

# THE USE OF CCTV CAMERAS TO CURB CUSTODIAL TORTURE UNDER PAKISTANI LAW

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## ABSTRACT

In 2010, Pakistan ratified the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishments 1984 (CAT), which provides a blanket prohibition on torture under international law. Since then, Pakistan has passed the Torture and Custodial Death (Prevention and Punishment) Act 2022 in fulfilment of its obligations under the treaty. However, there is still much to be done to reduce the high rates of custodial torture suffered by civilians at the hands of the police in Pakistan. This article critically assesses the legal framework related to police conduct and torture in Pakistan and proposes the installation of CCTV cameras as a safeguard against custodial torture. Drawing from international best practices proposed by the UN Committee Against Torture, NGOs working in collaboration with the UN in the prevention of and accountability for custodial torture, and case law from India and Pakistan, the article also provides a policy framework for, administering and monitoring CCTV Camera systems in Pakistani police stations.

**KEYWORDS:** Custodial Torture, International Law, CCTV Cameras, Convention Against Torture, Pakistan, Monitoring, Police Stations.

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## 1. INTRODUCTION

Reports of custodial torture by the police in Pakistan are very common.<sup>1</sup> A report by the Justice Project Pakistan found that 1424 out of 1867 medico-legal certificates from Faisalabad between 2006 and 2012 showed conclusive

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<sup>1</sup> Amnesty International, *Pakistan: Reports of Torture and Death in Police Custody* (AI Index: ASA 33/05/91, June 1991) 1-41 <https://www.amnesty.org/en/documents/asa33/005/1991/en/> accessed 23 November 2024. ('Amnesty International')

signs of abuse.<sup>2</sup> While confessional statements made to the police against the accused cannot be proven in a court of law,<sup>3</sup> the police often use torture to extract information or confessions from suspects.<sup>4</sup> However, Article 40 of the Qanun-e-Shahadat Order 1984 (QSO) provides a puzzling exception to this rule, wherein confessions (or statements otherwise) made during police custody can be proven to be true if supported by a discovery of fact.<sup>5</sup> This provision potentially incentivises police brutality in custody as information disclosed by the accused during the interrogation can be proven in court if subsequently supported by a discovery of fact.

Section 167(1) of the Code of Criminal Procedure 1898 (CrPC) dictates that within 24 hours of an arrest suspects must be produced before a magistrate; however, it is common for suspects to be kept in detention for several days.<sup>6</sup> During this time, detainees are often abused through intimidation, and various forms of torture.<sup>7</sup> Moreover, it is common practice to deny detainees access to relatives or lawyers.<sup>8</sup>

Since the passing of the Torture and Custodial Death (Prevention and Punishment) Act 2022 (TCDA), there have been some improvements in the last few years; however, there is still much room for improvement in terms of policy and standards of practices. This article critically assesses the legal framework related to police conduct and torture in Pakistan and proposes the installation of closed-circuit television (CCTV) cameras as a safeguard against custodial torture – a practice that has proven to be effective in other jurisdictions. Drawing from international best practices proposed by the UN Committee Against Torture, NGOs working in collaboration with the UN in the prevention of and accountability for custodial torture, and case law from India and Pakistan, the article provides a policy framework for administering and monitoring CCTV camera systems in Pakistani police stations.

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<sup>2</sup> World Organisation Against Torture and Justice Project Pakistan, *Pakistan: Universal Periodic Review* (July 2022) <https://www.omct.org/en/resources/reports/upr-submission> accessed 23 November 2024.

<sup>3</sup> Qanun-e-Shahadat Order 1984, art 38.

<sup>4</sup> Amnesty International (n 1) 3-37.

<sup>5</sup> Qanun-e-Shahadat Order 1984, art 40.

<sup>6</sup> Amnesty International (n 1) 3.

<sup>7</sup> *ibid.*

<sup>8</sup> *ibid.*

## 2. LEGAL HISTORY AND FRAMEWORK

Pakistani law against custodial torture underwent major developments in 2010 and 2022. On 23 June 2010, Pakistan ratified the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment 1984 (CAT),<sup>9</sup> which provides a blanket prohibition on torture under international law.<sup>10</sup> For the next 12 years, the Government failed to enact anti-torture legislation in express contravention of Pakistan's international legal obligations.<sup>11</sup> Finally, in 2022, the Government passed the TCDA.<sup>12</sup>

Prior to the TCDA, one had to look at the Constitution of the Islamic Republic of Pakistan 1973 (Constitution), the CrPC, the Police Order 2002 (Police Order), the 'Police Code of Conduct (Code of Conduct), and provincial Police Rules to ascertain the legal position on custodial torture. Article 14 of the Constitution explicitly protects the inviolability of the dignity of man. It provides that no person shall be tortured for the purpose of extracting evidence.<sup>13</sup> Meanwhile, the CrPC is silent on the subject of custodial torture. However, Section 156(d) of the Police Order does provide that a police officer shall be punished with imprisonment for a term of up to five years with a fine if he tortures any person in his custody.

As per Rule 14.4 of the Punjab Police Rules 1934 (Police Rules), police officers are obliged to keep their temper under control, act courteously, and maintain their composure. Furthermore, police officers must act calmly, using as little violence as possible when defending themselves or lawfully enforcing

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<sup>9</sup> UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 ('UNCAT').

<sup>10</sup> Amnesty International and International Commission of Jurists, *Pakistan's Reservations: A Challenge to the Integrity of the United Nations Human Rights Treaty System* (AI Index: ASA 33/006/2011, 23 June 2011) 1, <https://www.amnesty.org/en/documents/asa33/006/2011/en/> accessed 23 November 2024 ('Pakistan's Reservations').

