

Security Sector Reforms in Pakistan: Significance, Challenges and Impediments

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Abstract

Since 9/11 and the consequent US-led military action in Afghanistan, the Pakistani military has been deployed in the north-western areas to crush militant insurgency both by indigenous as well as foreign agents. This has brought about a major shift in the security posture of Pakistan, whereby the military's role has extended beyond its traditional duties. For nearly two decades, monitoring law and order, diffusing radical, militant as well as ethno-nationalist groups in select pockets of the country and countering terrorism, has transformed military's traditionally assigned role. Given the complexity of the problems impacting the internal sovereignty of the country, the process has become more inclusive with attention being focused in the areas of law enforcement as well as judicial and legislative bodies to improve the quality of their performance and making them more result oriented and effective. In terms of governance, the country has also faced problematic civil military relations, leaving little space for democratic forces to operate and mature fully. Not only does the military remain central to the debate on securitisation but also leads the discourse on Security Sector Reform (SSR). This paper attempts to review the various dimensions of SSR in a theoretical perspective, alongside an overview of the existing security sector institutions in Pakistan, besides highlighting the impediments and challenges faced.

Key words: Security Sector Reform, Police Order, National Reconstruction Bureau, Levies, Khasadars, FCR, Nizam-e-Adl.

Introduction

Since inception, Pakistan faced multidimensional security problems. Being a post-colonial state, it primarily faced external security threats, mostly emanating from its eastern neighbour. The origin of this threat lies mainly in

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the colonial legacy, of which Pakistan is not the only beneficiary. Many decolonised states faced similar security challenges. Unresolved border issues, disputed territories, divided populations and a tenacious colonial system and mind set, which despite seven decades of independent existence, remains reflective in institutional and political culture. Owing to this perennial security concern, Pakistan adopted a strong defence posture. The threat was not completely unfound, as both India and Pakistan, fought three full-fledged wars, with one resulting in the Dhaka Debacle in 1971. The two neighbours also faced several near-war situations, mainly over the disputed territory of Jammu and Kashmir and are still engaged in confrontation.

With regards to its western neighbours, Afghanistan and Iran, the security threat was never so pronounced. However, the Durand line has been a moot point. Yet, despite changing geostrategic relations over the decades and new emerging threats, Pakistan maintained minimalist military presence at this side. 9/11 resulted in a US-led military action in Afghanistan, which also brought about a heavy military deployment by the Pakistan military in its north west to crush militant insurgency both by indigenous as well as foreign agents. This brought about a major modification in the security posture: the military not only had to fulfil its traditional duties, but, for nearly two decades, got involved in the internal securitisation also.

Owing to Pakistan's inherent security dilemma, the military remains central to the discourse on security. However, the changing trends and global lens through which security is now viewed, requires a larger and more comprehensive framework. The stakeholders and providers of security are no longer the traditional institutions bequeathed with the task alone but a range of non-traditional issues and factors are equally important. Furthermore, these changing trends require improvement, modifications and transformation in the security sector, to enable effective functioning given the complexity of the problems impacting the internal sovereignty of the country, the process has become more inclusive. With attention being focused in the areas of law enforcement as well as judicial and legislative bodies to improve the quality of their performance and making them more effective. A daunting task, as these institutions still remain deeply wedded to their colonial roots and are not properly equipped to address the multifaceted threats and challenges that are rapidly evolving.

For this purpose, it is imperative to usher and implement an effective and sustainable Security Sector Reform (SSR) regime. In the case of Pakistan, as mentioned earlier, the institution of military, takes a position of prominence when it comes to managing security whether in the traditional or the non-traditional realm. However, the changing global dynamics as well as wide range of threats, calls for reforms in the prevailing security discourse. This paper attempts to review the various dimensions of SSR in a theoretical perspective alongside the existing security institutions in Pakistan. Furthermore, the challenges faced in an effective SSR agenda for the country would be examined and the prospects and measures would be suggested.

Security Sector Reforms and its Dimensions

Security sector, as a term, has become more commonplace in contemporary political and military discourse. It is defined as, “a broad grouping of institutions, state and non-state alike. It embraces a variety of unarmed and non-uniformed actors beyond the traditional understanding of armed and uniformed security sector practitioners.”¹ Likewise, the UN defines security sector as “the structures, institutions and personnel responsible for the management, provision and oversight of security in a country.”² The institutions involved include those concerned with defence, law enforcement, corrections, intelligence, border management, customs and civil emergencies, as well as the courts and tribunals adjudicating cases of criminal conduct. The UN definition also includes institutions responsible for the management and oversight of security, such as the executive and its ministries, legislative bodies and civil society groups. Non-state actors such as traditional authorities, militias and private security services are also included.³

Accordingly, the main constituent actors in the security sector can be divided into four broad categories:

