INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed



www.ijlra.com

ISSN: 2582-6433

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, or distributed in any form or by any means, whether electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the Managing Editor of the *International Journal for Legal Research & Analysis (IJLRA)*.

The views, opinions, interpretations, and conclusions expressed in the articles published in this journal are solely those of the respective authors. They do not necessarily reflect the views of the Editorial Board, Editors, Reviewers, Advisors, or the Publisher of IJLRA.

Although every reasonable effort has been made to ensure the accuracy, authenticity, and proper citation of the content published in this journal, neither the Editorial Board nor IJLRA shall be held liable or responsible, in any manner whatsoever, for any loss, damage, or consequence arising from the use, reliance upon, or interpretation of the information contained in this publication.

The content published herein is intended solely for academic and informational purposes and shall not be construed as legal advice or professional opinion.

Copyright © International Journal for Legal Research & Analysis. All rights reserved.

ISSN: 2582-6433

ABOUT US

The *International Journal for Legal Research & Analysis (IJLRA)* (ISSN: 2582-6433) is a peer-reviewed, academic, online journal published on a monthly basis. The journal aims to provide a comprehensive and interactive platform for the publication of original and high-quality legal research.

IJLRA publishes Short Articles, Long Articles, Research Papers, Case Comments, Book Reviews, Essays, and interdisciplinary studies in the field of law and allied disciplines. The journal seeks to promote critical analysis and informed discourse on contemporary legal, social, and policy issues.

The primary objective of IJLRA is to enhance academic engagement and scholarly dialogue among law students, researchers, academicians, legal professionals, and members of the Bar and Bench. The journal endeavours to establish itself as a credible and widely cited academic publication through the publication of original, well-researched, and analytically sound contributions.

IJLRA welcomes submissions from all branches of law, provided the work is original, unpublished, and submitted in accordance with the prescribed submission guidelines. All manuscripts are subject to a rigorous peer-review process to ensure academic quality, originality, and relevance.

Through its publications, the *International Journal for Legal Research & Analysis* aspires to contribute meaningfully to legal scholarship and the development of law as an instrument of justice and social progress.

ISSN: 2582-6433

PUBLICATION ETHICS, COPYRIGHT & AUTHOR RESPONSIBILITY STATEMENT

The *International Journal for Legal Research and Analysis (IJLRA)* is committed to upholding the highest standards of publication ethics and academic integrity. All manuscripts submitted to the journal must be original, unpublished, and free from plagiarism, data fabrication, falsification, or any form of unethical research or publication practice. Authors are solely responsible for the accuracy, originality, legality, and ethical compliance of their work and must ensure that all sources are properly cited and that necessary permissions for any third-party copyrighted material have been duly obtained prior to submission. Copyright in all published articles vests with IJLRA, unless otherwise expressly stated, and authors grant the journal the irrevocable right to publish, reproduce, distribute, and archive their work in print and electronic formats. The views and opinions expressed in the articles are those of the authors alone and do not reflect the views of the Editors, Editorial Board, Reviewers, or Publisher. IJLRA shall not be liable for any loss, damage, claim, or legal consequence arising from the use, reliance upon, or interpretation of the content published. By submitting a manuscript, the author(s) agree to fully indemnify and hold harmless the journal, its Editor-in-Chief, Editors, Editorial Board, Reviewers, Advisors, Publisher, and Management against any claims, liabilities, or legal proceedings arising out of plagiarism, copyright infringement, defamation, breach of confidentiality, or violation of third-party rights. The journal reserves the absolute right to reject, withdraw, retract, or remove any manuscript or published article in case of ethical or legal violations, without incurring any liability.

