Sabha on 31.08.2010 (*"Select Committee"*). The Select Committee submitted its report to the Rajya Sabha on 06.12.2010 as endorsed by the members present at the time of its adoption. However, the Torture Bill lapsed on the dissolution of the 15th Lok Sabha.

The Ministry of Home Affairs, Government of India in an answer to a question raised in the Lok Sabha on 11.05.2016, whether the Government was planning to ratify the UN Convention against Torture, has stated that the Prevention of Torture Bill, 2010 had lapsed on the dissolution of the 15th Lok Sabha. However, a proposal to suitably amend Section 330 and 331 of the Indian Penal Code was currently under examination and has in fact suggested that there is no need for a standalone legislation in this behalf. The nature of the proposed amendments to the IPC, their scope and reach has not been spelt out despite the lapse of over six years from the submission of the report of the Select Committee and about twenty years after India signed the UN Convention that came into force in 1987.

In the meanwhile, instances of torture continue to rise and thousands of citizens are subjected to inhuman treatment in custody resulting in grave infraction of their fundamental human rights and dignity.

D

Hence, this Writ Petition in Public Interest to ensure that India has a comprehensive law for the prevention of Torture, Cruelty, Inhuman or Degrading Treatment, Death in Police Custody and to ensure that the Rights of Individuals in Custody are protected and consistent with the UN Convention against torture, the Universal Declaration of Human Rights and dignatarion goals of the Constitution.

LIST OF DATES

9.12.1975 : The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("*Declaration*") was adopted by the United Nations General Assembly on 09.12.1975 vide Resolution 3452 (XXX).

10.12.1984 : On 10.12.1984 vide United Nations General Assembly Resolution 39/46, the Convention ("*Convention*") was adopted and opened for signature, ratification and accession. The Convention was brought into force on 26.06.1987, in accordance with Article 27 (1) thereof to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world. The basis for the Convention being the principles proclaimed in the Charter of the United Nations; Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights and the Declaration. Article 1 of the Convention clearly defines Torture. Article 4 of the Convention makes Torture a Criminal

Offence.

14.10.1997 India signed the UN Convention against Torture on 19.10.1997.

1997 In D.K. Basu Vs State of West Bengal (1997) 1 SCC 416 this Hon'ble Court had dealt with the malaise of custodial violence and torture that is prevalent across the country. In the said judgement, this Hon'ble Court had recognized the importance and inviolability of the affirmed human rights of every human being and that custodial violence including torture and death in lock ups strikes at the root of rule of law

19.04.2010 As there was no legislation in India dealing with custodial violence and torture to enable the ratification of the Convention, it was felt necessary that the domestic laws of India be brought into conformity with the Convention through a specific comprehensive Legislation addressing various aspects relating to custodial violence and Torture. In view of the said position, "The Prevention of Torture Bill, 2010" ("*Torture Bill*") dated 19.4.2010 was introduced in the Lok Sabha on 26.04.2010 by the Ministry of Home Affairs. The Lok Sabha passed the Bill on 06.05.2010.

26.04.2010 The Torture Bill was introduced in the Lok Sabha on 26.04.2010.

6.05.2010 The Torture Bill was passed by the Lok Sabha on 6.05.2010.

31.08.2010 The Bill, as passed by the Lok Sabha was referred to a Select Committee comprising of 13 members of Rajya Sabha on

F

31.08.2010 ("*Select Committee*"). The Petitioner herein was appointed as the Chairman of the Select Committee

6.12.2010 The Select Committee submitted its report on 06.12.2010. The Select Committee in its report, recommended enactment of the legislation with certain additions and modifications in the Bill.

2011 The Asian Center for Human Rights published a Report titled as 'Torture in India 2011' ("*Report of 2011*") stated that the data of the National Human Rights Commission ("*NHRC*") does not reflect the actual extent of custodial death in India. The Report of 2011 stated that not all custodial deaths are reported to the NHRC.

The Report of 2011 also reported that during the examination of India's human rights records under Universal Periodic Review ("*UPR*") on 08.04.2008, the UN Human Rights Council ("*UNHRC*") recommended India to "expedite ratification of the Convention against Torture". India accepted the recommendation and informed the UNHRC that "the ratification of the Convention against Torture is being processed by Government of India". The Report of 2011 stated that even after three years, ratification of the UNCAT had not been processed but India was once again required to submit voluntary pledges in February 2011 for membership to the UNHRC. India this time reiterated that it "remains committed to ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment"

G

26.11.2014 The Petitioner herein vide letters dated 26.11.2014 and
28.11.2014 28.11.2014 wrote to the Union Minister of Home Affairs, Shri
Rajnath Singh about the need to have the Bill passed in the
Parliament to prevent custodial violence and torture. The
letters further brought to light the fact that the Bill sought to
validate India's claim that it is irrevocably committed to the
protection of human rights of its citizen and that the Indian
State respects the liberties and human rights of all persons
including those who are required to be in custody or to
undergo custodial interrogation

15.09.2015 Vide Letter dated 15.09.2015, after a long lapse of time, the
Petitioner was informed by the Minister of State for Home
Affairs, Government of India that some States were of the
opinion that adequate provisions already exist in the IPC and
Code of Criminal Procedure, 1973 ("Cr.PC") and that there
was no need for a separate enactment. It was also informed
that the Government had decided to make suitable
amendments to the existing provisions of the IPC and Cr.PC.

16.12.2015 The Government of India, Ministry of Home Affairs
published data dated 16.12.2015 on the number of persons
who died in police custody, cases registered, Police personnel
charge sheeted and Police personnel convicted during the year
2012-2014.

As per the Ministry of Home Affairs, the number of the State-
wise number of deaths of prisoners in jails on other grounds
during 2012-2014, in 2012 the number of unnatural deaths in

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prison was 126, the number of unnatural deaths in 2013 was 115, however, the number of unnatural deaths increased in the year 2014 to 195.

22.05.2016 The Ministry of Home Affairs, Government of India published data dated 22.05.2016, on the percentage of deaths of children under age 0-14 in police custody to total deaths in police custody during 2012-13, 2013-14, 2014-15 and 2015-16 (upto 30.11.2015) were 7%, 35%, 26% and 21% respectively.

8.04.2016 Delhi University Professor G.N. Saibaba, who is 90 per cent physically disabled and wheelchair bound, in an interview/interview with the 'The Hindu' dated 8.04.2016, the professor recounted the police brutality against him during his time in Nagpur Jail. The professor in the said interview stated that his health badly deteriorated during his second stint in prison

25.04.2016 In an article dated 25.04.2016 in the newspaper "The Indian Express" reported that a prosecution witness submitted before a Special Court that he was made to drink gutter water and urine. The witness further alleged that they were forced to have sex with a stray dog and that he was regularly beaten up in the police custody from April 24, 2003, till he was released on May 17, 2003.

23.07.2016 Similarly, in a Newspaper Article dated 23.07.2016 published by the Times of India, a Police Officer in Suri, West Bengal had reportedly confined a 12 year old tribal boy at his

I

residence and then handed over to the Police merely for climbing a coconut tree inside a residential compound. When the Hostel Superintendent of the child finally traced him to the Police Station, the child was reportedly found to be naked and trembling in fear. He also reportedly bore grievous head injuries apparently inflicted by the Police.

2016 As per the answer dated 11.05.2016 on behalf of the Ministry of Home Affairs, Government of India to a question raised on the floor of the House whether the Government was planning to ratify the UN Convention Against Torture, 1997 to which India is a signatory. The Hon'ble Minister of State in the Ministry of Home Affairs interalia, answered that the Prevention of Torture Bill, 2010 had lapses on dissolution of the 15th Lok Sabha. However, a proposal to suitably amend Section 330 and 331 of the Indian Penal Code was currently under examination.

However, the Government of India did not specifically state when India would ratify the UN Convention against India or whether, the said amendments in IPC would be sufficient to ratify the Convention which India is a signatory to since 1997.

.09.2016 Hence, this Petition.

IN THE SUPREME COURT OF INDIA

[CIVIL ORIGINAL JURISDICTION]

WRIT PETITION (CIVIL) NO. _____ OF 2016

IN THE MATTER OF:

A Writ Petition under Article 32 of the Constitution of India;

AND IN THE MATTER OF:

A Petition under Article 32 of the Constitution of India, *inter alia*, to formulate Guidelines to prevent Torture, Cruelty, Inhuman or Degrading Treatment, Death in Police Custody and to ensure the Rights of Individuals in Police Custody under Article 21 of the Constitution of India.

AND IN THE MATTER OF:

Dr. Ashwani Kumar
S/o Late Prabodh Chandra
R/o C-9, Friends Colony (East)
New Delhi - 110065

... PETITIONER-IN-PERSON

VERSUS

Union of India
Through its Secretary,
Ministry of Home Affairs,
Government of India,
North Block,
Central Secretariat,
New Delhi - 110001

..... RESPONDENT

To,

THE CHIEF JUSTICE OF INDIA AND
HIS COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED.

MOST RESPECTFULLY SHOWETH:

1. That the present Petition has been filed in Public Interest seeking issuance of suitable Writ/ Order/ Directions from this Hon'ble Court to execute a comprehensive and purposive domestic legislation and its purposive enforcement through a set of guidelines for the prevention of torture, cruelty, inhuman or degrading treatment, death in official custody and to ensure that the sanctity of the fundamental right to dignity of these individuals guaranteed under Article 21 of the Constitution of India is protected, upheld and sustained at all times. The continuing offences of custodial torture shock the constitutional conscience. As an illustration, the case of Professor Saibaba is provides a compelling justification for this petition.

Delhi University Professor G.N. Saibaba, who is 90 per cent physically disabled and wheelchair bound, in an interview with the 'The Hindu' dated 8.04.2016, recounted the police brutality against him during his time in Nagpur Jail. The professor in the said interview stated,-

"Absolutely no treatment was given to me this time. I was kept inside the solitary Anda cell [egg-shaped high security block]. During my first term in jail, I was taken to hospital 27 times. But this time, I was not even taken to the jail hospital, which is a street away, and was not given any medicine. What they submitted to the Supreme Court was also a blatant lie. I cannot lift my left hand now. I cannot even shift from one place to other without external help, which was not the case earlier. The re-arrest put a break on my medical treatment and my health further deteriorated further."

In another report in 'The Hindustan Times' dated 08.04.2016 (updated) the Professor stated that *"My lawyers were not allowed to*

meet me. When my wife had come to meet me once, two people stood between us. We could not even talk,"

The above stated interview by Professor Saibaba, is an example of custodial torture which is metted out to thousands of prisoners in custody.

