

Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.61743-H/2023
(Mst. Sarriya Bibi vs. RPO Sheikhpura, etc.)

JUDGMENT

Dates of hearing:	22.09.2023, 25.09.2023, 26.09.2023, 28.09.2023, 04.10.2023, 16.10.2023, 19.10.2023 13.12.2023, 05.03.2024, 07.03.2024 and 05.04.2024
Petitioner by:	Mr. Akbar Saeed Chaudhary, Advocate.
State by:	<p>Mirza Nassar Baig, Additional Attorney for Pakistan assisted by Mr. Asad Ali Bajwa, Deputy Attorney General, M/s. Mohsin Raza Bhatti and Rana Adnan, Assistant Attorneys General along with Mohsin Hassan Butt, Director General FIA, Sarfraz Khan Virk, Director FIA, Lahore and Shah Zeb, Inspector FIA, Lahore.</p> <p>Mr. Khalid Ishaq, Advocate General Punjab assisted by M/s. Ghulam Sarwar Nihung & Baleegh-uz-Zaman, Addl. AGs, Mr. Shahid Nawab Cheema, AAG with Muhammad Idrees, Addl. I.G. of Police (Inv.), Kamran Adil, DIG (Security), Amin Bukhari, D.I.G. (I.A.) Imran Kishwar DIG (Inv.), Abdul Hanan, S.P., Mustansar Ata Bajwa S.P., Muhammad Saleem AIG Legal, Mian Tanveer Amjad, Nasir Abbas and Shahid Siddique Deputy Superintendents of Police-Legal, Shabbir Awan Inspector/SHO, Akhtar Inspector, Akbar Sub-Inspector/Investigating Officer and Dr. Adnan-ul-Qamar, M.S., Mian Munshi Hospital, Lahore.</p> <p>Syed Farhad Ali Shah, Prosecutor General Punjab assisted by Abdul Samad, Additional P.G., M/s Hafiz Asghar Ali, Moeen Ali, Abdul Rauf Wattoo and Ishaq Deputy Prosecutors General.</p> <p>Mian Nadeem Ashraf, Member National Commission for Human Rights Punjab.</p>
Amici Curiae:	Mian Ali Haider Advocate and Dr. Zahid Farooq Advocate
Research Assistance by:	M/s. Hamza Haroon and Amad Tahir Ch Advocates

ALI ZIA BAJWA, J.:- By dint of the instant Constitutional Petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter '*the Constitution*') read with

Section 491 of the Code of Criminal Procedure, 1898 (hereinafter '*the Code*') the petitioner invited indulgence of this Court seeking direction for the recovery and production of Shahbaz son of Bashir and Muhammad Yar son of Waryam, brother-in-law and nephew of the petitioner, (hereinafter '*the detenus*'), from the illegal, improper and unlawful custody of respondents No.2 and 3.

2. Through the order dated 22.09.2023, notice was issued to respondent No.2/Station House Officer, Police Station Manga Mandi, Lahore, and respondent No.3/Station House Officer, Police Station Ferozewala, District Sheikhpura to produce the *detenus* before the Court. On 25.09.2023 The Superintendent of Police (Investigation) Saddar Division, Lahore appeared before the Court and reported that the *detenus* lost their lives during an alleged police encounter that occurred in the early hours of 27.06.2023, precisely at 4:20 a.m. In that regard case FIR No.1601/2023, offences under Sections 302, 324, 353 & 186 PPC read with Section 13-2(a) of The Arms Ordinance, 1965 was registered at Police Station Manga Mandi, Lahore. He further informed the Court that following the police encounter, autopsies were conducted, and subsequently, the bodies were interred in the graveyard of Manga Mandi, Lahore.

3. Shockingly, the record reflected that no efforts, whatsoever, were made by the police to trace out the whereabouts of the legal heirs of the *detenus*. A notice was issued to the Deputy Inspector General of Police (Investigation), Lahore. Additionally, the Medical Superintendent of Mian Munshi Hospital, Lahore, was instructed to produce the record of the postmortem examination reports of the *detenus*. D.I.G. (Investigation), Lahore appeared before the Court and stated that he went through the police file and noted certain illegalities. It was also brought to the notice of this Court that a criminal case, FIR No. 2677/2023, under Section 155-C of the Police Order, 2002, and Section 166 of the PPC, has been registered at the Manga Mandi Police Station, Lahore, for tampering with the police file of the aforementioned criminal case against the delinquent police officials. Medical Superintendent, Mian Munshi Hospital, Lahore apprised the Court that postmortem examination reports of the *detenus* were not obtained from the hospital by the police without any reason.

