CHAPTER – III
PROTECTION FOR CUSTODIAL TORTURE: INTERNATIONAL PERSPECTIVE

There is an international consensus that the abuse like custodial torture or violence violate the inherent dignity or the human person and are not justified under any circumstances. The prohibition of torture and ill-treatment, particularly in custody, is found in all major international and regional human right treaties. At the international level a number of significant efforts have been made which can act as important tool to fight against custodial torture.\(^1\) Therefore, the U.N. Charter in its Preamble reaffirms its “faith in fundamental rights, in the dignity and the worth of the human person, in equal rights, of men and women” and the charter further spells out the achievement of international cooperation “in promoting and encouraging respect for human rights and for fundamental freedom for all without distinction as to race, sex, language or religion,” alongwith these basic observed set forth by the UN Charter, the world opinion is mobilized against torture.\(^2\) The law relating to the prohibition of torture has evolved with intensive involvement of the international community through the United Nations as well as regional organizations in the form of adoption of various human rights and humanitarian law treaties. The prohibition of torture is also considered to carry is special status in international law, that of jus cogens, which is ‘peremptory norm’ of international law.\(^3\) Torture is prohibited under:\(^4\)

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3.1 The International Committee of the Red Cross (IRC), 1863
3.2 The Universal declaration of human rights, 1948
3.3 The Geneva Convention, 1949
   3.3.1 Geneva convention relative to the protection of civilian persons in time of war, 1949 (Article 31)
   3.3.2 Geneva convention relative to the Treatment of prisoners of War (1949) Article 12, 14, 17, 130.
   3.3.3 Protocol Additional to the Geneva Convention, 1949 relating to the protection of victim of international armed conflicts (Protocol I) (1977) Article 75
3.4 The European Convention on Human Rights, 1950
3.5 The United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955
3.6 The International Covenant on Civil and Political Rights, 1966
3.7 The Human Rights Committee,
3.8 The American Convention on Human Rights, 1978
3.9 The Code of Conduct for Law Enforcement Officials, 1979
3.10 The council of Europe Declaration on the Police, 1979
3.12 The Principle of medical ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment, 1982

4. Supra note 2 at 343
3.13 The United Nations convention against torture and other cruel, inhuman or degrading treatment or punishment, 1984

3.14 The UN Committee Against Torture

3.14.1 State obligation to investigate acts of torture

3.14.2 State obligation for the enforcement of persons rights to reparation and compensation.

3.15 The Inter-American convention to prevent and punish torture, 1985

3.16 The International Instruments with regard to the Special Rights of Juvenile Accused

3.16.1 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). 1985; and


3.17 The UN Special Rapporteur on Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, 1985

3.18 The European Convention for the prevention of Torture and inhuman and degrading treatment or punishment, 1987

3.18.1 Torture

3.18.2 Degrading treatment

3.19 The body of principles for the protection of all persons under any form of detention or imprisonment, 1988
3.20 The World conference on human rights Vienna Declaration, 1993

3.21 The Istanbul Protocol, 1999


3.23 COE – Committee for the Prevention of Torture Established

3.1 The International Committee of the Red Cross (ICRC), 1863

Founded in 1863 in Geneva as an impartial private humanitarian body, the International Committee of the Red Cross is active in many forms of protection and assistance to victims of armed conflict, as well as situations of internal strife. It operates on the basis of strict neutrality between the parties to the conflict. In cases of international armed conflict between States Party to the Geneva Conventions, the ICRC is authorized to visit all places of internment, imprisonment and labour where prisoners of war or civilian internees are held. In cases of non-international armed conflicts, it offers its services to the conflicting parties and, with their consent, has access to places of detention. In situations of internal strife and tensions it offers humanitarian initiatives that may include visits to security detainees. Delegates visit detainees with the aim of assessing and, if necessary, 

6. Id at 75.
improving the material and psychological conditions of detention and preventing torture and ill-treatment. The visit procedures require access to all detainees and places of detention, that no limit be placed on the duration and frequency of visits, and that the delegates be able to talk freely and without witness to any detainee. Individual follow-up of the detainees’ whereabouts is also part of ICRC standard visiting procedures.\(^8\) Co-operation and trust between the ICRC and authorities are essential. Visits and the reports made on them are confidential.\(^9\)

To draw definitive conclusions on such a difficult topic as the one formulated in the heading would be presumptuous. Let it simply be said here that ICRC endeavour in its work to bring relief and assistance to all prisoners it visits in a conflict situation, and to ensure their physical and moral integrity. This applies to all parties and to all sides.

Emphasis has been placed on the necessity of having mental and particularly medical, interim diaries. The necessity is particularly great when torture is involved. By obtaining its information directly from all sources and through firsthand assessments by its own personnel, including medical staff, it ICRC is able to draw up comprehensive reports which it transmits to all authorities concerned. By ensuring that all reports are as professional as possible, appropriate requests can be made at all level for a stop to all use of torture.

\(^8\) Id at 283.  
To this effect ICRC delegates and physicians must constantly strive to maintain a professional approach in making their assessment. In reporting cases of torture to the authorities, they must avoid the pitfalls inherent in categorization and database simplification. Use of tabulations and statistics is better left to physicians and medical groups who do research in adequate settings, using proper scientific methodology. The two approaches are complementary but most not interchangeable.

There were, however, two obstacles to even greater effectiveness of the international committee of Red Cross, 1863. First, the organization could only work in those countries whose Government agreed to allow them to do so. Second, a condition of their access was that their finding would remain confidential, regardless of any lack of improvement in the behaviour of the authorities. It would only make its reports public, if the authorities published its reports in a selective or misleading way, either to make them look better than was the case or to make a various Government look worse than was merited.

3.2 The Universal Declaration of Human Rights, 1948

The universal prohibition of torture and ill-treatment was proclaimed by the General Assembly of the United Nations when it adopted the Universal Declaration of Human Rights on 10 December 1948. The principles of the Declaration have been the fountainhead of
international human rights law and are widely accepted as customary international law, applying to all nations.\textsuperscript{10}

The Universal Declaration of Human Rights, 1948,\textsuperscript{11} besides providing in general certain rights restoring the dignity of every human beings like, the rights of personal liberty, equality before law and the right against any discrimination to every human being;\textsuperscript{12} also contained a few provisions pertaining to the rights of an accused.\textsuperscript{13}

Article 3 of the Declaration provides that “Everyone has the right to life, liberty and security of person.”

Article 5 of the Declaration provides that, “No on shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. This Article is directly related to the rights of an accused against custodial violence, either during the custody of police or judicial custody.

Article 7 of the Declaration states that “All are equal before the law and are entitled without any discrimination to equal protection of the law.”

Article 9 of the Declaration declares that “No one shall be subjected to arbitrary arrest, detention or exile.” According to Article 10 of the Declaration an accused has the Right of Fair and Public Trial and also a right to be heard by impartial tribunal, in the determination of

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\textsuperscript{11} U.N. General Assembly Resolution No. 217A(III) of 10 Dec. 1948.
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his rights, and of any criminal charges against him. Article 10 of the Declaration is as under:

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11(1) of the Declaration provides that, "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence." Further, Article 11(2) of the Declaration provides that, "No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed or shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed."

On the basis of the above mentioned provisions of the Universal Declaration of Human Rights, 1948, the various rights of an accused recognized under the Declaration can be classified thus:14

(i) Right of accused to equality before law;
(ii) Right of accused to life, liberty and security;
(iii) Right of accused against torture or inhuman punishment;
(iv) Right of accused to have a fair and public trial;

(v) Right of accused to be protected against ex-post laws; and

(vi) Right of accused to be presumed innocent.

Nowadays, the above rights of accused persons have been provisioned at the world level. It has been expected through this Declaration that every country or stage shall make provision of these rules in its own law.