2. That the Petitioner is a public spirited citizen. He is a Senior Advocate of this Hon'ble Court and a former Member of Parliament, Rajya Sabha who is committed to the cause of human dignity and freedom in all its dimensions. The Petitioner was appointed as the Chairman of the Select Committee of Rajya Sabha on 'The Prevention and Torture Bill, 2010' by the Hon'ble Chairman, Rajya Sabha and Vice President of India. The Petitioner has studied all aspects of the matter and is concerned with the apathy of the Government in not ratifying the UN Convention against Torture (1997) in the absence of a comprehensive domestic law on this subject. The sphere of the prevention of Torture Bill, 2010 makes the position clear.

- 2A. That the details of the Petitioner are as under:

Name: Dr. Ashwani Kumar

Postal Address: C - 9, Friends Colony (East), New Delhi -
110065

E-mail: drashwanikumaroffice@gmail.com

Mobile No: +91 9958534440

Personal SCBA I.C. NO:313/A/00187

Identification Proof:

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Occupation: Senior Advocate, Supreme Court of India
Annual Income: Approximate Taxable income 4.8 Crores
PAN No: AAPK8980F

3. FACTS OF THE CASE:

Brief facts of the case constituting the cause of action as per Order XXXVIII Rule 1(1) of Supreme Court Rules 2013 are as:

- 3.1. Article 253 of the Constitution thereof confers power upon the Parliament to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. Article 51 which is a Directive Principle of State which provides for respect for International law and treaty obligations. Article 21 is the Constitutional promise of preserving and advancing human dignity in its widest amplitude, 51 and 253 reads as follows:

21. Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law.

51. Promotion of international peace and security.—The State shall endeavour to—

- (a) promote international peace and security;*
- (b) maintain just and honorable relations between nations;*
- (c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and*
- (d) encourage settlement of international disputes by arbitration.*

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253. *Legislation for giving effect to international agreements.*—Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

- 3.2. The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("*Declaration*") was adopted by the United Nations General Assembly on 09.12.1975 vide Resolution 3452 (XXX).

A true and correct copy of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the United Nations General Assembly dated 9.12.1975 is annexed herewith and marked as ANNEXURE - P1 [Page Nos. 28 to 32] The contents of the same may be read as part of the present Petition. The contents thereof are not being repeated herein for the sake of brevity.

- 3.3. On 10.12.1984 vide United Nations General Assembly Resolution 39/46, the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment ("*Convention*") was adopted and opened for signature, ratification and accession. The Convention was brought into force on 26.06.1987, in accordance with Article 27
(1) thereof to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world. The basis for the Convention being the

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principles proclaimed in the Charter of the United Nations; Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights and the Declaration. Article 1 of the Convention clearly defines Torture. Article 4 of the Convention makes Torture a Criminal Offence. The Convention was signed by India on 14.10.1997. A true and correct copy of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment dated 10.12.1984 is annexed herewith and marked as ANNEXURE – P2 [Page Nos. 33 to 64] The contents of the same may be read as part of the present Petition. The contents thereof are not being repeated herein for the sake of brevity.

- 3.4. However, India has not ratified the Convention so far since ratification requires enabling legislation to reflect the definition and punishment for "torture". As on date, India does not have any legislation that defines the expression "Torture" or "Custodial Torture" nor does is there a law dealing specifically with torture in custody and the various specific aspects concerned with Custodial Torture and those involved in the incidents of such Torture. It is pertinent to mention herein that it was observed in the Rajya Sabha Select Committee Report dated 02.12.2010 on the proposed Torture Bill which was presented to the Rajya Sabha on 06.12.2010 ("Committee Report") that the representatives of the Union Home Ministry had specifically deposed that relevant provisions in the Indian Penal Code, 1860 ("IPC") do not specifically define "Torture" as clearly as in Article 1 of the Convention nor has

"torture" been made a specific offence by name under the existing criminal laws of the country. It is manifest from a bare perusal of the provisions of the IPC, that the provisions thereof do not specifically and comprehensively address the various aspects of the custodial torture and are grossly inadequate to address the spiraling situation of custodial violence across the country.

3.5. Despite the judgment of this Hon'ble Court in D.K. Basu Vs State of West Bengal (1997) 1 SCC 416 and subsequent guidelines issued by this Hon'ble Court, the issue of escalating custodial violence remains unaddressed primarily because of lack of comprehensive legal regime and its effective enforcement.

3.6. As there was no legislation in India dealing with custodial violence and torture to enable the ratification of the Convention, it was felt necessary that the domestic laws of India be brought into conformity with the Convention through a specific comprehensive legislation addressing various aspects relating to custodial violence and torture. In view of the said position, "The Prevention of Torture Bill, 2010" ("*Torture Bill*") dated 19.4.2010 was introduced in the Lok Sabha on 26.04.2010 by the Ministry of Home Affairs. The Lok Sabha passed the Bill on 06.05.2010. A True and Correct Copy of the Torture Bill dated 19.04.2010 (introduced in the Lok Sabha on 26.04.2010) is annexed herewith and marked as ANNEXURE - P3 [Page Nos. 65 to 68].

3.7. The Bill, as passed by the Lok Sabha was referred to a Select Committee comprising 13 members of Rajya Sabha on 31.08.2010 ("*Select Committee*"). The Select Committee submitted its report on

06.12.2010. The Select Committee in its report, recommended enactment of a comprehensive law to prevent torture in the spirit of the Torture Bill. A true and correct copy of the report of the Select Committee on the Prevention of Torture Bill, 2010 dated 2.12.2010 (which was presented to the Rajya Sabha on 06.12.2010) is annexed herewith and marked as ANNEXURE – P4 [Page Nos. 69 to 147].

The contents of the same may be treated as part of the present Petition.

- 3.8. The Asian Center for Human Rights ("ACHR") published a Report titled 'Torture in India 2011' ("*Report of 2011*"), which states that the data of the National Human Rights Commission ("NHRC") does not reflect the actual extent of custodial death in India, at Pg. 5 of the original Report it was stated that:

"The data of the NHRC does not reflect the actual extent of custodial death in India. As stated above not all custodial deaths are reported to the NHRC. For example, the Asian Centre for Human Rights led a complaint with regard to the custodial death of Jumchi Nguso (35 years) as a result of torture at the Naharlagun police station in Papumpare district of Arunachal Pradesh on 15 July 2010 (NHRC Case no. 23/2/10/2010-AD). The NHRC registered the case and closed it after the State government awarded compensation of Rs 5 lakhs. Yet the NHRC's official statistics for 2010-2011 show that there was no custodial death during the year in Arunachal Pradesh. Similarly, ACHR led two complaints of custodial deaths from Meghalaya i.e. death of Dilip Dohkrud (35 years) due to alleged torture at the Bholaganj Police Check Post under Shella Police station in East Khasi Hills district on 27 January 2010 (NHRC Case no. 7/15/2/2010/UC/M5) and the death of Dexstarwise Bamon (28 years) at the Ladrymbai Police lock-up in Jowai on 26 January 2010 (NHRC Case No.

6/15/3/2010-AD). However, the official statistics record only one death during April 2009 to March 2010."

3.9. The Report of 2011 also reports that during the examination of India's human rights records under Universal Periodic Review ("UPR") on 08.04.2008, the UN Human Rights Council ("UNHRC") recommended India to "expedite ratification of the Convention against Torture". India accepted the recommendation and informed the UNHRC that "the ratification of the Convention against Torture is being processed by Government of India". The Report of 2011 states that even after three years, ratification of the UNCAT had not been processed but India was once again required to submit voluntary pledges in February 2011 for membership to the UNHRC. India this time reiterated that it "remains committed to ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment".

Exactly like
the page
in the
document

3.10. The Report of 2011 also states that since India had not ratified the UN convention against Torture and Other Cruel, Inhuman or Degrading Treatment, a Danish Court had refused to facilitate the extradition of Kim Davy, the prime accused in the 'Purulia arms drop case', on the ground that Kim Davy would risk "torture or other inhuman treatment" in India, which has not ratified the UN Convention.

3.11. As per the Report of 2011 published by ACHR torture remains endemic and majority of torture cases do not result in death. It was further stated that unlike custodial deaths, the police are not

mandatorily required to report cases of torture which do not result in deaths to the NHRC. The NHRC recorded a number of cases of police torture not resulting in deaths. The NHRC registered 2,044 cases of police torture. Of these 2,044 cases registered, 574 cases were registered in the year 2008-2009, 615 cases were registered in 2009-2010 and 855 cases were registered in 2010-2011. From a bare perusal of the abovementioned figures, it is evident that the statistics had risen up every year. However, it was also reported that these cases comprised only a fraction since, majority of the cases go unreported.

3.12. On 09.08.2011, the Minister of State in the Ministry of Home Affairs, Shri Jitendra Singh, stated in the Lok Sabha that the NHRC had recommended compensation in 45 cases of custodial deaths and 17 cases of custodial torture during 2008-2009 till 31 July 2011 but the "NHRC did not make any recommendation for disciplinary action/prosecution of the erring public servant". The Report of 2011 raises concern as regards the NHRC's inability to vindicate its mandate. The Report of 2011 indicates that unless the NHRC recommends prosecution of the guilty public officials, torture is unlikely to end. It is self evident that the mandate of authority of NHRC needs to be evaluated to enable the commission to address the issue of torture purposely and effectively.

A true and correct copy of the report, Torture in India 2011 published by the Asian Center of Human Rights dated Nil 2011 is annexed herewith and marked as ANNEXURE - P5 [Page Nos.

148 to 286

NHRC

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3.13. The Petitioner herein vide letters dated 26.11.2014 and 28.11.2014 wrote to the Union Minister of Home Affairs, Shri Rajnath Singh about the need to have the Bill passed in the Parliament to prevent custodial violence and torture. The letters further brought to light the fact that the Bill sought to validate India's claim that it is irrevocably committed to the protection of human rights of its citizen and that the Indian State respects the liberties and human rights of all persons including those who are required to be in custody or to undergo custodial interrogation. A True and correct copy of the Letter dated 26.11.2014 sent by the Petitioner to the Union Minister of Home Affairs, Shri Rajnath Singh is annexed hereto and marked as ANNEXURE - P6 [Page Nos. 287 to 288.

A True and correct copy of the Letter dated 28.11.2014 sent by the Petitioner to the Union Minister of Home Affairs, Shri Rajnath Singh is annexed hereto and marked as ANNEXURE - P7 [Page Nos. 289 to 291]

3.14. Vide Letter dated 15.09.2015, after a long lapse of time, the Petitioner was informed by the Minister of State for Home Affairs, Government of India, that some States were of the opinion that adequate provisions already exist in the IPC and the Code of Criminal Procedure, 1973 ("Cr.PC") and that there was no need for a separate enactment. It was also informed that the Government had decided to make suitable amendments to the existing provisions of the IPC and Cr.PC. A true and correct copy of the Letter dated 15.09.2015 received from the Minister of State for Home Affairs, Government of India is annexed hereto as ANNEXURE - P8. [Page

Nos 292 to 294] However, no amendments have been carried out till date. It is submitted that the need of the hour is not systematic changes or amendments in the IPC but a comprehensive stand alone legislation to prevent torture, in which all aspects of torture can be comprehensively addressed:

3.15. It is specifically stated that it is not possible to purposively and adequately address the various aspects of custodial torture through the kind of changes suggested by the Government. Nor has the Government given any indication of the specific amendments to the IPC. It is not understood at all as to why the Government is resisting a standalone legislation to prevent custodial torture considering the mandate of Article 21 and India's International Obligations. A standalone legislation will certainly go a long way in creating the necessary environment to prevent abuse of custodial torture and human dignity of citizen.

