

AS INTRODUCED IN THE RAJYA SABHA
ON 8TH DECEMBER, 2023

Bill No. XXXI of 2023

THE PREVENTION OF CUSTODIAL TORTURE BILL, 2023

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BILL

to provide a framework for the prevention of custodial torture inflicted by public servants, punishment and compensation for custodial crimes, rehabilitation of victims, protection of victims, complainants and witnesses, and for matters connected therewith or incidental thereto

BE it enacted by Parliament in the Seventy-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Prevention of Custodial Torture Act, 2023. Short title and commencement.
(2) It shall come into force on such date as the Central Government may, by notification
5 in the Official Gazette, appoint.
2. (1) In this Act, unless the context otherwise requires,— Definitions.
(a) "appropriate Government" means relation to a State, the Government of that State and in relation to a Union Territory, the Central Government.

(b) "public servant" without prejudice to section 21 of the Indian Penal Code, 1860, refers to any person acting in his/her official capacity under the Central Government or the State Government or employed in any Government Company as defined in clause 45 of section 2 of the Companies Act, 2013, or in any other institution under the control of the Central Government or the State Government. 5

(c) "prescribed" means prescribed by rules made under this Act.

(2) The words and expressions used herein and not defined in this Act shall have the same meanings respectively as assigned to them in the Indian Penal Code, 1860. 45 of 1860.

(3) Any reference in this Act to a law which is not in force in any area, shall, in relation to that area, be construed as a reference to the corresponding law, if any, in force in that area. 10

Custodial
torture.

3. Whoever, being a public servant or being abetted by a public servant or with the consent or acquiescence of a public servant, intentionally inflicts physical or mental suffering on a person detained, held in custody or held in administrative detention or imprisoned as a result of conviction for an offence, for the purpose of:— 15

(a) obtaining information or a confession from him/her or a third persons; or

(b) punishment for an act he/she or a third person has committed or is suspected of having committed; or

(c) intimidating or coercing him/her or a third person for any reason based on discrimination on the basis of caste, religion, gender, race, place of residence, language or sexual orientation, is said to inflict custodial torture: 20

Provided that nothing contained in this section shall apply to any pain, hurt or danger 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, "custodial torture", apart from physical and mental suffering, includes, but is not limited to food deprivation, submersion of head in water, asphyxiation, use of psychoactive drugs, maltreating family members, and inflicting shame upon the victim. 25

Burden of
Proof.

4. Where custodial torture referred to in section 3 is inflicted on a person, the burden of proof that the torture was not intentionally caused or abetted by, or was not with the consent or acquiescence, of a public servant, shall shift to such public servant. 30

Punishment
for custodial
torture.

5. (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 attempts to torture any person, such public servant or person shall be punishable with imprisonment for a term which shall not be less than three years but which can extend to ten years and shall also be liable to fine which shall not be less than one lakh rupees. 35

(2) Where death of any person is caused due to custodial torture, the person committing the offence shall be punishable with imprisonment for life and shall also be liable to fine.

Compensation
to victims of
custodial
torture.

6. (1) Any public servant or other person committing custodial torture or attempting to commit such torture shall also be liable to a fine which shall be payable as compensation to the affected person. 40

(2) **Notwithstanding the fine imposed under this Act, the appropriate Government may award such amount of compensation including interim compensation to the victim of custodial torture as may be considered necessary for rehabilitation of the victim, as may be prescribed.** 45

(3) Compensation by the appropriate Government to the victim of custodial torture for the purpose of his rehabilitation shall be awarded taking into consideration amongst others, the following factors, namely:—

5 **(a) the gravity of the physical and mental harm and suffering inflicted, including death if caused as a result of custodial torture;**

(b) lost opportunities, including employment, education and social benefits;

(c) material damages and loss of earnings including loss of earning potential;

10 **(d) cost required for legal or expert assistance, medicine and medical services, and psychological and social services; and**

(e) the age, family responsibilities and material condition of the dependents of the victim.

15 **(4) In case of death due to custodial torture, the dependents of the deceased person shall be entitled to such amount of compensation including enterim comensation under this Act, as may be prescribed.**

7. A public servant who abets, consents, acquiesces, or conspires to commit custodial torture shall be liable to the same punishment and compensation referred to in sections 5 and section 6. Abetment to torture.

20 **8. (1)** Whoever, being a public servant or with the consent or acquiescence of a public servant, sexually abuses a person detained, held in custody or held in administrative detention or imprisoned as a result of conviction for an offence, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine. Custodial sexual abuse.

25 (2) A public servant who consents, acquiesces, or conspires to commit custodial sexual abuse referred to in the sub-section (1), shall also be liable to the same punishment referred to in sub-section (1).

2 of 1974. **9.** 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 period of two years from the date on which the offence is alleged to have been committed. Cognizance of the offence.

35 **10.** It shall be the duty and responsibility of the State Government to make arrangements for the protection of victims of custodial torture and custodial sexual abuse, complainants and witnesses against all kinds of ill-treatment, violence, threats of violence, or physical harm or mental trauma, from the time of submission of the complaint till such time the State Government is satisfied that such protection is no longer required. Protection of victims, complainants and witnesses.

11. (1) The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force. Effect of provisions of this Act.

40 (2) The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

12. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. Power to make rules.

45 (2) Every rule made under this Act 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 the 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. 5

STATEMENT OF OBJECTS AND REASONS

Article 21 of the Indian Constitution guarantees the right to life and personal liberty to each and every person in the country. Custodial violence not only takes away the fundamental right to life but also viciously violates human dignity. Unfortunately, the existing laws in India do not adequately address custodial crimes.

2. India is a signatory to the United Nation Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment since 14th October, 1997, however, India is yet to ratify the same. Therefore, enabling legislation against torture is necessary for the ratification of the Convention. A legislation against custodial torture in consonance with the definition of torture provided under the Convention and related Indian legal provisions will ensure a right against custodial torture for all persons in India.

3. The Supreme Court in the case of *D.K. Basu v. State of West Bengal* (1997) held that the expression “life or personal liberty” in article 21 of the Constitution of India includes a guarantee against torture and assault even by the State and its functionaries to a person who is taken into custody. The Law Commission of India has also recommended ratification of the UN Convention against Torture and tougher laws for custodial torture.

4. In 2010, the Lok Sabha passed the Prevention of Torture Bill, 2010 which subsequently lapsed in Rajya Sabha. However, the Select Committee of Rajya Sabha in its report on the 2010 Bill flagged certain gaps in the Bill and suggested stricter provisions of prevent custodial torture. Taking a cue from the Committee Report, the current Bill criminalises custodial torture, death and sexual abuse, and prescribes punishments for these offences. In addition to this, the Bill also provides a legal framework for compensation, rehabilitation, and protection of victims of custodial violence.

The Bill seeks to achieve the above-stated objectives.

MANOJ KUMAR JHA.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 12 empowers the Central Government, as the case may be, to make rules for carrying out the purposes of the Bill. The matters in respect of which the rules and regulations may be made are of procedure and administrative details and as such, it is not practicable to provide for them in the proposed Bill itself. The delegation of legislative power is, therefore, of a normal character.

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(Prof. Manoj Kumar Jha, M.P.)