Policing, Custodial Torture and Human Rights: Designing a Policy Framework for Pakistan

Rabia Chaudhry

A Publication of the Centre for Public Policy and Governance

Forman Christian College
(A Chartered University)

CENTRE FOR PUBLIC POLICY
AND GOVERNANCE

Policing, Custodial Torture and Human Rights: Designing a Policy Framework for Pakistan

Rabia Chaudhry

A Publication of the Centre for Public Policy and Governance

Forman Christian College
(A Chartered University)

CENTRE FOR PUBLIC POLICY AND GOVERNANCE

Centre for Public Policy & Governance (CPPG)
F.C. College (A Chartered University)
Ferozpur Road, Lahore - 54600
Phone: 042 9923 1581 - 88 Ext. 388
Email: cppg@fccollege.edu.pk
Web: http://cppg.fccollege.edu.pk
ISBN: 978-969-9661-02-0
Price Domestic: Rs. 250
Foreign: $ 10

Publisher: Centre for Public Policy and Governance,

Design & Print: CrossMedia | 03334501684 | info@crossmedia9.com

Contents

Foreword	v
Acknowledgement	ix
Introduction	1
Policing and Torture: National and International Context	5
Colonial Legacy: How do Sociological, Cultural and Legal Structures Accommodate Torture?	41
Socio-Political Reality: Is the Gap between Legal Provisions and Reality Bridgeable?	47
Conclusions	89
Recommendations	97
Appendix 1 – Sexual Abuse	101
Appendix 2 – Punishments Awarded to Police Personnel (01.01.2011 to 31.12.2011).	103
Appendix 3 – Questionnaire	105
Bibliography	109

Foreword

Historically and across cultures torture has been used as a tool of governance to intimidate, coerce, subdue and force individuals and communities to make confessions against their will. Torture has been part of human history; it is only that its usages have become more sophisticated with the passage of time. What is significantly different though is that technology and globalization have raised awareness about human rights. Thus torture as an instrument of investigation is increasingly recognized as injuring human dignity, and hence demands zero tolerance. The good news is that international organizations, states, individuals, societies are becoming ever more sensitive to upholding human rights and preserving human dignity. Around the world, regulatory frameworks are being designed to curb and eliminate the use of torture as an instrument of governance.

Given this global environment and socio-political reality, the CPPG Monograph on *"Policing, Custodial Torture and Human Rights: Designing a Policy Framework for Pakistan"* offers a refreshing analysis and assessment of policing, custodial torture and how it impacts the human rights situation in the country. The Monograph is divided into five chapters. The first chapter provides an extensive review of how torture is defined, explained and interpreted in the national and international context. The chapter attempts to synthesize the two perspectives to convey a meaningful understanding of torture as a governance tool in Pakistani society.

The second and third chapters analyze socio cultural setting; the

juxtaposition of colonial laws and how they have continued to shape the contemporary structures of policing, instrumentalization of torture and how these impact the legal framework and prosecution system of Pakistan. The study is emphatic in conveying that over the years little effort has been made to reform the investigation procedures; evidence collection; prison conditions; Thana custody and the very conduct and structure of the police in the country.

It is in this broad context, that the present research departs from the earlier studies on the subject and ventures to build a link between various forms of torture and the need to design a policy framework for Policing, Torture and Human rights. The study boldly and succinctly recommends a comprehensive review of torture, methods of interrogation, judicial procedures, overhaul of prison system and changing the DNA of the oppressive Thana (Police Station). The study correctly cautions that unless policing and custodial torture practices are reformed, institutional coordination improves effectively and civil society becomes more vigilant, changing the architecture of the policy framework would remain a challenge.

The study was initiated through a grant from the Foundation Open Society Institute Pakistan (FOSIP) in November 2011 and completed in July 2012 through a comprehensive review and policy dialogue with the stakeholders. However at the CPPG we have been of the considered view that this study needed to be developed into a Monograph. The CPPG encourages and vigorously supports the research of young scholars. Ms. Rabia Chaudhry, Lead Researcher, accepted the challenge and it took another nine months to go through the materials that were collected, rewrite and expand the work. She has done it diligently and imaginatively. This is the fourth research study of the CPPG's Monograph series.

Let me take this opportunity to thank the two anonymous reviewers for providing some valuable critique and suggestions. We also deeply acknowledge the support of Mr. Kamran Arif, FOSIP, individuals and institutions who participated in focus group discussions, granted interviews and provided access to their data sources. The Lead Researcher has done her best to be methodical and dispassionate in recording and reporting the views of the interviewees and other participants. We do recognize that despite doing our best, there is always space for improvement.

We do hope, policy makers, researchers, policy analysts and members of the civil society find the findings and recommendations of the study instructive, informative and implementable. We welcome any critique or feedback on the study.

Saeed Shafqat

Acknowledgement

I am extremely thankful to my Director, Dr. Saeed Shafqat, whose encouragement, guidance and support from the initial to the final level enabled me to develop an understanding of the subject. Without him and his support (both intellectual as well as moral) this research project would not have been possible at all.

A special thanks to Mr. Kamran Arif (Legal Advisor, Foundation Open Society Institute Pakistan), the prime facilitator behind this project. He was particularly instrumental in arranging interviews with experts in the field, for sharing relevant material on the subject and most of all for always being available for advice.

My Research Assistants Hamza Ijaz, Amna Chaudhry and Ali Zafar deserve special mention, for their academic support as well as accompanying me on jail visits; they displayed intellectual prowess and sensitivity well beyond their years.

I wish to thank all the participants of the Policy Dialogue who took precious time out of their busy schedules on our request; they were extremely critical where necessary, yet at the same time were very generous with their support and expertise.

Most of all I would like to thank all those people who wished to remain anonymous but played an indispensable role in data collection and helping me develop an understanding of various nuances pertaining to the subject which I would not have been able to without them. Out of these the torture victims deserve a special

acknowledgement; they welcomed us in their lives and hearts and shared with us some of the bleakest realities of their lives.

Rabia Chaudhry

Introduction

Policing is inarguably a core component of governance. Policing structures, police conduct and its performance are all integral components on which the edifice of criminal justice system of a country is built. Therefore, should the police fall short of intended service delivery the very legitimacy and integrity of the entire system is jolted – raising questions about the legitimacy of the state and breeding rhetoric against it. In case of Pakistan, policing has become a key factor in shaping perceptions about the functioning of the state and changing this perception demands altering reality. In that spirit this study ventures to attempt at improving the governance institutions of the country and that implies police reforms and a careful review of the criminal justice system, its procedures, functions and organisation.

The police in Pakistan continues to employ torture as an 'essential' tool in the performance of its duties; people are tortured or otherwise ill-treated – often with impunity – on a daily basis. According to the Human Rights Commission of Pakistan a minimum of twenty cases of custodial torture are reported to them every month, and it is difficult – if not outrightly impossible – to know exactly what the true numbers really are.[1]

Torture can occur in many forms and for a variety of reasons: to intimidate, to coerce (which would include politically-motivated discriminatory treatment), to extract confessions, just to name a few. Most torture cases in Pakistan however, tend to fall under two broad categories: first, the cases that occur during police interrogations; and second, the recently surfaced phenomenon of ab-

ductions allegedly conducted by intelligence agencies, popularly referred to as the "Missing Persons".

The objective of this research study is to contest the culture of impunity that enables the ubiquity of custodial torture in Pakistan and to recommend a policy framework on torture and human rights. To this end, the first step was to develop an understanding of custodial torture strictly within a Pakistani context, informed by definitions prescribed by international law as well as the existing literature. By doing so, instead of addressing the Pakistani perspective in isolation we were able to situate it within a global context all the while maintaining a localised focus. Second, we also attended to the legality of the issue at hand, both within the criminal justice system as well as within the overarching constitutional framework. While conducting study for this research we found that it is a widely held view that Pakistani legal system suffers from chronic legislative fatigue. This led us to explore whether it is the absence of a commonly agreed definition of torture which under rates its criminality or the absence of legal safeguards against the victims? To resolve this riddle we have relied on the human rights and the sociological perspectives of policing i.e. to juxtapose the legal framework against the cultural context within which these practices thrive. It is ironic that on one hand police resorts to torture as a tool of governance, on the other the victims are not only unaware of its illegality, but actually approach torture with implicit acceptance as a legitimate tool of investigation.

This study raises two fundamental questions: first, does the police's routine reliance on torture represent inherent limitations of the legal and administrative system which make it possible to overlook such occurrences? Or is the Pakistani society and culture insensitive towards the torture of its citizens? This study focuses on the functioning of police in an attempt to determine the underlying causes of torture: why are the existing laws deficient in preventing torture? And to what degree are instances of torture

received with compliance, acceptance and/or inevitability by both the tormentors and the tortured?

The regulatory framework under which the police operates does have a number of legal safeguards tailored to prevent instances of torture[2] which include both constitutional measures (Articles 9 and 14 of the Constitution of Pakistan, 1973 to name a few - hereinafter, "The Constitution of Pakistan") as well as clearly spelled out penalties in the case of infractions (example section 337(k) of the Pakistan Penal Code, 1860 - hereinafter, "PPC") which specifically deals with "Causing hurt to extort confession, or to compel restoration of property" read with other relevant provisions of the Police Order, 2002 and the Code of Criminal Procedure (hereinafter, the "Cr.PC"), 1908. However, the narrative of those who have to face the police and criminal justice procedures on a daily basis points towards a systematic subversion of the existing laws. Thus the key elements of study revolve around forms of custodial torture.

Chapter I

Policing and Torture: National and International Context

Policing and torture have a complex relationship. While some forms of torture can be easily defined, others which include psychological abuse and leave indiscernible physical injuries are more difficult to discover and thus to categorise.[1] Therefore, the question as to what precisely qualifies as torture remains ambiguous at best. This study clarifies the nexus between policing methods in Pakistan and the use of torture as an instrument of governance.

With respect to Pakistan, police torture can broadly be categorised to occur in three different situations; first, while pursuing interrogation at the local police station and jail; second, while pursuing political agendas, goals of political party and its leadership; third, when federal and provincial intelligence agencies or special branches indulge in abductions of suspects under the pretext of ensuring state security.

The Constitution of Pakistan treats torture as liable to criminal prosecution; however, it is ubiquitous at every level of law enforcement. Torture as the foremost instrument of evidence collection remains a major weakness of the criminal justice system of Pakistan. What is more disturbing though is the socio-cultural acceptability of torture both among those who dispense it and upon whom it is inflicted. The police use torture routinely as a technique of extracting information. Consequently it has led to an interchangeable association between legally permissible interrogation techniques and the legally proscribed acts of torture. Ironically

victims also appear to share a similar understanding. During our field research we discovered that victims approach the issue with a sense of procedural inevitably. The most commonly held view was that police *will* resort to violence while investigating and the legality thereof did not seem to be much of a concern for both the police as well as the victims. It is thus that one interviewee remarked that *"Courts rarely question confessions obtained under torture and lawyers often lack even a basic understanding of what constitutes torture. This is a shameful situation with serious repercussions for law and order in Pakistan."*[2]

There is a second dimension of torture which is linked to the procedural laws of the country. Integrity and legitimacy of the entire criminal justice system is largely contingent upon policing structure and police conduct. Police Service of Pakistan traces its structure as well as [criminal] procedural laws at its disposal, back to colonial times; the current make-up was prescribed through the Police Act, 1861.[3] Police Rules, which were promulgated in 1934, remain in force in their original form till date.[4]

It is worth remembering that the Police Act, 1861 was enacted immediately after the 'War of Independence' (1857), or as the colonial lawmakers dubbed it, the '1857 Mutiny'. Thus it was only inevitable that all laws pertaining to maintenance of law and order, including policing laws, were perceptibly informed by concerns of state ascendency, maintenance of law and order and avoidance of another such uprising.

The problem though is that with the passage of time assiduous reliance on these laws has generated a set of negative ramifications; institutionalised traditions and informal practices, which are a far cry from the democratic / institutional building sentiment currently at large, have become so entrenched in the daily workings

of the Department that they have effectively replaced the intended formalised structure. For instance, Thana Culture (the culture and practice of a police station) espouses torture as an essential component. No wonder, Pakistani police's performance is constantly scrutinised with a fine toothed comb and police transgressions have become an integral part of anti-state rhetoric.[5]

Given this historical, cultural and legal context, the Police Order, 2002 was introduced as the federation's attempt at structural alterations which would foil the culture of impunity within the police and lend towards bridging the citizen police deficit.[6] The Police Order, 2002 is certainly a commendable effort. However, for the large part it is preoccupied with devising a counter terrorism and de-radicalisation strategy. In all fairness, given the current environment, it is a pertinent concern indeed.[7] However, it does little to address torture and investigation procedures adopted by the police. Hence misses the rigor that could transform the culture and mode of governance of Pakistani police.

Terrorism cases are inherently different in nature from those that the current criminal justice system is geared to prosecute. The prevalent system, which was devised between 1861 and 1908, is designed to deal with cases mostly of previous enmity, mostly murders; where the accused are generally known, physical evidence mostly available, witnesses readily accessible for testimony, arrests are comparatively easily to conduct, and recovery of the actual weapon of offence within the power of the law enforcement agency. Terrorism cases do not share any of these characteristics and thus present a unique set of issues. The accused are unknown, physical evidence destroyed, witnesses fearful of testifying and people present at the crime scene either dead or unable to identify the accused. Even though the accused may be arrested in time, it is usually after quite a lapse of time. The likelihood of recovering

the weapon of offence is almost impossible. In this backdrop the police are forced to concoct evidence, that too mostly circumstantial and again a situation arises where torture is the only available investigative method and hence resorted to with impunity.[8]

In the light of above evidence and analysis, it is instructive to note that devising anti-terrorism laws and strategies is an important dimension but curbing and eliminating torture has to be of equal importance for any meaningful police reform. While there is no refuting the fact that anti-terrorism effort is indeed a behemoth task occupying the police, it must not be forgotten that torture too is an undeniable reality that millions of citizens of this country face every day; prevalence whereof not only curtails their constitutionally guaranteed fundamental rights but has negative ramifications for the entire criminal justice system. The primacy of police reform has been a subject of popular discourse for the past decade or so, however, almost no attempt has been made by the state to acknowledge torture's ubiquitous existence.

While collating data for this study one of the principal challenges was to limit our focus on instances of torture and to stave off a constant urge to undertake a discourse aimed at the exposition of exigencies / shortcomings of the criminal justice system in general. To a considerable degree incidence of torture cases are the by-products of inadequacies of the criminal justice system. Therefore, it would only be pertinent to first define the parameters of analysis by examining prevalent literature on the subject, thereby establishing a working definition of torture. The subsequent analysis will then be situated within these predefined strictures.

The following section will provide a brief description of the notion of "torture"; first, differentiated from that of "cruel, inhuman and degrading treatment" (CIDT) as provided in the Convention

Against Torture (CAT). Second, it will delineate the framework within which these notions are to be understood—such as, solitary confinement and degrading prison conditions. Third, an overview of literature on torture and how that defines its various dimensions. Finally, while affording due cognisance to the coercive powers of the police, legitimate use of force shall be isolated from infractions occurring in the form of police brutality or police torture.

Torture and Inhuman and Degrading Treatment: Definitions Prescribed by International Law

CAT prohibits three different forms of ill-treatment: Torture (Article 1), Cruel, Inhuman or Degrading Treatment and Cruel, Inhuman or Degrading Punishment (Article 16).

Article 1 defines torture as follows:

> Article 1 (1) For the purposes of this Convention, the term "torture" means 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 for an act he or a third party 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. It does not include pain or suffering arising only from, inherent in or incidental to lawful.
>
> (2) This article is without prejudice to any international instrument or national legislation which does not or may contain provisions of wider application.

Article 16, distinguishes torture from less serious forms of ill

treatment in the following terms:

> Article 16 (1) Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.
> (2) The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman, or degrading treatment or punishment or which relates to extradition or expulsion.

Reason for using Articles 1 and 16 as working definition for the purposes of this paper is twofold; first of all Pakistani law does not have a specific definition of torture *per se*. While Article 14(2)[9] of the Constitution of Pakistan specifically outlaws "torture for the purpose of extracting evidence" and sections of Pakistan Penal Code (specifically 337-K and 348)[10] penalise infliction of Hurt, Pakistan has yet to formulate a tangible definition of torture [despite repeated recommendations of the United Nations Commission of Human Rights]. Secondly, Pakistan is a signatory to CAT and hence is under a legal obligation to formulate and enforce a workable definition.

It must be remembered that CAT (and other treaties of similar genre)[11] are merely drafted in response to a strongly felt and well established sense that certain abuses [torture in this instance] are beyond the pale; the treaty simply acknowledges a pre existing fact, not create a new one. Signatory countries conversely, ac-

tively negotiate and bind themselves to the contents as a sign of acknowledgement; it is not that a new onus is created but a previously shared stance is confirmed through such a legal instrument. Thus, in absence of a definition in domestic law, it is only pertinent and entirely justifiable to turn to CAT for assistance and fill the *lacunae*.

Coming back to Articles 1 and 16 above; certain constitutive elements of the definitional criteria of torture that are obvious from a bare reading of the said provisions are (i) intention / deliberation; (ii) infliction of severe pain (be it mental or physical); (iii) state responsibility (or involvement/instigation of law enforcement agencies/officials); and (iv) a purposive element, such as punishment, information, confession, intimidation, coercion or any other reason based on discrimination of any kind (including political, ethnic or religious).

These though fail to identify a decisive criterion that distinguishes torture from CIDT. Popular academic opinion as well as posturing of various multi-lateral bodies like The European Court and Commission of Human Rights[12] and the United Nations lean in favour of using "severity of pain or suffering inflicted" as the distinguishing pennant. In addition, according to the European Commission of Human Rights (an opinion which is endorsed by the UN) inhuman treatment covers at least such treatment that deliberately causes suffering, mental or physical, which, in the particular situation, is unjustifiable."[13]

Manfred Nowak[14] however rejects this line of argument on the grounds that "[w]hether use of force is justified or must be qualified as inhuman treatment depends on the particular circumstances of a given situation, to which the principle of proportionality needs to be applied."[15] Thus, in situations where the use of force

is necessarily incidental to law enforcement, for example, dissolution of violent demonstrations, lawful arrest of a suspected criminal, quelling a riot or insurrection, even use of force by military in case of armed conflict etc., if the Commission's above stated line of reasoning is applied, especially in light of the fact that in case of severe pain or suffering caused for any purpose listed in Article 1 CAT, no justification is permitted and, consequently, possibility of a proportionality test nullified, Article 1 CAT ends being interpreted very strictly and very narrowly.[16] He argues that every form of cruel and inhuman treatment, whether it includes torture or not, necessarily involves infliction of severe pain or suffering with the exception of certain cases of particularly humiliating treatment which might not include severe pain per se but would qualify as a violation of Article 16 nonetheless by virtue of degrading treatment or punishment involved. Thus, in order to ascertain whether a particular act or treatment qualifies as torture or not, fulfilment of criteria prescribed by Article 1 of CAT (or what we have referred to as elements thereof) should be selected as the determining factor.

Manfred Nowak observes that the distinguishing feature between torture and CIDT is that of intent and purely negligent conduct is ipso facto excluded from the category. Article 1, CAT clearly stipulates that "[torture] is intentionally inflicted on a person for such purposes as ..." therefore, the "[i]ntent must intend that the conduct inflict severe pain or suffering and intend that the purpose be achieved by such conduct. ... If severe pain or suffering is inflicted, for instance, in the course of a fully justified medical treatment, such conduct cannot constitute torture because it lacks both the purpose and intent enumerated in Article 1 CAT."[17]

This brings us to another decisive criterion for distinguishing torture from CIDT, i.e. the specific purpose for which the unlawful

use of force is applied. The purposes listed in Article 1, CAT are as follows:

- Extracting Confession;
- Obtaining information from the victim or third person;
- Punishment;
- Intimidation and coercion; and
- Discrimination.

