

UNVEILING THE SHADOWED: ADVOCATING FOR LEGAL REFORMS FOR MISSING PERSONS IN PAKISTAN

Aftab Alam Khan¹, Ameer Hamza Khan², Muhammad Rehan³

^{1,2,3}Graduates of LLB, Department of Law, University of Swabi, Khyber Pakhtunkhwa, Pakistan

*¹aftabalaam134@gmail.com, ²ameerhamzak2000@gmail.com, ³rehanmengal127@gmail.com

ABSTRACT

Enforced disappearances in Pakistan pose a serious human rights challenge, requiring urgent attention and legal reforms. This research explores the historical context of missing persons and critically examines the issue through international and domestic legal frameworks. It reviews key international treaties such as the Rome Statute and the International Convention for the Protection of All Persons from Enforced Disappearances, alongside Pakistan's Constitution of 1973 and the Code of Criminal Procedure, 1898. The study also scrutinizes the Supreme Court of Pakistan's stance on offenses against state integrity and individual rights. Employing a qualitative research methodology rooted in a post-positivist approach, the literature review is conducted through secondary sources. The findings reveal significant gaps in existing laws, systemic failures in law enforcement, and a lack of alignment between international commitments and domestic practices. The paper advocates for the criminalization of enforced disappearances, the establishment of stronger accountability mechanisms, and legal reforms to ensure justice and the protection of victims' rights. These recommendations aim to enhance accountability and uphold human dignity in Pakistan

Keywords: *Missing person, International law, Pakistani law, Human right, Detention*

INTRODUCTION

The issue of missing persons in Pakistan is a significant and complex human rights concern, deeply rooted in the country's socio-political landscape (Hussain, 2019). This research paper investigates the legal frameworks and protections available for missing persons, comparing international laws with existing Pakistani legislation (Fazi, 2020). A missing person may disappear due to various reasons—whether intentional or unintentional such as abductions, accidents, or voluntary absences (His Majesty's Inspectorate of Constabulary and Fire & Rescue Services, 2024). However, enforced disappearance is a specific form of abduction, where state actors or their agents are involved, and the person's fate or whereabouts are deliberately concealed (International Convention

for the Protection of All Persons from Enforced Disappearance, 2006). This distinction is crucial, as all enforced disappearances lead to a person being missing, but not all missing persons are victims of enforced disappearance.

Enforced disappearances, often involving state security agencies, pose severe challenges to the rule of law and fundamental human rights (Shafiq, 2013). The International Convention for the Protection of All Persons from Enforced Disappearances defines "enforced disappearance" as detention by state or state-authorized agents, with subsequent denial of detention or concealment of the person's fate (United Nations, 2006). The study employs a combination of descriptive and analytical methodologies, with a focus on qualitative research. It follows a post-

positivist approach, utilizing secondary data sources such as legal documents, reports, and case studies to explore the gaps in current legal protections and advocate for necessary reforms (Commission of Inquiry on Enforced Disappearances, 2024).

The international legal framework, including instruments like the Rome Statute (1998) and the International Convention for the Protection of All Persons from Enforced Disappearances, provides comprehensive guidelines to combat enforced disappearances and uphold human rights. These laws categorize enforced disappearances as crimes against humanity and emphasize the necessity of accountability and due process. However, despite these international standards, Pakistan lacks specific legal provisions addressing the issue of missing persons (Fazi, 2020). The Constitution of Pakistan (1973) and the Criminal Procedure Code (1898) offer some protections, but significant gaps remain, especially in cases involving state complicity (Khan et al., 2023).

This paper seeks to address these gaps by critically analyzing both the international and domestic legal landscapes. It examines key international conventions and their applicability in the Pakistani context, highlighting the urgent need for legal reforms (Hassan, 2009). The paper also explores the role of the Supreme Court of Pakistan in addressing enforced disappearances, emphasizing the need for judicial activism and comprehensive legal remedies (PLD 2014 SC 305, 2014). By advocating for the integration of international standards into Pakistan's legal system, the paper aims to strengthen protections for missing persons and ensure justice and accountability.

This research underscores the importance of a robust legal framework to address the issue of missing persons in Pakistan. It calls for legislative reforms, stronger judicial oversight, and adherence to international human rights standards. By doing so, Pakistan can better protect its citizens and uphold the rule of law, ensuring that the fundamental rights of all individuals are respected and preserved.

