



A CRITICAL ANALYSIS OF THE CRIMINAL JUSTICE SYSTEM IN PAKISTAN

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Abstract

The criminal justice system (CJS) consists of government institutions tasked with prosecuting and convicting offenders. The CJS comprises several interconnected pillars: law enforcement agencies, forensic services, the judicial system, and prisons. These pillars are erected to uphold the legal justice ideas. Legal justice is achieved by balancing the rights of an individual with the government's obligation to safeguard and defend those rights, i.e., a concept referred to as 'due process. These fundamental rights cannot be granted or preserved alone without the unwavering devotion of CJ professionals. Pakistan is ranked 130th out of 139 nations examined on their compliance with the rule of law. Pakistan had 319 terrorism-related events in 2020, resulting in 169 civilian fatalities. Pakistan's inefficient CJS has grave implications for internal, regional, and international security.

Keywords: Criminal Justice System, Lacunae, Obstacles, Pakistan, UNODC



Introduction

Any crime constitutes an affront to the rule of law (Greene & Lepore, 2021). Preventing offenses is taking measures to mitigate the likelihood of crimes that happen and their associated negative consequences for individuals and society, particularly crime and violence, by resolving their numerous causes (Lopez & Pasko, 2021; Siegel, 2017). The CJS seeks to address the societal repercussions of illegal behavior to safeguard human rights and people's right to safety (Waldron et al., 2017). It is primarily concerned with the behavior of the prosecution, courts, and police in criminal processes and with issues like access to justice counsel, prisons and alternates to incarceration, restorative justice, victim protection, and reparation (Chan & Adjorlolo, 2021). Access to prompt and affordable justice is an internationally recognized human right (UNODC, 2021).

The CJS is a web of government agencies entrusted with prosecuting and convicting criminals (Miller, 2021). The CJS comprises several interconnected pillars: prisons, judiciary, forensic services, and law enforcement. These pillars are erected to uphold the legal justice ideas (Siegel, 2017). Legal justice is accomplished by balancing an individual's rights and the government's commitment to defend and protect these rights - a notion known as 'due process.' Without the continuous commitment of CJ professionals, these constitutional freedoms cannot be provided or safeguarded (Lansdell et al., 2021).

Consequently, they must conform to the justice system's ethical standards and maintain a constant degree of character integrity. It is accomplished by applying a genuine professional code of ethics that displays competence, reliability, accountability, and overall trustworthiness (Kantorowicz-Reznichenko & Faure, 2021).

Pakistan is ranked 130th out of 139 nations analyzed by the World Justice Project regarding "adherence to the rule of law." Regrettably, Afghanistan was the only country in the area to rank worse than Pakistan. Similarly, Pakistan's CJ and civil justice systems were placed fourth among the region's six reviewed nations (Abbasi, 2021; Ahmad, 2021). Even the Prime Minister admitted that CJS reforms in Pakistan are his top priority (Raza, 2021). Pakistan's inefficient CJS has grave implications for internal, regional, and international security (Dawn, 2021a).

According to the South Asia Terrorism Portal in 2020, the Islamic Republic of Pakistan experienced 319 terrorism-related events, resulting in 169 civilian fatalities. In Pakistan's absence of a comprehensive systematic response to counter-terrorism, one must consult international information from comparable countries (Adil, 2021).



Rethinking enforcement and regulatory methods against extremism are critical, as the current default strategy is criminal prosecution (Business Recorder, 2021).

Pakistan's CJS is unsuccessful due to its length, cost, obsolescence, tardiness, and lack of deterrence effectiveness. All extremist organizations use the CJS's flaws as a rallying cry for public support (Ali, 2021). The CJS's failure has historically resulted in sympathy for radical religious forces. Contrary to enlightened folks, most people support the radicals' vision of swift justice (Ali, 2015).

