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A study of the criminal law and prosecution  
system in Pakistan

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## **ABSTRACT**

A society's well-being and progress is measured through various social indicators and two of the most important indicators are the rule of law and access to justice. The ability to go to court and the right to fair trial should be readily available at every level and therefore, it is important to identify factors within the system (be it judicial, legislative and/or enforcement) that may cause the system to become ineffective.

An increase in target killings, terrorist attacks and street crime with no swift recourse available, continues to exhaust courts with an insurmountable backlog of cases. The current state of the justice system makes it necessary to review loopholes in the criminal justice system and the issues that arise at various stages of criminal investigations and prosecutions.

This research focuses on the mismanagement of criminal cases at police stations and lower courts and outlines the primary issues that arise during the investigation and prosecution levels of criminal cases. It further discusses how these problems contribute to the inadequacy, inaccessibility and inefficiency of our justice system. Our aim is to analyze the reasons and generate solutions to improve the system in order to make justice accessible, affordable and equitable to all

## **1. INTRODUCTION**

### **1.1 Preamble**

The criminal justice system in Pakistan is known to be faulty, exploitive, and inequitable. These problems in our opinion are most certainly some of the many the main causes behind high crime rates.

State institutions are either inept or insufficiently trained, which significantly affects the effective and efficient administration of justice. It is important to understand the ripple effect that the inadequacy of one part of the justice system has on another. Criminal justice or criminal prosecution commences at the lower courts unless it's a high profile case that requires a larger jurisdiction. These lower courts are often burdened with overseeing multiple cases and within each case there are magnitudes of issues e.g. missing witnesses, falsified evidence. This further complicates matters and inevitably leads to delays and an overwhelming backlog of cases.

It is estimated that there are total of 12 deaths per day in Karachi.<sup>1</sup> Various occurrences of crime pervade the city on a daily basis ranging from robberies and target killings to bombings. This deterioration of law and order situation further is exacerbated further deteriorates due to the inadequacies justice system that provides insufficient protection

### **1.1 Objective of the research:**

The main objective of the research is to analyze the flaws of the criminal justice system/criminal prosecution system in Pakistan and to find effective solutions to create an accessible, efficient and reliable justice system in Pakistan. Moreover, this study aims analyze the issues concerning criminal prosecution, exploitation by law enforcement agencies and the vast problems existing in the lower courts of Pakistan. The study also focuses on the attainment of justice for marginalized members of society and how they are exploited by the legal system.

### **1.2 Limitations:**

The research focuses mainly on the criminal justice system at the basic/lower level with a narrow scope of problems in criminal cases, investigations and procedures dealt with in the lower courts.

Secondary data is collected from various research articles and papers, which focuses on the criminal justice system in Pakistan but primary data is collected from the province of Sindh, particularly Karachi.

### **1.3 Scope:**

This study mainly focuses on criminal prosecution at the lower courts level. High profile or cases are not the main focus.

### **1.4 Research Methodology:**

The primary research includes interviews, group discussions done with criminal lawyers who practice at lower courts. Secondary research was done through research papers, articles and published books.

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<sup>1</sup> Various occurrences of crime pervade the city on a daily basis ranging from robberies and target killings to bombings.

## **2. THE MAIN FINDINGS AND RESULTS.**

### **Socio-cultural Flaws:**

#### **2.1 Criminal law as followed in Pakistan:**

The criminal justice system is the set of agencies and processes established by governments to control crime and impose penalties on those who violate laws. How the criminal justice system operates in each respective area depends on the jurisdiction that is in charge: city, county, state, federal, tribal, government or military. Different jurisdictions have different laws, agencies, and ways of managing criminal justice processes.

Criminal law in Pakistan and the procedural codes that are followed are very different in their application from the criminal law that is followed in the developed world. Pakistan has inherited its legal code from the British Empire upon its exit from the subcontinent and later the forceful addition of various interpretations of Shariah, these now arguably anachronistic legal setups have only added to the various problems plaguing the criminal justice system.

