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Global War on Terror Interplay with Prohibition of Torture in Public International & Indian Law

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ABSTRACT

This paper discusses the impact that the Global War on Terror campaign had on the international human rights system and how has the international community responded to this impact. It proceeds to analyse specifically India's position on the same though its domestic laws, which have been a brainchild of measures adopted by the US during GWOt. This paper employs a tracing approach for the sake of clarity and structure by giving a brief overview of concepts of torture and WoT and then, examines the role of International Courts and human rights bodies in protecting Human Rights and their response to the trend of a flexible interpretation of torture prohibition introduced by WoT. In its latter segment, it reaches the conclusion that India has been heavily influenced by GWOt and continues to adopt torture as a counter-terrorism measure while denying its use. It is argued that India must ratify UNCAT, a special Convention on the prevention of torture, in accordance with its international obligations.

Keywords: Torture, Prohibition, Terror, Human Rights

I. INTRODUCTION

‘If anything is a human right, then it is the right to not be tortured;³ and if torture is not wrong, nothing is wrong.’⁴

War on Terror was a counter-terrorism campaign initiated by US as a response to 9/11.⁵ The campaign was riddled with human rights (HR) violations, especially with regards to bypassing the right of prohibition against torture. US as a hegemon had a global impact on anti-terrorism laws and the human right system. Torture is the most severe form of cruelty. Article 1 of UNCAT attempts to define torture, however, there is no universally accepted definition of the

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³ Alston, Goodman, *Norm Regression: The Norm Against Torture in International Human Rights*, (1st Edn, OUP 2012) 238

⁴ Jamie Mayerfeld, ‘In Defense of the Absolute Prohibition of Torture’ (2008) 22(2) PAQ 109

⁵ Richard Jackson, ‘War on Terrorism’, *Encyclopedia Britannica* (2020) <https://www.britannica.com/topic/war-on-terrorism> accessed 18 October 2021

same in the international law domain.⁶ Prohibition of torture, globally recognized human right, is a customary international law with the status of *jus cogens* or peremptory norm;⁷ entailing *erga omnes* obligations.⁸ It is recognised by various international accords like ICCPR (article 4,7,9), UNCAT, OPCAT, UDHR and even the common Article 3 of the Geneva Convention. The Geneva Convention places an absolute obligation on all its members (now even non-member states) to prohibit torture. Thereby, this HR obligation has universal jurisdiction and may even be imposed against States that have not ratified the relevant treaties prohibiting torture.⁹

II. THE GLOBAL WAR ON TERROR (GWOT) & IT'S IMPACT ON HR

While torture as a general practice is not defended, several states have historically warranted its use behind closed doors in certain circumstances.¹⁰ Prohibition of torture is absolute in nature but has been repeatedly challenged, for instance, the ticking bomb theory.¹¹ It is a hypothetical utilitarian theory which justifies the use torture to save the lives of many.¹² This theory is inbred with fallacies and is based on multiple presumptions,¹³ but was used as a justification to bypass human rights and employ acts of torture in the name of combating terrorism to ensure national security; which evolved to be a popularly accepted justification post WoT. The rationalization of torture for countering terrorism was embodied in the ticking-bomb theory,¹⁴ which gave a leeway for HR violations, even though the UN Committee denounced this defence.¹⁵ So, another impact of the WoT campaign was that it expanded the interpretation of prohibition of torture which led to States abandoning their long-term values of protecting human rights because of short-term threats.¹⁶

⁶ Jamie (n 2) & UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

⁷ Erika de Wet, 'The Prohibition of Torture as an International Norm of *jus cogens* and Its Implications for National and Customary Law' (2004) 15(1) EJIL 97

⁸ Devin O. Pendas, 'Review: Interrogating Torture: Human Rights, the War on Terror, and the Fate of America' (2010) 44(2) JAS 429

⁹ Stephen P Marks, 'International Law and the 'War on Terrorism': Post 9/11 Responses by the United States and Asia Pacific Countries' (2006) 14(1) APL Rev 43

¹⁰ Jamie (n 2). It was the main argument for justifying the use of torture in the Algerian War of Independence by the French army, for the massive use of torture by Israel military in Occupied Territories and became the primary justification for the use of torture in WoT.

¹¹ Jerome Slater, 'Tragic Choices in the War on Terrorism: Should We Try to Regulate and Control Torture?' (2006) 121(2) Pol SQ 191

¹² Alex J. Bellamy, 'No Pain, No Gain? Torture and Ethics In The War On Terror' (2006) 82(1) Int A 121

¹³ Ibid.