Since the adoption of Article 5 of the UDHR, a number of procedure of varying degrees of effectiveness have been proved for under the various global or regional instruments that have been created. Their common aim is to ensure that the prohibition of torture and ill-treatment is enforced at the national level. The procedures under the various treaties and protocols cover a wide range of practice. As example, one might begin by citing the establishment of expert bodies in order to examine obligatory reports submitted by the State parties, and move onto verification visit or preventive visit to place of detention. Other practices established by the treaties and protocols include reception and adjudication of individual or interstate complaints by international or regional organs and submission of various types of recommendations by expert bodies, often regarding the interpretation of various concepts relevant to torture or measure to take in order to secure enhanced implementation. Most of these obligations flow from legal commitments freely entered into by a state party and are applicable to state parties. Thus, the procedures do not reach beyond those states that have decided to adhere to different treaties.
In contrast, there are several mandates specifically dealing with torture which are either global or applicable to all Member State of the United Nations. Alongside these specific measures, there are mechanism and procedures for dealing with allegations of human rights violations, including torture and ill treatment, in confidential or public procedures on the pain of various organs, in particular the Commission on Human Rights. In addition, other organs and individuals are empowered to bring up question of torture ex-officio or in response to requests from Member States. Infact, this is frequently accomplished through general provisions regarding the promotion and protection of human rights under the Charter of the United Nations or other Charters, as well as in resolutions addressing the mandates of various high officials of the United Nations, the Secretary – Generals of regional organizations, the UN High Commissioner for Human Rights and the office of the High Commissioner, the UN Crime Prevention Branch and in regard to reforms of judicial or penal systems, increasingly, various development organs.  

In order to reach the goal of full implementation of the prohibition against torture and ill treatment, it is submitted that effort toward implementation is to demand accountability at all levels, regardless of whether an act of torture represents an isolated incident committed by a particular official, or is part of general practice set in motion by despotic Government, step should be taken to convince more countries to adhere to the convention against torture and other

relevant human rights instruments, step should be taken to develop more effective on the absolute prohibition of torture and ill-treatment and on ethical standards and code of conduct for specified professional group. Apart from this steps should be taken towards the adoption of a strong Optional Protocol to the Convention against Torture, providing for a global system of preventive inspection visits.

3.3 The Geneva Conventions, 1949

The four Geneva Conventions, adopted by an international Diplomatic Conference in 1949, form the centre piece of international humanitarian law, often referred to as ‘the rules of war’. Although the conventions deal principally with international armed conflicts, certain provisions (and particularly Additional Protocol II) are relevant in the context of internal armed conflicts, such as civil wars, insurgencies and low intensity operations against armed groups. In such situations, there is often a complementary interaction between human rights standards and the additional humanitarian standards that apply in situations of armed conflict. In all circumstances, however, torture and ill-treatment of all persons in any form of custody is prohibited. The Article 3 of Geneva Conventions provides that:17

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated

16. Supra note 7 at 14.
humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above mentioned persons:

1. violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
2. outrages upon personal dignity, in particular, humiliating and degrading treatment.

The right to freedom from torture is absolute and includes time of war, as it is prohibited by this convention. There is a duty to protect the life, health and safety of civilians and other non-combatants, including soldiers who are captured or who have laid down their arms. Torture of such protected persons is absolutely forbidden. Common Article 3 to the Geneva Conventions, for example, means violence of life and person, in particular murder of all kinds, mutilation, cruel treatment and torture as well as Outrages upon personal dignity, in particular humiliating and degrading.

3.3.1 Geneva convention relative to the protection of civilian persons in time of war, 1949 (Article 31)

The use of force to obtain information is specifically prohibited in Article 31 of the fourth Geneva Convention, which states that no physical or moral coercion shall be exercised against protected

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persons, in particular to obtain information from them or from third parties.

3.3.2 **Geneva convention relative to the Treatment of prisoners of War (1949) Article 12, 14, 17, 130.**

Provision in the third Geneva Convention\(^{19}\) say that prisoners of war “are entitled in all circumstances to respect for their persons and their honour (Article 14) and must at all time be protected, particularly against acts of violence or intimidation and against insult and public curiosity” (Article 13). Article 17 stipulates that no physical or mental torture, nor any other form of coercion may be inflicted on prisoner of war to secure from them information of any kind whatever, prisoner of war who refuses to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind. Torture or inhuman treatment of prisoners of war is a grave breach of the convention (Article 130).

Some elements of international humanitarian law have also become part of customary international law. This means that all detainees in wartime are protected by certain minimum safeguards irrespective of their legal status.

3.3.3 **Protocol Additional to the Geneva Convention, 1949 relating to the protection of victim of international armed conflicts (Protocol I) (1977) Article 75**

Article 75 of the first Additional Protocol to the Geneva Convention,\(^{20}\) which is recognized as restating customary international law, provides that “torture of all kinds, whether physical or mental” against

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“persons who are in the power of a party to the conflict and who do not benefit from more favourable treatment under the Geneva Convention, “shall” remain prohibited at any time and in any place whatsoever, “whether committed by civilian or military agents.” “Cruel treatment and torture” of detainees is also prohibited under common Article 3 to 1949 Geneva Conventions, which is considered indicative of customary international law.

3.4 The European Convention on Human Rights, 1950

The prohibition of torture has been firmly established in European human rights law since 1950 when the Council of Europe adopted the European Convention on Human Rights. A majority of the OSCE participating States are member States of the Council of Europe and thus are directly bound by the European Convention on Human Rights. Article 3 of the Convention provides that:21

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

This statement is similar, but not identical, to Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights. The omission of the word “cruel”, however, is not significant. As of November 1998, the newly constituted European Court of Human Rights is able to receive individual applications from anyone in a member State of the Council of Europe claiming to be a victim of a breach of the Convention. Its judgements are legally binding.

An important characteristic of Article 3 is the identification of its prohibitions as absolute. It is time that Article 3 itself does not state that they are absolute, nor does the convention employ terms such as 'absolute right' or 'absolute prohibition'. The characterization of the prohibition in Article 3 as absolute has emerged from general human rights discourse and litigations before Strasbourg supervisory organs. Unfortunately, neither the court nor the Commission has devoted much time to defining the motion of an absolute right. In practice, the tendency has been for practitioners and academic writers to assure that the absence of permissible limitation, exceptions or derogators provides a sufficient basis for the conclusion that the prohibition are absolute. Indeed reading Article 3 and 15(2) together clearly suggests that the drafters of the convention intended the rights enshrined in Article 3 to be superior in that they are not subject to exception or derogation, even in time of war or other public emergency threatening the life of the nation.22

Thus it is submitted that there is evidence to suggest that the guarantees in Article 3 are special and that they are treated as such by the supervisory organs. Article 3 of the convention on human rights guarantees absolute right on account of impermissibility of limitation or derogation. Absolute right must mean more than the impermissibility of limitations, exception and derogation.


The United Nations had adopted in the year 1955 the "Standard Minimum Rules for the Treatment of Prisoners, 1955" for providing

certain rights to 'prisoners under arrest' or 'prisoners awaiting trial'. In these Rules though the word “Accused” was not used, certain rights were provided in the Rules to the 'prisoners under arrest' or 'prisoners awaiting trial' which are naturally covered under the term accused.

Rule 84(1) of the Standard Minimum Rules, provides that: 'persons who are not convicted and are kept in police custody or detention and waiting for trial shall be known as 'untried prisoners'. It is the right of unconvicted and untried prisoners, that they shall be trusted as innocent persons. Rule 84(1) of the Standard Minimum Rules provides that 'unconvicted person shall be presumed to be innocent until the charges has been proved'.

Rule 85 of the Standard Minimum Rules provides that: 'untried prisoners' should not be kept with convicted prisoners' According to Rule 86 of the Standard Minimum Rules, “Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.”

Right of an untried prisoner to communicate and to be communicated has been recognized by Rule 92 of the Standard Minimum Rule which states that: “An untried prisoner shall be allowed to inform 'immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interest of the security and good

order of the institution.” According to Rule 42 of the Standard Minimum Rules, “so far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination”.

Right to 'apply for free legal aid' has been recognized to an untried prisoner by Rule 93 of the Standard Minimum Rules which provides that: “For the purpose of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal advisor with a view to his defence and to prepare and hand over to him confidential instructions. For this purposes, he shall, if he so desires, be supplied with writing material. Interview between the prisoner and his legal advisor may be within the hearing of a police or Institution's official.”

Therefore, it is submitted that since persons awaiting trial do not fall in the category of convicted persons, they have been given certain additional facilities compared to a convicted person. These Rules also recognize the fact that an accused person behind the bar is also a human being and, therefore, he cannot be denied basic essential facilities available to an human being in the form of fundamental or human rights such as food, clothing, medical treatment, communication, accommodation, legal assistance and other freedoms with reasonable limitations.

