



## **JUDICIAL RESPONSES TO TORTURE: EVALUATING THE EFFICACY OF PAKISTAN'S LEGAL SYSTEM**

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### **Abstract**

*The use of torture continues to be a systemic problem within Pakistan's criminal justice system – despite constitutional safeguards, and international obligations to eliminate it. This article provides a critical analysis of the effectiveness of judicial remedies against torture in Pakistan through an assessment of relevant legal structures, jurisprudence, and institutional processes. Despite its ratification of the United Nations Convention Against Torture (UNCAT) in 2010, Pakistan has a long way to go to ensure full domestic compliance with its international obligations. The lack of specific anti-torture legislation and the continued acceptance of confessions made under torture demonstrate the ineffectiveness of existing systems of judicial oversight. Trawling through superior court decisions, this research rock-tossed the judiciary's performance with respect to torture allegations and made a determination if legal redress was available to claimants. It also examines wider sociopolitical and institutional obstacles to the implementation of anti-torture measures, such as lack of judicial independence, police impunity and dysfunctional forensic and investigatory systems. It concludes that, despite some positive court judgements that have denounced torture and reforms, inconsistent implementation and political limitations often pose the greatest obstacles to overcoming this practice. The paper ends with policy level suggestions with a view to reinforce the legal and institutional framework to ensure accountability, protect human dignity and harmonize Pakistan's domestic practice with its international obligations. This inquiry is vital for human rights and for rebuilding confidence in the legal system of the country.*

**Keywords:** Torture, Pakistan, judiciary, human rights, legal system, accountability, UNCAT, police abuse, constitutional rights, judicial reform

### **1. Introduction**

Torture – a crime against humanity – continues to be a concern in many regions of the world, particularly in jurisdictions where rule of law rights is not properly established. Pakistan, despite ratifying the United Nations Convention Against Torture (UNCAT) in 2008, has been severely criticized for its failure to address allegations of torture, in particular in police custody (Amnesty International, 2020). Torture is not only illegal in the context of the most international regimes but also it violates the basic rights that are enshrined in the Constitution of Pakistan, particularly Article 14 (3) that stipulates, “No person shall be subjected to torture for the purpose of extracting evidence” (Government of Pakistan 1973).

The failure to adopt comprehensive anti-torture legislation and the absence of monitoring mechanisms have resulted in a culture of impunity in Pakistan's police and judicial institutions. While isolated judicial statements have condemned torture and urged institutional reform, their effects on the ground have been limited (ICJ, 2021). The confessions, obtainable under duress, are frequently resorted to by the courts, and the victims seldom find any relief because of procedural wrangling and lack of forensic support coupled with the threat of reprisal (HRCP, 2022).

The relationship between police and judiciary is but one point of contact, and it is symptomatic of larger structural and systemic problems. “Accountability is the core issue that the judiciary, as the guardian of constitutional rights, has to enforce and human dignity,” he added. Nevertheless, the extent to which judicial responses are effective in deterring torture depends to a great extent on judicial independence, access to legal remedies, timely



investigation of alleged incidents, and protection of victims and witnesses (UN Committee Against Torture, 2017).

This research, then, aims to assess how effective Pakistan's response to torture, through exploring landmark judicial verdicts, legislative changes and institutional arrangements. An appreciation of what is missing between legal norms and realities is crucial to the advancement of a rule-of-law-based system that upholds human rights and prevents custodial abuse.

## **2. Understanding Torture: A Legal and Human Rights Perspective**

### **2.1 Defining Torture under International Law**

Under international law, torture is completely condemned as an offense against human dignity and human rights. Most commonly cited definition this article refers to the definition set out in article 1 of the UNCAT: "Article 1.1. For the purposes of this Convention, '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.

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This definition is reinforced and repeated in other international instruments such as the International Covenant on Civil and Political Rights (ICCPR), which obligates states to guarantee that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (UN General Assembly, 1966, Art. 7). Torture is also categorized as a *jus cogens* norm, that is a norm of international law from which no derogation is allowable (Nowak & McArthur, 2008).

### **2.2 Torture under Pakistan's Legal Framework**

Although Pakistan has been a signatory to UNCAT since 2010, it has yet to effectively domesticate its commitments. Torture is proscribed in Article 14 (2) of the Pakistan Constitution that provides: "No person accused of any offence shall be compelled to be a witness against himself" (Government of Pakistan, 1973). There is no legislation that actually implements comprehensive law against torture, or that provides for effective remedies to the victims of torture, where law reform action should focus.

