

A STUDY OF TORTURE IN PRISON AND IT'S PREVENTIVE MEASURES

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Abstract

Prisons are established for the purpose of reforming deviant citizens into better versions of themselves. A prisoner's fundamental rights are constantly violated and are treated in a pathetic and a miserable manner. They are humiliated, tortured and exploited by the fellow prisoners. It is not uncommon to find that torture exists in prisons as a way to keep the prisoners on a leash. This paper includes the theories of punishment and provide the need for the same. Moreover, the authors emphasise on how the concept of intelligible differentia should be utilized in the theories and practice for bettering the conditions of the prisoners. The paper includes measures on how to tackle the pre-existing corruptions inside the walls to provide a better living of the prisoners. The paper talks about the society's orthodox perception towards prison and also the need to change the same.

For establishing the need for the above mentioned, this paper uses references from International Conventions like the International Humanitarian Law, International Human Rights Law and United Nations Convention against Torture. Further, this paper analyses the Rohingya Crisis and the Syrian war to elaborate upon the major human rights violation that have been constantly taking place despite having international laws governing them. The research methodology followed in this paper is empirical alongside demographic and the data will be collected from people by means of survey.

Key Words: Torture, Torture in Prison, International Conventions, Fundamental Rights, Rohingya Crisis, Syrian War.

Scope

Even though there are appropriate laws for the treatment of prisoners, the execution evidently is very weak and still remains a problem as there are thousands of prisoners who are being tortured and their human rights are being violated. With the object of stricter implementation in the current laws on prevention of torture of prisoners, the scope of this paper would be to help create awareness and prevent torture of prisoners and infinitesimal help in strictly enforcing the prevalent law.

Research Methodology

The method utilized to shape this research paper has been a combination of empirical and quantitative forms. The authors have gathered the data from various sources which have been duly acknowledged and presented their analysis and understanding of the same. A survey has been conducted among our peer groups about their general awareness and opinions on the subject and in accordance to the responses of the survey, an analysis is drawn and presented.

The contemporary scenario with respect to the topic has been discussed via judgments of the Supreme Court of India and several crises prevalent around the globe. To conclude, the authors' opinions and observations have been recorded and showcased in the suggestion and recommendation sections at the end of the paper.

Objective

This research paper has the following objectives:

- ❖ Present the opinions and understanding of today's youth about the prevalent scenario across the globe,
- ❖ Analysing the current standing of human rights violation specifically through torture of prisoners,
- ❖ Of creating awareness of the degree of human rights violations of prisoners and also put forth some ways to prevent the same,
- ❖ Interpreting the various theories of punishment and analysing the same,

- ❖ Lay down the anti-corruption measures that can be adopted to prevent the same,
- ❖ Point out the International Conventions and Protocols existent for protecting the rights of prisoners.

Literature review

The researchers have relied on the following set of literatures primarily;

Books:

❖ Salmond on Jurisprudence 12th edition by P.J. Fitzgerald

The new Salmond presents a thoroughly readable survey of contemporary jurisprudence. Aiming at a practical and common-sense approach, the Editor has also brought to bear the latest techniques of modern analytical philosophy. The main theories of law and fully discussed and, in particular, definitions of law, other than those propounded by Salmond himself, are investigated.

❖ "The Treatment of Prisoners under International Law" by Nigel Rodley¹ and Matt Pollard²

The book suggests that the absolute prohibition of such treatment remains firm. The initial part of the book deals with the focus on the period of first detention, when detainees are most at risk of having information or confessions extracted by unlawful means. Further states the deal with problems of poor prison conditions and of certain extraordinary penalties, notably corporal and capital punishment. Matt also incorporates the complementary fields of international humanitarian law and international criminal law, while addressing the problems associated with their interaction with human rights law. Crux of the majority of the chapters is that the human rights norm of most officials in the treatment of prisoners, namely, the prohibition of torture and cruel, inhuman or degrading treatment or punishment.

Papers, Journals and Articles:

❖ Conflict at a Macro-Level: Peacebuilding by National Human Rights Institutions, Conflict Management and Peacebuilding in Africa

¹Sir Nigel Simon Rodley - An international lawyer and professor.

²Matt Pollard - Author of "The Treatment of Prisoners under International Law"

In this report the authors have published their work on the human right violation and peace-making as a whole but have also laid special emphasis on prisoner's respect.

❖ **Torture of Prisoners by Sumanta Banerjee**

The author has cited various instances where prisoners are tortured around the world be it Russia, Paris, America or India. The author lays emphasis on one particular protests in Marion. Further the author has gone along to make a controversial statement being 'Just like New Delhi, even Washington turned a deaf ear towards the protest of Marion.'

It is to be noted that other than the above-mentioned literature, additional literatures that were of assistance to the researchers, have been duly acknowledged in the References section of the paper.

Introduction

Prison is a place where criminals are forcefully kept as inmates in confined walls. In a prison, it is obvious that a person loses various rights but there are certain rights which the inmate has. These rights are right to food and water, right to have an attorney to defend himself, protection from torture, violence and racial harassment. Yet these rights are violated and the prisoners are treated in a miserable manner. Persons deprived of their liberty shall be treated with human dignity and with respect for the inherent dignity of human person.³

The fundamental rights guaranteed to the prisoners are also violated. In the case of State of Andhra Pradesh v. C. Ram Krishna Reddy⁴, the judge stated that right to life is one of the basic human rights. State itself cannot deny the right. A prisoner does not cease to be a human and thus his fundamental rights must be ensured. The basic task of prisons should be to make sure that no prisoner faces a problem based on this issue as it would not only make a huge difference on the life of prisoners but also on the society as they would understand that the inmates living in the prison are people like them and they too deserve to be treated in a humane manner.

