

Bangladesh National Parliament

Fourth Report
Of

Committee on Private Members' Bill and Resolutions

March, 2011

Law Division-2

Bangladesh National Parliament

Honourable Speaker,

I place the fourth report of the Committee on the Private Members' Bills and Resolutions in this great House:

2. The Committee on the Private Members' Bills and Resolutions of the 9th Parliament was formed on 25 February 2009. The Committee has been reshuffled on 23 March 2010.

3. So far, until 6 March 2011, as per Rule 72(1) of the Rules of Procedure, 12 Private Members' Bills and Decision-Proposals have been sent to this Committee out of which 4 (Bills) are on amendment of constitution that have been directly sent to the Committee under Rule 223 (3) (A) of the Rules of Procedure and 8 general Bills have been sent for review after introduction in the House under Rule 223 (1) (B). In the first, second and third reports of the Committee it submitted its report on 2 of the 8 general Bills and 3 of the 4 constitution Bills that had been under review in the Committee. At present, a total of 7 Bills including one constitution amendment Bill are under review of this Committee.

4. This Committee has held 8 meetings till 6 March 2011. Various Bills that have been sent to this Committee have been reviewed and the review is being continued. The Committee has finalized its recommendation on "Torture and Custodial Death (Prohibition) Bill, 2009" at the moment.

5. The recommendation on "Torture and Custodial Death (Prohibition) Bill, 2009", introduced by Honourable Member of Parliament Mr. Saber Hossain Chowdhury as follows:

5.1. Establishing justice to all citizens is one of the responsibilities of the State according to the Constitution of the People's Republic of Bangladesh. It has been enshrined in Article 27 of the Constitution that all citizens are entitled to equal rights before the law. Article 35(5) of the Constitution reads: "No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment". Custodial torture or death meaning extrajudicial activities can never be acceptable to any person, group or society. Torture and custodial death are undoubtedly serious crimes. So, the General Assembly of the United Nations adopted a convention against "torture" on 10 December in 1984. The convention is "United Nation Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" means it a Convention of the United Nations against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In this Convention it has been asserted that each State-party, acceding to the Convention, shall make legislation criminalizing torture, other cruel, inhuman and degrading treatment as punishable crimes. So, Bangladesh, as a State-party to the Convention Against Torture, is obliged to make legislation against torture. For that purpose (of fulfillment of the obligation) "Torture and Custodial Death (Prohibition) Bill, 2009" introduced by Honourable Member of Parliament Mr. Saber Hossain Choudhury (182 Dhaka-9), discussions held in the second, third, fourth, fifth, sixth and seventh meetings of the Committee. In those meetings Honourable Members of Parliament Mr. A. S. M. Firoz (112 Patuakhali-2), Mr. Nurul Mazid Mahmud Humayun (202 Narsingdi-4), Mr. Hafiz Ahmad Mazumder (233 Sylhet-5), Mr. Muhibur Rahman Manik (228 Sunamganj-5), Mr. Md. Abdul Hai (81 Jhenaidah-1), Mr. Junaid Ahmad Polok (60 Natore-3) and Ms. Seyeda Ashifa Ashrafi Pappya (341 Women Constituency-

41) participated and placed their important opinions on the Bill. In the fourth meeting the representatives of various human rights organizations were invited. Amongst various human rights organizations the representatives (1) Advocate Sultana Kamal, Executive Director, Ain O Shalish Kendra, Dhaka; (2) Mr. Md. Adilur Rahman, Secretary, Odhikar Bangladesh, Dhaka; and (3) Advocate Manzil Morshed, Bangladesh Supreme Court, Dhaka gave their important opinions. In the seventh meeting the Attorney General of Bangladesh, senior advocate Mr. Mahbubey Alam, Supreme Court's senior advocate Barrister Ameer-ul Islam and Bangladesh Bar Council's Vice Chairman senior advocate Mr. Abdul Baset Mazumdar gave valuable opinion on the Bill. The introducer Member (of Parliament) of the Bill Mr. Saber Hossain Chowdhury (182 Dhaka-9) presented important points on behalf of the Bill. I thank all of them. Moreover, the officers and employees of Parliament Secretariat who provided overall assistance to the Committee for the review of the Bill, I cordially thank all of them from myself and on behalf of the Committee.

5.2. At the end of the review all the Honourable Members participated in the meetings expressed their consensus on the Bill titled "Torture and Custodial Death (Prohibition) Bill, 2009" and opined for the passage of this Bill with amendments.

5.3. The Committee is recommending the House to pass the Bill with amendments. The Committee has attached the amended version of the Bill as annexure – "A" herewith.

Abdul Matin Khasru, MP
Chairman
Committee on Private Members' Bills and Resolutions

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

[Tabled in the House of the Nation as recommended by the Committee for Private Members' Bill and Resolution]

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

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

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

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

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

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

1. Title and introduction:

(1) This Act may be cited as the **Torture and Custodial Death (Prohibition) Act, 2011;**

(2) It will be in immediate effect.

