Special Issue

Criminal Justice System in Pakistan

Pakistan Journal of Criminology

Volume 2 / Number 3 / July 2010

Guest Editor

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PAKISTAN SOCIETY OF CRIMINOLOGY (PSC)
http://www.pakistansocietyofcriminology.com

Pakistan Journal of Criminology
Volume 2 / Number 3 / July 2010

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Volume 2, No. 3, July 2010

Contents

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Editorial

Between a Rock and a Hard Place: Pakistan's Criminal Justice System in Transition

Dr. Paul Petzschmann

Previous special issues of this journal have been devoted to single issue-areas such as juvenile justice, violence against women and terrorism. This issue will depart from this trend by focussing on Pakistan's criminal justice system. This constitutes a significant development. The interpretation of crime and criminal justice has been the preserve of foreign academics and policy intellectuals. Inevitably they brought their own cultural assumptions and preconceptions to bear on their view of the subject. Interest in Pakistan's criminal justice system has therefore been sporadic and limited to those of its aspects deemed sufficiently "policy-relevant" to merit international interest the impact of Islamic law, the treatment of women, militancy to name only a few. Yet little attention has been devoted to the criminal justice system in its own right. This issue, for the first time, allows practitioners from the different sectors of its criminal justice system to have their say.

Studying a criminal justice system raises difficult questions. What is Pakistan's criminal justice system? To what extent is it possible to study it isolation? The contributions to this issue chart the successes and failures of a largely implanted institution, an amalgamation of pre-colonial and colonial elements, combined with a variety of Islamic legal interpretations. Moreover, it is constantly changing as the result of government reform initiatives, often undertaken in cooperation with a wide variety of donor organizations that are bringing their own culturally specific views about criminal justice to the table. The contributors deal with these challenges in their own ways.

In his contribution on the "Role and Responsibilities of the Public Prosecution A case study of Khyber-Pakhtunkhwa Province" **Mashhood Ahmad Mirza** gives us an overview of the structure of Pakistan's system of public prosecution and critically evaluates it in the light of international prosecutorial guidelines. Pakistan's prosecution services have undergone a transformation over the last decade, having been made independent of the command structure of the police an overhang from the days of the colonial magistracy system and now falling within the jurisdiction of the provincial ministries of law. These reforms, however, have had little impact on raising the convictions rate within the province, even for the most serious crimes. The author argues that a lack of coordination between the police and the newly

independent prosecution service as well as severe understaffing undermines the latter's effectiveness. Prospects of conviction are, apparently, much better under "special law provisions" presumably the author is referring to special courts created by the Terrorist Activities (Special Courts) Act of 1975 and the Anti-terrorism Act of 1997. It would be interesting to find out more about these courts, how they fit into the prosecutorial system, the laws under which they operate, how they impact conviction rates, and how they fare in comparison with the international prosecutorial standards the author mentions at the outset? A further question concerns the re-introduction of the executive magistracy in the province in 2010: what has been the situation of local prosecution services in the wake of this change?

The article by **Barakatullah** on the "Judicial system of Pakistan" gives us an overview of Pakistan's court system, its structure and development. He also includes some observations and recommendations regarding the National Judicial Policy and a detailed description of the office of the Ombudsman and its role since its creation.

Muhammad Masood Khan gives us a rare insight into the workings of Pakistan's prison service. He outlines the many colonial and post-colonial legal provisions concerning prisons and points out a variety of problems in the running of the service. There is an urgent need for reform in prison management and staff training. Efforts to implement these measures have failed because of a lack of resources and specialist staff. Without social workers and psychologists, prisons are unable to provide rehabilitation, education and post-release support to offenders.

The move towards restorative justice and other alternatives to imprisonment has not bypassed Pakistan as can be seen from **Mazhar Bhutta's** article on Pakistan's probation and parole system. Various legal provisions attempted to reverse the punitive focus of British Imperial penal policy. Yet unfortunately they remain merely theoretical possibilities as these possibilities are underutilized by judges. There is also an acute shortage of parole officers needed in order to make these alternatives viable in practice. It is important that donor governments and organizations dedicate themselves to this much-neglected area of justice reform because of the parlous state of Pakistan's prisons. Not only are overcrowded prisons crime factories but also havens for radicalization.[1] Although probation and parole options do not come cheap, the scope for developing community rehabilitation programs is feasible in developing countries as it frequently opens the possibility of drawing on pre-colonial non-punitive traditions.[2] In comparison with such experiences with the rehabilitation of offenders in Africa it would be interesting and fruitful to ask whether there were any similar models in pre-colonial South Asia that could be drawn on? Ideas of reparation and conciliation are also prominent in the Islamic legal traditions and their potential to contribute to a debate about non-custodial sentencing in Pakistan should not be underestimated.

Fasihuddin and Kam C Wong tackle the fraught issue of the policing of hate crime in Pakistan with reference to the two Danish cartoon crises in 2006 and 2008. They sketch the police response to these two crises as well as the mobilization tactics of the demonstrators with the support of an extensive survey. The cartoon crises throws light on the difficulty of combating hate crime in the absence of clear legislation on the subject. The authors also argue that in a conflict-ridden environment where religion is used for purposes of political mobilization such legislation would be difficult to design and implement.

In the only historical contribution to this issue, **Aftab Nabi and Dost Ali Baloch** turn their attention to the Sindh police under Charles Napier. Their contribution entitled "Policing Colonisation. The Evolution and Role of Sind Police and the Views of Sir Charles Napier on the Administration of Criminal Justice in Sind" mentions some of the difficulties in enforcing "alien law" that still bedevil criminal justice in Pakistan today. The combination of indirect rule with paramilitary policing of tribal societies the hallmark of the Napier regime - have created significant path-dependencies for policing in the modern era. The article shows that the decline of law and order played into the hands of collaborators with the colonial regime, who could extract resources and substantial local autonomy in return for their help in "pacifying" the borders of the British Empire. The logic of the national security state was in constant conflict with the administration of justice and the decision about which to adopt mostly a matter of expediency. The parallels to modern-day Pakistan are obvious. They highlight the need for further research into the history of criminal justice in the subcontinent.

Fasihuddin's contribution on "Police and Policing in Pakistan" chronicles attempts to reform the police, culminating in the comprehensive reform legislation of 2002. Especially interesting is his discussion of crime figures in the wake of these reforms and possible causes for what has been described as a breakdown of law and order at the local level.[3]

Fasihuddin's acute observation of the divergence in policing priorities between the elite officer cadre of the PSP and those on the front line echoes themes mentioned in Goldsmith's work on "policing in weak states": that the police can be victims as well as perpetrators, that they do not necessarily represent the state and that they are frequently only one of a number of providers of security (and insecurity).[4] The article raises the difficult question of whether the "grafting-on" of western institutions promises success in the long term. The criminologist should inform policy-makers not only with respect to international trends and developments but also "about the dangers of mindlessly importing foreign solutions to local crime problems."[5] Especially in the case of police reforms, it has become apparent that a

lack of legitimacy and responsiveness to community made them the plaything of powerful political interests. In this regard it seems that the police service itself has missed a chance by failing to build constituencies through the civilian oversight structures established by the Police Order 2002 and thus establishing a measure of legitimacy and independence from military and bureaucracy. If "every criminology worthy of its name should have a comparative dimension to it" this is perhaps especially true of criminology in Pakistan.[6] All contributors to this issue are aware of this, their perspective on Pakistan's criminal justice system informed by a desire to compare, to diagnose and to make policy recommendations with the aim of reducing crime. Beyond these pragmatic reasons for viewing Pakistan's criminal justice system in light of experiences made in Britain, Japan and elsewhere there is also an awareness that institutions are a reflection of the society. Bhutta, Nabi and Fasihuddin in particular are also aware that criminal justice can provide us with an understanding of "the way culture conditions the boundaries of law and the way criminal law helps shape those self-same boundaries."[7] If further expanded on, such an ethnographic perspective could perhaps counter the "occidentalism" that is near-ubiquitous in the contributions to this issue: the assumption that formal-legal provisions tell us most of what we need to know about the day-to-day operation of criminal justice in Pakistan and that, in essence, they are fundamentally the same as their Western counterparts. This perspective stands in need of serious qualification in the case of Pakistan. Indeed, it is ethnographers who have made some of the most important contributions to the study of law, crime and punishment in this country. Chaudary's study of justice in a Punjabi village and Keiser's work on vengeance in Kohat are only some examples.[8] Equally unexplored by the contributors is the impact of Islamic law on criminal justice, especially in the light of very recent developments and debates on the subject.[9] By ignoring legal pluralism as one of the most salient features of criminal justice in Pakistan, the contributors present the institutions of criminal justice as based on a unified and centralized legal system, further reinforcing the occidentalism already referred to.[10] This is not to encourage falling into the opposite extreme of assuming that Pakistan's criminal justice system is fundamentally unique and therefore incommensurable. These are not just matters for idle speculation by armchair criminologists. The ongoing conflict about the interpretation of the law in Afghanistan shows how much is at stake in striking a balance between the implementation of international standards and the reflection of multiple local legal traditions and practices.[11]

End Notes

1. See the article on Pakistan by Laila Bokhari in: Prisons and Terrorism. Radicalisation and De-radicalisation in 15 countries. ICSR Report, 2010, http://www.icsr.info/publications/papers/1277699166PrisonsandTerrorismRadicalisationandDeradicalisationin15Countries.pdf

2. Biggs, David. 1997. Community Service in Practice, http://www.gsdrc.org/docs/open/SSAJ27.pdf

3. Asian Development Bank, DFID, World Bank. 2004. Devolution in Pakistan. An Overview, http://www.adb.org/Documents/Studies/Devolution-in-Pakistan/devolution-pak-es.pdf, p 9.

4. Goldsmith, Andrew. 2003. Policing Weak States: Citizen Safety and State Responsibility, Policing and Society, 1(13): 3-21.

5. Hardie-Bick, James, James Sheptycki and Ali Wardak. 2005. Introduction: Transnational and Comparative Criminology in a Global Perspective: in: James Sheptycki & Ali Wardak, *Transnational and Comparative Criminology*. London: Glasshouse Press, p 14.

6. Hardie-Bick, James, James Sheptycki and Ali Wardak. 2005. Introduction: Transnational and Comparative Criminology in a Global Perspective: in: James Sheptycki & Ali Wardak, *Transnational and Comparative Criminology*. London: Glasshouse Press, p 1.

7. Nelken, David. 2007. Comparing Criminal Justice, in: Maguire, Mike, Rod Morgan and Robert Reiner (eds.), The Oxford Handbook of Criminology. Oxford: Oxford University Press, p 141.

8. M. Azam Chaudhary. 1999. Justice in Practice: Legal Ethnography of a Pakistani Punjabi Village. Karachi: Oxford University Press.

9. Wasti, Tahir. 2009. The application of Islamic criminal law in Pakistan: Sharia in Practice. Leiden: Brill. Lau, Martin. 2006. The role of Islam in the legal system of Pakistan. Leiden: Brill.

10. On legal pluralism see: Tanguay-Renaud, Francois. 2002. Post-Colonial Pluralism, Human Rights and the Administration of Criminal Justice in the Federally Administered Tribal Areas of Pakistan, Singapore Journa of International & Comparative Law, 6, 541-596.

11. Suhrke, Astri and Kaja Borchgrevink. 2009. Negotiating justice sector reform in Afghanistan. In: Crime, Law & Social Change 2(51) 211-230.

Dr. Paul Petzschmann has long association with research on Pakistan's civil security sector, especially police and policing. Pakistan Society of Criminology is highly indebted to Dr. Paul for being the Guest Editor of this special issue of the Journal. His contribution and his editorial will be remembered for years. There is not a single book on CJS in Pakistan and this special issue has tried to fulfill that gap, to a larger extent. {Pakistan Society of Criminology (PSC)}

Role and Responsibilities of the Public Prosecution A Case Study of Khyber- Pakhtunkhwa Province

Mashhood Mirza

Abstract

This paper analyses various international guidelines on the role of a Public Prosecutor and on the basis of these tries to give a picture of what the responsibilities and duties of a Public Prosecutor in Pakistan could involve, using the case of the province of Khyber Pukhtunkhwa. The paper concludes that the role of the Public Prosecutor is not to seek conviction at all cost but to place before the court all the evidence.

Keywords
Prosecution, Criminal Justice System, Public Prosecutor

Introduction

> *"The administration of justice, including* ***law enforcement and prosecutorial agencies*** *and, specially an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realisation of human rights and indispensable to the processes of democracy and sustainable development."*
>
> *The Vienna Declaration and Programme of Action of 1993*

The purpose of the criminal justice system (hereinafter CJS) is the realization of the rule of law, which is one of the most fundamental conditions for the sustainable development of societies. For this purpose, justice has to be given to those who have broken the law while protecting due process of law for which the office of 'Public Prosecutor' is created in some countries as a public authority who, on behalf of society and in the public interest, ensures the application of the law where the breach of the law carries a criminal sanction and who takes into account both the rights of the individual and the necessary effectiveness of the criminal justice system.

Prosecutors have duties to the State, to the public, to the Court and to the accused and, therefore, they have to be fair and objective while discharging their duties. Accordingly, the police are empowered to conduct investigations to give justice to suspects, whereas prosecutors are empowered to check the

investigation conducted by the police and to dispose the case for the prosecution, following the due process of law. In other words, prosecutors are vested with the responsibility of checking the police investigation against due process of law.

The 'independence' of the prosecutor's function stands at the heart of the rule of law. Prosecutors are expected to behave impartially. Prosecutors are gatekeepers to the criminal justice process as stated by Avory J in R v. Banks.[1] The learned Judge stated that the prosecutor, "throughout a case ought not to struggle for the verdict against the prisoner but… ought to bear themselves rather in the character of minister of justice assisting the administration of justice"

It is an established principle that Prosecutors are independent of the police and the Courts. While the police, the Courts and the prosecutors have responsibilities to each other, each also has legal duties that separate them from others. The prosecutor does not direct police investigations, nor does he advise the police. Public Prosecutors are part of the judicial process and are considered to be officers of the Court.

Public prosecutors must be in a position to prosecute without influence or obstruction by the executive or public officials for offences committed by such persons, particularly corruption, misuse of power, violations of human rights etc.

Role of Public Prosecutor as Interpreted by International Law and Guidelines

It is important to first have a cursory look at international standards and guidelines on the role of the public prosecutors in order to evaluate national prosecutorial systems. The United Nations Guidelines on the Role of Prosecutors[2] require Prosecutors to perform their duties fairly, impartially, consistently, protecting human dignity, upholding human rights and avoiding all political, social, religious, racial, cultural, sexual or any other kind of discrimination.[3] The use of prosecutorial discretion, when permitted in a particular jurisdiction, must be exercised independently and should be free from political interference.[4] In order to ensure the fairness and effectiveness of prosecution, prosecutors must strive to cooperate with the police, the courts, the legal profession, public defenders and other government agencies or institutions.[5] Corollary to the requirements of fairness and impartiality is the condition that prosecution should not be initiated or every effort to stay proceedings should be made where an impartial investigation shows

the charge to be unfounded.[6] The International Association of Prosecutors standards provide that criminal proceedings should be proceeded with only when a case is well founded upon evidence, which is reasonably believed to be reliable and admissible.[7] When Prosecutors come into possession of evidence against suspects that has been obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they are under a duty to refuse the use of such evidence.[8] The Prosecutors are also required to take proper account of the position of the suspect and the victim, pay attention to all relevant circumstances, and disclose all relevant evidence irrespective of whether it is to the advantage or disadvantage of the suspect.[9] The Prosecutors must act objectively and also remain unaffected by individual or sectional interests and public or media pressures. They must have regard only to the public interest.[10]

The State is also under a duty to ensure that Prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.[11] The State is further required to provide reasonable conditions of service to Prosecutors, adequate remuneration, and where applicable, tenure and pension.[12] Moreover, the promotion of Prosecutors should be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures.[13] If in a State, non-prosecutorial authorities have the right to give general or specific instructions to Prosecutors or right of directing the institution of proceedings or right to stop legally instituted proceedings, such instructions should be transparent, consistent with lawful authority and subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence.[14] The Council of Europe recommendations goe further and state that instructions not to prosecute in a specific case should in principle be prohibited. Should that not be the case, such instructions must remain exceptional and be subjected to transparency and appropriate control.[15] The Council of Europe recommendations also state that Public Prosecutors should account periodically and publicly for their activities as a whole and, in particular, about the way in which their priorities are implemented.[16]

Prosecution Services in Pakistan

Prosecutors are covered under section 492 of the CrPC which provides that the provincial government may appoint "generally or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors".[17] Until recently, the prosecution services in all the provinces were under the Home Department and were administered by the police.[18] There was a separate prosecution branch of the police consisting of law graduates in the ranks of

Deputy Superintendents of Police, Inspectors and Sub-Inspectors. This was considered, however, to be a major reason for poor prosecution and delay in the resolution of court cases. During the 1980s, a first attempt was made to transfer administrative control of prosecution powers from the police to law departments.[19] The ongoing vacillation between the Home Departments and the Law Departments on this question continued until prosecution services were permanently placed under the administrative control of the Law Departments with the promulgation of the Police Order, 2002. At present, all the provinces have laws for separate prosecution services and the respective provincial prosecution services are at nascent stages of development.[20]

How the Criminal Justice System Works in Pakistan

When a person is apprehended for committing a crime, after investigation that is to be completed within 14 days u/Sec. 173 of Criminal Procedure Code (hereinafter CrPC) he orshe is subjected to a rigorous trial in the prescribed criminal court that has jurisdiction in the said matter. The Court is duty-bound to allow an alleged offender to appoint a defence counsel of his or her choice under Article 10 of Constitution of Pakistan. Then Court pronounces a Charge against an alleged offender that describes the nature of offence and the nature of act or omission that constitutes a specific crime. Thereafter, prosecution is required to produce evidence that it has against the alleged offender. The defence counsel of the alleged offender is given full opportunity to cross-examine and object to the prosecution evidence,

within the prescribed limits of law. Though prosecution being the duty of the state is to be conducted by the state-appointed counsels, any person aggrieved by the offence can appoint his or her own prosecution counsel, in addition to the state counsels. After the prosecution concludes its evidence the presiding Judge puts certain questions u/Sec. 342 Cr PC to the alleged offender. These questions are very crucial as the presiding Judge gives an opportunity to alleged offender to explain incriminating evidence against him or her. The alleged offender is also given an opportunity to appear as his own witness. Moreover he or she is also given an opportunity to present documentary evidence and witnesses in his or her defence. After the conclusion of defence evidence the trial is concluded and the Presiding Judge pronounces the judgment. The judgment could be of acquittal or punishment. In both cases prosecution and alleged offender has right to appeal against the judgment of the trial court. The appeal is made to the immediate superior court of the trial court.

Punishment is universally accepted mode of retribution and deterrence. Punishment varies with the nature of crime. Different punishment can be given for the same crime. But retrospective punishment and double punishment in any case is specifically prohibited by the Constitution of Pakistan. Article 12 states: “No law

shall authorize the punishment of a person for an act or omission that was not punishable at the time of the act or omission", similarly Article 13 states: "No person shall be punished for the same offence more than once". Article 13(b) also states: "No person shall, when accused of an offence, be compelled to be witness against himself". Constitution of Pakistan specifically demarcates the contours of Criminal Law of Pakistan by stating unequivocally in Article 9: "No person shall be deprived of life or liberty save in accordance with law". And the Law shall never be against the universally accepted Fundamental Rights, this is specifically and explicitly enshrined in Article 8 of the Constitution of Pakistan.

It goes without saying that the CJS in Pakistan must function within the framework of the principles enunciated by the Constitution. Broadly speaking, these are as follows**:**

- The guarantee of equality before the law
- Equal protection of the laws
- Prohibition of discrimination imposed upon the State
- Deprivation of life /personal liberty only in accordance with procedure established by law
- Presumption of innocence of the accused
- The requirement of proof beyond reasonable doubt
- The right of the accused to remain silent
- Arrest and detention in accordance with law and judicial guidelines
- Protection against double jeopardy
- Non-retrospective punishment

No appraisal of the CJS can suggest derogation from these principles. Rather, it is these very principles that are the indicators on the basis of which any evaluation of the criminal justice system may be made. The independence of the judicial system is a key element of the basic structure of constitution via the separation of powers between the Legislature, Executive and Judiciary.[21]

Prosecution Service in Khyber Pukhtunkhwa Province

The prosecutorial services in Khyber Pukhtunkhwa were introduced through the North-West Frontier Province Prosecution Service (Constitution, Functions and Powers) Act, 2005. After this Act came into operation, the total prosecution services in Khyber Pukhtunkhwa province, from the registration of the FIR up to the conclusion of the case by the Supreme Court of Pakistan, came under the Khyber Pukhtunkhwa Directorate of Prosecution.

The 2005 Act is a short Act having 12 sections, but the powers of the prosecutor are immense and are given in its Chapter III.[22] The public prosecutor under the said ordinance is appointed under section 492 of the CrPC.[23] Once the prosecutor receives a case file from the police, which the police have already decided to pursue, the prosecutor reviews it and has the option to continue with the prosecution, take no further action or divert it away from the criminal proceedings.[24]

One thing must be clarified here that in Pakistan like Brazil, El Salvador, India, Kenya, Malaysia, and England as well as other countries - prosecutors are not investigators. They are not involved in criminal investigations because they do not have the authority to investigate crimes on their own. Upon completion of an investigation, in these countries the police refer the investigation report to the prosecutor who will then scrutinize or screen the investigation paper thoroughly and decide whether or not to prosecute the suspects based on the evidence available. The prosecutors would then be in a position to advise the police on further investigation, if necessary, so as to ensure that the prosecution has adequate and tangible evidence for prosecution.

Organizational Structure and Responsibilities

The Directorate is classified into three sections, namely, prosecution and administration and the accounts section, whereas the establishment lies with the Home Department. It is headed by a Director General assisted by a Public Prosecutor, Director Legal and Director Administration / Accounts. The Director General in essence is the head of Prosecution in the Directorate. He looks after the Establishment and Accounts Branches and exercises overall control over officers of the Prosecution Directorate. The District Public Prosecutors over see the prosecution functions in the respective districts and all the Assistant Public Prosecutors report and take guidance from the District Public Prosecutor. In cases where the sanctioned posts cannot be filled, the Prosecution Directorate can as a stop-gap measure appoint Special Public Prosecutors from the respective Bars Associations. The current strength of the Directorate of Prosecution in Khyber Pukhtunkhwa is as under:

Table I: Sanctioned Strength of the Prosecution Directorate

Posts	BS	Sanctioned Posts	Filled
Public Prosecutors	18	65	50
District Public Prosecutors	18	65	14
Assistant Public Prosecutors	16	126	96
Total		**256**	**160**

Source: Home Department, Khyber Pukhtunkhwa Province

There are 50 Public Prosecutors currently working against the sanctioned strength of 65. Surprisingly, there are only 14 District Public Prosecutors at present working against the sanctioned strength of 65in 24 Districts; however 24 new recruitments have been recently made by the Public Service Commission. The Directorate of Prosecution has got 126 sanctioned posts of Assistant Public Prosecutors, out of which 96 posts have beenfilled to date. Hence the prosecution directorate in Khyber Pukhtunkhwa province lacks 94 prosecutors.

Major Functions of the Prosecution Directorate

Normally, the role of the public prosecutor commences after investigation agency presents the case in the Court on the culmination of investigation. The Investigation Officer cannot be directed to consult the public prosecutor and submit a charge sheet in tune with the opinion of the public prosecutor. The public prosecutor is to deal with a different field in the administration of justice and cannot be involved in investigation. Foremost objective of the public prosecutor is to ensure a fair trial of the accused. Prosecuting officers assist law courts in the disposal of cases. The Directorate aims to deliver a prompt, efficient and speedy service to the litigant for achieving the ends of justice, ensuring judiciousness and speedy legal remedies.[25] Cases registered and investigated by the police are referred to the prosecution for scrutinizing charge sheets, and after their institution in the courts, the Assistant Public Prosecutors conducts the prosecution. They evaluate the evidence in each case and make their recommendations for filing revision petitions or appeals against impugned orders and judgments, as well as conduct cases in Courts. The public prosecutor has the power to withdraw prosecution if reasonable ground exists under section 494 of the CrPC. Consent will be given by the Public Prosecutor only if public justice in the larger sense is promoted rather than subverted by such withdrawal.

Evaluation of Prosecution Directorate Vis-à-Vis Conviction Rate

Generally conviction rates by the prosecution have been abysmally low, but it must be emphasized here that the prosecutor places before the court all evidence in his or her possession, whether in favour of or against the accused. This is seen as proper prosecution, as opposed to single-minded persecution in seeking a conviction regardless of the evidence. However, most of the time, this motive is misinterpreted and prosecutors show no interest in winning cases in favour of their client. The data obtained from the Police Department of the Khyber Pukhtunkhwa provides an insight into the conviction rate and the working of the Prosecution Directorate:

Table II. Percentage of Rate of Conviction During 2009

S. No.	Offences	%age
1	Murder	9%
2	Attempts to Murder	4%
3	Hurts	7%
4	Zina (Rape) 5,6,10	13%
5	Zina (Rape) 377 (12)	15%
6	Kidnapping Other	11%
7	Kidnapping for Ransom	7%
8	Child Lifting	22%
9	Abduction	2%
10	Assault on Police	29%
11	Assault Other	19%
12	Ordinary Dacoity	15%
13	Highway Dacoity	0%
14	Bank Dacoity	0%
15	Ordinary Robbery	26%
16	Highway Robbery	0%
17	Bank Robbery	0%
18	Burglary	26%
19	Theft	31%
20	Car Theft	58%
21	Other Motor Vehicle Theft	26%
22	Car Snatching	44%
23	Other Motor Vehicle Snatching	24%
24	Motor Cycle Theft	42%
25	Motor Cycle Snatching	60%
26	Fatal Accident	5%

Source: Office of the Additional Inspector General Police (Investigation), Khyber Pakhtunkhwa, Pakistan.

Even though the attempt was to do to a comparative analysis of the cases instituted, disposed and the conviction rate of the cases, but due to paucity of information and credible data for the past years, the analysis was restricted to only 2009. The average conviction rate of crimes against substantive law for the year 2009 remained 15.48%. The conviction rate is very high if convictions under special laws are included, but the rate of conviction drops very low when convictions are noticed under the substantive law. The reasons can be manifold. The conviction rate however, is not an effective parameter for judging the efficiency of the Prosecution Directorate. A high or low conviction rate can be due to various sociological and economic reasons. In such a case, an analysis of the number of cases filed and disposed will make a better benchmark.

Problems and Suggestions

The Directorate's problems are manifold. The Public Prosecutors Office is severely understaffed. Similar is the case with District Public Prosecutors who conduct cases in Sessions courts. Every post has a larger number of previously pending cases. It is evident that the distribution of cases is not only skewed but also creates problems of corruption, injustice and delay in provision of justice. Justice delayed is justice denied. The appointment of prosecutors is also a grey area; politicians, bureaucrats and big lawyers heavily influence the recruitment process. Even though there are many regulations regarding the appointment process, these are often overridden by the Executive, which would much rather have its preferred choices as ad hoc appointees special public prosecutors are the point of focus. The prosecutors are not treated on a par with the judges in payment of remunerations. Prosecutors should be insulated from political pressure and an incentives-based performance approach should be emphasized. Internal audit mechanism to evaluate the standards on which the case was fought should also play a significant role in increasing the overall quality of prosecution.

Due to the incompetence of the investigating officers the deadline of 14 days for the submission of the Challan (final report) u/s 173 of the CrPC is missed as a matter of routine, thus causing undue delay in the processing of the case. It has been observed that the number of courts is more than the number of public prosecutors in the province as alluded from Table-1 above.

The weak service structure of the prosecution Directorate is one of the causes of resentment among the public prosecutors as the three key posts in the prosecution directorate have been usually occupied by officials from outside .i.e. director general, director legal and director administration, although in the rules it is clearly mentioned that the post of director (legal) shall be filled from amongst the public prosecutors.

It is clear that the office of the Public Prosecutor needs more attention and more autonomy to ensure greater success. However, success cannot be measured in numbers of convictions. All too often the rate of convictions becomes the sole indicator of the health of the Pakistani CJS. Concerns about its condition are valid, but the prognosis and diagnosis has to be accurate to avoid further deterioration.

Conclusion

It cannot be emphasized enough that the health of the criminal justice system cannot be judged from conviction rates or death sentences alone. Such analysis is not only faulty and misleading but also often contrary to legal and constitutional safeguards, with dangerous implications for citizens. The challenge before the Public Prosecutor is to maintain impartiality and neutrality while prosecuting any and all persons facing criminal prosecution. The assumption here is that the State is committed to safeguarding and promoting the interests and rights of all constituents of society.

To make prosecution more reliable and credible, it is necessary to do an internal evaluation of the parameters on which cases are fought. As generally prosecution deals with underprivileged sections, it is important that cases are defended in such a way that the guilty party is convicted. Oversight committees for evaluating cases that were lost will check the quality of prosecution.

For any prosecution department to be successful and submit cases with best evidence before the courts, good relationship with the police is crucial. If the prosecution department and the police department are at loggerheads, or are working without any coordination, then the cases churned out will be like the cases in Pakistan that lack sufficient evidence and thus result in the acquittal of dangerous terrorists who had been arrested with great difficulties. It is to be seen whether police have accepted the supervisory role of the prosecutor?

End Notes

1. Per Avory J in R v Banks [1916] 2 KB 621.

2. There are various international guidelines elaborating upon the role of Public Prosecutors. The most important of these are "United Nations Guidelines on the Role of Prosecutors" (adopted by the United Nations during the United Nations Congress on the Prevention of Crime and Treatment of Offenders in Havana in 1990), "Recommendation 19 (2000) on the Role of Public Prosecution in the Criminal Justice System", adopted by Council of Europe in 2000 and general standards entitled the "Standards of Professional Responsibility and Statement of the Essential Duties and Right of Procedures", formulated by the International Association of Prosecutors in 1999

3. Articles 12 and 13(a), United Nations Guidelines on the Role of Prosecutors

4. Article 2.1, International Association of Prosecution's Standards of Professional Responsibility and Statement of the Essential Duties and Right of Procedures

5. Article 20, United Nations Guidelines on the Role of Prosecutors

6. Article 14, United Nations Guidelines on the Role of Prosecutors

7. Article 4.2(d), International Association of Prosecution's Standards of Professional Responsibility and Statement of the Essential Duties and Right of Procedures

8. Article 16, United Nations Guidelines on the Role of Prosecutors; Article 4.3(f), International Association of Prosecution's Standards of Professional Responsibility and Statement of the Essential Duties and Right of Procedures

9. Article 3(d), International Association of Prosecution's Standards of Professional Responsibility and Statement of the Essential Duties and Right of Procedures

10. Article 13(b), United Nations Guidelines on the Role of Prosecutors; Articles 3(e) and (f); International Association of Prosecution's Standards of Professional Responsibility and Statement of the Essential Duties and Right of Procedures

11. Article 4, United Nations Guidelines on the Role of Prosecutors; Article 6(a), International Association of Prosecution's Standards of Professional Responsibility and Statement of the Essential Duties and Right of Procedures

12. Article 6, United Nations Guidelines on the Role of Prosecutors; Article 6(c), International Association of Prosecution's Standards of Professional Responsibility and Statement of the Essential Duties and Right of Procedures

13. Article 7, United Nations Guidelines on the Role of Prosecutors; Article 6(e), International Association of Prosecution's Standards of Professional Responsibility and Statement of the Essential Duties and Right of Procedures

14. Articles 2.2 and 2.3, International Association of Prosecution's Standards of Professional Responsibility and Statement of the Essential Duties and Right of Procedures

15. Article 13(f), Recommendation No. 19(2000) on the Role of Public Prosecution in the Criminal Justice System, adopted by Council of Europe in 2000

16. Article 11, Recommendation No. 19(2000) on the Role of Public Prosecution in the Criminal Justice System, adopted by Council of Europe in 2000

17. **'Public Prosecutor',** means any person appointed under section 492, and includes any person acting under the directions of a Public Prosecutor and any person conducting a prosecution on behalf of the State in any High Court in the exercise of its original criminal jurisdiction. He is bound to assist the Court with his fairly considered view and the Court is entitled to have the benefit of the fair exercise of his function. AIR 1957 S.C. 389.

