

UNLAWFUL CONFINEMENT: AN ESSENTIAL ISSUE IN ARAB-ISRAELI CONFLICT

By Anant Peshin^{}, Anjali Sherawat^{**} & Anil Dawra^{***}*

ABSTRACT

Unlawful confinement, a cruel act, refers to unlawful arrest or confinement of a person without any lawful act. When considered in an armed conflict, it constitutes a war crime. The act of confining an individual unlawfully leads to gross injustice, violating the modesty and dignity of an individual. The conflict between Israel and Palestine comprising numerous incidents of unlawful confinement, include arbitrary detentions, unlawful arrests, solitary confinements, and torture of Palestinian detainees. It is very unfortunate that even Palestinian children are victimized through unlawful confinement. Such deprivations violating basic rights of individuals stand in clear contradiction to the legislation of a nation and the law governing the international community. The Rome Statute which is the governing body of the International Criminal Court has defined unlawful confinement under Article 8(2)(a)(vii)-2. It is enshrined in the common Article 3 of the four Geneva Conventions. The unlawful confinement contradicts the Right to liberty when seen in terms of law governing the human rights. Even the International Humanitarian Law states that the civilians of a nation need to be protected by the government from the offence of unlawful confinement. Though Israel has not ratified the Rome Statute, which is the governing principle of the International Criminal Court, the International Criminal Court has ruled that it had jurisdiction because the United Nations Secretary General has accepted the Palestinians accession to the treaty in 2015. The failure of the government of Israel to protect the Palestinians from the planned attacks by the groups of Jewish supremacists involves blatant violation of the civilian rights in context of this conflict, in order to ensure speedy justice, there must be an impartial body to help the exploited Arab citizens of Israel, ensuring release of wrongfully convicted individuals besides accepting the requests immediately in case of unlawful detentions.

Keywords: Unlawful Confinement, Conflict, Palestinian, Humanitarian Law etc.

^{*} Ph.D. Research Scholar, School of Law, Sushant University, Gurugram. Email: apeshin1991@gmail.com.

^{**} Assistant Professor, School of Law, Sushant University, Gurugram. Email: anjaliidabas@sushantuniversity.edu.in.

^{***} Professor, School of Law, Sushant University, Gurugram. Email: anildawra@sushantuniversity.edu.in.

I. INTRODUCTION

The term unlawful confinement is found in the Article 147 of the fourth Geneva Conventions, which defines war crimes as wilful killing, torture or inhuman treatment including wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity, and carried out unlawfully. Unlawful confinement which is any form of wrongful restraint means when a person is unlawfully arrested or is confined without any lawful act, and when there is an imposed unnecessary restraint. The important element includes an obstruction in the free movement of the person, preventing the person from proceeding in any direction. The freedom of an individual is an important aspect that needs to be prioritized and protected. The wrongful restraint is a very wide term involving various types of restraints, as it prevents a person from proceeding in a direction in which that person has a right to proceed. It is simply partial suspension of an individual's liberty. However, wrongful confinement on the other hand is a type of wrongful restraint in which a person is kept within circumscribing limits. It is the entire suspension of liberty beyond certain circumscribing limits.

MAIN BODY

Unlawful confinement which comes under Article 2 (g) of the statute of the tribunal, violates the Geneva conventions. In an armed conflict, limited confinement of civilians is permitted only in a restricted number of cases. According to the Article 42 of the fourth Geneva Conventions, placing in assigned residence of protected persons may be ordered, only if the security of the detaining power makes it absolutely necessary and if any person acting through the representatives of the protecting power, voluntarily demands internment and if his situation renders this step necessary, then he shall be interned by the power in whose hands he may be¹.

Unlawful confinement curbs the freedom which is a basic element necessary for the existence of a living being. False imprisonment importantly is a tort. Factors like the main cause for imprisonment, the right to information of the plaintiff for the tort, the exact intention in the

¹ United Nations International Residual Mechanism for Criminal Tribunals, Unlawful confinement of civilians, available at: <https://cld.irmct.org/notions/show/985/unlawful-confinement-of-civilians#> , Accessed June 5th,2023

² i-pleaders, Sept. 29, 2022, False imprisonment under law of Tort, available at: <https://blog.iplayers.in/false-imprisonment-in-tort/>, Accessed June 5th,2023.

defendant's mind during time of confinement are important.² The crime of unlawful confinement also constitutes war crimes which is defined in the Rome statute of the International Criminal Court (ICC) in Article 8. The Article 8(2) (a)(vii)-2 affirms about the war crime of unlawful confinement.³

1. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
2. The perpetrator was aware of the factual circumstances that established that protected status.
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.
5. The perpetrator confined or continued to confine one or more persons to a certain location.
6. [Mental element for Element 5] [Conduct of confining or continuing to confine]: The perpetrator meant to engage in the confinement or the continuation of confinement of one or more persons to a certain location.