4. It was a harrowing situation where the *detenus* were killed in an alleged police encounter under suspicious circumstances, and their dead bodies were buried instead of being handed over to their legal heirs. Such flagrant brutality on the part of the police officials could not be swept under the rug. The above situation emerged as a textbook case of police atrocities and high-handedness. The case exemplified the worst aspects of police misconduct, marked by blatant abuse of power and brutal treatment of individuals in custody. Learned *amici curiae* posited that after the enactment of The Torture and Custodial Death (Prevention and Punishment) Act, 2022 (hereinafter referred to as '*the Act of 2022*'), in instances where allegations of custodial torture, rape, or death are raised against public officials, only the Federal Investigation Agency (hereinafter '*the Agency*') possesses the requisite authority to conduct investigations.

5. In the above scenario, notices were issued to the Federal Government, the Advocate General Punjab, and the Inspector General of Police Punjab to explain why the investigation of all the cases of custodial torture, deaths and rapes should not be transferred to the Agency. Notice was also issued to the Prosecutor General Punjab to explain why the concerned prosecutor remained silent regarding the illegality committed by the police and to assist the Court regarding the competence of the police to investigate the cases of custodial torture, deaths and rapes. Reports were also requisitioned from both, the Director General of the Agency and the Chairperson of the National Commission for Human Rights (hereinafter '*the Commission*') concerning the non-implementation of the Act of 2022. All the requisite reports have been filed. On 30.01.2024, the Superintendent of Police (Investigation), Saddar Division, Lahore apprised the Court that the investigation in this case was referred to the Agency for further proceedings.

6. Arguments heard and the record available on the file perused.

7. Within the legal structure of a society committed to the tenets of lawful governance, instances of custodial torture, rapes, and deaths represent flagrant breaches of fundamental human rights. The rights inherent in Articles 4, 9, 10, 10-A, and 14 of the Constitution require to be jealously and scrupulously protected by the Courts. The custodial torture and extra-

judicial killings blatantly violate the above-referred Constitutional protections and strike a blow at the rule of law. The act of executing or subjecting a suspect to torture without affording him the opportunity for a fair trial constitutes a flagrant disregard for the legal framework, due process, and the fundamental rights enshrined in the Constitution, thereby undermining the very foundation of justice. In *Benazir Bhutto*¹ Supreme Court of Pakistan defined extra-legal executions as killings ‘which have no sanction or permission under the law, or which cannot be covered or defended under any provision of law’.

8. Complaints of custodial torture and deaths remained rampant in our country. Numerous attempts were made to introduce legislative reforms specifically addressing this issue, yet all these efforts had consistently resulted in failure in the past.² At long last, in November of 2022, the Act of 2022 was promulgated. The Act of 2022 reflects Pakistan’s commitments under multiple international accords, especially the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). Pakistan became a signatory to this Convention in 2008 and ratified it in 2010, emphasizing the international mandate for domestic laws that explicitly criminalize torture. The UNCAT explicitly mandates the creation of national legislation that categorically outlaws acts of torture, emphasizing the need for Pakistan to align its legal framework with international standards to effectively prevent and penalize custodial torture.³

9. With the enactment of the Act of 2022, Pakistan has embarked on a new era where the protection of human rights is genuinely assured, both in substance and practice. This piece of legislation marks a significant milestone in the country’s commitment to upholding the fundamental rights of its citizens. The Act of 2022 represents a formative legislative measure aimed at eliminating the menace of torture, rapes and deaths occurring under the custody of public officials, affirming the commitment of the State to uphold human rights and ensure the dignity of individuals under its

¹ Benazir Bhutto vs. The President of Pakistan - PLD 1998 SC 388

² Legislation Watch Cell Report on The Torture and Custodial Death (Prevention and Punishment) Act, 2022 published by the Human Rights Commission of Pakistan.

³ Article 4 of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

dominion. In essence, the Act of 2022 is a robust legal instrument designed to significantly curb the risks of custodial torture, rapes and deaths. By launching a clear legal mechanism for accountability, prevention, and victim support, the Act of 2022 represents a critical step forward in the protection of human rights and the promotion of justice and dignity for all individuals under the care of the State. This ambitious and comprehensive legislation includes many important aspects designed to eradicate the heinous incidents of custodial torture, rapes, and casualties. It is fitting to briefly outline the main features of the Act of 2022.

