Méndez's anti-torture vision and India

Context:

Launched in June 2020, the 'Principles on Effective Interviewing for Investigations and Information Gathering', dubbed the 'Méndez Principles', were developed through a comprehensive, expert-driven consultative process.

Relevance:

GS-II: Polity and Governance (Constitutional Provisions and Historical Underpinnings, Government Policies and Interventions), GS-II: International Relations (Important International Treaties and Agreements)

Dimensions of the Article:

1. About Méndez Principles
2. Benefits and the need to change the way Investigation works
3. Torture as a part of Indian Police culture
4. Report on Torture in India
5. Supreme Court on torture
6. Legislations related to Torture
7. United Nations Convention against Torture
8. Way Forward

About Méndez Principles

- The Méndez Principles aim to provide a cohesive blueprint of practical measures to

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replace torture and coercive interrogation with “rapport-based” interviews, reinforced through legal and procedural safeguards at every step.
- They offer practical guidance for non-coercive interrogations; address heightened vulnerabilities in custody; and provide specific guidance on training, accountability and implementation.
- They are to apply to all authorities who have the power to detain and question people, including the police, military, and intelligence.
- At their core, the Mendez Principles seek to prevent coercive techniques and torture by introducing a paradigm shift away from “confession” based information gathering.
- The primary innovation of the Méndez Principles is to present positive, normative guidance for what police should do in effective and ethical investigations, rather than simply restating the absolute prohibitions against torture and ill-treatment. Telling police what they can’t do doesn’t work.
- Crucially, they are grounded in scientific empirical studies across disciplines — psychology, criminology, sociology, neuroscience — which establish that coercive interrogation is counterproductive.

Proved disadvantages of torture tactics

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- Extreme torture tactics, such as forced stress positions or waterboarding, have been shown to significantly damage the affected person’s memory and recollection of information.
- Aggressive questioning is more likely to make the interviewee resistant, or ‘say anything’ just for the threat of violence to stop.
- Coercive interviewing leads to unreliable information and false confessions.
- These studies provide scientific evidence to reject the widely-held misconception that a certain degree of ‘pressure’, or physical pain, will yield accurate information.

Benefits and the need to change the way Investigation works

- It may seem counterintuitive that the integration of human rights safeguards and rapport-based interviewing produces better investigative outcomes, but that is exactly what the body of scientific evidence on interviewing shows.
- When police act in an ethical and trustworthy manner, and when the rights and dignity of people being interviewed are respected, investigative results are more accurate and more comprehensive.
- Experts point to public trust and cooperation of witnesses as one of the most important factors in solving crime.
- Abusive practices do not keep the public safe and do not help police solve crimes.
- However, murder clearance rates are consistently higher in countries where

investigative interviewing consistent with the Méndez Principles is used, and where safeguards like the presence of a lawyer during interrogation are implemented.

Torture as a part of Indian Police culture

- Torture is, in fact, an integral part of police culture all over the country and it would not be amiss to argue that this culture in India today is reminiscent of the brutality of the colonial police forces that we are so keen to forget.
- Official data also accept that police torture is a reality, but the quality of such data is always suspect.
- The data on torture show that it is not only an integral part of India's policing culture; in some investigations (such as terror cases), it is treated as the centrepiece.
- The fact is that the current laws facilitate such torture, such as through the admissibility of confessions as evidence under the Terrorist and Disruptive Activities (Prevention) Act and the Prevention of Terrorism Act, which continues refurbished as the Maharashtra Control of Organised Crime Act.
- Unfortunately, policing has also not mainstreamed the upgrade to newer technologies, like DNA analysis, which can directly impact law enforcement practices.

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Tacit acceptance by law

- Additionally, Indian law creates conditions which further permit torture through the "back door". While confessions before a police officer are not admissible evidence, to prevent the police from resorting to torture, other legal provisions have the effect of indirectly accommodating the use of torture in investigative practice.
- Section 27 of the Indian Evidence Act permits the admissibility of statements before the police to the extent that they relate to the recovery of material objects, often called 'recovery evidence'.
- Thus, investigators still have incentive to seek "disclosures", and information implicit in a confession, as central to their investigation. Torture and falsification, by forcing an accused to sign on blank papers, are known abuses in the use of this provision.

Report on Torture in India

- Every day, an average of five people die in custody in India, with some of them succumbing to torture in police or judicial custody.

- 2019 was no better, as 117 people died in police custody while 1,606 deaths were recorded in judicial custody.
- And yet, there has not been a single conviction in the deaths of 500 persons allegedly due to torture in police custody between 2005 and 2018.
- The belief that a certain degree of fear and pressure is necessary to compel a suspect to cough up the “truth” is widely held by police officers. This emerged strongly in a 2019 survey of about 12,000 police personnel across India.