18. An Asian Development Bank soft loan to Pakistan is de facto primarily responsible for the Access to Justice Program, in which the state is engaged "in improving justice delivery, strengthening public oversight over the police, and establishing specialized and independent prosecution services? In this we see the Police Act 1861 being replaced by the Police Order 2002 and new laws to constitute and provide for the functions of independent prosecution services in Pakistan, thus, divorcing prosecution from the investigative arm of the police. Arguably, more valid grounds can be cited for the creation of an independent prosecution service in Pakistan, being article 175(3) of the constitution, which mandates that "the judiciary shall be separated progressively from the executive within three years from the commencing day? Thereafter, there was the appeal decided in Govt. of Sindh v. Sharaf Faridi (PLD 1994 SC 105).

19. In Sindh, for instance, it was done in 1986; see Zahid, Nasir and Wasim, Akmal, *The province of Sindh as a case study on the prosecution service*: http://www.article2.org/mainfile.php/0704/333/ as on 12 July, 2010.

20. The laws providing for independent prosecution services are The Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2009, The Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006, The North-West Frontier Province Prosecution Service (Constitution, Functions and Powers) Act, 2005, The Balochistan Prosecution Service (Constitution, Functions And Powers) Act, 2003

21. Article 37(i) of the Constitution, which notes that: "The state shall decentralize government administration so as to facilitate expeditious disposal of its business to meet the convenience and requirements of the public.

22. See generally Chapter III of the North-West Frontier Province Prosecution Service (Constitution, Functions and Powers) Act, 2005.

23. 'Public Prosecutor' means a person appointed as Public Prosecutor under this Act for the purpose of section 492 of Cr.PC and includes District Public Prosecutor, Additional Public Prosecutor, Deputy Public Prosecutor and Assistant Public Prosecutor as well as Special Public Prosecutor.

24. A District Public Prosecutor in case of offences carrying seven years or less imprisonment and the Director General Prosecution for all other offences may

withdraw prosecution subject to prior approval of Court. Provided that prosecution of an offence falling under the Anti Terrorism Act, 1997 (XXVII of 1997), shall not be withdrawn without prior permission in writing of the Secretary to Government, Home and Tribal Affairs Department. See also Section 494 of CrPC, "Effect of withdrawal from prosecution**.** Any Public Prosecutor may, with the ....] consent of the Court, before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried, and upon such withdrawal: (a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences; (b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences"

25. Preamble of the The North-West Frontier Province Prosecution Service (Constitution, Functions and Powers) Act, 2005 states that." WHEREAS it is expedient to reorganize and establish a Prosecution Institution with a view to achieving a speedy justice process in the North-West Frontier Province and for matters ancillary or incidental thereto.

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Judicial System of Pakistan

Barakatullah

Abstract

The judiciary is one of the three basic organs of the State, the other two being the Legislature and the Executive. It has a vital role in the functioning of the State, more so, in a democracy based on the Rule of Law. Since time immemorial, law and the judiciary have played a vital role in the Indian polity. The Constitution accords a place of pride to the judiciary by conferring the power of judicial review of legislative and administrative action and entrusting it with the task of enforcement of the fundamental rights guaranteed under the Constitution.[1]

In a democratic polity, the supreme power of the State is shared among its three principal organs as constitutional functionaries. Each of the functionaries is independent and supreme within its allotted sphere and none is superior to the other. Justice has to be administered through the courts and such administration would relate to social, economic and political aspects of justice as stipulated in the Preamble of the Constitution and the judiciary, therefore, becomes the most prominent and outstanding wing of the constitutional system for fulfilling the mandate of the Constitution. The judiciary has to take up a positive and creative function in securing socio-economic justice for the people.

Keywords

Pakistan Judiciary, Constitutional-Framework, Powers of Courts, Supreme Court of Pakistan, National Judicial Policy, Anti-Terrorists Court, Organizational Hierarchy of Courts, Legal History of Pakistan

History

The roots of the current judicial system of Pakistan stretch back to the medieval period and even before. The judicial system that we practice today has evolved over a long period of time, spanning roughly over a whole millennium. The system has passed through several epochs covering the Hindu era, the Muslim period including the Mughal dynasty, the British colonial period and the post-independence period. The 4th and current era, commenced with the partition of India and the establishment of Pakistan as a sovereign and independent State. The system has evolved through a process of reform and development. During this process of evolution and growth, the judicial system did receive influences and inspirations from foreign doctrines and indigenous practices, both in terms of organising court structure and hierarchy, and following procedures in reaching decisions. Therefore, the present judicial system is not an entirely foreign transplant, as is commonly alleged, but has acquired an indigenous flavour and national colour.

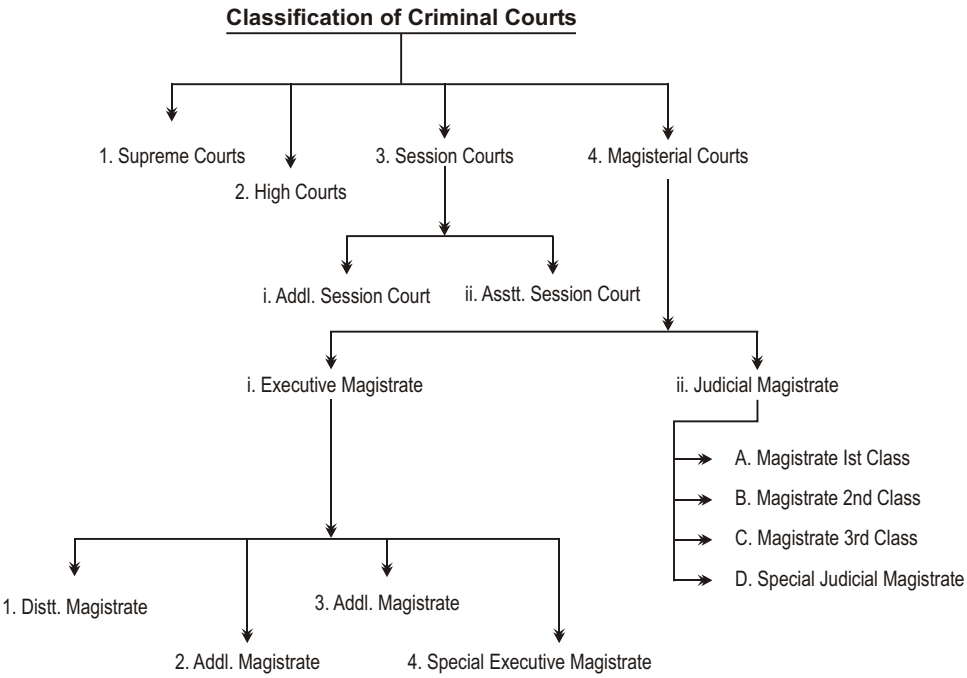
On independence, the Government of India Act 1935 was retained as a provisional Constitution. As a consequence, the legal and judicial system of the British period continued, of course, with due adaptations and modifications, where necessary, to suit the requirements of the new Republic. This way, neither any vacuum occurred nor any break resulted in the continued operation of the legal system. The judicial structure remained the same. The Lahore High Court continued to function and so did the Sindh Chief Court and the Courts of Judicial Commissioner in NWFP and Baluchistan.[2]

Court System

The judiciary is composed of three levels of federal courts, three divisions of lower courts, and a Supreme Judicial Council. There are district courts in every district of each province, having both civil and criminal jurisdiction though they deal mainly with civil matters. The High Court of each province has jurisdiction over civil and criminal appeals from lower courts within the provinces. The Supreme Court sits in Islamabad and has exclusive jurisdiction over disputes between or among federal and provincial governments, and appellate jurisdiction over High Court decisions. There is also a Federal *Shariat* Court established by Presidential Order on 26th May 1980. This Court has exclusive jurisdiction to determine, upon petition by any citizen or the federal or provincial governments or on its own motion, whether or not a law conforms to the injunctions of Islam. An Islamic advisory council of *ulama* assists the Federal *Shariat* Court in this capacity.

Classes of Criminal Courts

The term Criminal Court has not been defined by the Code of Criminal Procedure. But the Cr.P.C. describes its various kinds and their power. Courts are classified for the purpose to decide the cases immediately and reduce load on the other courts. Section 6 to 41 of the Code of Criminal Procedure describes classes of Criminal Courts with respect to its powers, jurisdiction and sentencing. The word "court means a place where justice is administered and the person or persons who administer justice"[3] while in the Black's Law Dictionary court is defined " a governmental body consisting of one or more judges who sit to adjudicate disputes and administer justices."[4] Generally Court includes all judges and Magistrates and all persons except arbitrators legally authorized to take evidence and it must be entrusted with judicial junctions. While it was held that if a person or body is entrusted with judicial power of the state, he or it would constitute a court[5]



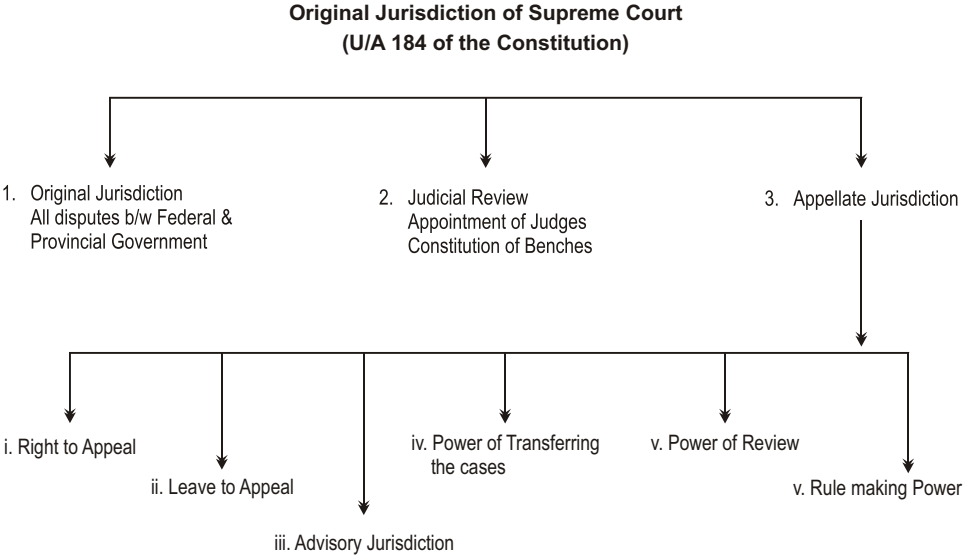
Constitutional Significance of Supreme Court

"There shall be a Supreme Court of Pakistan.".[6] It is the apex of the judicial system of Pakistan. Its decisions become final and all lower courts are bound to follow it. The Supreme Court is the apex Court of the land, exercising original, appellate and advisory jurisdiction.[7] The Supreme Court of Pakistan was entrusted with a task of interpreting the constitution. It was given the power to adjudicate in any dispute between Federal and Provincial Governments or between Provincial Governments.[8] Enforcement of justice is the primary duty of the courts and custodian of the fundamental rights given in the Constitution of Pakistan.[9] The Supreme Court enjoys the most distinguished position within the entire judicial setup which decides the constitutional validities of all laws and having the power to declare the law null and void if it is against the injunctions of Holy Quran and Sunnah.

The Supreme Court is the guardian of the constitution and given the power of judicial review. The Supreme Court also protects all those rights guaranteed under the first chapter of the Constitution of Pakistan. The concept of judicial review firstly established in the case of Madison VS Marbury where Chief Justice Marshall took the plea that the constitution is the paramount law of the land since it is the source of all authority and power.[10] There are 18 judges in the supreme court of Pakistan along with Chief Justice.[11]

Appointment of Its Judges

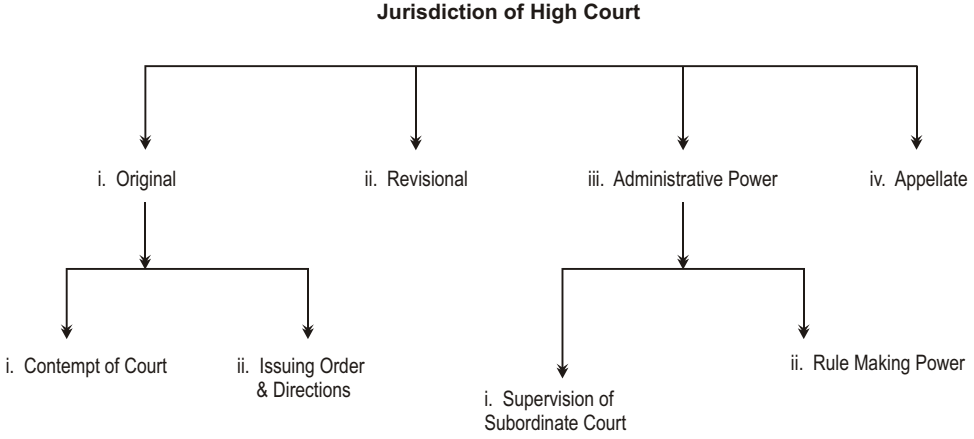
All the judges including the Chief Justice of Supreme Court are appointed by the President on the advice of Prime Minister. The Court consists of a Chief Justice and other judges, appointed by the president.[12] It is up to Parliament to determine the number of judges. The number fixed at the moment is 18. Currently, the Court is working with full strength. Further, 2 Ad hoc Judges have also been appointed for one year. The Court exercises original jurisdiction in inter-governmental dispute,[13] i.e. dispute between the Federal Government and a provincial government or among provincial governments. The Supreme Court also exercises original jurisdiction (concurrently with High Courts) for the enforcement of fundamental rights, where a question of 'public importance' is involved.[14] The Supreme Court has appellate jurisdiction in civil and criminal matters.[15] Moreover, the Supreme Court has advisory jurisdiction in giving opinion to the Government on a question of law.16



High Court

High Court means the highest court of Criminal appeal or revision for a province.[17] There is a High Court in each province. Each High Court consists of a Chief Justice and other judges. The Chief Justice is appointed by the President in consultation with the Chief Justice of Pakistan while the other judges with the consultation with the Chief Justice of the concerned High Court.[18] Following are the Power of High Court to Awarding punishment of

death: it may confirm death sentence; it is necessary that for Confirmation of death sentence the judges must be two or more in number, Petition of Habeas Corpus under section 491, transfer of criminal cases[19] from one court to another, award imprisonment up to 25 years, Fine any amount-difference between fine and compensation, Compensation for aggrieved person/heirs of deceased whereas fine goes in the treasury of the court, Forfeiture of property, High Court is the highest court in the province, and supervises the work of the subordinate courts in it. The most significant power of the High Court is writ jurisdiction[20] to issue direction in the nature of writ of Habeas Corpus, writ of mandamus, writ of certiorari, writ of quo warranto and writ of prohibition.



The High Courts have such jurisdiction as is conferred on them by the Constitution or by other statute of the country.

1. The jurisdiction of this court may be classified as follows:

i. Extra-Ordinary Jurisdiction

As the name suggests by exercising this jurisdiction the High Court may issue directions and orders to any person or authority in the country, prohibiting, commanding, calling in question acts done or intended to be done by such person or authority, in specified circumstances.

The jurisdiction to issue these orders is the well-known prerogative writs, which have not been mentioned by their traditional names of the writs of mandamus, certiorari, prohibition, quo warranto and habeas corpus.

Order of Mandamus

An order of mandamus is a direction issued to

a. 'any natural person,

b. corporation or

c. inferior court

within the jurisdiction of the High Court requiring them to do some specific thing therein particularised, and which appertains to their office of duty.

Its object usually is to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers when there is no other adequate and specific legal remedy and without which there would be a failure of justice.

Order of Prohibition

The High Court's jurisdiction to issue an order of prohibition where a Court or Tribunal other than the Supreme Court of Pakistan, the High Court or a Tribunal established under the law relating to Defence Services acts in excess of or without jurisdiction.

In case of quasi-judicial proceedings generally an order of prohibition does not issue. It is issued **only against a Court or a judicial body**, which though may not be called a Court but has been created specifically under a statute.

Order of Certiorari

Order of certiorari is of two kinds

a. for removal and adjudication; and

b. for quashing the proceedings.

The order of certiorari may be issued

a. for correcting errors of jurisdiction as when an inferior Court or Tribunal acts without jurisdiction or in excess of it or fails to exercise it; or

b. when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties, to be heard, or violates the principles of natural justice. An order under this article may be issued only to a body acting judicially or quasi judicially because Certiorari lies in all cases where there is a duty to act judicially or where there is a judicial act or order or when the proceedings are judicial or quasi-judicial.

Quo Warranto

Quo warranto is the remedy or proceeding whereby the Court inquires into the legality of the claim which a party asserts to an office or franchise, and to oust him from its enjoyment if the claim be not well founded to have the same forfeited.

To recover it if having once been rightfully possessed and enjoyed, it has become forfeited for misuser or nonuser.

Before opting for this kind of writ one shall look that it is a substantive corporate office of a public nature, and the person proceeded against is in actual possession and use of the office in question.

ii. Original and Appellate Jurisdiction

The original and appellate jurisdiction of the High Courts are provided by pre-Constitution laws such as

a. the Criminal Procedure Code,' and

b. the Code of Civil Procedure,

Appellate Jurisdiction under the Code of Criminal Procedure, the High Courts hear appeals against the orders passed by the Sessions or Additional Sessions Judges and under the Code of Civil Procedure, the High Courts hear appeals from the decisions of the subordinate civil courts and the District Judges' courts.

A second appeal under the Code lies to the High Court on a question of law or on the ground of a substantial error or defect in procedure in the first appellate court.

As an appellate court, the High Court has the power to determine the case finally, to remand to frame issues and refer them for trial, to take additional evidence or to require such evidence to be taken as it may deem fit.

iii. Supervisory Jurisdiction

The High Courts **make rules** for the guidance of the lower civil and criminal courts.

A High Court can **transfer cases** from one court to another or when it thinks fit may transfer a case for trial even to itself.

District Courts

1. The district courts of Pakistan are the lowest of all the courts in the hierarchy, which deal with all the mattes pertaining to civil and criminal nature.

Civil Cases

1. In every district of a Province, there is a Court of District Judge which is the principal court of original jurisdiction in civil matters.
2. Courts of General Jurisdiction Besides the Court of District Judge, there are courts of Civil Judges.
3. Civil Judges function under the superintendence and control of District Judge and all matters of civil nature originate in the courts of Judges.
4. The District Judge may, however, withdraw any case from any Civil Judge and try it himself.
5. Appeals against the judgements and decrees passed by the Civil Judges in cases where the value of the suit does not exceed the specified amount lie to the District Judge.

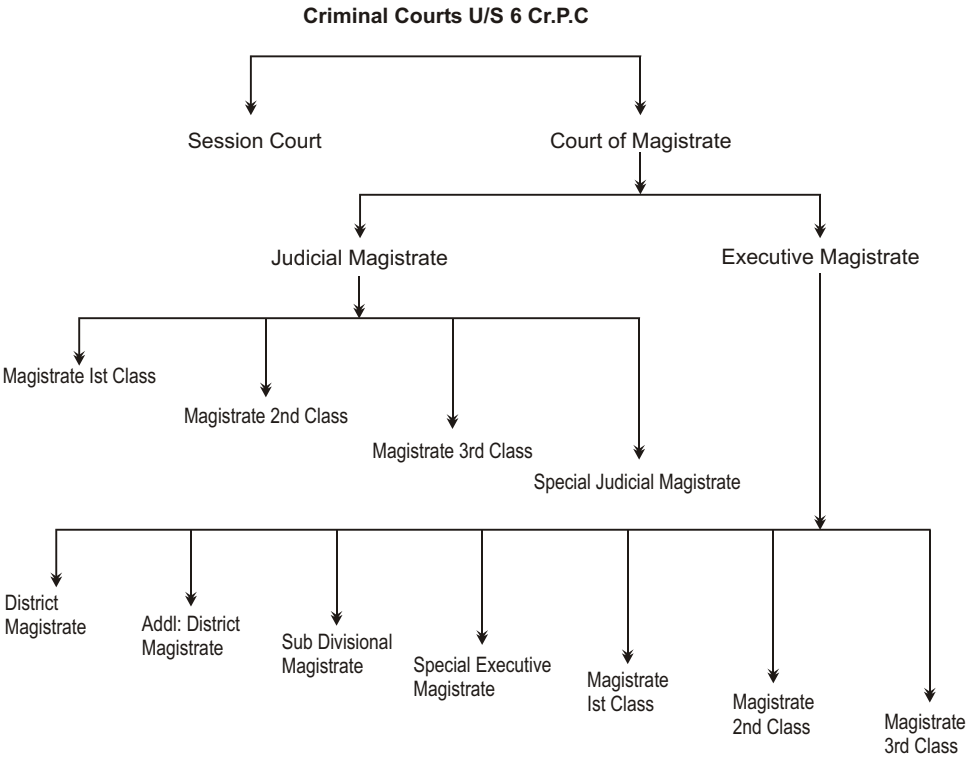
Criminal Cases

1. In every district, there is a **Court of Sessions Judge** and **Courts of Magistrates** has the jurisdiction to try the Criminal cases.
2. The offences punishable with death and cases arising out of the enforcement of laws relating to Hudood are tried by Sessions Judges.
3. The Court of a Sessions Judge is competent to pass any sentence authorised by law.
4. Offences not punishable with death are tried by Magistrates.
5. Among the Magistrates there are Magistrates of 1st Class, IInd Class and IIIrd Class.
6. An appeal against the sentence passed by a Sessions Judge lies to the High Court and against the sentence passed by a Magistrate to the Sessions Judge if the term of sentence is upto four years, otherwise to the High Court.

Session Court

Session Court is the August court in the district. Its jurisdiction extends to the whole district. It is presided by a session judge appointed[21] who may be assisted by one or more than one additional session judges all magistrates in the district are subordinate to the session judge. A Session judge has numerous powers e.g. to conduct trials all serious crimes such as robbery, murder and all kinds of homicide,

serious thefts by habitual offenders etc. A death sentence pronounced by him can be carried out only after the confirmation by the High Court. A Session Judge hears appeals from the orders of the First Class Magistrate and Section 30 Magistrates, if they have sentenced a man to four years or more imprisonment. He has also revisional jurisdiction. Appeals from the Session Court goto the High Court. All session judges have the power of the justice of the peace and they can exercise same powers as the police u/s 54 and 55 of the code of criminal procedure. An ex-officio justice of the peace may issue appropriate direction to the police authorities concerned on a complaint regarding i. non- registration of criminal case ii transfer of investigation from one police officer to another; and iii. Neglect, failure or excess committed by a police authority in relation to its function and duties.[22]



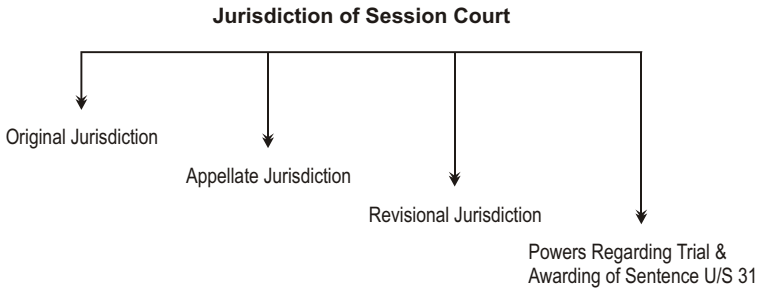
Civil Judge Cum Judicial Magistrate Courts

In every town and citythere are numerous civil and judicial magistrate courts.Magistrates with power of section 30 of Cr.P.C can hear all matter and offences of criminal nature, where there is no death penalty (such as attempted murder,dacoity,robbery,extortion)under his jurisdiction but he can pass sentence

only up to seven years or less. If the court thinks accused deserves more punishment than seven years then it has to refer the matter to some higher court with its recommendations. Every magistrate court is allocated a jurisdiction that is usually one or more Police Stations in the area. Trial of all non bailable offences including police remand notices, accused dischages, arrest and search warrants, bail applications are heard and decided by Magistrate Courts. Most of judicial Magistrates have powers over civil suits as well, they are usually called Civil Judge Cum Judicial Magistrates.

Court of Magistrate

There are two types of magistrate, one is the judicial magistrate while the other is executive magistrate which is not any more because section 10 of the code of criminal procedure was related to executive magistrates which was omitted in 2001 through amendment ordinance XXXVII of 2001. There are several Judicial magistrates in one district and they can exercise their powers within the limits prescribed to them. The powers of judges are distributed for the purpose to reduce pressure on the judges and also provided opportunity to the accused to get remedy quickly in case of refusal to get the right of appeal



Special Courts and Tribunals

1. In this country there are also special courts and tribunals has been established so as to deal with specific types of cases.
2. These are Special Courts for
   i. Trial of Offences in Banks;
   ii. For Recovery of Bank Loans;
   iii. Under the Customs Act,
   iv. Traffic Courts;
   v. Anti-Corruption;

vi. Anti Narcotics Courts

vii. Anti terrorist Courts

viii. Commercial Courts;

ix. Board of Revenue

x. Drug Courts;

xi. Labour Courts;

xii. Insurance Appellate Tribunal;

xiii. Income Tax Appellate Tribunal and

xiv. Services Tribunals.

xv. Special Magistrate courts

3. Appeals from the Special Courts lie to the High Courts, **except** in case of **Labour Courts and Special Traffic Courts**, which have separate forums of appeal.

Special Courts

i. Juvenile Court

Protection of child in criminal litigation is very important and for this reason special law through presidential ordinance came into in 2000 and juvenile courts are constituted under section 4 of the Juvenile Justice System Ordinance, 2000 to exclusively deal all offences committed by child. Which further clarify u/s 5 that there should be no joint trial of a child and adult person? The important thing is that u/s 12 the juvenile court can not award death penalty to juvenile nor handcuffed put in fetters or given any corporal punishment at any time while in custody.

ii. Anti-Terrorism Court

Due to changing circumstances it was expedient to provide for the prevention of terrorism, sectarian violence and for speedy trial of heinous offences and for matter connected therewith.[23] The purpose of this enactment was to provide heinous punishment to harder criminal and prevent terrorism. No court has power to release an accused on bail except Anti terrorism court, High court and Supreme Court. Anti Terrorism Court was established in Pakistan, under Nawaz Sharif's government, to deal with terrorism cases. Anti-Terrorist Act, amended on 24 October 1998 by the Anti-Terrorism (Amendment) Ordinance following the Supreme Court judgement (*Merham Ali versus Federation of Pakistan*, 1998) declaring most of its provisions unconstitutional.

iii. Anti-Narcotics Court

Anti Narcotics court is a special court constituted under section 46 of the control of narcotics substance act 1997. Which says that the Federal Government and, if so directed by the Federal Government, the Provincial Government shall by notification in the official Gazette establish Narcotics court. The intent and object behind enacting Control of Narcotics Substances Act, 1997, inter alia, was to control the production, processing and trafficking of narcotics etc and the Act being a special law the effective provision thereof could not be defeated on technicalities.

iv. Anti-Corruption Court

The anti-corruption court performs its function under the Prevention of the corruption Act, 1947 and its purpose is to eliminate corruption from societies. It is a special court and its judges are equivalent to session judge. Its procedure is different from the other courts in other courts majority cases are tried when some one lodge an FIR but in these court the cases are commence from the complaint and on the basis of the said compliant an investigating agency starts investigation and when the investigation officer founds some thing than an FIR is registered against the accused. Offences covered under the prevention of corruption Act are exclusively tried by the Anti Corruption Court and its appeal lies to the High Court.

v. Shariat Court

Federal Shariat Court comprises eight Muslim Judges including the Chief Justice to be appointed by the President. Of the Judges, four are the persons qualified to be the Judges of the High Courts, while three are Ulema (scholars well-versed in Islamic Law).

Jurisdiction: Federal Shariat Court has original and appellate jurisdiction.

Original Jurisdiction: The Court may examine and decide the question whether or not any law or provision of law is repugnant to the injunctions of Islam as laid down in the Holy Quran and Sunnah of the Holy Prophet. If the Court decides that any law or provision of law is repugnant to the injunctions of Islam, it sets out the extent to which such law or provision of law is so repugnant, and specifies the day on which the decision shall take effect. Where any law is held to be repugnant to the injunctions of Islam, the President in the case of Federal law or the Governor in the case of a Provincial law is required to take steps to amend the law so as to bring it in conformity with the injunctions of Islam, and such law ceases to have effect from the specified day.

Appellate Jurisdiction: The Court has exclusive jurisdiction to hear appeals

from the decision of criminal courts under any law relating to enforcement of Hudood Law i.e. laws pertaining to offences to intoxication, theft, Zina (unlawful sexual intercourse) and Qazf (false imputation of Zina).

vi. The Ombudsman (Wafaqi Mohtasib)

The Concept Mohtasib (Ombudsman) is an ancient Islamic concept and many Islamic States have established the office of Mohtasib to ensure that no wrong or injustice is done to the citizens. In the 18th century, when King Charles XII of Sweden was in exile in Turkey, he observed the working and efficacy of this institution in the Ottomon Caliphate. On regaining his throne, the King established a similar institution in Sweden. Gradually, other developed western countries also adopted this institution.

Establishment in Pakistan: In Pakistan, the establishment of the institution of Ombudsman was advocated on several occasions. It was Article 276 of the Interim constitution of 1972, which provided for the appointment of a Federal Ombudsman as well as Provincial Ombudsmen for the first time. Subsequently, the Constitution of 1973 included the Federal Ombudsman at item 13 of the Federal Legislative List in the Fourth Schedule.

The Institution of Ombudsman was, however, actually brought into being through the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983. The Wafaqi Mohtasib is appointed by the President of Pakistan and holds office for a period of four years. He is assured of security of tenure and cannot be removed from office except on ground of misconduct or of physical or mental incapacity.

Jurisdiction**:** The chief purpose of the Wafaqi Mohtasib is to diagnose, investigate, redress and rectify any injustice done to a person through misadministration on the part of a Federal Agency or a Federal Government official. The primary objective of the office is to institutionalise a system for enforcing administrative accountability.

The term "misadministration" has been defined in the law governing the office of Mohtasib, to cover a very wide spectrum, encompassing every conceivable form of administrative practice. It includes a decision, process, recommendation, an act of omission or commission, which:

a. is contrary to law, rules or regulations or is a departure from established practice or procedure;

b. is perverse, arbitrary or unreasonable, unjust, biased, oppressive or discriminatory or is based on irrelevant grounds;

c. involves the exercise of powers, or the failure, or refusal to do so, for corrupt or improper motives.

It also includes neglect, inattention, delay, incompetence, inefficiency, ineptitude in the administration, or in the discharge of duties and responsibilities. The term "Agency" has been defined as a Ministry, Division, Department, commission, or Office of the Federal Government, or a Statutory corporation, or any other institution established or controlled by the Federal Government.

Powers: If the Mohtasib finds an element of bad administration in a matter, he can, after investigating the matter, ask the Agency concerned to consider the matter further, to modify or cancel its decision, to take disciplinary action against any public servant, to dispose of the cases within a specified time, or to improve the working of the Agency, or to take any other specified steps. Failure on the part of an Agency to comply with the Ombudsman's recommendation is treated as "Defiance of Recommendations" which may lead to reference of the matter to the President of Pakistan, who, in his discretion may direct the Agency to implement the recommendations.

The Mohtasib is empowered to award compensation to an aggrieved person for any loss or damage suffered by that person on account of misadministration. But if the complaint is found to be false, or frivolous, he can also award compensation to the Agency or the functionary against whom the complaint was made.

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2. Courts of General Jurisdiction Besides the Court of District Judge, there are courts of Civil Judges.
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5. Among the Magistrates there are Magistrates of 1st Class, IInd Class and IIIrd Class.
6. An appeal against the sentence passed by a Sessions Judge lies to the High Court and against the sentence passed by a Magistrate to the Sessions Judge if the term of sentence is upto four years, otherwise to the High Court.

National Judicial Policy

It is a fundamental and inherent right of every citizen of the state to seek speedy and affordable justice, the provision of which becomes a state's duty and responsibility. In this regard, the announcement of "New Judicial Policy of Pakistan" is welcomed by masses, among many of them were made waited into their pending cases in the courts for years. Since the higher rate of pendency of cases, uncertain time limit for courts decisions, remote accessibility to courts and affordability of legal fees were the main reasons for the demand of judicial reforms in the form of "Nizam-e-Adal Regulation" in Malakand division, the Supreme court of Pakistan's realization for the need to bring reforms in the judiciary is opening the doors of justice to a common man.

The New Judicial Policy's effort in bringing out reforms through minimizing the pendency of cases rate, the allocation of specific time limits for specific cases and the provision for judges not to serve as acting governor, and for those currently serving in other departments on deputation to be summoned back to the courts are extremely welcoming.