¹⁴ Kim Lane Scheppele, 'Hypothetical Torture in the War on Terrorism' (2005) 1 JN Sec L & Pol 285

¹⁵ Derek Summerfield, 'Fighting Terrorism with Torture' (2003) 326 BMJ 773

¹⁶ Simon Chesterman, 'Why Not Torture?' (2014) National University of Singapore Research Paper 1 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2539021 accessed 22 October 2021

This campaign had severe impacts in the realm of HR and international law. The gravest impact was it becoming a pretext to expand the flexibility in torture prohibition obligations which led to major human rights violations.¹⁷ It created a loophole in the human right obligation of prohibition of torture which was recognised by several international conventions and treaties. This was done by concocting legal reinterpretation of torture and rationalizing immoral interrogation methods used by CIA.¹⁸ The use of torture was being justified as a counter-terrorism measure, which permitted officially sanctioned application of torture in ‘professionally enhanced interrogation techniques.’¹⁹

While opening the gates to justified violation of human rights, WoT also led to an inevitable increase in widened and illogical use of the ticking-bomb theory.²⁰ Moreover, it warranted the use of torture to extract information to achieve long-term goals of suppressing terrorism, much like a slow-fused bomb instead of a ticking-time one like the case of Guantanamo Bay.²¹ Further, the surfacing of Abu Ghraib and Baghram scandal photos revealed the ongoing practice of deporting suspects and use of torture during interrogation in these centers.²² This was a clear demonstration of the narrative of how acts of torture were being justified in the name of national security.²³

The contention of torture as an exception can be countered and some of the reasons are discussed as follows. The prohibition against torture is accepted as a principle of customary international law since the obligation’s entry in force.²⁴ Further, to block such arguments of modern terrorism threats, contemporary international law prohibited torture in all circumstances, banning its lift or derogation even during an emergency.²⁵ The international community rejected the use of torture even in the ‘ticking bomb’ case. The International human rights law, as well as U.S. law, do not contain any exceptions to the prohibition against torture.²⁶

¹⁷ Noah Coburn et. al, ‘Human Rights & Civil Liberties’ (*Watson Institute for International Studies, Brown University*, 8 February 2017) <https://watson.brown.edu/costsofwar/costs/social/rights> accessed 22 October 2021

¹⁸ Ibid.

¹⁹ Simon (n 14).

²⁰ Jeff McMahan, ‘Torture in Principle and in Practice’ (2008) 22(2) PAQ 91

²¹ Jamie (n 2).

²² Silvia Borelli, ‘Casting Light on the Legal Blackhole: International Law and Detentions Abroad in War on Terror’ (2005) 87(857) Int Rev RC 39

²³ George J Annas, ‘Truth and Torture in The War on Terror’ (2019) 394(10213) TLJ 1981 & Hellen Duffy, ‘Human Rights Litigation & The War On terror’ (2008) 90(871) Int. Rev. RC 573

²⁴ Simon (n 14).

²⁵ Jamie (n 2).

²⁶ HRW, ‘The Legal Prohibition Against Torture’ (*Human Rights Watch*, 1 June 2004) <https://www.hrw.org/news/2003/03/11/legal-prohibition-against-torture> accessed 24 October 2021

HR Response to the trend set by WoT:

In the wake of the 9/11 attacks, the Security Council formed a Counter-Terrorism Committee vide the Anti-Terrorism Resolution 1373 to further its counter-terrorism approach, which reaffirmed the Council's condemnation of the attacks.²⁷ Post WoT campaign, many States began to adopt similar counter-terrorism measures. While the Security Council failed to swiftly enunciate the State's duty with respect to its human rights obligations while employing counter-terrorism measures, it subsequently clarified vide the 2003 Declaration that States must comply with their HR obligations, like the torture prohibition, while employing such measures.²⁸ Despite this clarification, several States continued evading their human rights obligation by adopting the flexible approach, dismissing them in times of apparent threats.²⁹

Alarmed by the developments in counter-terrorism measures adopted by States and the subsequent risk posed in international HR post WoT, the International Commission of Jurists devised the 'Berlin Declaration.' It emphasised on upholding human rights while combating terrorism as a response to justified HR violations.³⁰ Although several States claimed that prohibition of torture is a luxury in times of crisis and can be derogated, the Berlin Declaration set out that international HR law envisages a reasonable scope of flexibility to enable States to counter-terrorism and digress from certain HR obligations in times of a legitimate threat.³¹ However, specific HRs, like the prohibition of torture, are non-derogable, regardless of the severity of the emergency.³² Therefore, the Panel reached a conclusion that this trend adopted by several States under the influence of WoT campaign needs to come to an end.³³

In 2005, the Eminent Jurists Panel on Terrorism, Counter-Terrorism, and Human Rights was formed to address such HR violations during counter terrorism.³⁴ Further, the litigations that followed the WoT campaign reflected the response of HR on the impact of WoT and the position taken by International Courts in its development.

