

[AS INTRODUCED IN THE SENATE]

A
BILL

to control and prevent torture and custodial death

WHEREAS *It is expedient to control and prevent torture and custodial death and for the purpose hereinafter appearing;*

It is hereby enacted as follows:-

1. Short title, extent, application and commencement.- This Act may be called the Torture and Custodial Death (Prevention and Punishment) Act, 2020.

(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 constituted under the Federal Investigation Act, 1974 (VIII of 1975);

(b) **"Commission"** means the National Commission for Human Rights created by the National Commission for Human Rights Act, 2012 (XVI of 2012);

(c) **"Complaint"** means allegations made orally or in writing to the Sessions Court that a public servant, or any other person acting under the influence, authority or consent of 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 she/he is not personally injured or affected by the offence;

(e) **"Convention"** means the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishments, 1984;

(f) **"Custody"** includes all situations where a person is detained or deprived of his liberty by a public servant, or any person on the direction of 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, arrest and seizure proceedings;

- (g) **"Custodial Death"** means the death of a person, directly or indirectly caused by and substantially attributable to acts committed upon the deceased while in custody or after his release from 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;
- (h) **"Custodial Sexual Violence"** means any person committing rape or sexual abuse or inflicting any kind of sexual violence on a person in his/her custody or in custody of a public servant subordinate to him/her, irrespective of the sex and/or gender of the perpetrator or the victim;
- (i) **"Government"** means the Federal Government or the Provincial Government, as the case may be;
- (j) **"Mala Fide Complaint"** means a complaint filed against a public servant, with mala fide intentions or other ulterior motives or to harass such person or public servant;
- (k) **"Offence"** means the offences as defined under this Act;
- (l) **"Person"** shall include any male, female or transgender of any age, and shall include minors;
- (m) **"Public Servant"** means a person defined under Section 21 of the Pakistan Penal Code, 1860;
- Explanation:** Wherever the word "Public Servant" occurs, they shall be understood as every person who is in actual or purported 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 a public servant, or at the instigation of or with the consent or acquiescence of such public servant, or any other person, with specific intent to inflict severe pain or suffering, whether physical or mental, 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 she/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

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- (iv) for any other reason based on discrimination of any kind; or
 - (v) harassing, molesting, denying due judicial process or causing harm whether physical or mental to a person for any of the above purposes; and
- (o) **"Victim or Aggrieved Person"** means any person who alleges that an offence under this Act has been committed against him/her.

(2) The Words and Phrases used but not defined in this Act shall have the same meaning as ascribed to them in the Pakistan Penal Code, 1860 (Act XLV of 1860).

3. Punishment for Torture.- (1) Whoever commits, or abets or conspires to commit torture shall be punished with imprisonment for a term, not less than three years, which may extend to ten years and with fine, which may extend to two 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 three years which may extend to five years and with fine, which may extend to one million Rupees.

(3) Any public servant, or any other person acting under the acquiescence of a public servant, who attempts to torture any person, or incites or instigates or otherwise participates in the torture of any person, shall be punished with imprisonment for a term, not less than one year, which may extend to three years and with fine, which may extend to one million Rupees.

(4) 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 Sexual Violence.-

(1) Whoever commits, or abets or conspires to commit the offence of custodial death or custodial sexual violence, shall be punished with imprisonment for life and with fine, which may extend to 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 sexual violence shall be punished with imprisonment for a term not less than seven years, which may extend to ten years and with fine, which may extend to 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 Person.- (1) No person shall be detained in order to extract information regarding the whereabouts of a person accused of any offence or to extract evidence from such person.

(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.

(3) The provisions of this section are in addition to the obligations outlined in section 167 of the Code of Criminal Procedure, 1898 (Act V of 1898).

6. Inadmissibility of Statement Extracted through Torture.- Any statement which 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 Non-Compoundable and Non-Bailable.- Every offence punishable under this Act shall be non-compoundable and non-bailable within the meaning of the Code of Criminal Procedure, 1898.

8. Filing of Complaint.- (1) A complainant shall lodge a complaint with the Sessions Court of territorial jurisdiction.

(2) 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 written 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 any form of torture may have occurred, the Court shall immediately forward a copy of the report to the Sessions Court to take cognizance of the offence.

(3) The Sessions Court, upon taking cognizance of the offence, shall direct the Agency to investigate and complete the investigation and forward the same within fifteen days to the Court:

Provided that the Court may extend the time within which such report is to be forwarded in case where good reasons are shown for not doing so within the time specified in this sub-section. Reasons for extension to be recorded in writing.

(4) On the submission of the report, the Court of Session shall take the cognizance of a case, the Court shall proceed with the trial from day to day and shall decide the case within sixty days and for any delay, sufficient reasons shall be recorded in writing.

(5) The Court shall not adjourn the trial for any purpose unless such adjournment is, in its opinion, necessary in the interest of justice and no adjournment shall in any case be granted for more than thirty days.

