

Human Rights and Torture

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Torture is defined by the United Nations Convention against Torture as, "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession..."(**Article 1 of the United Nations Convention against Torture**). It may be "inflicted by or at the instigation of or acquiescence of a public official or other person acting in an official capacity."¹ The prohibition against torture under international law applies to quite many different methods. Some of the most commonly used methods of torture include - simple thrashing by using sticks; electric shock applied to genitalia; gang-rape; near drowning by submerging in water for a long time; suffocation by tying plastic bags tied around the head; whipping; hanging by feet or hands chained to the ceiling or floor for prolonged periods etc.

International law generally prohibits mistreatment that does not meet the definition of torture, either because less severe physical or mental pain is inflicted, or because the necessary purpose of the ill-treatment is not present. Also, international law plays a vital role in affirming the right of every person not to be subjected to cruel, inhuman or degrading treatment. Examples of such prohibited mistreatment include being deprived of sleep, food or drink; being subjected to forced constant standing or crouching; being forcefully subjected to blindingly bright lights etc. Moreover, any type of physical violence/abusive methods used to scare, coerce or "break" an individual during a torture cum interrogation session constitutes to be prohibited ill-treatment. If such practices are acute enough, prolonged, or even combined together with other methods that result in extreme pain or suffering, these practices/methods may end up qualifying as torture.

The prohibition against torture as well as cruel, inhuman and degrading treatment is not limited to acts causing physical injury and suffering. It includes acts that inflict mental suffering for example threatening to physically abuse the victim's family or loved ones. The U.S. Supreme Court has recognized that, "coercion can be mental as well as physical...the blood of the accused is not the only hallmark of an unconstitutional inquisition". This was mentioned and highlighted in the historical case of **Miranda v. Arizona**², citing the case of **Blackburn v. State of Alabama**³. Also, the use of mind-controlling drugs (e.g. Sodium

¹ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

² 384 U.S. 436, 448, (1966)

³ 361 U.S. 199 (1960)

Pentathol) in order to force a person to give up sensitive information would at the very least amount to inhuman and degrading treatment under the Convention against Torture.

Human rights groups, however, did not put torture on the human rights policy map, either conceptually or legally. However, their concern and outrage at its continuing practice did facilitate in developing and expanding the legal and policy framework on torture. Amnesty International's efforts to secure the release of "**prisoners of conscience**"⁴, was one of the earliest efforts made to alert the organization to the prevalence of torture, frequently directed toward political prisoners in the modern world. This ultimately resulted in Amnesty International launching a "Campaign against Torture" in 1972⁵ and also lobbying for UN members for issuing a declaration against torture. By 1987 the Convention against Torture had managed to gather the twenty vital and necessary signatures for it to be enforced. Presently, more than 160 countries have ratified the Convention, resulting in some authorities to consider that it has indeed become an important part of international customary law and has also been recognized as a pre-emptory norm in international law.⁶

Another important argument that critiques against torture raise is the argument that the use of torture, even in the so called "War on Terror" by various countries/states, is not justified. The Convention against Torture requires states to assert jurisdiction when torture is committed within their jurisdiction, either investigate and prosecute them, or upon proper request extradite suspects to face trial before another competent court. However, the overture of terrorism and terrorist activities brought about a disruption of the state. Terrorists' attacks create the feeling of panic, imminent danger, and desperation on the part of states who do not want their citizens to be victim of such attacks. Thus states feel they need to obtain any seemingly useful or important information by all means in the bid to counter acts or attempted acts of terrorism.

However, the position of the law and the place of justice cannot be downplayed by 'executive discretion'. In the United Kingdom, for instance, the House of Lords and, indeed, the Court of Appeal have in their decisions, continued to take a muscular approach to terrorism-related measures by finding, for instance, that certain non-derogating control orders were incompatible with the Human Rights Act 1998. However, in the case of **A (FC) & Ors v. Secretary of State for the Home Department**⁷, it was held that torture evidence cannot be admitted in evidence against an individual. Thus, it is indeed difficult for a state to reach a balance between the rights of its citizens and security concerns of the entire state. One of the most popular counter arguments used to justify torture under some circumstances is the "**ticking bomb**" theory which asserts that if torture helps in producing information that might

⁴ https://en.oxforddictionaries.com/definition/prisoner_of_conscience

⁵ The United Nations Convention against Torture: A Handbook on the Convention against Torture and Other Cruel, Inhuman, Or Degrading Treatment or Punishment by J. Hermann Burgers, published on July 1, 1988

⁶ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=_en

⁷ [2005] 2 AC 68

help in forestalling a terrorist attack, maybe it is justified.⁸ Therefore, the legitimate use of torture still remains a controversial question in the international sphere as different countries have their own justifications for the legally sanctioned use of torture in their war against terrorism.

Now we move on to examine a few landmark cases wherein concrete judgements were passed, related to the legitimate use of torture by states. In the case of **Ireland v. the United Kingdom**⁹, the European Court of Human Rights listed “**factors to be taken into account in determining the severity of treatment**”, including the age, sex, and state of health of the victim. The Court also examined certain methods of interrogation, none of which were found to cause intense physical injuries, finding that forcing prisoners or even detainees to remain in stress inducing postures for prolonged periods of time, often exposing them to noise and depriving them of food, water and even sleep amounted to ill-treatment, but refusing to find that the treatment amounted to torture. This case specially emphasizes on the applicability of the prohibition, to extend to **cases involving terrorism and public danger**. Next, we look at the case of **Chahal v. UK**¹⁰. In this case, the Court decided there was a real risk of Chahal being subject to treatment contrary to **Article 3** of the **ECHR**¹¹, if he were to be deported to India as there was sufficient evidence exhibiting the contemporary involvement of the Indian security forces in killing and serious human rights violations associated with the problems in the state of Punjab. As such, it was held irrelevant that Chahal was allegedly a Sikh terrorist whose deportation to India was required as a means to protect the security of the UK. Thus, the UK would end up violating Article 3 even if it wanted to implement the Home Secretary's deportation order and the Court was not prepared to adjust Article 3 to the security situation in issue. However, via this case, the ECHR made it clear that the prohibition of deportation to face treatment contrary to Article 3 is absolute.

At this juncture it must be stressed that the rationale of the strict prohibition of torture lies notwithstanding, in the positive, written law on the matter. A state, bound by the Rule of Law, must not permit the use of torture et al as it is intrinsically abhorrent and vile. If it does so, it comes at the cost of the state having to forsake its own ethics and having to end up losing credibility at the international level. Also, a law-abiding state has no other choice, but to reconfirm the powerful symbolic message of prohibition against torture and subsequently set up a clear standard invoking the principle of reciprocity. It is also true that the comprehensiveness of the prohibition vis à vis the state doesn't necessarily need an individual to be responsible for any particular act of torture. While the state must definitely consider a kind of 'efficient autocracy,' wherein individuals may face situations where instead of institutional compliance, civil disobedience may be tolerated or even expected.

Conclusion

⁸ The Use of Torture in the War on Terror: Should this 'Exceptional Measure' Be Justified in 'Exceptional Times'? by Wuraola O. Durosaro published in the American Journal of Humanities and Social Sciences

⁹ Application No. 5320/71 (1978)

¹⁰ 23 EHRR 413, 74

¹¹ European Convention of Human Rights 1950, Art 3

Being disobedient presupposes a serious debate on the part of the investigators, a debate that must and cannot be substituted by any parliamentary decree. Hence, even though the state has the right to do all within its powers to protect its citizens and territory by the adoption of any means within its reach to combat terrorism, the anti-human right approach of the use of torture ultimately may not be a good solution et al.