

Title: Discussion on the motion for consideration of the Prevention of Torture Bill, 2010 moved by Shri P. Chidambaram (Bill Passed).

THE MINISTER OF HOME AFFAIRS (SHRI P. CHIDAMBARAM): Mr. Chairman, Sir, I beg to move:

"That the Bill to provide punishment for torture inflicted by public servants or any person inflicting torture with the consent or acquiescence of any public servant and for matters connected therewith or incidental thereto, be taken into consideration."

Sir, India is a party to the Convention Against Torture. We have to ratify the Convention. But ratification requires that an enabling legislation be put in place.

Hence this Bill is moved. This Bill defines torture in Clause 3 and describes punishment for torture in Clause 4. The definition of torture is by and large reflective of the provisions of the criminal law. I, therefore, move that the Bill be taken into consideration and passed.

MR. CHAIRMAN : Motion moved:

"That the Bill to provide punishment for torture inflicted by public servants or any person inflicting torture with the consent or acquiescence of any public servant and for matters connected therewith or incidental thereto, be taken into consideration."

**श्री अर्जुन राम मेघवाल (बीकानेर):** सभापति जी, मैं आपको धन्यवाद देता हूँ। चूंकि समय ज्यादा हो गया है, इसलिए मैं केवल पांच-सात मिनट में अपनी बात समाप्त करूंगा।

महोदय, प्रिवेंशन ऑफ टॉर्चर बिल, 2010 इसलिए आया है कि युनाइटेड नेशन्स आर्गेनाइजेशन की कन्वेंशन में यह बात उठी और 9 दिसम्बर, 1975 को यू.एन.ओ. का इस बारे में प्रस्ताव पारित हुआ। दिनांक 17 अक्टूबर, 1997 को, 22 साल बाद भारत ने इस पर हस्ताक्षर किए और उसके 13 साल बाद यह बिल लाया गया है। यह इसलिए लाया गया है कि it was a mandatory provision of the Convention that a law must be enacted and enforced.

सभापति जी, नैशनल ह्यूमन राइट्स कमिशन ने भी कई बार इसका जिक्र किया कि पब्लिक सर्वेंट के द्वारा टॉर्चर किए जाते हैं, हालांकि प्रावधान आई.पी.सी. में भी हैं, कंस्टीट्यूशन के आर्टिकल 21 में भी इसका प्रावधान है और सी.आर.पी.सी. में भी इसका प्रावधान दिया हुआ है, लेकिन चूंकि इंटरनैशनल कन्वेंशन थी, इसलिए यह बिल उसके तहत लाया गया है। मैं बताना चाहता हूँ कि 1994 से लेकर वर्ष 2008 तक कुल 16,836 कस्टोडियन डैथ्स हुईं, यानी पुलिस की हिरासत में या जेल में कोई टॉर्चर हुआ, उसमें डैथ हुई। इसका एवरेज 1203 बैठ रहा है। नैशनल ह्यूमन राइट्स कमिशन ने कहा कि यह संख्या दिनोंदैन बढ़ रही है, इसलिए इस पर कुछ चैक होना चाहिए। कन्वेंशन की बात थी, इसलिए यह बिल यहां लाया गया है।

महोदय, मैं कहना चाहता हूँ कि इस बिल के साथ-साथ यदि एवीडेंस एक्ट में भी अमेंडमेंट करते, तो ज्यादा बेहतर होता, क्योंकि जैसे धारा 4 और 5 हैं। मैं सिर्फ इन्हीं दो पर आना चाहता हूँ। एवीडेंस एक्ट में अगर अमेंडमेंट नहीं करेंगे, तो इसका जितना फायदा मिलना चाहिए, उतना नहीं मिलेगा। यह बिल फिजिकल और मेंटल, दोनों प्रकार के टॉर्चर को डील कर रहा है। मैं कहना चाहता हूँ कि सैक्शन 5 में सजा का प्रावधान नहीं है, बल्कि सिर्फ कॉगनीजेंस ऑफ ऑफेंस का है। इसमें जो छः महीने का प्रावधान रखा है, इसमें कुछ अमेंडमेंट होना चाहिए या इसका कुछ अपवाद होना चाहिए था।

महोदय, मैं एक उदाहरण देकर समझाना चाहता हूँ। सपोज करो एक जेल में कोई कैदी है और सुपरिंटेंडेंट ऑफ जेल, उस कैदी को टॉर्चर कर रहा है और उस कैदी को दो साल की सजा मिली है। क्या वह कैदी सुपरिंटेंडेंट ऑफ जेल के खिलाफ कानूनी कार्रवाई कर सकता है? वह नहीं करेगा, क्योंकि उसे जेल में रहना है, इसलिए उसे डर लगता है। आप इसमें कह रहे हैं कि यदि किसी ने किसी का टॉर्चर किया है, तो वह केवल छः महीने तक ही शिकायत इनीशिएट कर सकता है। छः महीने तक ही दावा कर सकता है और छः महीने के बाद नहीं कर सकता। मैं आपके माध्यम से सरकार से कहना चाहता हूँ कि इसमें अमेंडमेंट होना चाहिए और कुछ एक्सेप्शन भी होने चाहिए। ठीक है छः महीने का प्रावधान है, लेकिन कछ अपवाद भी होने चाहिए। कछ लोग ऐसे होते हैं जो टॉर्चर होते रहते हैं,

लेकिन शिकायत नहीं कर सकते, जैसे मैंने जेल का उदाहरण दिया। सपोज करो कोई पियून किसी बड़े अधिकारी के यहां काम करता है। अधिकारी ने उससे कहा कि खाना बनाओ, वह कहता है कि मैं खाना नहीं बनाता। ऐसी स्थिति में जब तक वह अधिकारी है, तब तक वह शिकायत नहीं कर सकता। मैंने ऐसा अपने जीवन में कई बार अनुभव किया है। इसलिए सैक्शन 5 में 6 महीने वाली जो शर्त है, उसमें कुछ एक्सेप्शन हमें देना चाहिए। मैं सरकार से यह अनुरोध करना चाहता हूं। सैक्शन 4 में दस साल की सजा का प्रावधान रखा है, इसमें भी मैं कुछ एक्सेप्शन की बात करता हूं। जो लोग कास्ट, रिलीजन, लैंग्वेज के आधार पर कोई अपराध करते हैं, इसके लिए प्रावधान तो पहले से ही हैं, इसमें आप दस साल की सजा का प्रावधान लाए हैं, लेकिन मैं समझता हूं कि इसमें आजीवन कारावास की सजा होनी चाहिए, ताकि कोई भी आदमी जाति, धर्म, लिंग और भाषा के आधार पर अपराध न कर सके।