The PPC as well as the CrPC have elements of hurt or grievous hurt but don't explicitly define or criminalize torture under the standards and definitions of UNCAT. As a result, seldom are the violators (in many instances -law enforcement officers) prosecuted and the victims remain without effective remedy (ICJ, 2021). The Torture and Custodial Death (Prevention and Punishment) Act was approved by the Senate in 2022 but has been stalled in being fully implemented and enforced.



### **2.3 Customary International Law and Obligations**

The prohibition of torture is *jus cogens* under the customary international law, and binds universally irrespective of whether or not states are parties to any particular convention. Torture is established as a *jus cogens* norm, and entails obligations *erga omnes*, meaning that all states have a responsibility to prohibit and punish it irrespective of treaty obligations (Rodley & Pollard, 2009). It means that instead of lightening the task of the prosecution by permitting it to rely on procedural mechanisms analogous to those observed in Pakistan, obligations are imposed on states (such as Pakistan) to bring their institutions and laws into line with international standards even in the absence of municipal legislation.

Furthermore, universal jurisdiction permits States to prosecute acts of torture no matter where such acts occur, reflecting the level of seriousness with which the international community views this crime (Evans, 2011). Pakistan's ongoing inability to reconcile its internal legal provisions with these universal responsibilities leaves it open to international scrutiny and deprives it of legitimacy in the international human rights system.

## **3. Legislative Framework in Pakistan**

### **3.1 Constitutional Safeguards Against Torture**

The Constitution of Pakistan has its roots in Geneva Convention 1984. Article 14 paragraph 2 clearly asserts, "No person shall be subject to torture for the purpose of extracting evidence" (Government of Pakistan, 1973). This text captures the essence of international human rights standards and shows that the state acknowledges human dignity and the right to bodily integrity. Furthermore, Article 9 protects the right of life and liberty that is directly infringed upon with torture and inhuman and degrading treatment in custody. Although the content of these constitutional guarantees is important, they are for the most part declaratory due to their lack of implementation and the absence of supporting laws.

### **3.2 The Pakistan Penal Code and Relevant Provisions**

The Pakistan Penal Code (PPC), 1860, however, lacks a specific provision criminalizing torture as per the international definitions of torture. But some of its areas have to do with things that could be defined as torture activities. For instance, sections 332-337 apply to the act of causing hurt or grievous hurt, sections 348 and 330 relate to wrongful confinement and coercion, and PPC – 1860 deals with these acts during judicial proceedings. However, these provisions are related to the context and severity of intent of any act of torture. This piecemeal approach fuels arbitrariness in justice application and weakens accountability for custodial violations (ICJ, 2021)

### **3.3 The Torture and Custodial Death (Prevention and Punishment) Act, 2022**

The Senate in 2022 enacted the Torture and Custodial Death (Prevention and Punishment) Act, the first holistic effort to criminalize torture in the country. ACTMAS sets out the legal definition of torture along UNCAT definitions, it criminalizes all forms of both physical and psychological torture by state agents and also provides for mandatory recording and investigation of deaths in custody (National Assembly of Pakistan, 2022). It also provides for the punishment of persons who engage or facilitate torture and protection mechanisms for complainants and witnesses. As yet, its implementation on the ground is not significant, because no implementation modalities, training means and mechanisms, and independent supervision institutions are in place (HRCP, 2023).



### **3.4 Gaps in Domestic Legislation**

Despite some recent advances, there remain important legal deficiencies. No reparations or rehabilitation for torture victims (UN, 1984, Art. 14). Furthermore, independent investigation and dispute mechanism for allegations of professional torture is missing and law prosecuting authorities still function with relative impunity. Procedural laws such as the Criminal Procedure Code (CrPC) do not require that coerced confessions be excluded and do not provide immediate access to medical and legal assistance for suspects (ICJ, 2021). These omissions render current provisions mostly symbolic and do not offer the necessary tools to act as a deterrent or as a remedy.

## **4. Comparative Analysis with Other Jurisdictions**

### **4.1 Regional Comparisons (e.g., India, Bangladesh)**

In South Asia the legal and judicial responses to torture are varied and there is much to be learned from a comparative perspective, albeit there are certain exemplary moments among certain jurisdictions. Like Pakistan, India has ratified ICCPR but not UNCAT. There is no domestic anti-torture law in India, but the courts have made strong statements verbally against torture in custody. The Indian Supreme Court has provided procedural protections for arrests and detentions in *D.K. Basu v. State of West Bengal* (1997) to reduce the incidence of torture, requiring, among other things, that arrested persons be medically examined and given an opportunity to consult with a lawyer (Supreme Court of India, 1997).

