

TORTURE IN DEMOCRACIES

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ABSTRACT

Torture has become an important issue in today's world with it becoming a commodity at the hands of big economies. Torture has been modernized with technological advancement leading to the formation of new & advanced ways of torture including medical and psychological torture apart from physical ones. It is majorly used in the name of obtaining a confession or some information. This article aims at how torture has been evolved from the traditional/conventional forms to the modern ones. Along with the specific study of torture in India & the U.S. and rights available against torture, the article maps its purpose, provisions, torture in liberal democracies. The main focus of the article is on torture along with some contemporary examples and relevant data. The article reflects on how it violates human rights and is an ethical issue governing people all around the globe. It concludes that there are immense possibilities of bringing reforms that will result in the eradication of torture.

Keywords: Torture, USA, India, UN technology.

INTRODUCTION

The method of torture had been widely used all around the globe in many democratic countries for several purposes such as extracting information, to inculcating fear and political apathy among the masses. Torture is widely and extensively used with the development in science and technology, new methods have been developed or added to the 'ways of torturing'. New methods of torture are being developed, including physical, psychological, and medical torture on the lines of technological advancement. Torture has acquired a shape of a commodity with tools of torture being on sale, studies developed on lines of torture, development of new tools and methods, and selling of such information, making torture internationalized and standardized. It won't be wrong to say that globalization has led to McDonaldisation or the cocoalisation of torture.

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Generally, we are aware of a few aspects of torture such as the methods and the ways used or the reason behind doing it, and in this process, one is left behind with an important aspect which is, as to what torture is. Traditionally, torture has been defined by several philosophers and jurists. Torture is widely seen as an act of exerting one's power over another by the use of physical violence to fulfill the objective such as to obtain any information, to confess, or admission of guilt.

The traditional definition of torture does not stand to the point of modern day torture in which apart from physical torture, psychological as well as medical or clinical torture is being widely used. Apart from the change like inflicting torture, the question is also raised on the purpose of inflicting torture. The widely recognized purpose of torture is to obtain information. Many times the person who is being tortured just to satisfy the ego of the person inflicting it, to show or present himself as a powerful being and exert that power on others. Oftentimes, the one being tortured has no information and might just have been a pawn. This leads to a distorted view of torture, leaving us in oblivion as to what torture is and what is the purpose behind using it worldwide.

TORTURE: DEFINITION AND PURPOSE

The widely recognized and accepted definition of torture has been defined in Article 1(1) of the UN 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, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind when pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official".¹

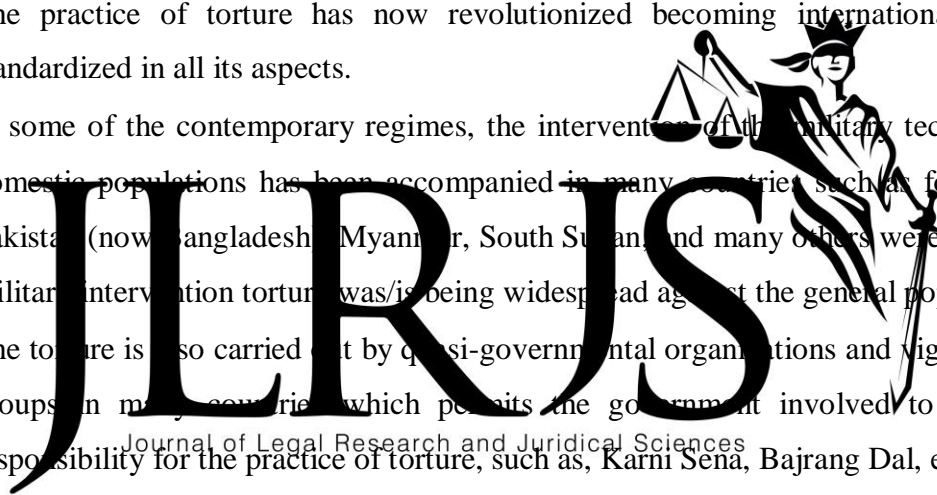
In the above definition, the objective and method of torturing has been explained. The method used can be either physical or mental and the purpose explained has been to obtain information, to punish, or to force him to accept that he committed the offence or for any other reason such as discrimination of any kind. As per a study titled, 'The technology of political control', torture is used in contemporary regimes for the following purposes. The major reason torture is used to 'extract information' of any kind. The second reason it is used is to prepare the defendants for 'show trials'. The third reason for its widespread use by contemporary regimes is to inculcate an environment of fear and political apathy in the masses when they lack popular support. The

last reason identified in the study is in the form of justifying the use of torture by visualizing torture as a form of 'self-defense' against those posing a threat.

