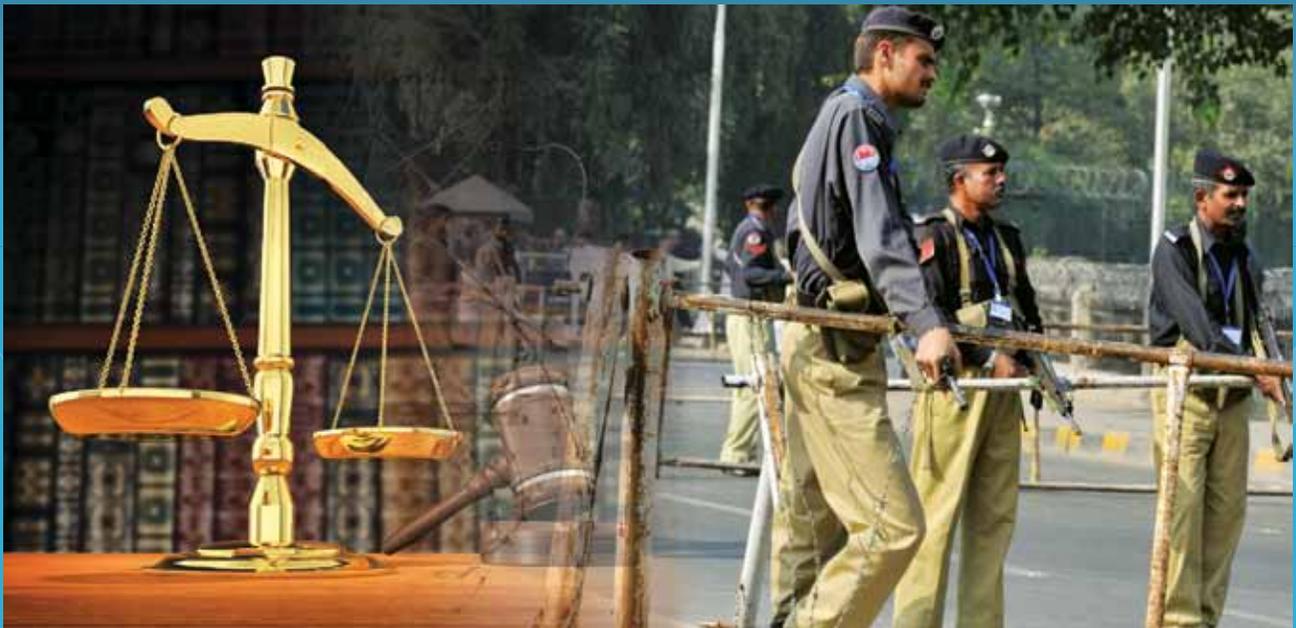


# Anti-Terror Laws, Policing and the Criminal Justice System: A Case Study of Anti Terrorist Efforts in Punjab



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CENTRE FOR PUBLIC POLICY  
AND GOVERNANCE



FORMAN CHRISTIAN COLLEGE  
(A CHARTERED UNIVERSITY)



# Anti-Terror Laws, Policing and the Criminal Justice System:

## Anti Terrorist Efforts in Punjab

by Rabia Chaudhry

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## Foreword

Among the developing countries, a number of states have been struggling to make transition to democracy and in the process they are constantly torn between maintaining political order, upholding rule of law and guaranteeing citizen security. In this phase of democratic transition, what could be some of the best ways to improve governance, curb terrorism and violence, restore law and order, and ensure security of the citizens? Leaders and policy makers have chosen several paths; to list a few: dismantling authoritarian regimes, constraining the political role of military, pursuing civil services and police reforms. The outcomes have been varied and there is considerable literature that contends that reforming 'Core Policing' holds the key for successful transition to democracy.

There is growing realization that Pakistan and particularly Punjab needs serious and systematic police reform. The deteriorating law and order situation; rise in the size and scale of extremism, escalation in violence, professional incompetence and poor investigative skills of the police, has drawn the attention of policy makers and policy analysts to focus on improving the working of the police. The Asia Society Report on 'Stabilizing Pakistan through Police Reform', edited by Hassan Abbas is an excellent example that brings to attention the various facets of policing in Pakistan that demand immediate and urgent reform. However, despite several innovative and practical recommendations, the report primarily focuses on the police in Pakistan.

The current study *'Anti-Terror laws, Policing and the Criminal Justice System: A Case Study of Anti-Terrorist Efforts in Punjab'*, while building on the insights from the Asia Society Report, departs by making a case for developing linkages amongst the criminal justice system, prosecution and police reform. This research study provides an in-depth analysis of the issues confronting the malfunctioning of the police in the country, particularly in the Punjab province, and argues that police reform without reforming criminal justice system would be an exercise in futility. It calls for a comprehensive reform of the entire policing system. It is in this context that the study examines several of the recent anti-terror laws and points out that the criminal justice system is not fully equipped to enforce these laws. Additionally, the police do not possess the investigative skills and equipment to curb and combat terrorists - who are hardened criminals and have access to sophisticated equipment and terror techniques.

The study records and identifies serious gaps and lack of coordination among the working of the police, prosecution and the criminal justice system. It forcefully argues that the edifice of police reform, particularly in the Punjab, must be built on changing the DNA of the criminal justice system. It underscores that law and order is primarily a provincial subject. Therefore, enhancing the capacity of the criminal justice system, police and prosecution must be done in conjunction with each other, with the aim of welfare and protection of the citizens. Deducing from its findings, the study claims that serious reform in the criminal justice system would not only curb violence but also help in strengthening anti-terrorism measures in Punjab. In continuation of this spirit, the study proposes that the Punjab government needs to develop an effective coordination among intelligence agencies to establish supremacy of civilian control. This would also facilitate in developing an effective counter-terrorism department at the provincial level. The study postulates that changing the structure of the criminal justice system in Punjab could pave the way for other provinces to adopt the Punjab police reform model.

The research for this study was completed after almost a year's hard work by a team of two researchers. The USAID financial and technical support helped the CPPG in enhancing its Think

Tank capability by establishing the Forman Christian College Public Policy Research and Resource Centre. This study on *'Anti-Terror laws, Policing and the Criminal Justice System: A Case Study of Anti-Terrorist Efforts in Punjab'* was initiated through this program and is the third study that is completed through USAID's Ambassador's Small Grants Project. We remain deeply appreciative of this support.

Besides our internal faculty review team, I am indebted to two anonymous reviewers for their invaluable comments, which have enormously helped the author in improving the quality and content of this study. We do hope that besides scholars, policy analysts and civil society activists, the Government of Punjab would find some of the recommendations of the study helpful in devising its anti-terrorism campaign and counter-terrorism policy.

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## List of Acronyms

ATA	Anti Terrorism Act, 1997
ATC	Anti Terrorism Court[s]
ANP	Awami National Party
CrPC	Code of Criminal Procedure, 1889
FIR	First Information Report
FSF	Federal Security Force
IO	Investigation Officer
ISI	Inter Services Intelligence
JIT	Joint Investigation Team
NACTA	National Counter Terrorism Authority
PPC	Pakistan Penal Code, 1860
PPO	Protection of Pakistan Ordinance, 2013
PRODA	Public Representative Offices (Disqualification) Act, 1949
PSP	Police Service of Pakistan
PTI	Pakistan Tehreek-e-Insaf
QSO	Qanun-e-Shahadat Ordinance, 1984
SHO	Station House Officer

## Executive Summary

1. This research study explores the linkages and connections among policing, prosecution and the criminal justice system, with a special focus on Punjab. The study reveals that there is a growing awareness and recognition that terrorism has indigenous roots and the policy makers need to develop an institutional and societal response to combat and curb it.
2. In the year 2013, a total of 1,717 terrorist attacks occurred across Pakistan in which, 2,451 were killed and 5,438 injured. In Punjab alone, the year saw over a hundred terrorism-related casualties. In fact, despite the benefit of the newly promulgated anti-terrorism legislation, there were 34 deaths from suicide attacks alone in the first two months of 2014. Conversely, conviction rates for the said time remain abysmally low. It is observed that both the federal as well as the provincial policymakers are still struggling to devise a comprehensive and consensus-based anti-terrorism policy.
3. The study draws a direct correlation between a weak criminal justice system and low conviction rates for terrorist offences. A weak criminal justice system translates into low convictions for terrorists, as is currently the case. Low conviction rates in terrorism cases in turn erode the citizen's confidence in the state, which, in many ways, becomes the root cause of terrorism. Rule of law and internal security are weakened, thereby creating a social environment conducive to the flourishing of terrorism. Yet, successful conviction of a terrorist is as much a function police investigation as of prosecution and judiciary. Relying on literature on the subject and anecdotal evidence, this study suggests reform to the criminal justice system at both the federal as well as the provincial level.
4. The study makes a case for greater coordination between all federal intelligence agencies. At the federal level, it emphasizes on the recognition of the National Counter Terrorism Authority (NACTA) as the key civilian institution responsible for coordination between the federation and the provincial stakeholders dealing with terrorism. But most importantly, it underscores that combating/countering terrorism, the world over, is the responsibility/jurisdiction of the civilian law enforcement and security agencies and therefore federal agencies and the Punjab Police need improved coordination to combat the menace.
5. Policy makers and analysts have, over the years, displayed a tendency to equate police reform with eradicating the current *Thana* Culture. Thus, all reformatory measures have displayed an almost teleological targeting of the Police Station itself, be it in the form of Model Police Stations, E-Stations or the question of salaries. This study, while recognising the importance of these measures, highlights that the emphasis on police reform by only reforming the *Thana* culture is misplaced. For example, the entire edifice of terrorist case – or any other criminal case for that matter – is constructed on investigation. Yet, one is hard put to point out any substantive measures taken to improve this most important aspect of policing.
6. This study conclusively claims that police reform without changing the criminal justice system would remain inconclusive and partial. That is why various police reforms attempted so far have had limited impact in organising an effective anti-terrorism campaign in Punjab. Salvation lies in a comprehensive review, reform and resurrection of the criminal justice system and police in Punjab in earnest and with urgency.

## Introduction

Over the past year or so there has been a spate of activity pertaining to, what can loosely be defined as, a “*de facto* campaign against terrorism”. The Anti Terrorism Act, 1997 (the ATA), for instance, underwent a series of amendments. Subsequently, two complimentary laws were [also] promulgated which sought to address a set of concerns that could be described as anti-terrorists efforts. For instance, the Fair Trial Act, 2013 (the Fair Trial Act), allowed for collection of evidence gathered through surveillance of persons suspected to be involved in terrorist activities or through their mobile phone based communication. Similarly, the Protection of Pakistan Ordinance, 2014 (the PPO) provided for reversing the onus of proof by attaching presumption of guilt to anyone accused of waging war against Pakistan.<sup>1</sup> Finally, in October 2013, the Punjab Government proposed the establishment of the Counter Terrorism Force to replace the current Counter Terrorism Department.

These measures, as well as many similar laws, shall be discussed in detail in the subsequent chapters. These laws introduced substantive as well as procedural changes in the national security laws. Ironically, all these legal improvisations sidestepped the existing criminal justice system. In such a situation, could any anti-terrorism campaign be built in isolation from the prevalent criminal system? This is a legal and institutional constraint and must take into cognizance that the laws like the ATA or the Fair Trial Act etc. are special laws; their successful execution is dependent on the procedures prescribed by the criminal justice system.<sup>2</sup>

As a result, despite constant increment in specialised legislation, incidents of terrorism and the resultant loss of life – both civilian as well as that of security personnel – saw a steady increase. As per *Pakistan Security Report, 2013* compiled by Pakistan Institute for Peace Studies, the year witnessed 9 percent increase in the number of reported attacks with 19 percent increase in the numbers killed and 42 percent raise in those injured.<sup>3</sup> In Punjab alone, the year saw over a hundred terrorism-related casualties.<sup>4</sup> In fact, despite the benefit of newly promulgated anti-terrorism legislation, there have been 34 deaths from suicide attacks alone in the first two months of 2014.<sup>5</sup>

This study raises three sets of questions. First, does the key to curbing terrorism lie in continued promulgation of specialised laws that operate outside the existing criminal laws? Second, without the rejuvenation of the criminal justice system, could anti-terrorism laws legitimately be expected to deliver? Third, could a comprehensive counter-terrorism strategy play a role in equipping the criminal justice system to perform the function of an indispensable tool of anti-terrorist efforts in Punjab? These questions shall be explored and addressed in the context of Punjab.

Historically and constitutionally, law and order has always been a provincial matter.<sup>6</sup> The 18th Constitutional Amendment, 2010 (hereinafter, the “18th Amendment”) reified this position by abolishing the Concurrent List, thereby devolving control of the police, the chief civilian law enforcement institution, to the respective provinces.

However, while all subjects from the Concurrent List have been transferred to the provinces, both the national and provincial legislatures still share the authority to legislate on matters pertaining to Criminal Law, Criminal Procedural and Evidence; notwithstanding the devolution of Security (i.e. Police). Given that terrorism is a national concern and almost all existing legislation on the subject, with minor exceptions, is designed and framed at the federal level, it remains to be seen

how these laws will be implemented on a provincial level.

Given these considerations, we have juxtaposed the existing body of anti-terrorism laws against the prevalent criminal justice system. While examining the federal laws, we will particularly focus on Punjab with regard to policing and criminal justice system.

This study is cognizant of three realities: first, that there is a segment of policy makers, analysts and practitioners who envisage a greater role of military in dealing with terrorism or devising a counter-terrorism policy. Second, there is a need to retain balance between the anti-terror laws and protection of civil liberties. Third, anti-terror laws regime invariably either enhances or gives more discretionary powers to law-enforcing agencies, thus relegating substantive rights and established norms of criminal procedure.

