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**PARLIAMENT OF INDIA
RAJYA SABHA**

**REPORT OF THE SELECT COMMITTEE ON
THE PREVENTION OF TORTURE BILL, 2010**

(PRESENTED TO THE RAJYA SABHA ON THE 6th DECEMBER, 2010)

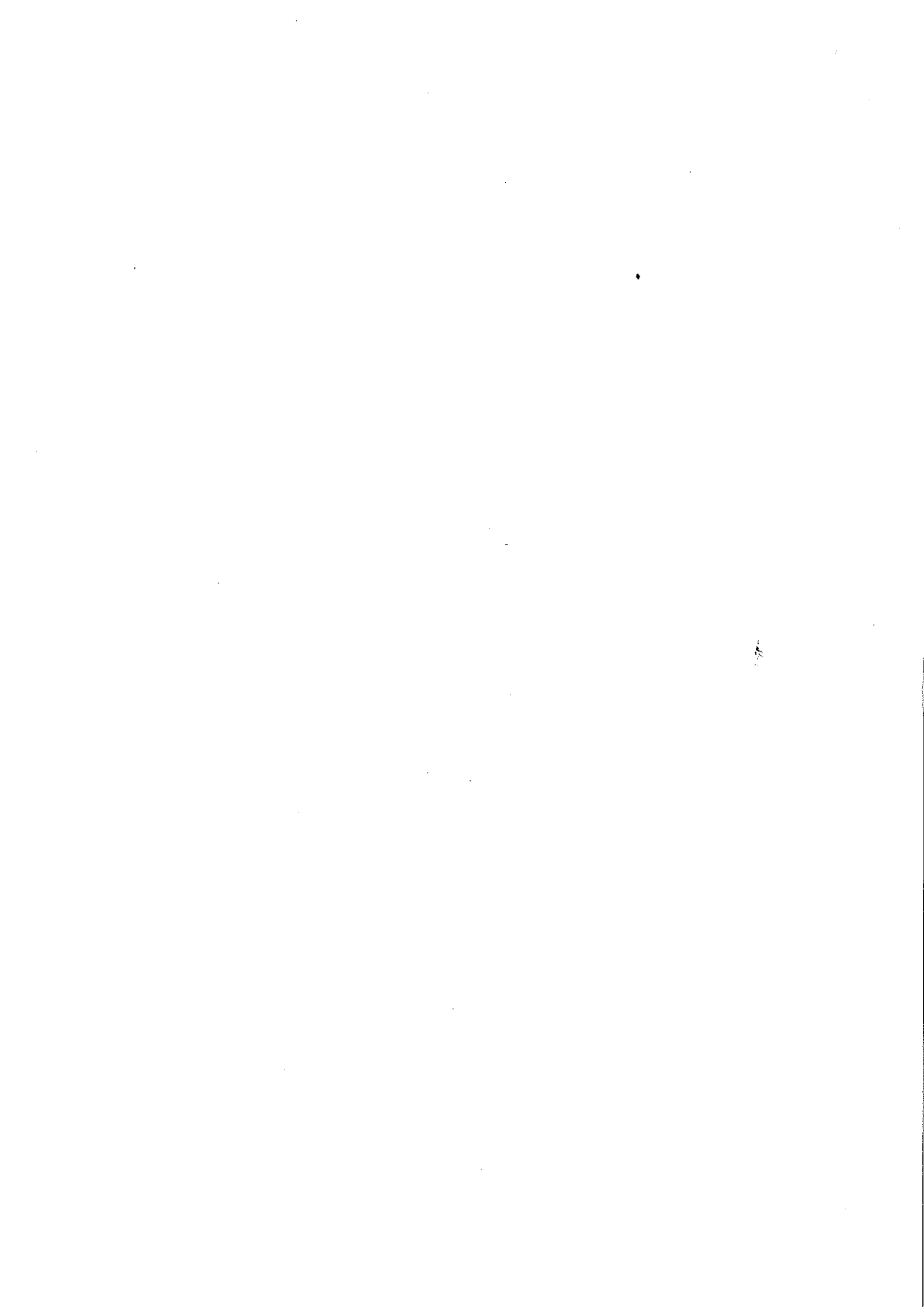
**RAJYA SABHA SECRETARIAT
NEW DELHI**

December, 2010



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COMPOSITION OF THE COMMITTEE

1. Shri Ashwani Kumar - **Chairman**

MEMBERS

2. Dr. E.M. Sudarsana Natchiappan
3. Shri Shantaram Laxman Naik
4. Dr. Vijaylaxmi Sadho
5. Dr. Janardhan Waghmare
6. Shri S.S. Ahluwalia
7. Shri Kalraj Mishra
8. Shrimati Maya Singh
9. Shri Naresh Gujral
10. Shrimati Brinda Karat
11. Shri Satish Chandra Misra
12. Shri Ahmad Saeed Malihabadi
13. Dr. Ashok S. Ganguly

SECRETARIAT

1. Shri N.K. Singh, Joint Secretary
2. Shri Mahesh Tiwari, Joint Director
3. Shri Sameer Suryapani, Deputy Director
4. Shri R.P. Shukla, Assistant Director
5. Smt. Monica Baa, Assistant Director

REPRESENTATIVES OF MINISTRY OF HOME AFFAIRS

- (i) Shri G.K. Pillai, Home Secretary
- (ii) Shri K.C. Jain, Joint Secretary
- (iii) Shri J.L. Chugh, Joint Secretary

REPRESENTATIVES OF MINISTRY OF LAW & JUSTICE

LEGISLATIVE DEPARTMENT

- (i) Shri V.K. Bhasin, Secretary
- (ii) Shri N.K. Nampoothiry, Additional Secretary & Legislative Counsel
- (iii) Shri R.K. Pattanayak, Deputy Legislative Counsel
- (iv) Shri K. Sreemannarayana, Assistant Legislative Counsel



INTRODUCTION

I, the Chairman of the Select Committee on the Prevention of Torture Bill, 2010 having been authorized by the Committee to submit the Report on its behalf, present this Report on the Bill.

2. The Prevention of Torture Bill, 2010 was introduced in the Lok Sabha on the 26th April, 2010 to allow India to ratify the United Nations' Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. It was passed by the Lok Sabha on the 6th May, 2010. The Bill, as passed by the Lok Sabha, was referred to the Select Committee comprising 13 members of Rajya Sabha on a motion adopted by the House on the 31st August, 2010 for examination of the Bill and report thereon to the Rajya Sabha by the last day of the first week of the next session *i.e.* the Winter Session, 2010.

3. The Committee held nine sittings in all including one local visit.

4. The Committee in its first sitting held on the 9th September, 2010 deliberated upon the course of action and procedure for examination of the Bill. The Committee decided to elicit the opinion, if any, of the State Governments in pursuance of the consultation with the States earlier initiated by the Ministry of Home Affairs. An overwhelming number of States and Union territories have responded in favour of the Bill. It was also decided that apart from opinion of concerned Ministries, the views of eminent jurists, legal experts, reputed organizations working for Human Rights including the National Human Rights Commission should also be elicited. As is the practice, the Committee decided to invite written Memoranda from interested individuals/organization/institutions/NGO's/ experts by issuing a Press Release in the form of an advertisement in English, Hindi and other vernacular languages in major leading national and regional newspapers and also through Prasar Bharti. Accordingly, media releases were published twice in leading national and regional newspapers and was also telecast on Doordarshan.

5. In its second sitting on the 16th September, 2010, the Committee heard the Home Secretary; Secretary (West), Ministry of External Affairs; Law Secretary and Secretary, Legislative

Department, Ministry of Law & Justice to hear the views of their respective Ministries on the provisions of the Bill.

6. In its third sitting held on the 29th September, 2010, the Committee heard the views of the Prof. Upendra Baxi, Prof. Yogesh Tyagi, National Human Rights Commission and Shri Y.S. Dadwal, Commissioner of Police, Delhi and received valuable inputs from them.

7. In its fourth sitting held on the 19th October, 2010, the Committee heard the views of Shri Chaman Lal IPS (Retd), representatives of Commonwealth Human Rights Initiative, Ms Vrinda Grover, Advocate and Shri Suhas Chakma, Director, Asian Centre for Human Rights.

8. In its fifth sitting held on the 20th October, 2010, the Committee heard the views of Justice A.P.Shah (Retd.); Shri Sankar Sen, IPS (Retd.); Shri P.Prashant Reddy, Pre-Legislative Briefing Service (PLBS) and Ms. Meenakshi Ganguly, Director, Human Rights Watch (HRW).

9. In its sixth sitting held on the 27th October, 2010, the Committee had a general discussion on the provisions of the Prevention of Torture Bill, 2010. Members of the Committee expressed their views and suggested changes/amendments on the various provisions of the Bill.

10. In its seventh sitting held on the 8th November, 2010, Members of the Committee expressed their views and suggested changes/amendments in the various provisions of the Bill. During this meeting, the Committee authorized the Chairman to move a motion in the House seeking four weeks' extension for completing the work of the Committee. The Committee also decided to visit Tihar jail to ascertain first hand information about the conditions of persons in custody in jail and also to obtain the views of persons tortured in police custody.

11. Accordingly, a motion for extension of time was moved in the House on the 10th December, 2010 which was approved and the time for submission of Report was extended till the last week of the Winter Session.

12. A visit to Tihar jail was undertaken on the 18th November, 2010 where the Committee interacted with the jail authorities and also the inmates. The Committee was informed about the facilities being made available by the jail authorities to the prisoners and the efforts to rehabilitate and integrate them into the mainstream. It was also informed about free legal aid, vocational training, sports and healthcare facilities being provided to them. The Committee also interacted with some of the under-trials and prisoners who had faced torture during police custody.

13. In its eighth sitting held on the 26th November, 2010, the Committee completed the clause-by- clause consideration of the Bill.

