



# End Impunity for Torture

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Pakistan

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## Prohibition of Torture

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The right to be free from torture and other forms of cruel, inhuman or degrading treatment/punishment (CIDT) is absolute in nature and must be guaranteed by the State to every individual in all circumstances, with no exceptions including during war or threat of war, national emergency, or any other such context.

Despite being a party to various international treaties prohibiting torture, and the presence of a limited Constitutional protection from the use of torture; torture perpetrated by various law enforcement agencies remains pervasive in the country with no avenue for accountability of perpetrators and redress for complainants.

Although not limited to these instances, custodial torture carried out by civilian police, usually during arrests, various stages of interrogation and physical remand, amounts to one of the most pervasive forms of torture in Pakistan. The victims include men, women as well as children. Torture is also rampant in prisons, carried out by prison officials, and during detentions by civilian and security sector personnel. In addition to torture, Pakistan has consistent problems with enforced disappearances, extrajudicial killings, and poor prison conditions. Pakistan is yet to create effective laws to prohibit, prevent and punish acts of torture.

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) defines torture as:

“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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## Domestic legal framework

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There is no domestic legislation in Pakistan expressly criminalizing torture and other CIDT, as opposed to some other countries in the region where torture has been criminalized either through specific Acts such as in Bangladesh, Philippines and Sri Lanka or through amendments in the domestic criminal code, such as in Nepal. While a standalone law itself does not solve the systemic issue of torture, it is a necessary first step for any semblance of accountability.

The Constitution of Pakistan envisages the protection of several necessary fundamental rights, which indirectly protect a person from the use of torture, including the right to liberty, safeguard

from unlawful arrest or detention, the right to fair trial and the prohibition of slavery. The only direct reference to the prohibition of torture is found within Article 14 (2) of the Constitution, the scope of which, however, is very narrow as it only outlaws torture inflicted for the purpose of extracting evidence. At present, any complaints of torture may fall under various general provisions of the Pakistan Penal Code 1860 (relating to hurt, use of force, abuse of power by a public servant), the Police Order of 2002 and the Qanoon-E-Shahadat 1984 (law of evidence and provisions safeguarding against confessions induced by force). However, these provisions have failed to enable any accountability for instances of torture and do not capture the definition or reality of torture; reporting by victims / complainants, and subsequent initiation of prosecution of torture, by police itself as a department, as well as courts and other agents, is extremely rare.

Last year, the Torture and Custodial Death (Prevention and Punishment) Act 2019, was submitted to the Senate Secretariat. This Bill, if passed, would allow domestic law to address acts of torture, custodial death and custodial sexual violence. As of February 2020, the law has been reviewed by the Senate but no further progress has been made towards its enactment. Previously, in 2015, the Senate of Pakistan passed the 'Torture, Custodial Death and Custodial Rape (Prevention and Punishment)' Bill, 2015 but that Bill could not be passed by the National Assembly within the stipulated time frame of 90 days. Thereafter, a resolution of the Senate referred the Bill to be passed by the joint session of the Parliament but the then National Assembly failed to pass it within its tenure and the pending Bill lapsed upon dissolution of the Assembly.

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## Challenges for Complainants

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In the absence of a specific legislation outlawing torture and an independent oversight and complaint mechanism where complaints against state officials can be brought for impartial investigation, and effective protection services available for complainants and witnesses, it is impossible for survivors, complainants and witnesses to come forward against members of a powerful state institution.

To take the police as an example, at present police departments operate with little to no oversight by any independent institution. The police remain one of the main perpetrators of custodial torture during arrest, detention and remand, and despite prosecutors and courts providing theoretical oversight, in practice there is none. There is a general state of impunity on these issues, which perpetuates an institutional culture, which sees torture as part of the ordinary course of events. This culture has seeped into all actors of the criminal justice system. No agency, including the prosecution service or courts themselves seek to assess if any torture was committed; even if this issue is raised in court (extremely rare for fear of reprisals and in the absence of legal counsel), the courts are unlikely to order serious measures (in the absence of any political pressure to do so such as in high profile or high media value case). Similarly, although prosecutors can contest physical remand, often they do not do so, nor contend with the issue of police torture.

Any complaints against torture are required to be filed with the police, which means that complaints are in essence to be registered by those against whom they are brought. This makes the present complaint procedure completely inaccessible. The police often do not register complaints brought against their colleagues and superiors in many cases and complainants fear harassment and reprisals. For example, in February 2019, the police refused to let a political leader's (who was a victim of police brutality and had died as a result of it) family file a complaint against the concerned officials. It was only after widespread protests that forced the human rights committee of the Senate to order the registration of a FIR against him.