<sup>11</sup> Justice Project Pakistan and World Organisation Against Torture (OMCT), *Criminalising Torture in Pakistan: The Need for an Effective Legal Framework* (Justice Project Pakistan and OMCT, 11 March 2021) 13-14 <https://www.ecoi.net/en/document/2047236.html> accessed 23 November 2024 ('JPP').

<sup>12</sup> Torture and Custodial Death (Prevention and Punishment) Act 2022 ('TCDA').

<sup>13</sup> Constitution of Pakistan 1973 ('Constitution'), art 14(2).

their authority. However, there is no explicit prohibition on torture under the Police Rules.

On the other hand, the Code of Conduct provides that a police officer can use minimum force when defending themselves or enforcing their lawful authority.<sup>14</sup> An officer is not permitted to use firearms against any person unless such act is justified by self-defence, ‘the defence of others against the imminent threat of death, to prevent a particularly serious crime, or to arrest a criminal’.<sup>15</sup> Moreover, officers are prohibited from using more force than is reasonable, or abusing their authority.<sup>16</sup> The Code of Conduct also provides that police officers may not ‘inflict, instigate or tolerate any act of torture or other cruel, inhuman, or degrading treatment or punishment’.<sup>17</sup> Additionally, police officers are prohibited from invoking superior orders, on specific pretexts,<sup>18</sup> to justify torture or inhuman treatment.<sup>19</sup> Violations of the Code of Conduct are grounds for punishment under the Punjab Employees Efficiency, Discipline and Accountability Act 2006.<sup>20</sup>

The aforementioned laws have been deemed insufficient by organisations such as Human Rights Watch<sup>21</sup> because no domestic law actually made torture a criminal offense prior to 2022. This meant that there was no definition of torture or an explicit criminalisation of torture as required under Pakistan’s international legal obligations. Therefore, passing an anti-torture bill was a crucial first step towards ending custodial abuse and mistreatment.<sup>22</sup>

Having ratified CAT in 2010, Pakistan was legally obligated to meet requirements set by the Convention. As per Article 2 of the CAT, States Parties are obligated to take effective measures to prevent acts of torture in

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<sup>14</sup> Punjab Police, ‘Code of Conduct for Punjab Police Officers’ (Lahore, 2011) Section E <https://punjabpolice.gov.pk/system/files/Code-of-Conduct-for-Punjab-Police-Officers.pdf> accessed 23 November 2024.

<sup>15</sup> *ibid.*

<sup>16</sup> *ibid.*

<sup>17</sup> *ibid* Section F.

<sup>18</sup> *ibid.*

<sup>19</sup> *ibid.*

<sup>20</sup> *ibid* [3].

<sup>21</sup> Human Rights Watch, *Pakistan: Pass Anti-Torture Bill: Creating a Criminal Offense Essential to Police Reform* (Human Rights Watch, 14 July 2021) <https://www.hrw.org/news/2021/07/14/pakistan-pass-anti-torture-bill> accessed 23 November 2024. (‘Human Rights Watch’)

<sup>22</sup> *ibid.*

their jurisdiction. This includes legislative, administrative, judicial or other measures. Article 4 obligates States to ensure that all acts of torture are made criminal offences and prescribed appropriately grave penalties given their nature. As per Article 12, where there is reasonable ground to believe that an act of torture has been committed, States must ensure a prompt and impartial investigation. In particular, Article 13 provides that States Parties ensure that victims of torture have a right to have their complaints heard and impartially examined by competent authorities.

In fulfilment of the aforementioned obligations, the Federal Government of Pakistan passed the TCDA. This law is applicable all over Pakistan. It defines ‘custody’ to include ‘all situations where a person is detained or deprived of his liberty by any person’.<sup>23</sup> This includes custody during any proceedings pertaining to search, arrest, and seizure. Furthermore, the law defines ‘cruel, inhuman, or degrading treatment’ to include ‘any deliberate or aggravated treatment inflicted by a public official or a person acting on his behalf against a person under their custody’.<sup>24</sup> Such treatment should cause ‘suffering, gross humiliation or degradation’ to the person in custody.<sup>25</sup> Finally, ‘torture’ means an act committed by which ‘severe physical pain or physical suffering is intentionally inflicted’ on a person.<sup>26</sup>

Section 3 of the TCDA provides that a statement extracted through torture shall be inadmissible. Importantly, Section 16 of the TCDA states that its provisions shall override any other law in force. When the two provisions are read together, it may be understood that Article 40 of the QSO, which allows for statements made in police custody to be proven by subsequent discoveries of facts, is not applicable in the case of torture. Public officials who use such information are liable for imprisonment of up to one year or with a fine of up to PKR 100,000.<sup>27</sup>

The TCDA designates the Federal Investigation Agency (FIA) constituted under the Federal Investigation Agency Act 1974 (FIA Act) to investigate

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<sup>23</sup> TCDA, s 2(f)

<sup>24</sup> *ibid* s 2(g).

<sup>25</sup> *ibid*.

<sup>26</sup> *ibid* s 2(n).

<sup>27</sup> *ibid* s 3(2).

torture.<sup>28</sup> This FIA has the same powers and shall follow the same procedure as prescribed in the FIA Act. According to Section 8 of the TCDA, the punishment for torture shall be the same as a punishment for the type of harm provided in Chapter XVI of the Pakistan Penal Code 1860 (PPC). Under Section 9, the punishment for custodial death shall be the same as that provided for Section 302 of the PPC.<sup>29</sup> Finally, Section 10 provides that the punishment and procedure the punishment for custodial rape shall be the same as that provided in the law and procedure for rape.

