

## **Opening the door of the Criminal Justice System through the Police Reforms Movement**

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Pakistan's criminal justice system gets tons of flak daily. This is not only a perception, but a stark reality. The recent Global Rule of Law Index, 2021 has taken Pakistan further down to 130 from its last ranking of 120. The sliding down is painful and calls for action. In this regard, many efforts have been made to overhaul the criminal justice system. Within these efforts, the movement of police reforms is important – an onerous task of attempting to open the doors of the criminal justice system, particularly for the poor and non-influential citizens of the country. In this movement, a series of official reports (over two dozen) constitute the body of literature that provides a point of departure for further work on the subject. This movement may be styled as the Police Reforms Movement (“PRM”), which has witnessed many highs and lows. The purpose of this write up is to provide an update on the latest activity on the PRM front. The write up discusses the background, thematic issues, and strategy of PRM separately.

### **1. Background**

After the promulgation of the Police Order, 2002, the momentum of the PRM slowed down. It had apparently achieved one of its core objectives of change in the governing police law that was colonial in nature. Along with many other objectives, one of the principal objectives of the PRM was to do away with the archaic Police Act, 1861. The repeal of the Police Act, 1861, through the Police Order, 2002, was considered a watershed moment. However, the Police Order, 2002 was not fully implemented and its impact remained limited. The reasons for non-implementation were political as well as administrative. The Police Order, 2002 was protected through the Seventeenth Constitutional Amendment to the Constitution of the Islamic Republic of Pakistan, 1973 (“Constitution”). Later, in 2010, the Eighteenth Constitutional Amendment abolished the concurrent legislative list and created a more powerful concurrent field to the extent of criminal law, criminal procedure, and law of evidence through Articles 142 and 143 of the Constitution. The Eighteenth Constitutional Amendment was interpreted in a manner that the police was not treated as a subset of criminal law and the provinces opted to enact their own provincial

laws resulting in uneven organizational police laws in the country. Resultantly, Balochistan promulgated the Balochistan Police Act, 2011, Khyber Pakhtunkhawa (“KP”) enacted the Khyber Pakhtunkhawa Police Act, 2017, Sindh enacted the Sindh (Repeal of the Police Act, 1861 and Revival of Police Order, 2002) (Amendment) Act, 2019, and Punjab continued with the Police Order, 2002 (with the provincial assembly having the power to amend it). The Police Act, 1861 remained applicable in Islamabad Capital Territory (“ICT”), Gilgit Baltistan (“GB”) and Azad Jammu and Kashmir (“AJK”). The PRM responded to this situation and the matter was agitated by the senior police leadership (led primarily by former Inspector Generals of Police including Dr. Shoaib Suddle, Mr. Afzal Ali Shigri, Mr. Tariq Khosa and Mr. Tariq Parvez) and by civil society organizations. They advocated the fact that police law is a subset of criminal law and provincializing it meant weakening the federation. The proliferation of lawful coercive state power meant weakening of internal security and fracturing of national security. The senior police leadership entreated the then Chief Justice of Pakistan, Mr. Justice Saqib Nisar, who constituted and notified a Police Reforms Committee (“PRC”) on 15<sup>th</sup> May, 2018. Acting in his capacity as the Chairman of the Law and Justice Commission of Pakistan (“LJCP”), the Chief Justice of Pakistan (“CJP”) set three Terms of Reference (“TORs”) in the notification of the PRC. These TORs form three broad thematic areas, which are:

- A. Determination of the constitutionality of police law (and to propose a model police law to be enacted at the national level).
- B. Improving service delivery by examining five areas:
  - i. Police accountability;
  - ii. Improvement of the quality of investigation;
  - iii. Revamping of urban policing;
  - iv. Use of Alternate Dispute Resolution (ADR);
  - v. Identifying gaps in the anti-terrorism law.
- C. Legislative issues that affect police working.

The PRC worked for six months and finally submitted its report (“PRC Report”), which was unveiled by the CJP on 14<sup>th</sup> January, 2019 at the Supreme Court of Pakistan (“SCP”) in a ceremony. The PRC Report was then sent to the Government of Pakistan for implementation. In the meanwhile, the successor CJP, Mr. Justice Asif Saeed Khan Khosa, constituted a PRC Implementation Committee (PRC-IC) comprising of members of the PRC (retired police officers) and serving Inspector Generals of Police of the four provinces and three territories (ICT, GB, and AJK). The CJP chaired seven meetings of the PRC-IC and oversaw the implementation of the PRC. Thereafter, the incumbent CJP, Mr. Justice Gulzar Ahmed, chaired two meetings. The last meeting took place on 11<sup>th</sup> November, 2021 and was attended by the Home Secretaries for the Provinces and the Secretaries of Interior and Law and Justice Divisions for the Federation along with serving and retired Inspector Generals of Police (“IGsP”). An institutional mechanism was used to see through the implementation of the PRC Report and the National Police Bureau (“NPB”) under the Ministry of Interior was entrusted to work as a secretariat for the implementation of the PRC Report. The NPB was also directed to prepare an action plan for implementation by the next meeting of the PRC-IC.

## **2. Thematic Issues**

The thematic issues that were mooted during successive meetings of the PRC are briefly explained below. The explanation will inform the public of the matter to garner its opinion and bring on record the results of the continuing PRM. These issues are:

### **A. Constitutionality of Police Laws:**

One major policy consideration was to examine the constitutionality of the police laws in the country. The PRC members stated that the SCP has finally decided that ‘police’ is a concurrent subject for legislation in terms of Articles 142, 143 and 240 of the Constitution. The present provincial legislations may be examined on the touchstone of Article 143 of the Constitution that indicates the prevalence of federal laws over provincial laws. The matter was left open to be considered by the executive and the legislature.