Besides a wide-ranging review of literature, the author interviewed officials of the police, prosecution and the prison departments. Prominent human rights and legal experts were also interviewed. The data was collected through extensive visits to police stations, prisons and the Punjab Forensic Laboratory in Lahore. The author solicited the views of specialised agencies, such as Inter-Services Intelligence (ISI) agency, through formal and informal interviews.

# I. Criminal Justice System, Crime and Terrorism

## **I. Criminal Justice System, Crime and Terrorism**

The criminal justice system of Pakistan categorises crime into non-violent and violent offences. Proceedings with respect to the former are fairly straightforward and therefore any latent shortcomings of the System are easily concealable. Take theft for example. More often than not there are no witnesses to the crime itself. Success [in such cases] is measured not by conviction, but by fulfilling the victim's chief concern i.e. recovery of the stolen items. So even if the perpetrator is identified solely by means of oral evidence, and the misappropriated property recovered through a combination of bribery, torture and other illegal means, questions pertaining to police ethics, poor investigative skills and defects in prosecution etc. never see the light of the day. As long as the stolen property is retrieved and restored, the case is a success. More often than not, the owners are not even interested in pursuing the case in court beyond this point.

On the other hand, violent offences like murder for instance, shed a completely different light on both the police and the criminal justice system. The stakes in such cases are inevitably higher, and reflect the inherent deficiencies of the System. Due to Police's incapacity to investigate, the entire case hinges upon the oral evidence collected over the course of the investigation. A number of practising criminal lawyers told us that almost all evidence in murder cases is fabricated at one stage or another. This naturally diminishes the sanctity of the evidence itself. Lack of concrete evidence leaves the judge in the compromising position of believing and disbelieving the very same statement/evidence. The System's consequent inability to deliver is reflected by the conviction rate of the country, which is estimated to be between 3 -5%.<sup>7</sup>

### ***Violent Crime, Pending Cases and Acquittal Rates***

Terrorism and terrorist acts, by their very nature, fall in the category of violent crime. The nature of the crime is such that makes evidence collection an uphill task and demands expertise. It cannot be fabricated because there are no identifiable suspects or witnesses. Poor investigative skills of the police and dearth of forensic facilities further erode the criminal justice system. In an attempt to assuage the powerlessness of the criminal justice system, terrorism cases are tried under the Anti Terrorism Courts created under the Anti Terrorism Act. This puts additional burden on the criminal justice system and impacts its ability to dispense justice. Without the benefit of a functional criminal justice system, speedier trials only translate into speedier acquittals.

### ***Investigation and Prosecution Pitfalls***

The incompetence and inadequacies of policing and criminal justice system become all the more worrisome as we examine the scale of pending cases, rates of acquittals and the number of adjudications done by the courts. Data available from two reports is both instructive and alarming. Between 1990 and 2009 the ATC Punjab adjudicated upon 311 cases out of which, 231 (74%) resulted in acquittals. According to another report for the year 2013, there were 1,015 cases pending before the Anti Terrorist Courts in Punjab (the ATC Punjab). Out of these, only 506 cases were adjudicated upon by the ATC Punjab. While 307 decisions led to acquittals, only 136 cases resulted in convictions. As per the data compiled by the Punjab Prosecution Department, a major proportion of these acquittals are attributable to witnesses resiling in court from their own statements recorded during investigation. In the remaining cases, the acquittals were prompted by lack

of evidence or poor investigation etc. on part of the police<sup>8</sup>.

Chief reasons extended by the ATCs for the said acquittals fell into three broad categories:

a) Defects in First Information Reports (FIRs): At the case registration stage, these were caused by factors like there were no eyewitnesses to the crime, accused were unknown and hence not nominated, there was no description of the accused provided in the FIR and at times there was an unexplainable delay in the registration of the case.

b) Investigation that contributed to the ultimate acquittal could broadly be categorised as defects in identification parade, doubtful recovery, defects in confessional statements under s. 164 of the Code of Criminal Procedure or before a police officer, late submission of *challan*, defective medico-legal reports and material evidence, and incorrect recording of statements under s. 161.

c) Poor prosecution was attributed to witnesses becoming hostile, witnesses not appearing for evidence, witnesses resiling or compromising, witnesses changing or contradicting their own statements or a contradiction between medico-legal and ocular/other evidence.

To summarise, all of these factors listed above contribute towards the poor conviction rates in criminal cases in general and terrorism cases in particular. *“This low conviction rate is [especially] worrisome, as it denotes, inter alia, lack of coordination between the investigation and prosecution agencies. This reflects the dire need of improvement in the system in term of training, knowledge and coordination between all stakeholders.”*<sup>9</sup> By stakeholders we refer to all the civil institutions that constitute the Pakistani Criminal Justice System; the Police, Prosecution and the Judiciary.



## II. Theoretical Debate and Policy Options: Civil Institutions as a Counter-Terrorism Instrument

## II. Theoretical Debate and Policy Options: Civil Institutions as a Counter-Terrorism Instrument

A sizeable literature pertaining to counter-terrorism efforts concentrates on post-conflict societies, that too when the foreign forces are still present on ground to lend to the stabilisation process.<sup>10</sup> While Pakistan is not a 'post war society' *stricto sensu*, it does display striking similarities to the post conflict societies described therein. It has, for instance, been engaged in a veritable 'war against terrorism' for more than a decade now; a war it is losing due to absence of requisite institutional infrastructure. Moreover, law and order being a provincial matter has further complicated the situation. Punjab, for example, has not been as hard hit by terrorism as some other provinces. The number of casualties from terrorism-related offences and the abysmally low conviction rates, however, clearly suggest that the existing tools of the criminal justice system are not being put to their most efficacious use. Therefore, while Punjab might not be post-conflict state as understood in a narrow sense, in reality it displays all the ingredients of one described by this literature and hence stands to benefit from this analysis. While comprehensively broader than the situation in Punjab, it is both relevant and instructive to our case.

One of the aspects of this paper will be to draw upon their work in an attempt to identify latent shortcomings of the police within the context of combined anti-terrorist efforts. Only then can a discourse on the current policing systems be initiated which extrapolates its current working methodology and determines whether or not the institutional structure is capable of combating terrorism to begin with. While there aren't any pockets within the Province beyond the writ of the state, there is an undeniable terrorist presence. There is a bomb blast in some part of Punjab almost daily. In response, the chief focus of the political rhetoric thus far, albeit a rather limited one at that, has been to hint at devising a counter-terrorism strategy. A more conspicuous outcome thereof is that the notion of police reform seems to have captured the imagination of a select few. However, one must qualify the statement by emphasising that it is indeed a mere select few that recognise police reform as a prerequisite of a collective counter-terrorism campaign. Furthermore, such a police reform is suggested in seclusion from the broader criminal justice system, of which the police are one tier only; an extremely important and indispensable component, but only a component nonetheless. The ubiquitous discourse though has failed to recognise the importance of reform of the criminal justice system. This study is emphatic in arguing that police reform must entail reform of the criminal justice system. The two are intertwined, one be reformed without the other and that demands a comprehensive reform strategy.

The edifice of justice system under representative civilian governments is built on the efficacy of police and the criminal justice system. If these twin pillars crumble, citizen security is jeopardized. Civil governments – which are represented by their institutions – and security have a mutually dependent relationship. While the efficacy of civil governments relies on security, security in turn is an indispensable prerequisite for the development of civil governments. The responsibility to oversee this installation of the writ of the state and to inspire the people's confidence in it lies with the local police. The inability to deliver on this promise, however, inevitably results in an upsurge in violence which can assume any number of forms; in case of Pakistan, domestic terrorism being its manifest appearance.

Bailey and Perito in their book *'The Police in War: Fighting Insurgency, Terrorism and Violent Crimes'*<sup>11</sup> analyse the role of the police in controlling violence, specifically counterinsurgency and terrorism and explore a set of questions in the context thereof. For instance, the division of labour

between the military and police in curbing violence; how should local police be trained to achieve this purpose; and, what type of governmental reforms are required to enable local police to become an effective instrument of democratic development? These questions though are addressed entirely within the context of reconstruction of post conflict societies like Afghanistan and Iraq and to that end, draw upon past experiences/mistakes of Kosovo (1999), Bosnia-Herzegovina (1996), Haiti (1995) and Somalia (1992) etc. Despite obvious differences, we are drawing upon the experiences of these countries for reasons that shall become self evident in due course. For the time being, suffice it to say, Punjab is most certainly not a post conflict society like Afghanistan and Iraq. It does, though, share a wide range of similarities from the viewpoint of the institutions of the criminal justice system and their role in counter-terrorism efforts which inform our reliance on Bailey and Perito's work.

Bailey and Perito argue vigorously that local police play a unique, albeit an integral role in the reconstruction of a stable, effective and democratic government. According to them, 'Core Policing' demands a change in orientation rather than a change in structure. Bailey and Perito contend that citizen security can be ensured in three ways: the police make themselves available to the citizens; they effectively respond to peoples' requests; and, demonstrate fairness in their actions. Bailey and Perito also extend two reasons why local police should be accorded preferable consideration in development of a legitimate local government: first, the police can provide crucial information for dealing with violence and second, they can demonstrate to a sceptical public that the government is worth supporting. These effects are mutually reinforcing. Without public support, both the control of violence and stability of the government are at risk. *'Local police are more important to the goal of winning this support than any other set of security agents, domestic or foreign.'*<sup>12</sup> Military action, conversely, is a poor tool and thus to be discouraged.

Core Policing is not a set of techniques, it is an orientation to the job; an add-on to technical skills if you will.<sup>13</sup> 'Without exception in countries where peace-building has been undertaken, the police have served the interests of elites rather than ordinary citizens and have acted illegally, abusively and for personal gain.'<sup>14</sup> Therein lies a lesson for Punjab: it would be entirely counterintuitive as well as counterproductive to concentrate on teaching specific, largely western, skills of public order and law enforcement. Instead, the police should be taught to serve and protect as opposed to exploit and repress. To that end, the lower ranks of police, who are technically the first responders and the first point of contact between the ordinary citizen and the state, should be concentrated upon. They should be prepared to be responsible for stabilising situations and calling for skilled backup if the situation so necessitates. Such core training, in addition to availability, responsiveness and fairness, would include 'officer safety, operational tactics for different situations, administrative procedures, physical fitness, and local history and culture.'<sup>15</sup> Technical skills, say criminal investigation for one example, should be stratified by rank.

This implies a comprehensive re-orientation and reform in police training accompanied by re-vamping and reform of the criminal justice system. It is pertinent to note, *'Significant change in the operational character of the police does not bubble up, it percolates downward. It must be facilitated by the reform and reconstruction of the institutions responsible for directing, administering and supporting not only the police but the entire justice system – prosecutions, courts and corrections.'*<sup>16</sup> Just as the citizens are likely to be more loyal to the state if they have infallible confidence in the police's ability to provide protection emergency services to them, similarly, *"if they believe they can rely upon the judicial system to provide justice, they are likely to view the state as legitimate and worth of their support."*

### ***Police or Military: Which is Better Geared to Claim Ownership of Counter-Terrorism Efforts in Punjab***

The Asia Society, New York, established an Independent Commission to pursue and propound Police reform in Pakistan. The Commission brought together diverse and competent retired and serving officers of the Police Service of Pakistan (PSP) so as to lend practicality to the proposed reforms. In 2012, it published its report '*Stabilizing Pakistan through Police Reform*'.<sup>17</sup> The Report covered a wide range of subjects, which can be divided into three broad categories: identifying problems and challenges confronting police reform, terrorism, and other critical areas that need urgent reform. '*The single thread running through this volume is that Pakistani governments lack the political will to reform the country's police force.*' The report also draws attention to the fact that public perception about police is negative and the force suffers from trust deficit among citizens. For modernization of police, the report advocates improvements in training, equipment and enhancement of intelligence capabilities. For morale boosting and better performance it recommends competitive salary package.<sup>18</sup>

Despite several constructive recommendations, it appears the report has fallen prey to the very trappings identified by Bailey and Perito. The Report reveals preference for seeking partnership with the military rather than relying only on police or civilian leadership. For instance, special training exchanges between police and military, induction of soldiers in police, providing more weapons to police etc. even developing liaisons with the UN peacekeeping operations and police are advocated. However, adopting such a military model, rather than concentrating on developing a civilian run institutional framework to take ownership of the anti-terrorism efforts, introduces a whole set of problems to the equation.

As it is, civilian confidence in the State in general and police in particular is at its lowest. Further militarisation thereof will only cast a deeper wedge between the people of Punjab and its police. While the Report is spot on in identifying the lack of police capacity as an area in dire need of reform, overt militarisation, however, is not the solution for a number of reasons. The chief amongst them being that investigation forms the bedrock upon which the Prosecution's case ultimately rests. Police being a civilian institution enjoys the benefit of familiarity with the area where the crime scene is situated - its geographic and demographic exigencies et al. It is ideally suited to permeate the area and collect not only concrete physical evidence post crime, but conduct intelligence collection exercises so as to prevent commission of the crime in the first place.

Recognising that there is a dearth in police's capacity at present, instead of increasing reliance on the military, Saeed Shafqat - while making a critical appraisal of the Asia Society report - argues that bringing multiple civilian intelligence agencies under police and civilian control would be a more appropriate option.<sup>19</sup> In the short-term, i.e. till such point in time that the police have at their disposal all the requisite tools of running a counter-terrorism campaign, it makes more sense to allow police access to civilian intelligence agencies of the likes of FIA and the IB, who in turn should have state-of-the-art training as well as technical assistance.<sup>20</sup> This way the police, as the prime civilian law enforcement institution will be ideally situated to respond to internal crime, terrorism related or otherwise.

