

## Violation of International Human Rights Law:

### The US Approach in handling situation after 9/11 attack

*Priyamvada Priyadrshini and Vanshika Premani<sup>1</sup>*

➤ **Abstract:**

*Protection of Human Rights has been one of the top notch agendas of United Nations. United States, being the world's superpower, has been very active and instrumental in initiating and even promoting the various conventions and treaties that aim at protecting the Human Rights.*

*However, U.S took a leap from its commitment after the 9/11 attack that shook the conscience of the whole world. The attack was horrendous and atrocious that took away lives of innocent people. But what US did in turn was nothing less dreadful.. The prisoners detained at Guantanamo Bay for almost a decade now has been deprived of the basic amenities of life. Thus, this paper aims at elaborating the entire situation. It would include the basic facts like history of the attack, the aftermath of 9/11, the measures adopted by the Bush Administration, the international laws that were violated and how the current government has strategized to handle the situation and to what extent it has been successful in providing and protecting the Human Rights of the Detainees.*

➤ **Methodology:** The authors have relied on doctrinal method of research.

➤ **Introduction & Observations:**

The attack of 9/11 has been unprecedented in the history of America. It brought along serious consequences not only for Americans who were the direct victims to the attack but also it proved fatal for those who although were not originally from U.S yet suffered the repercussions for the mere fact that they had some connections with Taliban and Al Qaeda. However, after analysis at the Global levels by various International Organisations such allegations turned out to be baseless and violative of Human Rights. This ill-fated incident took place during George W. Bush administration. It was under his administration that a

---

<sup>1</sup> B.A. LL.B (Hons.), Fourth Year, Dr. Ram Manohar Lohiya National Law University, India.

stringent decision was taken due to which hundreds of people were detained in Guantanamo Bay detention center located in Cuba.

Guantanamo, often known as the 'Pearl Harbour' of the Atlantic is located 400 miles away from the main landmass of US in the Guantanamo province of Cuba. It is the sole naval base in a communist country. It is the oldest overseas American Naval base and has no political affiliation with US. It was only when US assisted Cuba in Spanish American War, 1898 against Spain that Cuba got its independence by way of Treaty of Paris, December 1898 thereby strengthening its relations with U.S. In the same year US seized Guantanamo Bay compelling Spanish officials to surrender.

### **A. Pattern Followed During Bush Administration: The New Paradigm**

The 9/11 incident forced the then president of U.S George W. Bush to come up with some of the most stringent laws and therefore he announced "war on terror", the biggest conflict it would have ever faced. According to various analysts the only option left with the government was to resort to extracting information from those whom they suspected had connections with terrorist groups that of Taliban and Al Qaeda who were active participants in the attack. As a consequence of this the Bush Administration gave a start to an entirely new strategy to combat against such unpredictable war like situations which the administration introduced as 'The New Paradigm'. Under it, the president authorized, in Jane Mayer's words, "a new, ad hoc system of detention and interrogation that operated outside any previously known coherent body of law. The central feature of this new project would be the authority to use more flexible methods of interrogation on suspected terrorists, tactics believed to yield higher value intelligence.<sup>2</sup> As former U.S. Undersecretary of Defense for Policy Douglas Feith bluntly put it: "Intelligence is in the heads of these people. We need to extract it."<sup>3</sup>

But the fact remains that the New Paradigm was and is still silent on:

- 1) Who would be subject to such method of interrogation?
- 2) What would be the treatment meted out to them?
- 3) What will be the modes and method of Investigation?

### **The New Paradigm Framework:**

---

<sup>2</sup> Bill Gertz, Breakdown: How America's Intelligence Failure Led to September 11 (2002).

<sup>3</sup> Philippe Sands, Torture Team: Rumsfeld's Memo and the Betrayal of American Values, at 188 (2008).