LITERATURE REVIEW

Tariq Hassan, in his work *“The Supreme Court of Pakistan and the Case of Missing Persons”* reviews the paper regarding the role of the Supreme Court in addressing missing persons and its constitutional implications. Hassan discusses the need for effective legal remedies and highlights how successive governments in Pakistan have failed to prosecute perpetrators due to insufficient administrative capacity. He emphasizes that for families of missing persons, the Supreme Court often serves as a last resort to seek justice and ensure fair trials for the accused (Hassan, 2009).

Muhammad Abdullah Fazi, in his work *“Enforced Disappearances and Constitutional Guarantees in Pakistan: A Human Rights Perspective”* (2020), reviews the issue of enforced disappearances within the framework of Pakistan's constitutional protections. His paper examines the protections provided by Articles 8 to 28 of the Constitution and international laws like the ICCPR. Fazi highlights the need for Pakistan to ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) and criminalize enforced disappearances to address the humanitarian crisis that emerged after the Afghan war (Fazi, 2020).

Muhammad Imran Ali, in his work *“Unveiling Shadows: Imperative to Criminalize Enforced Disappearances in Pakistan”* (2023), reviews the gaps in Pakistan's legal framework concerning enforced disappearances. Ali emphasizes the importance of aligning Pakistan's legal standards with international norms and highlights the concept of *jus cogens*, fundamental principles of international law. He argues that Pakistan's failure to criminalize enforced disappearances undermines public trust in the state and judiciary, urging legal reforms to address these issues (Ali, 2023).

Aysha Shafiq, in her work *“The War on Terror and the Enforced Disappearances in Pakistan”* (2013), reviews Pakistan's state practices of enforced disappearances post-9/11. Shafiq examines how law enforcement agencies justify extrajudicial actions due to inadequacies in the criminal justice system. Her paper also explores the state's defense before the Supreme Court,

arguing that existing laws are insufficient to maintain peace. She underscores the violations of both constitutional and international laws, highlighting the urgent need for reforms to address these practices (Shafiq, 2013).

Grażyna Baranowska, in her work *“The Rights of the Families of Missing Persons: Going Beyond International Humanitarian Law”* reviews the rights of families of missing persons under International Humanitarian Law (IHL). Her paper discusses the gaps in IHL regarding the legal status of missing persons and the provision of compensation for families. Baranowska examines the ICRC Model Law and Additional Protocol I, noting their limitations in addressing family rights. She emphasizes the need for a comprehensive legal framework that goes beyond the minimum obligations of IHL to support families effectively (Baranowska, 2022).

Salman Hussain, in his work *“Violence, Law, and the Archive: How Dossiers of Memory Challenge Enforced Disappearances in the War on Terror in Pakistan”* (2019), reviews the protests of families of missing persons and their role in challenging state narratives. Hussain’s paper highlights the use of memory dossiers to expose state violence and document the struggles of families. He argues that these protests undermine the state’s justification of enforced disappearances as a counter-terrorism measure and bring the issue to the forefront of public discourse (Hussain, 2019).

Shah Ameer Khan, in his work *“The Space of Enforced Disappearance”* (2021), reviews the philosophical underpinnings of enforced disappearances through the concepts of "appearance" and "bare life" by Arendt and Agamben. Khan’s paper argues that victims of enforced disappearances are stripped of legal protections and excluded from societal participation, existing in a liminal state between life and death. His work provides a broader understanding of the human rights violations inherent in enforced disappearances (Khan, 2021).

F. Naseem, H. Sadia, and R. S. Waraich, in their work *“Islamic Approach Towards the Fundamental Rights Regarding Arrest and Detention”* (2022), review the Islamic perspective on arbitrary arrest and detention. Their paper argues that enforced disappearances violate

fundamental rights embedded in Islamic jurisprudence, including the rights to life, dignity, and protection from torture. They emphasize that these rights, rooted in Islamic teachings, predate modern human rights frameworks and call for Islamic states to adhere to these principles by ceasing inhumane practices like enforced disappearances (Naseem et al., 2022).