The papersheds a light on the theories of punishment with the analysis of the same. Many prisoners face discrimination every day and they cannot do anything but repent. In the case of

³ Article 10 of the International Covenant on Civil and Political Rights, 1966.

⁴State of Andhra Pradesh v. C. Ram Krishna Reddy, AIR 1977 SC 1926.

Madhu Limaye v. Superintendent, Tihar Jail, Delhi⁵, an Indian inmate faced discrimination as a European inmate was served better food and given better treatment. There was no reasonable classification to this and hence this was a violation of Article 14.

One of the many illegal activities taking place in prisons is corruption. Corruption is defined as “inducement to wrong by improper or unlawful means”⁶ Inside the prison the criminals bribe and pay the prison guards to do certain jobs for them. Some of the prisoners inside are looking for reformation and this corruption leads to them being discriminated by the prison officials and guards as they do not provide any money to them. This paper includes measures on how corruption can be curbed and how the measures can be implemented.

Theories of Punishment

Morality is subjective and it is an undisputed fact that popular moral beliefs of a State are the basis on which laws and sanctions are established. The culture of a community and the people’s philosophical outlook towards the society and life in general sets the ground work on which the society functions. Punishments sanctioned to convicts are sought on the rationales and justification of the people who constitute the society and the philosophy they follow.

There are five theories of punishment and they have been briefly described below: -

Deterrence Theory

A special emphasis is laid on deterrence theory as this sort of ideology and sanctions pave way to misuse of authority and this is where maximum torture takes place.

According to this theory, the objective is not to just simply prevent the wrongdoer from doing a wrong a more than once but he is also made to be an example to the society and people who may indulge in criminal activities. It is believed that such punishments would help in reducing the crime rate by consecutively setting an example for the people so as to the consequences one would face if they follow the same path. This theory focuses more on instilling fear in the minds of the people. It does not appeal to the moral conscience but impacts the human instinct to protect oneself from persecution. It can be said that if this

⁵Madhu Limaye v. Superintendent, Tihar Jail, Delhi, (1975) 1 SCC 525.

⁶ As defined by Merriam- Webster Dictionary.

practice succeeds in curbing the criminal tendencies of the people, it is not because they believe in the idea of 'live and let live' but because they are afraid to bear the consequences of their criminal actions. The intent would still arise in the mind of a person to hurt another and the only incentive they would have to not turn their intent into action would be to escape such sanctions.

Salmond has stated "*Punishment is before all things deterrent and the chief end of the law of crime is to make the evil-doer an example and a warning to all that are like-minded with him*"⁷

This theory does not raise the moral bar of the society and does not inculcate the practice of trying to be better human beings but merely provides an incentive to the people to not commit crimes. Deterrence theory works in a similar fashion. The idea is that punishments are justified to the degree to which they reduce, or deter, crime by preventing people from committing crimes or discouraging repeat offenses. If the punishment for a crime is such that it outweighs the reward one reaps from it, the punishment would succeed in deterring such crimes. This theory majorly relies on the **rational choice theory** which states that committing a crime is a choice that a person makes, that they commit the prohibited act because they want to. The criminologists in support of this theory also borrow the concept of **cost-benefit analysis** theory from economics, the cost being the sanction and benefit being the rewards.

Criminologists often criticize the rational choice theory indicating that crimes such as grievous hurt, rape, homicide and the offences falling in this category are more often than not done in passion where no rationale is used or where the offender does not choose to do so but is driven by passion and circumstances.

Rehabilitation Theory

The goal of this theory is to rehabilitate the convicts so they can attempt to be better, morally upstanding citizens of the society. This theory appeals to the human conscience of the offenders and aims at turning them into non offenders. The convict should be made to learn some form of art or any basic task which he can excel at so that once he is out of the prison, he may be able to provide for himself. They believe that by providing education-based learning, faith learning, anger management help and camps against substance abuse; an

⁷ Salmond on Jurisprudence by P J Fitzgerald.

offender can turn into a non-offender and will not relapse into a life of crime. Its goal is to minimize recidivism, i.e., a relapse into crime.

When a person has committed a crime, the judge must look into the purpose of the act keeping in mind the age of the criminal as well as the environment in which he has grown in before the punishment is granted. Reformation methods have been used extensively when it comes to Juvenile offenders. Borstal schools had been set up for minor convicts. In India there are 20 functioning borstal schools to reform the minors.

The supporters of this theory contend that the reason this theory has not worked so far is due to the fact that it was ill conceived, underfunded and poorly executed.

Retributive Theory

This theory works on the principle of 'what you sow is what you reap.' In Mohammedan Criminal Law, this theory is especially used for granting sanctions. The punishment prescribed to the offender is the same degree as to the offence committed.

In ancient history, when a person did wrong to someone, the wronged was allowed to take revenge against the wrongdoer and the theory relates to this.

This theory is highly criticized as it is considered to be against societal behaviour. This type of punishment is not the right remedy for the society as a whole as for one barbaric act, there is another barbaric act.

However, statistically this theory has proved to be the most effective in curbing crime and a hundred per cent effective in preventing recidivism.

Preventive Theory

This theory basically alienates the offenders from the society in one manner or the other. The sanctions usually granted are on the lines of imprisonment for life or capital punishment. It is a very pragmatic approach but not practical and not always feasible.

