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GUANTANAMO BAY DETENTION CAMP: A LEGAL HORROR THAT IS BEING UNNOTICED

AUTHORED BY - VARSHA SHREE A. I

Abstract

A detention facility, which was earlier used to facilitate Muslim militants and suspected terrorists captured by the U.S. forces in Afghanistan, Iraq, and elsewhere. At a later stage, it became a place of violation of human rights gravely based on the abusive treatment of detainees by the U.S. authorities. The camp was established during the period of former U.S. President George. W. Bush in 2002, after the 11 September 2001 war on terror. During the inception period, the U.S. government wanted to keep the count of detainees in the camp as a secret, the U.S. military officially brought up the number of detainees to the world after failed attempts to defy the Freedom of Information Act which was raised by the Associated Press. 2005 report of Amnesty International became a turning point, where the facility was compared with the Gulag, made by Vladimir Lenin in the Soviet Union where the detainees are compelled to do forced labour. This made then President Bush to appoint officers to interrogate the current scenario of the facility's DoD practices, enumerated facts are conceded on the tortured done to the detainees. So, the focal point of the organization is to exhibit the violation of the 5th and 14th Amendments of U.S. Constitution, as the testimonies of abuses and tortures of the prisoners were been found. So, this analysis helps to give an insight on the Guantanamo Bay detention camp and how the violations are not challenged in the eye of international law.

The main motto behind the formation of the facility

It was the effect of the 9/11 terrorist attack, the administration led by then-President George. W. Bush declared this attack as a “war on terror”. He needed to take a counterattack against the terrorists to maintain peace and harmony in their nation. The facility was established on 11 January 2002, became a place to hold people who are perceived to be “enemy combatants” during the war on terror; issued a military order on “detention, treatment and trial of certain non-citizens against the war of terrorism”. The non-citizens include the terror Muslim countries like the Taliban, Al Qaeda, and other Muslim countries that perturb the tranquility of people. The order authorized the foreign nationals to be in custody charged indefinitely. At the outset of the

detention camp, the first 20 detainees arrived at the bay, and they were held outdoors in wire mesh cages. In the later stages of 2002, the camp welcomed the terrorists who were responsible for the September 11 attack with terror. The camp provided no legal means to challenge the prisoners, and no rights and protection were granted to them, as during Bush's regime he made sure that the camp would neither oblige the Procedural codes of the country nor the code of the Geneva Convention. These rules were been questioned in the case of *Rasul v. Bush* [1] as the detainees of the camp can seek and invoke Habeas Corpus on the aspect of being wrongfully detained by the Department of Defence. In this case, the petitioners did not get any rights and they were not being charged for the offence. During the time of detention, they neither received the right to consult an attorney nor given access to the court of law or tribunal to question. The main issue of this case was the jurisdiction of court to provide habeas corpus. The Supreme Court of the U.S. held with a 6:3 ratio of judges on the jurisdiction and challenged the legality of the executive detention of the captives who were captured and kept in the camp. With the reference of cases *Ahrens v. Clarks* [2] and *Johnson v. Eisentrager* [3], the court concluded that the present case is different from the aforementioned cases, as the latter ones concluded that the prisoner will not get the relief of habeas corpus as they are out of the sovereignty of U.S. The parameters are different to analyse, as in the *Eisentrager* case they had approved themselves being engaged in the war of terror, meanwhile in the case of *Rasul*, they did not agree the engagement in the act of aggression against the US, and they weren't allowed to be heard or to perceive the well-being of their families. Therefore, the court stated that despite all issues, US has the jurisdiction over the Guantanamo Bay camp. The involvement of other cases will be used to know the relevance on the petitioner's constitutional rights on habeas review but did not establish and address the statutory entitlement. Section 2241 of the Statute refers that the plaintiff need not be physically present mandatorily, and they only need the custodian could be reached by the "service of the process". After the decision of the *Rasul* case, within nine days the Department of Defence had set up Military Combatant Status Review Tribunals had replaced US courts's jurisdiction to review and ascertain whether the captives are to be classified as enemy combatants.