2. Definitions:

In this Act, unless the context otherwise requires -

(i) "**Complainant**" means any person who makes a complaint under this Act

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

(iii) "**Public officer**" means a person who holds any paid office under the Republic;

(iv) "**Law enforcement agencies**" means uniformed and disciplined forces like the Police, Rapid Action Battalion, Border Guards of Bangladesh, Customs, Immigration, Criminal Investigation Department (CID), Special Branch, Intelligence Agencies, Ansar VDP, Coast Guard and any other state agencies engaged in the enforcing and implementing law in country;

(v) "**Armed forces**" means the members of the Army, Navy, Air Force or any other state unit that are formed entasked with the defence of Bangladesh;

(vi) "**Torture**" means any act or omission which causes pain, whether physical or mental, to any person, in addition to - --

(a) For the purposes of- **obtaining** information or a confession from that person or some other person; or

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

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

(d) On the basis of **discrimination, provocation or influence or consent of any public officer or any governmental capacity**

Any such act shall also be considered as "Torture";

(vii) "**Custodial death**" means the death of a person in the custody of a public officer; Moreover, any death of any person during an illegal detention, at the time of arrest by any law-enforcing agent shall also imply as "custodial death"; any death occurring whilst a person is being arrested or taken into detention; being questioned, irrespective of the fact that whether the person is a witness in a case or not.

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

3. Privilege of Act:

Irrespective of the provisions in any other law in force in Bangladesh the provisions of this Act shall prevail.

4. Complaints of an offense under this Act in court:

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

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

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

(c) If the complainant is a female, the examination shall be made by a female registered medical doctor

(ii) The registered medical doctor examining the person shall prepare a report within 24 hours on injuries, wounds or marks of violence upon the person, mentioning the approximate time when such injuries or marks might have been inflicted

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

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

5. Court may direct registration of cases:

(i) After recording of the statement as mentioned in Section 4 (i) (a), the Court shall immediately forward a copy of the statement, to the Superintendent of Police or in cases where necessary, to a superior police officer, under his jurisdiction with a direction to register a case

(ii) The Superintendent of Police, or the police officer, who receives such an order, immediately after such order is received shall investigate the matter, and file a report to the Court within sixty days, with or without a charge

Provided that, if the aggrieved person thinks that proper investigation is not possible by the police, in such context, if that person appeals to the Court and if the Court is satisfied that the appeal of the aggrieved person is appropriate, in that context the Court shall order a judicial investigation.

(iii) The investigation officer, where appropriate, the judicial investigation officer, while filing the report shall inform to the person whose statement was recorded under Section 4 (i) including the date and Court in which the report is filed

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

(v) The Court shall direct a police officer not below the rank of the alleged perpetrator to investigate the case of the particular crime

6. Accusations by third parties:

(i) Whenever an allegation is made by a third person is brought before a Court suggests that a person is being or has been subjected to torture by another person, the Court shall, according to the procedures laid down in Section 5, record its own observations about the person making the allegation and shall take appropriate measures to ensure the safety of the person making the allegation

(ii) If the Court is satisfied on the statement of the complainant that it is necessary to inspect the scene of crime, it shall visit that place

7. Other modes of complaints:

(i) In addition to the procedures mentioned under Sections 5 and 6, any person who wishes to file a complaint of torture, despite not being an aggrieved person, either concerning him/herself or concerning a third person may do so to the Session's Court or to a police officer not below the rank of the Superintendent of Police

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

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

8. Investigation of complaint:

(i) Whatever provision is laid down in the Code of Criminal Procedure, an investigation of any offence under this Act must be completed within 90 working days from the date of recording of the first complaint

(ii) If the investigation is not accomplished within the stipulated time frame, the investigation officer shall appear before the Court in person and shall explain the reasonable grounds for the delays and inconveniences.

(iii) The court shall hear the victim/s/aggrieved person/s statement within 30 days to settle the matter of seeking extension of time

9. Application of Code of Criminal Procedure: Unless anything laid down otherwise, the provisions of the Code of Criminal Procedure 1898 (Act V of 1898) shall be applicable for registering complaints, investigation, trial and discharging the crimes under this Act.

10. Cognizance of offence, etc: (i) All punishable crimes under this Act shall be cognizable, non-compoundable and non-bailable

(ii) As per the provision under Subsection (iii), no person, who has been the mastermind or directly involved in commission of a crime under this Act, shall be released on bail, if –

(a) The complainant party is deprived of the opportunity of participating in the hearing on the petition for bail; and

(b) The Court becomes satisfied that there are reasonable grounds that the alleged perpetrator/s can be convicted for allegations brought against him/her;

(iii) If the aforementioned persons under Subsection (ii), is a woman or a physically sick or inform, in such circumstance, the Court, if satisfied that releasing such person on bail shall not bar the process of justice, it may grant bail