This is not an exhaustive list by any means whatsoever and the reasons compelling such a posturing of law are dealt with below in detail. For the time being though it would be accurate to conclude that these purposes cover all situations where a person or victim of torture has been placed under direct and absolute command of the person inflicting pain or suffering and disparity of power and ability of the perpetrator to exercise complete control enables them to achieve a certain effect "such as extraction of information, intimidation, or punishment."[18]

It thus follows that "it is not the intensity of pain or suffering that distinguishes torture from CIDT, but the purpose of the ill-treatment and the powerfulness of the victim in a situation of detention or similar direct control."[19] As soon as the person has been arrested or brought under the control of the state, any use of force or pain or suffering inflicted for any of the purposes enlisted in Article 1, CAT and not those that are incidental and proportional to the purposes of law enforcement, would be deemed by law to constitute torture. In addition, in instances of violation of the right to personal integrity, presumption lies in favour of the fact that a situation of powerlessness of the victim was created whereby he / she was denied personal liberty.

Acts falling short of the definitional criteria of Article 1, particularly those which lack the element of intent or are not carried out

for any of the prescribed specific purposes outlined in the said provision of law may comprise cruel or inhuman treatment under Article 16.

Whereas torture is absolutely prohibited by law, the scope of CIDT by definition is a relative concept. That is, only excessive use of force is considered to qualify as CIDT. Whether force thus used is eligible to be deemed lawful or excessive, "depends on the proportionality of the force applied in a particular situation."[20] The proportionality test has three prerequisites: a) it requires that the use of force be legally permissible under the domestic laws, b) the use of force must be aimed at lawful purpose such as causing a lawful arrest, preventing escape of a lawfully arrested person, defending a person from unlawful violence, self defence to give a general idea and c) the use of weapons employed (including the type of weaponry) must be necessitated by circumstances and the intensity of force applied should be proportional to achievement of the aforementioned lawful purpose. "This means that the law enforcement officers must strike a fair balance between the purpose of the measure and the interference with the right to personal integrity of the person affected."[21] Hence the conclusion that if the state (chiefly police) employs the use of non-excessive force for a purpose lawfully permitted, then even purposeful infliction of severe pain or suffering does not breach lawfully prescribed thresholds and tantamount to CIDT.

As opposed to torture, CIDT must not be understood to take place only if / when the victim had been deprived of his / her liberty; excessive use of force can be applied by the police outside detention also and in order to determine whether or not it has crossed legally prescribed threshold of CIDT, the aforementioned proportionality test must be employed again. "If such use of force is disproportionate in relation to the purpose to be achieved and

results in severe pain or suffering, it amounts to cruel or inhuman treatment or punishment. If such force is used in a particularly humiliating manner, it may be qualified as degrading treatment even if less severe pain or suffering is thereby inflicted."[22]

From the above analysis it stems that the most pertinent attribute distinguishing torture from CIDT, despite popular opinion, is not the severity of pain or suffering inflicted but the intent of the perpetrator, purpose of the conduct and the powerlessness of the victim. As long as a person is in a position to resist the lawful use of force by law enforcement officials, the use of weapons can also be justified as long as it fulfils the proportionality test. However, as soon as the same person is under physical or direct control of the state or an officer of the state, excessive or disproportional use of force, be it physical or mental, is no longer permissible by law. In addition if such force is applied for any of the purposes enlisted in Article 1, CAT and causes severe pain or suffering, it will be deemed to tantamount to torture.

Pakistani Definition of Torture: Domestic Laws on Prevention of Torture

This brings us back to the lack of a workable definition of torture *per se* in Pakistani legalese. If one has to hazard a guess as to whether this deficiency in particular is incidental (that is due to oversight) or intentionally devised (that is specifically left uncodified so as to enable accommodation of peculiar scenarios), the answer will in all probability lean in favour of the former. Absence of a tangible definition though does not mean that the practice of torture, at least on paper, is encouraged. It should be noted that the preceding statement has been deliberately qualified to refer to the letter of the law only and is by no means intended to reflect the factual scenario. The very premise of this research is to highlight discrepancies between *de jure* and *de facto* state

of affairs. Therefore, the following exercise of tabulating all the relevant provisions of law, pertaining to the issue at hand can serve a dual purpose. On the one hand, by collecting all pertinent legislation in one place it will be easier to highlight the shortfalls of current legislation that facilitate ubiquity of torture. On the other hand, given that a major scheme of legislative overhaul is nowhere in sight, it can serve as an attempt to use the available legal safeguards to our advantage till such time that the laws are indeed revamped by law making bodies. The ultimate aim is to use whatever tools available to protect the people and to minimise the practise to the extent possible, as an immediate goal.

If the relevant provisions of the Constitution of Pakistan are read together, it can be averred with a considerable measure of certainty that the practice of and resort to torture, in any circumstances whatsoever, is absolutely prohibited. The Constitution of Pakistan guarantees protection from illegal custody which can create circumstances conducive to torture. The relevant articles of the Constitution are as follows:

> Article 9 _ No person shall be deprived of life or liberty, save in accordance with law.
>
> Article 10 (1) _ No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.
> (2)_Every person who is arrested and detained in custody shall be produced before a Magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the nearest Magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

...

Article 14 (1) _ The dignity of man and, subject to law, the privacy of home shall be inviolable.
(2)_No person shall be subjected to torture for the purpose of extracting evidence.[23]

One particular issue pertaining to the above cited Constitutional provisions demand clarification before we extend a jurisprudential explanation. As is obvious from a bare reading of the above, only Article 14 (2) specifically addresses the issue of torture. However, the said Article has a very narrow ambit i.e. it provides safeguard from torture carried out for extraction of evidence only and *ipso facto* denies legal recourse to those victims who are tortured for discriminatory purposes (be it ethnic or religious), for personal agendas or to establish writ of the local elite. While there is no doubt about the fact that a sizeable proportion of torture in this country is indeed carried out for the purposes of extracting evidence (our findings below reifies this), however the language of Article 14 (2) is very restrictive and those seeking recourse are bound by a very narrow understanding. What problematises matters even further is the fact that Article 14 (2) is extending a fundamental right; only it seeks to do so in very limited terms and hence turns its back to a sizeable group. Therefore, it is only pertinent to conclude that the constitution needs to be revisited and the case for importing Articles 1 and 16 of the CAT into domestic legislation is further concretised.[24]

Constitutional provisions spell out 'fundamental rights' available to every single citizen of Pakistan i.e. they are not created through the aegis of the Constitution itself, but are merely iterated therein. Fundamental rights, by their very essence, are non derogable thus even if the Constitution is temporarily suspended or held in abey-

ance, as has happened many a times in Pakistani political history as a consequence of various military takeovers, these rights continue to subsist independent of the status of the Constitution and can be invoked. Furthermore, in case of infractions, aggrieved persons have an additional right to approach the courts for the restoration of their civil liberties (right to life and liberty).[25]

The word 'life' as per the law is deemed to include dignity of life and therefore encapsulates all such rights that are essential for and necessarily incidental to a free, proper, comfortable and clean life. 'A person is entitled to enjoy his personal rights and to be protected from encroachments on such personal rights, freedom and liberties. Any action taken which may create hazards of life will be encroaching upon the personal rights of a citizen to enjoy the life according to law'.[26] Extending this train of legal rationale, agencies of the state like the police for example, are placed under a duty to ensure enforcement of the constitutional provisions in question. In case of an inability to do so, or should they deliberately act in violation thereof, they would be making themselves amenable to criminal prosecution.[27]

Thus, as soon as the police, as agents of the state, acquire custody of any person, be they merely accused of an offence or proven to be a perpetrator, they are not only vested with a constitutional duty to safeguard their life and liberty but are additionally ordained to do so both under procedural law (prescribed in the Code of Criminal Procedure, 1898 and Pakistan Penal Code, 1860 and the body of laws pertaining to police powers and procedures, which we shall discuss in due course. It should be noted that any reference to 'life', as per law, includes 'quality of life' which in turn subsumes the right to safeguard from torture and ill treatment within its ambit by necessary implication.

Certain ancillary but equally important issues arise from this. For instance, the police are proscribed from taking the law in their own hands by "submitting the accused to injustice and allowing a wrong to go unchallenged in a court of trial by way of denying him an opportunity of clearing himself from being implicated."[28]

The police are also legally bound to detain arrested personnel in either police lock up or judicial lock up, as the case may. The accused cannot be kept in any place at the discretion of the police officer thereby ruling out the possibility of private torture cells altogether.[29]

Additionally, fundamental rights extended by Articles 9 and 10 encapsulate the concept of a fair trial and are based on the premise that a trial shall be held without inordinate delay. Unfortunately however, this is a far cry from ground reality. Many prisoners have to wait for years for the outcome of their cases, including those regarding sensitive issues like breach of human rights as a result of police excess. This excessive delay in disposition of cases is not limited to the lower judiciary only. Prisoners all over the country have to suffer inordinate delays, particularly when it comes to outcomes of their appeals.

Article 14 specifically rules out any form of torture and provides in unequivocal terms that dignity of man is an inviolable fundamental right which cannot be infringed or undermined by anyone in any circumstances whatsoever.[30] In addition the article specifically addresses the issue of torture and prohibits subjection thereto for the purposes of extracting evidence in unequivocal terms.[31] Article 14 is further substantiated by the Code of Criminal Procedure, Section 162 whereof renders confessions obtained while in police custody inadmissible in the court of law unless made in the presence of a magistrate. The principle affect of this is that through

the aegis of constitutional as well as procedural laws, the duty of the police is limited to detection and investigation of crimes, and any use of force in pursuance thereof is absolutely and unequivocally prohibited by law; the police is not allowed to take the justice system in its hands and administer punishments.[32]

In the preceding section, while determining the contours of the definition of torture, we included solitary confinement in the list of ancillary practices that should be barred under the head. Article 14 does not specifically address the legality of solitary confinement. The courts however, have managed to bring it within the purview of the stated provision of law by interpreting it to include solitary confinement;[33] therefore, as per existing case law, solitary confinement of any person is specifically prohibited by none other than Article 14 of the supreme law of the land (i.e. the Constitution).[34]

These constitutional remedies are compounded by other relevant provisions of law and render any confession while in police custody inadmissible in the court of law, unless made in the presence of a magistrate. Manifest intention of the law is, that by denying such statements a basic level of acceptability, the investigating officer/s would not attempt to glean confessions from the detained / accused by subjecting them to torture.

This is further substantiated by Articles 38 to 40 of the Qanun-e-Shahadat Order, 1984 (hereinafter, the QSO). Article 38 outlaws the possibility of a confessional statement made by a police officer to be used as proof. Articles 39 and 40 take matters one step further and render all statements, confessional or otherwise, made in police custody inadmissible in the court of law. "... [No] confession made by any person whilst he is in custody of a police officer, unless it is made in the immediate presence of a Magistrate, shall be

proved as against such person."[35]

Sections 332 to 338 of the Pakistan Penal Code (PPC) specifically deal with the issue of Hurt and list various kinds of Hurt that can be inflicted and remedies thereto. While all these provisions of law are indispensable when it comes to prevention of torture, s. 337-K of the PPC is of added relevance with respect to the issues at hand.

> **Section 337-K _ Causing hurt to extort confession, or to compel restoration of property.**
> Whoever causes hurt for the purposes of extorting from the sufferer or any person interested in the sufferer any confession or any information which may lead to the detection of any offence or misconduct, or for the purpose of constraining the sufferer, or any person interested in the sufferer, to restore, or to cause the restoration of, any property or valuable security shall, in addition to the punishment of qisas, arsh or daman, as the case may be, provided for the kind of hurt caused, be punished, having regard, to the nature of the hurt caused, with imprisonment of either description for a term which may extend up to ten years tazir.

Article 367 of the PPC criminalises kidnapping and abduction leading to a person being "subjected to or put in danger or being subjected to grievous hurt". Articles 339, 340, 346, 365, and 368, PPC deal with offences relating to concealing, wrongfully restraining, keeping a person in confinement and wrongful confinement in secret and imposes strict penalties for each of these crimes. 348, PPC lays out express prohibition against wrongful confinement to extort confession.

The forgoing is by no means an exhaustive list of the legal prohibitions against torture in domestic legislation. These particular

provisions of law were chosen to present a cursory overview of the spirit of existing legislation and to build a case for the manifest intention of law against the practise of torture and ill treatment, despite the absence of a precise definition.[36] By not incorporating a specific definition of the term torture, or should we say refusal to do so in face of repeated appeals of the UNHRC to the affect, Pakistan, at least *prima facie,* can be charged with reneging on its legal obligations incurred under international law. Pakistan is a signatory of the CAT after all. However, by cataloguing the aforegiven laws, the intention was to underscore the fact that despite the absence of a concrete definition, the prohibition against torture and other cruel, inhuman or degrading treatment is clearly established under numerous sources of law.

Specific constitutional provisions, read together with laws governing admissibility of confessions, provisions against delayed trials as well as penal and procedural laws (this list is to be understood to include special police laws, prisons rules and other procedural laws which will discussed in due course), all form part of broader constitutional framework crafted to prevent and implement prohibitions against torture and other ill-treatment. Instead of understanding them separately as individual procedural laws, they should be viewed as an intricate arrangement designed to help regulate treatment of persons in custody and implant safeguards against torture.

The ongoing analysis clearly indicates that the system as it is, does contain, a bare minimum of safeguards. If these are followed, to the letter and spirit of law, practice of custodial torture can be considerably circumvented, or kept under control. This leads us to conclude that mere provision of law is not adequate for the protection of citizen's rights and the police and the prison system needs reform.

Framework of Analysis: Debating the Definition of Torture

It must be borne in mind that while torture and other lesser forms of ill-treatment might not be analogous with respect to their legal consequences and criminal law obligations, the distinction thus drawn is of no consequence whatsoever in terms of prohibitions enshrined in CAT. It would be safe to aver that all forms of ill treatment are equally prohibited by CAT. In any event these are necessarily overlapping actions which are almost impossible to distinguish as "it is extremely difficult in practise to draw a clear line between the thresholds of suffering".[37]

Furthermore, it is worth taking into cognizance that an exhaustive list of specifically prohibited acts is knowingly and deliberately withheld by law making bodies chiefly to avoid a concretisation of the definition, which can then not be altered should the need arise. Resultantly, definitions of torture and cruel, inhuman and degrading treatment and punishment adopt the form of a seamless web i.e. are couched in broad, open ended terminology by design.

Droege offers three possible reasons for assigning generality of expression to these definitions. First "these definitions are meant to cover a wide range of situations so they must remain relatively flexible to do so."[38] It is unrealistic to draw up a predetermined finite list of interrogation methods (used either individually or in combination) that would be acceptable for all times. While ascertaining the legality of an act, the abstract act itself will not be kept under consideration but the situation of the person including all surrounding factors will be weighed. "While it is possible to say in abstract that some acts are always prohibited (e.g. rape or mutilation), it is impossible to define in advance a list of lawful acts for all persons, regardless of such factors as the age, sex, culture and state of health of the individual and without taking into account the particular circumstances of the case."[39]

Secondly, ill-treatment is not necessarily an isolated act but an amalgam of a number of acts suffered in combination. It is entirely possible that any one of these acts might be permissible by law but if combined, amount to ill treatment. "It is hence often impossible to infer from the jurisprudence of international bodies that specific acts constitute torture or another form of ill-treatment, for the very reason that they are not confronted with such isolated acts. This jurisprudence simply reflects the reality of ill-treatment."[40]

Lastly, the dividing line between merely morally reprehensible activities and legally prohibited acts of ill-treatment lies in contested territory; notions of ill-treatment are constantly evolving "and acts that may not have been considered as torture or ill-treatment in the past may be considered so now."[41] Thus to commit to an exhaustive list of prohibited acts is not only constrictive in the present, but might turn out to be counter constructive in the foreseeable future.

Jeremy Waldron amplifies and broadens Droege's rationale. He contends that prohibition against torture is not merely another rule amongst the list of others but an archetype which "is emblematic of our larger commitment to non brutality in the legal system" and moulds the way how we ultimately think about the issue and subsequently categorise it with absolute legal and moral prohibitions.[42] Waldron is clear and categorical in stating that a statute is not merely a bundle of laws arbitrarily forged together but represents a natural coming together of laws which embody a common purpose and legal policy. The archetype represents the spirit of the area of law under scrutiny which is shared by concerned participants in a given legal sphere; it does not represent an individual mind and therefore can effectively be used as a background on which positive law structures are balanced.[43]

He then constructs a case for a broad definition of torture. Waldron begins with awarding due cognisance to the argument in favour of precision i.e. if the terms of legal prohibitions are left indeterminate, the person to whom they are addressed will never be able to ascertain what is precisely expected of him and subsequently will remain unsure as to the grounds on which the enforcement agencies can lawfully pursue and subsequently penalise him. It is only fair to recognise the fact that in such a scenario there is every possibility that the power of the state can be used against its own agent who is after all acting on behalf of the state itself.[44] It is pertinent to remember that CAT creates state obligations but also vests an individual with the onus of conformation.

Waldron's response to this argument is that the torturer already knows that he is torturing; he has the intended *mens rea*[45] therefore, whether the pain inflicted is severe enough to constitute torture legally speaking or not, or whether the particular act in question is covered squarely by an instrument of law is highly irrelevant and unnecessarily pedantic. The torturer or the perpetrator is *well aware* of what he / she is doing and is knowingly running the risk of finding him / herself without legal cover.

While being duly appreciative of the fact that at times law has no choice but to be forceful and coercive; for example interrogation by its very nature is aimed at pressuring people into revealing that they would rather not reveal or imprisonment is restrictive of one's liberty and hence highly undesirable, Waldron rejects the idea that even if at times law is constrained to be forceful it should necessarily be brutal. "The idea is that even where law has to operate force-fully, there will not be the connection that has existed in other times or places between law and brutality."[46] Law can pressure people without disrespecting them; all forms of pressuring need not *ipso facto* be brutal as well. Similar argument applies to

imprisonment. Imprisonment works coercively because it is undesired, not because it is, in any literal sense, painful.

Torture on the other hand, according to Waldron, is a crime of specific intent which involves a deliberate resort to pain to specifically break the will of the victim. He illustrates his point in the following manner: "Failing to provide a comfortable armchair for the interrogation room may or may not be permissible, but it is in a different category from specifically choosing or designing furniture in a way calculated to break the will of the subject by the excruciating pain of having to sit in it. That latter choice is on a continuum with torture. The former choice - failing to provide an armchair or a cushion - is not."[47] Thus, instead of resorting to a comprehensive list banning specific conducts, it is beneficial in the long run to develop a conceptual understanding of the issue at hand and deal with situations on a case to case basis in light of the spirit of the law.

There is an enduring connection between the spirit of law and respect for dignity, and the rule against torture is an archetype of this delicate balance in which the relationship between law and brute force is poised. Even when force is necessary, this distinction between law and brutality needs to be maintained at all times. If this archetype fails, there are chances that all surrounding laws, which might not necessarily pertain to torture *per se* but straddle the fine line bifurcating legitimate use of force from illegitimate, will also unravel; once this archetype loses its integrity so will all other laws prescribing writ of the state *vis-à-vis* its subjects.

