



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 be denied the right to consult and be defended by a legal practitioner of his choice.

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.

Constitution of Pakistan
Article 10(1) and (2)

The dignity of man and, subject to law, the privacy of home, shall be inviolable.

No person shall be subjected to torture for the purpose of extracting evidence.

Article 14(1) and (2)

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Universal Declaration of Human Rights
Article 5

Everyone has the right to recognition everywhere as a person before the law.

Article 6

No one shall be subjected to arbitrary arrest, detention or exile.

Article 8

The harsh conditions of detention in Pakistani prisons remained unchanged in 2015 and a failure to consider alternatives to custodial detention remained the biggest challenges. Far from rehabilitating criminals, the prison system in Pakistan served as a potential breeding ground for radicalisation, criminal activity and disease. Most prisons in the country housed more prisoners than they had been built for and some even housed prisoners in excess of twice their capacity.

The overcrowding was the result of an inclination to detain under-trial prisoners, and penal servitude being considered as the most effective punishment for offenders. Overcrowding also did not allow separation of prisoners according to the status of their cases. Convicted prisoners were often housed together with under-trial

prisoners while adult female prisoners shared space with juvenile females. Such conditions of detention not only ignored the dignity and the basic needs of inmates, they also served as a barrier to genuine reform. There were no indications that any substantial reform for the prison system was being contemplated in the near future.

Nearly five years of informal moratorium on executions had ended in late December 2014 following the brutal terrorist attack on Army Public School in Peshawar. As part of the National Action Plan, an anti-terrorism strategy devised in the aftermath of the Peshawar attack, the government had vowed to execute convicted terrorists and established military courts for a limited time for expeditious disposal of cases. In the first quarter of 2015, Pakistan resumed executions of all death penalty convicts, instead of just those convicted of those terrorism offences. During the year under review, Pakistan became one of the states with the highest rates of executions in the world. The overwhelming majority of the individuals executed through the year were not 'hardcore terrorists', for whom the executions had purportedly been resumed.

Human rights organisations opposed the establishment of military courts over dilution of due process standards and challenged the constitutional amendment that established military courts in the country. However, the Supreme Court ruled in favour of establishing the military courts. There were reservations regarding the quality of justice promised by military courts from the start. The secrecy surrounding the trials and denial of the right to a public hearing added to the apprehensions. Human rights groups continued to voice their opposition to military courts and demanded that they should be abolished in favour of genuine police and judicial system reform.

Cases of enforced disappearances continued to be reported, while impunity for the perpetrators also persisted. Amid an ongoing operation in Karachi by the paramilitary Rangers force, to end lawlessness in the city, complaints of arbitrary arrest and disappearance of individuals allegedly over political affiliation were reported. Little headway was made in the cases of enforced disappearance pending before the superior courts. Pakistan did not sign or ratify the UN Convention for the Protection of All Persons from Enforced Disappearance, nor implemented other recommendations that the UN Working Group on Enforced Disappearance had made at the conclusion of its visit to the country in 2012.

The state of prisons

During the year under review, prisons and prisoners entered the



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public discourse almost only during deliberations over heightening prison security and enforcing harsher punishments. The separation of various categories of inmates was an issue of fundamental importance that the prison system in Pakistan continued to grapple with. The overcrowding of jails did not allow for the separation of under-trial and convicted prisoners; only male juveniles were separated from adult prisoners. Female juvenile prisoners shared space with adult female prisoners and the convicted prisoners and those awaiting trial were detained together.

International standards demand that prisoners are provided individual cells for sleeping accommodation. Even if a separate cell cannot be provided, the accommodation should meet basic requirements of health, with due regard paid to climatic conditions and particularly to minimum floor space. The overcrowding of jails in Pakistan and the issues of concern resulting from that are well documented. Adiala Jail in Rawalpindi was the most crowded prison in Punjab. It had sanctioned capacity to detain 2,000 prisoners, but housed 5,000 inmates in June 2015. The prisons in Khyber Pakhtunkhwa fared no better, with 10,040 prisoners crammed in a space meant for housing 6,600 prisoners. The authorised capacity of Karachi Central Prison was 2,400 but it housed around 6,000 prisoners in November.

