

IV.3 : UNDER THE INTERNATIONAL CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT AND PUNISHMENT, 1984.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations Convention against Torture) is an international human rights instrument, under the purview of the United Nations that aims to prevent torture and cruel, inhuman degrading treatment or punishment around the world. Like the other covenant or conventions, this convention is having an implementing mechanism. The Convention requires states to take effective measures to prevent torture within their borders, and forbids states to transport people to any country where there is reason to believe that they will be tortured.

The text of the Convention was adopted by the United Nations General Assembly on 10 December 1984 and, following ratification by the 20th state party, it came into force on 26 June 1987.¹ 26 June is now recognized as the International Day in Support of Victims of Torture, in honour of the Convention. As of September 2013, the Convention has 154 state parties. India ratified the convention on 14th October, 1997.²

1. RESPONSIBILITY OF STATES TO PREVENT TORTURE

Although the convention contains 33 articles, yet, only the relevant part which pertains to judicial proceedings applicable to subordinate courts are noted herein. Article 2(1) of the convention provides that each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. 3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

The above provisions make it crystal clear that torture or other inhuman or degrading treatment cannot be inflicted on any person on any occasion. This cannot even be inflicted even during the state of war. The convention has forecast a remarkable provision to the effect that even if a superior officer orders the subordinate officers to inflict torture or other inhuman or degrading treatment on a person either a s prisoner, or arrestee or otherwise,

the same would not be recognized as a justifiable ground. In a nutshell, torture in any form and in eventualities is prohibited.

2. RIGHT AGAINST TORTURE

Article 4 of the convention provides that each state party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. Thus, it appears that the convention gives a mandate to the state parties to the convention that torture or attempt to torture in any form is recognized as an offence and punishable. It further provides that the person or persons who aid, instigate or participate in commission of any act of torture are also not scared and exempted from punishment that may be prescribed.

Torture comprises of physical torture and mental torture. Physical tortures can be seen sometimes. But mental torture cannot be seen. It can only be perceived by the victim. It is said that mental torture is more severe and dangerous in as much as it finishes the life of a person from inside. Although physical torture are made punishable under the law of the land in our country such as criminal force³, simple hurt,⁴ grievous hurt,⁵ yet, there is no law making the mental torture punishable.

REFERENCES

1. http://en.wikipedia.org/wiki/United_Nations_Convention_against_Torture.
2. Ditto.
3. Section 350 of the Indian Penal Code defined the term 'criminal force'. It states that whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other. And section 352 prescribes its punishment. It provides that whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.
4. Section 319 of the Indian Penal Code defined the term hurt. It provides that whoever causes bodily pain, disease or infirmity to any person is said to cause hurt. Section 323 of the Code prescribes the punishment. It provides that whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.
5. Section 320 of the Indian Penal Code defines the terms grievous hurt. As per this section, the following kinds of hurt only are designated as "grievous":- First- Emasculation. Secondly- Permanent privation of the sight of either eye. Thirdly- Permanent privation of the hearing of either ear. Fourthly- Privation of any member or joint. Fifthly- Destruction or permanent impairing of the powers of any member or joint. Sixthly- Permanent disfiguration of the head or face. Seventhly- Fracture or dislocation of a bone or tooth. Eighthly- Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

Section 325 and 326 respectively prescribes the punishment of grievous hurt. Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with 152[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. In all other case the offender would be punished under section 325 of the Code which may extend to imprisonment of seven years, and shall also be liable to fine.

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