

Grey Areas in Pakistani Criminal Law: The Missing Safeguards in Arrest Procedures for Vulnerable Accused with Mental Health Conditions and Neurodivergence

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Abstract

Through a comparative legal review, this paper examines the Pakistani legal framework concerning the protection and rights of the vulnerable population with intellectual disabilities, autism, and other related mental health conditions within the criminal justice system. The paper focuses specifically on the absence of legal safeguards at the point of arrest and during the first 24 hours of custody before the magistrate presentation, a critical period when suspects are most vulnerable to secondary victimisation. Comparative analysis with jurisdictions such as the United Kingdom, the United States, and other countries reveals established mechanisms, including supported decision-making, mandatory police training, and custodial safeguards that protect vulnerable individuals from rights violations. The identified safeguards were systematically compared against the current Pakistani legal framework governing arrest and pre-trial detention. This review produced a structured gap map of Pakistan's criminal procedure framework, evaluating the absence of enforceable safeguards across four domains: (1) vulnerability identification at arrest, (2) accessible communication of rights, (3) provision of an appropriate adult, (4) coercion prevention during initial custody. The paper concludes that the lack of procedural protections significantly increases the risk of coerced confessions, unreliable testimony, and miscarriages of justice. Urgent reforms are needed, including clearer statutory definitions, harmonisation of laws across provinces, integration of supported decision-making, structured training for law enforcement personnel, and the establishment of independent oversight mechanisms.

KEYWORDS

mental health; neurodivergence; criminal law; intellectual disability; justice system.

Introduction

Due process is the linchpin of the criminal justice systems around the globe, ensuring that state power is exercised within the limits that protect the rights of the accused. Fundamentally, due process guarantees that individuals are not arbitrarily detained, coerced, or denied access to fair legal procedures (Ismaili & Sulejmani, 2024). Prior Pakistani discussions predominantly focused on trial-stage issues like the insanity defence (Ajmal et al., 2022) or general custodial violence (Baig, Hassan et al. 2025), rather than systematically mapping the arrest-to-magistrate phase as a unique procedural blind spot for individuals with mental health conditions. In Pakistan, constitutional and statutory safeguards such as Article 10 of the Constitution and the Code of Criminal Procedure (CrPC), establish that any individual taken into custody must be presented before a magistrate within twenty-four hours of arrest (K. Baig et al., 2024). Although rights attach at arrest, the

criminal procedure framework lacks operational safeguards ensuring vulnerable suspects can understand and exercise those rights during the first 24 hours. Yet, the period before the magistrate presentation, particularly the initial arrest and immediate custodial phase, remains legally ambiguous. It is precisely that human rights violations, abuses, and miscarriages of justice frequently occur within this gap (Amnesty International, 2021; M. Baig et al., 2025).

The concern regarding miscarriage of justice and safety while detained becomes even more pressing when viewed through the lens of individuals with neurodevelopmental disabilities and other mental health conditions (Hughes et al., 2020). Forensic psychology has consistently accentuated the vulnerabilities of this population during the criminal justice procedures (Sarrett, 2019; Smith, 2023). Individuals with autism spectrum disorder (Cooper et al., 2022; Railey et al., 2021), intellectual disabilities (Spaan & Kaal, 2019), bipolar disorder (Etain et al., 2013; Pulay et al., 2008), schizophrenia (Greenberg et al., 2011), or other psychosocial conditions (Swann, 2011) often experience difficulties with communication, comprehension of rights, and susceptibility to coercion (Foster & Young, 2022). Studies from multiple jurisdictions discussed the systemic barriers in navigating legal procedures and the vulnerability of these individuals, including disproportionate risk of wrongful arrest, difficulty understanding processes, meeting expectations, managing bias, and coerced confessions (Fisher, Baird et al. 2016, Díaz-Faes, Codina et al. 2023). In interrogation settings, for example, they may display compliance or acquiescence to authority figures, leading to unreliable statements that can increase the risk of secondary victimization.

