

# Implication Of UNCAT On Pakistani Law: Critical Analysis

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## **Abstract**

It is a well-known fact that police and other uniformed officials use torture to obtain confessions, with carte blanche granted by gaps in existing regulations due to the lack of a full statute. Following the establishment of the United Nations, international law advanced by leaps and bounds as many sessions conducted conventions were nourished. Similarly, United Nations Convention against Torture was incorporated into international law. Following the Convention, the prevalent practice of torture began to jolt; as of now, the orchestration of custodial torture not only undermines the United Nations Convention against Torture, to which Pakistan is a signatory, but also Article 3 of the Geneva Convention 1949, which also intended to limit torture. The purpose of this research is how to make present laws more effective especially police related laws to hinder custodial torture and find out the deficiencies in present laws. Discussion on the underlying scenario will lead to suggestions for effective framework to clip the tentacles that have been hurting in this realm in line with UNCAT. Every legislations is best when it is successfully executed, and the present torture related provisions and proposed Bill require effective realization in order to be fully implemented; so, this research also deals the effective implementation of the present provision related to torture in Pakistani law tame torture. The research becomes immensely significant when fundamental rights are blatantly violated that malign the government internally and treaty to which the country is party is not complied by commission of torture that malign the country externally and the research aim to end this prevalent horror story for the country. Similarly, these violations are dangerous for the health and life of not only citizens but also for nation at large. It also affects

the capacity of nation to protect citizen's basic rights. Much-needed law and regulation is call of hour that will slim stretched space for injustice in form of torture by police.

**Keywords:** Torture, Article 3 of Geneva Convention 1949, Article 13 of constitution of Pakistan, Draft Bill on Torture, Pakistan Penal Code 1860 in its section 337- k.

### **INTRODUCTION:**

After dawn of United Nations, International law progressed by leaps and bounds when different meetings took place and conventions were nurtured. Similarly, one of conventions, called United Nations Convention against Torture (UNCAT), was made fold of International legislation. After the said Convention, the prevalent practice of torture started to jolts as of now the orchestration of custodial torture not only undermines United Nation Convention against Torture that Pakistan is party to, as well as Article 3 of Geneva Convention 1949 which also meant to circumscribe torture. Being a non-derogable right in peace and war alike, torture is criminalized by Geneva conventions as its violation is considered war-crime. In similar fashion, torture has been employed to extract confession or any other relevant or useful information which is curtailed by Fourth Geneva Convention in its Article 31 as protected individuals must not be subjected to force or coercion in order to get information from them (War, 2012). It is pertinent to mention here that the Bill of Rights that laid foundation stone for quest of attainment of human rights (including UNCAT) and set milestone for unanimous declaration of the same among leaders of international community. To begin with Universal declaration of human right, Article 5 of Universal declaration of human right(UDHR)raised voice against torture (Hannum, 1998). Subsequently, Article 7 of the International Covenant on Civil and Political Rights (ICCPR) emphasized on clipping wings of this endemic as it enunciated clearly: 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. (Hannum, 1998) Going step further, Article 4 Convention against torture (UNCAT) bounds the signatories to criminalize the act of torture in domestic legislation (Burgers, 1988). Pakistan is among the countries which became party to the above-mentioned Convention in early years of its inception; therefore, Pakistan is duty bound to take all possible and meaningful steps to get better off torture. However, the situation in Pakistan has been Murky and topsy-turvy asit is far behind in fulfilling this paramount obligation. Pakistan, the Land of pure, entailed torture in its legal framework which seems inadequate and failed to tighten the noose of the custodial torture by Police. Its legal domain contains obvious legal gaps that encourage the rogue practice of torture by key institutions.

The article published in the Daily Dawn, dated 5th September, 2018 titled "Torture bill" that a comprehensive torture enactment is dire need of an hour that can only bid farewell the endemic of torture. The article shed light on the fiasco of government to frame a much-needed torture law in decades. Discussing a certain cases of police torture, a case for bill is made without discussing comprehensively Pakistani laws and underlying lacunas that tills a fertile land for breeding opportunities to police have blanket power to which no accountability lies. It discusses

the lacunas after analyzing the prevalent legal framework pertaining to torture in Pakistan. The Draft Bill which was the first of its kind dealing torture is discussed in detail critically that ends up in suggestive measures becoming an effective horror story of torture. Written by Najm-ul-Sahr-Ata-ullah, a report titled 'Police abuse and reform in Pakistan' takes a cursory look of torture with reference to certain case studies (Najm-ul-Sahr-Ata-Ullah, 2016). This study details police torture in detention, extrajudicial killings, and other such like major human rights violations in Pakistan. It describes and divulges into the challenges that victims of crime (custodial torture) and police brutality experience in getting justice, including police reluctance to record, bribe requests, and biased and partial investigations. The system is skewed against them; the deprived and other susceptible or disadvantaged strata of people usually suffer the greatest challenges in getting evenhandedness in respect of abuses committed to them by men in uniform. It also face constraints , such as financial and societal resource limitations, which police claim limit their ability to function properly, as well as characteristics of effective police practices that might be used as future models. Going a step further, this research analyze police acts and police rules ,other substantive laws and underlying reasons for failure of implementation of International treaties mainly UNCAT that proclaims for preventions of torture and to which Pakistan is signatory. Implication of UNCAT and its critical analysis is central arch the research.

