



TORTURE

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Abstract: Torture remains a persistent human rights violation, presenting complex ethical, legal, and psychological challenges. This abstract explores the multifaceted nature of torture, examining its historical context, prevalence, and various forms across different regions and contexts. It delves into the motivations behind torture, including interrogation, punishment, and coercion, while also addressing the role of state institutions, armed groups, and non-state actors in perpetuating these abuses. Moreover, the abstract highlights the profound physical and psychological consequences endured by survivors, underscoring the urgent need for comprehensive rehabilitation and support mechanisms. Finally, it discusses international legal frameworks, preventive measures, and advocacy efforts aimed at eradicating torture and promoting accountability. By shedding light on the complexities surrounding torture, this abstract underscores the imperative of collective action to uphold human dignity and prevent further atrocities.

Index Terms - Torture, Human rights violation, Ethical, Legal, Psychological, Interrogation, Punishment, Coercion, Non-state actors, International legal frameworks, Preventive measures, Advocacy efforts, Accountability, Human dignity.

No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.

- Universal Declaration of Human Rights, Article 5

I. INTRODUCTION

Torture is one of the most serious violations of a person's fundamental human rights. It destroys dignity, body and mind and has far-reaching effects on family and community. Torture, not easy to define. Traditionally, it was viewed as imposition of physical suffering upon others through violence.

Although torture has endured for centuries in human history, its particular relationship to bioethics may be traced near the close of World War II, when the UN Universal Declaration of Human Rights was adopted by the international community in response to the crimes carried out by Nazi and Japanese doctors. The international establishment created two sets of documents as a result of this action. The first one (now recognized under the realm of military ethics) concentrated on avoiding the use of torture on prisoners of war in order to extract sensitive information. The primary focus of the second set of texts is on the doctor-patient interaction, with a particular focus on the limits that the former has with respect to the latter (this approach served as the foundation for the growing significance of the autonomy principle in Western medical ethics). Both of these ideas have faced criticism in recent years for various reasons. But torture affects more than just people; nonhuman animals who suffer from it also need to be included in this article, as they are a part of today's globalized society and should be taken into account.

II. MEANING OF TORTURE

In the introduction of the 2004 Istanbul Protocol UN, there is reference to definition provided in the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), where it is explained that torture refers to a practice – or technique – in which a person is subject to an intentional infliction of “severe pain or suffering, whether physical or mental,” with the aim of gaining direct or indirect sensitive information or a confession. Torture can also mean to punish someone for a proved or alleged crime, committed by him or a third person, as well as function as intimidating or coercing tool. Finally, it is stated that torture can be used as an instrument of 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.” Such a definition encompasses both the military and medical ethical variables mentioned above, and in recent years, the application of the principles embedded in it has gradually come under attack. Although interconnected between them, three different kinds of torture can be distinguished:

- Physical Torture
- Psychological Torture
- Torture by Proxy

Physical Torture

This is the most standard form of torture and, as its definition suggests, its implementation is applied by inflicting physical pain on the prisoner. In the course of history, humanity has managed to invent and use a countless number of ways to torment a person. Some of the classic methods of physical violence include beating, cutting, burning, whipping, and branding. Another common form of physical torture is sexual violence. This comprises rape and other forms of sexual assault (including incest) as well as inflicting pain through torturing sexual organs – such as genital Mutilation. Other ways of torturing without endangering the victim's life can be deprivation of light, sleep, food, oxygen, and sensory information and force feeding. Two other subtypes of physical torture can be considered unique: chemical and electrical. Chemical torture is a mainly “internal” kind of torture method. Electrical torture is a relatively new method of torture (mostly implemented after World War II) in which the victims suffer electrical shocks through a number of devices – most commonly through the application of the electrodes to their bodies. To increase the discomfort and pain provoked by this kind of torture, torturers often apply the electrodes to particularly sensitive areas, such as the genitalia or nipples, or insert them in the victim's mouth, rectum, or vagina.

Psychological Torture

Because of the difficulties in reaching an international agreement on what constitutes psychological torture, this method of torture is often denied the deserved consideration and is labeled as nonrelevant. Nonetheless, the mental and emotional damages that this nonphysical way of torturing entails can be as harming as – if not more than – physical torture. Being kept in confined spaces or forced to witness or commit repulsive acts, forced labor, suffering various forms of treats, verbal abuse and taunting, extended sleep, and total sensory deprivation are some of the most common methods classifiable as psychological torture. A specific version of psychological torture is that of psychiatric torture. This form of torture was based on false diagnosis of mental disorders in sane prisoners so to legitimize the implementation of procedures (including drugs and other means) associated with the recovery from the – inexistent – mental illness. This method was used by both sides during the Cold War but in recent years is less common.

