

التعذيب والحق في السلامة البدنية: دراسة حالة العراق

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المستخلص

يتناول هذا البحث موضوع التعذيب وعلاقته بالحق في السلامة البدنية، مع التركيز على الحالة العراقية بوصفها نموذجًا للدراسة. ويوضح البحث أن التعذيب لا يقتصر على إلحاق الألم الجسدي، بل يشمل أيضًا الأذى النفسي والمعاملة القاسية أو اللاإنسانية أو المهينة، ولا سيما في ظروف التوقيف والتحقيق والاحتجاز. كما يبين أن حظر التعذيب يمثل قاعدة أساسية في القانون الدولي لحقوق الإنسان والقانون الإنساني الدولي، وأن الدستور العراقي والتشريعات الوطنية تضمنت نصوصًا تؤكد حماية الحرية والكرامة الإنسانية ومنع التعذيب. ويناقش البحث كذلك التحديات العملية المرتبطة بادعاءات التعذيب وسوء المعاملة في أماكن الاحتجاز، ويخلص إلى ضرورة تعزيز الضمانات القانونية والرقابية، ومحاسبة المسؤولين عن الانتهاكات، وضمان جبر الضرر للضحايا.

الكلمات المفتاحية: التعذيب، السلامة البدنية، ظروف التوقيف، حقوق الإنسان، العراق.

Torture and the Right to Physical Safety: Iraq Case Study

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Abstract

Torture occurs when a person, in his official capacity, inflicts psychological or physical pain or severe suffering to another person for a specific purpose. Sometimes authorities torture anyone to extract a confession of committing a crime, or to obtain information from them. Sometimes torture is used as a mere punishment to instill fear in society, the methods of torture differ, they can be of a physical nature, such as beatings and electric shocks. It can be of a sexual nature, such as rape or sexual humiliation, or it could be psychological in nature, such as sleep deprivation or prolonged solitary confinement, under international law, torture and other forms of ill-treatment are always illegal.

Torture is a crude and crude tool for obtaining information. It is used routinely around the world to extract confessions; Information obtained in this way is unreliable because people will say anything under torture just to stop the pain.

Victims of torture faced a devastating long-term range of consequences; the physical and psychological pain caused by torture can lead to chronic pain and disabilities, post-traumatic stress disorder and depression.

That is why it is important that people who have been tortured receive redress, and that the perpetrators of torture are brought to justice.

Key words: Torture, Physical Safety, Arrest conditions, Human Rights

Introduction

When we think of torture and other ill-treatment, we often think of things like nervous situations, electric shocks, and drowning. These barbaric practices are commonplace in many countries, But these abuses can also include things like inhuman prison conditions, solitary confinement, and the denial of access to medical treatment.

Governments often use national security as an excuse to torture people. Torture occurs when a person, in his official capacity, inflicts psychological or physical pain or severe suffering to another person for a specific purpose. Sometimes authorities torture anyone to extract a confession of committing a crime, or to obtain information from them. Sometimes torture is used as a mere punishment to instill fear in society.

The methods of torture are differ. They can be of a physical nature, such as beatings and electric shocks. It can be of a sexual nature, such as rape, or sexual humiliation. Or it could be psychological in nature, such as sleep deprivation, or prolonged solitary confinement. Under international law, torture and other forms of ill-treatment are always illegal.

Many countries have failed to criminalize torture as a specific crime under their national laws, and governments around the world still defy international law by torturing people. Torture can never be justified, It is brutal, inhuman, and replaces the rule of law with terror. Nobody feels safe when governments allow its use.

First :Torture and its Most Important Forms

A- Torture's Concept:

Torture defined as any deliberate act that would inflict severe pain, or suffering for a person, whether physical or mental, for purposes such as; obtaining from him or from third party information or recognition, or punishing him for an act, he was suspected of committing by him or By a third party, or terrorize, compel him to obey or the third party. and for any reason based on the distinction of any kind, when the pain or suffering is inflicted on the person by incitement, raping or acquiescence from an official or official representing the official authority, and doesn't include torture pain or suffering arising out of, or which is part of, or which coincides with legal

penalties, inherent in these penalties, or which is an accidental result of them)1(.