Additionally, it must be recognised that no police, however institutionally well developed and structurally sound can hope to deliver results, be it in the context of regular crime or an anti-terrorist campaign, if it does not have its people's support; as we shall expound in due course, no battle

against terrorism has been won without police and citizen collaboration. However, people's lack of trust in the police is essentially indicative of a severe lack of faith in the ability of the state to protect them and consequentially they refuse to cooperate should the need arise. Militaries, by their very nature, are designed to seek and destroy without any compunction as to the fairness and proportionality of the measure taken. Militaries protect from the outside. Their enemies are foreign hostile elements and hence are granted a broader charter to adopt an antagonistic stance. Police protect from the inside. It too performs the function of protection, but through serving its people. It is a civilian institution that represents the first point of contact between the citizen and the state. Hostile elements that the police have to contend with are citizens of the very same state too and hence demand to be dealt with fairly and with a sense of proportionality.

Point being, the military and police operate in explicitly distinct domains, parameters of which are circumscribed by the differences in their *modus operandi* as well as the rationale of their very institution. Militaries are designed to lead counter insurgencies like the Swat operation, while police for taking ownership of counter-terrorism efforts. The difficulty is that in Pakistan, the military is playing a larger than life role in the latter i.e. the counter-terrorism campaign. This naturally translates into an incursion into the domain of the provinces. As mentioned before, one of the key features of the 18th Amendment was the devolution of powers pertaining to security matters to the police of every province. What we observe though is that the military is not only spearheading the entire effort but is very much a part of any initiatives taken by the civilian government as well. For instance, the Cabinet Committee on National Security includes all the three Chiefs of the Military. Newspapers report on a regular basis that the Prime Minister was briefed by some General or the other on matters of internal national security. Conversely, the Inspector Generals of Police of all the four provinces and Gilgit/Baltistan, who, constitutionally speaking, are the people actually responsible for internal security are not members of the said Cabinet Committee.

Arguments extended in support of militarisation pivot on the contention that in addition to innocent civilians, police officials and installations too have been targeted time and again by terrorists as they are deemed to be representatives of the State, and that is an act of war that demands either direct military action or militarisation of the police at the very least. However, relying on literature that dismisses militarisation of police,<sup>21</sup> it is our view that killing of civilians is not an act of war but murder and hence terrorists who target civilians and civilian agencies should be classified as criminals and should be treated as such.<sup>22</sup> Search and surveillance of the terrorists then can easily be brought within police jurisdiction and military operation avoided unless absolutely necessary. As aforementioned, militaries as of a rule are not trained to deal with law and order predicaments.

While constructing a case against militarisation of police, it is only appropriate to recall that in the 1970's Pakistan made a failed attempt to pursue that particular route. Prime Minister Zulfikar Ali Bhutto's rationale to establish a Federal Security Force (FSF) was certainly substantial and persuasive but once implemented, the FSF went on to become the key factor in the unravelling of Bhutto's government in 1977. This also reiterates our contention that civilian control of police and policing remains precarious at best and thus demands both revitalising institutional capacity of police and simultaneously designing regulation that establishes effective civilian control of the institution. Therefore, instead of a militarisation of the police, Bailey and Perito's proposition of Core Policing offers a more appropriate policy choice; which could pave the way for a relationship of mutual trust between the concerned citizens.

The Independent Commission's Report does not accord due attention that factors contributing

to this trust deficit deserve. Mere allusion to political interference, shortage of funds and lack of career prospects for the rank and file, though a bold step in the right direction, is not sufficient. The Report overlooks that Local Government Ordinance, 2001 and Police Order, 2002 have enormously improved the career prospects of senior police officers (federal cadres) while intensifying politicisation and hampering career opportunities for police ranks (provincial cadres). The report concedes that major restructuring, especially of the lower cadres, is immediately needed. What the structural and institutional changes should be at that level; the report does not dwell.

The Report's negligence to address law and order as a provincial subject is emblematic of how the subject and consequently police reform is perceived within the Pakistani context. The fact that the police are in need of training, capacity building and enhancement of career development is point well made. However, the popular discourse, of which this Report is a representative in many ways, fails to recognize that it is the subordinate cadres (particularly Assistant Inspector to Deputy Superintendent of Police) who desperately need an enhancement of professional skills and career advancement. When we say that police are the first point of contact between the ordinary citizen and the state, we naturally mean the lower cadres. Superintendants of Police (Grade 18) deal with the administration and hardly ever have to address direct complaints of the people. Yet they are the ones who are sent abroad on trainings, are awarded scholarships for further studies etc. The lower cadres, conversely, do not have the benefit of rudimentary training as shall be discussed later in the paper. The reason behind bringing this up at this juncture was to reify Bailey and Perito's stance that lower ranks of police are by and large ignored; and so is the case in Punjab. There is a broad lack of recognition that being the first responders, it is this very group that is responsible for stabilising situations and thus should be trained on how to serve and protect; Core Policing as the authors call it. Instead, ambivalence to their instruction and skill development has effectively turned the lower police, and by necessary implication the entire police service, into a tool of repression and exploitation wielded by the State. This, for a country embroiled head on in a war against terrorism, undermines the entire criminal justice system and places no end in sight.

### **Criminal Justice System Championing Anti-Terrorist Efforts through the Rule of Law and Effective Policing**

Literature pertaining to the role of democratic governance in reducing terrorism usually falls in either of the two categories: a) as democracies nurture an environment of civil liberties and freedom of association and speech, they are particularly susceptible to potential terrorist attacks<sup>23</sup> and, b) democracies eliminate the terrorist threat by promoting political participation and non-violent conflict resolution.<sup>24</sup> Either way, almost all efforts at deterring terrorism are usually approached from the point of view of setting foreign policy objectives for concerned governments. A case can be made for rule of law as mainstay against terrorism. Rule of law, initiated through the institutions of the state – the combined institutions of the criminal justice system, with particular emphasis on the prosecutorial and policing – serves as an effective conflict resolution mechanism thereby reducing the incidents of domestic terrorism.

Seung-Whan Choi, in '*Fighting Terrorism through the Rule of Law?*',<sup>25</sup> supports this line of reasoning and is of the opinion that citizens of states without rule of law view their regimes 'as illegitimate, their governments as arbitrary, and peaceful participation futile' and hence are particularly prone to resort to either attacking domestic targets or 'to support terrorist groups that do so.'<sup>26</sup> He emphasises that 'local people do not necessarily resort to terrorist violence... simply due to their religious and ideological beliefs. When local people with grievances are recruited to radical religious or ideological groups, they become international terrorists to vent their frustration and

rage. People who live in countries lacking the rule of law have a much smaller chance of resolving grievances peacefully and are more likely to resort to terrorist violence. In this context, the underlying cause of terrorism should be traced back to a poor quality of rule of law; not religion or ideology.<sup>127</sup>

Quan Li endorses this line of reasoning in 'Does Democracy Promote or Reduce Transnational Terrorist Incidents?'<sup>128</sup> He endorses the thesis that democratic participation demonstrably increases political efficacy of citizens, reduces their grievances, thwarts terrorist recruitment and raises public tolerance to counter-terrorist policies. However, he departs from the existing literature by concluding that democracy has multi-various aspects which need to be taken into account, for example economic development and income inequality, as they have important policy implications for the war on terrorism and for promoting democracy.

Thus, it stands established that civilian institutions, operating within civilian parameters are ideally suited to maintain law and order. Here, the question arises that if militarisation of the police is off the table, what about seeking military assistance in egregious circumstances? For instance, when a country is embroiled in a war against terrorism like Pakistan is, does civil-military liaison present a viable option? The case of Karachi in 1997 could be an instructive example of coordination effectiveness among police, intelligence agencies and local communities.

Bailey and Perito would argue in favour of the Rule of Law argument and against such a suggestion as the experiment of civil-military partnership has never proven successful. Additionally, militarisation of police should be discouraged not only from the point of view of its inability to deliver, but because of its negative ramifications on the collective democratic process. But what exactly is 'democratic policing'?

More often than not the issue is understood as a simple "trade-off between the 'democratic values' on the one hand and security, order, and law enforcement on the other – the objectives of the police."<sup>129</sup> This way of thinking is poised on the assumption that we know and understand precisely what democratic values are affected by policing. Additionally, it over simplifies the relationship between the two. Sometimes democratic policing is understood as distinct from militarisation, that is, procedural regularity and adherence to the rule of law are emphasised as demarcating features. At other times, policing in democracy is associated with respect to certain substantive rights – for instance rights against unreasonable search and seizure etc. Sometimes democracy is tied to 'popular participation in policing, either through some form of civilian oversight or through police practices that involve partnering with or delegation to the community' (Establishment of the Citizen's Liaison Committees through the aegis of Police Order, 2002 was one such attempt in the Pakistani context). At times, placing police departments under community control, as the Co-ordination Committees established under the Police Order sought to do, is considered as lending an element of democracy to policing. Given the long struggle for power between the District Management and the Police, strictly within the Pakistani context, democratisation is also understood in some policing circles at least as giving the police autonomy to regulate itself. We will stretch this argument further to include independence from political interference. Sometimes democratic policing is simply 'a matter of dealing with public in a particular way'<sup>130</sup>; what we refer to as 'service style' and use as a feature to distinguish police from the military.

Whatever the context, democratic policing, in its most distilled form, is a reference to the police working to preserve the citizens' democratic values. However, when it comes to taking active measures to reform the police, the afore-listed considerations are accorded perfunctory importance at best. For instance, even though 'police reform' has caught the imagination of many analysts and

academics in Pakistan, the realisation that the police needs to be approached as a component of the criminal justice system, which is indispensable to a successful counter-terrorism endeavour, is yet to sink in. Pakistan has been engaged in a veritable war against terrorism for more than a decade now. With time, the resulting strain on resources coupled with an underdeveloped institutional infrastructure has begun to manifest in a fast deteriorating law and order situation and a war that seems to have no end in sight. Point being, there is an escalating governance deficit, making demands of the civilian law enforcing institution, which it is ill prepared to deliver on.

In the eyes of many and particularly the other provinces, Punjab today may seem better governed; however, the data pertaining to the Province's anti terrorism efforts paints a rather bleak picture. While on the one hand its police does not fare any better than rest of the country's, there is sufficient literature that anoints civilian police the most effective instrument in counter-terrorism efforts and an indispensable component of democratic good governance on the other. That said, police reform/reconstruction is not an isolated endeavour. It has to be approached alongside its natural partners, the prosecution and prisons, i.e. the three components of the criminal justice system.

Despite the *prima facie* impression that the Police bear the onus of culpability, all the three tiers of the criminal justice system suffer from the same disabilities. The entire system is debilitated by structural as well procedural shortcomings which need to be addressed as a comprehensive whole before it can be expected to make any positive contributions to the counter-terrorism efforts. Concentrating on one component of the criminal justice system, say the police for example, will not improve the situation. Second, despite the lapse of ten years, the Province is yet to evolve a comprehensive counter-terrorism policy. All measures taken over the past decade have failed to deliver primarily because they are piecemeal attempts, devised to address specific situations. Third, the counter-terrorism campaign has an *ex post facto* focus. If one looks at the plethora of reforms suggested and laws passed, the concentration has been on what to do once the terrorist incident has already occurred. The reason why the US has prevented another 9/11 or the UK another 7/7 is that their efforts have been pointed towards pre-emption of terrorism. That realisation has yet to hit home in case of Punjab.

### III. Reforming Criminal Justice System: Spearheading the Counter-terrorism Campaign

### III. Reforming Criminal Justice System: Spearheading the Counter-terrorism Campaign

In this chapter we will look at the police structures and procedures and try to demarcate the areas that demand immediate attention and hence reform. Both the capacity and efficacy shortcomings are addressed from the point of view of maintaining law and order as well police's role in the counter-terrorism effort. We are also cognisant of the fact that the existing police system, as the central law enforcement institution of the Province, cannot be upgraded *in silos*. Instead, it must be part of an overarching restructuring of the total law enforcement infrastructure, including a reform of the criminal justice system and the stripping of politically motivated amendments from the Police Order, 2002. Hence, in this chapter, all the three branches of the criminal justice system i.e. police, prosecution and prisons will be approached as distinct rubrics with minor overlaps where necessary.

#### **Police Reform**

Police reform in Pakistan must be understood, analyzed and interpreted on two separate but minutely interdependent contexts: the history of colonial legacy, and the professional capacity and level of skills. Both of these are mutually dependant and continue to constrain professional capacity and ability of the police to deliver security and welfare services to citizens.

#### **Historical Context**

In most countries that have a colonial past, as Pakistan does, justice systems were established as instruments of control. As I have discussed elsewhere, the Pakistani police traces its roots to the Police Act, 1861 (the Police Act). It is the principal governing document till date. The Police Act was enacted in the immediate aftermath of what the Colonial law makers dubbed 'the Great Mutiny of 1857'. Thus, the laws promulgated for maintenance of law and order, including police laws, was informed by concerns of state ascendency; ensuring that such an incident does not happen again and the people are subjugated.

Anupama Rao<sup>31</sup> has aptly argued that the colonial masters recognised the efficacy of the culture of terror and structured police as an instrument of colonial governance. Simultaneously, they assumed the burden of expunging the system of all the relics of the previous oppressive 'native' practices. Therefore, the police were viewed on the one hand, as *'belonging to the generic category of state servants and functionaries of the law, while on the other hand the native police were viewed as a special category of colonial subjects who were outside the law.'*<sup>32</sup> Thus, not only were they able to establish a clear [albeit physical as well as structural] separation between themselves and the 'traditional repertoires of policing', abhorrent practices like torture *et al*, but they were simultaneously able to reap benefits of the so called 'traditional methods' of policing by espousing the pedagogical paradigm of the rule of law.

This reliance on native police for purposes of controlled governance, coupled with the inherent abuse of legal norms, produced a paradoxical need to police the police. 'In a colonial situation, natives were seen as possibly needing protection from the police, rather than being protected by them.'<sup>33</sup> By introducing this clear distinction between the colonial masters and natives, or for that matter between the 'Central' and the 'Provincial' police; two parallel forms of policing were initiated whereby the subordinate cadres were simultaneously viewed with a measure of scepticism and

yet relied on for maintaining control.