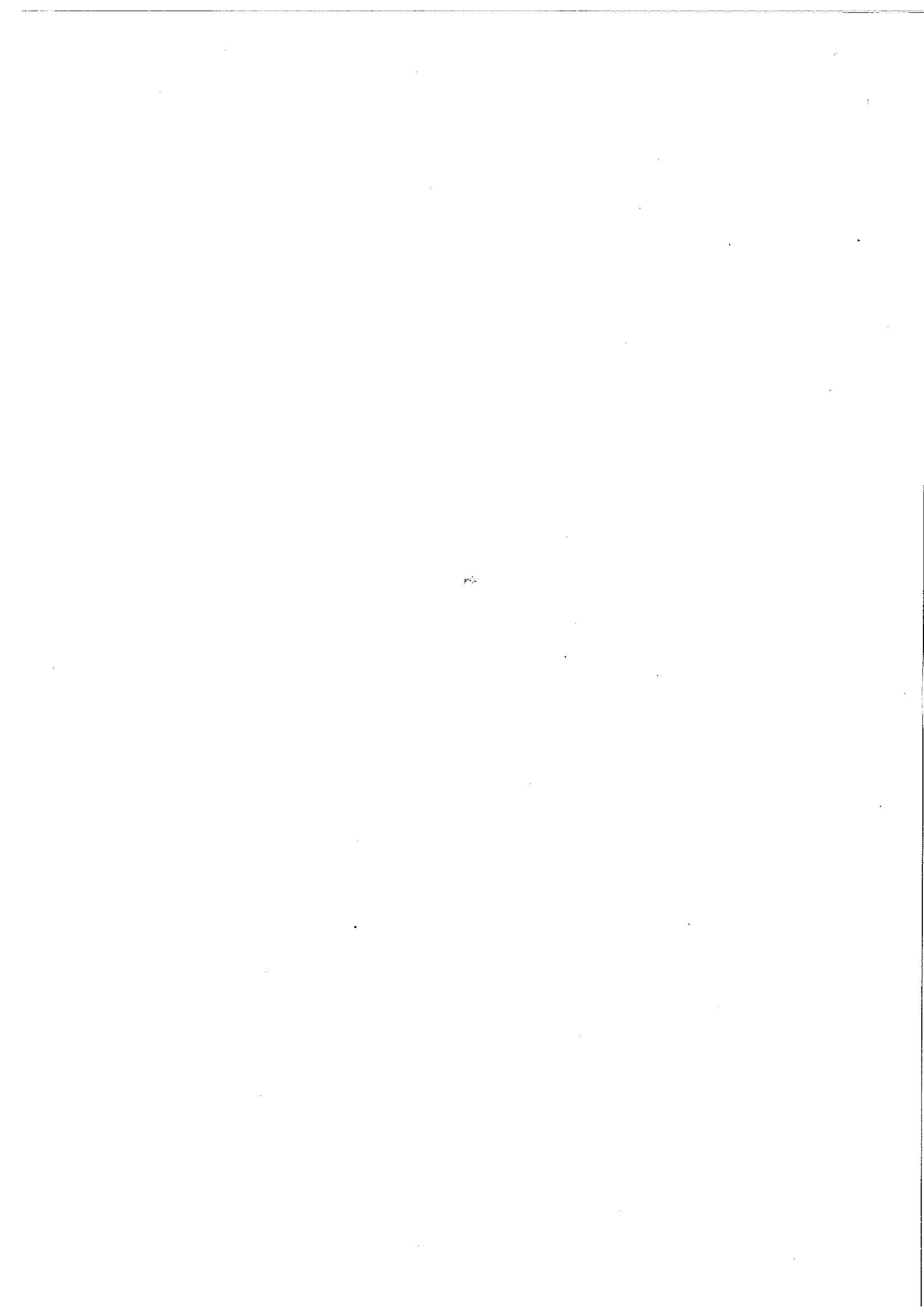
14. The Committee considered and adopted its draft Report on the Bill at its sitting held on the 02nd December, 2010.

15. In all the Committee received 80 memoranda in the process of examination of the Bill and heard 12 witnesses including representatives of organizations. .

16. The Committee wishes to place on record its gratitude to the representatives of the Ministries of Home Affairs, External Affairs and Law & Justice (Legislative Department and Department of Legal Affairs) for furnishing necessary information/documents and rendering valuable assistance to the Committee in its deliberations. The Committee also wishes to express its gratitude to all the distinguished persons who appeared before the Committee and placed their valuable views on the Bill and furnished written notes and information in connection with the examination of the Bill.

ASHWANI KUMAR
Chairman,
Select Committee on
the Prevention of Torture Bill, 2010

New Delhi
02nd December, 2010



REPORT

Background

The Prevention of Torture Bill, 2010 seeks to provide punishment for torture inflicted by public servants or any person inflicting torture with the consent or acquiescence of any public servant, and for matters connected therewith or incidental thereto. The proposed Bill is conceived as an enabling legislation to ratify the “UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment adopted by the United Nation’s General assembly on the 9th December, 1975. India signed the Convention on the 14th October, 1997, but has not been able to ratify the Convention in the absence of an enabling domestic legislation.

2 The Committee was informed by the representatives of the Union Home Ministry that the relevant provisions in the Indian Penal Code do not specifically define “torture” as clearly as in Article 1 of the UN Convention nor has ‘torture’ been made a specific offence by name under the existing criminal laws of the country.

3 In the circumstances, it was necessary for the ratification of the UN Convention that the domestic laws of our country are brought in conformity with the aforesaid UN Convention. The Ministry of External Affairs also submitted its written views on the subject apart from oral deposition and supported the need for a separate legislation/Bill. The Committee was informed that an overwhelming majority of States who are Members of the United Nations have ratified the Convention and that there is an expectation in the comity of nations to ratify the same.

4 The present Bill has been proposed by Parliament as a piece of central legislation under Article 253 of the Constitution to give effect to international conventions/treaties, etc.

Committee's Observations

The Committee accordingly deliberated at length on the various provisions of the Bill and also heard the views of a cross section of experts and organisations including eminent jurists, academicians, civil servants, NGOs and members of the civil society. The Committee notes that the principles and core objectives of the Bill are to enable India to ratify the "United Nation Convention against Torture and Other Cruel or Degrading Treatment or Punishment" as adopted by the United Nations General Assembly on 9th December, 1975 in order to underscore its irrevocable commitment to the protection and preservation of human rights as guaranteed by the Constitution of India.

2 The Bill under consideration seeks to provide punishment for torture inflicted by public servants or any person inflicting torture with the consent or acquiescence of any public servant.

3 The Committee after having gone through the memoranda, background notes, document and evidences tendered before it as well as also the views expressed by its Members on the provisions of the Bill, recommends enactment of the legislation with certain additions and modifications in the Bill as detailed below:-

Clause 2: Definitions

The Committee feels that it is evident from a plain reading of sub-clause (b) of clause 2 that the words "in this Act" in first line of the sub-clause is unnecessary repetition. **The Committee, therefore, recommends that sub-clause (b) of clause 2 may be modified accordingly.**

Clause 3: Torture

As regards this Clause, the following aspects amongst others engaged the attention of the Committee in the context of evidence tendered and memoranda submitted for its consideration:

- a) Since the Bill restricts the act of torture with reference to purpose thereof, the definition was considered too narrow to advance the objective of the Bill under consideration.
 - b) The Bill should not by implication exclude various serious offences recognized under the Indian Penal Code.
 - c) The issue of torture of women in the context of sexual abuse in custody and of children requires special consideration. It is pertinent to mention that India has ratified the United Nations Convention on the Rights of the Child, which specifically states that “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.” Our Constitution affirms likewise.
 - d) The Committee is of the view that the attempt to torture shall also to be provided for in the Bill as an offence.
- ii) Most of the memoranda received by the Committee as well as majority of the witnesses who deposed before the Committee advocated for amendment of the definition of torture to make it more comprehensive. The Committee was also of the opinion that if the intent of the legislation was to give effect to the United Nation’s Convention against Torture and Other Cruel or Degrading Treatment or Punishment, the said Clause needed to be suitably amended.
- iii) Based on the depositions and memoranda received as also the views expressed by Members, the Committee recommends that the definition of Torture be suitably enlarged so as not to exclude from the ambit of definition, acts generally known to be committed on persons in custody which cause severe physical and mental injury, pain, trauma, agony etc. Therefore, the definition needs to be suitably amended. The Committee is further of the view that definition of “torture” should not only be consistent with the definition in the UN Convention, but should also be enlarged to include specific and serious offences against the human body as enumerated in the Indian Penal Code. The Committee further observes that the proposed Bill and the definition of Torture should be consistent with the provisions of the UN Convention, our Constitutional jurisprudence and the nation’s irrevocable commitment to human rights and the basic dignity of the individual as guaranteed by our Constitution.

iii) Further, after reviewing the representations submitted to it for enlarging the definition of Public Servant, as provided in the Explanation to Clause 3 of the Bill, the Committee came to the conclusion that for the purpose of culpability for torture, the definition of Public Servant should not be restricted to that provided under section 21 of the Indian Penal Code but should be enlarged to include Government companies or any institution or organization including educational institutions under the control of the Union and State Governments. This would help to curb the menace of torture of children and students in educational institutions.

iv) The Committee also decided to specifically mention some of the obvious acts of torture by way of illustrations in the Bill itself. This would not only help to better interpret the provisions of the Bill but would also specifically cover specific cases of torture in the definition clause. The examples proposed are illustrative and not exhaustive. **The Committee therefore, recommends that clause 3 should be amended as suggested above.**

Clause 4: Punishment for torture

As is the cardinal principle of law, the Committee is of the opinion that punishment should be commensurate with the gravity of an offence. The Bill in its present form does not satisfy this condition as it does not provide for any minimum punishment for torture thus leaving scope for lesser punishments not consistent with the gravity of the offence of torture. **The Committee, therefore, recommends that a minimum punishment of three years be provided to make the law more deterrent. Similarly, in the case of fine, the minimum amount of one lakh rupees payable by the torturer is proposed.** The Committee has generally accepted the need for a 'victim centric approach' to the Bill and its recommendations are accordingly inspired.

ii) The Bill is silent on the issue of custodial deaths. In its present form, the Bill does not address the issue of compensation, including interim compensation to be paid to the victim for rehabilitation. Accordingly, there is need for making suitable provisions in the Bill for the rehabilitation of the victim of torture. The Committee feels that the Bill should also indicate guidelines to be followed for arriving at a fair and adequate compensation to the victim and in case of death, to his dependants.

iii) The Committee was of the opinion that the State must secure the basic human rights of the individual and may award, in appropriate cases, compensation including interim compensation wherever necessary to rehabilitate the victim of torture.

The Committee, therefore, recommends that clause 4 of the Bill be redrafted accordingly to incorporate the suggestions mentioned above.

Clause 5: Cognizance of offences

The Committee is of the view that the Bill deals with specific cases of torture inflicted or abetted by public servants. This makes the Bill in a class of its own requiring specific provisions to advance its main purpose. Thus, if the limitation period for taking cognizance of offence was made too liberal, transfer or superannuation of the concerned public servant in the meanwhile, may hamper investigations as well as eventual punishment for the offence. Also, critical witnesses may not be available for a successful prosecution of the accused. Thus, the need to retain the limitation period which provides for sufficient time to the victim to recover, report and pursue the case and also not make the case stale or incapable of being successfully pursued. The Committee has before it *inter alia* the example of the Protection of Human Rights Act, 1993 which provides for a limitation period of one year for filing of complaints.

Keeping in view the foregoing, the Committee recommends that a liberal limitation period of two years from the date on which the alleged offence was committed for filing of the complaint, would give sufficient time to enable the victim of torture to initiate proceedings against the persons responsible for torture. In order to meet exceptional situations, the Committee further considers it necessary to vest the discretion with the Court to entertain complaints even beyond the period of two years so as to advance the ends of substantive justice.

ii) The Committee is aware that indigent and disadvantaged victims face problems in even getting their complaints registered by the police and feels the need to specifically provide in the Bill for registration of the complaints according to law and if the victim is disabled for reasons of health, financial incapacity or otherwise, he may file a complaint through a duly authorized representative or friend. The Committee was also concerned at the machinery to be involved for investigating cases of torture so as not to allow the accused to interfere with the course of

investigation. The need for an impartial, time-bound and accountable investigation was recognized by the Committee.

The Committee, therefore, recommends that clause 5 be amended accordingly.

