

[Enacted by Bangladesh National Parliament]

Act No. 50 of 2013

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

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 domestic legislation to establish 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* (National Parliament) of the People's Republic of Bangladesh as follows:

1. Title and introduction:

- (1) This Act will be known as **Torture and Custodial Death (Prohibition) Act, 2013**;
- (2) It shall 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 enforcement and implementation of law in the country;

(v) "**Armed forces**" means the members of the Army, Navy, Air Force or any other state unit that are formed and tasked for the defense 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** any 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** any person or some other person; or

(d) On the basis of **discrimination, provocation or consent or authority 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 the 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 (Act No. V of 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 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, about the filing of the report with the Court

(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 the 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 made by a third person is brought before a Court suggesting 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 inspect the concerned scene.

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 a Court of Sessions Judge 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 Court of Sessions Judge 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 relating to seeking extension of time.

9. Application of Code of Criminal Procedure: Unless anything is laid down to the contrary, 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 and may release the accused on bail.

11. Protection: (i) A complainant can file petition to the Court of Sessions Judge 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, and after giving seven days notice to the respondents, shall pass an order on the petition within fourteen 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 of, at least, seven 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 to 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 unacceptable as 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 that act shall be considered as an offence committed by that person;

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

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

- then, it shall be considered that the person has committed an offence under this Act.

(iii) An offender, who commits an offence 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 fifty thousand Taka or both and in addition to that another compensation amounting twenty five thousand Taka to be paid to the victim/aggrieved person/ persons

(ii) If any person inflicts torture on any other person and that person dies as a result of such torture, then the perpetrator shall be considered as having committed an 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 to a minimum two hundred thousand Taka must be paid to the victim/aggrieved person/persons

(iii) Any person 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 Taka 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 the 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 High Commission
- (b) be entitled to communicate 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) Measures relating to 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, shall be taken 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, 1974 (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 apply the provisions of the Extradition Act 1974 (No. 58 of 1974)

(vi) The Government shall afford and supply any relevant evidence at its disposal to the relevant authorities of any State, as may be necessary in connection with the criminal proceedings 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 personally 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: The Government, by Gazette notification, may promulgate Rules, in compliance with this Act, for the purpose of the implementation of the spirit of this Act.