In the cases *Saadi v. Italy* and *Ramzy v. Netherlands*, before the ECHR, the issue revolved around deportation of individuals and the underlying risk of torture.³⁵ In both cases, the state

²⁷ Stephen (n 7).

²⁸ HRW, 'Terrorism/Counterterrorism' (*Human Rights Watch*, 2016) <https://www.hrw.org/topic/terrorism-counterterrorism> last accessed 23 October 2021 & Nowak Manfred, 'What Practices Constitute Torture? US and UN Standards' (2006) 28(4) HRQ 809

²⁹ Sebastian von Einsiedel, 'Assessing the UN's Efforts to Counter Terrorism' (2016) 8 UN UC Pol Res 1

³⁰ ICJ, The Berlin Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism, 2004.

³¹ Manfred (n 26).

³² ICJ Berlin Declaration (n 28).

³³ Ibid.

³⁴ Sebastian (n 27).

³⁵ Hellen (n 21), *Saadi v. Italy* App No. 37201/06 (ECHR, 28 February 2008) & *Ramzy v. Netherlands* Application no. 25424/05 (ECHR, 20 July 2010).

governments seized the opportunity to justify the use of torture in furtherance of national security. The unanimous judgment by the European Court rejected this argument and asserted that the deportation of individuals to places with a real underlying risk of torture is part of the absolute prohibition on torture.³⁶ Although the court acknowledged the adversity faced by States in countering modern threats of terrorism, it rejected the approach of this threat being used as an exception to the lift the absolute prohibition of torture.³⁷ Similarly, in the case *A & Ors v. Secretary of State for the Home Department*, the issue was regarding admissibility of evidence obtained through torture.³⁸ The UK argued that evidence obtained using torture by foreign officials is admissible in court as the UK is not responsible for their action. However, this rationale was rejected by the House of Lords, stating that torture is a crime irrespective of the inflictor, such evidence can never be admitted in legal proceedings.³⁹

III. ACCOUNT OF ANALYSIS

The WoT almost had a limitless scope, which led to confusion among States as to what extent they could reach without violating HR while countering terrorism.⁴⁰ It was subjected to heavy criticism as its success was outweighed by its failure in protecting fundamental HR of individuals.⁴¹

International HR bodies responded to the violations of HR post WoT. However, they failed to respond spontaneously, which may have led to innocent suspects being subjected to torture. The efforts to devise a comprehensive counter-terrorism convention had, unfortunately, fell in deaf ears.⁴² Furthermore, despite all the declarations and judgments that propounded the need to halt the trend set by WoT; these policies were unsuccessful in ultimately enforcing the international standards of humane treatment and several States around the world continue to adopt counter-terrorism measures like torture.⁴³

Twenty years post 9/11; there is still a search for a proper policy in guidance of counter-terrorism. The absence of an all-encompassing counter-terrorism convention highlights the shortcoming in UN's action post 9/11 as it allowed several states to circumvent their human rights obligations and justify the use of torture as a counter-terrorism tool.⁴⁴ Moreover, the

³⁶ Silvia (n 20).

³⁷ Ibid.

³⁸ Hellen (n 21) and *A & Ors. v. Secretary of State for the Home Department* [2004] UKHL 56

³⁹ Hellen (n 21).

⁴⁰ Silvia (n 20).

⁴¹ Richard (n 3).

⁴² Sebastian (n 27).

⁴³ Ibid.