3.16. As per the data published by the Government of India, Ministry of Home Affairs, dated 16.12.2015 on the number of persons who died in police custody, cases registered, Police personnel charge sheeted and Police personnel convicted during the year 2012-2014, the following unfortunate and distressing situation emerges:

Year	Deaths	Case Registered	Police personal Charge sheeted	Police personal Convicted
2012	109	56	7	0
2013	118	61	1	0
2014	93	28	26	0

- 3.16. As per the Ministry of Home Affairs, data published on 16.12.2016, the number of unnatural deaths of prisoners during the years 2012 – 2014 is as follows:

Year	Unnatural Deaths
2012	126
2013	115
2014	195

It is clear that these numbers do not reflect the actual ground realities.

A true and correct copy of the list of state wise custodial deaths published by the Ministry of Home Affairs, Government of India dated 16.12.2016 is annexed herewith and marked as ANNEXURE – P9 [Page Nos. 295 to 308]

- 3.17. As per the data published by the Ministry of Home Affairs, Government of India dated 22.05.2016, the percentage of deaths of children under age 0-14 in police custody to total deaths in police custody during 2012-13, 2013-14, 2014-15 and 2015-16 (upto 30.11.2015) were 7%, 35%, 26% and 21% respectively. The total number of deaths of children below the age of 14 in police custody is as follows:

Year	Death
2012-2013	10

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Year	Unnatural Deaths
2012	126
2013	115
2014	195

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Year	Death
2012-2013	10

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2013-2014	49
2014-2015	34
2015-2016	23
(upto 30.11.2015)	

A true and correct copy of list of state wise custodial death of children below the age of fourteen years published by the Ministry of Home Affairs, Government of India dated 22.12.2015 is annexed herewith and marked as ANNEXURE - P10. [Page Nos. 309 to 314]

3.18. A few recent illustrations of police brutality and custodial torture are indicated below :

- (i). Delhi University Professor G.N. Saibaba, who is 90 per cent physically disabled and wheelchair bound, in an interview with the 'The Hindu' dated 8.04.2016, recounted the police brutality against him during his time in Nagpur Jail. The professor in the said interview stated -

"Absolutely no treatment was given to me this time. I was kept inside the solitary Anda cell [egg-shaped high security block]. During my first term in jail, I was taken to hospital 27 times. But this time, I was not even taken to the jail hospital, which is a street away, and was not given any medicine. What they submitted to the Supreme Court was also a blatant lie. I cannot lift my left hand now. I cannot even shift from one place to other without external help, which was not the case earlier. The re-arrest put a break on my medical treatment and my health further deteriorated further."

In another report in 'The Hindustan Times' dated 08.04.2016 (updated) the Professor stated that "My lawyers were not allowed to

meet me. When my wife had come to meet me once, two people stood between us. We could not even talk."

A true and correct copy of the article in the newspaper 'The Hindu' dated 08.04.2016 is annexed herewith and marked as ANNEXURE - P11 [Page Nos. 315 to 321].

A true and correct copy of the article in the newspaper 'The Hindustan Times' dated 08.04.2016 is annexed herewith and marked as ANNEXURE - P12 [Page Nos. 323 to 324].

- (ii). An article dated 25.04.2016 in the newspaper "The Indian Express" reported that a prosecution witness submitted before a Special Court that he was made to drink gutter water and urine. The witness further alleged that they were forced to have sex with a stray dog and that he was regularly beaten up in the police custody from April 24, 2003, till he was released on May 17, 2003. A true and correct copy of the newspaper article in 'The Indian Express' dated 25.04.2016 is annexed herewith and marked as ANNEXURE - P13 [Page Nos. 325 to 326].

- (iii). As per the Report of 2011 and ACHR to NHRC dated 26.6.2010; on 18 July 2010, Tanong Tamuk, Vice-President of Adi Students' Union (AdiSU), was subjected to torture by Sub-Inspector PK Chatterjee at Pasighat police station in East Siang district, Arunachal Pradesh. The victim was taken to the police station for questioning after he had an argument with a police official. Medical examination of the victim revealed that he suffered severe injury in the left ear drum.

(iv). As per the Report of 2011 and Complaint of the ACHR to NHRC , dated 29 .10. 2010. On 28 October 2010, a video clip (MMS) showing a suspected thief (name unknown) being tortured by three police personnel, Assistant Sub-Inspector Avtar Singh, Head Constable Jagir Singh and Harjinder Singh, a Home Guard of the Bhogpur police station in Jalandhar, Punjab was published in the media and was shown on televisions. The video clip showed the victim being forced by three police personnel to stress out down on the floor and one police personnel beating him with a leather belt on the buttock and back with full force; while another police personnel was sitting on the chest of the victim holding both of his arms.

(v). Similarly, a Police Officer in Suri, West Bengal had reportedly confined a 12 year old tribal boy at his residence and then handed over to the Police merely for climbing a coconut tree inside a residential compound. When the Hostel Superintendent of the child finally traced him to the Police Station, the child was reportedly found to be naked and trembling in fear. He also reportedly bore grievous head injuries apparently inflicted by the Police. A true and correct copy of the newspaper article in 'The Times of India' dated 23.07.2016 is annexed herewith and marked as ANNEXURE P - 14 [Page Nos 327 to 328].

3.21. In terms of the answer dated 11.05.2016 on behalf of the Ministry of Home Affairs, Government of India, to a question raised in Parliament on whether the Government was planning to ratify the UN Convention Against Torture, 1997 to which India is a signatory, the Hon'ble Minister of State in the Ministry of Home Affairs, inter-

pg 331
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17.

alia, said that the Prevention of Torture Bill, 2010 had lapsed upon the dissolution of the 15th Lok Sabha. However, a proposal to suitably amend Section 330 and 331 of the Indian Penal Code was currently under examination. However, the Government of India did not specifically state when India would ratify the UN Convention against Torture or whether, the said amendments in IPC would be sufficient to ratify the Convention to which India is a signatory to since 1997. A True and Correct Copy of the Starred Question No.185 of Rajya Sabha published by the Government of India dated Nil 2016 is annexed herewith and marked as ANNEXURE P - 15 [Page Nos. 329 to 331].

3.22. Hence, this Petition.

4. Despite the mandate of Article 21 and the law enumerated by this Hon'ble Court treating torture of any kind as inconsistent with the constitutional guarantee of human dignity, instances of torture in custody are escalating. The present Writ Petition is being filed on the following amongst other grounds:

GROUND

- A. By virtue of Article 51 of the Constitution of India, an international obligation is cast upon India to prevent custodial violence and torture since India is a signatory to the UN Convention Against Torture, 1997. However, despite having made a commitment to the international community to prevent custodial violence and torture, which commitment is also in conformity with the ideals enshrined in the Constitution of India (Article 21) and the

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entire constitutional framework, the Legislature and Executive in India have abjectly failed to discharge their constitutional obligations. It is submitted that it has been held in *National Legal Services Authority Vs. Union of India (2014) 5 SCC 438* where this Hon'ble Court dealt with the rights of transgenders in India that Article 51 of the Constitution of India has to be read with Article 253 thereof.

- B. The absence of a standalone, comprehensive, and purposeful municipal legislation in India for the prevention of custodial violence, and disinclination of the Executive and the Legislature to enact a law in this regard has resulted in a disturbing void in law endangering the constitutional right of persons affected by custodial violence and torture.
- C. Considering the extent and nature of mischief, violation, depravity and consequences involved in custodial violence and torture qua the victims and the resultant infraction of human right, the power conferred upon Parliament under Article 253 of the Constitution of India read with Article 51 thereof ought to be construed as a binding constitutional mandate to the State to enact appropriate legislation to prevent custodial violence and torture in India.
- D. The Prevention of Torture Bill, 2010 passed in the Lok Sabha in 2010 so as to align the Indian municipal law with the UN Convention on Torture ought to be introduced in Parliament at the earliest so as to enable India to fulfill its International obligation under the various international convention referred to above.

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E. The unconscionable and inordinate delay on the part of the Government enabling the requisite legislation in a breach of its Constitutional obligations and abdication of its duty to advance the dignitarian goals of the Indian Constitution.

F. The existing legal framework is grossly inadequate and ineffective in securing this fundamental and natural rights of citizens.

G. Even though this Hon'ble Court has issued directions from time to time in the past to prevent custodial violence and torture. The same have not yielded the deserved result principally because of a lack of comprehensive law on the subject and for want of an effective and impartial machinery to enforce the Constitutional Fundamentals.

V. Ansh
H. Because a clear legal obligation is required to be established with regard *inter alia*, to the prosecution of delinquent public servants including Police authorities; mode and manner of lodging of Complaints against custodial violence and torture; ensuring fair and impartial investigation by transferring the investigation into custodial violence and torture to an independent agency outside the concerned State/Union Territory; burden of proof; interim compensation and rehabilitation of victims and witnesses of custodial violence and torture; parameters for deciding quantum of compensation to be awarded to the victims of custodial violence and torture; speedy trial and speedy disposal of Complaints regarding custodial violence and torture; grievance redressal mechanism for grievances that may arise from such trial and disposal of Complaints against custodial violence and torture; protection of victims, witnesses and Complainants of

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custodial violence and torture; education and sensitization of Police authorities, personnel and public servants to encourage the use of scientific methods for effective and timely investigation and interrogation and to eschew the use of brute force and torture for the same; strict deterrent action against errant Police personnel and public servants for failure to follow the directions of this Hon'ble Court in letter and spirit. However, the Government's proposal to suitably amend the provisions of IPC would not be adequate to bring in the changes as suggested abovementioned and to ratify the UN Convention against Torture.

