

Bill No. 312 of 2019

THE PREVENTION OF TORTURE AND ATROCITIES (BY PUBLIC
SERVANTS) BILL, 2019

By

ADV. DEAN KURIAKOSE, M.P.

A

BILL

*for prevent all kinds of torture and atrocities by public servants on ordinary citizens
and to provide punishment for torture inflicted by public servants or by any
person with the consent or acquiescence of any public servant and
for matters connected therewith or incidental thereto.*

WHEREAS India is a signatory to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;

AND WHEREAS it is considered necessary to ratify the said Convention and to provide for more effective implementation.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Prevention of Torture and Atrocities (By Public Servants) Act, 2019.

(2) It extends to the whole of India.

Short title,
extent and
commencement.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) words and expressions used but not defined in this Act shall have the same meaning as assigned to them in the Indian Penal Code, 1860; and 5 45 of 1860.

(b) any reference in this Act 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.

Torture.

3. (1) 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 in order to obtain from a third person such information or confession which causes,— 10

(i) grievous hurt to any person; or

(ii) danger to life, limb or health (whether mental or physical) of any person, is said to inflict torture: 15

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.

Explanation.—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. 20

Punishment for torture.

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 any person,—

(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 25

(b) on the ground of his religion, race, place of birth, residence, language, caste or community or any other ground whatsoever,

shall be punishable with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. 30

(2) If the torture was inflicted by the public servant or any person abetted by or with the consent or acquiescence of such public servant in a lock up room or at any official premise under the control of such public servant and the torture causes death of the victim then the punishment of such torture shall be life imprisonment and fine.

(3) (i) The fine contemplated in sub-sections (1) and (2) of this section shall be determined after considering the gravity of torture inflicted and resultant loss suffered by the victim; and 35

(ii) The fine so recovered from the convict shall be payable to the victim or the dependents of victim in case of death.

Cognizance of offences.

5. (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 six months from the date on which the offence is alleged to have been committed. 40 5 of 1974.

(2) 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,—

5 (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;

 (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;

10 (c) in the case of any other person, of the authority competent to remove him from his office.

STATEMENT OF OBJECTS AND REASONS

The Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment was adopted by the United Nations General Assembly on 9th December, 1975 [Resolution 3452(XXX)]. India signed the Convention on 14th October, 1997. 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 Indian Penal Code, 1860 yet they neither define "torture" as clearly as in article 1 of the said Convention nor make it a criminal offence as called for by article 4 of the said Convention. In the circumstances, it is necessary for the ratification of the Convention that domestic laws of our country are brought in conformity with the Convention. This would necessitate either amendment of the existing laws such as Indian Penal Code, 1860 or bringing in a new legislation.

In the year 2010 the matter was examined by Central Government at length in consultation with the Law Commission of India and the then learned Attorney General of India. After considerable deliberations on the issue, it was decided to bring in standalone legislation so that the aforesaid Convention can be ratified. Thereafter, the then Home Minister had introduced a similar legislation, *inter alia*, defining the expression "torture", providing for punishment to those involved in the incidents of torture and specifying the time limit for taking cognizance of the offence of torture. The said Bill was passed in the Lok Sabha but could not pass in Rajya Sabha. Eventually that Bill lapsed on dissolution of that House. It is high time to have such legislation in force to achieve these objects. Therefore, this Bill is introduced in pursuance of the same objects.

Hence this Bill.

NEW DELHI;
November 6, 2019.

DEAN KURIAKOSE

LOKSABHA

A

BILL

for prevent all kinds of torture and atrocities by public servants on ordinary citizens and to provide punishment for torture inflicted by public servants or by any person with the consent or acquiescence of any public servant and for matters connected therewith or incidental thereto.

(Adv. Dean Kuriakose, M.P.)