6.b.i. [Mental Element for Element 5] [Consequences of confining or continuing to confine]: The perpetrator meant to confine or continue to confine one or more persons to a certain location.

6.b. ii. [Mental element for element 5] [Consequence of confining or continuing to confine]: The perpetrator was aware that one or more persons would be confined or would continue to be confined to a certain location in the ordinary course of events.⁴

In countries like India, it is highlighted in the section 339 of the Indian Penal Code. The section 339 of the Indian Penal Code defines wrongful restraint as anybody who deliberately obstructs any person or prevents that person from proceeding in any direction in which that person has a right to proceed is said to wrongfully restrain that person. The unlawful

³ Case Matrix Network, Art. 8(2)(a)(vii)-2 War crime of unlawful confinement, *available at: <https://www.casematrixnetwork.org/cmn-knowledge-hub/elements-digest/art8/a/8-2-a-vii-2/>*, Accessed June 5th, 2023.

⁴ *Ibid.*

confinement differs slightly from wrongful restraint and is defined under section 340 of the Indian Penal Code. This section states that whoever wrongfully restrains any person in such a manner, as to prevent the person from proceeding beyond certain circumscribing limits is said to have committed the offense of wrongful confinement. If analysed carefully the crime of unlawful confinement restricts a person's personal liberty or freedom of movement. This restraint imposed on a person's right physically constitutes wrongful restraint. It attacks the right of personal liberty of a person, affecting the equality especially if it is carried out in a particular part of a nation, where some citizens face this menace while others are exempted.

The progress of a nation depends essentially on its citizens and if they are subjected to treatment like unlawful confinement, the approach may be labeled as that of apathy towards a nation's own citizens. Such confinement outrages the modesty and dignity of an individual. It is a torturous act, condemned globally and has been criticized in the laws of various countries around the world. It is very unfortunate that such incidents have plagued the nation of Israel, especially the occupied territories of Palestine. The act of unlawful confinement can be linked with the law of equality. The Palestinian Arab citizens of Israel are frequently discriminated and are subjected to various kinds of tortures as compared to the Jews in Israel.

The unlawful confinement which causes mental trauma, affecting the psyche of a person adversely, is an offence under the Geneva Conventions. The article 147 of the fourth Geneva Convention states that the unlawful confinement of a protected person is a contravention of grave nature. The protected person means all the civilians i.e., the citizens of Israel who are non-combatants, and not involved in any hostilities. It is the duty of this nation to take full responsibility to ensure that its citizens live a life of dignity that leads to their growth and development.

When this gruesome war crime is viewed on an individual basis, it can be well assessed that the main damage it causes is to the mind of a person. The act of wrongful confinement leads to victimization of a person and the damages inflicted on a person are essentially caused from illegal detention. A range of serious mental health issues among Palestinian populations in occupied Palestinian territory have cropped up due to abuse and exposure to violence, due to limited access to health care. The mental suffering and humiliation caused are some examples of the impact, which the victim bears under unlawful confinement.

Other associated problems with this war crime, include the interruptions in occupation of the victim creating an economic problem due to loss of timely earnings, thereby affecting the livelihood of victim and dependents who suffer miserably due to stagnant income. Further, there is also emotional suffering due to the absence of the family member adding to their misery. The agony which the victim faces is outrageous, disturbing immensely the psyche of the victim. Such acts definitely call for accountability. The mental trauma faced by the person in such a situation includes fear, shame and hatred against the authority. Since, unlawful imprisonment involves torture caused in a malicious manner, so besides action, it becomes necessary to go beyond the compensation rule and punish the perpetrators in the form of exemplary and punitive damages.⁵ When the conduct of the perpetrators is grossly indifferent to others' rights knowingly or reasonably violating those rights, awarding damages to the deterrent constitutes the punitive damages. On the other hand, exemplary damages are provided in instances of misuse of power by the state.⁶ In case the imprisonment of nominal character is offensive or when hurt is caused to the feelings of the plaintiff, increased damage may be awarded. However, there are also cases when there are exceptions to unlawful confinement like those done in good faith.⁷

Though issues like demolition of property, denial of voting rights, curbing freedom of movement as well as freedom to carry out their own business are faced by Palestinians, the aspect of unlawful confinement is one of the burning problems targeting Palestinians, especially the children, which can be linked to discrimination. The horror of discrimination has been haunting the community since they are targeted by the authorities in favor of Jews.⁸