FEATURES OF NEW TORTURE

Some of the eccentric features of 'New Torture' are:

- It often involves the application of sophisticated, psychological, and pharmacological (clinical or medical) techniques which result in extreme pain but at the same time leave few overt signs of physical pain such as nudity, drugs, threats, sensory deprivation, and many other techniques.
- In contemporary regimes, the individuals who are involved in the practice of torture have developed a 'slang' resulting in 'ritualization' of the use of torture.
- The practice of torture has now revolutionized becoming internationalized and standardized in all its aspects.
- In some of the contemporary regimes, the intervention of the military techniques to domestic populations has been accompanied in many countries such as former East Pakistan (now Bangladesh), Myanmar, South Sudan, and many others where by way of military intervention torture was/is being widespread against the general population.
- The torture is also carried out by quasi-governmental organizations and vigilante-type groups in many countries which permits the government involved to deny any responsibility for the practice of torture, such as, Karni Sena, Bajrang Dal, etc India.



LIBERAL DEMOCRACIES AND TORTURE: USA AND INDIA

Liberal democracy is often characterized by features such as rule of law, separation of power, rights for the protection of citizens, representational government, the system of checks and balances with no scope for any form of state-sponsored torture. Democratic states continuously assert that they are not engaged or they do not have any state policy of torture and in turn even present themselves to be against it and claims its prohibition at all possible levels. Even after several state policies, torture has swept its way deep into the system in the name of national security, punishing the guilty or avenging the loss done by the members of terrorist or armed organizations.

With the world witnessing 9/11, a terrorist attack in America paved a way for the introduction of Torture by US officials in the prisons of Abu Ghraib in Iraq. The liberal democracies like USA and India assert or lay major emphasis that they are not engaged in the evil of torture but at the same time highlight torture as a necessity in the name of national security. The nations keep on asserting that they are not engaged in such practices even after evident proof contradicting them. The U.S. Report on Torture to the Committee against Torture states, “Torture does not occur in the United States except in aberrational situations and never as a matter of policy.”

In the aftermath of the commencement of war on terror after the 9/11 attacks in the USA, the practice of inflicting torture on those who have wronged or somewhere involved in the attacks received a sanction from the citizens. This in addition also led to racial attacks on Muslims and Sikhs who were often confused because of their turbans. Liz Philipose in her article titled, "Politics of Pain and the Use of Torture", highlights that how the circulation of the Abu Ghraib photos contributed to the “cultural production” of the Muslim terrorism and the “solidification of the new racial grammar rooted in the regime of visibility”. The images of the tortures inflicted were mainstreamed leading to debates and discussions criticizing it. But at the same time, as an alternate aspect, it is portrayed as a way of averting the deaths caused and protecting national security. The mainstreaming of the pictures of torture from Abu Ghraib and Guantanamo Bay, which resonating with the earlier images of torture, produces the effect, as before, of white supremacy and social control, amidst the defenseless situation developed after the 9/11 events. In the name of “enhanced interrogation techniques” many suspects were taken into custody and immensely tortured. For years US officials had tortured pointing to Department of Justice memorandums that authorized and sanctioned these techniques, thereby denying that they constituted or inflicted torture. The former US President Barack Obama has admitted that torture has been made use of as part of the CIA’s post 9/11 interrogation program, and has at the same time acknowledged that waterboarding does add up to torture.²

Hence, it would not be wrong to say that the US presents itself to the world as the custodian of human rights does not take into consideration the violations of human rights when using torture in the name of national security. Torture in India torture is an ignored issue and only gets a few headlines in the mainstream media when an accused dies in police custody after being tortured. The major form of torture identified in India is custodial torture. It includes assault, physical violence, mental torture which even sometimes results in the death of the one being tortured.

V.R. Krishna Iyer, former judge of Supreme Court, had observed that "custodial torture is worse than terrorism because the authority of the State is behind it".³ As per data received from Home Ministry, 348 persons died and 1,189 were tortured in police custody between 2018-19 and 2020-21.⁴ Another report from National Human Rights Commission (NHRC) shows that a recorded 1,723 cases of death in custody were identified. India is a signatory of the UN Convention Against Torture (UNCAT) but has not ratified it yet, even though India reports such a huge number of cases of torture every year.

Apart from custodial torture, torture also seems to be used by armed forces in the areas affected by the insurgency to obtain information and confessions. At the same time, the armed opposition groups use torture against the informers of the police or armed forces to instill fear among the common people to refrain them from giving any information to the authorities. The methods of torture used in 2019 included hammering iron nails into the body, pulling nails, beating, burning of certain parts, rape, oral rape, stripping, electric shocks, and many other such practices.

