

The Culture of Power and Human Rights Abuse in Pakistan

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Every year Pakistan observes Human Rights Day with seminars, rallies, and extensive press coverage.¹ Academics, activists, and representatives of human rights franchises² express the usual concerns about police excesses, honor killings, and the need to ensure greater public participation in governance. Viewed from a broader historical perspective the debate about human rights abuse is hampered by a lack of understanding of its essential causes by both state officials and activists. This cause is the culture of power³ and the level of arbitrariness it manifests. The more arbitrary a culture of power the greater the propensity towards the abuse of the rights of citizens.

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1 See, for example, *Dawn* (Islamabad), December 11, 2004, pp.2, 3, 4, 6, 14, 18.

2 Such as the Human Rights Commission of Pakistan, and the United Nations.

3 The culture of power is the aggregate of the behaviour of all individuals and groups that exercise, or have exercised, power through the state over a historically significant period. It is the human expression of the evolution of the state and the determinant of the behaviour of the state and its officials towards each other and the people governed. Certain indicators that help us determine the nature of a particular region's culture of power include the condition of the institution of private property, the presence of autonomous institutions that can lawfully challenge the power of the ruling class, the prevalence of moral relationships between servants of the state, the composition and cohesion of the ruling class, the degree to which the intelligentsia is dependent on the state apparatus, the position given to the rulers by the ideology or religion they use to legitimize their dominance, the allocation of resources to the internal security apparatus and armed forces, the functioning of the financial administration and criminal justice systems, and the discretionary powers of the supreme executive and those officials or institutions that exercise power in her name.

Extremely arbitrary cultures of power can thrive in very different social contexts. Highly educated and technologically advanced societies, such as the Soviet Union and Germany before 1945, treated their own people with unremitting brutality and contempt. On the other hand, poor and materially backwards societies, such as India, have to a certain extent combined the forms, and some of the substance, of popular sovereignty and constitutional government, in spite of their historical experience of arbitrary rule.⁴ Even liberal democracies that emerged in societies whose cultures of power were not arbitrary by historical standards, such as the United States, have had, and continue to have, serious problems controlling their law enforcement and intelligence agencies. This is a phenomenon evidenced by recent scandals in American prisons in Cuba, Iraq, and Afghanistan. Although the details of the reported prisoner abuse differ in each case, the arbitrary and excessive behaviour of American officials at these prisons is a sad testament to the speed with which a culture of impunity can develop even in a society that prides itself on its historic constitutional and liberal achievement. Repeatedly societies have forgotten Montesquieu's admonishment:

Mankind ought not be governed with too much severity; we ought to make a prudent use of the means which nature has given us to conduct them. If we inquire into the cause of all human corruptions, we shall find that they

4 However, the brutality of the Indian police is legendary: "In 1980, a crime wave was sweeping through the previously unremarkable town of Bhagalpur in the state of Bihar. The police were smarting under the taunts of the local press and the public. No sooner did they arrest a suspected criminal, than he managed to get bail from the courts. So the police decided to teach the criminals a lesson. Among those caught in their dragnet was Baljit Singh, the son of a fruit-seller. Baljit was thrown into a jeep and driven to the police station...Policemen held him down, forced his eyes open and pierced them with a bicycle spoke. Then a man in a white shirt, referred to by the police as 'Doctor Sahib', injected acid into his eyes. He was taken back to a cell and locked up with six other blinded prisoners...at least twenty-six people were blinded by the police before this barbarity was ended. Even then, the police were not exactly repentant. A senior police official in the state capital of Bihar said: 'The police resort to atrocities while dealing with criminals because they do not find the traditional methods of justice effective.'" Mark Tully and Zareer Masani, *From Raj to Rajiv: 40 Years of Indian Independence* (London: BBC Books, 1988), pp.153-54. One can perhaps understand why the lower ranks of the police, poorly educated and economically neglected, would indulge in such actions. For a senior officer to justify such acts, on record, however, is a startling indication of how much the level of civilization of India's ruling classes has fallen.

proceed from the impunity of criminals, and not from the moderation of punishment.⁵

The ultimate form of punishment, which also the most intimately connected to the arbitrary power of its perpetrator, is torture. Torture can be defined as the application of excessive physical and psychological violence by any individual or group against any other that is in its power. The effect of torture is to produce unbearable pain. Its infliction may serve ideological, political, or economic objectives. The relationship between the torturer and his victim bestows arbitrary power upon the former, instills total fear of that arbitrary power in the latter, and forever alters the base of experience for all involved.