Clause 6: Previous sanction necessary for prosecution

The Committee discussed Clause 6 of the Bill from various perspectives. It was felt that since this enactment was with particular reference to public servants, there is need to retain the provision for prior sanction of competent authority before proceeding against the public servant concerned so as to insulate honest public servants from false, frivolous, vexatious and malicious prosecution. At the same time, the Committee felt that such a provision should not be used to shield those officials who have, in fact, intentionally tortured or abetted the torture of individuals. Thus, the Committee felt that relevant provisions needed to be suitably amended so as to provide adequate safeguards for honest and upright officials, while at the same time ensuring that the sanction provision was not used to deny the victims of torture their right to justice through speedy trial. The Committee, therefore, recommends that the Bill be amended as proposed.

ii) The Committee based on its understanding of the working of the criminal justice system further decided to recommend a "Deemed" provision in the Bill under which if the requested sanction is not granted within a period of three months from the date of application, it would be deemed to have been granted. This would help ensure that the right of the victim is not lost due to procedural delays and he is not made to run from pillar to post to get justice. The Committee feels that sanction in blatant cases of torture should be the norm and where sanction to prosecute is declined, the said decision should be supported by reasons, the said decision should also be appealable.

iii) The Committee is of the opinion that the phrase '*during the course of his employment*', is not in keeping with the intent of the Bill and needed to be made more specific to allow the courts to interpret it with the legislative intent. **The Committee therefore recommends that it may be replaced with '*while acting or purporting to act in discharge of his official duties*'.**

The Committee also recommends that every offence under this Bill be tried as expeditiously as possible so as to conclude the trial within a period of one year from the date of cognizance of the offence.

iv) The Committee also notes that the fact that torture is committed on the command and instruction of a superior officer or is committed during a state of war, threat of war, or during a proclamation of emergency being in operation should not be a defence against prosecution for torture. The Committee, therefore, recommends that suitable provisions to this effect may be added in the Bill.

v) It is not uncommon that the victims, the complainants and witnesses face intimidation and threats from accused persons. Hence, protection of the victim, complainants and witnesses need to be ensured. The Committee, therefore, recommends that adequate provisions for the protection of the victims, complainants and witnesses may be incorporated in the Bill. Further, the Committee also stresses the need for compulsory medical examination of the victim at the time of being lodged in jail and a report of such examination should be transmitted to the concerned trial court.

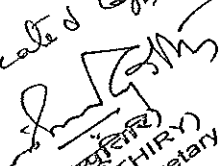
The Committee further recommends that for the removal of all doubts the Bill should specifically state that it shall be in addition to and not in derogation of any other law for the time being in force and that in the event of inconsistency with any other law, its provisions shall prevail.

vi) The Committee is aware that the rules to effectuate the provisions and objectives provided for in the Bill would need to be framed by the appropriate Government. It will also need to be ensured that such rules are laid before Parliament for their scrutiny. The Committee, therefore, recommends that provisions to this effect be incorporated in the Bill accordingly.

Clause 1: Enacting Formula and the Title

It is the common experience that where the time of notification has not been specified, the Government takes their own time to notify the Act. In view of the urgency and importance of the proposed Bill, the Committee recommends that the period of notification be specified in

the Bill itself. The Committee, therefore, recommends that sub-clause (3) of clause 2 should be modified to include **“or on the hundred and twentieth day of its enactment, whichever is earlier.”**

Authenticated Copy


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 (Ministry of Law & Justice
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 नई दिल्ली/New Delhi

THE PREVENTION OF TORTURE BILL, 2010
 [AS REPORTED BY THE SELECT COMMITTEE]
 [Underlined or portions sidlined indicate the amendments suggested by the Select Committee
 and asterisks indicate omissions]

THE PREVENTION OF TORTURE BILL, 2010		
	<p style="text-align: center;">A BILL</p> <p><i>to provide punishment for torture inflicted by public servants or any person inflicting torture with the consent or acquiescence of any public servant and for matters connected therewith or incidental thereto.</i></p> <p>WHEREAS India is a signatory to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;</p> <p>AND WHEREAS it is considered necessary to ratify the said Convention and to provide for more effective implementation.</p> <p>BE it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:-</p>	
	1. (1) This Act may be called the Prevention of Torture Act, 2010.	Short title, extent and commencement.
	(2) It extends to the whole of India.	
5	(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, <u>appoint or on the one hundred and twentieth day of its enactment, whichever is earlier.</u>	
	2. In this Act, unless the context otherwise requires,-	Definitions.
10 45 of 1860. 15	<p>(a) any reference ***to any enactment or any provision thereof shall in any area in which such enactment or provision is not in force be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area;</p> <p>(b) "prescribed" means <u>prescribed by rules made under this Act; and</u></p> <p>(c) words and expressions used in this Act shall have the same meanings respectively assigned to them in the Indian Penal Code.***</p>	

Torture.	<p>3. Whoever, being a public servant or being abetted by a public servant <u>including a superior officer</u> or with the consent or acquiescence of <u>such public servant, including the superior officer</u> intentionally <u>commits or is suspected to have committed any act</u> for the purpose <u>of obtaining information or confession from any person or punishing such person for any act committed or is suspected to have been committed by him or intimidating or coercing such person which may lead to the detection of an offence or misconduct or discriminates on the ground of religion, race, sex, place of residence, birth, language, caste, sect, colour or community or commits any other act for any other purpose, and such act causes -</u></p> <p>(i) grievous hurt to any person; or</p> <p>(ii) danger to life, limb or health <u>***of any person; or</u></p> <p>(iii) <u>severe mental pain, agony, trauma or suffering caused to any person by cruel, inhuman and degrading treatment,</u></p> <p>is said to inflict torture:</p> <p>Provided that nothing contained in this section shall apply to any <u>hurt, danger, or pain</u> as aforementioned caused by any act, which is inflicted in accordance with any procedure established by law:</p> <p>Provided further that where <u>torture in custody of a public servant is proved, the burden of proving that the torture was not intentionally caused or abetted by, or was not with the consent or acquiescence of, such public servant, shall shift to the public servant.</u></p> <p><u>Explanation I.-</u>For the purposes of this section, "public servant" shall, without prejudice to section 21 of the Indian Penal Code, 1860 also include any person acting in his official capacity under the Central Government or the State Government <u>or employed in any Government company as defined in section 617 of the Companies Act, 1956, or in any institution or organisation including an educational institution under the control of the Central Government or the State Government.</u></p> <p><u>Explanation II.-</u> For the purposes of this section, "torture" includes, but is not limited to the following, namely:-</p> <p>(a) causing disability or dysfunction of one or more parts of the body, <u>by acts, such as -</u></p> <p>(i) systematic beating, headbanging, punching, kicking, striking with truncheon or rifle butt or other similar objects, and jumping on the stomach;</p> <p>(ii) food deprivation or forcible feeding with spoiled food, animal or human excreta and other stuff or substances not normally eaten;</p> <p>(iii) electric shock;</p> <p>(iv) cigarette burning, burning by heated rods, hot oil or acid; by the rubbing of pepper or other chemical substances including spices or acids on mucous membranes, or on the wounds;</p>	<p>45 of 1860.</p> <p>1 of 1956.</p>

	<p>(v) submersion of the head in water or water polluted with excrement, urine, vomit or blood;</p> <p>65 (vi) <u>rape or threat thereof and sexual abuse of any kind, including sodomy, insertion of foreign objects into the sex organ or rectum, or electrical shock to the genitals;</u></p> <p>70 (vii) <u>mutilation or amputation of any part of the body such as the genitalia, ear or tongue;</u></p> <p>(viii) <u>the use of plastic bag and other materials placed over the head to the point of asphyxiation;</u></p> <p>(ix) <u>the use of psychoactive drugs to change the perception, memory, alertness or will of a person including the administration of drugs to induce confession or reduce mental competency and the use of drugs to induce extreme pain or symptoms of a disease ;</u></p> <p>75</p> <p>80 (b) <u>maltreating members of the family of a person and inflicting shame upon the victim or any one by such act as stripping the person naked, parading him in public places, shaving the victims head or putting marks on his body against his will;</u></p> <p>85 (c) <u>other analogous acts of mental or psychological torture;</u> (d) <u>torture of children in any form.</u></p>	
90	<p>4. (1) <u>Where the public servant referred to in section 3 or any person abetted by or with the consent or acquiescence of such public servant, tortures or attempts to torture any person, such public servant or person shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to ten years and shall also be liable to fine which shall not be less than one lakh rupees.</u></p>	Punishment for torture.
95	<p>(2) <u>Where death of any person is caused due to torture, the person committing the offence shall be punishable with death or imprisonment for life and shall also be liable to fine.</u></p>	
100	<p>(3) <u>Any public servant or other person committing torture or attempting to commit torture shall also be liable to fine which shall be payable to the affected person .</u></p>	
105	<p>(4) <u>Notwithstanding the fine imposed under this section, the State may award such compensation including interim compensation to the victim of torture as may be considered necessary for rehabilitation of the victim.</u></p>	
110	<p>(5) <u>Compensation by the State to the victim of torture for the purpose of his rehabilitation shall be awarded taking into consideration amongst others, the following factors, namely:-</u></p>	
115	<p>(a) <u>the gravity of the physical and mental harm and suffering inflicted, including death if caused as a result of torture;</u></p> <p>(b) <u>lost opportunities, including employment, education and social benefits;</u></p> <p>(c) <u>material damages and loss of earnings including loss of earning potential;</u></p> <p>(d) <u>cost required for legal or expert assistance, medicine and medical services, and psychological and social services;</u></p> <p>(d) <u>the age, family responsibilities and material condition of the dependants of the victim.</u></p>	
	<p>(6) <u>In case of death due to torture, the dependants of the deceased person shall be entitled to compensation including interim compensation under this Act.</u></p>	

Speedy trial of offences. 120	<p><u>5. Every offence under this Act shall be tried as expeditiously as possible on a day to day basis and endeavour shall be made to conclude the trial within a period of one year from the date of cognizance of the offence by the Court of Session.</u></p>	
Cognizance of offences. 125 130 135 140	<p>6. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no court shall take cognizance of an offence under this Act unless the complaint is made within a period of two years from the date on which the offence is alleged to have been committed:</p> <p><u>Provided that the Court may on sufficient grounds being shown, condone the delay in filing the complaint beyond the said period of twelve months.</u></p> <p>(2) Where the victim of torture is disabled for reasons of health, financial incapacity or otherwise, he may cause a complaint to be filed by a duly authorized representative.</p> <p>(3) Every complaint under this Act shall be registered by the police in accordance with law.</p> <p>(4) A complaint against torture shall be investigated by such officer not below the rank of superintendent of police or the corresponding rank in any other organization or investigative agency as would ensure independent investigation.</p> <p>(5) The investigation shall be completed within a period of six months from the date of making of the complaint.</p>	2 of 1974.
Previous sanction necessary for prosecution. 145 150 155 160	<p>7. (1) No court shall take cognizance of an offence punishable under this Act, alleged to have been committed by a public servant while acting or purporting to act in the discharge of his official duty, except with the previous sanction of -</p> <p>(a) in the case of a person, who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government by an officer in the rank of Secretary to the Government of India;</p> <p>(b) in the case of a person, who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government by an officer in the rank of Secretary to the State Government;</p> <p>(c) in the case of any other person, the authority competent to remove him from his office:</p> <p><u>Provided that the decision regarding the grant of sanction to prosecute the offending public servant shall be taken not later than three months from the date of application therefor, failing which the sanction to prosecute shall be deemed to have been granted:</u></p> <p><u>Provided further that the sanction for prosecution shall not be refused by the Government or the competent authority, as the case may be, except for reasons to be recorded in writing.</u></p> <p>(2) Any person aggrieved by the decision of the Government or the competent authority, as the case may be, under this section may prefer an appeal to the High Court within ninety days from the</p>	

165	<p>date of the decision in such form and manner and accompanied by such fee as may be prescribed.</p> <p>(3) The High Court shall endeavour to dispose of the appeal within six months from the date of its filing.</p>	
170	<p>8. For the avoidance of doubts, it is hereby declared that the fact that any act constituting an offence under this Act was committed-</p> <p>(a) at a time when there was a State of war, threat of war or where a proclamation of emergency was in operation ; or</p> <p>(b) on an order of a superior officer or public authority,</p> <p>shall not be a defence to such offence.</p>	Presumption.
175	<p>9. (1) <u>It shall be the duty and responsibility of the State Government to make arrangements for the protection of victims of torture, complainants and witnesses against all kinds of ill-treatment, violence, threats of violence, or physical harm or mental trauma.</u></p>	Protection of victims, complainants and witnesses.
180	<p>(2) <u>The protection under sub-section (1) shall be provided from the time of submission of the complaint to the conclusion of the trial and thereafter till such time as the State Government is reasonably satisfied that such protection is no longer required.</u></p>	
185	<p>(3) <u>The protection under sub-section (1) shall include necessary provision for providing physical security to the victims, complainants and witnesses.</u></p>	
190	<p>(4) <u>The State Government shall inform the concerned Court about the protection provided to any victim, complainant or witness under this section and the court shall periodically review the need of protection being offered to the complainants, victims and witnesses under this section and pass appropriate orders in this behalf.</u></p>	
195	<p>(5) <u>The State shall ensure proper medical examination of every person remanded to custody in jail and the report of such medical examination shall be transmitted to the concerned trial court.</u></p>	
200	<p>10. (1) <u>The provisions of this Act shall be in addition to and not in derogation of any other law for the time being enforce.</u></p> <p>(2) <u>The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.</u></p>	Effect of provisions of this Act.
205	<p>11. (1) <u>The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act:</u></p> <p><u>Provided that the first set of such rules shall be made within six months from the date of commencement of this Act.</u></p> <p>(2) <u>In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-</u></p>	Power to make rules.