Colonial institutions of governance, investigation and regulations that were specifically crafted to ensure a regime of terror and subjugation remain largely unaltered. As previously observed: *'The problem though is that with the passage of time assiduous reliance on these laws has generated a set of negative ramifications; institutionalised traditions and informal practices, which are far cry from the democratic/institutional building sentiment currently at large, have become so far entrenched in the daily workings of the Department that they have effectively replaced the intended formalised structure.'*<sup>34</sup> For example, bifurcation between higher and lower police cadres accommodates intricate structures of violence. The police station, which is supposed to be the first point of interaction between the state and its people is a particularly violent place and has an ingrained culture of brutality, colloquially known as the *Thana* Culture.<sup>35</sup> The adverse ramifications thereof i.e. the cultural orientation of the institution and the bifurcation of cadres on the functionality of the police and procedural failure is discussed in the proceeding section. For the time being, suffice it to say that instead of nurturing the sentiment of confidence in the State that Bailey and Perito made a case for, the *Thana* and the police transgressions it accommodates, has become the source of anti-state rhetoric.

That stated, appeals of police reform ignore the cadre bifurcation and nurture a distinct bias in favour of the higher cadres. It is the higher police that receive higher pays; they are the ones who are sent abroad for trainings as well as higher studies. The lower cadre reform is pointedly overlooked despite the fact that they are the ones in contact with the citizens of the state. Insofar as the common man is concerned, it is the *Thana* that represents the state; not the Civil Secretariat, not the Police Head Quarters and certainly not the General Head Quarters (GHQ). It must be acknowledged that *Thana* is where the policing actually happens. Yet, they are not only absent from the discourse of reform; their role in the anti-terrorism campaign is yet to be identified. In fact, partly because of institutional history which breeds a culture of mistrust and partly because of sheer oversight on part of those concerned, we see the lower cadres absent from all talk of reform. As I have discussed elsewhere,<sup>36</sup> a stringent control is maintained over the lower cadres by making them monetarily dependent on their higher counterparts. Additionally, internal mechanisms of accountability add an additional layer of debilitation. The point being to stress that talk of an effective counter-terrorism is incomplete without police reform, and that the police reform in turn has to bubble up and not percolate downwards as Bailey and Perito succinctly pointed out.

### **Skill and Training Reforms**

The Prosecution Department is responsible to pursue the case which is substantiated by admissible evidence; collection of the said evidence is a police function. When questioned about Pakistan's poor record in terrorism cases we discovered that the Courts hold the Prosecution and Police Departments responsible for their poor performance; the Prosecution Department rests the blame on Police's 'incompetence' and 'poor evidence collection skills'; and the Police Department is not only suffering from tenuous capacity shortfalls as well as training deficits but perceives any/all suggestions of assistance from the Prosecution Department during the course of investigation as an encroachment on its territory.

As aforementioned, establishing the chain of causation is an indispensable prerequisite of successful prosecution. When it comes to terrorism cases, the nature of the crime is such that the said chain of causation is virtually impossible to trace. To develop a better understanding of what

precisely happens through the course of investigation in terrorism cases and to be better able to identify areas, let us assume that a 16-year old boy named 'T' attempts a suicide bombing in a busy Lahore market place and fails to see the plan through for some unforeseeable reason. T is your typical terrorist. He is a juvenile and resident of a small village in the province of Sindh. He received his training in the Federally Administered Tribal Area which constitutionally does not fall under the writ of the State. He has met his handler, but the said handler is operating under an alias. He has never met the mastermind of the plan nor knows his name. T is not privy to the real intention behind the attack. Was the attack informed by sectarian considerations? Was it a dispute between two private parties? Was it an act of terrorism per se to undermine the writ of the State? T does not have answers to any of these. The question then arises, what are the police, being the primary law enforcing institution, going to do? Additionally, do they have the requisite capacity to deal with the situation?

The chain of causation has to be established in order to secure a conviction. Therefore, irrespective of who committed the crime, the mastermind of the crime has to be traced or else the prosecution will not have a case to go by. Even if the suspected terrorist is arrested; T in our example, sooner or later the justice system is bound to acquit him. In order to construct an infallible case, a thorough criminal investigation needs to be conducted. Before walking through the police procedures that will be applied, it should be pointed out that the above illustration is a perfect example of why the army should not be involved in domestic counter-terrorism efforts.

### ***Saying No to Military on Counter Terrorism***

To begin with, the army has neither the capacity nor the legal mandate to that effect. It is true that security establishments in Pakistan have a history of calling the shots in terrorism cases, but the fact of the matter is that formal counter-terrorism investigations are beyond the charter of the military and its agencies. This is because insurgency and counter-terrorism are understood as interchangeable as opposed to intrinsically distinct concepts, both of which demand entirely dissimilar prescriptive action. Additionally, as mentioned earlier, investigation demands gathering minute information from the place of crime; collecting physical evidence, identifying potential witnesses and gathering all other information relevant to the case, which the army is ill-equipped to do. Furthermore, the criminal justice laws do not apply to the army. It is regulated by its own specialised laws. So even if it does gather any evidence, or has any leads, they will be inadmissible in the court of law and hence utterly useless. Therefore, should the army be vested with the authority over domestic counter-terrorism campaign, its only choice will be to kill T, an action that not only has civil liberties implications but also undermines the entire criminal justice system and by necessary extension, further reifies the trust deficit between the citizens and the State.

Going back to investigating the terrorism case, it stands established that starting from the case registration, right up to the final decision of the court, evidence plays a pivotal role in the proceedings. The manner in which a crime scene is handled and the ensuing investigation conducted makes or breaks the case. The first hour after the commission of the crime is critical. After that, the mode of pursuing potential leads, collection of physical evidence and assembling of witness are of inimitable importance to the outcome of the case.

### ***Enhancing Investigating Capacity of Police***

We observe, however, that the police are not trained on how to handle the crime scene. The Investigation Officer (hereinafter, the "IO"), who is the first responder to the crime, is neither familiar

with the correct mode of evidence collection which will subsequently be admissible in the court; nor possesses the requisite technical ability. Whereas the IO should have at his disposal all possible investigative tools, including a trained staff, an investigative kit and adequate transport, all he has at his disposal is a cardboard, some papers and a biro. The budgetary constraints do not allow for such a kit which costs more than Rs. 50,000. Every IO has more than 50 cases to deal with at any given time. As per the figures provided to us, the budget available with the IO per case is approximately Rs. 250.

### **Police Training: The Current Situation and Possible Improvements**

We visited the Chung Police Training Academy as well as the headquarters of the Elite Force to identify the alterations made to police training in the past decade; only to find that there were none. In fact, due to a lack of resources, the original police training has been chiseled to less than six months. New inductees learn the mores on the go so to speak, by trailing the presiding DSP. One small group of the Elite Force has been trained by the Army, but they have been designated a restricted range of responsibilities; for example they are contacted during a hostage situation for negotiations purposes or when the terrorists have taken over a place and action needs to be taken against them. Again, it is pertinent to highlight the fact that as they are trained by the Army, they can take out [i.e. kill] hostile elements and are not trained to seek and detect. That is the job of the police, which is not trained to do so. Additionally, it is also representative of the fact that the State has been playing on a defensive pitch. This special cadre is trained to respond to a situation after the terrorists have attacked. However, we in this paper are making a case for the State to focus on a) preempting terrorist activities and focusing on police trainings so that the need for military-like operation does not arise, and b) in the event of an incident, the police should have the capacity to pursue leads, gather evidence, and identify witnesses and accomplices. In other words, the police should not only be able to identify and arrest T, but also have the capacity to trace the mastermind and the financier of the act so as to uproot the entire outfit.

For this, they need both training and independent capacity, while they have neither. We were told by the Inspector General of Police Training at Chung that a typical police officer has fired an average of 200 rounds of bullets during his training. A terrorist, due to no paucity of funds, would have shot upwards of 2000 rounds of bullets. One can imagine the comfort levels of the two with their weapons and make a rough guess as to who would fare better in an encounter. Additionally, there is a problem of radicalism within the concerned departments of the State. The issue of radicalism and how that debilitates the State's counter-terrorism efforts is beyond that scope of this paper. One must though recognize that the police department is not safe from radical elements either. Additionally, due to State's failure to develop a comprehensive counter-terrorism strategy, the counter narrative is missing. This in turn is a source of rampant confusion. The common citizens cannot discern the difference between terrorism and religiosity. Needless to say, police personnel are not immune either. We were told by a former AIG Training that this lack of State narrative is only compounded by training deficiencies. An 18-year old police inductee, hailing from a small village, has set ideas by the time he joins the force and the department does not have the capacity to alter his views; with the result that those fighting in the war against terrorism are not clear as to which side of the fence they are on.

Let us refer back to our example of T and the Police's investigation procedure. If and when a crime occurs, irrespective of the heinousness thereof, the immediate reaction of those in the vicinity is to head straight towards the crime scene. As a result, the crime scene is destroyed. Any evidence the police could have hoped to gather, is trampled. But the real obstruction is that the police them-

selves are not trained how to seal the crime scene, bag evidence, search for and pursue clues. We were told by the Forensic Department that it often happens that the IO collects the empty bullet shells and takes them to the police station with him. If supposing after investigation the alleged weapon from which the shots were fired is discovered, they put the bullets and the shooting weapon in the same bag and send it to the lab for verification. This way not only is the evidence destroyed because the bullets rub against each other and get scratched, but the veracity thereof is compromised.

### **Punjab: Problems and Possible Choices**

The foregoing analysis holds true for all crimes including terrorism-related offences in Pakistan. Punjab is certainly not an exception thereto. An additional feature of those offences that fall in the latter category is that of military interference. As mentioned earlier, it is the military that is at the frontline of most counter-terrorism efforts and as a result poses an additional impediment to police procedures. During an interview, a senior criminal lawyer told me that when there was a bomb blast at a Shia Imambargah in Lahore in 2009, 'certain intelligence agencies' arrived at the crime scene and took possession of all evidence long before the police turned up. Given that its legitimate authority is in constant danger of being undermined in its own (Constitutionally prescribed) jurisdiction, how can one reasonably take police performance to task?

Nature of the offences is such that prevention of a terrorist attack outweighs any post offence investigative measures. Thus, the most effective tool for countering terrorism is surveillance equipment which allows the police to monitor cellular communication. Recognising this, the Fair Trial Act, 2012 was enacted; awarding the Police the requisite authority for tapping phone calls. Despite a lapse of almost two years, rules pertaining to the Law are yet to be enacted. As a result whereof, while the Province is in throes of combating terrorism, the one legislation that made a key tool available to the concerned security agencies has had its implementation infinitely delayed.

Inevitably, any discourse on the measures taken by the civil security agencies in an effort to counter terrorism would not be complete without some level of military interference. Recognising the critical nature of surveillance equipment that allows interception of cellular communication, a few years ago the Sindh Police issued a tender for acquisition of such apparatus which has only been available to premium intelligence agencies thus far. Within a few days, due to some undisclosed reasons/pressures, the Sindh Police was compelled to withdraw the said advertisement. The purpose behind narrating this incident is to illustrate that thus far such technology has remained a closely guarded domain of the military and till such point that it is willing to share the turf, any amount of legislation will be inconsequential.

This brings us to another tricky area. As per the ATA, in order to investigate a terrorism offence, a Joint Investigation Team (JIT) has to be constituted which comprises of the Superintendent of Police, military personnel and members of the intelligence agencies. Our research establishes that such JITs are almost never formed in the aftermath of a terrorist incident. Even if they are, during our interviews with police officers we discovered that when it comes to sharing information, particularly surveillance related data, the intelligence agencies maintain a very uncooperative posture. Without access to the requisite tools, the Police leads an utterly debilitated investigation which is doomed to fail from the word go. Having made a case against military ownership of counter-terrorism efforts in Punjab, one cannot stress enough the transferring of mandatory apparatus to the Police. Till such time that that happens, legislations like the Fair Trial Act will remain pieces of paper with no efficacy whatsoever.

## Investigation and the Police Order, 2002

Till date, we are of the view that any engagement with the question of the possible nature of participation of Punjab Police in the anti-terrorist effort needs to contend with the fact that the Police Service of Pakistan does not necessarily represent the State in the Weberian sense of the term. 'The inability of state institutions to engage with and penetrate civil society ... prevents effective policing [even] in those areas where people enjoy the full protection of the law and where there is a semblance of constitutional normality. Even in Pakistan's central areas, policing must not be imagined as the legitimate exercise of authority by a professional government agency.'<sup>37</sup> While the situation on paper is entirely different, the primary law enforcement institution of the Province enjoys little to no autonomy and is forced to share jurisdiction with federal and at times local governments. Moreover, "these multiple lines of control are constituted by bureaucrats and not by elected politicians."<sup>38</sup> The rationale/nuances and implications of using a service component of the state as *arcanum dominationis*, an instrument of oppression, shall be discussed at length in the paper.

Promulgated against this *mis-en scene*, the Police Order sought to institute, at least theoretically speaking, a clean break from the previous, oppressive structures and allowed for a professionalisation agenda to be pursued for the first time ever in the history of Pakistan's police – since its inception in 1861. One of its key features was that, under the aegis of Article 8, the Police Order provided for the establishment of police divided along functional lines. Article 18 of the Police Order made it imperative for all cases to be investigated by an investigation staff. Direct supervision of investigators was handed over to the Head of Investigations while general control was retained by the Station House Officer (hereinafter the SHO).