Although the definition of torture under TCDA is fairly comprehensive, it fails to cover mental torture. While CAT does not specifically define the term mental torture, one may refer to the United States of America's Reservations, Declarations and Understandings in its ratification of CAT.<sup>30</sup> The United States interprets 'mental suffering' as:

prolonged mental harm caused by the intentional infliction or threatened infliction of severe physical pain or suffering; the administration or application or threatened application or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality; the threat of imminent death; and finally the threat that another person may be imminently subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.<sup>31</sup>

The latter type of torture is fairly common in Pakistan wherein detainees are forced to watch others being tortured to intimidate and extort them.<sup>32</sup> In fact, in *Saifuddin Saif v Federation of Pakistan*,<sup>33</sup> the Lahore High Court also held that

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<sup>28</sup> *ibid* s 5.

<sup>29</sup> Pakistan Penal Code 1860, s 302.

<sup>30</sup> The Government of the United States of America, *US reservations, declarations, and understandings, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Cong. Rec. S17486-01, daily ed., 27 October 1990) <http://hrlibrary.umn.edu/usdocs/tortres.html> accessed 23 November 2024.

<sup>31</sup> *ibid* Reservation II.

<sup>32</sup> Amnesty International (n 1), 5; Human Rights Commission of Pakistan, *Report 2022-2023* (Legislation Watch Cell, Oct-Dec 2022) <https://hrcp-web.org/hrcpweb/wp-content/uploads/2020/09/2023-State-of-human-rights-in-2022.pdf> accessed 23 November 2024 ('HRCP').

<sup>33</sup> *Saifuddin Saif v Federation of Pakistan* (PLD 1977 Lahore 1174).

'blindfolding, confinement in dark underground cells, and *incommunicado* detention' amounted to mental torture, which is violative of Article 14(2) of the Constitution.<sup>34</sup>

Notably, the entire investigative process has been entrusted to the FIA.<sup>35</sup> Thus, public officials shall be responsible for holding their fellow public officials accountable instead of an objective, independent and impartial body carrying out the process. Similarly, another concern is that the law does not establish any standalone punishments.<sup>36</sup> This means that the punishment for causing custodial death is the same as that prescribed under Section 302 of the PPC, which includes the death penalty. The Human Rights Commission of Pakistan (HRCP) has criticised this, highlighting that Pakistan's use of capital punishment is arbitrary and that the death penalty has not been reserved as punishment for the most serious of crimes alone.<sup>37</sup> In fact, the HRCP has pointed out that the death penalty is actually incompatible with Pakistan's obligations to prohibit torture and inhuman punishment.<sup>38</sup> Thus, despite the developments in Pakistan's law on custodial torture in the past few decades, significant room for improvement still exists.

It is also important to note that the TCDA limits custodial violence to instances where the accused is tortured for the purposes of investigation, such as to extract evidence for the prosecution. For example, Section 3 of the law deems evidence obtained through torture as inadmissible in a court of law. However, many cases of custodial torture in Pakistan take place for various other motivations. For example, in one case, police officers arrested a man without warrants, tortured him, and demanded a hefty bribe for his release.<sup>39</sup> While Section 8 does provide punishments for public officials who commit, abet or conspire to commit torture, there are no other provisions that directly address the different motivations that lead to custodial torture in Pakistan.

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<sup>34</sup> *ibid.*

<sup>35</sup> TCDA, s 5.

<sup>36</sup> HRCP (n 31) 7.

<sup>37</sup> *ibid.*

<sup>38</sup> *ibid.*

<sup>39</sup> Asian Human Rights Commission, *Pakistan: Police torture and extort huge bribe from father, two sons for complaining to higher authorities including courts* (15 April 2016) <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-034-2016/> accessed 10 December 2024.

As of December 2024, no case law is publicly available under the TCDA. Although the law was passed in 2022, cases related to custodial torture continue to be filed under other provisions of criminal laws. For example, in *Government of Sindh v Muhammad Sarwar*,<sup>40</sup> the victim's family filed a suit for compensation under Section 1 of the 'Fatal Accidents Act 1855', claiming that their son was tortured to death at the CIA Centre while in police custody.<sup>41</sup>

However, a cursory look at newspaper headlines from the end of 2024 suggests that this trend may be changing. The Tribune reported on 28 September 2024 that several police officers were booked under Section 8 and 9 of the TCDA for the killing of Dr. Shahnawaz Kumbhar after he was accused of blasphemy in Hyderabad.<sup>42</sup> Another newspaper reported that the Lahore High Court held a complaint with the FIA to be competent in a case of custodial torture even if the police had already registered the FIR.<sup>43</sup> The Court directed the police to refer any future complaints related to custodial torture to the FIA as per Section 6 of the TCDA. Despite this progress, it is imperative that further stringent measures are taken to curb custodial violence.

### 3. CCTV CAMERAS TO CURB CUSTODIAL VIOLENCE

The recording of police interrogation has been widely recognised as an useful safeguard against torture and inhuman treatment.<sup>44</sup> There have been many cases globally in which custodial abuse has been caught through video footage, resulting in the prosecution of the perpetrators.<sup>45</sup> A report by the European Committee for the Prevention of Torture to Ireland reported in 2006 that the amount of ill-treatment of detainees had reduced greatly partly

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<sup>40</sup> *Government of Sindh v Muhammad Sarwar* (2023 PLD 154 Karachi).

<sup>41</sup> *ibid* [2].

<sup>42</sup> Z Ali, 'Senior Cops, Others Booked in Dr Shahnawaz's Custodial Death' (The Express Tribune, 28 September 2024) <https://tribune.com.pk/story/2499215/senior-cops-others-booked-in-dr-shahnawazs-custodial-death> accessed 23 November 2024.

