



INTERNATIONAL LAW  
JOURNAL

---

**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

**Peer - Reviewed & Refereed Journal**

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

[WWW.WHITEBLACKLEGAL.CO.IN](http://WWW.WHITEBLACKLEGAL.CO.IN)

### **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK  
LEGAL

## **EDITORIAL** **TEAM**

### **Raju Narayana Swamy (IAS ) Indian Administrative Service** **officer**



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) ( with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru

and a professional diploma in Public Procurement from the World Bank.

### **Dr. R. K. Upadhyay**

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.





## **Senior Editor**

### **Dr. Neha Mishra**



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

### **Ms. Sumiti Ahuja**

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



### **Dr. Navtika Singh Nautiyal**

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



### **Dr. Rinu Saraswat**

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

### **Dr. Nitesh Saraswat**

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



### **Subhrajit Chanda**

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **INTERNATIONAL LEGAL PRINCIPLES ON CUSTODIAL TORTURE**

AUTHORED BY - SREE LEKSHMI B & DINESH KUMAR T

Assistant Professor

Department Of Law, Vels University

## **ABSTRACT**

Custodial torture has been seen visible in all over the world and it is high time for all nation to join hands to protect the weak section of the society from all sorts of torture faced by them. In the international scenario we have lot of conventions, Covenants and NGO s for protection the person from all sorts of torture. Even though international protection is there but still day by day people are getting cruelly tortured and killed. So all the nations together should make a promise that they won't allow any harm, hurt or torture to their people.

## **Introduction**

Human rights are the inalienable fundamental rights that are inherent to all human beings regardless of nation, location, language, religion or any other status. They are protected as a legal right in municipal law and also international law.<sup>1</sup> Human rights are of various types which are recognized and protected by the United Charter<sup>2</sup>. These are protected in order to ensure that people receive some degree of decent and humane treatment. And when these rights are violated then it will result in denial of an individual's moral entitlements<sup>3</sup>. The right to freedom from torture is one of the important fundamental rights protected by the Human Rights Act and universally recognized by the UN Charter. This right is absolute and when it is violated then this results in the violation of the right to dignity.<sup>4</sup>

Custodial torture which is today a widespread violation of human dignity destroys to an extent,

---

<sup>1</sup>DR.V.P.Verma,Torture in opposition to Human Rights :A Discouse,IOSR Journal of Humanities and Social Sciences, <http://www.iosrjournals.org/iosr-jhss/papers/Vol.%2021%20Issue2/Version-4/F021243038>.

<sup>2</sup>P. R. Ghandhi, Blackstone's International Human Rights Document, (2001), pp. 125-126.

<sup>3</sup> Michelle Maiese, Human Rights Violation, [https://www.beyondintractability.org/essay/human\\_rights\\_violations%20](https://www.beyondintractability.org/essay/human_rights_violations%20).

<sup>4</sup> Liberty, Article 3: NO torture <https://www.libertyhumanrights.org.uk/human-rights/what-are-human-rights/human-rights-act/article-3-no-torture>.



the individual personality. Torture ruins the victim physically as well as mentally. The victim remains in a state of perpetual fear and horror, as moments of their torture flash in their minds. For the rest of the victim's life, he feels haunted by the recurrence of such moments which do not enable him to lead a normal life.<sup>5</sup> Luge Genefke, Secretary of the General International Rehabilitation Council for the Torture Victims, pointed out that “the torture which mostly takes place in police custody is the strongest weapon against democracy”. She also said that “torture creates enormous amounts of fear in the victims and in the victim’s environment”<sup>6</sup> There are many international conventions, committees, and treaties for the prevention of such torture. The prohibition against torture in international law is applicable under *any* circumstances, including war, public emergency or terrorist threat. The prohibition is so strong that it is now a fundamental principle of customary international law. This means that even States which have not ratified any of the international treaties explicitly prohibiting torture is banned from using it against anyone, anywhere.

The beginning of the twentieth century brought into consideration some of the most important legal principles regarding the institution of torture and it was considered that the infliction of torture was inhuman and should be abolished under criminal legislation. The criminalization of torture was not however effective until the establishment of the United Nations. Still, then the early works of the Organization only had a small effect in the prohibition of torture, although some resolutions were adopted for such a purpose. The most important agreements and documents in international criminalization of torture are the followings: i) The Geneva Conventions ii) The Universal Declaration of Human Rights, 1948 iii) The United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955 iv) The International Covenant on Civil and Political Rights, 1966 v) The Declaration on the Protection of all Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1975 vi) The United Nations Code of Conduct for Law Enforcement Officials, 1979<sup>7</sup>.

In this 21<sup>st</sup> century where there are infinite numbers of human rights available for all persons, here one has the fundamental and legal right to be protected against all kinds of torture, pain, and ill-treatment. In order to protect these rights, the United Nations has taken initiative in

---

<sup>5</sup>Ashirbani Dutte, “Custodial Torture: a shameless truth behind the bars”, 2006 Cri LJ (*Jour*) 242.

<sup>6</sup>Quoted by Justice B.P. Jeevan Reddy, “Custodial Crimes: An Affront Against Humanity”, in P.H. Parekh (ed.) Human Rights Year Book 2001 at p. 15.

<sup>7</sup>Human Rights and Law Enforcement - A Manual on Human Rights, Training for the Police, U. N. 1997, Series No. 5, Para 124 at p. 26.



framing all conventions, treaties, principles relating to torture. All those countries who are members of such convention are made responsible to obey the rules of such convention. Though more and more people are becoming educated, rich and the country is also getting developed still there are vulnerable people who even now have to struggle themselves for earning a piece of bread. And it is their rights which are violated and it is they who are mostly tortured. All countries should stand together to stop all kinds of torture and must provide equal protection to all from all kinds of torture.