	<u>(a) steps required for prevention of cases of torture;</u>	
210	<u>(b) involvement of civil society and steps for ensuring civil treatment to prisoners consistent with their human rights;</u>	
215	<u>(c) manner of training to the law enforcement personnel, civil or military or medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subject to any form of arrest, detention or imprisonment;</u>	
	<u>(d) monitoring of police custody;</u>	
	<u>(e) impartial and prompt investigation procedures;</u>	
220	<u>(f) the form and manner in which an appeal may be preferred and the fee which shall accompany such memorandum of appeal under sub-section (2) of section 7;</u>	
	<u>(g) assistance, where necessary, in filing complaints of torture;</u>	
	<u>(h) procedure relating to payment of compensation to victims;</u>	
225	<u>(i) any other matter in respect of which rules are required to be made under this Act to effectuate its purposes.</u>	
230	<u>(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however,</u>	
235	<u>that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.</u>	

Annexure I

Statement showing the list of witnesses who appeared before the Select Committee

S.No	NAME
1	Professor Upendra Baxi, Jurisit
2	Professor Yogesh Tyagi, Jawahar Lal Nehru University
3	Shri Chaman Lal, DGP (Retd.)
4	Ms Maza Daruwala, Commonwealth Human Rights Initiative
5	Ms Navaz Kotwal, Commonwealth Human Rights Initiative
6	Ms Devika Prasad, Consultant
7	Shri Suhas Chakma, Director, Asian Centre for Human Rights
8	Ms Vrinda Grover, Lawyer
9	Justice A.P.Shah (Retd)
10	Shri Shankar Sen, IPS (Retd)
11	Shri Prashant Reddy, Pre-Legislative Briefing Service
12.	Ms. Meenakshi Ganguly, Human Rights Watch

List of representations received on the Prevention of Torture Bill, 2010

Memo No.	Name of Organisations/persons
1	Lt Col Najmul Islam Lucknow
2	R.K.Dhanvada Plot No124, Flat No.403, Prapura Nilayam, Kalyan Nagar III, Hyderabad-500018
3	Dr Lenin, Peoples' Vigilance Committee on Human Rights and RCT
4	Dr R.K.Balasubramanian, Parliamentary Law Consultant, Chennai
5	Shri Lr.R.Karthikeyan, Advocate, Chennai
6	All India Lawyers' Union District Committee, Chennai
7	Dr Kamlesh Kumar, Research Officer, Centre for Socio Legal Studies & Human Rights, Tata Institute of Social Sciences.
8	Shri Rajiv Baheti, 1187/58, Shivaji Nagar, Pune
9	PRS Legislative Research, Centre for Policy Research Dharma Marg, Chanakyapur, New Delhi-110021
10	Bijo Francis, South Asia Desk, Asian Human Rights Commission Ltd.
11	Anurag Srivastav, 153, Rai Colony, Post-R.S.Gazipur, Jila-Gazipur (U.P) 233001
12	S.M.Chandrapattan Hubli Karnataka
13	Lt Col (retd) Mathew Thomas Chief Administrative Officer, IIM Shillong
14	Jayjit Ganguly Advocate, High Court Calcutta, BE 51 Sector I Salt Lake West Bengal 700064
15	Dr Anil Dev G. No-38, 2 nd Cross, 10 th Bolock, Nagarbhavi, 2 nd Stage, BDA, Layout, Bengaluru-560072
16	S.Mahaboob Basha, HSC No.254, 1 st Floor, Nethaji Road, Tirupati-517502
17	S.Jagannathan Vide Email.
18	Namrata Sehgal, Nidhi Agarwal and Purushottam Awasthi Faculty of Law, Lucknow University
19	Mr A.Mahaboob Batcha, SOCO Trustee, Madurai
20	Shri Ashish Sharma, Meet Nagar, Delhi

21	Minakshi Chaudhury, Honorary Secretary & Project Coordinator, CCTV, P501, Keyatala Road, Kolkata-700029
22	R. J. Rajkumar
23	Shri P. D. Phadke Thane, Maharashtra
24	Dr Alok Chantia, President, All Indian Rights Organisations, Lucknow
25	Dr Anil Dev G. No-38, 2 nd Cross, 10 th Bolock, Nagarbhavi, 2 nd Stage, BDA, Layout, Bengalur-560072
26	Rohit Bhardwar, 34/1, Harnamdaspora, Adj, Sewak Ram Hospital, Kapurthala Road, Jalandhar
27	Tarun Dey, Advocate, District Bar Association, Cachar, Silchar
28	Anand K. Mishra, Advocate, F-48:LGF: East of Kailash, Delhi-65
29	Dr. Manjit Singh Sidhu, 22312, Shant Nagar, Bathinda, Punjab
30	Dr. A.D. Parikh, 005/9-B, Nalanda, Apna Ghar, Lane 1, Swami Samarth Nagar, Lokhandwala Complex, Andheri (W) Mumbai-53
31	Sanjiv Ferreira
32	D.R.Singh C-2/115A, Sector -B, Jankipuram,Lucknow, U.P 226021
33	Saurabh Sinha 8, Bachchaji Apartment Stanley Road, Allahabad-211002 U.P
34	Dr. Sanjay Jain, ILS Law College Pune
35	Dr. H.K. Nagu
36	Manik Wagh
37	Saileswar Chakrabarti, 1/288, Naktala, Kolkata-700047
38	Vijay Kumar Sharma
39	Gurjit Singh Advocate, Guest Faculty at Rajiv Gandhi National University of Law, Patiala
40	Enakshi Ganguly Thukral Co-Director, HAQ: Centre for Child Rights
41	Prem Krishan Sharma, President, Academy For Socio-Legal Studies, 49 Vivek Nagar Station Road, Jaipur
42	Kartik Varier Rajiv Gandhi school of intellectual property law, Indian Institute pf Technology, Kharagpur
43	Harideepak Singh
44	Dr Yug mohit Chaudhry
45	Vinaykumar Chndrakant Sarang 1401/A, Kingston, High Street Mumbai
46	Kirity Roy, secretary Banglar Manabdhikar suraksha Mancah (MASUM)
47	Sourabh Verma Faculty of Law Delhi University

48	Mathews Philips, Executive Director South India Cell for Human Rights Education and Monitoring I/F, anjanappaComplex, 35, Hennur main Road, Lingarajapuram, St Thomas Town Post,Bangalore
49	Sugandh Saksena & mohit Arora Rajiv Gandhi national University of Law, Punjab, Patiala
50	Amitadyuti Kumar, Vice president, Association for Protection of Democratic Rights (APDR), 18 Madan Boral Lane, Kolkata
51	Usha Ramanathan, Director Independent Law Researcher, New Delhi
52	Venkatesh Babu, Secretary Rakshak Foundation
53	Dr Mohapatra, Executive Director The Resist Initiative International Pandav Patna, P.O. Nirakarpur Disstt Khurda, Orissa
54	Donna Guest, deputy Director Asia-Pacific South Asia Team Amnesty International, London
55	Ravi Nair, Executive Director South Asian Human Rights Documentation Centre B-6/6, Safdarjung Enclave Extension, New Delhi
56	Manish, Radhika Chitkara Sahana Manjesh III year B.A.LL.B. (Hons) National Law School of India University, Bangalore
57	Dr. Vijay Vasandani, 177 A Block, Panchsheel Nagar, Ajmer
58	Rakesh Syal (Delhi Higher Jucicial Service) Officer on Special Duty O/o Lokayukta, NCT of Delhi, G-Block, Vikas Bhawan, I.P. Estate, New Delhi Rs-H.No. 232, Sector 7, Urban Estate, Gurgaon, Haryana-122001
59	Ashok Kumar Sinha, Advocate A/157 P.C. Colony, Kankarbagh, Patna
60	Hitesh H Bhatt. 35/C Dahiba Nager Society, Opp: Shreyas School, Manjal Pur Naka, Vadodara, Gujarat-390011
61	National Youth Project, Distt. Muktsar, Head Office: Guru Nanak Nagri, H.No. 215, W.No. 20, Malout-152107 (Pb)
62	Amnesty International, International Secretariat Peter Benenson House, 1 Easton Street, London WC1X ODW, United Kingdom
63	Gurdial Sahota, Inayat Medical & Education Charitable Society Ludhiana, P.N.B. road, New Janak Puri, Salem Tabri, Ludhiana
64	Ranbirtalib(Mrs Ranbir S.S. Rai) D/o Late Sardar Nirranjan Singh Talib, Ahlma 78, Sector 2, Chandigarh 160001
65	Phoolchand Rajak, M Sector-Aryatnagar Bhopal, Near ISRO-462041
66	Sankar Sen, IPS (Retd.), Senior Fellow-Institute of Social Sciences Former Director General-National Human Rights Commission Former director-National Police Academy

67	Prabhat Kumar, Former Cabinet Secretary IC Centre for Governance, Niryat Bhawan Rao Tula Ram Marg, New Delhi-110057.
68	Amitadyuti Kumar, Vice President, Association for Protection of Democratic Rights 18 Madan Boral Lane, Kolkata 700012
69	Yahia Alibi, Deputy Head of Delegation ICRC Regional Delegation for South Asia
70	Pre-Legislative Briefing Service (PLBS)
71	Navaz Kotwal, Programme Coordinator Access to Justice and Police Reforms Programmes Commonwealth Human Rights Initiative, B-117, First Floor, Sarvodaya Enclave New Delhi 110017
72	Vrinda Grover, Advocate N14A Saket, New Delhi-110017
73	Asian Centre for Human Rights, C-3,441-C, Janakpuri, New Delhi-110058
74	Human Rights Watch
75	Justice R.K. Mahajan (retd.), C-38 Lane-1, Phase-1, Sector-2, New Shimla (H.P) 171009
76	Saileswar Chakrabarti, 1/288, Naktala, Kolkata 700047 West Bengal
77	PRS Legislative Research
78	Yahia Alibi, Deputy Head of Delegation ICRC Regional Delegation for South Asia
79	Saileswar Chakrabarti, 1/288, Naktala, Kolkata 700047 West Bengal
80	Dr. R.K. Verma, B-15 Sector-J, Aliganj, Lucknow-226024

**MINUTES OF THE MEETING OF THE
SELECT COMMITTEE OF THE RAJYA SABHA ON THE
PREVENTION OF TORTURE BILL, 2010**

**I
FIRST MEETING**

The Committee met at 03.00 P.M. on Thursday 09th September, 2010 in Committee Room A, Parliament House Annexe, New Delhi.

