

System of Police in Pakistan: An Introduction

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Pakistan is a federation as per its constitution. This federal nature has resulted in division of work between the federation and the provinces. As far as the criminal justice system is concerned, as the criminal law, criminal procedure and law of evidence are 'concurrent' subjects for legislation within the scheme of the constitution (as per articles 142 and 143), therefore, two criminal justice system streams can be discerned in the country: one is the federal criminal justice system and the other is the provincial criminal justice system. There appears to be a lot of confusion about understanding the contours of the very system that many wish to reform. It is, therefore, in order that this point be stated in so many words to ward off any misperception. The implication of concurrence of the subjects of criminal law, criminal procedure and law of evidence is not fully appreciated by many leading to the popular perception that implementation of human rights and police related matters is sole domain of the provinces. Unfortunately, this misperception of expecting police and criminal justice system reforms from provinces has perpetuated over period of time and many suggest prescriptions that do not take into account the role of the federation in the criminal justice matters. While analyzing, many ignore the constitutionality of criminal law, criminal procedure and law of evidence on this important point; the important question that must be asked is that if the criminal justice is a provincial subject, why the federation has enacted laws like the latest Torture and Custodial Death (Prevention and Punishment) Act, 2022, the Anti-Rape (Investigation and Trial) Act, 2021, the Juvenile Justice System Act, 2018 and many other laws that cover the criminal law and procedural part of the criminal justice system. In this backdrop, the very architecture of every component of the criminal justice systems both at the federation as well as the provincial levels must be separately understood to prescribe constitutionally compliant and legally sustainable reform agendas for reforming the criminal justice system. With this premise, the anatomy of police system will be examined here to inform the public policy considerations on offering a better justice system for the country.

First, the semantics. The terms 'police' and 'policing' are often interchangeably used. This must be noted that the Handbook of Criminology published by the University of Oxford distinguishes between 'police' and 'policing'. While 'police' is the name of an organization, 'policing' is the function. The distinction implies that policing function is being discharged by many governmental

organizations along with full time police organizations. For example, the officers of food authority like the food inspectors inspect quality of food, the drug inspectors of health department are carrying out policing insofar as the drugs are concerned. In contradistinction, full time police officers of a police organization carry out general policing by implementing the general criminal law.

Second, there are provincial, territorial and federal police organizations. Thus, there are four provincial police organizations i.e., the Punjab Police, the Sindh Police, the Khyber Pakhtunkhawa Police and the Balochistan Police. Then there are three territorial police organizations of the Islamabad Capital Territory Police (ICT Police), the Gilgit Baltistan Police and the Azad Jammu and Kashmir Police. At the federal level, there are the Federal Investigation Agency (FIA), the National Highway and Motorway Police (NHMP) and the Railways Police. Then there are specialized police related establishments like the National Police Bureau (NPB) and the National Police Academy (NPA) under the Ministry of Interior and the National Counter Terrorism Authority (NACTA).

Third, each police organization has its own law. The matter of constitutionality of police as a subject of legislation resurfaces quite frequently before the Supreme Court of Pakistan due to politics of policing in Pakistan. The moot question before the Court is whether, after the Eighteenth Constitutional Amendment, the provincial police is a concurrent, or a purely provincial legislative subject. The present position is that, as of December, 2020, the Punjab Police is being governed by the Police Order, 2002, the Sindh Police works under the Sindh (Repeal of the Police Act, 1861 and the Revival of the Police Order, 2002) Act, 2019, the Balochistan Police operates under the Balochistan Police Act, 2011 and the KP Police under Police Act, 2017. It must be noted that after passage of the Twenty Fifth Constitutional Amendment, and the resultant mainstreaming of the erstwhile Federally Administered Tribal Areas (FATA) and Provincially Administered Tribal Areas (PATA), the personnel of the Levis Force and the Khasadar Force have been obligated to perform duties as required by the KP Police Act, 2017 after reconstituting them under the KP Levis Force Act, 2019 and the KP Khasadar Force Act, 2019. The specialized territorial police organizations in the ICT, AJK and the GB work under the Police Act, 1861. The issue of application of the Police Order, 2002 to the ICT is subjudice before the Islamabad High Court for couple of years now. The FIA operates under the FIA Act, 1974 while the NHMP has been constituted under the National Highways Safety Ordinance, 2000.

Four, the law related to policing powers of registration of criminal cases, stop and search, arrest and investigation is contained in the archaic Code of Criminal Procedure, 1898. The criminal justice processes that affect functioning of police organizations must be updated. The design and architecture of the Code must be rethought for better service delivery. The process serving, mandatory time lines and collateral criminal justice processes need to be synchronized with modern IT based policing interventions. The legislative cover for storing citizens' data, its protection and its defined use must be prepared to ensure that rule based structures and processes flourish.

Five, there are over two dozen official efforts/reports on reforming police. These reports are inward looking and must be supplemented by policing reforms that review the criminal processes that affect the working of police organizations.

Six, the leadership of all the police organizations is vested in the Police Service of Pakistan (PSP), an occupational group of the Civil Service of Pakistan that should ideally specialize in internal security of the country. The legal basis of the PSP cadre is article 242 of the constitution that provides for All Pakistan Service that is to work for the federation and the provinces. The PSP cadre has to work closely with the provincial police officers to ensure that the federal and provincial linkages complement and strengthen each other for effective writ of the state.

Seven, in order to strike gender balance within police, for the last decade, women in police are increasing. The inclusion of women police officers in the rank and file of police is a welcome step. It not only ensures better service delivery for womenfolk, but also increases the access to justice possibilities for them.

Eight, the ubiquitous cybercrimes fall only in the domain of the FIA as per the Prevention of Electronic Crimes Act, 2016. This must be reviewed as the telecommunication related technology is being used in every form of crime from the child abuse to the auto-theft and from ordinary frauds to shooters' killings in urban centres. All the provincial police organizations must be empowered to register cases related to cybercrime.

Nine, the organized crime is an area that gets little media coverage in Pakistan. According to the United Nations Convention against Transnational Organized Crime (UNTOC), the organized crimes comprise money laundering, trafficking in person, corruption and obstructing justice. In the context of Pakistan, terrorism, auto-theft, child pornography, human smuggling, ponzi schemes may be categorized as local organized crimes as these use the inter-district and inter-

provincial ungoverned and unregulated legal spaces to thrive and affect a large number of citizens. These must be checked and controlled effectively to reassure the populace that the state is concerned about their life and property. Learning from international experience and utilizing the international legal framework of the UNCTOC, the international cooperation regimes of mutual legal assistance and cooperation between law enforcement may be led by the Ministry of Interior in coordination with provincial home departments.

Final point is that the global trend for keeping peace and tranquility in societies is to minimize conflicts that emanate out of injustice. One of the main sources of injustice, within the justice sector, is unequal treatment of citizens by law enforcement agencies. For example, the US, in the context of the Black Lives Matter movement, loudly spelled out the issue of injustice in the following words: '*over protected, less policed; under protected, more policed*'. The discourse on justice sector reform is, therefore, getting impetus from the issue of unequal treatment before the law. Pakistan needs to learn from this as its peace, law and order and sustainable growth depend on quality policing and fair justice system that can inspire confidence and trust of its citizens.