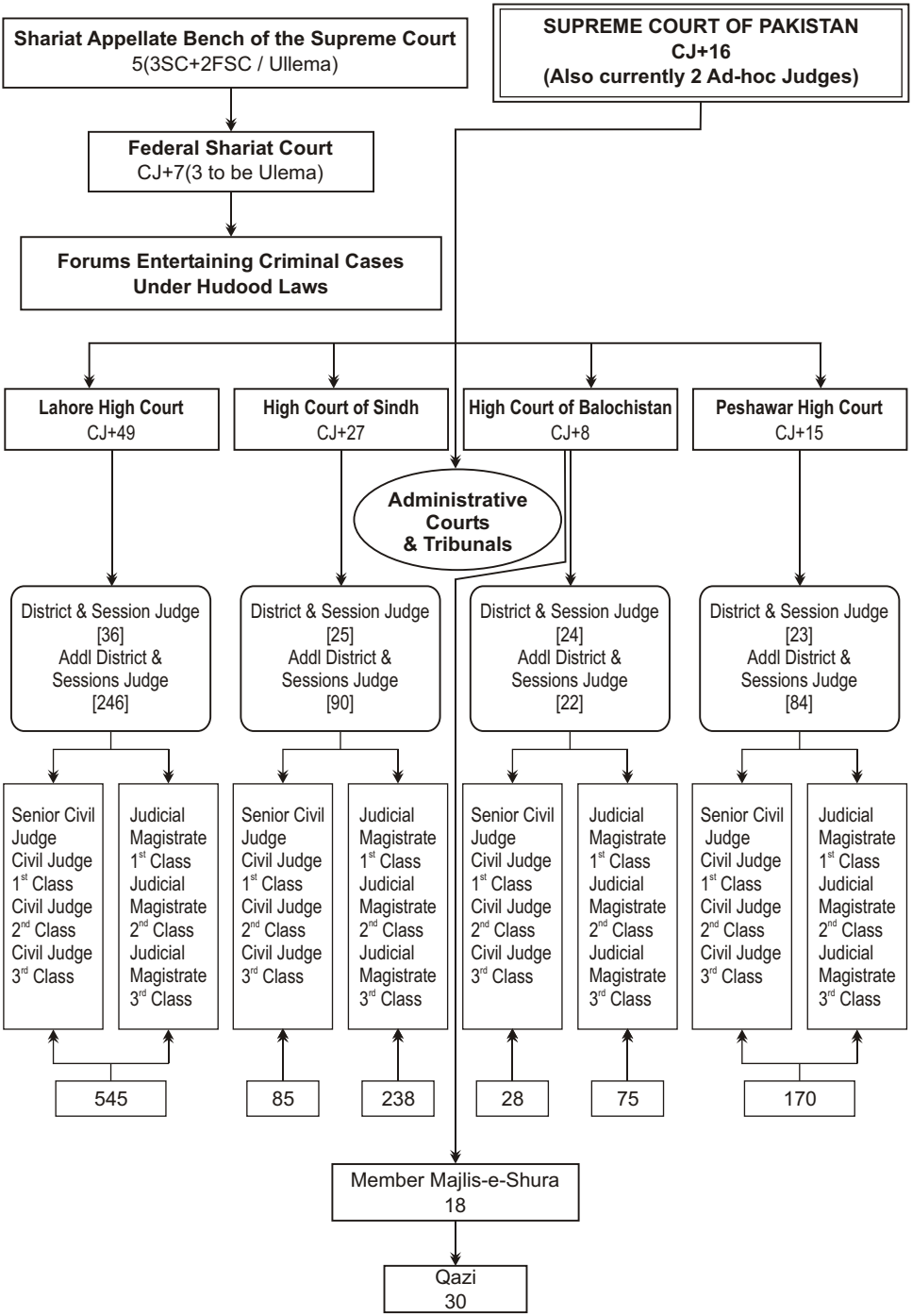
Since our judiciary is going through the phase of extensive reforms, other areas need to be considered for further efficiency. These include:

1. The appointment and dismissal of the judges of Supreme Court and those of High courts needs to be very clear and acceptable to the every stakeholder of the state. This will require the amendment in the constitution by parliament.
2. The practical implementation of the reforms introduced in the new policy is the most important task in this regard as justice in the real sense means justice not

only been done, but seemed to have been done. This will really help to boost the public confidence in the judiciary.

3. Code of ethics for judges needs to be revisited and needs to be brought about to the level comparable to that of judiciary in the most developed countries.
4. Remuneration and benefits provided to the all judges needs to be of sufficiently high level to minimize the chances of corruption. The establishment of anti-corruption cell is a very good move by the higher court in this regard.
5. There is also a need to bring improvements in the administration to ensure due dispensation of justice by the courts.
6. The problems of uncertain time limit and the pendency rate of cases have been appropriately addressed in the new policy, but following should be re-addressed:
    a. Establishment of new courts and increase in the number of specialized courts particularly in remote areas to make justice easily accessible to every citizen.
    b. A reasonable maximum amount of legal fees needs to be specified for specified cases to make justice affordable.
    c. There is a need for public awareness about courts legal system of the state to make dispensation of justice easily understandable for a common man.
7. Alternative Dispute Resolution (ADR) Forums on each separate legal area needs to be established to encourage settlement and resolution of disputes through alternative means. This will also help in decreasing pendency rate.
8. There is a need to respond to the complains and feedback timely and efficiently to redress the grievances of the masses quickly.
9. Minimum numbers of jail inspections in a specified period by authorized judges needs to be prescribed to stop human rights violations and mal-practices in jails.

Judicial Organization and Strength of Hierarchy



Note

1. In Punjab, 55 District & Sessions Judges, 34 Additional District & Sessions Judges and 23 Senior/Civil Judges and Judicial Magistrates are working on ex cadre posts.
2. In Sindh, 42 District & Sessions Judges, 9 Additional District & Sessions Judges and 8 Senior/Civil Judges and 11 Judicial Magistrates are working on ex cadre posts.
3. In Balochistan, 5 District & Sessions Judges, 4 Additional District & Sessions Judges, 7 Senior/Civil Judges and 5 Judicial Magistrates are working on ex cadre posts.
4. In NWFP, 31 District & Sessions Judges, 19 Additional District & Sessions Judges and 17 Senior/Civil Judges and Judicial Magistrates are working on ex cadre posts.

Strength of Judges and Administrative Staff of Superior & Subordinate Judiciary

Judges	Supreme Court of Pakistan	Federal Shariat Court	Lahore High Court	Sind High Court	Peshawar High Court	Balochistan High Court
Chief Justice & Judges	19	08	50	28	16	08
Administrative Staff	567	216	1861	970	346	308
Pendency	10,914	3,316	75,195	27,291	13,610	2,445
District & Sessions Judges/ Addl Distt & Session Judge/ Senior Civil Judge/ Civil Judge	-	-	939	508	277	197
Administrative Staff	-	-	10,330	-	3,317	1450
Pendency	-	-	110,546	123,663	37,000	8,377

Strength of Members and Administrative Staff of Administrative Tribunals

	Federal Service Tribunal	Punjab Service Tribunal	Federal Ombudsman	Federal Tax Ombudsman
Members	11	05	07	01
Staff	126	-	593	145
Pendency	20,453	1516	4885	357

Current Strength of Law Officers of the Federation and Provinces

Federation		Federal	Balochistan	NWFP	Punjab	Sindh	Total
Attorney General for Pakistan/Advocate General		1	1	1	1	1	5
Deputy Attorney General/ Additional Advocate General		10	2	5	12	8	37
Standing Counsel/ Assistant Advocate General		9	2	5	33	12	61
District Attorney		-	31	-	58	24	113
Deputy District Attorney		-	-	-	180	152	332
Assistant Deputy District Attorney		-	16	-	128	-	144
Public Prosecutor		-	-	31		31	62
Deputy Prosecutor		-	-	45	-	-	45
Assistant Public Prosecutor	BPS 16	-	-	42			42
	BPS 14	-	-	84			84
Government Pleaders		-	-	9			9
Assistant Government Pleaders		-	-	31			31
Total		**20**	**52**	**253**	**412**	**228**	**965**

Advocates on the Roll of the Supreme Court

Senior Advocates	Advocates	Advocates on Record	Senior Total
250	2,453	223	2,926

Advocates on the Roll of the Supreme Court

Punjab	Sindh	NWFP	Balochistan
30,000	6,840	3,171	1,020

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The Prison System in Pakistan

Muhammad Masood Khan

Abstract

The present structure of the Prison system in Pakistan can be traced back to British India. The author has tried to explain the current situation of jails and their problems: overcrowding; mal-administration; lack of training and low salaries of jail staff; and outdated methods of treating prisoners. This article also describes the functions and achievements of the Central Jail Staff Training Institute, the only institute for the professional training of prison staff and officers in Pakistan. Important prison rules and data compiled from government departments in all provinces of the country and policy recommendations are also included in this article.

Keywords

Prison System, Prisoners, Penal System, Jails in Pakistan, Penology, Prison Administration

Introduction

Pakistan inherited the Prisons System from the British as a colonial legacy. This system was used as an instrument to suppress political opponents and to neutralize threats to Crown rule.

Prison as a place of punishment after conviction, is an 18th century concept. It was conceived of as a humanitarian alternative to corporal punishment. It was felt that confinement would help prisoners to become penitent and that penitence would result in reformation. It was not until the 19th century that the prison reform movement took shape when for the first time classification, segregation, individualized treatment and vocational training of inmates were given due consideration.

After independence the prisons and prison departments as a whole remained a low-priority item on the Government agenda. However prisons remained an exclusively provincial concern in the successive constitutions of the Republic of Pakistan. Provincial Governments did make efforts to maintain and improve the existing prisons available in the country. Quite a few numbers of new jails were also constructed in the last fifty years, on the recommendations of various prisons reform committees.

The first prison reform programme was introduced in Pakistan during the year 1950 under the chairmanship of Col Salamat Ullah, ex-IG Prisons (UP combined India). Later various reforms committees were constituted in the provinces and under the auspices of the Federal Government in order to settle the grievances brought by prisoners. The recommendations of these Committees were invariably approved. However no productive work could be done mainly because of financial constraints.

Background of Prison System in Pakistan

Maximum-security prisons were commonly identifiable by the walls and towers for armed guards as well as the restrictive rules for the prisoners. The colonial prison system was conceived as an instrument of punishment. Harsh and brutal treatment was meted out to prisoners such as the imposition of handcuffs and fetters as well as hard labor, cellular and separate confinement, whipping, dietary restriction, the substitution of gunny clothes and the loss of privileges.

The Jailor being the head of the institution without uniform had to play the role of judge and his orders were to be implemented through his deputy designated the Chief Executive Officer of the prison. Prisons were operated under a military-style system of authority. Each officer in the staff hierarchy had specified duties and responsibilities and was linked to officers of higher and lower rank through a chain of command. Despite its hierarchical logic the system of authority and communication had serious weaknesses. One problem was that policy-decisions were made by administrators who were far removed the realities of daily life in prison.

The chain of command also compromised the accuracy and completeness of reports as they moved up and down the ranks. For many officers in the lower ranks allegiance to administrative policies was less important than engaging in the exchange of rumors with the inmates resulting in fraternization and collusion with the inmates.

Existing Prison Structure

At present there are 99 Prisons in Pakistan including Azad Kashmir & Gilgit Baltistan which includes four Women Jails (one jail in Punjab i.e. Women Jail, Multan and three jails in Sindh Province i.e. Women Jail, Larkana, Women Jail, Karachi and Special Women Jail, Hyderabad). However, women prisoners are also kept in separate portions of other jails.

It also includes two Borstal Institutions and Juvenile Jails i.e. B.I.&J.Jail, Bahawalpur and B.I.&J.Jail, Faisalabad. Juvenile prisoners are also kept in the Youthful Offenders Industrial School, Karachi and separate portions of other jails of the country.

Objectives of the Prisons

a. Custody Keeping inmates in safe place of confinement to satisfaction of the court.

b. Control Maintaining discipline within the prison premises.

c. Care Meeting basic needs of the inmates.

d. Correction Providing treatment (physical, mental and psychological counseling) to reform and rehabilitate the convicted inmates.

e. Cure Provision of facilities that are needed for a normal person to become productive member of the society.

Functions of the Prison

- Execute the sentence awarded by the Court.
- Maintenance, Care, Custody and transfer of prisoners.
- Maintenance of orders and discipline amongst the prisoners.
- Control of expenditure relating to prison management.
- Enforcement of Prison Act, all Laws, Rules/Regulations and orders pertaining to the protection and maintenance of prison/prisoners.
- Imparting useful education / training to the prisoners in various trades/skills and other vocational disciplines for their rehabilitation.
- Organizing of recreational programmes, welfare measures and psychological counseling of inmates for their correction and rehabilitation.

Statistics

Currently there are 99 prisons in Pakistan out of which 32 are situated in Punjab, 22 in Sindh, 23 in NWFP, 11 in Balochistan, 06 in Azad Kashmir and 05 in the Gilgit - Baltistan (As on 31-12-2009). According to the vital prison statistics, the Province wise number of prisons is as under:

Provinces	No. of Jails
Punjab	32
Sindh	22
NWFP (KP)	23
Balochistan	11
Gilgit Baltistan	05
Azad Kashmir	06
Total	**99**

Type-wise breakdown is as under:

S. No.	Particulars	No. of Jails
a	Central Jails	25
b	District Jails	50
c	Sub Jails	09
d	Women Jails	05
e	Juvenile Jails	05
f	Special Prison	01
g	Judicial Lock-ups	04
	Total	**99**

Prison Population

According to the prison population as on 31st December 2009, the authorized accommodation for keeping inmates is 42165 whereas 78328 inmates are actually kept in jails. The Punjab Prison department presides over the gravest incidences of overcrowding by accommodating 52318 prisoners against a capacity of merely 21527.

Province-wise prison population and authorized capacity is as under:

Type-wise breakdown is as under:

S. No.	Name of Province	No. of Prisons	Authorised Capacity	Prison Population
1	Punjab	32	21527	52318
2	Sindh	22	10285	14422
3	Khyber Pakhtunkhwa former NWFP	23	7982	7549
4	Balochistan	11	2173	2946
5	Azad Kashmir	06	530	663
6	Gilgit Baltistan	05	173	430
	Total	**99**	**42670**	**78328**

(Position updated till 31 Dec 2009)

Legislation on Prisons

The colonial Government had through Regulation III of 1818 passed on the 7th April of the same year, for the confinement of state prisoner adopted a procedure to place any individual under personal restraint against whom there were no sufficient grounds to initiate judicial proceeding. Act No. IX of 1894 was passed by the Governor General of India in Council on the 22nd March. The said enactment came after Bombay Act II of 1874 which was applicable to civil jails in the Presidency of Bombay under the provisions of about eight sections i.e. Section 9 to 16. The Prisons Act was came into force on the 1st July 1894 comprising twelve chapters and sixty-two sections and detailing the provisions for maintenance of prisons, the duties of prison staff, discipline, rights and obligations of prisoners.

Having received the assent of the Governor General on the 11th March 1897 an Act VIII of 1897 was passed to amend the law relating to reformatory schools and to make further provisions for dealing with youthful offenders. After enactment of this law, the Reformatory Schools Act, 1876 was repealed.

Act III of 1900, the Prisoners Act, received the assent of the Governor General on 2nd February 1900 and came into force at once. It consolidated the existing statutes relating to prisoners confined by order of a court. It extended to the whole of British India inclusive of British Balochistan, the Santal Parganas and the Pargana of Spiti. The Act included nine parts and fifty-three sections had the guidance on admission, removal, discharge, attendance in court and employment of prisoners.

The Punjab Borstal Act, 1926 received the assent of the Governor on the 22nd July 1926 and that of the Governor General on the 16th August 1926 and was first published in the Punjab Government Gazette of the 27th August 1926. It was an Act to make provision for the establishment and regulation of Borstal Institutions in the Punjab and for the detention and training of Adolescent offenders therein already received the sanction of the Governor General under sub-section (3) of section 80-A of the Government of India Act. The Act contains thirty-six sections to discuss various aspects of prisoners under twenty-one years of age.

The 1932 Jail Manual received the assent of the Governor in the council of Punjab on 31st December 1932. The Manual included forty-two chapters, eleven hundred and sixty rules, twenty supplement appendices and a comprehensive index. All the rules framed in the Manual are under the authority of section 59 of the Prisons Act 1894. The Manual included special mention of the post of Factory Manager, provisions for the appointment of European Warders for European prisoners, for the role of Senior Assistant Superintendent, for documents of bails or surety bonds, for duties of convict monitors, for punishments like Transportation for life, accidental or unnatural deaths, details about state, Leprosy and European prisoners and their treatment.

Issues and Problems

Under the 1973 Constitution of Pakistan (Concurrent List) "Jail Matters" is the responsibility of Provincial Governments. However, the Federal Ministry of Interior with the consultation of Ministry of Law and Justice and National Reconstruction Bureau (NRB) has made efforts to draft a comprehensive report on Prison Conditions and Prison Reforms which are yet to be fully implemented.

Present Conditions of Jails

- Jails of today are heavily overcrowded.
- Jails have old and dilapidated facilities, often dating from the 19th century.
- There is acute shortage of manpower.
- Budget allocation is insufficient.
- Security devices are very rare.
- Amendment in Rules is required (Pakistan Prison Rules being 28 years old).
- Training of Prison Staff at home and abroad is necessary.
- Establishment of Medical Laboratories is important.
- Water Treatment Plants need to be added;
- HIV/Aids / Hepatitis issues need to be addressed on a priority basis;
- Education Programmes need to be introduced.
- Remission Systems need to be liberalised by prison authorities.
- The use of mobile phone needs to be stopped immediately and replaced with installation of PCOs/Booths.
- Transport facilities need to be extended to prisons.

1. Overcrowding

   Causes:

   - High proportion of Pre-trial Prisoners
   - Under-utilization of Parole & Probation Provisions (see article in this issue)
   - Increasing Population of Addicts.
   - Prolonged Detention of Petty Cases
   - Non-Utilization of Open Jails

Effects:

- Congestion in Barracks / Cells.
- Poor Diet & Health Care Management
- Un-hygienic & poor sanitary conditions.
- Increased Security and administrative problems.

2. Mal-administration / Corruption:
   - Over-fatigued Prison Staff.
   - Extortion, Harassment and torture of Prisoners.
3. Lack of Recreational Facilities;
4. Un-organized Educational Programmes;
5. Un-attractive service structure and slow career progression of Prison Staff;
6. Low priority to training of prison staff;
   - Meager Budget Allocation;
   - More Nominations from Provinces for training at home (Common Training Programme at National Level).
   - Consistent lapse of opportunities of Foreign Training.
   - Full Activation of Function No.28 of Interior Division of Rules of Business.
7. Special consideration for vulnerable prisoners.

Suggestions for improvement in Prison System

Following curative/ reformative steps are required to be taken to improve the conditions of the jails in the country:

- Provision of funds for new construction / expansion of jails.
- Number of Jails for juveniles and female prisoners is increased.
- Prison Departments are actually understaffed. Keeping in view prison population, additional manpower is direly needed. This issue needs to be considered realistically.
- Financial constraints be removed to entertain previous recommendations and to solve a lot of problems. Minor approvals can be granted through delegation of powers at the lower level.
- The system of jail inspection be strengthened so that the judges of high courts and subordinate courts regularly visit jails and give on-the-spot instructions about the cases of under-trial prisoners.

- Open Prisons be established at Divisional level with large chunks of agricultural lands for rehabilitation of prisoners before final release.
- Federal Prison be established to deal with Prisoners under Federal Laws such as Drug Traffickers, Foreigners, Army Deserters, Tax Evaders, Loan Defaulters, Money Launderers (Accountability cases) etc.
- The number of prisoners in a condemned (death) cell be according to the capacity of the cell.
- Psychological counseling be provided to inmates which is extremely necessary.
- The old record about admission, release and remission accounts of the prisoners be computerized for efficient administration of jails.
- Prison staff be encouraged through better incentives of awards / prizes for their achievements and work of excellence.
- The tendency of long period of posting at one place be immediately stopped or some policy be devised.

Prison Reform

The credit for having started the prison reform movment belongs chiefly to the Englishman John Howard (1726 1790) whose study of prison life forced a change in the treatment of offenders. The work of Elizabeth Fry (1780 1845) was also significant as she spent much of her life to understand the lives of inmates. Similar work was done in he United States by a group of Philadelphia Quakers, who began agitating for prison reform later. Their efforts came to a point which ultimately led the United States to lead by example. The American prison system, now in almost universal use, embodies two main principles: the separation of prisoners by individual cells, and their engagement in some form of labor. Later correctional programes in nearly all parts of world show a significant trend toward specialization, diversification and experimentation.

The Reform Movement in Pakistan had its beginnings in the formation of the Punjab Jail Reforms Committee headed by Col H M Salamat Ullah the then Inspector General Prisons, the first meeting of which was convened on the 4th October 1950. The originally two-point agenda of the meeting was "whether these are certain rules which are derogatory to human self respect" and whether the existing rules provide facilities to prisoners for the discharge of the obligations enjoined by their religion. Later recommendations on Prison Reforms were brought forward by the same Committee. The condition of Prisoner's was improved through Punjab Jail Manual of 1955.

The meetings of the following Committees / Commissions / Conferences were held during the last 50 years:

1. First Prison Reforms Committee under Col. Salamat Ullah, Ex-IGP of UP combined India in 1950/1955;
2. East Pakistan Jail Reform Commission headed by S. Rehmat Ullah, CSP, Commissioner in 1956;
3. The West Pakistan Jail Reforms Committee headed by Mr. Justice S. A. Mahmood (S.Pk.), Retired Judge, High Court of West Pakistan in 1968-70
4. Jail Reforms Conference under Prison Division, Government of Pakistan in 1972.
5. Special Committee on Prison Administration headed by Mr. Muhammad Hayatullah Khan Sumbal, Home Secretary appointed by Governor of Punjab 1981-83.
6. Prison Reforms Committee headed by Mr. Mahmud Ali, Minister of State in 1985;
7. Jail Reforms Committee headed by Maj Gen (Retd) Nasirullah Khan Babar, Minister for Interior & Narcotics Control in 1994;
8. Jail Reforms Committee under Mr. Justice M. Rafique Tarar, Pak Law Commission headed by Mr. Justice Sajjad Ali Shah, Chief Justice of Pakistan in 1997;
9. Pak Law Commission headed by Mr. Justice Sajjad Ali Shah, Chief Justice of Pakistan in 1997;
10. Task Force on Prison Reforms under Mr. Justice Abdul Qadir Sheikh in 2000;
11. Meetings held at the national level by M/o Interior 2005 under the Chairmanship of former Minister for Interior Mr. Aftab Ahmed Khan Sherpao;

In addition meetings were also held under the Chairmanship of the Principal, Secretary to the Prime Minister and in the National Reconstruction Bureau, Islamabad with the coordination of Central Jail Staff Training Institute now upgraded as National Academy for Prison Administration (NAPA), Lahore.

A copy of the final report has been provided to all the Provinces by the Chairman, National Reconstruction Bureau, Prime Minister's Secretariat, for implementation. These recommendations will significantly improve the conditions in Jails in Pakistan.

Training of Prison Staff

In Pakistan, the burgeoning increase in population without corresponding increase in the resources provided to the criminal justice system has led to a rise in crime. It has built pressure on the already crowded and under-staffed prisons in the country, which is posing serious management and security problems. There is no gain saying the fact that these problems could not be given due importance by the policy maker as prisons remained a low priority. Consequently, instead of reforming the prisoners and transforming them as good citizens, the jails have virtually become dens of criminals, addicts and the social deviants to pollute the already stagnating fabric of society. In the circumstances, when the country is unable to afford the construction of new and well-equipped jails, an effective and viable way out is to shift the emphasis towards increasing professional competence and training of prison officers and the staff to effectively manage the prisons.

Origin of Prison Staff Training

There was no concept of practical training for prison staff. On the job training concept was introduced in 1957 under the guidance of Superintendent, Defunct Central & Borstal Jail, Lahore. Primarily the West Pakistan Prison Staff Training Institute was established at the site in 1963 yet it was abolished on dissolution of one Unit. The Punjab Prison Staff Training Institute was established in 1971 with a skeleton staff but the Institute could not function properly for want of a professional head and regular faculty staff.

With the policy of the Government of Pakistan to change the approach from punitive and retributive to corrective and reformative treatment of prisoners, there was a need to establish a Federal Institute to train jail officials on modern methods of jail management based on these new concepts.

The Central Jail Staff Training under the Ministry of Interior was therefore established as a result of unanimous recommendations of Prison Reforms Conference held in 1972.

The Prison Reforms Conference, 1972 unanimously recommended establishment of Federal Institute under the Prison Wing from the Defunct National Affairs, Overseas Pakistanis & Prisons Division to the Interior Division on 27th January 1975 for uniform, corrective and reformative training to all the prison staff and Reclamation personnel including Parole and Probation Officers of all the Provinces.

As such the Federal Institute was established in 1973-74 and the staff of the Institute was recruited in October to December 1974 and the courses were started in February, 1975.

This is the first nationally integrated Training Institution for training of all the Prison Staff and Reclamation Personnel (Probation and Parole Officers) of the country.

Central Jail Staff Training Institute (CJSTI)

The Central Jail Staff Training Institute (CJSTI) is the only Institution in the country engaged in the training of Prison Staff in provincial prison departments, in Azad Kashmir and the Northern Areas. It was established in 1974, as a result of joint recommendations of Provincial Inspector Generals of Police. In the last 30 years the Institute has acquired capability and experience in all related fields of professional and specialized training.

The CJSTI is currently functioning under Rule 28 of the Interior Division Rules of Business 1973. Proper training of Prison Staff is an important obligation under UN Charter and Geneva Convention of 1955. The charter has laid down to the minimum that "Prison Staff shall be given course of training in their general and specific duties. They shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at a suitable level." The CJSTI has the singular honor to be the only training Institution in the country fully qualified to meet all the national and international obligations and to lay down standards.

The CJSTI imparts professional training which includes better understanding of rules and procedures, calculation of remission, process of execution, security orientation techniques, crisis management methods, factory development and admission and release methodologies etc. Prison administration and management is purely a technical subject which is to be studied with minimum standards of treatment and basic rights of prisoners on international requirement.

The Institute offers a number of professional and physical training courses for officers and staff of about 89 prisons currently operating in Pakistan. On the average, over 300 staff are being trained from the institute every year. This is considered to be quite a reasonable output keeping in view facilities and meager resources available. In the future it has been decided to undertake short specialization and awareness courses, seminars and workshops concerning various professional subjects. In addition, efforts are also underway to offer diploma courses pertaining to some important disciplines of criminal justice system with the cooperation of local universities and law colleges.

In the realm of Physical Training, the Institute is presently conducting a number of practical training courses. These courses include Drill Instructor Courses and Physical Training Courses. Weapon Training and general drill practices continue to be integral part of basic training.

The Institute has also planned an elaborate Research, Development and Publication facility. To start with, research in various subjects pertaining to prisons and all other related fields has been made a compulsory part of the curriculum. In addition, this facility is also being utilized for collection and collation of data of all matters pertaining to prison. This facility has also been given the mandate to undertake a detailed study of prison rules, prison management systems and all other related matters with a view to updating them and in order to provide expert advice to the provincial prison departments and the Ministry of Interior. Another important assignment given to RD&P is to carry out comparative research into prison services and training systems. The ultimate purpose of this facility would be to recommend changes for our own prisons department and training institutions at all levels.

The Institute has also planned a computer literacy program for the prison staff. Efforts are in hand to establish Computer Laboratory for this purpose. Computer awareness and literacy has already been incorporated as an important part of the curriculum with effect from next training year.

Over a period of time the Institute has achieved the required standards and enhanced its capability to conduct training of prison staff on a uniform basis. Therefore, the Institute has now been upgraded to the of a National Academy for Prison Administration (NAPA) on par with institutions such as the National Police Academy, NIPA and the Civil Services Academy. This change in the status is likely to bring qualitative improvement in the training of prison staff.

Objectives of Training

i) Progressive professional training of entire prison officers and ranks of Prison Departments of all the Provinces, Northern Areas and Azad Jammu and Kashmir, on a uniform basis.

ii) Specialized training of senior prison staff, in important disciplines including human rights.

iii) Physical training of prison staff on ensuring physical fitness and crisis management skills.

iv) Training of Probation and Parole Officers in rehabilitation and correction techniques.

v) Orientation training of officers of other departments relevant to prison affairs;

vi) Research and Development in the fields of prison management.

vii) Computer training of Prison Staff to produce computer literates.

viii) Expert advice to Ministry of Interior and prison departments on legal, and administrative matters related to prisons.

ix) Maintenance of a comprehensive database to provide information regarding prisons and all other related fields to assist in policy planning.

x) Coordination of all training and other affairs of prisons with the Prison Departments on behalf of the Ministry of Interior.

xi) Advising prison staff on matters pertaining to psychosocial, and environmental aspects of inmates and providing counseling.

Training Needs Assessment

(a) In-Service Training

This Institute provides in-service training to all staff of the four provinces including Azad Kashmir and Northern Areas. The officers of the Reclamation and Probation Departments of the four Provinces are also receiving their technical and professional training at this Institute. This is the only National Institution in the country, which imparts training to the members of prison and probation staff on a uniform pattern. This type of training is given from 3 to 6 months at the Institute after completion of which a certification is provided to the successful trainees.

(b) On the Job Training

The Institute conducts field-training programs at the request of provincial prison departments, visiting jails in the provinces and providing on-the-job training to members of prison staff. This type of training equips prison staff to deal with day-to-day affairs. The training also emphasizes respect of human rights and focuses more on the treatment of prisoners. To guide trainees on psychological aspects and dealing with job stress such type of on-the-job training are very useful and has its own significance for which Inspector General of Prisons usually made requests to this Institute to hold programs at their provincial headquarters.

(c) Pre-Service Training

Before entry into service there is no procedure of training programs for Prison Staff in Pakistan. Yet it would enable staff to better understand the requirements of the job and to stay in the profession with greater spirit and enthusiasm. There is hence every need for pre-service training of Prison staff at the national institute.

(d) Master Training

This Institute is also responsible for training Master trainers for the prison staff. Master trainers should be equipped with teaching techniques, knowledge about the use of the latest technologies. Even educated prisoners can be associated with this program to train and educate other prisoners for better treatment and becoming law-abiding citizens.

(e) Specialized Training

The Institute holds specialized training for officers of the prison in the area of Penology, Prison Administration, Criminology and Criminal Justice. Experts of the Universities and Colleges are invited to deliver lectures to the course participants. Similarly senior professionals of the prison departments are requested to share their experiences with class on the subjects of treatment of prisoners, Prison Remission System, Prison Factory Management, Judicial Warrants and its execution process, Juvenile Justice Administration, Female Criminality and Criminal Justice System. Specialized training on computer literacy will start at the Institute very soon. Research and Development programs have started and the Institute has begun conducting its own research. Specialized training is always important in the promotion of studies and very helpful in receiving latest suggestions for formulating the government policies.

Conclusion

Prisons are a reflection of society. What is going on outside the Prison can easily be seen inside the prison. An in-depth study is required to understand Prison System in Pakistan not only for the reformation of prisoners but keeping in view all important role of different organs of the Criminal Justice system.

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Community Based Rehabilitation of Offenders; an Overview of Probation and Parole System in Pakistan

Mazhar Hussain Bhutta

Abstract

Community based rehabilitation of offenders (probation and parole system) has got tremendous significance in criminal justice system as the world has sharply moved away from retributive to rehabilitative justice. The author has tried to explore the gaps between the concept, comparing and contrasting it with "what works" in the situation of probation and parole systems in Pakistan. There are many stipulated rules available in the country for release of offenders on probation and parole. Correctional treatment of offenders being on probation and parole has been assigned to Reclamation and Probation departments in all four provinces of Pakistan which are, unfortunately, facing almost the same problems in legal, financial, professional and technical matters. Above all, probation and parole officers lack professional orientation, conceptual clarity, motivational work environment, innovative correctional skills and training. It reveals the fact that the probation and parole system has been a neglected area of criminal justice system in Pakistan. Research-based suggestions for reinvigorating the probation and parole system in Pakistan are also included.

Key words

Probation and Parole System, Alternative to Prison, Community Based Rehabilitation, Offender's Reintegration, Rehabilitation Justice, Criminal and Community, Criminal Justice and Public Safety.