<sup>43</sup> Hamid Nawaz, 'Custodial Death, Rape Cases: 'Registration of FIR Does Not Trump Proceedings' LHC' (The Business Recorder, 15 August 2024) <https://www.brecorder.com/news/40317556/custodial-death-rape-cases-registration-of-fir-does-not-trump-proceedings-lhc> accessed 23 November 2024.

<sup>44</sup> HRCP (n 31) 7.

<sup>45</sup> *ibid*.

due to audio-video recordings of interrogation rooms.<sup>46</sup> Additionally, a report by Amnesty International in 2010 revealed that CCTV cameras successfully reduced misbehaviour by the police in Spain by 40%.<sup>47</sup>

Penal Reform International (PRI), an NGO with consultative status at the United Nations Economic and Social Council (ECOSOC) and the Council of Europe, has pointed out three main purposes of recording police interrogations.<sup>48</sup> Firstly, it helps in preventing torture and provides protection against ill-treatment. Secondly, it helps to deter and protect police officials against false allegations. Finally, it creates accountability by securing evidence for legal proceedings. Thus, CCTV footage can also be used to successfully prosecute police officers for misbehaviour.

Interestingly, in its General Comment No. 2 on Article 2 of CAT, the UN Committee against Torture stated the following:

[a]s new methods of prevention (e.g. videotaping all interrogations [...]) are discovered, tested and found effective, Article 2 provides authority to build upon the remaining articles and to expand the scope of measures required to prevent torture.<sup>49</sup>

Thus, the UN Committee against Torture has recognised that videotaping interrogations falls under the scope of Article 2, which mandates States Parties to take effective measures for preventing acts of torture in their jurisdictions.

In the 12<sup>th</sup> General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the

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<sup>46</sup> Penal Reform International, 'Video Recording in Police Custody: Addressing Risk Factors to Prevent Torture and Ill-Treatment' (2006) [https://cdn.penalreform.org/wp-content/uploads/2013/11/Factsheet-2-cctv-v6\\_final.pdf](https://cdn.penalreform.org/wp-content/uploads/2013/11/Factsheet-2-cctv-v6_final.pdf) accessed 23 November 2024 ('PRI').

<sup>47</sup> Nishant Nagori, 'CCTV Cameras in Police Stations: A Comprehensive Step to Deter Custodial Violence?' (2021); Amnesty International, *Amnesty International Report 2010 - Spain* (Amnesty International, 28 May 2010).

<sup>48</sup> PRI (n 45) 1.

<sup>49</sup> UN Committee Against Torture, 'General Comment No. 2 on Article 2 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' [2017] UN Doc CAT/C/GC/2 <https://www.ohchr.org/en/documents/general-comments-and-recommendations/catcgc2-general-comment-no-2-2007-implementation> accessed 23 November 2024.

Committee addressed the developments concerning its standards in respect of police custody.<sup>50</sup> The introduction of electronic recording of police interviews was welcomed as an crucial additional safeguard against the ill-treatment of detainees.<sup>51</sup> According to CPT, this facility can provide ‘a complete and authentic record of the interview process’, which is in the interest of both victims of custodial ill-treatment and police officers who are faced with unfounded allegations of ill-treatment.<sup>52</sup>

Article 164 of the QSO provides that the Court may allow evidence or witnesses recorded by the Court through modern devices or techniques.<sup>53</sup> In fact, in *Ishtiaq Ahmed Mirza v Federation of Pakistan*,<sup>54</sup> the Supreme Court summarised the requirements for proving an audio or video recording before a court of law.<sup>55</sup> According to the judgment, recordings must be proven to be genuine and not tampered with for the court to rely on them. Forensic reports in respect of audio or video tapes are admissible under the Punjab Forensic Science Agency Act 2017. It is up to the discretion of the court whether it allows any audio or video recording to be produced as evidence. Where the court does allow such submission, the same must be proven according to the law of evidence.

Furthermore, the recording’s accuracy needs to be proven, and direct evidence must be produced which rules out the possibility of any tampering of the recording. The person who makes the recording must be produced before the court and the recording itself must be played in the court. The audio or video recording must be clearly audible or viewable. The person in the recording or voice of the person in the audio recording must be identified by any person who recognises said person. Any other person who was present at the time of the event that was recorded may also testify in support of the

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<sup>50</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), ‘12th General Report of the CPT’s activities covering the period 1 January to 31 December 2001’ *Council of Europe* (Strasbourg, 3 September 2002) <https://www.coe.int/en/web/cpt/police-2> accessed 23 November 2024 (‘CPT’).

<sup>51</sup> *ibid* [36].

<sup>52</sup> *ibid*.

<sup>53</sup> Qanun-e-Shahadat Order 1984, art 64.

<sup>54</sup> *Ishtiaque Ahmed Mirza v Federation of Pakistan* (PLD 2019 SC 675).

<sup>55</sup> *ibid* [11].

events recorded. The evidence sought to be produced through this recording must be both admissible and relevant.

Additionally, safe custody of the recording tape must be proved, and the transcript of the recording must be prepared independently. The person who makes the recording must have done it as part of their routine duties and not to lay a trap to procure evidence, and the recording's source has to be disclosed. An application must be filed before the court by the person desirous of producing the recording as evidence. Finally, a recording produced at a later stage of the judicial proceeding may be treated with suspicion.<sup>56</sup>

From the aforesaid, it may be understood that video and audio recordings are admissible in courts, albeit at the court's discretion. Other rules that govern the admissibility and presentation of the recording have also been outlined by the Supreme Court.