Preventive Theory primarily focuses on disabling an offender from doing a certain type of crime again. When the opportunity to commit a crime is taken, the person would have no option but to comply with the rules. When a person is taken to a jail, he loses the opportunity

to do a crime. Similarly, if a doctor is involved in any type of medical crime, his practicing license would be taken so that he does not commit the crime again

This method would only work if the offenders are locked up but if released, they would go back to victimizing citizens. If this theory is put into play and all offenders are locked up, it would be very impractical as it would require such prison complexes and it would mean increasing the prison population and decreasing the workforce. It would create a huge financial crunch and would pile up on the ever-increasing problems on the government.

Theory of Compensation

This theory establishes that criminal law does not entirely deal with punishing the wrongdoers by putting them behind bars or to prevent them from doing a crime again but also to provide relief to the victims who have been suffered by the wrongdoers. To restore a certain type of balance, the Supreme Court awards compensation to those who have been wronged. In the case of Hari Kishan v. Sukhbir Singh⁸, SC had declared that the plaintiff is entitled to a compensation of Rs 50,000. However, this theory too, suffers from certain demerits as this would not have any apparent effect on an offender who is rich and can spend money extravagantly. Hence, the punishment for the offender may be nothing but a formality.

All the theories are not completely right and every situation asks for use of a different theory. Hence one must not rely on one type of theory as it may be the detrimental to the society at large by not punishing an offender the correct way. The theories are just the tip of an iceberg as what is more important is how these theories are implemented. For example, the reformatory theory would not of any importance if the living conditions in the prisons are pathetic.

Violation of Human Rights of Prisoners

Basic Principles for the Treatment of Prisoners:

The United Nations Human Rights Office of the High Commissioner laid out 11 basic principles⁹ as to how a prisoner should be treated, they are:

⁸Hari Kishan & Anr vs Sukhbir Singh & Ors, [1998] AIR 2127 SC.

⁹ United Nations Human Rights Office of Commissioner for Refugees, Basic Principles for the Treatment of Prisoners, (09:36am, 31st March, 2019), <https://www.ohchr.org/en/professionalinterest/pages/basicprinciplestreatmentofprisoners.aspx>

1. *“All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.”*¹⁰

Irrespective of the crimes committed by the prisoners, their inhuman conduct should not be mimicked by the authorities. We should not let our personal biases take the better of us and trick us into being inhuman ourselves.

2. *“There shall be no discrimination on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”*¹¹

All prisoners shall be treated equally. Here again personal biases come into play and the intensity of the offence no longer is the only criterion on which the treatment of the prisoners depends upon.

3. *“It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require.”*¹²

In India, right to practice one's religion is a fundamental right and it the authors' belief that one's religious beliefs should be respected and no circumstances should ever lead to violation and disrespect of any religion.

4. *“The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.”*¹³

The prisons are responsible for the prisoners and it is their duty to come together and work in such a manner in which the society altogether is benefitted.

5. *“Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.”*¹⁴

¹⁰Principle 1, Basic Principles for the Treatment of Prisoners.

¹¹Principle 2, Basic Principles for the Treatment of Prisoners.

¹²Principle 3, Basic Principles for the Treatment of Prisoners.

¹³Principle 4, Basic Principles for the Treatment of Prisoners.

¹⁴Principle 5, Basic Principles for the Treatment of Prisoners.

Being a prisoner does not take away one's fundamental rights and human rights. This principle also states that for all the member nations of the United Nations Organization, other conventions and Protocols shall also be applicable.

6. *"All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality."*¹⁵

This may vary from prison to prison but where such activities are taking place, nothing restricts a prisoner from participating in such activities.

7. *"Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged."*¹⁶

Solitary confinement although sometimes necessary due to certain circumstances can have a long-lasting effect on one's mental health and therefore is discouraged.

8. *"Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labor market and permit them to contribute to their own financial support and to that of their families."*¹⁷

After one has served his sentence, he is believed to have paid for his crime and therefore should get an equal opportunity to have a normal life. Facilities like 'half-way house' which are provided by the United States of America should be encouraged.

9. *"Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation."*¹⁸

Everyone person has a right to life and liberty which includes right to medical facilities. The offender's legal standing should not be held against him in situations where he needs medical attention.

10. *"With the participation and help of the community and social institutions, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions."*¹⁹

Similar to pt.8, an ex-prisoner should be helped to ease his way back into society.

11. *"The above Principles shall be applied impartially."*²⁰

¹⁵Principle 6, Basic Principles for the Treatment of Prisoners.

¹⁶Principle 7, Basic Principles for the Treatment of Prisoners.

¹⁷Principle 8, Basic Principles for the Treatment of Prisoners.

¹⁸Principle 9, Basic Principles for the Treatment of Prisoners.

¹⁹Principle 10, Basic Principles for the Treatment of Prisoners.

²⁰Principle 11, Basic Principles for the Treatment of Prisoners.

All the above mentioned basic rights should be granted to all prisoners without any notions and prejudices. All the above principles are the guidelines that are set and are expected of the prisons to follow. However, it is a well-known fact that almost all of these are violated and prisoners are abused and tortured.

Most of the human rights violations occur due to the lack of proper facilities. Overcrowding, unsanitary conditions, improper medical aid and corrupt guards are the reason the prisoners are kept in an inhuman manner. To add fuel to the fire, being physically and sexually abused has become the norm of prison cells.