B- Forms of Torture

General understanding of the extent of torture and ill-treatment has expanded greatly since the adoption of the Universal Declaration of Human Rights in 1948, and from types of treatment that international human rights bodies and relevant mechanisms consider to constitute torture or ill-treatment as following)2):

-1 Intimidation

The idea of mental torture is a component of the definition of torture under Article 1 of the Convention against Torture, where the Special Rapporteur on Torture has indicated that fear of physical torture may itself constitutes mental torture. As well as, the threat of death for the physical safety of the victim, or the third person, which can reach the limit of cruel, inhuman, or degrading treatment.

-2 Sensory Deprivation

Where the European Court of Human Rights ruled in Ireland vs. The United Kingdom that the five methods of sensory deprivation that were applied together in interrogating prisoners held under Northern Ireland's emergency law amounted to inhuman and degrading treatment. Also, the risk was used under which prisoners held in a detention center surrounded by security procedures, under which the almost complete ban to conversational.

-3 Arrest Condition

The European Commission for Human Rights cited "scandalous overcrowding", and other factors like detention conditions the court considered as an inhumane treatment, and it was clear to the Committee against Torture that the relevant conditions of detention amounted to "inhuman and degrading treatment, as well as where specific aspects of the treatment of prisoners such as; overcrowding, insufficient food Water, lack of medical care, and lack of basic personal health needs by women. Prolonged solitary confinement has been the subject of ill-treatment outcomes, and has been described by international bodies and mechanisms as potentially ill-treatment.

-4 Disappearances

Article 1 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance (the Declaration on Enforced Disappearance) states that enforced disappearance deprives the person to whom he is subjected to the protection of the law, and inflicts severe torture on him and his family, violates his rights to freedom and security, and his right not to be subjected to torture as it violates his right to life, or constitutes

a serious threat to his life. The Special Rapporteur on torture has also stated; that prolonged incommunicado detention in a secret location may amount to torture, in addition, the torture endured by the relatives of the disappeared to the extent of torture.(1).

-5 Forced Destruction of Homes

The Committee against Torture stated that Israeli policies regarding house demolitions and closures, can in some cases reach to cruel and inhuman treatment or punishment.

-6 Medical and Practical Tests

Article Seven of the International Institute for Civil and Political Rights states “it is not permissible to conduct any medical or scientific experiment on anyone without his free approval”.

-7 Corporal Punishment

The Human Rights Committee has endeavored to banned torture and ill-treatment under Article 7 of the International Covenant on Civil and Political Rights and affirmed corporal punishment, including excessive intimidation, which is ordered as punishment for committing a crime, or as an educational or disciplinary measure.

-8 Excessive Use of Force in Order to Enforcement Law

The European Court of Human Rights has ruled that for a person deprived of his liberty, any recourse to mental strength that his behavior did not necessitate infringes on human dignity and constitutes a violation.

-9 Use the Death Penalty

The European Court of Human Rights ruled in *Suring v. United Kingdom* case that the manner in which it was imposed or carried out (the death penalty), and the personal circumstances of the convicted person, the disproportionate proportionality to the crime committed, as well as, the conditions of detention pending the execution of the death penalty; are examples of factors that can make the treatment or punishment of the convicted person found her or him as a victim of ill-treatment. The Committee against Torture, in examining the reports of the state’s parties to the Convention against Torture stated; that the persistence of the death penalty is a source of concern to it, and feeling of suspicion of many persons sentenced to the extent of cruel or inhuman treatment, and it must abolish the death penalty as soon as possible(1).

-10 Racial Discrimination

Whereas the European Court of Human Rights considered that the Greek Cypriots living in the area administered by the Turkish Cypriots in northern Cyprus were subjected to their living conditions of discrimination that amounted to degradeng treatment.