Establishing a correlation between discrimination and unlawful confinement, discrimination persuades each aspect of the criminal law and detention procedure. In absence of substantial basis there have been numerous arrests and detention of thousands of Palestinians by Israeli authorities in the West Bank, including East Jerusalem, as well as in its own territory, depriving them of liberty. Such illegal detention based on abstract threats or participation in protests, refers to punitive measure and discriminatory bias against Palestinians

⁵ Supra note 2

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Al Jazeera, May 2nd 2022, Some 600 Palestinians held by Israel without charge, group says, *available at*: <https://www.aljazeera.com/news/2022/5/2/more-than-600-palestinians-held-by-israel-without-charge-or-trial>, Accessed June 15th,2023

The children are never spared and are the worst targets of the unlawful confinement, as the law governing the Palestinian children in detention discriminates them from Jewish children. In occupied west Bank, prosecution of 500-700 children takes place yearly in Israeli juvenile military courts under Israeli military orders. Arrested in night raids and ill-treated, some of the children serve sentences within Israel, in violation of the Fourth Geneva Convention.⁹The authorities arrest many Palestinian children, impose charges upon them and prosecute them in Israeli juvenile military courts under the military orders of Israel. The children are arrested during night raids and are often ill-treated.¹⁰ Such acts of illegal arrest of children and later their confinement to prisons amounts to unlawful confinement. The civil law of Israel protects the children against night time arrests. The Jewish children even have the right to the presence of a parent while the interrogations are taking place. The children have limited time for detention before they can consult a lawyer.¹¹ The UN also records injury and killing of many children in attacks by settlers.

It is also reported that in the beginning of this year more than 5,300 Palestinians have been detained by the Israeli military including 630 children most of whom were from Jerusalem.¹² The children under the age of 18 years are the worst victims of unlawful confinement. There was an incident where a classmate of the detainee who was also from the Jerusalem neighbourhood of Sheikh Jarrah, shared that he was also arrested by Israeli forces last year when he was just 15 years old.¹³ Such shocking incidents, lead to mental agony of Palestinian children. These attempts reflect criminalization of Palestinian children, and the consequence of a policy known as un-childing.¹⁴ Such assaults and unnecessary arrests of children is a blow to their dignity. As of September 2022, Israel had 132 Palestinian children between the ages of 12-17 years held in military detention. It has been accepted widely in world that according to International Convention on the Rights of a child (CTC), detention of children should be a last resort, which Israel had ratified as of 1991.¹⁵ Due to many assaults on

⁹ Chapter 3: Israeli settlements and international law [amnesty.org/en/latest](https://www.amnesty.org/en/latest), Accessed June 15th,2023

¹⁰ Supra note 8.

¹¹ Human Rights Watch, April 27th 2021, A Threshold Crossed, Israeli Authorities and the Crimes of Apartheid and Persecution, *available at*: <https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution> ,Accessed June 15th,2023

¹² Mondoweiss, Barghouti M., November 2nd 2022, Classmates rally to save 16-year-old Palestinian student being held following brutal Israeli raid, *available at*: <https://mondoweiss.net/2022/11/classmates-rally-to-save-16-year-old-palestinian-student-being-held-following-brutal-israeli-raid/>, Accessed June 15th,2023

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

Palestinian youth, even the schools in Jerusalem are increasingly unsafe. ¹⁶Increasing and intense military detention, arrest and even killing of Palestinian children and minors and continuous exposure to violence on check posts, is surely responsible for disturbing the mind set of victims. There are a number of experiences of detention shared by Palestinian teens.¹⁷

According to Human Rights Monitoring groups, illegal detention categorised under unlawful confinement comprising of ill-treatment, denial of legal rights, occasional torture and various forms of abuse by soldiers are faced by Palestinians.¹⁸ The Israeli authorities held 4,323 Palestinians from the West Bank for so called security offences including 426 people in administrative detention as per a report of April 2021.¹⁹ Israel is known to have jailed people living in its occupied territories inside Israel. Transferring people living in the occupied territories stands in violation of the International Humanitarian law, making it a complicated procedure for their families to visit them.²⁰