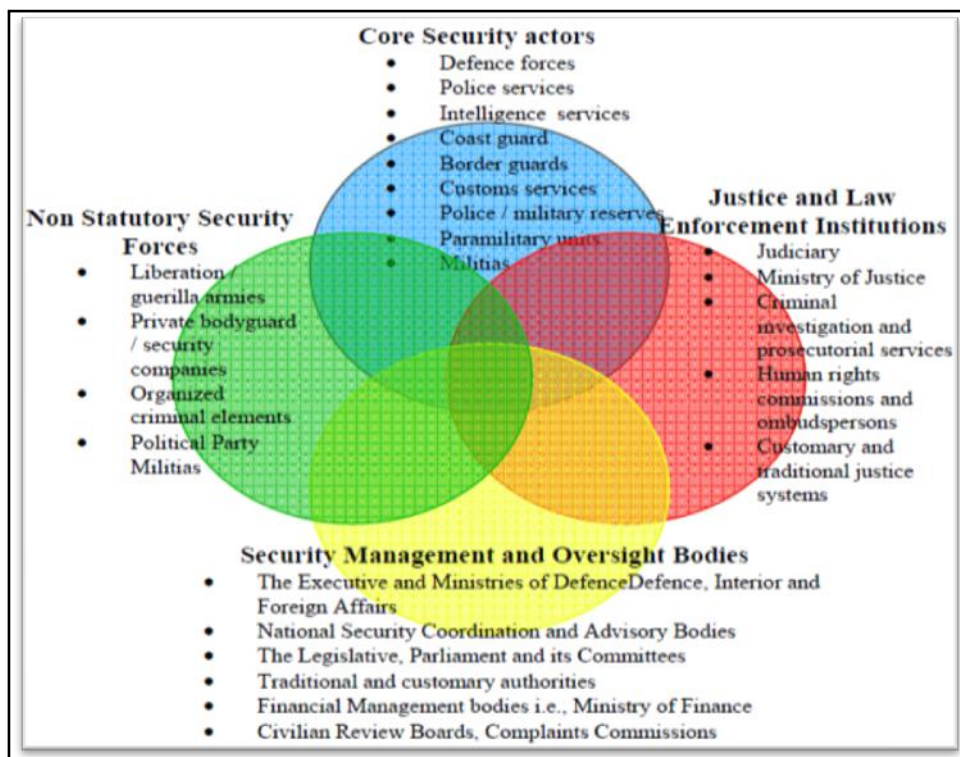
¹ “Understanding and Supporting Security Sector Reform,” in *Department for International Development (DFID)* (London: UK, 2002), 7. Also see, Edward Rees, “Security Sector Reform (SSR) and Peace Operations: ‘Improvisation and Confusion’ from the Field,” in *United Nations Peacekeeping in the Services of Peace*, March 2006, 7-8.

² UN Secretary General, “Report on Securing Peace and Development: The Role of the United Nations in Supporting Security Sector Reform,” January 23, 2008, 5-6.

³ *Ibid.*

- i. Core security actors.
- ii. Justice and law enforcement agencies and institutions.
- iii. Security management and oversight bodies.
- iv. Non-statutory security forces.

Table No.1
Dimensions of Security Sector



Source: Rees, “Security Sector Reform & Peace Operations,” and Robert M Perito, “The Interior Ministry’s Role in Security Sector Reform,” USIP Special Report No. 223, May 2009, 2.

In the same vein, the 2002 Human Development Report enlisted five categories of these actors, which not only constitute the security sector specifically but also influence the larger question of governance as well. These categories are as follows:

- i. *Organisations authorised to use force*: this category comprises of law enforcement agencies as well as armed forces of a country, including the police, paramilitary forces, intelligence and secret services as well as local security units.
- ii. *Civil management and oversight bodies*: national security advisory bodies, legislature and legislative committees such as those constituted in the upper and lower houses of a respective state's legislative process and civil society bodies etc.
- iii. *Justice and law enforcement institutions*: judiciary, criminal investigation and prosecution services, human rights commissions and ombudspersons, correctional services, customary and traditional justice systems.
- iv. *Non-statutory security forces*: liberation armies, guerrilla armies, private security companies, military contractors and militias.
- v. *Non-statutory civil society groups*: professional groups, media, research organisations, advocacy organisations, religious organisations, non-governmental organisations and community groups.⁴

This highlights the aspect that it is not only the uniformed services or armed forces that comprise the security sector but it is much more holistic term which covers a range of civil military institutions and their performance and viable sustainable governance as well.⁵ However, depending on the political culture of a given state-actor, the level of involvement by the institutions enlisted in the above five categories differs widely. For instance, when the question of good governance comes up,

⁴ United Nations Development Programme (UNDP), "Human Development Report 2002," 87. For a definition encompassing the first four component parts see D Hendrickson and A Karkoszka, "The Challenges of Security Sector Reform," SIPRI Yearbook 2002: Armaments, Disarmament and International Security (Oxford: Oxford University Press, 2002), 179. For a definition encompassing the first three component parts see D Hendrickson, "A Review of Security-Sector Reform," in "Conflict, Security and Development Group," Working Paper no. 1, Centre for Defence Studies, King's College London, London, September (1999): 29.

⁵ UN Document, "The Rule of Law and Transnational Justice in Conflict and Post-Conflict Societies," Report of the UN Secretary General, August 2004, 4.

attributes such as, transparency, responsibility, accountability, popular participation and responsiveness to the needs of people are considered key elements.⁶

Profiling Pakistan's Security

Pakistan is an interesting case which has had a very proactive role played by its military in the external security of the state, violent insurgency and terrorism faced by the country. Borne with an inherent security dilemma, the country embraced the US alliance during the Cold War to seek an offshore power balancer. This complemented the US desire to seek allies, in order to contain the growing Soviet influence in areas of strategic importance. In realistic terms, though this relationship introduced superior military hardware for Pakistan vis-à-vis India but a genuine strategic leverage over India, remained largely elusive. The US initially launched various diplomatic efforts to stall any military incursion by Pakistan in the disputed region of Kashmir during the 1962 India-China border war.⁷ Soon, consequently, a defence embargo was placed on Pakistan and India during the wars of 1965 as well as 1971 between Pakistan and India.