Reforming Pakistan's CJS has become an urgent imperative in the face of an impending tsunami of all types of extremism (Dawn, 2021b). It must be elevated to the top of the government's priority list. To accomplish this purpose, one must address the shortcomings of the police, prosecution, jail system, and courts or face the fury of an extremist-influenced populace (Javed, 2021).

Significant amendments to Pakistan's criminal and civil laws may be considered immediately. While guaranteeing justice, it is crucial to prioritize outcome above burdensome procedural niceties to modernize the respective system, which is also a vital component of the National Action Plan. Pakistan's inefficient CJS has grave implications for internal, regional, and international security (Jamshed, 2021).

Pakistan's poor conviction rate, believed to be between 5% and 10% at most, is understandable in a system where investigators lack access to essential data and investigation tools and are also undertrained (Tariq, 2020). Such prosecutors are unable to participate meaningfully in investigations. Militants and other high-profile offenders are often freed on bond, or their cases drag on for years while they plot operations from prison. Terrorism proceedings, too, result in a small number of convictions (Ali, 2021).

Corruption, intimidation, and foreign meddling in trials, especially by military intelligence services, jeopardize cases long before they reach the courtroom in many developing countries (Patterson & Graham, 2018b). Due to the lack of scientific evidence collecting procedures (Patterson & Graham, 2018a), and reputable witness protection programs, police and prosecutors can rely heavily on inadmissible confessions from the accused (Gawrylowicz & Bartlett, 2021).

Justification of the Research

Knowledge is seldom celebrated in a country like Pakistan. It is especially true in several disciplines of study that directly impact the lives of the general people. The



existing content usually focuses on reforms without even clearly defining the system or its operation correctly. The justice system suffers from a severe information deficit. A decent place to start is a review of Pakistan's CJS system, which the following article will aim to do.

Research Methodology

A systematic review method was used to conduct this research. This technique establishes the research objectives and thoroughly examines the subject's literature (Komba & Lwoga, 2020). The research conclusions are categorized according to the subject's substance (Petticrew & Roberts, 2006). The study incorporates classified data by categorizing it into topics (Pawson et al., 2005). The study's flow is determined by evaluating classified material and titles (Rahi, 2017). Thus, integrity is assured by comparing the research subject to its contents (Victor, 2008).

1973 Constitution and Judicature

A country's constitution establishes its real organs, including the legislative, executive, and judiciary. Pakistan's 1973 Constitution, like its primary constitutional documents, establishes the three organs. As a Federation, Pakistan's Constitution establishes executive, legislative, and judicial branches at the federal and provincial levels (The Constitution of the Islamic Republic of Pakistan, 1973). It is critical to distinguish the terms judicature and judiciary; while judicature relates to the administration of justice, judiciary refers to a country's court system (Britannica, 2021).

Judicature and the CJS of Pakistan

Pakistan's Constitution (Article 175, The Islamic Republic of Pakistan's Constitution, 1973) provides for the separation of the judiciary and the executive, albeit this constitutional obligation has not yet been implemented. The traditionally dominant administration has remained critical to power by controlling the money and keeping the periphery of the legislative and judiciary. Since 2007, the judiciary has gained some space by enforcing Fundamental Rights through the use of suo motu powers (Article 184(3) of the Islamic Republic of Pakistan's 1973 Constitution) in conjunction with the authority to punish contempt or non-compliance with its orders (Article 204 of the Islamic Republic of Pakistan's 1973 Constitution); the legislature has been unable to assert its authority through conventions, privileges, and rules, as well as due to its partisan nature.



The constitution created constitutional courts, including the Supreme Court, the High Courts, and the Federal Shariat Court, and defined the jurisdiction of multiple courts over constitutional, civil, criminal, and administrative matters. The combined understanding of the federal and provincial legislatures' competence, the constitutional courts' powers, and fundamental rights (Articles 8, 9, 10, 10-A, 11, 12, and 13 of Pakistan's 1973 Constitution) establish the constitutional foundation for Pakistan's CJS.