*Prima facie*, this was a very welcome step indeed as it sought to bring various components of internationally recognised best practices to bear upon Pakistani policing. The Police Order's proclamation was underscored by its legislators in terms like 'professionalisation', 'functional separation', 'civilian oversight' and 'de-centralisation'. However, as per Petzschmann 'scratching the surface of the sterile language in which they were clad reveals significant conflict between historically entrenched, colonial modes of governance and the attempt to create a centralised security state by a military dictatorship, mediated by international donors.'<sup>39</sup>

Casting all other criticisms aside, for instance the Police Order was used as a tool by a politically unrepresentative centre to build a new class of political clients, lack of legitimacy by the federal government while promulgating the legislation, policing being a provincial matter and creation of dysfunctional oversight bodies which sought to replace the executive magistracy, one of the biggest practical drawbacks of the institutional division was that the functioning of the department suffered.

Our research tells us that even though a new investigation wing was created, no measures were taken with respect to training the newly constituted IOs with the art of the trade methods. Bear in mind that investigation is the crux of the case, and it is at this stage that the construction of Prosecution's case commences. The IO, first of all has no means of reaching at the crime scene; there is no official transport provided. Even if he does manage to arrive, he is not trained on how to seal a crime scene and pursue clues. There are absolutely no tools of investigation at his disposal; he is merely armed with a clipboard, some papers and a pen. These shortcomings are far from sufficient in a standard criminal investigation; one can only imagine their insufficiency in a terrorism case.

One of the ameliorative suggestions that were offered to us during our research was that a State appointed prosecutor, who will be ultimately pursuing the case in court, should be brought on board from the very start of the investigation. This prosecutor will only act in advisory capacity; he will not interfere with the crime scene, but observe and direct the investigating officer from the sidelines. This way, what the investigating officer lacks in skills can be made up for through the expertise of the public prosecutor.

### ***Prosecution Reform***

Previously a special branch within the police itself – known as the Legal Branch – performed all prosecution functions. This legal branch comprised of police officers with rudimentary legal training, instead of lawyers. Their training, so to speak, was more on the lines of familiarity with the legal system and terms; a working knowledge of the bare minimum if you will. These policemen did not hold a basic legal degree or were qualified to practise law.

As this system was creating complications for both the police as well as the judiciary, in 2006, the prosecution function was taken away from the police altogether through the promulgation of Punjab Prosecution Act, 2006 and handed to the newly created Prosecution Department.

Despite best of efforts, criminal prosecution remains riddled with a set of latent shortcomings which have adverse ramifications on the performance of the Prosecution Department in particular and the criminal justice system charged with the responsibility of launching a counter-terrorism campaign on the whole. One of the many reasons thereof is that the relationship between police and prosecution is yet to be clearly defined. As a result, both are embroiled in a mutual blame game with respect to the system's poor performance.

For instance, collection of evidence is a Police function whereas the responsibility to pursue the case, substantiated by admissible evidence, lies with the Prosecution. Courts then base their decision on the evidence presented to them. It thus stands established that starting from the registration of the case, right up to the final decision of the court, evidence plays a pivotal role in the proceedings. However, due to a complete lack of coordination between the Police and the Prosecution Departments, the case finally presented to the court for hearing does not have the benefit of substantive evidence. As a result, we see two very disquieting trends emerging: 1) the courts are increasingly relying on oral evidence which, needless to say, has questionable veracity as an uninterrupted chain of causation cannot be formed on oral evidence alone; and 2) there is a large number of cases which go undecided as the courts are forced to reserve their judgment *sine die* due to lack of evidence. As a result, the backlog is increasing; the conviction rates are at an all time low and public faith in the efficacy of the criminal justice system to deliver justice and in its ability to eradicate terrorism is on a sharp decline.

Citizens of any state and its police; the province of Punjab and its police, for the purpose of this study; are a key partner in any counter-terrorist campaign. The entire effort is initiated for the protection of the citizen after all. Additionally, the common man can play a pivotal role in the investigations. He/she after all is both the informant as well as the subsequent witness in the case. What happens in reality though has been charted in detail in the Report on 'Acquittal Analysis in Pakistan'<sup>40</sup> which proclaims that 48% of cases between 1990 and 2009 resulted in acquittals because the witnesses resiled. In 27% of cases the rationale for acquittal was non-appearance of the witness. In another 27% cases, the witnesses had a compromise of sorts with the accused. In

25% cases, even if the witnesses did not renege and appeared in the Court, their statements were contradictory, which lead to acquittals. In 13% cases the witnesses changed their statements. The only plausible reason for that, as per the Report, is that they feared repercussions from the alleged terrorists.

This establishes that the common man, i.e. the witness is lynch pin when comes to the business of eradicating terrorists. And before expecting any help, a confidence-building exercise between the citizen and the provincial government is imperative. People need to have the confidence in the System that if they appear in court not only will they be protected from any possible repercussions but their evidence will be put to good use and the terrorist will be convicted.

Frustration amongst the three tiers of the criminal justice system inter se is also mounting. Courts hold the Prosecution and Police Departments responsible for their poor performance; the Prosecution Department rests the blame on Police's 'incompetence' and 'poor evidence collection skills'.

Strictly with respect to terrorism cases, the ATA has been amended to allow the prosecution to aid the police in investigation. This is similar to the Crown Prosecution Service (UK) whereby, once the police have identified a suspect, the prosecution is brought on board the investigation. It guides the police as to what kind of evidence is required to successfully prosecute a case. This though is a tricky business indeed. It is the Provincial Government, acting through the Prosecution Department that is ultimately putting the alleged terrorist on trial. Therefore, care must be taken that the prosecutor assigned the responsibility of advising the police during investigation gives a fair and neutral opinion and does not let his/her bias step in. Otherwise, the entire investigation and subsequently the trial can be compromised, thereby rendering the entire exercise redundant *ab initio*.

Additionally, speaking of backlog mentioned above, the prosecution should have the power to decide which case will ultimately be presented in court for adjudication. At present, while the prosecution does have the power to peruse the case files and point out discrepancies which the police is bound to fix before a case goes to the court, it does not have the power to decide that there is not enough evidence available for a particular case and hence should be dropped. The Prosecution Department is legally bound to forward any case that the police reports to it.

Lastly, as per the ATA, all terrorism-related cases are tried in special anti-terrorism courts established under the said legislation. This is effectively a pronouncement that the criminal justice system is ineffective and incapable of dealing with terrorism. This in turn not only thwarts any efforts for reform of the System in general and creates an avenue for military intervention, but does not bode well for civilian confidence in the State and its ability to combat terrorism. It is thus that the countries like the UK and US, which have been successful in spearheading an anti-terrorist campaign, try all terrorism cases through the normal criminal justice system.

### ***Prisons as Partner in the Anti Terrorist Campaign***

When it comes to counter-terrorism efforts, prisons constitute the third, and the least examined component of the criminal justice system. This is not to say that there is an absolute dearth of literature pertaining thereto; the Child Rights Unit at the AGHS for instance annually reports on the juvenile section of Punjab Prisons. The AGHS too has a programme for monitoring the Pun-

jab prisons and regularly publishes advocacy material on the condition of female prisoners and whether prison rules as well as relevant international conventions are being adhered to. However, prisons as an integral component of the criminal justice system in general, and as a vital element of the anti-terrorism campaign in particular, represent a grossly understudied subject.

Research indicates that prisons in Pakistan are allocated a very narrow charter of functions; as per popular perception, the prisons' ambit of responsibilities is limited to the custody, care, control and correction (the 4C's)<sup>41</sup> of those incarcerated. It is probably thus that a nexus between prison reforms and broader counter-terrorism efforts is yet to be drawn and explored accordingly. This chapter makes a case for the significance and indispensability of Prison Reform in the anti-terrorism campaign and makes policy recommendations to the affect.

There are 32 prisons in Punjab with a staff of almost 13,000 personnel<sup>42</sup> and house a population of approximately 51,000 inmates.<sup>43</sup> Out of these, 427 prisoners in Punjab are those incarcerated under the Anti Terrorist Act and are known in common parlance as high profile prisoners – a district-wise break down of those incarcerated under the ATA for the Category of Terrorism/Sectarian/Suicide Bombers is given in Appendix II below. Prisons all over Pakistan are governed by their own laws and rules; The Prisons Act, 1894; The Pakistan Prison Rules, 1978 and The Prisoners Act, 1900 being the principle documents. These statutes are applicable in tandem with a set of additional laws specific to prisons<sup>44</sup> as well as other laws pertaining to the criminal justice system.

Akbar and Bhutta in their paper titled '*Prison Reforms and Situation of Prisons in Pakistan*'<sup>45</sup> present a holistic picture of contemptible condition of the prisons all over Pakistan. They analyse the prevalent conditions of prisons and prisoners in view of the recommendations of numerous commissions and committees<sup>46</sup> formulated over the years to address the issues pertaining to prison reform and make recommendations accordingly. While presenting a fairly accurate expose' of prison conditions, one of the issues highlighted *inter alia*, by Akbar and Bhutta is that '... many career criminals go to jails to avoid conflict with rival gangs.'<sup>47</sup> Simultaneously, no effort whatsoever is made at rehabilitation and reformation of such prisoners, despite the legal obligation to do so. This provision is of particular significance in case of high profile terrorist convicts who not only need to be de-radicalised, but provided with the tools to re-assimilate after serving their sentence.

In my earlier work on custodial torture, decrepit conditions of Pakistan prisons - the overcrowding beyond capacity, infrastructural shortcomings and incapacity of the prison staff both in numbers as well as training - have been dealt with in detail.<sup>48</sup> In developing countries like Pakistan, 'a class system is deeply rooted in prisons.'<sup>49</sup> As per a Human Rights Watch report<sup>50</sup>, in the present prison system in Pakistan, special perks and privileges are offered to the well off prisoners. This, as we observed during our visits to the jail, has implications for maintenance of discipline and control in the prisons. Prisoners, who can afford to do so, bribe their fellow inmates as well as prison staff into smuggling contraband items like drugs, cigarettes, mobile phones and small weapons like knives. In case of those convicted under the ATA and even in case of gang leaders etc. this is a disquieting fact as it means that they are able to pursue their activities uninterrupted from the seclusion of the prison.

It was also observed that while the law demands strict segregation of under trial and convicted prisoners as per Rule 383, Chapter 15, Prison Rules and similarly, Rule 309, Chapter 13, Prison Rules, states that prisoners awaiting trial must always kept separate from convicts, these laws are not in fact implemented. There are of course multiple reasons thereof, gross overcapacity of

prisons being the primary cause.

This easy access of convicted criminals to under trial prisoners has worrisome implications which necessitated the law in the first place. We were told by one juvenile prisoner we interviewed that the first time he was ever imprisoned was because he got caught in a petty theft. He later joined a gang of car thieves and dacoits whom he met at the prison. This of course is certainly not the only incident of its kind. As aforementioned, the law demands insulation of the two sets of prisoners only because it recognises the real threat. In a country embroiled in an anti-terrorist campaign for more than a decade now, violation of this rule presents an added layer of worry with far worse implications. Access allows for prisons to be treated as veritable recruiting grounds for terrorist outfits.

A recent example of the consequences of such abject neglect came to fore on July 30, 2013 when Taliban militants conducted an assault on a prison in Dera Ismail Khan (Khyber Pakhtunkhwa) and managed to free 248 prisoners, 47 of whom were Taliban leaders. These militants, who were armed with an arsenal of state-of-the-art ammunition including rocket propelled grenades, blasted down the walls of the prison in question and stormed inside. In an attack that lasted for more than three hours, the attackers were reported to have used loudspeakers to hail particular inmates. At least 13 people died in the process, including three on-duty policemen. It was reported to be a 'very sophisticated attack – they blew the electricity line, they breached the walls and they set ambushes for reinforcements.'<sup>51</sup>

This was a very confident and sophisticated attack indeed. A senior TTP commander later revealed in a press conference that a total of 125 men participated in the operation. 'The fighters were divided into separate groups, one of whom was reserved for backup ... a ten man group was assigned the task of gathering intelligence, while a group of 25 men, including 18 equipped with night-vision goggles, stormed the jail in the initial phase. Another 25 men were deployed outside the jail to guide the prisoners to vehicles and while 25 more were tasked with transporting them out of the city. A 25 man group was also deployed on the road to respond to any security forces movement and another 25 men were reserved for backup.'<sup>52</sup>

One of the most common grievances raised by the civilian security forces in such scenarios is that in absence of sophisticated surveillance capacity at their disposal they have to rely entirely on the military intelligence agencies who in turn, either guard information jealously to a point of absolute non-disclosure or hand over such cryptic data that it cannot be put to any use. This case was different as the intelligence agencies went on record to say that on July 27, 2013 they handed over a letter marked 'secret' and 'most immediate' to the commissioner, deputy commissioner, deputy inspector general of police, district police officer and the superintendent of prison in question. The letter is reported to have stated 'It has been reliably learnt that miscreants namely Umer Khitab and his associates affiliated with Gandapur Group/TTP are planning to carry out terrorist attack against Central Jail \_ Dera Ismail Khan on the pattern similar to Bannu jailbreak in near future. According to information, miscreants are in possession of sketch/map of Jail and have reached in the vicinity of Dera Ismail Khan for this purpose.'<sup>53</sup> In order to ensure that the letter reached its intended destination, receipts of receiving were obtained from the offices of aforementioned recipient officers.

