

The Dilemma of Enforced Disappearances and Extra-Judicial Killings in Pakistan: A Way Forward in the Light of Human Rights Committee’s Reports and Concluding Observations

Muhammad Aqeel Khan

aqeel@awkum.edu.pk

PhD Scholar at Faculty of Sharia and Law, IIUI
Assistant Professor at Department of Law Abdul Wali Khan University Mardan

Corresponding Author: * Muhammad Aqeel Khan (aqeel@awkum.edu.pk)

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ABSTRACT

The issue of Enforced disappearances and extrajudicial killings has been haunting Pakistan for the more than two decades. The right to life and liberty of a person are the core human Rights recognized both domestically and internationally across the globe. The Human Rights Committee’s reports and observations always raised serious questions regarding the missing persons over a period of time now. Pakistan is a signatory to many Human Rights instruments and obligations. Despite its domestic legislations and International obligations, it has miserably failed to protect these rights under successive particularly military regimes. The Commission on Inquiry of enforced disappearances has not produced any far-reaching results so far in curbing the violation of these rights. A comparative analysis with the Philippine’s Model has been discussed in the paper to dig out some suggestions and recommendations to be incorporated in the social and legal framework of Pakistan.

Key words: *Enforced disappearances, Impunity, Philippines, HRC reports, Reparations*

INTRODUCTION

The persistence and systematic occurrence of Enforced disappearances and extra-judicial killings over a period of two decades in Pakistan has cast a dark shadow over its Human Rights efforts. Despite domestic rejection and International condemnation, these practices remain systematic tools of coercion, intimidation and counter-insurgency. The fundamental rights to life, liberty and security of persons lay the setting stone for democratic norms and culture of the society. The continuous violations of these rights have created a climate of fear and impunity mostly affecting Human Rights activists, journalists, ethnic and religious minorities in Pakistan. A clear gap between the constitutional guarantees and the practical realities within Pakistan needs to be thoroughly examined vis-à-vis both domestic legal frameworks and International Human Rights law.

Under International Law, Enforced disappearance has been defined as an arrest, detention or abduction or any other form by taking away the liberty of a person by agents of the state or any other person or group of persons authorized or having any support or acquiescence of the state followed by the refusal to share the information of the whereabouts of the victim. This keeps the latter most vulnerable and out of the protection of law which is considered the most serious violations of human rights law. Unfortunately in Pakistan, this is in most cases, followed by the extrajudicial killings that further compromises the constitutional right to life and due process of law. Extra-Judicial killings, is defined as ‘killings by person or group of persons or Official authorities without the sanction of any judicial proceedings or legal process’. (Taj 2025) The Supreme Court has also characterized extra- legal executions as killings “which have no sanction or permission under the law or which can not be covered or defended under any provision of law”. (Pakistan, Supreme Court of 1998)

The initial occurrences of Enforced disappearances were reported after 9/11 to counter so called ‘terrorism’

emerged on the map of the world. Many suspected terrorists in the United States were detained and transferred to internment centers without due process of law. (Ellis-Peterson 2022). After Pakistan became a close ally of US on war on terror, it also initiated the same policy against the suspected terrorists operating from its soil.

This grave violation of fundamental Human Rights not only compromises the rule of law but it also leaves a profound trauma over victim's families and society at large. The United Nations Human Rights Committee (HRC) through its periodic reports and concluding observations have raised serious concerns over Pakistan's failure as a state to protect and safeguard these core Human rights.

Human Rights Committee's Findings:

The HRC in its most recent concluding observations on 02 December 2024, over Pakistan's second periodic report submitted, raised serious concerns over non-compliance of Pakistan to the International Covenant on Civil and Political Rights (ICCPR), in full being its member state. (UN Human Rights Committee 2024) The committee raised concern about the reports of the increase in enforced disappearances, including those of short durations, torture and extrajudicial executions particularly in conflict-affected provinces like Balochistan, Khyber Pakhtunkhwa and Sindh, allegedly by members of the Military and of the police and of the Intelligence agencies. The committee was also concerned about lack of information on judicial investigations and executions. Lack of political will to explicitly criminalize enforced disappearances in domestic law, reports that National Enquiry commission on Forced Disappearances is not sufficiently independent and that not a single conviction has been made so far by the said Inquiry commission were other concerns to be addressed by the government of Pakistan.

The committee further reiterated that the followings steps need to be taken by the member state as follow;

1. That the state member should make laws on enforced disappearance including those of short duration and are clearly defined with adequate punishments provided according to the gravity of the crime and that the legislative initiatives should include meaningful and informed participation of civil society including families of the victim,
2. That Pakistan should review the Actions (in Aid of civil power) Regulation, 2011 with a view to amend it accordance with International standards and make sure no one is kept in secret cells,
3. Make all efforts to ensure that no one goes unpunished for committing this crime and that all reports, investigations or allegations are thoroughly investigated and prosecuted accordingly,
4. To search out the fate and whereabouts of the disappeared persons and in case of death, identify them and return their remains and ensure that there families are kept well informed of all the progress of search and results of such investigations and that the families can get official administrative documents and receive full and adequate compensation;
5. Evaluate the mandate of the Commission of Enquiry on Enforced disappearances and the impact of its work, making sure that the members of Enquiry Commission are fully independent, impartial, transparent and effective in advancing access to justice to the victims and their families.
6. That the state party should accede to the International Convention on the protection of All Persons from Enforced Disappearance. (UN Human Rights Committee 2024)