3.6. The International Covenant on Civil & Political Rights, 1966

Once he Universal Declaration of Human Rights had been adopted by the United Nations, work commenced on the International Covenant on Civil and Political Rights which, together with a
covenant on economic, social and cultural rights, would give legal force to the principles of the Declaration.\(^{25}\) The Covenant, adopted by the UN General Assembly in 1966, is the major international human rights treaty.\(^{26}\)

Article 7 of the CP Covenant provides: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.\(^{27}\)

The first sentence of Article 7 reproduces the text of Article 5 of the Universal Declaration of Human Rights, which provides that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".\(^{28}\)

Article 7 of the Covenant cannot be derogated from in any circumstances. The prohibition of torture and cruel, inhuman or degrading treatment or punishment and medical or scientific experimentation without the free consent of the person concerned is most strikingly revealed by the international community's concern to defend and preserve the physical and moral integrity of a Human being. There can never be any derogation from it even in times of public emergency.

The responsibility lies with the Human rights Committee under Article 40(4) of the Covenant for implementation of these rights. The

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Committee in 1982 adopted general comments on Article 7 of the Covenant, after examining reports submitted by State parties. The Committee observed that even in situations of public emergency, such as the one envisaged by Article 4(1), this provision is non-derogable. The purpose of this Article is to protect the integrity and dignity of the individual.

The Committee noted that Article 7 has a wide scope of application. Unfortunately it refrained from defining or providing clear criteria for the application of Article 7. The general comment stated that:

As appears from the terms of this Article, the scope of the protection required goes beyond torture as normally understood. It may not be necessary to draw sharp distinctions between the various prohibited forms of treatment or punishment. These distinctions depend on the kind, purpose and severity of the particular treatment.

The particular forms of punishments and practices which have attracted the attention of the Committee members have been certain interrogation methods, the evidential use of illegally obtained information, virginity testing of immigrants, the treatment of the so-called 'blanket people' in Northern Ireland, stoning, flogging, whipping, 30-40 years' rigorous imprisonment, loss of nationality, and deprivation of civil and political rights for extended periods”.

Therefore, it is submitted that it appears from the terms of Article 7, that the scope of protection required goes far beyond torture as normally understood. In the view of the Committee, the prohibited act may extend to corporal punishment including excessive chastisement
as an educational or disciplinary measure. The Article clearly protects not only persons arrested or imprisoned, but also pupils and patients in educational and medical institutions. It is also the duty of public authorities to ensure protection by the law against such treatment even when committed by persons acting outside or without any official authority. Finally, for all persons deprived of their liberty, the prohibition of treatment contrary to Article 7 is supplemented by the positive requirement of Article 10(1) of the Covenant that they shall be treated with humanity and with respect [for inherent dignity of the human person.

Article 10 of the covenant provides that:-

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

These two articles combine to provide a comprehensive obligation upon State to respect the well-being of all individuals in detention.

3.7 The Human Rights Committee

The International Covenant on Civil and Political Rights establishes a monitoring body, the Human Rights Committee. The Committee comprises 18 independent experts[^29] elected by the States Party to the Covenant. It examines reports which States are obliged to submit periodically and issues concluding observations that draw attention to points of concern and make specific recommendations to the State.

The Committee can also consider communications from individuals who claim that they have been the victim of a violation of the Covenant by a State. For this procedure to apply to individuals, the State must have become a Party to the First Optional Protocol to the Covenant. The Committee has also issued a series of General Comments, which set out what it considers to be the meaning of various articles of the Covenant.30

A new optional protocol was adopted by the UN General Assembly in December 2002. This established a complementary dual system of regular visits to places of detention in order to prevent torture and ill-treatment. The first of these is an international visiting mechanisms, or a Sub-Committee of ten independent experts who will conduct periodic visits to places of detention, the second involves and obligation on states parties to set up, designate or maintain one or several national visiting mechanism, which can conduct more regular visits. The international and national mechanisms will make recommendation to the authorities concerned with a view to improving the treatment of persons deprived of their liberty and the conditions of detention.31

The committee notes with concern the restrictive interpretation made by the state party of its obligations under the covenant, as a result in particular of its failure to take fully into consideration its obligations under the covenant not only to respect but also to ensure the rights prescribed by the covenant and its restrictive approach to some

30. Supra note 1 at 244.
substantive provisions of the covenant, which is not in conformity with the interpretation made by the committee before and after the state parties ratification of the covenant.

Therefore, it is submitted that the state party should review its approach and interpret the covenant in good faith, in accordance with the ordinary meaning to be given to its terms in their context, including subsequent practice, and in the light of its object and purpose. The state party should in particular take positive steps, when necessary, to ensure the full implementation of all rights prescribed by the covenant and consider in good faith the interpretation of the covenant provided by the committee pursuant to its mandate.

3.8 American Convention on Human Rights, 1978

American Convention on Human Rights (also known as the fact of San Jose) is an international human rights instrument. It was adopted by the nations of American meeting in San Jose, Coster Rice, in 1969. It came into force after the 11th Instrument of ratification (that of Grenda) was adopted in 18th July, 1978.\(^\text{32}\) The bodies responsible for overseeing compliance with the convention are the inter-American commission on Human Rights and the Inter-American Court of Human Rights, both of which are the organs of the organization of American States. According to its Preamble, the purpose of convention is to “consolidate in this hemisphere, within the framework of democratic institution, a system of personal liberty and social justice based on respect for the essential rights of men”.

Chapter-I establishes the general obligation of the State parties to uphold the rights set forth in the convention to all persons under their jurisdiction, and to adopt their domestic laws to bring them into line with their convention. The Article 23 of the Chapter-II gives the list of individual civil and political rights including right to life "in general, from the movement of conception", to human treatment, to fair trial, to privacy to freedom of conscience etc. The single in article in Chapter-III deals with economic, social and cultural rights.\(^{33}\)

Article 5 of the Convention provides:\(^{34}\)

(i) Every person has the right to have his physical, mental and moral integrity respected.

(ii) No one shall be subjected to torture or to cruel, inhumane, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

(iii) Punishment shall not be extended to any person other than the criminal.

(iv) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.

(v) Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as

\(^{33}\) Id at 207.

speedily as possible, so that they may be treated in accordance with their status as minors.

(vi) Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

The right to humane treatment is a result of the recognition of human dignity. Article 5(1) of American Convention provides that every person has the right to have his physical, mental and moral integrity respected. It prohibits torture or other cruel punishment or treatment. Punishment of any person other than the criminal is forbidden. Paragraph 4 of Article 5 provides generally for segregation of accused persons from convicted persons. There is a separate paragraph which provides that minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals. Trials of minors should be as quick as possible. Lastly, paragraph 6 provides that punishment shall have as an essential aim to reform and social readaption of the prisoners.

This Article coincides with the precepts of Articles 7 and 10 of the CP Covenant. Article 7 of the CP Covenant not only rejects torture, and cruel and inhuman treatment, but adds a provision that no one shall be subjected without his free consent to medical or scientific experimentation. Unfortunately this is not included in the American Convention.

Therefore, it is submitted that physical and moral torture is applied in many countries, and numerous systems are available to end the moral and physical resistance of prisoners. People are heaped in
jails, and undertrials and convicted persons are not separated. Further, there are no national systems which provide for the social readaptation of minors and criminals, as the after American Commission on Human Rights has shown in its 'in loco' missions to some countries. For the perfect harmonisation of different domestic legal systems with the Convention, policies must be adopted to improve conditions in jails and to provide adequate systems for the rehabilitation of minors.

3.9 Code of Conduct for Law Enforcement Officials, 1979

It was adopted by General Assembly on 17th December, 1979 which made significant efforts on the international platform to prevent custodial torture and violence by providing that in performance of their duty, law enforcement officials shall respect and protect human dignity and shall maintain and uphold human rights of all persons. Prohibition of torture has been formally established in the European human rights law since 1950 where Council of Europe adopted European convention on human rights whereby Article 3 expressly provides that no one shall be subjected to torture or inhuman or degrading treatment or punishment.35

It is submitted that establishment of a code of conduct for law enforcement officials is only one of several important measures for providing the citizenry served by law enforced officials with protection of all their rights and interest36 there are important principles and

36. Articles 2, 3, 5, 6, 7 & 8 of the Conduct for Law Enforcement Officials, 1979.
prerequisites for the humane performance of law enforcement functions, namely:-

(i) that like all agencies of the criminal justice system, every law enforcement agency should be representative of and responsive and accountable to the community as a whole;

(ii) that the effective maintenance of ethical standards among law enforcement officials depends on the existence of a well-conceived popularly accepted and humane system of laws.