### **Universal Declaration of Human Rights**

The Universal Declaration of Human Rights (UDHR) is a landmark document in the history of human rights.<sup>8</sup> It provides a foundation for a just and decent future for all and has given people a powerful tool to fight against oppression, impunity and affronts to human dignity.<sup>9</sup> On 10 December 1948, United Nation General Assembly announced the universal declaration of human rights and after that on 1966 two international conventions such as International covenant on civil and political rights, the International covenant on economic, social and cultural rights were adopted codifying the two sets of rights outlined in the universal declaration.<sup>10</sup>

UDHR states in detail the provision relating to human rights and every member state have to respect such human rights and incorporate it in their respective laws. The very basis of this declaration is that the interest of one part of the world is bound up with the interests of human beings as a whole in every other part of the world.<sup>11</sup> As Dr. Martin Luther King says, injustice anywhere is bound to lead injustice everywhere. Pains and troubles of one part of the human family may be religious or otherwise, cause pain and trouble to the rest of the human family.<sup>12</sup> All the member states should be protected by the law without any discrimination<sup>13</sup>. United Declaration of Human Rights respects human rights especially the right to freedom

---

<sup>8</sup> United Nations, Universal Declaration of Human Rights, <https://www.un.org/en/universal-declaration-human-rights>.

<sup>9</sup> United Nations, Universal Declaration of Human Rights, [https://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web](https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web).

<sup>10</sup> Yacine Ait Kaci, Universal Declaration of Human Rights, [https://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web](https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web).

<sup>11</sup> Influence of the UDHR on fundamental rights and directive principles, <https://www.escri-net.org/sites/default/files/Directive Principle India>.

<sup>12</sup> Influence of the UDHR on fundamental rights and directive principles, <https://www.escri-net.org/sites/default/files/Directive Principles India>.

<sup>13</sup> H. Leuterbach, *International Law and Human Rights*, 4 (1968).

from torture and all the member's state has to make laws relating to the protection of all persons from torture, cruelty, and ill-treatment. As per UDHR, state member has the duty to see that no person is made to undergo any amount of torture or ill-treatment.

People those who are subject to torture has the right to life, liberty, and security. When the said person is brutally tortured or ill-treated than he can go for the protection of his right such as the right to life, liberty, and security. Article.1 of the UDHR states that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in the spirit of brotherhood.<sup>14</sup> Article 6 states that everyone has a right to recognition everywhere as a person before the law. No one shall be subjected to arbitrary arrest, detention or exile. Everyone is entitled in full equality to a fair and public hearing by independent and impartial trial at which he has all guarantee necessary for his defense. According to the milestone document that is the Universal Declaration of Human Rights, states have the duty to protect the above rights.<sup>15</sup>

Torture has enduring effects on the physical, mental, and emotional well-being of its survivors, crippling or destroying their capacity to pursue fulfillment and happiness. In many countries, torture is used to extract confessions from alleged criminals or political prisoners. Torture is utterly inconsistent with basic human rights.<sup>16</sup> UDHR strictly prohibits torture or any cruel, inhuman or degrading treatment or punishment which has devastating consequences for its victims and the international prohibition against it is absolute.<sup>17</sup> Every person is entitled to get his fundamental rights protected even in case of torture or inhuman treatment by the police. The right to freedom from torture as a fundamental right is expressly or impliedly mentioned in most of the constitutions of the countries. When these rights are violated then the person has the right to get the remedy from the court. Everyone has the right to liberty and security and no one shall be deprived of his liberty except according to the procedure established by the law. Anyone who is subjected to unlawful arrest must be entitled to get remedy from the court.<sup>18</sup>

---

<sup>14</sup>For more details see, Universal Declaration of Human Rights, Article 1.

<sup>15</sup> Article 3 of the UDHR states that "everyone has a right to life, liberty, and security of a person".

<sup>16</sup> NYU Global Institute for Advanced Study, Article 5: The Anti-Torture Provision, Appendix E to the Report of the Global Citizenship Commission, Cambridge, UK: Open Book Publishers, 2016, <https://www.openbookpublishers.com/shopimages/The-UDHR-21st-C-AppendixE2>.

<sup>17</sup> Article 5 of the UDHR states that "No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment."

<sup>18</sup> National Commission for UNESCO, Claiming Human Rights, [http://www.claiminghumanrights.org/about\\_us.html](http://www.claiminghumanrights.org/about_us.html).

## Implementation of UDHR In India

India was a signatory to the Universal Declaration of Human Rights. The Indian constitution was adopted by the Constituent Assembly on Dec 26, 1949, which came into force on Jan 26, 1950. Our Indian Constitution was greatly influenced by the Universal Declaration of Human Rights, 1948. Provisions of Part III which stands for Fundamental Rights and Part IV for Directive Principles of State Policy bear a close resemblance to the Universal Declaration of Human Rights. As a result, a number of fundamental rights guaranteed in Part III of the Indian Constitution are similar to the provisions of the Declaration.<sup>19</sup> Article 21 does not contain any express provisions against torture or custodial crimes. The expression life or personal liberty has been interpreted to include a constitutional guarantee against torture, assault or injury against a person under arrest or under custody. The Supreme Court of India declared in a Mullin's case that any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an inroad into this right to live and it would, on this view, be prohibited by article 21 unless it is in accordance with procedures prescribed by law, but no law which authorizes and no procedure which leads to such torture or cruel, inhuman or degrading treatment can over stand the test of reasonableness and non-arbitrariness, it would plainly be unconstitutional and void as being violative of Articles 14 and 21.<sup>20</sup>

Article 20(3) is another important safeguard against custodial violence and torture. It guarantees the right against self-incrimination. As per this section no one can be forced to give evidence against himself as it amounts to torture. Article 22(1) provides that no person who is arrested shall be detained in custody without being informed as soon as possible of the ground for such arrest, nor shall be denied the right to consult and to be defended by a legal practitioner of his choice. This article provides that every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to court of the Magistrate and no such person shall be detained in custody beyond the prescribed period without the authority of a Magistrate. Indian Constitution has clearly enshrined articles for the protection of the person from all forms of ill-treatment from the police. In this way, India has tried to incorporate the provisions of UDHR into the Indian Constitution.

---

<sup>19</sup> Kaushik Dhar, Domestic Implementation of Human Rights, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2007967](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2007967).

<sup>20</sup> Mullin v. Union Territory of Delhi, (1981) 1 SCC 608.



