

PART 9: CRIMINAL COURTS

CRIMINAL COURTS

NAP Point 20: Reforms in criminal courts system to strengthen the anti-terrorism institutions including provincial CIDs.

9.1 Introduction

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One of biggest criticisms of Pakistan's fight against terrorism is its inability to prosecute and convict terror suspects. One solution, covered in chapter two of this report, is the parallel judicial system of the military courts. But even the military courts have managed to process only 40 cases over the course of 13 months.¹

Thus far, the only progress reported by the Interior Minister Chaudhary Nisar, in a briefing to the National Assembly on NAP progress in January 2016 states: "Provinces to submit proposals upon revamping criminal justice."² However, a month prior, Prime Minister Nawaz Sharif also created the Law Reform Committee.³

9.2 The Criminal Procedure Code of Pakistan

Code of Criminal Procedure, the most comprehensive bill on proceedings of criminal courts in Pakistan, contains all the procedures and provisions which are necessary to regulate the working of criminal law courts in the country. All criminal courts work under this act and it has a central role in the Pakistan legal system.

Criminal law in Pakistan and the procedural codes that are followed, are very different in their application from the criminal law that is followed in the developed world. Pakistan's criminal justice system needs to be understood in the context of the society and the region's history. Most of the criminal laws in Pakistan were introduced by the British Empire. The Code of Criminal Procedure (V of 1898) and the Penal Code (XL of 1860) both of which were implemented in the colony are

¹ Mukhtar, I. (2016, January 09). Military courts convicted 40 terrorists so far. Retrieved January 19, 2016, from <http://nation.com.pk/national/09-Jan-2016/military-courts-convicted-40-terrorists-so-far>.

² Questions and Oral Answers, 28th session of the National Assembly. (2016, January 15). Retrieved March 15, 2016, from http://www.na.gov.pk/uploads/documents/questions/1452850149_459.pdf.

³ (2015, December 01). PM sets up committee for legal reforms. Retrieved May 2, 2016, from <http://www.thenews.com.pk/print/77981-pm-sets-up-committee-for-legal-reforms>.

still by and large the prescribed statutes followed by the courts for criminal cases in Pakistan.

The shortfalls of PPC and CrPC are dire. Radical changes are required for revamping of the existing criminal justice system of Pakistan.⁴ Despite the growing urgency of reform, Pakistan's police, and indeed the whole criminal justice system, still largely functions on the mandate of "maintaining public order" rather than undertaking contemporary crime.⁵ In an analytical study of the criminal justice system in Pakistan, Sardar Hamza Ali says: "Our criminal justice system is not delivering due to multiple ailments that range from reporting of crime to the police, mal-practices during the course of investigation, preparation of report under section 173 of Cr.P.C. by the I.O., submission of *challan* in the court by the Public Prosecutor without application of his independent mind owing to his tied hands and subsequently trial at the mercy of the defense counsel. Each step has many slips and shorts at enforcement, judicial process and correction stages."

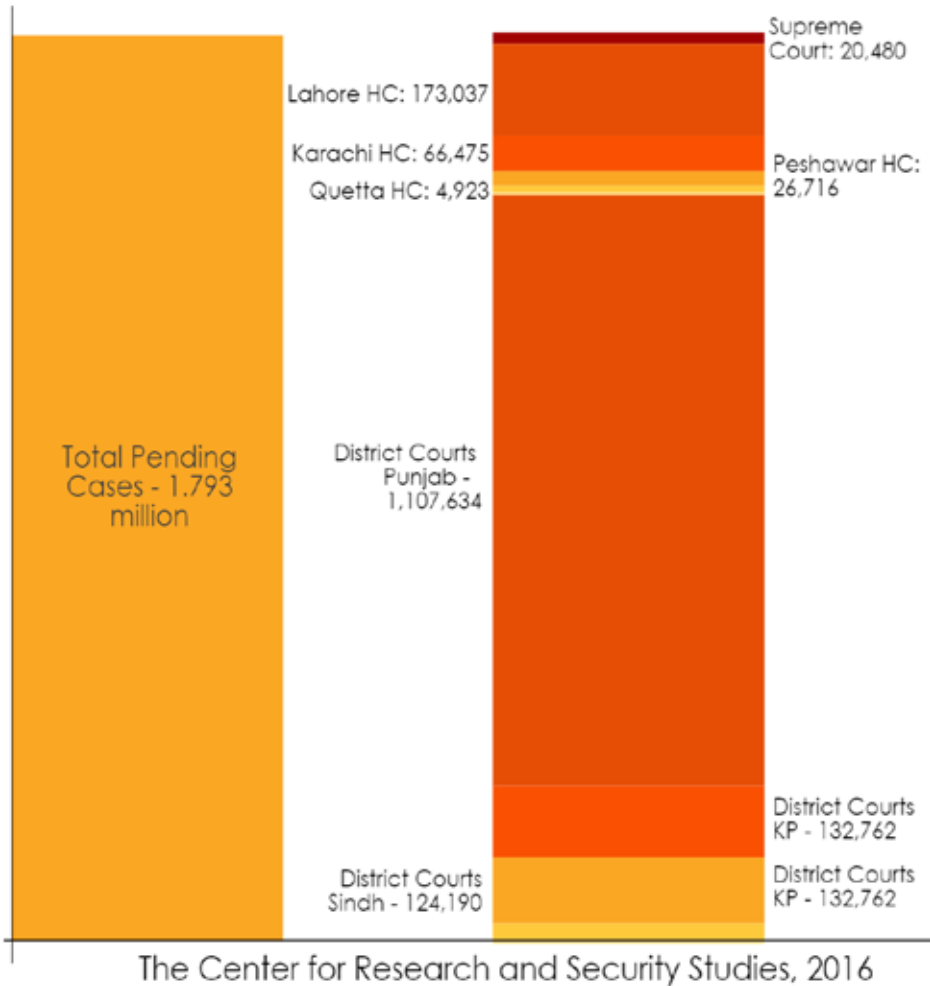
9.2.1 Pending Cases in Pakistan's Courts

