

REVIEW OF THE TORTURE AND CUSTODIAL DEATH (PREVENTION) ACT, 2013



**REVIEW OF
THE TORTURE AND CUSTODIAL DEATH
(PREVENTION) ACT, 2013**



Bangladesh Legal Aid and Services Trust (BLAST)

BLAST is a national legal services and human rights organization, established in 1993. It works with 300 staff and 2500+ pro bono lawyers, and operates district offices and legal aid clinics in 19 districts, uniquely from the frontlines of the justice system to the apex court. It conducts legal rights awareness sessions at community level, provides information and advice and referrals, and conducts mediation and litigation. BLAST undertakes strategic litigation, or public interest litigation, as part of its advocacy for law and policy reforms to ensure effective legal protection of rights. For more information, please log on to: www.blast.org.bd

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PREFACE

Bangladesh Legal Aid and Services Trust (BLAST) and Commonwealth Human Rights Initiative (CHRI) acknowledge the contribution of Mr. Tajul Islam, Advocate, Bangladesh Supreme Court, for accumulating the findings and drafting the review report of the Torture and Custodial Death (Prevention) Act, 2013. We are indebted to Mr. S. M. Rezaul Karim, Legal Advisor, BLAST for his contribution in the review process and Mr. Mubinul Mulk, Project Officer, BLAST for organising the divisional consultations. We are also thankful to the BLAST Unit Coordinators of Sylhet, Khulna, Barisal and Rajshahi for their support in organising the events and sincerely acknowledge the invaluable comments from the learned lawyers and academics from five divisions of the country. We would like to convey our gratitude to Mr. Isaac Robinson, Member, Ain O Salish Kendra, Dr. Md. Ridwanul Hoque, Associate Professor, Dhaka University and Ms. Devika Prasad, Coordinator (Police Reform), CHRI for reviewing and editing the report.

Thank You

Sara Hossain

Honorary Executive Director

Bangladesh Legal Aid and Services Trust (BLAST)

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Introduction

Freedom from torture is a fundamental right. An accused person must be afforded the right to due process of law. Any form of torture or illegal punishment, infringing one's rights to life and liberty, signifies a gross violation of fundamental human rights.

Article 3 of the Universal Human Rights Declaration (UDHR) provides that, 'everyone has the right to life, liberty and security of person.' Article 5 provides that, 'no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.' Again, Article 7 of the International Covenant on Civil and Political Rights (ICCPR) also echoed 'no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.' These rights are also guaranteed by the Constitution of Bangladesh. In its Articles 31, 32 & 35(5), the rights to life and liberty, and freedom from torture, or cruel, inhuman or degrading treatment or punishment are guarantee for Bangladeshi citizens. Thus, both under national and international law instruments this is recognized as a fundamental human right of the citizens which cannot be suspended on ground of emergency, national security or any other reasons.

On 10 December 1984, the UN General Assembly adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world. Bangladesh became a party to CAT on 5th October 1998. The Convention against Torture (CAT) includes more detailed provisions addressing prevention and punishment of torture and other ill-treatment than either the UDHR or ICCPR. Further, Article 4 of CAT provides that each state party to the Convention shall ensure all acts of torture are offences under its criminal law and shall ensure that the relevant penalties sufficiently reflect the gravity of the offences in question.¹

¹ Article 4 (2), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment- 1984

Despite the constitutional guarantee of freedom from cruel and degrading behaviour and punishment, Bangladeshi citizens reportedly commonly experience such violence, particularly in the context of custodial situations where law enforcement agencies seek to obtain confessional statements from the arrestees following arrest or detention. Section 330 of Criminal Procedure Code (CrPC) provides some safeguards against arbitrary arrest and detention.

The abuse of powers of arresting without warrant under section 54 and placing the accused in police custody under section 167 of CrPC has resulted in violations of fundamental rights to fair trial, freedom from torture or cruel, inhuman or degrading treatment. The High Court Division, in *BLAST and others vs. Bangladesh and others*² case, opined these sections are to some extent inconsistent with the Constitution and require amendments. To remove the inconsistencies, the High Court made seven sets of recommendations and directed the government to amend the law, to remove these inconsistencies within six months. The High Court also provided fifteen point directives to prevent misuse and abuse of the power by the members of law enforcement agencies under these sections.

