

A Bill designed to fail

TH thehindu.com/opinion/op-ed/A-Bill-designed-to-fail/article16301810.ece

May 18, 2010

The Prevention of Torture Bill fails to meet the minimum standards laid down in international law and betrays a contemptuous attitude towards Indian citizens.

Published - May 19, 2010 01:44 am IST

Tarunabh Khaitan

The right against torture, quite uniquely, admits to no exceptions whatsoever under international and comparative law. In practice, however, it remains one of the most frequently violated rights. The Minister of State for Home recently introduced the *Prevention of Torture Bill* in Lok Sabha, in order “to provide punishment for torture inflicted by public servants”. The main intention behind the Bill is to enable India to ratify the *United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. With 146 ratifications in place, India's continued failure to do so is a source of deep embarrassment and raises doubts over her claims to be a liberal democracy. Indeed, the chief motivation behind the Bill is to polish India's international image rather than to protect her citizens from torture.

Clause 3 of the Bill defines “torture” as an intentional act which causes “grievous hurt” or “danger to life, limb or health”. Grievous hurt is defined under Section 320 of the Indian Penal Code to include extremely serious injuries such as permanent loss of eye or ear, emasculation, bone fractures, or hurt which causes severe and debilitating pain for twenty days or more. In other words, a very high threshold has been set for an act to qualify as “torture”.

Even the “danger to (mental or physical) health” provision is not very helpful. The term “danger” implies a certain level of seriousness, while mental and physical “health” has frequently been interpreted by courts in civil cases to only include medically recognised illnesses. Given the general rule that criminal laws are interpreted strictly, courts are likely to err on the side of the accused and demand a high threshold for “danger to health”. The “danger to health” standard must also be contrasted with the definition of “hurt” in the Indian Penal Code, which simply includes “bodily pain”. Similarly, Article 1(1) of the U.N. Convention defines “torture” as the intentional infliction of “severe pain or suffering, whether physical or mental”.

Most reasonable people would agree with the Convention that torture must be understood primarily in terms of the pain that it inflicts, rather than any long-term impact. But, the Bill is likely to be interpreted so that acts that cause severe pain without causing any lasting damage to a person's health may not amount to torture. Thus, many cases of water-boarding, sexual assault, deprivation of food, water or sleep, whipping, rubbing chillies on sensitive body parts and other such barbaric acts readily condemned by most reasonable people may not amount to "torture" under the proposed Bill. As if this definitional ambiguity was not bad enough, the Bill is cynically silent on "other cruel, inhuman or degrading treatment or punishment", whose prohibition is an essential requirement under the U.N. Convention.

To make matters worse, Clause 4 of the Bill lays down that even if an act qualifies as "torture", it will be punishable only if it was committed "for the purpose of extorting ... any confession or any information which may lead to the detection of an offence...; **and** on the ground of [a person's] religion, race, place of birth, residence, language, caste or community or any other ground...". So, if a police officer breaks a few bones in order to intimidate a person, to extort money, to "teach her a lesson", or for no reason whatsoever, he cannot be punished under this bizarre Bill. Unless torture is inflicted for the purpose of extracting some information, the proposed law will refuse to take notice.

But even if this was indeed the case, there is yet another condition to satisfy — the victim must, in addition, show that the torture was based on some form of discrimination. It is true that many people are routinely tortured in India merely for being Dalit, Muslim, tribal or hijra. But the correct response is the formula in the U.N. Convention, which prohibits torture "for any reason based on discrimination of any kind" as an independent, rather than an additional, ingredient of torture. Thus, the Bill only punishes those acts of torture which result in a very serious injury, were motivated by a desire to extract a confession or information, *and* were discriminatory. Nothing less would suffice.

The next hurdle in this obstacle race is Clause 5, which requires that a court can entertain a complaint only if it is made within six months of the date of the offence. Victims of torture tend to be vulnerable people, who often need a lot of time to overcome the physical and psychological trauma, find support, organise resources and gather courage to make the complaint. As a general rule, criminal laws tend to prescribe no time limits whatsoever, let alone one as short as six months.

Finally, Clause 6 prohibits a court from taking cognisance of a complaint without the ever-elusive prior sanction to prosecute from the government. The Bill might as well be headed "Impunity for Torturers Bill", for it is not meant to bring any torturer to book. It is designed to save our government from criticism in the international community and preserve the facade of a rights-respecting liberal democracy. In reality, it fails to meet the minimum standards laid down in international law and betrays a contemptuous attitude towards Indian citizens. Rudyard Kipling said that the colonial government gave its subjects:

A time to squabble in court ...

Jails — and Police to fight,

Justice — at length of days,

And Right — and Might in the Right.

This may well be true of democratic India.

(The writer is a Fellow in Law, Christ Church, Oxford.)