RESEARCH METHODOLOGY

This study, unveiling the shadowed: advocating for legal reforms for missing persons in Pakistan, uses analytical methods. It focuses on qualitative research to explore the issue deeply. Following a post-positivist approach. Secondary data, such as existing literature, legal documents, reports, and case studies, articles, newspapers, and books etc are analyzed. This approach ensures a detailed review of the current legal framework and identifies gaps needing reform, providing a strong basis for advocating better legal protections for missing persons in Pakistan

INTERNATIONAL LEGAL FRAMEWORKS ON THE ISSUE OF MISSING PERSONS

The issue of missing persons is a pervasive global challenge, necessitating robust international legal frameworks to address it effectively. Key instruments such as the Rome Statute, the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), the International Covenant on Civil and Political Rights (ICCPR), and the Universal Declaration of Human Rights (UDHR) play crucial roles in this regard. These frameworks establish vital legal standards and mechanisms to protect individuals from enforced disappearances, ensure accountability, and uphold fundamental human rights. This paper explores the significance and impact of these international legal instruments in combating the crisis of missing persons worldwide.

Rome Statute

The *Rome Statute*, governing the International Criminal Court (ICC), holds significant implications for addressing serious human rights violations globally. Enforced disappearances are explicitly categorized as a crime against humanity

under Article 7(e) of the Rome Statute, highlighting their severe impact on human dignity (Rome Statute of the International Criminal Court, 1998, art. 7(e)).

The statute explicitly prohibits forced disappearances and the arbitrary deprivation of liberty.

Furthermore, the Rome Statute criminalizes actions that deny individuals their right to a fair trial, underscoring the importance of due process in international criminal law (Rome Statute Of The International criminal court, 1998, Art. 5 (8)(A)(Vi)). These provisions collectively establish a robust legal framework aimed at safeguarding fundamental human rights and ensuring accountability for perpetrators of grave offenses on an international scale.

International Convention for the Protection of All Persons from Enforced Disappearances

The *International Convention for the Protection of All Persons from Enforced Disappearance* (ICPPED, 2006) is a critical human rights treaty adopted by the United Nations. It aims to prevent enforced disappearances, hold perpetrators accountable, and provide justice and reparations for victims and their families (ICPPED, 2006). This convention establishes a comprehensive legal framework to safeguard individuals from this grave violation and reinforces the global commitment to ending impunity for such acts (ICPPED, 2006).

The treaty unequivocally prohibits enforced disappearances, affirming the right of every individual to security and legal protection (ICPPED, 2006, art. 1). It defines enforced disappearance as the deprivation of freedom by state agents or with their approval, coupled with the refusal to acknowledge the deprivation or concealment of the person's fate or whereabouts (ICPPED, 2006, art. 2). Moreover, it emphasizes that no exceptional circumstances, including war or internal political instability, can justify enforced disappearances (ICPPED, 2006, art. 1). States that are parties to the treaty are required to criminalize enforced disappearances through national legislation, ensuring thorough investigations and accountability for such acts (ICPPED, 2006, arts. 4–6). The document

classifies enforced disappearance as a crime against humanity, underscoring the severity of the offense and the need to hold perpetrators accountable (ICPPED, 2006, art. 5). Those involved in ordering, consenting to, or participating in such acts are to be held criminally responsible (ICPPED, 2006, art. 6).

Victims and their families are granted rights to seek compensation, rehabilitation, and redress, reinforcing the convention's commitment to reparative justice (ICPPED, 2006, art. 24). The treaty ensures that victims and their families receive prompt and fair compensation (ICPPED, 2006, art. 24). It also emphasizes the duty of states to take effective measures to prevent and end enforced disappearances, including ensuring that individuals deprived of liberty are held in officially recognized detention places with communication rights (ICPPED, 2006, art. 17). Protection is extended to victims, their families, and witnesses from intimidation or ill-treatment (ICPPED, 2006, art. 12). The treaty asserts the jurisdiction of states over acts of enforced disappearance within their territories and addresses issues of extradition and mutual legal assistance to ensure that suspects are either prosecuted or extradited (ICPPED, 2006, arts. 9, 13). Furthermore, it prohibits the refoulement of individuals to states where they might face enforced disappearance and mandates states to investigate allegations, prosecute perpetrators, and ensure no statutes of limitations apply to such cases (ICPPED, 2006, arts. 8, 16). Cooperation among states in investigating, prosecuting, and adjudicating cases is emphasized, along with the right of families to be informed about the progress and outcomes of investigations concerning their missing loved ones (ICPPED, 2006, arts. 15, 24).

