

# United Nations Convention against Torture

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## Manifest Pedagogy

Conventions, agreements are generally focused on by aspirants only in Mains. This has become a major drawback for them during Prelims as UPSC is exploring these areas in Prelims too in recent times. The best way to prepare for Conventions for prelims is to track the current affairs and read static portions surrounding them!

## In news

SC says it can't direct the government to ratify Convention against Torture

## Placing it in the syllabus

Important International institutions, agencies and fora- their structure, mandate.

## Static dimensions

Provisions of Convention against Torture

## Current dimensions

- The stand of India on the convention
- Law Commission recommendations on the Draft Torture Law

## Content

### What is Convention Against Torture ?

Convention against Torture and other Cruel, Inhuman or

Degrading Treatment or Punishment (commonly known as the United Nations Convention against Torture (UNCAT)) is an international human rights treaty, under the review of the United Nations, that aims to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment around the world.

The Convention requires states to take effective measures to prevent torture in any territory under their jurisdiction and forbids states to transport people to any country where there is a reason to believe they will be tortured.

It was adopted by the General Assembly of the United Nations in December 1984 (resolution 39/46). The Convention entered into force in June 1987 after it had been ratified by 20 States.

### **Important provisions of the convention**

Following are the important provisions of the convention

- **Definition of torture (Article 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.
- **Ban on torture:** The convention prohibits torture, and requires parties to take effective measures to prevent

it in any territory under their jurisdiction. This prohibition is absolute and non-derogable. "No exceptional circumstances whatsoever" may be invoked to justify torture, including war, threat of war, internal political instability, public emergency, terrorist acts, violent crime, or any form of armed conflict.

- **Ban on refoulement: It also prohibits parties from returning, extraditing, or refouling any person to a state "where there are substantial grounds for believing that he would be in danger of being subjected to torture."** The Committee against Torture has held that this danger must be assessed not just for the initial receiving state, but also to states to which the person may be subsequently expelled, returned or extradited.
- **Ban on cruel, inhuman, or degrading treatment or punishment:** Article 16 requires parties to prevent "other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1" in any territory under their jurisdiction. Because it is often difficult to distinguish between cruel, inhuman, or degrading treatment or punishment and torture, the Committee regards Article 16's prohibition of such act as similarly absolute and non-derogable
- **An act of torture is a criminal offence:** Under the convention, 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.

**Obligation of States:** The states which are party to this convention are required to take the following steps:

- Take preventive actions against torture like criminalizing acts of torture enacting domestic laws and regulations to respect human rights of the alleged victim and the accused.

- Need to outlaw torture and refrain from using 'higher orders' or exceptional circumstances' as excuses for committing acts of torture.

### **The Committee against Torture (CAT):**

- CAT is a body of human rights experts that monitors implementation of the Convention by State parties. The Committee is one of eight UN-linked human rights treaty bodies.
- All state parties are obliged under the Convention to submit regular reports to the CAT on how rights are being implemented.
- Upon ratifying the Convention, states must submit a report within one year, after which they are obliged to report every four years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of "concluding observations."
- Under certain circumstances, the CAT may consider complaints or communications from individuals claiming that their rights under the Convention have been violated.

### **Why is India not ratifying it**

- India signed this convention on October 14, 1997, however, so far has not ratified it. India has expressed its reservations against few provisions of the convention such as – Inquiry by the CAT (Article 20); state complaints (Article 21) and individual complaints (Article 22).
- **Argument of the Government:** It says that it has already criminalized torture under Indian Penal Code, 1860 ( it had introduced the Prevention of Torture Bill, 2010 in the Lok Sabha during UPA Government)

### **Law Commission recommendations on a draft torture law**

1. Ratification of Convention against Torture
2. Amendment to Existing Statutes (Criminal Procedure Code, 1973 and the Indian Evidence Act, 1872 )
3. Punishment for acts of torture
4. Compensation to Victims( to be decided by Courts)
5. Protection of Victims, Complainants and Witnesses
6. **Sovereign Immunity:** Going by the law of torts, which states 'liability follows negligence' the Commission is of the opinion that the State should own the responsibility for the injuries caused by its agents on citizens, and principle of sovereign immunity cannot override the rights assured by the Constitution