Torture by Proxy

As the definition quite explicitly implies, the term “torture by proxy” can refer to the application of torture to third persons not capable to provide the information required or comply with the requests of the torturer. For instance, the ancient Assyrians developed specific techniques aimed at heartlessly torturing the children (i.e., by roasting them alive) of the people they were interested in getting information from. In recent years however, torture by proxy has gained a different connotation altogether, moving the proxy in question from a physical person into a political entity.

III. TORTURE IS A FORM OF HUMAN RIGHTS VIOLATION

Torture is one of the most extreme forms of human violence, resulting in both physical and psychological consequences. It has been used for thousands of years and it is still occurring throughout much of the world. Torture is considered so barbaric and incompatible within a civilized society that it cannot be tolerated. Torturers are seen as the 'enemy of all mankind'. Torture seeks to harm the victim's personality and denies the inherent dignity of the human being.

Applying torture methods on someone can directly damage their memory and cause an extreme psychological trauma. By being tortured in any way, victims' memory, emotions, and an ability to deploy attention is deeply degraded causing severe psychological trauma, post-traumatic stress and depression.

Torture can happen to anyone, including people from ethnic minorities, student activists, protesters, petty criminals, and to those people who were simply in the wrong place at the wrong time. In most cases it is marginalized and poor people who get beaten, raped by police and humiliated, with no one to hear their cries for help and to help them. Some societies use different torture methods to suppress independent and individual thinking and force people to adopt the desired way of thinking. Torture, in this way, violates the human dignity and rights of the victims.

IV. THE PERPETRATORS OF TORTURE

- The police.
- The gendarmerie (in countries where this institution exists).
- The military.
- Paramilitary forces.
- State-controlled contra-guerrilla forces.
- Prison officers.
- Death squads (torture following disappearance and preceding killing).
- Any Government official.
- Health professionals doctors, psychiatrists or nurses may participate is torture either by act (direct involvement which may include certifying someone fit for interrogation) or by omission (falsifying medical reports or failure to give appropriate treatment).
- Co-detainees acting with the approval or on the orders of public officials.

V. CASE STUDIES OF INDIA

Case One:

P. Jayaraj and J. Benix, both inhabitants of Santhankulam in Tuticorin, in the state of Tamil Nadu, the father - son duo were arrested and held in custody under the accusation of keeping their shop open during the imposed mandatory curfew hours. They were later both seen with marks indicating heinous torture and sexual assault, and soon succumbed to their injuries in a local government hospital. The news of the manner of their subsequent death has shaken the nation and left its citizens aghast and generally distrustful of the uniform made to serve and protect them.

Case Two:

On 22 February 2010, undertrial prisoner Mr. Jahangir Khan (22 years) died under mysterious circumstances at Chas Jail in Bokaro in Jharkhand. The jail authorities claimed Mr. Khan had attempted suicide by setting himself on fire after pouring kerosene from a lamp in his ward. Mr. Khan was rushed to the Bokaro General Hospital with severe burn injuries but died on the next day. However, Mr. Khan before his death alleged in front of media persons that he had been tortured by the jail inmates and staff.

Case Three:

The use of torture in Tihar Jail has been brought to the notice of the higher authorities several times. But effective measures have not been adopted yet. Nine prisoners at Tihar Jail lost their lives in the month of June 2007. The post-mortem reports verified that one of the three deaths was caused by maltreatment that may have qualified as torture. Mr. Naqibullah Ali, 30, an Afghan national incarcerated pending trial, passed away at Delhi's Tihar Jail on February 13, 2007. The body of the dead suffered injuries to the back of the head, lips, legs, and neck, according to the interim post-mortem. In addition to strongly denouncing the jail staff for employing "methodical torture," the Delhi High Court also mandated an investigation into the death of the detainee and ordered physical and psychological assault to be employed as coercive measures.

Case Four:

In a case, a powerful local politician had used political connections through local police in order to settle the personal land dispute between him and the victim. The case is of district Chandauli, Uttar Pradesh. The victim had been targeted and tortured by district police. In addition, his elder brother was killed in a fake police encounter, his father was illegally imprisoned and tortured. Due to poor financial conditions the victim was unable to access the judicial system which is notoriously slow in delivering justice. Nonetheless, the victim failed to get his grievances redressed by police or concerned authority.