Nigel Rodley also argues in favour of a lack of an exhaustive list when it comes to defining torture (Article 1 of the CAT leaves it open ended by speaking of "such Purposes as"); while on the one hand he explains away the absence of language about aggrava-

tion from CAT as "a desire to leave the matter less certain"[48] he deems the purposive element to be a sufficient distinguishing factor. Thus, by using the purposive element as a feature unique to torture and hence the distinguishing factor between torture and cruel, inhuman and degrading treatment, effectively introduces certain limitations to the concept. The purpose however, naturally cannot be of any sort; they must have something in common with the purposes expressly listed in the 1988 Hand Book and need not be the sole or the main purpose of inflicting severe pain or suffering. The practical implications would then be that the prosecutors would have a rather broad based notion to work with thereby effectively covering a wide range of instances.

As established at the outset, Pakistani law, while displaying a visible intent to eradicate torture through the language of procedural law, has failed to table a definitive definition of the very act it seeks to prohibit. On the other hand, absence thereof is only making matters worse with each passing day; procedural law is flouted as a matter of routine, ordinary citizens are tortured as if it was a standard operating procedure and criminal justice system is at its lowest ebb. There is an urgent need to adopt a definition of torture, coupled with the fact that as per existing legal obligations under international law, Pakistan is already bound by the definitions extended by CAT. It is then only pertinent to import Articles 1 and 16 as they are into domestic legislation.

Necessarily Inclusive Factors

Thus it stands established that the definition of torture is to be understood as a seamless web which is not only continuously evolving to incorporate more specific issues within its folds, but also offers its existing constitutive elements as targets of academic contestation. The ensuing discourse covers a wide assortment of issues starting from broader jurisprudential concepts like what

constitutes severe physical or mental suffering or outrages upon personal dignity, in particular humiliating treatment or punishment and goes on to include the legal status of specific issues like treatment in detention, prison conditions, solitary confinement etc. As we propose to incorporate Articles 1 and 16 of CAT verbatim into domestic criminal legislation, the following analysis will be useful in posturing of certain specific shortfalls of the criminal justice system and subsequently in developing a policy stance with respect thereto.

From the above discussion it becomes clear that experts like Malcolm Evans[49] and Manfred Nowak[50] pursue Nigel Rodely's[51] line of reasoning. While impugning the necessary hierarchy between inhuman treatment and torture, they make a case for the powerlessness of the victim to be nominated as the sole distinguishing criterion. This powerlessness of the victim is compounded in conditions of detention – which is to be understood in its broadest sense, covering all forms of deprivation of liberty – as the likelihood of being ill treated is particularly high. To illustrate our point we will analyze three sets of circumstances; (a) conditions of detention and mistreatment, (b) solitary confinement, (c) prison conditions and treatment. This is neither a comprehensive list nor covers all aspects or forms of ill treatments in detention. The decision to limit focus on these three issues was inspired by the fact that during our field study they proved to be the most prominent.

Conditions of Detention and Ill-Treatment

Persons in detention are in an especially vulnerable / "powerless" condition and face a risk of being subjected to ill-treatment. Detention or imprisonment is specifically designed to deprive one of liberty. Hence it is inherently coercive and undesirable. However, this does not ipso facto translate into offering of detention conditions in a manner incompatible with basic tenets of human

dignity. Nor should imprisonment be executed in a manner that exposes the detained to such [unnecessary] hardship and distress that it not only violates their constitutionally prescribed fundamental rights but tantamounts to CIDT, even torture in certain cases.

Here it must be clarified that "since conditions of detention are not usually imposed for a specific purpose, such as punishment or interrogation, they do not generally constitute torture, but they may do so if they cause severe suffering and are imposed on the individual for a specific purpose". Therefore Droege, despite extending due cognisance to the fact that issues pertaining to detention should be approached as a cumulative effect of related factors including lawfulness of the said detention, then goes on to refine this line of reasoning to include inadequate prison conditions; even in the absence of specific intention to humiliate, prison conditions can be such a far cry from the basic level of acceptability that they can inspire a feeling of humiliation and degradation for the detainee. To illustrate his logic of reasoning he lists, overcrowding, inadequate sanitary and hygiene conditions, lack or denial of medical care including psychological care and solitary confinement as examples of conditions that amount to being cruel, inhuman or degrading.

Solitary Confinement

The issue of solitary confinement is slightly trickier as there is no international treaty specifically banning the activity. The international jurisprudence has yet to declare it unlawful, unequivocally. It has though been petitioned to be outlawed by successive Rapporteurs on Torture on grounds that it amounts to cruel or inhuman treatment, even torture, and Principle 7 of the Basic Principles for the Treatment of Prisoners treats the very principle of solitary confinement as undesirable: "Efforts addressed to the

abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged".

With respect to juvenile detainees, there are clear restrictions on the use of solitary confinement and The United Nations Rules for the Protection of Juveniles Deprived of their Liberty strictly prohibits "placement in a dark cell, closed or solitary confinement" as disciplinary measure and clearly categorise it as ill-treatment of the juveniles.

Solitary confinement can be meted out in instances of enforced disappearances / incommunicado detentions but also as a form of social isolation during imprisonment, either as a disciplinary measure or to prevent the detainees from influencing witnesses. Droege lists the limits imposed on solitary confinement by international jurisprudence and soft law which would qualify as cruel or inhuman treatment. These include, placement in a dark cell, sensory isolation, complete isolation, being confined in such manner for extended period of time etc. In addition, "If solitary confinement is inflicted for any of the purposes that define torture and causes severe harm to the detainee, it amounts to torture."[53]

Use of Force and Restraint in Detention

Keeping in view the particularly vulnerable situation of the detainees, which not only makes them more likely to face harsh treatment but makes them more susceptive to feel humiliated and derogated, we argue that excessive use of force constitutes ill-treatment. Based on our research we reiterate both Manfred Nowak's and Jeremy Waldron's line of argument and recognize that use of force, as long as it is strictly necessary for maintenance of security in prison or in cases where personal safety is threatened, can be applied. With the proviso that it is legitimised by the existing law and is not intended to humiliate and degrade or to

accomplish any of the purposes prohibited by Article 1 and 16 of CAT.

International Proscriptions in Pakistani Context: Police Brutality as a Form of Torture

This section will examine the gap between international proscriptions pertaining to torture, cruelty and degrading treatment laws, and the Pakistani reality and practice.

Whether it is because of repeated obfuscation of democratic process through intermittent military rule or an overall collapse of traditional social institutions, there appears to be an increased incidence of violence and passive acceptance of brutality and torture at societal level. On the other hand, police are increasingly seen resorting to torture as a scheduled activity. What is equally disturbing is that despite unwarranted violent *modus operendi* of the police; those at the receiving end have shown little capacity to resist such [police] brutality.

Reasons for this complicity (be they anthropological or historical) could be manifold. Within Pakistani context though, what merits particular attention is that viciousness in societal response inter se is increasingly becoming a norm; for example the case of Sialkot Lynching's.[54] Even though in that particular case the police were not the perpetrators, however they stood by and observed the proceedings afoot without making any attempt whatsoever to dissuade the perpetuators of crime. The crowd deliberately and with vengeance lynched two minors in broad daylight.

Yet another example of brutality and indignity was published in the Daily Nawa-i-waqt on the 7th of June 2012.[55] It was reported that certain influential inmates in a prison were caught sexually abusing younger ones. When the Assistant Superintendent took

them to task, they subjected him to grievous bodily harm. The perpetrators were then beaten by the police and locked in separate accommodation.[56]

These incidents show that police brutality is a standard operating procedure. At the societal level, resultant alienation from police operations is contributing towards a vigilante response from different segments of society which, needless to say, is an alarming trend indeed.

It is not clear if there is any connection between police brutality and the rising incidence of vigilante justice. The above incidents reveal that the abstract concept of 'Rule of Proportionality' used to distinguish between unnecessary and excessive use of force is necessarily incidental to its lawful exercise of power. The end result is that jurists and police alike are left to straddle a delicate and unfixed line between brutalities on the one hand and legitimate use of force on the other. Ironically, it is ultimately left to the police to delineate the realm of legitimate use of force, which as we shall see in due course, is the primary source of misuse of power and police brutality. James Fyfe characterises police brutality as extralegal violence and describes it as "the wilful and wrongful use of force by officers who knowingly exceed the bounds of their office."[57] Therefore, it would not be wrong to conclude that police torture is indeed a sub category of police brutality.

Budimir Babovic' explains circumstances under which torture occurs: "It is committed when police uses force with a view to achieving a task or design, most frequently to extort confessions or to induce compliance. It is practised upon persons in custody or under control, mostly (but not exclusively) on police premises or in other hidden places. Although extralegal and illegal, it is a component of what is called police methods and it reflects the conviction that

only force is efficient. It is known within the police organisation that it is tolerated somehow."[58] Babovic's reasoning pursued with the definitional criteria of torture established in Article 1 CAT, clearly demonstrates that the definition of Article 1 CAT could be operationalized as a springboard for discourse pertaining to custodial torture. In fact Babovic' himself advocated using Article 1 CAT as the bedrock of analysis; not only is the aforementioned definition internationally accepted, signatory states are bound by it, and most importantly it has an additional quality of being specific enough to encapsulate the loosely defined notion of police brutality within its folds. "... [W]henever this kind of brutality is discussed within police science, the notion of torture could helpfully replace the use of notion of brutality that appears to be rather vague and euphemistic. In that way the evil would be called by its proper name."[59]

This blending of police brutality and police torture has its own strategic uses as well as theoretical advantages. One of the primary benefits is that the circumstances under which torture occurs are carefully designed to go undetected. In addition, the only available method of redress is through an internal disciplinary mechanism whereby it is exclusively at the senior [police] officer's discretion to initiate penal action against the offending officer. This is compounded by the fact that in spirit of institutional cohesiveness, police adhere to an uncodified rule of silence, and in absence of external disciplinary mechanisms, turn a blind eye to most cases of torture. In addition, our field research has established that despite being cognisant of flagrant, albeit daily, resort to torture by police, the senior police officers deliberately refuse to take action primarily because they are of the view that it ultimately helps establish control of the police over people. Thus by bringing police brutality and torture together, a narrow room for intransigence is established. Going back to the newspaper clipping mentioned

earlier in this section, even though the concerned officer was well within his bounds to impede the illegitimate activity in question, the corporal punishment and the solitary confinement meted out as a consequence thereof were well beyond his charter and hence would tantamount to torture.

It must be recognised that police work by its very nature, is coercive. Stress induced by dangerous situations and self defensive reactions thereto can easily, and understandably so, result in the line dividing legitimate use of power and brutality, being crossed. On the other hand, there is no denying the fact that police do overextend their mandate to exercise power and hence a distinction between police brutality and custodial torture is warranted. Such a differentiation can be justified on the grounds that their sources and motivation as well as the *modus operendi* are very dissimilar. Babovic' believes that brutal proceedings can be treated as necessarily incidental to everyday police work and can be invoked for no apparent purpose. However, there are many situations where the police's resort to excessive force in response to an actual and at times perceived threat or aggression. Such instances merit recognition as police brutality, distinct from torture by police, occurs mostly in public spaces, on occasion of searches and arrests, during protests, demonstrations etc.[60] This proposed distinction neatly falls in step with Manfred Nowak's line of argument pertaining to the distinction between Torture and CIDT. Even though Manfred Nowak relied on the language of Article 1 CAT for guidance, we can safely rely on subsequent reasoning extended in support of his assertion and contend that as with Torture and CIDT, the distinguishing features between police brutality and police torture are the intent involved, the purpose and the powerlessness of the victim.

In conclusion, while setting up a case for relative openness in

which the definition of torture and ill treatment are to be couched; the intention is certainly not to rob the notion of its objectivity or to render it entirely dependent on subjective perceptions / feelings of the individual. The purpose is to assign the spirit of existing laws nucleus of emphasis so that even if there are any *lacunae* in the operational legislation, or jurisprudence, these can be overcome by a case to case exposition. By assigning the benefit of relative openness, it is ensured that should the adjudicating body be faced with an unprecedented scenario, not covered by the existing jurisprudence, it can, appealing to the spirit of the law and its general understanding, broaden the existing ambit of the definition accordingly. This way not only is the integrity and characteristic predictability of laws kept intact, but there is a blanket assurance that legal procedures will not stand in the way of course of justice. Thus, to ensure justice the parameters of the working definition established in the preceding section should be adhered to as the foundation while adjudicating upon cases dealing with torture and cruel and inhuman treatment.

End Notes

1 One of the participants of the Policy Dialogue, Mr. Sarmad Saeed Khan (AIG, Welfare, Training and Finance) was deeply critical of the *modus operendi* of the police and shared with us that now the police has developed, what he referred to as "scientific methods of torture" whereby they ensure that no tell tale mark is left on the victim's body. To this end not only do they have a special instrument (known as a *chitter* in common parlance; it is abroad leather strap) but they also never hit more than five times in succession on a particular spot. This way the blood flow does not stop and a bruise does not develop. Obvious motive behind such a practice is that supposing at any time the victim is medically examined, injuries sustained will be indiscernible and he will never be able to prove torture.

Dr. Tajammul Hussain Chaudhry (Head, Department of Forensic Medicine, Allama Iqbal Medical College) feared that the next era would be that of psychological torture chiefly because it is easy to get away with due to both due to lack of overall awareness on part of the society on the whole as well as the fact that it is extremely difficult to prove. Dr. Chaudhry blamed the common use of psychological torture in the alleged war against terror for making such methodology ubiquitous. Other participants agreed with Dr.

Chaudhry with respect to a general lack of awareness with respect to psychological torture and the potential damage that it can cause.

2. Interview with Chaudhry Shafique, Parliamentarian's Commission, conducted on 7 May 2012 in Islamabad.
3. Major pieces of colonial legislation, including the Indian Penal Code, 1860, the Police Act, 1861 and the Code of Criminal Procedure, 1908 were enacted immediately after the War of Independence; the Great Rebellion for the Colonisers. Thus it is not at all surprising to note that the body of laws that ensued adopted perceptibly authoritarian overtones all the while fixing a suspicious glare over the colonised subjects.
   The 1860 Police Commission, constituted immediately prior to the promulgation of the Police Act, 1861 made it abundantly clear that the primary objective of law was to be a politically useful force. It must therefore be noted that even though the British law makers of the time had a choice to introduce the democratic policing model upon which London Metropolitan Policing system was based, it favoured the Irish Constabulary model instead which imbibed a militaristic approach in civilian law enforcement. It can be safely averred that the colonial ruler's interests were well served by the creation of a repressive, government centric force which was so isolated from the very community it was intended to serve, that it could effectively be used as a tool to quell any schemes of dissent.
4. Draft Police Rules, 2012 were never promulgated as an Act of the parliament and are still pending.
5. Prevalence of torture, absence of swift and impartial criminal justice and increased resort to violence has caused brutalization of society. Resultantly, vigilante justice is emerging as a new disturbing trend, where people resort to violence against street crime.
6. Here it is only pertinent to underscore the fact that there seems to be a global consensus that treats the relationship between democracies and police for granted; any efforts to create or strengthen democracies necessarily deems that concerted measures to establish an effective democratic police force need to be taken. However, what is the precise extent of democratic values that the police is expected to imbibe and what is the causal effect between the two is an issue which is not remains pending within academia, but is also beyond the purview of this paper. As per Slansky (David Alan Slansky, 'Police and Democracy', *Michigan Law Review*, Vol. 103, No. 7 (Jun., 2005), pp. 1699-1830) it is by no means a simple trade-off; at times this relationship is identified as a procedural regularity and hence hitched to the concept of rule of law. At other times democracy is defined as an umbrella protection of substantive rights, rights which include police procedures like unreasonable search and seizure, compelled self incriminations etc.
7. This measure is endorsed by The Independent Commission on Police Reports in no uncertain terms. The Report identifies absence of an exhaustive counter terrorism strategy as one of the key failings of the state and propounds a military and police partnership in developing counter terrorism institutions and strategies as opposed to relying on police and / or civilian partnership. It designates police the primary responsibility of maintaining internal security and proposes substantive alterations to the Anti Terrorism Act, where-under more powers would be handed to law enforcement agencies and police as an institution is envisaged to be the principal beneficiary.

   While this suggestion does have certain merits, its chief failing is that by appointing

counter terrorism strategy as the nucleus of emphasis, institutional development is effectively rendered one dimensional. As aforementioned, the very notion of democracy and by necessary implication intuitional building, shares an inveterate bond with policing; police procedure is expected to abide by rules of criminal procedure law and imbibe substantive rights that are understood to have democratic implications, for instance those pertaining to search and seizure. Herein lies a fundamental difference in the *modus operendi* of the police and military; the former is a service as opposed to a force; it is expected to strike a balance between democratic liberties and 'policing' in its working as opposed to take collective actions that it, in its unbridled discretion deems appropriate. As it is there is a huge trust deficit between the citizens and state, police in particular. To add an additional element of what can only be described as highhandedness and highly undemocratic sentiment not only robs the police of its service oriented element but provides precisely the kind of environment which is conducive to cyclic reliance on torture.

8. If further souring of the police and citizen relationship is to be prevented and the police are to retain their service oriented temperament, it is absolutely imperative that civilian intelligence agencies i.e. police and intelligence agencies under police control are given preference over military trained and military owned procedures. It is only then that an overarching democratic sentiment can be brought in line with daily police operations and the process of institutional development be effectively initiated.
9. Text of Articles 14 and 9 of the Constitution of Pakistan, 1973 are given herein below.
10. S. 337 k (PPC) _ Causing Hurt to Extort a Confession. Any person who causes hurt for the purposes of extorting a confession shall be punished in a manner appropriate to the hurt caused by imprisonment for up to a maximum of 10 years.
    It should be noted that a policeman who is present and oversees the hurt being caused [for the purposes of extorting a confession] is deemed in eyes of law to be guilty of abetment of an offence.
11. Pakistan is signatory to a number of other international treaties dealing with the issue of torture for example International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights. Pakistan is a member state of the Universal Declaration of Human Rights. In addition Pakistan is already a party to the Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of the Child (CRC) and International Convention on the Elimination of All Forms of Racial Discrimination. Pakistan has signed but not yet ratified Option Protocol to the CRC on the involvement of children in armed conflict. Purpose behind enlisting these conventions is to clarify that CAT is not the only international obligation with respect to the issue of torture. The only reason why CAT is the focal point of discussion throughout is that we are proposing to import the definitions provided in the said piece of legislation as they are to domestic jurisprudence. In addition, we propose that CAT should be used as the guiding tool against which the efficacy of existing laws should be measured.
12. The Greek Case, 1969 Y.B. Eur. Conv. On H.R. 461 (Eur. Comm'n on H.R.).
13. *Ibid*. Also see Ahcene Boulebaa, The U.N. Convention on Torture and the Prospects for Enforcement 14 (1999).
14. Special UN Rapporteur on Torture from 2004 to 2010 and human rights lawyer.
15. Manfred Nowak, 'What Practices Constitute Torture? US and UN Standards,' *Human Rights Quarterly* 28 (2006) 809-841 (p. 821).