A 2015 study conducted by Legal Aid Office, a Karachi-based

advocacy group, in jails across Sindh found that overcrowding was a factor contributing to radicalisation among under-trial prisoners, who were detained in the same barracks as 'hardened' criminals. The research also found that 84 per cent of the under-trial prisoners replied in the affirmative when asked whether police demanded bribe at the time of arrest.

The country's first high-security prison was constructed in the year under review in Sahiwal district of Punjab. The jail, constructed over 98 acres, had the capacity to hold 1,044 prisoners.

International standards on detention also demand that the prisoners are provided food that is wholesome and of a nutritional value adequate for health. Clean drinking water should also be readily available. Prison surveys in the country demonstrated that despite some improvements in the menu in prisons, numerous food-related problems persisted.

According to media monitoring by HRCP, 65 prisoners died in the country's prisons during 2015. Various diseases caused the deaths for 46 of these prisoners, while four had died because of torture by prison staff and one succumbed to a beating by fellow inmates. Thirty of the prisoners were convicted and the remaining under trial.

The chairperson of Technical Education and Vocational Training Authority (TEVTA) announced in December that they would provide loans ranging from 10,000 to 100,000 rupees to prisoners at the completion of their technical training in jails. According to an agreement, 6,400 prisoners were to be trained annually in 13 jails of Punjab. The measure was aimed at providing prisoners with the requisite skills to rejoin society as productive citizens and have financial security. The loan was meant to assist prisoners in setting up their businesses. TEVTA planned to develop technical training centres in nine central jails, two women's jails and two juvenile detention facilities in Punjab.

According to a recent UNICEF report, Punjab had the highest number of juvenile offenders in the country. Under the Juvenile Justice System Ordinance 2000 the government was under an obligation to establish juvenile courts in each district of the country. However, rather than establishing such courts, existing courts were given the status of juvenile courts.

Numerous child rights experts have recommended that if it became imperative to detain juvenile offenders, they should be kept in

separate borstal institutions, which should cater to their specific needs. The country had six borstal jails; two in Punjab and four in Sindh. While Khyber Pakhtunkhwa had enacted the Borstal Institution Act in 2012, it was yet to establish a borstal institution in the province.

In October, a juvenile prisoner at Peshawar Central Prison alleged that he and other juvenile inmates had been sexually abused inside the jail. He also accused the jail officials of 'supplying' the juvenile prisoners to older prisoners for money. The victim lodged a complaint with the Peshawar district and session judge, who directed a judicial magistrate to conduct an inquiry. The victim also requested a medical examination. He alleged that other juvenile prisoners were afraid to raise their voice for fear of torture.

Torture

Custodial torture remained one of the gravest and most pressing human rights issues in Pakistan. After signing and ratifying the United Nations Convention Against Torture (CAT) in 2010, Pakistan has fallen short of complying with its obligations.

In January, the Senate Standing Committee on Interior unanimously adopted a draft anti-torture bill and referred it to the Senate chairman. The Torture, Custodial Death and Custodial Rape Bill defined torture and prescribed life imprisonment and a fine of Rs 3 million for custodial death or custodial rape and a minimum of five years in jail and a fine of up to Rs 1 million for torture. The bill, which remained pending in the National Assembly till the end of the year, failed on many fronts. One of these was that the investigating body had to seek instruction and direction from the federal government upon receiving a complaint directed against the military or intelligence agencies.

In October, the staff at Kasur Jail was summoned in court for torturing a death row convict. The victim had been convicted in a murder case and his execution orders had been issued recently. When his brother learned from other prisoners that the victim had been tortured, he had submitted a complaint. The judge ordered medical examination of the victim, which confirmed that torture had taken place. The complainant believed that the police had tortured his brother on the behest of a group of prisoners.