Moreover, in cases where the victims and their families muster the courage to file a complaint against the police, little or no serious action is taken against them. In August 2019, a video of Amjad Zulfiqar became viral, who was detained at a private torture cell in Lahore and died due to severe beating by the police. Three police officials involved were suspended, with no further action taken against them. The police officers on record condemned the practice; however, most of them admitted that the use of severe torture for 'investigation purposes' was a norm as well as a necessity for them, showing how these practices are deeply ingrained in domestic policing. A few days after this incident, a woman was tortured in a private cell in Vehari. She was dropped outside her house after her condition deteriorated due to the cruel treatment. Similarly, Amir Masih, who belonged from the Christian community was taken by the police to an undisclosed location and tortured to obtain a confession. Five days later, he was handed over to his family in a critical condition, after which, he died. The Investigation Officer was arrested; the SHO was suspended, while the sub-inspector had escaped.

In addition, the case of Salahuddin Ayubi - a person suffering from a mental health condition who was arrested, tortured and reported dead two days after his arrest highlight various challenges, including those of documenting torture. The police informed the family that death had occurred due to sudden cardiac arrest but the cause of death on the death certificate was left blank and Ayubi's father alleged that the police got a hasty postmortem conducted at night, without informing the family and that he had observed marks of extreme torture when he took his son's body back to his village. According to him, many of the injuries that were visible on the body were also not recorded in the autopsy report. Upon hearing the case, the magistrate allowed the petition for further postmortem after exhumation of the body and directed the Punjab health secretary to constitute a medical board as per rules and regulations. The subsequent and full postmortem report confirmed that his corpse displayed signs of extensive torture. The provincial authorities stated that all three officers involved were suspended. A criminal case commenced against the accused for a month after immense public outrage, however, the family forgave the perpetrators "in the name of God".

These are only some of the cases that illustrate the systemic nature of torture. Despite many media outlets and civil society organizations reporting prevalence of such practices, these practices continue to exist and there is a lack of political and institutional will to hold perpetrators accountable and provide justice to complainants.

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## Recommendations

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- Pakistan should introduce comprehensive domestic legislation giving effect to rights enshrined under the UNCAT and other relevant international treaties which have been ratified by Pakistan relevant to prohibition of torture and other CIDT and rehabilitation of survivors.
- Pakistan should become a party to the International Convention for the Protection of All Persons from Enforced Disappearances (ICERD) and ensure domestic accountability for perpetrators of enforced disappearance and access to justice for survivors, victims and complainants on their behalf.
- State officials involved in torture, other forms of cruel, inhuman and degrading treatment and custodial deaths should be held accountable by an independent, transparent and efficient complaint mechanism that is accessible to survivors, families of victims and witnesses of torture and CIDT. Independent district and provincial monitoring bodies should be established that are empowered and resourced to promptly investigate, discipline and prosecute these officials against whom torture and CIDT complaints have been made.
- There needs to be accessible mechanisms for provision of adequate compensation for survivors and families of victims of torture as well as rehabilitation and support services.
- Effective protection mechanisms should be introduced and strengthened to encourage survivors, families of victims and witnesses to come forward and file their complaints, without fear of reprisals and intimidation from law enforcement agencies.
- Effective protection should be provided to complainant's lawyers, human rights defenders, activists, and academics seeking accountability for torture and other forms of cruel, inhuman and degrading treatment. Protection should also be afforded to medical practitioners documenting torture and CIDT.
- The current laws governing criminal law procedures should be reviewed and reformed with a view to ensure appropriate safeguards against torture and other forms of cruel, inhuman or degrading treatment at various stages of the investigations.
- Domestic legislation, especially, national security laws, granting widespread powers to security sector and law enforcement agencies need to be reviewed and reformed with a view to ensure compliance with the absolute prohibition of torture and CIDT.
- Pakistan should invest in adequate training and capacity-building of relevant stakeholders, enabling awareness on torture and other forms of CIDT and reform in practice. Police, prison rules and manuals should incorporate acceptable interrogation techniques and prohibit police

from using illegal detention, torture, or other coercive measures to obtain evidence and ensure that prisons and places of detention comply with international standards. Moreover, Police in Pakistan remains under-resourced and ill-equipped to deal with essential policing functions; lack of scientific tools and equipment, along with the external pressures of finding evidence or recovering property also contributes to police resorting to torture and CITD. Greater resource allocation coupled with training on use of scientific tools and investigation techniques needs to be promoted.

- Trainings should also be conducted of prosecutors, medical practitioners, lawyers as well as members of the judiciary, on awareness of various forms of torture and other forms of cruel, inhuman and degrading treatment. Medical practitioners in particular need to be trained to identify and document torture in light of Istanbul Protocols and other relevant international guidelines and best practices.