9. Punishment for Filing Mala Fide Complaints.- (1) Whoever files a mala fide complaint shall, after it is established through cogent evidence that the complaint was mala fide, be punished with imprisonment, which may extend to 1 year or with fine, which may extend to five hundred thousand Rupees.

(2) Merely an unsuccessful complaint will not constitute an offence under this section.

10. Investigation of Offences.- (1) The Agency shall have the primary 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 order a Medico-Legal Certificate (MLC), and if the same reveals results consistent with torture, notify the Sessions Court, so it may take cognizance of the offence.

(3) On the orders of the Sessions Court, 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 VIII of 1975) and the rules made there under.

11. Intimation to the Concerned Government Department and Transfer or Suspension of Public Servant.- (1) The Sessions Court, at any stage 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/her and may recommend the public servant be suspended or transferred to a different location from the location in which the alleged offence was committed or discontinue to perform any public duty until acquitted by the final appellate court.

(2) The Sessions Court shall, if it feels the proceedings may be prejudiced as a result of the accused public servant's presence, 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) In furtherance sub-section (2), such 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; 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) Public servants could be prosecuted under this Act without requiring a sanction from the Federal Government.

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

14. Time Limit for Investigation, Trial and Appeal.- (1) The investigation of the offences under this Act shall be completed within fourteen days from the date of submission of the complaint.

(2) If the investigation of an offence under this Act is not completed within fourteen days, the Sessions Court shall call for a report in writing for explaining the delay in completion of the investigation.

(3) If investigation of an offence under this Act is not completed within fourteen 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 thirty days from the date of filing of such appeal.

15. Special Protection.- (1) Any person, including the victim or complainant or any witnesses, who allege that she/he requires protection from a person accused of having committed an offence under this Act or from any of his associates, shall file a petition to the Court of Session 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 three days.

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

16. Acting under Acquiescence of Superior Authority not to Constitute a Defence.- Acting under an order of a superior authority or official shall not constitute a defence against the commission of offences under this Act.

17. Procedure with Respect to Public Order/Emergencies.- Notwithstanding anything contained in any other law for the time being in force, while dealing with complaints of human rights violations regarding public order or/and public emergency, the Commission shall adopt the following procedure, namely,-

- (a) That it may either on its own motion or in receipt of a petition, seek a report from the Federal Government on complaint or violation;
- (b) After the receipt of the report it may either not proceed with the complaint, or, as the case may be, make its recommendations to the Federal Government;
- (c) The Federal Government shall inform the Commission of the action taken on the aforesaid recommendations within three months or such extended time as the Commission may deem appropriate;
- (d) The Commission shall publish its reports in writing together with its recommendations made under sub-section 17(b) and the action taken by the Federal Government; and
- (e) The Commission shall provide a copy of the written report published under sub-section 17(d) to the petitioner or his/her representative.

18. 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.

19. Bail for Victims of Torture.- If the Court is satisfied that the accused for a non-bailable offence is a victim of torture under section 2(1)(n) of this Bill, or if it receives a Medico-Legal Certificate (MLC) stating that the accused has been tortured, the court is bound to consider bail to the accused on this basis.

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

21. Provisions of the Code to Apply.- Proceedings under this Act shall be governed by the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898).

22. 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 officials are given periodic sensitization and awareness training on the issues addressed in this Act.

23. 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.

24. Power to Make Rules.- The Federal Government and the Provincial Government in consultation with the relevant High Court may, by notification in the official gazette, make rules for the purpose of carrying out the objects and purposes of this Act. Rules should be presented back to the Parliament within six months.

STATEMENT OF OBJECTS AND REASONS

The main objective of this Bill is to criminalize and prevent custodial torture and death, which are both a widespread and common occurrence in the criminal justice system of Pakistan. The Act also aims to facilitate redress to victims and survivors of custodial torture, who predominantly belong to economically and socially disadvantaged groups in our society.

The growing incidence of custodial torture and custodial deaths has affected the credibility of the rule of law and criminal justice system of Pakistan.

There is no specific criminal law penalty against torture in Pakistan in the existing legal framework, although there is condemnation of torture in Pakistan's two main criminal law codes (the Pakistan Penal Code 1861 and Code of Criminal Procedure 1898). The criminalization or penalty for torture remains to be enacted.

Cases of custodial violence, torture and death continue to proliferate despite its prohibition under Article 14(2) and Article 10 of the Constitution, which forbid arbitrary arrest and detention. Additionally, Pakistan ratified the United Nations Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT) and the International Covenant on Civil and Political Rights (ICCPR) in 2010, both of which prohibit torture and other acts of cruel, inhuman and degrading treatment. Pakistan is obligated both by its Constitution and such conventions to prevent and penalize torture in all its forms. However, torture, within the meaning attached to the "act of torture" prescribed in the UNCAT is still not a specific crime in Pakistan.

**SENATOR SHERRY REHMAN
MEMBER-IN-CHARGE**