A. Offenses punishable under the Act

- Custodial torture, death, and rape have been criminalized under the Act of 2022 as part of a determined effort to wipe out these grave offenses.⁴ The term ‘custody’ encompasses all circumstances in which an individual is detained or deprived of his liberty by any person, including a public official or someone acting in an official capacity. This definition applies regardless of the legality, nature, or location of the detention. The definition of ‘custody’ extends to judicial custody and encompasses all forms of temporary and permanent restrictions on a person’s movement, whether imposed by law, force, or other methods. Furthermore, an individual is considered to be in custody during proceedings involving search, arrest, and seizure.⁵ The term ‘torture’ has been explained in Section 2 (n) of the Act of 2022 in a self-explanatory manner.
- “Custodial death” refers to the death of an individual that occurs while in custody and results directly or indirectly from acts of torture inflicted upon the deceased during his detention. This includes deaths that take place within police stations, private or medical facilities, public spaces, transport vehicles, or jails. It also includes fatalities occurring during arrest, detention, or interrogation processes. Additionally, custodial death covers instances where an individual dies after being released from custody, if the death can be directly

⁴ Sections 8, 9 and 10 of the Act of 2022

⁵ Section 2(f) of the Act of 2022

linked to, and substantially attributed to, the treatment they received while detained.⁶

- “Custodial rape” refers to instances where an individual exploits his position to commit rape or sexual abuse on a person under his custody or in the custody of a public official subordinate to him. This definition captures the misuse of authority to violate the personal integrity and rights of those detained.⁷

B. Exclusive Jurisdiction of Agency to investigate under the supervision of the Commission

- Notwithstanding any provisions to the contrary in existing laws, the Agency shall possess the exclusive jurisdiction to investigate, under the supervision of the Commission, the complaints against any public official accused of committing offenses under the Act of 2022. While investigating offenses under the Act of 2022, the Agency is endowed with the same powers and is required to adhere to the procedure outlined in the Federal Investigation Agency Act, 1974 (Act VIII of 1975), and the rules established thereunder.⁸ Although the term ‘custody’ under the Act of 2022 is inclusive in nature covering all situations in which an individual is detained or deprived of his liberty by any person, including a public official or someone acting in an official capacity, the Agency has the authority only to investigate offenses committed specifically by public officials.
- Under Section 5(1) of the Act of 2022, although the term ‘complaint’ is mentioned but it does not carry the same procedural and restrictive definition as found in Section 4(h) of the Code. The complaint under the Code means an allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown, has committed an offense. This definition explicitly excludes reports made by police officers. Whereas the Act of 2022 uses ‘complaint’ in a broader sense to include any allegations or reports against public officials that the

⁶ Section 2 (h) of the Act of 2022

⁷ Section 2 (i) of the Act of 2022

⁸ Section 5 of the Act of 2022

Agency can investigate. This broader scope seeks to empower the Agency to take cognizance of various forms of information and allegations, thereby ensuring meticulous investigations into accusations of custodial torture, deaths, and rapes leveled against public officials. Section 5 of the Act of 2022 is a *non-obstante* clause having an overriding effect over any other conflicting provisions of law. The phrase *non-obstante* is Latin for ‘notwithstanding’, indicating that the specific provision will prevail despite anything to the contrary in other laws. Moreover, all the offenses under the Act of 2022 are cognizable in nature. A cognizable offense denotes a crime for which a police officer is empowered to make an arrest without a warrant.⁹

- Given the widespread complaints of custodial torture and deaths involving police officials, an imperative arose for a mechanism to ensure such allegations are investigated by an independent agency. It was also ruled by the Supreme Court of Pakistan in Zeeshan alias Shani¹⁰ that in case of a police encounter, it is desirable and even imperative that it should be investigated by some other agency. The Act of 2022 establishes a twofold mechanism for oversight in the investigation of offenses perpetrated by public officials under its provisions.
- The primary tier confers exclusive jurisdiction upon the Agency, making it the sole authority empowered to investigate specific allegations of custodial torture, deaths and rapes against public officials. This centralization of expertise and authority ensures a streamlined, specialized approach by a neutral and independent agency. Consolidating skills and decision-making power within a dedicated entity guarantees investigations are conducted with impartiality, precision, and a thorough understanding of the complexities involved. The constitution of a specialized wing dedicated to the implementation of the purpose of the Act of 2022 in its true letter and spirit would be immensely beneficial.