Despite the constitutional guarantees and the court decision, these safeguards are not regularly invoked and, therefore, are largely ineffective. The incident of torture and custodial death by the law enforcement agencies are taking place in a regular manner. For instance, seventy two persons were victims of extra judicial death by law enforcement agencies in 2013.³ In this backdrop, civil society members and human rights organisations have demanded the enactment of a comprehensive law to address these human rights violations. This demand has been substantiated by Bangladesh's obligation under CAT to enact a law criminalising all acts of torture. In this social context, a draft bill seeking to criminalise all acts of torture by members of law enforcement agencies was tabled as a private member's bill before the

2 *BLAST & others vs Bangladesh & others*, 55 DLR (HCD) (2003) 363

3 <http://greenwatchbd.com/504-violence-deaths-72-extrajudicial-killings-53-disappearances-in-2013/>

parliament, *the Jatiyo Sangsad*, on 5 March, 2009.⁴ Parliament then enacted the Torture and Custodial Death (Prevention) Act, 2013 on 27 October 2013.

BLAST conducted a study to review the Torture and Custodial Death (Prevention) Act 2013, in order to analyse any gaps, and challenges and to propose recommendations facilitating its effective implementation. We conducted a literature review and held five divisional-level consultation meetings⁵ in which lawyers, academics, activists and other stakeholders participated.

⁴ Khan, Saira Rahman, *How to kill a pro-people law*, New Age, 26 March 2015

⁵ Dhaka (29 November 2014), Sylhet (28 February 2015), Barishal (11 April 2015) Khulna (27 March 2015) and Rajshahi (16 May 2015)

Key Features of the Torture and Custodial Death (Prevention) Act, 2013

The Act is the first attempt in Bangladesh to provide a legal definition of ‘torture’ and ‘custodial death’. It has also sought to introduce effective victim protection mechanisms. The Act also provides details about provisions for making a complaint, the investigation procedure, and sentencing provisions. Below follow brief summaries of salient features of the Act.

2.1 Definition of ‘Torture’, ‘Custodial Death’ and ‘Law Enforcement Agencies’⁶

The word ‘torture’ first entered the language of the law in 1972, when torture was prohibited in Article 35 of the Constitution. However, neither the Constitution nor any other statute defined torture. The Torture and Custodial Death (Prevention) Act 2013 is the first legislation to attempt to provide a specific legal definition of ‘torture.’ According to section 2 (6):

“Torture” means any physical or psychological torture that hurts, in addition the following acts will considered as torture-

- a) Extorting any information or confession from the person or any other person;
- b) Punishing any suspected person or any offender;
- c) Intimidating any person or any other person through him;
- d) Any work done on a discriminatory basis, in each case, act done with someone’s provocation, with someone’s consent or by dint of the power of any government officer or government power.

⁶ The original text of the Act is in Bangla, the definition provided here is an unofficial translation

The Act provided a definition of ‘custodial death’ in section 2 (7):

“Custodial Death” means death of any person in the custody of any government official, beside this, “custody” will also mean illegal detention order or a death during an arrest by law enforcing agency, custodial deaths will also include death during interrogation, regardless of whether the person is a witness of the case or not.

‘Law Enforcement Agencies’ means uniformed and disciplined forces such as the Police, Rapid Action Battalion (RAB), Border Guards of Bangladesh (BGB), Customs, Immigration, Criminal Investigation Department (CID), Special Branch, Intelligence Agencies, Ansar VDP, Coast Guard and any other state agencies engaged in the enforcement and implementation of the law in the country.⁷

2.2 Consequence of Torture and Penalties

The possible punishment for torture under the Act is either imprisonment for a minimum of five years, or fine, the minimum amount being fifty thousand taka. The court has discretion whether to order one or both punishments. The aggrieved/victim, on the conviction of the accused, will also be entitled to compensation amounting to twenty five thousand taka.⁸ If the torture results in death then the punishment is more severe, to reflect the gravity and severity of the crime: those convicted will be punished with imprisonment for life, or a fine of minimum one hundred thousand taka, or both. The victim is also, in the context of death caused by torture, entitled to compensation of two hundred thousand taka.⁹ The Act also provides for punishments for those who are complicit in torture: those who attempt to commit or assist or provoke torture, or conspire in committing torture, face punishment of two years imprisonment, or a fine of a minimum of twenty

⁷ The Torture and Custodial Death (Prevention) Act, 2013, section 2(4)

⁸ Ibid., section 15 (1).

⁹ Ibid., section 15 (2)

thousand taka, or both. The fine and compensation must be submitted to the court within 14 days when the sentence is delivered.