In the subcontinent torture, or the fear thereof, has long been an integral component of the historical experience of governance⁶ and the culture of power. Kautilya, in the *Arthashastra*⁷ details the procedures and circumstances where torture may be applied. He asserts that torture is to be used only against those “about whom there is a strong presumption of guilt,” and declares petty criminals, the elderly, the sick, Brahmins, etc., exempt.⁸ That said, all normal procedures and rules were subject to arbitrary manipulation by the king and his favourites, and, the territorial extent and bureaucratic complexity of the Maurya Empire, no doubt left investigating officers with more than enough discretion to bend or break the rules when it suited them. Kautilya enumerates the official sanctioned methods of torture (18 in all) and adds that the “instruments to be used, the conditions, the methods of infliction, the duration, and the termination of torture shall be ascertained from the appropriate Manual.”⁹ For those that disrupt the ability of the state to perform its core functions,¹⁰ such as highway robbers, who would presumably have

5 Charles de Secondat, Baron of Montesquieu, *The Spirit of Laws* (New York: Prometheus Books, 2002), p.84.

6 That is, the experience of state power.

7 Kautilya, *The Arthashastra*, trans., L.N. Rangaraja (New Delhi: Penguin Books, 1992); Kautilya, *Arthashastra* trans., R. Shamasastri (Bangalore: Government Press, 1915); and B.P. Sinha, *Readings in Kautilya's Arthashastra* (New Delhi: Agam Publishers, 1976), are all versions of Ancient India's most famous compendium on statecraft. Kautilya was the Prime Minister to Chandragupta Maurya, the founder of the Maurya Empire, about 320 BC.

8 Kautilya, *The Arthashastra*, trans., Rangaraja, pp.466-67.

9 *Ibid.*, pp.467-68.

10 That is the maintenance of law and order, and the collection of taxes.

operated on the network of excellent state run arteries, are to be impaled, while those who rob from the royal treasury, the focal point of the elaborate financial administration of the Maurya Empire, are to be put to death by torture.¹¹

In medieval times, for which historical material is more forthcoming, the link between arbitrariness and the use of torture is much easier to make. Ibn Battuta wrote of Sultan Muhammed bin Tughluq that each day “hundreds of people chained, pinioned, and fettered, are brought to his hall” where he ordered beatings, torture, or executions.¹² The sultan was also “of all men the fondest of making gifts and of shedding blood” so that the gates of the royal palace were “never without some poor man enriched or some living man executed.”¹³ Battuta also related:

The Sultan had a half-brother named Masud Khan, whose mother was the daughter of Sultan Alauddin... He suspected him of wishing to revolt and questioned him on the matter. Masud confessed through fear of torture, for anyone who denies an accusation of this sort which the sultan formulates against him is put to torture, and the people consider death a lighter affliction.¹⁴

The arbitrary and excessive application of violence against subjects was also a central feature of the culture of power of the Mughals and other less successful rulers. Jahangir, for instance, ordered a band of robbers, about one hundred in number, “torn to pieces”¹⁵ and ordered some three hundred partisans of the rebellious prince Khusrau impaled.¹⁶

For rulers of countries in which an arbitrary culture of power prevails torture has immense appeal due to its many practical advantages. First, arbitrary rulers consider provision of speedy justice a great virtue whose attainment offsets the irregularities that this might entail. Second, arbitrary governments seek to maintain order through rendering society passive, indifferent, and atomized. This

11 Kautilya, *The Arthashastra*, trans., Rangaraja, p.481.

12 Ibn Batutta, *Travels in Asia and Africa 1325-54* (London: Routledge and Keagan Paul, 1929; reprint Lahore: Services Book Club, 1985), p.201.

13 *Ibid.*, p.195.

14 *Ibid.*, pp.201-02.

15 *Memoirs of Jahangir*, trans., H.M. Elliot, ed., John Dawson (n.p., 1871 reprint; Lahore: Islamic Book Service, 1975), p.237.

