

[AS INTRODUCED IN THE SENATE]

**A
BILL**

to provide for the prevention of and protection of Pakistani citizens and of all other persons for the time being in Pakistan from all acts of torture, custodial death and custodial rape

WHEREAS, Pakistan has signed in 2008 and ratified in 2010 the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishments 1984;

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

AND FURTHER WHEREAS, the Constitution of Islamic Republic of Pakistan provides for and guarantees the dignity of man in Article 14;

AND WHEREAS, it is expedient to enact a law for the prevention and criminalization of all acts of torture;

It is hereby enacted as follows: -

1. Short title, extent, application and commencement.- (1) This Act may be called the Torture, Custodial Death and Custodial Rape (Prevention and Punishment) Act, 2014.

(2) It extends to the whole of Pakistan.

(3) It shall apply to all persons including citizens of Pakistan and every other person for the time being within Pakistan.

(4) It shall come into force at once.

2. Definitions.- (1) In this Act, unless there is anything repugnant in the subject or context,-

(a) **“Agency”** means the Federal Investigation Agency created by Act No. VIII of 1974;

- (b) **“Commission”** means the National Commission for Human Rights created by Act No. XVI of 2012;
- (c) **“Complaint”** means allegations made orally or in writing that any person, including a public servant, has committed an offence under this Act;
- (d) **“Complainant”** means any person filing a complaint upon having reliable information of the commission of an offence under this Act, even if he is not personally injured or affected by the offence;
- (e) **“Convention”** means United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishments 1984;
- (f) **“Custodial death”** means the death of a person occurring during custody, directly or indirectly caused by and substantially attributable to acts committed upon the deceased while in custody. It includes death occurring in police, private or medical premises, in a public place or in a police or other vehicle or in jail. It also includes death occurring while a person is being arrested or taken into detention or being questioned;
- (g) **“Custodial rape”** means any person committing rape or sexual abuse on a person in his custody or in custody of a public servant subordinate to him;
- (h) **“Custody”** includes all situations where a person is detained or deprived of his liberty by any person, including a public servant, irrespective of legality, nature and place of such detention;

Explanation I: It includes judicial custody and all forms of temporary and permanent restraint upon the movement of a person by law, or by force, or by other means.

Explanation II: A person shall be deemed to be in custody during search and seizure proceedings.

- (i) **“Government”** means the Federal Government or the Provincial Government, as the case may be;
- (j) **“Malafide complaint”** means a complaint filed against any person, including a public servant, with malafide intentions or other ulterior motives or to harass such person or public servant;
- (k) **“Offence”** means the offences of torture, custodial death and custodial rape, as defined in this Act.
- (l) **“Person”** shall be understood as defined in Section 11 of the Pakistan Penal Code, 1860.
- (m) **“Public Servant”** means a person defined under Section 21 of the Pakistan Penal Code, 1860.

Explanation: Wherever the words “Public Servant” occur, they shall be understood as every person who is in actual possession of the public office, whatever legal defect there may be in that person's right to hold that position.

- (n) **“Torture”** means an act committed by any person, including a public servant, or at the instigation of or with the acquiescence of any other person, with specific intent to inflict physical or mental pain or suffering, not incidental to lawful sanctions, upon another person within his custody, for the purpose of:
 - (i) Obtaining from that person or some other person any information or a confession; or
 - (ii) Punishing that person for any act he or a third person has committed or is suspected of having committed; or
 - (iii) Intimidating or coercing that person or a third person; or
 - (iv) For any other reason based on discrimination of any kind; or
 - (v) Harassing, molesting, or causing harm whether physical or mental to a female for any of the above purposes;

(o) **“Victim or Aggrieved Person”** means any person who alleges that an offence under this Act has been committed against him.

(2) Words and phrases not defined in this Act shall have the same meaning as ascribed to them in the Pakistan Penal Code, 1860.

3. Punishment for Torture.- (1) Whosoever commits, or abets or conspires to commit torture shall be punished with imprisonment for a term, not less than 5 years, which may extend to 10 years and with fine, which may extend to Rs.1,000,000/- (one million Rupees).

(2) Any public servant, or any other person who has a duty to prevent and either intentionally or negligently fails to prevent the commission of torture shall be punished with imprisonment for a term, not less than 3 years which may extend to 5 years and with fine, which may extend to Rs.500,000/- (five hundred thousand Rupees).