Ratified UNCAT 1998 and moved a step further with Torture and Custodial Death (Prevention) Act, 2013 making a comprehensive definition of torture and strict punishment. But implementation is still distorted by institutional inertia and political intervention (Odhikar, 2021). Yet, infrastructural limitations aside, the single law's existence has led to greater awareness raised for and reporting of cases of torture, suggesting that legislation can be effective when leveraged by civil society.

### **4.2 Lessons from Global Best Practices**

A number of countries offer good examples of combating torture with strong legal structures and independent oversight. For example, in Sweden and the United Kingdom, there are independent bodies for police complaints, regime such as the United Kingdom's Independent Office for Police Conduct (IOPC) which investigates allegations of police abuse including torture (IOPC, 2022). Moreover, states such as Germany and Norway incorporate the Istanbul Protocol (i.e., international protocol for the investigation of torture) in their forensic and judicial systems (OHCHR, 2004).

These models work because they focus on victim rehabilitation, transparent investigations, and institutional accountability. As legal and institutional reforms are pursued, so also do they need to go hand-in-hand with robust training of the police and other law-enforcement agencies and the systematic engagement of civil society to ensure that a culture is developed in which torture becomes 'socially detestable' and 'institutionally infirm'.

### **4.3 Role of International Tribunals and Case Law**

International tribunals have been central to developing international jurisprudence on torture. The European Court of Human Rights (ECtHR) judgments in many cases have held that incommunicado and custodial torture and ill-treatment is a violation of Article 3 of the European Convention on Human Rights, which outlaws torture in absolute terms. In the 1999



case of *Selmouni v. France*, the ECtHR broadened the definition of torture so that degrading treatment, if serious enough, could qualify as torture (ECtHR, 1999).

Parallel to this, torture has been construed as a war crime and a crime against humanity by the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Court (ICC) in some cases (ICTY, 2001; ICC, 2011). These cases reinforce the international community's agreement that there is no excuse for torture and its belief that states have a duty prosecute perpetrators, even if they possess official status.

## **5. Role of Civil Society and Human Rights Institutions**

### **5.1 NGOs and Legal Aid Organizations**

The NGOs have had a major role in the fight against torture and reparation for its victims in Pakistan. The Justice Project Pakistan (JPP) and AGHS Legal Aid Cell are some organizations which offer legal representation, record cases of torture, and engage in strategic litigation to advance law reform (Justice Project Pakistan, 2021). They face political pushback, limited resources and the dangers that come with working in sometimes hostile territory, but these groups are filling the void left by the inaction of the state.

JPP in particular has been active in taking cases involving torture at an international level, for death row inmates and similarly vulnerable groups. By submitting shadow reports to the UN treaty bodies and documenting custodial abuse, they have generated more transparency and leveraged engagement from the government into accountability measures to fulfill its international obligations under the UN Convention Against Torture (UNCAT) (JPP, 2021).

### **5.2 Role of the National Commission for Human Rights (NCHR)**

The National Commission on Human Rights (NCHR) is a statutory body, which has been set up under the NCHR Act, 2012, to promote, protect and maintain human rights in Pakistan. The commission is established to investigate human rights abuses - including torture - and make recommendations to the government (NCHR Act, 2012).

The NCHR has been more assertive in recent years and has held public hearings, published inquiry reports and worked with civil society groups. The commission has however been undercut by a lack of financial independence, political meddling, and the tardiness of the appointments with respect to its key members (HRCP, 2023). Whipping its institutions into shape is essential to make it an effective guardian dog against torture and impunity.

### **5.3 Media Advocacy and Public Awareness**

Media plays a double role of unveiling the torture and influencing public opinion. Custodial violence has been exposed through investigative journalism on numerous occasions leading to judicial activism, social mobilization etc. Highly prominent were reports in the media regarding the custodial death of Salahuddin Ayubi in 2019, which attracted national attention and resulted in the registration of legal cases against accused policemen (Dawn, 2019).

In addition, media advocacy drives like Voice of America Uri, Dawn, geo News have raised the public's awareness about torture when combined with human rights organizations' awareness-raising campaigns. Social media sites have also been invaluable in mobilizing grassroots interest, capturing abuses as they happen, and putting pressure on governments (Amnesty International, 2022).

Despite positive developments in media activism, challenges persist in the form of the censorship, threats to journalists and the varying coverage. Lasting change will need





sustained coalitions between the media, civil society, and the judiciary to keep the momentum behind reforms.

