

## THE POSITION OF THE PROHIBITION OF TORTURE IN THE INTERNATIONAL LEGAL SYSTEM: ELUCIDATING LEGAL MECHANISMS

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**Abstract.** *In international documents, various definitions of torture have been presented, with the most comprehensive and reasonable being the definition provided in the Convention Against Torture of 1984. Article 1 of this Convention states that, for the purposes of the Convention, the term "torture" refers to any intentional act that causes severe physical or mental pain or suffering to a person, for the purpose of obtaining information or confessions from him or a third person. It also encompasses punishing a person for an act that he or a third person has committed or is suspected of committing, or threatening or coercing him or a third person. Punishment based on any form of discrimination is also considered torture. However, the same article adds that pain and suffering resulting from the inherent or incidental characteristics of lawful penalties are excluded from this definition. Among the international guarantees against torture in the international legal system are the Convention Against Torture of 1984, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Geneva Conventions, the Statute of the International Criminal Court, the European Convention on Human Rights, the American Convention on Human Rights, and the African Charter on Human and Peoples' Rights. Establishing the position of the prohibition of torture in the international legal system as one of the absolute principles contributes to preventing violations of the prohibition of torture, upholding human rights, and ensuring fair trials within the judicial process.*

**Keywords:** *Fundamental principles, international law, absolute right, torture, fair trial, international guarantee.*

## ПОЛОЖЕНИЕ ЗАПРЕТА ПЫТОК В МЕЖДУНАРОДНОЙ ПРАВОВОЙ СИСТЕМЕ: РАЗЪЯСНЕНИЕ ПРАВОВЫХ МЕХАНИЗМОВ

**Аннотация.** *В международных документах были представлены различные определения пыток, наиболее полным и обоснованным из которых является определение,*

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*данное в Конвенции против пыток 1984 года. Статья 1 этой Конвенции гласит, что для целей Конвенции термин «пытка» относится к любому преднамеренному действию, которое причиняет сильную физическую или психическую боль или страдание человеку, с целью получения информации или признаний от него или третьего лица. Оно также охватывает наказание человека за действие, которое он или третье лицо совершили или в совершении которого подозревается, или угрозу или принуждение его или третьего лица. Наказание, основанное на любой форме дискриминации, также считается пыткой. Однако в той же статье добавляется, что боль и страдания, являющиеся результатом неотъемлемых или случайных характеристик законных наказаний, исключаются из этого определения. К международным гарантиям против пыток в международной правовой системе относятся Конвенция против пыток 1984 года, Всеобщая декларация прав человека, Международный пакт о гражданских и политических правах, Женевские конвенции, Статут Международного уголовного суда, Европейская конвенция о правах человека, Американская конвенция о правах человека и Африканская хартия прав человека и народов. Закрепление положения о запрете пыток в международной правовой системе в качестве одного из абсолютных принципов способствует предупреждению нарушений запрета пыток, соблюдению прав человека и обеспечению справедливого судебного разбирательства в рамках судебного процесса.*

**Ключевые слова:** *Основополагающие принципы, международное право, абсолютное право, пытки, справедливый суд, международная гарантия.*

### **Introduction**

Torture, as one of the crimes against human dignity and integrity, is an issue for which an exact date for its beginning cannot be determined. It has always been utilized by various groups, including tyrants and oppressive rulers, to extract confessions or information, as well as for physical punishment. One of the most significant achievements of international support for the rights of humanity is the prohibition and fight against torture. Accordingly, the act of torture is considered incompatible with human dignity and has occupied the minds of many thinkers and advocates for justice, emphasizing the need for necessary support and guarantees to prevent this act. According to the Convention Against Torture, the term "torture" refers to any intentional act that causes severe physical or mental pain or suffering against a person for the purpose of obtaining information or a confession from that person or a third party.

It also includes punishing a person for an act that he or a third person has committed or is suspected of committing, or threatening or coercing him or a third person. Punishment based on any form of discrimination is also considered torture. However, the same article adds that pain and suffering arising from the inherent or incidental characteristics of lawful penalties are excluded from this definition. The establishment of the prohibition of torture in the international legal system as one of the absolute principles prevents violations of the prohibition of torture and ensures the respect for human rights and a fair trial within the judicial process. The author of this research poses the question of what position the prohibition of torture holds in the international legal system, and proposes the hypothesis that the prohibition of torture has a fundamental status in international law. Using a descriptive-analytical method, the conclusion is reached that torture, as a fundamental principle of the international system, holds a special status in all international documents. However, despite this, this principle is often violated due to the lack of legal mechanisms by states and must be upheld within legal systems to ensure that the process of fair trials is realized.

