

In the Shadow of Justice: Custodial Torture and Human Rights Violations in Pakistan

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Abstract

The article investigates the prevalent problem of custodial torture in Pakistan, which has its origin in the colonial period and is associated with the inconsistencies of domestic legislative frameworks and the inconsistency of the national laws with international human rights standards. The article focuses on the structures that sustain this procedure, for example, inefficient anti-torture legislation, inadequate police training, ineffective implementation process and no accountability mechanisms. The article discusses the impact of custodial torture by analyzing the relevant national and international legal standards and the cases of the past. The results are devastating for the individuals, the credibility of the judicial system and the general human rights environment. It implies psychological, physical, and social consequences, thereby depreciating the jurisprudence and confusing the public about the police and judicial systems. This article calls for the adoption of extensive legal reform, increased institutional oversight and strong international cooperation in the fight against custodial torture. It involves the formulation of strict anti-torture legislation which adheres to international standards as well as the training of law enforcement individuals to use methods that are compliant with human rights standards and setting up independent oversight mechanisms. The article underlines the necessity of Pakistan to intensify its engagement in human rights protection and the restoration of public faith in its judicial system in such a way that custodial torture gets eradicated permanently and ultimately human dignity and justice are upheld.

Keywords: Custodial Torture, Convention against Torture and other cruel, inhuman, or degrading treatment or punishment (CAT), International Covenant on Civil and Political Rights (ICCPR), Pakistan Penal Code (PPC), Code of Criminal Procedure (Cr.PC), Constitution of Pakistan 1973.

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1. Introduction

Custodial torture is one of the serious issues in Pakistan that may be attributed to the colonial background. Consequently, the fact that colonial British administration which ruled with the criminal justice system being the means of power, has built up the current patterns of policing in the country (Alam, 2018). Whereas Pakistan got its political independence in 1947, it still carries

out American colonial philosophy in the law enforcement and judiciary systems even today. As conflicts arise, such as the war on terror, they aggravate the problem more by means of increasing the application of torture to obtain information from those who know about the terrorists' plans (Badalič, 2019). On the other hand, there are lots of cases of human rights violations reported, for instance, when people are kept in custody while they are not charged, and they are exposed to different types of oppression (Nadeem, 2018). The absence of detailed regulatory frameworks with a clear ban on torture has propelled its continuity without meeting sanctions. Custodial torture remains a mental and physical torture of abuses in the field of human rights for numerous reasons. Not only does it directly contradict the idea of inherent dignity and intrinsic worth, but these are the two critical concepts we are taught in human rights. The action violates international laws and agreements such as the International Covenant against Torture. Custodial torture is a clear violation of law and order and weakens the civilian's belief in the law enforcement agencies and judiciary as well (Islam, 2022). The main goal of this article will be to provide an in-depth analysis of the start, pattern, and consequences of custodial torture in Pakistan. It aims to highlight contrasts between international norms of human rights and local legislation by studying laws or their absence. The article aims to enlighten and educate the public, human rights advocates, politicians, and the international community on the seriousness and frequency of custodial torture in Pakistan through extensive descriptions and analysis. The text evaluates current legal tools on national and worldwide scales to determine their efficacy in preventing and dealing with prison torture. The research will pinpoint loopholes and inconsistencies that enable such behaviours to continue. The paper will provide specific proposals for legislative reforms and policy adjustments based on the acquired insights. The measures will enhance legislative safeguards against torture, enhance the supervision and responsibility of law enforcement authorities, and guarantee adherence to global human rights norms. The paper contributes to the scholarly and policy conversation on human rights in Pakistan and pushes for real improvements to abolish custodial torture.