(3) The amount of fine, if recovered, shall be given to the victim. In case fine is not recovered, additional imprisonment shall be awarded which may extend to three years.

4. Punishment for Custodial Death or Custodial Rape.- (1) Whosoever commits, or abets or conspires to commit the offence of custodial death or custodial rape, shall be punished with imprisonment for life and with fine which may extend to Rs.3,000,000/- (Three million Rupees).

(2) Any public servant, or any other person who has a duty to act and either intentionally or negligently fails to prevent the commission of the offence of Custodial Death or Custodial Rape shall be punished with imprisonment for a term, not less than 7 years which may extend to 10 years and with fine which may extend to Rs.1,000,000/- (one million Rupees).

(3) The fine, if recovered, shall be paid to the legal heirs of the victim or to the victim as the case may be. In case fine is not recovered, additional imprisonment shall be awarded which may extend to five years.

5. Custody of females.- (1) No female shall be detained in order to extract information regarding the whereabouts of a person accused of any offence or to extract evidence from such female.

(2) No female shall be taken or held in custody by a male; only a female public servant can lawfully take a female into custody.

The provisions of this section are in addition to the obligations outlined in section 167 of the Code of Criminal Procedure, 1898.

6. Inadmissibility of statements extracted through torture.- Any statement which prima facie appears to have been obtained as a result of torture, shall be inadmissible, and shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

7. Offences to be cognizable, non- compoundable and non-bailable.- Every offence punishable under this Act shall be cognizable, non-compoundable and non-bailable within the meaning of the Code of Criminal Procedure, 1898.

8. Filing of complaint.- (1) A complainant may file a complaint with the Agency against any person, including a public servant,.

(2) A complainant may also directly lodge a complaint with the Sessions Court of territorial jurisdiction.

(3) If a person brought before a Court complains that he has been subjected to torture, the Court shall record the statement of the person and direct that the person be medically and psychologically examined immediately, with a report to be submitted within 24 hours describing injuries, marks of violence or psychological trauma upon the person with the approximate time when such injuries or marks may have been inflicted. If the evidence suggests that torture may have occurred, the Court shall immediately forward a copy of the report to the Agency to investigate the matter and file a report to the Court with or without a charge.

9. Punishment for filing Malafide Complaint.- Whosoever files a malafide complaint shall, after it is established through cogent evidence that the complaint was malafide, be punished with imprisonment, which may extend to 1 year or with fine, which may extend to Rs.100,000/- (One hundred thousand Rupees).

10. Investigation of offences.- (1) The Agency shall have the exclusive jurisdiction to investigate the complaints against offences under this Act, until such time as the Commission is functional with an investigative infrastructure notified for the purpose.

(2) If at any time, including during the grant of physical remand under section 167 of the Code of Criminal Procedure, 1898, the Magistrate has reasonable grounds to believe that an offence under this Act has been committed, he shall notify the Agency for investigation.

(3) The Agency, while investigating the offences under this Act, shall have the same powers and shall follow the same procedure as prescribed in the Federal Investigation Agency Act, 1974 (Act No. VIII of 1974) and the rules made there under.

11. Intimation to the concerned Government Department and Transfer or Suspension of Public Servant.- (1) The Agency, while investigating a public servant who is accused of an offence under this Act, shall forthwith inform the Competent Authority to which the public servant is accountable, the nature of the proceedings against him.

(2) The Agency shall, prior to investigation of an offence under this Act, ask the Competent Authority for transfer or suspension of the accused public servant in order to ensure a neutral investigation.

(3) A public servant when accused of an offence under this Act shall, forthwith and prior to initiation of the investigation, be suspended or transferred to a different location from the location in which the alleged offence was committed.

(4) A public servant when convicted of an offence under this Act shall not perform any public duty unless acquitted by the final appellate court.

Explanation: In this section, the "Competent Authority" shall mean the appointing authority as prescribed in the Service rules of the relevant Government.

12. Trial of Cases.- (1) The Sessions Court shall have exclusive jurisdiction to try offences under this Act.

(2) The bar contained in Section 197 of the Code of Criminal Procedure, 1898 shall not apply to the trial of offences under this Act.