## **International Covenant on Civil and Political Rights, 1966**

In 1966, two separate treaties, covering almost entirely all the rights enshrined in the Universal Declaration of Human Rights, were adopted after 20 years of negotiations. They are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICCPR was adopted by the United Nations General Assembly on 16 December 1966 and entered into force on 23 March 1976<sup>21</sup>. The Covenant on Civil and Political Rights incorporates the traditional human or fundamental rights which took place in the wake of the success of the industrial revolution. The majority of the substantive provisions of the Covenant on Civil and Political Rights are devoted to the traditional civil and political rights set forth in the Universal Declaration on Human Rights<sup>22</sup>. This treaty also comprises of various provisions applicable in case of prevention of torture.

Article 6 of the ICCPR states that every human being has an inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.<sup>23</sup> An increase in the amount of torture may lead to the death of the innocent person and here his right to life is violated. No person has the right to take other's life. Everyone has the right such as the right to freedom from torture and no one has the right to violate it. International Covenant on Civil and Political Rights sternly prohibits any form of torture or inhuman treatment to any person<sup>24</sup>. Member states have the duty to follow what is mentioned in the provisions of ICCPR. Everyone has the right to liberty and security of person. As per article 9, no one shall be subjected to arbitrary arrest or detention and if his right to liberty is violated through the arrest then it should be according to the procedure established by the law. All the procedures after an arrest should be followed. He should be informed about the reason for his arrest and he should be presented before the court within a short time and if he is unlawfully arrested then he must be given compensation.<sup>25</sup> People who are arrested according to the procedure established by law will

---

<sup>21</sup>Health and Human Rights International Covenant on Civil and Political Rights, [https://www.who.int/hhr/Civil\\_political\\_rights.pdf](https://www.who.int/hhr/Civil_political_rights.pdf).

<sup>22</sup> Human Rights and Law Enforcement - A Manual on Human Rights, Training for the Police, U. N. 1997, Series No. 5, Para 124 at p. 26.

<sup>23</sup> United Nations Human Rights, International Covenant on Civil and Political Rights, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

<sup>24</sup>Article 7 of ICCPR states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

<sup>25</sup>Article 9: (1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

(2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

(3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer

lose their right to liberty. They should be treated with humanity and dignity and they should not be badly tortured as part of the investigation. Accused persons should be separated from convicted person and these unconvinced ones should be given separate places from that of convicted ones. Juvenile offenders must be separated from the adult offender. And through all these ways arrested person's right to dignity and humanity must be given respect.<sup>26</sup>

### **Standard Minimum Rules for The Treatment Of Prisoners**

Standard Minimum Rules for the Treatment of Prisoners is an instrument to provide a comprehensive set of safeguards for the protection of the rights of persons who are detained or imprisoned. In 1955, the First UN Congress on the Prevention of Crime and the Treatment of Offenders adopted the standard minimum rules for the treatment of prisoners. This instrument provides principles of good practice in the treatment of prisoners and the management of penal institutions such as jails, detention centers, and correctional facilities<sup>27</sup>. They apply to all categories of detainees, including sentenced prisoners, those under administrative detention and persons detained without charge. On the whole, they represent the minimum conditions which are accepted as suitable by the United Nation. The Rules lay down minimum standards for registration, separation and classification of detainees, accommodation, sanitary installations, provision of food, drinking water, clothing, bedding, religious practice, education, exercise, sport, medical service and treatment of mentally ill prisoners. They regulate disciplinary and complaints systems, the use of instruments of restraint and the transport of detainees. In particular, all cruel, inhuman or degrading punishments, including corporal punishment are completely prohibited as punishments for disciplinary offenses.

---

authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

(4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

(5) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

<sup>26</sup> Article 10: All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person .

Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvinced person.

Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status

<sup>27</sup> Standard minimum rules for the treatment of prisoners, United Nation Human Rights, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx>.

There is also a section regulating the qualifications and behavior of institutional personnel. In the resolution of 20 December 1971, the General Assembly recommended to the Member States that the Standard Minimum Rules should be effectively implemented in the administration of penal and correctional institutions. It invited them to consider incorporating the Rules in their national legislation.<sup>28</sup> Standard minimum rules are milestones in the field of prison reforms and custodial management. It is noteworthy to mention that these Rules have been revised in 2015 and are now known as Nelson Mandela Rules.<sup>29</sup> Standard Minimum Rules thus provides that all prisoners have certain fundamental rights and they should be treated with due respect to their inherent dignity and value as human beings without discrimination of any kind.<sup>30</sup>

### **Convention against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment, 1975**

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the General Assembly of the United Nations on 10 December 1984. The Convention entered into force on 26 June 1987 after it had been ratified by 20 States. It was the result of many years of work initiated soon after the adoption of the Declaration on the protection of all Persons from being subjected to torture and other cruel, inhuman or degrading treatment or punishment by the General Assembly on 9, December 1975.<sup>31</sup> This convention clearly states what torture is. Torture is that where any pain or suffering is inflicted on a particular person for getting some information or as part of confession and it must be inflicted by or with the consent of a public official. The convention goes considerably further than the International Covenant on Civil and Political Rights in protecting persons against international crime and torture. Each state party has the duty to take all kinds of measures for preventing torture occurring in any place coming under its jurisdiction.<sup>32</sup> If a state party comes

---

<sup>28</sup>Human Rights and prisons, United Nations Publication, <https://www.ohchr.org/Documents/Publications/FactSheet4rev.1en>.

<sup>29</sup>Micro mission, Review and implementation of rules and process for the internal management of prisons and prisoners <http://bprd.nic.in/WriteReadData/userfiles/file/201907030915286643694ReviewandImplementationofRulesand-MM-08>

<sup>30</sup>Economic and Social Council Resolution No.663 CI (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

<sup>31</sup> Hans Danelius, convention against torture, cruel, inhuman or degrading treatment, Audiovisual library of international law <http://legal.un.org/avl/ha/catcidtp/catcidtp.html>.

<sup>32</sup> Article 2 of the convention against torture and other cruel, inhuman or degrading treatment or punishment states that :

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of



to know that there is the possibility of a person to be subjected to torture in a particular state than he cannot be forced by the state party to move to that state where he will have to face torture.<sup>33</sup> All the members of this convention must ensure that torture must be seen as an offense and punishment must be given for the offense<sup>34</sup>.