Pakistan's criminal justice system needs to be understood in the context of the society that it is placed in. Most of the criminal law that has been prevailing in Pakistan was introduced by the British Empire when India was a colony and Pakistan was part of it. Even then, much consideration was given to understand social conditions and their effects on criminal law. As such, the law was conditioned according to the cultural circumstances and influences of the colony and incorporated by India and Pakistan both after their independence from the British Empire. The Code of Criminal Procedure (V of 1898) and the Penal Code (XL of 1860) both of which were implemented in the colony are still by and large the prescribed statutes followed by the courts for criminal cases in Pakistan.

There are number of cases can be argued for a flawed criminal justice system in Pakistan. For example, in *Asiya Bibi Versus State Case*, the death sentence that a district court handed down to Aasiya Bibi, the defendant in this case, attracted criticism from various fronts including various legal and human rights experts. Due to the fact that no proper investigation was carried out and the case was aimed at religious emotionalism. It is not the first of its kind except that this is the first time a woman has been so sentenced (but not the first time one has been so accused). Since the 'blasphemy law' was promulgated, there have been many such convictions – that the higher courts have always over-turned.<sup>2</sup>

The Law and its enforcement require serious amendment and enquiry, that too ideally under the supervision of national and international jurists.

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<sup>2</sup> <http://www.viewpointonline.net/aasiya-blasphemy-case-act-now.html>



## **2.2 Legislation for Crime deterrence:**

The evolution of legislation for the efficient and effective administration of justice in criminal prosecution is an ongoing process in developed nations. Pakistan, unfortunately, has not yet developed such a process. Our legal system, codes and procedures are mostly outdated and have remained somewhat stagnant since the British colonial times. Reviewing and amending statutes and legislation that are antiquated and obsolete are crucial in keeping up with the fast-paced transformations of a contemporary society.

## **2.3 Corruption in courts and other prosecution institutes:**

One of the great evils haunting the lower courts and prosecution system in Pakistan is corruption. To quite an extent major government institutes are plagued by this menace which in turn affects the overall efficiency of the government as a whole and brings many problems for the average citizen. This particular problem is also present within the lower judiciary and the criminal prosecution system in Pakistan. The staff, judges and prosecution lawyers all are blamed by the public as either corrupt and/or bribed. The Police also share the same label.

## **2.4 Crime rate in Pakistan**

The crime rate in Pakistan has as of late increased exponentially. There are about 12 deaths<sup>3</sup> every day in the economic hub of Pakistan, the city of Karachi. The following statistical data demonstrates the prevalence and vast array of crimes that occur in Pakistan.

28,823 crimes reported in 72 districts of Pakistan last year.<sup>4</sup> As many as 260 women were gang-raped and 1,996 were raped in 2007, revealed via statistics of countrywide reported crime, which was submitted to the federal government. Statistics on kidnapping during the first quarter of 2008 revealed that 140 people were kidnapped for ransom in the country.<sup>5</sup>

Figures show that 23,144 vehicles were snatched or stolen in 2007. A total of 289,751 cases of street crimes, including dacoities, robberies, burglaries, thefts, drug dealing, bootlegging and carrying illegal weapons, were reported last year. While 76,974, street crimes have been registered during the first quarter of 2008.<sup>6</sup>

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<sup>3</sup> Various occurrences of crime pervade the city on a daily basis ranging from robberies and target killings to bombings.