This further dispelled any illusions about the viability of the alliance relationship as Pakistan was heavily reliant on the US military aid. Finally, owing to the dismemberment in 1971 and subsequent nuclear test by India in 1974, the country seriously pursued and by year 1998, operationalised a nuclear weapons programme. A decision primarily undertaken to redress the strategic disparity and ensure a credible deterrent capability against India.

⁶ Different organisations and bodies have come up with their own criteria for defining good governance. Though the checklist may slightly vary, however, few core elements common to all are accountability and public participation. According to the Organisation for Economic Co-operation and Development's Development Assistance Committee (OECD-DAC), "Good governance always includes the following core elements: people-centered, equity, accountability, transparency, participation and consultation in planning and decision-making, effective and efficient public-sector management and civil society involvement." According to the Asian Development Bank, good governance relies "on four basic elements: (i) accountability, (ii) participation, (iii) predictability and (iv) transparency," <http://www.adb.org/Documents/Policies/Governance/gov200.asp?p=policies>

⁷ Bruce Riedel, *JFK's Forgotten Crisis: Tibet, the CIA and Sino-Indian War* (Washington: The Brookings Institution Press, 2015), 126-132.

In the post 9/11 altered security discourse, the mirror image force posturing with India remained intact, however, it brought an added security dimension for Pakistan. For the first time, the country also had to deploy military troops in greater numbers on its north-western front, casting the hitherto traditionally oriented military into a new role of counter insurgency. Pakistan became a proactive partner in the US-led global war on terror, which created immense security challenges, particularly for the military. The country's reengagement with the US, in the backdrop of the latter's actions in Afghanistan, which, later on, created immense resentment and discontent amongst the Pakistani public. In addition to this, the military's role in shaping the entire gamut of civil-military relations of the country over the decades became more pronounced, as aptly stated by Mushahid Hussain:

The Pakistan army is amongst those few armies that view its own role beyond the conventional and constitutional stipulations of defending the country from external aggression. Like the armies of China, Turkey and Indonesia, the Pakistan army views its own role as the ideological and institutional mainstay of the Pakistani state. It is, at the same time, the 'defender of the faith,' (ideological moorings based on Islam), 'guardian of the family silver' (nuclear and missile programme) and a deterrent against external enemies. So the role of security is reinforced by stability... 'a dual function role.' This role is viewed by the[se] armies as legitimate extension of their professional role as well as being of key importance for the fate of the nation.⁸

As mentioned before, primarily because of its long-standing conflict with India, defence and security have been remained an exclusive domain of the military with very little space for civilian oversight or scrutiny. Since the Indo-Pak war of 1965, the yearly allocations and defence budget were neither questioned, nor opened for public debate. In the year 2008, after a long stretch of time, the defence budget and its respective break down for the services was announced in the state legislatures. Although dubbed insufficient by some, presenting the defence budget and respective forces' allocation can be termed as a first step towards greater transparency and opening of a governance sector that has so far remained highly exclusive.⁹

⁸ Mushahid H Sayed, "Parliamentary Oversight of Security Sector in Pakistan," PILDAT, Backgrounder Paper, October 2010, 14.

⁹ Irfan Bukhari and Khalid Aziz, "Defence Budget Declassified," *Nation*, June 18, 2008. Also Mumtaz Alvi, "Senate Debates Defence Budget for First Time," *News*, June 18, 2008.

Pakistan's security dilemma further intensified with the politically turbulent Western neighbour Afghanistan, facing 11 long years of Soviet occupation from 1979 to 1989. Serving as the last battleground of the Cold war to a post-Geneva Accords,¹⁰ unfortunately, Afghanistan gradually slipped into the classic description of a failed state.¹¹ In the post 911 situation, the Pakistan military had, thus, to fight at many battlefronts.¹² Where on the eastern border, its threat perception vis-à-vis India remained persistent. The western front with Afghanistan, involved a diverse range of actors. These included cross-border infiltrators, militants, even friendly forces as well as Afghans, seeking refuge. Internally, the military was again engaged on two fronts, conducting counter-insurgency operations in the north-western tribal belt and trying to purge the Swat valley from radical forces at one hand and trying to protect and temporarily relocate the displaced citizens. These developments resulted in overstretching the capacity of the military, which is also shouldering the load of ill-equipped and poorly trained law enforcement agencies.

Overview of Security Sector and Management Bodies

One of the foremost challenges in terms of governance and security reforms is the administrative arrangements the country has. The 1973 Constitution in its Article 1 (2) delineates these territories as, the four provinces, Islamabad

¹⁰ The Geneva Accords referred here are the final negotiated settlement that was signed between the US, USSR, Afghanistan and Pakistan in April 1988. The process was formally initiated as early as June 1982, under the UN aegis, with the UN General Assembly Resolution of November 20, 1980, as a basis for a political settlement and termination of the Soviet intervention in Afghanistan. But it could only be finalised after intense deliberations in April 1988. For details see, Rasul Bux Rais, "The Geneva Accords," in *War without Winners, Afghanistan's Uncertain Transition after the Cold War* (Karachi: Oxford University press, 1997), 118-137. See also for a detailed analysis of the Geneva Accords, Riaz M Khan, *Untying the Afghan Knot: Negotiating Soviet Withdrawal* (London: Duke University Press, 1991).

¹¹ A failed state is often defined as a state that cannot provide security to its people, control its territory, or offer basic services. See Carol Lancaster, "Failing and Failed States: Toward a Framework for US Assistance," in Nancy Birdsall, Milan Vaishnav and Robert L Ayres, eds., *Short of the Goal: US Policy and Poorly Performing States* (Washington DC.: Center for Global Development, Brookings Institution Press, 2006), 291-92.