(iii) That every law enforcement official is part of the criminal justice system, the aim of which is to prevent and control crime, and the conduct of every functionary within the system has an impact on the entire system.

(iv) That every law enforcement agency, in fulfillment of the first premises of every profession, should be held to the duty of disciplining itself, in complete conformity with the principles and standards herein, provided that the action of law enforcement officials should and be responsive to public security, whether exercised by review board, a ministry, a procuracy. The judiciary, an Ombudsman or any combination or reviewing agency thereof.

3.10 The Council of Europe declaration on the police, 1979

The declaration was adopted by Council of Europe on 8 May, 1979.37

Part-A of the declaration is entitled 'Ethics' and it consists of 16 Articles: Article 3 prohibits summary executions torture and other ill-treatment in all circumstances.

Article 14 requires a police official having custody of a person needing medical attention to receive such attention from medical personnel.

It is submitted that the adoption of “The European Code of Police Ethics” is in itself an important step for the promotion of council of Europe principles with regard to the police in member states. However, the principle contained in the code should also be actively promoted following its adoption.

Firstly, the code is a basic text, which should be complemented with other council of Europe legal instruments targeting specific topics more in depth.

Secondly, an intergovernmental structure within the council of Europe could be a useful basis for furthering police matters in member states. Considering that the police in all member state are bodies closely associated with the criminal justice system and their activities. Mainly are related to law and order, crime prevention and Crime control, follow up action should preferably be considered in such a context.

The know how and expertise built up the regard to police ethics criminal justice, individual’s fundamental rights and the rule of law, could in such a way be maintained in the future within the council of Europe.

African Charter on Human and Peoples Rights also known as Banjul Charter\(^{38}\) is an international human rights instrument that purports to promote and protect human rights and basic freedom in the African continent. It emerged under the ages of the organization of the African unity which, at its 1979 Assembly of head of States and Government, adopted resolution calling for the creation of a committee of experts to draft a continent wide human rights instrument, similar to those that already existed in Europe and the American. The committee was duly set up, and it produced a draft that was unanimously approved by 50 members of the Organization of African Unity (OAU) in 1981 Assembly. There are 63 Articles in the African Charter. A special feature of the African Charter is that along with rights, it also lays down the duties of the individuals.\(^{39}\)

The Charter requires most of what we are regarded universally civil and political rights. The civil and political rights recognizes in the charter include:\(^{40}\)

(i) Right to freedom from discrimination Article 2 and 18(3).

(ii) Right to equality before law and equal protection of law Article 3.

(iii) Right to respect for life and integrity of person Article 4.

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40. Supra note 38.
(iv) Right to the respect of the dignity inherent in a human being and the recognition of his legal status.

(v) Right to liberty and security of person.

Right to have his cause heard including (a) right to appeal to competent national organs against violation of fundamental rights (b) right to presumption of innocence until proved guilty (c) right to defence and the right to fair trial within a reasonable time by an impartial court or criminal.

The commission was three board areas of responsibility:

(i) Promoting human and peoples rights

(ii) Protecting and peoples rights

(iii) Interpreting the African Charter on human and peoples rights

in pursuit of these goals, the commission is mandated to "collect documents, undertake studies and researches on African problem in the field of human and peoples, rights, organize seminars, symposies and conferences, disseminate information, encourage national and local institutions concerned with human and people's right and should the case arise, give its views or make recommendations to Government.

With the creation of African court on human and peoples right the commission will have the additional task of preparing cases for submission to the courts jurisdiction.

In developing the instrument, the African commission put in writing a series of poetry of principles and set up a monitoring body called the
follow up committed on the implementation of the RIG with the mandate to ensure that the guidelines is observed and implemented. The RIG Constitute an essential tool for states in fulfilling their national, regional and international obligations to strengthen and implement the prohibition and prevention of torture. They are the tools for the African Commission and NGOs to use as a platform for continuously challenging states or other state holder to take action to prevent torture and other cruel, inhuman or degrading treatment.

3.12 Principle of medical ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment, 1982

The role of health personnel, particularly physicians, was recognized by the international community in protection of prisoners against torture and other cruel, inhuman or degrading treatment or punishment. The United Nations General Assembly on 18 December 1982, adopted the following principles for the role of Health Personnel.41

Principle No.1: Health personnel, particularly physicians, charged with the medical of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.

Principle No.2: It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health

personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.

Principle No.3: It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.

Principle No.4: It is a contravention of medical ethics for health personnel, particularly physicians;

(i) To apply their knowledge and skills in order to assist in the interrogation of prisoners and detainees in a manner that may adversely affect the physical and mental health or condition of such prisoners or detainees and which is not in accordance with the relevant international instrument.

(ii) To certify, or to participate in the certification of, the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health and which is not in accordance with the relevant international instruments, or to participate in any way in the infliction of any such treatment or punishment which is not in accordance with the relevant international instruments.

Principle No.5: It is a contravention of medical ethics for health personnel, particularly physicians, to participate in any procedure for
restraining a prisoner or detainee unless such a procedure is determined in accordance with purely medical criteria as being necessary for the protection of the physical or mental health or the safety of the prisoner or detainee himself.

Principle No. 6: There may be no derogation from the forgoing principles on any ground whatsoever, including public emergency.

In the past 20 years, human rights issues have become a more prominent concern of the medical profession. Until 1975, international standards describing the role of the profession in response to torture did not exist. Health care of victims of torture was rare (and is still inadequate at present), and the special needs of such victims were rarely recognized and poorly understood. In addition, medical societies rarely made statements on the ethical implications of torture. There are now numerous declarations on the ethics of human rights abuses from national and international professional organizations such as Amnesty International and from other medical associations are actively working in more than 30 countries on human rights issues. An increasing number of medical journal are publishing articles that deal with human rights. For example, the journal of the American Medical Association has for some years devoted on annual issue to human rights, the “Hiroshima Issue” is published every August. The American College of Physicians acknowledges and welcomes these activities and will continue to advocate for the rights of persons and communities to live in dignity and peace, free of the fear of unjust imprisonment or torture.
Physicians have skills that enable them to make a unique contribution to issue of human rights. Therefore, it is submitted that through clinical expertise (medical, surgical, psychiatric and forensic physician can directly help victims of abuse. Knowledge and application of epidemiologic principles can be used to document the incident of various acute and chronic health effects of torture and to give credibility to statistics about the prevalence of this type of human rights violation. As members of a respected profession with well grounded traditions and ethics, physicians can serve as strong advocates for the prevention of torture.

3.13 United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

The UN General Assembly adopted a declaration in 1975 stating that “any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights”. Based on this declaration, work started on a convention that would more firmly establish the prohibition of torture and ill-treatment in a treaty under international law and create a mechanism for implementation of the treaty's provisions. The UN Torture Convention was adopted by the UN General Assembly in 1984.\(^{42}\) It sets out internationally accepted definitions of torture and ill-treatment, establishes the responsibility of States for preventing these abuses and provides for the creation of

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the Committee against Torture. In the case of “torture”, there is a precise internationally accepted definition. “Ill-treatment” by its very nature is harder to define. Article 1 of the torture convention sets out the internationally agreed definition of torture. It states:

The term ‘torture’ means 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 or discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanction.

This definition has been accepted as customary international law. It can be taken as the accepted minimum applicable to all States and means that for an act to be torture, it must:

(i) cause severe physical or mental suffering  
(ii) be inflicted for a purpose  
(iii) be inflicted by, or with the acquiescence of, an official (that is to say, it can be attributed to the State).

“Inhuman or Degrading Treatment” is not defined in such precise terms. Article 16 of the Torture Convention describes it as comprising:

Acts... which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Nevertheless, although such acts are not regarded as torture, either because they do not involve severe pain or suffering or because they are not inflicted for a purpose, they are clearly prohibited and States are obliged to take steps to protect individuals from ill-treatment. The European Court of Human Rights has reinforced the general prohibition of inhuman and degrading treatment or punishment by ruling that: “in respect of a person deprived of his liberty, any resort to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 [of the Convention].”