2.3 Complaint and Lodging Cases

If any person complains of torture before any competent court, the court will immediately record the complainant's statement in writing. The court will then order an examination of the body by a registered doctor of the same sex of the complainant.¹⁰ On the recognition of wounds and signs of torture, as well as the approximate time of the alleged torture, the doctor will prepare a report within 24 hours.¹¹ A copy of the report will be given to Court, as well as to the complainant or their representative.¹² After receipt of the complaint the Court will order the filing of the case and arrange for a copy of the recorded statement to be given to the Police Superintendent, or, in cases where necessary, to a superior police officer.¹³ Under the Act, a third party who is a witness of torture can complain to the Court; for this kind of complaint the Court may inspect the place of occurrence.¹⁴ A third party, who is unharmed, is entitled to complain of the occurrence of torture to the Session Judge's Court or a police officer not less than the rank of Police Superintendent.¹⁵ Any offences under this Act can only be tried by the Sessions Court.¹⁶

2.4 Investigation of the allegation of torture

A police officer, whose rank is not less than that of the person accused, will be engaged by the Court to conduct an investigation.¹⁷ The aggrieved may argue that, for reasoning compromising neutrality, it would be impossible for the police to conduct a proper investigation. If the court is convinced by the causes pleaded

¹⁰ Ibid., section 4(1)(c)

¹¹ Ibid., section 4 (2)

¹² Ibid., section 4 (3)

¹³ Ibid., section 5 (1)

¹⁴ Ibid., section 6

¹⁵ Ibid., section 7(1)

¹⁶ Ibid., section 14 (1)

¹⁷ Ibid., section 5(5)

for in the application, it can order judicial investigation.¹⁸ The investigation must be concluded within 90 working days from the date of recording complaint. If the investigation is delayed on reasonable grounds the relevant investigation officer, being present at Court, will plead the grounds for extension and, if successful, the investigation may be extended for an additional 30 days.¹⁹ While submitting the report the investigating officer or judicial investigating officer, whichever is appropriate, will notify the Court that the complainant has received the report and the relevant date of receipt.²⁰ The aggrieved person can oppose this personally, or through her or his legal representative, within 30 days of receipt of notice of the report so submitted.²¹

2.5 Protection of Complainant

Section 11 of the 2013 Act provides mechanisms to protect the complainant, under which he can file a petition before the Sessions Judge's Court for protection from the accused. On receipt of the petition, the Court, after giving 7 days' notice to the respondents, shall approve or reject the petition within 14 days. If deemed necessary by the Court, the accused may be ordered to be detained for at least seven days, with possibility for intermittent extension.²² If necessary the Court may order its relocation, pursuant to the special protection of the court; it may also grant prohibitory orders against the defendant, including limiting the respondent's liberty to enter and remain in certain areas.

2.6 Trial of the Offence of Torture

The offence must be tried under this Act within 180 days from the lodging of the case. If the trial is delayed beyond this period on reasonable grounds, the trial must be completed within the following 30 days. In relation to appeals, those convicted

18 Ibid., section 5 (2)

19 Ibid., section 8

20 Ibid., section 5 (3)

21 Ibid., section 5(4)

22 Ibid., section 11 (4)

under this Act may appeal against conviction to the High Court Division subject to the deposit of fine and compensation within the 14 days of the judgement. The aggrieved person can also seek appeal and review in the higher courts.²³

2.7 Offence by a non-Bangladeshi citizen and Extradition

Any person, who is not a citizen of Bangladesh, arrested under this Act may communicate with the High Commission of his/her country and, if there is no High Commission in Bangladesh, with the High Commission of adjacent country.²⁴ The Ministry of Foreign Affairs of Bangladesh can request the authorities of the arrested person's country to extradite that person for trial. If any country request to extradite its citizen, who is accused for torture in Bangladesh, the concern department of Ministry of Foreign Affairs of Bangladesh have obligation to inform about the steps taken or proposed regarding trial and or extradition of the said person to that country. The Government of Bangladesh can also supply relevant evidence to the concern authority of that country to institute criminal case against the accused of torture. The issue of the extradition under this Act will be governed by the Extradition Act 1974.²⁵