In November, a prisoner died allegedly due to torture at Kot Lakhpat Jail in Lahore. He was shifted to the hospital after his condition deteriorated but he died during treatment. The police denied the claim

and alleged that the prisoner had already been facing health problems and had died of natural causes.

Pakistani prisoners abroad

In November, the Lahore High Court directed the Ministry of Foreign Affairs to come up with a consular policy for the protection of Pakistani prisoners abroad. The federal government was yet to formulate such a policy until the year's end. The court order had been issued following a petition that contended that out of the 8,597 Pakistanis imprisoned abroad, 4,357 were in six Gulf countries "where they were deprived of fundamental rights". In the first five months of 2015, as many as 10 Pakistanis were executed in Saudi Arabia, mostly on narcotics-related charges. Others languishing in foreign jails complained that they lacked consular support and assistance. Some families even contended that they were yet to receive the bodies of their loved ones who had been executed in Saudi Arabia.

While promises of closure of the Guantanamo Bay detention camp by the US president remained unfulfilled, at least five Pakistanis continued to languish in the notorious prison. The family of one of the prisoners, Ahmed Ghulam Rabbani, filed a petition with the Islamabad High Court (IHC) in 2015. Rabbani had allegedly been picked up by Pakistani intelligence agents from Karachi in 2001 and handed over to the US authorities in January 2002 without any legal process. He was first transferred to the Bagram prison in Afghanistan and in January 2004 shifted to Guantanamo Bay, where he was said to have received terrible treatment.

The IHC ordered a deputy secretary of the interior ministry to appear in person before the court along with a report from an inter-ministerial committee about the steps it had taken for Pakistani nationals at Guantanamo. The prime minister had constituted the committee in 2014 with the stated purpose of securing release of the Pakistanis incarcerated at Guantanamo. However, it was revealed that the committee had never met.

The cycle of arrests and release of Pakistani fishermen in India and Indian fishermen in Pakistan continued without any signs of a policy on the horizon. The Pakistan Fisherfolk Forum demanded that the governments of the two countries resolve this matter and immediately release all captured fishermen on humanitarian grounds.

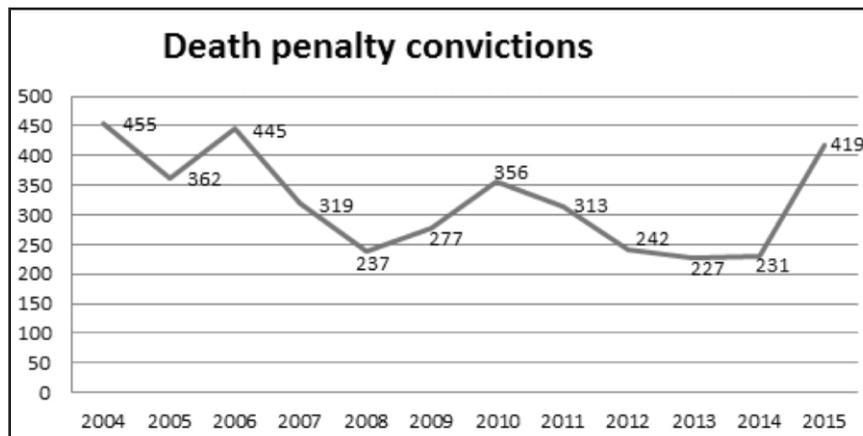
Death penalty

In the wake of the Peshawar school attack in December 2014, the

government decided to launch the National Action Plan (NAP), an anti-terrorism policy to crack down on terrorism and to support the ongoing military offensive against terrorist hideouts in the Federally Administered Tribal Areas (FATA). An all-parties conference had reached a consensus on the 20-point NAP before the prime minister announced it to the nation in a speech on December 24, 2014.