Although both torture and inhuman or degrading treatment are clearly prohibited, the distinction between the two has certain legal consequences. For example, under the Torture Convention, the state is obliged to establish its jurisdiction over acts of torture and either prosecute or extradite those suspected of committing such acts. The Convention does not oblige States to take the same steps in relation to those who have committed acts which are “inhuman or degrading”.

The distinctions between torture and ill-treatment are increasingly the subject of review as cases are brought before various courts and
tribunals. Similarly, there is a body of evolving case law that is helping to determine what forms of treatment and conditions of detention are unacceptable. For example, the physical conditions in which a person is held can be inhuman or degrading. This was established by the European Commission on Human Rights in a 1969 case in which a combination of overcrowding, incommunicado detention, no access to open air, limited light, no exercise and prolonged detention while in police custody was considered to violate Article 3 of the European Convention on Human Rights. Subsequent cases suggest that prolonged exposure to unsanitary conditions may on its own amount to degrading treatment.

Returning a person to a country where they will face a real risk of being subjected to torture or inhuman or degrading treatment can be regarded as being in itself inhuman or degrading. This is so even if the threat comes from private forces in lawless societies rather than from the State authorities themselves. Thus, if a State is responding to a request for the extradition of an individual to another country's jurisdiction, it needs to ensure that it is complying with its obligations under international law in respect of torture and ill-treatment. The same argument applies to decisions to return (refoule) asylum seekers. Article 3 of the Torture Convention provides that no one, including those convicted of crimes, should be sent back to a country where they would be at risk of torture. There are no exceptions to this provision.

The generally held view is that there is a progression of seriousness, with torture at the top and degrading treatment at the lower end of the scale. All points on that scale are illegitimate and violate international
legal and political commitments. In the course of the work of a field mission, it may be difficult to distinguish in practice between torture and cruel, inhuman and degrading treatment, either because insufficient details are available about particular incidents or because it is difficult to draw a precise line between a general custodial regime of degrading conditions and specific acts of deliberate violence. If a clear distinction cannot be made, the whole range of practices can be referred to as 'ill-treatment'.

In a historic decision, the international community in 1975 reached agreement on the principle that there is no justification for torture and ill-treatment. The 1975 UN General Assembly Torture Declaration states: "No State may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment."

This uncompromising statement of principle has remained in place ever since and has been incorporated into the Torture Convention. Similarly, the European Court of Human Rights ruled in 1996 that: "Even in the most difficult of circumstances, such as the fight against organized terrorism and crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment even in the event of a public emergency threatening the life of the nation."

As the effectiveness of the Torture Convention, like that of many other human rights conventions, would depend to a large extent on
the supervision system, the implementation at international level gave rise to extensive discussions. It was finally decided that a committee against torture be set up (Article 17 of the torture convention) with the following tasks.45

(i) To receive, study and comment on periodic reports from the states parties on the measure they have taken to give effect to their undertaking under the convention (Article 19).

(ii) To initiate investigation when there is reliable information which appears to contain well founded indication that torture is being systematically practised in the territory of a state party (Article 20).

(iii) To receive and examine complains by one state party of violation of the convention by another state party (Article 21); and

(iv) To receive ad examine applications by individuals claiming to be victims of a violation of the convention by a state party (Article 2).

However, the competence of the committee against Torture under (ii), (iii) and (iv) were to made compulsory but apply with the following modifications:

(i) A State party may “Opt Out” and declare that it does not recognize the committee's competence to initiate investigations to examine interstate.

45. Supra note 42 at 554-555.
(ii) The committing competence to examine inter-state complaints only applies when a State party has specifically recognized this competence (Article 21).

(iii) The committee’s competence to examine applications by individuals only applies when a State party has specifically recognized this competence (Article 22).

3.14 The UN Committee against Torture

The Committee against Torture is a body of ten independent experts established under the Torture Convention. It considers reports submitted by States and issues concluding observations. It may also examine communications from individuals, if the State concerned has agreed to this procedure by making a declaration under Article 22 of the Convention.46 There is also a procedure by which the committee may initiate an investigation if it considers there to be “well-founded indications that torture is being systematically practised in the territory of a state party”, although some States have made reservations excluding the applicability of this procedure.47 UN Committee against Torture further provides that:48

3.14.1 State obligation to investigate acts of torture.

3.14.2 State obligation for the enforcement of persons rights to reparation and compensation.

3.14.1 State obligation to investigate acts of torture

The State is compelled to investigate acts of torture. The UN Committee Against Torture provides that States:

- Shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed.

Furthermore, it reiterates that a State should ensure:

- That any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and have his case promptly and impartially examined by its competent authorities.

Measures shall also be taken by the State in order to protect the complainant from intimidation “as a consequence of his complaint or any evidence given.”

The obligation of State (to investigate) should be capable of leading to the identification and punishment of those responsible. If this were not the case, the general legal prohibition of torture and inhuman or degrading treatment and punishment, despite its fundamental importance, would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity.

3.14.2 State obligation for the enforcement of persons rights to reparation and compensation.

Another important State obligation in the prevention of torture is the enforcement of a person's rights to reparation and compensation.
The UN Committee against Torture provides that “the State shall ensure in its legal system that the victim of an act of torture obtains redress.” This entails that the victim receive adequate financial compensation, including the means for full rehabilitation as soon as possible. In the implementation of this important component, the draft United Nations Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and International law, provides that the State has a duty to provide reparation and to allow the victim to seek redress from the perpetrator. Reparation includes: restitution, compensation, rehabilitation, satisfaction and non-repetition. Restitution means re-establishing the situation that existed prior to the violation; Compensation should be recovered in the case of economic damage resulting from physical or mental harm; Rehabilitation includes medical and psychological care as well as legal and social services; Satisfaction and guarantees of non repetition means that the cessation of torture should be guaranteed.

A new optional protocol was adopted by the U.N. General Assembly in December 2002. This established a complementary dual system of regular visits to places of detention in order to prevent torture and ill treatment. The first of these is an international visiting mechanism, or a ‘Sub-Committee’ of ten independent experts who will conduct periodic visits to place of detention. The second involves an obligation on states parties to set up, designate or maintain one or several national visiting mechanisms, which can conduct more regular mechanisms will make recommendations to the authorities.

49. Supra note 21 at 108.
concerned with a view to improving the treatment of persons deprived of their liberty and the condition of detention.

3.15 The Inter American convention to prevent and punish torture, 1985

Inter-American Convention to prevent and punish torture (IACPPT) is an international human rights instrument, created within the western Hemisphere organization of American states and intended to prevent torture and other similar activities.\(^{50}\)

The Inter-American Convention defines torture more expansively that the United Nations Convention against torture including “the use of methods upon a person intended to obliterate the personality of the victim to diminish his natal or physical capacities, even if the do not cause physical pain or mental anguish.” The convention is one of a series of OAS agreements that seek to protect human rights, within the framework of the American Convention on Human Rights, which bans torture in less detail.

The convention also requires states to take effective measures to prevent torture within their borders, and creates an ability to extradite persons accused of torture.

The American States signatory to the present convention, aware of the provision of the American Convention on Human Rights that no one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment; reaffirming that all acts of torture or any other cruets, inhuman or degrading treatment or punishment

\(^{50}\) Basic Text, Human Rights in International Law, Council of Europe Publishing, 679(2009).
constitute an offence against human dignity and a denial of the principles set forth in the charter of the organization of American states and in the charter of the United Nation and are violators of the fundamental human rights and freedoms proclaimed in the American Declaration of the Right and Duties of man and Universal Declaration of Human Rights;

Nothing that, in order for the pertinent rules contained in the aforementioned global and required instruments to take effect; it is necessary to draft an Inter-American Convention that prevent and punishes torture;\textsuperscript{51}

Reaffirming their purpose of consolidating in this hemisphere the conditions that make for recognition of and respect for the inherent dignity of man, and assume the full exercise of his fundamental rights and freedoms. The American states signatory to the present convention have agreed upon the following:\textsuperscript{52}

The state parties undertake to prevent and punish torture in accordance with the terms of the convention.