The most crucial factors of unlawful confinement include unlawful arrests and torture of Palestinian detainees and failure of the government of Israel to protect them from planned attacks by the groups of Jewish supremacists. Recently on 10th June 2021 the Israeli police arrested more than 2,150 people, 90% being Palestinian citizens of Israel or the residents of East Jerusalem as reported by Massawa, a Palestinian Human Rights group.²¹ Most of the arrested Palestinians were detained, victimized due to the discriminatory crackdown done, as an act of retaliation and intimidation in order to crush pro-Palestinian demonstrations and silence the people especially who used to speak out and criticize Israel's policy and condemn Israel's institutionalized discrimination, as well as the systematic oppression of Palestinians.²² Around 600 Palestinian detainees are being held by Israel without charge or trial, the highest number since 2016 according to a report of May 2022. Besides there are also detainees in administrative detention, who are arrested on "secret evidence" and are unaware of the accusations against them. Further they are not allowed to defend themselves in the court.²³

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Supra* note 11

²⁰ *ibid*

²¹ AMNESTY INTERNATIONAL, June 24th 2021, Israeli police targeted Palestinians with discriminatory arrests, torture, and unlawful force, *available at*: <https://www.amnesty.org/en/latest/press-release/2021/06/israeli-police-targeted-palestinians-with-discriminatory-arrests-torture-and-unlawful-force/>, Accessed June 15th, 2023

²² *Ibid.*

²³ *Supra* note 8

The Ministry of Defense has been authorized to detain a person administratively up to six months, without an indictment, arrest warrant, judicial order, or finding of criminal culpability, in case the ministry decides that the person is a possible threat to the security of the state. This administrative detention order can be repeatedly extended. According to the NGO HaMoked, as of December 31, there were 870 persons in administrative detention, 11 from East Jerusalem, seven were citizens of Israel, and the rest being Palestinians from the West Bank. The arrests can be appealed to the Supreme Court. There are three laws that can be used to prosecute people held on security issues, or as illegal combatants or administrative detainees. A temporary law on criminal procedures, a suspect of security crime may be held by the IPS for 48hrs. with exception of 96hrs, before being presented in front of a judge. In case of security related issues, the suspect may be held for up to 35 days without charges. Detentions may be extended by the court up to 20 days for interrogation without any charges as compared to 15 days for non-security cases. Access to a lawyer may be denied to detainees of security issues up to 21 days.²⁴

According to a prominent Israeli Rights Group, the Israeli military court proceedings have been boycotted by the administrative detainees and their lawyers, as courts are held without them. The appeals of detainees can be heard by either military court of appeals or the Supreme Court of Israel but the court hearings are overwhelmingly deferred by the security establishment²⁵ according to Rights group. However, administrative detention is very rarely used against Jews. There are several Palestinians in administrative detention who have gone on prolonged hunger strikes in protest and many of them even developed health issues for life long. These are the consequences of the atrocities on the Palestinians during their unlawful confinement in the prisons of Israel.

The military law allows to hold Palestinians for up to eight days before they must see a judge, who in their case is, a military judge.²⁶ These processes and procedures highlight a true picture of discrimination faced by Palestinians as compared to the non-Palestinian citizens since they are held for eight long days before hearing in presence of a judge under the military law. The eight days of torture are included under unlawful confinement. Sadly, the Israeli authorities also have the power to renew the detention for longer periods by keeping Palestinians in pre-trial detention or during their proceedings as compared to the standards

²⁴ state.gov/reports/2022,2022 country reports on human rights practices: Israel, West Bank & Gaza Accessed , June 15th,2023

²⁵ Supra note 8

²⁶ Supra note 11

available to the Israeli civilians including the Israeli settlers.²⁷ There is blatant misuse of powers by the Israeli authorities, who can even deny the Palestinians to get access to their counsel up to 96 hrs. for regular offenses and 60 days for the security offences, contrary to just 48 hrs. and 21 days for the Jewish settlers.²⁸

The Palestinian security prisoners were subjected to more restrictive conditions than criminals with restrictive conditions comprising of administrative detention, restricted family visits, ineligibility for temporary furloughs, and solitary confinement. Recently, it has been reported that de-contextualization of statements in private messages on social media intimidating Palestinians is often done to seek information about others or to force a confession²⁹

Detention of protected persons should only be carried out in case of imperative security threat on valid grounds for detention, in accordance with the international law. Prompt appeal in presence of the competent authority is mandatory. All arrested detainees to be prosecuted for alleged crimes must be quickly brought before a judge to evaluate whether detention is necessary for the trial of concerned person as a measure of restraint. Failure to do so, and application of pre-trial detention without individual assessment infringes the international law. Normally conducting a search and arrest of a settler, requires a warrant or meeting in very restrictive conditions but none of these apply to searching a Palestinian living in West Bank.³⁰