Moreover, courts in Pakistan have also recognised that CCTV in police stations should be installed so that police conduct can be better controlled and supervised. In *Dr. Yasin Zia v Government of Punjab*,<sup>57</sup> the Lahore High Court ordered the installation of CCTVs in each police station as its monitoring had become essential to improve the working of police and for minimising illegal detention, and custodial abuse.<sup>58</sup> The Court directed the Government of Punjab to complete the installation of CCTV cameras in the police stations of the province within six months.<sup>59</sup> The directions specified that the entrance, corridors, lockups, and main reception halls of police stations must be covered with 24-hour surveillance with both audio and visual recordings.<sup>60</sup> The recordings need to be stored at the police station itself, the district police headquarters, as well as in an archive to preserve the data at the police headquarters.<sup>61</sup> The Station House Officer and either the Deputy Inspector General of Police or Deputy Police Officer are responsible for

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<sup>56</sup> *ibid.*

<sup>57</sup> *Dr. Yasin Zia v Government of Punjab* (PLD 2016 Lahore 94).

<sup>58</sup> *ibid* [3].

<sup>59</sup> *ibid* [4].

<sup>60</sup> *ibid* [3]-[4]

<sup>61</sup> *ibid* [3].

storing and preserving this data at their respective jurisdictional levels.<sup>62</sup> The Inspector General of the Police was directed to ensure that cameras at each police station are working and a record is maintained for at least three years at both the police station and the district headquarters.<sup>63</sup>

Through this judgment, the Lahore High Court laid down the foundation for the installation of CCTV cameras and their use for keeping a check on custodial torture. This judgment was passed by a provincial High Court, and is thus not binding on other provinces. Moreover, it does not provide detailed instructions, such as the manner of storage, or accountability for misplacing or failing to record footage. For proper installation and usage of CCTV cameras in police stations, a law should be passed along with rules of procedure for its effectiveness.

In a surprising development, the Inspector General of Sindh issued a press release in 2022 that a decision to install CCTV cameras in all police stations across Sindh had been taken.<sup>64</sup> According to him, four cameras were being installed at each police station – one at the entrance, the duty officer's room, the detention area, and the corridor.<sup>65</sup> He also added that shoulder cameras had been ordered, which would be provided to traffic police on duty. If the officer fails to record footage when issuing the notice of offence (*challan*), departmental action would be taken against him.<sup>66</sup>

From the assessment of laws in the second section of this article, it is clear that Pakistani legislators had not envisioned the installation of CCTV cameras in police stations as a means of curbing custodial torture. However, the Lahore High Court has directed the installation of CCTV cameras across police stations in Punjab. Since this judgment was passed by a High Court, its scope of applicability across the country is limited. The judgment also does

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<sup>62</sup> *ibid.*

<sup>63</sup> *ibid.*

<sup>64</sup> Raheel Salman, 'CCTV Cameras to Be Installed at All Police Stations: IGP' *The Express Tribune* (Karachi, 13 June 2022) <https://tribune.com.pk/story/2361290/cctv-cameras-to-be-installed-at-all-police-stations-igp> accessed 23 November 2024.

<sup>65</sup> *ibid.*

<sup>66</sup> *ibid.*

not lay down a detailed framework of the implementation and use of such an initiative.

On the other hand, Pakistan's obligations under Article 2 of the CAT would suggest that new technological measures such as the use of CCTV cameras are included in the scope of required measures for the prevention of torture. Thus, a direction to install CCTV cameras in police stations would be in line with the country's international legal obligations.

While the Sindh government has taken the initiative to install CCTV cameras in police stations, the same cannot be said for the remaining provinces. Instead, no statutory law or related rules require CCTV camera installation in police stations. For the effective application of such a policy, it is important that clear instructions are laid out for installing CCTV cameras, and the recording and storage of footage. Importantly, an accountability framework for tampering with footage, failure to record footage or negligent loss of footage must also be set in place for this initiative to be effective.

#### 4. FRAMEWORK FOR USE OF CCTV CAMERAS AGAINST CUSTODIAL TORTURE

Under this section, a prospective framework for the use of CCTV cameras to curb custodial torture shall be laid down. For this purpose, international guidelines by organisations such as PRI and case law in India have been relied on as blueprints.

##### 4.1. International Guidelines

##### 4.1.1. Location and type of equipment

For the effective use of CCTV cameras against custodial torture in police stations, one important consideration is the location and type of equipment being used. Poorly placed equipment or poor-quality cameras are unlikely to be effective.<sup>67</sup> Furthermore, regular cleaning and maintenance of this

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<sup>67</sup> PRI (n 45) 2.

equipment is necessary to ensure its effectiveness in producing evidence and acting as a deterrent.<sup>68</sup>

Moreover, footage must be clearly labelled and stored in an accessible location so that it can be used when needed.<sup>69</sup> In case the monitoring bodies are informed that the footage is unavailable or the equipment is broken, the issue must be raised immediately with the authorities and resolved.<sup>70</sup> Detailed rules and guidelines must be laid down for the smooth and efficient processing and resolution of such issues. For example, a time period after which regular inspection of the equipment must be set. In case of any irregularities, the relevant authorities must be readily notified so that the same may be resolved. Importantly, signs of willful tampering must be investigated and penalised accordingly.

While there are no clear-cut standards set by monitoring and standard-setting bodies pertaining to the placement of CCTVs in a police station, certain locations do require deliberation.<sup>71</sup> For example, the detainees' right to privacy must be weighed against risk of abuse when it comes to installing CCTV cameras in toilets.<sup>72</sup> Some monitoring bodies are of the view that removing blind spots is crucial and thus toilets cannot be left uncovered. Similarly, the detainees' right to privileged communication would require that their meetings with their lawyers are not video recorded. Therefore, there is a difficult weighing of the detainees' rights to privacy and dignity with their own safety to be made.