महोदय, जो अप्रत्यक्ष रूप से अपराधी होते हैं, जो गवर्नमेंट सर्वेंट हैं, लेकिन एवीडेंस एक्ट में कोई ऐसा प्रावधान नहीं है, जैसे कोई पुलिस में है, वहां थानेदार ने सिपाही को कहा कि आप इसको मारिए। सिपाही ने किसी को मारा, लेकिन थानेदार भी तो अप्रत्यक्ष रूप से जिम्मेदार है। अप्रत्यक्ष रूप से जो गवर्नमेंट सर्वेंट रिस्पॉन्सिबल हैं, उनकी बात इस एक्ट में नहीं आयी है। वह बात भी इस एक्ट में आनी चाहिए।

दूसरा, यहां फिजिकल और मेंटल दोनों प्रकार के टार्चर की बात आयी। मैं कहना चाहता हूं कि जैसे बीपीएल का सर्वे हो रहा है, इंदिरा आवास का हो रहा है, जैसे कोई ग्राम सेवक सर्वे करना जा रहा है, वह देख रहा है कि इसका मकान तो बीपीएल में आने लायक नहीं है, लेकिन वह उसे इसमें ले आता है और पड़ोसी का मकान जो बीपीएल में आने लायक है, वह उसे नहीं लाता है। यहां जो मेंटल टार्चर हुआ, ऐसे केसेज में क्या करेंगे? प्रावधान तो इसके लिए पहले से ही है, लेकिन वह लागू नहीं होता है। अगर ये दो एक्ट लाए, अगर आप इसको लार्जर प्रॉस्पेक्टिव में लाते, तो बहुत सी ऐसी योजनाएं हैं, जैसे बीपीएल लिस्ट है, इंदिरा आवास है, एसजीएसवाई है, उनको भी हम ठीक कर सकते हैं और उसमें गवर्नमेंट सर्वेंट गलत काम करने में डर सकता है।

महोदय, बी. के. बासु वर्सेज स्टेट आफ बंगाल का एक केस था, उसमें यह निर्णय दिया गया था कि जो हिरासत में मौत होती है या रेप केस होते हैं, उसकी सूचना 24 घंटे में मिलनी चाहिए। सूचना नहीं मिली, सेंट्रल गवर्नमेंट के पास भी आंकड़े नहीं हैं, मैंने भी पता लगाया, सूचना नहीं देंगे, तो कांटेप्ट माना जाएगा। मैं आपके माध्यम से कहना चाहता हूं कि कानून तो बहुत बन जाते हैं, लेकिन जब तक उनका पालन नहीं होता, तब तक उस कानून का कोई अर्थ नहीं होता। मैं राजस्थान से आता हूं। जैसे एक कानून बना कि सार्वजनिक स्थानों पर सिगरेट नहीं पियेंगे, लेकिन लोग धड़ल्ले से उसे पी रहे हैं। ज्यादा कानून होने से भी उसका पालन नहीं होता है। क्यों यह कानून लाया गया है? इसका आब्जेक्ट तो इंटरनेशनल कन्वेंशन की बात है। हमारे यहां शारदा एक्ट है। बाल विवाह नहीं होना चाहिए, लेकिन धड़ल्ले से हो रहे हैं। अभी आने वाली 16 मई को बहुत से बाल विवाह होंगे। जब तक हम लोगों का माइंड सेट चेंज नहीं करेंगे, तब तक केवल कानून लाने से भी बार पड़ने वाली नहीं है। ...(व्यवधान)

महोदय, मैं आपके माध्यम से मंत्री जी से अनुरोध करना चाहता हूं कि जब तक लोगों के माइंड सेट चेंज नहीं होंगे, चाहे पब्लिक सर्वेंट हो या चाहे कोई भी आदमी हो, वह हमेशा धर्म, भाषा, लिंग और जाति के आधार पर किसी को यातना दे सकता है। इसलिए माइंड सेट चेंज करने वाली बात भी इस अधिनियम में आनी चाहिए।

इन्हीं शब्दों के साथ आपने मुझे बोलने का जो अवसर दिया, उसके लिए धन्यवाद देते हुए मैं अपनी बात समाप्त करता हूं।

DR. SHASHI THAROOR (THIRUVANANTHAPURAM): Hon. Chairman, Sir, I rise to support the Prevention of Torture Bill 2010. This is my maiden opportunity to participate in such a debate as a Member of Parliament and I am grateful to you for this opportunity. However, since the hour is late and the issue is clear, I shall be brief.

As an Indian official at the United Nations, Mr. Chairman, I was proud when in 1997, the Government of India signed the United Nations Convention on the Prevention of Torture and other cruel inhuman and degrading practices. This was wonderful. But at the same time our failure to ratify our own signature for as long as 13 years has been a cause of some dismay. As the hon. Minister has just explained, the ratification requires enabling legislation from this Parliament to bring national laws in conformity with the international standards. I am pleased that now we have a Bill which actually defines torture for the first time far more clearly than our previous laws have done, and that also makes it a criminal offence punishable with the full force of the law. We have a Bill that accomplishes both these objectives and, I believe, it deserves our support.

It is interesting that the hon. Member of the Opposition just spoke about the mindset of people, and that is indeed a major concern. I have often felt that the issues here go to two fundamental problems in our country. The first is, how we treat our own people; and the second is the image of our country in the world at large. The mindset of our people is reflected in both of these.

My hon. colleague from Kerala Shri Mohammed Basheer just referred to a novel; let me refer to a film. We were also excited around the world about the huge success of 'Slumdog Millionaire' but, yet, none of us seem to make anything of the fuss. There was no public uproar about the fact that this film opens with a scene of astonishing police brutality where the Indian policeman is busy showing torturing the hero including with electric shocks to get him to confess the cheating in a quiz show. What was startling with that, it seems to me, was that the mindset of our public has become such that we are immune to it. We took these scenes for granted. No one said how outrageous it is that our country should be shown in this way because, in fact,

the assumption appears to be, well, this happens all the time.