## **6. Recommendations for Legal and Judicial Reform**

### **6.1 Legislative Amendments and Policy Suggestions**

For an effective approach to torture, Pakistan needs to change existing laws and enact a comprehensive law. Although the reform is a step forward, the final draft of the Torture and Custodial Death (Prevention and Punishment) Act, 2022 need to be improved. Legislative reforms should define torture in accordance with UNCAT, provide for the compensation of victims, and prohibit the use of evidence obtained under torture (United Nations, 1984). Pakistan should further adopt the recommendations set forth in the Istanbul Protocol as local domesticate in the conduct of torture accusations (OHCHR, 2004). Policy reform also needs to be directed towards terminating arbitrary detention policies by enhancing judicial supervision of arrest and detention.

### **6.2 Strengthening Judicial Training and Sensitization**

The judiciary is crucial for upholding freedom from torture but many judges have not been given the specialist training they need to recognize and deal with torture cases. Human rights education, in particular on anti-torture standards, should be incorporated into the curricula of judicial academies (ICJ, 2021). There should be awareness raising of the need to reject evidence obtained under torture and for strict accountability for violations. International models, such as India's D.K. Basu guidelines and European judicial education projects, demonstrate that increased judicial consciousness of these issues can have a dramatic impact on the number of cases of torture that are reported (Supreme Court of India, 1997; ECtHR, 1999).

### **6.3 Enhancing Witness Protection Mechanisms**

Victims and witnesses of torture continue to be afraid of retribution. Pakistan needs to establish a comprehensive witness protection system, inspired by best practices such as the U.S. Witness Security Program (O'Connor, 2015). Safety measures should provide anonymous services, physical protection, and safe shelter if needed. In the absence of child safety protection, people are discouraged to cooperate with the investigations and the perpetrators have a whopping field day (HRC, 2023). Strong witness protection provisions within anti-torture law would enhance reporting and successful prosecution rates.

### **6.4 Promoting Accountability in Law Enforcement Agencies**

Institutional reform of police institutions is essential to stopping torture. Independent monitors need to be authorized to conduct unbiased inquiries into torture allegations. The example of UK's Independent Office for Police Conduct (IOPC) shows how independent investigation bodies can improve police accountability (IOPC, 2022). Pakistan must form a civilian-led police accountability commission with authority to investigate, discipline and recommend criminal prosecution. Ongoing human rights audits, compulsory human rights training and public transparency reports can aid in fostering a culture of accountability across police and security bodies (Amnesty International, 2022).



## **7. Conclusion**

### **7.1 Summary of Findings**

This study emphasizes that, although Pakistan's legal framework incorporates important constitutional and statutory safeguards against torture, there are substantial shortcomings in terms of laws, implementation and judicial processes. Even with the passage of the Torture and Custodial Death (Prevention and Punishment) Act, 2022, the overall protection against torture in Pakistan is insufficient (National Assembly of Pakistan, 2022). A comparison with regional counterparts such as India and Bangladesh, as well as the best practices globally shows that the legal proscriptions alone are insufficient without the active protection mechanisms, judicial activism, independent monitoring, and the robust and militant civil society (Odhikar, 2021).

### **7.2 Reflecting on the Efficacy of the Legal System**

Torture in Pakistan is practiced by Pakistanis, despite a mere rhetoric commitment to fight it. Poor enforcement, failure to conduct independent investigations, lack of judicial sensitivity, and ineffective accountability mechanisms result in impunity being the norm (HRCP, 2023). Although the constitutional safeguards and new legal reforms create the legal-normative substrate for protection, the systemic entropy and policy impediments create conditions not conducive for the advancement of meaningful progress (ICJ, 2021). In the absence of both continued political will and judicial determination, the legal infrastructure in Pakistan is in danger of becoming more of a symbolic rather than transformational exercise.

### **7.3 The Way Forward for Pakistan**

Pakistani institutions must undergo sweeping reforms to comply with international human rights norms and meet its UNCAT obligations. Much more stringent legislation should be enacted so as to clearly and unequivocally criminalize torture, guarantee the provision of reparations for the victims, and establish effective programs for the protection of witnesses (United Nations, 1984). Judicial bodies need to be provided with particular training on human rights in order to more effectively identify and respond to cases of torture (ICJ, 2021). In addition, it is important to establish independent, adequately resourced oversight mechanisms to investigate complaints against law enforcement agencies (IOPC, 2022). Empowerment of the media, civil society, and heightened public awareness would also reinforce the process of dismantling a culture of impunity. The future of Pakistan requires a shared and total commitment from all state institutions and citizens to the values imbibed in our religion of mercy, justice and compassion, to the rule of law, to the vision of an un-discriminatory society.

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