ISSN: 2582-6433

TORTURE AGAINST HUMANITY: A COMPARITIVE STUDY OF ANTI – TORTURE LAWS IN INDIA, PHILIPINES AND SOUTH AFRICA

AUTHORED BY - LAVANYA SAHU
Designation – LL.M Student
Institutional Affiliation – National University of Study and Research in Law, Ranchi

ABSTRACT

India has signed the UN Convention against Torture, however has not ratified it nor created a freestanding offence of torture. Protection in custody derives from Constitutional Interpretation, Guidelines from DK Basu and General Offence Provisions for injury and detention. This paper analyses the common law approach to torture, compared to statutory approaches in South Africa (Act 13 2013) and Philippines (Republic Act No 9745 2009). The methodology is doctrinal and comparative. This paper will analyse how torture is defined, command responsibility, exceptions related to admissibility, remedies and supervision. It was found that all countries prohibit torture constitutionally. However, there are differences in how this is achieved. Philippines has created a statutory definition, superior liability and explicit exclusionary rule. South Africa has created a statutory offence with an exclusionary clause in the Constitution. India has no named offence or statutory exclusionary rule. Additionally, there is a provision about discovery. This paper argues that legislative stagnation has resulted in no statute being created. It recommends the creation of a prevention of torture act using Parliaments concurrent powers to legislate on criminal law. Keywords: Custodial torture, UNCAT, confessions, exclusionary rule, command responsibility, comparative Constitutional Law.

Keywords: custodial torture, UNCAT, confessions, exclusionary rule, command responsibility, comparative constitutional law

ISSN: 2582-6433

1. INTRODUCTION

Custodial torture is the prototype abuse of state power: it occurs where the individual is most dependent on the state and least able to prove what was done. The Convention against Torture (UNCAT) obliges states to criminalize it to refuse its fruits as evidence, and to provide redress.[1] India signed the UNCAT in October 1997 but has not ratified it, and nearly three decades later no Indian statute states torture as an offence.

Statement of the Problem

Custody-related violence in India is not covered by any statutory offence. Instead, it relies on judicial guidance, interpretation of the Constitution and the provisions of the Criminal Code on injury and illegal confinement. These effects can be divided into three categories. of luck in front of the court gives the opportunity to prosecute for general damages and culpable capital crimes in line with the severity of the case and the unbalanced crime. Although the confessional behaviour of the police officer cannot be infringed despite the protection to which he should like to apply, the discovery clause recognizes the power to prove the recovery. This opens up room for probatory evidence. Third, the Legislative Commission in its 273th report (2017) demanded to pass a corresponding statute that was not adopted by the Parliament. If in South Africa and the Philippines similar problems led to legislation, then the question arises why they the wording did not lead to a constitutional framework and precedent in India.

1.1 Research Questions

- Why have decades of judicial exhortation not produced a standalone anti-torture statute for India?
- How do the South African and Philippine statutes differ from India's guideline-based regime on definition, command responsibility, and evidentiary exclusion?
- Does the absence of a specific offence affect prosecution, sentencing, and victim compensation?
- What institutional and federal factors explain legislative stalemate?
- What must an Indian statute contain to be UNCAT-compliant and federally workable

1.2 Research Objectives

- To trace custodial-torture jurisprudence from *Sunil Batra* to *DK Basu* and the 2023 criminal-law framework.

ISSN: 2582-6433

- To compare the 2013 South African and 2009 Philippine Acts with India's guidelines.
- To assess the consequences of a missing statutory exclusionary rule.
- To recommend a legislative framework suitable for India's constitutional structure.

1.3 Hypothesis

India's dependence on judicially crafted safeguards, rather than a statute, has resulted in a weaker statutory framework for protection than in South Africa and the Philippines, where definition, command responsibility, and evidentiary exclusion operate together as an enforcement package.

1.4 Scope and Limitations

The present research on custodial torture is limited to non-armed-conflict situations. They are presented as period contrasts. My section is doctrinal and statutory; I have not gone to the police station or compiled complaint statistics. If there are conviction rate numbers on this site, I have avoided saying that is true. In Chapter II, I explained why I choose my predicates, even though the subjects they govern differ from the Police in India. Indian literature is inadequate for my analysis, and I deal mostly with the primary texts.

1.5 Research Methodology

This paper adopts a doctrinal and a comparative legal study. Primary sources (constitutional texts, statutes and case law of the three jurisdictions) are read alongside secondary sources, including Law Commission reports and judicial and legal commentary. The comparison is organized around five parameters: definition, command responsibility, evidentiary exclusion, compensation and rehabilitation, and oversight.