Case Five:

As part of counterinsurgency operations, Punjab Security Forces killed thousands of Sikhs between 1984 and 1995. According to municipal records, thousands of bodies were covertly incinerated by police personnel in three crematoriums located in the Amritsar district, which was one of Punjab's 13 districts at the time. The Supreme Court received multiple habeas corpus petitions and directed the CBI to look into the occurrence. However, procedural problems caused the probe to fail. Afterwards, "the flagrant human rights violations on a mass scale" were mentioned, and the case was brought to the National Human Rights Commission. In the Punjab mass cremations case, the NHRC was designated as a sui generis body with the authority granted by Article 32 of the Supreme Court to address basic human rights breaches. In an order dated October 9, 2006, the NHRC made reparations to the surviving relatives of 1,051 people who had their loved ones cremated illegally and to 194 people who had their rights to life violated; in the latter case, the Punjab police had acknowledged being in custody before the victims' deaths but had not acknowledged any responsibility for the illegal killing.

Human rights violated in above-mentioned cases are:

- ✓ Right to Life
- ✓ Rights against subjection torture or to cruel, inhuman or degrading treatment
- ✓ Right against arbitrary arrest, detention or exile
- ✓ Right to be presumed innocent until proven guilty
- ✓ Right to have a fair public hearing in civil or criminal matters
- ✓ Right of person to be treated humanely while in detention
- ✓ Right to privacy
- ✓ Right to equality
- ✓ Right against discrimination

VI. INDIAN LEGAL FRAMEWORK REGARDING TORTURE

- **Section 24** of Indian Evidence Act: All confessions made under bribe, threat or promise are inadmissible.
- **Section 25** of the Indian Evidence act: ensures that no confession made to a police officer can be used to prove any offence against him.
- **Section 26** of Indian Evidence Act: Makes all confessions made during custody inadmissible unless made in an immediate presence of the magistrate
- **Section 163** of the CrPC: prohibits the investigating officer for making any inducement, threat of promise to the accused
- **Section 164(4)** of the CrPC: provides recording and signature of confessions in proper manner.

The Government of India signed the Torture Convention on October 14, 1997 but is yet to ratify it. A Draft Bill against torture is in consideration by the government. A law needs to be enacted for India to be able to ratify the Convention.

The Prevention of Torture Bill, 2010

Even though the nation achieved independence in 1947, it took over 70 years to pass legislation aiming at preserving a detainee's basic right to life. The country's only piece of law that was passed specifically to control torture in detention was the Prevention of Torture Bill, which was introduced in 2010. The precautions, according to the ruling, included recording the detention, granting immediate access to legal representation, and having the detainee appear before a magistrate within twenty-four hours of the arrest. The Bill aimed to serve as the main piece of legislation governing instances and issues pertaining to torture and other cruel, inhumane acts. The aforementioned law was passed in compliance with the provisions of the UN convention on torture and other cruel activities and with the goal of lowering the number of deaths occurring in the nation's prison system. The 2010 Prevention of Torture Bill established stringent guidelines for how cases pertaining to torture were to be handled following the bill's enactment, as well as how it deviated from the Indian Penal Code's rules regarding coercing or using force to extract a confession.

The Prevention of Torture Bill, 2010 sought to punish any public official who inflicts harm to a person in custody. The Act lays down specific instances wherein a public official shall be held liable, namely:

1. When the act is committed in order to obtain a confession from the victim or any other information that implicates the person in custody.
2. When the Act is committed on the grounds such as religion, race, sex, language, caste or any other ground.

The aforementioned bill was passed in order to confirm India's position as a United Nations member state with reference to the convention on torture and other cruel activities. It is estimated that between 2010 and 2015, almost 1500 convicts died as a result of abuse they suffered while in custody. The government has come under fire for both the way it implemented and regulated cases involving torture. Because the administration was unable to approve the next statute, there was very little curtailment and conviction in cases involving torture. The bill primarily narrowed its scope of application to situations involving physical offenses, ignoring the psychological component of torture.

The bill was mostly limited to situations in which severe bodily harm was inflicted and did not include any provisions to outlaw other types of torture. It was further stated that under the procedures outlined in the law, legal action against a public person can only begin following approval from the federal or state governments. This ultimately causes some subjectivity and bias to emerge from the case, which means that the bill's intended remedy—or perhaps its whole purpose—won't be implemented correctly.