At the top of the NAP list was the “execution of convicted terrorists”. This meant that the government had decided to end the five-year suspension of executions. Pakistan had announced an informal moratorium on executions in 2009 during the rule of the Pakistan People’s Party. The new government of Pakistan Muslim League Nawaz (PML-N), which had taken the reins of government in 2013, had made clear through various statements that executions would be resumed. Also, when the informal moratorium was initially introduced, the interior minister had given at least one public statement citing Pakistan’s international commitment to human rights as one of the reasons.

When the executions resumed in late December 2014, the first death row prisoners to be hanged were those convicted of an attempt on the life of then president Pervez Musharraf and attacks on military installations. After a few months, the government decided to end the moratorium completely and to execute everyone waiting on death row. With the general revival of executions, the government hanged 327 people, out of which only 40 could be classified as terrorists, using the term in its most liberal sense.



During 2015, various courts awarded the death penalty to 419 persons in Pakistan, 216 of them for murder and 17 for terrorism-related offences. Death penalty convictions had been gradually dropping

since 2010, but registered a sharp increase during the year under review. The federal minister for the interior informed the upper house of parliament in October that there were 6,016 prisoners in the jails in the provinces, who had been sentenced to death.

Another major focus of the National Action Plan (NAP) was the creation of military courts. The plan called for special courts, headed by the officers of the armed forces for speedy trial of terrorists. These courts were established for a term of two years. On January 7, the 21st Constitutional Amendment was passed which established the military courts. Initially, nine military courts were established in the country; three each in Khyber Pakhtunkhwa and Punjab, two in Sindh and one in Balochistan. There were discussions to increase the number of military courts, especially in Karachi.

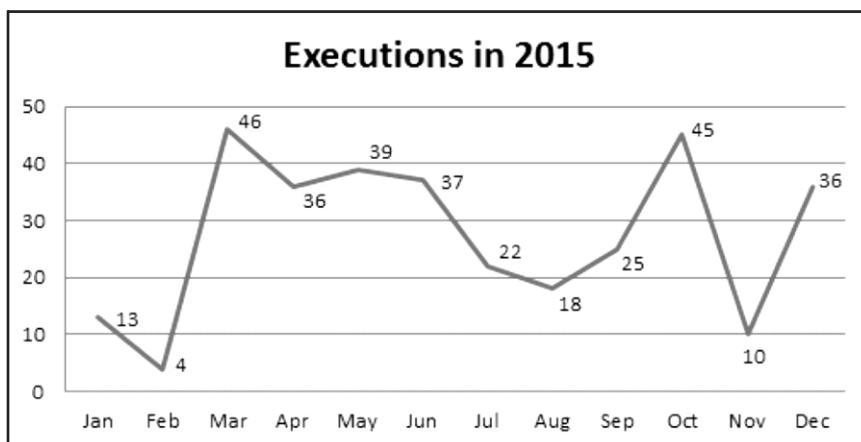
Until October 21, as many as 131 cases of terrorism were filed with the military courts, including those against the suspects in the Safoora Goth attack, who had targeted members of the Ismaili community, and individuals believed to be involved in attacking Malala Yousafzai. The courts concluded the trials of 64 people, finding the accused guilty in 40 cases. A total of 36 people were sentenced to death. Till the end of the year, the death sentence of four prisoners convicted by military courts had been carried out.

The prominence of the military and security apparatus in spheres that had previously been beyond its pale represented new and grave threats to democracy and administration of justice in Pakistan. The establishment of military courts was criticised as undermining due process, and creating exceptions and parallel avenues for administration of justice. Shortcomings in the conventional system had been cited as the main argument for setting up military courts for a two-year period, yet nothing substantial was planned for addressing those shortcomings. Reforming and strengthening the system of investigation, prosecution and witness protection as part of changes that could lead to sustainable improvement in the overall criminal justice system were also neglected.

Executions

The resumption of executions, as well as the pace with which they were carried out in 2015 was a matter of concern for human rights organisations and conscious citizens. During the year under review, 327 death penalty convicts were hanged in Pakistan, making it one of the highest executing states in the world. This was also the highest number of executions carried out in Pakistan in any one year over the past decade.