The fact is that, Mr. Chairman, it should not be allowed to happen all the time. No civilised democracy conducts or condones torture. The practice of police brutality and torture is, as we all know, a colonial legacy in our country. The police once intended to be instruments of repression; they are no longer that; they should no longer be that. But, yet, we all know that stories of police brutality abound in our society. Even in my own constituency of Thiruvananthapuram, the Capital of the enlightened State of Kerala, there have been reports of allegations at any rate of police torture. And, yet, how many of the custodians of the law in our country have been prosecuted for such behaviour? Let alone, how many have been ever punished for such behaviour? It seems to me that the strength of this Bill is those of us who campaign against this sort of behaviour; those of us in favour of the broader issue of police reforms would now have one more element to go to, to rest upon and that if a policeman in our country behaves as the policeman in that movie behaved, now he would face up to 10 years of rigorous imprisonment as well as a severe fine. That is an achievement of this Bill.

At the same time, Mr. Chairman, I do want to say that there is great deal that is amiss. I had the experience of reading a confidential report from a very leading international human rights organisation a few months ago, and I was deeply shocked and grieved by the accounts I saw there of the prevalence of torture in our society. Frankly, the stories, the verbatim accounts of the sufferers were deeply saddening. I know that some of us would argue that law and order is a State subject and this is not a proper concern for the Central Government, but I do want to state that 'torture' is not a State subject. Torture is a moral upfront to the conscience of every Indian, and we must use this occasion to affirm that very strongly. What, after all, is a law? A law simply reflects the values and aspirations of our society. Concepts of justice, of the legitimacy of governance, of the dignity of the individual, of humane treatment by the State, and indeed a protection of people from oppressive and arbitrary rule or conduct by the authorities of the State, all of these are fundamental to who we are as a nation.

It seems to me, Mr. Chairman, that this is also at the core of our national movement. Our national movement was based on such principles. Indeed Mahatma Gandhi's conduct in leading our national movement, the values of non-violence, won us great admiration as a country around the world. Many of us were there this morning to do a *pushparchan* of the portrait of Pandit Motilal Nehru, a great nationalist and lawyer, who fought for the human rights of Indians against the British. When we speak of people like Gandhi ji and Pandit Motilal Nehru, we are talking about people who fought for our freedom. But we did not fight to win our freedom in order to be able to torture our own people with impunity. I am quoting from my memory, Mr. Chairman, what Gandhi ji once said.

He said that it was a mystery, how any human being could find any honour in the humiliation of his fellow human beings. This was a powerful observation by the Mahatma, and it seems, Mr. Chairman, that we should honour the Mahatma and what he stood for by strongly outlawing the humiliation of people. The torture inflicts both the innocent and the guilty alike.

As has been pointed out by the hon. Member of the Opposition, the truth is that our country has had a long record. He mentioned the National Rights Commission. Indeed, early on, in our Independence, India participated with favour and conviction in the adoption of the universal declaration of the Human Rights. So, we have these values. We have indeed stood for the ideals for a very long time. India has never lagged behind the rest of the world in standing for these principles. We have no reason to fall behind on the issue of torture; as you have pointed out, adopted in 1975, signed by us in 1997. This is time enough for us to catch up with the rest of the world to be where we long in terms of the principles we stand for.

Torture is simply wrong. It is morally unacceptable; it is legally unjustifiable; and it is practically defective because people in pain would tell you anything that they think you want to hear to stop the torture. So, the truth is that it should not be allowed to happen anymore, and we have to ask ourselves what kind of India we wish to build in the 21<sup>st</sup> Century – clearly, not a land which condones that sort of practice.

Indeed, the next time if somebody wants to make an Oscar-winning movie showing an Indian policeman behaving in that way, we can surely hope that they will also show him being punished and sentenced for his actions. That is indeed what India should stand for and be seen as standing for around the world.

I would like to thank the Home Minister and the Government, therefore, Mr. Chairman, for bringing forward this timely and an important legislation. I wholeheartedly support this Bill, and, of course, I urge the Members here to pass it unanimously.

**श्री शैलेन्द्र कुमार (कौशाम्बी):** सभापति महोदय, आपने मुझे यातना निवारण विधेयक, 2010 पर बोलने का अवसर दिया, इसके लिए मैं आपका आभारी हूँ। अभी मैंने भाई अर्जुन और थरूर जी की बात को बड़े ध्यान से सुना। मैं थरूर जी को धन्यवाद देना चाहूंगा कि कम से कम इन्होंने महात्मा गांधी और नेहरू जी की बात कही। अब आपने शायद कुछ पढ़ लिया होगा, जैसे लोगों में एक भ्रांति थी।

जहां तक विधेयक की बात है, तो किसी भी व्यक्ति को गिरफ्तार करके उसे यातना देने से रोकने संबंधी यह विधेयक है। अक्सर देखा जाता है कि कोई भी मजरिम पकड़ा जाता है, अगर वह कबलनामा नहीं करता, तो थर्ड डिग्री का प्रयोग किया जाता है। मेरे

ख्याल से थर्ड डिग्री से ज्यादा मानवाधिकार हनन का मामला नहीं बनता। इसमें जबरदस्त उत्पीड़न की कार्रवाई की जाती है। यहां तक कि इतनी यातना दी जाती है कि कई मौतें भी हो चुकी हैं। मैंने इसी सत्र में जीरो ऑवर में एक मुद्दा उठाया था कि इलाहाबाद में नैनीथाना के अन्तर्गत दो नवयुवक मछुआरे जिनमें से एक की उम्र 24 वर्ष और दूसरे की 30 वर्ष थी, दोनों की पुलिस वालों ने इतनी पिटाई की कि उनकी मृत्यु हो गयी। यह स्थिति है। जो विधेयक लाया गया है, मेरे ख्याल से इसमें कुछ कमियां होंगी, लेकिन इसे सख्ती से लागू करने की जरूरत है।

दूसरा जो प्रमुखता से देखा जाता है, खासकर जो गरीब हैं, जिसकी कोई पैरवी, कोई सिफारिश नहीं होती, उसे गलत मुकदमे में फंसा दिया जाता है। ...*(व्यवधान)* जब थरूर साहब बोल रहे थे तब आपने नहीं बजायी, तब आपने यह नहीं कहा। ...*(व्यवधान)*