Inadequate supervision by guards, easy access to weapons, lack of separation of different categories of prisoners, and fierce competition for basic necessities encourage inmate-on-inmate abuse in many penal facilities. In extreme cases - as in certain Venezuelan prisons with one guard for every 150 prisoners, and an underground trade in knives, guns, even grenades -- prisoners kill other prisoners with impunity. Rape, extortion, and involuntary servitude are among the other abuses frequently suffered by inmates at the bottom of the prison hierarchy.²¹

Case study of India

Torture and violation of basic human rights of prisoners have led to judicial activism in India. Following are the relevant excerpts of certain judgments given by the Hon'ble Supreme Court of India:

i. Joginder Kumar v. State of UP and Ors.²²

“The quality of a nation’s civilization can be largely measured by the methods it uses in the enforcement of criminal law. The horizon of human rights is expanding. At the same time, the crime rate is also increasing. The court has been receiving complaints about violation of human rights because of indiscriminate arrests. A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on one hand and individual

²¹ Human Rights Watch, Human Rights Abuses Against Prisoners, (6:22pm, 30th March, 2019), <https://www.hrw.org/legacy/advocacy/prisons/abuses.htm>

²² Joginder Kumar v. State of UP and Ors, ((1994) 4 SCC 260).

duties obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first – the criminal or society, the law violator or the law abider.”

ii. Sunil Batra v. Delhi Administration²³

“Are ‘prisoners’ persons? Yes, of course. To answer in the negative is to convict the nation and the Constitution of dehumanization and to repudiate the world legal order, which now recognizes rights of prisoners in the International Covenant on Prisoners’ Rights to which India has signed assent. In Batra case, the Hon’ble Court has rejected the hands-off doctrine and it has been ruled that fundamental rights do not flee the person as he enters the prison although they may suffer shrinkage necessitated by incarceration.”

iii. Charles Shobraj v. Superintendent²⁴

“Like you and me, prisoners are also human beings. Hence, all such rights except those that are taken away in the legitimate process of incarceration still remain with the prisoner. These include rights that are related to the protection of basic human dignity as well as those for the development of the prisoner into a better human being.”

Myanmar authorities torture rohingya returnees

The Rohingya Crisis has plagued Myanmar since the time the Myanmar authorities started their ethnic cleanse against the Rohingya Community. Human Rights Watch has been keeping a close eye on their movements trying to ensure that the Myanmar Military stand true to their promise of providing safe return to the Rohingya refugees returning from Bangladesh.

Human Rights Watch has reported that the Rohingyas are still being subjected to the same persecution they were originally fleeing from. It is reported that the prisoners are being subjected to grave violence during their interrogation about the Arakan Rohingya Salvation Army (ARSA). The refugees are forced into stress positions during their interrogations at the

²³ Sunil Batra v. Delhi Administration, ((1980) 3 SCC 488).

²⁴ Charles Shobraj vs. Superintendent, (AIR 1978 SC 1675).

time of which they are beaten with fists, sticks and rods and also burnt and electrocuted to confess for crimes they have not even committed. They are made to stay in highly unsanitary conditions where they are not even provided with the basic necessity of clean drinking water. Also, their trials are conducted in a language they do not fully understand and they are not given the right to have a legal counsel, the result of which is that they are not able to defend themselves and therefore are being sanctioned to be imprisoned for years at an end.

Some personal accounts are also listed in the Human Rights Watch which indicates just how adverse the treatment received by them is. Some of them are as follows:

1. Rahamat, 17, described being repeatedly abused, including being burned, in Border Guard Police custody: *“They burned a plastic bag and let the hot plastic drip onto my body. They also took a heated iron bar and branded my legs, pressed burning cigarettes to my skin, poured hot wax from a burning candle on my skin, scratched my body with blade, and hit me with rod and sticks.”*
2. “Ahmed,” 17, said he was hung upside down and beaten repeatedly by the interrogating officers who demanded that he confess to being a member of ARSA.
3. “Lokman,” 24, said: *“At first, they kicked me in my chest and thigh and then they used electric shock to make me tell them I was an ARSA member, but they could not make me give a false confession.”*

Human Rights Watch observed scars and burns consistent with the described acts on the bodies of those interviewed.²⁵

The horror story that is Saydnaya Prison- Syria

The Syrian Government in the power-hungry struggle has been killing its own people never stopping to question themselves so as to who will they govern if they keep killing their own society.

As reported by Amnesty International, Saydnaya prison is the prison holding in which the gravest of crimes against humanity are committed. It is reported that every day about 50 people are taken from their cells and are hung and buried in a mass grave. About 13,000

²⁵ Human Rights Watch, Myanmar: Security Forces Torture Rohingya Returnees, (12:05pm, 3rd April, 2019), <https://www.hrw.org/news/2018/08/21/myanmar-security-forces-torture-rohingya-returnees>

people have been hung to death in Saydnaya alone between September 2011 and December 2015.

A former prison guard described how detainees are severely beaten throughout the night before being driven to an “execution room”: *“Whoever comes can beat them, until the officer arrives. We already know they will die anyway, so we do whatever we want with them.”*

The amount of torture that these prisoners face is unimaginable. They are beaten, raped and murdered mercilessly. Some of the techniques used are so commonplace they have their own nicknames. There’s the ‘flying carpet’, where people are strapped face-up on a foldable board, and one end is brought up to the other. Or the “tyre” (dulab), where people are forced into a vehicle tyre, with their foreheads pressed onto their knees or ankles and are beaten.