RIGHTS AGAINST TORTURE

Soft torture has been virtually prohibited by all the comprehensive international documents such as the UN Convention Against Torture (UNCAT), Universal Declaration of Human Rights, Geneva Convention of 1949. Apart from international documents, torture is also prohibited by laws of various states, making the practice of torture prohibited globally as well as locally.

According to Article 5 of the Universal Declaration of Human Rights, "no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment".⁵ Fundamental nature of the human right of freedom from torture is emphasized by the fact that under the major international Human Rights instruments, no derogation is permitted from this right even in times of "public emergency which threatens the life of the nation". Apart from it the Geneva Convention of 1949 in its Article 3 prohibits torture and other humiliating and degrading treatment during an armed conflict which is not international. From time to time much Non-Governmental Organization has also condemned the repeated and systematic use of torture by nations in consultative status with the Council of Europe describing it as a situation of gross violation of human rights which should be considered within the purview of the international crime of the same gravity as war crimes. The World Conference on Religion and Peace too

condemned torture stating that it is not only a crime against humanity but also a crime against the moral laws. It appears from the above mentioned points that the international forum has been vocal about this issue clearly expressing its dissent towards torture.

In India, torture is not criminalized in law as a separate or special offence. Some provisions in Indian law prohibit the practice of torture. The primary legislation enacted in the year 2017 was the Prevention of Torture Bill drafted to address the problem of Torture and Custodial Torture. But the bill could not be passed due to a change in the government. Some of the constitutional safeguards available against torture such as, Article 20(1)⁶ of the constitution of India which prohibits Ex Post Facto Law thereby imposing the penalty retrospectively. Article 20(3)⁷ of the Constitution deals with the provision against Self-incrimination, based on the legal maxim *Nemo tenetur prodere accusare seipsum*, meaning that “no man is bound to accuse himself”. This article of the Indian Constitution is in line with Article 14(3) (g) of the International Covenant on Civil and Political Rights.

Apart from constitutional provisions, there are some statutory provisions available. Section 24⁸ after the Indian Evidence Act makes confessions inadmissible which are obtained under inducement, threat, or promise whereas Section 26⁹ makes the confession inadmissible which are given in police custody. The Code of Criminal Procedure under Section 164(4) provides measures to ensure that the confession is obtained voluntarily. The Indian Penal Code under Section 348⁹ prohibits wrongful confinement made to extort confession.

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The U.S.A has witnessed three regimes of constitutional protection in the study of torture in interrogation. The first is, voluntariness doctrine related to the fifth amendment against self-incrimination which is also known as the Bram model. It provides with the provision for 'no self-incrimination'. The second is the voluntariness related to the due process clause of the Fourteenth Amendment, also known as the Brown model, which states that no state shall deprive any person of life, liberty, or property without due process of law. The third and last is the Miranda regime related to the Fifth amendment also known as the Miranda model which stated that a person has to be rendered explicit warning before being subjected to custodial questioning.

CONCLUSION

There continues to exist unacknowledged violence despite many constitutional safeguards and jurisprudence on torture which is widely available. Torture continues to be the most preferred rule in interrogation for extracting information and confessions leading to oppression of the marginalized sections of the society. To curb the issue of torture, and the effects torture leaves on one being tortured, it is imperative to conduct their rehabilitation and at the same, it is much more important to sensitize police and interrogate officers. The methods of interrogation need immense revamping. Interrogation must be recorded and done with the walls of law. Torture is a violation of human rights, is an ethical issue, and at the same time, it is a moral wrong that disturbs the collective conscience of society. Therefore, it is unacceptable in modern society.

References:

¹ UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

² <http://www.cbsnews.com/news/obama-we-tortured-some-folks-after-911/>

³ The Hindu, Custodial Torture Worse than Terrorism, <http://www.thehindujobs.com/the>

⁴ The Times of India, 348 killed 1189 tortured custody in last 3 years: Govt
<https://www.google.com/amp/s/m.timesofindia.com/india/348-killed-1189-tortured-in-custody-in-last-3-years-govt/amp_articleshow/85023919.cms>

Journal of Legal Research and Juridical Sciences

⁵ Universal Declaration of Human Rights

⁶ Constitution of India, Article 20(1)

⁷ Constitution of India, Article 20(3)

⁸ Indian Evidence Act, 1872

⁹ Indian Evidence Act, 1872

¹⁰ Indian Penal Code, 1860