**डॉ. ज्योति मिर्धा (नागौर):** उनकी एज ए मैम्बर मेडन स्पीच थी। ...*(व्यवधान)*

**श्री शैलेन्द्र कुमार :** ठीक है। यहां तक देखा गया है कि गलत मुकदमों में फंसाने का एक रिवाज सा बन गया है। जिसे हम पुलिसिया जुर्म कहते हैं, पुलिस का जो जुर्म है, उस पर रोक लगाने की जरूरत है।

सोची-समझी, जानी-पहचानी साजिश के तहत लोगों को यातना देने के लिए फंसाया जाता है। कई बार देखा गया है कि पुलिस वाले अदालत की फटकार से भी नहीं संभलते हैं, न उनको सूझबूझ आती है -- चाहे हाईकोर्ट हो या निचली अदालतें हों, कई पुलिस वालों को बुलाकर अदालत की तरफ से फटकार लगाई गयी है, लेकिन आज तक उनकी सेहत पर कोई फर्क पड़ा, न उनको कोई नसीहत मिली। जहां तक पीड़ितों को मुआवजे देने की बात है, कई मामलों में हम लोगों ने लिखा-पट्टी की, मानवाधिकार आयोग को लिखा, लेकिन पीड़ितों को कोई मुआवजा नहीं मिल पाता है। पुलिस हिरासत में जो मौतें होती हैं, अगर लिखा-पट्टी की जाती है, तो मुआवजा मिलने में इतनी देर होती है कि उसकी कोई इतिहा नहीं। मेरे ख्याल से बहुत कम ऐसे आंकड़े जिनमें पनिशमेंट मिला हो और लोगों को मुआवजा मिला हो। यहां जेल की बात कही जा रही थी, जेल के कैदियों के साथ बड़ा अमानवीय व्यवहार किया जाता है। एससी, एसटी और महिलाओं की जहां तक बात है, उत्तर प्रदेश में उन पर अत्याचार बढ़ा है। यह लेटेस्ट रिपोर्ट अनुसूचित जाति की आई है कि पूरे देश में इन पर सबसे ज्यादा अत्याचार अगर बढ़ा है, तो वह उत्तर प्रदेश में बढ़ा है। इस ओर भी आपको ध्यान देने की जरूरत है। एशियन सेंटर फार ह्यूमन राइट्स की रिपोर्ट के हिसाब से देखा जाए तो हिरासत में डेढ़ गुने से भी ज्यादा वृद्धि हुई है जिनमें मौतें हुई हैं, अत्याचार हुए हैं, यातनाएं हुई हैं। इसलिए मैं इस बिल पर पुरजोर तरीके से बल देते हुए अपनी बात समाप्त करना चाहूंगा। गृहमंत्री जी इसे गंभीरता से लें।

SHRI A. SAMPATH (ATTINGAL): Thank you, Mr. Chairman, Sir, for giving me the opportunity to speak on this Bill. It is a very important Bill. I would like to associate myself with the points raised in this august House by my learned senior colleagues. Anyway, my learned friend from my own District of Thiruvananthapuram, Shri Shashi Tharoor has made his maiden speech on a very important Bill.

The reason for this Bill, I understand, is the United Nations General Assembly Resolution of 1975. After 22 years, our nation signed the Convention on 14<sup>th</sup> October, 1997. I do not understand as to what is the hurry at the last minute of the Session for getting this Bill passed in this august House. I am asking this question because I was subjected to torture. I am standing before you because I have been subjected to severe torture...*(Interruptions)*

MR. CHAIRMAN : You have been!

...*(Interruptions)*

SHRI A. SAMPATH : Yes. I believe, I have every right to speak on this subject in this august House. Even the Leader of the Opposition. Mr. A.K. Gopalan was subjected to severe torture several times by the police.

It is not only the question of physical torture, there is also a mental torture. Not only the police officers but even the administrative officers are expert in giving mental torture. If in 1987 I was not kicked out by the UPSC, I would not have been elected as a Member of Parliament and I would not have come here in the 11<sup>th</sup> Lok Sabha; and again I would not have been here in this Lok Sabha. This is not a single piece of legislation alone. Here, we are the largest multiparty democracy in the world. We cannot follow the footsteps of the United States of America. They are simply preaching about the human values, on the human rights. We all know what they do in Guantanamo jail. We also have the experience of the Tihar jail in the very city of Delhi. A businessman from Kerala, was subjected to such a torture in that jail that he died in the jail. I do not want to repeat his name; everybody knows what happened at that time. It was before the 11<sup>th</sup> Lok Sabha elections.

This Bill is just like sick cattle sleeping in a paper. The sick cattle will not eat grass. The Bill talks of 'any person'. It is all right. This should not be curtailed as a right of citizen. This Bill inflicts certain restrictions upon the people, the injured people,

because it demands for the previous consent of the Government. My humble submission is that it should not be limited to the Government of India and the State Governments. It should be the definition given under article 12 of the Constitution of India. It says of the definition. I do not want to take much of the time because I hope everybody knows. So, it should be an officer or a public servant under article 12. So, as our Constitution was amended, and the Nagarpalika and the Panchayati Raj Acts have come into force, those who are working under the local bodies should also come under the purview of the Act if the Bill is being enacted. It should not be limited to both the Central Government and the State Governments.

Getting the previous sanction of the Government is almost impossible for a poor man or a poor woman who has been inflicted or who has been tortured. Tortured by whom? It is tortured by the State. If a police man or the administrative machinery or a public servant is doing the sovereign functions of the State, then the State is responsible for the torture. It means that. The State is the largest machinery for torture. That cannot be tolerated.

This is an important Bill. This should be sent to the Standing Committee on Home Affairs to have a detailed discussion and for taking evidence of experts and only after the discussion and only after the Report of the Standing Committee on Home Affairs, should this be re-introduced and a discussion should take place in this House, and only then this should be passed.

MR. CHAIRMAN : Please wind up.

SHRI A. SAMPATH : I shall finish within one minute.

We have been hearing many, many instances where the misuse of the Armed Forces Special Powers Act. We have been hearing painful stories from various parts of our country. We have been hearing not only from Jammu and Kashmir, not only from the North-Eastern States but also from many other States. Even if those provisions are not at all applicable, I am saying in this august House that many of the Armed Forces people and even the NCC officers are using their official vehicles without the number plates and they are going everywhere like that. We have not declared martial law in this country.