## **Chapter One: Definition of Torture, Concept of Torture, and Historical Background of Torture**

### **Section One: Definition of Torture**

The term "torture" is linguistically defined in the Dehkhoda Dictionary as harm, pain, punishment, torture, and suffering (Dehkhoda, 1994: 12709). In the Mo'in Dictionary, torture is described as causing harm and suffering, inflicting pain on a suspect with torture instruments to extract a confession (Mo'in, 1981: 2066). Additionally, in the Legal Dictionary, torture is defined as the act of causing pain and suffering to a suspect or non-suspect to extract a confession or obligation (Langroudi, 1999: 2301). Similarly, in the Amidi Dictionary, it is defined as pain and suffering, torment, and affliction (Amidi, 2010: 706).

It is worth mentioning that the English equivalent of torture is "Torture," which means torture, inflicting pain, suffering, and torment (Haim, 2006: 1005).

### **Section Two: Concept of Torture**

International documents provide various definitions of torture, with the most comprehensive and reasonable being the definition in the Convention Against Torture of 1984. Article 1 of this Convention states that the term "torture" refers to any intentional act that causes severe physical or mental pain or suffering against a person for the purpose of obtaining information or confessions from that person or a third party.

It also includes punishing a person for an act that he or a third person has committed or is suspected of committing, or threatening or coercing him or a third person. Punishment based on any form of discrimination is also considered torture. However, the same article adds that pain and suffering resulting from the inherent or incidental characteristics of lawful penalties are excluded from this definition (Mehrpour, p. 96).

Furthermore, torture is defined as the application of physical or psychological force against an individual to obtain a confession or information, to threaten, coerce, humiliate, punish, or intimidate them (Kasa, Authoritarian Governments, Violations of Human Rights in Contemporary Europe, 1998: 61).

### **Section Three: Historical Background of Torture**

Historically, torture has not always been a crime and was even considered a completely legal and justified act for a long time. For example, in ancient Greece, according to Aristotle and Demosthenes, torture was seen as the most reliable means of obtaining confessions. Slaves in Athens were frequently subjected to torture (Sadeghi, 2013, p. 54).

Torture has existed since ancient Rome and throughout the Middle Ages in Europe, being used against suspects to uncover crimes and extract confessions. It is still practiced in various forms in many countries. In ancient Rome, torture was initially applied to slaves and foreigners, while citizens were exempt. Later, it became commonplace for citizen suspects as well. In the 14th century, torture was a widespread public practice across Europe and was considered one of the investigative tools in criminal proceedings.

During the Middle Ages and the early modern period, torture was systematically used in France to obtain confessions, sometimes even continuing after a confession was made. In the 17th century, opposition to torture gradually increased, with figures such as Montesquieu, Voltaire, Rousseau, and Beccaria strongly condemning it. However, judges continued to accept it until finally, in 1788, due to widespread public opposition, torture was abolished in France. In other European countries like England, Spain, and Germany, torture was still seen as a normal and legal practice. Nevertheless, the fight against torture grew, being condemned from various angles and gradually becoming legally abolished in different countries; for instance, in Germany in 1787, in England in 1640, and in Austria in 1787, torture was abolished (Mehrpour, p. 94). Furthermore, on December 2, 1950, the UN General Assembly, in resolution number 440, recommended that necessary measures be taken to completely abolish corporal punishment in territories under trusteeship, and that a report be submitted to the Assembly.

Two years later, the Assembly received reports indicating that crimes subject to corporal punishment had decreased. The regulations concerning the minimum standard of treatment of prisoners, established at the first UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955 in Geneva, were adopted by the Economic and Social Council of the United Nations (ECOSOC) in resolution number 663 on July 31, 1957, which prohibited the application of corporal punishment as disciplinary measures against prisoners (Mehrpour, 2008: 102).

Additionally, the Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment was adopted by the General Assembly in 1975 (Mousazadeh, 2012, p. 95). Similarly, in contemporary legal systems, a confession is merely evidence and, like all evidence, is subject to challenge (Sharifi Khazrati, 2013, Vol. 1: 175).