PRESENT

1. Shri Ashwani Kumar - *Chairman*

MEMBERS

2. Dr E.M.Sudarsana Natchiappan
3. Shri Shantaram Laxman Naik
4. Dr Vijaylaxmi Sadho
5. Shri S.S.Ahluwalia
6. Shri Kalraj Mishra
7. Smt Maya Singh
8. Shri Ahmad Saeed Mahliabadi

SECRETARIAT

1. Shri N.K. Singh, Joint Secretary
2. Shri Mahesh Tiwari, Joint Director
3. Shri Sameer Suryapani, Deputy Director
4. Shri R.P.Shukla, Assistant Director
5. Smt. Monica Baa, Assistant Director

2. At the outset, the Chairman welcomed the Members of the Committee and informed them about the reference of the **Prevention of Torture Bill, 2010**, as passed by the Lok Sabha, to this Select Committee for consideration and report by the last day of the first week of the next session *i.e.* Winter Session 2010. He added that the Bill is said to have been brought as an enabling legislation to ratify the 'UN Convention against Torture, and Other Cruel, Inhuman and Degrading Treatment or Punishment' adopted on the 9th December, 1975. India signed the Convention on the 14th October, 1997. This Bill has sought to provide punishment for 'torture' inflicted by 'public servants or any person inflicting torture with the consent or acquiescence of any public servant and for matters connected therewith or incidental thereto'. The Chairman while elucidating various provisions of the Bill to the members of the Committee emphasised the need to ensure a fine balance between

protecting/securing individual safety and dignity on the one hand and ensuring genuine interrogations and investigations on the other.

3. The Members of the Committee expressed their views on the provisions of the Bill and the following issues were spelt out for indepth deliberations: Whether a stand alone legislation was indispensable or the purpose could be served by bringing suitable amendments to our existing legal codes such as, IPC, CrPC, etc.; whether the definition of torture was in conformity with the intent and purposes of the said United Nations Convention; provision regarding grant of sanction; need for redefining the 'public servant'; fixing a time limit specified in the Bill for filing a complaint against tortures; providing for compensation to be paid to the victims.

4. The Chairman observed that torture should be treated as torture irrespective of the purpose for which it is inflicted. Hence, limiting it to extracting information or confession would not be appropriate. Secondly, there should be a time limit within which sanction to prosecute the concerned officials should be granted. However, it also has to be ensured that there was no scope for frivolous complaints being lodged, against the sincere and genuine investigators. Moreover, Articles 14, 19 and 21 of the Constitution provide a clear prescription against torture and this Bill is a step further in fulfilling the Constitutional mandate.

5. The Committee was of the opinion that since the implementation of such a law, if enacted, would be the responsibility of the State Governments, their views along with the organizations like National Human Rights Commission, National Police Academy might be taken on the provisions of the Bill. Accordingly, it was decided that the eminent jurists, lawyers, legal experts, reputed organization working for Human Rights might also be requested to appear before or submit their comments to the Committee. As is the practice, the Committee decided to invite written Memoranda from interested individuals/organization/institutions/NGO's/ experts by issuing a press release in the form of an advertisement in English and Hindi and other vernacular languages in all the leading National and regional newspapers and also through Prasar Bharti.

6. After some discussions, the Committee decided to hold its meetings on the 16th and 29th September, 2010. It was also decided to call the Secretaries of the Ministries of Home Affairs, External Affairs and of Law and Justice for oral evidence on 16th Sept 2010 and to hear the views of individuals/ eminent experts on the subject on 29th Sept, 2010.
7. A verbatim record of the proceedings of meeting was kept.
8. The Committee adjourned at 4.08 P.M.

New Delhi
09th September, 2010

MAHESH TIWARI
JOINT DIRECTOR

**MINUTES OF THE MEETING OF THE
SELECT COMMITTEE OF THE RAJYA SABHA ON THE
PREVENTION OF TORTURE BILL, 2010**

**II
SECOND MEETING**

The Committee met at 10.30 A.M. on Thursday, the 16th September, 2010 in Committee Room 'A', Parliament House Annexe, New Delhi to have the oral evidence of the Ministry of Home Affairs, Ministry of External Affairs and the Ministry of Law & Justice on the provisions of the Prevention of Torture Bill, 2010.

PRESENT

1. Shri Ashwani Kumar - *Chairman*

MEMBERS

2. Dr E.M.Sudarsana Natchiappan
3. Dr Vijaylaxmi Sadho
4. Shri S.S.Ahluwalia
5. Shri Kalraj Mishra
6. Shri Naresh Gujral
7. Shri Satish Chandra Misra
8. Shri Ahmad Saeed Mahliabadi

SECRETARIAT

1. Shri N.K. Singh, Joint Secretary
2. Shri Mahesh Tiwari, Joint Director
3. Shri Sameer Suryapani, Deputy Director
4. Shri R.P.Shukla, Assistant Director
5. Smt. Monica Baa, Assistant Director

LIST OF WITNESSES

Ministry of Home Affairs

1. Shri G.K.Pillai, Home Secretary
2. Shri K.C.Jain, Joint Secretary

Ministry of External Affairs

Shri Vivek Katju, Secretary (West)

Ministry of Law & Justice (Department of Legal Affairs)

Shri D.R.Meena, Law Secretary

Ministry of Law & Justice (Legislative Department)

Shri D.K.Bhasin, Secretary, Legislative Department

2. At the outset, the Chairman welcomed the Members of the Committee and the Home Secretary, along with his team. The Chairman, in his opening remarks, requested the Home Secretary to dwell upon what he considered are the salient features of the Bill, particularly the background in which the Bill, as a stand alone legislation, has been proposed.

3. The Home Secretary stated that though the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the UN General Assembly in 1975, India adopted the Convention only in 1997. On whether there was a need for separate legislation or the existing provisions of the Indian Penal Code were sufficient to meet the provisions of the Convention, he stated that the Law Ministry had taken a stand that there was no need for a separate legislation. The Chairman of the Law Commission also opined at that time that no specific amendments were necessary in the IPC as Sections 44, 166, 330, 331, 357 and 503 of the IPC, by and large, meet the provisions of the Torture Convention. Subsequently, the matter was referred to the Attorney General who pointed out that there were some provisions which were not covered under the IPC. Therefore, it was felt that a separate legislation would be useful if these specific provisions cannot be brought into the IPC itself. The Home Secretary further stated that ratification of an international convention by the Government would also extend it to Jammu & Kashmir and therefore, a separate legislation would automatically apply to Jammu & Kashmir.

4. The Home Secretary suggested that the definition of torture should be broad-based to include torture not only by public servants, but also by any other person as the UN Conventions itself talks of torture by any person. But at the same time, the definition should not be made so broad-based that every single person could file complaints against police officers just to escape and harass the police officers.

5. The Chairman of the Committee expressed his view to harmonise the provisions of the law to serve the twin purposes of effective and purposive investigation into acts of torture on the one side and, most definitively, to prevent the debasement of human rights and denigration of dignity of the individuals on the other. The Chairman pointed out that in line with Article 4

of the UN Convention, 'attempt to torture' should also be included in the definition of torture. Otherwise, the bill will fall short of the UN Convention. He also stated that the words mental and physical pain should be incorporated in order to satisfy the UN Convention have not been added in at right place. But at the same time, there is a need to ensure that the genre of mental pain and suffering is not so broadly defined as to enable anybody to invoke mental pain and suffering in the abstract and lodge a complaint against a functionary. So there has to be some definition of how and in what circumstances an act of interrogation would cause mental pain and suffering. The Committee pointed out that there is a provision for compensation to the victims of torture in the UN Convention and that this should be reflected in the proposed legislation. The Committee also agreed that frivolous cases must be avoided so that the police forces do not get demoralized. The Committee also agreed that mental torture should be included in the provisions of the bill. The Committee is also of the opinion that minimum punishment for torture should be prescribed.

6. The Committee thereafter heard the views of Shri Vivek Katju, Secretary (West), Shri V.K. Bhasin, Secretary, Legislative Department and Shri D.R.Meena, Law Secretary on the provisions of the bill. The Chairman asked the Law Secretary as to why the Ministry of Law finally recommended a stand alone legislation in the matter. The Law Secretary stated that the Ministry of External Affairs is of the opinion that implementation of the UN Convention through stand alone legislation will give our country a greater visibility and mileage in the internal arena instead of incorporating suitable provision in the IPC, and that the Law Ministry have no objection to this. Further, with respect to Jammu & Kashmir, the IPC and Code of Criminal Procedure, 1973 do not apply by virtue of special provisions contained in the Constitution. However, any law enacted by Parliament under Article 253 of the Constitution to give effect to an international convention, treaty, etc. will apply to the State of Jammu and Kashmir also.

7. The Committee took note of the fact that after the stand alone legislation comes into place, corresponding provisions in the IPC, Cr.PC and Evidence Act have to be amended suitably in line with the legislation. The Secretary (West), Ministry of External Affairs allayed the fears of the Committee that passing the Torture Bill and ratifying the Torture Convention

will attract Article 20 of the Convention by stating that if we ratify the Convention it will be open to us, as a member-State, to decide whether we want to apply Article 20 of the Convention or not. The Secretary (West) submitted to the Committee that whatever route the Committee adopted to ratify the Convention, it should be such that it would enable ratification at an early date. He also submitted that the draft legislation, as it stands, meets the requirements from the international law point of view of enabling us to ratify the Convention.

8. A verbatim record of the proceedings of the meeting was kept.
9. The Committee adjourned at 12.50 P.M.

New Delhi
16th September, 2010

MAHESH TIWARI
JOINT DIRECTOR

**MINUTES OF THE MEETING OF THE
SELECT COMMITTEE OF THE RAJYA SABHA ON THE
PREVENTION OF TORTURE BILL, 2010**

**III
THIRD MEETING**

The Committee met at 02.30 P.M. on Wednesday 29th September, 2010 in Committee Room A, Parliament House Annexe, New Delhi.

PRESENT

1. Shri Ashwani Kumar - *Chairman*

MEMBERS

2. Dr E.M.Sudarsana Natchiappan
3. Shri Shantaram Laxman Naik
4. Dr Vijaylaxmi Sadho
5. Dr Janardhan Waghmare
6. Shri S.S.Ahluwalia
7. Shri Kalraj Mishra
8. Smt Brinda Karat
9. Dr Ashok S. Ganguly

SECRETARIAT

1. Shri N.K. Singh, Joint Secretary
2. Shri Mahesh Tiwari, Joint Director
3. Shri Sameer Suryapani, Deputy Director
4. Shri R.P.Shukla, Assistant Director
5. Smt. Monica Baa, Assistant Director

WITNESSES

1. Prof Upendra Baxi, Former Vice- Chancellor & legal luminary
2. Prof. Yogesh Tyagi, Jawaharlal Nehru University, New Delhi

National Human Rights Commission (NHRC)

1. Shri K.S.Money, Director-General
2. Shri J.P.Meena, Joint Secretary

Delhi Police

1. Shri Y.S.Dadwal, Commissioner of Police, Delhi

2. At the outset, the Chairman welcomed the Members of the Committee and Prof. Upendra Baxi and Prof. Yogesh Tyagi. While welcoming the distinguished Professors to the meeting the Chairman highlighted their contribution in the field of Human Rights and International Law and requested them to dwell upon the salient features of the Bill and its relationship with different international Conventions particularly UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

3. Prof. Baxi was of the opinion that the Bill in its present form fell short of fulfilling the objectives set out in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The definition of 'Torture', according to him, could have been better structured to bring it in conformity with the definition given in the UN Convention. In fact, the Bill, he said, should have a clear directive regarding zero tolerance for torture practices. The issue of seeking prior sanction also needed to be made stringent by prescribing a strict time limit for this, he said. Prof. Baxi felt that the provisions for adequate rehabilitation and compensation should also have been provided in the Bill itself. Further, as per Article 10 of the UN Convention, 'Education and Information' should also be included in the training schedule of the Law enforcement Officials and Other Public Servants.