On July 28, 2013 the National Crisis Management Cell, Ministry of Interior too sent a letter marked 'Threat Alert 699' to the Khyber Pakhtunkhwa government personnel<sup>54</sup> which read, 'It has been

learnt through reliable sources that Umer Khitab, along with TTP elements, are planning to carry Bannu jailbreak-like attack on Dera Ismail Khan Central Prison and for this purpose, the group has reached the vicinity of Dera Ismail Khan.<sup>155</sup>

In order to reiterate and reinforce the urgency of the matter, relevant officers were sent text messages on the preceding Sunday advising them to take appropriate measures. 'The intelligence was not merely confined to information about gathering militants in Dera. The administration was warned that militants would be launching a three-pronged attack from *Sabzi Mandi*, Girls Degree College and Town Hall where they parked their 14 vehicles... As a consequence, civil military officers visited the prison to work out a security plan.'<sup>165</sup>

However, the State's response to such a sophisticated challenge to its writ can only be referred to as abysmal ineptitude. All concerned promptly launched into a blame game, whereby the chief concern of stakeholders was to exonerate themselves. The Khyber Pukhtunkhwa government of the Pakistan Tehreek-e-Insaf (PTI) and the Pakistan army blamed one another. While the operation was going on, the Provincial Information Minister, Mr. Shaukat Yousafzai claimed that no prisoners had escaped. The PTI chief Mr. Imran Khan then blamed the previous government of the Awami National Party (ANP) for the security lapses, while his Chief Minister, Mr. Pervez Khattak was initially not heard from. Just as the intelligence agencies' ability to detect and intercept the TTP plan was being questioned, reports in the media started appearing about the intelligence agencies tipping off the Khyber Pakhtunkhwa government a few days before the assault. However, not a word was said by the politicians and government officials appearing on both print and electronic media about the state of the criminal justice system of the country.

It is pertinent to underscore that D. I. Khan jailbreak is not to be treated an isolated event, but as a case study illustrative of the state of the criminal justice system. During an interview with Mian Farooq Nazir, Inspector General Prisons, Punjab, we were told that piecemeal measures were taken over the past couple of years to ensure the security of prisons. For instance, approximately Rs. 700 million were spent on electric wires surrounding the prisons of Punjab. He recognised the fact that despite stringent checking, mobile phones are smuggled into the jails on a regular basis through some very innovative means. We were told that up to 5,000 mobiles, illegally conveyed inside prison premises last year, were discovered by the prison staff. As mobiles allow an avenue of communication with the outside world, which in case of prisoners incarcerated for terrorism charges can be potentially very dangerous, mobile jammers have been placed in the Kot Lakhpat Jail in Lahore. This is the section where the particularly dangerous prisoners and those convicted of terrorism charges are kept. The IG acknowledged the fact that the prison staff facilitates the ferrying of phones in exchange for money but this only represents the real challenges faced by the prison force on a daily basis. Prisons are an indispensable partner of the anti-terrorism campaign and demand reforms to the effect; salary of the prison staff being a possible starting point so as to discourage communication with the prisoners.

Pakistan has been a partner of the global anti-terrorist effort for more than a decade now. Over this time, some terrorists have been convicted and incarcerated as well. However, the prison staff to whom they have been handed over to for custody, has not formally received any training till date which would equip them to effectively perform the task they have been vested. Only recently, a few capacity building exercises were introduced. For instance prison staff was provided a preliminary training in weapon handling with the aegis of the army and the Rapid Reaction Squad of the Elite Force. But they also need to be trained to be the first responders and how to engage till such

time that the district police arrive. It must be borne in mind that the prison staff is permitted by law to wield batons only as a precaution against being overpowered by the prisoners and having their weapon taken away. Had the prison staff had rudimentary training, they might not have been as helpless as they were during the D. I. Khan jailbreak.

One cannot stress enough that prisons as the third component of the criminal justice system have an indispensable role to play in the counter-terrorism campaign and thus demand reform accordingly. The prison staff is in dire need of capacity building which makes them equal to the task at hand.



## IV. Bridging the Gaps between Anti-terrorism Laws and Counter- terrorism Strategy

#### **IV. Bridging the Gaps between Anti-terrorism Laws and Counter-terrorism Strategy**

There exists a body of laws in Pakistan, legislated for the express purpose of neutralising threats to the security of the country and assurance of fair and speedy trials of the related offences: The Pakistan Penal Code; the Security of Pakistan Act, 1952; Maintenance of Public Order Ordinance, 1960; Defence of Pakistan Rules; etc.

The Anti Terrorism Act, 1997 (ATA)<sup>57</sup> is the primary counter-terrorism legislation in Pakistan. The ATA was originally introduced to curb sectarian violence in Karachi. Even though subsequent amendments considerably broadened its scope, it has over the years proven incapable of coping with the complexities of the post 9/11 world. The world today is a very different place and poses far more intricate issues from when the ATA was originally promulgated. With passage of time the ATA, in conjunction with other counter-terror legislation in the country, has gone out of sync with the needs and requirements of the hour. Pakistan, which is one of the worst affectees of terrorism - partly due to its inadequate socio-economic policies and partly because of its proximity to and its role as a primary partner in the 'global war of terror' - is in dire need of a counter-terrorism strategy. Failure to formulate one has not only resulted in a spate of new legislation like the PPO but also amendments to the existing laws like the ATA. All of these which make sense on paper but have limited to no efficacy in reality.

##### ***Anti Terrorism Act as a Tool against Terrorism and its Efficacy***

The question that Punjab needs to ask itself is that after a decade of anti-terrorist efforts and innumerable deaths of both civilians as well as security personnel, why is it that any serious terrorism case has not come to any court? After which suicide bombing or target killing has a TTP member, despite having taken public ownership of the act of terrorism, been arrested and proceeded against in an ATC? The few who are caught, who are the judges that remand them and under what circumstances? Our research indicates that fault lies in the definition of terrorism itself. The ATA was promulgated to counter sectarianism in Karachi in the 90's. By very definition, the legislation was not intended to be a tool which could be wielded with any measure of success against terrorism as it stands today. Thus, rampant legal confusion prevails amongst those tasked with the responsibility of eradicating terrorism as to what is the precise nature of the beast.

In absence of a clear understanding of the nature of crime itself, it would not be entirely wrong to say that as matters stand, the government's understanding of terrorism is dictated by the need of the hour. A clear example thereof would be that the definition of terrorism, as specified in s. 7 of ATA, has been amended on numerous occasions in the past decade and a half. Most of these amendments though have only expanded the definition without the benefit of analysis as opposed to streamlining it. As a result, ATCs are trying cases which have nothing to do with terrorism. We were told by prosecutors that merely 5% of the total volume of cases pending before the ATCs all over Punjab can actually qualify as terrorism cases. The majority of the caseload pertains to the offence of kidnapping, which even if they have nothing to do with terrorism, land in ATCs. This then creates room for the State apparatus to be used for personal profit. As ATCs provide for speedier trials and more stringent punishments, it suits the parties to approach special courts as opposed to ordinary criminal justice system thereby highlighting failure of both.

But the confusion of those in power is represented by the current decision of the Punjab Govern-

ment to rename the Counter Terrorism Department to Counter Terrorism Force. Instead of utilising previous staff, new personnel will be trained to serve on the Force. What the real cause for concern is that this Force will report to the Home Secretary of Punjab as opposed to the Inspector General. We have established at great length and in extreme detail that it is the Police that is ideally suited to spearhead any successful counter-terrorism efforts. What the Punjab government is doing is the exact opposite. Not only are the already existing hostilities between the Management and Police being further stoked, but time, resources and energy are being invested in the wrong place.

As mentioned earlier in this chapter, the ATA was promulgated within a certain context, which over time has been rendered obsolete by the changing nature of the crime itself. As per our research, if the ATA is to be put to its most efficacious use, the very definition of terrorism has to be chiselled considerably. The definition should be limited to political terrorism. As the legislation stands, offences ranging from sexual violence to theft all fall within the purview of the definition. As terrorism is a more serious charge, ATA awards heavier punishments and terrorism cases get heard quickly because of special courts. All personal disputes which have nothing whatsoever to do with terrorism are also filed under the said law. Instead of helping curb terrorism, the law as it stands is being used to private end. Not only should a narrative of counter-terrorism be built, but the premier anti-law should reflect that narrative.

This narrative can then be used as a stepping stone for devising a way forward for Punjab. A case for comprehensive overhaul of the criminal justice system of the Province has already been made above. But once an efficacious counter-terrorism narrative has been put in place, the practical aspect of the anti-terrorist effort would benefit from a definitive direction too. The Police, for instance, would benefit from an overall institutional reform which allows for a certain measure of laxity but also from the much needed access to requisite [surveillance] equipment, skill development and training to effectively participate in anti-terrorism efforts but for the maintenance of law and order. Same goes for the Prosecution. With a counter-terrorism strategy in place, the Prosecution can eradicate its problems pertaining to case construction and witnesses defecting or resiling. It is safe to presume, that once a few convictions have been secured, not only will civilian confidence in the system undergo an overall boost, but an example can be set for future instances.

## Conclusion

As things stand in 2014, both federal as well as provincial policymakers are still struggling to devise a comprehensive and consensus-based anti-terrorism policy. It is disconcerting to note that in the past decade and half the Pakistani State has been perceived by some as the perpetrator and now is generally recognized as the victim of terrorist acts. Over these years, the civilian, police and military casualties have enormously increased, yet conviction rates remain abysmally low. This demonstrates that the country's criminal justice system needs serious reform.

At the federal level, an internal security policy is being debated and has yet to be formulated and made fully public. NACTA requires a major professional reorganisation and infrastructural makeover. The issue on who should the NACTA report to, the Prime Minister or Minister, remains a bone of contention and needs policy decision and professional input. Even the Cabinet Committee on National Security is procrastinating on decisive infrastructural issues, which in turn has adverse ramifications for the national security policy.

At the federal level, NACTA should be the key civilian institution responsible for coordination between the federation and the provincial stakeholders dealing with terrorism. In addition, the Interior Ministry, with all the federal agencies like ISI, IB, FIA etc., should liaise with the Counter Terrorism Department of Punjab and share real-time intelligence and threat assessment. But in order to do so, a clear distinction must be drawn between counter-insurgency and counter-terrorism, followed by the all important recognition that combating/countering terrorism, the world over, is the responsibility/jurisdiction of civilian law enforcement and security agencies – the Punjab Police in this instance. Therefore, all intelligence agencies, including the ISI and the IB should not act *ultra vires* the legal and constitutional framework and afford due recognition to the jurisdiction of the Provincial Police.

At the provincial level, the study brings to attention the case of Punjab. In the 1990's Punjab was vigorous in combating sectarian menace, and that roused the expectation that the Provincial police had the desired skills and professional competence to combat terrorism. *'It was then that the Crime Investigation Department was created by training a special cadre of police and security officials with intelligence, analysis and investigative sections to augment the capacity of the district police to apprehend the sectarian terrorists of Lashkar-i-Jhangvi and Sipha-i-Mohammad.'*<sup>58</sup> [This Crime Investigation Department is now known as the Counter Terrorism Department.] Anti Terrorist Courts formed under the aegis of the ATA conducted speedy trials, resulting in the death penalty for 72 terrorists within two years. Additionally, the Elite Force was instituted, where state-of-the-art training from SSG commandos was provided to some of the best police officers. 'The Punjab police, assisted by the intelligence and investigative agencies, squarely met the threat of sectarian terrorism and acquitted itself well because it had clear missions and an able leadership.'<sup>59</sup> Twenty years later, the very same Punjab is struggling to organise itself in face of a far more devastating terrorist threat.

One of the key arguments of this study is that justice systems under representative governments are entirely dependent upon the efficacy of the police and the criminal justice system. Should either of the two crumble, citizen security is compromised.

Our research indicates that due to institutional incapacities, latent distrust *inter se* and general organisational deficit on part of the Provincial government, all the three branches are working

in uncoordinated silos. In Punjab, the entire criminal justice system continuum, including police prosecution and the prisons, needs to function in a coordinated fashion, under a clear ethical and just framework.

Investigation is one of the key components of policing, and thus crime and terror acts fall under its domain. Once that is completed, the case has to be pursued by the Prosecution. It is therefore imperative that the Counter Terrorism Department, Prosecution Department and the IOs [Punjab Police] liaise from the very initial stages of an investigation and maintain coordination throughout the trial of all terrorism cases for successful prosecution and convictions. In short, a weak criminal justice system translates into low convictions for terrorists, as is currently the case. Low conviction rates in terrorism cases in turn erode the citizen's confidence in the state, which in many ways becomes the root cause of terrorism. Rule of law and internal security are weakened, thereby creating a social environment conducive to the flourishing of terrorism.

Investigating terrorism is a highly technical and yet excruciatingly delicate matter. However, as discussed earlier, that is one aspect of the broader anti-terrorist effort that is currently being paid the least attention to due to a failure on part of both the Province as well as the federation to recognise its importance and political tussles amongst the policy makers. However, this can be remedied through measures taken both at the federal as well as provincial level.

The mainstay in anti-terrorism efforts the world over is the police. This paper highlights the indispensability of the local police in successful counter-terrorism efforts. Using literature on the subject as well as anecdotal evidence we have established that while military action is a poor tool of choice, the local police can play a unique albeit an integral role in effective counter-terrorism efforts. Therein lies a lesson for Punjab; all efforts of reform should be concentrated upon the lower ranks – the provincial police. They are the first responders and first point of contact between the citizen and the State. Moreover, as aforementioned, terrorism is entirely their jurisdiction.

In recent years, police reform has caught the attention of a select few policymakers. The 100 Model Police Stations built all over Punjab were the result of one such initiative. Another such example is that in May 2014, E-stations were set up in Lahore and Faisalabad. Even Police salaries witness sporadic increases with every new budget. While all are steps in the right direction, none of these measures/experiments has borne any positive results. This is because they are all isolated measures taken without an exhaustive prognosis of what ails the existing system to begin with. Issues that require immediate attention are training; both in combat as well as investigation. How can a terrorist be caught and effectively prosecuted when the personnel in charge have not been trained to do so? They can sit in a Model Police Station, or maintain computerised records but all of this is of no use whatsoever when they do not have surveillance equipment, when basic data is withheld from them by the intelligence agencies, and when they arrive at a crime scene without the necessary investigative skills or equipment.