Both men and women have been raped and sexually harassed. Women have also been threatened with rape in front of their relatives in order to extract “confessions”. Their object is to extract false confessions and imprison the innocent irrespective of the fact that they might never catch the real culprits who have in actuality broken the law.²⁶

Survey-analysis

The researchers have conducted a survey with aim to attain and analyse the general public’s awareness with respect to the violation of human rights in the form of torture of prisoners. Therefore, with the help of the pie charts as an end result of the survey, the researchers conduct a pie chart analysis, the same is an attempt to provide conclusive analysis on the basis of organic research. However, there does exist certain limitations with such analysis, mainly the sample class only consisting of students and professionals, and not prisoners.

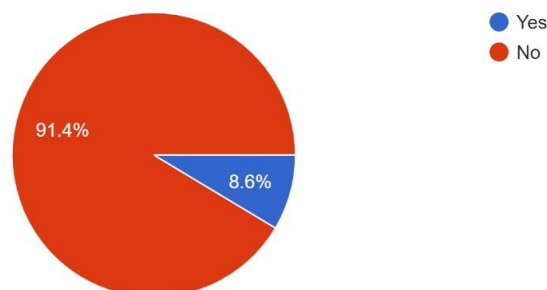
- ❖ **Analysis 1:** The first question was as stated below, with a clear majority of people holding the opinion that imprisonment is sufficient punishment and prisoners should not be subjected to torture. This question gives a glimpse of a person’s principles and how one’s perception of a criminal is, whether one believes in the practice of imprisonment being sufficient for such offenders or whether further ways should be adopted against such offenders. It clearly shows that more than 90% people do not

²⁶Amnesty International, End of Horror in Syria’s Torture Prisons, (5:54pm, 3rd April, 2019), <https://www.amnesty.org/en/latest/campaigns/2016/08/syria-torture-prisons/>

believe in the idea of torture and it can be said that they even find it repulsive.

Is imprisonment a self-sufficient punishment or it should be followed up with further torture of prisoners?

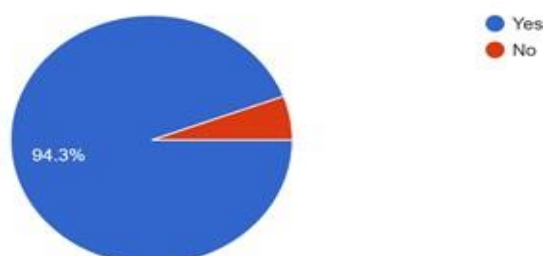
35 responses



- ❖ **Analysis 2:** The second question is as stated below, 94.3% people recognize that prisoners are indeed tortured in prisons while serving their sentence. When analysing the first and second questions together, we conclude that even though majority of the people do not feel the need of the prisoners being subjected to torture and might even stand against it, they accept the fact that prisoners are tortured which is against their opinion.

In your opinion are prisoners tortured in prison?

35 responses

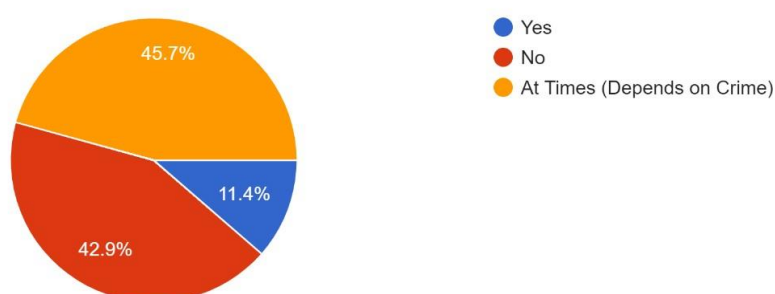


- ❖ **Analysis 3:** The next question was as stated below, with a majority in favour of the option 'at times (depending on the crime)', indicates that people's opinion on the

degree of punishment convict deserves is directly proportional to the crime committed by them. Further expanding on the views reflected by the respondents in the earlier questions the majority of the response are in favour of No or Depending on the crime (together around 88%) reflecting on our respondent's morals and opinions being consistent with the earlier responses.

Do you think torture of prisoners is justified?

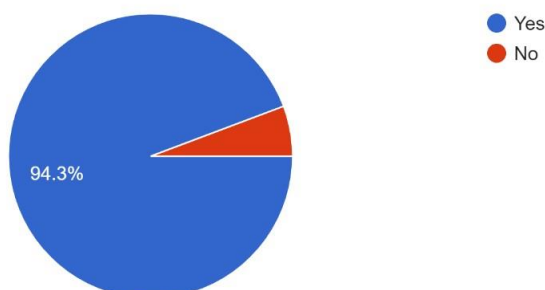
35 responses



- ❖ **Analysis 4:** The next question being a very basic one, with the majority of 94.3% inclining towards torture of prisoners indeed amounting to violation of human rights. This question answers the crux of the research paper as it goes on to reflect the authors view and research in the direction of the majority opinion.

Does Torture of prisoners amounts to violation of basic human rights?