MR. CHAIRMAN: Please wind up.

SHRI A. SAMPATH : I am going to conclude. Please have mercy on me because this Bill is very important.

Six months' time is given to the aggrieved person to file the complaint. How can he do this? If I am behind the bars, if I am grievously hurt—we all know what is said in the Indian Penal Code about the grievous injury—if I am grievously injured, I will be in the hospital; I will be at my home; I cannot move out; and I will be bed-ridden. How can you insist me to go and file my complaint within the period of six months? If I do not file within six months, then my complaint vanishes. So, the officer concerned or the public servant can go scot-free. So, this time limit should be deleted from that.

MR. CHAIRMAN: You have taken so much of time. Please conclude.

SHRI A. SAMPATH : Now, I am coming to children. If the children are tortured, this punishment is not sufficient. Torturing children by men in uniform or even by men not in uniform cannot be tolerated.

Last but not least, I am concluding. By profession, I am also a lawyer like the hon. Minister. I have seen him wearing the robes in the Supreme Court. I am very proud of that profession that we both share. I have seen many instances where the officers, especially the police officers, send the tutored witnesses to the box. They ask, they teach and they know how to make them speak. If the witnesses do not give the deposition as the officers have tutored them, they will be subjected to torture.

Here, it is only regarding getting of evidences. So, it is not only torture but prevention should also be there. Here it is stated in clause 4 'for the purposes of extracting from him or from any other person entrusted in him, any confession or like that'. So, this should also be kept in mind.

Again, my strong submission is that this should be sent back to the Standing Committee and a detailed discussion should take place in the Standing Committee. This is a very serious Bill.

SHRI B. MAHTAB (CUTTACK): Mr. Chairman, in this late evening hours we are still sitting in the House and deliberating on a very far-reaching Bill. I was telling my friend Shri Dikshit that this is a Bill which we should have discussed at length in this House because it concerns human rights, it concerns human values and it concerns the dignity of human being.

At the outset, I would thank the Government that agreed to put its signature in 1997, and also the present Government, specially the Prime Minister and the Home Minister. I think, with the change of Home Minister this Bill has come about. I do not

know. I think I am right. Specially, after the Dantewada incident, as it has been reported in newspapers, the Home Minister and the Prime Minister had the courage to get it ratified within the Cabinet and have brought it before this House.

This is a Bill, which I would say, defines 'torture'. Because on earlier occasion, in the IPC – many Members have mentioned about it – it was treated as a regular offence and provisions in the Indian Penal Code such as Section 230 is defined as 'grievous hurt' which may apply to torture cases, but are limited in two ways. First, they apply only in situations where specific kind of physical injuries are inflicted and fail to cover the gamut of ways in which torture is committed. Secondly, for the purposes of such sections it is of no relevance whether the perpetrator of the offence is a public servant or not. In that respect, this Bill comes a long way.

I would say that this Bill defines – it has already been said – 'torture' and very rightly it has been mentioned as a 'stand alone' legislation. The purpose is to put in place a law to check torture by Government servants including the Armed Forces personnel and police by making it a punishable offence and the maximum punishment for torture is ten years. Why can it not be more? I do not know. I am not a lawyer by profession; nor was I student of law. I do not know if the previous speaker from Congress, Member from Thiruvananthapuram, was subjected to mental torture or not. I do not wish to say whether we are put to some kind of torture by sitting at 9.30 p.m. or 9.45 p.m. or not. But the question arises as to who will be the complainant. The person who is tortured? As has been mentioned here, can a person who is inside jail, make a complaint within six months of time if he is imprisoned for more than two years? Or someone else, who is related to him, as in the case of provisions of law, a person can draw the attention of the court. That provision is not here. I think, subsequently, this can be modified and in certain respects a person who is affected should not be the only complainant. Of course, that provision can come. But the proviso is to be read along with danger to life, limb or health.

What I understand is that with these three provisos it has been very wide and open. Could the Government not have made it a little more explicit? How many complaints would you expect when there is apprehension that there will be very low conviction?

I am aware that the matter was examined at length in consultation with the Law Commission of India. This Bill seeks to achieve basically three things. One is – it defines the expression of torture; secondly it provides for punishment to those involved in the incidents of torture and thirdly I specifies the time for taking cognizance of the offence of torture. However, the law would not apply in cases which are covered by special laws such as the Unlawful Activities (Prevention) Act. It does not envisage setting up independent Committees both at the Centre and at State levels to deal with complaints of torture. One has to go to the court of law.

I think the Government can make certain Committees in different levels where this type of complaint can come other than the person who is affected himself by torture. Of course, I am not going to repeat about the custodial deaths and about the National Human Rights Commission which has recorded the custodial deaths of 16,836 persons on an average of 1,203 persons per year during the period 1994 till 2008.

This represents only a fraction of the incidence of torture. There is no record of torture that does not result in custodial deaths. Here, the hon. Supreme Court's guideline is to report cases of custodial deaths about which my predecessor has mentioned about B.K. Basu versus State of West Bengal. But I would say, UN Treaty says there cannot be any exceptional circumstances to justify torture, not even a state of war.

Before concluding, I would say this Bill is better late than never. Mental torture and trauma is barbaric. This Bill will add strength to Article 21 making it a constitutional guarantee to live a life with dignity, without trauma and without torture.

With these words, I support the Bill.

**श्री पन्ना लाल पुनिया (बाराबंकी):** सभापति महोदय, मैं आपका आभारी हूँ कि आपने मुझे महत्वपूर्ण Prevention of Torture बिल पर बोलने का मौका दिया। इसके स्टेटमेंट्स आफ ओब्जेक्ट्स एन्ड रीज़न्स में स्पष्ट किया है कि यूएन कन्वेन्शन 1975 में हुआ और हमने 1997 में उस पर दस्तखत किए। चूँकि कन्वेन्शन की आवश्यकता थी, इसलिए हम अधिनियम बिल को ले कर आए हैं। इसमें टार्चर की परिभाषा, उसके लिए दंड और कुछ कंडिशनस लगाई गई हैं। यह समस्या बहुत गंभीर है। रोज टार्चर की घटनाएं होती रहती हैं - चाहे राष्ट्रीय महिला आयोग हो, चाहे राष्ट्रीय अनुसूचित आयोग हो, उन सभी ने इसका उल्लेख किया है कि टार्चर की घटनाओं में वृद्धि हुई है और विशेष रूप से दलित वर्ग, अल्पसंख्यक वर्ग और महिलाओं के साथ ये घटनाएं ज्यादा हुई हैं। आज थानों में वही अंग्रेजी हुकूमत की बू आती है। अगर कोई व्यक्ति जाता है, तो अपराधी और पीड़ित व्यक्ति में कोई अंतर नहीं है। पीड़ित व्यक्ति के साथ भी वही सलक किया जाता है। जिस तरह से अपराधी के साथ किया जाता है। इसलिए उस मांडंडसैट को बदलने की आवश्यकता