According to the Israeli law suspected criminals can be held without charges for 24hrs. with exceptions up to 48 hrs. before appearance in front of a judge, who is authorized to extend the detention period from 15 days up to 30 days. Detainees can get bail or appeal in case of bail denial. The Palestinian detainees due to security violations were granted or denied bail according to the circumstances and severity of the case. Majority of convicted Palestinians from the West Bank or Gaza were detained in prisons inside Israel according to some human rights groups, including Military Court Watch. Non-Palestinian citizens detained inside Israel were prosecuted under Israeli military law contrary to Israeli citizens in the West Bank who

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Supra note 12

³⁰ Lawyers For Palestinian Human Rights, December 23rd 2021, No warrant required to enter Palestinian homes in the West Bank but warrants required to enter settlers' homes, Israeli High Court confirms, *available at*: <https://lphr.org.uk/blog/no-warrant-required-to-enter-palestinian-homes-in-the-west-bank-but-warrants-required-to-enter-settlers-homes-israeli-high-court-confirms/>, Accessed June 30th, 2023

are not prosecuted for similar crimes and the Government claims that the practice is in accordance with obligations related to military occupation.

The illegal Combatant Law can hold detainees for 14 days before a district court judge's review. They may be denied access to a lawyer for up to 21 days with the approval of attorney General, detained indefinitely, subject to semiannual district court reviews and appeals to the Supreme Court.³¹

The Palestinian security prisoners were subjected to more restrictive conditions than criminals with restrictive conditions comprising of administrative detention, restricted family visits, ineligibility for temporary furloughs, and solitary confinement. Due to their gender identity transgender women were held by Israeli prisons in solitary confinement.³²

In case of threat of a detainee to himself or others or there was prevention of information disclosure, solitary confinement was used. In such a case the detainee had the right to meet the IPS (Israel Prison Service) and medical personnel and representatives of ICRC. However, many NGO's including Military Court Watch, HaMoked, and B'Tselem, have charged the Government of using such confinement for politically important detainees. The PHRI has reported isolation of detainees with mental disabilities, or those who posed a threat to themselves or others without a medical check-up was common.³³

The authorities mistreat and torture the Palestinian detainees deliberately by using such type of tactics which are surprisingly used rarely against the Jewish detainees.³⁴ According to the Israeli Right group Public Committee Against Torture (PCATI) in June 2019, more than 100 complaints of alleged torture were filed by the Israeli internal security service, with instances of physical violence, painful and prolonged shackling as well as the use of stress positions. There were also cases of sleep deprivation and humiliation experienced by the detainees.³⁵ Use of unnecessary or superfluous violence has been often practiced. Such atrocities are essentially the result of unlawful confinement.

The Israeli government has accepted the use of exceptional measures which might include physical and mental torture, degrading treatment, sleep deprivation, beatings, incommunicado detention, sexual harassment, religion-based humiliation etc. besides threats to families of

³¹ Supra note 24

³² *Ibid.*

³³ *Ibid.*

³⁴ Supra note 11

³⁵ *Ibid.*

detainees in some cases during interrogation. According to PCATI another form of ill treatment practiced by Shin Bet, included holding of detainees in filthy, insect infested cells or interrogation facilities with poor living conditions. PCTAI after interviewing and examination of formerly held or imprisoned detainees for suspected security offences, has reported a rising trend in alleged use of “exceptional measures” by Shin Bet in 2021, and glaring flaws in investigations carried out by the government. The average time period to address complaints was 44 months, and the longest pending case stood at 97 months of initial examination. Since 2018, there was opening of only two cases due to internal reviews. There was criminal investigation of just three cases out of 1400 complaints of Shin Bet torture submitted to Ministry of Justice since 2001, with no indictment.³⁶

Israel has signed the UN Convention against Torture in 1986 and ratified it in 1991, but there is no prohibition according to its law. The government has failed to introduce a law unequivocally criminalizing torture after its commitment in 2020, according to PCATI.³⁷ Application of physical force, pressure or assault by a public official is not allowed by the Israeli domestic law.