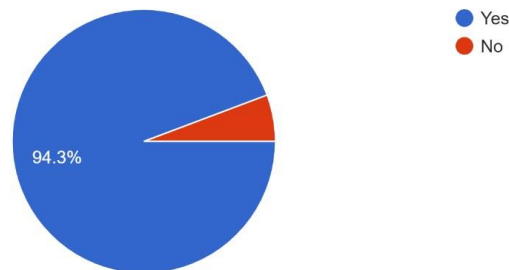
35 responses



- ❖ **ANALYSIS 5:** The next question is that where majority of the respondents could not answer correctly as an overwhelming majority stated that India is a member of UN Convention against Torture but to everyone's surprise, India is not a ratified member of UN Convention. Even though India is a UN member country it is still not a signatory under the UN Convention. At the same time, India is not the only member country which has not signed the Convention, many more member countries are further not signatories notable one being China.

Do you think India is a ratified member of UN Convention against torture of prisoners?

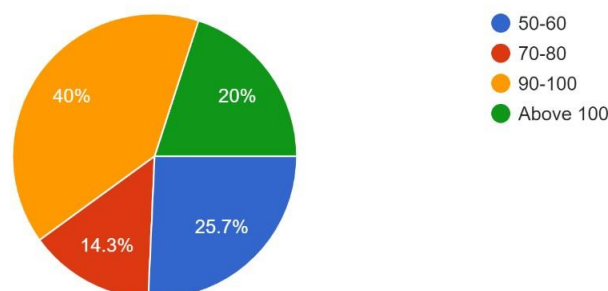
35 responses



- ❖ **Analysis 6:** This particular question was drafted keeping in mind the recent reported cases of torture of prisoners in China. China is not a member of the UN Convention but has a personal governing law against torture of prisoners. Just like India, China has also not signed the UN Convention against torture. The responses collected show that majority are of the opinion that a country may misuse its authority and the prisoners may suffer under it.

In recent years how many countries have reported of torture of prisoners?

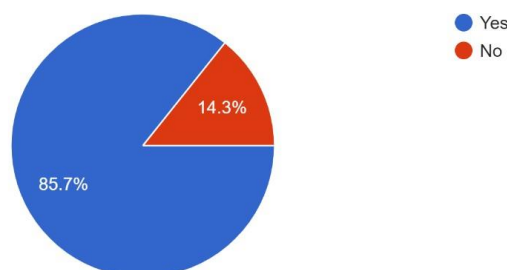
35 responses



- ❖ **Analysis 7:** In the question below, the majority was in favour of 90-100 countries but in actuality, 70 countries have reported incidents of torture in prison while 80 have reported of deaths in prison due to torturous activities.

Are countries with their personal laws against torture of prisoners prone to exploitation as their definition does not comply with the UN definition?

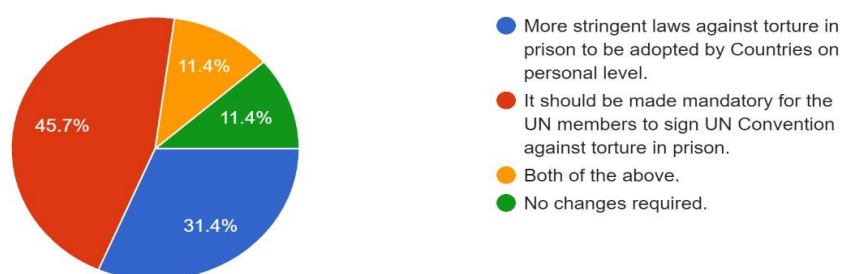
35 responses



- ❖ **Analysis 8:** While drafting the questionnaire there were two broad solutions the authors could lay out, both being an option in the question below leading the authors to the popular opinion to help in formulating a final conclusion. The reasoning behind our first solution is that countries like China have been able to achieve some success with their State laws to fight torture of prisoners. The second solution option was derived because the UN being an international body has the authority which can help countries eradicate the torture of prisoners. As evident below, the responses are mixed in nature; there is only a slight majority which cannot help draw any conclusions. This just shows that the people need to be made aware of the intricacies of the topic to come to a unanimous opinion.

What could be a probable solution against the increasing cases of torture of prisoners?

35 responses



Following the results of the surveys, it's important to establish the follow section of the paper.

Anti-Corruption measures for prisons

A prison exists almost in isolation and due to its closed nature, not many people outside know what happens inside. This has resulted in many corrupt activities behind the walls. A criminal can bribe any prison official and make the authority do jobs such as sneaking of drugs, smuggling in weapons or trafficking of mobile phones. Once a criminal gets a control over a prison official who occupies a high position, it is going to result in corruption of a high scale and this would have an impact on overall functioning of the prison as it would lose the purpose of reforming the criminals.

Corruption has increased recently in the prisons. 'The need to address corruption in prison settings is often side-lined by other pressing needs on the prison reform agenda, disregarding the fact that corruption might be a bottleneck and thus a contributing factor to those other needs'²⁷.

Sometimes it is due to low salaries of the prison authorities which makes them greedy and makes them vulnerable to doing jobs for criminals. Internationally, it has been observed that several prison guards have been caught having sexual relationships with female inmates. The guards would give mobile phones and drugs to these inmates and thus they contribute to the cycle of corruption inside the walls.

To ensure that such situations do not arise, there needs to be certain anti-corruption methods in place so that criminals do not have any opportunities to exploit the officials. They are: -

- ❖ Raising salaries of prison officials – Prison officials are as liable as the criminals inside because when they are involved in trafficking of the phones to the convicts, they help keep the network of the criminal outside the walls alive. If all the prison officials are paid fairly then they would not be compelled to take money from the convicts to carry out their tasks.
- ❖ Thorough checks of objects entering the prison facility – The prison officials and all the guards must ensure that all the containers and shipments entering the premises

²⁷ UNODC – Handbook on Anti-Corruption Measures in prisons.

belong to the authorities and there is no trafficked item in the containers. Most of the times, the trafficked items are hidden underneath other articles.