While international standards such as the UN Convention on the Rights of Persons with Disabilities (UNCRPD) establish the universal human rights principles that must govern the treatment of persons with disabilities in any legal system, including during police encounters. Article 13 provides a principle-based framework centered on non-discrimination, dignity, and effective access to justice. Crucially, it mandates the provision of procedural accommodations, such as communication support or an intermediary, to guarantee these rights on an equal basis. While the UNCRPD does not specify technical moments of arrest, its principles directly apply from the very onset of any deprivation of liberty, requiring states to ensure that all procedures, including arrest and detention, are accessible and non-discriminatory. The United Kingdom's Police and Criminal Evidence Act Code C (1984), key sections mandate that the custody officer inform the detainee of their right to have someone notified of their arrest (Section 5.1) and their right to free, independent legal advice (Section 6.1). Furthermore, for individuals identified as vulnerable, including many persons with disabilities, Paragraph 1.4 and Annex E require the summoning of an appropriate adult to safeguard the detainee's rights and facilitate communication during interviews and other key procedures. This structure

embeds protective measures from the earliest stage of police custody.

Pakistani law lacks equivalent protection provisions. No regulations exist for law enforcement to screen mental health conditions or ensure the presence of an appropriate adult for vulnerable suspects. In consequence, vulnerable individuals with mental health conditions and neurodivergent individuals often face the criminal process without recognition of their vulnerabilities or accommodations for their needs (Gormley, 2017). The absence of clear rules & regulations creates a grey area, a legal vacuum, and procedural silence, where abuse and miscarriage of justice are most likely to occur. The current paper tends to underscore this overlooked dimension of Pakistan's criminal law by conducting a critical review of existing legal provisions, forensic psychological evidence, and international standards. Specifically, it argues that Pakistan's criminal justice system is deficient in regulating the initial arrest stage. This lacuna exposed neurodivergent and mentally ill individuals to heightened risks of secondary victimisation.

Methods

The paper used a comparative legal review framework to analyse the procedural safeguards for individuals with mental health disabilities during arrest and the pre-judicial stage. The analysis was structured into two phases: A targeted review of international human rights instruments (e.g., the UN Convention on the Rights of Persons with Disabilities - CRPD) and the legal frameworks of selected jurisdictions (the United Kingdom's Police and Criminal Evidence Act 1984 and its Codes of Practice, relevant procedures from Canada or Australia) was conducted. These jurisdictions were selected for their established, explicit protocols regarding vulnerability and arrest. The identified safeguards were systematically compared against the current Pakistani legal framework governing arrest and pre-trial detention.

Primary legal texts (acts, ordinances, rules) were accessed from official government gazettes and reputable legal databases. Case law was identified through major Pakistani law reporting platforms. Scholarly articles, policy reports, and analyses were identified via searches in Google Scholar, HeinOnline, PubMed, and SSRN, using keywords including: vulnerable suspect safeguards, neurodivergence and arrest, custodial violence and mental health, autism and law. Inclusion Criteria: Materials focused on arrest procedures, police custody, rights of persons with disabilities in the criminal justice system, and comparative legal analyses were included. Exclusion Criteria: General commentaries on criminal law not addressing vulnerability, and literature pertaining solely to post-charge or trial stages, were excluded.

Existing Legal Framework in Pakistan
Constitutional Shield

Constitution of Pakistan (1973) theoretically provides safeguards against custodial violence and affirms the rights of the accused. Article 14(2) of the Constitution of Pakistan (1973) explicitly states:

1. No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.
2. Every person who is arrested and detained in custody shall be produced before a magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the nearest magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

The intent of Article 10 is clearly to prevent the arbitrary detention and to subject police action to judicial oversight. Additionally, the 18th Constitutional Amendment (2010) introduced Article 10A, which venerates the right to fair trial and due process as a fundamental right. These provisions together align with international human rights standards by recognising fair trial guarantees and judicial scrutiny of executive power.

But the constitutional text leaves a significant gap; it focuses on post-arrest presentation before a magistrate rather than regulating the conduct of arrest itself. Because there are no clear, required steps, like making sure a person can understand what is happening, checking if they have a disability, or getting them help immediately, these rights often don't work in practice. This leaves people at the mercy of how individual police officers act during their most vulnerable moment. There is no explicit requirement for police officials to assess whether a person they are going to detain has any special needs, or to avoid coercive practices at the moment of arrest. Moreover, while Article 10 speaks of the right to consult a lawyer, this right is not operationalised through procedural safeguards equivalent to the Miranda warnings in the United States or the caution requirements in the United Kingdom. As a result, vulnerable individuals, particularly those with mental illness and neurodevelopmental conditions, may not be in a position to understand their rights when taken into custody.