The Israel Prison Service (IPS) medical team reviews the requests from prisoners for independent medical examination at the prisoner’s expense, as per the Israeli government, who ignored injuries due to violent arrests and interrogations according to PCATI and Physicians for Human Rights Israel (PHRI). However the UN Committee against Torture recommended (among 50 other recommendations) independent medical examinations for all detainees should be provided by the government, in its 2016 review of the country’s compliance with the UN Convention.³⁸

According to the latest figures published by the prisoner’s rights group Addameer, 160 children and 32 women are among thousands of Palestinians held in jails.³⁹ Some of the most severe prison policies to which the Palestinians are subjected include problems of medical neglect and isolation for punishing.⁴⁰

Numerous reports suggest the prisoners and detainees were held in inhuman conditions. A detailed annual report is published by the Public Defender’s Office which is based on official

³⁶ Supra note 24

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ Supra note 8

⁴⁰ *Ibid.*

visits by representatives of the Public Defender's Office to the different detention centers and facilities to review the conditions of detention and imprisonment in the country under the responsibility of the IPS, Israel Police, and the courts. In its recent report of 2021, the Public Defender's Office raised the problem of intense overcrowding in detention facilities, thus violating the detainees' rights to health, respect and privacy. The detainees had been very often held in police stations overnight throughout the country and subjected to overcrowding, with less frequent access to bathroom, made to sleep on floor and had no medical treatment as confirmed by the Public Defender's Office after visits to prisons. The ACRI filed a petition in the Supreme Court with a plea to end the violation of rights of the detainees.⁴¹

In 2017, the Supreme Court has ordered that per prisoner there should be a minimum living space of 48 square feet including toilet and shower in government prisons and detention centers with a deadline for compliance of 18 months. There has been extension of dead line many times by the court, most recently being December 31, 2027, ordering an annual update by the state on Dec. 1. However, only 40% of the detention facilities have met the minimum living space requirement at the yearend as notified by the government.⁴²

In an effort to comply with the court ruling a temporary law of 2018 was enacted and extended that helps in release of prisoners (excluding Palestinian "security prisoners"). Alternative approaches to arrests and imprisonments for minor infringements should be looked into according to Public Defende'rs Office. Further there are laws for force feeding of prisoners on hunger strikes which were not implemented by the Government. There are regulations stating that based on medical considerations, treatment must be provided in reasonable quality and time, within the available resources and funding for the IPS.⁴³

According to a report of the state comptroller on medical services for prisoners, specialized incarceration and medical facilities have recommended for elderly, besides, identification of women and young prisoners in need of psychiatric hospitalization. Renovation of medical buildings with proper physical and sanitary conditions with and ensuring accessibility to persons with disabilities in conformity with the law. Development of a telemedicine system, has also been recommended. The authorities carried out investigations of only some allegations of mistreatment. Limited visitation permits were granted to family members of prisoners from West Bank only, placing severe restrictions on entry from Gaza.

⁴¹ Supra note 24

⁴² *Ibid.*

⁴³ *Ibid.*

Arbitrary detention and arrest are strictly prohibited by Israeli Civil law. Any person has the right to challenge it in court. Though the Government generally did follow the law, yet many NGO's identified cases of non-compliance. There was non-application of same laws to all residents of Jerusalem, regardless of their Israeli citizenship status by the authorities.⁴⁴

According to a recent survey by Human Rights Watch, it was observed that the Israeli authorities confiscated houses inhabited by Palestinians to allocate them to the Jewish settlers.⁴⁵ Broadly, Palestinians who live in the occupied territories of Israel have been facing many problems which are linked to unlawful confinement affecting them as a community.

The discriminatory policy of Israeli government extends to the occupied territories like West Bank and Gaza. The people living there are discriminated against the Jewish people by restricting the Palestinians access to land for housing to accommodate the natural population growth.⁴⁶ There have been land confiscations and various discriminatory policies in terms of planning due to which many Palestinian citizens are confined to the densely populated towns and villages with restricted expansion. The Israeli government nurtures the growth and expansion of the Jewish communities, with many built on the ruins of Palestinian villages which were destroyed in 1948.⁴⁷

There has been violation of laws related to settlements and human rights by Israel. Israel as an occupier can only use natural resources and state lands for military purposes or security needs. The Hague Regulations and Fourth Geneva Convention prohibit the unlawful allotment of property by an occupying power. It is war crime under the Rome Statute of the International Criminal Court and many national laws. None of the rules is respected by Israel. Transferring its civilians into the occupied territory is prohibited. Extensive appropriation and destruction of Palestinian property leads to settlements, that are created with the only aim of establishing Jewish Israelis on occupied land.⁴⁸

The International humanitarian law (including the rules of the law of occupation) and international human rights law essentially govern the situation in the Israel occupied Palestine territory. In case of significant violations which constitute war crimes International

⁴⁴ *Ibid.*

⁴⁵ Human Rights Watch, May 12th 2020, Israel Discriminatory Land Policies Hem in Palestinians, *available at*: <https://www.hrw.org/news/2020/05/12/israel-discriminatory-land-policies-hem-palestinians>, Accessed June 24th, 2023

