

Legislative Brief

The Prevention of Torture Bill, 2010

The Bill was introduced in the Lok Sabha on April 26, 2010 by Mr. P. Chidambaram, the Minister for Home Affairs. The Bill was not referred to a Standing Committee. It was passed in the Lok Sabha on May 6, 2010.

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Highlights of the Bill

- ◆ The Prevention of Torture Bill, 2010 seeks to provide for punishment for torture committed by government officials.
- ◆ The Bill defines torture as “grievous hurt”, or danger to life, limb and health.
- ◆ Complaints against torture have to be made within six months. The sanction of the appropriate government is required before a court can entertain a complaint.

Key Issues and Analysis

- ◆ The definition of torture (a) is inconsistent with the definition of torture in the Convention against Torture, (b) requires the intention of the accused to be proved, (c) does not include mental pain or suffering, and (d) does not include some acts which may constitute torture.
- ◆ The Bill dilutes existing laws by imposing a time limit of six months and requiring prior government sanction for trying those accused of torture. Existing laws do not have such requirements.
- ◆ There is no independent authority to investigate complaints of torture, and no provision for granting compensation to torture victims has been made.

PART A: HIGHLIGHTS OF THE BILL¹

Context

The Prevention of Torture Bill, 2010 introduced by the Ministry of Home Affairs seeks to provide punishment for torture committed by public servants or with their consent. This Bill has been introduced to allow India to ratify the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.² The Law Commission’s report ‘Custodial Crimes’ had recommended changes in existing laws such as the Indian Penal Code, 1860 and the Indian Evidence Act, 1937 to prevent custodial crimes, including torture.³

Key Features

The Bill has two main features:

- It defines ‘torture’ and seeks to punish torture inflicted by public servants or with their consent.
- It lays down conditions under which courts can admit complaints for acts which are offences under the Bill.

The features of the Bill are explained in detail in Table 1.

Table 1. Features of the Prevention of Torture Bill, 2010

| Features | Explanation |
|---|--|
| Definition of 'torture' | A public servant or any person with a public servant's consent commits torture if all three conditions are met: <ol style="list-style-type: none"> An act results in (i) Grievous hurt to any person (Grievous hurt as defined in the Indian Penal Code - includes damage to limbs or organs); or (ii) danger to life, limb or health (mental or physical) of any person, and The act is done intentionally, and The act is done with the purpose of getting information or a confession. |
| When is torture punishable? | <ol style="list-style-type: none"> When it is committed for gaining a confession or other information for detecting an offence, and The torture is committed on certain grounds such as religion, race, language, caste, or 'any other ground'. |
| Conditions under which courts can admit complaints | <ol style="list-style-type: none"> The complaint has to be made within six months of the torture having been committed. The approval of the central or state government appointing the accused public servant has been taken. |

Sources: The Prevention of Torture Bill, 2010; PRS.

PART B: KEY ISSUES AND ANALYSIS

Requirements for establishing and punishing torture

Clauses
3, 4

Torture is defined in the Bill as (a) the causing of grievous hurt or (b) danger to the life or health (mental or physical) of a person. This definition of torture raises the following issues:

- It is inconsistent with the definition of torture in the Convention against Torture which India seeks to ratify;
- It does not include many acts amounting to torture which are punishable under the Indian Penal Code;
- It adds a requirement of proving the intention of the accused person to commit torture. Current provisions in the IPC do not have this requirement.
- Grievous hurt does not include mental suffering or pain.

Inconsistency with the UN Convention against Torture

The Statement of Objects and Reasons says that one of the reasons for introducing the Bill is to ratify the UN Convention against Torture. Article 4 of the Convention states that (a) all acts of torture (as defined in the Convention) have to be made punishable, and (b) attempts to commit torture, and participation in torture shall also be made punishable. The Bill does not contain a number of provisions contained within the definition of torture in the Convention. Table 2 below compares the definition of torture in the Bill and the Convention against Torture.

Table 2: Comparison of the definition of torture in the Bill and the Convention against Torture

| Topic | Definition in the Convention | Definition in the Bill |
|--|---|--|
| Nature of injury/ threat | Any physical or mental "severe pain or suffering" | (a) Grievous hurt, and (b) danger to life, limb, or mental or physical health. |
| Intention | The accused has to be committing torture intentionally. | Same as the Convention. |
| Purpose(s) for which inflicting pain amounts to torture. | No exhaustive list. Reasons include (a) obtaining information, (b) punishment for an act, (c) intimidation. | The only purpose should be obtaining information or a confession. |
| When torture is punishable | No additional requirements | Torture is punishable <i>only</i> when (a) extorting information leading to detection of offences, and (b) on the ground of religion, race, place of birth, residence, caste, community, language or any other ground. |

Sources: UN Convention against Torture, 1975; Prevention of Torture Bill, 2010; PRS.