16 *Tuzuk-i-Jahangiri*, trans., Alexander Rogers, ed., Henry Beveridge, Vol 1, Years 1-13 (n.p. 1909-1914 reprint; Delhi: Munshiram Manoharlal Publishers, 1978), p.54.

outcome is best secured by instilling fear of the arbitrary powers of state officials responsible for law and order so that every subject understands “that his security depends entirely on his being reduced to a kind of annihilation.”¹⁷ Third, the servants of arbitrary overlords know that they are only marginally less secure than those they tyrannize, and can be removed and disgraced at a moment’s notice.

This realization produces consequences familiar to inhabitants of continental bureaucratic states in Asia, Africa, Eastern Europe, and Latin America. In matters that affect the public interest and require long-term effort and serious reflection, or involve the needs of private citizens, the apparatus chokes on its own procedural requirements, petty clerical objections, and cultural deficiencies. In matters that affect the personal interests of the ruler, his dependants, servants, and favourites, obstacles vanish, objections at the highest and most informed levels are quashed, and the deed is done with little, if any regard, for its impact on the public interest. In an atmosphere of inertia and arbitrariness, the criminal justice system is geared principally towards the production of victims, not the determination of the truth, and thus torture is a most effective instrument, for it produces results with minimal effort.

The idea that torture should not be used and the practical steps to translate these ideas into practice are both derivatives of the Enlightenment¹⁸ and liberalism. The latter, in particular, maintains that the purpose of the state is to uphold the natural rights of its citizens. These rights include, first and foremost, that of self-

17 Montesquieu, *The Spirit of Laws*, p.74.

18 “Torture was systematically used in the French judicial system to secure confessions and/or to discover the names of accomplices. As Voltaire’s thinking evolved in later years, he came to have serious reservations about the use of torture; though in fact, he never ruled it out absolutely.” Ian Davidson, *Voltaire in Exile: The Last Years, 1753-78* (London: Atlantic Books, 2004), p.46. “The central problem of the judicial system in France, and in many other Continental European countries, was the rationale of criminal law was confused with the rationale of social hierarchy, and both were confused with the rationale of religious dogma.” *Ibid.*, p.148. In Continental Europe, “The main features of the inquisitorial system were that it operated in private, and depended heavily on the use of torture. The real purpose of a trial was not primarily to discover and establish the facts of the case, but to prove guilt; the assumption being that a man would (probably) not be tried unless he were guilty.” *Ibid.*, p.149. In France there were two levels of torture that could be applied, *la question ordinaire* and *la question extraordinaire*, and all relevant enquiries were “conducted in writing and in secret.” *Ibid.*

preservation¹⁹ and security from the arbitrariness of the state. All other rights, inclusive of those to private property, and the freedoms of conscience, association, and expression, stem from the first right. After all, a state that can arbitrarily deprive its subjects of their lives can without great difficulty confiscate their properties, break-up their associations, and deprive them of personal liberties.²⁰

The first serious efforts to limit the arbitrary powers of the state and its servants in the subcontinent were made by the British. Between 1774 and 1935, the British introduced a number of autonomous institutions ranging from an independent judiciary, to private property, public service commissions, political parties, a merit based bureaucracy, and legislatures. The objective was to introduce to the subcontinent the rule of law and, eventually, a measure of public participation in government. Central to process was the creation of a space within which lawful opposition to the government's policies was permitted and civil society could be born.

Reducing the level of arbitrariness in the exercise of state power proved an enormously difficult, and often thankless, task, for the British were up against the culture of power of the subcontinent. In spite of important studies, such as the *Torture Commission Report* of 1855,²¹ and the Indian Police Commissions of 1860 and 1902, and the introduction of legislation, such as the Indian Penal Code in 1861, and the Indian Evidence Act of 1872, the arbitrariness of the criminal justice system, though contained, continued to persist. It was partially in response to this that the Indian National Congress, almost from the day of its inception, demanded the complete separation of executive and judicial powers in the districts. Rational laws and procedures, a regard for merit that encompassed both intellect and character, and autonomous institutions, such as the Congress itself, did reduce the arbitrariness of the state under the British.

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- 19 Even Hobbes concedes that the self-preservation of the individual is the basis of the social contract, which, if violated by the state, renders rebellion lawful. By the mid-eighteenth century, in Europe, "The use of torture was already widely criticized, and had been abolished in England, Prussia and Sweden." *Ibid.*, p.153.
- 20 See, for instance, Bertrand Russell, *History of Western Philosophy and its Connection with Political and Social Circumstances from the Earliest Times to the Present Day* (London: Routledge, 1996), pp.577-84, and pp.596-616.
- 21 Percival Griffiths, *To Guard my People: The History of the Indian Police* (London: Ernest Benn Limited, 1971), p.80.