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Supra* note 9

criminal law is also applicable. In contravention to the essential rules of international humanitarian law, Israel has policy of settling its civilians in occupied Palestinian territory and displacing the local population. Further there is also violation of other rules of international humanitarian law with regard to the extensive appropriation of land and appropriation and destruction of property required to build and expand settlements. The public property of occupies population like forests, lands and agricultural estates is subject to the laws of usufruct under the Hague Regulations of 1907, allowing the restricted use of the property by the occupying state. According to the International Committee of the Red Cross, it is the duty of the occupying power guarantee the protection, security, and welfare of the people living under occupation and to ensure them a normal a life in accordance with their own laws, culture, and traditions. “The destruction of private or state property, except in situations warranting it necessary by military operations” is also illegal under the Fourth Geneva Convention. Confiscation of private property is prohibited by the Hague Regulations.⁴⁹

Establishment of settlements in occupied territory amount to war crimes under the Rome Statute of the International Criminal Court, according to which “extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and rampantly” and the “transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory” constitute war crimes. The International Court of Justice (ICJ) asserts that the rules of the Geneva Conventions constitute “intransgressible principles of international customary law” Violations of the right to life: Unlawful killings during protests and the confiscation of land and the construction of settlements has been rampantly carried out.⁵⁰

Amnesty International reports that Palestinians in occupied territory subjected to arbitrary detention, are subjected to military courts as against Israel civil and criminal law for settlers, clearly violating international standards for trials and justice administration. Seeking legal redressal of grievances by the Palestinians is limited, violating their fundamental rights. According to Article 49 of the Fourth Geneva Convention “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies,” in

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

addition to prohibiting the “individual or mass forcible transfers, and deportations of protected persons from occupied territory”.⁵¹

After the court clearly denied interference in the discretion of the police to install cameras the Association for Civil Rights (ACRI) and PCATI withdrew its petition demanding immediate installation of cameras in all police entry checkpoint posts at the Jerusalem Old City’s Damascus Gate, after a social media footage of alleged severe police violence against Palestinian detainees.⁵²

Another component of unlawful confinement is isolation, which leads to psychological torture. Article 1 of the 1984 Convention Against Torture and other Cruel, inhuman or degrading treatment or punishment prohibits it.⁵³ Article 7 of the International Covenant on Civil and Political Rights also prohibits inhumane and degrading behaviour. Further Article 91 and 92 of the Fourth Geneva Convention which deals with minimum health standards for prisons and detention centers are breached in case of isolation of prisoners. There is gross violation of agreed upon international standards. The disconnect of prisoners from the outside world violates the international standards, regarding the right of the prisoner to communicate with the outside world especially contact with family.⁵⁴ Israel is holding so many Palestinian prisoners who are subject to the policy of isolation and are cut off from the outside world, which constitutes a type of psychological torture.⁵⁵ Due to their gender identity transgender women were held by Israeli prisons in solitary confinement. All these incidents are consequences of unlawful confinement culminating in mental illness.

In order to ensure safety and security of Palestinian prisoners, the international community must put pressure on Israel for a formal monitoring system and also to put an end to solitary confinement.⁵⁶ In fact, Israel is one of the 140 state parties to the International Covenant on civil and Political Rights, signed it on 19th Dec.1966 and ratified it on 3rd Oct. 1991.⁵⁷ It is also a party to the Convention against Torture and other cruel, inhuman, or degrading

⁵¹ Supra note 9

⁵² Supra note 24

⁵³ MEMO, Dr. Yasin B., April 26th 2021, Israel’s use of solitary confinement is inhumane and breaches international conventions, *available at*: <https://www.middleeastmonitor.com/20210426-israels-use-of-solitary-confinement-is-inhumane-and-breaches-international-conventions/>, Accessed May 20th, 2023

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ Ratification Status for CCPR - International Covenant on Civil and Political Rights, UNITED NATIONS HUMAN RIGHTS TREATY BODY, *available at*: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR

treatment or Punishment. At the same time, Israel has an obligation to obey the terms of these conventions. The Rome Statute which is the governing principle of the International Criminal Court has never been ratified by Israel. However, since the United Nations Secretary General accepted the Palestinians accession to the treaty in 2015, so the International Criminal Court does have the jurisdiction.⁵⁸ The previous prosecutor of the International Criminal Court, Fatou Bensouda added in March 2021 that there are many cases having potential to be admissible.⁵⁹