है। आज हम बराबर पुलिस में सुधार की बात करते हैं, लॉ एंड ऑर्डर में सुधार की बात करते हैं तो हम सीमित होकर रह जाते हैं कि किस तरह से पुलिसकर्मियों को सुविधाएं दे दी जाएं या जहां पर पुलिस कमिशनर सिस्टम नहीं है, वहां पर पुलिस कमिशनर सिस्टम लागू कर दिया जाए। हम यहां तक सीमित रह जायेंगे। लेकिन उनके एटीच्यूड में किस तरह से परिवर्तन किया जाए, उन्हें किस तरह से ट्रेन्ड किया जाए। मैं समझता हूं कि इसके बारे में कोई पहल आज तक नहीं हुई है। आप थानों में टार्चर की बात करते हैं, वहां टार्चर चैम्बर बने हुए हैं। अनेक ऐसे-ऐसे तरीके उन्होंने निकाले हैं कि जिससे वे मार करते रहें और व्यक्ति को पीड़ा होती रहे, लेकिन शरीर पर ऊपरी तौर पर चोट दिखाई भी न दे। आज लोगों को बिजली का करंट लगाया जाता है, जिससे मौतें हुई हैं। हमारे बाराबंकी जिले में थाने में रोजाना इस तरह की घटनाएं होती हैं, जहां लोगों की मृत्यु हो जाती है। अभी दस दिन पहले मौर्य परिवार का एक लड़का था, जिसकी जेल में मृत्यु हुई है। परंतु इन घटनाओं पर सब मौन रहते हैं। मैं समझता हूं कि इन पर और गंभीर चिंतन की आवश्यकता है। इन्हें रोकने की आवश्यकता है। इसमें जन-जागरण की आवश्यकता है। ह्यूमैन राइट्स कमिशन एक समय से मुकदर्शक बनकर रह गया है। उसे कुछ सुनाई नहीं देता। नोटिस जारी करते हैं, केस रजिस्टर कर लिया है। उस पर आगे सुनवाई करेंगे, तब तक काम चला गया। इसलिए इस पर गंभीरता से सोचने की आवश्यकता है। फर्जी एनकाउंटर रोजाना हो रहे हैं, ये बंद होने चाहिए, लेकिन वे कैसे बंद होंगे। एक मुख्य मंत्री थे, जिनके साथ मैंने काम नहीं किया, मैं उनकी बात कर रहा हूं। जब उन्हें बताया जाता था कि एनकाउंटर हुआ है, बड़े बदमाश लोग थे, जिन्हें हमने मारा है तो वह पूछते थे कि किसी पुलिसकर्मी को चोट तो नहीं लगी, सिर्फ यह जानने के लिए कि यह फर्जी एनकाउंटर है। अगर वास्तव में एनकाउंटर हो तो एक-दो पुलिस वाले ढेर हुए बिना नहीं रह सकते। बदमाशों का निशाना और उनके हथियार हमारे पुलिस वालों से ज्यादा अच्छे होते हैं। इसलिए आज रोज एनकाउंटेर्स हो रहे हैं और किसी पुलिसकर्मी को कुछ नहीं होता। इसके ऊपर गंभीरता से सोचने की आवश्यकता है।

सभापति महोदय, मैं अधिक न बोलते हुए सिर्फ सैक्शन-5 और 6 के बारे में बताना चाहूंगा।

Clause 5 reads:

"Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no court shall take cognizance of an offence under this Act unless the complaint is made within six months from the date on which the offence is alleged to have been committed."

इसमें सरकार ने अपने हाथ झाड़ लिये हैं। जिसके ऊपर पीड़ा हुई है, जिसकी प्रताड़ना हुई है, वह कोर्ट में कम्प्लेन्ट करे तो कोर्ट और कम्प्लेन्ट के बीच जो पीड़ित है, उसके बीच का ही सिर्फ मामला है, सरकार का उससे कुछ लेना-देना नहीं है। जो कम्प्लेन्ट करेगा, उसकी अपनी प्राइवेट कम्प्लेन्ट है, उसकी अपनी व्यक्तिगत कम्प्लेन्ट है, वह व्यक्तिगत पैरवी करेगा। सरकार उसकी पैरवी नहीं करने जा रही है। आप कह रहे हैं कि जो पीड़ित व्यक्ति है, वह कम्प्लेन्ट करे और बाकी कोर्ट के ऊपर है कि वह दो साल की सजा करे या दस साल की सजा करे। सरकार का इससे कोई वास्ता नहीं है। मैं समझता हूं कि इस पर विचार होना चाहिए। कम्प्लेन्ट की बजाय एफआईआर करने का भी प्रावधान होना चाहिए और सरकार की तरफ से पैरवी होनी चाहिए। पुलिस अधिकारियों को निर्देश होना चाहिए कि इसमें एफआईआर दर्ज करके शासन की तरफ से कार्रवाई हो। इसके अलावा कोई इंडिपेंडेंट एजेन्सी हो। अगरवही पीड़ित करने वाला, वही दंड देने वाला, वही जांच करने वाला और वही एफआईआर दर्ज करने वाला होगा तो न्याय कैसे होगा। इसमें कोई इंडिपेंडेंट एजेन्सी होनी चाहिए और ऐसे लोगों की एजेन्सी होनी चाहिए, जिस पर पुलिस का कोई प्रभाव न पड़े। यह व्यवस्था अवश्य होनी चाहिए। वरना यह एकट बेकार हो जायेगा।