Having discussed the incidence and prevalence of torture in Pakistan, it is high time to solve the issue. The ominous issue needs to be addressed forthwith .First of all, there is dire need to reform police law to arrest the abuse of authority by police which in turn limit the sprawl of brunt born by humanity due to it. Over and above, it is writing on the wall that Police reforms would be a long-term solution; in the meanwhile, it is critical to implement legislation criminalizing all types of torture, establish legal safeguards for witnesses and victims of torture, and establish independent agencies to examine torture cases other than inquest under 176 PPC. There is unquestionably a need to reform police who regard torture as an effective way of crime prevention. Undoubtedly, training of Police officers and other such like officers may be an excellent tool for sensitizing and resultantly, helping them understand that their mission is to protect civilians, not to dominate them. Once their view point changes the situation would itself turn up to right horizon. When Public servants behave like public servant, it would not only make the evil slim but also engender public confidence in and cooperation with such like institutions .The short-term measure of having such like awareness workshops would definitely turn the leaf. In partnership with other governments' investigative agencies, frequent training programmes, if implemented in accordance with international standards, would be more convenient. UN standard rules for training law enforcement officers should be utilized as a guideline and can be customized to meet our society's administrative and social demands.

It is an open secret that government has exhibited intertie in complying the obligations imposed by UNCAT, such as defining torture. Twice torture Bill has been tabled

once in 2014 and secondly after 5 years by PPC senator yet neither has seen light at the end of tunnel. The government must uphold its commitments under the UN International Covenant on Civil and Political Rights and the Convention against Torture, which it ratified. In this sense, the federal government may define "torture" in national legislation to include various types of cruel, inhumane, and humiliating treatment. In light of the foregoing, Pakistan should also ratify all relevant torture-related treaties as soon as possible. Unless and until, the torture has not been defined and simultaneously criminalized by law of the land, checking custodial torture is not more than a fairy tale. Hence, compliance of obligations of UNCAT by demystification by incorporation of required provisions is a sine quo non condition for end the sprawl of torture. Apart from insertion of new provision as highlighted in chapter 3 of this study, there is also need to harmonize the provisions of existing law with UNCAT. There are many provisions that are not at par with UNCAT as discussed in detail in previous chapter the relevant provisions of the PPC, CRPC, and prison rules be revised and enhanced. For instance, section 47 of CRPC give Carte blanche to police to use any sort of power against accused of murder in detain him who even amounts to murder or encounter. Such like provisions must be modified in line with UNCAT to obtain desired result.

The sum and substance of discussion is torture has been committed from centuries and different efforts the history witnessed to halt it also are centuries old, yet nurturing of UNCAT considered as unparallel milestone. A brief recap of history discloses the purposes of torture were extortion, revenge, interrogation or punishment to extract confession. With Agonizing the victim, the torturer rendered harm to victim ranging from psychological agonies to physical afflictions by infliction of harms that sometimes includes intentional prolonging suffering. Over time, the cruelty employed as a tool of modification, suggesting public terror, and sadistic pleasure. Medieval and early modern European courts availed torture. In Europe, it was also used to obtain corroborating evidence. Not limited to medieval times, modern period saw the heinous torture of witches. During the Renaissance, torture was used by Protestants against heretics. European states embarked on abolishing torture in the late 18th and early 19th centuries. The last European jurisdictions to abolish legal torture were Portugal. The major blow to torture was bashed by French Declaration of the Rights of Man and of the Citizen, of 1789 that embodied in clear words the prohibition of torture with putting restraint on detainees to any type of hardship.

The sensitization of previous century coupled with modern sensibilities nurtured from stir reaction to the crimes committed by Axis Powers against humanity and by the Allied powers in World War 1<sup>st</sup> and 2<sup>nd</sup>. Resultantly, the states around the globe tightened the scoop around torture and adverse sentiment flourished. As U.N has been forefront to exalt the wretched condition of Human Rights .Resultantly, in 1958 on 10 December the Universal Declaration of Human Rights was unanimously adopted by the United Nations General Assembly under auspices of ECOSOC that denounced torture and other cruel, inhuman or degrading treatment. Similarly, International Bill of Rights in the form of 1966 International Covenant on Civil and Political Rights also prohibited the obnoxious practice .There is an urgent need to modify police law in order to

prevent police officers from abusing their position and bearing the weight of the consequences. Accountability is a check on the police's unbridled authority. Because total authority must be checked, else it will be misused. Law enforcement organizations that kill suspected or innocent people in jail or abuse them should face consequences and should not be free. There is need of above board and transparent mechanism to limit the repeated tendency of torture. Pakistan has suffered a lot, if situation continues like this Pakistan would break like house of cards.

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