The Convention includes provisions for bringing persons accused of torture to justice, regardless of their nationality or where the crime is alleged to have been committed. It also established the committee against torture to assist in the implementation of the Convention. The Committee against torture is a body of human rights experts that monitors the 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 Committee on how rights are being implemented. The Committee against Torture has also set up a working group for the examination of individual communications received under article 22 which states about the individual complaint. The working group examines the admissibility and merits of the communications and makes recommendations to the committee.<sup>35</sup> As per article 14, each State party shall ensure victims of torture an enforceable right to fair and adequate compensation.

Torture is never justified under any circumstances and no public official has any defense available to him or her for committing torture.<sup>36</sup> Articles 10 and 11 of the Convention ensure that education and information regarding the prohibition against torture are included in the

---

torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

<sup>33</sup>Article 3 states that 1: No State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2: For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

<sup>34</sup> Article 4 of the convention against torture and other cruel, inhuman or degrading treatment or punishment states that:

1. 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

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

<sup>35</sup>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *available at*: <http://legal.un.org/avl/ha/catctdp/catctdp.html> (visited on 26-10-2017).

<sup>36</sup>Human Rights and Law Enforcement Manual on Human Rights Training for the Police U.N., 1997, Series No. 5, Paras 392, 393, 394, 397 p. 76.

training of law enforcement personnel and other persons involved in the custody, interrogation or treatment of detainees and to keep under a systematic review of interrogation, instructions and practices with a view to prevent torture. India signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment however, so far it has not been ratified. India has expressed its reservations against certain provisions contained in the Convention, such as Inquiry by the CAT under article 20, State complaints under article 21 and individual complaints under article 22.<sup>37</sup>

### **Code of Conduct For Law Enforcement Official, 1979**

The code of conduct for law enforcement officials, 1979 is a resolution of the United Nations General Assembly which was adopted on December 17, 1979. It is not legally binding for member states but it is a set of guidelines that the General Assembly encourages and recommends that member states follow or incorporate into their national. The main object of this code is that law enforcement officials shall fulfill the duty imposed upon them by law through serving the community and by protecting all persons against the illegal acts consistent with the high degree of responsibility required by their profession. This clearly prohibits torture in any form by the member states. As per this code, no officials have the power to inflict any harm or pain in the form of torture on any persons or give any superior orders during the time of war or public emergency<sup>38</sup>. This prohibition derives from the Declaration on the protection of all persons from being subjected to torture and other cruel, inhuman or degrading treatment or punishment adopted by the general assembly. Another important provision mentioned in this is that law enforcement officials have the duty to see that the health of the person who is under their custody must be taken care of and if the person has any health problem then he must be taken to the hospital. This Declaration defines torture as “any act by which severe pain or suffering whether physical or mental is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or another person.”<sup>39</sup>

---

<sup>37</sup> Human Rights and Law Enforcement Manual on Human Rights Training for the Police U.N., 1997, Series No. 5, Paras 392, 393, 394, 397 p. 76.

<sup>38</sup> Article 5 of the code of conduct for law enforcement officials, 1979 states that No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

<sup>39</sup> First United Nations Congress on the Prevention of Crime and the Treatment of Offenders: report prepared by

All governments are required to adopt the necessary measures to instruct law enforcement officials, during basic training and all subsequent training and refresher courses, in the provisions of national legislation in accordance with the UN code of conduct for law enforcement officials as well as other basic international human rights standards applicable to law enforcement officials. It has set out the important principles and prerequisites for the humane performance of law enforcement functions such as 1. Every law enforcement agency should be representative, responsive and accountable to the community as a whole. 2. The effective maintenance of ethical standards among law enforcement officials depends on the existence of a well-conceived, popularly accepted and humane system of laws. 3. Every law enforcement agency should discipline itself to uphold international human rights standards and the actions of law enforcement officials should be open to public scrutiny. 4. Standards for humane conduct of law enforcement officials lack practical value unless their content and meaning become part of the creed of every law enforcement official through education and training and through monitoring.<sup>40</sup>

### **International Humanitarian Law**

There is an absolute ban on torture and other cruel, inhuman or degrading treatment and outrages upon personal dignity under international humanitarian law and international human rights law. Both IHL and IHRL establish a comprehensive legal framework for the prevention and punishment of acts of torture and other forms of ill-treatment. To ensure the effective implementation of the prohibition on committing torture and other forms of ill-treatment, a number of independent mechanisms are provided under IHL and IHRL. These include national preventive mechanisms (Art. 3 of the 2002 optional protocol to the CAT), Committee against Torture (CAT, Art. 17) and the subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment (Art. 2 of the Optional Protocol to the CAT).<sup>41</sup>

### **Un Special Rapporteur On Torture**

In 1985, the UN Commission on Human Rights established a special rapporteur on torture. The mandate of the Special Rapporteur encompasses activities such as conducting country visits or

---

the Secretariat (United Nations publication, Sales No. 1956.IV.4), annex I.

<sup>40</sup>10 basic human rights standards for law enforcement officials, Amnesty international, <https://www.amnesty.org/download/Documents/156000/pol300041998en>.

<sup>41</sup>See Advisory Service Factsheet "Penal Repression: Punishing War Crimes," at [www.icrc.org/resources/document/factsheet](http://www.icrc.org/resources/document/factsheet).



fact-finding missions to countries where it is suspected that torture may involve more than isolated or irregular incidents; transmitting allegations of torture through allegation letter and communicating urgent appeals to Governments and submitting annual reports on his activities to the commission on human rights and the general assembly. The special rapporteur follows up his requests with the Governments concerned in order to secure protection for the individual in question. It should be noted that the mandate of the special rapporteur does not duplicate that of the Committee against Torture, set up under the convention against torture and other cruel, inhuman or degrading treatment or punishment. In particular, the convention applies only to state parties to that instrument, whereas the mandate of the special rapporteur is global.<sup>42</sup>

In the case of India also there is a special rapporteur to visit and check the torture happening in the country. The current special rapporteurs on Extrajudicial Executions, Torture, and Right to Health are Agnes Callamard, Dainius Puras and Nils Melzer. They had referred the June 2018 report of the office of the high commissioner of human rights and written to the government in March 2019 asking about steps taken by New Delhi to address the alleged human rights violations listed in the report. In addition, the special rapporteurs had listed 13 cases of concern from 2018 alone, in which four children were among eight civilians killed by members of the security forces. The 2018 report said that more than half of the 432 victims suffered some form of health complications after being tortured. In the 432 cases studied for this report, 24 are women. Out of these, 12 had been raped by Indian armed personnel. The torture survivors have battled with psychological issues long after their physical wounds were healed. Of the 432 victims, 44 suffered from some form of psychological difficulty after being subjected to torture.

