

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	340
Land:	Pakistan
Kilde:	Justice Project Pakistan og World Organisation Against Torture
Titel:	Economic, Social and Cultural Causes of the Death Penalty and Torture in Pakistan
Udgivet:	september 2016
Optaget på baggrundsmaterialet:	13. januar 2017



ECONOMIC, SOCIAL AND CULTURAL CAUSES OF THE DEATH PENALTY AND TORTURE IN PAKISTAN

Submitted by Justice Project Pakistan (JPP) and the World Organisation Against Torture (OMCT) to the Committee on Economic, Social and Cultural Rights, September 2016

In December 2014, following the tragic terrorist attack on the Army Public School in Peshawar, the Government of Pakistan lifted a 6 year moratorium on the death penalty. Initially lifted to apply to terrorism related offences, the moratorium was lifted for all capital offences in March 2015. In a span of less than two years the Government of Pakistan has executed over **405** prisoners, thereby becoming the 3rd most frequent executioner in the world.

A close examination of the criminal justice system reveals that the application of the death penalty in Pakistan is rooted in economic, social and cultural causes. A disproportionately high proportion of prisoners on Pakistan's 8000 strong death row population¹ and those executed since December 2014 belong to the poor, excluded and other vulnerable groups such as juveniles, religious minorities and persons with mental and physical disabilities.

This submission prepared by the Justice Project Pakistan (JPP) and the World Organisation Against Torture (OMCT) aims to highlight key areas under Pakistan's criminal justice system where there is a correlation between violations of economic, social and cultural rights and the death penalty. Through an analysis of selected case studies of prisoners represented by JPP this submission demonstrates that the poor, excluded and vulnerable groups are the foremost and primary recipients of the death penalty in Pakistan and are, as a result, victims of international human rights violations inherent in its application, including police torture. This report shows how poverty and ill-treatment are interrelated in Pakistan. In particular, deprivation of social, economic and cultural rights correlate with (1) capital punishment (2) poor representation of capital defendants, and (3) the risk of facing torture and ill-treatment in custody.

¹BBC. *Pakistan Death Row Inmates Face Imminent Executions*, <http://www.bbc.com/news/world-asia-30577808>.

A. POLICE TORTURE, FORCED “CONFESSIONS” AND THE DEATH PENALTY

(i) Systemic torture of vulnerable groups

Torture and cruel, inhuman and degrading treatment by police in Pakistan is systematic and pervasive. In the absence of a legislative framework criminalising torture by police and establishing an independent investigation mechanism for allegations of torture, police in Pakistan face virtual impunity to torture. The current legal recourse available to survivors of police torture in Pakistan is to file complaints with the police for allegations of torture against their colleagues. It is further common that police officers ask for bribes for a First Information Report to be registered. It is therefore, no surprise that torture complaints rarely lead to prosecutions and penalties for perpetrators. In lieu of their unfettered powers, the police frequently employ torture against socio-economically disadvantaged populations. As a result of their vulnerable position in society, these survivors are even less likely to pursue retributive action.

A study conducted by the Justice Project Pakistan (JPP) and Allan K. Lowenstein International Human Rights Clinic, discovered that out of 1867 Medico-Legal Certificates (MLCs), prepared by a District Standing Medical Board (DSMB) for the city of Faisalabad during 2006 to 2012, there were **1,424** confirmed cases of police abuse.² Torture methods employed by the police in the confirmed cases were extreme. Victims were suspended, stretched, put in solitary confinement, subjected to sleep deprivation and sexually abused. The survivors of torture were primarily persons belonging to poor, marginalised and excluded groups. An analysis of the most common occupations of the survivors demonstrated that the biggest chunk (almost 37%) were daily-labourers who were dependent on a daily wage. The remaining also held low-income occupations including working as domestic servants, drivers and small-scale farmers.

Not only were the poor disproportionately targeted by the police, the abuse also resulted in subsequent denial of their socio-economic rights. The effects of abuse lasted long after the incident. Victims described long-standing physical pain and harms to their reputation in the community and to their financial standing. For example, victims stated that their businesses had suffered as others in the community were reluctant to work for them and/or patronise their business as a result of the stigma associated with torture. Some victims also reported suffering from lasting physical disability that meant that they could no longer earn through daily labor.