It all started with allotment of work to 3 Intelligence agencies of U.S during the Bush Administration. These agencies were Central Intelligence Agency (CIA), Federal Bureau of Investigation (FBI) and Department of Defense (DOD). These 3 agencies operated through different offices and regulations on which the entire interrogation technique was based. The Federal Bureau of Investigation (FBI) acts as the lead agency for exposing, preventing, and investigating intelligence activities on U.S. soil, works to keep weapons of mass destruction and other embargoed technologies from falling into wrong hands, to protect critical national secrets and assets, and to strengthen the global threat picture by proactively gathering information and intelligence.<sup>4</sup>

The Department of Defense (DOD) being an executive branch department of the federal government of the United States is given the responsibility for organizing, systemizing and supervising all agencies and offices of the government concerned directly with national security and the United States Armed Forces. The Central Intelligence Agency (CIA) preempt threats and further US national security objectives by collecting intelligence that matters, producing objective all-source analysis, conducting effective covert action as directed by the President, and safeguarding the secrets that help keep our Nation safe.<sup>5</sup>

The government of U.S basically focussed on the following three aspects in The New Paradigm Scheme:

- 1) Detention Facilities
- 2) Rules applicable on the detainees
- 3) Location of Prison Centres for detainees.

1) **Detention Facilities:** The arbitrary process of the Bush Administration started with the issuance of a clandestine directive thereby granting the Central Intelligence Agency (CIA) the power to set up detention facilities which they termed as 'Black Sites' to be set-up outside United States. According to *Collins Dictionary* a 'Black Site' is defined as:

"a secret facility used by a country's military as a prison and interrogation centre, whose existence is denied by the government" . The term gained momentum, for not so good reasons, when secret prisons were being operated by CIA at locations outside U.S with the basic purpose of secretly detaining alleged unlawful combatants in its War on Terror' after the lethal attack of 9/11. Word of this new directive was kept secret until October 2001 when a senior U.S. official told the *Washington Post* that President Bush had directed the CIA to

---

<sup>4</sup>Counterintelligence, The Federal Bureau of Investigation, (Aug. 6<sup>th</sup> , 2014, 5:10 p.m.), <http://www.fbi.gov/about-us/investigate/counterintelligence>

<sup>5</sup>Our Mission, Central intelligence Agency, (Aug. 6<sup>th</sup>, 2014, 4:30 p.m.), <https://www.cia.gov/index.html>

“undertake its most sweeping and lethal covert action since the agency was founded in 1947.” “The gloves are off,” the official said. “The president has given the agency the green light to do whatever is necessary. Lethal operations that were unthinkable pre-September 11<sup>th</sup> are now under way.”<sup>6</sup>

Since opening up of ‘Black Sites’ was a completely secret mission, many studies revealed the fact that about 20 locations around the world were marked as ‘Black Sites’ viz., Thailand, Afghanistan, Poland, Romania, Lithuania, Kosovo, several democracies of Eastern Europe as well as a small centre at the Guantanamo Bay prison in Cuba. These ‘Black Sites’ had secret code names like ‘Salt Pit’ and ‘Bright Light’. There was an investigation conducted by the Council of Europe wherein they came up with certain findings revealing that the CIA subjected the detainees to enhanced interrogation techniques which were torturous, tormenting and inhumane. This resulted in criticism of the various ‘Black Sites’ and the surmounting pressure from International establishments led to shut down of almost all the ‘Black sites’ except that at Guantanamo bay. Even after no other location left for the detainees to be detained, still the Bush Administration instead of detaining them back in U.S prisons it chose to transfer them to Guantanamo Bay so that they in no way can get access to US courts. The amount of discretionary power that was given to CIA was not justified. The then government in power failed to conclusively prove that people who were detained were real culprits and adding to their misery the U.S government took away their right to appeal in the Federal Courts for fair trial by locating them outside the jurisdiction of the penalizing country.

## 2) **Rules Applicable to Detainees:**

The authorities at that time decided to apply the provisions of Third Geneva Convention (GCIII) which is also known as Geneva Convention Relative to the Treatment of Prisoners of War (POWs), which provides rules for governing the capture and detention of prisoners of war and for regulating the treatment to be given to them while in detention. The Office of Legal Counsel (OLC) US played a very important role in influencing the decisions made by the Bush Administration while considering the status of Prisoners for the purpose of giving them protection under the Third Geneva Convention (GCIII). The OLC, by delegation from the Attorney General, the Assistant Attorney General in charge of the Office of Legal Counsel, provides authoritative legal advice to the President and all the Executive Branch agencies. The Office drafts legal opinions of the Attorney General and also provides its own