- I. It is submitted that when the functionaries of the State themselves become the law breakers, it breeds contempt for law and encourages lawlessness where every person has a tendency to become a law unto himself. Such a state of affairs ought not to be allowed to prevail in a civilized society committed to responsive and demonstrate governance in a constitutional democracy.
- J. Custodial torture is a naked violation of human dignity and degradation that destroys self-esteem of the victim. Custodial torture is a calculated assault on human dignity and whenever human dignity is wounded, civilization takes a step backwards. Despite a catena of judgments and guidelines of this Hon'ble Court against inhuman methods of torture, the assault on human dignity of individuals in Police custody continues unabated. Since, there is no scientific method of investigation, torture remains integral to investigation to obtain confessions from suspects. Terror suspects are at increased risk of torture given the immense pressure on the

police to solve cases. Despite, the guarantee under Article 21 and 22 of the Constitution of India and directions from this Hon'ble court in D.K. Basu (supra), custodial torture is rampant and is rising. There has been no check and balances against the personnel who commit custodial torture. The situation is especially grim in areas where political and social unrest prevails and also in areas where police powers are resorted to indiscriminately for the sake of containing a situation and maintaining law and order. It appears from the alarming incidents of custodial violence and torture that the directions issued by this Hon'ble Court to prevent custodial violence and torture by the State and its functionaries including the police authorities are not being properly implemented by the Executive in letter and spirit. Therefore, an intervention from this Hon'ble Court has become imperative.

K. This Hon'ble Court has in a series of Judgments indicated to the Government the need for comprehensive, purposive and effective laws to subserve their objectives. Reference is invited *inter alia*, to latest pronouncement in Swami Achyutanand Tirth & Ors. Vs UOI & Ors in Writ Petition (C) No. 159 of 2012. The said judgment follows a series of other judgments which this Hon'ble Court has in its expansive of review jurisdiction pointed out the lacuna and inadequacies in the existing legal framework and has suggested changes in the law. Reference is invited to Vishaka v. State of Rajasthan (1997) 6 SCC 241, Vineet Narain v. Union of India (1998) 1 SCC 226, Destruction of Public and Private Properties Vs State of A.P (2009) 5 SCC 212, Lakshmi Kant Pandey Vs UOI (1984) 2 SCC 244, State of W.B. Vs Sampat Lal (1985) 1 SCC 317, K. Veeraswami Vs UOI (1991) 3 SCC

③
D.K. Basu
vs
UOI
1997 (6)
SCC 142
④
UOI vs
Kishan
Bharwari
Kishan
(2012) 5
SCC 294

- L. The right to life guaranteed under Article 21 of the Constitution of India has been given a wide meaning by this Hon'ble Court in a series of decisions. It is now well settled in law that the right to life and personal liberty guaranteed under Article 21 of the Constitution of India is available to every person without exception and does not denote merely an animal existence but means and includes the right to live with dignity. Thus, Article 21 of the Constitution also includes within its ambit a guarantee against torture and assault by the State or its functionaries. Custodial violence and torture violates this inviolable right with impunity.
- M. The Petitioner herein craves the liberty of this Court to add, alter, modify or amend the grounds during the pendency of this Writ Petition, if necessary.
5. That there is no personal interest or gain, private motive or oblique reason in filing the present petition.
6. That there are no civil, criminal or revenue litigations involving the petitioner, which have or could have a legal nexus with the issues involved in the present petition.
7. That the Petitioner had vide letters dated 26.11.2014 (Annexure P-6) and letter dated 28.11.2014 (Annexure P-7) had written to the Union Minister of Home Affairs inquiring about the status of the Torture Bill, 2010. Vide letter dated 15.09.2015 (Annexure P-8) the Union

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Minister of Home Affairs stated that Torture Bill, 2010 had lapsed upon the dissolution of the 15th Lok Sabha.

8. That the Petitioner has no other alternative efficacious remedy except to approach this Hon'ble court by way of the present Writ Petition under Article 32 of the Constitution of India.
9. That the sources of knowledge of the facts as alleged in the present Writ Petition are self enquiry, records publicly available international reports and press reports printed in news papers and available in public domain, meeting and interacting with general public at large. That the present Writ Petition is being filed for the benefit of the general public at large, particularly victims of custodial violence.
10. That the Petitioner has the means to pay the costs, if any imposed by this Hon'ble Court and at the same time the Petitioner undertakes to pay the same, if so imposed by this Hon'ble Court.
11. The Petitioner herein states that the Petitioner has not filed any other Petition before this Hon'ble Court or before any other Hon'ble High Court on the same issue or issues.
12. This Hon'ble Court has jurisdiction to entertain the present Writ Petition.
13. This Writ Petition is made bonafide and in the interest of justice.

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PRAYER

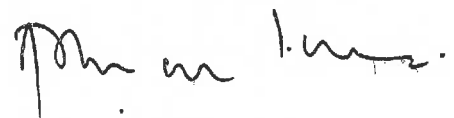
In view of the submissions made hereinabove and facts and circumstances stated, it is most humbly and respectfully prayed that this Hon'ble Court may graciously be pleased to:

- (a). Issue appropriate Writs, Orders or Directions to ensure an effective and purposeful legislative framework/laws and its enforcement to fulfill the constitutional promise of human dignity and prevention of custodial torture at all levels;
- (b). Issue appropriate Writ, Order or Directions to ensure that India meets its constitutional and international commitments with regard to prevention of torture, custodial violence and preservation of human dignity in terms of Articles 21, 51 and 253 of the Constitution of India;
- (c). Issue an appropriate Writ, Order or direction in the nature of Mandamus or any other appropriate Writ, Order or Direction directing the Union of India to invest and empower agencies such as the National Human Rights Commission (NHRC), with the necessary enforcement capabilities and mechanism for implementation of its orders and directions;
- (d). Issue appropriate Writs, Orders or Directions or Guidelines in the interim for timely and effective investigation of complaints of torture and custodial violence;
- (e). Issue appropriate Writs, Orders or Directions to the Central Government for rehabilitation, relief and compensation for victims of custodial violence and torture in keeping with the constitutional guarantee and the spirit of United Nations Convention;

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- (f). Issue an appropriate Writ, Order or Direction in the nature of Mandamus or any other appropriate Writ, Order or Direction directing the Union of India to ensure that all steps necessary to eliminate custodial torture are implemented within a time bound manner throughout the country, where necessary in consultation with the respective State Governments;
- (g). Issue an appropriate Writ, Order or Direction in the nature of mandamus or any other appropriate writ, order or direction, directing the State/UT Governments to establish and ensure an independent mechanism for investigation into complaints and acts of custodial torture of any kind and to take all steps necessary in this regard;
- (h). Pass any other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER-IN-PERSON
AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN & FILED BY



[DR. ASHWANI KUMAR]
Petitioner in Person

New Delhi
DRAWN ON: 14.9.2016
FILED ON: 15.9.2016

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IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. OF 2016

IN THE MATTER OF:

Dr. Ashwani Kumar

...Petitioner

Vs

Union of India & Ors.

.....Respondents

AFFIDAVIT

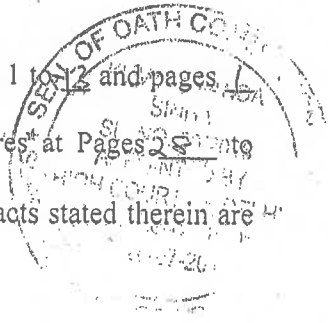
I, Dr. Ashwani Kumar, S/O Late Shri Prabodh Chandra, aged about 63 years, R/O C-9, Friends Colony (East), New Delhi-110065, do hereby solemnly affirm and declare as under:

1. That I am the Petitioner in person in the Writ Petition and as such I am fully conversant with the facts and circumstances and therefore competent to depose this Affidavit.
2. That I have read and understood the contents of Para 1 to 12 and pages 1 to 24 of the Writ Petition alongwith the Annexures at Pages 25 to 33 and List of Dates B to I and I say that the facts stated therein are true and correct to my knowledge.
3. That there is no personal gain, private motive or oblique reason in filing the Public Interest Litigation/ Writ Petition.
4. That the contents of the instant Writ Petition are true and correct to the best of my knowledge and belief.


DEPONENT

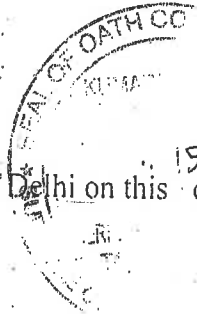
VERIFICATION:

VERIFIED that the contents of the foregoing affidavit are true and correct to the best of my knowledge and belief. No part of it is false and nothing material has been concealed therefore.



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VERIFIED at New Delhi on this 15th day of Sep 2016



[Signature]
DEPONENT



I IDENTIFIED THE DEPONENT WHO
HAS SIGNED IN MY PRESENCE
NAME.....Ashwani Kumar
OCCUPATION.....Advocate
SIGNATURE.....Setu

ATTESTED
[Signature]
OATH COMMISSIONER
SUPREME COURT OF INDIA
NEW DELHI

15 SEP 2016

Declaration on the Protection of All Persons from Being
Subjected to Torture and Other Cruel, Inhuman or Degrading
Treatment or Punishment

Adopted by General Assembly resolution 3452 (XXX) of 9
December 1975

Article 1

1. For the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.

2. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

Article 2

Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as

a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.

Article 3

No State may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Article 4

Each State shall, in accordance with the provisions of this Declaration, take effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment from being practised within its jurisdiction.

Article 5

The training of law enforcement personnel and of other public officials who may be responsible for persons deprived of their liberty shall ensure that full account is taken of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment. This prohibition shall also, where appropriate, be included in such general rules or instructions as are issued in regard to the duties and functions

of anyone who may be involved in the custody or treatment of such persons.

Article 6

Each State shall keep under systematic review interrogation methods and practices as well as arrangements for the custody and treatment of persons deprived of their liberty in its territory, with a view to preventing any cases of torture or other cruel, inhuman or degrading treatment or punishment.

Article 7

Each State shall ensure that all acts of torture as defined in article 1 are offences under its criminal law. The same shall apply in regard to acts which constitute participation in, complicity in, incitement to or an attempt to commit torture.

Article 8

Any person who alleges that he has been subjected to torture or other cruel, inhuman or degrading treatment or punishment by or at the instigation of a public official shall have the right to complain to, and to have his case impartially examined by, the competent authorities of the State concerned.

Article 9

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Wherever there is reasonable ground to believe that an act of torture as defined in article 1 has been committed, the competent authorities of the State concerned shall promptly proceed to an impartial investigation even if there has been no formal complaint.

Article 10

If an investigation under article 8 or article 9 establishes that an act of torture as defined in article 1 appears to have been committed, criminal proceedings shall be instituted against the alleged offender or offenders in accordance with national law. If an allegation of other forms of cruel, inhuman or degrading treatment or punishment is considered to be well founded, the alleged offender or offenders shall be subject to criminal, disciplinary or other appropriate proceedings.

Article 11

Where it is proved that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed by or at the instigation of a public official, the victim shall be afforded redress and compensation in accordance with national law.

