

[TO BE INTRODUCED IN THE NATIONAL ASSEMBLY]

A

BILL

*to provide protection to a person during custody from all acts of torture
perpetrated by public officials*

WHEREAS, Pakistan is a party to the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishments 1984 and it is imperative to make law for its effective implementation;

AND WHEREAS, the Constitution of the Islamic Republic of Pakistan guarantees the dignity of man as mentioned in Article 14;

AND WHEREAS, it is expedient to enact a law for the prevention and criminalization of all acts of torture;

It is hereby enacted as follows:-

1. **Short title, extent and commencement.**- (1) This Act shall be called the Torture and Custodial Death (Prevention and Punishment) Act, ~~2020~~ ²⁰²¹.

(2) It extends to the whole of Pakistan.

(3) 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) "Code" means the Code of Criminal Procedure, 1898 (Act V of 1898);
- (c) "complaint" means allegations made orally or in writing to the Agency that a public official or a person working in an official capacity 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, or his representative as the case may be;
- (e) "concerned division" means the Ministry or department to which the business of the Act stands allocated;
- (f) "custody" includes all situations where a person is detained or deprived of his liberty by any person, including a public official or by any other person working in an official capacity irrespective of legality nature and any 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; and

Explanation II.-A person shall be deemed to be in custody during search, arrest and seizure proceedings;

- (g) "cruel" or "inhuman" or "degrading treatment" means and includes any deliberate or aggravated treatment inflicted by a public official or a person acting on his behalf against a person under their custody, causing suffering, gross humiliation or degradation of the person in custody;
- (h) "custodial death" means the death of a person while in custody, directly or indirectly caused by and attributable to acts of torture committed upon the deceased while in custody;

Explanation I.-Custodial death includes death occurring in police, private or medical premises, in a public place or in a police or other vehicle or in jail. It includes death occurring while a person is being arrested or taken into detention or being questioned; and

Explanation II.—Custodial death also includes all cases where the death of a person after his release from custody is directly caused by and may be substantially attributed to acts committed upon the deceased while in custody;

- (i) “custodial rape” means and includes any person taking advantage of his position and committing rape or sexual abuse on a person in his custody or in custody of a public official subordinate to him;
- (j) “Government” means the Federal Government or the Provincial Government, as the case may be;
- (k) “malafide complaint” means a complaint filed against any person, including a public official with malafide intentions or other ulterior motives or to harass such person or public official;
- (l) “person” shall have the same meaning as assigned thereto in section 11 of the Pakistan Penal Code, 1860 (Act XLV of 1860);
- (m) “public official” for the purpose of this Act means every person who holds any office by virtue of which he is empowered to place or keep any person in confinement, every officer of the

Government whose duty it is, as such officer, to prevent offences, to investigate, and to give information of offences.

Explanation- Wherever the words "Public official" occur, they shall be understood as every person who is in actual possession of a public office, whatever legal defect there may be in that person's right to hold that position;

- (n) "torture" means an act committed by which severe physical pain or physical suffering, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions; and
- (o) "victim" or "aggrieved person" means any person who alleges that an offence under this Act has been committed against him.

(2) All the words and phrases used but not defined in this Act shall have the same meaning as defined ~~there to~~ in the Pakistan Penal Code, 1860 (Act XLV of 1860).

3. Inadmissibility of statement extracted through torture.- (1) Any statement, information or confession obtained by a public official as a result of torture or cruel, inhuman or degrading treatment shall be inadmissible evidence in any proceedings against the person making it.

(2) A public official who knowingly uses such information under sub-section (1) shall be liable for imprisonment which may not exceed one year or with fine which may not exceed hundred thousand rupees or both.

(3) Notwithstanding anything contained in sub-sections (1) and (2), any information or confession obtained as a result of torture or cruel, inhuman or degrading treatment shall be admitted as evidence against a person accused of committing the offence of torture. These provisions shall be in addition to the provisions of section 37 and 38 of the Qanoon - e- Shahadat, Order 1984 (P. O. No. X of 1984).

4. Custody of females.- (1) No female shall be detained in order to extract information regarding the whereabouts of a person accused of any offence or to extract evidence from such female.

(2) No female shall be taken or held in custody by a male except by a female public official lawfully authorised to do so.

5. Investigation of offences.- (1) Notwithstanding anything contained in any other law for the time being in force, the Agency shall have the exclusive jurisdiction to investigate the complaints against any public officials who have committed offence under this Act.

(2) If at any time, including during the grant of physical remand under the Code, the Magistrate has reasonable grounds to believe that the offence under this Act is committed or a complaint of torture is lodged by the person in custody, he shall order a medical examination and if the results of such examination reveal infliction of torture, he shall notify the Agency to investigate such offence.

(3) The Agency, 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 thereunder.

6. Trial of offences.- (1) Notwithstanding anything contained in any other law for the time being in force, the Court of Sessions shall have exclusive jurisdiction to try offences under this Act.