Requirement of proving intention not present in the existing law

The Bill states that grievous hurt or danger to life, limb or health has to be inflicted intentionally. The person alleging torture will have to prove that the accused intended to grievously hurt or endanger the life, limb or health of the victim. This requirement is additional to the provisions in the Indian Penal Code, 1860.⁴ The IPC does not require the intention of the accused to cause 'grievous hurt' to be proved.

Grievous hurt does not include mental suffering or pain

The Bill defines torture as the causing of grievous hurt, or endangering the life, limb, or health of a person. The Bill states that the meaning of grievous hurt in the Bill is the same as that in the IPC. Grievous hurt as defined in the IPC does not include mental suffering (See table 3 for details). The definition of torture in the Bill covers danger to mental health, but does not cover damage caused to mental health or any other form of mental suffering.

~~Non-inclusion of acts which may constitute torture~~ (DELETED ON SEPTEMBER 3, 2010)

The IPC contains provisions which make it unlawful to cause hurt or grievous hurt to extort a confession (See Table 3 for details).⁴ These provisions also make it unlawful to hurt a person in order to extort a confession from another person interested in the sufferer (for example, hurting the parent or child of a person to extract a confession from him). The definition of torture in the Bill does not include the act of inflicting pain or suffering on a person with a view to extort a confession from another interested person.

Table 3 compares the relevant provisions in the IPC and the Bill.

Table 3: Comparison of some provisions relating to torture in the Indian Penal Code and the Bill

| Indian Penal Code, 1860 | Prevention of Torture Bill, 2010 |
|--|--|
| Proving intention is not required to prove grievous hurt. | Grievous hurt has to be intentionally inflicted. |
| Extorting confession from a person by hurting him and extorting a confession from another person interested in the sufferer are punishable. | Extorting a confession from a person interested in the sufferer is not punishable. |

Sources: Indian Penal Code, 1860; Prevention of Torture Bill, 2010; PRS.

Clauses
5, 6

Dilution of existing law on torture

The Bill makes it difficult for those accused of torture to be tried. This is because (a) complaints against acts of torture have to be made within six months, and (b) the previous sanction of the appropriate government has to be sought before a court can entertain a complaint.

The Criminal Procedure Code (a) requires government sanction only when public servants cannot be removed without government sanction, and (b) does not specify a time limit for offences whose punishment exceeds imprisonment for three years.⁵ (See Table 4 for provisions in the Criminal Procedure Code and the Bill).

Table 4: Relevant provisions in the Criminal Procedure Code and the Bill

| Subject | Criminal Procedure Code | Bill |
|------------------------------------|--|---|
| Requirement of government sanction | Sanction needed if (a) a public servant is not removable except with the sanction of the appropriate government, and (b) the public servant was acting in the course of his duties. | Prior sanction of the appropriate government needed in all cases. |
| Time limits for filing complaints | Time-limits exist for offences punishable with maximum imprisonment of up to three years. No time limits for offences which are punishable with imprisonment of more than three years. | There is a time-limit though torture is punishable with maximum imprisonment of up to ten years. Complaints have to be filed within six months. |

Sources: Sections 197 and 468 of the Criminal Procedure Code, 1973; PRS.

No independent authority to investigate complaints

There is no independent mechanism/ authority to investigate complaints of torture. Not only is prior sanction required from the government (whose officials are alleged to have committed torture), the investigating agency in cases of torture may also be the same department whose official has committed torture (in case police officials are alleged to have committed torture). This may affect the effectiveness of investigations in incidents of torture. Many other countries give independent authorities powers to investigate incidents of torture (Table 5).

Table 5: Independent authorities in other countries to investigate incidents of torture

| Country | Authority/ Institution |
|----------------|---|
| France | Comptroller General of the places of deprivation of liberty |
| Germany | The Federal Agency for the Prevention of Torture |
| New Zealand | Human Rights Commission, Police Complaints Authority, Children's Commissioner |
| United Kingdom | 18 different organisations, including Independent Monitoring Board, Independent Custody Visiting Associations, etc. |

Sources: National Preventive Mechanisms, Subcommittee on Prevention of Torture⁶; PRS.

No provision for granting compensation to victims

The Bill does not contain any provision allowing victims of torture to claim compensation. Article 14 of the Convention against Torture requires member countries to ensure that victims of torture have a right to compensation. The Supreme Court has held torture to be a violation of the fundamental right to life under Article 21 and has stated that compensation may be granted to victims of torture.⁷

Recommendations of the Law Commission

The 152nd Report of the Law Commission on ‘Custodial Crimes’ contains a number of relevant recommendations which have not been addressed in the Bill. The main recommendations are listed in Table 6 below.