2. REVIEW OF LITERATURE

There are three themes in Torture Literature. Firstly, Treaty Compliance. Nowak and McArthurs Commentary discusses how the central principles of the Convention must be followed. This includes defining torture according to Article 1, creating a criminal offence according to Article 4, excluding statements according to Article 15 and creating remedies according to Article 14. The exclusionary rule in Article 15 is discussed. This is to stop any incentive to torture. Statements are easy to extract and hard to disprove. Therefore, any system which lacks a named offence cannot be compliant.

ISSN: 2582-6433

Secondly, Jurisprudence. Waldron discusses how torture prohibition can be seen as a pattern of law. This is a clear and absolute norm which shapes the surrounding law. This relates to the decision to create a statutory offence or judicially created. This is only announced in guidelines and therefore less visible and less enforceable.

Lastly, Indian and Official. In India there is much discussion around land deprivation. Including official documents such as the 273th report of the commission. However, this focuses on judicial guidelines and legislation. Whereas in South Africa there is more focus on how effective the Act is. There is still a lack of research placing India next to the two post-Authoritarian statutes and explaining why legislation is more of a bottleneck than rural. It is still difficult to determine if there is an effective law in place and why it is withheld by legislatures.

3. INDIA: CONSTITUTIONAL AND JUDICIAL FRAMEWORK

3.1 Constitutional Provisions (Articles 20(3), 21, 22)

Torture is nowhere named in the Constitution; its prohibition is indicative. Article 20(3) provides that no person accused of an offence shall be compelled to be a witness against himself. Article 21 guarantees life and personal liberty, except for the procedures established by law and Article 22 gurantees the right to be told the grounds of areesr, to consult a lawyer, and to be produced before a magistrate within twenty four hours of the arrest. Courts have interpretd these together as a custodial charter. *Nandini Satpathy v. PL Dani* extended the protection against self-incrimination to police interrogation, and and *Selvi v. State of Karnataka* held that involuntary narcoanalysis, polygraph and brain-mapping tests violate Articles 20(3) and 21, protecting mental privacy and bodily integrity during investigation.[5]

3.2 Evidentiary Framework (BSA/BNS, formerly Indian Evidence Act ss. 25–27)

The Bharatiya Sakshya Adhiniyam, 2023 (BSA) replaced the Indian Evidence Act 1872 and carried its confession rules forward. A confession caused by inducement, threat, or promise is irrelevant, and no confession to a police officer may be proved against an accused, and a confession made in police custody is excluded unless made in a magistrate's immediate presence.[6] A proviso, the former section 27, allows so much of an accused's custodial information as relates distinctly to a fact thereby discovered to be proved, whether or not it amounts to a confession. The Privy Council in *Pulukuri Kottaya v King-Emperor* confined the proviso to information that distinctly leads to discovery.[7] Yet the discovered fact is admitted however the information was extracted and the BSA contains no provision excluding evidence,

ISSN: 2582-6433

or its fruits, obtained by torture.

On the penal side, the Bharatiya Nyaya Sanhita 2023 (BNS) punishes hurt and wrongful confinement inflicted to extort a confession and the Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS) retains the requirement of government sanction before a public servant is prosecuted for acts done in official duty.[8] These provisions criminalize acts not torture and the sanction requirement filters prosecution at the threshold.

3.3 Judicial Development - from Sunil Batra to DK Basu

In *Sunil Batra v Delhi Administration* the Supreme Court dismissed the hands-off attitude towards prisons and held that Article 21 follows a prisoner into custody; Raghbir Singh v State of Haryana confronted a a death in police custody and deplored the persistence of third-degree methods.[9] *Nilabati Behera v State of Orissa* established compensation for custodial death as a public-law remedy against the state distinct from tort and punishment.[10] *DK Basu v State of West Bengal* issued binding requirements: identifiable police personnel, an attested arrest memo, notification of a relative, periodic medical examination and access to counsel during interrogation with contempt as the sanction for breach.[11] *State of Madhya Pradesh v Shyamsunder Trivedi* turned to proof criticizing the conspiracy of silence among police witnesses and permitting inferences where the facts lay within police knowledge.[12] More recently, *Paramvir Singh Saini v Baljit Singh* directed CCTV in police stations and *PUCL v State of Maharashtra* framed procedural guidelines for police encounters.[13]

The change is real but remedial, yet there exists no offence, no sentence and no superior liability.