Code of Criminal Procedure (CrPC)

The CrPC Code of Criminal Procedure (1898) remains the principal statutory framework guiding the arrest, remand, and investigation. Two sections are of central relevance:

- Section 61: Provides that a person arrested without a warrant shall not be detained in custody for more than 24 hours unless authorised by a magistrate.
- Section 167: Procedure when the investigation cannot be completed in twenty-four hours. Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed

within the period of twenty-four hours fixed by Section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police-officer making the investigation if he is not below the rank of sub-inspector shall forthwith transmit to the Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

Section 61 of the Code of Criminal Procedure (CrPC) 1898 in Pakistan does not contain specific, distinct rules for the arrest of mentally challenged persons. Instead, it lays down the general, mandatory procedural law for all individuals arrested without a warrant. While the CrPC outlines general arrest and detention powers, its key operational sections, including Sections 54 (arrest), 61 (presentation), 167 (remand), and the relevant Police Rules, are uniformly silent on creating specific duties or mechanisms to accommodate neurodivergent or psychosocially disabled suspects. This procedural silence across the framework constitutes the operational gap.

Police Rules & Ordinance

The Police Rules (1934), implemented to date, were inherited by the British colonial-era administration, designed for maintaining public order, its framework lacks any provision for identifying or accommodating the needs of neurodivergent or psychosocially disabled individuals during arrest, reflecting a historical oversight that persists today. The rules outline the procedure for arrest, interrogation, case records, and custody. While the rules prescribe the maintenance of case diaries, registers of arrests, search and seizure procedures, they provide no requirement or criteria for identifying vulnerable detainees, conducting psychological assessments, or ensuring the presence of an appropriate guardian or legal counsel at the time of arrest. Unlike modern policing codes, such as the UK's Police and Criminal Evidence Act (PACE) Code C, which mandates the presence of an appropriate adult for mentally vulnerable suspects, the Pakistani Police Rules remain silent.

Mental Health Legislation

Under the 18th Amendment, Pakistan's mental health legislation has undergone reforms in the past two decades. Pakistan's Mental Health Ordinance (2001), which replaced the colonial-era Lunacy Act (1912), and its provincial successors, such as the Sindh Mental Health Act (2013), Punjab Mental Health Act (2014), Khyber Pakhtunkhwa Mental Health Act (2017), and Balochistan Mental Health Act (2019). These laws are primarily oriented towards the treatment, care, and rehabilitation of individuals with mental illness. They regulate procedures for admission to psychiatric facilities, consent for treatment, and guardianship. While important for protecting the rights of patients, these acts do not address the criminal process. Specifically, they contain no provisions regarding safeguards at the time of arrest, interrogation, or custodial

detention. This stands in stark contrast to jurisdictions that integrate mental health legislation with criminal justice safeguards. For example, under the UK's PACE framework, mental health concerns are directly tied to procedural rights during police investigations (Farrugia & Gabbert, 2019). In Pakistan, by contrast, mental health acts are siloed within the healthcare domain, leaving a void in criminal procedure.

The review of Pakistan's legal framework reveals that while constitutional and statutory provisions exist to regulate the custody, detention, and post-arrest procedures, there remains a critical silence with respect to safeguards at the point of arrest. The Constitution of Pakistan, the Code of Criminal Procedure, the Police rules, and the provincial mental health acts form a patchwork of protections that are reactive rather than proactive. However, these protections are only triggered during court proceedings or formal psychiatric hospitalization, but the point of arrest, where coercion, intimidation, and custodial violence are most likely, is left unregulated. This legal silence constitutes a grey area that undermines the due process guarantees enshrined in the Constitution. This lacuna disproportionately affects individuals with mental health conditions and neurodevelopmental disabilities, who are particularly vulnerable in custodial settings. Salahuddin Ayubi's death in 2019, who had intellectual disability, and autistic Zill-e-Shah's death in 2023 under police custody within the initial 24 hours of arrest fall under this grey area. The consequences of this gap are particularly severe for this population. Without procedural safeguards at arrest, such individuals are often unable to comprehend their situation, assert their rights, or resist coercive pressures. International standards, including the UN Convention on the Rights of Persons with Disabilities (Articles 13 and 14), emphasize equal access to justice and liberty for persons with disabilities. Pakistan, as a signatory, is under an obligation to operationalize these principles, yet its domestic framework falls short.