Article 12

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Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings.

pon 1

True copy

Convention against Torture and Other Cruel,
Inhuman or Degrading Treatment or Punishment

Adopted and opened for signature, ratification
and accession by General Assembly resolution
39/46 on 10 December 1984 entry into force 26
June 1987, in accordance with article 27 (1)

The States Parties to this Convention,

Considering that, in accordance with the principles
proclaimed in the Charter of the United Nations,
recognition of the equal and inalienable rights of all
members of the human family is the foundation of
freedom, justice and peace in the world,

Recognizing that those rights derive from the
inherent dignity of the human person,

Considering the obligation of States under the
Charter, in particular Article 55, to promote universal
respect for, and observance of, human rights and
fundamental freedoms,

Having regard to article 5 of the Universal
Declaration of Human Rights and article 7 of the
International Covenant on Civil and Political Rights,

— Ratified

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both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

PART I

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person 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, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

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1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

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2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the

offences referred to in article 4 in the following cases:

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(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so

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warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its

findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States

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required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

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2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and

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impartially examined by, its competent authorities.

Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

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Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

PART II

Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee)

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which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who

obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or

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for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Six members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a

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majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the

Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.

Article 20

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these

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findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the cooperation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

Article 21

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a

declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure;

(a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to

the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(d) The Committee shall hold closed meetings when examining communications under this article; (e) Subject to the provisions of subparagraph

(e), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;

(f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply

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any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force

when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a

State Party which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned. 5. The Committee shall not consider any communications from an individual under this article

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unless it has ascertained that:

(a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

6. The Committee shall hold closed meetings when examining communications under this article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General.

Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary General, unless the State Party has made a new declaration.

Article 23

The members of the Committee and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph I (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 24

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

PART III

Article 25

1. This Convention is open for signature by all States. 2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 27

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.

2. Any State Party having made a reservation in accordance with paragraph I of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 29

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present

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and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph I of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 30

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the

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International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by paragraph I of this article with respect to any State Party having made such a reservation:

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission

which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State:

Article 32

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which ~~have signed this Convention~~ or acceded to it of the following:

(a) Signatures, ratifications and accessions under articles 25 and 26;

(b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;

(c) Denunciations under article 31.

Article 33

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1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

Am.

True copy

STATEMENT OF OBJECTS AND REASONS

The Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment was adopted by the United Nations General Assembly on 9th December, 1975 [Resolution 3452(XXX)]. India signed the Convention on 14th October, 1997. Ratification of the Convention requires enabling legislation to reflect the definition and punishment for "torture". Although some provisions relating to the matter exist in the Indian Penal Code yet they neither define "torture" as clearly as in Article 1 of the said Convention nor make it a criminal offence as called for by Article 4 of the said Convention. In the circumstances, it is necessary for the ratification of the Convention that domestic laws of our country are brought in conformity with the Convention. This would necessitate either amendment of the existing laws such as Indian Penal Code or bringing in a new legislation.

2. The matter was examined at length in consultation with the Law Commission of India and the then Learned Attorney General of India. After considerable deliberations on the issue, it was decided to bring in a stand alone legislation so that the aforesaid Convention can be ratified. The proposed legislation, *inter alia*, defines the expression "torture", provides for punishment to those involved in the incidents of torture and specifies the time limit for taking cognizance of the offence of torture.

3. The Bill seeks to achieve the above objects.

NEW DELHI;

P. CHIDAMBARAM.

The 19th April, 2010.

THE PREVENTION OF TORTURE BILL, 2010

A
BILL

to provide punishment for torture inflicted by public servants or any person inflicting torture with the consent or acquiescence of any public servant, and for matters connected therewith or incidental thereto.

WHEREAS India is a signatory to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

AND WHEREAS it is considered necessary to ratify the said Convention and to provide for more effective implementation.

BE it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Prevention of Torture Act, 2010.
(2) It extends to the whole of India.
(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—
(a) words and expressions used in this Act shall have the same meanings respectively assigned to them in the Indian Penal Code; and

(b) any reference in this Act to any enactment or any provision thereof shall in any area in which such enactment or provision is not in force be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

3. Whoever, being a public servant or being abetted by a public servant or with the consent or acquiescence of a public servant,

intentionally does any act for the purposes to obtain from him or a third person such information or a confession which causes,—

- (i) grievous hurt to any person; or
- (ii) danger to life, limb or health (whether mental or physical) of any person, is said to inflict torture:

Provided that nothing contained in this section shall apply to any pain, hurt or danger as aforementioned caused by any act, which is inflicted in accordance with any procedure established by law or justified by law.

Explanation.—For the purposes of this section, 'public servant' shall, without prejudice to section 21 of the Indian Penal Code, also include any person acting in his official capacity under the Central Government or the State Government.

4. Where the public servant referred to in section 3 or any person abetted by or with the consent or acquiescence of such public servant, tortures any person—

(a) for the purpose of extorting from him or from any other person interested in him, any confession or any information which may lead to the detection of an offence or misconduct; and

(b) on the ground of his religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, shall be punishable with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

5. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no court shall take cognizance of an offence under this Act unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

6. No court shall take cognizance of an offence punishable under this Act, alleged to have been committed by a public servant during the course of his employment, except with the previous sanction,—

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(a) in the case of a person, who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person, who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

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ANNEXURE P-4

PARLIAMENT OF INDIA

RAJYA SABHA

REPORT OF THE SELECT COMMITTEE ON
THE PREVENTION OF TORTURE BILL, 2010

(PRESENTED TO THE RAJYA SABHA ON THE
6TH DECEMBER, 2010

RAJYA SABHA SECRETARIAT

NEW DELHI

December, 2010

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(iii) Minutes of the Meetings of the
Committee

COMPOSITION OF THE COMMITTEE

1. Shri. Ashwani Kumar - Chairman

MEMBERS

2. Dr. E.M. Sudarsana Natchiappan
3. Shri. Shantaram Laxman Naik
4. Dr. Vijaylaxmi Sadho
5. Dr. Janardhan Waghmare
6. Shri. S.S. Ahluwalia
7. Shri. Kalraj Mishra
8. Shrimati Maya Singh
9. Shri. Naresh Gujral
10. Shrimati Brinda Karat
11. Shri. Satish Chandra Misra
12. Shri. Ahmad Saeed Malihabadi
13. Dr. Ashok S. Ganguly

SECRETARIAT

1. Shri. N.K. Singh, Joint Secretary.
2. Shri. Mahesh Tiwari, Joint Director
3. Shri. Sameer Suryapani, Deputy Director
4. Shri. R.P. Shukla, Assistant Director

5. Smt. Monica Baa, Assistant Director

**REPRESENTATIVES OF MINISTRY OF HOME
AFFAIRS**

- (i) Shri. G.K. Pillai, Home Secretary
- (ii) Shri. K.C. Jain, Joint Secretary
- (iii) Shri. J.L. Chugh, Joint Secretary

**REPRESENTATIVES OF MINISTRY OF LAW
& JUSTICE**

LEGISLATIVE DEPARTMENT

- (i) Shri. V.K. Bhasin, Secretary
- (ii) Shri. N.K. Nampoothiry, Additional
Secretary & Legislative Counsel
- (iii) Shri. R.K. Pattanayak, Deputy Legislative
Counsel
- (iv) Shri. K. Sreemannarayana, Assistant
Legislative Counsel

INTRODUCTION

I, the Chairman of the Select Committee on the Prevention of Torture Bill, 2010 having been authorized by the Committee to submit the Report on its behalf, present this Report on the Bill.

2. The Prevention of Torture Bill, 2010 was introduced in the Lok Sabha on the 26th April, 2010 to allow India to ratify the United Nations' Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. It was passed by the Lok Sabha on the 6th May, 2010. The Bill, as passed by the Lok Sabha, was referred to the Select Committee comprising 13 members of Rajya Sabha on a motion adopted by the House on the 31st August, 2010 for examination of the Bill and report thereon to the Rajya Sabha by the last day of the

first week of the next session i.e. the Winter Session, 2010.

3. The Committee held nine sittings in all including one local visit. (Tihara Jail)

4. The Committee in its first sitting held on the 9th September, 2010 deliberated upon the course of action and procedure for examination of the Bill. The Committee decided to elicit the opinion, if any, of the State Governments in pursuance of the consultation with the States earlier initiated by the Ministry of Home Affairs.

An overwhelming number of States and Union territories have responded in favour of the Bill. It was also decided

that apart from opinion of concerned Ministries, the views of eminent jurists, legal experts, reputed organizations working for Human Rights including the National Human Rights Commission

should also be elicited. As is the practice, the Committee decided to invite written Memoranda from interested individuals/ organization/ institutions/ NGO's/ experts by issuing a Press Release in the form of an advertisement in English, Hindi and other vernacular languages in major leading national and regional newspapers and also through Prasar Bharti. Accordingly, media releases were published twice in leading national and regional newspapers and was also telecast on Doordarshan.

5. In its second sitting on the 16th September, 2010, the Committee heard the Home Secretary; Secretary (West), Ministry of External Affairs; Law Secretary and Secretary, Legislative Department, Ministry of Law & Justice to hear the views of their respective Ministries on the provisions of the Bill.

6. In its third sitting held on the 29th September, 2010, the Committee heard the views of the Prof. Upendra Baxi, Prof. Yogesh Tyagi, National Human Rights Commission and Shri. Y.S. Dadwal, Commissioner of Police, Delhi and received valuable inputs from them.
7. In its fourth sitting held on the 19th October, 2010, the Committee heard the views of Shri. Chaman Lal IPS (Retd), representatives of Commonwealth Human Rights Initiative, Ms. Vrinda Grover, Advocate and Shri. Suhas Chakma, Director, Asian Centre for Human Rights.
8. In its fifth sitting held on the 20th October, 2010, the Committee heard the views of Justice A.P. Shah (Retd.); Shri. Sankar Sen, IPS (Retd.); Shri. P. Prashant Reddy, Pre-Legislative Briefing Service (PLBS) and Ms. Meenakshi

Ganguly, Director, Human Rights Watch (HRW).

9. In its sixth sitting held on the 27th October, 2010, the Committee had a general discussion on the provisions of the Prevention of Torture Bill, 2010. Members of the Committee expressed their views and suggested changes/ amendments on the various provisions of the Bill.

10. In its seventh sitting held on the 8th November, 2010, Members of the Committee expressed their views and suggested changes/ amendments in the various provisions of the Bill. During this meeting, the Committee authorized the Chairman to move a motion in the House seeking four weeks' extension for completing the work of the Committee. The Committee also decided to visit Tihar

jail to ascertain first hand information about the conditions of persons in custody in jail and also to obtain the views of persons tortured in police custody.

11. Accordingly, a motion for extension of time was moved in the House on the 10th December, 2010 which was approved and the time for submission of Report was extended till the last week of the Winter Session.

12. A visit to Tihar jail was undertaken on the 18th November, 2010 where the Committee interacted with the jail authorities and also the inmates. The Committee was informed about the facilities being made available by the jail authorities to the prisoners and the efforts to rehabilitate and integrate them into the mainstream. It was also informed

about free legal aid, vocational training, sports and healthcare facilities being provided to them. The Committee also interacted with some of the under-trials and prisoners who had faced torture during police custody.