⁹ Section 4(f) of the Code

¹⁰ Zeeshan alias Shani Vs. The State – 2012 SCMR 428

- The second tier of oversight has been provided by the supervision of investigation process by the Commission. This supervision is crucial as it introduces an additional level of scrutiny, ensuring that the investigations are conducted with a commitment to human rights standards. This dual structure is designed to enhance accountability and transparency in handling sensitive cases of custodial torture, deaths and rapes involving public officials. It aims to prevent any abuse of power or negligence in the investigative process and ensures that the rights of all individuals involved are respected and upheld throughout the proceedings. The supervisory role of the Commission has been designed to infuse the investigative process with transparency and fairness. This supervisory role ensures that the proceedings are conducted openly and justly, shielding them from any undue influence or bias. By maintaining vigilant oversight, the Commission helps to uphold the integrity of the investigation, thereby promoting a culture of accountability and trust in how allegations against public officials are handled.
- The supervision by the Commission must be profound and meaningful, encompassing several key aspects vital for achieving the ends for which the Act of 2022 was promulgated. Meaningful supervision entails proactive oversight of investigations, where the Commission does not merely receive reports but actively monitors the progress of investigations. This includes reviewing procedures, ensuring compliance with legal standards, and making periodic checks to prevent any potential misuse of power or negligence. Supervision is about holding investigators accountable for their actions or inaction. This means ensuring that any deviation from the lawful process or any misconduct is promptly addressed. Meaningful supervision also includes providing guidance and support to the investigating Agency. This could involve training programs and offering expert advice to conduct thorough and fair investigations. Engaging with stakeholders, including victims, witnesses, and the general public, is part of meaningful supervision. The Commission should ensure that all parties involved in the investigation are treated fairly and impartially.

This includes protecting the rights of the accused while also ensuring justice for victims. Scrupulous supervision is crucial for maintaining the integrity and effectiveness of the legal framework, ensuring a respected and resilient criminal justice system.

C. *A statement or confession extracted through torture inadmissible in evidence.*

- Any statement, information, or confession extracted by a public official through torture or other forms of cruel, inhuman, or degrading treatment is deemed inadmissible as evidence in any legal proceedings against the individual who made or provided it. A public official who knowingly employs information obtained through torture or other prohibited means shall face potential legal consequences. This public official could be sentenced to imprisonment for up to one year, fined up to one hundred thousand rupees, or subjected to both penalties.¹¹ The rationale behind this provision of law is twofold and crucial. Firstly, confessions obtained under duress are unreliable and coerced, undermining the integrity of the legal process. Secondly, allowing such evidence endorses and perpetuates torture, violating fundamental rights guaranteed under Article 14 of the Constitution. Lastly, excluding such evidence protects individuals from abuse, upholds fairness, and maintains public trust in the legal system. Furthermore, it reinforces the provisions outlined in Articles 37, 38 and 39 of the Qanun-e-Shahadat Order, 1984, which unequivocally exclude confessional statements made before an investigating officer.

D. *Special protection for females and female accused.*

- The Act of 2022 affords extraordinary protection to women by stipulating that no woman shall be detained for the purpose of extracting information about the whereabouts of a person accused of any offense, or to coerce evidence from her. The Act of 2022 further mandates that no female shall be taken into or held in custody by a male, except by a female public official who is legally authorized to do so.¹² The provision outlined in the Act of 2022 serves several

¹¹ Section 3 of the Act of 2022

¹² Section 4 of the Act of 2022

critical purposes, primarily focused on safeguarding the dignity, safety, and rights of women in investigative procedures. It reflects an understanding of the specific needs and vulnerabilities of women in the criminal justice system. The aim is to create a more gender-sensitive approach that respects the rights of women and avoids exploitative situations. By embedding such protections in law, the Act of 2022 also sends a strong societal message about the importance of respecting the rights of females and the need for tailored protections based on gender-specific concerns. This can contribute to broader cultural shifts toward ensuring procedural protections for women in the criminal justice system. Overall, legal provision intends to ensure that women's rights are specifically protected within the framework of criminal investigations, reflecting a commitment to protect the dignity and respect in handling legal and investigative procedures involving women.

