**The state and the disappeared**

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Enforced disappearances, also known as involuntary disappearances, are a persistent problem across Pakistan. It has been revealed by the Commission of Inquiry on Enforced Disappearances (COIED) that it has received more than 8,463 complaints of enforced disappearances since its establishment in March 2011. According to the commission's monthly report, the commission received 76 new complaints of missing persons in the month of March 2022.

However, since most complaints of enforced disappearances are not reported, it can be inferred that the actual number of missing persons is much higher.

Victims of enforced disappearance disappear into thin air, without a trace, from their loved ones and their community. While sometimes the forceful kidnappings are captured by surveillance cameras, in other cases the complainants are left with no explanation for the missing state of their loved ones. Complainants run from pillar to post to discover their loved ones but often fail to find them.

The Convention for the Protection of all Persons from Enforced Disappearance (ICAED) is the first universally legally binding human rights instrument concerning enforced disappearance. It was adopted in 2006 and opened for signatures in 2007 in Paris, where 57 countries signed it. The convention came into force on December 23, 2010. State parties to the ICAED are obliged to prevent, prohibit and criminalize enforced disappearance.

Article 2 of the ICAED defines enforced disappearances as: “…the arrest, detention, abduction or any other form of deprivation of liberty by agents of the state or by persons or groups of persons acting with the authorization, support or acquiescence of the state, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”

The ICAED obliges the state parties to investigate acts of enforced disappearance and bring those responsible to justice (Article 3) and take necessary measures to ensure that enforced disappearance constitutes an offence under their criminal law (Article 4).

It is important to note that Pakistan is not a signatory to the ICAED. To add fuel to the already burning fire, the country does not have an explicit law criminalizing enforced disappearances. A bill titled ‘Criminal Law (Amendment) Bill 2021’, was passed by the National Assembly of Pakistan on 8, November 2021. However, in a strange twist of events, it was revealed in June 2022 that the bill had disappeared when it reached the Senate Secretariat.

The Criminal Law (Amendment) Bill 2021 is aimed at making amendments to the Pakistan Penal Code (PPC) and Code of Criminal Procedure (CrPC). The proposed law provides for the insertion of a new section 52B in the PPC for defining an ‘enforced disappearance’. The proposed definition mirrors the definition of ‘enforced disappearance’ stated in Article 2 of the ICAED.

Further, the proposed law provides for the insertion of section 512 titled ‘forcible or involuntary disappearance’ and Section 513 ‘punishment for forcible or involuntary disappearance’ to the PPC. Section 513 states that the punishment may include “…imprisonment of either description for a term which may extend to ten years and shall also be liable to a fine.”

The bill also proposes an amendment to Schedule II of the Code of Criminal Procedure 1898 and makes the offence of ‘forcible or involuntary disappearance’ a non-bailable and non-compoundable offence.

In Mahera Sajid v Station House Officer, Police Station Shalimar and others (2018 CLC 1858), Justice Athar Minallah of the Islamabad High Court declared and directed at paragraph 31(i) of the judgment that enforced disappearances is: “one of the most cruel and inhuman acts and categorized as a crime against humanity. A complaint which alleges or discloses characteristics in the nature of 'enforced disappearance' shall be treated by the respondents as a heinous act and thus dealt with accordingly”. Further, the court added that: “It is the duty and obligation of the state to take effective and prompt action when 'enforced disappearance' has been alleged.”

Similarly, in Asma Nadeem v Federation of Pakistan (PLD 2022 Sindh 264), Justice Mohammad Karim Khan Agha of the Sindh High Court stated in paragraph 9 of the order that: “It is the duty of the state to protect its citizens and we firmly believe that the state has the power and ability to prevent such practices as missing persons/enforced disappearances and to pass appropriate legislation to this effect.”

The practice of enforced disappearances is a heinous crime; it results in the violation of the human rights of not only the victim/detained person but also the families of the disappeared person. Families of the victims suffer in the aftermath of the act and face social, economic, and psychological disadvantages within their communities.

Pakistan’s failure to hold the perpetrators of enforced disappearances accountable perpetuates the culture of impunity in the country. Therefore, it is of utmost importance that the parliament of Pakistan enacts the Criminal Law (Amendment) Bill 2021 to make enforced disappearances a punishable offence.

Pakistan must affirm its commitment to end enforced disappearances by ratifying the ICAED. Further, all disappeared persons must be immediately released. Missing persons who have been detained as a result of allegedly committing recognizable crimes must be brought before a court as all citizens are granted the right to a fair trial (Article 10-A of the constitution of Pakistan). Lastly, the government of Pakistan must investigate and prosecute those who are responsible for carrying out enforced disappearances.

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