---

<sup>6</sup> Bob Woodward, CIA Told to Do ‘Whatever Necessary’ to Kill Bin Laden *Washington Post*, (2001).

written opinions and oral advice in response to requests from the Counsel to the President, the various agencies of the Executive Branch, and offices within the Department. Such requests typically deal with legal issues of particular complexity and importance or about which two or more agencies are in disagreement. The Office also is responsible for providing legal advice to the Executive Branch on all constitutional questions and reviewing pending legislation for constitutionality.<sup>7</sup>

It was in January, 2002 that the lawyers of OLC of US Department of Justice prepared various memorandums for detention, investigation, etc in order to assist the Bush Administration in deciding over the policies to be adopted for regulating the detention procedure and also the type of treatment to be given the alleged prisoners of war. They were adamant that the Third Geneva Convention should not be applied to members of Al-Qaeda and Taliban who were captured in the war in Afghanistan and other locations. They gave 2 different reasons for denying such protection to the two groups. Al Qaeda members were not granted the shield of protection under the Convention because of the reasons that they were neither a state actor nor a signatory to any pact. On the other hand Taliban was not successful in establishing the Government and the status of Afghanistan too failed as a state thereby making it very difficult for Taliban Members to claim their rights as POWs under the Convention.

On 25<sup>th</sup> January, the White House Counsel Alberto Gonzales, sent a memorandum to the then President George W. Bush recommending him to deny any protection to the members of Al Qaeda and Taliban under third Geneva Convention. This stand of Alberto Gonzales was opposed by the Secretary of State Colin Powell who in turn requested the President to reassess his decision and claimed that the provisions of Third Geneva Convention would apply to them. He also proposed an alternative according to which a military board should be constituted that would take up matters on case by case basis and determine whether the members of the two groups can be tagged as prisoners of war or not for the purpose of providing protection under Geneva Convention. The memo that was sent to the President was also sent to Colin Powell for his comment. The memo stated reasons for such an advice given by Gonzales. According to him, by excluding the members of the two groups from the definition of Prisoners of War as mentioned under the Convention provides "flexibility" and "reduce threat that the military officials and people under administration would not be prosecuted for war crimes". In a reply comment to this draft memo by Gonzales, Powell

---

<sup>7</sup> Office of Legal Counsel, The US Department of Justice, (August 6, 2014, 3:45 p.m.), <http://www.justice.gov/olc>

claimed and expressed his concern that Gonzales never gave any options to the then President rather only proposed to not give them protection and right to appeal for Justice. Powell considered such a move as disrespectful to the fundamental principles of International Law one of it being acting in compliance with convention regulating the purpose in issue.

The entire discussion got settled when the Bush Administration issued a memorandum on February 7, 2002 stating its final decision on the issue. It was in the form of a Fact Sheet that was issued by the White House purporting to determine the status of the detainees whether they would be covered under Third Geneva Convention or not. It stated:

*“The United States is treating and will continue to treat all of the individuals detained at Guantanamo humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of the Third Geneva Convention of 1949. The President has determined that the Geneva Convention applies to the Taliban detainees, but not to the Al-Qaida detainees. Al-Qaida is not a state party to the Geneva Convention; it is a foreign terrorist group. As such, its members are not entitled to POW status. Although we never recognized the Taliban as the legitimate Afghan government, Afghanistan is a party to the Convention, and the President has determined that the Taliban are covered by the Convention. Under the terms of the Geneva Convention, however, the Taliban detainees do not qualify as POWs. Therefore, neither the Taliban nor al-Qaida detainees are entitled to POW status. Even though the detainees are not entitled to POW privileges, they will be provided many POW privileges as a matter of policy.”<sup>8</sup>*

### 3) Location of Prison Centres for Detainees:

The third major concern for the U.S government that time was to search for a suitable place to locate the prisoners. They wanted a place which is outside U.S so that the Federal Courts have no jurisdiction to try any cases challenging the detention of the prisoners. They focussed on getting a safe and secure location away from U.S to detain and capture the prisoners who were otherwise arrested in Afghanistan. The purpose of such a requirement was to ensure that the detainees can be held and confined for as much time as the US government and the departments responsible for conducting investigation demanded. This led to detention for an indefinite period of time without interference of any judicial obligation to conform to. A debate took place in the month of October and November, 2001 wherein inter-agency task force composed of lawyers from the White House and the departments of Defense, State, and Justice, negotiated on various alternatives. “The one