Comparative Insights

India's Rights of Persons with Disabilities (RPWD) Act (2016) explicitly recognized autism spectrum disorder and intellectual disability as distinct categories, ensuring rights protection in the justice system, including assistance at the time of arrest or trial. This clear recognition of specific conditions provides a more structured approach than Pakistan's generalized disability legislation. In Norway, the police are mandated to notify the country's health services when a vulnerable person is detained, integrating mental health professionals into law enforcement responses (Hean et al., 2017). Similarly, the United Kingdom's Mental Capacity Act (2005) requires the police and courts to ensure individuals with intellectual disabilities and mental

health conditions have access to an appropriate adult or support system. These safeguards reduce coercion and respect autonomy, areas where Pakistan's legal framework remains vague. Canada's provincial Mental Health Acts and the Charter of Human Rights require medical assessments instead of default incarceration, supported by Mobile Crisis Teams that pair police with mental health professionals. U.S. follows a similar path, the Americans with Disabilities Act (1990) prohibits discrimination in policing and justice, and courts overturn convictions where intellectually disabled individuals were denied accommodations at arrest or trial. *Saranchak v. Secretary, Pennsylvania Dept. of Corrections*, 802 F.3d 579 (3d Cir. 2015), the defendant's conviction was upheld, but his death sentence was overturned. The court found the trial counsel's failure to investigate and introduce mitigating factors, including a dysfunctional childhood history and mental health history, amounted to ineffective assistance of counsel during the penalty phase. A key innovation is the Crisis Intervention Team (CIT) model, now adopted widely, which trains police in de-escalation and communication with autistic or mentally ill persons (Goings, 2022).

The South African Mental Health Care Act (2002) recognizes the rights of vulnerable individuals with intellectual and mental health disabilities in custody, requiring forensic accommodations. New Zealand's Intellectual Disability Compulsory Care and Rehabilitation Act (2003) provides specialised procedures for justice-involved persons with intellectual disabilities, focusing on rehabilitation over punishment. Australia's Disability Discrimination Act (1992) and state-level Mental Health Acts include explicit provisions to protect vulnerable individuals during police interactions. Police undergo Mental Health First Aid training, and diversion programs redirect offenders with mental illness into treatment rather than prison. Pakistan's Rights of Persons with Disabilities Act (2020) provides recognition but lacks specific provisions on rights at initial arrest, interrogation, and trial. Current criminal law focuses only on the insanity defence and trial fitness, leaving a grey area: how to protect autistic individuals or those with intellectual disabilities during police custody or interrogation. Unlike India, Pakistan does not separately categorize autism; unlike the UK, it does not mandate supported decision-making; unlike the U.S., it lacks forensic case standards to ensure non-discrimination in the justice process and unlike Norway, Australia and US Pakistan has no standardized or special training in recognition of vulnerable population with mental health condition and how to deal with during the due process of arrest and custody. The following is [Table 1](#), Comparative Policy Analysis: Mental Health Conditions and Legal Protection.