-11 Armed Conflicts Violations

Using civilians as human shields and digging trenches on the battlefronts is cruel and inhumane.

-12Types of Torture or Ill-treatment based on Gender

The Special Rapporteur on Torture has pointed out that rape, sexual abuse, harassment, forced abortion, and virginity are considered as forms of torture that concerned women specifically.

The UN Special Rapporteur on violence against women, causes, and consequences, also considered cultural practices such as female genital mutilation and honor crimes.

In the old-time, all human rights to physical integrity and freedom from torture were subject to permanent violation. In ancient civilizations, slavery was common but it was considered an important economic pillar in society, and slave didn't enjoy any rights, usually assaulted him with beating and victimization and was charged with hard works.

As was a large number of wars and invasions led to the captivity of large numbers of human beings who were abused, and tortured in brutal ways, which were among the most common manifestations of the right's violation of physical integrity.

In addition, the accused was extracting from him a confession of torture and other inhuman treatment, and there were no guarantees for a person, not attack his body and not to subjected torture.

With the advent of Islam, the Messenger (may God bless him and grant him peace) forbade torture by saying (God punishes those who torture people in the world), Hisham bin Hakim bin Hizam passed on people of the Nabataeans by the Levant. They were put under sunlight. He said: What do they do? They said: They were locked in a tribute. Hisham said: I bear witness to I heard the Messenger of God, peace and blessings be upon him, saying, "God tortures those who torture people in this world." Narrator: Orwa bin Al-Zubayr Al-Muhaddith: Muslim))

In addition to this, we find that in Islam the issue of torture and cruel treatment is a forbidden matter, which contradicts the human dignity with which the Islamic Sharia is concerned. One of the manifestations of dignity is that a person lives in his society in a way that is consistent with his humanity and not harming him by word or deed. Restoring rights to the oppressed and whose rights and freedoms have been violated, and Muslim scholars and jurists stress the illegality of torturing or ill-treating the accused, whether in the Qur'an texts or the hadiths of the Prophet

Second: The Integrity of the Body

The integrity of the body was not the subject of a philosophical and religious consensus. This safety also constituted one of the main stakes in the logic of force and the role of power in domination in its various forms. Exposure to the body has been the subject of intimidation and carnage since

ancient archaeological panels. The idea of punishing exposure to the body was rooted in Pharaonic civilization, Mesopotamian civilizations, ancient Chinese, Indian civilizations, and pre-Colombian civilizations in America and Africa. Exposure to the body was used as a method of weakening enemies. The idea of hindering individuals on the enemy's front, civilians or fighters, was the raised of the logic of weakening the enemy itself. Consequently, there was no rejection in the prevailing values and laws at that time(1).

We are not surprised that this political theoretical struggle coincides with the launching of a branched struggle for the physical sanctity of this new person who is still awaiting recognition in one of the turning points of the future. Also, we are not surprised that the most important writings known to defend the safety of the soul and the body only refer to the Enlightenment era, that is, for the beginning of the eighteenth century. The bulk of the literature that we have seen in eastern cultures leaves wide margins and blurry areas on the issue of body safety. Some Islamic schools have tried to forcefully present the issue through the concept of a complete human being defended by Sufi trends in Islam and Ibn Arabi. However, the marginalization of Sufis' theses in the prevailing culture determined their role in protecting the soul and protecting the body and considering life as a right that human can't dispose of.

What is important in these intellectual battles is their very existence. That is, it exposes an escalating rebellion against what seemed throughout history to be self-evident, that is, the inferiority of the individual. It also highlights the continued political emancipation of the Western person and his struggle for his political, economic, and social rights. This means that the social movement in the West has evolved in a manner in which democratic liberalization coincides with the person's crystal as a value no less than the value of the group and in which the person's crystallization as a value no less than the value of the group coincides with the democratic liberation.