---

<sup>8</sup> Status of Detainees at Guantanamo, US Department of State, ( Aug. 6, 2014, 3:30 p.m.), <http://2001-2009.state.gov/p/sca/rls/fs/7910.htm>

thing we all agreed on was that any detention facility should be located outside the United States," writes John Yoo, a former Department of Justice lawyer who served on the task force.<sup>9</sup> Guantanamo Bay for the past 110 years has been centered for processing refugees, most particularly Cuban and Haitian refugees. A number of places were marked as "Black Sites" but due to the gradual closure of these sites the US Government shifted all the prisoners to Cuba, which was already noted by them as a "black site" and thereby the US administration became successful in placing the detainees outside the jurisdiction of the law of the land. The Cuban government continues to repress individuals and groups who criticize the government or call for basic human rights. Officials employ a range of tactics to punish dissent and instill fear in the public, including beatings, public acts of shaming, termination of employment, and threats of long-term imprisonment.<sup>10</sup> This stand by the U.S government was against the Rule of Law and against the Constitutional principle of Equality.

#### **B. *FUNDAMENTAL ISSUES:***

- 1) Whether the Bush Administration was right in defining the situation as a warlike situation?
- 2) Whether tagging the detainees as 'unlawful enemy combatants; and denying protection to them under Geneva Convention on this ground was justified?
- 3) Whether U.S being an active signatory to all the Human Rights treaties violated the fundamental principles of International Public Law?
- 4) Whether the detainees at Guantanamo Bay should be entitled to be examined by the same Tribunals as where the American Combatants are prosecuted for committing war crimes? Are there any regulations that regulate the handling of such detainees?
- 5) Whether the detainees captured during the International Armed Conflict should be treated as Prisoners of War and thereby entitled to the shield of the Third Geneva Convention of 1949?
- 6) Whether the treatment meted out to the detainees were inhuman and against the moral philosophy of World Medical Association, of which the US is a party?

---

<sup>9</sup> John Yoo, *War By Other Means: An Insider's Account of the War on Terror*, at 142 (2006), available at <http://books.google.co.in/books?id=cSluURhjZgsC&printsec=frontcover&dq=WAR+BY+OTHER+MEANS+An+Insider%E2%80%99s+Account+of+the+War+on+Terror.&hl=en&sa=X&ei=KzQVVOrVCoeHugTEtYKwAg&ved=0CB0Q6AEwAA#v=onepage&q=WAR%20BY%20OTHER%20MEANS%20An%20Insider%E2%80%99s%20Account%20of%20the%20War%20on%20Terror.&f=false>

<sup>10</sup> *Human Rights in Cuba*, Human Rights Watch, ( Aug. 7<sup>th</sup>, 2014, 5 p.m.), <http://www.hrw.org/americas/cuba>

- 7) Barack Obama has been blamed by various experts for favouring the idea of reallocation of detainees at Guantanamo to which he alleged to have acted under pressure from US Congress. Is it right to drag the Obama Administration to list of those who are held responsible for violating the International Humanitarian Law?

### **C. VIOLATION OF INTERNATIONAL LAWS:**

The US Laws dealing with the handling of the detainees prior to September 11 was contained in the treaties. The laws were enacted by US Congress and ratified by the United States. All such laws enacted have to be in consonance with the fundamental principles of International Law.

#### **The Geneva Convention**

The basic laws which require immediate attention before addressing the issue of Guantanamo Bay relates to the clauses of the Geneva Convention. The Geneva Conventions are a aggregation of four international humanitarian laws of warfare. These four Conventions have been ratified by every nation in the world and therefore it is composed of both International and U.S. Laws. The two important items that stems from the Clauses of the Geneva Convention includes the rules for holding the prisoners of war as contained in Article 3 of the Convention and the rule of Habeas Corpus that ensures the due procedure of law.