It is important that visitors or occupants of the premises understand they are being recorded. As discussed below, the Indian Supreme Court directed large posters in English and native languages informing the reader of ongoing CCTV recordings, to be hung at visible locations in and outside the police stations for public awareness.<sup>73</sup>

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<sup>68</sup> *ibid.*

<sup>69</sup> *ibid.*

<sup>70</sup> *ibid.*

<sup>71</sup> *ibid.* 3.

<sup>72</sup> *ibid.*

<sup>73</sup> *Paramvir Singh Saini v Baljit Singh & others*, Special Leave Petition (Criminal) No.3543 of 2020 [17].

In terms of location of the cameras, it is important that there are no blind spots.<sup>74</sup> For example, if there is only one camera in a room, it should be capable of rotating or zooming out (to increase the viewing field).<sup>75</sup> This is to ensure that there is no risk of unnoticed threatening gestures towards the detainee. The quality of the footage must also be clear enough to identify those being filmed.<sup>76</sup>

Another concern is the possibility of the prosecution relying on CCTV footage from a police station as evidence against the accused. For example, the accused, unaware of themselves being recorded, may have made incriminating statements outside of the investigation. However, many countries which employ the use of CCTV cameras inside police stations have protective laws which prevent such a possibility. For example, Article 6 of the European Union General Data Protection Regulation (GDPR) provides that data collection (such as CCTV recordings) must only be used for what is necessary. Thus, the use of CCTV recording is meant to protect the accused from custodial abuse, for the prosecution of the same individual could be a violation of their privacy.

Similarly, safeguards should be incorporated in the law regulating CCTV installation and recording in police stations, limiting the footage's use solely to curbing custodial violence. Additionally, it may be argued that the use of such recordings against the accused violates the principle of voluntariness embodied by Article 37 of the QSO, which only allows confessions to be made voluntarily before a magistrate.

#### 4.1.2. Recording, Storage and Accountability

In order to prevent unlawful deprivation of liberty, it is important for the CCTV footage in police stations to have a recording function.<sup>77</sup> The PRI also stresses the importance of the personnel in charge of reviewing and analysing the footage of being sensitised.<sup>78</sup> In addition, they must be well aware of the

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<sup>74</sup> PRI (n 45) 3.

<sup>75</sup> *ibid.*

<sup>76</sup> *ibid.*

<sup>77</sup> *ibid* 4.

<sup>78</sup> *ibid.*

relevant laws which protect against torture and ill-treatment.<sup>79</sup> However, at the same time, the duty of monitoring the footage must not be the responsibility of a single officer for the entire day or shift to avoid oversight caused by diminished alertness.<sup>80</sup> Therefore, a schedule which includes a variety of tasks must be created to ensure that the footage is watched dutifully so that instances of custodial abuse are readily noted, and police officers, aware of the constant and vigilant surveillance, have an incentive to behave appropriately and legally.

The PRI further advises that the storage of CCTV footage must be closely regulated and supervised.<sup>81</sup> A detailed framework must be laid down to ensure that this footage is used to meet the set objectives and is being used professionally. For example, in one case, it was found that police officers resorted to storing footage in USB drives when faced with equipment that had limited storage capacity.<sup>82</sup> Furthermore, the time period for which data must be recorded and stored before it is destroyed should be stipulated.<sup>83</sup> In order to remove any arbitrariness, the same metric must be set for all police stations (or if distinctions are made they must not be arbitrary).<sup>84</sup> This way, it may be ensured that the staff is well aware of how long they must store the footage and when to destroy it.

Another important aspect is the sensitivity of the images and right to privacy. It is crucial that the information is used and managed according to protocol and that the footage is traceable from its recording till its destruction.<sup>85</sup> To ensure this, police officers must undergo training in the professional use of CCTV cameras, their management, storage and destruction. Correct methods of labelling and other safeguards related to privacy must be dutifully incorporated into this training programme.<sup>86</sup>

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<sup>79</sup> *ibid.*

<sup>80</sup> *ibid.*

<sup>81</sup> *ibid.*

<sup>82</sup> *ibid.*

<sup>83</sup> *ibid.*

<sup>84</sup> *ibid.*

<sup>85</sup> *ibid.*

<sup>86</sup> *ibid.*

Wherever audio recording is being used during interrogations, the equipment or programme must not allow it to stop the recording randomly during questioning.<sup>87</sup> If such interruptions are allowed, the risk of torture and abuse going unrecorded increases. Therefore, there must be safety mechanisms built into the equipment to ensure that the questioning is taped in its entirety. This footage can also be useful in training police officers on issues related to human rights.<sup>88</sup> However, this educational use must not compromise the right of privacy of those being recorded. Thus, officers in charge must blur out the faces of those recorded before using the footage.<sup>89</sup>

Monitoring bodies must maintain a checklist when inspecting the surveillance systems installed at police stations.<sup>90</sup> This checklist can include whether the system records footage or simply transmits it without recording, if the system has both sound and image, and who is authorised to view the footage. Other important matters include whether the monitoring is organised within the police station, what the storage medium is and how it is maintained, where the footage is kept before it is destroyed, if law enforcement personnel are instructed in the handling of data, and whether detainees and their legal counsels can access the data as well.

