**Getting away with torture**

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There is an absence of law that explicitly criminalizes and prevents police brutality and custodial torture with serious penal consequences, in a country where the police are one of the most widely feared government institution.

Women, children, minorities, economically weaker sections and other vulnerable and marginalized groups are most affected by police brutality and custodial torture. They are also the ones who lack the means to take action against the illegal and unlawful actions of the police force.

The fact that there is no explicit law that can be used as a shield to abstain the police force from using excessive force, brutality and torture adds fuel to the already burning fire. This restricts most people from taking action against the police and the police force continues to enjoy impunity for their abusive conduct.

This is exactly why cases of police brutality remain exceedingly under-reported. The state makes no effort to collect annual data on cases of police brutality, abuse and torture. In 2008, the Madadgaar Helpline released its own report and revealed that in a matter of six months, 743 cases of police torture had been reported, predominantly from Punjab (406) with Sindh being the second worse (304). Nevertheless, there were no reforms. Additionally, a report by the Justice Project Pakistan in 2014 revealed that physicians found conclusive signs of physical abuse in 1,424 of the 1,867 reported cases of alleged police abuse in Faisalabad. The data represents only those cases where victims were willing to come forward and report the abuse. This is just the tip of the iceberg.

A bill that plans to criminalize torture was first tabled in parliament in 2014. Years later, the Senate unanimously passed the amended ‘Torture and Custodial Death (Prevention and Punishment) Bill 2021’ (Torture Prevention Bill) on July 12, 2021.The bill was presented by PPP Senator Sherry Rehman in the Senate. Having being passed by the Senate, the bill was laid before the National Assembly of Pakistan on September 29, 2021 where it is awaiting review and consideration. Efforts must be made to table the much-needed bill on the National Assembly legislative business agenda.

In the absence of explicit law, certain provisions in the prevailing laws of Pakistan can be utilized to make a complaint against police abuse. First and foremost, Article 14 (2) of the constitution of Pakistan states that: “No person shall be subjected to torture for the purpose of extracting evidence.”

Moreover, section 156 (d) of the Police Order 2002 penalizes custodial torture thus: “Whoever, being a police officer – (d) inflicts torture or violence to any person in his custody; shall, for every such offence, on conviction, be punished with imprisonment for a term, which may extend to five years and with fine.”

Additionally, the Pakistan Penal Code 1860 (PPC) prohibits a public servant from disobeying the law with intent to cause injury to any person under Section 166. It stipulates a penalty of one year imprisonment or fine or both.

Other sections in the PPC include Section 355 titled: “Assault or criminal force with intent to dishonor person, otherwise than on grave provocation”, which is punishable with imprisonment for a term which may extend to two years, or with fine, or with both. Moreover, Section 337-K, titled: ‘Causing hurt to extort confession, or to compel restoration of property’ can also be utilized to report police abuse in limited circumstances.

Further, Section 50 of the Code of Criminal Procedure 1898 states: “The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.”

As per the Qanun-e-Shahadat Order 1984, a confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the court to have been caused by any inducement, threat or promise (Section 37). Moreover, a confession made by any person whilst s/he is in the custody of a police officer, unless it is made in the immediate presence of a magistrate will not be proved against him/her (Section 39).

It is of utmost importance to highlight that Pakistan became a signatory to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in April 2008 and ratified it in June 2010.

However, there is an absence of the definition of ‘torture’ by the law enforcement. The Torture Prevention Bill fills this gap by defining ‘torture’ under Section 3, the definition is in line with Article 1(1) of the UNCAT and includes physical and psychological torture, discrimination of any kind as well as intimidating, coercing and harassing the victim.

Moreover, under Section 4(2), any public servant, who intentionally or negatively fails to prevent the commission of torture will also be liable to punishment. The bill also prohibits and prescribes punishments (Section 7) for custodial death (Section 5) and custodial rape (Section 6).

Importantly, under Section 10, the bill makes the offence of torture cognizable, non-compoundable and non-bailable. This coupled with Section 23 titled ‘Special Protection’, which allows an applicant to file a petition to the sessions court for a protection order, will prevent out-of-court settlement.

The process of filing of complaints is given under Section 11. The sessions court has been given exclusive jurisdiction to try the offences, as per Section 17. Section 19 provides guidelines on timelines for investigation, trial and appeal.

A report by the Human Rights Watch titled: ‘This Crooked System: Police Abuse and Reform in Pakistan’ revealed that: “…the police are one of the most widely feared, complained against, and least trusted government institutions in Pakistan, lacking a clear system of accountability and plagued by corruption at the highest levels.”

The enactment of the Torture Prevention Bill would introduce accountability of police officers as it would for the first time explicitly outlaw torture by the police in Pakistan. There is no doubt that this will improve the public perception of the police force.

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