The legality of habeas corpus on persistent detention has been dealt in the case of *Al odah v. US*, which has been merged with the case of *Boumediene v. Bush* [4] where whether aliens are classified as enemy combatants in the camp have the right to file the writ of habeas corpus, which is a constitutional privilege not revoked except in the case of suspension clause. The court held that the right of filing habeas corpus is applied to them and the process of alternative procedures

were not sufficient or effective. The Military Commission Act of 2006 is not intended to be a substitute for habeas corpus and hence every prisoner has the right to have legality to challenge the detention.

The horror of being in the camp

The prison was built to hold the detainees as enemy combatants and those prisoners were from forty- nine different countries, mostly from Afghans, Saudis, Yemenis, and Pakistanis, and the age bar of those detainees ranged between thirteen to eighty-nine when detained. Some detainees were been nabbed in the middle of the night as they were been in the list of Al-Qaeda suspects. There is no escape from the camp, as they are guarded by steep hills, motion, and sound sensors on the US side to invigilate the detainees. The camp has been divided into four prison camps for different types of captives. Every camp is surrounded by rings of barbed wire with separate gates, many detainees are unaware that they are near the coast. In case a detainee needs medical care, that particular detainee will be blindfolded. While moving to and fro, the guards will check the detainee's scrotum and thigh to ensure that nothing foreign was attached to the body. For the detainees, their future is undetermined. They spent their time on being in a coffin as a punishment for 11 days and other brutal treatment was given to them. 24 hours or 48 hours of sleep deprivation will be taken by the detainees, their cognitive abilities will disappear. During CIA custody some detainees may have lost their eyes.

No US government officials will be liable for implementing the CIA's secret detention and torture program. The torture report was not been released to the people. Biden also opposed not allowing the International Criminal Court on atrocities by the nation on the aspect of grave human rights crimes in Afghanistan. It is also noted that the country continued abusive practices against terrorism suspects including transferring them to countries that torture and unlawfully detain people across the sea.

The detainees complained that there was a lack of medical assistance and torture rehabilitation to habilitate the victims both at the bay and the transferred place. They are not also able to meet their families when in need. Mental stress and paranoia also became a repercussion of being in the bay for a longer period of time. The motto has been diverged from time, and the responses were not well provided by the government, when approached by the families, though judgements were been provided accordingly.

Conclusion

Guantanamo Bay is now being prepared to address the hardest human rights issues and urged other countries that were barred from accessing detention centers to follow suit. In the year of 2003, the facility held 700 prisoners, twenty years later 39 detainees are remaining. Among those 39 detainees, only 9 of them have been charged with or convicted of crimes, and 13 have been cleared for transfer. Some of the detainees in the bay committed suicide during the trial. This bay is lagged in accountability as they practice on the path of brutality, torture and ill-treatment towards the detainees. Though the idea of the camp was developed by the Bush during the period of 2001 but during the regime of Biden and Obama, their main motto was to plummet the use of detention camp. As during 2009 election, Former President Barack Obama promised to close the prison within one year and the detainees will be released immediately once the prison is dissolved, however it has a long run during his regime compared to Bush regime. In this case the human right is completely violated, and hunger strikes were been taken by detainees for their basic rights and could not endure the persistent torture and detention. During this period, Code Yellow incidents has been out based on their testimonies, prisoners passed out during the strike. At this current period under Biden, though prisoners transferred from the prison yet it is operational. At the end, to protect themselves from further terror attacks, the US government tends to keep it operational. However, torturing prisoners without cross-examination is way beyond worse.

Citation

1. 542 U.S. 466 (2004)
2. 335 U.S. 188 (1948)
3. 339 U.S. 763 (1950)
4. 553 U.S. 723 (2008)