16. *Ibid*.
17. *Ibid*., p. 830.
18. *Ibid*., p. 832.
19. *Ibid*.
20. Manfred Nowak & Elizabeth McArthur, 'The Distinction between Torture and Cruel, Inhuman and Degrading Treatment,' *Torture* Volume 16, Number 3, 2006, pp. 147-151 (p. 149).
21. *Ibid*.
22. *Ibid*., p. 150.
23. According to Waldron, there are various ways in which such norms can not only be legally entrenched in the system but also be protected from future revision, redefinition or repeal. Three methods that he proposes are first, the provision of international law can be vested with the status of *jus cogens,* "as proof against the vagaries of consent that dominate treaty-based international law." Secondly, such a norm may be incorporated in international jurisprudence as a non derogable clause of human rights law and insulated against the "thought that it is acceptable to abandon rights-based scruples in times of emergency." The third possible method is that the rule may be encapsulated in constitution so as to avoid future majoritarian usurpation.

    While the first two relate to international law, the third is a remedy that has to be pursued at home and is a responsibility of domestic legislature. Pakistan, as established above, has indeed fulfilled this responsibility and Article 14(2) is a living testimony thereof. The problem though is that the prohibition itself does not enjoy the benefit of a definition which enunciates in definitive terms what precisely is the law proscribing thereby relegating the said constitutional provision to the ineffective status of a mere show piece.
24. One of the chief concerns extended with respect to Articles 9 and 10 of the Constitution and other provisions of law quoted in this paper during the Policy Dialogue was that they do not specifically address the issue of torture and hence should be removed from this paper. We wish to clarify that we too are cognizant of the fact and the chief purpose behind highlighting these provisions of law is twofold; a) to highlight the inadequacy of the laws with respect to the subject at hand, and b) despite their *prima facie* inadequacy, we used them as an archetype of a general anti torture sentiment concealed within the spirit of the laws.
25. Mumtaz Ali Butto v. Deputy Law Administrator, Sector 1, Karachi PLD 1979 Karachi 307
26. Benazir Bhutto v. President of Pakistan, PLD 1998 SC 388
27. Amir Ullah v. The State, 2004 PCrLJ 821
28. Abdur Rashid Butt v. The Sate, PLD 1997 Lahore 394
29. The State v. Muhammad Yusuf, PLD 1965 Lahore 324 (CIA Office is not a police lock-up unless so declared by notification issued by the Government.)
30. In Muhammad Ibrahim v. SHO, Police Station, Sheikhupura, 1990 PCrLJ 1717 it was held that where offences charged against accused were not cognizable by police except with the order of the competent Magistrate, police could not have entered upon an inquiry. All action taken by the Police Officer (SHO) including lodging of detenu in police lock up were improper, illegal and without authority. Detenu was set at liberty.
31. Shahida Zahir Abbasi v. President of Pakistan, PLD 1996 Supreme Court 632
32. Muhammad Afzal v. Home Secretary, PLD 1996 Lahore 325

33. Saifuddin Saif v. Federation of Pakistan, PLD 1977 Lahore 1174
34. Begum Tahira Masood v. Fariduddin Masood, PLD 1974 Lahore 120
35. Article 39, QSO.
36. Even quoting Section 337-k, PPC one cannot turn a blind eye to the fact that this particular section deals with "Hurt" and could undoubtedly use the benefit of a precise definition of torture in order to take effective legal action with respect to the issue. While the said provision of penal law, along with section 348 can be used as a baseline for say litigating CIDT, torture needs to be defined in absolute terms so that legal recourse is easily achievable.
37. Cordula Droege, 'In Truth the leitmov: The Prohibition of Torture and other forms of Ill Treatment in International Humanitarian Law,' *International Review of the Red Cross*, Vol 89, No. 867, September 2007, pp. 515=541 (p. 519)
38. *Ibid.*, p. 518.
39. *Ibid.*, p. 518.
40. *Ibid.*, p. 519.
41. *Ibid.*, p. 519.
42. Jeremy Waldron, 'Torture and Positive Law: Jurisprudence for the White House,' *Columbia Law Review*, Vol. 105, No.6, (Oct., 2005), pp. 1681-1750.
43. *Ibid.*, p. 1723.
44. *Ibid.*, p. 1769.
45. Waldron did not use the term *mens rea* and has been introduced by us to emphasize the point that torture is a legally prohibited act liable to criminal prosecution.
46. *Ibid.*, p. 1727.
47. *Ibid.*, 1703.
48. Charles Brower, Nigel Rodley, Oren Gross, 'Torture, Violence and the Global War on Terror,' *Proceeding of the Annual Meeting (American Society of International Law)*, Vol. 99 (March 30 – April 2, 2005) pp. 401-410 (p. 406).
49. Malcolm D. Evans, 'Getting to Grips with Torture,' *International & Comparative Law Quarterly* 51.02 (2002): 33-49 (p. 49)
50. Manfred Nowak & Elizabeth McArthur, *Ibid.*, pp. 147-151.
51. Sir Nigely Rodley, Special UN Rapporteur on Torture from 1993 to 2001 visited Pakistan in 1995 on an official visit. Unfortunately, it is manifestly clear that ground reality has not come very far from what he reported.
52. Cordula Droege, *Ibid.*, p. 536.
53. *Ibid.*, p.540.
54. Saba Imtiaz, *Third Degree*, The Express Tribune, 29 April 2012 http://tribune.com.pk/story/370212/third-degree/
    Brothers Hafiz Mughees, 17 and Muneed Sajjad, 15 were publically lynched while the police stood by watching. Although in this particular instance it was the public and not the police who were the perpetrators, it draws attention to the omnipresence of a culture of violence that not only breeds but ultimately perpetuates ill treatment and torture. Even if in this instance the police were not direct contributors to the illegal activity in question, reversal of roles does not seem impossible, as a society so attuned to violence can only be expected to readily accept brutality when at the receiving end.
55. http://www.nawaiwaqt.com.pk/E-Paper/Lahore/2012-06-07/page-1
56. Purpose of narrating this incident is to underscore the fact that, even though the police were well within their bounds to impede the activity afoot, not only was corporal punishment their default recourse but such action is so widely acceptable that a

newspaper of Nawa-i-waqt's reputation and circulation did not deem anything amiss and hence reported it in their front page.

57. James J. Fyfe, 'Training to reduce police-civilian violence,' (1995), in W.A. Geller and H. Toch, 'And Justice for All: Understanding and Controlling Police Abuse of Force,' *Police Executive Research Forum,* Washington DC, p. 163.
58. Budimir Babovic', 'Police brutality or Police Torture,' *Policing: An International Journal of Police Strategies & Management,* Vol. 23 No. 3, 2000, pp. 374-380 (p. 374-375).
59. *Ibid.*, p. 375
60. *Ibid.*, p. 376.

Chapter II

Colonial Legacy: How do Sociological, Cultural and Legal Structures Accommodate Torture?

Prohibition against torture and other cruel, inhuman or degrading treatment can clearly be established under numerous sources of law; ranging from international proscriptions to domestically prescribed legal embargos. However, it is equally important to remember that torture as a practise has never been completely eliminated. The use of physical and mental abuse to *obtain confessions,* in spite of the aforementioned legal injunctions, remains an important component of law enforcement which incidentally garners strength from societal acceptability. It would be pertinent to clarify here that acquisition of confessions has been deliberately isolated from all other possible scenarios that can and do indeed perpetuate instances of torture. Most of the state perpetuated torture, or custodial torture, takes place through the aegis of the police and on the premises of the state itself i.e. the police station. The case of Pakistan reveals that, it is the institutional architecture of the department of police that instrumentalizes torture. How history, tradition and colonial rule contributed towards this is analysed in the following section.

Torture: Mughal and the British Rule

A number of scholars contend that torture (custodial torture specifically speaking) is ingrained in South Asian history and culture with its antecedents traceable to pre-colonial times. Conversely there are others who emphasise that colonial rule aggravated the situation and added an element of ubiquity to brutality.[1]

S. K. Ghosh, in his book *Torture and Rape in Police Custody*[2] iden-

tifies commencement of British rule as the principal turning point from the prevalent state of affairs. In 1860, the criminal justice system was regularised under the Indian Penal Code, which not only abolished its predecessor, the Shariat Law, thereby codifying the criminal justice system on the whole, but also expunged the general organisation of the state of extra judicial exercise of power that *Shariat* Law had inadvertently become synonymous with.[3]

The current structures of criminal justice system (the judiciary, police, jails and statutory laws as they exist today) together with the latent abhorrence of torture that they advocate, Ghosh claims, are imperial bequests. Having thus averred, he then attempts a rationalisation of the concurrent existence of legitimate / codified procedural law with an endemic recourse to torture by state agencies. Ghosh asserts that with the passage of time the practice has been so deeply ingrained in police psychology that it has acquired an element of inevitability i.e. it has become an essential component of the very procedure of investigation. This undesirable union of the illegal and the legally permissible has resulted in a blurring of lines dividing torture from lawfully permissible investigation methods and interrogation techniques. Thus, robbing the practice of the last modicum of compunction. If taken to task, police officials' inexorable reply is that "this is the way things have always been done". Additionally, investigative / interrogative procedures assume a *modus operendi* which is far removed from the letter and spirit of existing laws affirming Ghosh's assertion that the investigative procedures have almost undergone a reverse process.[4]

Gosh's thesis is extremely helpful in establishing a transcendental ubiquity of the practise. However, in order to develop a finer appreciation of torture, it needs to be understood as a structural problem of policing as opposed to a historical function or even an aberrant and extraordinary instance.

Anupama Rao[5] does not share Ghosh's admiration for the colonial legal regime. She attempts to draw a necessary correlation between laws established by the British Raj and practice of torture; the imperial masters not only participated in the activity, but carefully engineered structures that would erase from the public eye their complicity in the regime of torture. Rao is of the view that the colonial masters recognised the efficacy of the culture of terror that they sought to displace, especially the value of police violence in [colonial] governance. At the same time, they were saddled with the burden of expunging the system of all relics of the previous oppressive 'native' practices.

Therefore, the police was divided on the one hand, as "belonging to the generic category of state servants and functionaries of the law, while on the other hand the native police were viewed as a special category of colonial subjects who were outside the law."[6] Thus not only were they able to establish a clear [albeit physical / structural] separation between themselves and the "traditional repertoires of policing", abhorrent practices like torture *et al,* but they were simultaneously able to reap benefits of the so called 'traditional methods' of policing by espousing the pedagogical paradigm of rule of law.

This reliance on native police for purposes of controlled governance, coupled with the inherent abuse of legal norms, produced a paradoxical need to police the police. "In a colonial situation, natives were seen as possibly needing protection from the police, rather than being protected by them."[7] By introducing this clear distinction between the colonial masters and natives or for that matter between the 'Central' and the ' Provincial' police; the two parallel forms of policing were initiated whereby the subordinate cadres were simultaneously viewed with a measure of scepticism and yet relied on for maintaining control.

In this context, usage of torture problematised matters even further. On the one hand the colonial state projected itself as institution builder, neutral and rational, upholding 'rule of law' in an otherwise backward society. Thus to curb violence the colonial rulers enforced extensive codification of laws. On the other hand the very same rule of law called for stringent legal standards to be pursued; for example proof was inadmissible unless established beyond a shadow of doubt. These rules, despite neutrality, did not enjoy the benefit of being backed by forensic sciences. Confessions still had to be 'gleaned' or 'obtained', and in absence of a scientific endorsement, the pre colonial traditional techniques of *'policing'* remained intact.

Elaborating the paradox of colonial rule Rao perceptively remarks: "... the problems with police reform suggested a split between the rhetoric of colonial improvement and its personification in the native police who were meant to enact ideologies of rule of law. ... the problematic discovery of torture for the extraction of confessions is symptomatic of the contradictions of a colonial rule that acknowledged customary practices (due to the political necessity of relying on natives), yet stigmatized them through the rhetoric of modernization and improvement."[8]

Suffice to say, colonial administrators were all too aware of the extent to which these police officials took the task of disciplining the criminals upon themselves as well as the readiness with which established legal mores were flouted in order to glean confessions and produce evidence. This illegally extracted information would then be laundered through the so called neutral legal system to gain legitimacy. The colonial state used and deployed torture as a mode of governance and control through the conduit of the native police and in the process effectively erased any trace of their own complicity.

End Notes

1. One of the more regularly extended explanations for torture acquiring the status of an almost scheduled element of police procedures is that the Indian Subcontinent police has identified with torture and violence since time immemorial. Most of the torture conducted at the behest of the state so to speak, is for a large part dispensed as a form of rough and speedy justice. This is the reason why the common explanation extended even today is that such practices have existed since the very inception of the institution itself.

   Historically speaking, it is was the Mughal regime (1500—1700) that was responsible for assigning torture the status of a standard operating procedure as it were in police matters. Under the Mughals, *Shariat* Law formed the order of the day and daily affairs of the state were accomplished in absence of codified procedural laws both criminal and civil. This is not to say that *Shariat* Law either endorsed or even tolerated routinisation of torture and resort thereto. However, there is no doubt about the fact that it failed as a cogent substitute for a codified criminal justice system with the result that the exercise of torture for purposes of extorting confessions became a norm during the era.
2. Shrikanta Ghosh, *Torture and Rape in Police Custody: An Analysis*, (New Delhi: Ashish Publishing House, 1993).
3. *Ibid*., p. 17 "With the collapse of the Mughal Empire and till the advent of the British rule in India, criminal justice system did not exist. The *Shariat* laws in force. The Indian Penal Code of 1860 abolished the *Shariat* Law. Judicial functions were exercised by anyone strong enough to compel others to submit to his jurisdiction. The country was subjected to a general system of tyranny. From the greatest chieftains and nobles of the realm to the humblest peasant in a village neither life nor property of a subject could be called his own and all bowed to the iron spectre having no law to prevent then from oppression."
4. Another contributory factor identified by Ghosh is the overzealousness of the investigating officers to secure conviction as this is ultimately considered a yardstick for assessing their merit. The craze of conviction that ensues has literally flipped the investigation procedure on its head. The average investigation by the police, irrespective of the nature of the alleged crime, has been distilled to discovery of the suspect, extortion of a confession from the suspect through whatever means possible and mostly with a flagrant discard to the illegality thereof, was elaborated by Justice Walsh who says. "Paradoxically though it seems, it is in many cases the fact; whereas the English detective begins with his available witnesses, and works his way up to the discovery of the accused, the Indian Sub-Inspector begins with the accused, and from him works his way up to the witnesses, who are sometimes surprised to find out how much they are supposed to know".
5. Anupama Rao, 'Problems of Violence, States of Terror: Torture in Colonial India, Interventions', *International Journal of Post Colonial Studies*, 3:2, 186-205.
6. *Ibid*., p. 189.
7. *Ibid*., p. 193.
8. *Ibid*., p.193.

Chapter III

Socio-Political Reality: Is the Gap between Legal Provisions and Reality Bridgeable?

Anupama Rao's insights are instructive in understanding how institutional structures that accommodate transgression continue to exist even today. Clear bifurcations between the Central and the Provincial police cadres are still maintained and perpetuated through both their training as well as the organisational architecture. This is subsequently reflected in differences of their attitudes both towards the public as well as each other. These fundamental differences between the lower and higher cadres of police enable us to couch our pedagogical analysis in terms of structural failure as opposed to a mere conventional practice as suggested by Ghosh.

It must be understood that police functions support a duality of purpose. First of all, the police are absolutely essential to the maintenance of public law and order; second, it also serves as the first point of contact between the state and its citizens.[1] The net effect of this dual role is that the police assume the role of complaint mechanism as well as the ultimate arbiter at the micro level.

During our field research it became abundantly clear that abuse / ill treatment, even torture of prisoners was a common practice both in prisons and police stations. However, our research shows that instances of torture in police custody i.e. at the station, far outweigh those in prisons. This helps us in dealing with 'custody in police stations' and 'custody in prisons' under separate heads.

Our observations in the following section are based on our findings. We were able to interview approximately 150 prisoners, cur-

rently incarcerated at the District Jail and the Kot Lakhpat Jail, Lahore. These prisoners though come from all over the Punjab. The interviewees included mostly men, but we also got an opportunity to interview around 26 children or 'Underage / Juvenile Offenders' as they are legally referred to and around 40 women. The number of women is relatively less because, while we had complete access to male and underage prisoners and were able to conduct interviews in absolute privacy, we were denied the same level of freedom of contact with female prisoners. We realized that the jail staffs was suspicious of the nature of our questions; therefore they were careful in choosing the ladies who we were allowed to interview. These were women who had been in prison for less than week to ten days and were charged with petty offences. With the exception of women, interviewees were randomly selected from all age brackets and natures of crime and therefore included convicted murderers, those apprehended in fraud cases, major and minor thefts as well as petty offences.

Police Stations (Thanas): Custody and Torture

Every step of the way, starting from the moment that the First Information Report (FIR) is lodged, to the time that the suspect (victim for our purposes) is sent to prison on a judicial remand, has been carefully charted by existing laws. Our research is making a finer point that the policing laws inherited from the colonial rule are inadequate and need a comprehensive reform, till that is done, the victims' plight can be drastically mitigated if these laws are adhered to. Despite the fact that these laws do not singularly address the issue of torture, a major deficit of the legal system; they do define the parameters of interaction between the police officials and ordinary citizens which, if followed both in letter and spirit, would prevent torture taking place in the first instance. In order to elucidate our point, below is a rough framework of laws which though by no means exhaustive, is more than sufficient to

develop an understanding of the system and to be used as a yardstick for measuring transgression.

These laws and regulations are needless to say, disregarded more often than adhered to. In this section we will draw from information gathered during our field research. The attempt will be to construct a narrative based on the victims' experience of procedural malpractices [by the police] which ultimately create grounds conducive to meting out of torture. Benefit thereof shall be threefold; we will not only be able to identify the cultural norms that perpetuate inevitability of torture, but will also be in a better position to demarcate *lacunae* in the current legal scheme, which work in tandem with conventional practices and undermine the system on the whole. Lastly, the scenario thus formed can be used as the basis for devising remedial measures.

Torture: Investigation and Interrogation Linkages

First Information Report is when the complainant or the victim or a reporter of crime registers complaint with the local police. The Sections 154 and 155 of the Cr.PC read with Rule 24.1 of Police Rules, 1934 (Police Rules) stipulates that all information pertaining to the offence in question must be recorded in the First Information Report by the Station House Officer (SHO), who is in charge of the police station. Failure to comply with this stipulation will tantamount to breach of duty on part of the SHO who shall have to subsequently bear the consequences.[2] FIR is a particularly significant document as it literally forms the foundation upon which the entire investigation will ultimately be built upon; it is based on the contents thereof and the information provided therein that the investigating officer decides his *modus operendi*. Additionally, it is only once an FIR has been lodged that, registered, that, as per section 156, Cr.PC read with Rule 25.1, Police Rules, can the investigating officer formally commence his inves-

tigation; FIR, contrary to popular belief and practice, does not *ipso facto* form the basis of an arrest.[3] This rule however, is not strictly adhered to primarily because legally speaking, it is neither an absolute requirement nor are there any enabling guidelines provided to the effect. Consequently, it is as early as the lodging of FIR that the system fails to protect interests of the person against whom the complaint is made; or alternatively speaking, victimisation begins at such a nascent stage and that too through the aegis of law, or the lack thereof. While on the issue of FIRs, it must also be noted that Rule 24.7, Police Rules makes it abundantly clear that it [an FIR] cannot be cancelled unless specifically ordered by the Magistrate.

In addition to the lodging of FIRs, as per Article 167 of Police Order, 2002 (Police Order), the SHO is also responsible for maintaining a Daily Diary of all complaints and charges made, list of names of all persons arrested, charges against them and the names of the complainants and witnesses.