(ii) Forced Confessions and wrongful death sentences

The police force in Pakistan is woefully underequipped, both in terms of training and resources, to investigate the increase in crime, terrorism and insurgencies that are becoming increasingly prevalent in the country. Poor education, low salaries, and excessive working hours are common in the police force. This lack of competence combined with the impunity accorded by lack of a legislative framework criminalising torture, makes torture the primary method of police investigation. This is particularly harrowing considering that with the lifting

² Justice Project Pakistan and the Allan K. Lowenstein International Human Rights Clinic, Policing as Torture, June 2014, https://jpp torturewatch.files.wordpress.com/2015/09/jpp-launch-report_052314.pdf.

of the moratorium on the death penalty, confessions and statements coerced through torture have become the basis of death sentences. As highlighted below, people belonging to disadvantaged socio-economic backgrounds and vulnerable groups are often arrested by police and coerced into providing falsified confessions in order to expedite the resolution of cases. The judiciary and prosecution tend to harbour inherent biases against vulnerable groups and therefore, accept the evidence presented by the police without ensuring that it was in fact given willingly and without coercion.

Case Study: Shafqat Hussain

Shafqat was sentenced to death in 2004 and executed in August 2015. He was arrested by the police on suspicion of involvement in the kidnapping of a child who lived in the building that Shafqat worked at as a guard and caretaker. Shafqat was 14 years at the time of the occurrence of the alleged offence. According to Shafqat, he was arrested along with other suspects all of whom were asked to pay an exorbitant bribe. Whilst the others complied and were let free, Shafqat who was unable to afford to pay. He was kept in solitary confinement for 7 days where he was tortured by the police by severe beatings, cigarette burns, and electrocution. At no point following his arrest was Shafqat allowed to be visited by a lawyer.³

On the 7th day he was taken before a Magistrate in handcuffs and directed by the Investigating Officer to admit to the alleged crime. As Shafqat knew that he was going to be returned to the custody of the police after delivering his statement he had no choice but to confess. The Magistrate accepted the confession without conducting any requisite diligence to determine that it was not given as a result of any coercion. Shafqat retracted his confession during his trial at the earliest opportunity and informed the court, in his statement under Section 342 of the Code of Criminal Procedure, that he had only confessed in order to save himself from further physical and mental torture.

Shafqat was convicted and sentenced to death on 1st September 2004. His appeal to the Sindh High Court was decided on 15th May 2006. In the course of his appeal the High Court confirmed that the confession was the primary basis for his conviction. Shafqat made a further appeal to the Supreme Court which was also rejected in October 2007.

The CESCR may consider asking the Government of Pakistan to:

- a) Provide information on measures taken to address socio-economic and health problems of torture victims.
- b) Provide information on training, equipment and working conditions of police forces including on trainings to sensitize police to the importance of fair and non-discriminatory law enforcement.
- c) Provide information on measures to address corruption in the criminal justice system.

³ See Press release by Christof Heyns, UN Special Rapporteur on extrajudicial, summary or arbitrary executions; Juan E. Méndez, UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Gabriela Knaul, UN Special Rapporteur on the independence of judges and lawyers; and Benyam Mezmur, current Chairperson of the UN Committee on the Rights of Child who called on Pakistan to halt the execution of Shafqat.

<http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=16046&LangID=E#sthash.Mk4ubkKG.dpuf>.

- d) Provide information on measures taken to ensure proper representation of disadvantaged groups before the Magistrate and courts.
- e) Provide information on measures taken to equip police with modern forensic means in order to attach less importance on confessions.

B. LACK OF EFFECTIVE LEGAL REPRESENTATION FOR POOR CAPITAL DEFENDANTS

The death penalty is disproportionately applied against poor and vulnerable groups as these groups generally lack the resources to put up an effective defence. The Government of Pakistan provides legal representation at state expense for capital defendants. However, due to the lack of minimum standards governing qualifications, performance and experience of those who can serve as defence counsels in capital cases, state-appointed lawyers are for the most part young and inexperienced lawyers who have little to no expertise in capital cases. Additionally, state-appointed lawyers are often assigned to indigent defendants once a trial is already under way, and as a result defence attorneys rarely are involved in investigations, nor provided sufficient time and resources to expend upon parallel inquiries.