2. Legal Framework

2.1 Domestic Laws

Pakistan in its constitution as well as in its domestic laws has built mechanisms to safeguard people's rights, for instance by prohibiting torture and inhumane and degrading treatment. Under Article 14 (2) of the constitution of Pakistan, the state has also prohibited torture to get evidence against citizens, therefore, the state also acknowledges the need to prevent individuals from such actions (Constitution of Pakistan, 1973, art. 14(2)). However, the gap of having no universally accepted law which categorically assails torture methods has remained a significant issue in the country's legal system that has completely defeated the constitutional provisions and its assurances. This gap has driven a discrepancy line between the articles of the constitution and the way by which law enforcement officials perform the law. Both the Police Rules of 1934 (Police Rules, 1934) and the Police Order of 2002 (Police Order, 2002) have had a significant impact on the policing landscape in Pakistan. The former does the job of a traditional, clear-cut guideline of police conduct and administration, while the latter is an attempt to transform and reform the policing system to better address the needs of the public. These frameworks' effectiveness largely depends on how they are implemented and the extent to which they adapt to the current challenges and the community's expectations. Torture and Custodial Death (Prevention and Punishment) Act 2022 is a significant step in criminalizing acts of torture, custodial death, and custodial rape committed by public officials against persons held in custody (The Torture and Custodial Death (Prevention and Punishment) Act, 2022). It defines torture broadly to include acts resulting in severe physical or mental suffering for various purposes such as obtaining information or

confessions, intimidation, punishment, or for reasons based on discrimination. The Act makes statements extracted through torture inadmissible in proceedings, prescribes punishments for those involved in torture, and positions the Federal Investigative Agency under the National Commission for Human Rights supervision for investigating complaints. Notably, the offences under this Act are cognizable, non-compoundable, and non-bailable.

Torture and inhuman treatment are prohibited in the country through the articles related to the constitution and national laws. Moreover, according to article 14(2) of the Pakistan constitution which is that no torture should be used to obtain evidence for the state as it has recognised the value of protecting individuals from such practices. There is a legal lacuna in the country as there is not a sufficient law to punish acts of torture although the constitutional defence is there. It can also be said that the existing laws have lost their deterrent effect to address the issue. This has proved to be a serious problem. This rift induces the gap between constitutional behaviour patterns and actual policing strategies. Pakistan's police force is not stress-free but rather inadequate in terms of getting resources and instead, it leans heavily toward strict interrogation techniques. Due to the absence of severe norms and accountability institutions, inside the police means that there are no consequences for torturing anyone. In this situation, cases of torture are not effectively investigated and prosecuted because of the culture of unaccountability for the police. Progress has been made in the adoption of standard statutory prohibition of the acts of torture. There is a form of legal gap in custodial death and torture incidence. This is where legislation like the Torture and Custodial Death (Prevention and Punishment) Act 2022 came into force. There are still many deficiencies in this Act to address the issue. The Code of Criminal Procedure (Cr. PC) and the Pakistan Penal Code (PPC) have sections that indirectly deal with torture by protecting against wrongful arrest and incarceration. These guidelines do not fully meet the requirements of international human rights standards to properly tackle the issue of custodial torture.

2.2 International Laws

In 2010, Pakistan ratified the Convention against Torture (CAT), committing to enforce stringent measures to prohibit torture inside its territory and to ensure that torture is considered a criminal offence under Pakistani legislation. Nations are required by the Convention to establish regular inspection processes for detention institutions and provide avenues for appeal for victims of torture (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). Pakistan ratified the ICCPR in 2010, whereby the first of the principles of the ICCPR obliges the state to prevent torture and all other forms of cruel, inhuman, or degrading treatment and punishment (International Covenant on Civil and Political Rights, 1966, art. 7). It reiterates the importance of legally established processes which protect these rights. For sure Pakistan does declare the pledges and intends to integrate the international norms into the local legislation, however, the process is a bit uneven. There is no direct legislation against torture as well and the absence of the systems for the transparent holding of the perpetrators to account and the compensating of the victims exposes the inconsistency between international duties and domestic execution.