Procedural malpractices, which ultimately set a stage conducive for meting out of torture, set in as early as the filing of the complaint or the lodging of the FIR as it is formally known. Two possible scenarios emerge at this juncture. If the police is acting on behest of a politically influential person or are in cahoots with the actual perpetrators (i.e. have been paid off by them or are related to them), they will simply refuse to file the complaint. There is absolutely no recourse available in such a scenario. If not, they will still create problems for the complainant by threatening to implicate the victim himself or filing an inaccurate complaint. However, in absence of outside influence, a bargaining situation is created whereby they are willing to relent at a later stage, though only in return for money. As we shall see in due course, this is a recurring theme throughout the entire length of interaction with police of-

ficials; money is requested and exchanged at every single step of the way and outcomes alter drastically based upon the ability to pay and the amount traded.

Coming back to the lodging of FIR, if it is the former of the two scenarios, i.e. a person of influence is involved, which can include the local politician, industrialist or persons of similar category or alternatively, simply a relative of the police officials, the police force serves as a personal militia. The local police is on a regular pay roll and private influence is maintained through their aegis.[4] In such a scenario, room for bargaining with the complainant is considerably narrow; police have to do as they are bid which may include a refusal to lodge an FIR or at times even arresting certain persons on fabricated charges. During our field research we discovered this to be a regular feature and there were quite a few inmates who were recorded as saying that they hadn't even heard of the person whose murder they had been charged with.

If it is the latter scenario, absence of external pressures automatically creates room for bargaining. FIR is one of the most important and thus ill-used documents of a police case. It is based on the information recorded therein that the ambit of the offence will be determined and subsequent inquiry conducted. Therefore, being all too cognisant of the significance of the document in question, as well as vulnerability of the complainant, they [police] will refuse to lodge the FIR unless paid first. If an outright request for money is not made, the procedure is delayed to such an extent that the complainant offers money him/herself.[5]

We used the word bargaining earlier deliberately. It is not absolutely necessary that the amount requested will be the one ultimately tendered. Our research found that the amount solicited can be anywhere between Rs. 10,000 to Rs. 50,000. Amount that

eventually changes hands though depends on the nature of the crime (the more serious the crime, the less will the police be willing to bargain) and on the paying power of the complainant. Based on these two factors, a settlement may be reached for as low as Rs. 50,000. What is manifestly certain is that, no matter what the amount, money will most certainly be exchanged.

It must be noted that this particular scenario of negotiations applies both when a complainant seeks to lodge an FIR as well as when, based on that FIR, persons have been arrested. Almost all the persons interviewed had the same story to tell. The moment they were arrested and brought to the police station, negotiations commenced and continued at every step of the way. Once arrested, basic dynamics of negotiations also alter drastically. With an arrested person the balance of power and control is egregiously tipped in favour of the police which brings us back to the earlier point made by Manfred Nowak with respect to the definition of torture; most infractions take place because of the powerlessness of the victim. In such scenarios, chances of the police settling for paltry amounts are next to none. On the other hand, in the earlier scenario of refusal to lodge FIR, room for bargaining is relatively less as even the police are aware of the fact that they would have to file the complaint sooner or later. Vulnerability of those involved is also comparatively less, thereby further restricting room for manoeuvre.

Investigation / Interrogation and Arrest

Once the case has been registered an Investigation Officer (IO) is appointed by the Superintendent of Police in charge. The IO is to investigate facts and prepare an investigation report within 14 days of the registration of the case. Arrests are made based on the findings of the investigation report and the *challan* along with the arrested suspects are presented to the magistrate. Detailed

laws governing *modus operendi* of this investigation exist. Unfortunately, in Pakistan, the investigation is less about evidence collection; it is primarily based on the witness statements and the recorded statements of the arrested suspects. In case it is discovered upon investigation that the arrested suspect is unable to supply sufficient evidence or there aren't any reasonable grounds for suspicion against him / her, the accused may be released even without being presented to the Magistrate.

The Police Order though makes provision for the duty officer to "apprehend all persons whom he is legally authorised to apprehend and for whose apprehension sufficient grounds exist" (Article 4(1) (j) of the Police Order). Here it must be noted that the term used is 'apprehended' as opposed to the more legal term of 'arrest'. The problem though lies with the fact that in Pakistan, offences are divided into two broad categories; cognizable offences and non cognizable offences. With respect to the former, the IO is permitted to exercise his own discretion and make an arrest without warrant from the Magistrate. In addition, matters are made worse by the fact that the police are vested with broad powers of arrest; there are 33 different grounds of arrest alone. This is where potential for most abuse lies; the absence of a legal requirement to obtain warrant not only trivialises the sanctity attached to legal procedures and their rightful legitimacy, thereby undermining the entire legal system in its wake, but also provides the police a *carte blanche* to promote their private agendas as they are legally permitted to implicate anyone and arrest anyone as they deem fit.

In addition, the Rule 25.2(1), Police Rules authorises an investigating officer to associate "any person" with the investigation. The Rule 25.2(2) categorically provides that "no avoidable trouble shall be given to any person from whom enquiries are made and no person shall be unnecessarily detained. While the Rule 25.2(3)

provides a further clarification that "it is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person."

The law allows for a police officer to apply to a Magistrate for a warrant or a summons instead of making an arrest immediately and this discretion shall be exercised whenever possible and expedient. In a bailable offence though, under section 170 of Cr.PC, the police officer can take security from the accused person to appear before the Magistrate, without first arresting him. The Rules 26.2 and 26.9 of the Police Rules expressly prohibit police officers involved in investigation of crimes from unnecessarily interfering with the liberty of suspects "until investigation is sufficiently complete" and "the facts justify arrest". The Rule 26.1 of Police Rules, states, that facts justifying an immediate arrest may include possibility of the suspect escaping from justice or causing inconvenient delay likely to result from the police failing to arrest.

The Sections 46 to 53, Cr.PC charts in minute detail the parameters of a legally conducted arrest. It is specified that during the process of arrest, the arrestee should not be subjected to unnecessary and undue force (section 50); and that person arrested can be searched only to the extent the warrant permits (section 51). The Section 54(1), Cr.PC provides an exception to the afore stated rule pertaining to arrests; the police may be allowed to arrest without warrant in certain extraordinary circumstances, for instance, when there is 'reasonable suspicion' or the police are in receipt of 'credible information' or there is a reasonable complaint regarding the suspect's involvement in a crime. Herein is another *lacuna* which facilitates abuse. The above criteria falls short of the probable cause standard and inevitably leads to considerable abuse of power, espe-

cially with respect to arrests made under the Hudood Ordinances which provide for arrest without warrant. However, the Rule 26.1 of Police Rules emphasises that the authority given to any police officer to make an arrest without warrant in cognizable offences is permissive and not obligatory. They are bound to make an arrest only in cases where escape from justice or inconvenient delay is likely to result from police's failure to make an arrest.

All arrests, whether conducted with a warrant or without, as per sections 60 and 61, Cr.PC, must be reported to the Magistrate and the arrested persons must be brought before the Magistrate within 24 hours without any unnecessary delay. This is one of the most important provisions of criminal law and one of the most frequently violated one as we shall establish in due course. Once presented to the Magistrate, the latter is vested with the authority under section 167 (2), Cr.PC to remand the suspect back to the police for an additional 15 days for further police investigation of a charge.

Legally speaking, the investigation, interrogation and subsequently the arrest are distinct procedures and are supposed to follow in that order. In reality however, they are all grouped together into a single action of sorts. Whether it is a mere misconception entertained by the police [which incidentally we found is shared by the victims] or has attained the status of a convention due to the sheer convenience it affords,[6] or there is a possible third reason, we know not. However, it is widely believed that the arrest of a suspect or an accused is a necessary *sine qua non* of investigation. This needless to say, and as spelled out in the previous section, is a misnomer that testifies to a scant knowledge of law on the part of all concerned.[7]

Legal prescriptions make it manifestly clear that a suspect is not to

be arrested immediately upon registration of an FIR or as a matter of course until and unless the situation so warrants. Arrest is to be deferred till such point in time that sufficient material or evidence becomes available on the record of investigation *prima facie* satisfying the investigation officers regarding the correctness of allegations levelled by the complainant party against such suspect or regarding involvement in the crime at hand.

What actually happens is that once a person has been identified as a suspect, this is considered sufficient grounds for arrest. Needless to say, the suspect's ordeal (or the victim for our purposes) begins as soon as he / she is apprehended. We have deliberately favoured the word 'apprehended' in favour of the legally provided term of 'arrest' ostensibly because the latter is necessarily understood within the context of a set of *a priori* assumptions which include adherence to a prescribed procedure. However, given the bifurcation of cognisable offences and non cognisable offences, and the procedural laxity pertaining to the former which permits arrests to be conducted without the benefit of a warrant, the two terms, despite their inherent differences, are used interchangeably, at least within the context of the Pakistani legal system. They are certainly treated as such by all the relevant stakeholders i.e. the arresting officer as well as the person being arrested.

Once thus seized, the prisoner will be transported to a place of detention. AS per law this place has to be a state recommend or recognised area, like the police station. In reality however, it is not necessarily the case; the person arrested may be taken to a police station, an army barrack, or a place belonging to neither category, but commandeered for that purpose. In cases dealing with narcotics it is inevitably the custom's warehouse. Once safely on the premises controlled by the police[8], whatever its nature and legal standing, torture and ill-treatment will commence; unless it

had already started during transportation thereto, for example, if the person tries to resist arrest.

The isolated act of physically arresting the suspect - as opposed to the broader legal concept - has, over the years, evolved a standard pattern of its own. Needless to say, this bears little to no resemblance whatsoever to the legally prescribed method. Arrests can take place at any hour of the day, or night for that matter. Quite a few prisoners informed us that they were arrested from their respected homes after twelve at night. Another recurring theme was that people were arrested from their work places, or apprehended while they were running household errands. In such instances nobody initially knew of their whereabouts and their family members found about their fate mostly when they went to the police station to report them missing or were informed by passers-by who had witnessed the arrest.[9]

With respect to arrests, another common practice is that even if one person is named in the FIR or is believed to be a genuine suspect (which is rarely the case), all the male members of the family, and at times the female members too, are arrested along with the primary suspect. This particular act serves two purposes in the grander scheme of affairs. First of all, it is the most effective method of obtaining a statement of confession from the primary suspect. Secondly, in case the suspect does not relent easily or for that matter is not the real perpetrator at all, by bringing the family in and threatening to torture them, and at times in fact torturing them, this is certainly the most effective method of pressurising them into tendering a confession, be it true or false. During the Policy Dialogue, Mr. I.A. Rehman pointed out that these family members are at a greater risk of abuse (and hence torture) than the primary accused because not only is their arrest so to speak, never recorded, but there exists no official documentation to the affect

that they have been apprehended to begin with, which ultimately makes recovering them from police custody an impossible task.

> During our visit to Kot Lakhpat jail we met a girl, 21 years of age, who had falsely been identified [accused] as accessory to murder. Her uncle had murdered their next door neighbour's daughter. As the neighbours had to justify the girl's presence at the house next door (the place of murder), they informed our interviewee's parents that they had paid the police and they were making their daughter (our interviewee) an accessory to murder by accusing her of inviting their daughter to their house (where the murder took place). She told us that she, was not subjected to any physical assault, but when she denied the charges against her at the police station, they [the police – investigation officer/s] tied her uncle to a charpoy and beat him with leather straps in her presence. She was assured that they would not stop until she gave in. She told us that she confessed only to save her uncle.
>
> Another prisoner incarcerated on murder charges at the District Jail, Lahore, told us that he had never even heard of the persons he was accused of having murdered but had been falsely implicated to protect the local feudal lords. On his repeated denial, his old father and two brothers [who were not accused of anything, at least on record], were also apprehended but were later released when they paid the SHO Rs. 50,000 [which they borrowed from relatives]. The police realising that he will not relent brought his three year old son to the police station and hung the child upside down in his father's presence. The interviewee told us that then he was left with no other option but to confess to the crime he had been accused of. Once having confessed, a new set of negotiations commenced with the police; they promised

him that if he paid up some more they would make sure that they submit a favourable report. He though had already borrowed the money that had been used to release his father and brothers and hence could not afford to raise more money. The police then miraculously found the murder weapon, with his finger prints on it. He though told us that he had never seen the said weapon or ever been to the place where the police alleged it was discovered from.

On the basis of our research, we can aver with considerable degree of confidence that almost all torture takes place under the seemingly legitimate head of 'interrogation'. According to a study conducted by Waseem Haider[10], PhD student at the University of Health Sciences 92% of detained men and 9% of women were physically tortured by the police.[11] In addition, 12.14% of women detainees were subjected to psychological torture. The study concluded that 16.42% of youth aged between 15 to 19, 25.38% adults aged between 20 to 24 and 18.9% aged between 25 to 29 were tortured while in police custody. Waseem Haider attributes this exercise of torture on the 'non-professional attitude of the police'. He revealed that most of the times (18.6% to be exact), custodial violence could be explained as a 'mechanical' recourse of investigation'. His study shows that torture techniques such as rolling heavy objects over the prisoners, jumping on them, placing them on ice blocks and hanging them upside down was observed in a few cases. He pointed out that parts of the body most frequently targeted by torture were: buttocks, foot soles, back, front, and back of thighs. He recorded that the most common tool used to inflict pain was the cane stick and a broad flat leather slipper (dipped in mustard oil to inflict maximum pain).[12]

Over and above the torture techniques narrated by Haider, we were told of some additional practices. Three different men told

us that they had been electrocuted 'during interrogation'. Two of them were electrocuted using proper electric chairs, but in case of the third his interrogators concocted a homespun solution; they electrically charged a metal chair and made him sit on it. One man told us that he was beaten with a strip of car tyre soaked in water and his skin came off. We were not able to verify his wounds but a lot of prisoners displayed theirs, including limps they claimed had been caused by beatings, fingers from which nails had been pulled. Some had their teeth pulled. Women were not spared from brutal torture techniques either. One woman told us that a lit cigarette was inserted in her genitals. Chillies emerge as a particular favourite of the torturers. They are either inserted in eyes or genitalia. Other forms of torture included sleep deprivation, five men being locked in a bathroom for three days; this bathroom was so small that they had to take turns to sit down. One woman told us that she was sedated while in custody and then sexually abused. As she was reluctant to share the details of what happened we cannot give an exhaustive account.[13]

> Two of the ladies we met at Kot Lakhpat Jail, were incarcerated on grounds of theft and murder. Both worked as maids for a wealthy, industrial family in Faisalabad. They took a couple of weeks off (with permission from their employers) to go harvesting in their local village also in Faisalabad. Whilst they were gone a dacoity took place at their employer's house and the mother was killed in the process. The employers accused these two females for having orchestrated the dacoity and held them responsible for the death of their mother also. They were both arrested under 302 PPC from Faisalabad and brought to the Wahadat Colony police station in Lahore. Here they both were stripped naked, tied to a table and then cigarette stubs rubbed in their genitals as part of the "interrogation" process. The police officer in

charge also called other men to watch over as this activity was being carried out (Note: no female police officers were present here); they were beaten in their knees with sticks and repeatedly asked to confess to the crime. This would happen every night; come day break they would be shifted to another police station (next to the Lahore Zoo; female police officers were present here). Here they would spend the whole day and at night would be shifted back to the Wahadat Road police station where they would be tortured again. This process continued for over 3 months.

After 3 months they were finally presented before a magistrate who did not ask for any explanation and refused to listen to them. They did not confess to the alleged crime; their lawyer was very helpful and repeatedly stressed their innocence. They were brought to the Central Jail where they stayed for 10-15 days before they were returned once again to the previous thaana for a night (this was the same police station where they had been tortured earlier). This time they were not beaten or tortured but were accused of committing 2 to 3 other crimes before being presented before the Judge once again. The Magistrate admonished the police for bringing them again under false charges and ordered them to be sent to Central Jail. They have been here since 2004. Both still suffer from the injuries they acquired at the thaana; older of the two has developed a severe knee injury and walking problem. Both still have cigarette scars in their genitalia.

Most of the agonizingly brutal torture was conducted off the premises of the police station. This brings us to another common phenomenon. Police officers are duty bound to maintain a thorough log of the day's events in what is formally known as the Daily Diary. The information that is supposed to be catalogued ranges

from the mundane occurrences of the day to a detailed account of the persons arrested, their names, the time of arrest etc. Once the Daily Diary indicates the time when the alleged perpetrator was admitted to police custody, the 24 hour rule sets into motion i.e. the arrested person has to be presented before a Magistrate within 24 hours. The Magistrate will then award a physical warrant of up to 14 days and no more. This is when the suspect is handed back to the police custody to conduct investigation.

What really happens though is that once the police arrest somebody, they do not make an entry in the Daily Diary. This not only buys them time, but also provides cover for being able to detain a person indefinitely without the court ever finding out. It is during this period of 'invisibility' that torture of detainees takes place. It also enables the police to transport the arrested person off the premises of the police station for administering the most heinous forms of torture. This is not to say that there are any acceptable levels of torture.

During our interviews one pattern that emerged was that the lower police officers, or those in charge of the station, harboured a genuine fear of the *'bara sahib'* or the senior police officer. Many interviewees told us that if a senior police officer happened to be on the station premises while some infraction was underway, whatever its nature, it would immediately stop.

> For example one man who was incarcerated under murder charges told us that he had initially absconded. As the police were continuously harassing his family, they [his family] forced him to hand himself over to the police. The police though had already registered him as an absconder on the books and as per the record, were conducting a detailed investigation as to his whereabouts. Therefore, his handing

himself would have negative implications for their performance in general. What they did was, that they informally arrested him i.e. kept him in the police station but did not make an entry in the register for a good two months. When we asked him what he did in the police station for these two months, he told us that he polished their shoes, made tea and was responsible for cleaning up and dusting of the station. However, every time during these two months the Superintendent or any other senior officer came to the station, the resident officers would make him climb a tree and hide till such time that senior officer left. Reason was that the senior police officer would conduct a tally of the recorded arrestees with those present in the station and this man was nowhere to be found on the books.

As aforementioned, the police are at times politically motivated or are acting on behest of a third party.[14] In such cases the torture that takes place is not merely incidental to police practice or resorted to as part of conventionally justifiable investigation procedure, but forms the very essence of the reason why it is conducted. These are the situations where outhouses are mostly used. Once the intended purpose is achieved, mostly the victim is issued a warning and allowed to leave. However, more often than not, they will be implicated in a fabricated case, listed as accessories in an ongoing investigation, or simply presented as perpetrators in some pending case. Formal court proceedings will be initiated and their fate will lie in the judicial system.

Coming back to the events post arrest. As aforementioned, it is not necessary that the arrested person will be taken off the premises. Most of the time their presence in the police station is simply kept off the records (out of the Daily Diary) and they are subjected to torture for any of the reasons stated above. Once the intended

purpose is achieved, the torture stops, they wait for a couple of days for the torture marks to fade and an entry is finally made in the Daily Diary. After this the arrested person is presented before the Magistrate within 24 hours. If a physical remand is awarded, the arrested person will be brought back to the police station for further 'investigation' or to finish the unfinished business. At the end of the remand period, he will be taken back to the court, and based on the proceedings, either set free or taken to the prison under a judicial remand.