दूसरा आपने कहा कि जो पब्लिक सर्वेंट है, उसके खिलाफ कार्रवाई नहीं हो सकती, कॉग्निजेंस नहीं लिया जा सकता, इस बिल के सैक्शन 6 में प्रावधान किया गया है कि जिन कर्मचारियों, अधिकारियों के विरुद्ध शारीरिक व मानसिक उत्पीड़न करने का आरोप है उन पर बिना सरकार की अनुमति के मुकदमा नहीं चलाया जा सकता, यह बिल्कुल गलत है। जब तक कि गवर्नमेंट की परमीशन न मिल जाए। क्या ये लोग सरकारी काम कर रहे हैं? जो प्रताड़ना कर रहे हैं वह एक अपराध है। यदि वह अपराध है तो उससे मुक्त होना चाहिए। इसमें सुप्रीम कोर्ट की भी अनेकों रूलिंग्स हैं कि जो भ्रष्टाचार करता है, वह सरकारी काम से संबंधित नहीं है, वह व्यक्तिगत अपराध करता है। इसलिए व्यक्तिगत अपराध करने वाले मामलों में जो पब्लिक सर्वेंट की हैसियत से उसकी अनुमति लेने की आवश्यकता है, उससे मुक्त होना चाहिए।

इन्हीं शब्दों के साथ मैं इस बिल का समर्थन करते हुए अपना वक्तव्य समाप्त करता हूं।

\*SHRI PRASANTA KUMAR MAJUMDAR (BALURGHAT) : Respected Chairman Sir, we must always remember that we were under the British rule for a very long time. The laws framed by the Britishers are still prevailing; as for instance the archaic Indian Penal Code. The torture that was meted out at that time by the colonial rulers has still not disappeared – we should not forget this. The law states that if any person is arrested, he must be produced in the court within 24 hours. But what actually happens? If the police is satisfied, only then they produce him in court; otherwise they resort to torture, harassment and try to exploit his vulnerable situation. Often they squeeze out money from the accused person. The law also states that if the police requires to take statement from an accused, always a Magistrate should be present. But this law is also violated. The policemen apply third degree, give electric shocks and often beat up the arrested person. After that they cook up a story and submit it legally. We have seen this happening.

Who are the public servants who torture the most? The policemen do it, no one else does it in that fashion. One should definitely ponder over this. But Sir, I am very glad today that after so much of delay, this Bill has been ultimately brought before this august House by the Government. Thus I thank Hon. Minister for this initiative. However I don't know very surely whether after the passage of this Bill, the situation is going to change or not; whether things are going to improve or not. Times have changed; the age is different today – people are now more progressive, more developed, more well – informed. But there is a need of further awakening and arousal of consciousness. These things must always be kept in mind.

It should also be remembered that more than 1600 people have died due to cruel torture in judicial as well as police custodies. But they did not get justice even today – nothing happened to the perpetrators of crime; no punitive action was taken against them. Not a single FIR was filed. We all know that in the entire country, the picture of all police stations is almost similar. The policemen do not want to register complaints, they do not accept FIRs easily. In many places you will find that the police is omnipotent, all powerful and MPs and MLAs do not have any power to control them. This should not be allowed to happen. Those power-hungry cops must be severely punished. Infact there is a need for complete overhaul in the police system – police reform is the only way to cleanse the entire force. The common people are actually afraid of them. On one hand they extort money from them and on the other, torture them cruelly. These practices should be stopped immediately.

I have one more request to make to Hon. Home Minister. He should remember that the country has gained independence through mass movement, through people's struggle starting from Mahatma Gandhi's Non-Cooperation Movement. Thus if possible, Hon. Minister should ponder over the proposal that in no mass uprising or movement, police force would be utilized to restrict or torture the activists. This is a very important issue. It would be great if this provision of non-interference by police be included in the said Bill. This is my humble submission to you Sir.

With these few words, I thank you for allowing me to participate in the discussion on Prevention of Torture Bill 2010 and conclude my speech.

SHRI SANSUMA KHUNGGUR BWISWMUTHIARY (KOKRAJHAR): Sir, thank you for giving me an opportunity to participate in the debate and discussion being held on the Prevention of Torture Bill, 2010.

I rise to support this Bill wholeheartedly, but at the same time I do have some queries. I would like to know from the Government of India, particularly, from the present Union Home Minister as to why the Government of India had ratified the Convention against torture and other cruel, inhuman and degrading treatment or punishment, only on 14th October, 1996 whereas the UN General Assembly had adopted the aforesaid convention on 9th December, 1975 itself. रैटिफिकेशन करने के बावजूद 12 साल और 22 दिन के बाद यह विधेयक लाया गया है। Why this kind of Bill was not brought in this august House before? It is a fundamental as well as a very serious question.

I would like to tell you about the manifold tragedies, which had been faced by the Bodo people during the Bodoland movement period. We had started our Bodoland movement since 2<sup>nd</sup> February, 1987. Our movement was quite peaceful, non-violent and very very democratic....(*Interruptions*)

MR. CHAIRMAN: Please address the Chair.

...(*Interruptions*)

SHRI SANSUMA KHUNGGUR BWISWMUTHIARY : A lot of atrocities were meted out to the Bodo people and a lot of draconian black laws including TADA, etc. were imposed on Bodo people with a view to cracking down our peaceful Bodoland movement.

## **22.00 hrs.**

Right from 2<sup>nd</sup> February, 1987 to 20<sup>th</sup> February, 1993, around 2,000 innocent Bodos were killed and massacred, in a period of six years and 18 months. Then, the first Bodo Accord was signed on 20<sup>th</sup> February, 1993 between the Government of India, the Government of Assam and the All Bodo Students Union.

उसके बाद वर्ष 1993 से वर्ष 2003 तक नया बोडो समझौता करने के समय तक नौ साल ग्यारह महीना बीस दिन के अंदर कम से कम एक हजार बोडो लोगों की हत्या की गयी । इस तरह ही बोडो लैंड आंदोलन के दस साल के भीतर कम से कम तीन हजार हमारे निर्दोष बोडो लोगों की हत्या की गयी। More than 200 Bodo girls and women were gang-raped by the security personnel. In the year 1988, on a particular night, 12 Bodo girls and women were gang-raped in a particular village called Bhumka in the District of Kokrajhar. At that time, the Chief Justice of Guwahati High Court was Mr. Guman Mal Lodha. It was only because of his

kindness, a bit little amount of justice was given to the victims. On a particular night, during the Bodoland Movement, in a particular village called Kapurpura, ten innocent Bodos were killed by the police personnel.