Table 1. Comparative Policy Insights Table: Mental Health Condition and Legal Protection

Country	Key Law(s)	Protection at Arrest/Trial	Law Enforcement Training/Support	Miranda-Type Rights
India	Rights of Persons with Disabilities Act (2016)	Autism & intellectual disability recognized as distinct categories; reasonable accommodations at trial & arrest	Limited structured training is available, but awareness programs are in place.	-No formal Miranda-style warnings. -Rights against self-incrimination exist, but were not explained at arrest.
Norway	Mental Health Act (2001)	Police must notify health services when a vulnerable individual is detained	Mental health disability awareness in training.	Right to silence and legal counsel under the Criminal Procedure Act
South Africa	Mental Health Care Act (2002)	Courts mandate forensic accommodations and rights protection in custody.	Training linked to mental health, courts, and rehabilitation centers.	The Constitution guarantees the right to silence and to have a lawyer.
UK	Mental Capacity Act (2005) + Equality Act (2010)	Supported decision-making; an appropriate adult required in custody/interrogation	Mandatory disability awareness and autism training for law enforcement.	Caution under PACE.
Canada	Charter of Rights + Provincial Mental Health Acts (1982)	Right to medical assessment instead of automatic detention.	Mobile Crisis Teams pair police with mental health professionals.	Charter requires caution at the point of arrest.
US	Americans with Disabilities Act (1990)	Courts demand accommodations; convictions overturned if rights denied.	The Crisis Intervention Team model teaches de-escalation and communication.	Miranda warnings are mandatory.
Australia	Disability Discrimination Act (1992) + State Mental Health Acts	Diversion into treatment instead of prison; safeguards at custody.	Police receive Mental Health First Aid training	Right to silence and lawyer in custody.
New Zealand	Intellectual Disability Compulsory Care & Rehabilitation Act (2003)	Specialized procedures for persons with ID and a focus on rehabilitation.	Specialized training integrated into justice-health collaboration.	Bill of Rights caution ensures the right to silence and counsel.
Pakistan	<i>Rights of Persons with Disabilities Act (2020) + Provincial Mental Health Acts</i>	General protections, no distinct recognition of autism/ID; weak custodial safeguards.	No structured disability training for police.	No Miranda-style warnings. Rights exist, but are rarely explained at arrest.

Result and Discussion

This review shows that Pakistan has made notable strides toward disability rights through the UNCRPD ratification, constitutional guarantees, and legislative reforms. Despite the mental health-related legislation, a critically significant gap remains in Pakistan's legal framework, the absence of a specific protocol or law to protect vulnerable individuals with intellectual disabilities, autism, and related mental health conditions at the point of arrest and during the first 24 hours in custody before the suspect's presentation to a magistrate, thus representing a legal blind spot. This early stage of criminal proceedings is the most vulnerable period, as individuals are often without legal representation, subject to police interrogation, and at heightened risk of coercion or mistreatment. This legal vacuum between arrest and arraignment is where most custodial abuse occurs,

particularly for individuals unable to advocate for themselves due to neurodivergence or intellectual disability and related mental health issues.

The comparative review summarises the absence of procedural safeguards into six fundamental gaps in the Pakistani legal system on the arrest and the initial detention of neurodivergent individuals. To begin with, vulnerability screening at the point of arrest is not a compulsory measure, leaving police without a duty to identify a suspect's potential needs. Second, there is no requirement of accessibility in the communication of legal rights, including plain-language descriptions or other visual aids, even though it has been established that the standard formats are not well comprehended. Third, the right to an appropriate adult, or independent support person, during questioning, stipulated by statute, is absent. Fourth, police training guidebooks and procedures do not provide standardised instruction on dealing with neurodivergent

individuals. Fifth, there is no need to form a record of a perceived vulnerability of a suspect or accommodations offered, which eliminates accountability. These gaps are supported both by legal analysis of the silent CrPC and provincial acts, and by empirical forensic-psychological evidence on heightened risks of false confession and communication breakdown among vulnerable populations.

The risks of this loophole in criminal justice law are tragically illustrated by custodial death in Pakistan. The case of Zille Shah (Riaz, 2023), reportedly suffering from autism, died under police custody within a few hours after his arrest. The postmortem report reveals 26 injuries on his body and death by severe blunt trauma (The Nation 2023). Similarly, the death of Salahuddin Ayubi (Anwar, 2019), a man with suspected intellectual disability, who died in Rahim Yar Khan police custody, demonstrates how the absence of clear arrest protocols and lack of custodial safeguards disproportionately endanger persons with mental health conditions and developmental disabilities.