Although India has been a signatory to the United Nations Convention against Torture (UNCAT) since 1997, it has not ratified the treaty to date. In all three universal periodical review conducted by the UNHRC in 2008, 2012 and 2017, it was recommended that India should ratify the convention. According to the UN records, more than 20 such visit requests of special rapporteurs including to Jammu and Kashmir, are pending at present. UN sources also said that between 2016 and 2018, the OHCHR Special Rapporteurs had sent as many as 58 communications and had received no response other than the April 23 letter on Jammu and Kashmir.<sup>43</sup>

---

<sup>42</sup> Human Rights and prisons, United Nations Publications, <https://www.ohchr.org/Documents/Publications/training11en.pdf>.  
<sup>43</sup> Suhasini Haidar, India cuts off UN panel after Jammu @ Kashmir

## NGOs for Prevention of Torture

From the end of the Second World War and the beginning of the United Nations, NGOs were actively involved in developing human rights standards.<sup>44</sup> They act as watchdogs and provide an independent overview and assessment of whether and how human rights are ensured.<sup>45</sup> NGOs are well known for their role in gathering information with respect to the abuse of human rights including those rights relating to torture. Thus by investigation, documentation and dissemination of the information, NGOs play a vital role in bringing human rights abuses to the attention of public and international community. The United Nations has repeatedly recognized the important role played by NGOs in the fight against torture. Individual experts, including the Special Rapporteur on torture, Special Rapporteur on violence against women and treaty monitoring bodies such as the Committee against Torture rely heavily on information brought by NGOs and individuals.<sup>46</sup>

Recently there was an NGO report titled as the 'Torture: Indian State's Instrument of Control in J&K', documented 432 cases of suspected human rights violations and brutality by security forces of which only 27 had been investigated by the State Human Rights Commission. The report claimed that nearly "70% of torture victims in Jammu and Kashmir were civilians and they are not militants and 11% died during or as a result of torture". The cases included incidents of electrocution, 'water-boarding' and sexual torture, which the Indian government has repeatedly denied.<sup>47</sup>

## Various Types of NGOs

### 1. Amnesty International

Amnesty International was constituted for the elimination of torture which has emerged in 1961. Amnesty International is a worldwide movement independent of any government, political persuasion or religious creed. It plays a specific role in the international protection of

---

report, <https://www.thehindu.com/news/national/india-cuts-off-un-panel-after-jammu-kashmir-report/article27190445.ec>.

<sup>44</sup> William Korey, NGOs and the Universal Declaration of Human Rights. A Curious Grapevine (Palgrave Macmillan, 2001), p. 3.

<sup>45</sup> Lina Marcinkute, The role of human rights NGOs, <https://www.degruyter.com/downloadpdf/j/bjlp.2011.4.issue-2/v10076-011-0012-5/v10076-011-0012-5>.

<sup>46</sup> Universal Declaration of Human Rights, The human rights fact sheet series, the Office of the United Nations High Commissioner for Human Rights <https://www.ohchr.org/Documents/Publications/FactSheet4rev.1en>.

<sup>47</sup> India cuts links with UN Special Rapporteur on torture after damning report on Kashmir, News in Asia <https://newsin.asia/india-cuts-links-with-un-special-rapporteurs-on-torture-after-damning-report-on-kashmir/>.

human rights<sup>48</sup>. Between January 2009 and May 2013, Amnesty International received many reports of torture and other ill-treatment committed by state officials in 141 countries, and from every corner of the world. In May 2014, Amnesty International launches its global Stop Torture campaign to ensure that everyone is protected from torture. The campaign focuses on people held by the military, police forces, Special Forces, secret services; situations involving emergency laws, regulations or provisions, unofficial or secret places of detention where the risk of torture significantly increases.<sup>49</sup>

### **Role Played by Amnesty International in Prevention of Torture**

There are lots of torture incident took place in different countries and amnesty international played an important role in preventing such torture. In 2005 Police arrested and tortured Moses Akatugba when he was 16 yrs old. Police beat him, shot him in the hand, and hung him by his limbs for hours at the station. Moses states he only signed a confession agreeing he was involved in a robbery because of the torture. In November 2013, after waiting eight years for a verdict, Moses was sentenced to death. His allegations of torture were never investigated. Amnesty International called Dr. Emmanuel Uduaghan, Governor of Delta State, to discard the death penalty sentence and investigate the torture of Moses Akatugba. There is evidence of the increasing use of torture in Nigeria. Amnesty International's research indicates that in Nigeria the police and military personnel routinely use torture to extract information and confessions and to punish and exhaust detainees. In contravention of national and international law, information extracted by torture and ill-treatment is routinely accepted as evidence in court. The authorities apparently lack the political will to adhere to international human rights obligations. On 7<sup>th</sup> August 2012 Mexican marines broke into Claudia Medina's home and took her to the local navy base where she was given electric shocks, forced to inhale a very spicy sauce, and she was wrapped up in plastic while beaten up and was kicked. The marines accused her of being a member of a powerful and violent criminal gang. Amnesty International called Mexico's Federal Attorney General to launch an effective investigation into the alleged torture and ill-treatment suffered by Claudia Medina and makes its results public and brings those responsible to justice. On 3 October 2013, Philippine police arrested Alfreda Disbarro who is a single mother was handcuffed and taken to Paranaque Police Headquarters. A senior police

---

<sup>48</sup>Amnesty Report, Amnesty International Report, 1988, <https://www.amnesty.org/download/Documents/POL1000011988ENGLISH>.