Recognition that the individual has more than just a number in an equation and that he has inherent dignity and dignity in it, and rights imposed by this dignity paved the way to consider the integrity of the soul and body as a fundamental right of his rights.

But, can peace and souls be addressed in peace and war in the same way? Did not mankind fail to this day prohibit war and chose to legalize human behavior in war? Not to all pay the price in leaving the boundaries ambiguous between insisting on the human right to physical integrity and the widespread production of causes of disability, mutilation, and injury. In a situation like this, does the issue of mines not break all the barriers between war and peace, between civilians and the military, between vulnerable and powerful groups? Where mine is the blind weapon par excellence. didn't the

arms lobbying and power rhetoric make the world's largest countries (the United States, Russia, China and India) out of international efforts to ban the use of mines?

Despite all the shortcomings of international law in this regard, there is an arsenal of prevention and resistance distributed among the various conventions and declarations: according to international humanitarian law, the group that composes international law that regulates the conduct of parties to armed conflicts: fourth Geneva Conventions, dated 12 August 1949,¹⁾ in the third common article, assault on life and physical integrity, especially killing in all its forms, mutilation, cruel treatment, torture, and assault on personal dignity, in particular, degrading and degrading treatment. Article 13 of the Third Geneva Convention calls for "the protection of prisoners at all times, especially against all acts of violence or threats, against insults and curiosity of the masses, and prohibits reprisals from prisoners of war." Article 146 of the Fourth Geneva Convention provides for the commitment of the High Parties to take the necessary legislative action to impose effective criminal sanctions on persons who commit or order the commission of grave breaches of the Convention. Article 147 of the same convention considers intentional killing, torture, inhuman treatment, or intentional infliction of severe pain, serious harm to physical integrity or health, or conducting special experiments, or exile, and the destruction and usurpation of property, as gross violations.

The two Additional Protocols to the Geneva Conventions adopted in 1977, expand the list of specific prohibited acts. Additional Protocol I (ratified by the United States), which relates to international armed conflicts, expands the list of grave breaches (Articles 11 and 85). It reaffirms the prohibition of "attacks on life, health, or physical or mental integrity of persons.»

In addition, Protocol II, on non-international armed conflicts, prohibits "attacks on life, health, or the physical or mental integrity of persons.»

The obligations set out in the Geneva Conventions and the two Additional Protocols are binding on states parties to these instruments. All states are effectively parties to the Geneva Conventions, and most are parties to the Additional Protocols. Moreover, not only states, but also other parties to armed conflict are obligated to apply the provisions of Common Article 3 and, where applicable, the provisions of Additional Protocol II.

In 1998, The statute of the International Criminal Court approved the crime of torture with in its definition of war crimes and crimes against humanity. Article 8 stipulates torture, intentional infliction of severe pain, or serious harm to physical integrity, attacks on personal dignity, degrading treatment, and degrading treatment as war crimes. The definition of crimes

against humanity includes any large-scale or systematic attack that includes such acts as torture, rape, forced prostitution, forced pregnancy and inhumane acts of a similar nature that intentionally inflict severe pain or serious harm to physical integrity or mental or physical health..

In many of its articles, the Iraqi constitution has referred to the prevention of torture in all its forms and the right to physical and psychological integrity.

Article 15th(1) of the Iraqi constitution stipulates that (everyone has the right to life, security and freedom. Deprivation or restriction of these rights is not permitted except in accordance with the law and based on a decision issued by a competent judicial authority).

Article (37) stipulates) first 2:

A - Human freedom and dignity are protected.

B - No one may be arrested or investigated except pursuant to a judicial decision.

C - It prohibits all types of psychological and physical torture and inhuman treatment, and does not reflect any confession extracted through coercion, threats, or torture, and the injured party may claim compensation for the material and moral damage he sustained, according to the law.

Second: The state guarantees the protection of the individual from intellectual, political and religious coercion.