Introduction

Probation and parole system in Pakistan are governed by provisions that allow the release of offenders on probation and parole under certain terms and conditions. Legally, these provisions are recognized as a fundamental to the Criminal Justice system in Pakistan.

Probation

The Probation of Offenders Ordinance (1960), was promulgated by the President of Pakistan to cater to the needs of first-time offenders who can be rehabilitated under the supervision and proper guidance of the probation officer without being sent to prison.

In the words of Ahuja Ram(1979), probation is the postponement of final judgment or sentence in a criminal case, giving the offender an opportunity to improve his or her conduct, often on conditions imposed by the court and under the guidance and supervision of an officer of the court.[1] Probation can be considered as a formative and flexible program for the first-time offender because it overcomes rigidity of imprisonment.

An analysis of the definition of probation reveals that its basic elements are:

- a postponement of sentence;
- a period of re-socialization for the criminal in the community;
- the criminal's observance of the conditions imposed by the court, and
- the supervision of the criminal by the probation officer.

Correctional and legal scientists like Panakal J.J and Madhava N.R (1984) think that the concept of probation be shifted entirely form that of the suspended sentence so that the corrective and rehabilitative functions of probation will be emphasized.[2]

The original aim of probation, as Srivastava, S. (1970) states, is "to advise, assist and befriend" criminals whom the court decides to release on probation.[3] It has widened greatly to include preparation for economic and social activity. Probation is based on the belief that encouragement must be given to the criminal not only to be a law-abiding citizens but also to contribute to the development of the local community and society.

Instead of indiscriminate imprisonment, the criminal is released for correctional treatment in the community. This community treatment is, in lieu of imprisonment, which is suspended by giving a chance to the criminal, to restrain and re-educate the probationer. Probation, therefore, attaches great value the influence of the home- and social environment.

Probation is correctional treatment aimed at reshaping the personality of a criminal. It, therefore, is helping the criminal to reshape himself. A fully rehabilitated person is capable of effectively evaluating his or her actions. More importantly, one is able to organize one's life, predict future events, and explain one's actions or conjecture about what will happen under various courses of action.

"Probation is a method of correctional process for the guidance and treatment of the criminal and his family, the discovery and correction of the criminal's personality and character and criminogenic environment, with the help of the resources of the community."[4]

Probation Procedures

The Probation of Offenders Ordinance (1960), Section 5 empowers Judiciary/courts to place certain offenders on probation not more than 3 years who are eligible for release on probation. After release of offenders on probation, the Reclamation and Probation (R&P) department in the province is to supervise, monitor and rehabilitate them in community. Probation and parole officer plays the key role in the whole process of probation system from release of offenders to successful rehabilitation.

The Courts empowered to release offenders on probation;

- High Court
- Sessions Court

- Judicial Magistrate 1st class
- Any other Magistrate specially empowered in this regard
- Determination of offender's suitability for release on probation entirely rests with the judiciary

Social Investigation Report (SIR)

After hearing the arguments of the prosecution and the defence, if the Court feels the case fit for probation, then it orders the Probation Officer to submit SIR that includes the following information about the offender likely to be released on probation

- Character
- Antecedents
- Commission and nature of offence
- Home surroundings and other circumstances

Functions of the Probation Officer

The Probation of Offenders Ordinance (1960), Section 10 describes the duties of Probation Officer after release of offender on probation:

- Explain to every probationer placed under his charge, the terms and conditions of the Probation order made in respect of such probationer, and if so deemed necessary, by warnings, endeavour to ensure their observance by the probationer;
- In the first two months of probation of every probationer under his charge, meet the probationer at least once in a fortnight, and thereafter, subject to the provisions of the Officer in Charge, keep in close touch with the probationer, meet him frequently, make enquiries into his conduct, mode of life and environments, and wherever practicable, visit his home from time to time;
- If any probationer under his charge be out of employment, endeavour to find suitable employment for him and assist, befriend, advise and strive to improve his conduct and general conditions of living;
- Encourage every probationer placed under his supervision to make use of any recognized agency, statutory or voluntary, which might contribute towards his welfare and general well-being, and to take advantage of the social, recreational and educational facilities which such agencies might provide;
- Where a probationer under his supervision, who has executed a bond, with sureties under section 5, is found to have committed any breach of the terms of his bond, or to have otherwise misconducted himself, to bring such breach or misconduct to the notice of his sureties;

Maintain the books and registers and submit reports prescribed under these rules; and

Subject to the provisions of these rules; carry out the instructions of the Court in regard to any probationer placed by the Court under his supervision.

Parole

Parole refers to the early release of good conduct prisoners or offenders who have completed mandatory period of substantive sentence as required under the good conduct Prisoner's Probational release Act, 1926 and Rules 1927 that provide for release of good prisoners on conditions imposed by the government. This is commonly known as conditional release or Parole release.

Parole Procedures

Good Conduct Prisoners' Probation Release Act, (1926) empowers the Executive (Home Secretary) of the province to release certain offenders on parole who are eligible to be released on parole. This is commonly known as conditional release on parole. This act provides the release of chance offenders with good antecedents and prison record with a view to remove them from the society of hardened criminals in jails. They are to be engaged in suitable environments under the supervision of Parole officer of the R&P department in their respective province. The parolees are employed with approved employers of R&P department on fixed wages and under specific terms and conditions.

Selection of Prisoners eligible for Parole Release

The cases of prisoners who are likely to be released on parole may be taken up by the Assistant Director R&P department in the following ways

On application of the prisoner

On application of the relative or friend of the prisoner

On recommendation of the Superintendent of jail

The Assistant Director and Parole Officer visit jail for selection of prisoner suitability to be released on parole

Functions of the Parole Officer

Supervision and rehabilitation of offenders placed on Parole

Visit jails and arranges interview of good conduct prisoners with the Assistant Director R&P department

Consult history tickets, remission sheets, warrants etc of prisoners

- Assists Prison administration in preparation of rolls of selected prisoners for parole release
- Receive prisoners on parole, finds their suitable employment, solve problems
- Periodically pay visits to parolees, collect wages and submit reports to the Assistant Director R&P about parole work and process any complaint
- the duties of Parole officers are assigned to Probation officers in many districts of Pakistan as there is shortage of Parole staff in R&P department of each province

Background of Probation and Parole System

In primitive times, each individual dealt with wrongs, done to him, as he perceived appropriate. In taking personal revenge, the retaliation, being unrestrained, frequently went for beyond the original wrong. Later, attempts were made to limit the retaliation to the extent of injury. This was the intent of the ancient Judaic of 'eye for an eye and a tooth for a tooth'. It was an injunction against inflicting another more injury than one had received. Fitzgerald, P.J. (1998) says that as a part of deterrent theory of crime prevention, prison houses were made to keep the criminal away from the society.[5] Aulakh, Abdul Majeed (1987) states that the Romans also used dungeons and basements to confine Under-Trial prisoners accused of crime.[6] These Prison houses in U.S.A., Brittan and European countries during 17th to late 19th centuries remained Penitentiaries; the places to penitate by professing before God to attain spiritual rehabilitation.[7] The purpose of imprisonment, prior to 20th century was to punish the criminals on the basis of retributive, deterrent or punitive Justice System. Whether the criminal was reformed or not during the time in prison was not the issue; what was important was that the offender could not commit crimes again.

Prisons are considered to be factories of crime. High prison population numbers, as Garland (2001) states, bring with them poorer conditions of hygiene, poorer sanitation arrangements, less time for outdoor exercise, insufficient bedding and clothing, insufficient nutrition and health care, more tension, more violence between prisoners, more violence against staff and more suicides.[9] According to UNAFEI, Tokyo report (2003), high and growing prison population sizes lead to overcrowding. Overcrowded prisons are a breach of United Nations and other international standards, which require that all prisoners shall be treated with the respect due to their inherent dignity and value as human beings, which includes being accorded a reasonable amount of space.[9]

In the USA (1994), 79 percent of a national sample shows the statement that society would be better served if non-violent offenders were not jailed but were put

to work and made to repay their victims, over the assertion that violent criminals must be kept in jail because allowing them out represents too great a risk to society.[10]

In another survey, 64 percent of the respondents indicated that most violent offenders could be rehabilitated if given the right rehabilitation program.[12]

One of the major transformations in the European Criminal Justice systems from the 70s onwards has been the growth of the rehabilitation justice movement and the increased interest in informal conflict resolution schemes, such as victim offender mediation and community based reformation of offender (Probation and parole system). This change has global dimensions, well known to Asian and African countries.

Conceptual Framework

The concept of offender treatment in community maintains that if the offender is to change, a comprehensive effort must be made to address the individual and his or her family and the influences directed toward that family. The probationer/parolees must be linked to a range of services involved in the community and tied to the family. The goal is to strengthen the individual, the family, and the community. Communities must be stable and offer a decent and dignified existence as the fruits of respectable and cooperative behavior.

Probation/Parole rests on the philosophy that punishment certainly does not correct criminals or protect the community. It therefore offers an effective strategy for achieving the expected aim of justice. Bokil, M.K. (1969) states that "If the aim of criminal justice was to protect the community that aim is best achieved by a constructive community correctional programme."[12]

According to Gullen F. and K. Gilbert (1982) rehabilitation is the only justification of punishment that obligates the state to care for an offender's needs.[13]

Rehabilitation

The term rehabilitation is widely used in the literature. In the discipline of sociology, criminology and criminal justice, it refers to the process, which read just an individual and takes him up to the level of normalcy. This process takes place when the normal functioning of an individual is disrupted due to some natural or social episodes. For example, suppose a person commits crime, subsequently, he is detected, apprehended, convicted and imprisoned. He can no more function in the society during the course of his imprisonment and temporarily cuts off from the society; he is bound to live in a peculiar environment (in the prison), which is quite different from the society. At this juncture, he needs some agency that could help him to readjust in the society. In this way, he can function normally in the society. This process may be called rehabilitation.

The rehabilitative process takes place in the societal context of a welfare state, focuses on the offender, provides treatment to him or her, seeks conforming behavior

"The rehabilitation system is based on the concept of trusting people who unfortunately have committed crimes"[14] The Rehabilitation Bureau of Japan announced in a public statement. By not trusting criminals, the Bureau implies, the prison isolates them form the curative powers of normal community relationships.

In Asylums, Goffman (1961) points out that while on probation, the offender is to undergo a transformative experience that causes a radical shift in the offender's moral career. This radical shift of self is the essence of rehabilitation.[15]

Rehabilitation of offenders in community is supported in order to cut criminal justice system cost, to promote the concept of human dignity, to maintain the integrity of the profession, and to support reform in the criminal justice system. Rehabilitation is cheaper than imprisonment. Aulakh, Abdul Majeed (1987) states that Probation is fifty times less expensive than prison but that it is a hundred times more effective in rehabilitating offenders in community.[16]

Applegate, Cullen, and Fisher (1997) report that although the public wants to see the offender punished, however, the public is not interested in punishment alone; most of the public support the rehabilitation of offenders. In reviewing 27 studies that asked respondents to rate, rank, and choose rehabilitation in comparison to other options, Applegate, Cullen, and Fisher found rehabilitation was considered important in 20 out of 27 studies.[17]

The Purposes of Community-Based Alternatives to Prison (Probation and Parole System)

United Nation institute for crime prevention (UNAFEI) has clearly stated the purposes of community-based alternatives among which are:[18]

- To reduce overcrowding in prisons and prevent escalation of detention costs;
- To ensure public safety and security through effective supervision and control over offenders who serve their sentences in the community;
- To prevent or reduce offender stigmatization;
- To enhance rehabilitation and reintegration of offenders into the community in order to strengthen their ability to live peacefully with other in the community setting;
- To permit the offender to contribute towards his or her family in particular and to society by working instead of being confined in prison or jail;

- To avoid the risks of family break-up due to separation during incarceration;
- To avoid an escalation in deviant behaviour when new offenders are mixed with hardened criminals;
- To monitor and supervise offenders in order to ensure compliance with court-ordered conditions and programme requirements.

Benefits

There are many advantages of Community-based Alternatives to Prison (Probation and Parole System):

- To achieve the reformative and preventive aim of sentencing as a form of soft punishment
- To avoid offender stigmatization
- To reduce prison overcrowding(180% in Pakistan) and prevent escalation of detention costs
- To allow the offender to contribute to his/her family in particular and society instead of being confined in prison
- To avoid the break-up of family institution as a result of being in jail
- To retain their employment and contribute to the economic mainstream of the country
- To avoid the raw/chance offenders from the company of hardened criminal in prison
- To enhance rehabilitation and reintegration of offenders into community

Legislative Provisions

Before the partition of the Indian Sub-Continent in 1947, the Government of the Punjab passed the Good Conduct Prisoners probation Released Act (1926). It provided protection as well as guidance to the prisoner for his readjustment and rehabilitation in free life. This system worked well and was adopted by the Government of West Pakistan in 1957.

After independence, Pakistan tried to incorporate the concept of probation for juveniles in the Punjab Children Act 1952, the Punjab Youthful Offenders Act 1952 and the Sind Children Act 1955. The first two were never enforced and the latter was implemented in two Divisions only after a gap on 19 years.

Pakistan has following enactments for operation of probation and parole institutions as well as regulation of non-institutional treatment of young offenders under Reclamation Manual:

- Reformatory Schools Act 1897
- The Criminal Procedure Code(CrPC), 1898
- Punjab Borstal Act 1926;
- Good Conduct Prisoners' Probation Release Act, 1926
- Punjab Youthful Offenders' Ordinance, 1983
- Sind Children Act, 1955;
- Probation of Offenders Ordinance, 1960
- Juvenile Justice System Ordinance, 2000, Law, Justice and Human Rights division Islamabad. The 1st July. 2000

Table: 1 Province-wise Situation of Probation and Parole Pakistan

	Probation Office			Parole Officers			Probationers					Parolee				
Province	Male	Female	Total	Male	Female	Total	Male	Female	Juveniles		Total	Male	Female	Juveniles		Total
									Male	Female				Male	Female	
Punjab	35	1	36	8	2	10	20774	225	217	0	21216	0	0	0	0	99
Khyber Pakhtunkhwa (former NWFP)	16	6	22	2	0	2	1607	17	43	2	1669	0	0	0	0	5
Sindh	1	0	1	1	0	1	277	0	33	0	310	0	0	0	0	7
Balochistan	6	0	6	2	2	4	2	0	0	0	2	0	0	0	0	80
Pakistan	58	7	65	13	4	17	22660	242	293	2	23197	0	0	0	0	191

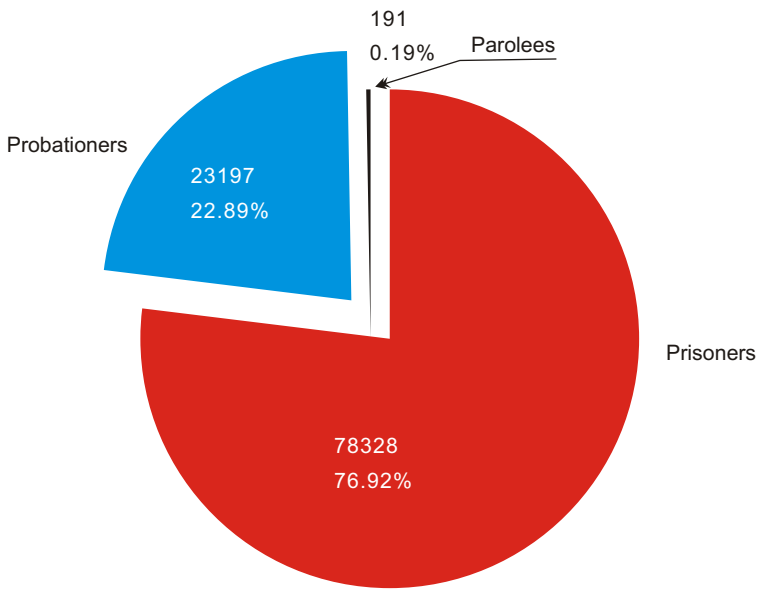
Dated 30 March, 2010, National Academy for Prison Administration,(NAPA) Lahore Pakistan (former CJSTI)

Table 2: Province-Wise Prison Population and Authorized Capacity

S. No.	Name of Province	No. of Prisons	Authorised Capacity	Prison Population
1	Punjab	32	21,527	52,318
2	Sindh	22	10,285	14,422
3	Khyber Pakhtunkhwa	23	7,982	7,549
4	Balochistan	11	2,173	2,946
5	Azad Kashmir	06	530	663
6	Gilgit Baltistan	05	173	430
	Total	**99**	**42,670**	**78,328**

Dated 30 Dec., 2009, National Academy for Prison Administration,(NAPA) Lahore Pakistan (former CJSTI)

Situation of Prisoners, Probationers and Parolees in Pakistan



Discussion

Table 1 shows that there were 65 probation officers including 7 female probation officers in Pakistan. From the total male probation officers 35 were in Punjab, 16 in KP, 6 in Balochistan and 1 in Sindh. Out of total female officers, six were in Khyber Pakhtunkhwa (KP) and only one was in Punjab whereas Sindh and Balochistan had no female probation officers.

Under Rule 22(3) of the Probation Rules, a female offender should not be placed under the supervision of a male probation officer. However, a husband and wife may be jointly placed under the supervision of a male probation officer. Because of Rule 22(3) and since a few female probation officers were present in Pakistan except one in Punjab and six in KP, it should not thus be surprising that only 242 women prisoners were released on probation in Pakistan by March 2010.

Women and children are usually first-time offenders and are more likely to get released on probation if the system could be properly utilized and if more female probation officers were present.

By late 2009, there were no female Probation officers in KP province. Home Departments in Sindh and Punjab had also advertised 16 and 20 Probation and Parole Officers' posts respectively. It is hoped that there will be some reserved seats for female probation officers.

The figure in table 1 shows that a large number of offenders had benefited from the probation system but not many among them were juveniles and women.

Out of total probationers (23191), 242 were reported as female, majority 225, of which were from Punjab and 17 were from KP, whereas there were no female probationers in Sindh and Balochistan. From the total 295 juvenile probationers, only two were female. Majority of juveniles 217, were released on probation in Punjab then 45 and 33 in KP and Sindh. There were no juveniles on probation in Balochistan.

Out of total 17 parole officers in Pakistan, there were 4 female Parole Officers, two in Punjab and two in Balochistan. Sindh and KP had no female Parole Officers. Among Male Parole Officers 8 were in Punjab, 2 in KP, 2 in Balochistan and 1 in Sindh. This clearly shows that Parole system has been on the low priority in all provinces of Pakistan as table 2 indicates that out of total prison population in Pakistan (78328), only 191 offenders (male) have got release on parole; the majority (99) of them in Punjab. Although there were four female parole officers in Punjab and Balochistan but unfortunately there were no women on parole in the country. Similarly, there were no juveniles taken on parole.

The above given diagram shows the numbers and percentage of prisoners, probationers and parolees in Pakistan

Challenges/Problems

Probation/Parole system in Pakistan is facing various problems at different levels:

Justice Administration

Conceptual ambivalence in Rehabilitation Justice approaches to properly address the issues and problems of Probationers and Parolees

Lack of coordination between Law Enforcement Agencies and regarding Prisoners, Prison and the Probation and Parole system

Ignorance of Probation and Parole Officers regarding the needs of offenders and subsequently absence of standardized models of Rehabilitation for offenders released on Probation and Parole in the country

Non-availability of criminal experts, criminologists and social workers on the penal of R&P departments in the provinces

Absence of Research and Development wings in R&P departments and Home Ministries of the Provinces

No organized and client-focused efforts by the R&P departments to ensure active participation and engagement of family, friends and community of the offenders released on Probation or Parole

Neglect of R&P departments within Criminal Justice system of Pakistan

Administrative Level

Under-staffing: Shortage of professional Probation/Parole officers

Lack of proper training, motivation, problem-solving skills and modern innovative techniques among Probation/Parole officers

Low salaries and low morale; unattractive service structure and slow career progression of prison staff

High caseloads and over-worked staff

Lack of proper infrastructure: official accommodation; transport facility; provision of extra allowance for travelling

No empirical data has been collected about the workings of the parole and probationer system in Pakistan

No use of Information and Communication Technology in R&P Departments in the Provinces

Dearth of evaluation reports about the functioning/performance in R&P departments on the basis of formal, systematic and standardized principles of Performance

Legal Level

Complicated and vague procedure to release offender on Probation/parole

Lack of cooperation and coordination among Criminal Justice Organizations i.e. Judiciary, Home ministry, Prosecution, Prison management and R&P Professionals

Lack of Legal Conferences, Seminars and Professional training for officials dealing with Probation and Parole System

Ineffective Role of District Criminal Justice Coordination Committee (DCJCC)in every districts of Pakistan under Police Order 2002 regarding the probation and parole system

Lack of appropriate human resource development Programmes and professional training particularly for judicial officers who has to decide the fate of the offenders to be released on probation

Majority of the Lawyers in Pakistan are not aware of the Probation and Parole system as Bar Associations have been overlooking the issue of community rehabilitation

Rehabilitative Justice, Community and the Media

Rehabilitation Justice requires close coordination and cooperation of the family and community of probationers and parolees, social welfare organizations including NGOs, Probation and Reclamation departments and employment agencies and above all, the political elite of the country. So, there is dire need to attract media attention to this issue for disseminating information, changing public opinion and transforming stereotypes regarding crime and criminals. Community-based rehabilitation of offenders in Pakistan has not got attention of the public at large and therefore, the concept of reformation of offenders in community needs promotional campaigns, dialogue, conferences, seminars and symposiums so that the dream of correcting the offenders in community could achieve its realization.

Current Development Regarding Probation / Parole Under National Judicial Policy

The Chief Justice of Pakistan chaired the Committee (6th June 2009) that also considered the issue of release of convicts and offenders on parole or probation and observed that the benefits of parole and probation laws are not extended to the deserving convicts and offenders. The Committee after deliberation resolved that judges, lawyers and other stakeholders should be sensitized about the parole and probation laws to reduce the load on prison and provide opportunities for rehabilitation. The Committee asked the Provincial Governments to strengthen the

Provincial Directorates Reclamation and Probation in term of manpower and necessary infrastructure, transport and office accommodation. The Committee asked the Provincial Government to consider appointments of Probation and Parole Officers on transfer basis from other departments. The Committee also asked the High Courts to issue directions to the judges for invoking provinces of Probation of Offenders Ordinance, 1960 to extend the benefits to good conduct and deserving offenders involved in minor offences and asking the District & Sessions Judges to convene frequent meetings of the District Criminal Justice Coordination Committees for discussing the issues relating to Parole/Probation.

Suggestions

A large number of cases that are under trial in criminal courts and come under the purview of the probation laws.

There is need to improve mechanism and mode of official coordination between judicial officers and the executive and P&R department for release of offenders on probation and parole.

District Criminal Justice Coordination Committee should make all efforts to ensure the release of convicts on probation as it is the highly effective body at district level of Pakistan to run probation system efficiently.

The Probation and Parole officer alone is unable to rehabilitate. Government, social welfare department and other human rights organizations should join hands together for the over all improvement of their economic, social and psychological conditions.

The probation and Parole officer should be given the required facilities to visit the home of probationers and parolees and to cultivate relations with the family, community and other stakeholders in the rehabilitation process.

There is a strong need to attract the attention and cooperation of non-governmental organizations. Some programs for community mobilization, participation and engagement should be planed to effectively support the rehabilitative process

The prisoners who qualify for probation or parole should be released on probation. It may be helpful in reducing the cost of detention and other problems in jails

For improving professional competency and establishing sympathetic attitude towards the adjustment of probationers and parolees, probation and parole officers should be given proper training and professional orientation.

Volunteers should be invited by the R&P departments to assist the offenders in community in the process of their rehabilitation as is currently the case in Japan.

Some psychologists and psychiatrists must be placed on the panel of R&P departments in order to consider the mental health needs of probationers and parolees.

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Hate Crime Vs. Free Speech: A Case Study of Danish Cartoons in Pakistan

Kam C. Wong & Fasihuddin

Abstract

This paper of first impression studied the reaction of public and police to Danish cartoons crisis (2006, 2008) in Pakistan. The paper addresses four issues: (1) How did the Danish cartoons incident developed? (2) Why did it attracted so much resentment and caused so much damage in Pakistan? (3) How did the Pakistan government and police react to the cartoon crisis? (4) What need to be done in the future to avoid such "cartoon crisis"? The research finds that: (1) The Danish cartoons crises have a devastating impact on Pakistan's society. It is brought on by pre-existing anti-foreignism and religious intolerance. (2) The Danish cartoon crisis was inflamed by political rhetoric during an election season. (3) The police were ill prepared and not equipped to deal with the crisis. (3) Comparative speaking the first "cartoon crisis" (2006) was more violent and less orderly than second "cartoon crisis (2008). The politics of "cartoon crisis" making has matured. (4) The best way to avoid future "cartoon crisis" is by open communication and hate crime legislation.

Keywords

Hate Crime, Agitation, Demonstration, Protest, Danish Cartoon.

Introduction

Religion is an integral part of our lives. Religion fulfills a person's psychological needs. The publication of controversial cartoons in September 2005 by a Danish local newspaper and subsequently redistributed by other European countries, registered religious intolerance as it ushered in a "clash of civilization." The whole Muslim world felt betrayed by Western 'free speech.' A worldwide protest ensued, mostly by Muslim followers. Pakistan was particularly hard hit.

The "carton crisis" was kidnapped by other disgruntled and opportunistic political elements. They capitalized on the highly charged crisis to advance their own personal, e.g., anti-foreignism and political agenda, e.g., nationalism. They attacked multi-national companies and foreign establishments.

Between February and March of 2006, there were violent riots in many big cities in Pakistan. There was a total disregard for law and order. There was a complete breakdown of government machinery. The nation was paralyzed. The disturbance costs millions and harmed thousands.

The Danish cartoons were reproduced in February 2008. This time, besides insulting images, an anti Quran documentary film 'Fitna' was produced and released by a Dutch parliamentarian. The sacrilegious cartoons and documentary led to yet another round of protests and demonstrations in the Muslim world, including Pakistan. However, the severity and extent of the agitation were unexpectedly lower than that of 2006.

This paper examines the impact and implications of Danish cartoons on Pakistan society. The paper addresses the following issues: (1)How did the Danish cartoons incident developed? (2) Why did it attracted so much resentment and caused so much damage in Pakistan? (3) How did the Pakistan government and police react to the cartoon crisis? (4) What need to be done in the future to avoid such "cartoon crisis"?

This paper is organized in the following way. Section I sets forth the facts and circumstances giving rise to the "Danish 'Cartoon Crisis' in the World Stage." Section II "Danish 'Cartoon Crisis' in Pakistan" describes in detail the public reaction to Danish cartoon crisis, as illuminated by a personal (police) account of how the disturbances were pacified in one city by one of the co-author (Annexure A). Section III: "Police Reaction" describes how ill prepared and under resourced the Pakistan police were in facing up to the "cartoon crisis" of a historical proportion. Section IV "The Second Danish Cartoon Crisis" follows the development of the second "cartoon crisis" in 2008. Section V compares "Cartoon Crisis 2006 vs. 2008." It observes that public reaction to 2008 "cartoon crisis" while still agitated and virile, was much more subdued, reasonable and orderly. Section VI reports on the "Findings of Survey" conducted to ascertain students' opinions disposition towards "cartoon crisis" and its handling. Finally, Section VII is on "Legislating Hate." It discussed how hate crime can be brought under control through legislation. Section VIII "Conclusion" provides for a brief "Reflection" and a few "Recommendations." The most important learned is that hate crime and free speech advocates had to learn to live with each other, through open communication and selfless accommodation.

1. Danish 'Cartoon Crisis' in The World Stage

In 2005, Flemming Rose, culture editor of Denmark's newspaper Jyllands-Posten invited illustrators to submit drawings of Prophet Muhammad (PBUH). The images were commissioned for a forthcoming biography of Prophet Muhammad. The expected readership was children.

On September 30th 2005, Rose printed twelve of these images. The images drew instant, visceral and violent reactions from Muslims all over the world. They also created heated debates worldwide over religious intolerance (hate crime) and

free speech. Some, like Bruce Bawer, regards them 'innocuous', and part of 'free speech.' Others termed them 'Islamophobic', 'sacrilegious', 'blasphemous', 'a conspiracy' and symbolic of 'anti-Muslim hate crimes.' Some scholars condemned the cartoons as acts of hate crime. Others justified their publication on free speech grounds. A few went so far as to announce the beginning of a 'clash of civilization' and the starting of 'new crusades.'

The general public in the Muslim world were all up in arms. Their violent protestations resulted in deaths of hundreds of innocent people around the world. The emotionally charged atmosphere was manipulated by many to settle deep rooted grievances and allay long held frustrations between people, communities and nations. Unfortunately, the crisis generated by these cartoons was preceded by other ugly ethnic religious incidents. In 2002 a Dutch politician was killed for his criticism of Islam. In October 2004 another Dutchman, Theo Von Goh, a filmmaker was killed for releasing '*Submission'*, an anti-Muslim film.

The cartoons at issue associated the Holy Prophet (PBUH) with terrorism. One showed Muhammad in a bomb-shaped turban. Another depicted him wielding a cutlass. A third had him saying that paradise was running short of virgins for suicide-bombers (The Economist: January 7th, 2006).

On October 12, 2005, with disapproving e-mails to Danish embassies and Muslim protesting in the streets of Copenhagen, ambassadors from ten Muslim countries demanded a meeting with Prime Minister Anders Fog Rasmussen to resolve the case. The PM regarded the incident as one of the most serious international crisis of Denmark after World War II. Yet, the PM refused to acknowledge the Muslim's grievances: "It is self-evidently clear what principles Danish Society is based upon …that there is nothing to have a meeting about"(Bawer, 2006).

Mr. Fog Rasmussen cultural ignorance, religious insensitivity and personal arrogance was roundly deployed by 22 former Danish ambassadors to the Muslim world. In order to make amend, the PM in his New Year speech condemned any attempts to demonize people on the basis of their religion or ethnic background. For many Muslims this was a bit too little, too late. (The Economist: January 7th, 2006).

Soon after the protests, the cartoons were reprinted in many other European countries, especially Norway and Sweden.

A group of Muslims associated with Denmark's Islamic Society traveled to the Middle East to study the situation. Some think that drawings of this kind have never appeared in any Danish publication, concluding that they were meant to be inflammatory.

Others, noticeably the famous Richard Dawkins, were of the opinion that:

> "indignation was carefully and systematically nurtured throughout the Islamic world by a small group of Muslims living in Denmark, led by two imams who had been granted sanctuary there in late 2005. These malevolent exiles traveled from Denmark to Egypt spreading a dossier to the whole Islamic World, including, importantly Indonesia, which contained falsehoods about alleged maltreatment of Muslims in Denmark, and the tendentious lie that Jyllands-Posten was a government run newspaper. It also contained the twelve cartoons which certainly, the imams had supplemented with three additional images whose origin was mysterious" (Dawkins, 2006).

In the meantime, Muslims wanted to express their displeasure with the boycott of Danish goods and services. Newspapers' websites were blocked. Other Muslims showed their frustration by torching the Danish embassies in Damascus and Beirut.

In December 2006, Lovis Arbour, UN High Commissioner for Human Rights, promised that "action" on the cartoons would be taken, speedily. The Committee of Ministers of the Council of Europe condemned the Danish media's "intolerance" and "insensitivity."

On February 9 2006, Frenco Frattini, EU Commissioner of Justice, Freedom, and Security, urged the media to "self-regulate" to avoid giving offense; three days later Kofi Annan told Danish TV: "you don't joke about other people's religion, and you must respect what is holy for other people." EU Trade Commissioner Peter Mandelson complained: "Every re-publication of the cartoons was adding fuel to the flames". Ex-President Bill Clinton described the cartoons as "totally outrageous." The State Department described them as "offensive." Still, the Assistant Secretary of State Daniel Fried, in an interview with Jyllands-Posten, insisted that the US's posture was one of "unconditional solidarity" with Denmark. (Bawer, 2006).

The Norwegian periodical, *Magazinet,* ran the inflammatory cartoons on January 10, 2006. "According to the Danish online newspaper *ejour*, 143 newspapers in 56 countries around the globe, including Christian and Muslim ones, have republished one or more of the Muhammad cartoons, first published by the Danish daily *Jyllands-Posten* in September……13 newspapers in 9 countries, including *Egypt*, had published one or more of the cartoons before the Norwegian Christian newspaper *Magazinet* republished them on January 10." (*The Brussels Journal*, Page 1 of 21)

When the Norway's embassy in Syria was burnt by protestors, Prime Minister Jens Stoltenberg conceded that *Magazinet* deserved at least part of the blame.

