

A PRIVATE MEMBER'S BILL TO GIVE EFFECT TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT; AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO

[5 March 2009]

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1. Preamble:

WHEREAS a Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, was signed in New York on December 10, 1984;

AND WHEREAS by an instrument of accession dated 5th October 1998, Bangladesh has acceded to the aforesaid Convention;

AND WHEREAS Article 35(5) of the Constitution of the People's Republic of Bangladesh fundamentally prohibits the practice of torture, cruel, inhuman and degrading punishment and treatment;

AND WHEREAS Article 2 (1) and Article 4 of the Convention requires the state party acceding to it to enact a domestic law to recognise an act of torture, cruel, inhuman and degrading punishment and treatment, as a crime in the country;

AND WHEREAS it is necessary to make legislative provisions to give effect to Bangladesh's obligations under the aforesaid Convention;

NOW therefore it is required for a Bill to be introduced to the *Jatiya Sangsad* (National Parliament) of the People's Republic of Bangladesh as follows:

2. Title:

This Bill may be cited as the **Torture and Custodial Death (*Prohibition*) Bill, 2009**

3. Definitions:

In this Bill, unless the context otherwise requires -

(i) **"Convention"** means the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment signed in New York on December 10, 1984;

(ii) **"Public officer"** means a person who holds any paid office under the Republic and also any person who may exercise any power, pursuant to any law in force in a foreign state, that would be exercised in Bangladesh by the person described herein;

(iii) **"Law enforcement agencies"** means uniformed and disciplined forces like the Police, Rapid Action Battalion, Bangladesh Rifles, Customs, Immigration, Criminal Investigation Department (CID), Special Branch, Intelligence Agencies and any other state agencies engaged in the enforcing and implementing law in country as of the date of enactment or at any new agencies formed after the enactment of this law;

(iv) **"Armed forces"** means the members of the Army, Navy, Air Force or any other state unit that might be formed entrusted with the defence of Bangladesh;

(v) **"Torture"** with its grammatical variations and cognate expressions means any act or omission which causes pain, whether physical or mental, to any person, --

(a) *For such purposes as--*

(i) **Obtaining** from that person or some other person information or a confession; or

(ii) **Punishing** that person for any act or omission for which that person or some other person is responsible or is suspected of being responsible; or

(iii) **Intimidating or coercing** that person or some other person; or

(b) *For any reason based on **discrimination** of any kind*

And being in every case, an act which is done by or at the instigation of, or with the consent or acquiescence of, a public officer or other person acting in an official capacity

(vi) **"Custodial death"** means the death of a person in the custody of a public officer. The term 'custody' also implies illegal detention and all other occasions, like the deaths of persons who have been arrested or otherwise detained by a public officer. It also includes deaths occurring whilst a person is being arrested or taken into detention; being questioned, irrespective of the fact that whether the person is a witness in a case or not. The death may have taken place on police, private or medical premises, in a public place or in a police or other vehicle.

(vii) **"Victim" OR "Aggrieved person"** means any person who alleges that an offense under this Bill has been committed upon her/him or upon a person she/he is concerned about

4. Punishment:

(i) Any person who **torture** any other person shall be guilty of an offence under this Bill

(ii) Any person who -

(a) *attempts to commit;*

(b) *aids and abets in committing;*

(c) *conspires to commit;*

an offence under Subsection (i) and or Subsection (v) shall be guilty of an offence under this Bill.

(iii) The subjection of any person on the order of a competent court to any form of punishment recognised by written law shall be deemed not to constitute an offence under Subsection (i) above

(iv) A person guilty of an offence under Section 4 (i) & (ii) of this Bill, shall, on conviction after trial by the Session's Court, be punished with rigorous imprisonment for a term not less than five years AND a fine not less than 25,000 Taka

(v) Any person who commits an act of torture that results in custodial death, shall, be guilty of an offence under this Bill

(vi) In the event of a custodial death, if it is proved that the death occurred as a consequence of an offense punishable under Section 4 (i) & (ii) of this Bill, the person who committed the offense punishable under Section 4 (i) & (ii) of this Bill, that resulted in custodial death, shall be sentenced for rigorous imprisonment for life AND for fine of an amount not less than 100,000 Taka

(vii) A person convicted for an offense under Section 4 (i) & (ii) of this Bill, shall also pay, in addition to the fine imposed in Subsection (iv) above, an amount of compensation, not less than 25,000 Taka to the victim/s/aggrieved person/s.