The point being that the policymakers fail on two fronts. First, their instinctive reaction is to aim for police reform as opposed to an overall improvement of the criminal justice system. There is no denying the fact that the chief responsibility in any anti-terrorist effort lies with the police; in fact that is one of the core emphases of this paper. However, in order to yield results, it must be viewed as a component of the criminal justice system; an integral component working in tandem and coordinating with the other branches of the said system, but a component nonetheless. Secondly, all reformatory measures taken over the years work with the assumption that the chief shortcoming

of the Police is the *Thana* culture and once that is fixed, the problem will be solved. It is thus that cosmetic changes like the Model Police Stations and E-stations are experimented with. What this study highlights is the fact that while these are extremely important measures, they inevitably fail because it is the police procedures that need fine tuning. An infrastructural as well as procedural overhauling needs to be done. For example, the entire edifice of terrorist case – or any other criminal case for that matter – is constructed on investigation. Yet one is hard put to point out any substantive measures taken to improve this most important aspect of policing.

As mentioned earlier, a state-of-the-art forensic facility has been set up in Lahore. Interviews with the local police, combined with the information provided by the laboratory itself is one of the best examples of how the Police training lacks certain rudimentary skills. Not all know that the Laboratory is actually available to them. There is a broader consensus that it is meant for Lahore only. Lack of awareness on how to bag evidence and how best to utilise the facility have already been discussed in detail above. Moreover, as with all new initiatives taken, there is a turf war here as well. The IO, instead of recognising the efficacy of this facility understands it as an incursion of his territory. Again, the solution lies in training and skill development, but most importantly an orientation to the job.

It needs to be ingrained that all components of the criminal justice system must work in tandem. Additionally, the police demands extra attention. It needs to be taught to serve and protect as opposed to exploit and repress. Efforts should be made to improve implementation, with emphasis on protection of citizen's rights as opposed to violation of the rule of law.

To sum up, this research study has underscored and in the process conveyed that police reform in Pakistan has caught the imagination of political leaders, policy makers and policy analysts globally. However, it draws us to conclude that police reform without reform of criminal justice system is not likely to carry us too far. That is why various police reforms attempted so far have had limited impact in re-orienting the functioning of police. The study also draws the attention of policy makers and analysts to the notion that effective anti-terrorism campaign in Punjab would bring meaningful results if the criminal justice system in the Province undergoes comprehensive review, reform and resurrection. To combat terror, anti-terror laws are only a beginning; to dismantle and destroy terrorist's networks, we need more research and policy appraisal on fixing the criminal justice system. Punjab is well poised to lead; the critical question is would its leadership venture to convert this challenge into an opportunity?

## **APPENDIX I - Anti Terror Laws History**

In the past two decades, terrorism emerged as a major global as well as regional/indigenous issue. Concerned states' immediate response to a worldwide call for comprehensive counterterrorism strategies was – and continues to be – *inter alia*, promulgation of anti-terrorist legislation and institutions specifically designed to curb and contain incidence of terrorist activities.

Post 9/11, geo-political considerations anointed Pakistan as a frontline state in this multi-lateral partnership; though Pakistan's precise role in the broader global effort remains contentious. While one view holds the country as a victim of terrorism; in eyes of many policy analysts and experts, Pakistani State has been a perpetrator of terrorism as well – it is perceived as cultivating, sponsoring and abetting terrorist activities. In order to dispel these perceptions and to curb terrorism, Pakistan adopted a two-pronged strategy: first, several anti-terror laws were devised in the past two decades; second, it has created National Counter Terrorism Authority (NACTA). However, both of these are works in progress.

While there is an obvious difference in the form and content of the State's pre and post 9/11 response to security threats, it would be counterproductive to study the efficacy/effectiveness of the latter category in isolation. For a comprehensive analysis, it only makes sense to study the Pakistani state's commitment to national security as a comprehensive whole. This way we can trace the evolutionary pattern of the form of the laws and the vernacular used therein in order to analyse and better understand the shortcomings of the current anti-terrorist legislation holding field. Therefore, the first logical step would be to construct a chronological typology of laws promulgated by successive regimes since 1947 in order to suppress whatever the State deemed to be violent and terrorist acts.

As aforementioned, Pakistan's relationship with anti-terrorist legislation precedes aggregate efforts of the post 9/11 world. Traditionally speaking, the main threats to Pakistan's internal security are organised crime<sup>60</sup>, violence based on ethnic and sectarian divisions, Baluch Nationalist Movement, militancy in Jammu and Kashmir, and terrorism arising as a result of State's failure to establish writ over large areas of its territory. To these main forms, a new dimension of Islamic Terrorism with international linkages has been added in recent years. An additional layer of complexity to the existing threat has been contributed by external sponsorship.

Given the Country's long-standing struggle with various forms of political violence, there is a comprehensive trajectory of anti-terrorist legislation that can be traced as far back as 1949.

The first step ever taken towards eradication of violent and terrorist acts was promulgation of Public and Representative Offices (Disqualification) Act, 1949 (hereinafter referred to as PRODA). As per Shabana Fayyaz, the sole purpose thereof was to serve as a tool to suppress political freedom.<sup>61</sup> Even though on paper the intention behind PRODA was prevention of the "abuse of official power and position in the interest of public probity to limit such persons that are found guilty of 'misconduct' in any public office or representative capacity or in any affair which comes under it", the true intention informing its promulgation manifests itself in the definition of the offence of 'misconduct' that it sought to introduce. Misconduct included bribery, corruption, robbery, favouritism, nepotism, maladministration, misuse of public money, money collection and abuse of official power or position. Anyone found guilty of the offence was not only divested of their duties with immediate effect, but were rendered ineligible to hold any public office of profit for up to ten years.

The final decision lay with the Governor General, with no right to appeal. Additionally, it incorporated protective confinement and imposed restrictions on the gathering of more than five persons.

Ayub Khan's tenure (1960–1971), whose official policy stance was of a 'guided democracy', displayed no compunction whatsoever in seizing political rights through multiple legal channels. Laws introduced for curtailing political freedoms, censoring newspapers and eliminating civil rights by enforcing extraordinary penalties against criminals included Public Offices Disqualification Act, 1959; Electoral Bodies (Disqualification) Order; The Defence of Pakistan Ordinance, 1955; and Defence of Pakistan Rules, 1965. The most important legislation amongst these was Security of Pakistan Act, 1952 whereby military courts were established, federal government was awarded blanket powers to restrict movement and issue detention orders wherever it deemed suspicious in its sole discretion. Additionally, the federal and provincial governments were vested with the authority to direct any person to submit his/her photograph, fingerprints, handwriting and signatures to a designated officer. Anyone deemed guilty of disobeying such an order faced up to six months imprisonment, or fine, or both. These legislative measures proved effective in obfuscating opposition as it is estimated that nearly 20,000 politically active personnel at the time, including both politicians and activists were removed altogether from the political arena.

Despite reversion to democracy during the Bhutto years (1972–1977), the state policy continued to pursue its commitment to suppression of undesirable political activity by subscribing to the rhetoric of commitment to an anti-terrorist campaign. In fact, the word 'terrorist' was introduced to the Pakistan's legalise for the very first time during the said elected government's tenure. Bhutto's regime had to face nationalist movements in Baluchistan and the North West Frontier Province (now known as Khyber Pakhtunkhwa). Therefore, Suppression of Terrorist Activities Ordinance, 1975 was promulgated with the intention to quell ensuing violence. Special courts were created to try scheduled offences; all offences under the Arms Act, 1878; West Pakistan Arms Ordinance, 1965; Railway Act, 1890; Telegraph Act, 1885; and Anti-National Activities (Special Courts) Act, 1974 were considered scheduled offences and by extension, acts of terrorism. Special courts created under the said law not only had the power to pass any sentence authorised by law, but could exercise the powers of the High Court to punish any person who disobeyed, abused and interfered in the Court's order. It must be remembered that the judges of these special courts were appointed directly by the provincial and federal governments, in consultation with the Chief Justice, thereby affording the State not only the right to interfere with the judicial process but also the authority to wield law a tool for obfuscating any/all opposition. This Act remained in force in Sindh and Punjab until it was repealed by its successor in 1997 and in Baluchistan and Khyber Pakhtunkhwa till as recently as 2001.

There is no denying the fact that the Pakistani state has been threatened with violent opposition and its civil order challenged since the country's inception. Thus, it was only natural that successive governments responded by their own contributions to the body of security laws. The problem though is that all these prima facie legitimate attempts at curbing violent activities were informed by the State's attempt at preservation of self interest and therefore designed to subvert political opposition or address ethno-national conflict. "Such policies, at times, departed from the norm – they were justified as 'necessary' or as meeting 'emergencies' – and, at times, the targets of such policies were labelled as 'terrorists'. But, such decision makers did not create an ideology that justified such departures from the norm, they did not create permanent institutions that dealt with 'terrorism', and they did not construct an 'anti-terrorist regime'."<sup>62</sup>

That said, post-1997 policies of Nawaz Sharif mark the beginning of a step away from previously self-serving policy making and towards formulation of a qualitative anti-terrorism strategy for the very first time. The Anti-Terrorism Act, 1997 (hereinafter referred to as the ATA) continues to be the primary counter-terrorism legislation till date. However, before embarking upon a detailed discussion into the merits and demerits of the ATA and how that reflects on the broader counter-terrorism efforts that the criminal justice system is embroiled in, it is only pertinent to mention that Nawaz Sharif had attempted to introduce an anti-terrorist strategy as early as 1991 through the 12th constitutional amendment whereafter Article 212-B of the Constitution allowed for 'establishment of special courts for the trial of heinous offences'. This was a temporary measure that was never affirmed by the Parliament and lapsed after three years. Secondly, the ATA was very much a product of the time and purpose it was promulgated in and hence defined terrorism in very broad terms with proposed stringent procedural requirements. Section 6 defined Terrorism as follows:

'Whoever, strikes terror in the people, or any section of the people, or to alienate any section of the people or to adversely affect harmony among different sections of the people, does any act or thing by using bombs, dynamite or other explosive or inflammable substances, or firearms, or other lethal weapons or poisons or noxious gasses or chemicals or other substances of a hazardous nature in such a manner as to cause, or to be likely to cause the death of, or injury to, any person or persons, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community or display firearms, or threatens with the use of force public servants in order to prevent them from discharging their lawful duties commits a terrorist act.'

Due to such broad terminology, a vast array of crimes could easily be included within the purview of the Act irrespective of whether at the time of commission they were not intended to. For instance, acts which could easily be tried as terrorism included murder, malicious insult of the religious beliefs of any class, the use of derogatory remarks in respect of the holy personages, kidnapping and various statutes relating to dacoity and robbery. 'Clearly, terrorism as defined by the act was in the eyes of the prosecutor, that is the terms of the act could be interpreted to include virtually any violent act, or encouragement of the commission of a violent act.'<sup>63</sup>

Additionally, ATA created special anti-terrorism courts. Their judges' tenure did not have any specific tenure of office and were serving at the government's discretion. The prosecution was afforded no more than seven days to complete investigation and the court given an additional seven days to try the case. Witnesses could be recalled, there were no adjournments beyond two days, the accused could be tried and sentenced in absentia and the appeal lay only with an appellate bench of the ATA Tribunal which were constituted at the discretion of the government.

It was thus that the ATA received severe criticism from legal as well as human rights activists and certain especially unacceptable provisions of the Act were overturned by the Supreme Court through *Mehram Ali v. Federation of Pakistan*. The three main changes ordered were:

1. The judges of the special courts created under the ATA would have fixed and established tenure;
2. Such special courts would be subject to the same or similar procedural rules as regular courts including rules of evidence, etc.; and
3. The decisions of special courts would be subject to appeal before the relevant constitutionally mandated regular courts.

These changes were incorporated in the main body of the Act through Anti Terrorism (Amendment) Ordinance, 1998. Over the years the Act was fiddled with by successive governments; the more significant changes though happened after September 2001 when the security strategy came under renewed attention perforce. Post 9/11 there has been obvious somewhat focused commitment, yet the numbers and facts belittle these efforts.

## APPENDIX II – Data of Terrorists Incarcerated Provided by the Punjab Prisons

Sr. No.	Name of Jail	Under Trial	CT	CP	Security Prisoner	Total No. of Terrorist Prisoners
<b>LAHORE REGION</b>						
1.	Central Jail, Lahore	14	35	11	0	60
2.	Central Jail, Gujranwala	0	1	0	0	1
3.	Central Jail, Sahiwal	0	3	0	0	3
4.	District Jail, Kasur	0	0	0	0	0
5.	District Jail, Lahore	0	0	2	0	2
6.	District Jail, S-Pura*	0	0	0	0	0
7.	District Jail, Sialkot	7	10	20	0	37
	<b>Total</b>	<b>21</b>	<b>49</b>	<b>33</b>	<b>0</b>	<b>103</b>
<b>RAWALPINDI REGION</b>						
8.	Central Jail, Rawalpindi	46	13	7	0	66
9.	District Jail, Attock	0	0	0	0	0
10.	District Jail, Gujrat	0	0	0	0	0
11.	District Jail, Jhelum	0	0	0	0	0
12.	District Jail, M. B. Din*	0	0	0	0	0
13.	Sub – Jail, Chakwal	0	0	0	0	0
	<b>Total</b>	<b>46</b>	<b>13</b>	<b>7</b>	<b>0</b>	<b>66</b>
<b>FAISALABAD REGION</b>						
14.	Central Jail Faisalabad	1	33	18	0	52
15.	Central Jail, Mianwali	1	6	5	0	12
16.	B.I. & J, Jail, Faisalabad	0	0	0	0	0
17.	District Jail, Faisalabad	0	0	0	0	0
18.	District Jail, Jhang	0	4	0	0	4
19.	District Jail, Sargodha	0	0	0	0	0
20.	District Jail, Shahpur	0	0	0	0	0
21.	District Jail, T. T. Singh*	0	0	0	0	0
	<b>Total</b>	<b>2</b>	<b>43</b>	<b>23</b>	<b>0</b>	<b>68</b>
<b>MULTAN REGION</b>						
22.	Central Jail, Multan	19	41	84	0	144
23.	B.I. & J, Jail, Bahawalpur	3	7	0	0	10
24.	Central Jail, Bahawalpur	5	1	3	0	9
25.	Central Jail, D. G. Khan*	10	0	0	0	10
26.	District Jail, B. Nagar*	0	0	0	0	0
27.	District Jail, Multan	0	0	2	0	2
28.	District Jail, M/Gah*	0	0	0	0	0
29.	District Jail, R.Y. Khan*	1	1	2	0	4

30.	District Jail, Rajanpur	0	0	0	0	0
31.	District Jail, Vehari	0	0	0	0	0
32.	W. Jail. Multan	0	11	0	0	11
	<b>Total</b>	<b>38</b>	<b>61</b>	<b>91</b>	<b>0</b>	<b>190</b>
	<b>Grand Total</b>	<b>107</b>	<b>166</b>	<b>154</b>	<b>0</b>	<b>427</b>

\*where S-Pura is Shiekhupura, M.B.Din is Mandi Bahauddin, T.T.Singh is Toba Tek Singh, D. G. Khan is Dera Ghazi Khan, B. Nagar is Bahawalnagar, M/Gah is Muzaffargarh and R. Y. Khan is Rahim Yar Khan.