13. Appeals.- (1) An appeal against a conviction or acquittal of an offence under this Act shall be presented before the respective High Court within 10 days from the date on which copy of the order passed by the Sessions Court is supplied to the appellant.

(2) An appeal against conviction shall not be admitted unless some part of the amount, imposed in the form of fine as determined by the appellate court, is deposited in the court.

14. Time limit for investigation, trial and appeal.- (1) Investigation of the offences under this Act shall be completed within 14 days from the date of submission of the complaint.

(2) If investigation is not completed within 14 days, the Agency shall call for a report for explaining the delay in completion of the investigation.

(3) If the investigation is not completed within 14 days, the Agency shall also file an interim report before the Sessions Court and the court may decide to initiate the trial on the basis of such information.

(4) The trial of offences under this Act shall be completed within three weeks from the date of submission of challan before the relevant court.

(5) The appeal against a conviction or acquittal of offences under this Act shall be decided within 30 days from the date of filing of such appeal.

15. Revision.- Unless there is anything inconsistent with the provisions of this Act, the provisions of chapter XXXII of the Code of Criminal Procedure, 1898, shall apply to the proceedings under this Act.

16. Accused who is a Non-Citizen.- Where a person who is not a citizen of Pakistan is arrested for an offence under this Act, the person so arrested shall be entitled to communicate immediately with the nearest appropriate representative of the State of which he is a national, or if he is a stateless person, the nearest appropriate representative of the State where he usually resides.

17. Extradition.- (1) The offence of torture shall be deemed to be an extraditable offence.

(2) No person shall be returned, expelled or extradited to another country where there are substantial grounds to believe that he would be in danger of being subjected to torture:

Provided that the extradition shall not be carried out unless there is an extradition treaty existing between Pakistan and the requesting state.

18. Special Protection.- (1) Any person(s), including the victim or complainant or any witnesses, who allege(s) that he requires protection from a person accused of having committed an offence under this law or from any of his associates, shall file a petition to the Sessions Court in this regard.

(2) The court receiving the petition, after giving notice to the concerned parties, shall hear the matter and pass an order on the petition within 3 days.

(3) The court while disposing of such a petition as mentioned in sub-section (1) above, shall make such orders as deemed necessary and appropriate according to the facts and circumstances of the case.

19. War and other contingencies no defence.- A state of war, threat of war, public emergency, internal political instability or an order of a superior authority or officer shall not constitute a defence against the commission of offences under this Act.

20. Act not to prejudice Civil Remedies.- Nothing in this Act shall prejudice the civil remedies available to the victim by virtue of any other law for the time being in force.

21. Overriding effect.- The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force.

22. Provisions of the Code to Apply.- Unless there is anything inconsistent with the provisions of this Act, the provisions of the Code of Criminal Procedure, 1898, where applicable, shall mutatis mutandis apply to the proceedings under this Act.

23. Duties of the Government.- The Government shall take all measures to ensure that,-

- (a) The provisions of this Act are given wide publicity through media at regular intervals; and
- (b) The relevant public servants are given periodic sensitization and awareness training on the issues addressed in this Act.

24. Removal of difficulties.- If any difficulty arises in the implementation of the provisions of this Act, the Federal Government may make such orders, not inconsistent with the provisions of this Act, as may appear to it to be appropriate for removing such difficulty.

25. Power to make rules.- The Federal Government may, by notification in the official gazette, make rules for the purpose of carrying out the objects and purposes of this Act.

STATEMENT OF OBJECTS AND REASONS

Pakistan signed the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment in 2008, and thereafter ratified it in 2010.

Ratification of the Convention requires enabling legislation to reflect the definition and punishment for "torture."

Although some provisions relating to the matter exist in the Pakistan Penal Code, they neither define "torture" as clearly as in Article 1 of the said Convention, nor deem it a criminal offence as called for by Article 4 of the said Convention. It is necessary after the ratification of the Convention that domestic laws of our State are brought in conformity with the Convention.

Furthermore, it is incumbent upon the Federal Government to implement international conventions and treaties by virtue of Items No. 3 and 32 of the Federal Legislative List under the Constitution of Pakistan 1973. This necessitates the instant legislation.

SENATOR FARHATULLAH BABAR
Member-in-charge