

**Prevention of Torture Bill passes muster in the Lok Sabha at an unearthly
hour
May 13, 2010**

Dear all,

I am writing to alert you about certain developments around the *Prevention of Torture Bill, 2010*. The text of the Bill is easily accessible on the website of Parliamentary Research Services at: <http://prsindia.org/uploads/media/Torture/prevention%20of%20torture%20bill%202010.pdf> I could not find this Bill on the MHA website despite that being the administrative Ministry.

Some of you may have tracked its passage through Parliament. If so, this news is redundant for you, please ignore this email. As for others: this [Bill](#) was tabled in the Lok Sabha on 6th May, 2010 after 9pm in the night- a day before the House session ended. After the Home Minister moved a motion for considering the Bill the following MPs spoke for about an hour after which the Bill was passed:

- 1) Shri Arjun Ram Meghwal (INC, Rajasthan)
- 2) Dr. Shashi Tharoor (INC, Kerala)
- 3) Shri Shailendra Kumar (Samajwadi Party, UP)
- 4) Shri A Sampath (CPI-M, Kerala)
- 5) Shri Bhartruhari Mahtab (BJD, Orissa)
- 6) Shri Pannalal Punia (INC, Uttar Pradesh)
- 7) Shri Prasant Kumar Majumdar (RSP, West Bengal)
- 8) Shri S K Bwiswmutiary (Bodoland People's Front, Assam)

Not a single member from the main opposition party-the BJP spoke on the Bill. Similarly, RJD, BSP, CPI, NCP, NC, Shiv Sena, did not say anything on the Bill. We do not know if any of their MPs were even present so late in the House. According to Kaul and Shakder's Manual of Practice and Procedure in Parliament, hourly statements of the number of MPs sitting in the House is required to be published in the bulletin. But this is not done in actual practice, so we do not know how many MPs were actually present in the Lok Sabha when this Bill was debated.

The Bill was passed by the Lok Sabha after the Home Minister replied to the debate. If only if someone had demanded to know the quorum or sought division, the passage of the Bill could have been stalled. The text of the uncorrected version of the debate is attached. I have not read it fully but I am sending it out in a hurry so that someone may take action on it if this has not caught anybody's attention yet.

In this short Bill the proviso to Section 3 is very interesting. Section 3 reads as follows:

"3.

Whoever, being a public servant or being abetted by a public servant or with the consent or acquiescence of a public servant, intentionally does any act for the purposes to obtain from him or a third person such information or a confession which causes,—

(i) grievous hurt to any person; or

(ii) danger to life, limb or health (whether mental or physical) of any person, is said to inflict torture."

The proviso reads as follows:

"Provided that nothing contained in this section shall apply to any pain, hurt or danger as aforementioned caused by any act, which is inflicted in accordance with any procedure established by law or justified by law."

Frankly I have not followed the debates in civil society on this Bill. But this proviso appears to be designed to **a)** justify death penalty and **b)** use of force to maintain law and order when facing unlawful assemblies. I do not know if extra-judicial encounter killings will also fall in this category. No other law sanctions the use of pain hurt or danger to the best of my knowledge. The Supreme Court has recently struck down the forcible administration of narco, brain-mapping and lie detector tests. So this law will not apply to such procedures. But I could be wrong, so do share your opinion on this issue. The wording of the proviso almost seems like a sanction to use torture for public servants. The NHRC has no role in the scheme of this law.

The Bill will now go to the Rajya Sabha where there might be a chance to oppose it. Perhaps lobbying with MPs to refer the Bill to a Select Committee of the Rajy Sabha (and not a Standing committee which is a joint committee) might save the day and allow people to send their submissions. I leave it to your best judgement. Please feel free to pass this email on to anyone who you think might be interested in this issue.

I thank Madhavan of PRS for alerting me on this development a short while ago.

Regards,

Venkatesh Nayak
Programme Coordinator
Access to Information Programme
Commonwealth Human Rights Initiative
B-117, I Floor, Sarvodaya Enclave
New Delhi- 110 017
tel: 91-11- 2686 4678/ 2685 0523
fax: 91-11- 2686 4688
website: www.humanrightsinitiative.org
alternate email: nayak.venkatesh@gmail.com