

PART 9: CRIMINAL COURTS

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

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PART 9: CRIMINAL COURTS

9.1 Introduction

Our ninth and final theme explores the final point in the NAP, reforms in the criminal courts system to facilitate better implementation of rule of law and speedier access to justice. One of the biggest criticisms of Pakistan's fight against terrorism is its inability to prosecute and convict terror suspects.^{1,2}

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 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. 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.

9.2.1 Pending Cases in Pakistan's Courts

Rate of conviction is thought to be the most significant performance indicator of any judicial system. Dr. Shoaib Suddle, while discussing the poor criminal judicial system of Pakistan told the Senate Committee on August 20, 2015 that conviction rate in Pakistan is only 10 percent and that too, through bribe and influence.

Any moderately complex civil suit takes 20 to 30 years to be resolved by the exhausting litigation system after numerous rounds of appeals, revisions and remands. There are around two million pending cases in Pakistani courts.³

Former judge of Supreme Court of Pakistan Justice (R) Nasir Zahid had likewise expressed once that the

¹ Staff Reporter. (2016, July 15). Criminal justice system: 'Conviction rate low as judicial system in need of reform'. Retrieved January 1, 2017, from, <<http://tribune.com.pk/story/1142622/criminal-justice-system-conviction-rate-low-judicial-system-need-reform/>>.

² Gul, I. (2016, May 17). Reforming the justice system. Retrieved January 1, 2017, from, <<http://tribune.com.pk/story/1105109/reforming-the-justice-system/>>.

³ Ahmad, S. (2016, December 20). Reforming Pakistan's criminal justice system. Retrieved January 1, 2017, from, <<http://www.dawn.com/news/1303096/reforming-pakistans-criminal-justice-system>>.

conviction rate in the Pakistan was less than 10 per cent.

Nonetheless, the Pakistan Institute of Legislative Development and Transparency (PILDAT) had referred to much higher conviction figures for Punjab and Sindh in its October, 2015, report.

As much as Rs. 1,149,766,000 were spent on salaries of the members of the prosecution services out of the budget of Rs. 1,215,078,000 (nearly 95%) of Punjab Prosecution Service. In 2014, Prosecution Service of Punjab dealt 712,888 and an average amount of 1,704 PKR was spent on them.

In 2014, the Courts cosigned 91, 261 on account of the fact that the accused had absconded and 121,937 were disposed off on account of lack of evidence. As many as 4,596 cases were disposed of in the 27 districts of Sindh. The number of convictions was 4,596 and the number of exonerations was 11,385. The number of cases still pending rests at 71,276.

One of the huge issues of criminal judicial system in Pakistan is pending court cases and insufficient number of court judges. On December 10, 2015, in a Full Court meeting Chief Justice Anwar Zaheer Jamali reflected on the issue disposal of cases in Supreme Court. During the period from October 4, 2015 to December 5, 2015, around 3,147 cases were decided against the institution of 2,603 cases, leaving 26,599 cases pending. It is one the daunting facts that only 2,400 judges have the task to clear 1.7 million pending cases in different courts of Pakistan.

In October 2015, it was revealed by the Chief Justice of Pakistan Justice Anwar Zaheer Jamali that there were 60 judges working in Lahore High Court, 40 in Sindh High Court, 11 in Balochistan High Court and 20 in Peshawar High Court and 7 in Islamabad High Court.

Other main causes of poor prosecution in Pakistan and hence the dismal conviction rates are: Absence of professional autonomy, poor training, lack of access to basic data, inadequate tools to investigate in the Police Department, delay in registration of FIRs due to the reluctance of police, totally ineffective witness protection mechanism, lack of initiative on the part of state prosecutors due to insufficient financial rewards, political appointments of blue-eyed police personnel and prosecutors, un-ending reliance on old conventional tactics and barbaric sources to investigate the crime and criminal reluctance in using scientific sources for probe etc.^{4,5}

9.3 Progress on Legal Reforms

This is the weak justice system of Pakistan that has allowed forming military courts instead of overhauling the whole criminal judicial system. On September 3, 2016, a sub-committee was set up to 'thoroughly consider the impediments in implementation and execution' of various points of National Action Plan.