The high number and the fast pace of executions was particularly disturbing because none of the circumstances that had warranted the suspension of executions in the first place appeared to have changed. Amid deficiencies of a deeply flawed criminal justice system, serious possibilities of wrongful convictions persisted.



The federal government's decision to suspend executions during the fasting month of Ramazan "in reverence for the Holy month and human dignity" was a welcome move but it also called into question the government's policy of generalised resumption of executions in the context of human dignity during the rest of the year. HRCP had asked the government at the time that if executing people were in fact a notion that conflicted with human dignity, why should it be allowed in the first place.

In addition to the various challenges that capital punishment presented, there was a particular need to introduce safeguards in cases where the age of the convict or his mental or physical ability was in question.

Execution orders were issued on three different occasions for Abdul Basit, a paraplegic death-row prisoner, before his execution was delayed. He was first scheduled to hang on July 29, but the Lahore High Court stayed the execution at the eleventh hour when a writ petition challenged the legality of hanging a paralysed man. It was argued that because of his disability, his execution could not be carried out in accordance with the Pakistan Prison Rules. His execution was later scheduled for September 22 and then November 25 but was halted both times. In a letter to the prime minister, HRCP noted that Basit's hanging would offend against all norms of civilized justice. On November 25, his execution was suspended for two months.

During the year under review, a few cases came to light where the convicts claimed that they were juveniles at the time of commission of the crime they had been sentenced for.

The most highlighted case was that of Shafqat Hussain, who had been awarded the death penalty on the charge of kidnapping and murdering a child in 2004 in Karachi. His lawyer claimed that Shafqat was only 14 years of age at the time of the offence. It was also alleged that police had tortured him to force a confession out of him. The court did not accept the contentions and appeals by national and international organisations for staying the execution or pardoning Shafqat altogether were also not entertained. After his execution was stayed a number of times, he was hanged in Karachi on August 4.

Aftab Bahadur Masih was convicted of murder in Lahore in 1992. He was allegedly 15 years of age at the time and claimed that he had been tortured into confessing the murder. The two witnesses in the case had later retracted their statements. Despite repeated appeals to the authorities, Aftab was hanged on June 10.

HRCP called upon the authorities to stay the execution of all individuals who claimed that they were juveniles at the time the alleged offence took place, at least until all questions about their age had been conclusively dealt with. It had said that it would not be in the interest of anyone to rush to the gallows a convict who could be a juvenile. Pakistan has ratified the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights, which include the commitment not to impose the death penalty on anyone who was a juvenile at the time of the crime. The Committee on the Rights of the Child's jurisprudence states that in case of confusion or inconclusive evidence regarding age, the accused in question should be given the benefit of the doubt.

Enforced disappearances

Even as more cases of enforced disappearance were reported during the year under review, there was little judicial or political headway over the issue. Not a single perpetrator was charged, much less prosecuted, for involvement in enforced disappearance. HRCP reiterated its view that the continuing impunity emboldened others to indulge in such brutal tactics.

In many cases, involvement of security forces personnel was confirmed by eyewitnesses, while in others their role was actively suspected. The victims were often persons known for their political dissent or activism.



Cases of enforced disappearances continued to be reported, while impunity for the perpetrators also persisted

A two-member bench of the Supreme Court accepted HRCP's review petition on missing persons' case. HRCP had filed a petition in the Supreme Court in 2007 regarding 270 missing persons but the petition was dismissed while many of the persons in question continued to be missing. The court had asked HRCP to pursue the case with the inquiry commission. HRCP was of the view that the short order had failed to address many grievances cited in the petition. It had also stated that since the matter was of grave public concern regarding violation of fundamental human rights, the jurisdiction of the apex court could not be replaced by a commission. Till the end of the year, no hearings were held.

In March, a three-judge bench of the Supreme Court stated that a larger bench should be constituted to hear all cases of missing persons. The fundamental questions under consideration were whether a person serving in the army, who was accused of commission of an offence under the Pakistan Penal Code (PPC), should be tried under the Criminal Procedure Code (CrPC) or under the Army Act.