#### 4.1.3. Laws and Regulations Governing CCTV Recording

CCTV monitoring systems are relatively new additions to the criminal justice system. Therefore, the blueprint for regulations is still being molded. Normally, laws regulating CCTV footage and its use in public areas do include some protection of the right of privacy of persons being recorded.<sup>91</sup> Such rights include the possibility of accessing the footage or asking that it be destroyed. In some countries, CCTV footage is only recorded if the detainee has been apprehended under a specific offence, such as drug trafficking.<sup>92</sup>

The PRI recommends that any law regulating the use of CCTV in police stations should have clear provisions covering the duty to inform the persons

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<sup>87</sup> *ibid.*

<sup>88</sup> *ibid.*

<sup>89</sup> *ibid.*

<sup>90</sup> *ibid.*

<sup>91</sup> *ibid.* 5.

<sup>92</sup> *ibid.*

being recorded, the responsibility and chain of command in place regarding viewing, storage and destruction of data, and the access to data by detainees and their lawyers.<sup>93</sup> Furthermore, a balance must be struck between the benefits of recording and the detainees' right to privacy. The protection afforded through CCTV footage must be given to detainees indiscriminately.<sup>94</sup> Such laws must always specify the persons who are allowed access to the footage.<sup>95</sup> For example, if the footage includes any nudity, only persons of the same gender should have access to it.

#### 4.1.4. Comparative Analysis: Indian Case Law

The Indian Supreme Court has issued detailed instructions for the surveillance and monitoring of police stations in India that can serve as a blueprint for similar initiatives in Pakistan. The Court considered various issues, such as a complaints mechanism, the usage of footage, storage capacity, budgetary concerns and the imposition of responsibility. In *Paramvir Singh Saini Baljit Singh & others*,<sup>96</sup> the Supreme Court noted the need for an oversight mechanism in each State to be created whereby an independent committee can study the CCTV camera footage and periodically publish a report of its observations. The same Court had previously issued directions to set up a Central Oversight Board in *Shafbi Mohammad v State of Himachal Pradesh*.<sup>97</sup>

The directions given by the Court were fairly detailed. According to the Court, CCTV systems must be equipped with night vision, and both audio and video footage.<sup>98</sup> Where there is no electricity and/or internet, the State or Union Territories are obliged to provide the same expeditiously.<sup>99</sup> The Court also set requirements for Internet systems, image resolution, and audio quality. It also gave some suggestions for the storage of footage in different mediums.<sup>100</sup> The preservation period for recorded data is directed to be 18

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<sup>93</sup> *ibid.*

<sup>94</sup> *ibid.*

<sup>95</sup> *ibid.*

<sup>96</sup> *Paramvir Singh Saini v Baljit Singh & others* (n 72).

<sup>97</sup> *Shafbi Mohammad v State of Himachal Pradesh* (2018 8 SCC 311).

<sup>98</sup> *Paramvir Singh Saini v Baljit Singh & others* (n 72) [17].

<sup>99</sup> *ibid.*

<sup>100</sup> *ibid.*

months long. In case the storage capacity of available equipment in the market was for less than 18 months, the State, Union Territories and Central Government must purchase equipment with storage capacity up to at least 1 year.<sup>101</sup> As soon as equipment with higher storage capacity (18 months) becomes available, States are directed to purchase the same.<sup>102</sup>

The Court's rationale for the installation of CCTV cameras was to ensure that persons were free to complain against force being used in a police station which resulted in serious injury or custodial deaths.<sup>103</sup> Such complaints could be made to the State Human Rights Commission which would use its powers under Sections 17 and 18 of the Protection of Human Rights Act 1993 for redressal. The Commission could then summon the CCTV camera footage of the incident. The same could subsequently be provided to an investigation agency to hear the complaints it receives.

In light of the above, the Court gave further instructions to States to direct all police stations, other law enforcement and investigation agencies to make prominent displays at the entrance and insides of their respective premises that CCTV footage was being recorded therein.<sup>104</sup> The informational posters must be in English, Hindi as well as local vernacular languages. These posters shall also inform readers of a person's right to complain about any human rights violations to the National or State Human Rights Commission, Human Rights Court, Superintendent of Police or any other authority empowered to take cognisance of an offence. Finally, the storage period of the CCTV footage must also be mentioned, as well as the victim's right to access this footage.

The insights drawn from Indian case law and the guidance provided by PRI lend valuable perspectives that can be adapted and contextualised to suit Pakistan's unique circumstances. These guidelines not only underscore the importance of technical aspects like camera placement, maintenance, and storage but also emphasise the necessity of ethical considerations, such as safeguarding privacy rights and ensuring the admissibility and reliability of

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<sup>101</sup> *ibid.*

<sup>102</sup> *ibid.*

<sup>103</sup> *ibid* [18].

<sup>104</sup> *Paramvir Singh Saini v Baljit Singh & others* (n 72) [20].

CCTV evidence in legal proceedings. By drawing inspiration from such sources, Pakistan can bolster its efforts in eradicating custodial violence. Including clear protocols for the retention and access to footage, coupled with mechanisms for independent oversight, enhances transparency and builds public confidence in the justice system's integrity.

#### 4.2. Other Measures

Custodial violence is a problem that can only be tackled if holistic measures are taken that cater to all socio-political dimensions of the issue. The installation of CCTV cameras is only one such mechanism for keeping a check on custodial violence. Pakistan has not ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 2002 (OP-CAT).<sup>105</sup> Therefore, it is not legally bound by the legal provisions contained therein. However, as the country faces increasing pressure from the international community to take stronger steps against the rampant problem of custodial violence,<sup>106</sup> it is in the Government's best interests to take further steps in strengthening its preventative mechanisms against the issue. Pakistan could ratify OP-CAT to offer substantive means of implementing change at the domestic level. The OP-CAT complements CAT's preventative framework by providing a solid legal framework for combating custodial ill-treatment.<sup>107</sup> For example, the Subcommittee Against Torture established under OP-CAT can visit places of detention in States Parties, offer them assistance such as training and advice, and even tackle root causes of custodial ill-treatment.<sup>108</sup>

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<sup>105</sup> UN, *Tables for UN Compilation on Pakistan* (Universal Periodic Review Project, 2023) [https://upr-info.org/sites/default/files/country-document/2023-02/UN\\_Compilation\\_42\\_PK\\_E\\_Annex.pdf](https://upr-info.org/sites/default/files/country-document/2023-02/UN_Compilation_42_PK_E_Annex.pdf) accessed 23 November 2024.