## **Chapter Two: International Guarantees for the Prohibition of Torture**

### **Section One: General Documents and Treaties**

#### **Subsection One: Universal Declaration of Human Rights**

The most valuable achievement of World War II was the United Nations, an organization that is truly global and has effective powers to maintain peace (Taylor, 408:1397). The first human rights document that addressed torture and cruel, inhuman, and degrading treatment is the Universal Declaration of Human Rights, adopted on December 10, 1948. This declaration recognizes the prohibition of torture in its Article 5 (Mehrpour, 46:1387). According to Article 5 of the Universal Declaration of Human Rights, no one should be subjected to torture or to cruel, inhuman, or degrading treatment or punishment (Johnson, 1377: 91). This prohibition has since been widely incorporated into international documents, becoming a common prohibition in international law. Although the Universal Declaration of Human Rights does not provide a definition for torture, it also does not foresee any enforcement mechanisms for it.

#### **Subsection Two: International Covenant on Civil and Political Rights**

The International Covenant on Civil and Political Rights was adopted by the United Nations General Assembly through Resolution 2200A on December 16, 1966, and is one of the international human rights documents (Mehrpour, 58:1387). By 1999, 144 states had acceded to this covenant, which became effective on March 23, 1976 (Hashemi, 153:1384). By 2002, 155 countries had joined it (Mirzaei, 1373: 66). The covenant addresses the prohibition of torture in Article 7, which states, "No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment" (Mehrpour, 457:1387).

Accordingly, the Human Rights Committee was established under the International Covenant on Civil and Political Rights to monitor the implementation of the covenant's provisions by states and to request reports from them. After receiving these reports, in cases of human rights violations by member states, the committee informs the member states and the United Nations General Assembly (Mehrpour, 65:1387). The covenant allows for deviations from its provisions in emergency situations where public safety is threatened, allowing states to refrain from executing the provisions except for seven fundamental rights specified in Articles 6, 7, 8, 11, 15, 16, and 18, among which the prohibition of torture is included (Mehrpour, 63:1387).

### **Subsection Three: Geneva Conventions**

The four Geneva Conventions, adopted in 1949 to protect victims of war, came into force on October 21, 1950 (Mehrpour, 251:1387). Article 12 of the First Convention states that members of the armed forces and other individuals mentioned in this article who are wounded or ill must be respected in all circumstances and must be provided legal protection. The state that holds these individuals during war must treat them humanely and must not discriminate against them based on gender, beliefs, religion, or political opinions. Any actions endangering their lives or applying violence against them are strictly prohibited. They must not be killed, expelled, tortured, or subjected to biological testing (Mehrpour, 253:1387).

According to Article 13 of the Third Convention, they must always be treated humanely. Any action or inaction by the detaining authority that causes death or serious harm to the health of the detainee is prohibited and constitutes a serious violation of the convention. It is specifically stated that no prisoner of war shall be subjected to physical or psychological torture or to scientific experiments.

Furthermore, Article 32 of the Fourth Convention states that any inhumane actions against civilians under the control of the warring parties, such as murder, torture, corporal punishment, amputation, scientific testing, and any other inhumane or degrading acts, are prohibited (Mehrpour, 255, 256:1387).

### **Subsection Four: Convention Against Torture**

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is included in some specific international documents. The most important of these is the United Nations Convention Against Torture, adopted in 1984 by the UN General Assembly. As of December 31, 1995, 39 states had joined this convention. This convention established a ten-member expert committee to review reports submitted by states based on Article 19



(Sadeghi, 1392, p. 402). However, by the end of 1990, this number had increased to 107 countries (Ashouri, 1384, vol. 1, p. 41). By 2002, more than 110 countries among the 200 in the world had become parties to the Convention Against Torture (Mirzaei, 1373: 66).

This convention can be considered the most important and binding international document guaranteeing the prohibition of torture. According to Article 1 of the convention, torture is defined as any act that deliberately inflicts severe physical or mental pain or suffering on a person for the purpose of obtaining information or a confession from them or a third party.

It also includes punishing a person for an act committed or presumed to be committed by them or a third party, or threatening or coercing them or a third party. Punishment based on any form of discrimination is also considered torture. However, this article adds that pain or suffering arising from the inherent or incidental characteristics of legal penalties is excluded from the above definition. Additionally, the prohibition of torture is specified in paragraph 2 of Article 2 of this convention, stating that no exceptional or emergency situations, including war or internal political instability, can justify torture. Orders from superiors cannot be used as an excuse for torture, and torturers are held accountable for their actions (Mehrpour, 1387, pp. 96-97).

