**[Grave violation](https://www.dawn.com/news/1780260/grave-violation)**

[Sana Farrukh](https://www.dawn.com/authors/8646/sana-farrukh) Published October 10, 2023 Updated 2 days ago

OCT 10 marks the World Day Against the Death Penalty. This year, activists will reflect on the relationship between the use of torture and capital punishment. There are over 3,800 people languishing in death-row cells across Pakistan, many of them victims of torture. Outside the prison walls, the average Pakistani hopes never to cross paths with law enforcement. In this country, even ostensibly well-meaning police officers use torture, cruel and inhuman or degrading treatment to track down perpetrators.

While the death penalty landscape is diverse and touches many criminal justice issues, torture remains at the heart of it. By curbing this endemic practice, we can protect both the rights of the accused, who may be an innocent bystander confessing under duress, and the rights of victims and their families to seek accountability, who may lose the opportunity to hold the right person to task for their losses.

The research on torture and interrogations dates back at the very least to the 1600s, with repeated findings pointing out its inefficacy. Information received through torture is often incorrect. The subject is more likely to assist in an investigation if the interrogation is rapport-based. In a high-pressure, high-stakes situation, torturing a detainee is the poor choice — an abject failure to understand neuroscience, human psychology, and criminal justice. If by a mere coincidence, a confession based on torture happened to be true, it would be inadmissible in court, leading to prosecutorial failure.

The fact that torture does not work, while essential to note, should be our secondary concern. First and foremost, torture is a serious human rights violation — the Constitution of Pakistan, Islamic principles, and international law all declare an absolute prohibition on the practice.

Torture is at the heart of the death penalty landscape.

In November 2022, after years of discourse, the tabling and lapsing of numerous bills on the issue, and the torture and custodial deaths of countless Pakistanis, the Torture and Custodial Death (Prevention and Punishment) Act was passed. Although Pakistan previously had several safeguards against torture scattered across our laws, the act is the first comprehensive enactment on the subject and brings the country more in line with its obligations under international law. This move demonstrates Pakistan’s appreciation of the Concluding Observations of the UN Committee Against Torture and the UN Human Rights Committee, which in 2017 had urged Pakistan to improve its compliance with the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT).

The act gives the National Commission for Human Rights a supervisory mandate over investigations into torture. The NCHR has been instrumental in documenting the practice, most recently in its assistance to the Islamabad High Court in the case of Imtiaz Bibi. Of the prisoners interviewed in Rawalpindi jail, 74 per cent reported torture ranging from beatings with a rubber tyre to solitary confinement. While the presence of more data on torture is essential to curb this practice, to perform its mandate under the act, the NCHR’s role must be clearly delineated, along with that of the Federal Investigation Agency.

Although the passage of the act is a historic occasion for Pakistanis, it is the subordinate legislation, that is, the rules and regulations passed under an act, which enable its implementation. Now that the debate and scrutiny over various points of law are behind us, and consensus on the necessity of this law is present and palpable, what remains is for the relevant ministries to sit together and come up with a roadmap for its enforcement.

Section 20 of the act empowers the division concerned to make rules for the purpose of carrying out the objects and purposes of the act. For this act, the division concerned is the Interior Division under the Ministry of Interior which presented the bill in the Lower House. When subordinate legislation is framed by the relevant division, it is drafted and vetted by the Law Division under the Rules of Business, 1973. The Interior Division, the Human Rights Division and the Law and Justice Division must work together on the draft rules and regulations.

While there are no perfect laws or tidy solutions for issues surrounding torture and the death penalty, despite all its obstacles, this country has taken steps in the right direction. With continued momentum to push the rules and regulations through, we can start to reap the benefits of the tremendous work that has already been done. With Pakistan’s upcoming reviews under the ICCPR in 2024 and CAT in 2025, it is the implementation of the Torture and Custodial Death (Prevention and Punishment) Act that will be centre stage.

*The writer is a lawyer who leads the policy and advocacy team at Justice Project Pakista*n.

*Published in Dawn, October 10th, 2023*