<sup>106</sup> Amnesty International, *Pakistan: Human Rights Safeguards: Memorandum Submitted to the Government Following a Visit in July – August 1989* (Index Number: ASA 33/003/1990, 30 April 1990) <https://www.amnesty.org/en/documents/asa33/003/1990/en/> accessed 23 November 2024; Human Rights Watch, 'Pakistan: Make Torture a Crime: Senate Should Promptly Pass Law to Hold Security Forces to Account' *Human Rights Watch* (New York, 23 August 2022) <https://www.hrw.org/news/2022/08/23/pakistan-make-torture-crime> accessed 23 November 2024.

<sup>107</sup> Association for the Prevention of Torture (APT) and Inter-American Institute for Human Rights (IHR), *Optional Protocol to the UN Convention Against Torture Implementation Manual* (revised edn, APT and IHR, 2010) 11 <https://www.apr.ch/sites/default/files/publications/opcat-manual-english-revised2010.pdf> accessed 23 November 2024.

<sup>108</sup> UNCAT, arts 11, 20.

Article 17 provides that States Parties must maintain independent National Preventative Mechanisms (NPMs). As per Article 19, these NPMs shall have the power to regularly examine the treatment of detainees at their places of custody. They may also protect such persons against torture or inhuman treatment if necessary. Article 20 also directs States Parties to grant these NPMs access to information regarding detainees, and their treatment and conditions of detention. They must also provide such institutions access to all places of detention and their facilities. NPMs shall also be able to visit detainees and interview them privately. Thus, the OP-CAT envisions an additional mechanism for preventing custodial torture in States Parties. Pakistan should consider ratifying the OP-CAT, or at least, establishing a similar NPM structure voluntarily if ratification is not opted for.

The Office of the United Nations High Commissioner for Human Rights (OHCHR), the Association for the Prevention of Torture (APT) and the Asia Pacific Forum of National Human Rights Institutions (APF) have jointly published a set of anti-torture guidelines in ‘Preventing Torture: An Operational Guide for National Human Rights Institutions’.<sup>109</sup> This Guide set out lays down standards of practices in monitoring places of detention for national human rights institutions.<sup>110</sup> According to this Guide, simply setting up internal administrative control mechanisms, such as police inspection services, is not enough as they lack independence and largely perform administrative monitoring functions.<sup>111</sup> Instead, independent mechanisms must be set up for visiting places of detention as these are proven to have a strong deterrent effect.<sup>112</sup> The primary aim of such visits does not need to be the documentation of cases of torture or condemnation of the authorities.<sup>113</sup> These bodies should operate with the goal of analysing the overall operation of the places of detention and providing constructive and practical recommendations to improve their treatment of the detained

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<sup>109</sup> Office of the High Commissioner of Human Rights (OHCHR), APT and APF, *Preventing Torture: An Operational Guide for National Human Rights Institutions* (HR/PUB/10/1, OHCHR, APT and APF, May 2010) <https://www.ohchr.org/Documents/Publications/PreventingTorture.pdf> accessed 23 November 2024.

<sup>110</sup> *ibid.*

<sup>111</sup> *ibid.* 81.

<sup>112</sup> *ibid.*

<sup>113</sup> *ibid.*

persons.<sup>114</sup> The basic principles of monitoring are provided in the Guide which include doing no harm, respecting the authorities and detainees, respecting confidentiality and security, being objective and credible, and being consistent and persistent.<sup>115</sup> Practical steps to take before the visit, during the visit, and after the visit are discussed in detail.<sup>116</sup> This guide can serve as a useful blueprint for the establishment and operation of independent monitoring mechanisms against custodial violence in Pakistan.

## 5. CONCLUSION

Custodial violence remains a deeply embedded problem in the Pakistani law enforcement system. While the passage of TCDA provides a legal framework for holding officials accountable, the law itself has some glaring issues that need to be addressed. In addition, legislative change alone is insufficient to successfully tackle the problem. It needs to be complemented with the establishment of independent monitoring mechanisms that visit places of detention frequently, provide constructive feedback, and work collaboratively with authorities for the prevention custodial violence. Furthermore, a robust investigative system is required to hold violators accountable regardless of position and authority.

This article proposes the installation of CCTV cameras in police stations as a means of prevention of and accountability for custodial violence. Pakistan's obligations under Article 2 of the CAT and its commentary would suggest that new technological measures such as the use of CCTV cameras are included in the scope of necessary measures for the prevention of torture. Thus, a direction to install CCTV cameras in police stations would be in line with the country's international legal obligations. Moreover, the Punjab and Sindh Governments have already taken steps for the installation of such systems in police stations. However, as statutory law is still silent on the subject, it is important that clear legal rules are laid out for the installation of CCTV cameras, and the recording and storage of footage, along with an

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<sup>114</sup> *ibid.*

<sup>115</sup> *ibid.*

<sup>116</sup> *ibid* 84-91.

accountability framework for tampering with footage, failure to record footage or negligent loss of footage.