A report by the National Campaign Against Torture in 2019

- In 2019, the National Human Rights Commission (NHRC) recorded 1,723 cases of death in custody.
- It noted that “most deaths in police custody occur primarily as a result of torture”.
- Of the 125 deaths in police custody, 93 (74.4%) were due to alleged torture or foul play while 24 people (19.2%) died under suspicious circumstances – such as suspected suicide (16 persons), illness (7 persons) and slipping in bathroom (1 person).
- Uttar Pradesh had the highest incidence of such deaths with 14 cases, followed by Tamil Nadu and Punjab with 11 cases each.
- The report also highlighted how while probing non-heinous crimes, police personnel in several states went to the extent of torturing the suspects to death.

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Examples of Torture incidents

- The report said from acts like slapping, kicking with boots, beating with sticks, pulling hair, torture also includes barbaric methods like hammering iron nails in the body (as in the case of Gufran Alam and Taslim Ansari of Bihar), applying roller on legs and burning (as happened to Rizwan Asad Pandit of Jammu & Kashmir), and ‘falanga’ or beating with sticks on the soles (as with Rajkumar of Kerala).
- Sometimes, the police and jail staff even go to the extent of stabbing people with a screwdriver (as Pradeep Tomar of Uttar Pradesh was subjected to) or giving electric shock (as with Yadav Lal Prasad of Punjab and Monu of Uttar Pradesh). Often, private parts are also targeted. There have been instances of cops pouring petrol on private parts (as in the case of Monu of Uttar Pradesh) or applying chilly powder to them (in the case of Raj Kumar of Kerala)
- As part of torture, the report pointed to cases where the victims were forced to perform oral sex (as in the case of Hira Bajania and 12 others of Gujarat). Also, it said women continue to be tortured or targeted for sexual violence in custody.
- **The report said most victims were from poor and marginalised sections and were targeted because of their socio-economic status.**

Supreme Court on torture

- Even before India signed the UNCAT, our Supreme Court had brought about glorious jurisprudence highlighting the many problems with the country's torture culture.
- In Raghbir Singh v. State of Haryana (1980), the Court was "deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new peril when the guardians of the law gore human rights to death."
- These sentiments were revisited in Francis Coralie Mullin v. Union Territory of Delhi (1981) and Sheela Barse v. State of Maharashtra (1987), where the Court condemned cruelty and torture as violative of Article 21.
- This interpretation of Article 21 is consistent with the principles contained in the UNCAT. The UNCAT aims to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment around the world. Although India signed the UNCAT in 1997, it is yet to ratify it.

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Legislations related to Torture

- In 2010, Prevention of Torture Bill was passed by the Lok Sabha, and the Rajya Sabha later sent it to a Select Committee for review in alignment with the UNCAT, but the Committee's recommended law, submitted in 2012, never fructified.
- By 2017, the Law Commission had submitted its 273rd report and an accompanying draft torture law. But the Supreme Court dismissed the petition on grounds that the government cannot be compelled to make a law by mandamus; treaty ratification was a political decision; and that it was a policy matter.
- Such reluctance is arguably because all governments appear to collectively agree that police brutality is a necessary evil to maintain law and order.
- There have been opportunities for 23 years to enact a law on torture, but they have been studiously avoided. State consultation also has no meaning.

United Nations Convention against Torture

- 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 reason to believe they will be tortured.

- Since the convention's entry into force, the absolute prohibition against torture and other acts of cruel, inhuman, or degrading treatment or punishment has become accepted as a principle of customary international law.
- 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.
- The Convention defines “torture” as 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.

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Way Forward

- What we really need is a recognition that torture is endemic and a systemic problem, and the only answer lies in stringent legal framework that is aligned with and committed to the principles of international law under the UN Convention Against Torture (UNCAT) to which India has been a signatory since 1997, and a watertight enforcement mechanism that deters such practices.
- The introduction of so-called scientific techniques of interrogation, such as lie detectors and narco-analysis, are often presented as the solutions to end physical torture. While the scientific validity of these techniques in determining the “truth” is held suspect, Indian law allows evidence voluntarily given by an accused through these techniques to be used as corroborative evidence. Hence, introduction of these techniques should be done only with addressing the existing conditions which perpetuate torture.

Applying Mendez’s principles in Indian Context

- With their emergence as a new set of aspirational standards, it is tempting to assess whether the Méndez Principles can readily apply to the Indian context.
- There would need to be a fundamental shift in police thinking before the goal set by the Méndez Principles of moving from coercive practices to “rapport-based interrogation” can be realised.

-Source: The Hindu

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