And the Penal Code No. 111 of 1969 amended stipulates the imposition of penal sanctions for anyone who uses harsh methods to extract recognition of the torture method, in accordance with Article 333 thereof. And the Law on Discipline of State and Public Sector Employees No. 14 of 1991 stipulated the formation of an investigation committee against any employee or official charged with a public service if he committed a crime of assault, torture, or acts in violation of public office duties or exceeded the limits of his job by committing an act of torture.

Law No. (30) of 2008 has been issued regarding Iraq's accession to the Convention against Torture and Other Forms of Cruel and Inhuman Treatment and Punishment, which was adopted by the United Nations General Assembly. In 2012¹), Ministry of Human Rights registered nearly 600 complaints related to torture. While the Presidency of the Public Prosecution / Supreme Judicial Council stated that it received more than 6000 complaints during the years 2011, 2012, and 2013 to take legal measures against them, while in the Kurdistan Region, the independent commission report indicated Human rights claim that detainees in Asayish prisons and police stations are subjected to torture during the investigation.

Dozens of various cases are lined up on the shelves of police stations and anti-crime departments, while administrative contexts require speedy resolution of them even those that are difficult to accomplish and open from

time to time, while the investigation team resolves the case and moves to another to ensure the satisfaction of the higher authorities, at the expense of professionalism and justice, according to specialists, They use torture and intimidation to extract confessions, many of which are in fear. What the victims' families pay bribes to the officers in order not to delay the case and discover the perpetrator, which inflames the enthusiasm of those officers to extract confessions in any way, even if they lead to an innocent death or imprisonment for years long.

"In 2019 Sputnik" published a statistic on the number of allegations of allegations of torture and ill-treatment in Iraqi prisons for two years, with numbers that registered a double increase during the past year, which witnessed more than 14 thousand cases of torture.

The statistics obtained from the Iraqi High Commissioner for Human Rights documented allegations of torture and ill-treatment in Iraqi prisons for the years (2018-2017), increasing from about two thousand cases to up to 15 thousand.

Sputnik's correspondent in Iraq obtained this statistic on allegations of torture and ill-treatment in prisons from a member of the Iraqi High Commissioner for Human Rights, Ali al-Bayati During 2017, there were 1,774 lawsuits that were exhibited, and The number of settled cases: 1759, while the number of rounded suits reached 15 cases. and according to the statistic, the percentage of these cases, 99%.

During the year 2018, the presented cases, which registered a significant increase compared to the previous year, reached 14614 cases, while the number of deducted cases reached 13788 cases, while the number of rounded cases amounted to 826 cases, while the discount rate reached 94%)1(.

Al-Bayati revealed the four reasons specifically for not resolving cases related to allegations of torture and ill-treatment, which are four on top, first: the lack of answers from the relevant authorities, second: the failure to secure the presence of the accused to record their statements as complainants, third: as stated in the reasons for not resolving these cases, within the prepared statistics From the Iraqi Judicial Council - Department of Statistics, it is delay in submitting the accused to a medical committee in order to link his medical report, and fourthly, failure to implement the arrest warrant against the accused, because they have a job character of a special nature, and finally delegate other courts to record the statements of the complainants.

In the same year of 2019, Human Rights Watch announced that Iraqi officers continued to torture detainees in a prison in the city of Mosul, despite the efforts of human rights defenders to prevent it.

Human Rights Watch reported that in its report it documented new allegations of torture in al-Faisaliah prison in northern Iraq early of 2019,

about six months after the publication of a report about what it described as “significant” violations there. These violations included different forms and forms, whether in terms of places of detention, investigation procedures, or dealing with prisoners, which negatively affected the image of Iraq in its dealings with prisoners and its commitment to international agreements and treaties guaranteeing human rights and freedoms in general and prisoners in particular.

All these violations, Human Rights Watch sent full details about the subject of violations to the Prime Minister’s Office, the Minister of Foreign Affairs and the Ministry of Interior without receiving any response, and this marks a dangerous indicator in the issue of the government’s response to these reports.