The Federal government had earlier, constituted a Commission of Enquiry on Enforced Disappearances

(COIED), in March 2011 comprising the Chairman and two members, headed by a former Judge of the Supreme court of Pakistan. The said commission worked as a legal forum for the victim's families to lodge complaints. Lodging complaints is absolutely free without engaging any lawyer. During Investigation of the cases, they are informed of the progress of the cases. Hearing of the cases is performed in their presence. The hearing of the cases is also arranged at Provincial Capitals so that it can save expenses of the complainants to travel from far flung areas to Islamabad. (Government of Pakistan Second Periodic Report submitted by Pakistan 2022) The commission gets cooperation and coordination from all forces and agencies of the country. The Federal government has introduced a criminal law amendment 2021 by inserting a new section 52-B in the Pakistan Penal Code for Enforced disappearances. The Bill also seeks to insert new sections 512 and 513 in PPC.

The Enquiry Commission has been able to dispose majority of cases. The total number of alleged reported cases on enforced disappearances up to August 2021 was 8,122. By August 2021, 5853 cases were disposed. Out of the 56 cases reported in August 2021, 45 persons were traced out of which 35 returned to their homes, 05 were found to be confined in internment centers, 04 were confined in prisons, 01 was found dead and 11 cases were dismissed as there was no such issue of enforced disappearances. (Government of Pakistan Second Periodic Report submitted by Pakistan 2022) While having said that the commission has been criticized due to its ineffective and Partial nature. Instead of performing an accountability mechanism, it is termed as purely a bureaucratic body that exists more to justify salaries than to deliver good. (International Commission of Jurists 2020).

Pakistan has asserted that the Actions (in Aid of Civil power) Regulation 2011 has been strictly framed in accordance with International standards. The abuse or misuse of force during operations has been made punishable under the said Regulation. All detainees apprehended during operations are kept at declared and notified internment centers. (Government of Pakistan Second Periodic Report submitted by Pakistan 2022)

The HRC also raised serious questions regarding extrajudicial killings with impunity under the guise of "Police encounters" and deaths while in custody. It highlighted the issue of torture leading to deaths during custody of security agencies in the context of counter terrorism operations without due process and judicial oversight. The committee stressed that article 6 of ICCPR is a non-derogable right which bounds the state to thoroughly investigate any suspicious death and award punishment to the culprits. For the said purpose Pakistan passed a Bill in the parliament called the 'Torture and custodial death) Prevention and Punishment) Act, 2022. (UN Human Rights Committee 2024)

Legal Framework:

Though Pakistan has already provided certain constitutional guarantees to protect the rights of its citizens in shape of Articles 4, 9,10, 10-A, 14 and 25 of 1973 constitution of Pakistan. (Government of Pakistan n.d.) It has also enacted some statutory laws and procedural safeguards for arrest and detention but despite of all this legislation, it has failed to protect its citizens against arbitrarily and enforced disappearances and extra-judicial killings due to a huge gap between theory and practice. (Zainab 2025)

The excuse for security agencies to arrest and detain a suspected person in the region of former FATA was provided initially by the Action (in aid of Civil Power), Regulation 2011. The detainees could be sent to different internment centers at the behest of the security agencies. These internment centers were made in such a manner that they did not adhere to the constitutional guarantees provided under article 10 of the 1973 constitution of Pakistan. This power of arrest and detention was further extended to the whole of KP region by enacting the KP (Actions in aid of Civil power 2019) that further deteriorated the already worsen situation in the region. (International commission of Jurists 2019)

The continuous occurrences of Enforced disappearances in Pakistan coupled with other abuses of torture and custodial deaths show a clear ambiguity and non-seriousness on the part of both legislators and the Executive Branches of the state. Existing laws grant excessive power to authorities to abuse them with impunity. In not a very remote incidence of enforced disappearance occurred in case of Gulalai Ismail and her father, known activists from Khyber Pakhtunkhwa to silence dissent. Despite court interventions, Muhammad Ismail remain in detention center for extended period of time without due process of law. (Amnesty International 2021) A very recent and famous case of Mahrang Baloch, a vocal activist raised voice for the rights of Baloch people. She became a symbol of resistance. In December 2024 Mahrang was reportedly abducted under mysterious circumstances. It sparked outrage among the human rights activists condemning targeting women dissent. She was also stopped from leaving her country. (Amnesty International UK n.d.)