#### **Geneva Convention Relative To The Treatment Of Prisoners Of War Of August 12, 1949 (Geneva Convention III)**

The Third Geneva Convention lays out the specific regulations for the treatment of Prisoners of War. Since the Geneva Conventions have been signed by every nation and includes both International and U.S. Laws the Common Article 3 establishes the universal standard to be applied to all the detainees. So the basic principles set down under Common Article 3 have its reflection in other International and U.S. Laws. It states:

*In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:*

1. *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 humanely, without any adverse distinction .*

*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:*

- (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;*
  - (b) Taking of hostages;*
  - (c) Outrages upon personal dignity, in particular, humiliating and degrading treatment;*
  - (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.*
2. *The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.*

The foundation principle on which it is based includes:

- 1) Prohibition on all forms of Torture
- 2) It forbids cruel, inhuman or degrading treatment
- 3) These obligations apply universally without any exception to time and space
- 4) It demands that the detainees should be cared-for humanely

### **Violation of the Principles enshrined under the Common Article 3**

Several studies have demonstrated that the detainees are dehumanized, physically and psychologically abused and reminded that nobody cared for them. From the interrogation log of one of the detainees Mohammed al-Qahtani, the so called 20th hijacker at Guantanamo, the following excerpts<sup>11</sup> were found:

**11 December 2002**

---

<sup>11</sup> .Steve, Tsang, Intelligence and Human Rights in the Era of Global Terrorism, at 95 ( 1<sup>st</sup> ed. 2008).

“Detainee was reminded that no one loved, cared or remembered him. He was reminded that he was less than human and that animals had more freedom and love than he does. He was taken outside to see a family of banana rats. The banana rats were moving around freely, playing, eating, and showing concerns for one another. Detainee was compared to the family of banana rats and reinforced that they had more love, freedom, and concern than he had. Detainee began to cry during this comparison.”

### **20 December 2002**

“Detainee offered water-refused. Corpsman changed ankle bandages to prevent chafing. Interrogator began by reminding the detainee about the lessons in respect and how the detainee had disrespected the interrogators. Told detainee that a dog is held in higher esteem because dogs know right from wrong and know to protect innocent people from bad people. Began teaching the detainee lessons such as stay, come, and bark to elevate his social status up to that of a dog. Detainee became very agitated.”

Among other ploys, the detainees were forced to stand naked in front of the female interrogator, to wear women’s underclothes, and to undergo repeated strip searches as part of the interrogation.

The interrogation technique was divided into three distinct categories. Category I techniques were the most commonplace and the least aggressive (direct questioning; standard rewards and deceptions; yelling, but not directly in the ear). Category II techniques became the benchmarks<sup>12</sup>:

- 1) The use of stress positions (like standing), for a maximum of four hours.
- 2) The use of falsified documents or reports.
- 3) Use of isolation facility for up to 30 days [with certain conditions attached].
- 4) Interrogating the detainee in an environment other than the standard interrogation booth.
- 5) Deprivation of light and auditory stimuli.
- 6) The detainee may also have a hood placed over his head during transportation and questioning. The hood should not restrict breathing in any way and the detainee should be under direct observation when hooded.
- 7) The use of 20 hour interrogations.
- 8) Removal of all comfort items (including religious items).
- 9) Switching the detainee from hot rations to MREs [Meals Ready to Eat].
- 10) Removal of clothing.

---

<sup>12</sup> .ibid

- 11) Forced grooming (shaving of facial hair etc.)
- 12) Using detainees's individual phobias (such as fear of dogs) to induce stress.

**Category III techniques went a little further<sup>13</sup>:**

- 1) The use of scenarios designed to convince the detainee that death or severely painful consequences are imminent for him and/or his family.
- 2) Exposure to cold weather or water (with appropriate medical monitoring).
- 3) Use of a wet towel and dripping water to induce the misperception of suffocation.
- 4) Use of mild, non-injurious physical contact such as grabbing, poking in the chest with finger, and light pushing.

**Article 4 of GCIII:** It defines six categories of people who qualify as POW's.

*'Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:*

*1.Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces.*

*2.Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfill the following*

*...Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.*

*3.Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization, from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model.*

*4.Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law.*

*5.Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms*

---

<sup>13</sup> ibid

*openly and respect the laws and customs of war.*

President Bush formally endorsed Gonzales recommendation in a memorandum and announced that those who were brought into custody would not be treated as POW. But the President gave assurance that such individuals should be treated humanely and, to be treated in a way coherent with the military necessity and the precepts of the Third Geneva Convention.