For the purpose of this convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain a suffering is inflicted on a person for purposes of criminal investigation whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation whereby physical or mental 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investigation whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation whereby physical or mental pain or suffering is inflict...
investigation, as a means of intimidation, as personal punishment, as a prevention measure, as a penalty, or for any other purpose. Torture shall be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequences of lawful measures, provided that they do not include the performance of the acts or use of methods suffered to in this article.

The following shall be held guilty of the crime of torture:

(i) A public servant or employee who acting in that capacity orders, instigates or induces the use of torture, or who directly commit it or who, being able to prevent it, fails to do so.

(ii) A person who at the instigation of a public servant or employee mentioned in a sub-paragraph (a) orders, instigate or induce the use of torture, directly commits it or is an accomplice trends.

The fact of having acted under order of a superior shall not provide exemption from the corresponding criminality.

The existence of circumstances such as state of war, threat of war, state of siege or of emergency, domestic disturbance or shife, suspension of constitutional guarantee, domestic political instability, or public emergencies or disaster shall not be invoked or admitted as justification for the crime of torture.
Neither the dangerous character of the detainee or prisoner, not the lack of security of the prison establishment or penitentiary shall justify torture.

In accordance with the terms of Article 1, the state parties shall take effective measures to prevent and punish torture within their jurisdiction.

The state parties shall ensure that all acts of torture and attempts to commit torture are offence under criminal law and shall make such acts punishable by reverse penalties that take into account their serious nature.

Convention provides that the state parties shall take measure so that, in the training of police officers and other public officials responsible for custody of persons temporarily or definitely deprived of their freedoms, special emphasis shall be put on the prohibition of the use of torture in interrogation, detention or arrest.

The state parties likewise shall take similar measure to prevent other cruel, inhuman, or degrading treatment or punishment.

Convention provides that the state parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an important examination of his case.

Convention provides that the state parties undertake to incorporate into their rational laws regulates guaranteeing suitable compensation for victims of torture.
Convention provides that no statement that is verified as having been obtained through torture shall be admissible as evidence in a legal proceedings except at legal action taken against a person.

Convention provides that the state parties shall take necessary steps to extradite anyone accused of having committed the crime of torture or sentenced for commission of that crime in accordance with their respective national laws on extradition.

Convention provides that every states shall take the necessary measures to establish its jurisdiction over the crime described in this convention in the following cases:

a) When torture has been committed within its jurisdiction.

b) When the alleged criminal is a national of that state; or

c) When the victim is a national of that states and it so deems appropriate.

Every state party shall also take the necessary measures to establish its jurisdiction over the crime described in this convention when the alleged criminal is within the area under its jurisdiction and it is not appropriate to extradite him in accordance with Article 11.

Convention provides that the crime referred to in Article 2 shall be deemed to be included among the extraditable crimes in every extradition treaty entered into between state parties. The state parties undertake to include the crime of torture as an extraditable offence in every extradition treaty to be concluded between them.
Convention provides that when a state party does not grant the extradition, the case shall be submitted to its competent authorities as if the crime had been committed within its jurisdiction for purpose of investigation, and when appropriate, for criminal action, in accordance with national law.

Convention provides that no provision of this convention may be interpreted nor as limiting the right of asylums, when appropriate, nor as altering the obligations of the states parties in the matter of extradition.

Convention provides that the convention shall not limit the provisions of the American Convention on Human Rights, other convention on the subject, or the statutes of the Inter-American Commission on Human rights, with respect to the crime of torture.

Convention provides that the state parties undertake to inform the Inter-American Commission on Human Rights of any legislative, judicial, administrative, or other measures they adopted in application of the convention in regard to prevention and elimination of torture.

Convention provides that the convention is open to signature by the member states of the organization of American states.

Convention provides that the convention is subject to ratification. The instrument of ratification shall be deposited with General Secretariat of the organization of American states.

Convention provides that the convention is open to accession by any other American state. The instrument of accession shall be deposited with the General Secretariat of organization of American states.
Convention provides that the state party may at the time of approval, signature, ratification, or accession, make reservation to this convention, provided such reservation are not incompatible with the object and purpose of the convention.

Convention provides that the convention shall enter into force on the thirtieth day following the date on which the record instrument of ratification is deposited. For each state ratifying or acceding to the convention after the record instrument of ratification has been deposited, the convention shall enter into force or the thirtieth day following the date on which that state deposits its instruments of ratification or accession.

Convention provides that this convention shall remain in force indefinitely, but may be denounced by any state party. The instrument of denunciation shall be deposited with General Secretariat of the organization of American states. After one year from date of deposit of the instrument of denunciation, this convention shall cease to be in effect for the denouncing state but shall remain in force for remaining state parties.

The Inter-American Convention provides for a system of universal jurisdiction for the rime of torture, and states are required to take effective measures to prevent and punish torture within their own jurisdiction. Once domestic remedies have been exhausted, cases of alleged torture may be submitted to the relevant international fora. Generally this would be the Inter-American Commission, which also has responsibility for analyzing “the existing situation in the member states of the organization of American States in regard to the
prevention and elimination of torture" and publishing the findings in its annual report.

3.16 International Instruments with regard to the Special Rights of Juvenile Accused

At international level, a special system of criminal justice tempered with compassion and understanding was advocated for delinquent juveniles and the United Nations framed the following two Rules:

3.16.1 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 1985; and


These rules, interalia, deal with fundamental perspectives of the juvenile justice, aims of juvenile justice, age of criminal responsibility, scope of discretion at all levels of juvenile justice administration, investigation and prosecution, detention pending trial, adjudication and disposition, legal counsel, parents and guardians, guiding principles in adjudication and disposition, various disposition measures, avoidance of unnecessary delay, need for professionalism and training and non-institutional treatment. The detailed

53. Beijing Rules were Adopted by the General Assembly on 29 Nov., 1985 under U.N. General Assembly Resolution No. 40/33 of 29 Nov. 1985.
54. Supra note 13 at 183-185.
examination of these rules is proposed to be made later on while examining the rights of juvenile accused.


The United Nations adopted by its Resolution No. 45/113 of December 14, 1990, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990. Rule 1 of the 'Rules for the Protection of Juveniles states that: "The juvenile justice system should uphold the rights and safety, and promote the physical and mental well-being, of juveniles. Imprisonment should be used as a last resort." The objectives of these Rules have been described in Rule 3 of the Rules for the Protection of Juveniles' as under:

The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedom, and with a view counteracting the detrimental effects of all types detention and to fostering integration in society.

Rule 17 of the Rules for the Protection of Juveniles provides, interalia the following rights to Juveniles who are under arrest or awaiting trial:

55. The United Nations Rules for the Protection of Juveniles deprived of their Liberty, 1990, Complication, Vol. 1 Rule 17 runs as under: Juveniles who are detained under arrest or awaiting trial (untried) are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, Juvenile courts and investigation bodies shall give the highest priority to the most expeditious processing of such case to ensure the shortest possible duration of detention. United detainees should be separated from convicted Juveniles.

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(i) They shall be presumed innocent

(ii) Only in exceptional cases or circumstances, detention before the trial shall be made,

(iii) All efforts should be made to apply alternative measures,

(iv) In case there are unavoidable circumstances regarding the detention of untried juvenile, the court shall give priority to speedy process to insure the shortest possible duration of detention, and

(v) Untried detained juveniles should be separated from convicted juveniles

3.17 Un Special Rapporteur on Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, 1985

The position of Special Rapporteur was first established in 1985 by the UN Commission on Human Rights with the purpose of examining international practice relating to torture and reporting upon it. On the basis of information received, the Special Rapporteur can communicate with governments and request their comments on cases which are raised. He or she can also make use of an 'urgent action' procedure, requesting a government to ensure that a particular person or group of persons are treated humanely. The Special Rapporteur can also conduct visits if invited by a State to do so. The Special Rapporteur reports regularly and publicly to the UN Commission on Human Rights and to the UN General Assembly.56

56. Supra note 37 at 540-550.
The UN Special Rapporteur on Torture has repeatedly stressed that procedural safeguards include the prohibition of incommunicado detention. Time and again, it has been shown that the risk of torture significantly increases if the apprehended person is isolated from contact with the outside world. Measures against incommunicado detention should therefore be enforced, since these are designed to make the treatment of all detainees as transparent as possible.