2.3 Analysis

The domestic laws of Pakistan are not in conformity with international laws preventing torture due to incredible variations. The basic issue is the corresponding legislative deficiency which fails to specify, criminalise and set punishments for torture, in accordance with international standards. The existence of a legal loophole impedes the fight against prison torture and the discovery of people responsible for such violations. Pakistan has progressed in ratifying international treaties, but the process of implementing these pledges into strong local legal

safeguards has been sluggish and insufficient. The absence of enforcement and monitoring tools, along with an inefficient and non-independent court system, exacerbates the problem (Mustafa, 2017). A comprehensive piece of law is vital in the sense that not only it would help in resolving this specific issue of torture in prisons in Pakistan but also it would upgrade the domestic legal system of Pakistan with international legal obligations. In this post legislation torture, the definition should be concise according to international norms, be able to bear responsibility and support the victims, appoint severe penalties for the culprits, and indicate comfortable or tolerable punishments. To ensure the effective prevention and punishment of torture in Pakistani prisons, it is crucial to strengthen the legal system, enhance the independence of the court, and improve the ability of law enforcement authorities to adhere to human rights norms. Pakistan must align its domestic laws with international obligations to fulfil its role of protecting the human rights of all individuals within its authority. Pakistan can only expect to eliminate the practice of jail torture under those circumstances.

3. Incidence and Case Studies

This part will consider some actual incidents that expose the psychological effects of custodial torture in Pakistan and manifest the roots of this systematic phenomenon. They illustrate, however, such complexities involved in the establishment of custodial torture mitigation measures and fundamentals of the system reforms.

Salahuddin Ayubi, a guy with a mental health disorder, was apprehended for committing theft at an ATM in Punjab, which was captured on video. His situation became well known after a video emerged online of him in police detention, clearly upset and being interrogated by cops. Ayubi was declared deceased while in captivity some days later. Originally, the police report said that his death was due to natural causes, but after public protest, an inquiry uncovered that he had experienced significant physical abuse while in custody. This case underscored the use of torture as well as the absence of accountability and openness in the inquiry into prison fatalities ("Salahuddin Ayubi Was Tortured Before Death, Forensic Report Confirms," 2019). Legal proceedings for the cops have been delayed, highlighting the systemic concerns of impunity and lack of accountability in the law enforcement system.

Umar Daraz, who was a teenager and belonged to a special group, got caught by the police in Karachi because of suspicion over his thieving. The circumstances of detention Daraz managed to stand drug injections and heavy beatings; injuries he bears to this day. This case points to a little-known aspect – the ill-treatment of at-risk or powerless inmates in custody and the challenge that fighting for the rights of vulnerable individuals faces. Contrary to suffering as proven by tortures, legal advancement has been challenged by long-lasting delays, and the Daraz has also faced poor treatment and offensive violence just for being courageous enough to speak out.

Aftab Ahmed's assassination at the hands of rangers outlines the harsh measures practised by paramilitaries in Pakistan. Attached to a political party MQM that found itself often at a hostile standoff with government authorities because of its immense criticism of the state, Ahmed's case brought to mankind the shocking reality of so-called torture cases. The grotesque and cruel torture experiences confirmed by post-mortem reports were publicized throughout the country and invoked societal-wide anger and demands for justice (Dawn, 2016). While the detention of some officers later displayed a segment of justice for what happened, systemic reforms to prevent such incidents in the future and the challenges in addressing custodial torture were demonstrated as the key obstacles. D.G. Rangers also admitted that the person was tortured during custody. The case of Ahmed clearly reveals, on the one hand, the abuses of power by paramilitary ones and, on the other hand, the need for stronger supervision and law actions for detainees.