⁴⁴ HRW (n 26).

developments made post WoT were proven weak to negate the counter-productive and unlawful measures of combatting terror by states ultimately exacerbating the terrorist threat.⁴⁵

Even though the UN's counter-terrorism approaches had some short-comings, the UN, along with other international bodies, proved to be a valuable in establishing the broad frameworks for collective counter-terrorism action.⁴⁶ For instance, the approach by the ECHR in the *Ramzy* and *Saadi* case sets an example of the crucial role played by International courts in reasserting fundamental HR principles. The judgment in *A & Ors.* by the House of Lords is yet another reaffirmation of absolute nature of prohibition of torture. Furthermore, the panel in the Berlin declaration had also taken a strong position against States that undermined HR for countering terrorism.⁴⁷

Torture is a form of terrorism, and there are no justifications for it.⁴⁸ The GWoT campaign led by the US weakened the international HR institutions.⁴⁹ It led to a paradigm shift in the counter-terrorism measures employed by States. Even today, States continue to employ counter-terrorism measures like torture, which has been demonstrated in the next segment through the India's position on the aftermath of WoT. The illegitimate attempts of redefining torture with an extremely high threshold of brutality to justify its use illustrate attempts to evade HR obligations indirectly.⁵⁰ Accepting such paradigmatic shift would threaten the core of Human rights values and is not permissible owing to its *jus cogens* status in International Law.⁵¹ No convention or treaty in the International Law domain provides for the lifting of the prohibition of torture and it is only imperative that States counter-terrorism in a manner that does not undermine such HR values. Moreover, the use of torture to protect the HR of some from terror threats creates a paradoxical loop where human rights are violated by the protectors of human rights itself to protect the human rights of others.⁵²

IV. INDIA'S POSITION

This segment deals with Global War on Terror's influence on India's counterterrorism policy analyzed through the lens of its domestic laws. Upon scrutiny, this part reaches the finding that India's domestic law has adopted the trend set by GWoT which weakened international institutions in their approach towards prohibition of torture. Via its domestic laws India confers

⁴⁵ Sebastian (n 27).

⁴⁶ Courtenay R. Conrad, *Torture and the War on Terrorism* (The Oxford Handbook of Terrorism, OUP 2019)

⁴⁷ ICJ Berlin Declaration (n 28).

⁴⁸ Derek (n 13).

⁴⁹ Stephen (n 7).

⁵⁰ Hellen (n 21).

⁵¹ Stephen (n 7).

⁵² Harold Hongju Koh, 'A World Without Torture' (2004) 43 Colum. JTL 641

sweeping powers to security forces, responsible for human rights violations, as a counter-terrorism mechanism. Owing to the lack of a special law relating to torture alongside the inadequacy of pre-existing domestic laws, it is contended that India, as a signatory, must take steps to ratify UNCAT.

India Post War on Terror

As a response to War on Terror, the countries in Asia-pacific region extended their support to US and took measures to implement Resolution 1373 (2001).⁵³ India, specifically, endorsed US military response, provided logistical support, and as a member of ASEAN adopted a joint declaration in 2003 to counter international terrorism.⁵⁴ In reaction to 9/11 and the internal militant attacks in 2001, India introduced the Prevention of Terrorism Act (POTA) which conferred extensive powers to security forces. POTA was in line with India's acknowledgment of Resolution 1373 to facilitate its government with law-enforcement tools in the war on terrorism.⁵⁵ This demonstrates India's position with respect to HR response to the WoT. The US State Department coordinator for Counterterrorism had recognised the contribution of American officials in the formulation of POTA.⁵⁶ US's involvement in the introduction of anti-terrorism laws in India implies the consonance between the measures adopted by the two democracies. However, as war on terrorism advanced, the Indian Government's actions were remodelled to adapt to domestic requirements and their approach towards terrorism, but did not digress from the path set by WoT.

Although India is a signatory to UNCAT, it has not ratified it and thus, provisions of UNCAT cannot be invoked at any international forum against India's actions which may be classified as torture or cruelty. This does not absolve India of its international obligations of upholding indispensable human rights like prohibition of torture. In 2010, the Lok Sabha passed the Prevention of Torture Bill, with a fresh draft re-issued in 2017, as an inadequate attempt to ratify UNCAT. India backs up its stance for not ratifying UNCAT by claiming that proscription of torture is provided for under its domestic law. However, Indian legal jurisprudence fails to give a coherent definition of torture and uphold the subsequent condemnation of torture by public officials. What rather appears analogous between the two liberal democracies of India and US is prevalence of torture on an administrative basis, as a means of governing civilian

⁵³ Stephen (n 7).

⁵⁴ ASEAN-India Joint Declaration for Cooperation to Combat Terrorism.

⁵⁵ Stephen (n 7).

⁵⁶ Karthika Sasikumar, 'State Agency in the Time of Global War on Terror: India and the Counterterrorism Regime' (2010) 36(3) *Rev. Intl. Studies* 615

population under the guise of “torture as an exception.”⁵⁷ This shows how India is one of those States which continues to justify the use of torture for countering terrorism that WoT had set out, despite of HR’s rejection of the same.