E. The time frame for investigation and trial

- The investigation into the offenses stipulated by the Act of 2022 must be concluded within thirty days following the filing of the complaint. If the investigation of an offense under this statute does not conclude within thirty days, the Agency shall summon a report to account for the delay. Should the reasons for the delay prove unsatisfactory, the Agency may reassign the case to a new investigating officer, who shall assume the investigation from the juncture it was abandoned and swiftly complete the same. If the investigation remains incomplete after thirty days, the Agency must submit an interim investigation report to the Court of Sessions. Upon reviewing this report, the court may decide to commence the trial based on the material presented therein. The trial of the offenses delineated under the Act of 2022 shall be concluded within three weeks from the date the investigation report is submitted to the court of competent jurisdiction.¹³
- The stipulations provided in the Act of 2022 are designed to ensure the expeditious handling of cases of custodial torture, deaths and rapes

¹³ Section 13 of the Act of 2022

alongside the accountability of the investigating officers. By mandating that investigations be completed within a thirty days window, the law emphasizes the importance of efficiency in legal proceedings. This expeditiousness is intended to prevent undue delays that could impede the course of justice, ensuring that the cases are decided promptly and that victims and accused persons are not left in prolonged uncertainty. The requirement for the Agency to report delays if the investigation exceeds the requisite time frame ensures accountability. This provision acts as a safeguard against laxity and neglect, compelling investigating officers to maintain diligence and focus. The mandate for submitting an interim investigation report to the Court of Sessions if the investigation is not concluded on time, places a mechanism of judicial oversight over the investigation process. This enables the court to review the progress of the case and decide whether enough evidence exists to begin the trial, thus maintaining a continuous push to conclude the trial at the earliest. Stipulating a definitive three-week period for the completion of the trial once the investigation report is submitted enforces a strict timeline that further highlights the commitment to timely justice. The Act of 2022 has been structured to create a more responsive and efficient criminal justice system that upholds the norms of justice by ensuring that investigators remain accountable, cases are concluded expeditiously, and all parties involved are assured that their rights and concerns are addressed within reasonable and predictable time frame.

F. Protection to the victim and witnesses etc.

- Any person, including the victim, complainant, or witnesses, who asserts the need for protection from a person accused of committing an offense under this Act, or from any associates of the accused, shall file a petition with the Court of Sessions. The court shall adjudicate such a petition after providing all the concerned parties an opportunity to be heard and shall issue an appropriate order considering the facts and circumstances of the case.¹⁴ Allowing any person, be it a victim, complainant, or witness, to seek protection, this provision addresses

¹⁴ Section 14 of the Act of 2022

the fundamental need for safety and security from those accused of crimes or their associates. By providing a clear mechanism for seeking protection, this provision helps to build trust in the criminal justice system. It reassures the stakeholders and aggrieved persons that the law shall actively work to protect their rights and safety, encouraging greater cooperation with legal authorities and participation in the judicial process.

G. Punishment for filing mala-fide complaints

- Anyone who files a complaint in bad faith, upon confirmation that the complaint was malicious, shall receive the same punishment as outlined in Section 8 for offenders under the Act of 2022.¹⁵ This legal provision plays a crucial role in deterring individuals from lodging false complaints against public officials. By imposing the same penalties on those who file complaints with *mala fide*, the law acts as a significant deterrent against the misuse of the provisions of the Act of 2022. False complaints can severely undermine the morale and confidence of public officials, potentially hampering their effectiveness in dealing with criminal activities. When public officials are unjustly targeted, it can create an atmosphere of mistrust and caution, which might impede their willingness to take decisive actions against criminals. By ensuring that malicious complainants face stringent consequences, this law protects public officials from undue harassment.

H. Duties of the Government regarding the Publicity and awareness of the Act of 2022

- The Government¹⁶ is required to take all necessary measures to ensure that the provisions of the Act of 2022 receive extensive publicity through the media at regular intervals. Additionally, relevant public officials must undergo periodic sensitization and awareness training

¹⁵ Section 11 of the Act of 2022

¹⁶ Under Section 2 (j) of the Act of 2022 „Government“ refers to either the Federal Government or the Provincial Government, depending on the context.

concerning the issues addressed in the Act of 2022.¹⁷ The publicity of a newly promulgated law is essential for its effective implementation. When laws are widely publicized, it becomes difficult for those in authority to apply these laws on their whims and wishes arbitrarily. Public knowledge of the law acts as a check on the actions or inactions of the authorities, ensuring that the law is applied uniformly and justly across all sections of society. This widespread awareness is key to ensuring compliance with the law, as people are more likely to adhere to laws they understand and are familiar with. Publicizing the penal statute extensively also serves a preventive function. Potential offenders are deterred by their knowledge of the legal consequences of their actions, reducing the likelihood of infractions.