3.4 The Law Commission's 273rd Report and the Draft Bill

India's legislative history is short and stalled, and as at the date of writing no standalone anti-torture statute is in force. The Prevention of Torture Bill 2010 passed the Lok Sabha but lapsed without enactment. Its definition confined torture to acts causing grievous hurt or danger to life, limb or health, a threshold narrower than Article 1 of UNCAT. The Law Commission's 273rd Report recommended ratification and annexed a draft Bill, and also proposed a new Evidence Act provision permitting a court to presume that injuries sustained in custody were caused by the police.[14]

Why has Parliament not acted? Three explanations recur: resistance to police reform; the argument that 'police' and 'public order' are State subjects and national-security exceptions. The federal objection is the weakest. Criminal law falls in the Concurrent List, and Article 253

ISSN: 2582-6433

empowers Parliament to legislate to implement international agreements.[15] A more plausible explanation, offered here as argument rather than finding, is political economy: the beneficiaries of a torture statute are powerless, while those it constrains are organized and indispensable to governments.

4. SOUTH AFRICA: THE STATUTORY MODEL

4.1 Constitutional Foundation — Section 12(1)(d)

Section 12(1)(d) of the Constitution guarantees everyone the right not to be tortured in any way, and section 12(1)(e) extends to cruel, inhuman or degrading treatment or punishment. The text names torture making the prohibition express rather than inferred. Section 35(5) requires exclusion of evidence obtained in violation of the Bill of Rights if its admission would render the trial unfair or otherwise be detrimental to the administration of justice. Early Constitutional Court decisions under the interim Constitution, *Makwanyane* on the death penalty and *Williams* on juvenile whipping treated the State's power to inflict pain as constrained by dignity. The confession doctrine was equally protective: *S v Zuma* struck down a statutory presumption burdening the accused to prove a confession involuntary and *Key v Attorney-General* treated unconstitutionally obtained evidence as a matter of balancing.[16]

4.2 The Prevention and Combating of Torture of Persons Act, 2013

The Act was enacted in July 2013, almost 15 years after South Africa ratified UNCAT in December 1998. Section 3 defines torture on the Convention model: severe pain or suffering, physical or mental, intentionally inflicted for purposes such as obtaining information or a confession, punishment, intimidation, coercion or discrimination by or with the instigation, consent or acquiescence of a public official or other person acting in an official capacity, excluding pain incidental to lawful sanctions. Section 4 creates the offence punishable by imprisonment including life, and reaches attempt, incitement, command, procurement, participation and conspiracy with an official. Section 5 lists aggravating sentencing factors, section 6 confers extra-territorial jurisdiction, and section 8 bars refoulement.[17]

Its notable omissions are an express evidentiary exclusion and a compensation scheme which remain with section 35(5) and general law, and commentary has focused on implementation rather than text.[18]

4.3 Command Responsibility and Post-Apartheid Rationale

The preamble recites South Africa's 'shameful history' of serious human rights violations,

ISSN: 2582-6433

including torture, and commits the state to bring perpetrators to justice.[19] Liability upon those who incite, instigate, command or procure torture. Section 4(3) denies as a defense or as a ground for reduced sentence that the accused was a head of state, official or member of government or obeyed a manifestly unlawful order; section 4(4) excludes war, emergency or national security as justification; and section 4(5) protects those who refuse to torture. Unlike the Philippine Act, however, it does not expressly impose liability on a superior who merely fails to prevent or punish subordinates' torture; section 7 preserves liability under common law and other statutes.