Existing literature of forensic psychology strongly supports the heightened vulnerability of individuals with intellectual and cognitive disabilities in correctional and custodial settings (Henshaw & Thomas, 2012; Modell & Mak, 2008), and they are more likely to have interactions with police compared to those without disabilities (Chown, 2010; Mailhot Amborski et al., 2022; Trofimovs et al., 2022). Their repetitive gestures and communication difficulties suggest challenges with executive functioning, including working memory and planning (Jones et al., 2018), which can impact their ability to process information under stress (Kenny et al., 2016) and can lead to hyperreactivity, anxiety, or self-protective behaviors like withdrawal or repetitive movements (MacLennan et al., 2020). Individuals with cognitive and communication impairment are often perceived as less credible or more deceptive in a forensic context due to non-normative affect and expression (Lim et al., 2022; Thye et al., 2018). This bi-directional communication difficulty (D. Milton et al., 2022; D.E. Milton, 2012) may intensify the physiological impact of coercive interrogation (MacLennan, Roach et al. 2020). Within the context of the criminal justice system, their communication difficulties, atypical behaviors, and sensory sensitivities, specifically of autistic or intellectual disabilities, are frequently misunderstood by untrained officers, leading to escalations that may involve detention, physical restraint, or fatal force (Cashin & Newman, 2009; Crane et al., 2016; Salerno-Ferraro & Schuller, 2020).

Another critical issue is the lack of awareness and training among professionals in the justice system (Diamond & Hogue, 2023). Law enforcement is seldom trained to recognize and differentiate the unique vulnerabilities of individuals with intellectual and developmental disabilities, leading to misinterpretations and wrongful arrests (Gormley & Watson, 2021). For example, autistic people are more likely to be rated as deceptive and less credible than non-autistic people (Lim, Young et al. 2022). They are also significantly more likely

to become victims of bias and crime, including violence, fraud, and sexual assault, due to their increased dependency on others and challenges in self-advocacy (Díaz-Faes et al., 2023; Fisher et al., 2016), limited officer training or resources to handle these interactions (McLachlan et al., 2021) further compounds the risk. In the absence of developmental awareness or trauma-informed protocols, these behaviours are at risk of being interpreted as defiance or non-cooperation by law enforcement, thereby escalating the risk of punitive violence.

Conclusion

In carceral environments, the absence of trauma-informed protocols exacerbates this vulnerability, particularly in resource-constrained regions. Pakistan's legal framework reflects a strong operational silence at the pre-judicial stage, as it does not translate the constitutional requirement and UNCRPD rights into actionable protections for people with mental health disabilities. There are no clear regulations for police to follow right at the beginning, like how to identify if someone has a mental health vulnerability, they might need extra help, or how to make sure they actually understand their rights. Immediate priorities (within 12–18 months) include piloting interventions such as a basic vulnerability screening tool and an accessible rights notification sheet, and testing the effectiveness of having a support person sit in during questioning in a few cities as a trial run. Over the next couple of years, make training for police and magistrates on disability rights mandatory, and establish a single, clear set of national rules to ensure a uniform procedure nationwide. In the long run, bake these changes into the law by reforming the CrPC and developing an independent group to check that police are actually following the rules. Therefore, the final goal of these reforms should be to develop and react to concrete indicators: high compliance rates based on custody audit, positive results based on training assessment, a quantifiable increase in the use of accommodations, and a reduction in legal disputes based on procedural violation. Such empirical evidence can only be credibly supported by the definition and the systematic monitoring of and its progression as a normative entitlement to practical justice.

Author contributions

Rida Fatima: Conceived the idea, conducted the data search, and wrote the manuscript. Fareeha Nayab: Conducted data search, wrote, edited the manuscript, and proofread the manuscript. Iqra Yaseen: wrote, edited, and proofread the manuscript. All authors contributed to interpreting data, drafting the manuscript, and critical revision of the manuscript for intellectual content.

Funding

This review received no specific funding from any agency in the commercial, public, or not-for-profit sectors.

Acknowledgements

The authors used Grammarly (v1.2.226.1810) for

grammar correction, language clarity, and stylistic correction during manuscript preparation.

Conflict of interest

The authors declare no conflicts of interest concerning the research, authorship, and/or publication of this article.

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