### **The Convention Against Torture**

The *U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), ratified by the Senate in 1994, forms part of international and U.S. Law. The prohibition on torture was made out as a norm of customary international law, and admitted in the Geneva Conventions earlier to the draw up of CAT. It turned out to be really efficient and provided a sound definition of torture. It puts down a series of affirmative substantive requirements and prohibitions, and prohibited cruel, inhuman or degrading treatment. CAT reflects that the prohibition of torture is one of the basics rules of international jurisprudence. The ban of torture is absolute, without exception, of war or national emergency. It also adopted the universal rule that the evidence obtained through torture is inadmissible in Court of law, except in the instances where it is produced as evidence against alleged torture. It likewise provides for proper training of detention personnel as well as the interrogators so that they could easily understand the prohibitions on torture and cruelty. It also prohibits “acts of cruel, inhuman or degrading treatment or punishment” against detainees even if they fall short of torture.

With the support of United States CAT was adopted by the U.N. General Assembly in 1984. The State Department described U.S. participation in the negotiation of the treaty as evidence that “*[t]he United States has long been a vigorous supporter of the international fight against torture.*”<sup>14</sup> U.S. also confirmed support for such a ban by signing the treaty which provided:

*By giving its advice and consent to ratification of this Convention, the Senate of the United States will demonstrate unequivocally our desire to bring an end to the abhorrent practice of torture*<sup>15</sup>.

Apart from CAT United States also has a federal statute which prohibits the act of torture and commonly referred to as “The Torture Statute”. Although the U.S. was instrumental in the

<sup>14</sup> . The Report of The Constitution Project’s Task Force on Detainee Treatment, DetaineeTaskForce.Org ( Aug.8, 2014, 5:08 p.m.), <http://detaineeetaskforce.org/pdf/Full-Report.pdf>

<sup>15</sup> . Ronald Reagan, Message to Senate Transmitting the Convention Against Torture and Inhuman Treatment or Punishment , The American Presidency Project (Aug 8, 2014, 5:10 p.m. ), <http://www.presidency.ucsb.edu/ws/?pid=35858>

inception of CAT but it was found that U.S. it violated the principles enshrined under the Convention, which was discernible from the treatment meted out to the captives in Guantanamo Bay.

### **Other International Instruments reflecting US Commitments**

The Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) are the two important instruments that is reflective of the U.S. Commitment to the bans on torture. United States acted very enthusiastically in the implementation of these instruments. Although UDHR is not legally binding yet it lays down certain fundamental principles of Human Rights which makes it significant and relevant. ICCPR on the other hand also prohibits torture and acts as a catalyst for the enforcement of the UDHR and protects “basic democratic values and freedoms.”

### **D. PRESIDENT BARACK OBAMA'S ADMINISTRATION:**

One of the areas of research is to find out whether it is justified to hold responsible President Barack Obama for the inhumane treatment meted out to the detainees. The answer to this is a yes and a No both. It was the Bush Administration that initiated and proposed this model and so the Obama Administration did not have direct involvement in its inception. But by delaying the closure of prisons in Guantanamo Bay, the Obama Administration has indirectly aggravated the situation. While seeking presidential nomination in 2008, the U.S President Barack Obama took an election oath to close down the high-security military prison after being elected as the President of U.S. Not only this, after being elected President of U.S, he signed an Executive Order on 22<sup>nd</sup> January, 2009 to ensure its citizens, the detainees and the International Community at large that U.S would shut down the detention shelters in Guantanamo Bay since according to the President such practice of keeping the detainees in isolated areas and depriving them of the basic amenities of life is against the International Humanitarian Law. The order stated:

**Section 1(c) of the Order defined detainees as:**

*"Individuals currently detained at Guantánamo" and "individuals covered by this order" mean individuals currently detained by the Department of Defense in facilities at the Guantánamo Bay Naval Base whom the Department of Defense has ever determined to be, or treated as, enemy combatants.*<sup>16</sup>