<sup>4</sup> <http://www.maverickpakistanis.com/2011/04/28823-crimes-reported-72-districts-pakistan-january-2011/>

<sup>5</sup> <http://www.maverickpakistanis.com/2011/04/28823-crimes-reported-72-districts-pakistan-january-2011/>

<sup>6</sup> <http://www.maverickpakistanis.com/2011/04/28823-crimes-reported-72-districts-pakistan-january-2011/>

## 2.5 Perception of the people regarding the crime:

The perceptions of Pakistani citizen for the level of crime and other indicators are shared below, the source is survey website.<sup>7</sup>

<b>Level of crime</b>	<b>80.59</b>
<b>Crime increasing in the past 3 years</b>	<b>87.65</b>
<b>Worries home broken and things stolen</b>	<b>77.98</b>
<b>Worries being mugged or robbed</b>	<b>82.83</b>
<b>Worries car stolen</b>	<b>79.22</b>
<b>Worries things from car stolen</b>	<b>76.51</b>
<b>Worries attacked</b>	<b>68.98</b>
<b>Worries being insulted</b>	<b>67.59</b>
<b>Worries being subject to a physical attack because of your skin color, ethnic origin or religion</b>	<b>60.80</b>
<b>Problem of people using or dealing drugs</b>	<b>73.48</b>
<b>Problem of property crimes such as vandalism and theft</b>	<b>81.33</b>
<b>Problem of violent crimes such as assault and armed robbery</b>	<b>79.41</b>
<b>Safety walking alone during daylight</b>	<b>36.01</b>

## 2.6 Safety in Pakistan

<b>Index</b>	<b>20.00</b>
<b>Crime Index:</b>	<b>77.20</b>
<b>Safety Index:</b>	<b>22.80</b>

Reportees: 86

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<sup>7</sup> [http://www.numbeo.com/crime/country\\_result.jsp?country=Pakistan](http://www.numbeo.com/crime/country_result.jsp?country=Pakistan)

As evidenced above, not only is there a disturbingly high prevalence of crime, but the perception of individuals regarding crime within the last few years is also alarming. It is clear within the context of the study from which this data was retrieved, that individuals perceive an extremely low sense of security and are in a constant state of fear regarding the occurrences of crime and their own personal safety. The distrust of a faulty justice system only perpetuates this fear by not providing individuals with a swift, reliable or accessible recourse to justice.

## **2.7 Women, Hudood Ordinance and Criminal prosecution:**

The criminal prosecution system has been the source of several controversies via the implementation of the Hudood Ordinances. Which were promulgated in 1979 by then Head of State Zia-ul-Haq's regime and further incorporated into the constitution through the Eighth Amendment. The Hudood Ordinances, in the words of HRCP (Human Rights Commission of Pakistan) Chairperson and prominent human rights Lawyer Asma Jahangir were "the precursor to [the] conversion of the judiciary". This statement was made since judges which were appointed were those who "are loyal to whatever the state ideology" happens to be, also according to prominent human rights lawyer and Supreme Court advocate Hina Jilani, Pakistan now has "a judiciary that has been influenced by Islamisation". The ordinances prohibit theft, alcohol consumption, sexual intercourse outside of marriage termed "fornication" and, until November 2006, and rape. The punishments are divided between Hadd (Quranic) punishments, which include amputation of limbs, flogging, stoning to death and other forms of capital punishment; and Taazir (non-Quranic) punishments for lesser offences, including imprisonment and whipping.<sup>8</sup>

## **2.8 Blasphemy law and its Criminal Charges:**

This law had been introduced to punish persons offending the name of the prophet Mohammed (PBUH) with the penalty of death. Unfortunately, the ambiguous wording of the law has led to numerous cases where the accuser had other motives to file a complaint against the accused. Although it applies equally to Muslims and non-Muslims, the law has been predominantly seen to be used to harass religious minorities. Those who have allegedly breached the law are often arrested without any evidence other than the word of their accusers.

On 25<sup>th</sup> July 2001, Multan Bench of the Lahore High Court in Pakistan turned down an appeal lodged by one Ayub Masih, a Christian convicted of blasphemy under Section 295C of the Pakistan Penal Code. This decision marked the first time in the nation's legal history that a bench of the High Court refused to overturn the ruling of a lower court that had delivered a death sentence for a blasphemy conviction. Ayub Masih had been arrested on 14<sup>th</sup> October

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<sup>8</sup> Reforming the Judiciary in Pakistan -Crisis Group Asia Report #160, 16 October 2008