- ❖ Checking of prison employees – All the prison employees must be checked before they enter the prison and after they leave the prison to make sure no smuggling is taking place. These checks should be done randomly to ensure that the employees would have to think twice before smuggling any sort of item inside the prison.
- ❖ Increased use of metal detectors – Metal detectors should be used at all check posts to ensure that no weapon is reaching the facility. According to NYSOIG in USA, ‘Utilization of metal detectors will significantly increase’²⁸ If similar methods are employed in India, the prisons in our country could benefit greatly as it would curb problems of violence as well. Convicts make use of these weapons to hurt the prison guards and the other inmates.
- ❖ Frequent change in guard duty at a place- It is important that there should not be any development of a relationship between prison authorities and the guards. This can be ensured by making changes in the duty places of the guards.
- ❖ Installation of more CCTV cameras at prisons – In 2015, The Supreme Court gave a judgement which made the installation of CCTV cameras necessary at prisons²⁹, however not many have been installed to make sure no type of torture is taking place. To ensure this, the government needs to spend money on installing cameras in almost every corner of the prison.

United Nations minimum rules for treatment of prisoners

The Standard Minimum Rules for Treatment of Prisoners was adopted by the United Nations General Assembly in the year 1955 in its First UN Congress on the Prevention of Crime and Treatment of Offenders. These rules have been renamed to be the “Nelson Mandela Rules” to honour the legacy and memory of the Late South African President for his groundbreaking work towards the cause of plight of the prisoners, their living conditions and prison staff.³⁰

²⁸Center for the Advancement of Public Integrity at Columbia Law School, Prison Corruption – The Problem and Some Potential Solutions, (11:13pm, 6th April, 2019).https://www.law.columbia.edu/sites/default/files/microsites/public-integrity/files/prison_corruption_-_capi_community_contribution_-_september_2016.pdf

²⁹ D.K. Basu v. State of Bengal, (2015) 8 SCC 744.

³⁰ United Nations Organization, Nelson Mandela Day, (10:02am, 4th April, 2019), https://www.un.org/en/events/mandeladay/mandela_rules.shtml

"It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones."

– Nelson Mandela

The Basic Rules³¹ can be summarized as follows:

Basic Principle: It stating the grounds on which the whole rule book shall lie, that there should be no discrimination among the prisoners on any ground and that all religious beliefs and practices of the prisoners shall be respected.³²

Register: The records of every prisoner shall be maintained including the crime committed by them as well as their records of admission and released in a registration book.³³

Separation of Categories: Prisoners shall be detained separately. They shall be classified on the basis of gender, legal status of their trial, nature of crime-whether civil or criminal and age.³⁴

Accommodation: The rules about accommodation basically state that the prisoners must be kept in sanitary conditions and should have proper ventilation and heating, in accordance with the climate. They also refer to the situation in which more than one prisoners are made to sleep in the same cell or dormitory, then they should be tactfully placed so as to the temperament of the prisoners does not cause any trouble³⁵

Personal Hygiene: The prisoners shall be enabled to maintain cleanliness and such appropriate articles must be provided to them including facilities to cut their hair and shaving beard for men.³⁶

Clothing and Bedding: If a prisoner is not allowed to wear his own clothes then he shall be provided with a separate pair of clothing which is clean and dignified. If the prisoner is outside the prison complex for any reason, he shall be allowed to wear his personal clothing which is to be presented to him in clean conditions.

³¹United Nations Office of Higher Commissioner of Refugees, Standard Minimum Rules for the Treatment of Prisoners, (1:037, 4th March, 2019), https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf

³²Rule 1, Standard Minimum Rules for the Treatment of Prisoners.

³³Rule 2, Standard Minimum Rules for the Treatment of Prisoners.

³⁴Rule 3, Standard Minimum Rules for the Treatment of Prisoners.

³⁵Rule 4, Standard Minimum Rules for the Treatment of Prisoners.

³⁶Rule 5, Standard Minimum Rules for the Treatment of Prisoners.

Every prisoner has the right to be allotted separate bedding which is to be clean and hygienic.³⁷

Foods: Food shall be provided to the prisoners at the appropriate hours and should hold nutritional value for the well-being of the prisoner and clean drinking water must be available with the prisoners at all times.³⁸

Exercise and Sport: Prisoners who are not employed for work shall have a minimum of one hour in the open air for their physical exertion and young prisoners shall be given appropriate space and equipment for maintaining their physical well-being.³⁹

Medical Facilities: All prisoners shall have access to medical facilities. Every person must have trained medical officers who are qualified to take care of the prisoners' mental and physical well-being. If a prison complex is not equipped to take care of the medical attention required by a prisoner, the prisoner shall be taken to a medical facility or a hospital which can take care of his needs.

In women's prisons, a medical officer qualified to give pre-natal and post-natal treatment to pregnant prisoners must be present and a neo-natal facility shall also be provided for infant care. The birthing place, i.e. the prison, shall nowhere be mentioned on the birth certificate of the infant.

It would also fall in the job description of the medical officer to ensure that the prisoners receive a proper nutritional diet and adequate amount of physical exercise. They shall also report on the sanitation and cleanliness of the prison complexes.⁴⁰

Discipline and Punishment: Disciplinary actions against the prisoners shall only be taken by the authorities after investigating the matter and giving an opportunity to the alleged prisoner to present a defence, through an interpreter whenever possible and no prisoner shall be punished for the same offence twice.