23 Ibid., section 16.

24 Ibid., section 17

25 Ibid., section 18

Implementation of the Torture and Custodial Death (Prevention) Act, 2013

The Torture and Custodial Death (Prevention) Act, 2013 was enacted by the Government of Bangladesh in October 2013. However, very few cases have been filed under this Act in the last two years. According to reports published in daily newspapers, the first case under this Act was filed on 20 July 2014 regarding the murder of jhut trader Sujon at the Mirpur Police Station in Dhaka.²⁶ This contrasts strongly with the very high number of news items published regarding torture and custodial deaths caused by law enforcement agencies all over the country over the last two years. Thus it can be concluded that people in general are not aware about this Act. In addition, despite the existence of this specific law concerned officials from law enforcement agencies are not always willing to take cognizance of matters under this Act. An example of this is a case concerning the Sylhet Kotowali Police Station. In this case, an allegation of torture of one Kamal Chowdhury on July 17, 2014 was brought against five police officials including the Officer-in-Charge of the Kotowali Police Station Sylhet. The relatives of the victim wanted to lodge a complaint against the alleged police officials. However, the concerned authorities did not receive the complaint. Consequently, the aggrieved filed a writ petition before the Hon'ble High Court Division, Supreme Court of Bangladesh. On 24 July 2014 the Court ordered the relevant authorities to file the case. On August 05, 2015, ten days after the High Court Order, a case was filed against the alleged police officials.²⁷ As evidenced by this case, lack of responsiveness among law enforcement agencies is a major barrier to effective implementation of this Act.

26 <http://www.asia-observer.com/Template/news.php?news=Uk9XlgAdygxZ&&ac=Bangladesh/>

27 <http://newagebd.net/37239/case-filed-against-5-cops-10-days-after-hc-order/>

Findings of the Review

The findings of the review are set out below.

4.1 Definition of Torture and Custodial Death

The definition of torture stated in the Act, limiting the definition of torture to only physical or mental pain pursuant to obtaining information and confession, is deficient in capturing the multiple and complex aspects of torture. The definition fails to include the physical or mental pain experienced by those who are imprisoned awaiting trial or by remand order of Court; the definition is absent on direct or indirect physical or mental pain perpetrated by a person or government official as a manifestation of their power. The definition also fails to encompass cruel, inhuman and degrading treatment as torture specifically. Moreover, it fails to reflect an international standard on the definition of torture provided in the United Nations Convention against Torture 1984 (CAT). CAT defines torture as follows²⁸

‘...the term “torture” means any act by which severe pain or suffering, whether physical or mental, 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.’

²⁸ Article 1, The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

Definitional ambiguity, in relation to ‘mental torture’, ‘custody’ and other elements in the Act, may inhibit the smooth implementation of the Act. The definitions of those terms should therefore be clarified. During consultations, it was proposed that private individuals and institutions may also be included in the definition of torture and custodial death. Again, the gender-based violence including rape, sexual harassment as a form of torture is missing from the Act.

4.2 Definition of Law Enforcement Agencies

The definition of law enforcement agencies, as defined in section 2(4) of the Act, does not include all law enforcement agencies. The Department of Narcotics Control, Anti-corruption Commission and other security forces are engaged in the enforcement of laws and their officials are likely to be resorting to torture in the course of their work. They should be included in the definition.

4.3 Lodging a Complaint

The Act provides that the Session Judge’s Court is to hold the trial of the offences under this Act.²⁹ However, it does not clearly specify the Court of cognizance for the offences under this Act. It is also deficient in addressing the procedure for the receipt of complaints if the aggrieved is in police custody or imprisoned.

4.4 Investigation

The Act primarily entrusts the police with conducting the investigation; the neutrality of such an investigation will be highly compromised when the accused may be another police officer. The provision for judicial, rather than police, investigation, is provided for in the Act, though it is not mandatory and can only be argued for, before the court, on reasonable grounds that investigation by the police will be

²⁹ The Torture and Custodial Death (Prevention) Act, 2013, section 14(1).

insufficient.³⁰ The modus operandi of post mortem and the process of collecting a post mortem report is also absent from the Act. There are also issues with the time frame provided in the Act. According to section 8 (1), the investigation must be completed within 90 working days from the date of the first recorded complaint, this can be extended by another 30 days on reasonable grounds, but the Act fails to provide any direction to what procedure will be followed if the investigation is not completed within the prescribed time limit. In addition, the Act does not prescribe punishment for misconduct or failing in conducting a proper investigation by the respective investigation officer.

4.5 Trial

The prescribed time limit for trial, under section 14 (2) of the Act, is 180 days from the registration of the complaint. The Court may extend this time limit, on the basis of reasonable grounds, for 30 additional days. However, the Act is silent on what the aftermath will be if the trial is not concluded within the prescribed time limits.