In order to enforce the prohibition of incommunicado detention and significantly lessen the risk of torture, the State should guarantee three fundamental rights in order to protect individuals from torture:

(i) the right of those concerned to have the fact of their detention notified to a close relative or a third party of their choice (family or friends);

(ii) the right of access to a lawyer;

(iii) the right to a medical examination carried out by a doctor of their choice.

3.18 The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987

Since 1987, the European Convention on Human Rights has been complemented by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which establishes the Committee for the Prevention of Torture. The OSCE Budapest Summit (1994) specifically recognized the importance of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, suggesting an endorsement
of both its mechanism and the preventive safeguards which are advocated by the Committee for the Prevention of Torture. Although this is a Council of Europe convention, the First Protocol, when it enters into force, will allow non-council members to be invited to join the convention system. This could enable all OSCE States to benefit from the Convention.\textsuperscript{57}

Article 3 of European Convention which deals with torture stipulates, "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

This provision is absolute in the sense that no derogation may be made from it under Article 15(2).

The European Commission has defined the terms:-

3.18.1 Torture; and
3.18.2 Degrading treatment

\textbf{3.18.1 Torture}

Torture in the Greek case, to means "inhuman treatment which has a purpose such as the obtaining of information or confessions, or the infliction of punishment and it is generally an aggravated form of inhuman treatment". By "inhuman treatment"; the Commission understood "at least such treatment as deliberately causes severe suffering, mental or physical, which in the particular situation, is unjustifiable". The Commission distinguished inhuman treatment from "a certain roughness of treatment of detainees by both police and

military authorities such roughness may take the form of slaps or blows of the hand on the head or face. It added that "the point lip to which prisoners and the public may accept physical violence as being neither cruel nor excessive varies between different societies and even between different sections of them".

3.18.2 Degrading treatment

The Commission considered degrading treatment, in the Greek Case, as follows: "to be a treatment or punishment of an individual may be said to be degrading if it grossly humiliates him before others or drives him to act against his will or conscience". This definition was followed and extended by the Commission later in the East African Asian case where it said that degrading treatment was a conduct of a certain level of severity which lowers the victim in rank, position, reputation of character whether in his own eyes or in the eyes of other people. These definitions have been explained by the court in Tyrer Case, in which the Court observed that the first element of serious humiliation was whether the conduct was "degrading". Secondly, some qualifications are essential to the proposition that degrading treatment covers conduct which lowers, etc., the 'victim in his own eyes. In Campbell and Cosans, the Court observed that "a threat directed to an exceptionally insensitive person may have no significant effect on him but nevertheless be incontrovertibly degrading; and conversely, an exceptionally sensitive person might be deeply affected by a threat that could be described as degrading only by a distortion of the ordinary and unusual meaning of the word".
According to Sir Gerald Fitzmaurice, "degrading treatment" was: "intended to denote something seriously humiliating, lowering as to human dignity, or disparaging, like having one's head shaved, being tarred and feathered, smeared with filth, pelted with muck, paraded naked in front of strangers, forced to eat excreta, deface the portrait of one's sovereign or head of State or dress up in a way calculated to provoke ridicule or contempt".

In the case of torture and inhuman treatment or punishment, the suffering caused must have reached a sufficient level of severity; in the case of "degrading" treatment or punishment, the key element is humiliation but the threshold point is the same: the humiliation involved must attain a particular level of severity. All the circumstances of the case must be examined in assessing whether a conduct is sufficiently serious to fall foul of Article 3.

The Convention prohibits in absolute terms inhuman and degrading treatment or punishment, irrespective of the victim's conduct. Unlike most of the substantive clauses of the Convention and of Protocols 1 and 4, Article 3 makes no provision for exceptions.

3.19 The body of principles for the protection of all persons under any form of detention or imprisonment, 1988

The contents of the Body of Principles are set forth in 39 principles that follow the provisions on scope and the use of terms. The principles range from very general formulation of the human rights of person under any form of detention or imprisonment, to more specific

guarantee of a procedural nature, to provisions on particular rights to be ensured in places of detention or imprisonment.

Among the most noteworthy formulation of basic human rights are Principle 1, according to which “all persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person”; and principle 2 and 4, which provide that arrest, detention and imprisonment shall be carried out in accordance with the law and by “competent officials or persons authorized for that purpose”, and that measures affecting the human rights of detained or imprisoned persons “shall be ordered by, or be subject to the effective control of, a judicial or other authority.

Principle 6 contains a forceful prohibition of the use of torture and of “cruel, inhuman or degrading treatment or punishment.”

(i) All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

(ii) Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.

(iii) Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.
(iv) No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

(v) The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subjected to recourse to a judicial or other authority.

(vi) Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.

(vii) Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights.

(viii) Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.
If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention shall be given to notifying parents or guardians.

(ix) A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.

(x) It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.

(xi) The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law.

(xii) Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case.
(xiii) A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest.

The body of principles for the protection of all persons under any form of detention or imprisonment, 1988 not being a treaty, but a document annexed to a General Assembly Resolution, it obviously has no binding force as such its force resides in the fact that it was approved by consensus by the United Nations General Assembly, which in so doing “adopted” it and urged that “all efforts be made, so that it would “because generally known and respected.”

The main immediate effect of the body of principles seems to be twofold. On the one hand, it can serve as guidelines for the shaping of national legislation and domestic practice. On the other hard, it can serve as a statement of basic international legal and humanitarian concepts to which every one can refer. The letter function will be particularly important in providing arguments to states or nongovernmental bodies such as Amnesty International whenever abuses require them to bring political pressure to bear on certain Governments.

3.20 World conference on human rights Vienna Declaration, 1993

The World Conference on Human Rights welcomes the ratification by many Member States of the Convention against Torture and other cruel, inhuman or degrading treatment of punishment and encourages its speedy ratification by all other Member States.
The World Conference on Human Rights emphasis that one of the most atrocious violations against human dignity is the act of torture, the result of which destroys the dignity and impairs the capability of victims to continue their lives and their activities.

The world conference on Human Rights reaffirms that under human rights law and international humanitarian law, freedom from torture is a right which must be protected under all circumstances, including in times of internal or international disturbance or armed conflicts. The world conference on Human Rights, therefore, urges all states to put an immediate end to this evil forever through full implementation of the universal Declaration of Human Rights as well the relevant conventions and, where necessary, strengthening of existing mechanisms. The world conference on Human Rights calls on all states to cooperate fully with the special Rapporteur on the question of torture in the fulfillment of his mandate special attention should be given to ensure universal respect for, and effective implementation of, the Principle of Medical Ethics relevant to the Role of Health Personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment adopted by the General Assembly of the United Nations. 59

The world conference on Human Rights stresses the importance of further concrete action within the framework of the United Nations with the view to providing assistance to victims of torture and ensure more effective remedies for their physical, psychological and social

59. Supra note 13 at 78-80.
rehabilitation providing the necessary resources for this purpose should be given high priority, inter alia, by additional contributions to the United Nations voluntary fund for the victim of torture states should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing of firm basis for the rule of law.

The world conference on Human Rights reaffirms that efforts to eradicate torture should, first and foremost, be concentrated on prevention and, therefore, calls for the early adoption of an optional protocol to the convention against torture and other cruel, inhuman and degrading treatment or punishment, which is intended to establish a prevention system of regular visits to place of detention.

3.21 The Istanbul Protocol, 1999

The Istanbul Protocol submitted to the United Nations in the year 1999 for its further processing is the suggested standard international procedural guideline in relation to investigation of complaints of torture or cruel or inhuman or degrading types of treatment. Very detailed and methodical steps that would help the process of investigation into all such complaints have been made. The Protocol can be classified into two parts. The first part deals with steps that would cover the pre-investigation areas and following it are the general issues in terms of interviews.

For the purposes of investigation, it would be worthwhile to have a closer look at the methods and procedures for the collection of

physical evidence of Torture. Also some of the vital medico-legal evidences that would be relevant are to be kept in view.

Some of the essential aspects of the general principles relevant to the subject can be summarized as under:

(i) The member States will take quick and prompt steps to cause investigation into all cases or complaints of torture or ill treatment or inhuman or degrading behavior.

(ii) Even in the absence of a complaint, action to cause investigation is necessary where there is reasonable indications or clues about the commission or existence of such instances or incidents.