Norway's Foreign Ministry sent Muslim embassies a statement expressing regret for *Magazinet*'s actions . On February 10, 2006, in a press conference by Norway's Minister of Labor and Social Inclusion, Bj arne Hakon Hanssen, *Magazinet*'s editor Vebjorn Selbekki, issued an apology to Muhammad Hamdan, head of Norway's Islamic Council, who accepted his apology on behalf of all Muslim organizations. Muhammad Hamdan then asked that all threats against the editor and his family now be withdrawn.

On February 9, 2006, Swedish foreign minister Laila Freivalds closed down the right-wing Swedish Democratic Party's website because it had published a Muhammad cartoon. Laila Freivalds commented: "It is frightful that a small group of Swedish extremists can expose Swedes to a clear danger" (Bawer, 2006).

At this juncture, most of the statements and advices from public intellectuals to opinion leaders to government officials were directed at 'reconciliation' and 'appeasement.' Uffe Elleman-Jensen, a former Danish foreign minister, lamented his country's lack of manners. "We have a right to speak our minds, not an obligation to do so." (The Economist: January 7th, 2006).

In some countries, a few editors were fired and arrested for their decision to re-publish the cartoons. Several newspapers were closed. The University of Prince Edward Island's student newspaper *The Cadre* and *Western Standard* faced disciplinary problems in Canada. Jacques Lefranc, managing director of *France Soir* was fired in France. Lester Melany, an editor of the *Sarawak Tribune* resigned from his post in Malaysia. The Russian weekly newspaper *Nash Region* was closed by its owner, Mikhail Smirnov. Staff of the *New York Press* walked out in protest after management disallowed them to reproduce the cartoons as part of their reporting,

In Yemen, Mohammad al-Asaadi, editor-in-chief of the English-language daily *Yemen Observer*, was jailed on 4 December, 2006 until he could pay a fine of 500,000 rials (approximately $ 2500). Kamal al-Aalafi, editor-in-chief of Arabic weekly *al-Rai al-Aam* was sentenced to a year in prison. He was later released on bail. The paper was closed for six months in Yemen (Wikipedia-Page 19-24, March, 2008).

Who is right? Tolerate protestation of the Muslims against hateful acts or defend right to free speech? Before deciding a balanced and impartial analysis need to be made. This required a thorough - systematic and comprehensive research and analysis of the facts and circumstances research attending the "carton crisis."

To lay the foundation, it is best to begin such a research with a critical comment of former Secretary of State, Madeline Albright:

> "A wave of protests, some violent, erupted when the offensive cartoons were reprinted elsewhere in Europe and made available on the Internet. The hysteria dramatized both the divide between secular Europe and Muslims, and the eagerness of extremists on all sides to turn hate to their advantage. The publication of the cartoons, though an exercise in free speech, was also an act of bigotry. The protests were equally an exercise in free speech, except for those that turned violent. The whole sad episode, a triumph of emotion over reason, was deeply regrettable. The attitudes that gave rise to it, however, were hardly new."(Albright, 2006)

II. Danish 'Cartoon Crisis' in Pakistan

The freedom of religious and tolerance of faith in Pakistan society is not a wholesome one. Religious fanaticism is the norm. Religious intolerance is the rule. Religious beliefs have been used to move people, support causes and do things. It was in this backdrop that the Danish cartoons were published. In the sico-political context of Pakistan, Danish cartoon is adding oil to burning fire.

The "cartoon crisis" agitation in Pakistan started in February and March of 2006. General elections were approaching. The "cartoon crisis" became a rallyingcry for many local and national politicians who were looking for every opportunity to motivate and mobilize the public to their cause. Religious (political) parties also tried to divert public attention from the real issue of the day, i.e., government performance in two provinces (the NWFP and Baluchistan), to that of religious issue of the moment, i.e., "Islam is in danger" and "defend the faith of Islam at all costs."

In the beginning, Pakistani news media depicted the 'cartoon crisis' as a religious crusade of good vs. evil. All right minded Muslims needed to vindicate the "cartoon crisis" with passion and righteousness. Protest is a noble duty of a true Muslim. In every big city the protest gained momentum by the day. Still, no one expected the situation to get out of hand.

The protesters had no identified leadership at the start. People from all walks of life joined in the spur of the moment. Criminals and bad characters joined to enrich themselves. The politicians rode the protest wave. Soon, the whole country was plunged into chaos. The mob rule the day. In the name of civil disobedience, people took to the streets. Chief Minister of the North-West-Frontier-Province (NWFP) organized a rally in one the busiest shopping markets of the city of Peshawar and demanded "the production of the wrongdoers and the cartoonists before the International Court of Justice for their unholy sketches and blasphemy."

The President and the Prime Minister of Pakistan, while severely criticizing the 'outrageous images' called for a halt to such irrational fanaticism and all consuming emotional upheaval. But people did not take heed. The crowd grew in size and violence.

The controversial carton images were first published in September 2005 and reproduced subsequently in other European countries by a few other newspapers and magazines. In Pakistan, the violent reprisals and devastating commotions started until very late in February 2006. This delay could be explained by the ineptness of politicians who were more concerned with criticizing the philosophy of '*Enlightened Moderation'* of General Pervez Musharraf than attaching the insulting cartoons.

A. Lahore Episode: (Total Population =06 million)

On 13th of February 2006, the second biggest city of Pakistan experienced the worst day of its history. The para-military forces were called to control the mayhem in the streets and markets. The Daily Dawn carried a glimpse of the incidents on that day as follows:

- "Two young men were killed and 20 suffered injuries when angry mobs, protesting against publication of sacrilegious caricatures of the Holy Prophet (PBUH) in a number of European newspapers turned violent.
- "The protesters ransacked and set on fire a number of buildings, including the Punjab Assembly, a number of local and foreign banks, and four restaurants of two American fast food chains, a Norwegian cell phone company's office, a five-star hotel, a theatre and a number of petrol pumps.
- "Around 500 vehicles were damaged, various shops were looted and at least 75 motorcycles and 10 cars were burnt by the rioters and protestors." (Daily Dawn, Islamabad, 14 Feb, 2006)

Similar rampage happened in other parts of the country, though with less intensity and lesser damage. Surprisingly, the demonstrations were more severe and damaging in the more densely populated areas, even though the rural population are less educated and more religious. This is perhaps due to: (1) people conglomeration; (2) economic concentration; (3) political astuteness of city-life.

B. Peshawar Episode: (Total Population=02 million)

After the 13th February incident, all the religious parties and traders of the country announced a countrywide protest. People from all walks life workers, trade, religious organizers, seminary students, public-private schools, colleges and universities, traders, general public - gathered for a one day nationwide protest in one of the biggest city of North-West-Frontier-Province (NWFP) on February 15. The city of Peshawar was turned into a 'bloody battle-field' with rampant looting, killing and arson. According to one report: "40 to 60 thousands protesters attacked the city like an alien army and conquered the streets and markets by killing three

persons and inflicting injuries to 124 persons including 18 policemen." As documented in an official local intelligence agency report:

- "At 1140 hours the protesters started looting and plundering Bata Shoes Store at Peshawar Cantt.
- At 1155 hours, the protesters from various sides of the city resorted to violence at the office of 'Telenor' at Grand Trunk (G.T) Road and damaged the signboards of Novelty and Pictures House cinemas.
- At 1200 hours, Karkhano Market, Hayatabad was forcibly closed down by the agitators.
- Two persons have reportedly been injured due to firing of the security guard of Daewoo bus stand.
- Police mobile was put on fire and torched in Gulbahar Peshawar.
- One hundred injured persons were brought to Lady Reading Hospital (LRH). They received injuries due to police shelling and beating.
- Two persons including a child succumbed to the injuries in Lady Reading Hospital.
- Telenor booster at Bakshoo Pull (Bridge), Charsadda road, Peshawar was ransacked and burnt.
- Prince Agha Khan's Jamaat Khana in the area of Faqirabad Police Station was burnt.
- The protesters set on fire St Michel School in Peshawar Saddar.
- Agitators smashed and broke the signboards of Allied Bank at Board of Intermediate and Secondary School Education (B.I.S.E), Peshawar.
- Peshawar Police Post at Choke Yadgar was burnt to ashes. Protesters pitted stones on police at Qisa Khawani Bazar, Peshawar.
- At 1230 hours, Daewoo bus stand was set on fire. 12/15 big vehicles (Buses) and 3/4 pick ups parked in the stand were burnt and heavy losses caused to the private transport system.
- A 1240 hours, the mob attacked the building of K.F.C and smashed its windowpanes at Arbab Road, Peshawar."

The civil disturbance continued throughout the months of February and March of 2006. The disturbance paralyzed public life, e.g., schools and colleges were closed by the Provincial Government for more than two weeks period. Though there

is no data available on the financial impact the disturbance, they estimated to be in the tens of millions of dollars in every city. There were injuries to and loss of human lives as well.

The protests continued, but with declining frequency, intensity and vigor. There were to be some occasional and sudden outburst and resurgence like the nation-wide shutter-down strike by the All-Parties Conference on March 13, 2006.

Slogans and Demands of the Protestors

The protests and demonstrations were loosely organized. They have no unifying theme and centralized leadership. Most of the demonstrators were disgruntled politicians and jilted business adventurers. Besides looting, plundering, burning, killing and stampede, the mob made a number of slogans and demands:

- Say 'No' to American and European commodities.
- Boycott and destruction of Telenor- Communication system/offices/boosters.
- Cutting diplomatic relations with Europe, especially Denmark and Norway.
- Calling Ambassadors back from the countries who published these insulting images.
- Boycott of fast food, KFC, Mc Donald and multi-national companies (MNCs).
- No financial transaction through foreign banks.
- The Government machinery has failed and therefore the present regime should resign immediately.
- The 'Clash of Civilization' has begun, so join hands with religious parties.
- We should be ready to sacrifice lives for the honour of our religion.
- Europeans should be ashamed of blasphemy.
- Friends of the Jews should be driven out of the country.

A review of the slogans shows that they are more animated by a hatred for foreigners, i.e., anti-foreignism than driven by support of religion.

III Police Reaction

Failure of Police in Big-Cities

The police in Pakistan are ill equipped, under-staffed, under-paid, over-burdened and ill-trained. They were not prepared to respond to such a serious crisis. For a start, there was a dismal failure of intelligence. The intelligence agencies and policy-analysts did not predict or forewarn the looming crisis. They were certainly not able to chart their constitution, capacity, motive and plan.

The demonstrators took the police by surprise, until it was too late to effectual an effective response. The police did not cope well with the situation. They have little resource. They worked under legal and political constrains. Few responsible officers were able to reach to the disturbance area or crime scene in a timely fashion. Police staff was over-stretched in responding to crisis, one after another.

The junior officers cried for clear-cut orders from the higher-officials on the proper use of force, The Peshawar police ran out of teargas and rubber bullets. Many policemen were holding wiping sticks instead of lethal weapons. The frontline constables were a little hesitant to take any serious action against the protestors. They thought they were religiously bound not to attack such *pious and righteous protestors*.

In many places, small and young children were arrested for joining the protests. The children were encouraged by their elders and teachers to join the protest because that it is their *divine duty* to do so. All told, in Islamabad alone, one hundred and fifty young boys were arrested.

The Federal Minister for Interior estimated the number of demonstrating people, mostly students, as six thousand (6000). The students attacked highly protected areas in Islamabad.

The Diplomatic Enclave and the Secretary Interior publicly expressed his displeasure over lax security and slow response of the local police administration. Since then, all the important and sensitive government buildings in Islamabad were provided with military protection from Army troops of 111-Brigade.

In Peshawar, there were five thousand police officers. They could not be expected to manage and control an extremely violent mob of 40 to 60 thousands. On top of that, the police suffered from lack of strategic intelligence and contingency planning for such large scale protests.

In terms of disposition of offenders, the court treated all children and student agitators as minors and released. As against the young offenders, the police failed to prove their involvement in any plundering and/or theft. In this regard, the police have conducted no scientific investigations to indentify unknown miscreants and rioters. Even the analysis of photos and video by the media/reporters could not lead to a single identification and arrest.

IV The Second Danish Cartoon Crisis

In February 2008, The Danish police said that they had arrested three people, a Dane of Moroccan origin and two Tunisian nationals, suspected of plotting to kill the cartoonist of the most controversial cartoon, Kurt Westergaard. Following the arrest, more than a dozen of Danish newspapers reprinted the original cartoons as 'a stand against self-censorship.'

In a poll by Ranboell Management, published in Jyllands-Posten, more than 58 percent of those questioned said it was wrong to reprint the cartoon.

Newspapers in France (like *France Soir*) and Germany (like *Diet Welt*) reprinted the cartoons on February 27, 2008. Again this sparked controversy, agitation and resentment around the world, mostly affecting the Muslim community in Europe. There is a large Muslim population in Europe, e.g., 5 million in France, and 3 million in Germany.

Roger Koppel, editor-in-chief of *Diet Welt*, said he had no regrets. He told the *Guardian:* "It's at the very core of our culture that the most sacred things can be subjected to criticism, laughter and satire."

On the contrary, Carsten Juste, the editor of Jyllands-Posten, said "his only regret was that his enemies had "won". Asked whether he made a mistake in publishing the cartoons, he said, "Head we known that it would lead t boycotts and Danish lives being endangered as we have seen, then the answer is no" (*The Hindu*. March,2008).

Unfortunately, the second episode of blasphemous cartoons was accompanied by another very highly volatile and provocative issue of the desecration of the Holy Book of Islam, the Quran. Greet Wilder, a Dutch member parliament and leader of a strong anti-immigrant party, revealed in November 2007 his plan to air on television a documentary on the wickedness of Koran, which he calls an '*Islamic Mein Kamps'*. After being declined by Dutch state television, Mr. Wilder decided to broadcast privately and put it on internet.

The film 'Fitna' went on air and sparked a synergy for the Danish cartoon protests. '*The Netherlands is going a considerable crisis*," said the Prime Minister. (The Economist: Feb, 2008). Indeed it did so. The agitation against the Netherlands became as much violent and forceful as was against Denmark. It added salt to injury and fuel to fire.

The first glimpse of the crisis was that the Netherlands embassy was temporary moved to a local hotel in Islamabad, due to fear of reprisals.

At the international level, the condemnation continued as was earlier but with relatively less emphasis and interest this time. More importantly, the newly installed government in Pakistan after the general election in Feb 18, 2008, which is a coalition government of liberal and democratic secular parties both at provincial and federal level, adopted resolutions against the blasphemous cartoons and Dutch film 'Fitna.'

The North-West Frontier Province (NWFP) Assembly in its first session on March 28 2008 (Resolution No. 1) adopted a unanimous resolution of condemnation

and a demand of boycott of Danish commodities and a review of diplomatic ties with Denmark. The National Assembly of Pakistan adopted a similar but more comprehensive and unanimous resolution on April 15, 2008. It reads,

"The act of defamation and incitement of hatred not only deeply hurt sentiments of muslims but also threatened stability amongst societies…..The House demands of the Dutch and Denmark governments to prosecute the violators under the domestic laws of these countries. Freedom of expression doesn't confer licence to injure sentiments of others or defame religion…… The United Nations should take necessary legal, political and administrative actions to curb these trends and ensure respect for all religious…….The House calls on the UN to take all necessary legal, political and administrative steps to curb this trend and ensure the respect for all religions in these societies. In this context , the House takes note of the recently adopted resolution on the mandate of Special Rapporteur of the UN Human Fights Council on freedom of expression which has mandated the Rapporteur to report on instance where abuse for the right of freedom of expression constitute the act of religious discrimination."

Similarly the Senate (Upper House) also adopted a unanimous resolution to this effect on April 25, 2008. The language, style and contents of the Senate resolution are almost similar to the resolution of the National Assembly (Lower House).

On his visit to Pakistan, the European Union (EU) Foreign and Security Policy chief, Javier Solana, strongly condemned the publication of these blasphemous cartoons and the anti-Islamic film 'Fitna' and said, "The EU Constitution protects free speech but abhors insulting religions. I don't believe in the so-called theory of clash of civilization, he said in an interview." (*Daily Times*, April, 2008)

V Cartoon Crisis 2006 vs. 2008

A More Subdued Affair

The agitation against blasphemous Danish cartoons was augmented by the Dutch film 'Fitna' (Persecution/Terrorism) in February till April, 2008. Most of the agitation in the second episode was limited to protest demonstrations, placard raising, banners weaving, posters pasting, and statements and speeches, essays and editorials and, sometime colourful signboards to the effect that "we are ready to die for our Prophet's honour."

Interestingly, the demands of the agitators were less offensive than the first episode and mostly directed towards Denmark, Norway and the Netherlands. Gatherings and demonstrations were rarely thickly participated. Vociferous announcements of 'head money' for the assassination of the 'culprit cartoonists' were

noticed more than once this time. The demonstration mostly remained peaceful and no noticeable violence, arson, looting, disruption or killing are reported in the second round of agitation.

Unlike the agitation in 2006, no mainstream political party took out general mass rallies this time, notwithstanding the fact that most of the 2006 activists and politicians are still active in their political life. Jamat-i-Islami, a radical Islamic political party, which boycotted the 2008 general elections, remained on the top in leading processions and holding protests across the country.

There was also no call for a 'country-wide strike' was given as most of the opposition and religious parties did in 2006. Jamiat-ulama-i-Islam (Fazlur Rahman Group) also held some demonstrations but its top leadership didn't take part in any of the protest. JUI (F) has also suffered in the general elections of 2008. Pakistan Peoples Party (Sherpao Group) took out unprecedented precessions under their provincial leadership. The party was relatively silent in the 2006 agitation.

Reason and Politics Not Violence and Demonstration

Some critics observe that all such parties, like the above mentioned JI, JUI (F) and PPP (SG), tried to mobilize their workers and supporters for the coming by-elections, despite their boycott or defeat in the general elections, 2008. Pakistan People's Party (PPP), Pakistan Muslim League-Nawaz Group (PML-N) and Awami National Party (ANP) stayed away from street agitation this time. However, their coalition governments at the federal and provincial level passed resolutions against the blasphemous acts of 'Danish cartoons' and 'Fitna'.

This is a change in strategy and tactics in registering displeasure. Reason has to take over rashness and dialogue has to replace violence. The trend must continue. It is not an appropriate for opposing party to stir up public resentment into violent demonstrations.

The demands of the agitators were also very selective this time. Instead of complaining against all western countries, only a few egregious nations were selected as targets, namely Denmark, and the Netherlands. A leaflet, from some unknown writer and publisher was distributed in the markets, demanding that "before buying stuff in a superstore, look for these codes: Israel, 729, Norway, 708-709, and Denmark, 578-279.If these codes are there, don't buy it because they have disrespected our Prophet (PBUH); it is our divine duty."

The most interesting thing of the leaflet is that it is 'anonymous', whereas in all such cases the Muslim groups clearly indicate their names and organizations. The economic consideration is above all other considerations. The nature and extent of the 2008 agitation remained at an ebb which is a sharp contrast to 2006 whereas the publications in 2008 were enormous.

VI Findings of Survey

A survey was conducted to conduct the opinion of students on their opinion about Danish cartoon crisis.

A total of 120 respondents were chosen. Sixty were from an Islamic school (Madrassah), Jama-i-Usmania, Nauthia, Peshawar. Sixty were from previous and final years MA, Political Science, University of Peshawar. The later included twenty female students. All students (respondents) were from-masters program. Their age group was from 21 to 30 years.

Being relatively better educated and mature, the MA students were expected to know more about the cartoons crisis and its associated developments. The response of the female respondents were almost identical to their male counterparts. Thus their responses are shown collectively as respondents of the University of Peshawar.

There are two limitations to this study. The sample is relatively small. The questionnaire is semi-structured. However, as a preliminary exploratory study, the trend, aptitude, public perception, awareness and response of the general masses can be easily discern. Some of the interesting findings are:

On knowledge about Danish cartoons

Table I shows that 6.66% of madrassah students claimed that they know the name of the cartoonist(s) whereas none of the university students claimed to know any name.

13.33% of madrassah students claimed to have seen these cartoons themselves and 20% of the university students have searched or come across them accidentally on internet.

All have seen it through net, especially 'Google-search' which shows that computer/net browsing is almost similar in both categories of the students, whereas the general belief is that the madrassah students are lagging behind in use of modern technologies than the other regular /English-medium modern schools and colleges.

A respondent from madrassah said, “I have seen them but I have forgotten them and I am thankful to God that they have slipped from my mind”. Another said, “No, Never, I should never see them.”

Table I: Findings of the Survey on Danish Cartoons Agitation in Pakistan

S.No.	Question?	Respondents from Islamic School (Madrassah) (60)		Respondents from University of Peshawar (40 male + 20 female)	
		Yes	No.	Yes	No.
1	Do you know the Name (s) of the Cartoonist (s)?	4 (6.66%)	56 (93.33%)	0 (0%)	60 (100%)
2	Do you know the Name (s) of newspaper (s) which published?	14 (23.33%)	46 (76.66%)	12 (20 %)	48 (80%)
3	Have you seen these cartoons?	8★ (13.33%)	52 (86.66%)	12 (20%)	48 (80%)

★Almost all respondents have watched these cartoons through Google browsing in various website s or some European newspapers on internet. No one has seen any hard copy of the publication and no one has received it through e-mails or letters.

Table II shows that 93.33% of madrassah students recommend a boycott of Danish items and 90.00% are of the opinion that diplomatic relations with Denmark, Norway and the Netherlands should be cut off. On the contrary, only 40% of the university respondents oppose the idea of boycott and 46.66% did not approve of diplomatic disconnect.

Some think that the boycott should be for a limited time and others say that it should be at government level and the public should not interfere directly in the diplomatic/foreign affairs. Some think it as a pressuring technique, and some say that there is no other option, the only way left till the time they apologize for their misbehaviour.

A respondent remarked that “we are an underdeveloped country, we should not do it”; another said, “for warning to the non-believers, we should do it”; a few replied that, if we produce these items then we should boycott them and if we don't, then we should continue with their supply”. However, majority of the respondents replied that “it is absolutely right to boycott and do away with diplomatic ties with the culprit nations”. Most of these respondents think such actions as a 'demand from Allah', a pre-requisite to the love of Prophet (PBUH)' , 'a divine responsibility', and 'those who don't express such deep feelings of love for Islam and its Prophet (PBUH) will be questioned for their behaviour on the Day of Judgment.'

With all such profound sentiments, 60% of the madrassah and 43.33% of the university students approve of the ongoing street agitation and protests whereas 40% of the madrassah and 56.66% of university respondents don't favour this kind of agitation.

Those who favour, mostly are of the opinion that, "the agitation and protests should be peaceful and there should be no damage to public or private property or person."

Those who oppose agitation explain their view point with the justification that, "the agitation will harm our won economy; only media and national leadership should register their protest through the UN, OIC and other forums; and instead of street processions there should be some intellectual answers to and dialogue with the perpetrators of these actions."

The interesting phenomenon is that despite enormous support for the agitation only 6.66% of the madrassah respondents have taken part in any of the protest demonstration and despite the 56.66% disapproval of the agitation 25.00% of the university respondents have taken part in the agitation themselves. Only one respondent said that "he participated in the agitation of 2006 but now he thinks it is not good to take part in the agitation". Some said that "they wanted to do so but they are busy in their studies"; some replied, "Sorry, I don't have time".

Table II: Findings of the Survey on Danish Cartoon's Agitation in Pakistan

S.No.	Question?	Respondents from Islamic School (Madrassah) (60)		Respondents from University of Peshawar (40 male + 20 female)	
		Yes	No.	Yes	No.
1	Is boycott of Danish items a right demand by the agitators ?	56 (93.3%)	4 (6.66%)	36 (60%)	24 (40%)
2	Should Pakistan cut off diplomatic relations with Denmark, Norway and the Netherlands?	54 (90%)	6 (10%)	32 (53%)	28 (46.66%)
3	Do you approve the continuous agitation and protests?	36 (60%)	24 (40%)	26 (43.33%)	34 (56.66%)
4	Did you take parting any of the demonstrations?	4 (6.66%)	56 (93.33%)	15 (25%)	45 (75%)

Table III also depicts the same level of idiosyncrasies and preconceived notions that only 3.33% of madrassah and 25.00% of university respondents held Denmark responsible for the crisis.

3.33% of the madrassah and 8.33% of the university respondents held 'Israel' responsible for the 'whole mess' it has made in this issue.

Some think the US is behind the issue alone but US and Israel got prominent position in the list of responsible countries.

No one mentions 'Germany'; and France is mentioned in combination with Denmark, Norway and the Netherlands only by the madrassah respondents.

France is not mentioned by any of the university respondents. More important is the belief of the majority of the madrassah respondents (30.00%) that all non-believer/western countries are responsible as "they are one force against the Muslim world." Only 10% of the university respondents have the same idea.

A few respondents, equally in number for both the respondents i.e., 3.33% , are annoyed with the Muslim world and think that "it is because of the weakness of Muslim leadership and nations that our Prophet (PBUH) and our religion are made targets of their jokes."

A few, despite their affirmation to other questions of boycott, agitation, etc, expressed their ignorance of which one country is responsible for publishing these cartoons. The question was posed to identify only one country but the respondents identified a kind of combination than a single country.

The data gathered from this small survey can be further analysed for more interesting findings, patterns and trends.

Table III: Which one country in your opinion is responsible for publishing these cartoons? (USA, Israel, UK, Denmark, Norway, Netherlands, or any other)

S. No.	Name of Country	Respondents from Islamic School	Respondents from MA Political Science
1	Denmark	2 (3.33%)	15 (25 %)
2	Israel	2(3.33%)	5(8.33%)
3	USA	2(3.33%)	3 (5%)
4	Israel + Denmark	4(6.66%)	-
5	Israel + Norway	-	4 (6.66%)
6	Israel + USA	-	1 (1.66%)
7	Denmark + USA	4(6.66%)	1(1.66%)
8	Denmark + Norway	-	3(5%)
9	Denmark + Norway + Netherlands	6(10 %)	4(6.66%)
10	Israel + Denmark + USA + UK + Norway + Netherlands	2(3.33%)	1(1.66%)
11	USA + Israel + Denmark	-	6(10%)
12	Denmark + Norway + Netherlands + France	12(20 %)	-
13	Israel + France + Like Minded European Countries	2(2.33%)	-
14	Israel + Jewish lobby in USA	-	1((1.66%)
15	Denmark + Israel + Norway	-	3(5%)
16	USA + UK	-	1(1.66%)

S. No.	Name of Country	Respondents from Islamic School	Respondents from MA Political Science
17	Denmark + USA + Norway + Israel	2 (3.33%)	-
18	All Non-believers/All Western countries	18 (30 %)	6 (10%)
19	Muslim nations/leaders responsible for weakness	2 (3.33%)	2 (3.33%)
20	Don't Know	2 (3.33%)	4 (6.66%)
	Total	**60**	**60**

VII Legislating Hate

A Hate Crime-Definition and Nature

'Hate crime' is a notoriously difficult concept to define. There are numerous academic, professional and official definitions around the world. Hate crime has been defined by scholars as:

"Hate Crimes are committed against individuals or groups or their property (destruction and theft) because of their race, ethnicity, religion, national origin, disability, or sexual orientation. The key factor distinguishing hate crime from 'normal' violent crime is the motive of the offenders if the offender's motivation includes prejudice or hostility based on the victim's race, religion, and the like, then it is a hate crime" (Barkan, 2006).

The US Hate Crime Statistics Bill, proposed in 1985 and enacted in 1990, gives the first official federal definition of hate crimes as:

"Crimes that manifest evidence of prejudice based on race, religion, sexual orientation or ethnicity, including where appropriate the crimes of murder, non-negligent manslaughter, forcible rape, aggravated assault, simple assault, intimidation, arson, and destruction, damage or vandalism of property. (Public Law: 101-275)" (Hall, 2005)

B Hate Crime Vs. Freedom of Speech

The legislation against hate crime is basically now a debate between two contrasting views:

The libertarian view is that expressing all dissenting, unpopular and even anti-religion ideas are protected by freedom of speech.

The egalitarian view is that hate speech against minority groups is offensive.

There are advocates and opponents to both sides, each has their reasons. However, a reasonable balance between the two is always a desired goal. As Kallen (1998:4) notes:

"From the egalitarian view, all persons and groups must be equally protected against the willful promotion of hatred and against defamatory attacks which deny their right to human dignity. Freedom of speech, from this view, does not mean the right to vilify. Insofar as hate propaganda has no redeeming social value and is inherently harmful both to target groups and the social order, restrictions on freedom of expression explicitly designed to curb hate-mongering represent "reasonable limits." (Goff, Colin: 2004)

C Legislation on Hate Crimes and Blasphemy

Hate crimes are more serious than other crime because they deny the free exercise of civil rights by minorities and the marginal. The criminal acts tend to be more violent. They are perpetrated against groups with intent to terrorize the entire community. That why new laws with heavier punishment against hate crime. Hate crime law is also necessary to heighten awareness and off set ignorance or insensitivity:

"Several officers with whom I spoke had no idea what a hate crime was ….. Many of the officers disliked the additional paper work required by the departments' hate crime policy, and they questioned whether hate crimes should be a special category at all….. And some officers felt that hate crimes were not real at all but simply human nature" (Gerstenfeld, 2004).

Currently, in many countries, hate crimes are not dealt with specific laws. Old laws pertaining to anti-discrimination or anti-defamation are regarded as sufficient to prosecute hate crimes. For example, Article 1 of 1945 United Nations Charter, Article 7 of the 1949 Universal Declaration of Human Rights, Article 14 of the European Convention on Human Rights and 1965 International Convention on the Elimination of All Forms of Racial Dissemination. In U.K. there is the Race Relations Acts of 1965, 1968 and 1976 , Section 95 of the 1991 Criminal Justice Act, the 1998 and 1976, section 95 of the 1991 Criminal Justice Act, the 1998 Human Rights Act and the Race Relations (Amendment) Act 2000.

Canada and Germany have also expanded their hate crime legislation and enacted enhancement provisions for offences motivated by prejudice against nationality, colour, religion, sex, age, sexual orientation and disability, both mental and physical. Legislation on racial hatred to some degrees have been established in Denmark, France, Switzerland and the Netherlands, etc. More specifically, Holocaust and its denial is an offence in countries such as Austria, Belgium, France, Spain, and perhaps unsurprisingly, Germany (Hall, 2005)

A difficult problem in hate crime legislation and enforcement is the differentiation 'freedom of speech' (as guaranteed in the First Amendment in the U.S.) and hate crimes. In the U.S., the first federal hate crimes late was enacted in

1990, i.e., the Hate Crimes Statistics Act (HCSA). In 1994, Congress passed the Hate Crimes Sentencing Enhancement Act, and the Violence Against Women Act (VAWA). Another is the Church Arson Prevention Act, 1997.

In Europe, Australia, Canada, the German Penal Code (Sections 869, 130, 130a, 131,185 and 189), the Crime and Disorder Act of UK (Section 28,29), the Federal Racial Anti-Discrimination Act (Section 18C, 18D) of Australia, the New South Wales Anti-Discrimination Act (Section 20C,20D) and the Criminal Code of Canada (Section 318-320 and 718.2) and the Canadian Human Rights Act 13(1) are a few examples of legislation against hate crimes. Some groups like the Anti-Defamation League (ADL) (www.adl.org) have worked a lot in dealing with hate crimes. (Gerstenfeld, 2004).

In Pakistan, Chapter XV of the Pakistan Penal Code, 1860 deals with 'Offences Relating to Religion' from Section 295 to 298-C. Section 295-C, as incorporated by the Criminal Law (Amendment) Act, III of 1986, states, *"Use of derogatory remarks, etc; in respect of the Holy Prophet*: Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (P.B.U.H) shall be punished with death, or imprisonment for life, and shall also be liable to fine" (Pakistan Penal Code, 1860)

Chapter XV of the PPC, 1860 deals with these 'blasphemous actions' as crimes and describes various punishments for them, ranging from fine and imprisonment to death. However, the word 'blasphemy' is not described in any of its provisions. Legally, we have no definition on the term 'blasphemy' or 'blasphemous.'

The Black's Law Dictionary defined "blasphemy" as: "Irreverence toward God, religion, a religious icon, or something considered sacred. Blasphemy was a crime at common law and remains so in some U.S jurisdictions, but it is rarely if ever enforced because of its questionable constitutionality under the First Amendment."