The statement quoted the deputy director of the Middle East department at the organization “Luma Fakih”, saying: “It is not surprising that the violations continue, with the Iraqi government ignoring reliable reports on torture,” asking: “What do the authorities need to take the allegations of torture seriously?”

Human Rights Watch noted that Iraqi judges do not normally investigate allegations of torture, noting that the Iraqi “Supreme Judicial Council” responded to Human Rights Watch’s inquiry, saying that a group of Iraqi courts had investigated 275 complaints against investigators by the end of last year, while the council stated 176 of these cases were “resolved” while 99 are still pending.

Third :Measures that Enhance the Right of Physical Integrity and Reduce Torture

In fact, this paper came with a set of procedures and recommendations that are fully consistent with the vision of OHCHR in this regard and from it:

1- Enforce laws that never allow torture and ill-treatment, in any form. It should also clarify for members of the police and other security forces the texts of those laws and international conventions that prohibit torture.

2- The need to consider the crime of torture a felony, and to increase the penalty for law enforcement officials.

3- Joining the Optional Protocol to the Convention against Torture, which permits the establishment of a system of regular visits by independent international and national bodies to places of deprivation of liberty.

4- Requesting the ministries of the Interior, Defense, Justice, and Labor to facilitate the implementation of the mechanism outlined in the fifth paragraph of Article Five of the Commission Law No. 53 of 2008 that allows the Commission to conduct visits to prisons, social rehabilitation centers, positions and all other places without the need for prior permission and to meet with the governed, and this task is consistent with Optional Protocol to the Convention against Torture.

5- Requesting the Iraqi government to issue a statement of recognition and acceptance of the competence of the committee formed in accordance with Article 22 of the Convention against Torture, which is concerned with examining the communications in line with its texts and the recommendations of the first universal periodic review.

6- Asking the Iraqi government to submit its first basic report based on the provisions of the Convention against Torture, which obliges member states to submit it one year after depositing the instrument of accession.

7- Bring anyone responsible for committing acts of torture and other serious human rights violations to justice.

8- The necessity for the public prosecutor to perform a supervisory role on all detention centers of the authorities, in order not to subject the detainees to ill-treatment, torture or any harm affecting their psyche, and to investigate cases that may indicate that detainees and arrested detainees are subjected to any form of torture or / and ill-treatment Transaction.

9- Provide effective judicial means at all times through which the relatives of the prisoners and their attorneys can immediately know the place of their detention and the authority holding them and ensure their safety.

10- An impartial and effective investigation of all complaints of torture should be urgently undertaken by a commission independent of the parties accused of committing torture. The means used in this investigation and the results resulting from it should be announced. Officials suspected of torture should be suspended from duty during the investigation.

11- Provide protection for grievances, witnesses and others at risk from any intimidation or reprisals they may face.

12- Establish training programs for persons in charge of law enforcement concerned with detention in relation to everything related to the topic of torture and its opposition.

13- To provide justice to those who are subjected to an act of torture and to compensate him in a fair and appropriate manner, including means of rehabilitating him as fully as possible.

Conclusion

The use of torture destroys people, weakens the rule of law, undermines the criminal justice system, and undermines public confidence in public institutions and the state that represents it. It causes severe pain and suffering to victims that last long after the acts of torture have ceased, and are of no use. A common myth about torture is that it is sometimes the only way to obtain information that can save lives.

Countries have a wide range of ways to gather information about crimes - both past and planned - without losing their humanity.

Torture is a crude and crude tool for obtaining information. It is used routinely around the world to extract confessions; Information obtained in

this way is unreliable because people will say anything under torture just to stop the pain.

Victims of torture faced a devastating long-term range of consequences; the physical and psychological pain caused by torture can lead to chronic pain and disabilities, post-traumatic stress disorder and depression.

That is why it is important that people who have been tortured receive redress, and that the perpetrators of torture are brought to justice.

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