In a report to the National Assembly in January, 2015, it was revealed that there are over 1.7 million cases pending in the apex and lower courts around the country.⁶ These figures are from 2013, and will have only increased with time.

⁴ Hamza, S. A. (2015). An Analytical Study of Criminal Justice System of Pakistan. *Journal of Political Studies*, 22(1), 2015th ser., 17-42. Retrieved March 03, 2016, from http://pu.edu.pk/images/journal/pols/pdf-files/2 - SARDAR ALI HAMZA_22_2015.pdf.

⁵ International Crisis Group. (2010, December 06). *Reforming Pakistan's Criminal Justice System*. Retrieved January 27, 2016, from <http://www.crisisgroup.org/~media/Files/asia/south-asia/pakistan/196 Reforming Pakistans Criminal Justice System.pdf>.

⁶ Khattak, I. (2015, January 15). 1.7m cases pending with SC, lower courts, NA told. Retrieved March 24, 2016, from <http://nation.com.pk/national/15-Jan-2015/1-7m-cases-pending-with-sc-lower-courts-na-told>.

Graph 9.1 Pending Cases in Pakistan's Courts

9.3 Progress on Legal Reforms

While several bills and amendments have been presented and passed in the federal and provincial assemblies, a structural overhaul is sorely missing. To this end, on December 1, 2015, nearly a full year after the APS attacks, the Prime Minister's Committee on Legal Reforms was finally formed.³ The Terms of Reference for the committee are as follows:

- 1) To process the law reform proposals contained in the manifesto of the PML-N 2013.
- 2) To consider the law reform proposals made by the Law and Justice Commission of Pakistan and other relevant institutions and committees of any other persons.
- 3) To prepare draft legislative bills for reforms.
- 4) To share the draft legislative bills with the relevant stakeholders.
- 5) To put up the draft legislative bills for approval of the prime minister/ cabinet.
- 6) Initiate and follow up the legislative process for enactment of the draft legislative proposals.
- 7) To create awareness and acceptability for the law reforms.

One of the biggest changes is the time at which a First Information Report (FIR) is lodged in criminal cases. A highly exploitative mechanism, the FIR is often treated as a final version of events. The proposed changes mandate that the report be created only after the investigation has been concluded. This alone, could be a massive change for the legal system in Pakistan.⁶

The committee will also look into allowing NADRA to process non-contentious succession/inheritance cases; privatize inordinate delays stemming from issuance and receipt of court summons in civil cases; introduction of timelines with milestones as well as penalties/ costs for non-compliance; creation of a Legal Service of Pakistan, an ideas lab/incubation ground for all levels of legal service; and introducing costs of litigation. It is a positive step, but unfortunately, the committee has been largely silent.

9.4 OPINION: CRPC Reforms: The Way Forward by Yawar Ali Khan

Infamous for its egregious human rights violations, confidence in Pakistan's criminal justice system has been little to none over the past few decades. To appear reform-driven, the Pakistan government, in its National Action Plan 2025, has undertaken to protect fundamental rights by strengthening the judicial system; reviewing rules and regulations and reinforcing formal and informal channels of dispute resolution with the focus on ensuring equal application of law and order on all segments of society.