¹² The total strength of Pakistan Military is 643, 800 including its strategic command, as well as paramilitary forces. "Asia," *The Military Balance 2015*, 115, no. 1 (2015): 276-279.

Capital Territory (ICT), Federally Administered Tribal Areas (FATA) comprising of seven agencies as well as Provincially Administered Tribal Areas (PATA) that include former princely states of Swat, Dir as well as Chitral. Also those states and territories are or may be included whether by accession or otherwise, that have unique administrative mechanisms. Furthermore, the Balochistan province is also divided in two categories. Category a comprises city centres and urban areas that cover five per cent of the total area, has the regular administrative and law enforcement system. Whereas, 95 per cent of the province falling under category 'B' is akin to the FATA and is administered under a loose arrangement comprising the civil bureaucracy, representation in the provincial legislature as well as the Frontier Corps (FC) and Levies.

Additionally, there have been several ad-hoc initiatives by various civil and military regimes in the past and present at altering or abolishing the established setup for a better system. However, this led to a total disconnect with the criminal justice system, creating serious difficulties in law enforcement at best under normal circumstances. It further exacerbated, given the multifarious internal security challenges, such as insurgencies, vigilantism and parallel justice systems. Unusual and informal administrative set ups, such as those in FATA or 'B' areas of Balochistan, empower and provide space for the rise and consolidation of stakeholders both within governmental jurisdiction as well as informal spaces. The tribal belt as well as Balochistan border with Afghanistan has been a haven for criminals, smugglers, traffickers and terrorists since ever. With no formal or loose governmental oversight mechanisms, such border zones and adjacent areas become one of the most lucrative markets for counterfeit items that benefit all stakeholders concerned. The commodities may range from narcotics to weapons, stolen or tax-free vehicles, electronics to cloths and household items. Not only do informal stakeholders (local sardars or elders) benefit from such market spaces, governmental agents as well as border security agencies, paramilitary forces and political representatives, all have a financial stake in this system. This makes uprooting or complete clampdown on such informal systems of financial corruption and abuse very difficult.

During Musharraf's regime (1999-2008), with a technocratic government in place, there was an attempt to restructure the entire civil bureaucratic setup, which also entailed governance as well as police

reforms. The National Reconstruction Bureau (NRB), which remained functional from 1999 to 2011, was established in 1999 to formulate policy for national reconstruction and become the focal point to generate fundamental thoughts on promoting good governance to strengthen democracy through reconstruction of state institutions. On the NRB's recommendation, the provincial governments in August 2001, promulgated the Local Government Ordinance, 2001. The Police Order 2002 was promulgated on August 14, 2002 that replaced the Police Act of 1861. The Local Government Order meant decentralisation of many functions as well as funds previously handled by the provincial governments to the districts and tehsils.

As part of the governance reforms, the regular police jurisdiction was extended to the 'B' areas in Balochistan,¹³ which was heavily opposed by the bigger tribal chieftains, who perceived it as a governmental ploy to annex or usurp Balochistan further and because of the trust deficit that had been created due to general Musharraf's military-led operations. Another reason was the loss of (informal) authority and power over the entire system by the local stakeholders. Had the governmental reforms been implemented, besides political mainstreaming, it could have provided employment opportunities to the locals. However, unfortunately this decision was reversed by the political government after 2008 elections in order to appease the local influential.

With regards to FATA, it is by no means an easy task to mainstream the area or abolish the British-era Frontiers Crime Regulation (FCR). Successive governments have failed to address the basic issue of mainstreaming the tribal and the special areas. In simpler terms, this can be done by reforming the system in line with the constitutional provisions and treating the people of these areas at par with the rest of the country. However, given the complex ground realities, the vested interests of select political stakeholders, also becomes an impediment in the reform process.

In the tribal areas of Khyber Pakhtunkhwa (KPK) and Balochistan, the FC, Levies and Khasadars are tasked with law enforcement. Amongst the three, the FC was basically established as a paramilitary force formed to maintain peace and order. However, as the counter-insurgency operations

¹³ "Conversion B to A Area of Balochistan," Construction Projects, Official Webpage of Balochistan Police, <http://www.balochistan.police.gov.pk/cba.php>

became widespread and specialised, the FC owing to its military structure and superior firepower became more autonomous and was mandated to operate in the settled areas also. Whereas, the Levies and the Khasadars are loosely organised militia, either recruited from amongst the local tribes through quota allocation, inheritance or nominated directly. Owing to their tribal traditions and allegiance, it makes law enforcement extremely difficult, compromising on professionalism. Same is the case with Levies, though they work directly under the governmental setup but their loyalty rests with the local sardars or political influential.¹⁴

Furthermore, in the tribal areas, the normal jurisdiction of the High Court does not exist and the trial system is carried out by the local *Jirga*. This system is governed by special laws like FCR and a mix of Rawaj and Sharia.¹⁵ In recent years, the government has made several attempts to reform and mainstream these areas, the latest being the 2016 proposed legal framework as the *Nizam-e-Adl* Act 2016, to repeal the FCR and extend jurisdiction of the superior courts to FATA, the act according to governmental sources is a “unique amalgam of the Code of Civil Procedure 1908, Code of Criminal Procedure 1898 and Rewaj — the customs, traditions and usages of tribes in FATA.”¹⁶ The places such as Malakand division have been a unique case study. In such places, despite regularisation of various districts such as Swat, Chitral, Dir (former princely states) no proper attempt towards enforcing a proper legal system was done.