13. In its eighth sitting held on the 26th November, 2010, the Committee completed the clause - by - clause consideration of the Bill.

14. The Committee considered and adopted its draft Report on the Bill at its sitting held on the 02nd December, 2010.

15. In all the Committee received 80 memoranda in the process of examination of the Bill and heard 12 witnesses including representatives of organizations.

16. The Committee wishes to place on record its gratitude to the representatives of the Ministries of Home Affairs, External Affairs and Law & Justice (Legislative Department and Department of Legal Affairs) for furnishing necessary information/documents and rendering valuable assistance to the Committee in its deliberations. The Committee also wishes to express its gratitude to all the distinguished persons who appeared before the Committee and placed their valuable views on the Bill and furnished written notes and information in connection with the examination of the Bill.

ASHWANI KUMAR
Chairman,
Select Committee on
the Prevention of Torture Bill, 2010

New Delhi
02nd December, 2010

REPORT

Background

The Prevention of Torture Bill, 2010 seeks to provide punishment for torture inflicted by public servants or any person inflicting torture with the consent or acquiescence of any public servant, and for matters connected therewith or incidental thereto. The proposed Bill is conceived as an enabling legislation to ratify the "UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment adopted by the United Nation's General assembly on the 9th December, 1975. India signed the Convention on the 14th October, 1997, but has not been able to ratify the Convention in the absence of an enabling domestic legislation.

2. The Committee was informed by the representatives of the Union Home

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Ministry that the relevant provisions in the Indian Penal Code do not specifically define "torture" as clearly as in Article 1 of the UN Convention nor has 'torture' been made a specific offence by name under the existing criminal laws of the country.

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Torture is not
defined in
IPC
- 447
Punishment
in S. 21
of CrP
amended

3. In the circumstances, it was necessary for the ratification of the UN Convention that the domestic laws of our country are brought in conformity with the aforesaid UN Convention. The Ministry of External Affairs also submitted its written views on the subject apart from oral deposition and supported the need for a separate

legislation/Bill. The Committee was informed that an overwhelming majority of States who are Members of the United Nations have ratified the Convention and that there is an expectation in the comity of nations to ratify the same.

India
9 July 1960
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saluted
this is a
signature

4. The present Bill has been proposed by Parliament as a piece of central legislation under Article 253 of the Constitution to give effect to international conventions/ treaties, etc.

Committee's Observations

The Committee accordingly deliberated at length on the various provisions of the Bill and also heard the views of a cross section of experts and organisations including eminent jurists, academicians, civil servants, NGOs and members of the civil society. The Committee notes that the principles and core objectives of the Bill are to enable India to ratify the "United Nation Convention against Torture and Other Cruel or Degrading Treatment or Punishment" as adopted by the United Nations General Assembly on 9th December, 1975 in order to underscore its irrevocable commitment to the protection and preservation of human rights as guaranteed by the Constitution of India.

2. The Bill under consideration seeks to provide punishment for torture inflicted by

public servants or any person inflicting torture with the consent or acquiescence of any public servant.

3. The Committee after having gone through the memoranda, background notes, document and evidences tendered before it as well as also the views expressed by its Members on the provisions of the Bill, recommends enactment of the legislation with certain additions and modifications in the Bill as detailed below.-

Clause 2: Definitions

The Committee feels that it is evident from a plain reading of sub-clause (b) of clause 2 that the words "in this Act" in first line of the sub-clause is unnecessary repetition. **The Committee, therefore, recommends that sub-clause (b) of clause 2 may be modified accordingly.**

Clause 3: Torture

As regards this Clause, the following aspects amongst others engaged the attention of the Committee in the context of evidence tendered and memoranda submitted for its consideration:

- a) Since the Bill restricts the act of torture with reference to purpose thereof, the definition was considered too narrow to advance the objective of the Bill under consideration.
- b) The Bill should not by implication exclude various serious offences recognized under the Indian Penal Code.
- c) The issue of torture of women in the context of sexual abuse in custody and of children requires special consideration. It is pertinent to

mention that India has ratified the United Nations Convention on the Rights of the Child, which specifically states that "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment." Our Constitution affirms likewise.

d) The Committee is of the view that the attempt to torture shall also to be provided for in the Bill as an offence.

ii) Most of the memoranda received by the Committee as well as majority of the witnesses who deposed before the Committee advocated for amendment of the definition of torture to make it more comprehensive. The Committee was also of the opinion that if the intent of the legislation was to give effect to the United Nation's Convention against Torture and Other Cruel or Degrading

Treatment or Punishment, the said Clause needed to be suitably amended.

iii) Based on the depositions and memoranda received as also the views expressed by Members, the Committee recommends that the definition of Torture be suitably enlarged so as not to exclude from the ambit of definition, acts generally known to be committed on persons in custody which cause severe physical and mental injury, pain, trauma, agony etc. Therefore, the definition needs to be suitably amended. The Committee is further of the view that definition of "torture" should not only be consistent with the definition in the UN Convention, but should also be enlarged to include specific and serious offences against the human body as enumerated in the Indian Penal Code. The Committee further observes that the proposed Bill and the definition of Torture should be consistent with the provisions of the UN

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Convention, our Constitutional jurisprudence and the nation's irrevocable commitment to human rights and the basic dignity of the individual as guaranteed by our Constitution.

iv) Further, after reviewing the representations submitted to it for enlarging the definition of Public Servant, as provided in the Explanation to Clause 3 of the Bill, the Committee came to the conclusion that for the purpose of culpability for torture, the definition of Public Servant should not be restricted to that provided under section 21 of the Indian Penal Code but should be enlarged to include Government companies or any institution or organization including educational institutions under the control of the Union and State Governments. This would help to curb the menace of torture of children and students in educational institutions.

v) The Committee also decided to specifically mention some of the obvious acts of torture by way of illustrations in the Bill itself. This would not only help to better interpret the provisions of the Bill but would also specifically cover specific cases of torture in the definition clause. The examples proposed are illustrative and not exhaustive. The Committee therefore, recommends that clause 3 should be amended as suggested above.

Clause 4: Punishment for torture

As is the cardinal principle of law, the Committee is of the opinion that punishment should be commensurate with the gravity of an offence. The Bill in its present form does not satisfy this condition as it does not provide for any minimum punishment for torture thus leaving scope for lesser punishments not consistent with the gravity

of the offence of torture. The Committee, therefore, recommends that a minimum punishment of three years be provided to make the law more deterrent. Similarly, in the case of fine, the minimum amount of one lakh rupees payable by the torturer is proposed. The Committee has generally accepted the need for a 'victim centric approach' to the Bill and its recommendations are accordingly inspired.

ii) The Bill is silent on the issue of custodial deaths. In its present form, the Bill does not address the issue of compensation, including interim compensation to be paid to the victim for rehabilitation. Accordingly, there is need for making suitable provisions in the Bill for the rehabilitation of the victim of torture. The Committee feels that the Bill should also indicate guidelines to be followed for arriving at a fair and adequate compensation to the

victim and in case of death, to his dependants.

iii) The Committee was of the opinion that the State must secure the basic human rights of the individual and may award, in appropriate cases, compensation including interim compensation wherever necessary to rehabilitate the victim of torture.

The Committee, therefore, recommends that clause 4 of the Bill be redrafted accordingly to incorporate the suggestions mentioned above.

Clause 5: Cognizance of offences

The Committee is of the view that the Bill deals with specific cases of torture inflicted or abetted by public servants. This makes the Bill in a class of its own requiring specific provisions to advance its main purpose. Thus, if the limitation period for taking cognizance

of offence was made too liberal, transfer or superannuation of the concerned public servant in the meanwhile, may hamper investigations as well as eventual punishment for the offence. Also, critical witnesses may not be available for a successful prosecution of the accused. Thus, the need to retain the limitation period which provides for sufficient time to the victim to recover, report and pursue the case and also not make the case stale or incapable of being successfully pursued. The Committee has before it *inter alia* the example of the Protection of Human Rights Act, 1993 which provides for a limitation period of one year for filing of complaints.

Keeping in view the foregoing, the Committee recommends that a liberal limitation period of two years from the date on which the alleged offence was committed for filing of the complaint,

would give sufficient time to enable the victim of torture to initiate proceedings against the persons responsible for torture. In order to meet exceptional situations, the Committee further considers it necessary to vest the discretion with the Court to entertain complaints even beyond the period of two years so as to advance the ends of substantive justice.

ii) The Committee is aware that indigent and disadvantaged victims face problems in even getting their complaints registered by the police and feels the need to specifically provide in the Bill for registration of the complaints according to law and if the victim is disabled for reasons of health, financial incapacity or otherwise, he may file a complaint through a duly authorized representative or friend. The Committee was also concerned at the machinery to be

involved for investigating cases of torture so as not to allow the accused to interfere with the course of investigation. The need for an impartial, time-bound and accountable investigation was recognized by the Committee.

The Committee, therefore, recommends that clause 5 be amended accordingly.

Clause 6: Previous sanction necessary for prosecution

The Committee discussed Clause 6 of the Bill from various perspectives. It was felt that since this enactment was with particular reference to public servants, there is need to retain the provision for prior sanction of competent authority before proceeding against the public servant concerned so as to insulate honest public servants from false, frivolous, vexatious and malicious

prosecution. At the same time, the Committee felt that such a provision should not be used to shield those officials who have, in fact, intentionally tortured or abetted the torture of individuals. Thus, the Committee felt that relevant provisions needed to be suitably amended so as to provide adequate safeguards for honest and upright officials, while at the same time ensuring that the sanction provision was not used to deny the victims of torture their right to justice through speedy trial. The Committee, therefore, recommends that the Bill be amended as proposed.

ii) The Committee based on its understanding of the working of the criminal justice system further, decided to recommend a "Deemed" provision in the Bill under which if the requested sanction is not granted within a period of three months from the date of application, it would be deemed to have

been granted. This would help ensure that the right of the victim is not lost due to procedural delays and he is not made to run from pillar to post to get justice. The Committee feels that sanction in blatant cases of torture should be the norm and where sanction to prosecute is declined, the said decision should be supported by reasons, the said decision should also be appealable.

iii) The Committee is of the opinion that the phrase 'during the course of his employment', is not in keeping with the intent of the Bill and needed to be made more specific to allow the courts to interpret it with the legislative intent. **The Committee therefore recommends that it may be replaced with *'while acting or purporting to act in discharge of his official duties'*.**

The Committee also recommends that every offence under this Bill be tried as

expeditiously as possible so as to conclude the trial within a period of one year from the date of cognizance of the offence.

iv) The Committee also notes that the fact that torture is committed on the command and instruction of a superior officer or is committed during a state of war, threat of war, or during a proclamation of emergency being in operation should not be a defence against prosecution for torture. **The Committee, therefore, recommends that suitable provisions to this effect may be added in the Bill.**

v) It is not uncommon that the victims, the complainants and witnesses face intimidation and threats from accused persons. Hence, protection of the victim, complainants and witnesses need to be ensured. **The Committee, therefore, recommends that**

adequate provisions for the protection of the victims, complainants and witnesses may be incorporated in the Bill. Further, the Committee also stresses the need for compulsory medical examination of the victim at the time of being lodged in jail and a report of such examination should be transmitted to the concerned trial court.