5. THE PHILIPPINES: THE STATUTORY MODEL

5.1 Constitutional Foundation — Article III, Section 12

Article III, section 12 of the 1987 Constitution gives a person under investigation the right to remain silent and independent counsel, prohibits torture, force, violence, threat, intimidation or any other means vitiating free will, bans secret detention, solitary and incommunicado detention, and declares inadmissible any confession or admission obtained in violation of these rights.[20] It therefore contains both the prohibition and an unconditional consequence absent from India's Constitution; South Africa's section 35(5) excludes conditionally. Section 19(2) separately directs that physical, psychological or degrading punishment of prisoners and detainees be dealt with by law, a mandate the Anti-Torture Act later answered.

5.2 The Anti-Torture Act of 2009 (Republic Act No. 9745)

Section 3 defines torture on the UNCAT model: severe pain or suffering intentionally inflicted for purposes such as obtaining information or a confession, punishment, intimidation or discrimination, by or with the consent of a person in authority or an agent of one. Section 4 then lists acts of physical and mental or psychological torture from electric shock and water submersion to sleep denial and secret detention, while section 5 addresses other cruel, inhuman and degrading treatment. Section 6 states freedom from torture absolute: war, instability, emergency or an 'order of battle' can never justify it. Torture is a separate and independent crime, neither absorbing nor absorbed by other offences (section 15); amnesty is excluded (section 16); penalties run from *reclusion perpetua* for torture causing death to lesser terms for psychological harm (section 14).

Section 13 supplies command responsibility. A superior who commands torture is a principal. So is the immediate commanding officer or senior official whose act, omission or negligence led to, assisted or allowed torture by subordinates, where he knew or should have known of it

ISSN: 2582-6433

and failed to take preventive or corrective action. Public officers who conceal torture are accessories.[21]

5.3 The Exclusionary Rule and Rehabilitation Provisions

Section 8 makes any confession, admission or statement obtained through torture inadmissible in all proceedings, except when offered against a person accused of the torture itself. The Supreme Court's confession jurisprudence is consistent: in *People v. Rapeza*, it refused to rely on an extrajudicial confession taken without demonstrated compliance with custodial safeguards and acquitted the accused.[22]

Remedies for victims are statutory. Compensation may be claimed under Republic Act No.7309 with a floor of ten thousand pesos (section 18); agencies must formulate a rehabilitative environment for victims and their families (section 19); and an Oversight Committee headed by a Commission on Human Rights commissioner monitors implementation (section 20). Section 10 requires the expeditious disposal of habeas corpus, amparo, and habeas data proceedings for victims of torture.[23] The writ of amparo, applied in *Secretary of National Defense v. Manalo* to brothers abducted and held by military personnel, provides a rapid remedy that predates the Act.[24]

6. COMPARATIVE ANALYSIS

6.1 Definition of Torture

All three countries prohibit torture however only two countries have a definition. Both South Africa and the Philippines follow the definition within article 1 of the UNCAT. The Philippine Act provides an extensive list of acts that can be considered under torture. This aids prosecutors when proving an offence. The South African Act follows the general definition. However, India has no convention or statute. The 2010 Bill creates a high threshold for grievous hurt meaning the definition would have been restrictive. When considering how to charge an offence it is important to have a definition. Without one, prosecutors will have to fit the offence into other offences. However, psychological torture is not really addressed.

6.2 Command Responsibility

The Philippines provides the clearest definition. Anyone ordering torture will be a principal. Anyone who knew or ought to have known that torture was taking place and failed to prevent / punish will also be a principal. South Africa provides command liability for anyone who commanded, incited or procured. There is no defence for superior orders however there is no

ISSN: 2582-6433

mention of omission based liability. India provides general principles within the criminal code. There is a need for sanctions.

6.3 Evidentiary Exclusion

The Philippines excludes torture derived statements by constitution and statute. South Africa excludes conditionally under section 35(5). India excludes confessions to police but admits discovered facts through the proviso and no provision addresses derivative evidence. This is the starkest divergence.