(iii) As a matter of general rule, the persons who investigate into such complaints must be drawn from sources other than the one from which the culprit or culprits of such abuse come from. In other words, persons drawn from some other agency or organization would be better situated to deal with such complaints and only such an arrangement would also be able to evoke the confidence of the victims as well as sustain public credibility.

(iv) Persons conducting such an investigation or verification should be impartial as well as capable and competent.

(v) The investigating officials or authority should be vested with the power to have access to impartial medical or other experts.
(vi) The professional standards that such investigators exhibit must be of a very high order and should be not less than the minimum accepted international standards.

(vii) The methods must reflect highest professional standards relatable.

(viii) The investigating authority should have the legal capacity and power as well as the obligation to secure all relevant facts and information. Furthermore the authority must have at its disposal the needed financial and other resources to enable it to fulfill the objectives of its work.

(ix) The authority should also have the legal potential to summon and get the persons alleged or suspected to have caused or committed the abuse in question to testify before and towards that end must have the authority for summoning witnesses and others connected and also be vested with the potential to seek the production of documents and other evidentiary materials.

(x) The proceedings of that body should be made available for the public by its authentic publication on a periodical basis.

(xi) It shall also be ensured that victims of all such torture or ill-treatment and the witnesses are protected from any kind of vengeful action by anyone, including the suspected or accused persons and they shall also be protected from violence, threats or any other form of intimidation that may arise pursuant to investigation of such cases. Similarly those who are accused of such abuse should not be, as a rule, allowed to continue in
office or position of power or influence, whether direct or indirect, over the accused or witnesses or their families.

(xii) It must also be so arranged as to make available all relevant information to the alleged victims of torture or ill treatment or their legal representatives, the status of their complaint and its progress in so far as the investigation is concerned.

(xiii) The body or institution so designed by the member states should be in a position to seek and obtain all information necessary to the inquiry and shall conduct the inquiry as suggested in this international standard pattern.

(xiv) It must also be so designed as a part of the procedure normally followed by such an investigative body that a written report is made in each case of complaint referred to or received by it or acted on by it suo-moto, and that should also be made public as a matter of course.

(xv) The follow up of the report and its recommendation must be made systematic and well established so that the message that Human Rights abuses will not be tolerated and if the abuse is established then consequences are sure to follow.

(xvi) It should also be so ensured that the experts and other medical personnel, who assist all such investigations, should behave in the highest form of ethical behaviour and all other standard ethical behaviour codes accepted, as they shall follow the current international ethical policy.
(xvii) Normal procedures where secrecy is necessary for the purposes of examination of the victim etc are ensured and it should be done outside the presence of the security agents and other government officials.

(xviii) International standards for medical examinations connected with such investigations also warrant that the medical experts conducting such examinations will file a prompt and accurate written report.

(xix) It should also be so arranged as to ensure that the medical report is kept confidential and at the same time be communicated to the subject or his or her nominated representative. The views of the subject and his or her representative about the examination process should be solicited and recorded in the report. It should also be provided in writing, where appropriate, to the authority responsible for investigating the allegation of torture or ill treatment. It is the responsibility of the State to ensure that it is delivered securely to these persons. The report should be made available to any other person, except with the consent of the subject or on the authorization of a court empowered to enforce such transfer.


The General Assembly of the United Nations has laid down the principles and guidelines for remedies and reparation for victims of
gross violations of international human rights law and serious violations of international humanitarian law as follows:

The General Assembly recalling the provisions providing a right to a remedy for victims of violations of international human rights law found in numerous international instruments, in particular the Universal Declaration of Human Rights at article 8, the International Covenant on Civil and Political Rights at article 2, the International Convention on the Elimination of All Forms of Racial Discrimination at article 6, the Convention against Torture and Other Cruel, Inhuman or Regarding Treatment or Punishment at article 14, the Convention on the Rights of the Child at article 39, and of international humanitarian law as found in article 3 of the Hague Convention of 18 October 1997 concerning the Laws and Customs of War and Land (Convention No. IV of 1997), article 91 of Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol I), and articles 68 and 75 of the Rome Statute of the International Criminal Court.

Recalling the provisions providing a right to a remedy for victims of violations of international human rights found in regional conventions, in particular the African Charter on Human and Peoples' Rights at article 7, the American Convention on Human Rights or article 25 and the European Convention for the Protection of Human Rights and Fundamental Freedoms at article 13,

Recalling the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power emanating from the deliberations of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and resolution 40/34 of 29 November 1985 by which the general Assembly adopted the text recommended by the Congress,

Reaffirming the principles enunciated in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, including that victims should be treated with compassion and respect for their dignity, have their right to access to justice and redress mechanisms fully respected; and that the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged, together with the expeditions development of appropriate rights and remedies for victims.

Noting that the Rome Statute of the International Criminal Court requires the establishment of principles relating to reparation to, or in respect of, victims, including victims of gross violation of International Human Rights Law.

3.23 COE—Committee for the Prevention of Torture Established

Establishment, mandate and activities of the European Committee for the Prevention of Torture (CPT) are based on the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT). The ECPT, which was opened for signature by the member states of the COE on 26 November, 1987 and entered into force on 1 February, 1989, was established in order to “strengthen the protection of persons deprived of their liberty. As of
1 January, 2007, the convention has been satisfied by all 46 member states of the Council of Europe. Amendments to the convention have been provided for the Protocol No. 1 and No. 2, which entered into force on 1 March, 2002. Protocol No. 1 provides for an “Open” ECPT and allows the committee of Ministries to invite non-member states of the Council of Europe to accede to the ECPT. The only non-member who has acceded upto now was Montenegro. Protocol No. 2 provides for technical amendment to the ECPT.62

Pursuant to Article 1 ECPT the CPT is responsible for examining the treatment of persons deprived of their liberty by a public authority in order to ensure the protection of these persons from torture and from inhuman or degrading treatment or punishment. The CPT is charged with visiting all places of detention, including, but not limited to, prisons, police stations, military barrack and mental hospitals.63 In accordance with Article 4(1) ECPT, the CPT is composed of a members equal to that of the parties. The highly qualified experts are independent and impartial and serve in their personal function and not as representatives of their State of nationally. The CPT members are elected for a period of four years by the Council of Europe’s Committee of Ministers by an absolute majority of votes.

The visiting practice of the CPT is contingent upon co-operation between the committee and the states parties and confidential. Conceived as a “proactive no judicial mechanism” of “preventive character” the CPT can be seen as an addition to the reactive judicial

mechanism under the European Convention of Human Rights, which, in Article 3, also contains a provision against torture. The CPT may also organize adhoc visits to any places where persons are deprived of their liberty by a public authority, when they appear required by the circumstances, by 2007, the committee has carried out 223 visits, thereof 139 periodic visits and 84 adhoc visits.

Under Article 10(1) of the CPT, after each visit shall draw up a report on the facts found. Apart from discussion with officials on the spot and at the end of the visit. The CPT may use the reports to set forth any recommendation considered necessary. The report remains, in principle, confidential and is submitted to the state with the request for a written response. In urgent and special cases of serious violations, the CPT may take the decision to publish certain reports on its own initiative and issue a public statement in accordance with Article 10(2) ECPT. Furthermore, the CPT submits a yearly reports to the committee of Ministers under Article 12 ECPT. The "substantive sections" of these reports have been complied to form the "CPT standards" which fulfill a dual role.

**Conclusion**

It needs no great argument to arrest that torture and ill-treatment are banned under international law. There is an international consensus that these abuses violate the inherent dignity of the human person are not justified under any circumstances. The prohibition of torture and ill-treatment is found in all major international and regional human rights treaties. Prevention of torture of all kinds can be
achieved through the existence of safeguards and strategies at the international, regional, national and local level.

An international convention or treaty does not alter Indian law unless it is embodied in domestic legislation. The Supreme Court has ruled that Indian laws must be construed, so far as practicable, in conformity with India’s obligations under international treaties and convention. Evidently the states were opposed to the signing and ratification of the torture convention. Therefore, the convention by itself does not amount to much there is a need of legislation which provides extra protection against torture as envisaged by the convention.

Apart from this, one of the major deterrent against the practice of torture is its exposure so that it come into the leg light of public opinion. Individual lawyers in collaboration with legal bodies can take a leading role in publishing the act of torture and in the process can conduct on the spot inquiry in respect of alleged torture. Educating the general masses with a view to creating an awareness in them for human rights in general and against torture in particular is no less important.