Idrees Khattak's case serves truly as an example of how activists and political dissidents are being marked in Pakistan. Being close with Manzoor Pashteen, the leader of the Pashtun Tahafuz Movement (PTM), Khattak's reported physical abuse or torture by security forces reveals more than just an official reaction to political opposition and activism. The PTM has been harshly vocal for human rights violations against the Pashtuns, more notably in the conflict-affected regions of Pakistan, which has an outburst of tension with the state authorities (Amnesty International UK, 2023). Consequently, Khattak's torture may be considered as a part of an intimidation scheme that targets meaningful dissidents in an effort to stifle and suppress activism. The case of Rohail leaves no doubt regarding the vulnerable situation of human rights defenders in Pakistan, not to mention the need for measures to ensure that their work would not put the implementation of explicit legal safeguards against torture as a major factor in the continuity of custodial torture. Pakistan has flaws in its legal system regarding torture according to global norms. This loophole not only hinders the ability to prosecute wrongdoers but also implies that such behaviours are accepted. Another recurring thing in the cases of torture in custody is the non-responsibility of law enforcement authorities who have part or full in such misbehaviour (Mishra, 2021). Legal processes of high-profile cases that attract media attention and spark public protests usually occur very slowly and end up with very few convictions. Such an impunity atmosphere drives criminals and undermines society's public trust in the justice system. Those who are the most susceptible and vulnerable, i.e. ethnic minorities, the poor as well as the mentally ill, are the ones who [personally] suffer the most when custodial torture is carried out. These people have a higher probability of getting abused, limited access to the court service and are easy to convince and confiscate wrong confessions (Anand, 2020). That demonstrates how equality before the law remains in the domain of theories and is not observed due to economic discrepancies and prejudice in law enforcement and judicial institutions. The lack of independent supervision mechanisms for detention institutions and law enforcement organisations is a crucial systemic problem. Lack of routine inspections and impartial inquiries of claims of torture results in minimal openness and responsibility. The absence of supervision enables abusive behaviours to persist without restraint and hinders victims from seeking justice (Kershaw, 2022). The fate of Salahuddin Ayubi and Umar Izadar delineates the real extent of custodial torture in Pakistan. The instances depict the urgent call for change in the face of those issues systemic issues like legal shortcomings, the situation like impunity, targeting of vulnerable groups, and in the situation of lack of supervision. To implement these solutions, the entire enforcement mechanism has to be set in place by revision of laws, adopting institutional modification, and obligating all government levels to comply with human rights (Mirza, 2012). In its characteristic Pakistani way, by acting and taking the initiative, humanity's destruction in the form of custodial torture can be eradicated and the country can start fulfilling its responsibility toward the citizens' rights and human worth soon.

4. Impact on Society

The ramifications of custodial torture, both directly and broadly, are highly pervasive affecting individuals, families, and communities, eroding public trust in law enforcement and the legal systems. This part of the study encompasses the psychological, physical, and societal implications of jail torturing in Pakistan. The psychological effect which is caused by custodial torture on victims and their families is profound and long-lasting. The victims mostly have PTSD (post-traumatic stress disorder), anxiety, depression, and other mental health problems. Having impotence and humiliation during the torture can lead to a long-lasting mental wound that influences how a person communicates with others and takes part in social life. Family members of the victims often face post-traumatic stress because of the physical changes or the loss of their

loved ones. This can lead to a vicious circle of pain and desperation (Qayyum et al., 2023). In terms of psychological effects which are seen in victims, physical pain has incurred them and continuous suffering physical, social, or emotional for prison victims are the added outcomes. The injuries might be, for instance, from fractures, deformities, organ damage, or even neurological dysfunction. A delayed and inappropriate medical response to these injuries could further complicate their seriousness which can lead to problems of impairment or long-term disability (Haseeb et al., 2021). Torture has consequences that people might not be able to handle and from which they might not recover for a long time, which also makes their family destitute and unable to manage medical bills, and probably, the loss of income.

It is worth noting that the phenomenon of public distrust in law enforcement authorities because of the frequent use of torture in detention facilities is a very serious social problem which should get a proper solution. The credibility of the integrity of these institutions is immensely threatened whenever the public justifiably has the impression that those assigned to supervise the law of the land engage in brutal activities without any consequence to them. The idea that the judicial system is crippled with injustice and beyond the reach of the common man is affirmed by the episodes where law enforcement officers acted wrongly, but they are not held accountable. As a result, public trust is further undermined. This widespread lack of trust in the judicial system stems from the perception that either police and facilities of detention frequently carry out torture, or judicial processes do not efficiently resolve the issue. Judging by the situations when the accused go unpunished or the victims will find difficulties on the road to justice, it can be argued that the judicial system is unable to perform its function: to uphold the rights of the citizens (Shahnawaz and Qamar, 2021). One may as well abstain from seeking legal remedy because they might fear being punished or the chances of them a success reflect incrimination hence a trap of impunity continues.