6.4 Compensation and Rehabilitation

India has the richest judicial compensation doctrine in *Nilabati Behera* and *DK Basu* but it is discretionary and unconnected to conviction. The Philippines supplies a statutory claim with a floor and a rehabilitation mandate. South Africa's Act is silent on civil claims.

6.5 Oversight Mechanisms

India depends on courts the National Human Rights Commission under the Protection of Human Rights Act 1993 and judicially directed CCTV; none is torture specific. South Africa has the Independent Police Investigative Directorate under Act 1 of 2011 and statutory training duties.[25] The Philippines has a dedicated oversight committee and requires detention lists to be submitted to the Commission on Human Rights.

7. FINDINGS

India appears to lack all three elements - definition, superior liability, exclusion, that the Philippines and South Africa possess to some extent. Second, the most important gap is in evidence because the discovery exception effectively turns a protective confession rule into an open door. Third, India's compensation provision represents the best feature of its regime, but it is primarily compensatory. Fourth, there seems to be no legal obstruction to federalism, but it could still be a political economy explanation. Finally, legislation is clearly necessary, but not sufficient. South Africa's failures show that statutory regimes are incomplete. Given the non-empirical nature of the study, we cannot determine what effect the changes would have on conviction rates.

ISSN: 2582-6433

8. CONCLUSION AND RECOMMENDATIONS

India's torture jurisprudence is rich but unfinished: courts have named the wrong, prescribed safeguards and awarded compensation, while the legislature has declined to name the offence. Torture remains, in India, without a name. South Africa and the Philippines show that comparable democracies can close the gap and that the package matters more than any single clause. Parliament must now supply the machinery of definition, accountability and proof. India should therefore consider the following.

- Ratify UNCAT and enact a Prevention of Torture Act under the Concurrent List and article 253, without a grievous-hurt threshold.
- Define torture on Article 1 lines, covering acts with official consent or acquiescence.
- Adopt Philippine-style superior liability for knowing failure to prevent or punish, and South Africa's bar on superior orders.
- Amend the BSA to exclude torture-derived statements and their fruits, narrow the discovery proviso, and enact the Law Commission's custody-injury presumption.
- Dispense with sanction and short limitation periods for torture prosecutions.
- Provide statutory compensation, rehabilitation and an independent preventive oversight body.

BIBLIOGRAPHY

Constitutions and Statutes

- Bharatiya Nagarik Suraksha Sanhita 2023 (India)
- Bharatiya Nyaya Sanhita 2023 (India)
- Bharatiya Sakshya Adhiniyam 2023 (India)
- Constitution of India 1950
- Constitution of the Republic of South Africa 1996
- Independent Police Investigative Directorate Act 1 of 2011 (South Africa)
- Indian Evidence Act 1872 (repealed)
- Prevention and Combating of Torture of Persons Act 13 of 2013 (South Africa)
- Prevention of Torture Bill 2010 (India)
- Protection of Human Rights Act 1993 (India)
- Republic Act No 7309 (Philippines)
- Republic Act No 9745 (Anti-Torture Act of 2009) (Philippines)
- 1987 Constitution of the Philippines

ISSN: 2582-6433

CASE LAW — INDIA

- DK Basu v State of West Bengal (1997) 1 SCC 416
- Nandini Satpathy v PL Dani (1978) 2 SCC 424
- Nilabati Behera v State of Orissa (1993) 2 SCC 746
- Paramvir Singh Saini v Baljit Singh (2021) 1 SCC 184
- Raghbir Singh v State of Haryana (1980) 3 SCC 70
- Selvi v State of Karnataka (2010) 7 SCC 263
- State of Madhya Pradesh v Shyamsunder Trivedi (1995) 4 SCC 262
- Sunil Batra v Delhi Administration (1978) 4 SCC 494

CASE LAW — SOUTH AFRICA

- Key v Attorney-General, Cape Provincial Division 1996 (4) SA 187 (CC)
- S v Makwanyane 1995 (3) SA 391 (CC)
- S v Williams and Others 1995 (3) SA 632 (CC)
- S v Zuma 1995 (2) SA 642 (CC)