As a result, such ad-hoc arrangements, over the decades, resulted in discontent and unrest amongst the public paving the way for the demand for Sharia by Sufi Muhammad that ultimately transformed into violent militancy perpetuated by his son-in-law Mullah Fazalullah. The Shariah Nizam-e-Adl Regulation (SNAR),¹⁷ introduced by the government in

¹⁴ Afzal Ali Shigri, “Internal Security Parameters,” in Salma Malik, ed., *Pakistan’s Security Problems and Challenges in the Next Decade* (Islamabad: NUST Publishing, 2015), 91-92.

¹⁵ Iftikhar Firdous, “Mainstreaming Tribal Region: Nizam-e-Adl Act 2016 to Replace Infamous FCR,” *Express Tribune*, June 23, 2016, <https://tribune.com.pk/story/1128494/mainstreaming-tribal-region-nizam-e-adl-act-2016-replace-infamous-fcr/>

¹⁶ Ibid.

¹⁷ The Shariah Nizam e Adil Regulation (SNAR) was an act passed by the Government of Pakistan on April 13, 2009. At best considered controversial, the regulation was an attempt by the PPP government, under President Asif Ali Zardari

2009, to enforce its writ and appease all stakeholders, has yet to take roots. However, such half-measures and appeasement approach instead of addressing genuine grievances of the common people were perceived as caving into violent extremists' demands who used religion to their advantage.

Amongst the different (formal) constituents of security sector and oversight bodies, the foremost is the establishment and functioning of an effective, strong and just criminal justice system. Comprising of police, prosecution, courts as well as probation/rehabilitation departments, the entire structure of a viable internal security and law enforcement rests on these. The baseline of the system rests on the structure and performance of the police. Like many other post-colonial states, this department is a remnant of the British colonial era, when the police were created as an instrument of control and suppression after the Mutiny of 1857. Enacted in 1861, on the pattern of Irish Police Constabulary, essentially a militarised version to maintain order at all cost.

Since the function of the police in the British colonial era was to assert order and conformity only, any service in crime control was incidental. Post-independence, the successor states of India and Pakistan used this traditional orientation to their advantage as much as suitable. However, with

towards the restoration of executive magistracy system in the Malakand and Kohistan Divisions, ushering durable peace in Swat by the provincial government and replacing the pre-existing Shariah Nizam-e-Adl Regulation of 1999, which had been in force in Malakand and some other parts of the PATA. Promulgated under Article 247 of the Constitution, the Regulation was deemed applicable to PATA except the tribal area adjoining Mansehra district and the former State of Amb. The regulation envisaged two appellate forums, Dar-ul-Qaza (equivalent to Supreme Court) and Dar-ul Qaza (High Court) to operate in Malakand Region (includes seven districts — Swat, Buner, Shangla, Chitral, Malakand, Upper and Lower Dir) after regular courts stopped function at the call of TNSM's leader Sufi Muhammad. The executive magistrate would be empowered to deal with those cases under the Pakistan Penal Code, which were punishable up to three years imprisonment; local and special laws; cases pertaining to breach of peace and public nuisance; and, cases pertaining to deviations of licenses and permits under relevant laws. See: Waseem Ahmed Shah, "Malakand Announces Nizam-E-Adl Implementation," *Dawn*, April 5, 2009, <https://www.dawn.com/news/457515>
For text of the regulation see, "The Shariah Nizam-E-Adl Regulation, 2009," Government of Khyber Pakhtunkhwa, http://kp.gov.pk/uploads/2016/02/44._Shariah_Nizam-e-Adle_Regulation,_2009_.pdf

pressing internal security challenges, the governments did realise the need for reforming this institution and bringing it in line with the modern police structures. To achieve this at various intervals, not less than, “29 commissions, committees and experts examined all the issues in detail and came up with concrete recommendations that were never implemented on one or the other pretext.”¹⁸ In 2002, to reform and restructure the police, the government abolished the colonial era’s 1861 Police Act, with Police Order 2002, so as to improve both the quality and performance of this institution as well as to get rid of out-dated system, the NRB 2001 stated:

[T]he archaic structure of the police that presently lacks both capability and capacity for shouldering massive challenges emanating from political pressures or from the emerging compulsions of law and order... as it was considered to be a system that was not only fundamentally flawed but also perceived to be working against the interests of the people. The police system in Pakistan has been ‘a prisoner of history without any breakaway from its colonial past.’ The outmoded and outdated system of policing conceived by the colonial masters for a different objective more than 139 years ago, has continued unchanged due to the unbroken nexus of the bureaucracy and the politicians; the organisation presents a bewildering picture that is too static and devoid of the dynamism of change.¹⁹

Therefore, the biggest challenge faced when recommending reforms or changes in the police system have been largely from politicians. Undue political control and interference in the administrative as well as operational matters of the institution, alongside the dreaded *thana* culture (the environment and attitude of officials at police stations), is heavily influenced by the local politics of the area concerned. This culture accelerated the decay of this system. Besides political interference, another pressing issue has been the allocation of extra-financial resources. In any case, with the rising concerns about security, the number of Law Enforcement Agents (LEA) is much less than ideal. Even at present the police to population ratio according to different sources is anywhere between one policeman to 553 people (181 police official to a 100,000 people, 2011)²⁰ whereas, according to a 2011 study by Hassan Abbas, this ratio is one police official to 304 people.²¹

¹⁸ Shigri, “Internal Security Parameters,” 96.