Universal Declaration on Human Rights

The *Universal Declaration on Human Rights* (UDHR), although comprehensive, does not specifically address enforced disappearances, which represent a severe violation of human rights, denying individuals their fundamental freedoms and rights. Highlighting the impact on missing persons underscores the gravity of these violations within the human rights framework. The *Universal Declaration of Human Rights*

(UDHR) articulates fundamental principles essential for safeguarding individuals against grave human rights violations like enforced disappearances. It emphasizes the need to treat every person with respect and fairness, ensuring that all individuals are protected from arbitrary detention and violence (Article 9). The declaration underscores the importance of preventing torture and cruel treatment (Article 5), advocating for the right to fair legal processes and equal protection under the law (Article 7). Furthermore, the UDHR enshrines the right to a fair and impartial trial (Article 10) and upholds the presumption of innocence until proven guilty (Article 11). It also safeguards personal privacy and dignity (Article 12), reinforcing the protection of individuals from unlawful state actions. These core principles are pivotal in the context of international frameworks aimed at preventing enforced disappearances, as they provide a critical basis for ensuring the respect and protection of human rights globally (United Nations, 1948).

International Covenant on Civil and Political Rights

The *International Covenant on Civil and Political Rights* (ICCPR) is a fundamental instrument in the protection of civil and political liberties, directly relevant to the issue of missing persons. Adopted in 1966, the ICCPR enshrines essential rights such as the right to life, freedom from torture, and protection against arbitrary detention. These provisions are critical in addressing and preventing enforced disappearances, as they establish clear legal standards and obligations for state parties. By mandating that individuals be safeguarded from such violations and ensuring avenues for redress, the ICCPR plays a crucial role in advocating for the rights of missing persons and holding accountable those responsible for such egregious human rights abuses (United Nations, 1966).

The *International Covenant on Civil and Political Rights* (ICCPR) provides a robust framework for protecting individuals from severe human rights abuses such as enforced disappearances. Central to the ICCPR is the affirmation of the inherent right to life, which is frequently violated in cases of enforced disappearance (Article 6). The treaty

also prohibits torture and inhuman treatment, which are often experienced by individuals who are forcibly disappeared (Article 7). The ICCPR safeguards against arbitrary arrest and detention, which are common features of enforced disappearance scenarios (Article 9). Additionally, it guarantees humane treatment for all detained individuals, a principle that is grossly disregarded in enforced disappearances, where mistreatment is prevalent (Article 10). The right to a fair trial is another cornerstone of the ICCPR (Article 14), yet it is often denied to victims of enforced disappearances, who are deprived of access to justice. Finally, the ICCPR recognizes the right to legal recognition (Article 16), which is routinely denied to those who have disappeared, further compounding the violation of their rights. These principles collectively underscore the ICCPR's critical role in addressing and preventing the abuses associated with enforced disappearances (ibid). These provisions furnish a framework for international efforts dedicated to upholding human rights and addressing the severe violations inherent in enforced disappearances.

PAKISTANI LAWS RELATING TO MISSING PERSONS

In addressing the problem of missing persons in Pakistan, two key legal documents play a central role: the Constitution of Pakistan and the Code of Criminal Procedure (CrPC). The Constitution of Pakistan enshrines fundamental rights and guarantees, including provisions related to personal liberty and protection from arbitrary detention, which are essential in safeguarding individuals from enforced disappearances. Meanwhile, the CrPC outlines the procedural framework for criminal investigations and detentions, offering mechanisms for challenging unlawful detentions and ensuring due process. Despite these legal frameworks, challenges remain in effectively implementing these protections, highlighting the need for continued legal reforms and enhanced enforcement to address the issue of missing persons comprehensively.

Constitution of Pakistan 1973

The Constitution of Pakistan provides crucial protections relevant to the issue of missing persons through several key provisions. Article 4 ensures the right to be informed of the grounds of arrest and to challenge unlawful detention. Article 9 guarantees the right to personal liberty and protection from arbitrary arrest. Article 10 and 10A mandate the right to a fair trial and due process. Additionally, Articles 199 and 184(3) empower the High Court and Supreme Court to enforce these rights, ensuring judicial oversight and remedy for violations. These constitutional provisions establish a vital legal foundation for addressing and preventing enforced disappearances.