Now, I would like to know what kind of retrospective action, will be taken by the Government of India against those culprits and erring officials. In the background of such situation prevailing in the country, a question arises as to how the Government of India will ensure the safety and security of the indigenous tribal people, indigenous Bodo people and the Scheduled Caste people in the whole country? This is my question.

मैं एक बात और बताना चाहता हूँ कि जब डेमोक्रेटिक भाव से हमारे लोग सरकार के साथ बातचीत करके समस्या का समाधान निकालने के लिए आगे बढ़ते हैं तो सरकार बात करने को तैयार ही नहीं है। जब बंदूक उठाते हैं तो बात करने के लिए आते हैं।

MR. CHAIRMAN : Please take your seat. Please wind up.

SHRI SANSUMA KHUNGGUR BWISWMUTHIARY : What is happening today in the areas which are infested by the naxalites, infested by the Maoists, and infested by the insurgents in the North-Eastern Region?

MR. CHAIRMAN: Please wind up.

SHRI SANSUMA KHUNGGUR BWISWMUTHIARY : इसलिए मेरी मांग है, मेरा सुझाव है, मेरी दरखास्त है और मेरी विनती है कि हिन्दुस्तान में जितने मिलेटेंट और गणतांत्रिक संगठन हैं- उन सभी के साथ शांति वार्ता शुरू करके सभी समस्याओं का स्थायी समाधान निकालने की कोशिश करनी चाहिए । ...*(Interruptions)*

MR. CHAIRMAN: Nothing will go on record. The Minister can proceed now with his reply.

*(Interruptions)* \*

SHRI P. CHIDAMBARAM: Mr. Chairman, I thank all the Members who participated in the debate. Just to set the record straight, I must say that the Bodo people have now their Bodo Territorial Council. It is a success story, as far as self-governance is concerned. They held recently an election. The party which was ruling the Council has been re-elected. So, I compliment the Bodo people for making a success of their Autonomous Council. If there has been any injustice in the past, we are very sorry. But this is an opportunity for you to demonstrate how well you can self-govern yourself.

Sir, there are just four points to be clarified. 'Torture' in this Bill is defined as a special offence. Grievous hurt, murder, homicide, injury, they are all defined in the IPC. Here, 'torture' is defined in a very special context, namely, when it is inflicted by a public servant or abetted by a public servant for the purposes to obtain from him or a third person information or confession. So, that is the definition in the Convention, and that is the definition that has been borrowed here. When a person is in the custody of a public official or somebody, abetted by a public official, is tortured for the purposes of extracting information or a confession, this section applies. In ordinarily, when a person is in jail as a prisoner, this section may not apply, the general IPC will apply. Unless in the rare case, when a jailer inflicts torture on a prisoner say in order to extract information about co-prisoners or extract a confession about committing a prison offence, generally the IPC will apply. This is a special offence.

The second point is about public servant. The definition of public servant in the Explanation to clause 3 is without prejudice to section 21 of the IPC. Section 21 of the IPC defines public servant. All those who are mentioned there will be public servant under this Act plus any person acting in his official capacity under the Central Government or the State Government is also a public servant. If you look at section 21, you will find employees of panchayats and local bodies are already defined as public servants.

The third matter on which apparently there is some confusion is about the word 'complaint'. How can a victim under a superior officer or in jail complain? The point is that the complaint need not be given by a victim. Complaint and complainant are two different things. Victim is a different thing. Please read the section. Notwithstanding anything contained in the Code of Criminal Procedure, no court shall take cognizance of an offence under this Act unless the complaint is made within six months, not that the victim must complain. Victim's father can complain, victim's friend can complain, victim's brother can complain. And that is consistent with section 2, clause (d) of the Criminal Procedure Code which defines complaint. Anybody can give a complaint. Today a Habeas Corpus petition need not be filed by the person who has been abducted or kidnapped. It can be filed by any person, even by the next friend. Complaint, therefore, can be given by anyone who is the next friend or next of kin of the victim.

The fourth point is about compensation. This is already provided for in the Criminal Procedure Code. Section 357 of the

Criminal Procedure Code contains detailed provisions regarding compensation. There is no need to carry all those provisions into this Act because the Criminal Procedure Code will any way apply.

On custodial death and custodial disappearance, there is already section 176 of the Criminal Procedure Code. Therefore, we need not again carry all that into this Act.

Finally, I want to conclude by saying that most cases of torture arise where a person is given for what is called custodial interrogation. I do not want to comment on the way the law has developed. But I have always had grave reservations about the concept of custodial interrogation as if custodial interrogation is different from ordinary interrogation. We have unwittingly allowed some element of unjustified methods being imported into interrogation. Which is why, I welcome the judgment of the Supreme Court which declared narco test as gross interference with Fundamental Rights. When I saw the television channel broadcasting the narco test tape, when narco tests were administered to the two boys of Nepal in the Nithari case, it was shocking. I am very happy that the Supreme Court has declared narco test as unconstitutional. In my view, all interrogations must take place in a very civilised manner after administering to the person to be interrogated his legal rights, after telling him that he has a right to have counsel and under very civilised conditions where he has water, food, rest, toilet breaks. That is the only way a civilised country will interrogate even the worst criminal. I think by introducing this new phrase called 'custodial interrogation', we have unwittingly given scope for unjustified methods. I hope that this Bill will, if not entirely, to some extent, put an end to unjustified custodial interrogation methods and bring back interrogation to the civilised manner in which interrogations should take place.

I commend this Bill and request the House to pass the Bill.

MR. CHAIRMAN : The question is:

"That the Bill to provide punishment for torture inflicted by public servants or any person inflicting torture with the consent or acquiescence of any public servant and for matters connected therewith or incidental thereto, be taken into consideration."

*The motion was adopted.*

MR. CHAIRMAN: The House shall now take up clause-by-clause consideration of the Bill.

The question is:

"That clauses 2 to 6 stand part of the Bill."

*The motion was adopted.*

*Clauses 2 to 6 were added to the Bill.*

*Clause 1, the Enacting Formula, the Preamble and the Long Title were added to the Bill.*

SHRI P. CHIDAMBARAM: I beg to move:

"That the Bill be passed."

MR. CHAIRMAN: The question is:

"That the Bill be passed."

*The motion was adopted.*

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