CASE LAW — PHILIPPINES

- People v Rapeza GR No 169431 (4 April 2007)
- Secretary of National Defense v Manalo GR No 180906 (7 October 2008)

Books and Reports

- Law Commission of India, Implementation of 'United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment' through Legislation (Law Com No 273, 2017)
- Moyo AY, 'Bridging Gaps Through Implementation of the Prevention and Combating of Torture of Persons Act 13 of 2013' (Centre for the Study of Violence and Reconciliation Policy Brief, 2014)
- Nowak M and McArthur E, The United Nations Convention Against Torture: A Commentary (OUP 2008)

Journal Articles

- Waldron J, 'Torture and Positive Law: Jurisprudence for the White House' (2005) 105 Colum L Rev 1681

International Instruments

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

ISSN: 2582-6433

- Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85

1Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (UNCAT) arts 1, 4, 14, 15.
2Law Commission of India, Implementation of 'United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment' through Legislation (Law Com No 273, 2017).
3Manfred Nowak and Elizabeth McArthur, The United Nations Convention Against Torture: A Commentary (OUP 2008).
4Jeremy Waldron, 'Torture and Positive Law: Jurisprudence for the White House' (2005) 105 Colum L Rev 1681.
5Constitution of India 1950, arts 20(3), 21, 22; Nandini Satpathy v PL Dani (1978) 2 SCC 424; Selvi v State of Karnataka (2010) 7 SCC 263.
6Bharatiya Sakshya Adhiniyam 2023, ss 22–23, replacing the Indian Evidence Act 1872, ss 24–27.
7Pulukuri Kottaya v King-Emperor AIR 1946 PC 67.
8Bharatiya Nyaya Sanhita 2023, ss 120, 127; Bharatiya Nagarik Suraksha Sanhita 2023, s 218.
9Sunil Batra v Delhi Administration (1978) 4 SCC 494; Raghbir Singh v State of Haryana (1980) 3 SCC 70.
10Nilabati Behera v State of Orissa (1993) 2 SCC 746.
11DK Basu v State of West Bengal (1997) 1 SCC 416 [35].
12State of Madhya Pradesh v Shyamsunder Trivedi (1995) 4 SCC 262.
13Paramvir Singh Saini v Baljit Singh (2021) 1 SCC 184; PUCL v State of Maharashtra (2014) 10 SCC 635.
14Prevention of Torture Bill 2010 (India) cl 3; Law Com No 273 (n 2).
15Constitution of India 1950, art 253 and Seventh Schedule, List II entries 1–2 and List III entry 1. 16Constitution of the Republic of South Africa 1996, ss 12(1)(d)–(e), 35(5); S v Makwanyane 1995 (3) SA 391 (CC); S v Williams and Others 1995 (3) SA 632 (CC); S v Zuma 1995 (2) SA 642 (CC); Key v Attorney-General, Cape Provincial Division 1996 (4) SA 187 (CC).
17Prevention and Combating of Torture of Persons Act 13 of 2013 (SA), ss 3–6, 8.
18Annah Y Moyo, 'Bridging Gaps Through Implementation of the Prevention and Combating of Torture of Persons Act 13 of 2013' (Centre for the Study of Violence and Reconciliation Policy Brief, 2014).
19Act 13 of 2013 (n 17), preamble and ss 4(1), 4(3)–(5), 7.
201987 Constitution of the Philippines, art III §§12, 19(2).
21Republic Act No 9745 (Anti-Torture Act of 2009) (Philippines), ss 3–7, 13–16.
22Republic Act No 9745 (n 21), s 8; People v Rapeza GR No 169431 (4 April 2007).
23Republic Act No 9745 (n 21), ss 10, 18–20; Republic Act No 7309 (Philippines).
24Secretary of National Defense v Manalo GR No 180906 (7 October 2008).
25Protection of Human Rights Act 1993 (India); Independent Police Investigative Directorate Act 1 of 2011 (South Africa); Criminal Law (Amendment) Act, 2013, s 9.