Any sort of corporal, cruel and inhuman punishments are completely prohibited. Punishments which require placing the prisoner in a confined space or reduction in diet shall only be

³⁷Rule 6, Standard Minimum Rules for the Treatment of Prisoners.

³⁸Rule 7, Standard Minimum Rules for the Treatment of Prisoners.

³⁹Rule 8, Standard Minimum Rules for the Treatment of Prisoners.

⁴⁰Rule 9, Standard Minimum Rules for the Treatment of Prisoners.

authorized after the prisoner has been examined by a medical officer and declared and certified fit to endure it.⁴¹

Instruments of Restraint: Irons and chains shall never be used as restraints. If other instruments are used as restrains, they shall only be used in certain conditions like during transportation, on the advisement of a medical officer or if it is the only way through which a prisoner can be stopped from either harming himself or others.⁴²

Complaints and Requests by Prisoners: All prisoners shall be given an opportunity to meet with the director and prison in-charge even in the absence of authorities to present his request or complaint without any censorship. Unless it is found that the grounds of the complaint or request are baseless and frivolous, it shall be acted upon without any undue delay.⁴³

Contact with the Outside World: The prisoners shall be allowed supervised visits with their families on regular intervals. If the prisoners belong to other foreign countries then they shall be allowed to meet their diplomat representative on regular intervals.⁴⁴

Books: Every prison complex shall be equipped with a library for the mental enhancement of the prisoners.⁴⁵

United Nations Convention against torture and other cruel, inhuman or degrading punishment or treatment

This Convention was opened for signature and ratification on 10th December, 1984 and it came into force on 26th June, 1987.

It consists of 33 articles out of which article 10 and 11 deal with torture of prisoners.

Article 10⁴⁶ -This article ensures that all personnel with authority are educated and informed about the prohibition against torture of prisoners at the time of custody, interrogation and arrest and detention.

⁴¹Rule 10, Standard Minimum Rules for the Treatment of Prisoners.

⁴²Rule 11, Standard Minimum Rules for the Treatment of Prisoners.

⁴³Rule 12, Standard Minimum Rules for the Treatment of Prisoners.

⁴⁴Rule 13, Standard Minimum Rules for the Treatment of Prisoners.

⁴⁵Rule 14, Standard Minimum Rules for the Treatment of Prisoners.

⁴⁶Article 10, United Nations Convention against Torture and other cruel, Inhuman or Degrading Punishment or Treatment.

Article 11⁴⁷-This article instructs all State Parties to always keep with them systematic interrogation rules and instructions for their referral while dealing with arrest, detention or imprisonment with the object of preventing the prisoners from being subjected to torture.

Conclusion

Even though times have changed and laws have evolved, nothing has changed for the people living behind bars. For them, nothing is new and the same old methods are being carried out. There is an immediate need to improve the living conditions inside the prisons. The violation of their basic human rights has made them realise that there is no hope for them. Many international conventions have declared that there are certain rights which cannot be taken away from a prisoner whatsoever yet it has been observed that violation of these rights still take place. As mentioned in the paper, the classic example of the contemporary world, i.e, the Rohingyas and the Syrians, the worst part being that their torturers is their government itself. The people who were supposed to protect them are the ones making them suffer. What can we conclude from that? All the conventions and protocols are impotent if the law makers turn in to law breakers.

However, for places in which the government is not the culprit, if the government could form a body which would conduct frequent visits to the prison and have a check on the prevailing conditions of the prisoners, then this inhuman treatment could be prevented. Corruption is an element which is omnipresent and thus it has seeped its way into the prison. Many prison officials often get bribed and they do certain favours for criminals. Anti-corruption methods need to be put in place to ensure that no criminal would have the opportunity to indulge in corrupt activities with the prison officials and guards.

From the analysis, observations and inferences drawn from the paper, the authors conclude that it is not the absence of provisions that has given invented the problem of torture that is faced by the prisoners but the lack of consequences and answerability for not following such provisions. Therefore, only a stricter implementation of the current provisions and the threat to bear consequences for violating these provisions will bring about a change that we so eagerly wait to witness.

⁴⁷Article 11, United Nations Convention against Torture and other cruel, Inhuman or Degrading Punishment or Treatment.

Suggestions

The following are the suggestions that the researchers recommended, following the research on the said topic;

- ❖ States should make sure that victims of torture will get redressed. Victims should even have an enforceable right to honest and adequate compensation from their offenders.
- ❖ Victims of torture don't suffer alone, however torture conjointly scars members of the family and friends. Hence not only there should be a rehabilitation for victims but even their family and people close to them.
- ❖ More stringent laws against torture in prison to be adopted by Countries on personal level.
- ❖ It should be made mandatory for the UN members to sign UN Convention against torture in prison.
- ❖ An independent body could be set up officially to have a constant lookout at the well-being and their surrounding environment of these prisoners, helping this inhuman treatment to be prevented.
- ❖ Under the sub head of anti-corruption measures for prison it has been highlighted that sometimes due to the low salaries of the prison authorities, the officials in charge tends to be greedy which makes them vulnerable of assisting criminals. Hence the motivations of the prison authorities should be in a constant investigation and a legitimate inquiry regarding the above must be made mandatory. The above could be ensured by raising salaries, ensuring a warm environment for prison officials. Above all making the prison officials feel wanted making their self-actualisation need satisfied.

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