(viii) A person convicted for an offense under Section 4 (v) of this Bill shall pay in addition to the fine prescribed in Section 4 (vi) above, an amount, not less than 200,000 Taka as compensation to the victim/s/aggrieved person/s

(ix) A person convicted for any offense under this Bill must deposit at the trial court within 14 days from the date of conviction, the compensation, as required above in Subsection (i) or (viii) above. An appeal against a conviction for an offense under this Bill shall not be admitted until the fulfilment of this requirement.

(x) The court may allow the victim/s/aggrieved person/s to withdraw the amount, unless the withdrawal of the amount is stayed by an appeal court

(xi) An offence under this Bill shall be a cognizable, non-compoundable and a non-bailable offence, within the meaning, and for the purposes, of the Code of Criminal Procedure 1898

5. War or other contingencies no excuse:

(i) For the avoidance of doubts it is hereby declared that the fact that any act constituting an offence under this Bill was committed -

(a) at a time when there was a state of war, threat of war, internal political instability or any public emergency;

(b) on an order of a superior officer or a public authority;

shall not be a defence to such offence

6. Jurisdiction of courts:

(i) No court inferior to that of a Session's Court shall have the jurisdiction to hear and try an offence under this Bill committed in any place inside or outside the territory of Bangladesh by any person;

(ii) The jurisdiction of the Session's Court of Bangladesh in respect of an offence under this Bill committed:

(a) by a person who is not a citizen of Bangladesh;

(b) or outside the territory of Bangladesh;

shall be exercised by the Session's Court that has been assigned the jurisdiction by the Chief Justice, by a direction in writing under his/her hand

7. Non-Citizens:

(i) Where a person who is not a citizen of Bangladesh is arrested for an offence under this Bill, then he shall be entitled to communicate immediately with the nearest appropriate representative of the State of which he is a national or if he is a stateless person, the nearest appropriate representative of the State where he usually resides

8. Extradition:

(i) Where a person is arrested for an offence under this Bill, the Ministry in charge of the subject of Foreign Affairs shall inform the relevant authorities in any other State having jurisdiction over that offence, of the measures which the Government of Bangladesh has taken, or proposes to take, for the prosecution or extradition of that person, for that offence

(ii) Where a request is made to the Government of Bangladesh, by or on behalf of the Government of any State for the extradition of any person accused or convicted of the offence of torture, the Ministry in charge of the subject of Foreign Affairs shall, on behalf of the Government of Bangladesh, forthwith inform the Government of the requesting State, of the measures which the Government of Bangladesh has taken, or proposes to take, for the prosecution or extradition of that person, for that offence

(iii) Where it is decided that no order should be made under the Extradition Act, No. LVIII of 1974, for the extradition of any person accused or convicted of the offence of torture pursuant to a request for her/his extradition made under that Act, by the Government of any State, the case shall be submitted to the relevant authorities, so that prosecution for the offence which such person is accused of, or other appropriate actions may be considered

(iv) Where there is an extradition arrangement in force between the Government of Bangladesh and the Government of any other State, such arrangement shall be deemed, for the purposes of the Extradition Act, No. 58 of 1974, to include provision for extradition in respect of the offence of torture as defined in the Convention, and of attempting to commit, aiding and abetting the commission of, or conspiring to commit, the offence of torture as defined in the Convention

(v) Where there is no extradition arrangement made by the Government of Bangladesh with any State, in force on the date of the commencement of this Bill, the Government may, by Order published in the Gazette, treat the Convention, for the purposes of the Extradition Act, No. 58 of 1974, as an extradition arrangement made by the Government of Bangladesh with the Government of that State, providing for extradition in respect of the offence of torture as defined in the Convention and of attempting to commit, aiding and abetting the commission of, or conspiring to commit, the offence of torture as defined in the Convention

(vi) The Government shall afford such assistance (including the supply of any relevant evidence at its disposal) to the relevant authorities of any State as may be necessary in connection with criminal proceeding instituted in that State against any person, in respect of the offence of torture

9. Complaints of an offense under this Bill in court:

(i) In addition to the existing provisions in the Code of Criminal Procedure, 1898 if a person brought before a judicial officer complains that she/he has been subjected to torture, the officer shall:

*(a) **Record** the statement of the person immediately;*

*(b) **Direct** the person/body of the person, to be examined by a registered medical practitioner immediately;*

(c) provided that where the person is a female, the examination shall be made only by or under the supervision of a female registered medical practitioner

(ii) The registered medical practitioner examining the person shall prepare the record of the examination, mentioning therein any injuries or marks of violence upon the person, and the approximate time when such injuries or marks might have been inflicted

(iii) Where an examination is made under Subsection (ii), a copy of the report of the examination shall be furnished by the medical practitioner to the person examined or to the person nominated by the person examined and also to the court within 24 hours

(iv) If the medical practitioner is of the opinion that the person examined requires medical treatment, the judicial officer shall direct the person to be admitted in a hospital

10. Court may direct registration of cases:

(i) After recording of the statement as mentioned in Section 9 (i) (a), the judicial officer shall immediately forward a copy of the statement, to the Superintendent of Police under his jurisdiction with a direction to register a case and investigate it

(ii) It shall be the duty of the Superintendent of Police who receives such an order to immediately investigate the matter, and file a report to the Session's Court within sixty days, with or without a charge

(iii) The officer while filing the report must serve advance written notice to the person whose statement was recorded by the judicial officer under Section 9 (i) (a) informing the person, the date and court in which the report is filed

(iv) A person receiving a notice under Subsection (iii) above may file objections, personally or through a lawyer, to the report to the court within 30 days from the date of receipt of notice

(v) If the statement referred to in Section 9 (i) (a) above accuses or suggests the involvement of a public servant equal to the rank of a Superintendent of Police, the Judicial officer shall direct the case to be investigated by an officer not below the rank of the Deputy Inspector General of Police

(vi) Any officer, mentioned above in Subsection (i) or (v) shall not have the power to delegate the investigation to an officer below his rank

11. Special Prosecutor:

(i) The offenses punishable under this Bill shall be prosecuted by a Special Prosecutor. A Special Prosecutor shall be a person enrolled as a lawyer in Bangladesh with a minimum active legal practice of 10 years. The Government shall make necessary arrangements for the appointment of such Special Prosecutors within sixty days from the date on which this Bill is enacted

(ii) If the victim/s/aggrieved person/s so requires, upon an application to the Session's Court, may appoint a lawyer of his/her own choice to conduct the prosecution of the case.

(iii) On the appointment of such a lawyer as provided in Subsection (ii) above, it shall be the duty of the Special Prosecutor to provide all necessary assistance for the lawyer so appointed in order to conduct the prosecution, including the furnishing of the copies of all documents, statements, reports, and other information related to the case, and any other information concerning the case which the lawyer may require to conduct the prosecution.

12. Protection:

(i) Any person who alleges that she/he require protection from a person accused of having committed an offense under this Bill, shall, file a petition to the Session's Court

(ii) The state and the person against whom such a protection is sought for shall be made parties to such petition

(iii) The court receiving the petition, shall, after giving seven days notice to the respondents shall pass an order on the petition within seven days

(iv) The court while disposing off such a petition as mentioned in Subsection (i) above, shall make such orders as deemed necessary, including but not limited to, the detention of the person for periods not beyond 14 days, which may be extended as required from time to time

(v) The Court may also direct the officer investigating the offense punishable under this Bill to take such measures as directed by the court to ensure the compliance of the court's order

(vi) The court may also make appropriate orders as required to safeguard the persons who petitions the court seeking protection, to be relocated, provided security, or pass other prohibitory orders against the respondent like limiting the respondent's entry into a particular territory

13. Accusations by third parties:

(i) Whenever an allegation of torture is made by a person brought before a judicial officer, the officer shall, in addition to the procedures laid down in Section 9 above, record the officer's observations about the person making the allegation and shall take appropriate measures to ensure the safety of the person making the allegation

(ii) When the allegation so made suggests the detention of a third person, who is subjected to torture, it shall be the duty of the judicial officer to visit such place of detention, record his observations and take all measures necessary to ensure the safety of the person so detained

14. Other modes of complaints:

(i) In addition to the procedures mentioned here above, any person who wishes to file a complaint of torture, either concerning him/herself or concerning a third person may do so to the Session's Court or to a police officer not below the rank of the Superintendent of Police