It also stated the factual statements like the number of Detainees that have been released on record and the number of Detainees who were yet imprisoned. It mentioned that due to surmounting pressure from the International Community it became imperative for the US government to not only close the detention homes but also aim for prompt and adequate disposition of the individuals currently detained at Cuba. It also promised the right of habeas corpus to the detainees through which they can challenge their detention. It promised right to those who committed offences by aiming at gauging the quantum of punishment to be given to them so that after serving the definite term of imprisonment, they can be relieved. One of the fundamental provisions of the executive order was Section 3 which stated that the Detention facilities would be closed as soon as practicable as and not later than within 1 year from the date of the order i.e latest by 22<sup>nd</sup> January, 2010. But even after five years of the Vow, Guantanamo Bay remains still opened. The Obama Administration mentioned that strong criticism from the Congress he got delayed in execution of his Promise. Nonetheless, the Obama Administration has and is still striving to release the detainees as early as possible. One of the positive steps has been the enactment of National Defense Authorization Act, 2014 that has given greater flexibility to the present government to catalyse the process of releasing the detainees. It was passed by the senate on 19<sup>th</sup> December, 2013 which contained a provision making it easier for the government to transfer detainees to foreign countries. Before detainee transfers could take place under the old law, the defense secretary had to make detailed certifications about security and other issues in the host country, to assure Congress that released detainees would not engage in terrorist activities in their new country. Congress eased many of these restrictions.<sup>17</sup> On 28<sup>th</sup> January, 2014, the President Barack Obama finally declared the closure of the prisons as it has wind down its military role in Afghanistan and shifted from a permanent war footing.

He stated:

*This needs to be the year Congress lifts the remaining restrictions on detainee transfers and we close the prison at Guantánamo Bay. Because we counter terrorism not just through intelligence and military action, but by remaining*

---

<sup>16</sup> Executive Order -- Review And Disposition Of Individuals Detained At The Guantánamo Bay Naval Base And Closure Of Detention Facilities, The White House, (Aug. 6<sup>th</sup>, 2014, 5:35 p.m.), [http://www.whitehouse.gov/the\\_press\\_office/Closure\\_Of\\_Guantanamo\\_Detention\\_Facilities](http://www.whitehouse.gov/the_press_office/Closure_Of_Guantanamo_Detention_Facilities).

<sup>17</sup> Tim Ryan, Small but tangible progress moves the meter off of Promise Broken, Campa Bay Times: Politifact com, at 1 (Feb. 27<sup>th</sup>, 2014), <http://www.politifact.com/truth-o-meter/promises/obameter/promise/177/close-the-guantanamo-bay-detention-center/>

*true to our constitutional ideals and setting an example for the rest of the world.*<sup>18</sup> Having said this, it should be seen that to what extent and how early does the current government make it possible and abide by its commitment.

➤ **Conclusion:**

At present the aggregate number of prisoners held at Guantanamo remains at 115.<sup>19</sup> From one perspective US President Barack Obama asserted that he is determined to shut down the Guantanamo Bay Prison. As indicated by him the main force that is pulling him back is the requirement of confinement demanded by Congress on the exchange of prisoners from the maritime base in Cuba to the US keeping in mind the end goal to close it. Then again the Obama administration is depending on the guarantee made by Republican Senator McCain who had guaranteed that he had an arrangement with Republican to convince Republicans to lift the prohibition on the limitations on exchanging prisoners. In the meantime McCain is of the view that the limitations forced by the new Republican would just be lifted if the Barack organization is fruitful in introducing the powerful answers and solutions to close down the detainment facility.