¹⁹ Government of Pakistan, Chapter 01, “Introduction,” National Reconstruction Bureau Report on Police Reforms, 2001.

²⁰ “Twelfth United Nations Congress on Crime Prevention and Criminal Justice,” UNODC,

Secondly, the recruitment or *Bhartti* system is also heavily influenced by the local politicians, which compromises merit. Many police officials are engaged and deputed to VIP duties, which further decreases their number and performance. Lastly, even at the higher level, appointments, promotions and placements of the officials is done on political grounds to maintain an influence over one's adversaries, rather than on merit. Abbas further refers to corruption within the ranks, which also arises at the lower cadre due to the very poor salary structure and long work hours. Paramilitary services and border security forces are very often found complicit in financial corruption, which they attribute to an informal hierarchical structure of payment, which makes the informal border economy work.

The war on terror brought forth the necessity (worldwide) for a stronger law enforcement system, in which the police force would be especially equipped well enough to respond to internal security challenges. Correspondingly in Pakistan, various governments tried to implement effective reforms through attempts such as the 2002 Police (reform) Order. Followed later by the National Internal Security Policy 2014-2018 (NISP)²² and its recent revised and broader version the NISP 2018-2023 have amply stressed on the need for improvement in all segments to reap any positive results. However, despite its merits and recommendations for reforms the 2002 Police Order could not progress much. Since each province had its own set of reservations, these reforms could at best be implemented selectively. The order suggested the following recommendations for reforms in the police structure and system:

- i. Transforming police' role from enforcement to service based.
- ii. Curbing and insulating political interference.
- iii. Autonomy in terms of operational and administrative jurisdiction.
- iv. External oversight by the civil society.

http://www.unodc.org/documents/commissions/CCPCJ_session19/ACONF213_3eV1050608.pdf,19

²¹ Hasan Abbas, "Reforming Pakistan's Police and Law Enforcement Infrastructure, is it Too Flawed to Fix?," USIP, Special Report No. 266, February 2011, <https://www.usip.org/sites/default/files/resources/sr266.pdf>, 5-6.

²² The complete text can be found at: Government of Pakistan, "National Internal Security Policy, 2014-18," NACTA, Ministry of Interior, <http://www.nacta.gov.pk/policies/NISP.pdf>

v. Strict, swift and credible accountability of police.²³

Furthermore, there is also a divide within the service, since there is a lack of complete coordination between those serving at the federal and provincial level. This disconnect proves extremely costly and cumbersome, when coordinating security operations outside territorial jurisdictions.²⁴ Such a lack of coordination at inter institutional level especially with intelligence agencies negatively impacts upon counter terrorism operations. As a result, the military has directly as well as indirectly (through its paramilitary forces) gradually taken over the internal law enforcement and security duties. Starting as occasional deployment, the governments' reliance on the army for police duties increased, which had a double effect. First, it unnecessarily involved the military in internal politics and made them partisan stakeholders and secondly, it absolved the police from all law enforcement responsibilities. Despite working under provincial governments, the Rangers (primarily in Karachi) or any other paramilitary force, stands answerable only to the army high command instead of civil authorities, giving rise to serious irregularities in the criminal justice system.

This has also led to a trend where these security forces have disregarded basic rights and need for constraint, indulging in wilful abuse and ruthlessness. There have been reported incidents such as the 2011 manhandling and, later, killing of an alleged pickpocket at the hands of the Rangers in Karachi.²⁵ Another highly controversial issue was the brutal gunning down of foreign nationals including women at Kharotabad border check-post in Balochistan by the provincial police and FC, on the grounds that they were suspected to be Chechen suicide bombers.²⁶ The disconnect and ineptness of LEAs has also led to another dangerous and brutal trend that is, Citizen Vigilantism, with average citizens lynching or burning alive

²³ Operations Wing, "Police Order 2002, Updated Version," NRB, <http://anf.gov.pk/library/acts/police-order-2002-updated-version.pdf>

²⁴ Ibid., 7-10.

²⁵ Editorial, "The Death of Sarfaraz Shah," *Express Tribune*, June 09, 2011, <https://tribune.com.pk/story/185448/the-death-of-sarfaraz-shah/>

²⁶ "Kharotabad Firing Incident: 'Foreigners had Little Else Except Shampoo Bottles,'" *Express Tribune*, June 05, 2011, <https://tribune.com.pk/story/182692/kharotabad-firing-incident-foreigners-had-little-else-except-shampoo-bottles/> also see: "Chechens Killed in Quetta were Unarmed: Witnesses," *Dawn*, May 19, 2011, <https://www.dawn.com/news/629894/chechens-killed-in-quetta-were-unarmed-witnesses>

people on mere suspicion of petty crimes and thefts. This indicates lack of control and a deep-seated anger and desperation amongst population groups when justice and security are long denied.

Another loophole in effective policing is the abysmal criminal prosecution system, without which ensuring justice and enforcing law and order is impossible. In 2015, commenting on the state of affairs of the prosecution department, retired senior police officer, Afzal Shigri stated:

Recruitment on political consideration without any transparent method of hiring and resource constraints have from its very inception made the department yet another form of squandered resource that has failed to deal with the challenges of prosecuting hardened criminals and terrorists. Despite 48 functional, anti-terrorist courts and new prosecution department from 2008 to 2012, 14115 terrorists were acquitted and 10387 were released on bail, 6661 cases were decided against and 13053 cases were instituted. The accused include a large number of dangerous terrorists who were acquitted or released on bail and are back to their trade of crime and terrorism.²⁷

Similarly, the three major laws on which the entire prosecution and criminal justice system rests are namely, the Pakistan Penal Code (PPC), Criminal Procedure Code (CrPc) and the Evidence Act, which again date back to the 19th century colonial enactments. Making them not only outdated but also partly alien to the rural or traditional nuances in the contemporary settings. By virtue of procedure, specific offences are divided into cognisable and non-cognisable ones, where usually the onus to prove the guilt of any offender in non-cognisable offences must be borne by the complainant. With the *thana* culture making the lives of complainants more difficult and biased or poorly filed First Investigation Reports (FIRs)²⁸ often result in people feeling deterred or losing faith in the formal institutions. Therefore, this creates a tendency to seek alternate means for dispute and grievance redressal, through the *Jirga* or *Panchayat*, which is relatively swift, if not entirely humane.