The Committee further recommends that for the removal of all doubts the Bill should specifically state that it shall be in addition to and not in derogation of any other law for the time being in force and that in the event of inconsistency with any other law, its provisions shall prevail.

vi) The Committee is aware that the rules to effectuate the provisions and objectives provided for in the Bill would need to be framed by the appropriate Government. It will

also need to be ensured that such rules are laid before Parliament for their scrutiny. **The Committee, therefore, recommends that provisions to this effect be incorporated in the Bill accordingly.**

Clause 1: Enacting Formula and the Title

It is the common experience that where the time of notification has not been specified, the Government takes their own time to notify the Act. In view of the urgency and importance of the proposed Bill, the Committee recommends that the period of notification be specified in

THE PREVENTION OF TORTURE BILL, 2010
[AS REPORTED BY THE SELECT COMMITTEE]
 (_____ underlined or portions sidelined
 indicate the amendments suggested by the
 Select Committee and asterisks indicate
 omissions]

	<p>THE PREVENTION OF TORTURE BILL, 2010</p> <p>A BILL</p> <p>to provide punishment for torture inflicted by public servants or any person inflicting torture with the consent or acquiescence of any public servant and for matters connected therewith or incidental thereto.</p>	
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	<p>WHEREAS India is a signatory to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;</p> <p>AND WHEREAS It is considered necessary to ratify the said Convention and to provide for more effective implementation</p> <p>Be it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:-</p>	
	1. (1) This Act may be	Short title,

	called the Prevention of Torture Act, 2010.	extent and commencement.
	(2) It extends to the whole of India.	
5	(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint or on the one hundred and twentieth day of its enactment, whichever is earlier,	
	2. In this Act, unless the context otherwise requires:-	Definitions.
10	(a) any reference *** to any enactment or any provision thereof shall in any area in which such	

	enactment or provision is not in force be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area;	
	(b) "prescribed" means prescribed by rules made under this Act: and	
45 of 1860	(c) words and expressions used in this Act shall have the same meanings respectively assigned to them in the Indian Penal Code.***	
<u>Torture.</u>	3. Whoever, being a public servant or being	

20	abetted by a public servant including a superior officer or with the consent or acquiescence of such public servant, including the superior officer intentionally commits or is suspected to have committed any act for the purpose of obtaining information or confession from any person or punishing such person for any act committed or is suspected to have been committed by him or intimidating or coercing such person which may	
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<p>25</p>	<p>lead to the detection of an offence or misconduct or discriminates on the ground of religion, race, sex, place of residence, birth, language, caste, sect, colour or community or commits any other act for any other purpose, and such net causes -</p> <p>(i) grievous hurt to any person; or</p> <p>(ii) danger to life, limb or health ***of any person; or</p>	
<p>30</p>	<p>(iii) severe mental pain, agony, trauma or</p>	

	suffering caused to any person by cruel, inhuman and degrading treatment, is said to inflict torture:	
35	Provided that nothing contained in this section shall apply to any hurt, danger, or pain as aforementioned caused by any act, which is inflicted in accordance with any procedure established by law:	45 of 1860 1 of 1956
	Provided further that where torture in custody of a public servant is proved, the burden of proving that the torture	

	was not intentionally caused or abetted by, or was not with the consent or acquiescence of, such public servant, shall shift to the public servant.	
40	Explanation I.-For the purposes of this section, "public servant" shall, without prejudice to section 21 of the Indian Penal Code, 1860 also include any person acting in his official capacity under the	
45	Central Government or the State Government or employed in any Government company as	

50	<p>defined in section 617 of the Companies Act, 1956, or in any institution or organisation including an educational institution under the control of the Central Government or the State Government.</p> <p>Explanation II.- For the purpose of this section, "torture" includes, but is not limited to the following, namely:-</p> <p>(a) causing disability or dysfunction or one or more parts of the body, by acts, such as -</p>
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55	<p>(i) systematic beating, handbanging, punching, Kicking, striking with truncheon or rifle butt or other similar objects, and jumping on the stomach;</p> <p>(ii) food deprivation or forcible feeding with spoiled food, animal or human excreta and other stuff or substances not normally</p>	
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sound attacks
~~for~~ sleep deprivation
 forced to stand.

60	eaten; (iii) electric shock; (iv) cigarette burning burning by heated rods, hot oil or acid; by the rubbing of pepper or other chemical substances including spices or acids on mucous membranes, or on the wounds;	
	(v) submersion of the head in water or water polluted with excrement,	

		urine, vomit or blood;	
	65	(vi) rape or threat thereof and sexual abuse of any kind, including sodomy, insertion of foreign objects into the sex organ or rectum, or electrical shock to the genitals;	
	70	(vii) mutilation or amputation of any part of the body such as the genitals, ear or tongue;	
		(viii) the use of plastic bag and other materials	

		placed over the head to the point of asphyxiation;	
	75	(ix) the use of psychoactive drugs to change the perception, memory, alertness or will of a person including the administration of drugs to induce confession or reduce mental competency and the use of drugs to induce extreme pain or symptoms of disease;	
	80	(b) maltreating members of the family of a person	

	and inflicting shame upon the victim or any one by such act as stripping the person naked, parading him in public places, shaving the victims head or putting marks on his body against his will;	
	85 (c) other analogous acts of mental or psychological torture;	
	(d) torture of children in any form.	
90	4.(1) Where the public servant referred to in section 3 or any person	Punishment for torture.

abetted by or with the consent or acquiescence of such public servant, tortures or attempts to torture any person, such public servant or person shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to ten years and shall also be liable to fine which shall not be less than one lakh rupees.

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(2) Where death of any person is caused due to torture, the person committing the offence shall be punishable with

	death or imprisonment for life and shall also be liable to fine.	
100	<p>(3) Any public servant or other person committing torture or attempting to commit torture shall also be liable to fine which shall be payable to the affected person.</p> <p>(4) Notwithstanding the flite imposed under this section, the State may award such compensation including interim compensation to the victim of torture as maybe considered necessary for</p>	

	rehabilitation of the victim.	
105	<p>(5) Compensation by the State to the victim of torture for the purpose of his rehabilitation shall be awarded taking into consideration amongst others, the following factors, namely:-</p> <p>(a) the gravity of the physical and mental harm and suffering inflicted, including death if caused as a result of torture;</p> <p>(b) lost opportunities, including employment,</p>	

	education and social benefits;	
110	(c) material damages and loss of earnings including loss of saving potential;	
	(d) cost required for legal or expert assistance, medicine and medical services, and psychological and social services;	
115	(e) the age, family responsibilities and material condition of the dependants of the victim.	
	(6) In case of death due to torture, the	

	dependants of the deceased person shall be entitled to compensation including interim compensation under this Act.	
Speedy trial of offences 120	5. Every offence under this act shall be tried as expeditiously as possible on a day to day basis and endeavour shall be made to conclude the trial within a period of one year from the date of cognizance of the offence by the court of Session.	
Cognizance of offences	6(1) Notwithstanding anything contained in	2 of 1974

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the Code of Criminal Procedure, 1973, no court shall take cognizance of an offence under this Act unless the complaint is made within a period of two years from the date on which the offence is alleged to have been committed.

Provided that the court may on sufficient grounds being shown, condone the delay in filing the complaint beyond the said period of twelve months.

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(2) Where the victim of torture is disabled for

reasons of health, financial incapacity or otherwise, he may cause a complaint to be filed by a duly authorized representative.

(3) Every complaint under this Act shall be registered by the police in accordance with law.

(4) A complaint against torture shall be investigated by such officer not below the rank of superintendent of police or the corresponding rank in any other organization or investigative agency as would ensure

140	independent investigation. (5) The investigation shall be completed within a period of six months from the date of making of the complaint.	
Previous sanction necessary for prosecution	7. (1) No court shall take cognizance of an offence punishable under this Act, alleged to have been committed by a public servant while acting or purporting to act in the discharge of his official duty, except with the previous sanction of-	
145	(a) in the case of a	

	person, who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government by an officer in the rank of Secretary to the Government of India;	
150	(b) in the case of a person, who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government by an	

officer in the rank of
Secretary to the State
Government;

(c) in the case of any
other person, the
authority competent to
remove him from his
office;

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Provided that the
decision regarding the
grant of sanction to
prosecution the
offending public servant
shall be taken not later
than three months from
the date of application
therefore, failing which
the sanction to
prosecute shall be
deemed to have been

160	<p>granted;</p> <p>Provided further that the sanction for prosecution shall not be refused by the government or the competent authority, as the case may be, except for reasons to be recorded in writing.</p>	
165	<p>(2) Any person aggrieved by the decision of the government or the competent authority, as the case may be, under this section may prefer an appeal to the High Court within ninety days from the date of the</p>	

	<p>decision in, such form and manner and accompanied by such fee as maybe prescribed.</p> <p>(3) <u>The High Court shall</u> endeavour to dispose of the <u>appeal</u> within <u>six</u> months from the date of its filing.</p>	
170	<p>8. For the avoidance of doubts, it is hereby declared that the fact that any act constituting an offence under this Act was committed-</p> <p>(a) at a time when there was a State of war, threat of war or where a</p>	Presumption

	<p>proclamation of emergency was in operation; or</p> <p>(b) on an order of a superior officer or public authority,</p> <p>Shall not be a defence to such offence.</p>	✓
175	<p>9.(1) It shall be the duty and responsibility of the State Government to make arrangements for the protection of victims of torture, complainants and witnesses against all kinds of ill-treatment, violence, threats of violence, or physical</p>	

	harm or mental trauma.	
180	(2) The protection under sub- section (1) shall be provided from the time of submission of the complaint to the conclusion of the trial and thereafter till such time as the State Government is reasonably satisfied that such protection is no longer required.	
185	(3) The protection under sub- section (1) shall include necessary provision for providing physical security to the victims, complainants and witnesses.	