According to data released by the Commission of Inquiry on Enforced Disappearances at the end of December 2015, a total of 3,012 cases of alleged disappearance had been filed with the commission and another commission that had preceded it. Out of these, as many as 1,449 missing persons had been traced, while 1,390 cases were still pending. According to the data, 565 of those traced were from Khyber

Pakhtunkhwa, 322 from Punjab, 365 from Sindh, 101 from Balochistan, 43 from Islamabad Capital Territory (ICT) and 42 from FATA. Of the 1,390 pending cases, 664 were from Khyber Pakhtunkhwa, 300 from Sindh, 217 from Punjab, 125 from Balochistan, 40 from FATA, 31 from ICT and one from Gilgit Baltistan.

According to data gathered by HRCP volunteers in Balochistan, at least 151 cases of disappearances were reported in the province between January and November 2015. According to HRCP's focused monitoring of around 60 selected districts across six regions of Pakistan, 127 cases of enforced disappearance were reported in 2015. These included 66 cases reported from Balochistan, 28 from Khyber Pakhtunkhwa, 22 from interior Sindh, 10 from FATA, and one from South Punjab. No disappearance case was reported from Gilgit Baltistan, the sixth region where HRCP monitored selected districts for critical violations.

Amid the ongoing security operation in Karachi, the Muttahida Qaumi Movement (MQM) complained that the security forces were picking up its activists on account of political affiliation. A senior party leader claimed that 92 of their workers had gone missing and no law-enforcement agency had acknowledged their arrest. The party demanded a judicial probe into the disappearance of its workers.

Of internees and fig leaves

Internment centres set up under Action (in aid of civil power) Regulation in Khyber Pakhtunkhwa and FATA have been slammed as an attempt to legitimise illegalities such as enforced disappearance. The regulation provides wide-ranging powers to authorised officers and armed forces and empower internment of suspects for long durations.

Accounts of suspects detained there left little doubt that many had been in custody of the security forces for varying lengths before being shifted to internment centres.

In August, media quoted an additional advocate general, who represented the government of Khyber Pakhtunkhwa and internment centres in some of the court cases, as saying that more than 250 missing persons shifted to various internment centres in Khyber Pakhtunkhwa and FATA had been declared 'black', a term used for hardcore militants.

While continuing to refer to these individuals as missing persons, the lawyer said it was yet to be decided if they would be tried by the

military courts, special anti-terrorism courts or under the Frontier Crimes Regulation.

He said that around 1,500 missing persons had been shifted to internment centres and that out of the lists provided to the court for the suspects in internment centres, 99 percent missing persons were declared 'black'. "We expect the same percentage in context of the remaining internees whose reports are awaited," he had added.

Two months earlier, the Peshawar High Court had disposed of cases of 22 missing persons shifted to the internment centre in Lakki Marwat after they were declared 'black' while another five were judged 'grey' (terror suspects). It was stated in the report submitted by the provincial government that the internees had been picked up between 2009 and 2012.

Unlearning old lessons

In December, a Senate committee asked the government about progress on the missing persons' issue. He suggested that constitutionalism and human rights should be taught as compulsory subjects in security institutions. During Pakistan's 2012 Universal Periodic Review, eight recommendations regarding enforced disappearance had been made. Pakistan had accepted four, noted three and rejected one recommendation. None of the four accepted recommendations were implemented despite the passage of three years.

Recommendations

- Immediately halt executions and abolish the death penalty in law.
- Sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearances without further delay and ensure its prompt implementation.
- It has been three years since Pakistan ratified the Convention Against Torture. It should be codified into law and the process should proceed with greater urgency.
- Besides construction of new jails to address the problem of overcrowding, the judicial system should devise alternatives to penal servitude and incarceration of under-trial prisoners for long periods of time.
- Advanced forensic institutions should be built and police trained in modern methods of investigation in order to reduce chances of custodial torture to extract confession.