

Comparison of the Prevention of Torture Bill, 2010 and the Select Committee Report

The Prevention of Torture Bill, 2010 was introduced in the Lok Sabha on April 26, 2010 by the Ministry of Home Affairs. The Bill was not referred to a Standing Committee for scrutiny. The Lok Sabha passed the Bill on May 6, 2010. The Bill, as passed by the Lok Sabha, was referred to a Select Committee comprising 13 members of the Rajya Sabha on August 31, 2010. The Committee submitted its report on December 6, 2010. In Table 1, we have compared the Prevention of Torture Bill, 2010 with the amendments suggested by the Select Committee.

Table 1: Comparison of Prevention of Torture Bill, 2010 and the Amendments Suggested by the Select Committee

Prevention of Torture Bill, 2010	Amendments Suggested by Select Committee	Remarks of Select Committee
Definition and Punishment for Torture		
<p>3. Whoever, being a public servant or being abetted by a public servant or with the consent or acquiescence of a public servant, intentionally does any act for the purposes to obtain from him or a third person such information or a confession which causes</p> <p>(i) grievous hurt to any person; or</p> <p>(ii) danger to life, limb or health (whether mental or physical) of any person, is said to inflict torture:</p> <p>Provided that nothing contained in this section shall apply to any pain, hurt or danger as aforementioned caused by any act, which is inflicted in accordance with any procedure established by law or justified by law.</p> <p>Explanation.—For the purposes of this section, 'public servant' shall, without prejudice to section 21 of the Indian Penal Code, also include any person acting in his official capacity under the Central Government or the State Government.</p>	<p>3. Whoever, being a public servant or being abetted by a public servant <i>including a superior officer</i> or with the consent or acquiescence of <i>such</i> public servant, <i>including the superior officer</i> intentionally commits or is suspected to have committed any act for the purpose 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, community or commits any other act for any other purpose, and such act causes –</p> <p>I. Grievous hurt to any person; or</p> <p>II. Danger to life, limb or health of any person, or</p> <p>II. <i>Severe mental pain, agony, trauma or suffering caused to any person by cruel, inhuman and degrading treatment,</i></p> <p>Is said to inflict torture:</p> <p>Provided that nothing contained in this section shall apply to any hurt, <i>danger, or pain</i> as aforementioned caused by any act, which is inflicted in accordance with any procedure established by law:</p> <p><i>Provided further that where 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.</i></p> <p>Explanation I – For the purposes of this section, "public servant" shall, without</p>	<p>The Committee recommended that the definition of torture should be suitably expanded so as to make it consistent with the UN Convention and include offences under the Indian Penal Code. Torture of women and children should be given special consideration and attempt to torture should also be made an offence. The definition of public servant should include any government companies or institutions.</p>

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 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.

Explanation II – For the purposes of this section, “torture” includes, but is not limited to the following, namely:

- a. *Causing disability or dysfunction of one or more part of the body, by acts, such as –*
 - i. *Systematic beating, head banging, punching, kicking, striking with truncheon or rifle butt or other similar objects, and jumping on the stomach;*
 - ii. *Food deprivation or forcible feeding with spoiled food, animal or human excreta and other stuff substances not normally eaten;*
 - iii. *Electric shock;*
 - iv. *Cigarette burning, burning by heated rods, hot oil or acid; by the rubbing of pepper or other chemical substances including spices or acid; by the rubbing of pepper or other chemical substances including spices or acids on mucous membranes, or on the wounds;*
 - v. *Submersion of the head in water or water polluted with excrement, urine, vomit or blood;*
 - vi. *Rape or threat thereof and sexual abuse of any kind, including sodomy, insertion of foreign objects into the sex organ or rectum, or electric shock to the genitals;*
 - vii. *Mutilation or amputation of any part of the body such as the genitalia, ear or tongue;*
 - viii. *The use of plastic bag and other materials placed over the head to the point of asphyxiation;*
 - ix. *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;*
 - b. *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;*
 - c. *other analogous acts of mental or psychological torture;*
 - d. *torture of children in any form.*
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<p>4. 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 any person –</p> <p>(a) for the purpose of extorting from him or from any other person interested in him, any confession or any information which may lead to the detection of an offence or misconduct; and</p> <p>(b) on the ground of his religion, race, place of birth, residence, language, caste or community or any other ground whatsoever,</p> <p>shall be punishable with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.</p>	<p>4(1) 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 <i>attempts to torture</i> any person, <i>such public servant or person</i> shall be punishable with imprisonment for a term which <i>shall not be less than three years</i> but which may extend to ten years and shall also be liable to fine which <i>shall not be less than one lakh rupees</i>.</p> <p>(2) <i>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.</i></p> <p>(3) <i>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 effected person.</i></p> <p>(4) <i>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.</i></p> <p>(5) <i>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 :-</i></p> <p>(a) <i>the gravity of the physical and mental harm and suffering inflicted, including death if caused as a result of torture;</i></p> <p>(b) <i>lost opportunities, including employment, education and social benefits;</i></p> <p>(c) <i>material damages and loss of earnings including loss of earning potential;</i></p> <p>(d) <i>cost required for legal or expert assistance, medicine and medical services, and psychological and social services;</i></p> <p>(d) <i>the age, family responsibilities and material condition of the dependents of the victim.</i></p> <p>(6) <i>In case of death due to torture, the dependents of the deceased person shall be entitled to compensation including interim compensation under this Act.</i></p>	<p>The Committee suggested that a minimum punishment of three years be given to make the law more of a deterrent. Also, the torturer should be fined a minimum of Rs 1 lakh.</p>
<p>No provision.</p>	<p>5. <i>Every offence under this Act shall be tried as expeditiously as possible on a day to day basis and endeavor 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.</i></p>	<p>The Committee suggested that trial should be concluded within one year.</p>
<p>Cognizance of offence</p>		
<p>5. 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 six months from the date on which the offence is alleged to have been committed.</p>	<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 <i>period of two years</i> from the date on which the offence is alleged to have been committed.</p> <p><i>Provided that the court may on sufficient grounds being shown, condone the delay in filing the complaint beyond the said period of twelve months.</i></p>	<p>The Committee stated that the limitation period for filing a complaint should be two years so that complainants have sufficient time to initiate proceedings. Also, it is necessary for the courts to have the discretion to allow complaints after two years in exceptional circumstances.</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>	<p>The Committee felt that there should be a specific provision in the Bill to ensure that complaints of disadvantaged victims are registered according to the law. Also, the machinery involved in investigating the case should be impartial, time-bound and accountable.</p>
Necessity of Previous Sanction		
<p>6. No court shall take cognizance of an offence punishable under this Act, alleged to have been committed by a public servant during the course of his employment, except with the previous sanction-</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;</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;</p> <p>(c) in the case of any other person, of the authority competent to remove him from his office.</p>	<p>7(1) No court shall take cognizance of an offence punishable under this Act, alleged to have been committed by a public servant <i>while acting or purporting to act in the discharge of his official duty</i>, 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 <i>by an officer in the rank of Secretary to the Government of India</i>.</p> <p>(b) In the case of a person, who is employed in connection with the affairs of the State and is not removable from his office save by or with the sanction of the State Government, of that Government <i>by an officer in the rank of Secretary to the State Government</i>.</p> <p>(c) In the case of any other person, the authority competent to remove him from his office:</p> <p><i>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 therefore, failing which the sanction to prosecute shall be deemed to have been granted: 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.</i></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 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>	<p>While there is a need to protect honest officials, the Committee was of the view that this provision should not be used to shield guilty officials and deny justice to victims. Therefore, it suggested that if requested sanction is not given within three months, it would be deemed to have been granted.</p>
<p>No provision.</p>	<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>The Committee stated that if torture is committed on the command of a superior officer or during</p>

	<p>(a) <i>At a time when there was a State of war, threat of war or where a proclamation of emergency was in operation ; or</i></p> <p>(b) <i>On an order of a superior officer or public authority, shall not be a defence to such offence.</i></p>	war it should not be a defence against prosecution for torture.
Protection of victims		
No provision.	<p>9(1) <i>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.</i></p> <p>(2) <i>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 reasonable satisfied that such protection is no longer required.</i></p> <p>(3) <i>The protection under sub section (1) shall include necessary provision for providing physical security to the victims, complainants and witnesses.</i></p> <p>(4) <i>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.</i></p> <p>(5) <i>The State shall ensure proper medical examination of every person remanded to custody in jail and the report such medical examination shall be transmitted to the concerned trial court.</i></p>	Since victims and witnesses face threats from accused persons, the Committee recommended that adequate provisions for the protection of victims and witnesses should be included in the Bill. A medical examination of the victim should be mandatory while he is lodged in jail. The report should be sent to the trial court.
Power to make Rules		
No provision.	<p>11(1) <i>The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act:</i></p> <p><i>Provided that the first set of such rules shall be made within six months from the date of commencement of this Act.</i></p> <p>(2) <i>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:-</i></p> <ol style="list-style-type: none"> a. <i>steps required for prevention of cases of torture;</i> b. <i>involvement of civil society and steps for ensuring civil treatment to prisoners consistent with their human rights;</i> c. <i>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;</i> 	The Committee stated that the appropriate government would need to frame Rules for implementation of the Bill. Such a provision should be included in the Bill.

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- d. *monitoring of policy custody;*
 - e. *impartial and prompt investigation procedures;*
 - 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;*
 - g. *assistance, where necessary, in filing complaints of torture;*
 - h. *procedure related to payment of compensation to victims;*
 - i. *any other matter in respect of which rules are required to be made under this Act to effectuate its purposes.*

(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, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Sources: The Prevention of Torture Bill, 2010; The Report of the Select Committee on Prevention of Torture Bill, 2010; PRS.

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