Earlier in this section we had mentioned that one of the consistent themes is that money is requested at every single stage of what can only be described as 'alternate proceedings'. Negotiations begin as soon as the victim comes in contact with the police, every single action is bargained over and outcomes alter drastically based on the amount of money ultimately tendered. The sum that is requested bears proportionality with the nature of the crime; the more serious the crime, the higher the amount asked for. Bargainable issues include, contents of the FIR lodged, whether or not the victim will be tortured or not, the kind of torture that will be meted out, etc. In murder charges if the victim consents to pay up, his charge sheet will bear no mention of the discovery of a firearm upon his person. If not, then miraculously he will be found in possession of the murder weapon. While on the issue of arrests, it was mentioned that even if one person is named as a suspect, the entire family is arrested as a matter of procedure. If the family pays up, they will be allowed to go. If the amount is large enough, even the true suspect might be let off either completely or charged with a petty offence. If the victim refuses to pay up, and in most cases there is a genuine disability to collect such large sums, even those initially charged with petty offences, will suddenly find themselves involved in bigger crimes. Almost all the interviewees had paid up at some point or another, for one reason or another.

Almost had had incurred a loan to do so, as they did not own that kind of cash. As aforementioned, the amount requested can range from Rs. 500,000 to Rs. 100,000, depending upon the nature of the crime. Room for bargaining is determined by the seriousness of the offence, extraneous involvement etc. Outcomes reflect the sum exchanged.

According to the Simorgh Collective 1990 study, "the reason for this dereliction of duty is [sic] due to rampant corruption of the police force; the degree of extortion will depend on the financial position of the persons involved".[15]

During our research we uncovered the phenomenon of outhouses. In cases where torture was conducted on behest of a third party, the victim was mostly taken to what the victims described as *Mudai ka dera* (premises owned and maintained by the Plaintiff). In other cases, some mentioned empty warehouses, some mentioned hotel rooms or other empty places of such nature.[16]

> One man, who had been initially arrested by the Federal Investigation Agency (FIA), said he was kept incognito in a basement. He was hooded for the entire time. This facility was underneath a children's school because he used to hear them sing the national anthem during the morning assembly.

For the first time ever in legal history of the country a remedial measure was introduced through the aegis of the Police Order which attempted to establish a separate investigation cell and specifically provided that the working of the investigation cell was not to be interfered with by the District Police Officer (DPO). The Police Order though failed to spell out the investigative methods that this department is supposed to adhere to with the result that

the infrastructure exists but they have no idea how they are supposed to work. Important investigation components like properly trained detectives, forensic experts and laboratories etc. are concepts that a common police officer in Pakistan has only recently become familiar with.[17] Thus, effectively the attempt to regulate the methods of investigation in Pakistan thereby ridding the system of police excess has sadly failed.

In 2006 National Public Safety Commission was established to oversee the workings of law enforcement agencies. The Commission was *inter alia,* also responsible to facilitate the establishment and operation of Citizen Police Liaison Committees in accordance with Article 168 of the Police Order.[18] Despite the fact that this was a welcome effort which could have kept custodial torture under check, the effort failed before it really took off.

Statements Made in Police Custody (Extorting Evidence; Legal Sanctions and Tolerance)

Any statement made to a police officer during the course of investigation, as per section 162, Cr.PC, is inadmissible evidence in the eyes of law. Sections 38 to 40, QSO stipulate in unequivocal terms that not only are confessions made by the concerned police officer inadmissible in court but additionally, confessions made in police custody, unless made in the immediate presence of the Magistrate, do not have any legal standing whatsoever.

All of the above stated factors (and their respective outcomes) combine to construct the charge sheet that will ultimately be presented to the court. The point being that when the victim or the arrested person or the suspect is finally presented before the Magistrate, charges against him are steeped in procedural malpractices to such an extent that they really cannot be considered to be truly reflective of reality. Even if there is a measure of legitimacy at-

tached, the process followed is so far removed from the legally prescribed mores that the charge sheet is robbed of veracity and the entire system undermined as a result thereof.[19]

Despite Articles 39 and 40, QSO, the victims were of the view that the judiciary entertained a strong bias against Defendants as a collective group and displayed a propensity to favour the police. We interviewed a senior police officer on the issue who wished to remain unnamed. His point of view regarding this particular issue was that the courts on the whole tend to support oral evidence. Whether this stems from the courts' cognisance of a lack of proper investigative system, general apathetic nature or mere laziness (for want of a better word) is discussed herein below. For the time being suffice it to say that confessions gleaned by resort to torture face no difficulty whatsoever in doffing their illegality and to find themselves a home in formal legal procedure.

Women and Juveniles: Special Rules and their Manipulation

Police Rules contain special rules governing the arrest and interrogation of women. As per Rule 26.18A, no woman may be arrested by an officer below the rank of Assistant Sub-Inspector unless she is arrested in the presence of her male relatives or village or town elders. Rule 24.12 stipulates in unequivocal terms that all arrests of women must be reported immediately to the Superintendent of Police. As per Rule 26.3 once arrested, women prisoners may be searched but only by a female officer. Women suspects, as per Rule 26.18A are not to be kept in police custody overnight except in unavoidable circumstances, and women who have been brought in for merely questioning may never be kept overnight. The above section also makes it manifestly clear that the arresting officer is in all cases "responsible for the taking of necessary measures for the safe and decent custody of the prisoner."

In the previous section we touched upon certain prescriptions made by the legal system to protect women. For instance it was noted earlier, that the law clearly stipulates that women detainees are never to be guarded or interrogated in the absence of a female police officer. This though, is almost never the case. One possible reason for this lack of adherence to procedure could be the paucity of female police officers. Take the example of Lahore: out of a total of 77 police stations in the city, there is only 1 women's police station. For the entire province of Punjab there are only 1,174 women police officers[20].

Insofar as the rule that no woman can be kept overnight in a police station is concerned, the same methodology of post dating FIRs and tampering with police diaries is exercised in order to bypass the law. In addition, all detainees are threatened that if they speak of this misdemeanour in court, they will be subjected to worse treatment upon their return to the police authorities after the remand.

Harris Khalique[21] was of the view that situation pertaining to women has come a long way from that of yesteryears. A human rights chapter has been included in the training manual of the lower police. In addition courses on gender sensitivity and how to approach / treat women prisoners and complainants has been formally included in the curriculum which, Khalique thought has shown positive results in recent years.

Most of the women we were allowed to interview informed us that under custody they were asked to pay bribe and they did make payments but that none of them were abused, sexually or otherwise surprised us. This conveyed the impression that the situation of maltreatment of women has perhaps slightly improved. It must be borne in mind though that our access to female prisoners was

entirely controlled by the jailers. The ladies that we met before the interference began were the ones who had been incarcerated for longer periods of time and were in prison for serious offences and they were the ones who suffered physical and sexual abuse (as noted above).

Judicial Respite is Missing

Once the investigation is complete, a *challan* is prepared and all persons arrested with respect to the case at hand are presented before the Magistrate. The Magistrate is supposed to go over the paper work and award either a physical remand (whereby the arrested person is handed back to the police for further investigation) or a judicial remand (whereby formal judicial proceedings of the case commence and the arrested person is sent to jail to await his hearings and the outcomes of the case). Based on the expose' given above, one would assume that once presented before the Magistrate, the torture victim is finally beyond the clutches of the [faulty] system and can now hope from some respite. Additionally, it is the judiciary after all which is vested with the constitutional responsibility of ensuring that every citizen's fundamental rights are protected and nobody is made the victim of the state to say the least.

Herein lays another *lacuna*. As there is a possibility of the arrested person, i.e. torture victim being physically remanded back to the police custody, despite presence of a neutral third party, most victims do not complain of the torture that they had been subjected to earlier. Quite a few persons interviewed told us that they had been specifically instructed by the police not to do so, with a forewarning as to the consequences they would have to face once back within power of the police. However, it seems that the issue of taking a plea with the Magistrate hardly ever arises. Most victims are never produced in court to begin with.

As per information gathered by us, the victim was kept waiting outside the courtroom while the police officer went in alone and obtained the remand. Alternatively, the Magistrate was not present in the court in the first instance and the police officer obtained the remand after a private audience with the judicial officer in his chamber.

This is not to say that those who got to meet the Magistrate had a marginally better story to tell. It is not possible that the Magistrate, being in his profession for as long as he has, but moreover being an adult member for this society who can only reasonably be expected to be aware of the ubiquity of torture in police stations, if not intricate details, at least on a social infinitesimal level, would feel the need to ask the person being presented before him whether or not he had been subjected to torture. However, this is hardly ever the case. Most of the interviewees claimed that there was a blatant bias of the Magistrate in favour of the police. One person told us that despite forewarnings he decided to inform the judge of the torture anyway. While he was speaking the police officer leaned over and covered his mouth with his hand. The judge was present and could reasonably be expected to have observed this, but chose not to take cognisance.

There are of course instances where the judge either based on his personal observation or the victim's complaint does inquire into visible injuries. This though does not amount to much. If it is the former scenario, and despite the victim's reticence the Magistrate does order a medical examination we learnt that victims are also instructed by the police to deny any form of inspection on privacy grounds. Judges, at least per our research, seem to accept this fact as it were and not press any further. If it is the latter, police blatantly deny all charges and are never taken to task. Even if they are, law requires the Magistrate to order a medical examination. It

should be noted that out of all the prisoners that we interviewed, only two or three had the benefit of having been medically examined. This number from the total is sufficient to positively assert that medical examinations are not conducted.[22]

A possible reason for this apparent laxity in Magisterial attitudes could be that because the lower judiciary, which includes courts of Sessions Judge and Magistrates (of the first, second and third class) is closely linked with the executive and is known to be easily influenced by police and other pressures.

In addition, judicial independence at all levels in Pakistan saw a steady decline following the constitutional reforms during General Zia's regime. Development of parallel religious, martial and speedy trial courts during his era made the lower judiciary entirely dependent upon the executive with the result that all hope or justice at the trial court level has been diminished for a Pakistani citizen.

Jonathan Hafetz, approaching the prevalent impunity in the context of maintenance of detention centres, such as Abu Gharib and Guantanamo, places the onus on the judiciary. According to Hafetz, one of the primary factors facilitating use of torture and other coercive techniques since September 11 is, "denial of an effective judicial remedy through a combination of jurisdictional limits and absence of procedural safeguards."[23] He then, while drawing on a comparative analysis of leading case law in the area, goes on to underscore the limitations of legislation and the latent inadequacy of articulating legal standards for the treatment of post-September 11 detainees in the absence of sufficient judicial safeguards to ensure their enforcement.[24] Despite the difference in context, the courts need to play a proactive role in developing and enforcing prohibitions against torture and other abuses of detainees. Laws governing admissibility of evidence, as well as other constitutional

and procedural guarantees like the right to prompt hearing, the 24 hour rule, rules against admission of evidence by police officers, detailed procedures of arrest etc. are not merely enacted for the purposes of securing a fair trial for the accused but they also collectively form a network of anti torture safeguards "that help regulate the treatment of individuals in government custody".

Custody in Prisons

Physical as well as sexual abuse of prisoners is regularly reported by concerned agencies as well as daily newspapers. It must be noted that instances of abuse in prisons are substantially less than those in police custody. A possible reason could be that in the past decade or two various NGOs, legal aid cells and newspaper have gained access to such facilities thereby reducing occurrence of torture in prisons, particularly those in big cities.

Before refining upon the particulars of prison custody, it is absolutely essential to establish the context within which the term abuse is to be understood. In the preceding section ubiquity of torture was explained as a by product of structural exigencies and legal *lacunae* that, over the years, have tilted the balance of power in favour of the police to such an extent that the practice has slowly acquired the status of a scheduled activity. Therefore, anyone who comes in contact with the police, *ipso facto* faces abuse. This abuse is in turn both pecuniary in nature but simultaneously assumes a more substantial form, through physical torture. This physical torture is then not only verified by the assistance it ultimately renders to overcome institutional limitations but also helps achieve personal motives and promote private gains.

If the above is to be used as a yardstick for measuring torture, *prima facie* tally of instances of abuse and torture in prisons does indeed portray a relatively better picture as opposed to that in

police stations. However reasons thereof can primarily be attributed to the fact that the very nature of interaction is different in both instances. While in the former scenario, police's power affords them the authority to drastically alter outcomes every step of the way, in prisons the police do not possess the same degree of immediate influence. Hence the relatively low numbers of reported abuse. Nevertheless, given the near total control that they exercise over inmates, those incarcerated are regularly targeted. Only the nature and scope of this abuse is fundamentally different.

Due to lack of repercussive influence, police display their authority through a very different kind of abuse; they exercise their control by extorting money wherever they can and however they can. Before embarking upon a detailed exposition of the methodology employed by prison police to promote private gains and establish their writ, we must first run a cursory glance over the legal mores that bind them and determine the ambit of their influence as well as responsibilities. It should be remembered that the following is not an exhaustive list and the rules mentioned herein below have been selected for the sole purpose to develop a workable understanding of the current legal prescriptions so that areas of impunity can be identified and suitable ameliorative methods can be devised.

Prison Rules

Pakistan's prison rules on the whole were drafted keeping in line with the UN Standard Minimum Rules for the Treatment of Prisoners, 1955. Despite the fact that they are not legally binding, still they are widely regarded as the minimum standard which must be adhered to by states to whatever extent possible.[25]

As per Rules 90-94, Chapter V, Prison Rules, 1977 (hereinafter, Prison Rules) the Prison Superintendent is required to inform all

prisoners at the time of admission of how long they have to appeal their conviction, and to render all assistance necessary to allow prisoners to appeal.

According to the Rules 18 and 21, Chapter III, Prison Rules, every prisoner when first admitted to prison must be medically examined within 24 hours of admission. Furthermore, every female prisoner has to be medically examined under the direction of a female medical officer, and all unexplained injuries must be explained (Rule 19, Ch. III, Prison Rules). If any injuries are discovered, they must be reported to the district magistrate and to the police (Rule 20, Ch. III, Prison Rules). There is a specific prohibition against fettering of the prisoners under Rule 175(v), Chapter VII, Prison Rules.

Female Prisoners must be kept separate from male prisoners at all times under Rule 184, Chapter VII, and Rule 231, Chapter IX, Prison Rules. Pre-trial prisoners may be kept separate from under-trial prisoners at the discretion of the Superintendent (Rule 235, Chapter IX, Prison Rules). However, strict segregation with respect to under trial prisoners and convicted prisoners must be maintained as per Rule 383, Chapter 15, Prison Rules. Similarly, as per Rule 309, Chapter 13, Prison Rules, prisoners awaiting trial must always be kept separate from convicts.

Legal Violence and Abuse[26]

Prison Conditions

Overall prison conditions do not fall within the ambit of this paper *per se*. Abuse of prisoners however, does. Therefore, in order to present a clear picture of the ill-treatment of prisoners at the hands of prison officials, especially when the narrative is constructed within the context of absolute power that state officials exercise over those incarcerated, a brief account of the prison conditions and the environment within which they are kept, becomes an im-

perative corollary.

Needless to say, based upon the information available to us, coupled with our own observations made during our visits to various prisons, one thing that is abundantly clear is that conditions of prisons in Pakistan on the whole are extremely decrepit.

On a more positive note, we were informed by the prison staff as well as the inmates that the Sessions Judge sets up court within the premises of the jail at least three times a month (on the 1st, the 10 and the 20th of every month, give or take a few days). Purpose thereof is to dispose of small causes cases. On our last day of the visits we were told that the Sessions Judge would be setting up court the day after, but as we did not have permission to be on the prison premises for that particular day, we were unfortunately unable to observe the proceedings for ourselves. Prisoners though verified the regularity of Sessions Judge's visits and those who were incarcerated for petty thefts seemed confident of their release. For example one boy who was involved in a theft amounting to merely Rs. 5,000 told us that he was very hopeful that he would be let go of soon.

Prisoners are provided three meals a day and tea twice a day. Even though we could not sample the quality of food, we were assured that the meals were adequate. There were those who registered strong objections thereto, but a sizeable majority rendered a favourable report. None of the prisoners reported being fettered while inside the prison, which is needless to say another positive discovery. Convicted and under-trial prisoners are kept separate as prescribed by the law. Overcrowding of prisons though remains a real problem which has been acknowledged by the prison staff.[27] This obviously has more than one adverse effect. Not only is the quality of life and overall living conditions extremely dismal but

it also leads to regular fights amongst the inmates.

Solitary Confinement

Solitary confinement, despite legal proscription, is a norm of prison life and all prisons that we visited maintained such facilities. When questioned on the issue, officials denied the existence of any such structure. They did though euphemistically allude to the existence of punishment blocks, but based on information gathered from our interviewees we can aver with certainty that these so called 'punishment blocks' are indeed facilities maintained for the purposes of solitary confinement, also known as *chakki* to the prisoners.[28]

Solitary confinement is the most common form of punishment in jails. Reasons that can land a prisoner in the *chakki* can range anywhere from possession of contraband items like mobile phones and cigarettes to general misdemeanour. An interesting finding was that if two people fight, irrespective of who was in the wrong, both parties would be sent to solitary confinement. One prisoner told us that only a week prior to our interview, one juvenile prisoner had been sodomised; both the victim and the perpetrator were meted out the same punishment i.e. month long solitary confinement.

Duration of such punishment can vary anywhere from ten to fifteen days to up to two to three months even. The length of confinement and the act which instigated it in the first instance bear no proportionality to each other. Of course if money is proffered, the jail staff will be definitely less irked and hence the punishment duration will be considerably less too.

The *chakki* or the physical structure itself is a building with forty odd rooms. These rooms are merely big enough to lie down in.

They are extremely dirty and do not have proper ventilation; they have a small window but it is too high for to be able to see outside from. The person thus confined is provided three meals a day but allowed to step out for merely an hour a day. There are no bathroom facilities and in case they wish to use one during the twenty three hours of solitary confinement, they are provided with a pail in the room. Upon our request we were assured that we could visit the place and see for ourselves, but despite our insistence this promise never materialised.[29]

Solitary confinement, despite the egregiously decrepit living conditions that it offers and the psychological harm and physical discomfort that are a part and parcel thereof is not looked upon as anything untoward. It seems to be surrounded by a general aura of acceptability and inevitability on part of both the prison officials, who made open and unabashed references thereto which were couched in a sense of necessary resort and the victims thereof, who took it in their stride as an essential component of prison life. What was additionally poignant was that some of the victims of sexual abuse and serious gang fights, openly preferred solitary confinement as opposed to the alternate fate.

Medical Facilities

It was encouraging to note that the rule regarding immediate medical examination of incoming prisoners is regularly followed; almost all prisoners, with the exception of only one or two, told us that medical inspection had been conducted. Rationale behind this exam though is to catalogue any prior injuries or untoward bruises etc. before a prisoner is admitted. We are assuming that signs of ill-treatment and torture that occurred during police custody are detected and consequently recorded at this stage. Who are these results subsequently reported to and what is the precise fate of such data remains indeterminate.

The issue of availability of medicines apparently varies from prison to prison. We couch the sentence in suspicious tones deliberately. All the ladies at Kot Lakhpat jail expressed an overall satisfaction with the medical facilities available. Women who had children said that their children were being provided adequate medical care as well. One lady who had a heart condition said she was provided adequate medical attention and if need be was also taken to the nearest hospital for specialist opinion. Having said that, we have mentioned before that our interviews of female prisoners did not have benefit of complete privacy and it is entirely possible that these statements were inspired by fear. Some of the interviews though were not compromised, however even these, at least with respect to medical care, presented a favourable report. There could be two possible reasons for this. Either the medical conditions in female jail really are satisfactory which, to say the least, is one less cause for concern. The other possible reason could be that given the extreme control of female jailers over inmates [more so than the male and juvenile counterparts due to lesser numbers] it is possible that even in the absence of authorities, these ladies were afraid to speak up. We though cannot verify either beyond a shadow of doubt.