The preliminary examination of the former ICC prosecutor focussed on issues of operations of Israeli military in Gaza and construction of illegal settlements in West Bank.⁶⁰ When the Palestinians were asked to accede to the Rome statute, they recognized ICC jurisdiction for the purpose of prosecuting alleged perpetrators of crimes starting from 13th June 2014 onwards.⁶¹ A complaint was lodged to the ICC Prosecutor's office regarding Israel's long and continued policy depriving Palestinians property for settlements and in conditions not justified by military necessity by Bindman's LLP in Partnership with the International Centre for Justice for Palestinians. A thorough independent preliminary assessment of the situation by the former ICCs prosecutors' announcement in 2019, concluded that standards for opening of a formal investigation under the Rome Statute had been met. It was also revealed that there was ground to justify that war crimes have been or are being committed in West Bank including East Jerusalem and Gaza strip. The various prospective cases arising from situation were allowable and there were no essential reasons to think that an inquiry would not serve justice.

The investigation of ICC continues under the new prosecutor appointed in June 2021 with the request submitted by ICJP to include all the submitted cases or those intended to be submitted as a part of the formal investigation. The evidence is being further gathered by ICJP into numerous cases to be submitted to the ICC.⁶² Recently, on 6th October 2022, the ICC's current prosecutor was called to initiate a preventive intervention, and caution Israel that it is moving forward with a war crime since forcible transfer of the residents in occupied

⁵⁸ BBC NEWS, March 3rd 2021, ICC opens 'war crimes' investigation in West Bank and Gaza, *available at*: <https://www.bbc.com/news/world-middle-east-56249927>, Accessed June 13th,2023

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² Bindmans, August 18th 2022, 'Gateway' war crimes case submitted against Israel on behalf of Salhiah family and others, *available at*: <https://www.bindmans.com/knowledge-hub/news/gateway-war-crimes-case-submitted-against-israel-on-behalf-of-salhiah-family-and-others/>, Accessed July 15th,2023

territory violates Article 8(2)(a)(vii) of the Rome Statute. The Human Rights group B'Tselem stressed that while the policy has been implemented for decades, the current responsibility lies with the top Israel's officials including the Prime Minister, the defence minister, the chief staff, OC Central Command, the head of civil administration and the high court justices who sanctioned the policy. On 7th March 2022, Israeli forces raided the home of a Palestinian lawyer and an activist and placed him in administrative detention, by which Israeli government holds people without charging them.⁶³

A submission on his behalf was filed by lawyers from the Centre of Constitutional rights and the International Federation for Human Rights. This adds as evidence enough for the current ICC chief prosecutor Karim Khan to take appropriate actions as he considers bringing charges against the Israeli officials for war crimes and crimes against humanity.⁶⁴ The victim of unlawful confinement in this case who is a lawyer and an activist must be given justice in order to protect him from this grave war crime and in future no other person living in Israel or in the territories occupied by Israel should ever be victimized in such a way. The latest submission to ICC was sent by a media channel *Al Jazeera* to investigate and prosecute the culprits responsible for the death of Palestinian American journalist, besides seven submissions by a Palestinian human rights group, on war crimes by Israel.⁶⁵

CONCLUSION

Keeping in view the heinous crime of unlawful confinement, the state must ensure that all its citizens are treated in an unbiased way as constitution of a civilised nation always guarantees the life of equality and dignity. To its citizens. In case of Israel's internal problem with regard to its Arab citizens, an impartial body should be evolved to cater to the needs of such exploited people. This impartial body must also ensure release of, wrongfully convicted citizens and must accept the requests immediately when the people are unlawfully detained. A system must be evolved in the constitutional mechanism of the nation, which will give substantial ground before detaining people besides explaining the procedure of review of detention to the detainee. The person detained must be given a reasonable opportunity to

⁶³ Common Dreams, Jailed Palestinian lawyer implores ICC to probe Israeli 'Crimes Against Humanity' in East Jerusalem, *available at*: <https://www.commondreams.org/news/2022/05/16/jailed-palestinian-lawyer-implores-icc-probe-israeli-crimes-against-humanity-east>, Accessed May 25th, 2023

⁶⁴ *Ibid.*

⁶⁵ The International Court of Last Resort <https://jewishcurrents.org/the-international-court-of-last-resort>, Accessed Aug 5th, 2023

contact the outside world to get evidence for, himself. The victim must also be given sufficient opportunity to make proper representations in order to get justice. The competent body should play an effective role to guarantee fair and equal process so that the citizens are protected against unnecessary force or arbitrary attitude. It is ultimately the responsibility of the state to exercise human rights, and various laws that govern them without exercising unnecessary authority by exhibiting arbitrariness on its own citizens irrespective of their age and gender.