<sup>49</sup>Amnesty Report, Amnesty International Report, 1988, <https://www.amnesty.org/download/Documents/POL1000011988ENGLISH>.



officer repeatedly punched her in the stomach and face, hit her with a club, poked his fingers in her eyes, slapped her and banged her head against the wall. Amnesty International called for the Philippine National Police Internal Affairs Service to open an investigation into the allegations of torture and ill-treatment suffered by Alfreda Disbarro and to ensure this investigation is prompt, impartial, effective and efficient.<sup>50</sup>

Recently the amnesty international has done an investigation and has documented Hong Kong police's arbitrary arrest and torture against the detained person. Those detained persons were the ones who participated in the mass protest in the street against the legislative amendments. More than 1300 people were arrested by the police and were cruelly beaten up in custody and also undergone ill-treatment resulting in torture. This amnesty international has conducted an interview of arrested persons and collected all required evidence<sup>51</sup>

Amnesty International decides individual cases, pressurizes the government to release the prisoners who are innocent, and improves the treatment of prisoners. It visits the prisoners and conducts interviews with government officials. Amnesty International aims in protecting human rights by working with international organizations such as UNESCO, the United Nations, and the International Labour Organization etc.<sup>52</sup>

### **International Committee of The Red Cross**

Torture and any forms of ill-treatment are banned under international law. The international committee of the Red Cross tries to prevent this form of cruelty and put an end to this and its main focus is on the victim and its families.<sup>53</sup> It is an independent and impartial humanitarian body with a specific mandate assigned to it under international humanitarian law, particularly the four Geneva Convention. It provides many forms of protection and assistance to victims of armed conflict as well as situations of internal strife. The ICRC is authorized to visit all places of internment, imprisonment and labor where the prisoners are detained. The visit procedures require access to all detainees and at all places of detention, that no limit is placed on the

---

<sup>50</sup> Amnesty international, Torture in 2014 <https://www.amnestyusa.org/files/act400042014en>.

<sup>51</sup> Amnesty International, HongKong: Arbitrary arrest, Brutal beatings and Torture in Police Station revealed <https://www.amnesty.org/en/latest/news/2019/09/hong-kong-arbitrary-arrests-brutal-beatings-and-torture-in-police-detention-revealed>.

<sup>52</sup> Amnesty International, UNESCO Teaching and learning for a sustainable development, [http://www.unesco.org/education/tlsf/mods/theme\\_b/popups/mod07t04s03.html](http://www.unesco.org/education/tlsf/mods/theme_b/popups/mod07t04s03.html).

<sup>53</sup> Torture and ill treatment: The position of the ICRC, International committee of the red cross, 25<sup>th</sup> june, 2015, <https://www.icrc.org/en/document/torture-ill-treatment-position-icrc>.

duration and frequency of visits and that the delegates are able to talk without any restriction. Visits and the reports made on them are confidential - although the ICRC may publish its own comments if a state publicly comments on a report or visit.<sup>54</sup>

## **Role Played by the International Committee of The Red Cross in Preventing Torture**

International Committee of the red cross plays various roles in preventing inhuman treatment towards the victims and in protecting their human rights. It gives importance to the victim and its families and accesses the persons who are responsible for such occurrence of torture. It gets the assistance of various authorities for preventing such a form of torture. International Committee of the Red Cross visits frequently the victims who are detained and engage in detail talk with the authorities about the treatment of the detainees and the conditions followed in case of detention. It supports the victims and aids in rehabilitating the victims and helps the organization such as Red Crescent Societies, National Red Cross etc who specialize in preventing ill-treatment of victims. The international committee of the Red Cross discusses and has bilateral and confidential dialogues with government authorities in order to prevent such a form of torture and in punishing the persons who are responsible for such cruel form of ill-treatment.<sup>55</sup>

An international committee of the Red Cross visited prisoners of wars and civilian internees in Iraq between the month March and November of the year 2003 and wrote on a report about the violation of human rights taking place in prison. Brutal torturing leading to serious injury or death, detainee's parents are not informed about his arrest, detained person is subjected to physical or mental torture as part of interrogation, putting a person alone in a cell in the form of solitary confinement without any light, using of immense force on person resulting in serious harm to body or leading to death were the human right violations taking place inside the prison.<sup>56</sup> The international committee of the Red Cross issued a report on February 14, 2007, about the treatment of the fourteen detainees in Central intelligence agency before they were transferred to Guantanamo. And this report states that detainees were subjected to arbitrary

---

<sup>54</sup> Menace of torture: Prohibition in International Law, Mohd. Yusuf Bhatt, <https://www.jstor.org/stable/41856242>.

<sup>55</sup> Torture and ill treatment: The position of the ICRC, International committee of the red cross, 25<sup>th</sup> june, 2015, <https://www.icrc.org/en/document/torture-ill-treatment-position-icrc>.

<sup>56</sup> Report of the international Red Cross committee, <http://www.derechos.org/nizkor/us/doc/icrc-prisoner-report-feb-2004>.

deprivation of liberty by way of severe physical and mental pain during the time of extracting information.<sup>57</sup>

### **Legal Framework Relating to Torture around The World**

Torture is a dilemma known to mankind and it is found in all areas of the globe affecting all kinds of persons. It is an assault on the body by the person who has the liability to protect the person from all sorts of physical and mental harm and maintain law and order. This torture is done to cause fear in the mind of the detained person, dehumanize him and to exercise control over him in order to get every detail in order to complete the investigation.<sup>58</sup>

Torture is totally prohibited by international instruments but still, it goes on in most countries. The majority of the states have ratified the convention against torture and other cruel, inhuman or degrading treatment or punishment. Torture even today has on a large scale increase in the countries which have ratified it. Many countries continue to repress and maltreat citizens. Governments of Iran apply torture and violate human rights by creating fear in the mind of the people. Torture has been widespread in Iraq since the US attack and subsequent occupation in 2003. Today Iran applies torture as an interrogation technique instead of using apt investigation techniques.<sup>59</sup> United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [UNCAT] and international human rights law impose responsibility on states to prevent torture by framing legislative and other measures to prevent all forms of torture and to provide a remedy to the victims. States have the duty to take appropriate positive steps in order to ensure that they are capable of practically complying with all aspects of the treaty.<sup>60</sup>

### **Following Are The Legal Framework Followed By The Different Countries:**

#### **Law Relating to Torture in Us**

The United States of America is one of the most powerful countries which has signed and ratified all those above mentioned international conventions relating to torture. In 1988, President Ronald Reagan signed the convention against torture and President George H.W.