Are Indian Domestic Laws Enough?

Oversight in domestic laws, lack of accountability with simultaneous denial of the use of torture, are the main factors which contribute to abuse of terrorism suspects in custody. As one of the impacts on GWoT, such flexibility with regards to circumventing human rights, prohibition of torture, is justified for the reasons of national security. To be sure, this is not to dismiss the support for the contention that Indian law bars torture. The Indian Penal Code (IPC) does not define torture but defines ‘hurt’ and ‘grievous hurt.’ ‘Hurt’ does not have an all-encompassing definition and bars mental torture from it. But the judiciary has incorporated psychic torture, environmental coercion, tiring interrogative prolixity, and overbearing and intimidatory methods, among others, in the ambit of torture.⁵⁸ Use of hurt to extort confessions is also catered to under the Code.⁵⁹ Additionally, a judicial magistrate inquires into every custodial death in accordance with the Code of Criminal Procedure.⁶⁰ Contrastingly, the statistics and testimonial evidence, as discussed below, suggest otherwise.

Indian security forces resort to torture to elicit information, confessions. These measures were used internationally, upon the advent of GWoT, and acts as an overriding justification for India’s actions. These abuses are attributed to two reasons i.e., India’s negligence to modernize and train police force to ensure their competency;⁶¹ the judicial system’s over emphasis on confessions as evidence.⁶² India’s judiciary, recognised for its independence, plays an imperative role in ensuring accountability of those who inflict torture and has repeatedly condemned use of torture and extortion as means of gathering evidence. Although the Constitution does not explicitly prohibit torture, it is interwoven in Article 14 and 21.

The Supreme Court in *Mullin Territory v. UT of Delhi* had held that any form of cruelty or torture would be offensive to human dignity and would impinge on the right to life and therefore, be prohibited under Article 21.⁶³ Additionally, any law which authorises the use of

⁵⁷ Jinee Lokaneeta, ‘Defining an Absence: Torture ‘Debate’ in India’ (2014) 49 EPW 69

⁵⁸ R.K. Vij, ‘Why a Separate Anti-torture Law’ *The Hindu* (20 July 2020)

⁵⁹ Indian Penal Code 1860, s 331

⁶⁰ Indian Penal Code 1860, s 176

⁶¹ HRW, ‘The Anti-Nations: Arbitrary Detention and Torture of Terrorism Suspects in India’ (*Human Rights Watch*, 2 February 2011) <https://www.hrw.org/report/2011/02/01/anti-nationals/arbitrary-detention-and-torture-terrorism-suspects-india> Accessed 27 October 2021 “Much of these human rights violations are caused by a deficit of capacity”

⁶² Urmila Pullat, ‘The Indian States and its Counter-Productive Counter-Terrorism’ *The Wire* (4 May 2016)

⁶³ *Mullin Territory v. UT of Delhi* AIR 1981 SC 746

torture and degrading treatment will not stand the test under Article 14 of reasonableness and non-arbitrariness.⁶⁴ Regardless of the language being dictum, this case is unequivocal as it did not deal with torture but with limitations on a prisoner's access to legal aid and family.⁶⁵ Alongside such interpretation of the Constitution, India is a party to the International Covenant on Civil and Political Rights (ICCPR), Article 7 of which prohibits torture, and is also bound by common Article 3 of Geneva Convention, among other multilateral accords.⁶⁶ By virtue of this affiliation, India has flouted its international obligations by acceding to the use torture.

Torture Negotiated Within the Law

Unfortunately, India's democratic institutions have proven incompetent in warranting accountability of human rights abuses. Usually, magistrates take the word of police when they deny mistreatment of suspects instead of ordering independent investigations of allegations.⁶⁷ These security forces are also liable for serious human rights violations during counter insurgency operations like Jammu and Kashmir, Manipur, and Assam by way of wide powers vested in them through 'national security' laws like AFSPA 1958; Disturbed Areas Act and, Public Safety Act.⁶⁸ India also provides effective immunity to its security forces and public officials from prosecution.