This committee was assigned the task to thoroughly consider the obstacles in the implementation of

⁴ Shah, S. (2016, March 12). Poor prosecution plays havoc with judicial system. Retrieved January 2, 2017, from, <<https://www.thenews.com.pk/print/104661-Poor-prosecution-plays-havoc-with-judicial-system>>.

⁵ Staff Reporter. (2016, July 15). Criminal justice system: 'Conviction rate low as judicial system in need of reform'. Retrieved January 2, 2017, from, <<http://tribune.com.pk/story/1142622/criminal-justice-system-conviction-rate-low-judicial-system-need-reform/>>.

these points; NAP-1 (Execution of Convicted Terrorists), NAP-2 (Special Trial Courts) and NAP-20 (Revamping of Criminal Justice System).^{6,7} The fact that this committee was set up 21 months after the enactment of the NAP is indicative of the seriousness of the government's overall attitude towards legal reforms.

Further, at the time of the 21st amendment being passed, the government had committed to bring reforms in the criminal judicial system within two years so as to avoid military courts in future.

9.4 OPINION: National Action Plan

by Ahmer Bilal Soofi

Formulated in the aftermath of the blood-curdling attack on the Army Public School (APS), Peshawar, the primary objective of the National Action Plan (NAP) was to reassure the citizenry of the State's writ and to comprehensively eradicate the scourge of hydra-headed terrorism in Pakistan. To this end, the NAP has been a partial success, but crucially its implementation remains inchoate and stunted.

The military courts, envisioned under the NAP, and established via the 21st Amendment to the Constitution, have proved to be a viable short-term solution in bringing jet-black terrorists to justice as mandated by the United Nations Security Council (UNSC) Resolution 1373 (2001).

Given the horrendous nature and frequency of terrorist attacks against the State and citizenry of Pakistan by terrorist non-state actors, the military courts were an essential measure that was upheld by the Supreme Court under the law-of-war paradigm.

Notwithstanding their effectiveness and necessity in the short-term, the military courts, however, should not be mistaken for a long-term or permanent solution. For that, a holistic and specifically tailored reform of the criminal justice system is urgently required and should be prioritized by the State and its organs, including the judiciary, in order to strengthen the already existing criminal courts (under the Criminal Procedure Code and the Anti-Terrorism Act) as well as their procedures and build their capacity to efficiently and speedily deal with genuine cases of terrorism.

Despite the implementation of NAP somewhat stymied by the structural constitutional impediments imposed by the 18th Amendment to the Constitution, the Karachi operation has largely been meeting its objectives by significantly reducing violent crime and terrorism in the city and restoring its economic activity. Additionally, intelligence-based combing operations carried out under NAP in urban areas and other parts of Pakistan have tactically proven to be extremely successful in eradicating terrorism and its threats. Moving forward, such operations should continue. Moreover, to further harmonize the implementation of NAP between the Federal and provincial governments, the existing provincial Apex Committees should be strengthened.

The NAP has had its fair share of criticism as well, which, moving forward, should provide a constructive

⁶ Staff Reporter. (2016, September 04). Sub-committee to consider NAP impediments. Retrieved January 3, 2017, from, <<http://nation.com.pk/national/04-Sep-2016/sub-committee-to-consider-nap-impediments>>.

⁷ Abbasi, A. (2016, October 05). Criminal justice system to be overhauled. Retrieved January 3, 2017, from, <<https://www.thenews.com.pk/print/155038-Criminal-justice-system-to-be-overhauled>>.

basis for a much fuller implementation of its 20 points. Much of the criticism of these points is that they are lacking and are not as extensive as one might expect from a document of this nature. For instance, it fails to provide timelines, guidelines or mechanisms for the measurable implementation of these points.

The goal now should be to take the NAP forward by focusing not just on its tactical goals but also the strategic ones. In this regard, the State should work on developing a Countering Violent Extremism (CVE) framework to de-radicalize terrorists and re-integrate them into the society. Where the NAP calls for the registration of all religious seminaries across Pakistan, the same could be used to help standardize the curriculum of these madrassas and bring it in line with the State of Pakistan's ideology and its international law obligations. Further, Federally Administered Tribal Areas (FATA) Reforms and the repatriation of internally displaced people should be expedited to fully uproot the menace of terrorism.