Blasphemy is the malicious revilement of God and religion. In England blasphemy is the malicious revilement of the Christian religion: "Blasphemy has been held to be a common-law crime [in the United States] because of its tendency to stir up breaches of the peace. It is expressly made punishable by some of the statues." Rollin M. Perkins & Ronald N. Boyce, Criminal Law 474, 475 (3rd ed. 1982).

Turning to the bible, in the Old Testament, blasphemy is frequently used as involving the denial or rejection of God (Lev. xxiv: I6; lxxiv: I8; Ezek. xx:27). In the New Testament, the Jews accused Christ of blasphemy (Matt.ix:3, xvi:65, Luke v:21; John x:36) since he assumed the attributes and prerogatives of God. But the Jew's rejection of Christ is also regarded as blasphemy (Luke xxii: 65; Acts xiii: 45, xviii:6, xxvi:11). Peculiar to the New Testament is blasphemy against the Holy Spirit (Mark iii: 28, 29), involving willful confusion of good and evil.

In some Christian countries, blasphemy has often been regarded as a civil offense, i.e., breach of the peace, public nuisance, and, when printed, equivalent to libel. In modern times, however, blasphemy has seldom been punished by law. (Kerr, T. Hugh, 1991).[1]

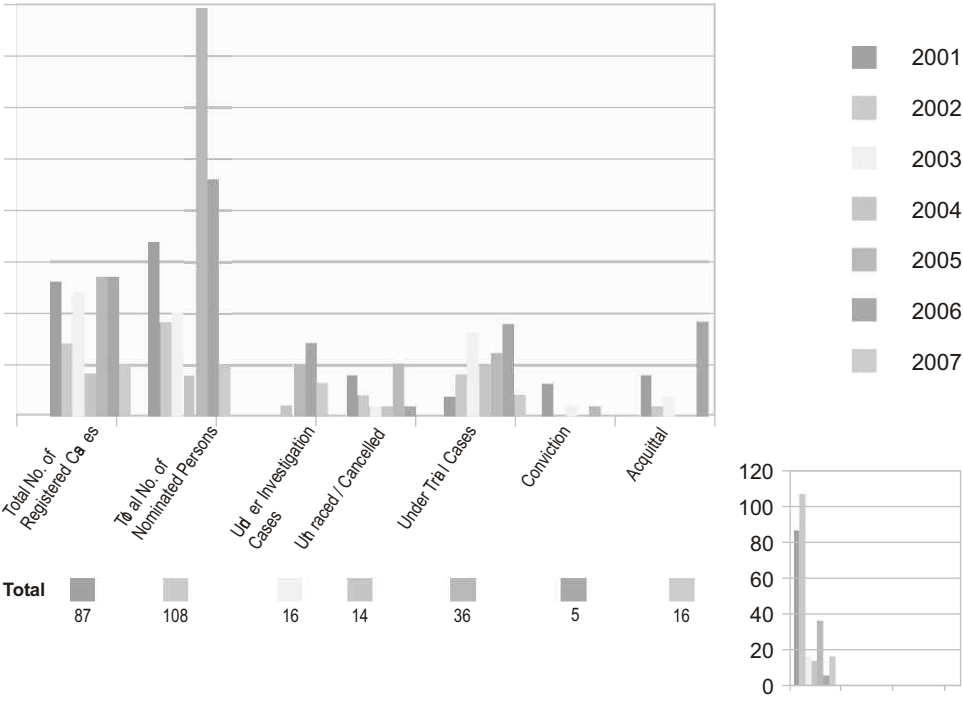
In Pakistan human rights activists and organizations have repeated charged that blasphemous offences under Section 295-A, 295-B, 295-C of Pakistan Penal Code (PPC) are used selectively against the minority religious groups, especially the Christians, the Hindus, and the Qadiyanis, (a group of disbanded Muslims). The report of the Human Rights Commission categorically mentions this every year. If some non-Muslim is punished under these law, human right activities would come to the rescue. Ishtiaq Ahmed, a professor of Political Science, is one such advocate:

> " The barbaric murder of Jagdeesh Kumar, accused of blasphemy by some of his workmates at a garment factory in Karachi, brings out in sharp focus once again the exposed and vulnerable situation of non-muslims in Pakistan still wedded to the legacy of General Ziaul Haq….. Anyone who follows the news from Pakistan and reads the reports published regularly by the Human Rights Commission of Pakistan would find that violence and brutality against non-Muslims increased exponentially after the blasphemy laws was imposed in 1982 and reformulated in 1986….. All this is indicative of another type of Pakistan". (Ishtiaq, 2008)

To be accurate in our assessment, one has to consult official crime data.. From 2001 to 2007, a total of 862 cases have been registered u/s 295,295-A, 295-B, 295-C in Pakistan, the highest number of which is in the Punjab (535) and the lowest in the capital city of Islamabad (7) and the Province of Baluchistan (12). The complete details and break-up of these figures given by the National Bureau of Police (NBP) are not known. However, for the North-West Frontier Province (total cases 87), further details have been obtained from the local police headquarters. Out of the total arrested 108 nominated/charged persons, only seven persons are non-Muslims and 101 arrested persons are Muslims. This shows that the allegations of discrimination and minority marginalization are not supported by the official statistics. The details of this data from 2001-2007 are shown in the following graph:

For a complete and detailed discussion on 'blasphemy' and 'sacrilege,' see '*The Encyclopedia of Religion*', volume 2, P-238,245 and volume 12, P-557, 563, respectively , edited by Mircea Eliade and published by Macmillan Publishing Company, NY, USA, 1987.

Total Cases of Blasphemy in NWFP (U/Ss 295A/295B/295C) (2001 - 2007)



Source: Office of the Additional Inspector General of Police (Investigation) NWFP, Peshawar

VIII Conclusion

Reflection

The respective and mutual shaping of memories from both the Islamic world and the western hemisphere is embedded in a complex and violent history structured mainly around conflicts, but this does not mean that collaboration and common interests never occur, and in time converge. Islam can now be legitimately considered as established more than 'transplanted' faith in most of the western European countries (Valérie Amiraux: 2004). At the present, there is observed a tremendous interest in understanding and studying of religion in general and Islam in particularly. The scholarly discourse, conferences and debates at all level have gained serious momentum after the events of 9/11 in New York. The Danish cartoons crisis has now added another catalyst to the dialogue. An opportunity has arisen amid the worst and bleak pictures of Danish images.

Europeans have never entered into a dialogue with the Muslims as they did after 7/7 London bombing, Madrid bombing, Von Goh's murder, and now Danish and Swedish cartoons and an anti-Islamic film '*Fitna'* by a Dutch parliamentarian. The outward tumults of agitation across the world should not blur our vision and commitment to search for the true causes of such irritants, and work hard for the removal of unnecessary suspicion and distrust. Debate and dialogue should begin with mutual respect and commonalties in a purposeful manner and in a harmonious environment.

The agitation of 2008 against Danish cartoons re-publication can be taken as an example of increasing maturity amongst the general masses and political leadership of Muslim societies. The western media should learn from this new found Islamic maturity. They should also learn that individual actions should not be attributed to one's religion and system of belief which, then becomes a matter of concern for many more who are not a party to the actual happenings. Human progress and development should be the ultimate good of all members of the world community. The recent growth of interest in religion should not be left to the whims of trouble-makers. Scholarly and creative thinking should prevail upon the misguided and unaware.

Recommendations

The recommendations of this paper are focused around the agitation, the blasphemy and hate crimes in Pakistan and the role of the police in dealing with these problems. Hate crime prevention ranges from early interventions of offender control and change to broader and more long-term strategies aimed at, for example, public educational and improved community relations, in order to tackle the social roots of the problem. Social 'roots' should include fundamental problems such as social exclusion or cultures which condone oppressive behaviour against particular social groups. Such an approach is interwoven in an immediate situational prevention and a community and multi-agency-based programmes. (Maquire and Fiona, 2005). In light of this discussion, we propose:

i A comprehensive analysis of the agitation against Danish cartoons should be carried out to assess the nature, extent, severity and damages of the demonstrations and riots in 2006 and 2008. The losses to human life and property and their compensation should be thoroughly researched. The study should bring to light all the vested interests, pressure groups and their ulterior motives in engineering these violent demonstrations.

ii New law on the pattern of laws in the developed world should be formulated and promulgated on all hate crimes. Such law should be included in the syllabus of all law enforcement agencies, especially the police.

iii The existing 'blasphemy laws' should be reevaluated and should be incorporated into a more comprehensive law on hate crime which should speak for all religions, all groups, all classes, all nationalities and all cultures.

iv Special unit or task force should be established in every province, comprising members from law enforcement agencies, NGOs and minorities in Pakistan who should be responsible for prevention and preliminary investigation into the allegations of hate crime before a proper report is lodged in a police station. This will minimize the chances of persecution, false allegations and will promote a victim-offender mediation before a cumbersome litigation.

v Laws and rules should be framed for public demonstrations so as to regulate and monitor all potentially violent eruptions in future. The debate on interfaith should be taken seriously and away from street to a more intellectual level in academic institutions, public bodies, media and social organizations.

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Annexure: A

First person account of second author (FASIHUDDIN) on pacifying Charsadda.

Police Strategy in District Charsadda: (Total Population = 01 million)

Role of Local Government in Enhanced Security Arrangements:

As we received the bad news of sudden eruptions and destruction in Lahore, I (second author), being the district police chief, at once contacted the head of the District Government, known as District Nazim in our country. I apprised him of the religiously inspired mobs and the damages they caused to public property and life. We thoroughly discussed the prevailing country-situation, its repercussions, spillover effects and the expected and potential eventualities in case of violent disorderliness. The District Nazim contacted the officers of all other district departments and asked them to make effective and meaningful security arrangements for all the sensitive installations and other establishments of their respective departments. Through the District Coordination Officer (DCO) we made liaison with all other civil departments and provided them with practical suggestions on matters of security and protection. The local police provided them extra-force and security guard on sensitive spots whenever and wherever they needed. We held regular meetings with the representatives of all other departments for this purpose.

Meetings with Local and Political Representatives

A meeting with the members of the Provincial and National Assemblies, belonging to our district was called by the District Nazim. This meeting was actually called on the request of the District Police. All of us discussed and analysed the national situation and the concerns of the international community on the issue of cartoons and their generated response. None of us agreed that such irrational damages to public property were religiously or morally approved. We decided to go to the public and educate them that by such actions they are not doing any good to the nation, religion or country. But it was a very tricky and touchy issue as no one could dare to say even a single word against this 'holy protest' in the given situation of extremism, violence, fanaticism and unruly demonstrations. However we decided to call a larger gathering which would be representative of the whole district, and whereby the local councilors and elected members of the community will be requested to educate the public at their villages and street level.

After thorough and heated debate we succeeded in our plan and a huge meeting of more than 300 notables/elected members of local community/councilors was held in the district Town Hall where despite their individual differences, all

political elites and members of the national and provincial assemblies participated. Every one of these leaders spoke to this selected gathering. While criticizing the disrespectful images, none of them approved the indiscriminate damages to the national assets and public life. It was quoted from the Holy Book that no religion has ordered killing of the innocent people or looting their property/goods and putting the natural resources and man-made productions on fire. God dislikes such acts, and had any Prophet been alive, he would have never approved of this transgression, terrorism, destruction, intimidation and illegal and inhuman infliction on the life and property of innocent masses. This general meeting was told that they must tell the public about the life, mission and teachings of the divinely inspired personalities, all of whom very patiently suffered tremendous hardships in their lives. They never reacted in this way, even against their die-hard opponents. The Prophet of Islam forgave even the murderers of his close relatives. This open debate helped us a lot and I requested these representatives to be on guard whenever and wherever a mob-procession is taken out in the district. These representatives made their presence sure on such scenes of processions and gatherings, and they worked unbelievably to articulate and aggregate their demands and helped in guiding the protestors on an authorized route so to avoid any disturbance or destruction.

Public-Meetings by Police-Officials

I myself took this responsibility and delivered dozen of speeches to small gatherings in every corner of the district on the same pattern and points, which were discussed in the huge gathering at Town Hall. Similar were the mass-awareness programmes and police-to-people contact by the other staff under my command. This strategy worked well and we were able to regularize, identify and streamline the processions, their route and their time duration. We were thus successful in convincing the leadership of these processions to be organized, peaceful and nice.

Barricades to Outsiders/Tribal Miscreants

Despite our educative programmes, we put effective barricades to all outside demonstrators and rioters from the adjacent tribal areas. For example, twice the young tribal students of the Yakka Ghund College (Momand Tribal Area) came down to the city market of Shabqadar and tried to attack and bring down the booster of Telenor Company, but the security arrangements were so tight that they went back without doing any damage to the said installation. It was perhaps the only booster in the surrounding districts, which survived this hot phase of religious frenzy.

Effective Communication

I gave clear instructions to all my subordinates and made a humble request to the general public that as soon as a procession is taken out, whether instantly started or pre-programmed, they should immediately inform the police control and operational rooms by all available means of communication. They were asked to provide us all-important information about such processions e.g; who called for it? Who is the leader? Who are the supporters? Which political party is behind the protest? How many participants are expected or present at the moment? Which route will they adopt? etc, etc. The policemen on duty in that area were categorically asked to communicate, on wireless or telephone, the names of the culprits in case they indulge in looting or sabotage activities. I am happy that, unlike other big cities, our district, despite numerous processions, remained calm, and peaceful and no untoward incident took place. The number of processions and their average participants are shown in Table-I and II, which clearly show how terribly the local police remained engaged in these demonstrations in the months of March and February 2006.

Table I. Anti Cartoons Processions in District Charsadda

Name of Leading Organization / Parties	No. of Processions	
	February 2006	March 2006
Students Organizations	05	-
Religious Parties	26	22
Local Govt: Representatives	04	-
Medical / Para Medical Association	01	01
Lawyers	01	-
Traders	03	-
Political (National / Provincial)	10	04
Journalist Association	01	-
Labour Organization	-	01
Teachers Association	-	04
Total	**51**	**32**

Table II. Anti Cartoons Processions in District Charsadda

Description	February 2006	March 2006
Total No. of Procession / Gathering	051	032
Average No. of participants per procession	554	334
Average time duration per day per procession	04 hours	01 hours

Annexure B

Important Websites on Hate Crime	
American-Arab Anti-Discrimination Committee (ADC)	www.adc.org
Anti-Defamation League (ADL)	www.adl.org
Center for Democratic Renewal (CDR)	www.publiceye.org/cdr/cdr/html
FBI Hate Crime Statistics	www.fbi.gov/ucr/01hate.pdf
Hate Crime California State University, Stanislaus	www.csustan.edu/hatecrimes/
Hate Crimes Research Network	www.hatecrime.net
The Hate Directory: Hate Groups on the Internet	www.bcpl.net/-rfrankli/haterdir.html
National Asian Pacific American Legal Consortium (NAPALC)	www.napalc.org
National Center for Hate Crime Prevention (NCHCP)	www.edc.org/HHD/hatecrime/idl -homepage.htm
National Criminal Justice Reference Service (NCJRS)	www.ncjrs.org/hate-crimes/summary-html
National Gay and Lesbian Task Force (NGLTF)	www.ngltf.org
Not in Our Town	www.pbs.org/niot/
Partners against Hate (PAH)	www.partnersagainsthate.org
Political Research Associates (PRA)	www.publiceye.org
Sexual Orientation: Science, Education and Policy	www.psychology.ucdavis.edu/rainbow/ index.html
Simon Wiesenthal Center (SWC)	www.wiesenthal.com
Southern Poverty Law Center (SPLC)	www.splcenter.org

Source: Gerstenfeld B. Phyllis: Hate Crimes, Causes, Controls, and Controversies, Sage Publications, UK, (2004)

Annexure C

Blasphemy Laws
(Pakistan Penal Code 1860)

295

Injuring or defiling place of worship, with intent to insult the religion of any class

Whoever, destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class or persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

295-A

Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs

Whoever, with deliberate and malicious intention of outraging the religious feelings, of any class of the citizens of Pakistan, by words, either spoken or written or by visible representations insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to (Ten) years, or with fine or with both.

295-B

Defiling, etc. of copy of Holy Quran

Whoever willfully defiles, damages or desecrates a copy of the Holy Quran or of an extract therefrom or uses it in any derogatory manner of for any unlawful purpose shall be punishable with imprisonment for life.

295-C

Use of derogatory remark etc., in respect of the Holy Prophet

Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (PBUH) shall be punished with death, or imprisonment for life, and shall also be liable to fine.*

*To constitute offence u/s 295-C, P.P.C., number of witnesses were not required and it was not necessary that such abusive language against Holy Prophet (P.B.U.H) should be made loudly in public or in a meeting or at some specific place, but *statement of single witness that some body had made utterance for the contempt of Holy Prophet (P.B.U.H) even inside the house was sufficient to award death penalty to such contemnor.* (2005 YLR 985 (April); PLD 1992 Lah. 1] Words "or imprisonment of life" have lost their efficacy w.e.f. 30.4. 1991__ "Defile"__Means to corrupt purity or perfection of, to debase; to make ceremonially unclean; to pollute; to sully, to violate the sacredness or sanctity of; to desecrate, profane; to sully the honour of, and to dishonour. [PLD 1994 Lah 485]. Preaching against the order of Almighty Allah, said pamphlets not covered from the alleged accused or at his instance. Religious rivalry prevailing in the locality. Imperative upon prosecution to establish beyond any shadow of doubt the printing and publishing of the alleged pamphlets. Name of printing press or publisher not known. Accused not to be saddled with responsibility of getting said pamphlets printed or published from anywhere. 2003 YLR 2000. Doubt__ *Must be reasonable and not imaginary* . Evidence for conviction must under go the test of Tazkia-tul-Shahood. PLD 2002 S.C. 1048. Nothing available on record to suggest even remotely that the derogatory remarks were made by the accused as a result of an argument, a controversy, a discussion or a wrangle. Such accept sufficient to demolish the prosecution case. PLD 2002 S.C. 1048.

Source: M. Mahmood: The Major Acts Criminal, 27th Edition, Pakistan Law Times Publications, Lahore, (2006)

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Policing Colonisation
The Evolution and Role of Sind Police and the Views of Sir Charles Napier on the Administration of Criminal Justice in Sind

Aftab Nabi and Dost Ali Baloch

This article examines the origin, evolution and orientation of police subsequent to the conquest of Sind and assesses how policing, and to a substantial extent, the administration of criminal justice, became subservient to the larger aim and vision of the conqueror of Sind when confronted with the immediate and fundamental problem, that is, the territorial consolidation of the province and the subjugation of the tribals in the hinterlands. The background to the annexation of Sind is relevant because it was these issues and aspects that played an important role in the formulation and orientation of the police department and its evolution over the four years of Sir Charles Napier's tenure. In this context, the article is sub divided into nine sections, first, the British interest in Sind, the ambitions of Sir Charles and the conquest of Sind, second, the administrative system initiated by Sir Charles and the position of Sind police in that system, third, the colonial priorities and the orientation of the Sind police, fourth, the police manpower and recruiting policies, fifth, the nature of crimes and their detection, sixth, the policy and orientation of Napier's concept of criminal justice, seventh, the consolidation of the Upper Sind Frontier, eighth, the essence and orientation of Napier's policing system and last, the impact of collaboration and codification on the policing of rural Sind.

1. The British Interest in Sind, the Ambitions of Sir Charles Napier and the British Conquest of Sind.

1.1 Sind: History and Administration

Geographically, Sind is located in the North West part of Indian sub continent and borders with the Punjab on the north, Rajputana on the east, and the Rann of Kutch on the south, the Indian Ocean on the south west and Baluchistan on the North West. The Baluch rule in Sind starts from 1783, when the Baluch tribe of Talpurs wrested power from the Sindhi Kalhoras. In 1827, one of the Amirs of Sind fell very seriously ill and Dr. James Burns went to Sind to treat him. His subsequent publication based on this visit, included a detailed account of the country, highlighted the lucrative prospects of developing the Sind, and emphasised the importance of the river Indus as a route and key to the trade of Central Asia.[1]

Around this time, Great Britain was apprehensive of a Russian advance through north west India and both Wellington and Ellenborough were of the

view that the best strategy was to acquire control of the river Indus. This would act as a natural barrier for the Russian advance, negate the Russian influence in Central Asia,[2] help exploit commercial advantages by achieving an ascendancy in the area and removing the Russian fear altogether.[3] Through pressure tactics, treaties were signed between 1832 and 1834 which freed the navigation of the river from restrictions. Between 1838 and 1841, the Afghan crises assumed importance and there arose an urgent need to despatch troops via the Indus. Further British pressure was asserted on the Ameers of Sind. By now they had been relegated from "the rulers of an independent state to princes of a client state."[4] At the age of sixty, Napier was posted to India and found himself at last in a position where he could perhaps realise his ambition to fame.[5] Huttenback describes Napier as a man of "bizarre appearance," and "capable of great generosity and small minded parsimony, of humility and unbounded conceit."[6]

1.2 The Battle of Miani and Daobba

The Ameers of Sind neither desired nor were prepared for war.[7] Napier, with active encouragement and support from Ellenborough, precipitated a very serious situation that ultimately ended in the two Sind battles --- Miani on the 17th February 1843 and Daobba on 26th March 1843.[8] The Battle of Miani was a massacre. Some two thousand Baluchis fell, four hundred corpses alone were heaped up within a circle of fifty yards radius.[9] The Baluchis fought well, but were driven off in confusion.[10] The second battle was also extremely bloody with the Talpur army suffering very heavy casualties. Victory for the British at Daobba was as complete as that of Miani.[11] By August 1843 Sind was annexed into British India.

1.3 The Talpur System of Administration

The administrative and revenue divisions of the country, known as *pargannas* (a revenue sub division of a tehsil, the latter being an administrative subdivision of a district), were sub-divided into *tappas* (administrative sub division of a taluka; a taluka is an administrative sub division of a district) which were put incharge of revenue officers known as *kardars*. Larger towns were in charge of *kotwals* (in charge of police in a small town). *Foujdars* (in charge of a police post) and *kotwals* usually commanded a mounted police, rather small, since crime prevention was a local responsibility. Each village community was held responsible for any theft that was traced to it, and paying a fine if it was unable to find the thief.[12] As far as the Talpur system was concerned, "its great defect was its ignorance; its merit was its simplicity."[13] According to Rathborne, the first Magistrate at Hyderabad subsequent to the conquest of Sind, the Talpur administration had the "the speediness of decision,

accompanied by a freedom from costs."[14] In Sind, the tribal organisation was very strong,[15] and the authority of the chieftain, the *sardar* or the *wadero*, not only stood in the place of a village organisation, but was also unquestioned.[16] The *panchayat* (village council) decided all matters of the community as well as civil disputes.[17]

1.4 Napier's Administrative System

Subsequent to the conquest, a martial law regime was established, Napier was appointed Civil and Military Governor and Sind began to be administered as a detached province directly under the Supreme Government and of India. Napier's system divided the government into four branches: first, the purely military branch or regular troops, second, a force of Irregular Horse, "ready to march at a moments notice." The third branch was the Police, who were "generally the point of collisions between the rulers and the ruled." Napier specified that these "three powers form an echelon: the Policeman leads the attack. If he be too weak the Irregular Horseman comes up to his aid, and lastly if that does not do, the regular soldiers enter into the battle." The fourth was the Civil Branch which was constructed on "the same gradatory principle as the military." Napier divided the country into three collectorates, apart from Upper Sind Frontier which was entrusted to a military commander who discharged military and political duties.[18]

2. The Administrative System Initiated by Napier and the Position of the Sind Police

2.1 The Sind Police: Structure and Organisation

In the early days of the conquest, lower Sind, especially the delta area, was in a state of turmoil because of insurgents who operated in bands, while the followers of the Talpur army, fifteen thousand formidable men and all armed, were a danger to be reckoned with. From Napier's point of view a powerful and rugged police force was a must to curb their activities and ensure submission by the tribal *sardars* (chief of a tribe). It was also essential "to prevent the troops being disseminated," which would bring them into "familiar contact with the people."[19]

Napier's strategy was to keep his regular force, that is, the army, in three masses, at Hyderabad, Sukkur and Karachi, safe from acquaintance and familiarity with the people. Next in importance were the irregular horsemen, more divided, yet only in four or five posts as a chain of connection between the three capital Collectorate. Aloofness and elitism in such units was strongly marked because the irregular horsemen were "of caste" and only kept "company with such." The third group was the police, in immediate contact with the people on all occasions.[20] Under Napier's direction, two thousand men, well armed, well drilled, and divided into

three classes, "one for the town, two for the country" were organized as a police corps. The first were all infantry, the last, infantry and cavalry, and were called the rural police.[21]

2. 3 Command and Control

The Police in Sind was under the command of an officer styled the Captain of Police who was solely responsible to the Governor and latter the Commissioner in Sind. In each *Zillah (*district), the Police was controlled by a European officer, the Lieutenant of Police, who was directly subordinate to the Captain of police in Sind. He was assisted in his duties by an Adjutant, also a European officer from one of the regiments of the Line.[22] The police were subject to the collector and deputy collectors for civil offences, such as ill - treating the natives, plundering fields, and for debts, and to their own officers for all military offences.[24] The chief of the Karachi police, had "magisterial functions" in the town, but what his exact powers were "does not appear to be determined." [25] The Lieutenant of the Police was supposed to be constantly on the move from one portion of his district to another, so as to ensure supervision and control.

2. 4 The City Police

The city police were raised "for the actual protection of the three principal towns in Sind, Karachi, Hyderabad, and Shikarpur."[25] On 23rd March 1843, on Napier's orders, Lieutenant Edward Charles Marston, a Gazetted Staff Officer to the 1st Brigade, proceeded to Karachi to initiate the police force. He "looked scarcely eighteen years of age when he arrived to take command of the police."[26] By the 1st. May 1843, Marston had raised the Karachi Police which was subsequently taken as a model for the whole of India. Captain Preedy, the first Magistrate of Karachi reported that the police force consisted of 190 mounted police, 133 rural foot police, and 19 city police, with a proportion of native officers.[27] Initially, Lieutenant Leeson was posted to Hyderabad; but "the business of the latter's concubine coming belatedly to the General's notice, a hint was given to Leeson to resign." The post of Lieutenant of Police at Sukkur remained for some time unfilled.[28]

The City Police were "dressed in the native style"[29] in dark calico dresses, were armed with swords and staves, and furnished with matchlocks. They were divided into two classes, first, the *Nujjeebs (*watchmen), who were dressed like *Chupprasies* (peon, orderly, messenger), and employed in cities and large towns to act as watchmen, night patrols, *bazar* (market place) and *chowree (intersection*) guards, etc. The second category were trackers, whose duties were almost purely detective. They were selected for their intelligence, from amongst the best *paggis*, or trackers, in Sind.[30]

2. 5 The Mounted and Rural Police

The Mounted Police was divided into 2 classes, Regular and Irregular. The Regular Mounted Police was organized and equipped with light single barrelled carbines and swords. Their functions were partly protective, acting as patrols and guards, scattered in small detachments all over the country; and partly detective in acting as *thannadars* (incharge of police stations) to hear complaints, and arrest offenders; to take up the traces of robbers, apprehend and bring to justice, with the assistance of trackers, belonging to their own or to other branches of the force. The Irregular Mounted Police were not uniformly equipped, though the men generally adopted the uniform costume of their tribes, which was generally white; they carried a sword, shield, and matchlock and consisted of horsemen and camel *sowars* (riders). The latter, who, subsequently adopted the same uniform and equipment as the Regular Mounted Police, were employed in those portions of the country, such as the Eastern Desert, Western Hills, etc., where camels were found to be more useful than horses. The Irregular Mounted Police, comprising of horsemen, were confined to the Shikarpur z*illah* (sub division), and consisted exclusively from the tribes of Jackranees, Dombkees, Chandias, and other Frontier Baluch clans whose chiefs had submitted to Napier or were actively collaborating with the colonial power. Their services were made use of in a similar manner to the Regular Mounted Police, but to encourage the employment of the border tribes, who disliked a regular uniform, their dress, was left to their own taste.[31] Non insistence of the dress code was a clever colonial move to negate tribal inhibitions in joining the force.

Vis a vis the rural district of Karachi, Preedy, mentioned that the mounted police were "no favourites with the *ryots*," who complained much of "their hectoring, overbearing conduct towards them."[32] An idea of the fear and awe of the mounted and the armed police can be had from the fact that in September 1843, a chief from the Lumree tribe organized a robbery which, unfortunately resulted in murder as well. The arrested accused admitted that their chief ordered them and the "tribe delivered him to the police." The chief was tried and hanged with his two followers "on the same gallows sixty miles from any soldiers save Marston."[33]

Rural Police comprised a body of infantry which was "dressed, and equipped like other local infantry corps. Their functions were purely protective. This branch of the police was of crucial importance in the colonial framework because they catered for all the Civil Guards at the Head Quarter Stations, including the Jails and Treasuries, and acted as escorts for transportation of treasure.[34] The Rural Police also "guarded the *Daks* (post or postal services)

enforced executions, relieved the soldiers from many isolated minor duties, and formed a body of excellent guides in war."[35] Their duties also consisted in supporting the mounted police stationed at posts further removed from aid.[36]

Each station was supported by a body of police under a European commander, and protected by a powerful mass of regular troops, always within reach. These, however, were only to be employed when the police and the irregulars were unable to resist incursions and the situation became a warfare. To sustain the rural police, the irregular cavalry, "composed of men who disdained the company of persons lower in degree," were distributed between the collectorates and around them. Although composed of smaller bodies than the regulars, they were maintained nevertheless in masses. The militaristic organisation and bearing suited the rural police, they acquired greater confidence and courage and on behalf of the colonial power took an active part in partisan warfare.[37]

3. The Sind Police: Colonial Priorities and Orientation

3. 1 Law and Order and the Collection of Intelligence

Once a week, or often, if necessary, the *thannadar* reported to the lieutenant of police and deputy magistrate of the district "all the information he had received." Each Lieutenant forwarded weekly to the Captain of Police an English digest of such reports, along with the vernacular papers. A summary of these digests, together with the returns of the Jails, was forwarded weekly by the Captain of Police to the Governor and, after 1847 to the Chief Commissioner. The *Jamedar*, or the Chief *Thannedar* would make himself acquainted with the whole district under his charge, as well as the names of the *patells* (village headman) of the villages, and any other useful information. Colonisation of the rural area required deep penetration by the police and the technique adopted by the police officer commanding each *Thannah* or Post, was to despatch a certain number of *Sowars* (riders) to patrol within his range, meeting if practicable, the patrols of the neighbouring posts, and returning occasionally to be relieved by others as circumstances permitted. By this means everything going on in the district was, inevitably, known to the native officer in charge.[38]

3.2 Groups Disgruntled with Previous Rulers Recruited in Police for Spying

Although Napier's police was composed chiefly of *Sindhis* who had been so employed by the Ameers, yet he selected in bulk those that "had suffered in person or family from the cruelty of those princes," and possessed " the hatred

of emancipated slaves to cruel masters."[39] Sir Charles formed a body of spies upon the Ameers and these were chosen "from persons who had suffered in purse or person from their tyranny."[40] Rathborne, the Magistrate of Hyderabad, believed that the police "occasionally resorted to espionage."[41] On his revisiting Sind and passing through Hyderabad, Sir Richard Burton mentioned the "secret-police, half a dozen detectives" in Hyderabad, who were periodically changed.[42]

The Hindus of Sind, generally, gave an impression to the British that, prior to the conquest, the loans disbursed by them to the Baluch were either not paid or paid as per convenience. Napier ensured that, "the Hindoos have enforced payment."[43] By an overt support to the Hindus of Sind, Napier gained in two ways, firstly he secured a valuable source of loyal informers and secondly, being traders and indigenous bankers or the essence of capital in an otherwise pure rural economy, they were a crucial link and of significance for the colonial state.

3.3 Priority for Collection of Intelligence on Law and Order and Destabilisation of Government

The mounted police were often employed by the magistrates and the *kardars* (revenue official; in Sind he had some magisterial powers and supervisory powers over the police) in carrying letters or delivering messages on official subjects. Although this was not one of their proper duties as policemen, it had the great advantage in giving them the means of picking up information of importance regarding the state of the country, and the presence of suspicious characters. Hence by "constantly moving about and conversing freely with the natives," they soon learnt "everything of consequence" that was going on in the district. All branches of the police were instructed to be constantly on the look-out for the detection of suspicious characters and circumstances tending to "affect the peace of the country" and they were "well aware" that this was "one of the most important parts of their duty." In view of the fact that even the most minute items of intelligence were reported by every rank of the police to their superiors, and then on to the head of the department, this negated the secrecy of any conspiracy against the state.