4. Thereafter, Prof. Tyagi during his deposition stated that right to freedom from Torture in fact, was inherent in Article 21 of the Constitution. It was also a part of the customary international law. Further, Article 7 of the International Covenant on Civil and Political Rights also prohibits torture, he said. India has ratified this Covenant on Civil and Political Rights and its Article 7 without reservations. In this way, India has acceded to a set of international obligations against torture. The definition of torture in the Bill under consideration was a major cause of concern, as it failed to meet the standards set by the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and also failed to add anything new to the existing law on torture. The proviso exempting torture inflicted under procedure established by law needed to be more specific to prevent its misuse. He wanted that the limitation period of six months be relaxed to one year. He felt that the penalty clause of ten years needed clarification. For example if a victim died due to torture, then under the present Bill only ten years punishment would be provided while under the Indian Penal Code life imprisonment was prescribed for it. Further, only public servants were covered under the Bill, whereas International Covenant on Civil and Political Rights have highlighted the need for bringing non-state actors also under the preview

of the law against torture. The same needed to be insured in the present Bill. Lastly, Prof. Tyagi felt that the provision of compensation to the victims of torture and the role of civil society also needed to be incorporated in the Bill.

5. The Chairman thanked the Professors for their views which also reflected the opinion of the Committee. Further, he observed that as for the applicability of the Bill, a combined reading of Clauses 3 and 4 would help to cover public servants and also those abetted by a public servant. This would infact enlarge its ambit. As far as the definition of torture is concerned, the Committee is ceased of the matter and it would ensure that it gives to the people of the country that which is effective in their day to day existence. The Committee thereafter heard the Secretary-General, National Human Rights Commission.

6. Secretary-General, NHRC emphasised that in the definition of torture 'intention' would have to be established. He also felt that the limitation period provided in the Bill for all practical purposes was too short. Provision for compensation to the victims of torture also needed to be made in the Bill itself. Lastly, he suggested to provide for exclusion of evidence obtained by torture for which corresponding changes would also be needed to be made in the Indian Evidence Act.

7. The Chairman stated that most of the issues raised were already under Committees' consideration and felt that the Indian Evidence Act already provided for the exclusion of evidence obtained from torture. The Committee felt that NHRC should have provided its views on different forms of torture with particular reference to gender based torture for its consideration as it was closely involved with the working of Human Rights in the country. The Committee asked the Secretary General, NHRC to submit a summary of the statistics of the custodial deaths and torture for its consideration at the earliest.

8. Thereafter the Committee heard Shri Y.S.Dadwal, Commissioner of Police, Delhi. The Chairman stated that since in a majority of cases of alleged torture the law enforcement agencies were involved, the Committee felt the need to hear the views of serving/retired Officers from the Police forces also. This would help the Committee in bringing a law which, on one hand would help prevent torture of innocent citizens, and also on the other hand, protect an honest officer doing his official duty from frivolous complaints.

9. Commissioner of Police, Delhi informed the Committee that while the physical injury can be examined in cases of torture, proving the mental torture was always a difficult issue. Any person could complain of mental torture and all that he would have to do was to arrange a certificate from a psychiatrist. This would have a negative impact on the investigation of cases. The difficulty before a policeman was to prove the extent of mental anguish the person had suffered. As compared to other departments, the Police apart from being accountable to the Government was also accountable, on a daily basis, to the Courts for its acts. Secondly, the provisions of the existing laws already provide punishments for any acts of excessive use of force and, if such a Bill was also passed it might in fact hamper investigations as no Police Officer would like to put himself and his career at risk of being accused of torture.

11. The Committee was of the opinion that today when so many modern tools and methods of investigations were available, continuing to resort to torture to get the information should not be acceptable. The central idea behind the legislation was to humanize the law and yet to ensure that it did not lose its efficacy and efficiency. In fact, absence of physical marks of torture should not mean absence of torture. The Committee assured the witnesses to keep the views expressed by them in consideration, while finalizing its recommendations.

12. A verbatim record of the proceedings of meeting was kept.

13. The Committee adjourned at 4.55 p.m.

New Delhi
29th September, 2010

MAHESH TIWARI
JOINT DIRECTOR

**MINUTES OF THE MEETING OF THE
SELECT COMMITTEE OF THE RAJYA SABHA ON THE
PREVENTION OF TORTURE BILL, 2010**

**IV
FOURTH MEETING**

The Committee met at 3.00 P.M. on Tuesday 19th October, 2010 in Committee Room A, Parliament House Annexe, New Delhi to hear the views/oral evidence of Shri Chaman Lal IPS (Retd), Commonwealth Human Rights Initiative, Ms Vrinda Grover, Advocate and Shri Suhas Chakma, Director, Asian Centre for Human Rights.

PRESENT

1. Shri Ashwani Kumar - *Chairman*

MEMBERS

2. Dr E.M.Sudarsana Natchiappan
3. Shri Shantaram Laxman Naik
4. Dr Vijaylaxmi Sadho
5. Dr Janardhan Waghmare
6. Shri S.S.Ahluwalia
7. Srimati Maya Singh
8. Shri Naresh Gujral
9. Smt Brinda Karat
10. Shri Ahmad Saeed Malihabadi

SECRETARIAT

1. Shri N.K. Singh, Joint Secretary
2. Shri Mahesh Tiwari, Joint Director
3. Shri Sameer Suryapani, Deputy Director
4. Smt. Monica Baa, Assistant Director

LIST OF WITNESSES

1. Shri Chaman Lal, IPS (Retd.)
2. Ms Vrinda Grover, Advocate

Commonwealth Human Rights Initiative

1. Ms Maja Daruwala, Director
2. Ms Devika Prasad, Consultant
3. Ms Navaz Kotwal, Programme Coordinator

Asian Centre for Human Rights

1. Shri Suhas Chakma, Director

2. At the outset, the Chairman welcomed the Members of the Committee and Shri Chaman Lal IPS (Rtd). Ex-DGP Shri Chaman Lal and had served in different capacities in the Government of India and also received Padamshree award for his distinguished meritorious services. While initiating the discussion, the Chairman invited Shri Chaman Lal for his views on the Prevention of Torture Bill, 2010.

3. Shri Chaman Lal thanked the Committee for inviting him for oral discussion on the Bill and said that torture has to be considered in the context of all aspects of custodial violence and should not be confined to only interrogation and extracting information. The present Bill provides a very restrictive and narrow definition of the torture. He was of the opinion that the definition of torture should be broadened to align it with the United Nations CAT definition. Otherwise it would be diluting the existing provisions related to torture as provided in the Indian Penal Code. Secondly the limitation period provided in the Bill needs to be examined because the Criminal Procedure Code (CrPC) and National Human Rights Commission Act provided for a more relaxed limitation period. Thirdly, the provision of sanction in the Bill relates to section 197 of the CrPC which was meant to be a protective measure against mischievous prosecution of public servants. However in actual practice it has proved otherwise so much so even the National Police Commission has recommended deletion of Section 197.

4. Dwelling further on the issue Shri Chaman Lal felt that the success of the Bill would hinge on prompt investigation of complaints and this investigation has to be done by a agency other than the Police like the State CID or any other unit. The concept of command responsibility if incorporated in the Bill would also ensure that even the higher levels of the Police administration can be penalized for offences under the proposed legislation. Lastly the Bill is also silent on the issue of custodial deaths. This needs rectification because the data on custodial death itself advocates the need for such consideration.

5. The Chairman while thanking Shri Chaman Lal for his views felt that the concept of command responsibility merits consideration and also acknowledged need for an impartial investigating mechanism. The Committee advocated that specific provisions to cover cases of

torture of women also need to be considered further a time limit for granting sanction of prosecution can be provided in the Bill and if the decision on grant of sanction within the prescribed time frame is not granted then it would be deemed to have been granted. The Committee felt that with the development of scientific means of investigation and interrogation, coercion or violent methods should have no place in the police system.

6. Thereafter, the Chairman welcomed the representatives of Commonwealth Human Rights Initiative (CHRI) and Ms Vrinda Grover, Advocate. He stated that since the written comments of witnesses had already been received by the Committee hence the discussion may be restricted to issues not taken up in the memoranda.

7. Ms Maza Daruwala, Director, CHRI told the Committee that the Bill has sought to prohibit an acknowledged criminal activity of a certain type by people who are public servants and are charged with upholding the law. She then emphasized that the acts the Bill seeks to prohibit cannot be considered to be in the course of official duty and hence prior sanction for prosecution should not be needed. The second clog in the Bill is the limitation period of six months as this is in variance with the limitation period provided under the general law hence it needs corresponding changes. The issues related to compensation to the victims, command responsibility, provision to ensure prevention of torture and of witness protection also need to be provided in the Bill. Further, she also stated that bringing a stand alone legislation was better because it provides for more specific definitions and also enhanced punishments thus helping built a whole supporting regime around it

8. Advocating the need for including cases of torture based on gender Ms Vrinda Grover, Advocate in her presentation said that as it is a reality of the day. Secondly, the proviso to Section 3 needs to be made more specific because the language used states "which is inflicted in accordance with any procedure established by law or justified by law" which leaves much room for interpretation. Further, when even the 152nd Law Commission Report has advocated the removal of Section 197 of CrPC which provides for prior sanction, the Bill should also delete the clause related to prior sanction. Lastly changes must be made in Evidence Act and in the Bill to provide for a presumption that violence had been committed by the person in whose custody the victim was, if such allegation of torture comes up. She also thanked the Committee for giving her an opportunity for submitting her views on the Bill before the Committee.

9. The Chairman while welcoming the Director, Asian Commission for Human Rights (ACHR) informed him that since the Members had already analyzed the memoranda submitted by ACHR hence the presentation be restricted to issues not covered in the memoranda.

10. Shri Suhas Chakma, Director, ACHR presented before the Committee a legislation enacted by Philippines in November, 2009 to prevent torture and highlighted some of the salient features of it which he felt could also be incorporated in the Bill under consideration. He was of the opinion that since the establishment of National Human Rights Commission much efforts have been made to prevent torture and custodial death. However, there are still places in the country which are beyond the reach of NHRC and the Bill should be strong enough to reach such places. Lastly the Bill should provide for institutional protection for victims of torture as well as witnesses.

11. After hearing the views and observations of the experts and observations, the Committee was of the opinion that certain provisions in the Bill like definition clause, limitation period, issue of prior sanction and limitation period provided were already under consideration of the Committee and by having an insightful discussion with experts and organizations certain other issues of importance have come up before the Committee and would need their deliberation.

12. A verbatim record of the proceedings of meeting was kept.

13. The Committee adjourned at 5.17 p.m.

New Delhi
19th October, 2010

MAHESH TIWARI
JOINT DIRECTOR

**MINUTES OF THE MEETING OF THE
SELECT COMMITTEE OF THE RAJYA SABHA ON THE
PREVENTION OF TORTURE BILL, 2010**

**V
FIFTH MEETING**

The Committee met at 11.00 A.M. on Wednesday, the 20th October, 2010 in Committee Room 'B', Parliament House Annexe, New Delhi to hear the views of certain individuals/ organizations on the provisions of the Prevention of Torture Bill, 2010.