Other provisions in the Convention Against Torture include states' obligations to prosecute and punish those who commit torture, providing facilities for victims to file complaints, compensating victims of torture by the state, the ineffectiveness of confessions obtained through torture, criminalizing acts considered torture, and providing necessary training for prison staff regarding the prohibition of torture (Ashouri, 1384, vol. 1, p. 42).

Articles 5, 6, and 7 of the convention focus on the obligation of states to prosecute and punish those who commit torture, creating facilities for torture victims to file complaints, and addressing those complaints. Article 8 requires member states to treat the crime of torture as an extraditable offense and to include provisions in bilateral agreements that individuals accused of torture must be extradited to the relevant country for trial.

Furthermore, Article 10 emphasizes that states must provide training on the prohibition of torture to law enforcement personnel, military forces, and all officials involved in the detention and treatment of individuals. According to Article 11, member states are required to systematically and regularly examine the rules and procedures related to inspections and arrangements concerning prisons and the treatment of individuals detained or imprisoned to prevent torture.

Article 4 specifies that member states must treat any act of torture, as well as attempts to commit torture and participation in such acts, as a criminal offense under their criminal laws and establish appropriate penalties for these acts (Mehrpour, 1387, p. 98).

#### **Subsection Five: Statute of the International Criminal Court**

This statute consists of a preamble and thirteen chapters, totaling 128 articles. The preamble emphasizes that the gravest crimes that disturb the peace of the international community should not remain unpunished. It defines torture broadly. According to section (h) of paragraph 2 of Article 7 of the statute, torture is defined as the intentional infliction of severe pain or suffering, whether physical or mental, on a person who is in detention or under the authority of the accused, excluding pain or suffering that is solely a result of or incidental to lawful punishments. Torture is considered a crime against humanity (Karyangsak, 1383, pp. 60-209).

However, according to the second paragraph of Article 7 of the International Criminal Court's statute, there is no mention of state officials in the definition of torture. This omission arose from the understanding that crimes against humanity (under which torture falls) can be instigated or led by either state or non-state actors (Sak Giti Chaisari, 1392, p. 139). Based on this statute, torture can be prosecuted as a gross violation, a serious breach of humanitarian law, a crime against humanity, or ethnic cleansing (Karyangsak, 1383, p. 271). In fact, the statute of the International Criminal Court is based on the principle that a human being is a member of the human family, not just a citizen of a specific country (Najafi Abrand Abadi and Khazani, 1383, p. 271). The court recognizes crimes against humanity anywhere and anytime, provided they comply with the substantive regulations of the statute and are punishable (Vorleh, 1378, pp. 59-100). Furthermore, in terms of criminal procedure, the International Criminal Court aims to ensure fair trial standards (Ruiz and Sorel, 1378, p. 174). It implements a unified procedural system based on moral rules from both common law and Roman-German legal traditions (Sadeghi, 1384, pp. 303-381; Ambos, 1386, pp. 185-238).

#### **Chapter Two: Specific Documents and Treaties (Regional)**

##### **Section One: European Convention on Human Rights**

The European Convention on Human Rights, consisting of a preamble and 66 articles, was adopted on November 4, 1950, and came into force on September 3, 1953. It can be said that the European Convention on Human Rights is the first step in making the human rights regulations of the Universal Declaration of Human Rights legally enforceable.



This convention addresses the prohibition of torture and inhuman punishment in Article 3. According to Article 15, even in times of war and emergencies, member states cannot evade their obligations concerning the prohibition of torture (Mehrpour, 182-185: 1387).

### **Section Two: American Convention on Human Rights**

The American Convention on Human Rights comprises a preamble and 82 articles. It was adopted on November 22, 1969, and became effective in 1978. This convention emphasizes several civil and political rights that states must recognize and are obligated to implement, such as the right to life and humane treatment (Mehrpour, 1387: 213-215). This convention, inspired by the International Covenant on Civil and Political Rights, rejects any form of torture and inhuman treatment while ensuring necessary guarantees. In addition to establishing a Human Rights Commission, it also led to the creation of the Inter-American Court of Human Rights.

### **Section Three: African Charter on Human and Peoples' Rights**

This charter was adopted by the African Union in June 1981 and came into force on October 21, 1986. It consists of a preamble and 68 articles. Articles 4 and 5 of this charter address the right to life, the inherent dignity of the human being, the prohibition of slavery and the slave trade, as well as the prohibition of torture and inhuman or degrading treatment (Mehrpour, 229-232: 1387).