Over the years, amendments to these laws were made, in addition to parallel (and very often) overlapping legislations, which resulted in further

²⁷ Shigri, 99.

²⁸ Author's interview with the IGP, (Retd.) Iftikhar Rashid in Islamabad, April 8, 2014.

confusion and replication. One reason why people in troubled areas such as Swat, Kohistan and the FATA turned to the call for Sharia by vigilante as well as violent armed groups was the promise and provision of swift and speedy justice and redressal of grievances. Unfortunately, these problems remained unaddressed and pending, at times, for generations in the regular system. To rehabilitate and reintegrate offenders, criminals as well as militant elements, every province has a Probation or Rehabilitation Department. However, like other state institutions, this is the most under-utilised and dysfunctional departments. Although it carries immense potential and can contribute amply towards rehabilitation, reintegration and de-radicalisation of individuals involved, while also playing an effective early warning and pre-emptive role. It also makes correctional facilities and prisons a fertile breeding ground for radical militants and terrorists.

Lastly, the judiciary also has a role to play. Often labelled and discredited as corrupt, politicised, overworked and inefficient, the judiciary is primarily an understaffed and over-burdened institution that has not been able to meet the expectations of the common man. Several factors have contributed to the judiciary's plight. Amongst which the foremost is resource constraint, in terms of baseline to critical infrastructure, courthouses and space for lower or mid-tier judiciary, administrative and work staff as well as finances. The judges, the fewer they are, fear taking up or passing any verdict that may be deemed controversial in terms of religion or politics, let alone seek an impartial and fearless trial or aspire for witness protection programmes. In Pakistan's history, one of the worse victims of warped civil military relations has been the judiciary. It has been mocked, checked, corrected and reformed as per the ruling elites' whims and fancies, and wilful indulgence by the latter in law-faring for its survival. The judiciary has not only to address these challenges but has also been a repeated target of political activism and terrorist attacks.²⁹

As part of the governance reforms, the governments in the past also secured funding and tried to bring about judicial reforms but the dividends could not be felt beyond the top layer. Thousands of cases are still pending, as there are neither enough judges nor the infrastructure to handle them. The 2011 Justice and Law Commission Annual Report provides the figure of only 127 judges including the district judges in Karachi required to deal

²⁹ Zahir Shah Sherazi, "Judge, 10 others Killed in Islamabad Blasts, Firing," *Dawn*, March 04, 2014, <https://www.dawn.com/news/1090737>

with all civil and criminal cases numbering 85,260.³⁰ As a quick redressal measure, even democratic governments have set up parallel Military³¹ or Anti-Terrorism Courts (ATCs),³² to ensure speedy trials and alleviating pressure from the regular judiciary. However, the jurisdiction and setting up of such courts has been perceived as highly controversial from civil rights bodies as well as human rights' commissions and legal quarters, as being extra constitutional and exceptional. As stated by Asia Director of the International Commission of Jurists (ICJ), Sam Zarifi, in response to the establishment of military courts after the December 2014 Peshawar school massacre, "The lapse of the jurisdiction of military courts over civilians is a step in the right direction, but unsurprisingly, there is no sign of the promised reforms to strengthen the ordinary criminal justice system to effectively handle terrorism-related cases."³³ Furthermore, they have also often been used to settle political goals.

The Way Forward

The route to ensure an effective and lasting SSR regime for Pakistan is an arduous yet not impossible. Several measures can be suggested: For the international donors and actor, first do no harm by advising and not enforcing changes tailor made to their requirements in their overseas operational framework. Till such time that Pakistan has the US troops stationed in Afghanistan, the security discourse would remain lopsided and highly challenged. The benchmark for the US involvement must be established by Islamabad. A comprehensive political strategy needs to be introduced to bring about lasting stability, which may require revamping the tribal set up. One of the initial measures undertaken by the political

³⁰ Government of Pakistan, "Judicial Statistics of Pakistan 2013," Annual Report of Justice & Judicial Commission, 60-1.

³¹ As part of the National Action Plan January 2015.

³² The ATCs were created under the 1997 Anti-Terrorist Act, amended on October 24, 1998, by the Anti-Terrorism (Amendment) Ordinance following a Supreme Court judgement that declared most of its provisions unconstitutional. In August 1999, after certain amendments the ATCs were generalised all over the country. See: Charles H Kennedy, "The Creation and Development of Pakistan's Anti-terrorism Regime, 1997-2002," in Satu P Limaye, Robert G Wirsing, Mohan Malik, eds., *Religious Radicalism and Security in South Asia*, Honolulu: Asia Pacific Center for Security Studies (Spring 2004): 387-413.