Thus, it would be important to note that whether the US government would still face opposition from the Congress or whether the parties would join hands and try to eradicate this major problem that concerns not only the detainees but also the International Community that has its eye on the world's superpower that is known for being loyal and devoted to the International obligations

➤ **References:**

- 1) Bill Gertz, Breakdown: How America's Intelligence Failure Led to September 11 (2002).
- 2) Philippe Sands, Torture Team: Rumsfeld's Memo and the Betrayal of American Values, at 188 (2008).
- 3) Counterintelligence, The Federal Bureau of Investigation, (Aug. 6th , 2014, 5:10 p.m.), <http://www.fbi.gov/about-us/investigate/counterintelligence>

---

<sup>18</sup> Thornhill Ted, Barack Obama renews old vow to shut controversial Guantanamo Bay prison as he says 'America must move off a permanent war footing', Mail online, at 1 (Jan. 29<sup>th</sup>, 2014), <http://www.dailymail.co.uk/news/article-2548035/State-Union-address-Barack-Obama-renews-vow-shut-Guantanamo-Bay-prison.html>

<sup>19</sup> Carol Rosenberg, U.S. sends 5 Guantanamo detainees to European Settlement. Miami Herald.com, at 1 (Sep.19, 2015), <https://www.miamiherald.com/news/nation-world/world/americas/guantanamo/articles4032520.html>

- 4) Our Mission, Central intelligence Agency, (Aug. 6th, 2014, 4:30 p.m.), <https://www.cia.gov/index.html>
- 5) Bob Woodward, CIA Told to Do 'Whatever Necessary' to Kill Bin Laden Washington Post, (2001).
- 6) Office of Legal Counsel, The US Department of Justice, (August 6, 2014, 3:45 p.m.), <http://www.justice.gov/olc>
- 7) Status of Detainees at Guantanamo, US Department of State, ( Aug. 6, 2014, 3:30 p.m.), <http://2001-2009.state.gov/p/sca/rls/fs/7910.htm>
- 8) John Yoo, War By Other Means: An Insider's Account of the War on Terror, at 142 (2006), available at <http://books.google.co.in/books?id=cSluURhjZgsC&printsec=frontcover&dq=WAR+BY+OTHER+MEANS+An+Insider%E2%80%99s+Account+of+the+War+on+Terror.&hl=en&sa=X&ei=KzQVVOVCoeHugTEtYKwAg&ved=0CB0Q6AEwAA#v=onepage&q=WAR%20BY%20OTHER%20MEANS%20An%20Insider%E2%80%99s%20Account%20of%20the%20War%20on%20Terror.&f=false>
- 9) Human Rights in Cuba, Human Rights Watch, ( Aug. 7th , 2014, 5 p.m.), <http://www.hrw.org/americas/cuba>
- 10) Steve Tsang, Intelligence and Human Rights in the Era of Global Terrorism, at 95 ( 1st ed. 2008).
- 11) The Report of The Constitution Project's Task Force on Detainee Treatment, DetaineeTaskForce.Org ( Aug.8, 2014, 5:08 p.m.), <http://detainee-taskforce.org/pdf/Full-Report.pdf>
- 12) Ronald Reagan, Message to Senate Transmitting the Convention Against Torture and Inhuman Treatment or Punishment , The American Presidency Project (Aug 8, 2014, 5:10 p.m. ), <http://www.presidency.ucsb.edu/ws/?pid=35858>
- 13) Executive Order -- Review And Disposition Of Individuals Detained At The Guantánamo Bay Naval Base And Closure Of Detention Facilities, The White House, (Aug. 6th , 2014, 5:35 p..m.), [http://www.whitehouse.gov/the\\_press\\_office/Closure\\_Of\\_Guantanamo\\_Detention\\_Facilities](http://www.whitehouse.gov/the_press_office/Closure_Of_Guantanamo_Detention_Facilities).
- 14) Tim Ryan, Small but tangible progress moves the meter off of Promise Broken, Campa Bay Times: Politifact com, at 1 (Feb. 27th, 2014), <http://www.politifact.com/truth-o-meter/promises/obameter/promise/177/close-the-guantanamo-bay-detention-center/>

- 15) Thornhill Ted, Barack Obama renews old vow to shut controversial Guantanamo Bay prison as he says 'America must move off a permanent war footing', Mail online, at 1 (Jan. 29th, 2014), <http://www.dailymail.co.uk/news/article-2548035/State-Union-address-Barack-Obama-renews-vow-shut-Guantanamo-Bay-prison.html>
- 16) Carol Rosenberg, U.S. sends 5 Guantanamo detainees to European Settlement. Miami Herald.com, at 1 (Sep.19, 2015), <https://www.miamiherald.com/news/nation-world/world/americas/guantanamo/articles4032520.html>