Additionally, the remuneration provided to these lawyers is grossly inadequate thereby making them susceptible to influence from the complainant and/or police. The problem is further exacerbated by the fact the Pakistan does not provide any recourse for retrial or redress as a result of incompetent or ineffective counsel. The Supreme Court of Pakistan also routinely dismisses applications for post-conviction review that raise potentially exculpatory evidence that was not raised at trial even if as a result of incompetent state counsel.

Many of the clients that JPP has represented in death penalty cases suffered from inadequate representation by state-appointed lawyers in the early stages of their cases. This inevitably served as amongst the primary bases for the death penalty. In some cases, egregious errors by these lawyers directly resulted in convictions based on false testimony and in the execution of juveniles and members of other vulnerable groups who are owed special protection under international law. For instance, Zulfiqar Ali Khan spent sixteen years on death row prior to his execution on May 6, 2015, by firing squad. When the prosecution presented falsified witness statements during his trial. Zulfiqar's state-appointed lawyer failed even to challenge this testimony, causing irreparable damage to his case. Similarly, Shafqat Hussain was appointed a state-counsel who also failed to raise any evidence in his defence by stating that "no one leaves the anti-terrorism courts without a death sentence".

Case Study: Aftab Bahadur

15 year old Aftab was accused and convicted of murder in October 1992. At the time he was working as an assistant to a plumber, Ghulam, whilst going to school. A witness reported seeing Aftab and Ghulam at the scene of the crime.

Aftab and his family (including his brothers and cousins) were arrested and tortured in order to force him into confessing to the crime. Ghulam, Aftab's co-accused, was also tortured into implicating Aftab – stating that he was there at the time of the murder. The state-appointed lawyer provided to Aftab at trial refused to challenge Aftab's confession or the statements of the co-accused or the key-witness. The lawyer did not raise even a single witness or any evidence in defence of Aftab.

The key witness subsequently admitted that he had only stated to seeing Aftab at the scene of the crime as a result of being tortured by the police. JPP have an affidavit from the witness recanting his statement that it was given under duress. However, Aftab's lawyers at JPP were denied the opportunity to raise this and other evidence including evidence of torture and fabrication of finger prints at the scene of the crime and missing witnesses at the stage of the post-conviction review as it was "out of time". In 2015, Aftab was hanged at Central Jail Lahore.

The CESCR may consider asking the Government of Pakistan to:

- a) Provide aggregated data on (1) the number of prisoners on death row; (2) the number of executions, (3) the type of charges brought against persons who were sentenced to death.
- b) Steps taken to ensure that all legal proceedings are conducted in accordance with international standards taking into account the vulnerability of disadvantaged and poor defendants

C. MISUSE OF ANTI-TERRORISM LAWS AND THE DEATH PENALTY

Various loopholes inherent under Pakistan's anti-terrorism laws allow them to be grossly overused by police and security agencies particularly as a means to control poor, vulnerable and exploited segments in society. The Anti-Terrorism Act, 1997 (ATA) is the primary legislation governing arrest, detention, prosecution and sentencing of terrorism. Under S. 6(1) "terrorism" is defined as the *"use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society"*. Such a vague and overly broad definition allows police and security agencies to book persons accused of crimes bearing no relation to militancy and membership in terrorist outfits as terrorism. S. 6(2) of the ATA lists 18 crimes including murder, assault, destruction to property and kidnapping as terrorism. At least three of the listed crimes including murder and kidnapping carry the death penalty, which judges are directed to award in all, except the most exceptional of cases. A study by the Justice Project Pakistan and Reprieve titled "Terror on Death Row" discovered that 80% of prisoners convicted of "terrorist offences" had nothing to do with terrorism; only 20% were genuinely terrorists as the word is commonly understood.⁴

The gross overuse of the ATA has a disproportionate impact upon poor and vulnerable groups. Under the law, the police have unfettered powers to use force against suspects and make arrests. Additionally, the ATA allows police to suspend various procedural safeguards that are inherent to a suspects right to fair trial and allow protection to vulnerable groups from torture and coercion. For example, whilst ordinary criminal procedure bars confessions statements and confessions procured in police custody from being considered as evidence, under the ATA such statements are admissible. As a result, police have a license to torture suspects into providing damning statements that are thereafter used as the basis for awarding

⁴ Terror on Death Row: The Abuse and Overuse of Pakistan's Anti-Terrorism Legislation," Justice Project Pakistan and Reprieve, December 2014, Justice Project Pakistan and Reprieve, http://www.reprieve.org.uk/wp-content/uploads/2014/12/2014_12_18_PUB-Pakistan-Terror-Courts-Report-JPP-and-Reprieve.pdf.

death sentences. This problem is further exacerbated by the fact that the law only provides police with a maximum period of 7 days to conclude an investigation. Therefore, as was explained above in the case of Shafqat Hussain, police arrest poor and vulnerable persons and torture them into confessing for crimes they have not committed.