³³ Shamil Shams, "Pakistan's Military Courts: What did They Achieve?" *DW*, January 07, 2017, <http://www.dw.com/en/pakistans-military-courts-what-did-they-achieve/a-37049690>

government of Prime Minister Yusuf Raza Gillani, in 2008, was to abolish the FCR was a welcome first step in changing these colonial, obsolete and self-damaging security arrangements. The need is to develop a gradual and sustainable system, which could systematically abolish the special status accorded to certain territories within the federation and also gain local acceptability and legitimacy.

It is impossible for all security sector institutions, mainly intelligence organisations, to maintain transparency in their respective operations. However, a parliamentary and judicial oversight is a necessary check for enhancing and ensuring their sustainability and professionalism. None of the reforms can work without an integrated approach, with complete acceptance and ownership by participating bodies, ensuring speedy and cost-effective access to justice and security, and filling up political spaces. Lack of necessary action, may otherwise provide an opportunity to non-state entities to exploit and occupy these available spaces. Reforming of intelligence outfits, would require and should also enhance their legality, effectiveness and efficiency. A comprehensive approach in ideal terms would entail, ensuring conformity with human rights' conventions and laws, as well as transparency in budgeting and finances.

In the face of changing security threats, there is also a need to prepare pre-emptive strategies and measures to predict, assess and counter the drastic consequences of natural calamities and disasters. One such institution created in response to the 2005 earthquake was the National Disaster Management Authority (NDMA). However, it could neither provide effective early warning mechanism nor fully respond to the devastation wreaked by the July 2010 flood. The need is to critically re-evaluate the performance of such institutions and make them a consolidated structure, which should perform as a national body fully equipped to provide the desired response.

The GDP ratio of defence spending vis-à-vis law enforcement also needs to be reviewed and adjusted. So long as the law enforcement agencies have modest salary structures with limited perks, they would remain susceptible to corruption and poor performance. Besides the challenge of building credibility with local population as well as donors, in the militancy affected areas, the government with limited resources has to deal with perception management, exercising political, economic and military balance

as well as avoiding collateral damage. The mantra of ‘winning hearts and minds’ may appear simplistic but it is highly imperative once ‘the exit strategy’ is executed.

Advancement in technology helps in the incorporation of necessary skills and equipment to carryout effective securitisation. Without an effective control and surveillance of the borders, which are an open source of trafficking and non-state actors’ free movement, internal security remains deficient. Adequate checks and measures such as biometrics and effective border patrols through electronic measures and equipment can help curb illegal movement of goods and people. There is a need for administrative restructuring of not only security forces but mainly the administrative units, with uniform laws and governance system applied equally and fairly across the country, including the tribal areas, semi administered B areas, Gilgit-Baltistan, Azad Jammu and Kashmir and all others.

Internal security and law enforcement efforts also need an appreciation of local sensitivities and culture by security providers. Reviving the *Panchayat* and *Jirga* traditions, as an effective alternate, dispute resolution mode should be considered as they have always been effective. However, the government needs to address the flaws and delays in the justice system, which has made insurgents claim these critical spaces in the past effectively creating a parallel justice system.

In conclusion, the need for reform, transparency, accountability and better training for the LEAs is most critical, as internal security can only be better ensured through a stable and proper law enforcement structure. This also includes the prison and probation department as well as the criminal justice system. Purging the judiciary of political interference and influence is most imperative, besides having a truly transparent and corruption free system. Lastly, there are many over lapping legislations, especially in the anti-terrorism realm, which need to be reviewed. The establishment of the National Counter Terrorism Agency (NACTA) in 2009 is an important case in point. Despite being established as a federal apex body to curb the menace of terrorism from the country, remained dysfunctional until 2013.

NACTA was to be the central depository for receiving and collating all sorts of data, information and intelligence and as a central coordinating body to disseminate and coordinate between all relevant stakeholders to

formulate threat assessments with periodical reviews to be presented to the federal government, help formulate counter terrorism and extremism strategies, and action plans and review them on periodic basis. In addition, it was intended to conduct specialised research on relevant topics, review relevant laws and suggest amendments and liaise with international entities for facilitating cooperation in areas of concern.³⁴ However, till date NACTA is a toothless tiger. It is just another counter-terrorism body which needs to be made more autonomous and powerful, rather than becoming yet another employment cell.

The government must discourage the rise of private militias and citizen armies. It should ensure a well-networked institutional framework, which supports and interacts for swift and effective implementation alongside impartial accountability. Also there is a need to discourage private funding by international donors, state parties or individual organisations. Especially in the light of how a network of madrassahs mushroomed all over the country with monetary grants by friendly Arab countries as well as other state actors in response to the US call for jihad in the 1980s against the Soviets. These madrassahs and unaccounted for money became a major source of militancy and radicalism in the country. In the present day, Pakistan is faced by multidimensional conflict. The need is for a rapid response at the appropriate level. The swift reconstruction and rehabilitation of affected population in response to a natural or man-made disaster can lessen the critical space exploited by non-state actors and would help enhance the government's credibility.

Given the complex security dynamics, Pakistan needs to reassess and reappraise its options and ensure sustainable reform in the security and governance sector. However, by developing an ownership policy in the SSR process and realising the critical need and importance for an integrated and consolidated approach, the problems can be better managed and tackled. The need is not only to share best practices, but most fundamental is to realise the importance and necessity of SSR, so to make them effective both for the state as well as the people.

³⁴ “About NACTA,” NACTA official home page, <http://www.nacta.gov.pk/index.html>. Also see: Senate Secretariat, “An Act to Establish National Counter Terrorism Authority,” Act No. XIX of 2013, The Gazette of Pakistan, March 26. 2013.