These articles explain further the fundamental rights and protections. Article 4 asserts the right of every citizen to be treated according to the law, ensuring safety and fair treatment (*Khalilur Rehman v. Deputy Commissioner, 1963*). Article 9 emphasizes that no individual can be denied life or freedom unless prescribed by the law. Article 10 outlines protections against arrest and detention, emphasizing rights to legal counsel, notification of reasons for arrest, and timely appearance before a magistrate. Enforced disappearances violate these principles, circumventing legal procedures and undermining human dignity. The Constitution grants high courts authority under Article 199 to issue orders requiring the production of a detainee, as seen in *Mst. Rowshan Bijaya Shaukat Ali Khan v. Government of East Pakistan, 1965*.

Article 10A upholds the right to an impartial judicial process, highlighting justice and procedural correctness. This right, essential to human rights, ensures fair trials and access to justice. Relatives of "disappeared" individuals have filed habeas corpus cases under Articles 199 and 184(3), urging the judiciary to locate their missing family members. Courts have directed relevant agencies to trace and present the "missing persons" despite resistance from security agencies. However, courts have refrained from invoking contempt of court powers to enforce compliance. These provisions underscore Pakistan's dedication to upholding the rule of law and safeguarding citizens' rights and dignity. However, the handling

of missing persons often violates these protections, constituting a clear breach of fundamental rights.

Criminal Procedure Code 1898

Within the Criminal Procedure Code 1898, two sections are particularly relevant to addressing cases of missing persons, underscoring the violation of these provisions in cases of enforced disappearance. The Code of Criminal Procedure (CrPC) of Pakistan contains essential provisions for addressing the issue of missing persons. Section 61 mandates that no person may be detained by the police for more than 24 hours without a judicial order, ensuring timely judicial oversight. Section 491 grants the High Court the authority to order the release of individuals unlawfully detained. These provisions are crucial for preventing arbitrary detention and providing legal recourse for those subjected to enforced disappearances:

The Code of Criminal Procedure (CrPC) of Pakistan includes provisions aimed at ensuring transparency and accountability in arrests to prevent arbitrary detention by law enforcement authorities. It mandates that individuals arrested without a warrant must be promptly informed of the reasons for their arrest and restricts the period of detention to a maximum of 24 hours. This limit excludes the time required for transporting the individual to the nearest magistrate's court. Any detention beyond this period requires a special order from a magistrate under the relevant section of the CrPC. Additionally, the CrPC empowers high courts to issue directions akin to a writ of habeas corpus, granting them the authority to ensure individuals within their jurisdiction are treated according to the law and to release those unlawfully or improperly detained (*shafqat ullah khan vs Naveed shahbaz, 1995*). This statutory power enables the courts to swiftly address cases of unlawful custody, upholding the principles of justice and individual rights.

VIEW OF THE SUPREME COURT OF PAKISTAN ON THE ISSUE OF MISSING PERSONS

The Supreme Court of Pakistan has intermittently addressed the issue of missing persons, though comprehensive records of its involvement are not

fully documented on the Court's website. While specific judgments highlight the Court's stance against enforced disappearances as a grave human rights violation, there remains a lack of a cohesive legal framework to effectively tackle the issue (Iqbal Hussain v. Federation of Pakistan, 2016; Muhammad Azam Khan Swati v. Federation of Pakistan, 2012).

In the Case of *Muhammad Azam Khan Swati v. Federation of Pakistan* (PLD 2012 SC 774), the Court underscored the necessity of accountability for enforced disappearances, acknowledging the state's role and the need for judicial scrutiny. Similarly, in the Case of *Iqbal Hussain v. Federation of Pakistan* (2016 SCMR 1261), the Court reiterated its condemnation of enforced disappearances and emphasized the importance of upholding human rights. Despite these rulings, the implementation of these principles has been inconsistent, revealing a gap between judicial pronouncements and practical enforcement (Iqbal Hussain v. Federation of Pakistan, 2016).

The Supreme Court's engagement has brought significant attention to the issue, particularly in high-profile cases from regions like Balochistan and Sindh. However, procedural delays often redirect these cases to lower courts, stalling investigations and hindering justice, likely influenced by political considerations that shield security agencies from scrutiny. The situation is particularly acute in ex-FATA and Khyber Pakhtunkhwa, where ongoing conflict exacerbates the problem, leaving families with limited access to justice (UN Working Group on Enforced or Involuntary Disappearances, 2020).