That said, no number of legal changes could, or can, fundamentally alter a society's intuitive reactions to the exercise of state power in the short-term. What can be accomplished in the medium term, that is, in decades, is an improvement in detail and the daily operations of the state. Successful reform of the principles of a particular culture of power require exertions over many generations geared to generate movement towards a clear vision of the future. In the context of Pakistan, instead of improving and building the institutions that sustain the rule of law, meritocracy, and self-government, the opposite has been accomplished. Today, Pakistanis are more insecure and cynical vis-à-vis their own state than twenty, forty, or fifty years ago.

These views are corroborated by the *Report of the Committee for the Study of Corruption, 1986*, constituted by the Government of Pakistan.²² The Committee based its findings on extensive surveys, and the reflections of its members. About 70 percent of the responses indicated that citizens could not secure their lawful rights except through bribes and favours.²³ Only 43 percent said they would turn to the police for help, half said they would not even report anti-state activities out of fear of coming to the attention of state officials, and 75 percent believed that those in power "place themselves above the law."²⁴ 88 percent of the responses indicated that people regarded the abuse of power as "unavoidable" or "that to be corrupt is smart, to be honest stupid."²⁵

The Committee was equally unsparing in its treatment of the criminal justice system, the preferred target of human rights activists. It declared that "the ascent of any society into civilization or its descent into barbarism is best measured by its attitude towards and handling of the fallen."²⁶ In 1986, 60 percent of inmates were under trial prisoners exposed, like convicts, to the "generally barbaric and brutal behaviour of the jail staff," infinitely more conducive to the production of "hardened" criminals than "penitent" sinners.²⁷

22 *Report of the Committee for the Study of Corruption, 1986* (Islamabad: Cabinet Secretariat, Establishment Division, 1986).

23 "Sifarish." *Ibid.*, p.27.

24 *Ibid.*, p.34.

25 *Ibid.*, p.60.

26 *Ibid.*, p.238.

27 *Ibid.*, p.239.

In 2001-2002, the CIET²⁸ Social Audit, which surveyed 57,000 households in 97 districts,²⁹ found that fewer “than one quarter of the households...would contact the police for a problem of personal safety or threat to property.”³⁰ About 30 percent of those surveyed said that “the police made them feel safe”, only 10 percent “reported contacts with the police” over the preceding five years, with half of the contacts “initiated by the police”, which were, unsurprisingly, “more common in the most vulnerable households.”³¹ Only half “thought the courts were there to help them.”³² In December 2003, Brad Adams, the Executive Director of the Asia Division of Human Rights Watch, in an open letter addressed to the President of Pakistan, stated:

Torture is routinely used in Pakistan to obtain confessions in criminal cases and against political opponents and journalists. Most acts of torture committed by civilian law enforcement agencies are aimed at producing a confession during the course of a criminal investigation. By contrast, acts of torture by military agencies primarily serve the purpose of “punishing” an errant politician, political activist or journalist. Torture by the military usually takes place after the victim has been abducted — the purpose is to frighten the victim into changing his political stance or loyalties or at the very least to stop him from being critical of the military authorities. The victim is often released on the understanding that if he fails to behave, another abduction and mistreatment will follow. In this manner, the victim can be kept in a state of fear often for several years.³³

The Committee for the Study of Corruption, in its effort to explain the causes and effects of corruption, elevated its discourse to a plane worthy of the philosophy of history. The Committee asserted, “the root-cause of all corruption is the misuse of the power and

28 CIET stands for Community, Information, Empowerment and Transparency. It is a Mexico-based NGO constituted in 1994. For more, see, <http://www.ciet.org>.

29 A. Cockcroft, N. Anderson, K. Omer, *et.al.*, “Social Audit of Governance and Delivery of Public Services: Base Line 2002 National Report”. Paper Presented at Conference on State of Social Sciences and Humanities: Current Scenario and Emerging Trends, hosted by Quaid-i-Azam University, Islamabad, in collaboration with Fatima Jinnah Women’s University, Rawalpindi, and the Council for Social Sciences, Pakistan, Islamabad, December 15-17, 2003, p.276.