Local Police always feel hesitant while registering FIRs by the victim's families. This institutional reluctance undermines the legal remedy provided to them by the state. Even if the FIRs are registered, the investigation is not carried effectively and smoothly due to involvement of powerful members of security agencies in the crime. This shows procedural inefficiency as well as power imbalances within the state apparatus. (Amnesty International 2021). In Pakistan, legislative measures provide protection and impunity to certain security institutions from holding them accountable. In other words the security personnel are granted de facto immunity due to which the Courts and Executive authorities have very little influence or hold over accountability measure. (Zainab 2025)

A Comparative Perspective: The Philippine Model

Pakistan's struggle with state sanctioned violence shows a sharp similarity with the situation particularly administered under President Rodrigo Duterte (2016-2022) and his 'war on drugs'. A comparative study of Pakistan with Philippines can discover potential lessons. We can find how the narrative of national security and public order were made to justify extra constitutional measures. In Pakistan it was always the separatist insurgencies and counter-terrorism while in Philippines it was the illicit drug trade. In both cases, the marginalized groups- ethnic minorities in Pakistan while urban poor in the Philippines faced the brunt of violence. Other than these both the countries have institutional mechanism for countering it as in Pakistan the COIED became ineffective while in Philippines, the Commission on Human Rights (CHR), faced severe budgetary restrictions and political denunciation. (Amnesty International 2021) (Amnesty International 2021)

The Philippine case offers two important reference points. The role of international criminal accountability became the spotlight. The ICC opened a formal investigation into crime against humanity allegedly committed during the drug war when the domestic framework fails. Second, the Philippines introduced a specific and strong legal instrument: the **Anti-Enforced or Involuntary Disappearance Act of 2012 (Republic Act No. 10353)**, which criminalizes the act, establishes command responsibility, and prohibits secret detention facilities. (Philippines 2012) While its implementation has been poor, the law itself provides a stronger legislative framework than anything currently existing in Pakistan.

The deep-rooted crisis requires comprehensive Lego-social reforms on urgent basis, the summary of which is mentioned as under.

Legal and Institutional Reforms:

1. Comprehensive legislation:

Pakistan must immediately pass a comprehensive and robust law according to International standards and expressly criminalize enforced disappearances by making the culprits being punished without any impunity. It should also at once without any further delay, **rectify and accede** to the International Convention for the protection of All Persons from Enforced disappearances (**ICPPED**). (UN General Assembly n.d.)

2. Establishing an Independent Investigative and Prosecutorial Body:

The Commission on Inquiry of Enforced Disappearance (COIED) must immediately be replaced or re-structure it into a Statutory Independent Commission with full powers State officials including the Intelligence agencies, making a fair investigation and prosecution with a strong witness protection mechanism. (UN Working Group on Enforced or Involuntary Disappearances n.d.)

3. Strengthen Judicial Oversight:

The Superior courts must exercise its writ vigilantly under 199 of the Constitution to enforce Fundamental Rights. The Court must seek verifiable and concrete information from security agencies in Habeas Corpus petitions and impose strict penalty for non-compliance or providing false information before the court. At the same time it is also necessary to ensure that only competent civilian courts have jurisdiction over alleged enforced disappearance cases and that Military courts should be barred from hearing such cases. (International Commission of Jurists 2020)

4. Identified Detention centers:

All detention or internment centers must be officially identified having an immediate access to lawyers, victim's family members as required by Law. All these centers must have a judicial check or oversight. By doing this, the practice of keeping the detainees in unofficial "safe houses" would be discouraged. (UNHRC concluding observations (para. 17(f) 2017). Maintain an accessible, up to date official Register of detainees and a record of all places of detention. (International Commission of Jurists 2020)

Social and Advocacy Solutions:

1. Protection and Empowering Civil Society:

The state must stop the harassment and intimidation of political activists, lawyers and particularly family members of the victim who are in desperate need of truth and justice. The state must establish safe channels for advocacy. (UNHRC concluding observations (para. 17(f) 2017)

2. Reforming narrative and Training to the security Personnel:

A long-term institutionalized training program of Human Rights for military, paramilitary and other security agencies is required with a vibrant and transparent internal accountability mechanism.

3. Promotion of a National Consensus:

A national consensus regarding the erosion of our constitutional order and social fabric due to this menace of enforced disappearances and extra judicial killings via media, newspapers, Television etc. has to be fostered. Religious scholars should also be engaged in the dialogue.

4. Establishing Memorials and Truth-Telling:

By establishing memorials, Public Achieves and a National day of remembrance, for the victims would acknowledge their honor and dignity and would serve as a permanent reminder for the State to adhere to its obligations under International Human Rights Law.

5. Reparations for victims:

Establish a program of reparations for all the victims of Enforced Disappearances, including their family members and those directly affected. It should include adequate compensation, full rehabilitation, satisfaction, and restoration of dignity and honor and of course assurance of non-repetition. (International Commission of Jurists 2020)

CONCLUSION:

The prolonged persistence of Enforced Disappearance and extra-judicial killings poses a serious threat to Pakistan's Rule of Law and democratic integrity. The recommendations and observations by the Human Rights Committee are not a one-off incident but sustained and systematic evil practices performed with impunity both by state and non-state actors. Learning from comparative models like Philippines, Pakistan can also implement the same by bringing a strong legislative framework along with International scrutiny. All these steps not possible without a strong a political will to reform institutions, an active Judiciary to hold the authorities accountable and a resilient and vigilant civil society demanding the state to perform its obligations by protecting the basic rights of life and liberty of every citizen.

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