PRESENT

1. Shri Ashwani Kumar - *Chairman*

MEMBERS

1. Dr E.M.Sudarsana Natchiappan
2. Dr.Janardhan Waghmare
3. Shri S.S.Ahluwalia
4. Shrimati Maya Singh
5. Shri Naresh Gujral
6. Shrimati Brinda Karat
7. Shri Ahmad Saeed Malihabadi

SECRETARIAT

1. Shri N.K. Singh, Joint Secretary
2. Shri Mahesh Tiwari, Joint Director
3. Shri Sameer Suryapani, Deputy Director
4. Smt. Monica Baa, Assistant Director

WITNESSES

1. Justice A.P.Shah (Retd.)
2. Shri Sankar Sen, IPS (Retd.)
3. Shri Prashant P.Reddy, Pre-Legislative Briefing Service (PLBS)
4. Ms.Meenakshi Ganguly, Director, Human Rights Watch (HRW)

2. At the outset, the Chairman welcomed the Members of the Committee and Justice A.P. Shah (Retd.) to the meeting of the Committee and requested him to share his incisive views on the proposed legislation. Justice A.P. Shah was of the opinion that the Prevention of Torture Bill, 2010 was a highly flawed legislation. He stated that the current definition of torture in the proposed Bill was very restrictive and a person will be punished for torture if all four conditions are met - he is a public servant or has been abetted by a public servant or with the consent or acquiescence of a public servant commits an act that results in grievous hurt to any

person; or danger to life, limb or health, whether mental or physical; the act is done with the intention of extracting information or confession and the act is done on certain grounds such as religion, race, language, caste, etc. Other provisions of the UN CAT which, he stated, did not find place in the proposed Bill are- like, compensation to and rehabilitation of the victims of torture and, impartial mechanism for investigation of torture cases. Also, abetment is not punishable under the proposed Bill. Combined reading of Clause 3 Clause 4 suggests that only a person who actually commits acts of torture can be punished. A public servant who abets, consents, acquiesces or conspires in an act of torture cannot be punished under the Bill.

3. Justice Shah further stated that placing a limitation period of six months in Clause 5 is non-complaint with the provisions of the UNCAT since there is a possibility of several cases of torture remaining un-prosecuted owing to the limitation. s Justice Shah was of the opinion that Clause 5 must be deleted. Regarding prior sanction for prosecution, he stated that Clause 6 posed an additional and more serious barrier. It prohibited the prosecution of a public servant without explicit permission from Government or the authority that employed him or her. According to him, public servants were already provided protection against prosecution in the form of prior executive sanction under section 197 of the CrPC. Justice Shah opined that Clause 6 may conflict with the UN Convention as Article 12 could not be complied with if the relevant superior did not give the Court sanction to prosecute the public official who was suspected of having committed an act of torture. The ground reality is that prosecution of a public servant has become virtually impossible due to the existence of section 197 of the CrPC as sanction is invariably not granted or the requests for sanction merely languish with the executive, thereby, unduly delaying prosecution. Justice Shah also felt that there must be some mechanism for independent investigation. If the same police department was to investigate it, it would not make any difference. According to him, when there is a slur on the police as a whole, there is no chance of getting a proper investigation from the police department. In conclusion, Justice Shah expressed his opinion that mere amendment to the CrPC may not be effective.

4. The Chairman of the Committee then expressed his opinion and questioned that if custodial deaths led to torture, why it should not be covered by this stand alone legislation. He

stated that the complaint could be read with Section 302 of the CrPC. It would be anomalous that a person who died on account of torture in custody would not be covered under the torture law. The Chairman also expressed that the use of the terminology "procedure established by law" in Clause 3 made the provision stricter. Under Article 21 of the Constitution, there cannot be a procedure established by law that mandates torture. In the context of sanction clause, right to torture can never be part of official duties, he stated. There could be no procedure established by lawful legislation unless it met the test of Article 21.

5. Some Members of the Committee expressed the view that there was need of some specific provisions in the Bill relating to the torture inflicted on women. An opinion was also expressed that if a limitation period was prescribed and if during that period the sanctioning authority did not give sanction, then automatically, it would be deemed that the sanction was given.

6. The Committee then heard the views of Shri Shankar Sen, IPS (Retd.) and a former DGP on the torture Bill. Shri Shankar Sen expressed his views that the definition of torture was very narrow and restrictive and needs to be broadened. Secondly, he stated that the punishment of ten years which had been provided in the Bill was somewhat lenient in the sense that in a large number of cases torture led to death. Thirdly, some kind of minimum punishment was needed to be prescribed. Shri Sankar Sen expressed that he personally felt that there should be a limitation period because, according to him, when a complaint is delayed, it gave scope for fabricated complaints. He felt that the limitation period of six months was too short and that it should be increased to one or two years. Further, he stated that there should be some provision in the Act to discourage people from lodging false complaints as this would only lead to demoralization and harassment of officers. He said that though many people, especially, human rights activists were of the view that there should not be any sanction, he submitted that if the provision of sanction is not there, it would be very difficult to operate. Without the provision for sanction, a large number of complaints would be lodged and the law enforcement personnel would not be able to function. Shri Sankar Sen also expressed that there should be some provision in the Act against custodial violence. Another provision, which he said is missing in the bill, is compensation to the victims of

torture. Victims of torture must get some compensation, or, a provision for interim relief should be incorporated. He also expressed his opinion that the ban on torture would not hamper law enforcement personnel from functioning, but, on the contrary, would reiterate that they have to function within the four corners of law. The last point submitted by Shri Sankar Sen was that under the UN Convention on torture, orders from superior officers cannot be invoked as a defense in case of torture. This may also be incorporated in the proposed legislation.

7. The Committee thereafter heard the views of Shri P. Prashant Reddy of Pre-Legislative Briefing Service (PLBS) and Ms. Meenakshi Ganguly, Director, Human Rights Watch on the matter. Shri Prashant Reddy submitted before the Committee that with regard to Clause 3, the definition of torture should be expanded to include even grievous, severe pain and suffering. The second recommendation he proposed in Clause 3 was that the words "intentionally" was restrictive because even in IPC, grievous hurt or hurt is defined in such a way that it includes not only intentionally but also having knowledge that such act may cause injury to the person. So, a definition along these lines would be consistent with the scheme of the penal laws in India. Thirdly, torture was defined only in the context of extracting information or confession. This, according to him, was too restrictive and should be done away with. Regarding Clause 4, he suggested that the word "and" between sub-section (a) and (b) should be removed because this would make it very difficult to prove torture. Also, torture was already defined in Clause 3, so Clause 4 should ideally refer only to that definition of torture and punish anyone who had fulfilled the requirements/elements of Clause 3. However, he stated that Clause 4 was a reproduction of the definition of torture in Clause 3. Regarding the limitation of time period to lodge complaints in case of torture, he stated that the Bill currently laid down a 6 month limitation which was equivalent to an offence punishable with only a fine as laid down in Section 468 of CrPC. So, it is strongly recommended that Clause 5 be deleted. In case the Government is not agreeable to deleting Clause 5, it should, at least, insert a provision which is similar to Section 473 of the CrPC which provides for the Court to waive the limitation period on the basis of certain grounds, he stated. On Clause 6, Shri Reddy opined that there should definitely be a sanction requirement because there have been a lot of cases where honest public servants have been harassed by the public or by political masters. But, he added, the procedure

needed to be more streamlined, transparent and made more accountable. So he suggested that the Bill should provide for a statutory term within which sanction should be granted, and also, the reasons for sanction should be listed out in the Order granting sanction.

8. Ms.Meenakshi Ganguly, Director, Human Rights Watch drew the attention of the Committee to the fact that the bill did not include prohibitions on cruel, inhuman and degrading treatment or punishment. She referred to her written submission on omissions in the bill and urged the Committee to incorporate them in the Bill. The omissions mentioned in her written submission are-violence against women and sexual minorities, deaths in custody, exclusion of evidence obtained by torture, right of victim to redress, criminal liability of superior officers for acts of torture, obligation to investigate, protection of victims and witnesses, non-refoulement and universal jurisdiction.

9. A verbatim record of the proceedings of the meeting was kept.

10. The Committee adjourned at 1.00 P.M.

New Delhi
20th October, 2010

MAHESH TIWARI
JOINT DIRECTOR

**MINUTES OF THE MEETING OF THE
SELECT COMMITTEE OF THE RAJYA SABHA ON THE
PREVENTION OF TORTURE BILL, 2010
VI
SIXTH MEETING**

The Committee met at 3.00 P.M. on Wednesday, the 27th October, 2010 in Committee Room 'A', Parliament House Annexe, New Delhi to have a general discussion on the provisions of the Prevention of Torture Bill, 2010.

PRESENT

1. Shri Ashwani Kumar - *Chairman*

MEMBERS

2. Dr E.M.Sudarsana Natchiappan
3. Dr.Janardhan Waghmare
4. Shri S.S.Ahluwalia
5. Shri Kalraj Mishra
6. Shrimati Maya Singh
7. Shri Naresh Gujral
8. Shrimati Brinda Karat
9. Shri Ahmad Saeed Malihabadi

SECRETARIAT

1. Shri N.K. Singh, Joint Secretary
2. Shri Mahesh Tiwari, Joint Director
3. Shri Sameer Suryapani, Deputy Director
4. Shri R.P.Shukla, Assistant Director
5. Smt. Monica Baa, Assistant Director

2. At the outset, the Chairman welcomed the Members of the Committee to the meeting. The Chairman outlined the main points/issues that had come up before the Committee during evidences, written and verbal. Regarding the definition of torture, there was unanimity that it should be as comprehensive as the UN Convention.

3. Some Members were of the opinion that the four points mentioned in the UN definition should be utilized and that the grounds of religion, race, etc. and the issue of discrimination on the basis of sex should be incorporated. Another view was that sect and colour should be

added on the grounds on which torture is made and that agony and trauma should be added in the definition clause.

4. Another suggestion was about the need for inclusion of compensation in the provisions of the Bill. Concern was expressed about the abuse of the sanction procedure as well as the time limitation for filing of complaints. In addition to these, the Chairman proposed that there should be a provision for condonation of delay based on sufficient grounds being shown. Also, if a person was unable to file a complaint, there should be a provision in the Bill which would enable him, for reasons of financial inability or incapacity, to authorize his representative to file a complaint on his behalf. It was also proposed that death due to torture which was not included in the original Bill should also be included. Further, the Chairman proposed that there should be a provision in the legislation empowering the Government to formulate rules regarding training of the public servants and rehabilitation of the victims. The Chairman expressed his views that this law must be credible and must advance the purpose of preventing torture to the extent possible. It must ensure effective and impartial investigation. At the same time, it must also ensure that the officials are not subjected to frivolous complaints.

5. Regarding the Clause 4 pertaining to punishment for torture, Members opined that death resulting from torture or custodial death should be included. Also, there should be no cap on the maximum amount of fine to be imposed for torture.

6. Regarding Clause 5, pertaining to cognizance of offence, there was a view that period of limitation should be increased and that there should be provision for condonation of delay based on sufficient grounds being shown. Also, if somebody was unable to file a complaint, he should be allowed, for reasons of financial inability or incapacity to authorize, to authorize his representative to file his complaint. Another view that emerged was that there should be no limitation period for filing of complaints since there was no limitation period for serious offences under Section 468 of CrPC.

7. Regarding requirement of previous sanction under Clause 6, a view emerged that there should be no prior sanction on the issue of torture and that Clause 6 should be deleted. The other view was that prior sanction was needed but if sanction was not given within the stipulated time, say six months, then it must be treated as deemed to have been given sanction. Also, the appropriate authority for giving sanction should be specified in the Bill/Act itself.

8. There were certain other issues which are not mentioned in the Bill but on which Members expressed their views. On the issue of compensation, Members were in broad agreement that compensation should be paid to the victims of torture. However, there was a divergence of opinion as to who would pay the compensation. One view was that the erring officials should pay the compensation as very often it is they who abuse their power and therefore, making them liable to pay could be a severe deterrent. The taxpayer's money should not be used for the fault of one person. The alternative was that usually compensation is paid by the Government and not the person who is accused of torture. Torture happens because the Government is not posting/appointing officers with proper training. If the Government had put trained police personnel, torture would not have occurred. It is the duty of the Government to ensure proper and regular training of its officers especially regarding methods of investigation. It was held in the Committee meeting that compensation cannot be fixed according to the pocket of the police official. Another view was expressed that medical treatment should be included in compensation and interim relief.