4.6 Punishment

Sections 15 (1), (2) and (3) provide for the punishment of offences under this Act. However, there is ambiguity in the phrases relating to punishment. Section 15(2) provides,

“If any person tortures another person and if that person dies due to the torture, the torturer shall be considered as having committed a crime under Section 13 Subsection (1) and shall be punished with rigorous imprisonment for life, or shall be liable for a fine of not less than one lac (100,000) Taka or both and shall pay additional two lac (200,000) Taka to the victim/aggrieved person/persons.”³¹

³⁰ Ibid., section 5 (2)

³¹ The original text of the Act is in Bangla, the section provided here is an unofficial translation..

The severity of the punishments provided for offences under this Act does not reflect those for similar offences under the Penal Code 1860. The punishments provided for by the Act are limited to imprisonment and compensation, other departmental proceedings such as ‘suspension and dismissal from his/her job’ are not included. Further, the Act set out the provisions to compensate to the victim/aggrieved persons, but it fails to prescribe the specific procedure for the compensation to be paid. Furthermore, the law does not provide for the death penalty for death. But when a gruesome custodial murder or crossfire deaths what would be the sentence.

Section 15 also provides a substantive limitation: it states that the offence of murder is punishable only if the death in custody occurred as a result of torture. This provision has an exclusionary effect of deaths in custody which occurred for other illegal reasons, or where the evidence of torture is invisible. For example, evidence of mental torture after death by poisoning will not be visible.

4.7 Compensation:

The compensation scheme provided under the Act is extremely insufficient. The accused, on conviction for torture, will compensate only twenty five thousand taka and, on conviction for death caused by torture, will compensate two hundred thousand taka to the aggrieved/victim. An international slandered has already been establish in assessing compensation by the ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law’ adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005. Basic Principle and Guideline 20 states that;

“Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international

human rights law and serious violations of international humanitarian law, such as:

- a) Physical or mental harm;
- b) Lost opportunities, including employment, education and social benefits;
- c) Material damages and loss of earnings, including loss of earning potential;
- d) Moral damage;
- e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.”

Moreover, the Act does not provide other forms of reparation including *restitution, rehabilitation, satisfaction and guarantees of non-repetition* of the victims and or his/her family, which is also a major shortcoming of the Act.

4.8 Witness Protection

Section 11 provides for protection for any complainant under the Act. Complainants may submit a petition before the Session Judge’s Court seeking protection against the accused. The conflict between sections 11 (1) and 11 (4) creates scope for confusion. Under section 11 (1) of the Act, the complainant may file a ‘petition’ against the accused for protection. Under section 11 (4), the Court may, while resolving the ‘case’ filed under section 11 (1), pass an order detaining the accused for at least seven days, which may be extended intermittently. This confusing section needs to be clarified. Moreover, intimidating the victim is not considered as a separate offence in the purview of this Act. Further, there is no provision for the protection of witnesses. The offences of torture and custodial death are serious offences and those who witness such torture are considered at high risk. Hence, Article 13 of UNCAT states to ensure protection for both complainant and witness against all ill-treatment or intimidation. Lack of witness protection provisions undermines the objects and purpose of the Act.

4.9 Extra-territorial Jurisdiction

The Act is silent with regard to offences committed extra-territorially, for example on board a ship or aircraft of Bangladesh. Article 5 (1) of CAT obligates state parties to take measures to establish jurisdiction over any offence committed extra-territorially.

4.10 Appeal and Revision

Section 16 of the Act provides for an appeal process, but does not specify a time limitation. Section 16(2) provides that, 'The victim/aggrieved person/persons may approach the higher courts for appeal or review.' The term 'review' should be replaced by the word 'revision' here in line with existing laws. Alternatively, in regards to Appeal and Revision the application of CrPC by default may be added in the Act.

Recommendations and Conclusion

The Torture and Custodial Death (Prevention) Act, 2013 is very new law which deals with the special and sensitive nature of the offences in question. In order to analyse the Act's deficiencies and to identify the challenges to implementation, we carried out a desk review. We shared the findings with lawyers, academics, activists and other stakeholders at five divisional sharing meetings in divisional city. Speakers made recommendations for effective implementation of the Act and upholding the principles of natural justice and human rights.