Table 6: Recommendations of the Law Commission on ‘Custodial Crimes’ not included in the Bill

| Subject | Recommendation |
|--------------------------|--|
| Investigation | If the police refuse to register a case of custodial violence, a judicial authority should have the power to conduct a preliminary enquiry. |
| Sanction for prosecution | The Criminal Procedure Code should be amended to clarify that the requirement of prior sanction from the government does not apply in cases of offences committed against the human body. |
| Evidence | In criminal cases, the prosecution has to prove the guilt of the accused. The Commission recommended that if a police officer causes bodily injury to a person in custody, it should be presumed that the injury was caused by the police officer. |

Sources: 152nd Report of the Law Commission on Custodial Crimes; PRS.

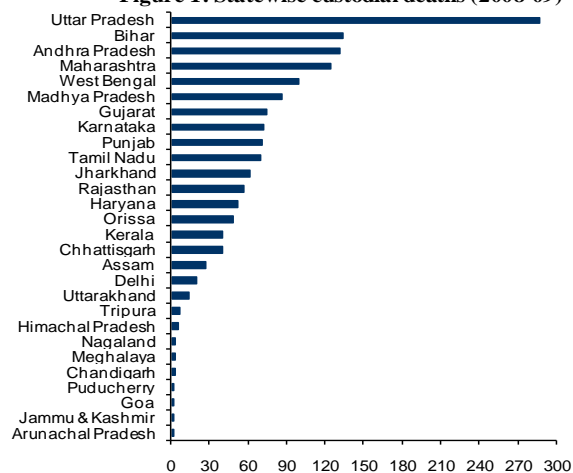
ANNEXURE

Table 7: Requirements for proving torture in the Bill compared to the Indian penal Code, 1860

| Prevention of Torture Bill, 2010 | Indian Penal Code, 1860 (Sections 330, and 331) |
|---|---|
| <ul style="list-style-type: none"> Grievous hurt or danger to life, limb or health has been caused. Intention of the accused needs to be proved. It was caused to obtain information or confession from the victim. | <ul style="list-style-type: none"> Hurt or Grievous Hurt has been caused. There is no requirement of proving intention. Obtaining information from the sufferer or another interested person. |
| <ul style="list-style-type: none"> The purpose of obtaining information was to detect an offence or misconduct. The torture was committed on one of the grounds specified in the Bill. | <ul style="list-style-type: none"> Caused (a) to obtain information, or (b) to restore property or any valuable security, or (c) to satisfy any claim or demand. No grounds mentioned. |

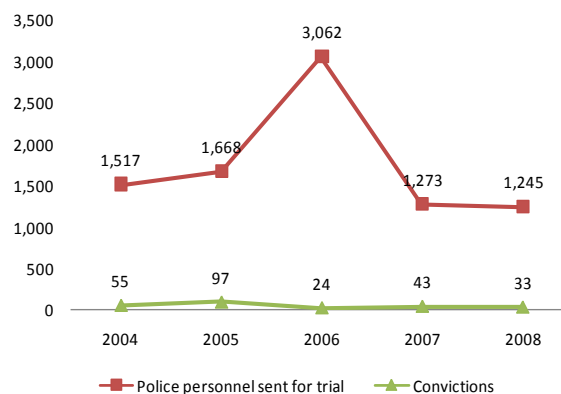
Sources: Prevention of Torture Bill, 2010; Indian penal Code, 1860; PRS.

Figure 1: Statewise custodial deaths (2008-09)



Sources: Lok Sabha Starred Question No. 175 dated March 9, 2010; PRS.

Figure 2: Police personnel sent for trial under existing laws, and convictions



Sources: NCRB 2008; PRS.

Notes

- This Brief has been written on the basis of the Prevention of Torture Bill, 2010, which was introduced in the Lok Sabha on April 26, 2010, and was passed by that House on May 6, 2010.
- Article 2, 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1975.
- One Hundred and Fifty Second Report of the Law Commission on ‘Custodial Crimes’, 1994.
- ~~Sections 330 and 331 of the Indian Penal Code, 1860.~~
- Sections 197 and 469 of the Criminal Procedure Code, 1973.
- Subcommittee on Prevention of Torture, <http://www2.ohchr.org/english/bodies/cat/opcat/mechanisms.htm>
- Sube Singh v. State of Haryana and others AIR 2006 SC 1117; D.K. Basu v. State of West Bengal AIR 1997 SC 610.

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