(iv) Any persons accused under this Act, except as mentioned under Subsection (ii), is considered by the Court with satisfaction that releasing him/her shall be justifiable, then the Court, shall record the reasonable grounds for such decision, may release the accused on bail

11. Protection: (i) A complainant can file petition to the Sessions Court against any accused under this Act for protection

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

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

(iv) The court while disposing off such a petition as mentioned in Subsection (i) above, shall make such orders as deemed necessary, including but not limited to, the detention of the person for periods at least 7 days, which may be extended as required from time to time

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

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

12. War or other contingencies no excuse:

(i) Any act constituting an offence under this Act was committed - at a time when there was a state of war, threat of war, internal political instability or any public emergency; or on an order of a superior officer or a public authority; shall be unacceptable as an excuse

13. Offences: (i) If any person tortures another person, then this act shall be considered as a crime committed by that person

(ii) Any person, any crime mentioned under Subsection (i) –

- (a) Attempts to commit
- (b) Assists or provoke; and
- (c) Conspires

then, that shall be considered that that person has committed a crime under this Act.

(iii) An offender, who commits a crime under this Act, shall be personally liable for the crimes committed

14. Trial: (i) Trial of an offence committed under this Act shall be conducted only before a Court of Sessions Judge

(ii) A trial must be completed within 180 days since the registration of a complaint

(iii) If the trial is not finished within the stipulated time as mentioned under Subsection (ii) on the basis of reasonable ground, the Court shall complete the trial within the following 30 days.

15. Punishment: (i) Any person, who is found guilty under Subsection (i) of Section 13 of this Act, shall be punished with a minimum of five years rigorous imprisonment or a monetary penalty of minimum twenty five thousand Taka or both and in addition to that another compensation amounting twenty five thousand Taka to the victim/aggrieved person/ persons

(ii) Any person, if commits torture to any other person and that person dies as a result of that torture, then the perpetrator shall be considered as committed the offence under Subsection (i) of Section 13 of this Act and shall be punished with rigorous imprisonment of minimum life term or a monetary penalty of minimum one hundred thousand Taka or both, for that crime and in addition to that another compensation amounting minimum two hundred thousand Taka must be paid to the victim/aggrieved person/persons

(iii) Any person is found guilty under Subsection (ii) of Section 13 of this Act shall be punished with minimum two years rigorous imprisonment or a monetary penalty of minimum twenty thousand or both

(iv) Any person convicted under this Act shall deposit the amount of monetary penalty and compensation under Subsections (i), (ii) and (iii) to the trial Court within 14 days from the date

of passage of the verdict. No appeal against the verdict under this Act shall be admissible unless this obligation is fulfilled.

16. Appeal: (i) An appeal challenging the convictions of the offences under this Act can be made to the High Court Division of the Supreme Court of Bangladesh

(ii) The victim/aggrieved person/persons may also proceed with their appeal to the higher courts for reviews

17. Non-Citizens: Any person who is not a citizen of Bangladesh is arrested for an offence under this Act, then that person shall –

- (a) be entitled to communicate with its own country's Embassy/High Commission
- (b) be entitled to communicate immediately with the nearest appropriate representative of the State in the neighbouring territories

18. Extradition: (i) Any person who is not a citizen of Bangladesh is arrested for an offence under this Act, then Ministry of Foreign Affairs of Bangladesh shall request the authorities of the country concerned to extradite that person for trial

(ii) If a person accused for torture is not a citizen of Bangladesh, upon a request from any country's Government of such person for extraditing him/her to the concerned country, the authorized Department of the Ministry of Foreign Affairs of Bangladesh shall immediately inform that country regarding the steps taken or proposed regarding trial of the said person or his/her extradition

(iii) Extradition of any person who is not a citizen of Bangladesh is accused of torture under this Act shall be initiated, upon requests from the concerned Government, in accordance with the Extradition Act 1974 (Act No. 58 of 1974)

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

(v) Where there is no extradition arrangement made by the Government of Bangladesh with any State, in force on the date of the commencement of this Act, the Government may treat the Extradition Act 1974 (No. 58 of 1974)

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

19. Individual obligation and burden of proof:

In case of any harm caused to a complainant on account of negligence or carelessness by a public officer or a person acting on behalf of a public officer then the accused shall be liable to prove that the said harm has not been caused due to negligence or carelessness by him/her or the person acting on his/her behalf

20. Authority of making rules: For the purpose of the fulfillment/ implementation of this Act, the Government, by Gazette notification, may make Rules

Justifications of the Bill

Right to justice is a fundamental right of human beings.

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

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

It should be noted that despite the specific enshrinement of these fundamental rights in the Constitution such rights have been consecutively violated. Laws have repeatedly been abused. Moreover, various departments, especially the law-enforcement agencies who are involved in the legal system, forget and ignore the fundamental rights of the people in most cases. As a result, it becomes impossible to ensure justice.

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

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

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

Saber Hossain Chowdhury
Member of Parliament
Constituency 182, Dhaka-9