30 *Ibid.*, p.281.

31 *Ibid.*

32 *Ibid.*, p.282.

33 <http://hrw.org/press/2003/12/pakistan-ltr120203.htm>, December 2, 2003. The letter discusses specific instances of abuse and waxes eloquent about the rule of law and press freedoms without, however, betraying the slightest understanding of real cultural and historical forces that shape the conduct of the state apparatus.

authority vested in government.”³⁴ This “misuse” was the product of the “arbitrary culture of power,”³⁵ created and sustained by millennia of “despotic and exploitative,”³⁶ represented by ruling elites that saw, and continue to see:

...the state as their personal estate, spreading wide a network of patron-client relations, they present a model and create a structure which conditions the people to (rightly) believe that advancement in life is possible only through the patronage of powerful patrons...An exceptional few struggle to retain their faith, large numbers desert the camp of the good...the decline of the state gathers momentum as good men continue to be suppressed and bad men gain the upper hand. Arbitrary rule is corrupt rule and it evokes in the people arbitrary and corrupt responses...³⁷

This “arbitrary culture of power” destroyed “social solidarity,” promoted “internal chaos”, invited “external aggression,” and cultivated an ultimately suicidal combination of “intellectual inertia,” “civic indifference,” and “dread of the rational.”³⁸

In February 2000, Zafar Iqbal Rathore, a former interior secretary, and a member of the Committee for the Study of Corruption whose findings are cited here, presented then Interior Minister, Lt. General Moinuddin Haider, with a paper titled “State and Order.”³⁹ Rathore observed:

No one realized “the phenomenon of change” in society e.g. urbanization, communications and mobility. This society has undergone more changes in the last 50 years than in the previous two thousand years. We have always looked for “clever”, tactical solutions based on subjective make-believe facts, rather than wise, strategic long term solutions based on enlightened self-interest. This resulted in the perpetuation of an outmoded system, *without applying ourselves to improving the quality of the state apparatus, specially the qualifications for induction, training, equipment, salaries and the privileges, and their numbers etc.* Actually we did worse, we massively subverted this outmoded system by large scale arbitrary interference...

Briefly speaking we have a Criminal Justice System...staffed mostly by people who are generally recruited, trained, promoted and posted without any reference to merit, and almost entirely by their subservience to people

34 Report of the Committee for the Study of Corruption, 1986, p.77.

35 Ibid., p.76 A-1.

36 Ibid., p.64.

37 Ibid., p.94.

38 Ibid., p.95.

39 Zafar Iqbal Rathore, Chairman of the Focal Group on Police Reform, “State and Order.” Paper presented to the Interior Minister, Lt. General Moinuddin Haider, February 2000.

in power. *It is imperative that we take steps to improve the quality of the police personnel. Therefore, the first and basic reform which is necessary is to insulate the management for the police from the arbitrary interference of the powerful members of the executive. This can be done by creating a neutral body of eminent persons to manage the police. This body will also undertake accountability of the police.* Since the Second World War this has been successfully done in almost all the countries of North America, Western Europe and Japan. The modalities of establishing these neutral bodies, depends on the legal and institutional conditions of different countries...but the objective is the same,—insulate the police management from arbitrary interference from the powerful members of the executive...

...As the state of order has nearly collapsed throughout the society, some areas being more affected than others, instead of trying for sustained improvement, we seem to panic, to react by promising huge funds and powers to individuals and departments who promise to rid us of this nightmare. This solution has neither worked before nor is it likely to work now.⁴⁰

Therein lies the great dilemma. The reduction of human rights abuse requires the regulation of state power. The regulation of state power can flow only from the habilitation of autonomous institutions. Autonomous institutions cannot survive unless the ruling elite perceives that the reformation of its arbitrary culture of power is ultimately linked to its own survival. The arbitrary culture of power that pervades Pakistani state and society, however, is the product of centuries of historical experience and cultural conditioning. The intellectual effort and moral stamina that such an attempt must draw upon apparently dwarfs the capabilities of the Pakistani ruling elite, accustomed as it is to relying upon received wisdoms from benefactors as diverse as American neo-conservatives, Marxist intellectuals, and religious fundamentalists.

40 Rathore, "State and Order." Emphases original.