Case Study: Muhammad Akhtar

Muhammad, then an illiterate 21 year old man received 2 death sentences in December 2000 for his alleged participation in a murder and rape – he received a third death sentence under the ATA for the “panic, harassment and sense of insecurity” these acts supposedly caused in the local community.

There are clear signs of misconduct in the police’s investigation of the case. Even though 89 people appeared before the police in support of Muhammad, the police refused to take their statements or even log them into their investigation diary. After arresting Muhammad, the police brutally tortured him to obtain a confession. He was hung upside down from a metal bar and stretched while tied to a bed. On appeal the courts themselves concluded that the eyewitness testimony tying Muhammad to the crime was “utterly unreliable” and that neither forensic nor medical testing indicated that rape had taken place. However, despite clear loopholes, the court upheld Muhammad’s death sentence. Muhammad has remained on death row for over 36 years now and has steadily lost his eyesight.

The CESCR may consider asking the Government of Pakistan to:

- a) Provide aggregated data on the number of persons charged under the ATA including the number of minors and the type of charges brought.

D. EXECUTIONS OF MENTALLY ILL PRISONERS

The systematic deficiencies under Pakistan’s criminal justice system fall particularly hard on defendant with mental illnesses and intellectual and developmental disabilities. Despite an international law prohibition on executions of persons suffering from intellectual or mental disabilities, Pakistan routinely sentences to death and executed prisoners suffering from mental illness.

The lack of mental health treatment and training in the criminal justice system, as well as in Pakistan generally, means that many individuals never even get diagnosed. The dearth of procedural safeguards upon arrest and in the course of trial results in the sentencing to death of many mentally ill persons.

The lack of mechanisms to detect and classify mentally ill individuals poses an initial and significant obstacle to ensuring Pakistan does not execute persons with mental and intellectual disabilities. In Pakistan, prior to defendants’ entanglement with the criminal justice system, access to psychiatric care is limited, especially among the poor. As a result, many indigent, mentally ill individuals are rarely diagnosed. Indeed, “[t]hose who experience

mental illness often turn first to religious healers, rather than mental health professionals,” and then only to traditional and alternative healers.⁵

Case Study: Muneer Hussain

Muneer Hussein was one such case. Muneer Hussein came from a low socioeconomic background, “with no awareness of psychiatric treatment.” In the years prior to his execution, JPP was able to gather an extensive file documenting the numerous indicators of mental illness that arose early on in his childhood, and that worsened over time. As a child, Muneer was violent and “hot-tempered,” experiencing episodes of extreme anxiety and hallucinations. When he was twenty-two years old, he accidentally shot himself in the face. Because the pellets were made of lead, it is likely that this wound—visible to all—exacerbated his mental illness. According to the affidavit of his uncle, “[a]fter this incident, Muneer’s behaviour changed a lot. He started to behave strangely, but not all the time. Sometimes he would be normal and then he would suddenly change, as if he was a completely different person.”

Until JPP’s intervention, Muneer’s mental illness remained undiagnosed and untreated. Yet, Muneer’s mental illness was clearly manifest during his time on death row. In an affidavit, his wife recounts how when she would visit, Muneer would have “frequent fits of extreme anger and violence, and on other occasions, turn [...] extremely pale, and become [...] silent and distant, as if he was lost in his own world,” sometimes not recognizing his own family. According to fellow prisoners, Muneer had episodes where he would not eat for days on end.

Finally, in September 2014, Muneer received his first psychiatric evaluation by a psychiatrist retained by his counsel, who diagnosed “symptoms of intense neurological and psychological illness.” Yet, despite the psychologist recommending additional testing and medical and psychiatric treatment, the Pakistani government never provided such care.