The Role of Federal and Provincial Governments

The federation's function is concurrent with the provinces (Articles 142 and 143 of Pakistan's 1973 Constitution) and includes federally administered territories, such as the Azad Jammu & Kashmir, Gilgit Baltistan, and Islamabad Capital Territory (IC). The Constitution mandates the provinces to preserve law and order, which they accomplish through provincial governments. The CJS is administered by the individual provinces' Home and Prosecution Departments. Additionally, the Federal government is responsible for inter-provincial coordination on criminal cases, which it accomplishes through the Interior.

Additionally, the Federal government oversees the Federal Investigation Agency, which serves as a federal police agency responsible for investigating and prosecuting organized crime, such as illegal immigration, human trafficking, and cybercrime. The federal and provincial governments manage the CJS through separate business rules; this balancing of primary and delegated laws is a vital process that must be extensively explored before making any CJ governance system improvements.

Components of the CJS in Pakistan

Criminology studies crimes, whereas CJ studies the entities that governors respond to crime (Siegel, 2017). The United States has a history of producing CJ professionals and offers a variety of academic programs (Pittaro, 2021). Pakistan's CJS, according to US educational practice, can be bifurcated into the following sections: (i) police; (ii) prosecution; (iii) courts; and (iv) prisons and corrections. These sections have their responsibilities, organizational structure, budget, operating processes, and legal framework. The Home Department administers a conventional provincial CJS, which is aided by the police and prisons. Each component has been briefly described below.

1. Police

A police force is an organization charged with detecting and preventing crimes while policing is the act of detecting and preventing crime (Oxford Handbook of



Criminology, 2021). Each province has its police force in Pakistan, such as the Sindh Police, Punjab Police, Balochistan Police, and KPK Police.

Pakistan has over half a million police personnel in total. Each province has its own set of legislation that regulates its administration. The Police Order, 2002 govern Punjab Police; Sindh Police is governed by the Sindh (Repeal of the Police Act, 1861 and Revival of the Police Order, 2002) (Amendment) Act, 2019; Khyber Pakhtunkhwa Police is governed by the Khyber Pakhtunkhwa Police Act, 2017; and The Balochistan Police Act, 2011 govern Balochistan Policy.

The 1898 Code of Criminal Procedure provides the policing powers from which all police agencies derive their authority. By providing a legal foundation for investigations and enforcement, the legal framework of policing bolsters the detection model of policing; it also offers police organizations minor preventative powers.

2. Prosecution

The prosecution's role is to analyze police evidence and to limit the number and quality of prosecutions. It was previously affiliated with police organizations, following the United Kingdom's lead in establishing the Crown Prosecution Service in 1986. In 1986, the prosecution was separated from police groups; this separation was restored in 1991. After 2003, every of Pakistan's provinces has had its prosecution department. These departments have provincial legislation that regulates their organization and operations.

Punjab Prosecution Department was founded in 2006 under the Punjab Criminal Prosecution Service (Constitution, Functions, and Powers) Act, 2006. Sindh Prosecution Service is an affiliated department of the Sindh Law Department. It is governed by the Sindh Criminal Prosecution Service (Constitution, Functions, and Powers) Act, 2010.

The Khyber Pakhtunkhwa Prosecution Service (Constitution, Functions, and Powers) Act 2005 and the Balochistan Prosecution Service (Constitution, Functions, and Powers) Act 2003 create prosecution institutions in the Khyber Pakhtunkhwa and Balochistan.

3. Courts

Magistrates and sessions courts adjudicate criminal cases. Unlike constitutional courts, which are created by the Constitution and have binding authority over the government, magistrates and sessions courts are creations of the 1898 Code of Criminal Procedure and are simply concerned with factual findings.



Magistrates are responsible for many police stations, and their job is just as critical as that of the police stations. Due to their relevance, Mr. Asif Saeed Khosa, Pakistan's previous Chief Justice, referred to the police and courts as 'conjoined twins.' Criminal judgments are rendered by courts based on the outcomes of fair trials conducted in conformity with the law. In every district, magistrate courts and additional sessions are accessible at the tehsil/taluka level.