9. The Committee stressed the need for training of police personnel. It was felt that Government should frame rules regarding training of personnel on methods of investigation. Emphasizing the importance of training, orientation and in-service training of police, the Committee was of the view that these should be included in the Act itself. Also, the Members opined that protection of victims and witnesses should be included in the Bill. A view was expressed that right of the civil society to be involved should also be incorporated in the Bill. It was felt that some kind of involvement of civil society is a must if the objective is to end torture.

10. Allaying the apprehensions of some Members that the notification of the Act might get delayed it was considered necessary to mention the time schedule for commencement of the Act. Other issues mentioned were adoption of fast track procedure to avoid delays in completion of the process and mandatory registration of FIR in cases of torture.

11. A verbatim record of the proceedings of the meeting was kept.

12. The Committee adjourned at 4.52 P.M.

New Delhi
27th October, 2010

MAHESH TIWARI
JOINT DIRECTOR

**MINUTES OF THE MEETING OF THE
SELECT COMMITTEE OF THE RAJYA SABHA ON THE
PREVENTION OF TORTURE BILL, 2010**

**VI
SEVENTH MEETING**

The Committee met at 11.00 A.M. on the Monday the 08th November, 2010 in Committee Room A, Parliament House Annexe, New Delhi to have a general discussion on the provisions of the Prevention of Torture Bill, 2010 .

PRESENT

1. Shri Ashwani Kumar - *Chairman*

MEMBERS

2. Dr E.M.Sudarsana Natchiappan
3. Shri Shantaram Laxman Naik
4. Dr Vijaylaxmi Sadho
5. Dr Janardhan Waghmare
6. Shri S.S.Ahluwalia
7. Shri Kalraj Mishra
8. Srimati Maya Singh
9. Shri Naresh Gujral
10. Smt Brinda Karat
11. Shri Satish Chandra Mishra
12. Shri Ahmad Saeed Malihabadi

SECRETARIAT

1. Shri N.K. Singh, Joint Secretary
2. Shri Mahesh Tiwari, Joint Director
3. Shri Sameer Suryapani, Deputy Director
4. Shri R.P.Shukla, Assistant Director
5. Smt. Monica Baa, Assistant Director

2. At the outset, the Chairman welcomed the Members of the Committee to the meeting. The Chairman highlighted the major issues needing attention of the Committee based upon the views/opinion given by the experts/organizations and the Members of the Committee.

3. The Committee was of unanimous view that to get a better insight on the steps adopted by the States to prevent abuse of power and torture by the police forces, the Committee may visit some of the places like police station, Jails etc. Also, the interrogation chambers and places of police custody of States which have made significant advances in the methodology of criminal

investigation may be visited to get a first hand account of the things including the Research Institutes involved in narco-analysis.

4. The Committee felt that since the said legislation would be implemented by the States and hence the views of the State governments on the Bill were of paramount importance. The Committee decided that views of State governments especially Jammu & Kashmir, Bihar and Uttar Pradesh where instances of violation of human rights are repeatedly reported, on the Bill should be sought for consideration of the Committee. Other States who have not as yet responded should also be reminded to send their views on the Bill at the earliest for the consideration of the Committee.

5. The Committee further decided to hear the views of victims of torture to get a first hand experience of the way torture is inflicted and the steps needed to prevent it. Dwelling further on it, the Committee felt that since stand-alone legislations are usually not taught at graduate level law courses, hence there was a need to take steps to include a list of such significant stand-alone legislations which the students would have an option to choose from for studying during a particular semester. This would help give wider publicity and awareness to such socially significant legislations.

6. The Chairman then informed the Members that the Committee was mandated to give its report by the last date of the first week of the next session i.e. by the 12th of November, 2010. However, keeping in view the importance of the issues under the consideration the Chairman sought the Committee's approval for seeking an extension of four weeks i.e. upto the last day of 221st Session for submitting the report which was agreed to the Committee. Pursuant to this decision a motion would have to be moved to this effect during the ensuing 221st Session commencing w.e.f. 9th November, 2010. The Committee authorized the Chairman and in his absence Shri S.S.Ahluwalia and in his absence Shri Ahmad Saeed Mahliabadi to move the said motion in the House on 10th November, 2010.

7. A verbatim record of the proceedings of meeting was kept.

8. The Committee adjourned at 11.45 a.m.

New Delhi
08th November, 2010

MAHESH TIWARI
JOINT DIRECTOR

**MINUTES OF THE MEETING OF THE
SELECT COMMITTEE OF THE RAJYA SABHA ON THE
PREVENTION OF TORTURE BILL, 2010**

**VIII
EIGHTH MEETING**

The Committee met at 03.00 P.M. on the Friday the 26th November, 2010 in Committee Room A, Parliament House Annexe, New Delhi to have a clause by clause discussion on the provisions of the Prevention of Torture Bill, 2010 .

PRESENT

1. Shri Ashwani Kumar - *Chairman*

MEMBERS

2. Dr E.M.Sudarsana Natchiappan
3. Shri Shantaram Laxman Naik
4. Dr Vijaylaxmi Sadho
5. Shri S.S.Ahluwalia
6. Shri Naresh Gujral
7. Smt Brinda Karat
8. Shri Satish Chandra Mishra
9. Shri Ahmad Saeed Malihabadi

SECRETARIAT

1. Dr.V.K. Agnihotri, Secretary-General
2. Shri N.K. Singh, Joint Secretary
3. Shri Mahesh Tiwari, Joint Director
4. Smt. Monica Baa, Assistant Director

MINISTRY OF LAW & JUSTICE (LEGISLATIVE DEPARTMENT)

1. Shri N.K. Nampoothiry, Additional Secretary & Legislative Counsel
2. Shri K. Sreemannarayana Additional Legislative Counsel

2. At the outset, the Chairman welcomed the Members of the Committee to the meeting and the Officers of the Ministry of Law and Justice and outlined the purpose of the meeting. The Committee then took up clause by clause consideration of the Prevention of Torture Bill, 2010.

I Clause 2: Definitions

The Committee felt that on a plain reading of sub-clause (b) of clause 2, it was evident that the words "in this Act" in the first line of the sub-clause was a repetition. The Committee, therefore, recommended that sub-clause (b) of clause 2 may be modified accordingly.

II Clause 3: Torture

Based on the depositions and memoranda received as also the views expressed by Members, the Committee decided that the definition of Torture should not only be consistent with the definition in the UN convention but should also include acts generally known to be committed on persons in custody causing severe physical and mental injury, pain, trauma, agony etc. The Committee also decided that the definition of 'Public Servant' should be enlarged to include Government companies or institutions or organizations including educational institutions under the control of the Union and State Governments. The Committee also decided to specifically mention some of the obvious acts of torture by way of illustrations in the Bill itself.

III Clause 4: Punishment for torture

Since the Bill in its present form did not provide for any minimum punishment for torture, the Committee decided to recommend minimum punishment of three years to be provided to make the law more deterrent. Similarly, in the case of fine, the minimum amount of one lakh payable by the torturer was proposed.

The Committee further decided to include the issues of custodial deaths and compensation, including interim compensation to be paid to the victim for rehabilitation. The Committee felt that certain basis for arriving at a fair and adequate compensation to the victims or their dependants should also be provided.

IV Clause 5: Cognizance of offences

As the Bill dealt with cases of torture by public servants, the Committee was of the view that a liberal limitation period of two years for filing of the complaint from the date on which the alleged offence was committed, would give sufficient time to enable the victim of torture to initiate proceedings against the persons responsible for torture. In order to meet exceptional situations, the Committee considered it necessary to vest the discretion with the Court to entertain complaints even beyond the period of two years so as to advance the ends of substantive justice. The need for an impartial, time-bound and accountable investigation was recognized by the Committee.

V Clause 6: Previous sanction necessary for prosecution

The Committee decided to retain the provision for previous sanction with a view to insulate honest and upright officials from false and frivolous complaints against them. At the same

time it decided to ensure that the sanction provision was not used to deny the victims of torture their right to justice through speedy trial. If the sanction is not given in three months, it would be deemed to have been provided.

Where sanction to prosecute is declined, the said decision should be supported by reasons, the said decision should also be appealable. The Committee also decided that a trial for every offence under this Bill should be concluded within a period of one year from the date of cognizance of the offence.

The Committee was of the opinion that the phrase '*during the course of his employment*', was not in keeping with the intent of the Bill and needed to be made more specific to allow the courts to interpret it with the legislative intent.

The Committee felt the need for providing adequate provisions for the protection of the victims, complainants and witnesses as well as for compulsory medical examination of the victim at the time of being lodged in jail and for such a report to be transmitted to the concerned trial court.

VI Clause 1: Enacting Formula and the Title

In view of the urgency and importance of the proposed Bill, the Committee decided that the period of 120 days may be specified in the Bill itself for notifying the Act.

3. The Committee also directed the Secretariat to prepare a draft Report on the Bill for its consideration and adoption at its next sitting.
4. A verbatim record of the proceedings of meeting was kept.
5. The Committee adjourned at 4.45 p.m.

New Delhi
26th November, 2010

MAHESH TIWARI
JOINT DIRECTOR

**MINUTES OF THE MEETING OF THE
SELECT COMMITTEE OF THE RAJYA SABHA ON THE
PREVENTION OF TORTURE BILL, 2010**

**IX
NINTH MEETING**

The Committee met at 03.00 P.M. on the Thursday the 02nd December, 2010 in Committee Room A, Parliament House Annexe, New Delhi to consider and adopt the draft Report on the Prevention of Torture Bill, 2010 .

PRESENT

1. Shri Ashwani Kumar - *Chairman*

MEMBERS

2. Dr E.M.Sudarsana Natchiappan
3. Shri Shantaram Laxman Naik
4. Dr Vijaylaxmi Sadho
5. Shri Janardhan Waghmare
6. Shri Naresh Gujral
7. Smt Brinda Karat
8. Shri Ahmad Saeed Malihabadi
9. Dr. Ashok S. Ganguly

SECRETARIAT

1. Shri N.C. Joshi, Secretary
2. Shri N.K. Singh, Joint Secretary
3. Shri Mahesh Tiwari, Joint Director
4. Shri Sameer Suryapani, Deputy Director
5. Shri R.P.Shukla, Assistant Director
6. Smt. Monica Baa, Assistant Director

REPRESENTATIVES OF MINISTRY OF LAW & JUSTICE

LEGISLATIVE DEPARTMENT

- (i) Shri N.K. Nampoothiry, Additional Secretary & Legislative Counsel
- (ii) Shri R.K. Pattanayak, Deputy Legislative Counsel

The Chairman welcomed Members of the Committee and placed the Draft Report along with the Bill as amended which was circulated on the 13th November, 2010, for consideration and adoption as per the circulated agenda of the meeting. He informed the Committee that suggestions given by the Members of the Committee during the Clause-by-Clause consideration of the Bill on the 26th November, 2010, and earlier have been suitably been incorporated by the Draft Bill. A

Member sought certain clarifications on a provision of the Bill as amended which was clarified by the Chairman. Thereafter, the Chairman requested the Members to adopt the Bill along with the Report which was then unanimously adopted by the Members present.

2. It was also decided to present the Report during the current Session of the Parliament.
3. A verbatim record of the proceedings of meeting was kept.
4. The Committee adjourned at 3.18 p.m.

New Delhi
02nd December, 2010

MAHESH TIWARI
JOINT DIRECTOR