The CESCR may consider asking the Government of Pakistan to:

- a) Provide information on the execution of death sentences on mentally ill persons.
- b) Provide information on access to mental health care, including for those held in custody

E. JUVENILES ON DEATH ROW

International law recognizes that, for the purposes of criminal justice, children are inherently different from adults and thus merit special considerations throughout the legal process, particularly at sentencing. International law clearly, repeatedly, and categorically condemns use of the death penalty for offenses committed by juveniles. The United Nations Convention on the Rights of the Child (CRC), which Pakistan ratified in 1990, dictates that “neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.” Pakistan’s domestic law under the Juvenile Justice System Ordinance 2000 (JJSO) also prohibits sentencing to death and executions of juvenile offenders.

⁵ Gilani et al, *Psychiatric Health Laws in Pakistan: From Lunacy to Mental Health* (2005).

In practice however, since the lifting of the moratorium on the death penalty in December 2014, Pakistan has knowingly executed 6 juvenile offenders despite credible evidence supporting their juvenility. A study published by the Justice Project Pakistan and Reprieve titled “Juveniles on Pakistan’s Death Row”, in April 2015, discovered that as many as 10% of Pakistan’s death row population could have been under 18 at the time of committing the crime for which they were convicted and sentenced to death.⁶ The criminal justice system is discriminatory towards juvenile offenders particularly those belonging to disadvantaged backgrounds and thereby fails to accord them requisite lawful protection.

Almost 46% of Pakistan’s total population has no form of official registration to demonstrate age, with figures going as low as 1% in Balochistan and FATA. Only 32% of the population possesses a birth certificate with figures going even lower in rural areas. As a result, juvenile offenders who were unregistered at the time of their births are placed in an impossible position to prove their juvenility at the time of arrest during the course of their trial and appeals. In the absence of documentary record demonstrating age, police at the time of arrest record an arbitrary age based upon a visual assessment of the physical appearance of the accused. In practice, police are more inclined to record the age of the accused as an adult in order to avoid the application of safeguards for juveniles under the JJSO.

If a plea of juvenility is raised by the accused at the time of trial, the courts place the burden entirely upon the defendant. Not only is such a burden difficult to dispel given the dismal rates of birth registration in the country, it is also contrary to international human rights law principles. The UN Committee on the Rights of the Child has recognised in General Comment No 10 that “If there is no proof of age, the child is entitled to a reliable medical or social investigation that may establish his/her age and, in the case of conflict or inconclusive evidence, the child shall have the right to the rule of the benefit of the doubt”. Additionally, in the absence of age determination protocols courts tend to rely inevitably on evidence that disproves the plea of juvenility of the accused. In certain cases courts have even dismissed government issued birth and registration records as unreliable. As a result, juvenile offenders find themselves in an impossible situation where they are inevitably denied the benefit of provisions that were enacted to protect them.

Case Study: Ansar Iqbal

Ansar Iqbal was arrested in 1994 on murder charges – which he denied – and sentenced to death in 1996, despite telling the court he was 15 at the time of his arrest. All the government issued documentary evidence provided to the courts during his trial or appeal indicates that he was a child at the time of the alleged offence; however, the courts have chosen to believe the estimate of police officers that he was in his 20s. He was hanged on 29th September 2015.

Iqbal did not have a birth certificate to submit in the early stages of the legal process because he was not registered at the time of his birth. He instead submitted school and other family records, which were dismissed by the courts. When his appeal reached Pakistan’s Supreme Court earlier this year, he provided a birth certificate issued by the countries official National Database and Registration Authority (NADRA) in 2015, which gave his date of birth as

⁶ Reprieve, *An Estimated 800 Facing Hanging in Pakistan were Sentenced to Death as Children*, <http://www.reprieve.org.uk/press/an-estimated-800-facing-hanging-in-pakistan-were-sentenced-to-death-as-children/>.

25.12.1978 – confirming Iqbal’s account that he was a child at the time of the alleged offence in 1994. However, the judges refused to consider the document, continuing to rely instead on the age initially recorded by police officers following a cursory visual assessment which has been accepted by the lower courts.

The CESCR may consider asking the Government of Pakistan to:

- a) Provide data on the number of juveniles sentenced to death.
- b) Provide information on steps taken to guarantee the systematic registration of births.