Courts are inherently adversarial. According to the Constitution, all people charged with a crime must appear before them within twenty-four hours (Article 10). Charges must be established beyond a reasonable doubt, and defendants are presumed innocent until and unless proved guilty.

4. Prisons and Corrections

Prisons are a branch of the provinces' departments of home affairs. Maintaining a prison system centered on incarceration is too expensive in any economy. Globally, the trend is toward decriminalization. While each district should theoretically have a district prison and each division a central prison, district and central jails have not been relatively dispersed across the country.

Prisons are built and operated in all provinces except Sindh, where the Sindh Prisons and Correctional Services Act, 2019, was just enacted. Correctional facilities are also incorporated in Pakistan's jail systems to prepare criminals for reintegration into society upon their release. Regrettably, the correctional system's achievements are restricted due to a lack of investment, and prisons have effectively swallowed its facilities.

The Home Department created the Directorates of Parole and Probation in 1927 to provide alternatives to imprisonment. Following independence, comparable directorates were formed inside each province's Home Department. To be thorough and in light of Pakistan's context, it is vital to define three critical ideas associated with rehabilitation and reintegration:

4.1 Corrections: "...services and programs aimed at rehabilitating and reintegrating convicts into society" (Section 4(1), Sindh Prisons and Corrections Services Act, 2019).

4.2 Suspension: The term "probation" is originated from two pieces of legislation: the 1926 Good Conduct Probationer's Release Act and the 1960 Probation of Offenders Ordinance. Probation is a concept in which the court may release first-time offenders on surety. Probation may be used instead of imprisonment.



4.3 Parole: The term "parole" is not defined in the Act. The Good Conduct Probationer's Release Rules, 1927, about the Parole Officers who supervise offenders on 'parole.' The concept is that provincial governments may postpone a prisoner's sentence and conditionally release him if he maintains good behavior.

‘The Rule of Law in Pakistan’ by World Justice Project

The World Justice Project is an autonomous, interdisciplinary organization dedicated to promoting the worldwide rule of law via information development, public sensitization, and active engagement. In 2017, face-to-face interviews with 2,010 inhabitants were performed in 2,010 residences split proportionately throughout five metropolitan districts: Quetta, Peshawar, Lahore, Karachi, and Faisalabad.

This survey was conducted for the WJP Rule of Law Index to elicit information regarding ordinary individuals' views and perceptions on various topics relating to government integrity, corruption and bribery, criminality, and equal protection under the law.

The WJP used the same technique to perform a supplemental Justice Sector Survey of 2,010 homes to understand justice issues better. The purpose of this survey is to elicit respondents' experiences and perspectives regarding resolving disputes, civic participation, legal identity, family dynamics, and gender problems.

Unlike the WJP's flagship Rule of Law Index, which shows the aggregated rule of law scores, this report delivers disaggregated question-level data in the form of 12 themed briefs that emphasize various aspects of Pakistan's rule of law seen by its population. These writings address themes of accountability, injustice, fundamental rights, criminal justice, civil equality, and the perspectives of women, internally displaced people, and refugees. These briefs provide an outline of Pakistan's rule of law and justice system and can be used to understand the state better as it manifests itself in the daily lives of its residents.

Significant Discoveries

1. Bribery Victimization: In Pakistan, petty bribery is prevalent. Over half of the population have bribed to obtain police help, and 25% reportedly accepted bribes for government licenses to be processed more quickly. Since 2013, bribes paid to police



officers for getting government licenses and receiving medical care at a public hospital have decreased significantly.

2. Views of Government Accountability: While Pakistan enjoys a high degree of impunity, views on government accountability differ considerably by city. Lahore residents are the most positive about government transparency, while Quetta residents are the most negative.