190	(4) The State Government shall inform the concerned court about the protection provided to any victim, complainant or witness under this section and the court shall periodically review the need of protection being offered to the complainants, victims and witnesses under this section and pass appropriate orders in this behalf.	
195	(5) The State shall ensure proper medical examination of every person remanded to	

	custody in jail and the report of such medical examination shall be transmitted to the concerned trial court.	
200	<p>10. (1) The provisions of this Act shall be in addition to and not in derogation of any other law for the time being enforce.</p> <p>(2) The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.</p>	<p>Effect of provisions of this Act.</p> <p>?</p>
	11. (1) The Central	Power of

205	<p>Government may, be make rules notification in the official gazette, make rules for carrying out the purposes of this Act;</p> <p>Provided that the first set of such rules shall be made within six months from the date of commencement of this Act.</p> <p>(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-</p> <p>(a) steps required for</p>
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	prevention of cases of torture;	
210	(b) involvement of civil society and steps of ensuring civil treatment to prisoners consistent with their human rights;	
215	(c) manner of training to the law enforcement personnel, civil or military or medical personnel, public officials and other persons who maybe involved in the custody, interrogation or treatment of any individual subject to any form of arrest, detention or imprisonment;	

220	<p>(d) monitoring of police custody;</p> <p>(e) impartial and prompt investigation procedures;</p> <p>(f) the form and manner in which an appeal maybe preferred and the fee which shall accompany such memorandum of appeal under sub section (2) of Section 7;</p> <p>(g) assistance, where necessary, in filing complaints of torture;</p> <p>(h) procedure relating to payment of compensation to</p>
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	victims;	
225	(i) any other matter in respect of which rules are required to be made under this Act to effectuals its purposes.	
230	(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament while. It is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following	

235	<p>the session or the successive session aforesaid, both Houses agree in making any modification in the rule or both houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.</p>	
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Annexure I**Statement showing the list of witness who
appeared before the Select Committee**

S.No	NAME
1.	Professor Upendra Baxi, Jurisit
2.	Professor Yogesh Tyagi, Jawahar Lal Nehru University
3.	Shri Chaman Lal, DGP (Retd.)
4.	Ms Maza Daruwala, Commonwealth Human Rights Initiative
5.	Ms Navaz Kotwal, Commonwealth Human Rights Initiative
6.	Ms Devika Prasad, Consultant
7.	Shri Suhas Chakma, Director, Asian Centre for Human Rights
8.	Ms Vrinda Grovel, Lawyer
9.	Justice A.P. Shah (Retd)
10.	Shri Shankar Sen, IPS (Retd)
11.	Shri Prashant Reddy, Pre-Legislative Briefing Service
12.	Ms. Meenakshi Ganguly, Human Rights Watch

ANNEXURE II

**LIST OF REPRESENTATIONS RECEIVED ON
THE PREVENTION OF TORTURE BILL, 2010**

Memo No.	Name of Organizations/ persons
1	Lt.Col Najmul Islam Lucknow
2	R.K. Dhanvada Plot No.124, Flat No.403, Prapurna Nilayam, Malyan Nagar III, Hyderabad -500018
3	Dr Lenin, Peoples' Vigilance Committee on Human Rights and RCT
4	Dr. R.K. Balasubramanian, Parliamentary Law Consultant, Chennai
5	Shri. Lr. R. Karthikeyan, Advocate, Chennai
6	All India Lawyers' Union District Committee, Chennai
7	Dr Kamlesh Kumar, Research Officer, Central for Social legal Studies

	and Human Rights, Tata Institute of Social Sciences.
8	Shri Rajiv Baheti, 1187/58, Shivaji Nagar, Pune
9	PRS Legislative Research, Centre for Policy Research Charma Marg, Chanakyapur, New Delhi-110021
10	Bijio Francis, South Asia Desk, Asian Human Rights Commission Ltd.
11	Anurag Srivastav, 153, Rai colony, Post R.S. Gazipur, Jila Gazipur (U.P.) 233001
12	S. M. Chandrapattan Hubli Karnataka
13	Lt Col (Retd) Mathew Thomas Chief Administrative Officer, IIM Shillong
14	Jayjit Ganguly Advocate, High Court Calcutta, BE 51 Sector I Salt Lake West Bengal 700064
15	Dr Anil Dev G.

	No.38, 2 nd Cross, 10 th Block, Nagarbhavi, 2 nd Stage, BDA, Layout, Bengaluru-560072
16	S. Mahaboob Basha, HSC No.254, 1 st Floor, Nethaji Road, Tirupati-517502
17	S. Jagannathan Vide Email
18	Namrata Sehgal, Nidhi Agarwal and Purushottam Awasthi Faculty of law, Lucknow University
19	Mr. A. Mahaboob Batcha, SOCO Trustee, Madurai
20	Shri Ashish Sharma, Meet Nagar, Delhi
21	Minakshi Chaudhury, Honorary Secretary and Project Coordinator, CCTV, P501, Keyatala Road, Kolkata - 700029
22	R.J. Rajkumar

23	Shri P.D. Phadke Thane, Maharashtra
24	Dr Alok Chantia, President, All Indian Rights Organizations, Lucknow
25	Dr Anil Dev G. No.38, 2 nd Cross, 10 th Block, Nagarabhavi, 2 nd Stage, BDA, Layout, Bengaluru-560072
26	Rohit Bhardwar, 34/1, Harnamdaspora, Adj, Sewak Ram Hospital, Kapurthala Road, Jalandhar
27	Tarun Dey, Advocate, District Bar Association, Cachar, Silchar
28	Anand K. Mishra, Advocate, F-48:LGF: East of Kailash, Delhi-65
29	Dr. Manjit Singh Sidhu, 22312, Shant Nagar, Bathinda, Punjab
30	Dr. A.D. Parikh, 005/9-B, Nalanda, Apna Ghar, Lane I, Swami Samarth Nagar, Lokhandwala Complex, Andheri (W) Mumbai-53

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31	Sanjiv Ferreria
32	D.R. Singh C-2/115A, Sector-B, Jankipuram, Lucknow, U.P.226021
33	Saurabh Sinha 8, Bachchaji Apartment Stanley Road, Allahabad -211002 U.P.
34	Dr. Sanjay Jain, ILS Law College Pune
35	Dr. H.K. Nagu
36	Manik Wagh
37	Saileswar Chakrabarti, 1/288, Naktala, Kolkata -700047
38	Vijay Kumar Sharma
39	Gurjit Singh Advocate, Guest Faculty at Rajiv Gandhi Natinal University of Law, Patiala
40	Enakshi Ganguly Thukral Co-Director, HAQ: Centre for Child Rights
41	Prem Krishan Sharma, President,

	Academy for Socio- Legal Studies, 49 Vivek Nagar Station Road, Jaipur
42	Kartik Varier Rajiv Gandhi School of Intellectual Property Law; Indian Institute of Technology, Kharagpur
43	Harideepak Singh
44	Dr Yug Mohit Chaudhry
45	Vinayakumar Chandrakant Sarang 1401/A, Kingston, High Street Mumbai
46	Kirity Roy, Secretary Banglar Manabadhikar Suraksha Manchah (MASUM)
47	Sourabh Verma Faculty of law Delhi University
48	Mathews Philips, Executive Director South India Cell for Human Rights Education and Monitoring. I/F,

	Anjanappa Complex, 35, Hennur Main Road, Lingarajapuram, St. Thomas Town Post, Bangalore.
49	Sugandh Saksena and Mohit Arora Rajiv Gandhi National University of Law, Punjab, Patiala
50	Amitadyuti Kumar, Vide President, Association for Protection of Democratic Rights (APDR), 18 Madan Boral Lane, Kolkata
51	Usha Ramanathan, Director Independent Law Researcher, New Delhi
52	Venkatesh Babu, Secretary Rakshak Foundation
53	Dr. Mohapatra, Executive Director The Resist Initiative International Pandav Patna, P.O. Nirakarpur Distt Khurda, Orissa
54	Donna Guest, Deputy Director Asia -Pacific

	South Asia Team Amnesty International, London
55	Ravi Nari, Executive Director South Asian Human Rights Documentation Centre B-6/6, Safdarjung Enclave Extension, New Delhi
56	Manish Radhika Chitkara Sahana Manjesh III Year B.A., LL.B., (Hons.) National Law School of India University, Bangalore
57	Dr. Vijay Vasandani, 177 A Block, Panchsheel Nagar, Ajmer
58	Rakesh Syal (Delhi Higher Judicial Service) Officer on Special Duty O/o Lokayukta, NCT of Delhi, G-Block, Vikas Bhawan, IP Estate, New Delhi Rs- H.No.232, Sector 7, Urban Estate, Gurgaon, Haryana-122001

59	Ashok Kumar Sinha, Advocate A/157 P.C. Colony, Kankarbagh, Patna
60	Hitehs H Bhatt 35/C Dahiba Nagar Society, Opp. Shreyas School, Manjal Pur Naka, Vadodara, Gujarat-390011
61	National Youth Project, Distt Muktsar, Head office: Guru Nanak Nagri, H.No.215, W.No.20, Malout-152107 (Pb)
62	Amnesty International, International Secretariat Peter Beneson House, I Easton Street, London WCIX ODW, United Kingdom
63	Gurdial Sahota, Inayat Medical and Education Charitable Society Ludhiana, PNB Road, New Janak, Puri, Salem Tabri, Ludhiana
64	Ranbirtalib (Mrs. Ranbir S.S. Rai) D/o Late Sardar Niranjan Singh Talib, Ahima 78, Sector 2, Chandigarh- 160001

65	Phoolchand Rajak, M. Sector-Aryatnagar Bhopal, Near ISRO-462041
66	Sankar Sen, IPS (Retd.), Senior Fellow-Institute of Social Sciences Former Director General- National Human Rights Commission Former Director-National Police Academy
67	Prabhat Kumar, Former Cabinet Secretary IC Centre for Governance, Niryat Bhawan Rao Tula Ram Marg, New Delhi -110057
68	Amitadyuti Kumar, Vide President, Association for Protection of Democratic Rights 18 Madan Boral Lane, Kolkata -700012
69	Yahia Alibi, Deputy Head of Delegation ICRC Regional Delegation for South Asia.
70	Pre- Legislative Briefing Service (PLBS)
71	Navaz Kotwal, Prgoramme Coördinator Access to Justice and Police Reforms

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	Programmes Commonwealth Human Rights Initiative, B117, First Floor, Sarvodaya Enclave New Delhi-110017
72	Vrinda Grover, Advocate N14A Saket, New Delhi-110017
73	Asian Centre for Human Rights, C3, 441 C, Janakpuri, New Delhi-110058
74	Human Rights Watch
75	Justice R.K. Mahajan (retd.), C38 Lane -1, Phase-1, Sector-2, New Shimla (H.P.)-171009
76	Saileswar Chakrabarti, 1/288, Naktala, Kolkata 700047 West Bengal
77	PRS Legislative Research
78	Yahia Alibi, Deputy Head of Delegation ICRC Regional Delegation for South Asia
79	Saileswar Chakrabarti, 1/288, Naktala, Kolkata 700047 West Bengal
80	Dr. R.K. Verma, B15 Sector-J, Aliganj, Lucknow -226024

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