- Wide publicity also opens channels for feedback from the public, which can be invaluable for refining and improving the implementation of the law. When individuals know what protections and avenues for recourse are available to them under the law, they are better equipped to defend their rights. This knowledge empowers citizens to take appropriate actions if they encounter situations covered by the Act of 2022, thereby enhancing their protection. The extensive publicity of the Act of 2022 is integral to its success, ensuring it is effectively implemented and achieves its intended goals of promoting fairness, preventing misuse of power, and protecting the rights of individuals in custody. In nutshell, the publicity of newly promulgated law is not just a procedural formality but a fundamental aspect of its successful implementation. It shall ensure that law does not exist in a vacuum but is integrated into the daily lives of the citizens, thereby strengthening the legal system and democratic governance.

10. However, despite promulgation of the Act of 2022 in November 2022 following approval from the President, the law remained largely on paper, with no practical implementation. This situation highlights a significant gap between the formal adoption of the law and its actual enforcement, reducing it to a mere document without substantial impact. The

¹⁷ Section 18 of the Act of 2022

Act of 2022, despite its grand promises and visionary provisions, has regrettably remained a paper law, with no tangible implementation. A ‘paper law’ refers to legislation that has been formally enacted and exists in legal documents but is not effectively implemented or enforced in practice.¹⁸

11. The reports submitted by the Agency and the Commission reveal a disheartening reality that the stakeholders, as designated under the Act of 2022, have demonstrated a marked indifference towards the enforcement of this crucial legislation. This apathy towards implementing the law highlights a profound disregard for the legal provisions it contains and the protections it seeks to guarantee. Section 9 of the National Commission for Human Rights Pakistan Act, 2012 (*hereinafter* ‘NCHR Act’) delineates the functions of the Commission, endowing the Commission with *Suo Moto* power to fulfill its mandate. Specifically, under Section 9(d) of the NCHR Act, the Commission is charged with recommending the adoption of administrative measures for the effective implementation of existing laws related to human rights violations. Similarly, Rule 3 of the Federal Investigation Agency (Inquiries and Investigations) Rules, 2002 stipulates that the Agency, subject to Rules 4 and 5, may commence an inquiry or investigation either on its own volition or upon receiving a complaint, whether oral or written. Regrettably, the Commission and Agency have demonstrated a significant degree of indifference in enforcing the Act of 2022.

12. The vital duty of the Commission has been wholly neglected, resulting in a profound miscarriage of justice in countless cases. The legislative intent behind the conferment of such significant powers upon the Commission was to ensure a vigilant and proactive stance against human rights violations. The Commission’s failure to fulfill its expressly mandated functions, despite the extensive powers granted by the Parliament, constitutes a profound betrayal of its purpose. This dereliction of duty not only undermines the authority of the Commission but also perpetuates a systemic failure to protect and uphold the rights it was designed to defend. Given these failures, it is crucial to revitalize the Commission’s commitment

¹⁸ 2 Atul Setalvad, “Paper Laws,” *Economic and Political Weekly*, Vol. 23, Iss. 29 (July 16, 1988): p. 1467–70. Available at: <https://www.jstor.org/stable/4378763>.

to its core duties. The measures must be implemented to ensure that it fulfills the responsibilities conferred by the NCHR Act. Only through such reaffirmed dedication can we hope to rectify past oversights and ensure the protection of human rights for all.