The UN Working Group on Enforced or Involuntary Disappearances has criticized Pakistan for failing to meet international standards and for procedural inefficiencies. The persistence of unresolved cases in conflict zones underscores systemic flaws within the judicial system (UN Working Group on Enforced or Involuntary Disappearances, 2020).

Under Chief Justice Iftikhar Muhammad Chaudhry, the Supreme Court's suo motu actions led to the formation of commissions to investigate enforced disappearances. However, the effectiveness of these measures remains questionable, as tangible outcomes have been

limited, and challenges in enforcement persist (Human Rights Case No. 965 of 2010, 2010). The government's reluctance to ratify the *International Convention for the Protection of All Persons from Enforced Disappearance* further complicates the issue, suggesting a protective stance towards implicated law enforcement agencies (UN Working Group on Enforced or Involuntary Disappearances, 2020).

During Chief Justice Iftikhar Chaudhry's tenure (2005-2013), the judiciary took proactive measures, including holding intelligence agencies accountable for unlawful detentions. These rulings, such as in *Human Rights Case No. 965 of 2010*, not only resulted in the release of some detainees but also established that no state organ, including intelligence agencies, is above the law (Human Rights Case No. 965 of 2010, 2010). Such judicial pressure has compelled the government to take concrete actions, including the establishment of the *Commission of Inquiry on Enforced Disappearances* in 2011.

However, confrontations between the judiciary and the executive often lead to tensions that threaten judicial independence. An example is the suspension of Chief Justice Iftikhar Chaudhry by President Pervez Musharraf in 2007, which sparked the 'Lawyers' Movement' and raised public awareness about judicial accountability. Similarly, Justice Jawwad S. Khawaja faced resistance from the government when he summoned intelligence officials regarding missing persons, highlighting ongoing conflicts between the judiciary and security agencies (Iqbal Hussain v. Federation of Pakistan, 2016).

In short, while the Supreme Court of Pakistan has made significant strides in addressing enforced disappearances, its effectiveness has been limited by challenges in enforcement, political resistance, and procedural inefficiencies. Strengthening its impact requires robust enforcement mechanisms, increased political commitment, and the development of a comprehensive legal framework to ensure accountability and protect citizens, particularly in conflict-affected areas like Khyber Pakhtunkhwa and ex-FATA.

RIGHT OF INDIVIDUAL IN CASE OF COMMISSION OF AN OFFENCE AGAINST THE STATE INTEGRITY AND LOYALTY

In addressing the issue of missing persons and the rights they are entitled to, it is crucial to consider both international and Pakistani laws. The central concern is whether an individual, who may be accused of terrorism, should be granted the same rights as any other accused person. This question arises frequently, with arguments presented by institutions that suggest such individuals, due to their potential threat to national security, should not be afforded the same legal protections. However, it is imperative to recognize that even a person suspected of terrorism remains an accused until proven guilty by a court of law. Therefore, they should be accorded the same fundamental human rights as any other person.

In Pakistan, these rights are enshrined in various constitutional articles, such as Article 4, which guarantees the right of individuals to be dealt with in accordance with the law; Article 9, which protects the right to life and liberty; Article 10, which ensures safeguards against arbitrary arrest and detention; and Article 10A, which provides the right to a fair trial.

Internationally, the Rome Statute under Article 5(8)(a)(vi) addresses crimes against humanity, including enforced disappearance, and Article 7(e) defines enforced disappearance of persons as a crime against humanity. The Universal Declaration of Human Rights (UDHR) in Article 3 ensures the right to life, liberty, and security of person; Article 5 protects against torture or cruel, inhuman, or degrading treatment or punishment; Article 6 provides the right to recognition everywhere as a person before the law; Article 10 guarantees the right to a fair and public hearing by an independent and impartial tribunal; and Article 11 ensures the right to be presumed innocent until proven guilty. Additionally, the International Covenant on Civil and Political Rights (ICCPR) in Article 6 reinforces the inherent right to life; Article 7 prohibits torture and cruel, inhuman, or degrading treatment or punishment; Article 9 guarantees the right to liberty and security of person; Article 10 mandates humane treatment for all

persons deprived of their liberty; Article 14 ensures the right to a fair and public hearing by a competent, independent, and impartial tribunal; and Article 16 upholds the right to recognition everywhere as a person before the law. These provisions collectively affirm that missing persons, regardless of the accusations they face, must be treated with the dignity and rights accorded to all human beings under both national and international law.