## End Notes

- 1 Section 14, Protection of Pakistan Ordinance, 2013.
- 2 The Criminal Justice System of Pakistan includes the Police, the Courts and the Prisons. For the purpose of this paper, all the three components shall be discussed both separately as well as collectively. Please note, wherever the term Criminal Justice System is mentioned, it is referring to all these three collectively and is not to be understood as referring to any one of the components unless clearly specified to the contrary.
- 3 The Express Tribune, Vicious Year: Terrorism Surged in 2013, says Report, <http://tribune.com.pk/story/655329/vicious-year-terrorism-surged-in-2013-says-report/>  
The Report concluded that a total of 1,717 terrorist attacks occurred across Pakistan in 2013 in which, 2,451 were killed and 5,438 were injured.
- 4 List of Suicide attacks in Punjab between 2003 – 2013 collected by the South Asia Terrorism Portal. <http://www.satp.org/satporgtp/countries/pakistan/Punjab/datasheet/suicideattack.htm>
- 5 Suicide Attacks in Punjab, 2014. <http://www.satp.org/satporgtp/countries/pakistan/Punjab/datasheet/suicideattack.htm>
- 6 As per the constitution of Pakistan, constitutionally elected provincial legislatures – in conjunction with a broad based consultative process involving all the stakeholders, civil society organisations as well as public at large – are vested with the ownership of all legislation pertaining to security matters.
- 7 These numbers have been verified by the Human Rights Commission of Pakistan.
- 8 High Ration of Acquittal: Punjab to Review ATC Prosecutor's Working  
<http://www.dawn.com/news/770169/high-ratio-of-acquittal-punjab-to-review-atc-prosecutors-working>  
  
As per the data compiled by the Punjab Prosecution Department, 699 new cases were instituted over the course of 2013. This number was added to in 2014 when in January of this year alone there are 346 pending cases before the ATCs across the Province.
- 9 120th UNAFEI International Seminar, Cooperation between the Police and Prosecutors. 120th International Senior Seminar Reports of the course; Mr. John Maru, Mr. Ejaz Husain Malik, Ms. Nassuna Juliet, Mr. Nobuyuki Kawai, Prof. Kei Someda and Prof. Yuichiro Tachi.
- 10 To name a few for instance: Coalition Provisional Authority and Ministry of Interior, Iraq, "Iraq Police: An Assessment of their Present and Recommendations for the Future", Baghdad, Iraq, CPA, 2003; Bair, A., and M. Dziedzic, "Bosnia and the International Police Task Force", and Gray, A., and M. Manwaring, "Panama: Operation Just Cause", both in Policing the New World Disorder: Peace Operations and Public Security, edited by R. Oakley, M. Dziedzic and E. Goldberg, 253-314, Washington DC: National Defense University Press, 1998.
- 11 Bayley, David H., and Perito, Robert M., "The Police in War: Fighting Insurgency, Terrorism and Violent Crime", (Lynne Rienner Publishers, Inc.), First Indian Edition, 2012.
- 12 Page 152.
- 13 Page 103.
- 14 Page 153.
- 15 Page 103.
- 16 Page 153.
- 17 Hassan Abbas (Editor), "Stabilizing Pakistan through Police Reform", Asia Society Report by the Independent Commission on Pakistan Police Reform (New York; Asia Society, 2012).
- 18 Ibid.
- 19 Saeed Shafqat, "Reforming Pakistan Police", Quarterly Research & News, Number 16-18, Centre for Public Policy & Governance, July 2012, Page 49.
- 20 C. Christine Fair and Peter Chalk, "Fortifying Pakistan: The Role of U.S. Internal Security Assistance" (Washington, DC: United States Institute of Peace Press, 2006) pp. 61-79.
- 21 Seth G. Jones and Martin Libicki, "How Terrorist Groups End: Lessons for Countering Al Qa'ida" (Washington DC: RAND Corp., August 2008). [http://www.rand.org/content/dam/rand/pubs/monographs/2008/RAND\\_MG741-1.pdf](http://www.rand.org/content/dam/rand/pubs/monographs/2008/RAND_MG741-1.pdf)
- 22 Abbas Supra Note 13. Page 158.
- 23 William Eubank, and Leonard Weinberg, "Does Democracy Encourage Terrorism?" *Terrorism and Political Violence* 6 (4), (1994). Pp., 417-43; and "Terrorism and Democracy: Perpetrators and Victims", *Terrorism and Political Violence*, 13 (1), (2001). Pg. 155-64.
- 24 Joe Eyerman, "Terrorism and Democratic States: Soft Targets of Accessible Systems", *International Interactions* 24 (2), (1998), Pp. 151-70.
- 25 Seung-Whan Choi, "Fighting Terrorism through the Rule of Law", *Journal of Conflict Resolution* 54(6), (2010), Pp. 940-966.
- 26 Ibid., p. 945.
- 27 Ibid., p. 957.
- 28 Quan Li, "Does Democracy Promote or Reduce Transnational Terrorist Incidents?", *Journal of Conflict Resolution*, Vol. 49, No. 2, April 2005, Pp. 278-297.
- 29 David Alan Sklansky, "Police and Democracy", *Michigan Law Review*, Vol. 103, No. 7 (Jun., 2005), 1699-1830.
- 30 Ibid; 1700-1701.
- 31 Anupama Rao, "Problems of Violence, States of Terror: Torture in Colonial India, Interventions". *International Journal of Post Colonial Studies*, 3:2, 186-205.
- 32 Ibid., p. 189.
- 33 Ibid., p. 193.
- 34 Rabia Chaudhry, "Policing, Custodial Torture and Human: Designing a Policy Framework for Pakistan", Center for Public Policy and Governance, 2013.
- 35 The culture of violence and impunity it espouses has been discussed in the above monograph on torture.
- 36 Conclusion chapter of the Torture monograph.
- 37 Paul Petzschmann, "Pakistan's Police between Centralization and Devolution", NUPI Report, Norwegian Institute of International Affairs, 2010, Pg. 11.
- 38 Ibid.

- <sup>39</sup> Ibid., pg. 19.
- <sup>40</sup> See Supranote 2.
- <sup>41</sup> Law & Justice Commission of Pakistan, Jail Reforms Revised (1997 Report No. 23) [www.ljcp.gov.pk/Menu Items/Publications/Reports of the LJCP/reports/73- 89/80.doc](http://www.ljcp.gov.pk/Menu%20Items/Publications/Reports%20of%20the%20LJCP/reports/73-89/80.doc).
- <sup>42</sup> Sanctioned Strength of Punjab Prisons Department as on 20.09.2010.
- <sup>43</sup> Population Statement of Prisoners confined in Punjab Jails as on 15.09.2010.
- <sup>44</sup> Laws which are applicable to prisons and prisoners in addition to The Prisons Act, 1894, The Pakistan Prison Rules, 1978 and The Prisoners Act are: 1900 The Reformatory Schools Act, 1897; The Punjab Borstal Act, 1926; Good Conduct Prisoners Probational Release Act, 1926; The Probation of Offenders Ordinance, 1960; The Probation of Offenders Rules, 1961; Regulation III of 1818 for the Confinement of State Prisoners; Execution of the Punishment of Whipping Ordinance, 1979; The Punjab Execution of the Punishment of Whipping Rules, 1979; The West Pakistan Maintenance of Public Order, 1960; West Pakistan Public Order Detenue Rules, 1962; and the Lunacy Act, 1912.
- <sup>45</sup> Muhammad Siddique Akbar and Mazhar Hussain Bhutta, "Prison Reforms and Situation of Prisons in Pakistan" [http://sapandssrp.com/attachments/File/Prison\\_reforms.pdf](http://sapandssrp.com/attachments/File/Prison_reforms.pdf).
- <sup>46</sup> The meetings of the following Committees/Commissions/Conferences were held during/since 1947: First Prison Reforms Committee under Col. Salamat Ullah, Ex-IGP of UP combined India in 1950/1955; East Pakistan Jail Reform Commission chaired by S. Rehmat Ullah, CSP, Commissioner in 1956; The West Pakistan Jail Reforms Committee headed by Mr. Justice S.A. Mahmood (S.Pk.), Retired Judge, High Court of West Pakistan in 1968-70; Special Committee on Prison Administration headed by Mr. Muhammad Hayatullah Khan Sumbal, Home Secretary appointed by Governor of Punjab 1981-83; Prison Reforms Committee headed by Mr. Mahmud Ali, Minister of State in 1985; Jail Reforms Committee headed by Maj. Gen. (Retd.) Nasirullah Khan Babar, Minister for Interior & Narcotics Control in 1994; Jail Reforms Committee under Mr. Justice M. Rafique Tarar; Pak Law Commission headed by Mr. Justice Sajjad Ali Shah, Chief Justice of Pakistan in 1997; Pak Law Commission headed by Mr. Justice Sajjad Ali Shah, Chief Justice of Pakistan in 1997; Task Force on Prison Reforms under Mr. Justice Abdul Qadir Sheikh in 2000; Meetings held at the national level by Ministry of Interior 2005 under the Chairmanship of former Minister for Interior Mr. Aftab Ahmed Khan Sherpao. In addition, meetings were also held under the Chairmanship of Principal Secretary to the Prime Minister and in the National Reconstruction Bureau, Islamabad with the coordination of Central Jail Staff Training Institute now upgraded as National Academy for Prison Administration (NAPA), Lahore. A copy of the final report has been provided to all the Provinces by the Chairman, National Reconstruction Bureau, Prime Minister's Secretariat, Islamabad, to all the Home Secretaries and Inspectorates of Prisons for implementation (NAPA, 2011).
- <sup>47</sup> Ibid.
- <sup>48</sup> Rabia Chaudhry, "Policing, Custodial Torture and Human: Designing a Policy Framework for Pakistan", Center for Public Policy and Governance (Monograph Series).
- <sup>49</sup> Areyeh Neir and David J. Rothman, "Prison Conditions in India", Human Rights Watch (New York, N.Y.) (1991).
- <sup>50</sup> <http://www.hrw.org/reports/2007/us0207/us0207webwcover.pdf>.
- <sup>51</sup> Katherine Houreld (Reuters correspondent) <http://www.bbc.co.uk/news/world-asia-23493323>.
- <sup>52</sup> Tahir Khan, Pakistan Taliban Commander Uncovers DI Khan Jail Assault Plan, <http://tribune.com.pk/story/586235/pakistan-taliban-commander-uncovers-di-khan-jail-assault-plan/>  
According to the Taliban leader, the operation was launched by three groups – the Punjabi Taliban, the Halqa-e-Mehsud and a group from the Mohmand tribal region. All three groups were reported to have contributed to the finances of the operation. The freed TTP men were taken to safe locations and expected to resume their routine responsibilities.
- <sup>53</sup> Ismail Khan, Jail Break: It Wasn't an Intelligence Failure for Once, <http://dawn.com/news/1033064/jailbreak-it-wasnt-an-intelligence-failure-for-once>
- <sup>54</sup> Ibid. The letter was sent to Khyber Pakhtunkhwa Home Secretary, Peshawar; Provincial Police Officer; Additional Chief Secretary FATA; Inspector General Frontier Corps; Inspector General, Prisons, Khyber Pakhtunkhwa; and Commandant Frontier Constabulary, Khyber Pakhtunkhwa, Peshawar.
- <sup>55</sup> Ibid.
- <sup>56</sup> Ibid.
- <sup>57</sup> Which has subsequently been amended in 1998, 1999, 2002, 2010, and now in 2012.
- <sup>58</sup> Tariq Khosa, Counterterrorism Confusion, <http://www.tariqkhosa.com/counterterrorism-confusion/>.
- <sup>59</sup> Ibid.
- <sup>60</sup> Organised crime includes dacoity, prostitution, kidnapping, drugs and gambling.
- <sup>61</sup> Shabana Fayyaz, "Responding to Terrorism: Pakistan's Anti Terrorism Laws: Part I", Pakistan Institute for Peace Studies, April 28, 2008.
- <sup>62</sup> Charles H. Kennedy, "The Creation and Development of Pakistan's Anti-Terrorist Regime, 1997-2002" in Religious Radicalism and Security in South Asia (Satu P. Limaye, Robert G. Wirsing, Mohan Malik, eds.), p.387-413 (a publication of the Asia Pacific Center for Security Studies, Honolulu, Hawaii, Spring 2004).
- <sup>63</sup> Ibid., page 390.



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