Inmates of the male and juvenile sections though had an entirely different story to tell. They all said that they were being provided a standard medicine for all complaints i.e. Panadol which is a generic medicine, irrespective of the seriousness and nature of the ailment. Those who could read told us that these medicines were inevitably past their date of expiry. They did though say that if the situation got rather worse they were taken to a proper hospital for specialised care. We were informed by the prison staff as well as the inmates that doctors visited every Wednesday; competence of these doctors received mixed reviews. While some were satisfied others were not.

According to the Prison Rules, all pregnancies are supposed to be reported to the magistrate for the purpose of securing release on bail for the woman.[30] At the same time however, Prison Rules also provide for child birth in prison and do not require the pregnant woman to be bailed.[31] Despite the fact that this section does not contain any exceptions for pregnant women and nursing mothers, the courts are generally understood to have the power to free such prisoners on their own cognizance. In practical life however, courts have been seen to fail to exercise any such discretion.

Abuse of Power and Money Matters

The Prison Police, as aforementioned, do not suffer from the same kind of structural debilitations as those in charge of police stations. However, they do exercise complete control over the inmates and so we observe that the previous theme of extorting money every step of the way continues. The result is that bribery has become a norm in prisons and the quality of life of an inmate is wholly, solely and only determined by his / her ability to pay up.

The amount tendered in prison is considerably less than that exchanged in police stations. Reasons thereof can again be attributed to the fact that at the police station, officials are in a position to alter outcomes and control the fate of the person involved. In prisons, the fate lies elsewhere i.e. with the judiciary. Hence the prison official's bargaining power is considerably curtailed. Their only leverage is that they exercise writ large over the prison premises and consequently are in a position to dictate their terms. Money is exchanged as surety for provision of basic amenities, which are insured by law but can be withheld by the prison staff. Another general trend that came to our attention was that if a prisoner had been asked for money and refused to pay, or could not pay, they were beaten up and thrown in solitary confinement.

Process of extortion and torture starts the minute a prisoner sets foot inside the jail; they are beaten up with leather straps, plastic shoes and wooden sticks. This inaugural beating takes place in the *deorhi* and has no purpose other than to establish writ and to extort money.[32]

The omnipresence of money related corruption has divided the basic prison structure into two tiers. Quality of life of the inmates is wholly determined by the inmate's ability to pay up. Those who can afford to pay bribes are able to lead lives of considerable ease and comfort. For example, those who pay will get better food or more quantity at least, there will be less people to a cell, it will be ensured that the fans are in working order during summers and they will be regularly sent to the court for hearings etc. Those sentenced with rigorous imprisonment can easily avoid going to work if they pay up. If these people are found in possession of contraband goods, the police officials easily turn a blind eye in exchange of money. Anyone who pays up can procure prohibited privileges and facilities like mobile phones, alcohol, drugs, etc. During our visit to the juvenile jail, we were informed by almost all the children that 'that there was nothing that you could not get in' jail. In fact one of the most common problems in the juvenile jail is that of smoking. Despite the fact that smoking is prohibited, majority of the children possessed cigarettes. Some even indicated that they had access to soft drugs like marijuana. Needless to say, all these transgressions of law exist due to the fact that bribery is commonplace. Inability to pay thus obviously results in torture and solitary confinement.

Police are Responsible for Policing Themselves

Excess of power by the police thrives not because of a lack of laws addressing the issue, but because the perpetrators do not fear retribution. In case of a serious violation, a police officer, as per the

written law 'may' run the risk of dismissal (subject to an enquiry of course). However, in spite of the fact that the law provides all possible safeguards and that the judiciary initiates action against deviant policemen to whatever extent possible, the process never achieves it desired conclusion.

For instance, the Police Rules require the Deputy Inspector General to review all internal cases in which an officer was punished to see whether criminal prosecution is "desirable".[33] However, it should be noted that this decision is entirely discretionary. Even if disciplinary measure is taken against any officer, the punishment will not necessarily correspond to the crime. Following is the data provided to us by the Discipline Branch of Inspector General's office pertaining to some of the disciplinary actions taken against the police officers[34]:

Rank	Grounds	Major			Minor		
		Dismissal Removal	Forfeiture of Approved service	Reduction in Rank	Withholding of increment	Withholding of promotion	Censure
ASP/ DSP	Torture	0	0	0	0	0	0
	Death in Custody	0	0	0	0	0	0
	Illegal Confinement	0	0	0	0	0	0

Inspector	Torture	0	1	0	1	0	0
	Death in Custody	1	0	0	0	0	0
	Illegal Confinement	0	3	2	2	3	5
Sub-Inspector	Torture	2	1	0	3	0	4
	Death in Custody	0	0	0	0	1	0
	Illegal Confinement	0	7	1	4	8	12
Assistant Sub-Inspector	Torture	2	2	0	0	0	1
	Death in Custody	3	0	0	0	0	1
	Illegal Confinement	2	9	2	6	3	7
Head Constable	Torture	0	0	0	0	0	1
	Death in Custody	0	0	0	0	0	0
	Illegal Confinement	0	3	0	0	0	1
Constables	Torture	2	6	0	2	0	5
	Death in Custody	7	0	0	0	0	0
	Illegal Confinement	2	3	0	1	0	9

In addition, as is obvious from the above, punishments tendered are largely administrative in nature. Even if an officer is charged with a criminal offence, the most common scenario is that he or

she will be suspended from duty during the length of the trial; proper criminal proceedings are never initiated against them even in instances of torture, which is an offence as per the constitution.

End Notes

1. Thereby rendering them simultaneously both instruments of control as well as the emissary of the state, or even the state itself at the infinitesimal level.
2. Ghulam Abbas v. The State, PLD 1968 Lahore 101
3. Khizer Hayat v. Inspector General of Police (Punjab), Lahore, PLD 2005 Lahore 407
4. Even if bribery is not involved [which is rarely the case] police have to face a constant pressure from politicians to heed their desire. Should they refuse, safety of their own children is threatened, their promotion stopped or transferred to far flung areas away from their home and families. Two different investigation officers told us that most of the time the politician himself or his / her emissaries are present in the police station when the "interrogation" [i.e. torture] takes place thereby leaving the officer in question almost no recourse.
5. Police Order (like its predecessor the Police Act, 1861) provides for prosecution of the police. Articles 155 to 157 thereof provide specific penalties that should be imposed on a police officer in case of neglect and misuse of power. This neglect of duty would include a failure to register a FIR within its purview. Article 156(d) specifically speaks of torture in custody and prescribes a penalty of a maximum of five years of imprisonment in case of conviction.
6. Sarmad Saeed Khan (AIG, Welfare, Training and Finance) shared an insider's perspective and helped us unearth at least one explanation for such behaviour. He told us that 80% of torture conducted in police stations is for the recovery of stolen property. To that end the IO is under immense pressure from the persons whose property has been stolen to recover the goods as soon as possible, using whatever means possible. This situation is compounded by the fact that the IO does not have any investigative tools whatsoever at his disposal. Technically speaking every IO should be provided with a proper Investigation Kit, a proper staff, as well as adequate means of transport. However, as one such kit costs more than Rs. 50,000, all that he has at his disposal is a clipboard, no transport, no help and some influential elite who are constantly pressurising him to recover stolen property and usually exerting serious pressure on him to torture the accused. In addition every IO has more than 50 cases that he has to deal with at any given time and has a meagre budget of Rs. 237 per case.

   Khan also shared with us that the police stations have over the years developed a specific culture of violence (known as *Thana* culture in common parlance) which differs at every level. Root cause of this violence is the crippling lack of resources and lack of training.

We have noted time and again during this paper that money is requested by the police as a matter of routine and negotiations with the victims take place at every single step of the way. Outcomes alter drastically based on the amount of money tendered. Khan shared with us some figures that help develop an understanding of the monetary situation of a *Thana*. The Punjab Police is given Rs. 62 Billion per year to spend. Rs. 56 Billion is spent on salaries, Rs. 5 Billion on POL which includes rents, bills, petrol and other overhead costs. That leaves only Rs. 1 Billion for the daily working and utilities of the *Thanas* which includes police uniform, and training money. This amount is then to be divided amongst 706 police stations of Punjab which is enough to draw a rough picture of the monetary situation of a police station.

Khan told us that as per the Police's own estimations, each police station needs a bare minimum of Rs. 100,000 to operate efficiently. However, they were awarded Rs. 60,000 instead and that too for the hundred model police stations operating in Punjab. The remaining 606 police stations have no money whatsoever of their own and are left to their own resources. Even with the model police stations, they cover the shortfall of Rs. 40,000 through personal liaisons with money traders, gambling dens and through coercing the victims / accused.

With respect to training he told us that only 2.5% of the total budget is allocated thereto. Over the years they have incorporated special units on Human Rights, women and minority rights, attitude change in the syllabus being taught during the training. However, once in the field the officers usually forget their training. Additionally, the screening process of who gets selected for the lower police needs a lot to be desired and needs to be revamped drastically.

It must be noted that the above explanation was extended as one of the factors that can explain the ground realities; using this information ameliorative methods can be devised. It was neither Khan's intention nor ours to justify the use of torture.

7. Khizer Hayat v. The State, PLD 2005 470
8. During the Dialogue I. A. Rehman (Secretary General, Human Rights Commission Pakistan) related that in Hyderabad every police station has an outhouse. While on the subject of outhouses, Rehman sahib also told us that a makeshift outhouse can be set up anywhere at all, Dera of a local politician, an abandoned shed, stables, hotels. Hussain Naqi corroborated Rehman sahib's statement and told us that even if the police does make use of an outhouse, it is under a legal obligation to declare it.
9. Naqi Hussain (National Coordinator, Human Rights Commission Pakistan) stated that it is absolutely mandatory to inform the family members of the arrested persons of not only the charges but also where he / she is being kept.
10. Daily Times, 1 October 2007. *Characterization of Y-STR in Sexual Assault Victims and Collection of Allele Frequencies and Haplotypes in Punjab*. (Ph.D Dissertation by Dr. Waseem Haider in Forensic Medicine and Pathology submitted to the University of Health Sciences on 14 August 2008)
11. During the Policy Dialogue there was a general consensus as to the veracity of these figures. Naqi Hussain told us that based on the data collected by the HRCP it would be safe to say that there are approximately 20 custodial deaths per month.
12. *Ibid*.

13. This particular lady was at a friend's place when the friend's husband, who was into drug trafficking, was arrested. She was accused of being an accomplice and hence arrested with him and taken to Saddar police station where the "interrogation" took place. She was very reluctant to provide us details of what precisely happened but kept saying "you know what happens to women there". She did tell us though that she was given sedatives in her tea and was kept at the police station for a whole day and night without any female officers present. Based on our experience and judging from her demeanour we belief that she was sexually assaulted, if not raped. From there she was shifted to Kasur Jail where she was kept for 7 months before being convicted for 25 years and brought to the Central Jail. When she was presented before the judge he said nothing, asked her for a explanation which she provided and pleaded innocent. He still said nothing and took her thumb print before sending her here.
14. August 2011 I happened to find out that a man was being beaten in one of the police stations in Lahore. When I tried to enter the police station, I was categorically denied entry. However, one of the police officers came outside to talk to me. When asked to stop and pointed out the illegality of what he was doing, I was rather surprised to discover that he was not defensive at all and instead narrated the following facts and appealed to me to suggest an alternative route available to him: Earlier that morning a complaint had been filed for a stolen rickshaw engine and the complainant had identified the suspect. The police went and arrested the suspect within a few hours; one of the chief reasons of this efficiency being that the complainant was related to one of the members of the National Assembly (MNA). The suspect was brought to the said police station, where after a little bit of questioning he confessed to the crime and told them that he was willing to return the stolen property and also told them where it was kept. He was escorted by one of the policemen to Mozang Bazaar (where the stolen property was) for recovery. Upon arrival at the place, the suspect hit the policeman and tried to run away. He was persued, caught and eventually brought back to the police station. He however, had still not returned the stolen property and in the process antagonised the arresting officer, not to mention engineer his escape. Given that almost an entire day had passed in this process, the complainant had by this time begun to grow impatient and he thus requested the MNA to take matters in his own hand and sort things out. By the time I happened to arrive at the scene and witness the episode of the suspect of the case being tortured, I was told by the policeman that not only was the officer, that the suspect had injured earlier, vying to get even (which he duly recognized was beyond his legal purview), but the MNA was sitting inside the police station and had specifically issued orders of torture which he was now in the process of personally overseeing.

    The purpose is not to justify the police officer's actions or to provide redemption, but to highlight the fact that political pressure is exerted at every possible (albeit infinitesimal) level which not only deprives the police of their autonomy, but at times forces their hand into resorting to illegal activity. Of course the fact remains that the police officer is always free to reject that kind of pressure, but without conceding to the lures of an existentialist discourse, my point is to draw attention to the fact that a lower level police officer is, more often than not, pushed into a corner where he has to make a decision between adhering to the letter of the law and keeping his job.
15. Shazreh Hussein, with The Simorgh Collective, Rape (Lahore: Simorgh Collective, 1990)

16. Naqi Hussain told us during the Dialogue that he had witnessed a mosque being used as an illegal detention center.
17. *"Salary Raise for Police"*, Dawn, 20 April 2009 and *"South Asia's Best Forensic Lab Being Built in Lahore"*, Pakistan Today, 10 January 2011. Some initiatives have been launched in this direction since 2009 in the shape of higher salaries for police and creation of advanced forensic laboratories.
18. http://www.dailytimes.com.pk/default.asp?page=2006%5C06%5C13%5Cstory_13-6-2006_pg1_1
19. Additionally, Kamran Arif, quoting from the Annual Report of Human Rights Commission of Pakistan, pointed out that the conviction rate till date remains as low as 2 – 3% which is only further proof of the fact that torture as a tool of interrogation, without prejudice to the illegality thereof, is a highly ineffective and is only undermining the efficacy of the criminal justice system on the whole.
20. http://www.punjabpolice.gov.pk/page.asp?id=458
21. Harris Khalique, Writer and Policy Analyst.
22. All court ordered medical examinations are conducted by a board at The Munshi Hospital, Lahore where they maintain a detailed register of their findings. This register by law is supposed to be a public document. However, we were denied access to this register on the grounds that it contains data that might be potentially embarrassing for the Government, especially the police.
23. Jonathan Hafetz, 'Torture, Judicial Review, and the Regulation of Custodial Interrogations', Vol. 62, *NYU Ann Surv. Am. L.* 433 (2007).
24. *Ibid*, pg. 459.
25. These rules basically reinforce customary international law and other international obligations from legally binding instruments for example the Torture Convention etc. For example Rule 8 of the Standard Minimum provides that pretrial and convicted prisoners should be kept apart, something which has been borrowed directly from the Torture convention.
26. During our prison visits we discovered that sexual abuse is a predominant feature of prison life. Even though abuse of prisoners is well within the purview of this paper, our focus is restricted to maltreatment extended by state officials as opposed to by their fellow inmates. However, as sexual abuse is an undeniably prominent facet of incarceration of jails which merits attention, we have attached our findings hereto as Appendix I.
27. At the Policy Dialogue, Kamran Arif, who is a criminal lawyer, shared with us that prisons are 100 to 200% overpopulated out of which 60% are under trial prisoners.
28. In District Jail there were two solitary confinement blocks; one was called *Challi Chakki* and the other Che (6) *chakki*. In Kot Lakhpat it was called *Kasuri phera*. The one in the female section of Kot Lakhpat was called *Chakki* only. Juveniles shared the solitary confinement block with the male section.
29. We were denied inspection on one premise or another. The above description is based on what we were told by the inmates. However, as all their descriptions matched to the last word we can assign veracity thereto.
30. Rule 324, Chapter 13, Prison Rules.
31. Rules 322 to 325, Chapter 13, Prison Rules.
32. This particular fact was corroborated by almost all the participants of the Policy Dialogue and all agreed that mindless abuse of power of the jail staff, be it for the

purpose of extorting money or merely to establish their writ was a permanent feature of the prison culture and had to be stopped.

33. Rules 16 to 13, Chapter 16, Police Rules
34. Full table is attached hereto as Appendix II

Chapter IV

Conclusions

During our research, we discovered that it was difficult to provide precise statistics for the current prevalence of torture and ill-treatment of prisoners, primarily because instances occur in isolation. Additionally several other factors complicate data collection of torture victims; physical scars, if any, may not be long-lasting; the tortured and those close to them may be too terrified to complain; and doctors and lawyers may be silenced. Of course the government functionaries and the authorities can be expected to deny the existence of anything resembling torture. Despite these obstacles to information, our research has attempted to provide a sketch of how torture occurs and continues to be practiced. This persistence of torture evokes vociferous protest and denunciations in Pakistan from rights based groups, civil society activists and international human rights organizations. This research offers three broad conclusions; first, torture needs to be defined, second, police needs to be reformed with a particular emphasis on police trainings, finally, Police Order, 2002 needs to be seen in totality.

Torture Needs to be Defined[1]

The pivotal point of this research is that torture needs to be understood and defined in entirety and comprehensively. It is an offence *malum in se* as opposed to *malum prohibitum* i.e. as opposed to the prohibition being established by the letter of the law, it is an act which is considered to be inherently wrong regardless of the position of positive law pertaining thereto. Existing rules prohibiting torture merely iterate a broader *consensus ad idem* on the issue as opposed to creating new rights and duties. In that broad context, it needs to be reiterated that Pakistan is a signatory to CAT and has actively negotiated to bind itself to the treaty and by

virtue of that fact created obligations with respect to it.

Accepted jurisprudence and legal theory also lean in favour of this premise. Hart propounded the concept of 'Minimum Content of Natural Law', whereby he advocated that there are certain kinds of rules that a legal system cannot absolutely dispense with as they form the very bedrock of our conception of what the society should look like and how as law abiding humans, we are to conduct ourselves.[2]

During this research our interaction with victims of torture as well as police officers leads to conclusively claim that the lack of definition of torture has done more harm than is visible to the naked eye.

Second, problems pertaining to the issue are no longer confined to seeking best possible tools to litigate torture. Section 337-k, PPC deals with Hurt and could undoubtedly use the benefit of a precise definition of torture in order to take effective legal action with respect to the issue. While the said provision of penal law, along with Section 348 can be used as a baseline for say litigating CIDT, torture needs to be defined in absolute terms so that legal recourse is easily achievable.

Third, we should also take into cognizance that the absence of a precise definition has, over the years, robbed both the victims as well as the perpetrators of a shared sense of what is to be perceived as torture. This lack of definition has inadvertently awarded the executive the carte blanche to interpret what constitutes torture as narrowly as possibly with the result that solitary confinement passes off as acceptable form of punishment; dismal medical and living facilities are acknowledged as necessary requisites of incarceration; third degree methods of extracting information pass off

as legitimate methods of interrogation and worst of all the victims' mettle with the police is not that they were subjected to the worst form of inhuman treatment but, that a financial burden has been imposed on them. Providing safeguards, even if it is in the form of concrete law may not be sufficient anymore because it will only force them [the executive that is] to negotiate *lacunae* in the letter of law and explore imaginative alternatives to arrive at the same point. i.e. that of torture. In addition, the policy decisions on the issue need to accommodate facilitative structural exigencies as well as devise real judicial consequences for all parties involved.

Reforming Police Training and Structures

Standards prohibiting abuse, without meaningful judicial inquiry into the factual or legal basis of prisoner's detention are insufficient to effectively regulate custodial interrogations of prisoners held outside the established frameworks of domestic or international law. This demands accountability of the judiciary as well as of the police. As mentioned above, colonial institutions of governance, investigation and regulations that were specifically crafted to ensure a regime of terror and subjugation remain largely unaltered. For example, bifurcation between higher and lower police cadres accommodates intricate structures of violence and torture.