CONCLUSION

The phenomenon of enforced disappearances in Pakistan presents a grave human rights challenge that demands urgent attention and comprehensive legal reforms. Throughout this paper, we have explored the historical context, current legal frameworks, and the profound impact on families and communities affected by this issue. Our analysis reveals significant gaps in existing laws and their implementation, highlighting the need for robust mechanisms to ensure accountability and justice for the victims.

International conventions and human rights instruments, such as the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), play a crucial role in shaping local laws and policies regarding missing persons. Despite Pakistan being a signatory to several international human rights treaties, there is a noticeable gap between international standards and domestic practices. The influence of these conventions is pivotal in advocating for legal reforms and ensuring that Pakistan adheres to its international obligations.

The cases examined illustrate not only the human cost of enforced disappearances but also the systemic issues within law enforcement and judicial processes. The lack of transparency, inadequate investigation procedures, and impunity enjoyed by perpetrators perpetuate a cycle of fear and injustice. The stories of the missing and their families underscore the urgent need for legislative and policy changes to address these deficiencies. We advocate for specific legal reforms, including the criminalization of enforced disappearances, the establishment of independent oversight bodies, and the provision of support services for affected families. Incorporating international human rights standards into national legislation is essential to bridge the

gap between Pakistan's international commitments and its domestic practices. Enhanced cooperation with international organizations and civil society can further strengthen efforts to combat this issue.

The implementation of these recommendations can pave the way for a more just and humane society where the rights of all citizens are protected. By shedding light on the plight of missing persons and advocating for comprehensive legal reforms, this paper aims to contribute to the broader struggle for human rights and justice in Pakistan. Continued research, advocacy, and collaboration are essential to achieving lasting change and ensuring that the shadow of enforced disappearances is lifted once and for all.

While international conventions provide a framework for the protection of human rights, their effective integration into local laws is crucial for addressing the issue of missing persons in Pakistan. Integrating these conventions is essential to bridge the gap between international obligations and local realities, ensuring justice and accountability for victims and their families.

RECOMMENDATIONS

- ❖ **Criminalization of Enforced Disappearances:** Amend national legislation to explicitly criminalize enforced disappearance of enforced disappearance as a distinct offense in the penal code.
 - ❖ **Independent Oversight Bodies:** Establish independent oversight bodies to monitor and investigate cases of enforced disappearances. These bodies should be empowered to operate without interference, ensure transparency, and hold perpetrators accountable.
 - ❖ **Strengthening Judicial Processes:** Enhance the capacity and independence of the judiciary to handle cases of enforced disappearances. This includes training judges and legal professionals on international human rights standards and the specificities of enforced disappearances.
 - ❖ **Victim Support Services:** Develop comprehensive support services for the families of missing persons, including

psychological counseling, legal aid, and financial assistance. These services should be readily accessible and adequately funded.

- ❖ **International Collaboration:** Strengthen collaboration with international human rights organizations and bodies such as the United Nations Working Group on Enforced or Involuntary Disappearances. This can facilitate knowledge sharing, capacity building, and adherence to international best practices.
- ❖ **Public Awareness Campaigns:** Launch public awareness campaigns to educate the public about the issue of enforced disappearances, their rights, and the legal mechanisms available for seeking justice. These campaigns can also help reduce stigma and encourage reporting.
- ❖ **Data Collection and Transparency:** Establish a centralized database to systematically collect and publish data on cases of enforced disappearances. This database should be accessible to the public and regularly updated to ensure transparency and accountability.
- ❖ **Legislative Reform:** Review and amend existing laws to align with international human rights standards. This includes ensuring that laws provide adequate protection for human rights defenders, journalists, and others who work to expose and address enforced disappearances.
- ❖ **Training and Capacity Building:** Conduct regular training programs for law enforcement agencies, including police and military personnel, on human rights standards, investigation procedures, and the handling of enforced disappearance cases. This can help improve the response and accountability of these agencies.
- ❖ **Ratification and Implementation of International Treaties:** Advocate for the ratification of international treaties related to human rights and enforced disappearances that Pakistan has not yet ratified. Ensure effective implementation of these treaties through national legislation and policies.
- ❖ **Legal Aid and Representation:** Provide free legal aid and representation for families of missing persons to ensure they can navigate the legal system effectively and seek justice for their loved ones.
- ❖ **Mechanisms for Accountability:** Develop and implement mechanisms to hold state and non-state actors accountable for enforced

disappearances. This includes establishing procedures for investigating and prosecuting those responsible, regardless of their position or rank.