13. Public officials are bound to operate within the confines of the Constitution. Article 5(2), read in conjunction with Article 4 of the Constitution, unequivocally mandates that all public functionaries perform their duties in strict adherence to the law.¹⁹ The laws enacted by Parliament represent the will of the people and form the cornerstone of the legal framework of the Country. As such, these laws must be implemented with full fidelity and without exception. The public functionaries hold no authority to sit on their hands and disregard the implementation of a law duly passed by the Parliament. The executive cannot shun its duty to enforce the statutes set forth by the representatives of the people. All State functionaries, including governmental departments and agencies, are obligated to ensure the proper execution of these laws. This duty is not merely procedural but foundational to the rule of law, maintaining the integrity and effectiveness of the legal system. Compliance with enacted laws is paramount, ensuring that the governance of the state supports the democratic principles and mandates set forth by its elected representatives. If state functionaries fail to implement laws enacted by the Parliament, it will result in complete chaos. The legal system's authority would be undermined, leading to a breakdown in the rule of law. The failure to implement a law due to negligence, inaction, or indifference by public functionaries, resulting in violation of fundamental rights, cannot be ignored by this Court when exercising its Constitutional jurisdiction under Article 199 of the Constitution. The principle that the failure of public functionaries to adhere

¹⁹ Government of Pakistan through Director-General, Ministry of Interior, Islamabad and others Vs. Farheen Rashid - 2011 SCMR 1, Muhammad Yasin Vs. Secretary, Government of Punjab and others - 2007 SCMR 1769 and Abdul Majeed Zafar and others Vs. Governor Of The Punjab through Chief Secretary and others - 2007 SCMR 330

to the law constitutes malice in law is a cornerstone of administrative and constitutional jurisprudence. This tenet emphasizes that public officials must act within legal bounds because any deviation reflects a malicious disregard for the rule of law.

14. This Court finds itself compelled to issue the directions necessitating the involvement of the highest echelons of our Governmental structure to ensure the prompt implementation of the Act of 2022 without further delay. This Court hereby directs that: -

- I. The issue of implementation of the Act of 2022 shall be formally brought to the attention of the Chief Minister of Punjab, conveyed through the Principal Secretary to the Chief Minister. Simultaneously, the issue shall also be presented to the Federal Minister, Ministry of Interior, Government of Pakistan, through the Federal Secretary Ministry of Interior. They shall assiduously ensure the swift and thorough execution of the Act of 2022, sparing no effort to guarantee its full and immediate implementation. Their prompt and decisive intervention is essential to ensure the effective enforcement of the Act of 2022, thereby precluding any further delay in its execution.
- II. A copy of this judgment shall be dispatched to the Chairperson of the National Human Rights Commission of Pakistan and the Director General of the Agency. They are mandated to assume a proactive role and take on the responsibility for the implementation of the Act of 2022, ensuring that its provisions are diligently and effectively enforced.
- III. As the Police are devoid of the requisite jurisdiction to investigate cases pertaining to allegations of custodial torture, deaths, and rapes, therefore, all the cases of custodial torture, deaths, and rapes currently under investigation, and registered after the promulgation of the Act of 2022, shall forthwith be transferred to the Agency for the purpose of investigation by the Provincial Police Officer without fail, in the same manner, as the investigation in the case at hand was transferred to the Agency.

- IV. In the future, if the police receive any complaints regarding custodial torture, death, or rape, such matters shall be promptly referred to the Agency to initiate proceedings swiftly in the spirit of the Act of 2022. The police, having no jurisdiction to investigate such cases, ought not to drag their feet on these complaints.
- V. All the cases of custodial torture, registered after the promulgation of the Act of 2022, currently pending trial before any other court shall be transferred to the Court of Sessions for trial, per the spirit of Section 6 of the Act of 2022.
- VI. The Government shall undertake all necessary measures to ensure comprehensive publicity of the provisions of the Act of 2022. Such measures shall include but are not limited to, regular dissemination of information through the media to ensure widespread awareness among the public.
- VII. The relevant public officials must receive periodic sensitization and awareness training pertaining to the issues addressed in the Act of 2022, therefore, training should be arranged and structured to ensure that officials are well-informed and adequately prepared to implement and uphold the provisions of this Act.
- VIII. The Act of 2022 should be implemented with all due haste, leaving no stone unturned in that regard without further ado because it is better late than never. A copy of this judgment shall also be sent to all the stakeholders designated under the Act of 2022, through the Office of the Registrar of this Court, to ensure strict compliance.

15. With the investigation of the case arising out of this petition now entrusted to the Agency, this petition is **disposed of** considering the aforementioned directions.

(ALI ZIA BAJWA)
JUDGE

The judgment was pronounced on 30-05-2024 and after completion, it was signed on the same day.

JUDGE

Approved for Reporting.

JUDGE