Custodial torture can be reflected in diverse manifestations in society. It is the creator of the atmosphere of fear and suspicion as well as prompting citizens to doubt police friends because they may be treated badly. The very fear of the police makes it hard for community policing efforts to be successful and it also makes it difficult to prevent crime as people might fear reporting criminal activities or cooperating with the investigations. And one more factor is that it may be like we are less sensitive to violence and this way we may become a community which supports human rights violations (Gondal, 2017). This process aims to lessen the perception of law enforcement and justice towards society, which may grow hatred and revenge based on the community, which could therefore lead to feuds and cycles of violence. custodial torture witnessed in Pakistan among the complex social phenomena has an aggregated impact on people, families, and society. The results are quite destructive, for men and women who are both not only highly distressed mentally and physically but also for the public's eroded faith in the laws and courts. Resolving this predicament calls for legal and institutional transformations as well as change in the ways people look at human rights and justice (Bibi et al., 2023). The key to regaining public trust in the judiciary and preserving the rights of all the people lies in the development of an accountability culture which includes facilitation for victims and imposing responsibility on offenders.

5. Challenges in Addressing Custodial Torture

Dealing with custodial torture in Pakistan is challenging due to several legal and institutional obstacles, exacerbated by entrenched problems of impunity and a lack of accountability in law enforcement organisations. The inefficiency of the legal framework that deals with the problem of torture and brings it to international standards in a proper way is one of the obstacles. The

Constitution of Pakistan prohibits torture but, not having solid legal measures for successful tracking of culprits makes the task of ending the torture very difficult. In Pakistan, the court system faces the problem of providing supervision of law enforcement actions. Inadequate resources, backlog of cases, and procedural delays frequently cause prolonged incarceration of individuals at risk of torture. Because the judiciary does not ensure prompt and impartial trials the culture is created where custodial torture is used instead of proper investigation, based on the wrong thinking that it is the efficient approach to get confessions (Ahmed, 2002). Inadequate training of law enforcement personnel in Pakistan on human rights and non-violent interrogation methods is a general concern. As a result, the lack of resources and the time pressure faced by law enforcement accuse them of using torture as a means of speedily obtaining evidence. The deficiency of inclusion of police ethics as well as morals can be a reason that sustains a perception where prison torture is looked at as an option rather than a violation of the rules and regulations.

Dealing with custodial torture is greatly hindered by a widespread culture of impunity. Law enforcement officers frequently believe they will not be held accountable for their conduct, a notion that regrettably is often justified. Instances of custodial torture are often unreported or not thoroughly investigated, and when they are exposed, wrongdoers are seldom held responsible (Lassi, 2022). The absence of accountability is due to political influence, corruption, and a court system that has difficulty enforcing the law against powerful entities. Those who have experienced the hands of detention torturing and relatives of the victims have found the challenge of reporting the abuse and pursuing justice to be a daunting endeavour. A very large percentage of the victims choose not to report police abuse; they are discouraged by possible reprisals from the police, mistrust of the system and negative societal attitudes. Investigations are regularly thwarted by the police denying cooperation, destruction or concealment of evidence, and intimidation of witnesses, even if they inform the crime (Bhutta and Akbar, 2012). Adding the lack of a self-directed mechanism to investigate torture complaints makes these issues more critical because it prevents the acquisition of evidence and the prosecution of perpetrators. The struggle against custodial torture and the adoption of reforms is usually resisted by law enforcement agencies or other authorities. Institutions might resist a change if they believe it will limit their power or affect their ability to operate. Opposition can be expressed by lobbying against the law reforms, neglecting torture prevention regulations, and ignoring cooperation with monitoring bodies. The task to do it will be completed via the implementation of the legal reforms and changing the attitudes towards human rights and accountability. The problem of custodial torture in Pakistan needs a joint approach of the government, judiciary, law enforcement agencies, and civil society because the matter is quite complex. Legal problems and institutional matters as well as ending impunity are a must in the process of eliminating custodial torture. This signifies the creation of strict anti-torture legislation, improvement of court supervision, raising the level of law enforcement training and equipment, and establishing reliable mechanisms of accountability and inquiry. Pakistan can only eliminate prison torture and regain people's confidence in the judiciary by taking relevant measures and putting human rights first place.