### B. Police Accountability:

Owing to the colonial design of using police as an instrument in the hands of powerful entities, accountability of police has emerged as a significant issue. External and internal mechanisms of police accountability have their own peculiarities. The external mechanism of police accountability has many manifestations including media oversight, judicial review, *suomotu* actions by the SCP, complaint redressal mechanism of the offices of ombudspersons, parliamentary committees on human rights, statutory human, women and children rights commissions and provincial and federal information commissions established under the law. The internal accountability mechanism, however, is believed to be more important than the external oversight and accountability structures. Former CJP, Mr. Justice Asif Saeed Khan Khosa, implored the PRC-IC to introduce Internal Accountability Units (“IAUs”) in all the police organizations. His direction was implemented by all the provincial organizations, which not only established the IAUs but also tasked the IAUs to play the role of a complaint redress mechanism to the extent of applications under Section 22-A of the Code of Criminal Procedure, 1898 which pertains to the powers of justices of peace. The system of IAUs was carved out to ensure maximum registration of criminal cases through police administration and to lessen the burden of the courts in dealing with miscellaneous applications in the capacity of justices of peace. The institution of applications and writ petitions for registration of criminal cases in the district courts and the high courts was, during his tenure, linked to the disposal of such applications by IAUs. The practice remained very effective and brought substantial reduction in the institution of such applications before the courts. In fact, the filing of such an application before an IAU was seen as a pre-condition for considering similar applications before the courts. However, the practice did not sustain as it was not backed by a judicial order or provision of any statute. An important aspect of the internal police accountability mechanism that must be considered in the following meetings is the adjudication of disciplinary actions (taken by police leadership against delinquent police officers) by the service tribunals. Often, these tribunals apply evidentiary and procedural standards

of trials to disciplinary matters which have the effect of neutralizing disciplinary actions.

#### C. Quality of Investigation:

Quintessentially, policing law is detection based in Pakistan. This emphasis of policing on detection underscores the significance of qualitative investigation. The public at large and the judiciary through its dicta, have recorded serious reservations about the independence of the police and the quality of investigation. The independence of the police becomes a moot point in highly contentious cases where the most powerful and influential in society have to be dealt with by the police. The quality of investigation primarily suffers due to conventional and non-scientific investigations that value testimony over forensics. The PRC has made comprehensive recommendations addressing both organizational independence and scientific investigation. The IGsP have, within their given resources, tried to improve the quality of investigation. For example, there was no separate investigation wing in ICT up until January, 2021. A regional monitoring system for supervising the quality of investigation was introduced in Punjab. In Sindh, two major steps have been taken. First, in line with the judgment of the SCP titled *Sughran Bibi v The State* (PLD 2018 SC 595), Chapter XXVI of the Police Rules, 1934 was amended to provide for evidence based arrest in criminal cases. Secondly, with the help of the Legal Aid Society in Karachi, the Sindh Police has started certifying investigators for specialization in investigating gender-based violence cases.

#### D. Urban Policing:

The police organization envisaged by the Police Act, 1861 was aimed at rural areas. The PRC was tasked to make recommendations about urban policing. The PRC Report states that cities with a population of over two million should be treated as urban districts qualifying them to have an organization that is more efficient and capable of dealing with challenges of urban policing, which is characterized by high crime rates and disorganization that defines urban centres.

E. Alternate Dispute Resolution:

Much has been stated about the ADR regime in general. For the police in Pakistan, ADR is a very important strategy. Unfortunately, legislation in the provinces and at the federal level only envisages ADR during trial and not in pre-trial proceedings. The PRC Report made actionable recommendations about ADR. The KP Police Act, 2017 provided the legal basis of the Dispute Resolution Council (DRC). In addition, the police leadership has often used its trust and discretion to structure arrangements that provide mediatory and reconciliatory mechanisms for dealing with non-criminal matters that reach police stations. For example, the ICT Police has over two decades of valuable experience of functional Public Conciliatory Committees (PCCs). The incumbent Inspector General of Police, Islamabad has tried to preserve and resurrect the PCCs and DRCs in Islamabad by personally supervising their functioning and involving the community.

F. Anti-Terrorism Law:

Pakistan's anti-terrorism law has had its problems insofar as its implementation is concerned. One of the main issues was that the definition of terrorism was very wide, and it was expected that the architecture to fight terrorism should also deal with extremism, hatred, and other forms of violence. The PRC Report made recommendations on this aspect as well. Meanwhile, the SCP in its judgment reported as *Ghulam Hussain, etc. v The State* (PLD 2020 SC 61) linked the acts of violence with the object of terrorism, thus optimizing the definition of the term terrorism. In addition, the intersection of anti-terrorism law with anti-money laundering law in the context of the Financial Action Task Force ("FATF") has added a new dimension to anti-terrorism law, which is now being dealt with by specialized Counter-Terrorism Departments (CTDs), operative in all the provinces and territories.

### 3. Strategizing through Police Reforms Movement

The PRM is an umbrella term for all the professional police initiatives that try to break from the vicious status quo rigor. The PRM tries to contribute to national security by strengthening the internal security of

the country. Some initiatives of the PRM are safe city projects, data analytics programmes (for predictive, preventive and detective policing), complaint redress mechanisms, gender protection units, child protection units, facilitation centres (*khidmatmarakaz*), model police stations, scientific investigations, counter-terrorism departments, and partnerships with prosecution departments. The PRC Report is a part of a larger PRM. It is hoped that strategizing police professionalism through the PRM will ultimately accelerate other components of the criminal justice system, which will strengthen the rule of law in the country that is run by a written constitution with elaborate fundamental rights.