3. Institutional Corruption: Most Pakistanis feel that a sizable portion of the government is dishonest. According to respondents, the most corrupt authority figure is a police officer, whereas judges are the least dishonest.

4. Victimization of Crime: In Pakistan, criminality varies according to the type of crime and the city. In Karachi, armed robbery is more prevalent. Burglary is more prevalent in Peshawar, and murder rates range between 1% and 3% in all five cities. Since 2016, the average rate of all three violations has declined.

5. Fundamental Freedoms: Pakistanis place a low premium on political and media freedoms but a high premium on religious freedoms. Since 2016, the country's popular opinions of religious liberty, media, and political parties have improved.

6. Access to Civil Justice: Most responses (82 percent) stated that they had encountered legal difficulties in the preceding two years, with the most often cited issues being community and natural resources, consumer problems, and public services. Only 14% of individuals seek the aid of a government or third party to negotiate, arbitrate, or assist in resolving the disagreement. Almost half reported experiencing difficulties due to their legal situation, with stress-related disorders being most often indicated.

7. CJ: Ineptitude of investigators was seen as one of the most significant difficulties confronting Pakistan's criminal investigative agencies, while resource constraints were identified as the most critical task confronting criminal courts. In past years, popular perceptions of police corruption and concern for detainees' privileges have shifted.

8. Women in Pakistani Society: While men and women have similar views on women's rights regarding divorce and conflict resolution, the perception of inheritance and family dynamics grows.

9. Awareness of the Law: Pakistanis possess a rudimentary awareness of the law. The majority of respondents provided accurate information on children's legal rights.



10. Refugees in Pakistan: Attitudes about refugees vary by problem and city in Pakistan. According to the majority of respondents, refugees should enjoy the same rights as Pakistani citizens enjoy. When questioned about the gravity of many refugee-related problems, the overwhelming majority of respondents reported that refugees spreading instability and radicalism to Pakistan was a significant problem. Fewer than half of respondents feel police personnel treat immigrants and citizens fairly.

11. Trust in Pakistan: Pakistanis place a premium on civic trust. Pakistanis have the most faith in the court and the least in the police; nevertheless, trust in the police has significantly increased during the last four years.

12. Internally Displaced Persons: In Pakistan, internally displaced persons differ according to issue and city. On average, less than 50% of Pakistanis feel IDPs are acceptable in their respective neighborhoods, and more than two-thirds think that the government is not doing enough to assist IDPs. Faisalabad has by far the most favorable attitudes, while Quetta has the most unfriendly.

UNODC's role in Pakistan's CJS and Legal Reforms

According to the UNODC (2021a; 2021b), a functioning CJS is necessary to establish the rule of law, which underpins accountability mechanisms, civil liberties, and political rights, thus safeguards all citizens' right to equality before the law. Sub-Program II (SPII) aims to bolster Pakistan's CJS by assisting with police reform and process improvement, strengthening prosecution and judiciary services, and addressing barriers to prison management reform and alternatives to imprisonment, all while respecting cross-cutting areas of vulnerable group human rights protection.

Additionally, SPII assists the Pakistani government in strengthening accountability and openness in the judicial system by preventing and combating corruption. SPII's main areas are as follows:

1. 1. Awareness-raising, the public on their rights under the CJS, building on the previous Country Programme's achievements.
2. Improved coordination and collaboration among CJ stakeholders.
3. Personal, institutional, and training academies capacity building on a targeted basis.
4. Align all law enforcement organizations in the CJ chain's regulatory and legislative structures with worldwide rules and codes.

Deliverables of the Program



SPII is devoted to aiding the Pakistani government in developing a secure, safe, and prosperous society in which all individuals' rights are protected and upheld via a fair, efficient, and responsive CJS. Simultaneously, SPII works with the government to foster an open and accountable culture throughout its institutions and agencies, with a zero-tolerance policy for corruption. SPII's comprehensive approach supports Pakistan's Vision 2025, ultimately assisting in achieving SDG 16 on peace, justice, and institutions.