5.1 Recommendations

The following recommendations were made by the participants in this review;

- The definition of 'torture' should not be limited by the reference to torture being for the purpose of obtaining information and confession. It should include all possible objectives and circumstances in which torture occurs. Moreover, the definition of torture should include all elements of torture provided in the UNCAT, to reflect the international standards.
- The Act does not include any definition of 'custody'. There should be a clear definition of 'custody' in the Act to make the law more effective. Some other definitions including 'government officer' and 'court' need to be clarified in the Act. For example section 2 (d) of the Public Servants (Retirement) Act, 1974 provides the definition of 'public servant'.
- The definition of law enforcement agencies should include all law enforcement agencies and security forces including the Department of Narcotics Control and the Anti-corruption Commission.
- The Act should specify the cognizance Court for offences under this Act as it is

currently ambiguous. Moreover, the Act needs to prescribe the procedure for the filing a complaint of torture by a detainee.

- The Act needs to prescribe the procedure of post mortem, the procedure of referring the deceased for post mortem, and how the post mortem report will be collected from the physician and who will collect it.
- Those likely to be accused of the offences under this Act are the members of law enforcement agencies, particularly the members of the police service. However, the Act primarily entrusts the investigation of these offences to the police, this will endanger the credibility of a neutral investigation. Thus it is recommended that the judicial investigation under section 5(2) should be mandatory. It is also recommended that the offences under this Act must be investigated by an independent investigating agency which should not have administrative and supervisory authority with district police. It can also be recommended that investigation officer shall be selected from a different law enforcement unit e.g. CID officer investigating police officer, police officer investigating RAB officer. Further, section 8 of the Act fails to provide any direction on what procedure will be followed if the investigation does not conclude within the prescribed time limit of 120 days. It should be specified in section 8 of the Act.
- Section 14 of the Act does not provide any direction on what procedure will be followed if the trial of the offences does not complete within the prescribed time limit of 210 working days. It should be specified in section 14 of the Act
- The provisions on punishment³² need to be amended. First, the punishments provided for the offences under this Act are insufficient and have no correlation with similar types of offences under the Penal Code. These provision need to be amended to ensure the penalties are consistent with those provided for similar offences under the Penal Code and the severity of the offences in question.

32 Ibid., section 15 (1), (2) and (3)

There should be a gradation of punishment as per the offences. Secondly, in the section 15 (1), (2) & (3) the term 'or' needs to be substituted by 'and' between imprisonment and monetary penalty. Thirdly, the amount of compensation allocated for victim/aggrieved persons need to increase as per the Basic Principles and Guidelines,³³ so it is proportionate to the real sufferance and legal injury. Moreover, there should be a specific procedure in the Act to reimburse the compensation, such as the procedures found in The Negotiable Instrument Act, 1881 and the Nari O Shishu Nirjaton Daman Ain, 2000. The source of such compensation is a matter of concern, which is missing in the Act. In some other countries compensation is sourced from the State's Reserve in the event that it cannot be secured from elsewhere. Such provisions need to be included in the Act.

- Apart from fines and imprisonment, an additional penalty may be included to the effect whether the accused law enforcement officer shall be suspended from his/her position and subsequently barred from entering into any job of public and private service in the future.
- The protection of witnesses is of paramount importance in order to uphold the objective of the Act. Thus the Act should be amended by adding a protection mechanism for witnesses, in order to secure justice.
- The Act should be amended by introducing provisions for extra-territorial jurisdiction particularly on-board a ship or aircraft of Bangladesh in accordance with article 5 (1) of the UNCAT.
- Section 16(2) of the Act needs to be amended by substituting the term 'revision' for the term 'review' in order to remove any confusion.

³³ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' adopted and proclaimed by General Assembly on 16 December 2005

5.2 Conclusion

In October 2013, the Bangladeshi Parliament made a landmark step by enacting the Torture and Custodial Death (Prevention) Act, 2013. Prior to this Act, there were major obstacles to prosecutions for custodial torture by public servants, in particular by any members of the law enforcement agencies. The Act is the first, and an important step of many necessary to fight torture and custodial death. Despite the Act's limitations, its enactment is seen as progress and welcomed by activists and practitioners. To build a violence-free society, a public awareness campaign needs to be held and orientation on its provisions is needed for judges, lawyers, members of the law enforcement agencies and human rights activists. At the same time, we need to address the limits of the Act, either through seeking judicial activism, or advocacy for further amendments through Parliament.

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এই প্রকাশনাটি ইউরোপিয়ন ইউনিয়নের আর্থিক সহায়তায় প্রকাশিত হয়েছে। এখানে প্রকাশিত সকল মতামত ব্লাস্টের নিজস্ব এবং কোনভাবেই তা ইউরোপিয়ন ইউনিয়নের মতামতের প্রতিফলন হিসেবে বিবেচিত হবে না।



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