3.4 Requirement of Consolidating the Conquered Territory Led to Delegation of Indiscriminate Miscellaneous and General Powers to Police

The requirements of a newly conquered territory necessitated not only the extreme degree of reliance on the police, but also the increased range of duties assigned to them. The Sind police in the 1840's helped the *kardars* in finding

carriages and means of transport for government officials and travelers, if requested, and sometimes ensured the supply of forced labour. Collector Karachi clarified that this was resorted to only "in cases of emergency."[44] In addition the Sind Police was responsible for the working and supervision of the jails.

In large towns persons moving out at improper hours were stopped by the police and taken before the authorities, "unless able to give a good account of themselves;" but no restraint was put upon the movements of travelers. Marston specifically stated that "after 11 o'clock at night, the police were ordered to apprehend all found moving about the towns, unless able to produce a pass from a magistrate." Cultivators were not restrained, as their business compelled them to work during the night at their water - wheels and fields.[45]

On the 16th February 1844, Napier issued a General Order forbidding the carrying of arms. Travelers "passing through" were exempted from this order. In addition all chiefs who had "made their *salaam*" were entitled to carry arms personally. Merchants of Sind, despatching goods outside the province were supposed to obtain arms permits by applying to the area police officer.[46] The police also had to "guard prisoners at hard labour on public works." When three principal jails were established in Sind, at Karachi, Hyderabad and Shikarpur, they "were under the immediate control of the Lieutenants of police."[47]

3. 5 Policing Techniques: colonial expediency

The deployment of police was governed by colonial exigencies of maintenance of law and order and the subjugation of indigenous unrest. The horsemen were kept at Shikarpur, the camels at Larkana, and were supposed to check the hill robbers down to lake Muncher." At Sehwan, were a squadron of wild horsemen to guard the plains from Lake Muncher to Kotri, opposite Hyderabad. At Jherruck, the location of a detachment completed the chain. The strategy was that if a hostile tribe ventured into the re entering angle formed by the Indus, tending to east at Hyderabad, a regiment from Gharo would "sally forth supported by troops" from Karachi upon his right flank; and from Hyderabad and Kotri on his left.

Napier realised the urgency, importance and necessity of consolidating the newly conquered territory. In this context, the raising of the camel corps under Lieutenant Fitz Gerald was of crucial significance in the subjugation of process. He made marches of nearly eighty miles in a day and thus surprised some of the recalcitrant bands in the hills.[48] Sir Charles' journal for 15th February 1844 indicated that "the thieves" had all fled to the hills when the 9th cavalry

reached Shikarpur. The camel corps at Sehwan, had "spread terror even up to Quetta, and in the valley of Shawl." After a year or so, the border tribes had sent to beg pardon and crave for mercy.[49]

An example of Napier's exploitation of tribal animosities was his resettlement scheme for the tribes around the Upper Sind Frontier. Napier had located on good lands about two thousand followers of the Kalhora Princes, who were driven by the Talpurs into the hills. In gratitude due to the resettlement technique they would become attached to the colonial power.[50] Napier, being well informed on inter-tribal feuds, exploited these to his advantage. On 23rd April 1844, writing to his brother Lieutenant General William Napier, Sir Charles stated that he had "turned out two powerful Scindian tribes, Mugsees and Chandikas," against the Bugtis, with whom those tribes had a blood feud. His police were to go with them to secure victory. His strategy was to play off "tribes against tribes" and thereby put down the Jakranis and Dombkis.[51]

3.6 The Magisterial Control and the Revenue Function

The supervisory control over the police by the magistracy had a dual function. Firstly, it was essential that the Collector's authority as a revenue official was bolstered by executive powers and for this the police was more than sufficient. The second was that each agency would act as a counterweight for the other with the result that the government would get to know the real state of affairs.

In the revenue set-up, the *kardars* had no permanent treasuries but forwarded such portion of the collections as passed through their hands from time to time by bills, or under a police escort, to the treasury of the Collector or one of his deputies.[52] Napier did not visualise resistance to settlement of revenue dues, but if there was, the police would "settle it, pending reference to the collector," who was also a magistrate. However, Napier was very clear that command and control was that of the Captain of Police, and that the collectors had no right whatsoever "to interfere with the police." The power of the Collector was to "call upon the police for any men they may require to arrest defaulters, or collect revenue."[53]

The advantage that Napier saw in this system was that the police would report against the corruption or harassment of the *kardars* while the latter would complain against police abuse of power. Hence both would be "kept in check," with both protecting the poor, "not from humanity but spite."[54] The benefit would go to the government because the poor would look on both as protectors.[55]

4. Police Manpower and Recruitment Policies

4.1 Colonial Expediency Dictated Napier's Recruitment Policy for the Police

The police recruitment policy was based purely on colonial expediencies, mainly the necessity of ensuring law and order so that the process of colonisation was not hindered in any way. Very often recalcitrant tribes, even those with overt criminal propensities, were pacified by inducting some of their men into the police; the important consideration being that the tribe through such a process would either submit to the colonial power or, at least, stop creating law and order problems. Considerations of suitability for the job, merit or administrative niceties did not appear to have any priority. An example of this policy pertained to the Pathan and Baluch tribes around the Upper Sind Frontier, who in 1844, were resisting the colonial power. Napier had ordered Roberts, the area commander, that the Pathans "be put to the sword" if they "were obstreperous," He was prepared to kill "five or six hundred of them" rather than "loose two or three thousand good soldiers by a guerrilla war." However, after their defeat at Peer Aree, the *Pathans* "became lambs" and were absorbed in the police. Describing them as "very nice, well behaved, honourable cut throats" Napier remarked that "Dugald Dalgetty himself would be proud of them: five hundred handsome fellows, well mounted and ready to cut their fathers' throats" if he ordered them. However, such ruthless types were useful to him in subduing the hill tribes, such as the action under MacKenzie, when they fought against "their own kith and kin," and "sparing was not the order of the day."[56]

On 15th February 1844, Sir Charles wrote in his journal that all the people employed by the Ameers" were retained by him and he "enlisted an influential pack of scoundrels." The redeeming feature was that these were the "scoundrels to whom the people are used," whereas had his "chosen rascals" been recruited, they would have done much "more mischief and less good than the old rogues."[57]

4.2 Absorbing Recalcitrant Tribesmen in the Police Department and Thereby Neutralising Opposition to Colonial Rule

Another example of the technique of utilising a police posting to a far broader colonial priority of law and order pertained to a tribal chief of the hills north west of Karachi. Subsequent to 1843, the hillmen "swooped down and murdered and plundered and were back safely in their inaccessible haunts." Marston captured the chief and brought him to Karachi. Normally, he hanged them at the scene of the crime. However, he pleaded with Sir Charles for his life

and secured for him his freedom and an Inspector's post on the condition that not a single crime was allowed to occur by the hillmen. He "kept his promise till he died," hence the hill tract was free from crime.[58]

6.3 Inducting Martial Races in the Police

The colonial rulers had a fascination for what they visualised as the martial races. Napier strategy was to mix with the police "bold adventurers," Pathans and Rajputs, along with "the minor chiefs who had fought at Meeanee." In this way, he thought that the "necessary courage was created," so that they could act alone or alongside the troops on the most dangerous services.[59] Amongst the native officers, the one most close to Napier was Ayliff Khan, a *Pathan*. Both he and his son were in the police.[60] *Pathans*, *Punjabis* and *Hindustanis* were in a majority in the Armed Branch of the Sind Police.

6.4 Training and Discipline

To facilitate the compliance of orders, and absolute compliance in view of the colonial requirements, the government acknowledged that officers of Police should have, in all points connected with the discipline of the force, "exclusive magisterial powers to enable them to act in cases where circumstances prevent their immediately cooperating with the local magistrates and judges."[61] This was a very crucial aspect for the colonial government could not, in the initial phase of the conquest, tolerate a situation where the constabulary thought that the only punishment for non compliance of orders could be dismissal. With magisterial powers over the force, the native manpower knew that non compliance, ineffectual compliance, or subversion of the colonial directive could mean landing in the lock up. Similarly, desertion or absence from duty needed to be effectively checked, since both tended to sap the energy of the force and therefore indirectly the potency of colonial rule. Like the army, the rural police were also drilled according to regulation.[62] In order to make his police as hardy as possible, Napier deployed a large detachment in the hills so as "to make soldiers of them." After the "first sundry battles" with large bands, whom they defeated, the law and order problem ceased.[63] Discipline, therefore signified the toughness of combat and the absolute compliance of directives so that there was no hesitancy in implementing colonial priorities.

5. Nature of Crime, Detection and Punishment

5.1 Nature of Crime: Cattle Theft and Karo Kari

In 1843, and even as late as the 1870's, cattle lifting was the "favourite crime, much preferred to rape, robbery and murder."[64] However, after cattle lifting, murder, highway robbery, were generally the most frequent offences.[65]

Karokari or *Siakari* was the tendency in the Baluch tribes for a husband to kill an unchaste wife. This was quite prevalent and being a tribal custom, it proved to be extremely difficult to eradicate.

A few months after Sir Charles Napier had conquered Sind, he issued an order promising to hang any one who committed *karokari* or *siakari*, a species of legal murder.[66] Hanging of the accused failed to put a stop to these cases. In one case where the accused was hanged ----"much to the amusement of the lookers on" ------ and also "to the apparent gratification of the culprit," the government realised that the people did not "seem to care a straw" about the capital punishment.[67] Harsh punishments resulted in a high incidence of female suicides. Napier suspected that these suicides were in fact murders and threatened dire punishment on any village where a woman was found to have committed suicide under suspicious circumstances. A fine was to be levied on the whole village, the *kardar* was to be dismissed, and all dead women's husband's family would be brought to Karachi. The crime decreased, but for a short while only, and soon Napier warned the *kardars* to find out the truth --- and, if they did not, they too would suffer. He regarded it as a deliberate conspiracy "to baffle a just law," and resolved that it should be dealt with "great firmness and punished with great rigour."[68]

Unfortunately, such wife murders "obstinately defied the law" and senior officers in the police and magistracy realised that it was hopeless to try to convince the Baluchis that there was any harm in slaughtering an unfaithful woman.[69] Lieutenant James Rees, the Deputy Collector of the Pergunnah of Chandookah (the present day Larkana district) realised that if the change was gradual, and a less severe punishment than that of death, there was a possibility that the Baluch accused may not feel the necessity of concealment, and thereby render detection and punishment more certain.[70]

After consulting local opinion Keith Young believed that transportation would be the only effective punishment. The death sentence was "regarded with comparative indifference," but transportation was "enough to subdue the heart of the greatest villain" because the natives of Sind were "particularly attached to their own soil," and expatriation meant "the greatest of horrors," for they would have to "bid adieu to their families, friends and even language as well as their native land."[71]

5.2 Crime Detection

Subsequent to the British conquest, villagers were made responsible for stolen property, and the responsibility was rigidly enforced. All the inhabitants were bound to extend help to the police to the full extent of their ability, if called on,

"under pain of fine or imprisonment, or both."[72] The *zamindars* were held responsible to give notice of any suspicious persons; however, the chain of police posts established on the orders of Napier, were so comprehensive, and the mounted police were so active, that persons suspected in such cases were usually detected immediately.[73]

In case of difficulty in detection of a robbery, *paggis* were sent for, who "tracked till the tracks were lost in a village," and then that village was called on to take the tracks out, or pay the loss. Often the villagers brought out their own trackers till the thief was caught and this accomplished, the accused was then sent to the deputy collector. It was mandatory for the village *patells* and *paggis* to aid the police, and similarly the *jagirdars* (hereditary landholders) had to give their aid within their respective *jagirs* (hereditary landholdings). Anything over and above that was tackled by the *kardars* and police. Several *paggis*, natives of the country, were maintained by Government, and attached to the police in each district.[74] Captain Keith Young cited an instance of some robbers that were tracked a distance of nearly 200 miles by Lieutenant Marston and some of his police, and finally arrested with the stolen property in their possession."[75] Marston emphasised that very rarely any thief escaped from a *paggi* once his footsteps had been seen by him.[76] Regarding the practical utility and skill of such *paggis*, Burton believed that not only was he the only detective the Sind police could afford, but he also formed "an uncommonly efficient force." Their expertise was so accurate that if a soldier had deserted, a house had been robbed, or a traveller had been cut down, all that was required was to show him a footprint, and he was "sure of his man."[77]

5.3 Schedule of Punishments

During Napier's Martial Law tenure in Sind, crimes and punishments were defined and classified to a memorandum from the Judge Advocate General's office.[78] The specified punishments were fine, imprisonment with or without hard labour, flogging, transportation and death.[79] Some latitude was left to the discretion of the magistrates, but, the schedule appeared rather harsh with most crimes against property carrying punishments ranging from imprisonment with hard labour from three months to seven years and in addition fifty lashes. More severe punishment was reserved for offences of forgery, counterfeiting false seals with fraudulent intent, coining false coin, bribery, misappropriating or embezzling public money, where the upper limit was imprisonment with hard labour, not exceeding ten years.[80]

In 1846, 2076 persons were tried for petty offences while 786 persons were tried for serious ones. Out of the latter, 401 were for cattle stealing, 46 for murder and the rest for miscellaneous offences. Of the 786 brought to trial for

the grave offences, 708 were convicted.[81] Flogging was resorted to in cases of serious thefts, cattle and camel stealing, petty thefts, etc. For serious theft only one person was flogged, two for cattle and camel stealing while 444 were flogged for petty thefts, assaults, etc. Five were transported for life, all for murder. Thirty persons were executed, out of these, eight pertained to murder while twenty two were for robbery with violence, all the twenty two cases pertaining to the Sukkur area.[82]

Sir Charles believed that the technique for quieting a country was "a good thrashing first and great kindness afterwards: the wildest chaps are thus tamed."[83] In a letter to General Simpson in November 1843, Sir Charles emphasised the effectiveness of flogging and capital punishment: "if you get hold of any chap plundering your camels try what a flogging will do; however but hang the next and keep his body guarded a sufficient time to hinder his people touching it: that will make the execution more effective." His considered views were that flogging would have more effect than capital punishment because the Baluch "screw up courage to meet death; but when *Nuseeb*-fate, takes a fancy to a cat-o-nine tails it becomes disagreeable."[84]

6. Policy and Orientation of Napier's Concept of Criminal Justice

Mr. Pringle, Napier's successor, clarified that the forms of trial during and after Napier, were analogous to those observed in military courts.[85] In December 1843, in a letter to William Napier, Sir Charles mentioned that ten men were hanged for murder, the procedure being first a regular trial by the magistrate, then the file went to the Governor who read it over with the judge advocate for civil affairs. If both concurred with the magistrates, the sentence was confirmed and executed, whether death or imprisonment.[86] Theoretically this appeared to be a simple synchronised system under a martial law administration. In practice, however, there was acute friction because Sir Charles' ideas of justice were tempered by colonial considerations. Amongst many cases, the proceedings of the trial and retrial of Bakhsho Chandio highlighted this confrontation.

Capt. Keith Young remonstrated against the retrial by a Military Commission of one Bakhsho Chandio, who had been acquitted by Preedy, the Magistrate of Karachi, of killing a British woman in a melee.[87] When the Governor reversed a magistrate's order of acquittal and punished the accused, Keith Young represented to Sir Charles that he had acted illegally because the case seems to have been one of manslaughter, almost accidental while the Governor had treated it as murder.[88] Napier became quite agitated and asserted that he did not require Young's advice and that Chandiya was not legally tried and acquitted.[89]

Keith Young, replied that nothing could at all justify his conviction by a second trial and if "political considerations" required the risk of doing a great injustice, the Governor was the only judge.[90] On his part, Napier emphasised that he was obliged, by being in a recently conquered territory, "to act in that arbitrary manner" which was permitted to general officers commanding an army in presence of an enemy. He added further that Young's duty was not to teach him how he should exercise the power entrusted to him by his superiors, but to assist him in the execution of such powers by attentively doing the duties confided to him.[91]

Keith Young, a conscientious officer, asked to be allowed to refer the facts to Lord Ellenborough to ascertain his line of action because he had received orders which he considered to be illegal and also to clarify whether the Governor of Sind had power to retry a man for an offence of which he had been legally acquitted?[92] On this, Napier, was furious and threatened Young that if he made any official application, he would consider it to be "an act of military insubordination and act accordingly."[93] Sir Charles specifically mentioned that he "never considered what is legal, or not legal" because Sind was a conquered country ruled by martial law. His argument was that earlier, the power of life and death was in the hands of the Ameers, but by conquest had been transferred to the military commander.[94] At the same time, Napier castigated Captain Young pointing out that their object was to convict guilt and acquit innocence, "not to support quibbles about what is law and what is not law in England."[95]

7. Policing Colonisation: the Upper Sind Frontier

7.1 The Upper Sind Frontier

The north west border of Sind stretches for nearly two hundred miles along an almost rainless desert plain.[96] It starts from "the point where the Punjab meets Sind, the western mountain barrier recedes from the Indus valley, curving round to enclose the Kelat province of Kachhi," and comprises of a plain some six thousand square miles in extent, and separated from Upper Sind by a desert twenty or thirty miles across.[97] Subsequent to the British conquest, this belt called the Upper Sind Frontier, constantly gave trouble mainly because the fierce hill tribes from adjacent Baluchistan made repeated forays into Sind area, either to drive off the cattle or settle blood feuds.

Around 1843, the Upper Sindh Frontier was very strategic: it represented the north western border of British colonisation. Beyond it lay the hostile territory. Pacification of this long belt running from the south east to the north west, was required in order to ensure control in the Upper Sindh area in general. Another crucial aspect was that in the immediate south of the frontier was the very

important commercial centre of Shikarpur. This town represented the banking and the trading classes of Sind and comprised of the Hindus who were actively collaborating with the British. Napier's view was that they must hold Shikarpur if they wanted to do business as merchants in Sukkur. If they did not cater for law and order around Shikarpur, the tribes would descend from the hills and occupy the great jungle between those towns, and thereby the commerce of Shikarpur would be ruined. This town connected Sind with all the countries north and west, and was "the seat of all their money dealings," hence it could become a place from whence trade would pour into Sukkur and Bukkur.[98] Napier had assessed that Shikarpur was inhabited by a Hindu population that had been tolerated for ages by the Muslims and consequently formed a pacific link between British India and the nations north and west. He visualised that through Shikarpur the Hindoos would gradually direct the commercial stream and be the means of social intercourse between the Mohammedans and the British and in time would unite those who would not amalgamate. Moreover, through Shikarpur the British government could learn what was going on in Asia.[99]

7.2 The Situation: 1843 - 44

Between May 1843 and April 1844, part of Burdika, the country north east of Shikarpur, and Mian -jo - Goth were almost destroyed by Dombkis, Jakhranis, and Kalpar Bugtis, and the peasantry abandoned their villages.[100] General Napier had ordered Sardar Wali Mohammed, the collaborating chief of the Chandio tribe, "to cross the desert and plunder the Dombkis." This confirmed a blood feud between them and it was such blood feuds that were the main cause of the chronic disturbance of the border country. Around June 1844, the tribals cut to pieces an army party of grass cutters and their guards. On 18 July 1844, the vicinity of Naudero, thirteen miles north - west of Larkana, was plundered; a fortnight latter Ratodero, a substantial town in the same part of the country, "suffered a like fate." But worse still was "the sacking and burning" in broad daylight of Kambar, a large town fourteen miles west of Larkana, the headquarters of FitzGerald's Camel Corps, by 200 Dombkis and Jakhranis.[101]

At the end of August 1844, tribals from across the northern desert came into the country north of Shikarpur. MacKenzie incharge of the area, started out to intercept them, and was able to report at the end of the day that he had "put 200 men to the sword." Sir Charles Napier expressed that the officer had "signally distinguished himself." Later, however, it appeared that while MacKenzie with one detachment was pursuing the mounted robbers, another detachment of his regiment, commanded by a native officer, fell in with a large body of Baluch and other peasantry of a neighbouring village who had turned out to repel the

invaders. This officer charged these men, though they cried out that they were the *sarkar's* (government's) poor peasantry. So rough was the handling of these peasants that those who had arms were told to throw them down, which they did; and "were then butchered." The details told by the survivors to the court were "so shocking that the General could not believe them." He argued that he found no motive or such barbarity on the part of the troops.[102] Sir Charles also stressed that since the British units cut two hundred plunderers to pieces during the previous month there had been no inroads! Later he ordered Hunter to sift this matter to the bottom. However, his feeling continued to be that the villagers were "very insolent, and tried petty tricks to annoy the troops." [103]

The enquiry report spoke in volumes, but did not ascribe categorical blame. This was the test case for Napier to punish his subordinates with the criteria that he repeatedly emphasised when talking about the criminality of the Baluch. But Napier, in order to protect the troops announced "that there was no reason to believe they had disgraced themselves by killing innocent men." Later Napier admitted that it did happen, but by mistake, adding further that the villagers were armed and there was "not the least difference between them and the robbers in appearance."[104] Keith Young, the Judge Advocate, an upright officer, who conducted the enquiry, observed, that "among over a hundred bodies there were so few swords or other arms." [105]

Divide and rule, was a ruthless colonial tactic and Napier was adept at it. In a letter to William Napier dated 20th September 1844, he elaborated that the lands of the Bugtis, Burdis and Jakranees were contiguous, and he would offer them to the Chandias and Murrees, if with his aid they could drive those tribes away altogether.[106] Because such policies were implemented either via the army units, the irregulars or the mounted and rural police, or a combination of such forces, colonial policing in this period was definitely very far removed from any semblance of a civilising mission or an institution providing any service to the population at large. Around January 6th 1845, the Bugtis and Murrees had a fight and the latter won. Napier utilised Wali Chandia, his tribe and the Magsis to join with his forces and lead the assault so as to capture "Poolajee alongwith Beja Khan, Islam Khan and the other chiefs." On 12th January 1845, writing to William Napier, he mentions that he would enter the Bugti area with the "Chandikas in front, with licence to plunder."[107] The Khayree tribe who were driven out of their lands by the Dombkis around ten years earlier, were won over by Napier and he got them re-established in their ancient possessions.[108]

7.3 Develoments in 1845

The Upper Sind Frontier continued to remain disturbed and Napier utilised the Sind Irregular Horse for policing this frontier belt. On various occasions the

duties were pure military while on others in the nature of policing, but mostly repressive in nature. Napier's strategy did not produce results and ultimately he resorted to starve out the Bugtis. In his journal for 31st January 1845, he observed that two thousand head of cattle were seized "which is as good, it starves them." Again, that he had sent McMurdo with a troop of cavalry to meet Simpson at Deyrah, "where they have probably laid up grain for the winter."[109] In such raids, it was not the army alone that took part. The police, the armed branch and the irregulars of the police department, invariably had some active role.

In a letter to Lord Ellenborough, dated 9th of February 1845, Napier not only detailed his strategy and tactics, but also indicated the real reason for the state of criminality in these wild tribes: "my plan was not to fight, but to starve the tribes by occupying lines across their country." Continuing further, he stated that he therefore camped between the passes and occupied both till such time that his forces had gathered above 6000 head of cattle altogether. This move forced the four chiefs, to send terms and ask for surrender. About these Chiefs and their tribes, he opined that "robbers they are, but have been made so by circumstances, and had I been a Doomkee I should have been as great a robber as Beja Khan!"[110]

In late February 1845, after his success at Traki in the Kaachi hills, he placed a garrison in Shapur, and distributed his cavalry so as to intercept the marauders. Of the robbers who had surrendered he made the wildest, who were unfit for civil life, enter the service of the Government as policemen. Bija and his personal followers were compelled to settle on the eastern side of the Indus; the Dombkis and Jakranees were removed from Kachhi into Sind, where lands were assigned to them on condition of their undertaking to oppose any of the hill men who might make plundering raids. Unfortunately, the newly appointed policemen robbed and murdered those whom they were supposed to protect.[111]

Napier's policy of utilising one tribe against the other was being actively followed via induction of the loyal tribes on policing and security assignments on the frontier posts. In September 1845, he "launched Deriah Khan Jackranee against the Bhoogtees" and "allowed the Jackranees, at their own request to go after the Bhoogtees, while he supported them with cavalry. On the frontier, many of the best Jackranees" were employed and posted by Napier on different police posts.[112] The police and the cavalry continued to be utilised on fomenting inter tribal rivalries and aggravating situations to the advantage of the colonial power. Around the third week of October 1845, Deriah and the Jackranees came back after making a "desperate march" in which some cavalry and police went with them and brought with them eighty heads of cattle. He promised the

Marris "a supply of powder" as a reward and instigation to kill the Bugtis, and expressing that "the more Bhoogtees you kill in war the more honour for the Murrees."[113]

7.4 Further Developments: 1846 - 47

On 8 January 1846 Napier issued a General Order to the officers commanding outposts in Upper Sind Frontier to the effect that "the Boogtees and outlaws and all cattle belonging to them, and themselves, are to be captured or killed when they come near the frontier."[114] In August 1846, the price of ten rupees was offered for every Bugti seized and delivered to the British cavalry outposts.[115] A man brought "a sack with two heads to Captain Jacob, expecting ten rupees, and got twenty four lashes."[116]

In 1847, through the incessant efforts of Captain John Jacob, substantial control was achieved in the area. Knowing the Baluch temperament, he laid down some principles, for example, to act always on the offensive, secondly, "to treat robbery and murder as equally criminal whether the victim was a British subject or not," thirdly "to consider blood feud an aggravating circumstance as proving deliberate malice." Sir Charles Napier had used one tribe against another and in particular outlawed the Bugtis, putting a reward on their heads. By August 1847, Jacob's constant efforts had practically stopped all supplies from reaching the hill country from British territory. He knew that "distress was severe in the Bugti hills" and that the peasants were imploring their chief to make submission to the British. On the 5th September 1847, a party of Bugtis, men, women and children, "appeared in Khangarh and threw themselves at Jacob`s feet to beg for food." When he gave them flour "they could not wait to cook it but devoured it raw by the handful."[117]

At the end of September, 1847, seven hundred Bugtis from the hills entered the plains. Lieutenant Merewether, Jacob's second in command, assuming that the intention was to plunder "charged with his troopers and crashed through and through them." Martineau writes that "for two hours the carbines of the troopers, did their terrible work ..... when five hundred and sixty of their dead and wounded lay upon the plain, the remnant of a hundred and twenty survivors surrendered, two only out of the whole number escaping to tell the tale of death at their home in the hills."[118]

Finally, the colonial policy, implemented with the aid of the police, of supporting rival tribes and blockading the Bugtis into starvation succeeded. In addition, having a bad crop and starving, the Bugtis ultimately came down in desperation to the Sind Frontier and surrendered.[119] In end October 1847, Islam Khan and Alim Khan Kalpar proceeded to Kashmore and surrendered to Alif

Khan, the Rissaldar of police.[120] The Bugtis who had surrendered at various times were kept at Mahmuddero, a village near Larkana. The settlement was guarded by police command, together by Bugti horsemen taken into British pay, by rissaldar Alif Khan, under the general supervision of the Deputy Collector of Larkana.[121]

8. Napier's Policing System: Essence and Orientation

8.1 Colonisation via Police Terror

Colonial requirements demanded a very effective police force with the capacity to overawe and subjugate indigenous power to alien rule. From this criteria, Napier's force was a very useful instrument. Napier himself believed that due to the "handsome uniform, and a military organisation under European officers, the necessary courage was created," and the police soon acted alone or alongside the troops on the most dangerous services.[122]

To break the tribal resistance, an overbearing para military constabulary was exigent for colonial objectives. The substance and essence of policing was made to be harsh and oppressive and Napier was aware of these traits in his police. In a letter to Lord Fitzroy Somerset on the 26th of May 1844, he referred to the police as "too much inclined to be rough." Continuing further, he stated that he kept this tendency down, but the situation was such that the police had "a hard game and a very rough one to play, if they did not carry their heads high they would soon be run down by the Beloochees, and finally coalesce with them."[123] Amongst many examples of over aggressiveness was the case when FitzGerald caught a great chief who fled with some others into a large field of corn. When some policemen were sent into the field, they "cut down the chief's son and nephew and took him."[124]

8.2 The Negative Effect Due to Tolerance of Police Abuses

A factor that contributed to the abuse of police authority was that "the rural police caught the spirit of their organisation, and, finding themselves well supported by the government, at first fell into the extreme of being too rough." Napier's historian brother William admitted that a fear of the police becoming ineffective made the General very cautious in checking them, until the course of their duties had produced some sharp fights, in which several were killed on both sides. Later, however, when Napier realised that such feuds would tend to harden the attitudes of potential collaborators, he proceeded to "enforce a vigorous discipline."[125] It was impossible for the police, "by its unaided efforts, to keep perfect order." Much depended on the local influence of the zamindars, and the efficiency of the village officers, who, under the Ameers, had enjoyed

the respect of the people. Napier's rule had broken down the authority of the zamindars: the people, relying on the ignorance or indifference of their masters, were no longer punctual in paying the taxes; hence police resorted to excesses.[126]

8.3 Stress on Capital Punishment

Napier believed that "the arguments in favour of the doctrine that opposes all capital punishment were only applicable to a high wrought state of society, which furnished so many other modes of repression of crime" and expressed that those who adhered to it in Sind, "would soon be thrown into the Indus." He thought that "Becaria and Livingstone would find it hard to rule Beloochees without capital punishment."[127] Napier, always kept the colonial interest above all other considerations. Young quoted him as saying that it was from political motives principally that "he had recourse to capital punishment."[128]

Capital punishment, in the colonial context, however, needed to assess the consequences involved in its execution also. Hence expediency was a very important consideration. A very clear indication of Napier's thoughts and his colonial strategy are contained in a letter sent by him in December 1844 to Henry Napier. If two men committed the same crime, the whole country would rise if one was hanged, whereas the entire populace would submit if the other was hanged. He gave the example of Naubat Khan and Wali Chandia. If he hanged Naubat, the tribals would submit and Napier's collaborator, Wali Chandia would be very happy. But if the latter were hanged, the entire country would be in arms and Napier would have difficulty in finding adequate force to control the situation. It was also necessary to hang Naubat because he would murder Wali Chandia if he was not hanged.[129] It was, however, in the colonial interest that Wali Chandia be kept on his toes all the time, seeking Napier's help and remain dependent on him. The ideal technique was to create a blood feud between the two tribes. Instead of combining and concentrating against the British, the two tribes would be embroiled in feuds for years and years to come. So Napier gave Wali the personal arms of Naubat, and this secured a blood feud, between the two tribes.

8.4 Tough Control and Punishment for Native Officials

Elaborating on his system, Napier mentioned his formula as "punish the governments first, and enquire about the right and wrong when there is time!" He felt that this was the way to prevent tyranny, and make the people happy, and render public servants honest. His argument was that the latter knew they had "no chance of justice" if they were complained against and therefore "take good care to please the poor."[130] A case pertained to that of "two scoundrel

kardars" who were riding roughshod over the *ryots*. On such officials, his idea was to "make such an example as shall show the poor people" his resolution to protect them. Vis a vis *kardars*, he elaborated that "if it be found they shed blood their blood shall be chilled by death" and that nothing shall save the *kardars* from punishment.[131] A clerk was sent for trial, his misdemeanour being that he "rode over a poor young sepoy." Napier decided that the fellow would be flogged.[132]

On 20th September 1844, writing to William Napier, Sir Charles boasted that *kardars* and policemen, he smashed by dozens. A police official had levied money from a poor village and when the people remonstrated, he flogged the spokesman. Napier learnt about this and he was sent a prisoner to the centre of the village, where "his uniform was stripped off and the two dozen lashes he had inflicted were repaid to him in kind: he was then turned loose." His approach was that those in authority, should be "milled very hard." Due to this policy, he felt that an Englishman could ride without an escort.[133]

There is no doubt that Napier was tough with erring subordinates and listened to public complaints against them, but this tough policy appeared to be applicable to the native officers. Although MacKenzie had grossly over reacted and his unit had massacred friendly peasants, no action was taken against him. Similarly, in other cases, such as those pertaining to FitzGerald or the action of Merewether in the wanton slaughter of the Bugtis, no action was initiated. On the contrary, the General expressed his appreciation on the valour shown by his officers.

