Editorial: Law and Violence against Children in Pakistan

This editorial is divided in two parts. In the first part I comment briefly on the challenges in Anti-terrorism law to deal with violence against children in Pakistan. In the second part I introduce the articles in this issue.

I

In early 2018 a six-year old girl, Zainab, was raped and murder in district Kasur, Punjab. This outrageous incident became viral on social media and later the electronic and print media also gave it wide coverage. The incident sent waves of shock, terror, and anger around the country, but especially in Kasur, Punjab. The people were also worried because of the fact that the police were unable to identify and arrest for several weeks the person who committed the rape and murder. When the pressure on the Punjab government mounted, the government brought all its security resources to use to find out the culprit. Eventually, the police was able to arrest a suspect and identify him through a DNA identification test. However, soon after his identification on the basis of medical test, there arose questions about the ability of the prosecution to get him convicted.

Normally in such cases of child rape and murder there is challenge to get the suspects convicted under the ATA (1997). In this particular case the government was successful in getting the suspect convicted in the Anti-Terrorism Court. The trial took only four days of rigorous day-to-day hearings as provided in the ATA (1997). The court sentenced the convict to death. However, the case went to the Lahore High Court, and from there it might go to the Supreme Court.

Here I want to point to certain challenging aspects for the prosecution in such cases of child rape and murder. These aspects relate to the questions of law, criminal procedure, and due process. A case like this is placed in the backdrop of earlier precedents, especially in the higher appeal courts. There some of the major questions a case like this involves include: a) whether the action (Actus Reus) consists terrorism, b) whether the purpose (Mens Rea) of the action was to cause terror and insecurity among the people, b) whether the accused had a design to intimidate the public, c) whether the corroborative evidence collected by the police draws a complete picture beyond reasonable doubt, and d) whether procedural rights and due process was granted to the accused. Although actions consisting of murder and rape normally fall within the definition of terrorism in the ATA (1997), what is often challenging for
the prosecution to establish is the purpose and/or design of the terrorist act. A suspect can argue that his actions had personal, psychological or medical condition behind them. Accordingly, he can argue that he had no political motives of spreading terror and insecurity among the people. If he successfully gets this point established then the ATC can order to send the case to a regular session court where it can linger on for longer time.

Another aspect is that although a suspect’s actions might spread intense terror, insecurity, and anger among the people, but this factor alone is not enough to establish a terrorism case. The courts have decided that the purpose element is more crucial than consequence (of actions) element. On the other hand, with regard to evidence, the prosecution needs to present fully reliable evidence or bring together corroborative pieces of evidence in such a way to present a full picture, which is beyond reasonable doubt. However, we know that in this particular case, and often in similar other cases, neither direct evidence in the form of eyewitness is available, nor enough corroborative evidence is available. The type of evidence normally available is different pieces of corroborative forensic evidence found on the scene of crime (for instance, in this case the jacket of the accused) and medical evidence consisting of the DNA test. Other pieces of the evidence can consist of testimonies of different people about the accused. Moreover, it also needs to be pointed out the under the ATA (1997) the evidence is appraised in the light of the Law of Evidence (1984), which provides for the tough criteria. It would be relevant to point to the Mukhtaran Mai case in which the accused were eventually released given the insufficiency of evidence.

II

Now I would introduce the articles in this issue.

In the first article of the issue the author, Petter Gottschalk, engages convenience theory to reflect upon members of religious organization and their involvement in white-collar crimes. He argues that while white-collar crimes take place in these organizations the extent of it depends on financial motive, organizational opportunity, and personal willingness. He further argues that the trust of people and the availability of forgiveness elements in the religious organization become other factors of white-collar crimes.

Ayub Jan argues in his article entitled Current Conflict and the Ensuing Debates about Identity among the Pakhtuns in Cultural and Virtual Spaces that although in the mainstream War on Terror discourse the Pukhtun belt is
depicted as a backward and retrogressive place, it is no more so. He points to the use of cyberspace among Pakhtuns as an evidence of social change taking place there. He focuses on the tribal institution of hujra, which has attained its cyber form by internet forums like Global Hujra. Jan points out, “The dialogical skills demonstrated by the educated Pakhtun through these internet forums represent a change from other wise traditional forums of deliberation such as jirgas or hujras.”

Irfanuddinet al study the internally displaced people in Pakistan. Their main focus is on financial constraint faced by these people and protection gap with respect to international health assistance. They employ quantitative method of lottery type simple sampling. They show that poor economic status and unemployment have prevailed for long time in IDPs camps. These people depend on government and NGOS for charities and assistance. However, they argue that such charities and assistance always falls short of their needs.

Next article by Ilyas Khan entitled Conceptual Approach to Trafficking of Children for Domestic Work tries to understand the nature of human trafficking from theoretical perspective. The article questions as to what is trafficking and also throws light on different stages of trafficking in person including recruitment and consent, smuggling and transportation.

Azam Jan and Mukhtar Ahmed’s article entitled Use of Facebook as a Source of Social Capital Pakistan: A Critical Analysis puts to critical light the increasing use of Facebook among the Pakistani youth. Their study focuses on students of universities in Islamabad. They argue that “there is a high intensity relationship between Facebook and the scale of social capital among the university students” in Islamabad.

Asghar Khan and Ayaz Ahmed’s article entitled Organized Crimes and Governance Gap in the Conflict Affected North-Western Pakistan focuses on the factors propelling conflict and lack of governance in the border tribal belt of Pakistan. They question the state capacity to deal with these problems. They argue that “in the absence of state control, the organized criminal groups fill this governance gap by performing state-like functions in the local community for strengthening their roots.”

Nadia Agha and Zamir Ahmed in their article, Prevalence and nature of violence against women in Pakistan: A Six-month Content Analysis of a Pakistani newspaper, study the reasons of growing violence against women in
Pakistan. Their analysis is focused on how newspapers portray this violence. They also present frequency of the violence.

Amir Ullah Khan et al in their paper entitled Personal-cum-Political Security and Blasphemy Laws traces the history of blasphemy laws in Pakistan with an eye on how these laws relate to or cope with violence in the country. Although a timely topic, it is often difficult to talk about it. Khan’s article throws careful and critical light on it.

In his article Syed Sami Raza carries out an ethnographic study of how Radicalization, sectarianism, and violence affected the youth in district Dera Ismail Khan, Pakistan. Raza points to several factors that contributed to producing the environment that increased youth's susceptibility to radicalization, sectarianism and violence. He suggests that there is need to empower the youth as active participants to counter the radical narratives, and to check their susceptibility to violence.

Hazirullah et al in their article explore “how young boys and girls in Pakistan engage with the social world (schooling, family, and leisure) and whether their engagement overturns or resists key regulations and normative expectations for girls and boys. Moreover, it asks “how gendered socialization, both in the family and school, regulates and perpetuates the gendered social order of Pakistani society.”

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