### **Conclusion**

Based on the above points, it must be stated that the commission of torture in all its forms and for any purpose is prohibited under international criminal law. The prohibition of torture is one of the most important norms accepted and recognized in the international community, confirmed in documented sources with the emergence and formation of the modern human rights system. Instruments have been established to protect individuals against this inhumane act (torture), which is firmly and non-suspendably prohibited in international documents. Therefore, violators of this prohibition are considered serious human rights offenders. The prohibition of torture, as an independent crime in international law, is regarded as a peremptory norm, which obliges states not only to refrain from issuing permits or participating in the commission of this crime but also to prevent its occurrence.

The Convention Against Torture 1984, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Geneva Conventions, the Statute of the International Criminal Court, the European Convention on Human Rights, the American Convention on Human Rights, and the African Charter on Human and Peoples' Rights are among

the international guarantees. However, violations of this absolute principle frequently occur by states and institutions. What is needed to further reduce the infringement of this fundamental principle is greater attention to the mechanisms for enforcing this principle in international conventions, both global and regional.

### REFERENCES

1. Ashouri, Mohammad, 2005, *Criminal Procedure*, Tehran, Iran, Samt Publications, 9th edition.
2. Ambus, Kai, 2007, *International Criminal Procedure: Adversarial, Inquisitorial, or Mixed*, translated by Mr. Janat Makan, Hossein, *Legal Research Journal of Shahid Beheshti University*, No. 45.
3. Johnson, Glenn, 1998, *The Universal Declaration of Human Rights and Its History*, translated by Pouyandeh Mohammad Jafar, Tehran, Nashr-e Ni.
4. Dehkhoda, Ali Akbar, 1998, *Dehkhoda Dictionary*, 2nd edition, new period, Tehran University Press, Vol. 9.
5. Hashemi, Dr. Seyyed Mohammad, 2005, *Human Rights and Fundamental Freedoms*, 1st edition, Tehran, Mizaan Publications.
6. Wörle, Gerhard, 1999, *Crimes Against Humanity in Contemporary International Law*, translated by Amir Saeed Vakil, *International Legal Journal*, No. 39.
7. Hayim, Suleiman, 2006, *Contemporary Great Dictionary (English-Persian)*, 6th edition, Tehran, Contemporary Culture Publishing.
8. Kiti Shia Yazri, Kriang Sak, 2004, *International Criminal Law*; translated by Behnam Youssefian, Mohammad Esmaeili, Tehran: Organization for the Study and Compilation of Humanities Books for Universities (Samt).
9. Kasseh, Antonio, 1998, *Inhumane Governments: Human Rights Violations in Today's Europe*, translated by Kia Tabatabai, Tehran, Basirat Publications.
10. Langroudi, Mohammad Jafar, 1999, *Terminology of Law*, 1st edition, Ganj Danesh, Vol. 2.
11. Moein, Mohammad, 1981, *Persian Dictionary*, 4th edition, Vol. 2.
12. Moosizadeh, Dr. Reza, 2012, *Prerequisites of Public International Law*, Tehran, Mizaan Publications.
13. Mehrpour, Dr. Hossein, 2008, *International Human Rights System*, 3rd edition, Tehran, Information Publications.

14. Najafi Abrand Abadi, Ali Hossein and Khazani, Manoochehr, 2004, *An Introduction to the Draft International Penal Law*, *Legal Journal*, Nos. 18 and 19.
15. Sakeh Kiti Chaisari, Kriang, 2013, *International Criminal Law*, translated by Dr. Hassan Aghaei Janat Makan, 1st edition, Tehran, Eternal Jungle Publications.
16. Omid, Hasan, 2010, *Amid Persian Dictionary*, 1st edition.
17. Sadeqi, Hatam, 2005, *Procedure and Evidence of the International Criminal Court*, *Quarterly Legal Journal*, No. 33.
18. Ruiz Fabre, Helen and Jean-Marc Sorel, 2008, *International Procedures*, translated by Ebrahim Bigzadeh, *Legal Journal*, No. 24.
19. Sharifi Khazarti, Amir, article "Prohibition of Torture in Criminal Law", *Legal Journal of Dadgostar*, Year 7, No. 40, Mehr-o Aban 2009.
20. Taylor, Alan John Percival, 2018, *World War II*, translated by Bahram Fardad Amini, 1st edition, Tehran, Scientific Cultural Publications.
21. Mirzaei, Saeed, 1994, *Transformation of the Concept of Sovereignty in the United Nations*, Tehran, Political and International Studies Office.