9. Impact of Collaboration and Codification on Policing Rural Sind

9.1 Initiating Collaborators: the *jaghir* settlement and its fall out

Immediately after the conquest, Napier had announced that if the *sardars* did not disturb the peace and retired to their homes, their *jagirs* would be confirmed to them. A formal *darbar* was held on 24th May 1844, the birthday of the Queen; no *jagirdar* was to be absent from this great meeting or he would loose his *jagir.*[134]

The category of the first class *jagir* holders was the most privileged and, politically, the most important: almost all of them were from tribes on the borders of Sind who were never totally subjugated by the Ameers. A very large area proposed for alienation to the *jagirdars* was in possession of *wadero* Gaibi Khan, chief of the Chandia Tribe. The colonial strategy of inducting collaborators necessitated a secure and strong position to the Chandias. This was done, by promising their chief hereditary possession of his estates, in exchange for "the fidelity and good conduct of himself and his tribe."[135] Some

of the other tribal *sardars* granted benefits were the Numerias, the Jokhias and the Kurmati tribe whose entire *jagirs* were regranted, the chief of Jats, Malik Jehan Khan, and others like Kurram and Emam Bux Marri.[136] The induction of the Jagir settlement, was the beginning of an equation with the collaborator class which facilitated colonial rule, but when collaborators were given priority and the countryside was indirectly administered through them, this had the germs of future problems.

A fall-out of the combined effect of the *jagir* settlement, rural indebtedness and criminal justice policy was that civil policing in the countryside deteriorated and became a tool in the hands of the collaborating *waderos.* The jagir settlement was essential to British rule being the mode for inducting collaborators. The combination of court procedures and legalistic attitude of judges as opposed to the pragmatic outlook of the district officers, aggravated the inhibitions of the *waderos* to come to terms with the system. Since witnesses were reluctant, convictions declined and this falling rate of deterrence aggravated crime. District officials and police appeased the *waderos* who saw this as the path to sustain their hold on the day to day affairs in the countryside.

9.2 Operational Drawbacks

i. The Negative Effect of Legal Procedures

Keith Young observed in December 1843 that an offender seldom denied his guilt, and that there wasn't "one case of murder where the really guilty" had not confessed.[137] Two Baluchis attempted to kill Marston and his friends. When arrested, instead of denying their intentions, they "brazenly confessed they meant to shoot all the three officers ---- they were brought to Karachi and hanged before a full parade."[138] In 1847, however, Lieutenant James observed that the Sindhis, "accustomed now to our courts, almost invariably plead not guilty, and summon a host of witnesses for their defence; whereas formerly they seldom denied their guilt."[139]

The reason for this unfortunate change was that the scheme of pleading and procedure encouraged lawyers and criminals to maintain their innocence even when all knew that they were guilty. Legal format and procedures had been introduced, and gradually the business of producing witnesses became, "a contest, a trial of strength and cunning between the police and the friends of the accused, with little reference to actual happenings."[140]

ii. The Ineffectiveness of an alien law and the Difficulty in Procuring Evidence:

Jagirdars and zamindars were traditionally helpful to the police, but at times, certain societal peculiarities negated this trend. If, for example, the zamindar was a Sindhi and his cultivators were Baluchis, there was no possibility of enforcing the submission of the Baluchi tenants to the authority of the zamindar in the matter of reporting offence to him. Another complication was gradually becoming apparent. Lieutenant James realised that the zamindars avoided investigations because it meant becoming a witness in the case and being repeatedly summoned, thereby causing a loss.[141] Secondly, the *zamindars* were not treated well when engaged in the pursuit of thieves and others.[142] Captain Preedy arrived at a similar conclusion and added that the peasants intensely disliked the trouble of attending the courts of justice, that many of them preferred suffering the loss of their property to complaining to the *kardars* or to the police.[143] The Judge Advocate General opined that the "fear of being summoned" from their homes to give evidence at the trial of thieves and others, rendered the people generally "unwilling to interfere in any way in police matters."[144]

iii. Implications for Policing

By 1847, it was obvious that zamindars were becoming averse to interference, hence prevention of crime would solely depend upon police and other government servants.[145] Gradually the situation was deteriorating and by 1868, police were experiencing an acute difficulty in getting respectable persons to give evidence about the character and habits of men who were notorious thieves. The Superintendent of Police of Hyderabad district wrote to the commissioner in Sind that without the evidence of such respectable persons the police could do nothing.[146]

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Police and Policing in Pakistan[1]

Fasihuddin

Abstract

Policing in Pakistan underwent drastic changes after the introduction of a new police law the Police Order 2002. This article describes the existing police organization and structure in Pakistan. It also briefly analyzes the various police reforms done in Pakistan since the British era. Despite replacing the Police Act 1861 with the new law policing remains dysfunctional. The reasons for this are analysed and suggestions are made in a comprehensive conclusion.

Keywords

Police, Policing, Law, Colonial Criminal Justice System, Police Order 2002, Police Reforms, Fraser Commission, Crime Situation, Security Issues, Post 9/11, War on Terror, Talibanization

Police are the first respondents to any breach of law in all civil societies. Police as an organization underwent dramatic changes throughout the world in the last two centuries, in a bid to keep pace with theories of good governance, new political ideals, modern technologies, and to respond to the social implications of urbanization and modernization. Similarly, policingthe way police perform their job with their peculiar style and attributeshas evolved through a variety of stages and shapes, right from the order-maintaining and riots-controlling policing to the problem-oriented policing, community policing, down to the present day terrorism-oriented community policing and intelligence-led policing, especially after 9/11, to name a few. Copious literature is available in the market on the history and development of police and policing in the modern world. However, little is available on the related subjects in Pakistan, as criminology or policing sciences have never been the topic of research and empirical studies in any educational institution or police training colleges, except a few periodic individual efforts.

This paper is an attempt to study the police and policing in the context of Pakistan. Pakistan is a federation of four provinces (Sindh, Punjab, North-west Frontier Province and Baluchistan) and two federally controlled territories (Islamabad Capital Territory, and the Tribal Areas, commonly known as FATA-Federally Administered Tribal Areas). The third federally administered territory of Northern Areas has recently been given the status of autonomy through a Presidential Order in 2009. The total area of Pakistan is 796,095 sq. km and the

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[1]*This article was originally written for Police and Security Year Book, 2010 by Manas Publication, Delhi, India and is reproduced here with the permission of the Manas Publications.*

current estimated population is 170 million (2009). The Constitution of Pakistan 1973 stipulates that in the provinces the responsibility for crime prevention and control and the administration of justice primarily rests with the respective provincial governments. That's why police are under the control of the provincial government for all practical purposes. The federal government, however, has jurisdiction over matters of such as the enactment of criminal laws, the training of certain categories of criminal justice personnel, and research, apart from the direct law and order responsibility it has for the federally controlled territories (Shoaib Suddle, 1995). Though in all federation systems such arrangements are inevitable, yet at times, it gives rise to problems of dichotomy, authority, resources allocation, autonomy and overriding effects of certain laws. Pakistani police have suffered a lot in this respect, especially after the new Police Order 2002, promulgated by the military ruler Gen. Pervez Musharraf and after Pakistan joined the war on terror in the wake of 9/11 attacks. Both decisions have far reaching effects as far as the police department is concerned. We will discuss it shortly.

Police Structure & Organization

Pakistan inherited the colonial criminal justice system from the British Rule in India. Since the partition of India in 1947, Pakistan has a rigid police structure, mostly hierarchical and vertical in nature and based on command and control system. At the top is the Inspector General of Police in a province and a Deputy Inspector General of Police in a region or range, who is assisted by a Superintendent of Police (SP) in a district. Below him is the Deputy or Assistant Superintendent of Police who commands the subdivision or tehsil (sub district level), and below him is the Station House Officer (SHO) who is incharge of a police station, mostly in the rank of Inspector or sub-inspector. After the Police Order 2002, most of this nomenclature is changed. The IGP is now called the Provincial Police Officer (PPO), the SP is renamed as District Police Officer (DPO) and the DIG in the big cities is given a new role and authority under the new title of Capital City Police Officer (CCPO). The Investigation is being separated from the prevention or watch and ward and has its own chain of command right from police station level to the SP (Investigation) and Additional Inspector General of Police (Investigation) at the top, however, subject to the general command and control of the SHO in a police station, of a DPO in a district, of a DIG in a region and of the PPO in the province. Prosecution is altogether cut off from the police and is now an independent department under the new Prosecution Ordinance 2005. The various levels of entries to the police and the tree of organizational structure is given in diagram No. 1

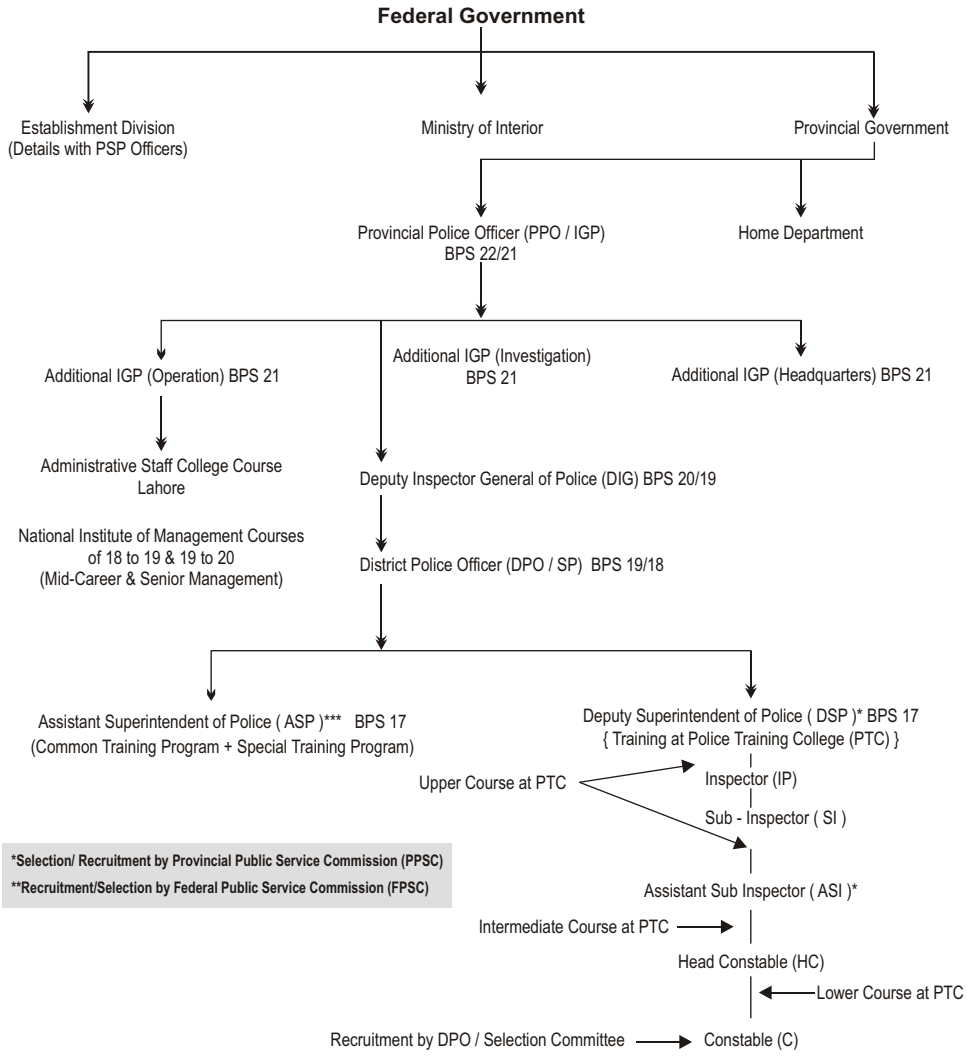


Diagram No. 1.

Police Organization and Administration with Special Reference to Recruitment and Training.

The total strength of the police in all the four provinces and the allocated budget for them are shown in Table I and II respectively. The police normally are not happy with the available strength and budget and a demand for more recruitment and funds allocation is always on the top of the police agenda.

Table: I Sanctioned Police Strength for 2008 - 09

Rank	Punjab	Sindh	NWFP	Balochistan	Total
PPO / IGP	1	1	1	1	4
Addl. I.G.P	18	6	2	4	30
DIG	38	18	13	13	82
AIG / SSP	37	18	10	32	97
SP / Addl. SP	215	102	66	47	430
ASP	65	333	17	5	420
DSP	797		182	222	1201
Inspector	3457	1551	442	542	5992
Sub-Inspector	15121	4190	1779	1545	22635
Assistant Sub-Inspector	12602	9146	1948	2467	26163
Head Constable	17732	15105	6201	7463	46501
Constable	117537	68074	37994	23529	247134
Grand Total	**167620**	**98544**	**48655**	**35870**	**350689**

Source: Office of the Director General, National Police Bureau, Islamabad, Pakistan.

Table: II Total Police Budget in Pakistan. (Figures in Millions Rupees)

Area	Establishment	Other Expenditure	Development	Total
Punjab	24500.750	4740.84	1375.24	30616.830
Sindh	21521.460	4773.86	500.00	26795.320
NWFP	5585.622	972.80	636.82	7195.2420
Balochistan	3761.380	303.36	0.00	4064.740
Total	55369.212	**10790.86**	**2512.06**	**68672.132**

Source: Office of the Director General, National Police Bureau, Islamabad, Pakistan.

Police Reforms in Pakistan

The history of reforms in the police is very old and of course very interesting. The first excellent report on police reforms in the Indian subcontinent, in our view, was that of the Fraser Indian Police Commission of 1902-03. It says:

> *"The perusal of the Report of the English Constabulary Force Commissioners of 1839 inspires the Commission with hope that, if police reform in England, initiated by Sir Robert Peel, has converted the state of things described therein as existing sixty years ago into the state of things*

now existing in the country, earnest efforts to reforms the police in India may in due time produced incalculable benefit" (p.36).

Since then dozens of reports were compiled and debated but the desired results of the police reforms never come true to the expectations of the general public as well as of academics and researchers. The story of police reforms in Pakistan is basically a story of the police image. Almost all of the more than two dozen commissions and reports since 1947 start with some basic ailments in the police like inefficiency, malpractices, lack of scientific investigations, political interference, public distrust and colonial characteristics, so a rationale for police reforms is developed on these lines. Some think that the high crime rate is the raison de'tre of the recent police reforms which we will discuss shortly, others think that it is basically the police integrity problems which demand a drastic shift in our policing policies and approaches. Amongst the various reasons given by Zubair and Ivkovic (2004) for the police misconduct in Pakistan before the new police law was enacted, it was stated that:

"The successive governments have been unable to muster the political will to reform the administrative structure of the police department in Pakistan. The original police laws and rules are almost a century old and require a complete overhaul to provide for the appropriate internal organizational accountability".

But the problems of corruption, misconduct and complaints against the police have never been addressed successfully by the subsequent reforms and repeal of the century old colonial laws! Police are the reflection of a society and before studying the behaviour and culture of a police organization, we have to take into account the society itself with its history, traditions, composition, culture, level of development, education and economic prosperity (Fasihuddin, 2008).

Out of all of the commissions and their reports, the Report of Abbas Khan (ex. Inspector General of Police, Punjab) became very famous, which also contains the recommendations of the Japanese Police Mission of 1996. This report recommended, inter alia, the replacement of the Police Act, 1861 by a new police act, formation of Public Safety Commissions and establishment of a National Police Agency. It was basically influenced by the style, culture and structure of the Japan Police. Later on, many officers, reforms activists and analysts started a kind of movement for introducing a democratic police service in Pakistan. The Police Commission Report of 1985 was thus overshadowed by the Report of the Focal Group on Police Reforms in 2000. The Group after giving a bleak picture of the existing law and order situation, criticizing the obsolete Police Act of 1861 and outdated Police Rules of 1934, complaining about the absence of any meaningful research in police and objecting to the protection of criminals by influential politicians, underlined the following major concerns as a rationale for bringing drastic structural and functional changes in the police. It was suggested that reforms are necessary to:

i. Restore security, justice and establish rule of law.

ii. Safeguard the citizens against abuse of authority by police and other vested power groups.

iii. Minimize extraneous interference, mainly political.

iv. Enhance operational capabilities alongwith improving the credibility of police through the use of due process.

v. Institutionalise community participation.

vi. Strengthen prosecution thereby ensuring speedy justice.

The re-organization of the police in light of these major concerns was proposed by the Focal Group as a system or service, which shall be:

i. Democratically controlled and politically neutral.

ii. Non-authoritative.

iii. People-friendly and responsive to their needs.

iv. Honest and having respect for rule of law.

v. Professionally efficient.

After a great deal of debate across every nook and corner of the country, a final draft was promulgated by the government of Gen. Pervez Musharaf as Police Order 2002. It has now completely changed the structure of the police in Pakistan, though the said law has become a moot point due to political reasons and as it is subject to day to day changes and amendments due to one or other pretext. The initial salient features of the new Police Order 2002 are:-

i. Detailed description of Responsibilities and Duties of the Police.

ii. Reconstitution and Re-organization of the existing police force, with separate wings for prevention and investigation wings and other specialized units.

iii. Formation of Public Safety Commissions at District, Provincial and National levels.

iv. Establishment of Police Complaint Authorities at District, Provincial and Federal levels.

v. Establishment of Criminal Justice Coordination Committee at District Level.

vi. Establishment of National Police Management Board.

vii. Establishment of National Police Bureau.

viii. So many other qualitative and quantitative changes.

Whether it was a step forward or a jump backward is yet not clear and after seven years of the new police law, many are not happy the way these reforms were introduced without considerable spadework in terms of the capacity problem of the existing police to absorb the implications of the new police law, unleashed, wittingly or unwittingly, by such a drastic and direct grafting from the modern and highly developed police systems in the west to an under-developed, semi-tribal, semi-democratic and transitional society such as Pakistan. The sad event is that of the subsequent amendments to the new police order in a couple of months, which altogether changed the whole idea of the police reforms. A pioneer of police reforms, ex- Inspector General of Police and who worked closely with the National Reconstruction Bureau (NRB) in drafting and implementation of the new police law, Mr. Afzal Ali Shigri bitterly responded to these subsequent changes to the original law. In an article, 'Dismantling the Police Command Structure' he observed:

"The Police Order 2002 was a genuine attempt to address, inter alia, the problem of strengthening the internal organization of police so that t could grow into a cohesive and effective force….Unfortunately this law was never implemented… The Government, instead of moving towards a progressive and modern law, has embarked on revising the provisions that depoliticize police. Its amendments are even worse than the 1861 Police Act, harking back to the Subadari System by Sher Shah Suri in the sixteenth century that was meant to protect and enhance the power of the ruler. The destruction of command structure of a modern police force and its total subservience to the political bosses will have dreadful results for the country". (Daily *The News*, December 3, 2005).

In a comprehensive report by International Crisis Group on 'Reforming Pakistan's Police,' it was noted that "Amendments to the Police Order have watered down provisions that held some promise of reform, including mechanisms for civilian accountability and internal discipline, as well as guarantees for autonomy and safeguards against political interference in the posting, transfer and promotion of police officials. ----

With public confidence in the police at an all-time low, reform will be difficult and require time, patience and resources, yet it is a task the new governments at the centre and in the provinces will ignore at their peril, as militant violence reaches new heights" (Asia Report N° 157 dated 14 July 2008).

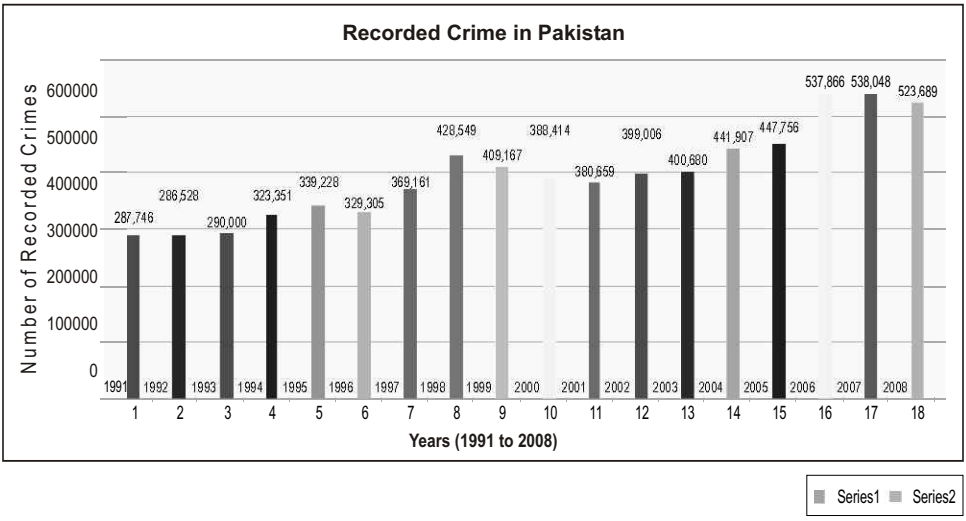
The opponents of the reforms have some valid observations like the non-framing of new police rules or non-implementation of the Police Order, yet we think that instead of rolling backing the reforms process, we need more reforms, and we should concentrate on the lessons learnt during the process. Scrapping the reforms will create greater problems than it would solve. Contrary to the opposition of the police reforms, some moderate thinkers and NGOs are trying to safeguard and protect the system from further setbacks and confusion. For example, the Consumer Rights Commission of Pakistan (CRCP) in collaboration with the Asian Development Bank organized some public forum debates of all the stakeholders on the topic of 'Police Reforms: New Legal Framework and Issues in Implementation'.

They found many good discussion points for the consideration of the stakeholders and suggested to build ownership of reforms, and create awareness and consensus on the issue. “The Police reforms appear not to have mustered enough public support. This is partly due to almost absence of open public debate on the Police Order 2002 and its implementation”, the report has rightly suggested. We would close this discussion with the apt remarks of another analyst who is also an ex-Inspector General of Police and a well-known writer and criminologist:

“The police is rightly considered to be the top player in crime control and the establishment of law and order. And in this it is generally said that the police in Pakistan have much to do. When you ask senior police administrators why this be so, they come up with many quite valid reasons like bad recruitment, inadequate training and lack of adequate facilities etc. That these arguments are generally 'fair comment' has been underlined by various commissions and committees set up from time -to-time. The Police Order 2002 has addressed many such issues, but the full impact of the Order will not be visible for many years and that only if the Order is allowed to take effect in its true intent and if money is made available as per the roadmap of its implementation. Because in this country the police are given resources on a 'as-and when available' basis” (Mohib Asad, 2009).

Pakistan's Crime Situation

As an integral and important part of the law and order machinery, police all over the world are trying desperately to measure up to the task of prevention and detection of crimes. The genesis and growth of crime is, therefore, relevant to a better understanding of police, its role and performance (Chaudhry, 1997). Pakistan's crime situation has never been a pleasant one as not only the ordinary crimes are very rampant but also bouts of extra-ordinary situations, agitations and riots like that of 1958 and 1968, the external migration like the three millions of Afghan refugees in 1980s and like the recent effects of the war on terror in shape of serious security threats and another three millions of Internally Displaced Persons (IDPs) from tribal areas and Malakand Division down to the cities, often aggravate the crime scenario, however, rarely proper research and analyses are conducted in this respect. Crime figures are available with comments only from 1947 to 1981, but no such efforts have been seen after this by the Ministry of Interior. The total recorded crimes in 1947 were 74, 104 and 152,782 in 1981 with a crime rate of 247 per 100,000 population in 1947 and 182.2 in 1981. This can be attributed to the volatile situation in the post-independence scenario in 1947. If we study the recorded crimes from 1991 onwards, it seems that the crime tide has never been gone down considerably. Astonishingly, the police reforms were initiated in a time (2001) when the official crime figures were going low and which steadily went up after the promulgation of the new police law in 2002. It is still on the rise. Figure 1 shows ample proof that police reforms of 2002 were not crime-centered only. There must have been so many other good reasons for it.



Sources: Office of the Director General, National Police Bureau, Islamabad, Pakistan (Figure 1)

Though there are many shortcomings in and aspersions about the police-collected data, yet it is the only officially available data so for in Pakistan. There are some important points to be remembered about crime data in Pakistan:

i. Mere statistics do not convey the seriousness of any particular crime. The trends and levels are two different things. No one can claim with authority that the compiled record of crime/ statistics is the complete picture of our national crime data.

ii. The official data in Pakistan is not verified by alternative means like victimization survey, self-report surveys, hospital admissions, and cause of death data or at least counter checked by the data compiled by the free media. Exchange of information indicators amongst the various components of the criminal justice system like prison, probation, prosecution, courts and police is another problem in Pakistan to get an authentic and consolidated data.

iii. In most cases people don't go to the police stations due to one or other reasons, and even the police feel reluctant to register cases due to work overload and performance checks by the seniors. This is not uncommon in Pakistan.

iv. The police data is compiled by the National Police Bureau and in most cases the data from specialized units for some heinous crimes like money laundering, cyber crimes, drugs issues, terrorism, white-collar crimes and children and women abuses, etc are not included in the format of the National Police Bureau. Specialized agencies have their own record. (Fasihuddin, 2008).

Police and Recent Security Issues in Pakistan

Pakistan joined the war on terror after the 9/11 attacks in the USA. The 'students-cum-rulers-cum-fighters' (now collectively called Taliban) became a serious threat to the very integrity and solidarity of the country. Pakistan, in order to crack down on these 'non-state actors' and to comply with the international commitments, became a staunch ally (though to some it was a Hobson choice) in the war on terror, and since 2003 has lost about 2000 army personnel and more than 100 pro-government tribal chieftains, in chasing the foreign and local militants in the rugged terrain of tribal areas, especially adjacent to Afghan borders. Pakistan moved more than 100,000 security forces to these areas with more than 1100 check posts. Though a protracted war in the tribal areas, Pakistan pursued its policy of 3Ds (development, dialogue and deterrence) in FATA. Pakistan's anti-terrorism and counter-insurgency policy oscillated between the heights of periodic peace deals with local militants and tribal population, and military operations against the miscreants, militants, terrorists and Talibanthe various names they are called with. (Fasihuddin, 2009) During the breathing space of peace deals and at places where the security was weak, the militants extended their sphere of influence by a variety of techniques and tactics, commonly known as talibanization. Taliban as retaliation and to engage the security agencies in other places, carried out a series of terrorist activities throughout the country, including suicide bombing, mines and improvised explosive device (IED) blasts, target killing and kidnapping of high profile officials. The worst setback and reprisals from these militants were received in the North-west Frontier Province, the Province of Baluchistan and the cities of Islamabad. Rawalpindi and Lahore during 2005-09. As an example, we would like to quote the statistics for one province i.e; the NWFP, which is the most affected province and adjacent to most of the tribal territories and where the military operations have been going on in most of its northern and southern districts. Table III and Table IV show the details of the total terrorist and suicide incidents with the human losses inflicted on security forces as well as civilians. To some analysts, the number and extent of casualties and damages are far more than the official figures.

Table: III Details of Terrorist Activities in NWFP (Period: 20048.6.2009)

Years	No. of Cases Registered	Person Killed					Person Injured				
		Police	FC	Army	Civil	**Total**	Police	FC	Army	Civil	**Total**
2004	27	6	1	2	4	13	3	3	7	58	71
2005	1	0	0	0	0	0	0	0	0	0	0
2006	38	18	0	0	55	73	24	0	0	121	145
2007	359	62	32	62	253	409	172	89	162	592	1015
2008	524	117	25	52	408	602	256	86	88	885	1315
1.1.2009 to 8.6.2009	337	58	13	38	194	303	153	42	121	658	974
Grand Total	**1286**	**261**	**71**	**154**	**914**	**1400**	**608**	**220**	**378**	**2314**	**3520**

Source: Office of the Additional Inspector General of Police (Investigation) NWFP Peshawar.

Table: IV Detail of Suicidal Cases (Period: 20048.6.2009)

Years	No. of Cases Registered	Person Killed					Person Injured				
		Police	FC	Army	Civil	**Total**	Police	FC	Army	Civil	**Total**
2006	4	2	0	4	44	50	2	0	12	75	89
2007	28	45	23	57	210	335	54	43	137	351	585
2008	30	30	7	25	219	281	92	43	65	450	650
1.1.2009 to 8.6.2009	13	13	2	26	95	136	51	34	85	239	409
Grand Total	**75**	**90**	**132**	**112**	**568**	**102**	**199**	**120**	**299**	**1115**	**1733**

Source: Office of the Additional Inspector General of Police (Investigation) NWFP Peshawar.

After 9/11, Whites (2007) observes that:

> "Departments have been forced to revise training, deployment, and communication strategies and to create counterterrorism units within their departments. Polaice now provide extra patrol and guard around critical infrastructures such as power plants, food and water sources, and transportation hubs. Police departments now receive briefings from federal authorities in the FBI and Homeland Security about potential threats and terrorist plans garnered through electronic surveillance and interrogations of incarcerated terrorists."

Also, there was much criticism of the American intelligence failure prior to 9/11 which is evident from the observations of the 9/11 Commission Report, however, new laws were promulgated, new departments were established and new policies and strategies were adopted to cope with the menace of terrorism in the USA, the UK and other developed world. On the contrary, police in Pakistan were not ready to face such a horrible challenge as they have never been recruited or trained and equipped for anti or counter terrorism actions. To cope with such a situation police have to work hard; enhance their professional capabilities; and mobilize and reinforce their ranks with new vision, leadership and commitment. Police, at the moment, need drastic overhauling, huge financial support, capacity-building trainings and a realistic model of intelligence-led-policing (Fasihuddin 2009). Though some actions have been taken as protective measures against terrorist acts and some morale boasting initiatives for the local police are introduced by the respective provincial governments, yet no comprehensive anti-terrorism policy at a national level is available till date. No extra resources allocation for the police departments, and more than that no tangible individual or institutional endeavors have been visibly noticed for a comprehensive and empirical research on terrorism or suicide attacks or a thorough documentation and analysis of the reported cases. This gap of knowledge or gap of understanding gives rise to many missing links in our approach to address the issue of terrorism and human bombings in Pakistan. An indigenous research in Pakistan will be a more relevant document for all stakeholders of the war on terror. (Naushad, 2009).

Hassan Abbas (2009) has suggested some recommendations for improving the police performance which in his opinion are crucial for counterinsurgency and counterterrorism success. These include implementation of Police Order 2002 in letter and spirit; increased salaries and better service conditions for lower ranks; establishing Citizen-Police Liaison Committee (CPLC) throughout the country on the pattern of CPLC Karachi; up gradation of National Police Bureau to the level of a resourceful think-tank and effective coordination amongst intelligence agencies and the community for a better model of intelligence-led policing. Most of his

recommendations are theoretical and hold good, but more practical initiatives have been suggested by Naushad Khan (2009), Fasihuddin (2008, 2009) Mohib Asad (2009), Abdul Khalique Shaikh (2009) and others in order to bring changes in the existing police culture, police training and education, police welfare, police structure and functions, police administration and leadership. The aim and objectives of these suggestions are, enhanced police professionalism; effective and quick service delivery; improved public image; decreased crime rate; increased public satisfaction of security; absence of stories of police excesses, torture and human rights abuses; career and capacity-building opportunities for the officers; creation of specialized units within the police based on modern techniques and scientific investigation; and above all, a sense of police- friendly environment with greater respect and dignity for the department.

Conclusion

Police performance can be assessed only in relation to particular goals and criteria of success. Deciding what the objectives and priorities of the police should be, however, is inevitably a contested, political matter. This suggests that there can not be any definitive, once-and-for-all-time statement of the goals of policing (Reiner, 1998). Many police chiefs were once asked some specific questions relating to their organizations and functions and the situations which often have agitated their minds. In response to a question about the greatest challenge facing police today, the Australian Federal Police Commissioner Mick Keelty, replied:

"I think the greatest challenge is to meet the expectations of stakeholders, including both the community and government. Sometimes the expectations of the community and government are not aligned… and the police are therefore caught in the middle. The challenge is to balance these stakeholder interests while at the same time maintaining the organization" (Fleming, 2009).

If we compare this statement with the outcome of a survey of lower and middle rank police officials in the NWFP, who stated that the biggest challenge to them is terrorism, religious militancy and suicide attacks (30% in total of the respondents) (Fasihuddin 2009), it becomes clear that the higher police leadership is sensitive and cognizant of policy matters related to community satisfaction and political agendas of the governments, whereas the lower and middle managers are concerned with the imminent field issues such as attack on their and public life and property. This needs an immediate bridge and consideration by policy makers and police leadership. This is not uncommon in Pakistan where exists a gulf between the high police leadership and the lower ranks and file. All our efforts for modernization and sophistication of the police will fall short of any tangible results, if not coupled with democratization of the police in Pakistan. Even less achievements will be praised high if there is rule of law, accountability, fair play, transparency and single-mindedness across the hierarchy of the police organization.

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Pakistan Journal of Criminology

Volume 2 / Number 2 / Apl 2010

Contents

ISSN 2074-2738

UNI - GRAPHICS