By implementing these recommendations, Pakistan can make significant progress in addressing the issue of missing persons, ensuring justice for victims and their families, and fulfilling its international human rights obligations.

REFERENCES

- Ali, M. I. Unveiling shadows: Imperative to criminalize enforced disappearances in Pakistan. *Vietnamese Journal of Legal Sciences*, 9(2), 90–114.
- Amnesty International. (2021). Human rights in Pakistan: Annual report. Retrieved from <https://www.amnesty.org>
- Baranowska, G. (2022). The rights of the families of missing persons: Going beyond international humanitarian law. *Israel Law Review*, 55(1), 25–49.
- Code of Criminal Procedure. (1898). Sections 61, 491.
- Commission of Inquiry on Enforced Disappearances. (2024). Introduction. Retrieved August 23, 2024, from <https://coioed.pk/>

- Constitution of Pakistan. (1973). Art. 4, 9, 10, 10A, 199, 184(3). Retrieved from <https://www.pakistani.org/pakistan/constitution/>
- Fazi, M. A. (2020). Enforced disappearances and constitutional guarantees in Pakistan: A human rights perspective. *European Journal of Social Sciences*, 59(3), 288–299.
- Hassan, T. (2009). The Supreme Court of Pakistan and the case of missing persons. *Asia-Pacific Journal on Human Rights and the Law*, 10(1), 23–47.
- His Majesty's Inspectorate of Constabulary and Fire & Rescue Services. (2024, March 15). Missing person. Retrieved from <https://hmicfrs.justiceinspectrates.gov.uk/glossary/missing-person/>
- Human Rights Case No. 965 of 2010. (2010). Supreme Court of Pakistan.
- Human Rights Watch. (2020). Pakistan: Enforced disappearances persist. Retrieved from <https://www.hrw.org>
- Hussain, S. (2019). Violence, law, and the archive: How dossiers of memory challenge enforced disappearances in the war on terror in Pakistan. *PoLAR: Political and Legal Anthropology Review*, 42(1), 53–67.
- ICMP. (2024, April 26). Who are the missing? Retrieved from <https://www.icmp.int/the-missing/who-are-the-missing>
- International Convention for the Protection of All Persons from Enforced Disappearance. (2006). Article 1. Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced>
- International Covenant on Civil and Political Rights. (1966). Articles 6, 9, 10. Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>
- Khalilur Rehman v. Deputy Commissioner, PLD 1963 Kar 213.
- Khan, M. S., Gul, N., & Farid, N. Enforced disappearance and the role of law enforcement agencies and judiciary in Pakistan.
- Mst. Rowshan Bijaya Shaukat Ali Khan v. The Government of East Pakistan, PLD 1965 Dacca 241.
- Naseem, F., Sadia, H., & Waraich, R. S. (2022). Islamic approach towards the fundamental rights regarding arrest and detention. *Global Legal Studies Review*, 7(2), 126–132.
- PLD 2014 SC 305. (2014).
- PLJ. (2010). Lahore Cr.C(Lahore), 179.
- Rome Statute of the International Criminal Court. (1998). Articles 5, 7. Retrieved from <https://www.icc-cpi.int/resource-library/Documents/RS-Eng.pdf>
- Shafiq, A. (2013). The war on terror and the enforced disappearances in Pakistan. *Human Rights Review*, 14(4), 387–404.
- Shafqat Ullah Khan v. Naveed Shahbaz and 3 Others, 1995 P.Cr.L J 1868.
- The Magna Carta. (1215, June). Runnymede.
- The Scottish Government. (2018, August 8). National Missing Persons Framework for Scotland. Retrieved from <https://www.gov.scot/publications/national-missing-persons-framework-scotland/pages/5/>
- United Nations. (1948). *Universal Declaration of Human Rights*. Retrieved from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>
- United Nations Office of the High Commissioner for Human Rights. (2024). *International Convention for the Protection of All Persons from Enforced Disappearance*. Retrieved from <http://www.ohchr.org/Documents/ProfessionalInterest/disappearance-convention>
- UN Working Group on Enforced or Involuntary Disappearances. (2020). Report on Pakistan's compliance with international standards on enforced disappearances..