---

<sup>57</sup> UC Davis Center, Center for study of human rights in the America, <http://humanrights.ucdavis.edu/projects/the-guantanamo-testimonials-project/testimonies/testimonies-of-the-red-cross/index>.

<sup>58</sup> Refworld, Legal framework for preventing torture in Africa <https://www.refworld.org/pdfid/56e2d44e4>.

<sup>59</sup> Jithendra Mishra, Custodial atrocities, Human Rights and Judiciary <https://www.jstor.org/stable/43951999>.

<sup>60</sup> Centre for Justice and International Law Torture in International Law, [https://www.apl.ch/content/files\\_res/jurisprudenceguide](https://www.apl.ch/content/files_res/jurisprudenceguide).

Bush submitted it to the Senate for advice and consent in 1990. And in 1994, the United States became a party to the said convention. The U.S. government has confirmed and agreed to article 2 of the said convention which states that the obligations to prevent torture, cruel, inhuman, and degrading treatment or punishment remain applicable even in times of armed conflict.<sup>61</sup>

The United States became a party to the Geneva Conventions which form the basis of the law of armed conflict. All four Geneva Conventions include provisions prohibiting torture and other cruel treatment. Further, article 3 which is common to the four Conventions provides minimum baseline protections for members of non-state groups who are detained during war or not taking an active part in hostilities<sup>62</sup>. The Supreme Court confirmed that the said article 3 applies to the US conflict with Al Qaeda in its 2006 ruling in *Hamdan v. Rumsfeld*.<sup>63</sup> The United States has also recognized article 75 of the Geneva Convention's first Additional Protocol which gives protection to the people who are detained in conflicts between states by prohibiting torture of all kinds whether physical or mental which affect the personal dignity and cause humiliation resulting in degrading treatment.<sup>64</sup>

Torture and any form of ill-treatment are prohibited under United States domestic law. US report was filed in 2013 to the United Nations Committee against torture and it states that all forms of torture are seen as offenses under the criminal law of the United States. Many amendments made to the US Constitution give protection to all persons from all forms of torture. Three important amendments are fifth, eighth and fourteenth amendment which is applicable in case of torture. Fifth Amendment states that a person cannot be prosecuted without due process. Due process is a right to be heard and defend himself or herself. This amendment also protects the person from self-incrimination. The Supreme Court has affirmed that the Fifth Amendment that is right against self-incrimination prohibits "torture or other abuse" to obtain confessions.<sup>65</sup> Every person who is arrested has the right to be heard and defend for his rights and he cannot be forced to confess during the process of investigation. US constitution states that no cruel or unusual punishment should be imposed on persons. Here

---

103 Human Rights First, American Ideas and human values, <http://www.humanrightsfirst.org/sites/default/files/Issue-Brief-Laws-Against-Torture>.

<sup>62</sup> International committee of the red cross, Treaties, state parties and commentaries, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp>.

<sup>63</sup> *Hamdan v. Rumsfeld* (No. 05-184) 415 F. 3d 33, at 67.

<sup>64</sup> The white house, Fact sheet: New actions on Guantanamo and detainee policy, <https://obamawhitehouse.archives.gov/the-press-office/2011/03/07/fact-sheet-new-actions-guant-namo-and-detainee-policy>.

<sup>65</sup> *Chavez v. Martinez*, 123 S. Ct. 1994 (2003).



cruel or unusual punishment means an act of torture towards a person.<sup>66</sup> Nowadays we can see that cruel and harsh punishment is inflicted to prove the case and this, in turn, violates the right to life of a person. In order to prevent this, the eighth amendment is applicable when such an incident occurs. It also states that no person shall be denied equal protection of the law and no person's right to life, liberty and property can be violated and their right to due process cannot be denied.<sup>67</sup>

There are other legislations that prohibit torture. They are the Detainee Treatment Act which was passed by the Senate in 2005 which is an amendment to the Department of Defense Appropriations Act. It prohibits the department of defense from using cruel or inhuman punishment against any individual who is under the control of the United States government. While conducting the interrogation, the department of defense should use only the techniques mentioned in the army field manual and this manual explicitly prohibits torture or any unlawful treatment during interrogation.<sup>68</sup> There are other important two legislations such as the United States torture Act and Torture Victim Protection Act which prohibits torture. Any attempt of committing by U.S. national and now national are prohibited by the U.S. Torture Act. This legislation gives the power to punish those people who commit torture outside the United States.<sup>69</sup> Torture Victim Protection Act provides the individuals in the United States the right to get civil remedy from the U.S. court for the torture caused by the foreign national.<sup>70</sup>

Though there are lots of legislations for preventing torture and also international laws still we can see that there is increased use of enhanced interrogation techniques and also coercive interrogation methods employed through the Central Intelligence Agency and US Military to extract information for the intended purpose of strengthening the War on Terror and national security. The enhanced techniques include waterboarding, prolonged isolation, prolonged sleep deprivation, sensory deprivation, extremely painful stress positions, forced nakedness, sexual humiliation, cultural humiliation, being subjected to extreme cold etc. The U.S. government was not only aware of the use of torture at its detention facilities but also created policies that suggested and encouraged it. Legal memoranda produced by government lawyers at the Justice and Defense Departments indicates that high-level government officials approved the use of

---

<sup>66</sup> Eighth Amendment of the US constitution.

<sup>67</sup> Fourteenth Amendment of the US constitution.

<sup>68</sup> 42 U.S.C. §2000dd, available at: <https://www.law.cornell.edu/uscode/text/42/chapter-21D>.

<sup>69</sup> 18 U.S.C. § 2340A et seq., <https://www.law.cornell.edu/uscode/text/18/2340A>.

<sup>70</sup> 7 H.R.2092, <https://www.congress.gov/bill/102ndcongress/house-bill/2092>.

harsh interrogation tactics, and reports from a variety of sources, including the International Committee of the Red Cross and the FBI details the first-hand observations of torture and inhumane treatment in U.S. detention facilities which lead to a conclusion that the United States encourages the use of torture.<sup>71</sup>

### **Law Relating to Torture in UK**

The use of torture has been contrary to common law for several centuries, and the UK was well ahead of many other European jurisdictions in abolishing its use. Although the common law prohibited torture, however, the Privy Council continued to issue torture warrants until Felton's case in 1628 and it was not until the Long Parliament in 1640 that the practice was formally abolished. In Scotland, torture was prohibited by section 5 of the Treason Act, 1708. In addition to the established common law provisions, section 134 of the Criminal Justice Act 1988 makes it an offense for any public official to intentionally inflict severe pain or suffering on another in the performance of his official duties. This provision was introduced to honor the UK's commitments under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.<sup>72</sup> The United Kingdom has also signed and ratified many conventions relating to torture and is having an obligation to follow the provision of the conventions just like other member countries of the conventions.