The Indian Penal Code's Sections 330 and 331 address the topic of coercing someone into making a confession. There was no law created expressly to govern offenses based on torture, even while some IPC provisions address specific occurrences that can be linked to the more general idea of torture. It was necessary to enact legislation that would govern crimes involving torture committed while a victim is in custody because the IPC's rules sharply prohibited certain offenses that may be committed during that time.

The Prevention of Torture Bill, 2017

The Prevention of Torture Bill, 2010 outlined the fundamental framework to be implemented in order to reduce crimes related to torture in custody; however, there were a number of gaps in the law that needed to be fixed in order to ensure the detainees' safety. The main piece of legislation that was passed into law by parliament to address torture in detention in the nation was the Prevention of Torture Bill, 2017. It covered concerns about the original bill and the different reforms that the government had presented to the law commission. Since the previous Act ignored several key principles outlined in the convention regarding the expansion of the range of crimes that could be covered by custodial torture, the Act was also changed to be more consistent with the UN convention against torture and other cruel activities. The main goal of the 2017 Act is to broaden the definition of what circumstances qualify as torture. It aims to prosecute instances that impact the victim's mental state in addition to violent or physical crimes.

Many new elements that were not included in the government's 2010 original bill were added by the Amendment Act. The recently revised bill mandates a life sentence for the officials for any form of inhumane treatment, not just for injuries that were severe or life-threatening. The Act places emphasis on expanding the scope of instances that fall under its purview by offering compensation for any mental distress suffered by the victim or inmate. Although the Act specifies damages, the court has discretion over how much should be awarded to each victim based on the circumstances of the case.

The Prevention of Torture Act, 2022

The Prevention of Torture Act 2022 in India is a landmark legislation aimed at combating torture and custodial violence. It prohibits the use of torture, defined broadly to include physical and mental abuse, by any public servant or person acting in an official capacity. The Act establishes stringent penalties for offenders, including imprisonment for up to ten years and fines. It also mandates that any confession obtained through torture is inadmissible as evidence in court. To prevent torture, the Act requires the recording of all custodial interrogations and the presence of a magistrate during such proceedings. It also mandates regular inspections of detention facilities and the establishment of independent oversight mechanisms to monitor compliance with the law. Additionally, the Act guarantees the right to legal counsel and medical examination for all detainees.

Importantly, the Act aligns with India's international obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. By enacting this legislation, India aims to address systemic issues of abuse within its law enforcement and judicial systems, promote accountability, and safeguard the fundamental rights and dignity of all individuals under its jurisdiction.

VII. NATIONAL HUMAN RIGHT COMMISSION

The National Human Rights Commission (NHRC) established in 1993, is an independent statutory body as per the provisions of the Protection of Human Rights Act of 1993 which was amended in 2006. The NHRC issued guidelines directing all District Magistrates and Superintendents of Police in every district to report to the Secretary General of the NHRC on custodial deaths/rapes within 24 hrs. of their occurrence. The Commission also issued guidelines on arrest and fake encounters. According to the NHRC records, during 2019-2020, A total 76,628 cases were registered in the Commission. Out of these 32,693 cases related to the State of Uttar Pradesh, 6535 to State of Tamil Nadu, 5843 to State of NCT of Delhi, 4150 cases to Odisha, 3218 cases to Bihar and 2743 cases to Haryana. At the end of the reporting period, i.e. on 31st March 2020, the total number of cases pending with the Commission was 21,037. These covered 4,127 cases awaiting preliminary consideration and 16,910 cases pending either for want of reports from the authorities concerned or the reports received being pending for consideration by the Commission. The National Human Rights Commission has been addressing individual complaints relating to torture. The Commission has also been conducting training programs, workshops and debates for paramilitary forces and army personnel.

VIII. CONCLUSION

Torture is a global problem that has recently gained new visibility due to its interconnection with some of the developments of global politics after 9/11. Its legitimate – or not – implementation in some cases requires a careful analysis by the authorities in charge so as to avoid unjustifiable inconsistencies of the application of the universal principles stated in the UDHR. Torture is an extreme abuse of power and control of one person over another. Torture consists of acts that are intrinsically wrong due to their cruelty and abusiveness. Whether psychological or physical, torture is a calculated and systematic assault on and dismantling of a person's identity, dignity and humanity. The right to freedom from torture is a universally recognized human right and one of the foundations of international law. Torture and other cruel, inhuman, and degrading treatment or punishment violate human dignity and are absolutely prohibited at all times and under all circumstances and cannot be justified.

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