(ii) Upon receipt of such a complaint as mentioned above in Subsection (i) above, the Superintendent of Police or any officer superior to his rank shall immediately register a case, record the statement of the complainant, serve a copy of the complaint to the complainant specifying the case number and what action is taken upon the complaint

(iii) A Superintendent of Police or any officer superior to his rank receiving and taking action upon a complaint as provided above in Subsection (ii), shall within 24 hours furnish a report mentioning the facts of the complaint and the actions taken, to the Session's Court entertaining jurisdiction within 24 hours from the time of receipt of such complaint

15. Appeals:

(i) Any appeal against a conviction for an offense under this Bill shall be made to the High Court

(ii) The victim/s/aggrieved person/s shall also have the right to file appeals or revisions against the finding in a case invoking the provisions of this Bill

(iii) An appeal shall not be admitted until Section 4 (iv) is complied with

16. Termination or suspension from public office:

(i) A person under investigation for an offense punishable under this Bill, if is a public servant, shall be immediately placed on suspension

(ii) If the person under investigation for an offense punishable under this Bill is a member of any of the law enforcement agencies in Bangladesh, including the armed forces, the accused officer shall be immediately relieved from all active duties

(iii) A person convicted for an offense under this Bill shall be terminated from public service, from the date of conviction. However, if the sentence is reversed in Appeal, the appeal court shall make necessary orders to reinstate the person into service

17. In case of conflict with existing laws:

Irrespective of the provisions in any other law in force in Bangladesh the provisions of this Bill whenever in conflict with any other law in Bangladesh, the provisions in this law will prevail.

18. Time limit for investigation, trial & appeal:

(i) The investigation of an offense must be completed within seven months from the date of recording of the first complaint

(ii) Should there be an extension of time required for the completion of the investigation of an offense punishable under this Bill, the investigating officer, shall in person, submit an application to the Session's Court entertaining jurisdiction to try or hear the case, specifically mentioning the grounds for the extension of time

(iii) Such extension shall not be allowed without hearing the victim/s/aggrieved person/s

(iv) The court shall give the victim/s/aggrieved person/s a minimum period of 20 days to file counter applications for any applications seeking extension of time

(v) If the court hearing such applications is of the opinion that an extension is not warranted, it shall deny the same

(vi) A decision concerning the application seeking extension shall be made within sixty days from the date of filing the application

(vii) The time taken to decide such an application shall not be excluded from the six-month period fixed for the completion of investigation

(viii) The trial of an offense punishable under this Bill shall be completed within six-months from the date of the filing of the charge against the accused

(ix) An appeal from any order against a proceeding initiated under the provisions of this Bill shall be concluded within 12 months from the date of filing of the appeal

19. Presumption and burden of proof:

If it is proved that a person has suffered injuries from the act or omission of a public officer or a person acting on behalf of a public officer, and further, if the such proof is made in a trial of an offense under this Bill, it shall be then the burden of the person accused of an offense punishable under this Bill to prove that the injuries were not suffered in an act amounting to torture

Justifications of the Bill

Right to justice is a fundamental right of human beings.

According to the Constitution of Bangladesh it is one of the responsibilities of the State to establish justice and such rights have been protected for all citizens in the Constitution. As example, the Constitution asserts that "All citizens are equal before law and are entitled to equal protection of law." (Article 27)

It is also said in the Constitution that the people have rights to get protection of law. According to Article 31, it is fundamental right "To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law."

It should be noted that despite the specific enshrinement of these fundamental rights in the Constitution such rights have been consecutively violated. Laws have repeatedly been abused.

Moreover, various departments, especially the law-enforcement agencies who are involved in the legal system, forget and ignore the fundamental rights of the people in most cases. As a result, it becomes impossible to ensure justice.

People are victimised by the administrative branches and the police in different excuses. Cruel and inhuman torture is inflicted under the custody of the law-enforcers. Even there are incidents of deaths in custodies as a result of torture happening frequently.

As far as there is strict legal provision of producing an arrested person before a Magistrate within 24 hours of arrest; however, the accused or arrested persons are detained in police custody for days after days. Such abuse of power weakens the structure of the State. People lose rights. Having deprived of legal shelter the citizens become helpless.

In order to ensure the constitutional rights of the general people; with a view to ensure accountability and make the rule of law well-protected; and to safeguard the victims from illegal torture and repression of the police as well as the public administration; and to ensure the people's right to justice and establishing the rule of law and human rights this Bill is proposed.

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