The senior police officer or the civil servant enters services after having sat through a competitive exam and acquires focused training over a course of two years which includes acquaintance with law, investigation techniques and extensive familiarity with the field. They are also afforded specialised courses as well as role based training. Through the course of their career, the 'police officer' will also be given refresher courses. The tragedy though is that these highly trained officers are not required to conduct 'police work' *per se* but are responsible for the administrative part of policing. By police work we refer to the task of investigation, in-

terrogation, arrests i.e. all activities incidental to the daily routine of a police station, where most instances of torture occur.

Now we revert to the police station where policing, as it were, is actually conducted. The police station is run by the provincial police or those who are inducted through Provincial cadres. Even though they too sit through a competitive exam, their entrance requirements are comparatively less rigorous. Their training is also very different. Even though the District Police Officer (hereinafter, the DPO), who is a Central/Federal servant and a highly trained officer himself, is officially responsible for their training, most of the instruction is conducted on the field over a course of five to six months by their own seniors; they learn as they trail their superiors and thus begins the vicious cycle of impunity. It is a part of their training process, albeit a rather informal one, that they are attuned to what is colloquially referred to as the '*thana* culture'. The end result is that not only is the investigating officer denied benefit of proper instruction, but it is only a matter of time, before what we term as transgressions become the norm. Of course a basic familiarity with the law is essential, but the demeanour towards people in general and ready resort to torture, or what are referred to third degree methods in common parlance are something that they learn on the job.

Training woes are compounded by a crippling budgetary dependence of the lower cadres on their superiors. Here structural peculiarities that perpetuate complicity and facilitate impunity are underscored yet again. Every police station has what is known as 'Advance Budget' to the tune of Rs. 30,000 to Rs. 40,000 available at all times. Their utility bills, maintenance expenditures including stationery and other contingency expenses are all approved and paid by the office of the Superintendent. Any other expenditure incurred over and above the scheduled spending is also sent to the

Superintendent's office for approval and disbursement. The police station does not exercise any autonomy with respect to its own budgeting. In addition every police station is required to not only keep a mobile van but is also expected to keep it in good working condition. No provision is made for petrol of the said van or for other maintenance overheads. If they spend from the standing advance amount lengthy inquiries are initiated and the findings are mostly against them with the result that they have to cover the shortfall out of their own pockets.

These structures were established during colonial times and have survived since then. One can only assume that the purpose was to keep the police station on a financial short leash so that they were forced to seek sources of money elsewhere. To that end they would the be forced to flaunt [as well as flout] their power. This way not only will the lower police remain in complete control of their superiors but in order to ensure that they themselves remain in favour with their higher officers, they would maintain a tight writ over the people falling within their jurisdiction.

Control of the lower police cadres by the senior police is perpetuated through another medium i.e. that of complaint mechanism relating to the working of the police. The decision to initiate proceedings against a deviant police officer lies entirely at the discretion of his commanding officer. Affects of this particular canon are three fold. First, police as an institution is rendered impermeable to outside interference as well as control thereby allowing it to proceed with impunity. Secondly, the police is vested with the authority to police itself which comes in very handy for concealment purposes. However, in our view this particular state of affairs serves a third and concealed purpose; by retaining ownership of retributive procedures, the senior police is able to maintain its writ over the lower cadres.

We were told by a senior police officer who wished to remain unnamed that it is not that they are not cognisant of what is happening at the police station. Disciplinary measures are also taken against deviant officers. However, the numbers of infractions that occur on a daily basis do not correspond to the punitive measures. For example, as per data provided to us by the IG Office, in the year 2011, only 10 police officers were penalised in one way or another for torture charges. This number though is not reflective of the instances of tortures by a long shot. Reason thereof can be that if a Superintendent has 50 police stations under him, there will be certain police officers at that level who will be 'his own men'; not necessarily because they are related to him, but because they can be of particular use to him professionally speaking. If the commanding officer discovers something untoward about this category of officers, chances are that he will turn a blind eye only because it is in his own interest to do so. With others, *prima facie* discipline will be maintained and they will be penalised accordingly. This keeps the lower police constantly on their toes as constant fear of penalty looms overhead.

Maximum Utilisation of the Police Order, 2002

As already mentioned in the previous section, one of the most obvious problems yet is the fact that power to prosecute lies entirely with the police itself. In fact departmental loyalties run so deep that the Court in its judgement admitted the fact that "Police... could not be expected to register a case against their own colleagues for any *mala fide* reasons". The trouble though is that the police don't register cases against their colleagues even in *bona fide* cases; the only sanction failing to do so is administrative penalty.

At the moment there is not a single independent body existing in Pakistan which is responsible for lodging disciplinary or criminal charges against police officers. Chapter V of the Police Order

establishes 'The Provincial Public Safety (and Police Complaints) Commission(s)'. These Commissions have the authority to take cognizance on their own or on a complaint received by an aggrieved person, of instances of 'police neglect, abuse of authority and conduct prejudicial to public interest' at the District and Provincial level.[3] However, keeping up with the general tenor of police laws, once again the only mechanism available for redress is in the form of departmental proceedings.

Article 80, Police Order was amended to include 'registration of a criminal case under the relevant provisions of the Penal Code' against a deviant officer'. Efficacy thereof is evident from the data provided above. Undisputed reality of the matter is that there is currently no mechanism available independent from the police which reviews allegations of police misconduct towards civilians. As a result the police can commit abuses without any compunction and such offences will inevitably go unnoticed.

Another good thing that the Police Order attempted to do was to give Zilla Nazim the authority to simply walk in any police station to ascertain if the police was transgressing any of its duties like unlawful detention, failure to lodge FIRs, violence etc. Unfortunately, this too has failed to achieve the desired result because at the end of the day, even if the Nazim notices excess of power, he is supposed to report it to the Head of District Police and as we have already established such a complaint will never result in prosecution.

End Notes

1. While this paper was in its final editing phase we came to know that the Ministry of Human Rights in Islamabad was in the process of drafting an Anti Torture Bill, 2013. As the said Bill was still at a very nascent stage we were not able to get a copy thereof. The Ministry of Human Rights though was kind enough to share the tentative definition of Torture which is proposed to be as follows:

(F) **"Torture"** means any act or omission which causes pain, whether physical or mental, to any person; and being in every case, an act that is done by or at the instigation of, or with the consent or acquiescence of, a public officer or other person acting in an official capacity.

(i) For such purposes as--
  (i) **Obtaining** from that person or some other person information or a confession; or
  (ii) **Punishing** that person for any act or omission for which that person or some other person is responsible or is suspected of being responsible; or
  (iii) **Intimidating** or **coercing** that person or some other person; or
(ii) For any reason based on **discrimination** of any kind.
(iii) For the purpose of this Act, Torture shall include any act, omission or commission in respect of a woman where such act-

  (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of a woman or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse; or
  (b) harasses, harms, injures or endangers a woman
  (c) has the effect of threatening the woman or any person related to her by any conduct mentioned in clause (a) or clause (b); or
  (d) otherwise injures or causes harm, whether physical or mental, to a woman.

As is evident from a bare reading the definition ostensibly encapsulates the essence of Article 1 of CAT with minor cosmetic / structural alterations. Sub-section (iii) reserves particular emphasis for female detainees and, at least on paper, extends them all manner of protection. While this is a pending draft, and should be treated as such, and we stand by the Ministry's efforts, our recommendation would be to offer similar [definitional] safeguard[s] to male and juvenile detainees as well. In this paper it has been underscored on numerous occasions that male and juvenile detainees are in no way better off than their female counterparts and are by and large amenable to almost similar maltreatment. The Ministry's sensitivity to women is a welcome sign, but insofar as custodial torture is concerned, all incarcerated, irrespective of their gender and age, share a similar plight and hence should have similar legal protection.

2. H.L.A. Hart, *The Concept of Law*, pg. 193-200 (2d ed. 1994). Hart famously illuminated this concept with the following example: "[S]uppose that men were to become invulnerable to attack by each other, were clad perhaps like giant land crabs with an impenetrable carapace ... In such circumstances (the details of which can be left to science fiction) rules forbidding the free use of violence ... would not have the necessary non-arbitrary status which they have for us, constituted as we are in a world like ours. At present, and until such radical changes supervene, such rules are so fundamental that if a legal system did not have them there would be no point in having any other rules at all."
3. A separate Commission has been said for achieving the same purpose for the Capital City.

Chapter V

Recommendations

The following recommendations are being made in light of the above analysis and conclusion:

1. General Recommendations

1.1 Torture should to be clearly defined in our criminal procedures; it is proposed that the definitions as per the Article 1 and 16 of the CAT be adopted.

1.2 There is a serious need to review and reform our current laws of criminal procedures. While new laws and rules should be drafted, the existing legislations need to be implemented in letter and spirit to ensure their effective utilisation.

1.3 A dedicated campaign needs to be launched in order to raise awareness regarding rights in general and torture in particular.

2. Reforms in Procedures for Interrogation

2.1 The forensic procedures and laws need to be fine-tuned and an implementation policy needs to be formed for their effective utilisation.

2.2 The forensic department should be made an autonomous body, independent of the government.

2.3 Medico-legal officers need to be incentivised through recognition as a highly skilled group of people, provision of monetary benefits and reduction of political pressure.

2.4 Detailed examination, such as gun powder analysis and finger printing, should be made an integral part of the investigation procedure.

2.5 All interrogations should be conducted in the presence of a lawyer or a third party.

3. Reforms Related to Arrest

3.1 Grounds of arrest should be clearly defined; rules governing the act of arrest should be clearly spelled out.

3.2 Arrest should not be made without a prior arrest warrant. Moreover, arrest warrant should be based on clear facts and evidence.

3.3 List of cognizable offences should be rationalised and, if possible, removed altogether.

3.4 Clause pertaining to "associating any person to investigation" should be removed.

4. Reforms in the Judicial Procedure

4.1 The provision of a 14 day physical remand should be removed.

4.2 Courts should not rely upon oral evidence, especially that of the police. The police testimonies should, at best, be advisory only.

4.3 Judges should always meet the accused and inspect the daily diary.

5. Reforms in the Thanna Culture

5.1 Model Thannas should be established where CCTVs are set up so that proper monitoring of these Thannas can take place.

5.2 The daily diary system should be computerised and the diary should be maintained more diligently.

5.3 Thanna, which is the basic unit of law enforcement, should be granted financial autonomy.

5.4 The government should invest in the training of investigation officers; they must have some qualification in

forensics and investigation. Furthermore, they should have clearly defined roles within a team.

5.5 Promotions and transfers of police officers need to be regularised. Also, they must be protected from any form of political interference.

5.6 Awareness should be created with respect to the role of police. Emphasis should be made on the fact that police is a service and not a force.

5.7 The police's right to bear arms should be curtailed. Also, the use of force needs to be clearly defined.

6. Reforms in the Prison System

6.1 A zero-tolerance policy should be adopted against corporal punishment and an effective implementation of existing legislations in this regard needs to be ensured.

6.2 Solitary confinements should be incorporated within the prison rules and its procedure should be clearly defined.

Appendix 1 - Sexual Abuse

Our jail visits brought another aspect of jail life to our attention i.e. that of sexual abuse. Juvenile offenders are the primary targets of such exploitation. They can be mal-treated by both older boys in the juvenile section as well as by adult prisoners in the neighbouring male section. We discovered that most of the abuse takes place at night and as the cell doors are locked at seven o' clock in the evening, the only way that access can be gained is through the aegis of the police. The prison staff is provided money / bribe and the victim identified. This is colloquially known as *"munda book kerwana"* i.e. the victim is literally booked. The police then facilitate transport. We discovered that boys hailing from Khyber Pakhtunkhwa are more prone to abuse of such nature primarily because of the general stereotyping.

One inmate told us that he had been 'booked' and was transported to the pre designated barrack. He though managed to procure a weapon from one of his fellow inmates. This weapon is commonly known as a 'cut'. It is usually a spoon chiselled to form sharp edges or a broken plate with jagged ends; in short anything sharp which can be used to inflict injury. This weapon is quite common in prisons and regularly used in prison fights. Our victim then attacked the perpetrator with the so called cut and thus avoided being sodomised. He did though end up in solitary confinement for a month after that.

Female prisoners get considerable respite from sexual violence in prisons as opposed to in police lock ups. This is because women prisoners are guarded by female guards. This fact in itself illustrates the dire need for female constables and officers in police lock ups.

During our visit to women section of the Kot Lakhpat jail we were informed by all the women whom we interviewed that none of them had ever been abused by the prison staff. We were informed by women prisoners that the only time when prison staff was strained to use force against the inmates was for disciplinary purposes only. This however is neither representative of the general state of affairs nor does it warrant adherence of the writ large in any way whatsoever.

Appendix 2 - Punishments Awarded to Police Personnel (01.01.2011 to 31.12.2011).

[Data Obtained from Discipline Branch, Inspector General Punjab's Office, Lahore.]

Rank	Grounds	Major						Minor						
		Dismissal Removal	Removal from Service	Compulsory Retirement	Forfeiture of Approved service	Reduction in Rank	Recovery from pay / pension	Withholding of increment	Withholding of promotion	Reduction to lower stage or stages in pay scale	Censure	Extra drill quarter guard	Fine	Total
ASP/DSP	Torture	0	0	0	0	0	0	0	0	0	0	0	0	0
	Death in Custody	0	0	0	0	0	0	0	0	0	0	0	0	0
	Illegal Confinement	0	0	0	0	0	0	0	0	0	0	0	0	0
Inspector	Torture	0	0	0	1	0	0	1	0	0	0	0	0	2
	Death in Custody	1	0	0	0	0	0	0	0	0	0	0	0	1
	Illegal Confinement		0	0	3	2	0	2	3	0	5	0	0	15
Sub-Inspector	Torture	2	0	1	1	0	0	3	0	0	4	0	0	11
	Death in Custody	0	0	0	0	0	0	0	1	0	0	0	0	1
	Illegal Confinement	0	0	2	7	1	1	4	8	0	12	0	0	35
Assistant Sub-Inspector	Torture	2	0	0	2	0	0	0	0	0	1	0	0	5
	Death in Custody	3	0	0	0	0	0	0	0	0	1	0	0	4
	Illegal Confinement	2	0	0	9	2	0	6	3	1	7	0	0	30
Head Constable	Torture	0	0	1	0	0	0	0	0	0	1	0	0	2
	Death in Custody	0	0	0	0	0	0	0	0	0	0	0	0	0
	Illegal Confinement	0	0	0	3	0	0	0	0	0	1	0	0	4
Constables	Torture	2	0	0	6	0	0	2	0	0	5	0	0	15
	Death in Custody	7	0	0	0	0	0	0	0	0	0	0	0	7
	Illegal Confinement	2	0	0	3	0	0	1	0	0	9	0	2	17

Appendix 3 - Questionnaire

Personal Information

Name:	
Age:	
Sex:	
Domicile:	

Information Re Alleged Crime:

What is your alleged crime?	
What provision of law have you been charged under?	

Information Re Arrest

When were you arrested? (date / day)	
Where were you arrested from?	
Were you told why were you being arrested?	
Method of arrest (number of police officers / presence of female constables)	
Were any or your family members arrested with you?	

Police Station

Which police station were you taken to?	
Did they record your arrival at the police station?	
Did they have any evidence against you?	
How did they investigate into the complaint before filing the case?	
When was the official case filed against you?	
What happened at the police station?	
Did you acknowledge your crime?	

Judicial Remand

When were you presented for judicial remand? Date	
Did you meet the judge?	
What did the judge say?	
Did you acknowledge your crime?	
What did the judge say to the police?	
If yes, what happened then as per your knowledge?	

Prison

How long have you been in prison?	
How many people to the cell?	
Are convicted and other prisoners kept separately?	
How is the discipline at the prison?	
What methods usually taken?	
Have you been disciplined?	
Is there is a place of solitary confinement?	
How many people on average are taken to solitary confinement? Time?	
Is a there a facility of medical treatment at the prison?	
Have you availed the medical treatment?	
Other facilities in Prison?	
Access to facilities?	
Family visits? & Letters and mail	
Any fights among inmates?	
Routine in the prison	

Bibliography

Babovic', Budimir. "Police brutality or police torture." *Policing: An International Journal of Police Strategies & Management,* Vol. 23 No. 3, 2000, pp. 374-380 (p. 374-375)

Brower, Charles, Rodley, Nigel and Gross, Oren. "Torture, Violence and the Global War on Terror." *Proceeding of the Annual Meeting (American Society of International Law),* Vol. 99 (March 30 – April 2, 2005) pp. 401-410 (p. 406)

Droege, Cordula. "In Truth the leitmov: The Prohibition of Torture and other forms of ill treatment in international humanitarian law." *International Review of the Red Cross,* Vol 89, No. 867, September 2007, pp. 515 – 541

Evans, Malcolm D. "Getting to Grips with Torture." *International & Comparative Law Quarterly* 51.02 (2002): 33-49 (p. 49)

Fyfe, James J. "Training to reduce police-civilian violence." (1995), in Geller, W.A. and Toch,H. "And Justice for All: Understanding and Controlling Police Abuse of Force." *Police Executive Research Forum, Washington DC,* p. 163

Ghosh,Shrikanta. *Torture and Rape in Police Custody: An Analysis,* (New Delhi: Ashish Publishing House, 1993)

Hafetz, Jonathan. "Torture, Judicial Review, and the Regulation of Custodial Interrogations." *NYU Annual Survey of American Law, Vol. 62, No. 3, 2007*

Hart, H.L.A. *The Concept of Law,* 193-200 (2d ed. 1994)

Nowak, Manfred. "What Practices Constitute Torture?: US and UN Standards." *Human Rights Quarterly* 28 (2006) 809-841

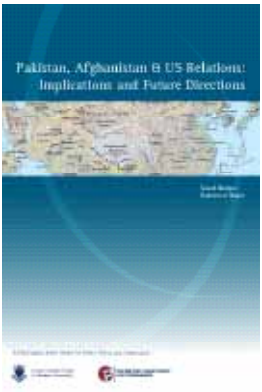
Nowak, Manfred & McArthur, Elizabeth. "The Distinction between torture and cruel, inhuman and degrading treatment." *Torture* Volume 16, Number 3, 2006, pp. 147-151

Rao, Anupama. "Problems of Violence, States of Terror: Torture in Colonial India, Interventions." *International Journal of Post Colonial Studies,* 3:2, 186-205

The Simorgh Collective, Rape (Lahore: Simorgh Collective, 1990)

Waldron, Jeremy. "Torture and Positive Law: Jurisprudence for the White House." *Columbia Law Review,* Vol. 105, No.6, (Oct., 2005), pp. 1681-1750

CPPG Publications



Saeed Shafqat and Raheem ul Haque

Pakistan, Afghanistan & US Relations:
Implications and Future Directions

Raheem ul Haque

Rickshaw & Environmental Pollution:
Assessing Punjab Government's Rickshaw Policy

Quarterly Research & News

FCC Public Policy Research

Rabia Chaudhry is a Research Fellow at the Centre for Public Policy and Governance, FC College Lahore. She has a Masters (Exec.) in Public Policy from CPPG, FC College Lahore. Prior to that she practiced civil and commercial law and taught law Jurisprudence and Legal Theory and Contract Law in local law college. Her research interests include Human Rights, Institutional reforms and changing dynamics of civil-military relations.

CrossMedia | 03334501684

Centre for Public Policy and Governance

Forman Christian College
(A Chartered University)

CENTRE FOR PUBLIC POLICY
AND GOVERNANCE

ISBN: 978-969-9661-02-0