We can see that though there are domestic laws and international laws for the prevention of torture still it goes on increasing today. The UK's official position is that it does not apply torture or any cruel, inhuman and degrading treatment but credible evidence of public and parliamentary record shows that UK security services and military personnel torture people both as part of the CIA's rendition, detention and interrogation program, and in case of military detention facilities in Afghanistan and Iraq. The UK parliament's Intelligence and Security Committee published two reports following its investigation into detainee mistreatment and rendition in June 2018. The investigation has revealed that the UK's role in prisoner abuse was even more extensive than academic research had previously found. Yet officials have been slow to investigate and holding anyone responsible for such torture and has done very little in case of providing meaningful redress to the aggrieved party who is tortured.<sup>73</sup>

---

<sup>71</sup> Scott Rehm, An overdue reckoning with US torture, <https://www.opensocietyfoundations.org/voices/an-overdue-reckoning-with-us-torture>.

<sup>72</sup> Torture in UK Law, Justice, <https://justice.org.uk/torture-uk-law/>.

<sup>73</sup> Justice, Torture in UK law <https://justice.org.uk/torture-uk-law/>.

## **Comparison between India, USA and UK Relating to Laws of Torture**

India, the UK, and the US are among many countries that give high value for the human rights of all people. In this 21<sup>st</sup> century, there is always frequent fight which is daily happening in all these three countries. There are strikes, procession as a form of protest, conducting drama with a theme of human rights violation and also people yelling and shouting for the human rights violations. But here we can see that though there is a voice of protest for all kinds of rights in this world the voice for the prevention of torture is less seen in these countries. It is the political parties which are seen mostly going for the objection against all human right violation but when there is custodial torture taking place there is no active role played by these people in these countries and even the government remains less active in fighting for the right of the innocent poor victim.

Even though there is a large number of laws in these countries and these countries are members of this convention but still there can be seen a large number of increases in the number of torture happening in these countries. Here we can see that the US and UK have ratified the convention relating to torture but still torture in these countries goes on. But in the case of India, there is no ratification of such convention and it has only signed it. So here there is no difference seen in countries that have signed and ratified and country that has only signed the convention. As in the three countries, there is still torture going on.

There is an undeniable fact that every country's police force has modern technological sources. They have psychologists and psychiatrists in each police station along with facilities to carry out investigations scientifically. They further have a specific team allotted for all specified crimes. Despite all these measures, several accused have died in police custody. The torch-bearers of civil rights, the US and the UK, are also included in this list. 23 people died in or following police custody in 2017-18 in England and Wales, as per the Independent Office for Police Conduct (IOPC). These developed countries such as the US and UK's police forces are provided with every facility through which they can carry out investigations in modern ways. But still, there is an increase in the use of torture as a tool for conducting the investigation<sup>74</sup>. India a developing country also have modern technological sources but not that much-advanced one as that of US and UK but still, we can see that they are even now relying on third-degree torture method in order to get information from the detained person.

---

<sup>74</sup> Daily Times, <https://dailytimes.com.pk/486290/why-do-police-resort-to-torture-in-custody-2>.

The International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment establishes an absolute prohibition against torture that may not be compromised or justified under any circumstances or for any reason. A state of war, public emergency or superior orders are not defenses to torture under the Convention<sup>75</sup>. In the United States and the United Kingdom, we can see nowadays that most of the people are tortured due to the suspicion that these people are involved in terrorism or involving in affecting national security. It is very highly seen now and the government knowingly tries to support this torture to the suspected people. These are only the suspected ones; they can be innocent or not innocent but they have a right to prove their side that they are innocent. Before hearing them, they are brutally tortured and even raped.<sup>76</sup> In India we look into the torture, here torture is conducted as a daily routine as part of the investigation in every case. There is no particular reason for torturing people, they are given pain by saying that it is to prove the case. And this proving of the case which is said as reason is a reason which has no sense in it.

The present president of America, Donald Trump supports torture and this is clearly evident in the various acts done by him. He wants Marshall Billingslea who is a supporter of the CIA torture program to be the under secretary of state for civilian security, democracy and human rights. In 2018 Trump made former intelligence officer Gina Haspel who was alleged to have committed torture in a black site in Thailand as the director of the CIA. These actions of Trump give green light to the practice of torture in the United States. The United Kingdom also supports CIA torture and this is clearly seen in the case of the British government's obstruction in conducting the parliamentary investigation in the UK's role in the program of torture and rendition.<sup>77</sup>

## Conclusion

There are many international conventions, treaties, etc. for the prevention of custodial torture occurring in any part of the world. The majority of the states have signed and ratified the convention relating to custodial torture but still, we can see that these countries including the developed countries use torture as a part of the investigation. Protection from custodial torture is considered as one of the important human rights. There are lots of movements, councils, Act,

---

<sup>75</sup> Daily Times, <https://dailytimes.com.pk/486290/why-do-police-resort-to-torture-in-custody-2>.

<sup>76</sup> The world organization for human rights USA, Torture by the United States, <https://www2.ohchr.org/English/bodies/hrc/docs/ngos/wohr>.

<sup>77</sup> News Statesman America, Populist leaders are taking us backwards in the fight against torture. <https://www.newstatesman.com/world/2019/12/populist-leaders-are-taking-us-backwards-fight-against-torture>.



etc for the protection of human rights still we can see that day by day a large number of innocent people are detained in custody and continuously tortured by the police in order to prove the case. There should be strict punishment framed for the members of the convention who apply torture as a method of investigation. Even the developed countries such as the US and UK are found in the top position in the list of countries who use torture against the detained person. If this continues then the value of each rule of conventions, treaties etc will be lost and the importance of human right especially the human right of the person in custody will start to diminish.

