

THE TORTURE AND CUSTODIAL DEATH (PREVENTION AND

PUNISHMENT) ACT, 2022

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THE TORTURE AND CUSTODIAL DEATH (PREVENTION AND PUNISHMENT) ACT, 2022

ACT NO. XXVIII OF 2022

[1 November, 2022]

An Act 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 may be called the Torture and Custodial Death (Prevention and Punishment) Act, 2022.
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.

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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;

“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;

“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-I— 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;

“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;

“Government” means the Federal Government or the Provincial Government, as the case may be;

“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;

“person” shall have the same meaning as assigned thereto in section 11 of the Pakistan Penal Code, 1860 (Act XLV of 1860);

“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;

“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

(0) "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 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 of 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 provision shall be in addition to the provisions of section 37 and 38 of the Qanoon-e-Shahdat, 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 authorized 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:

Provided that the Agency shall investigate the complaints under the supervision of National Commission for Human Rights.

(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.

(2) No adjournment shall be granted during the trial save for the interest of justice, provided that if such an adjournment is granted it shall be not more than thirty days.

7. Intimation to the concerned Government and transfer of suspension of public official.—

(1) The Agency, while investigating a public official who is accused of an offence under this Act, shall within twenty-four hours of arrest, inform the competent authority to which the public official is accountable, of the nature of the proceedings against him.

(2) Notwithstanding anything contained in any other law for the time being in force, a public official when accused of an offence under this Act shall forthwith be suspended or transferred to a different location from the location in which the alleged offence was committed, after completion of a departmental enquiry within 7 days, giving a finding that there is *prima facie* evidence of commission of offence under this Act by the public official.

(3) Notwithstanding anything contained in any other law for the time being in force, a public official when convicted of an offence under this Act shall not perform any public duty unless acquitted by the appellate court.

Explanation-I.—In this section, the “competent authority” shall mean the appointing authority as prescribed in the service rules of the relevant Government.

Explanation-I] —It is clarified that this section, except sub-section (3), shall only apply when a court of law finds a strong *prima facie* evidence against a public official with regard to the commission of an offence under this Act.

8. Punishment for torture— Any public official who commits or abets or conspires to commit torture shall be punished with the same punishment as prescribed for the type of harm provided in Chapter XVI of the Pakistan Penal Code.

Explanation. — The offence under this section shall be cognizable, non-compoundable and non-bailable within the meaning of the Code.

9. Punishment for custodial death — Whoever commits or abets or conspires to commit the offence of custodial death, shall be punished with the same punishment as prescribed in section 302 of the Pakistan Penal Code.

Explanation. — The offence under this section shall be cognizable, compoundable and non-bailable within the meaning of the Code.

10. Punishment for custodial rape— Whoever commits or abets the offence of custodial rape, shall be dealt with and punished under the law and procedure for rape, and the provisions of this Act shall also be applicable to the accused, *mutatis mutandis*.

Explanation.— The offences under this section shall be cognizable, compoundable and non-bailable within the meaning of the Code.

11. Punishment for filing malafide complaints Whoever files a malafide complaint shall, after it is established that the complaint was malafide, be punished with the same punishment as is prescribed under section 8 for the perpetrators under this Act.

12. Appeals.— (1) An appeal against a conviction or acquittal of an offence under this Act shall be presented before the respective High Court within thirty days from the date on which copy of the order passed by the Court of Sessions is supplied to the appellant.

(2) An appeal against conviction shall not be admitted unless part of the amount, imposed in the form of fine as directed by the appellate court, is deposited in the court.

13. Time limit for investigation, trial and appeal.— (1) The investigation of the offences under this Act shall be completed within thirty days from the date of submission of the complaint.

(2) If the investigation of an offence under this Act is not completed within thirty days, the Agency shall call for a report for explaining the delay in completion of the investigation and if satisfied with the causes of delay, may grant maximum five days for completion of the investigation or if the Agency is not satisfied with the causes of delay, may transfer the investigation to another investigating officer who shall take up and complete the investigation from the same stage where it was left by his predecessor.

(3) If investigation of an offence is not completed with thirty days, the Agency shall also file an interim report before the Court of Session and the court may decide to initiate the trial on the basis of such information.

(4) The trial of offences under this Act shall be completed within three weeks from the date of submission of challan before the relevant court.

(5) The appeal against the offences under this Act shall be decided within thirty days from the date of filing of such appeal.

14. Special protection.— (1) Any person, including the victim or complainant or any witnesses, who allege that he requires protection from a person accused of having committed an offence under this Act or from any of his associates, shall file a petition to the Court of Session in this regard.

(2) The court receiving the petition, after giving notice to the concerned parties, shall hear the matter and pass an order on the petition within three days.

(3) The court while disposing of such a petition as mentioned in sub- section (1) shall make such orders as deemed necessary and appropriate according to the facts and circumstances of the case.

15. Act not to prejudice civil remedies Nothing in this Act shall prejudice the civil remedies available to the victim by virtue of any other law for the time being in force.

16. Overriding effect.— The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force.

17. Provisions of the Code to apply.— The provisions of the Code shall apply to the proceedings under this Act.

18. Duties of the Government.— The Government shall take all measures to ensure that the provisions of this Act are given wide publicity through media at regular intervals and;

the relevant public officials are given periodic sensitization and awareness training on the issues addressed in this Act.

19. Removal of difficulties.— If any difficulty arises in the implementation of the provisions of this Act, the concerned division may make such orders, not inconsistent with the provisions of this

Act, as may appear to it to be appropriate for removing such difficulty:

Provided that no such order shall be made after the expiry of a period of two years after the enactment of this Act.

20. Power to make rules— The concerned division may, by notification in the official Gazette, make rules for the purpose of carrying out the objects and purposes of this Act.