Surprisingly, the National Action Plan is accurate in identifying where the short-falls in the system lie; it highlights access to justice, need for speedy trials and consistency with constitutional protections such as due process as the key areas of focus. However, regardless of how noble the National Action Plan makes the government's intentions to reform appear, the question remains; does the government really have the political will to become a human rights observant state or is this just another ploy to distract the masses by giving them a glimmer of hope. We have heard these promises of action before and yet here we are in a system which, on a regular basis, goes out of the way to flout basic tenants of justice and the rule of law. The plan certainly questions the state's vested interest to ensure that it retains its GSP Plus status and that it is in line with its Global Goals (more particularly, Global Goal 16 which aims for peace, justice and strong institutions). Giving Chapter 1 of the Constitution of Pakistan a cursory read gives an ordinary citizen hope as to the plethora of rights they possess but the rule of day is far from it. The reality of the criminal justice system in Pakistan is currently predicated on protecting its national security interests which does not allow for any protection of fundamental rights or implementation of Global Goals. The laws contained within the anti-terror legislation and the Pakistan Protection Act has legally thrown the country back into the dark ages where the King reigned supreme and could do with its subjects as he willed.

There are innumerable examples of these loopholes in the law which glorifies the concept of human rights while simultaneously stripping citizens of all rights. So while the Constitution promises to protect its citizens from illegal detention and security of person, it legitimizes police detention on something as ill-defined as "sufficient cause" in the same breath. Now where "policing" in Pakistan was already marred with abuse of power, the Constitution has legalized this abuse without corresponding protections for the detained. Even if we look at something as simple as confessions before a police officer, which are generally inadmissible in court per Pakistan's laws of evidence, in practice they are admissible where they lead to a discovery, which gives the police the power to extract a confession using torture with indemnity.

What's worse is that because of inherent bias in the system, the burden of proof is inevitably on the defendant to prove his innocence. No longer are we in a system which upholds the notion of innocent until proven guilty. The guilt of the accused is already established and unless proven otherwise, it's off to the gallows.

These laws, rather than increase the security of the state have actively raised the likelihood of greater abuses by the government without giving the citizens any protection against it.

In fact, so determined is Pakistan to deprive its citizens of any protections whatsoever, that even after having ratified international conventions such as the International Covenant on Civil Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, there are no reporting mechanisms for citizens to pursue claims against the government or enforce the very rights these laws are ratified to protect. These conventions will not mean anything unless the government passes the relevant enabling legislation. They do, however, fall under the apparent ploys played by the government to appear to be upholding human rights in the public eye.

The inability to administer is further validated and recognized when the government and the Supreme Court give into military courts implying the system's own ineffectiveness and failure. These courts, which have been given a 2 year mandate, are a result of the 21st amendment. Proceedings conducted by these courts are held in secret, without transparency and with no way to gauge the measure of its success or failure. Moreover, there is no certainty that by the end of these two years the sunset clause will be invoked and these courts will be wrapped up. For the sake of argument, even if military courts are a short stop to give the regular criminal justice system a chance to be reformed, we need to measure the changes in the criminal justice system over the past year to see what headway we have made. However, if the laws that govern the criminal justice system are to be looked at i.e. the Pakistan Penal Code, The Criminal Procedural Code, Evidence Act, no material changes have been made. Over the course of the last year, Pakistan has lifted the moratorium on the death penalty and has executed over 350 individuals out of which only around 60 are under the Anti-Terror Legislation. When the state is exacting the ultimate punishment of death, it is under a much stricter obligation to ensure protection of human rights. Despite that and despite the promises under international law, Pakistan has knowingly executed juveniles and the mentally ill and by the looks of these trends, the government isn't planning on stopping anytime soon.

In order for Pakistan to even meet the minimum standard for protecting human rights, certain reforms need to take place with speed and aggression. More importantly, they need to focus on one of the biggest problems of the criminal jus-

tice system within the law; inconsistency. Simply looking back at inadmissible confessions before the police, neglectful practice has in fact led to police torture, proven to be counterproductive and has become the new unlawful norm of the police. Furthermore, new laws are continuously passed without repealing the old ones. According to Iqbal Haider, a former Law Minister, “Nobody in the law ministry or the judiciary can claim to know what the valid laws of the land are”, proving that this practice leads to contradiction, further inconsistency and results in there being multiple laws in the book.

Along with fundamental reforms in law making, protection should be provided to witnesses, prosecutors and judges when dealing with high profile cases. Substantial changes to the PPC, CRPC and the Evidence Act should be made to ensure respect of human rights along with effective execution of enabling legislation on Pakistan International obligations under the ICCPR and CAT.

Pakistan, at this point is nowhere near implementing the change it has envisioned in its National Action Plan and the government and the nation needs to realise that these reforms will not happen overnight but the state is responsible to identify and rectify this problem. Previously, the government has shown absolutely no political will in changing these laws; a small example of this is the anti-torture law the government has been trying to pass for over 2 years. With the National Action Plan, now is the time for the government to start scrutinizing the fundamental flaws within the law and start taking actual steps in attempting to reform the criminal justice system. Most importantly, these reforms need to be carried out in an effective and transparent way with a greater need to administer consistency. The last thing this country needs is more toothless reforms.

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