6. Recommendations

Based on the crucial legal reforms, which are a prerequisite to be carried out, the idea of safety measures that need to be put in place already now comes up. The first step of Pakistan to fight against torture is that they should adopt and implement comprehensive anti-torture laws that are based on international norms such as the United Nations Convention against Torture (CAT). Such a law should be detailed in defining and identifying torture in all its aspects, stipulating very heavy penalties for convicted offenders and an investigating authority that ensures a strict screening

mechanism (Akbar and Bhutta, 2012). Moreover, there must be a guarantee for victims and witnesses against retaliation. The legal framework has to be amended with changes to criminal procedure regulations to expedite court supervision of detention and provide the detainees with quick access to legal aid after their arrest. One of the legal aspects is the adoption of rules which forbid the use of evidence obtained through torture and the exclusion of instances when criminals can enjoy the advantages of torture. Institutional changes are what is needed for the prevention of custodial torture. Developing a training program for law enforcement officers on human rights and the proper method of questioning is important. Training should consist of non-coercive methods of investigation and confession should be put first over evidence obtained by force. Implementation of autonomous supervision systems is one more vital step. The bodies should be given the power to investigate the law-enforcement malpractices and conduct surprise inspections of the prison institutions (Heera et al., 2021). Agencies of law and order must be compelled to submit annual reports to the public which describe cases of complaints, investigation and measures of discipline taken against individuals accused of torture to bring more openness and accountability. The adoption of the zero-tolerance policy on torture in these institutions will be a clear indication that such actions are not justifiable.

International organisations and foreign governments may significantly help in addressing custodial torture in Pakistan. Receiving technical support and training from global human rights organisations can enhance local capabilities in preventing torture. Pakistan should participate in peer learning with nations that have effectively tackled custodial torture, in order to incorporate and adapt best practices to the local situation. The government, through meeting international reporting requirements as well as joining international human rights forums like the UN Special Rapporteur on Torture will be able to show the world its commitment to transparency and betterment. There is a need for Pakistan to avail the available international platforms, for instance, the Universal Periodic Review (UPR) and develop and achieve specific targets for the complete elimination of torture in the country through the supportive comments and assistance of the international community (Gaer, 2020). The war against custodial torture in Pakistan demands an all-encompassing strategy based on stringent judicial reforms coupled with significant institutional transformation, as well as effective international cooperation. Pakistan can make significant strides in eliminating custodial torture with the help of the adoption of special anti-torture laws, hiking the level of supervision and accountability, and working together with the international community. These actions are for the protection of people's rights and dignity with the result that Pakistan's image would be much better in the world's community. The implementation of these changes together with a solid determination from all involved, is essential for the judicial system to be fair, open, and observant of human rights.

7. Conclusion

The problem of custodial torture in Pakistan is a large concern that not only destroys people's trust in the judicial system but also leads to massive violations of human dignity and rights in the country. The in-depth investigation has exposed the harsh facts of the system that maintains the abuses and has offered a ray of hope through practical solutions and international cooperation to reverse the practice. The human rights declarations of custodial torture state that every person has dignity and rights that must never be violated. Torture in captivity breaks down fundamental standards and brings down public confidence in the ability of care institutions to provide security. This creates an air of fear and suppression; hence justice is nothing but a dream. Calling for far-reaching changes is not a mere process necessity but a moral imperative. The law should be transparent in its definition of torture and consider it a crime where people who are responsible are

punishable under the due process of law. It is important to instil the values of human rights, ethical conduct, and non-coercive interrogation methods through training programs for a new group of officers who believe in upholding human dignity as their major responsibility. It is important to provide independent monitoring systems as a measure of transparency and accountability. These courts are endowed with the authority to investigate torture complaints and to prosecute offenders. The committees will therefore act as custodians of public trust, rebuilding the respect for the law as the basis of the legal system comes about. Partnering among nations is the very key here. Through the alliance with international human rights organizations and international legal frameworks, Pakistan can excel in its fight against custodial torture since it will be aided by the greatest expertise, resources, and support. Addressing custodial torture is not a sole legal problem; it is an implication of the ideals and objectives of Pakistan as a state that believes in principles of fairness and justice. Finally, the fight against custodial torture in Pakistan is a very critical problem right now and it is necessary to address this problem to protect human rights in the country. Determined, and collaborative efforts are very critical to abolishing custodial torture in the future.

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