This became more apparent post 2008 Mumbai bombings when the Indian Parliament passed the Unlawful Activities (Prevention) Act (UAPA) which replaced the repealed POTA. Police abuse has been facilitated by reinstating overboard counterterrorism laws that contain vague definitions of terrorism, increased police powers of search and arrest, increased pre-charge detention period for terrorism suspects beyond internationally accepted limits.⁶⁹ This form of torture assumes the leverage of being legally approved and legitimized. Modern legal systems continue to rely on controlled violence while simultaneously denying it, leading to a tension in law. Both India and US, following the WoT, have relied on necessity in determining constitutionality of the degree of torture permissible during interrogations. In India, the constitutionality of POTA and Terrorist and Disruptive Activities (Prevention) Act (TADA) was based on "supreme necessity not covered by law."⁷⁰

The Government defends itself by highlighting the existence of national and state human rights

⁶⁴ Ibid.

⁶⁵ A Mark Weisburd, 'Customary International Law and Torture: The Case of India' (2001) 2 Chi J Int'l L 81

⁶⁶ UDHR, Article 3 of Geneva Convention, Articles 4,7, and 9 of ICCPR

⁶⁷ HRW (n 59).

⁶⁸ Shubh Mathur, 'Torture, Empire and Nation' (2005) 40 EPW 993

⁶⁹ HRW (n 59).

⁷⁰ Anupama Roy, 'Review of Torture and Modern Liberal Democracy in the US and India, by Jinee Lokaneeta' (2013) 47 EPW 33

commissions. However, these mechanisms are under-staffed, overlooked and weak. The NHRC itself has brought to notice the hurdles that come in its way in addressing impunity.⁷¹ It stated in its Annual Report “Custodial violence and torture continue to be rampant in the country.”⁷² India Torture Report 2020 by National Campaign Against Torture also underscored the increase in custodial deaths despite COVID-19.⁷³ The NHRC, Law Commission, Supreme Court have recommended the Government of India to enact a special law against torture.

Even though the right against torture is considered to be a pronouncement of right to life under Article 21 of the Indian Constitution, the process enforcement of fundamental rights is long drawn when compared to invoking provisions of special statutes, thereby making it more accessible. This lays foundation for the question why India has not ratified UNCAT without having a law in existence adhering to the same.⁷⁴ The UN Committee on CAT too explains the need for a special law as it will mandate a definition for torture and distinctly criminalise the offense from assault and hurt, thereby emphasising the gravity of the crime.⁷⁵

V. CONCLUSION

India followed US’s footsteps in justifying use of torture to combat terrorism by introducing the above discussed laws. The absolute prohibition of torture was reinstated in the HR’s response to WoT and its impact on prohibition of torture. However, India chose to deviate from this response and continued to introduce counter-terrorism laws under the shadow of GWoT. Torture, at least physical, is barred under the Indian jurisprudence even though relevant provisions are scantily distributed across sundry legislations but have proven insufficient thus, emphasising the need of a special law. The fact of the matter remains that Indian police officers are rarely prosecuted for torture.⁷⁶ India continues to deny use of torture⁷⁷ and draws on international law to justify its actions and reinforce its case for introducing stringent anti-terrorism laws. Given that prevention of torture is an indispensable human right, it assumes eminence. Moreover, with India’s strong stake for a seat at the Security Council, its efforts to abolish torture are not proportionate. India’s refusal to ratify UNCAT and to bring about institutional changes to achieve long-term objective of suppressing terrorism by way of

⁷¹ HRW (n 59).

⁷² The 2015-2016 NHRC Annual Report

⁷³ ‘Indian Torture Report 2020’ (UNCAT 18 March 2020) <http://www.uncat.org/press-release/india-torture-report-2020-increase-in-custodial-deaths-despite-covid-19-lockdown-at-least-one-suicide-every-week-due-to-torture-in-police-custody/> accessed on 26 October 2021

⁷⁴ Sanchita Kadam, ‘Why has India Still Not Ratified UNCAT?’ *CJP* (23 July 2021) <https://cjp.org.in/why-has-india-still-not-ratified-un-convention-against-torture/> accessed on 25 October 2021

⁷⁵ Baljeet Kaur, ‘India’s Silent Acceptance of Torture has made it a “Public Secret” (2018) 53 EPW

⁷⁶ Human Rights Watch et al, *Police Abuse and Killings of Street Children in India* (1996) 83

⁷⁷ Jinee (n 55).

prohibiting abuses in countering terrorism, insinuates its conformity to the *doctrine of sovereign immunity apparent*, a common law principle meaning that ‘King commits no wrong’ and has evolved on the principle of sovereignty that a State cannot be sued in its own court.⁷⁸

⁷⁸ Sanchita (n 7).