Limitations of the Study

Limitations of the study include its nature, i.e., only qualitative. The problem's qualitative components could be looked into through in-depth interviews or focus group discussions with the respective groups, i.e., police, prosecutors, judges, correctional and prison-related personnel in national (i.e., Pakistani) and the international context. Further, after data collection, statistical analysis can be performed, but that remains outside the study's domain at the moment.

Conclusion

Knowledge is seldom celebrated in a country like Pakistan. It is especially true in several disciplines of study that directly impact the lives of the general people. The existing content focuses on reform or improvement without defining the system or its operation correctly. The justice industry suffers from a severe information deficit. Throughout the legal procedure, witnesses are summoned to testify on each day of the hearing. Finally, the trouble, price, and stress associated with court appearances dissuade most of them from attending the proceedings. Even if they do, some are swayed or bullied into cooperation. Some witnesses introduced to the case during the inquiry stage as a form of 'padding' do not present.

These barriers result in widespread acquittals of the perpetrators as they reach the third year of their sentence as undertrial inmates, the brutal criminals involved in a terrible robbery, and dacoity successfully obtain dismissal of the charges brought against them by the court. Typically, police and prosecutors pursue such cases forcefully. To avoid a formal trial, the defending attorneys convince the accused to plead guilty. As a result, courts typically impose a three-year or slightly longer sentence of harsh imprisonment.

The time spent in judicial custody as an undertrial prisoner up to that point is considered in place of the sentence, and the day of the verdict effectively becomes the day of the criminal's liberation. They are freed the same day, only to revert to their old habits with new groups and the advantage of contacts formed during the pre-trial phase with criminals. Concurrent application of sentences provides additional benefit to



defendants convicted in many crimes. As a result, seasoned criminals never spend time in jail as convicted felons, where the sting of punishment is felt.

Recommendations

1. Police registering FIRs and amending legislation to incorporate FIRs should not be used to justify arresting any accused. Arrests may be made according to court-issued warrants based on the evaluation of police evidence.
2. To make all offenses cognizable and to erase the difference between cognizable and non-cognizable offenses.
3. The ordinance of Qanoon-e-Shahadat should be amended to make confessions before a police official acceptable proof. Giving indirect evidence a higher weight than eyewitness testimony.
4. The Deputy Commissioners and Chief Secretary should conduct a monthly progress review on a district and provincial level to assess the operation of CJ components.
5. It cannot be overstated how critical it is for police stations to maintain digital records of all FIRs. Citizens must have a system for checking the progress of their FIRs and reporting carelessness to the proper authorities. Online computerization of FIRs, criminal investigations, and court procedures, i.e., in conjunction with prison authorities ensuring effective coordination, would increase transparency and minimize delays.
6. It is required to establish infrastructure at both the police station and trial court level.
7. All provincial High Courts and local courts should be held liable to the state for their effectiveness, as the judicial system frequently misappropriates the term 'judicial independence' to disparage other public institutions for personal enrichment and egotistical pleasure. Considering that citizens support the judiciary, it ought to be accountable to the public and state, both outside and internally, via impartial processes and controls checks.
8. The presence of defense and prosecution eyewitnesses must be ensured, and the method of delivering them digitally should be upgraded by developing a system for recording their statements in one session.
9. Investigations should be costed realistically and appropriately funded.
10. Increased human resources, particularly investigators and judicial officials, are required to conduct prosecutions more efficiently and reduce current lawsuits.
11. Continuous empowerment and substantial expansion of correctional, judicial, and police personnel are critical to ensuring the course of justice and the prompt and successful resolution of prosecutions.
12. To alleviate the strain on existing prisons, separate jails for the convicted and pre-trial offenders should be constructed, and a more organized probation/parole system.



13. Multimedia must be promoted to save time & expense by reducing the requirement for the accused to be physically transported from the police precinct or prison to trial.



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