1996 on a complaint filed by a person alleging that he heard Mr. Masih utter, "*if you want to know the truth about Islam... read Salman Rushdie.*" The defense alleged that the accusations were fabricated in order to force fifteen Christian families to drop a local land dispute involving the complainant. The case appeared to have been registered without a proper investigation and no substantive evidence was forwarded to prove Mr. Masih's guilt at his trial and unsuccessful appeal. The appellant level verdict is believed to be the result of immense pressure brought by fundamentalists who, on the day of the appeal, surrounded the High Court to intimidate the proceedings. On numerous occasions Mr. Masih and his lawyers were threatened with death if the accused was acquitted.

On 16<sup>th</sup> august 2002, Ayub Masih was acquitted in an appeal before the Supreme Court. The comments of Amnesty International, at this moment, were that:

*"Pakistan's blasphemy law is frequently misused. The law has frequently been abused to imprison people on grounds of religious enmity but also has proved an easy tool to have people imprisoned when the real motives are business rivalry or land issues".*

The higher judiciary also lacked initiative to mend the situation. Though the higher judicial forums had not allowed any execution following a blasphemy conviction from the trial court thus no death sentence has taken place till today but hundreds of alleged blasphemers remain in jail pending their appeals against their original convictions. Even when acquitted, accused blasphemers often remain the targets of fundamentalist attacks and they find no alternative except to flee from Pakistan. There is no protection for them from legal forums or law enforcement agencies.

Zia-ul-Haq regime's amendments, however, placed special emphasis on the protection of Muslims; called for harsher punishments for offences against Islam; and required trials under Section 295 to be presided over by a Muslim judge. Words from a Karachi-based human rights lawyer and Supreme Court advocate who wished to remain anonymous: "It is these provisions that make the PPC a discriminatory system".<sup>9</sup>

They include: Section 295B (1982): Calls for life imprisonment for anyone who "willfully defiles, damages or desecrates a copy of the holy Qu'raan .. or uses it in any derogatory manner". It allows for such a person to be arrested without a warrant.

Section 295C (1986): Imposes the death penalty, or a life sentence, on anyone who, "by words, either spoken or written, or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad"

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<sup>9</sup> Crisis Group interview, Akhtar Hussain, Karachi, 20 July 2007

Thus, it is on record that on this count too, the independence of judiciary in Pakistan has been jeopardized by pressure and threats brought by Islamic fundamentalists. Many lower court judges genuinely fear reprisals should they render acquittals against accused blasphemers. As recourse to higher Courts is available for the convicted, lower Court judges are forced to convict accused blasphemers on weak evidence rather than face the prospect of verbal and physical attacks for releasing them.<sup>10</sup>

## **2.9 Malicious prosecution and Bogus Cases:**

Another problem faced by the Pakistani criminal justice system is of malicious prosecution and bogus cases. Malicious prosecution is a false and malicious accusation against an innocent person without reasonable and/or probable cause.

Malicious prosecution can take several forms. A person can maliciously institute an untrue criminal complaint against another party. This untrue complaint can lead the victim of the malicious claims to be subject to a criminal trial or a criminal investigation. A person can also bring a malicious tort claim against another. This improper civil suit, like an improper criminal allegation, could be considered a form of malicious prosecution.

The malicious and bogus cases are framed in Pakistan are mostly either because of personal enmity or political reasons. High profile cases such as Zulifqar Ali Bhutto Vs State are thought to be maliciously prosecuted because of political agendas, according to senior analysts such as Tariq Ali.

### **Legislative procedural faults:**

## **2.10 Flaws in the Procedures of criminal Prosecution:**

Both, complainants and accused incur many problems throughout the prosecution procedure. Some of the issues that exist at the procedural level of criminal prosecution are discussed below:

- Process becomes lengthy at times, and the parties involved face numerous problems
- Report or lodging of an FIR becomes very difficult for marginalized and impoverished members of society due to corruption and inefficiency of police
- There are chances of framing a bogus or false case on an innocent person (though the chances of bogus cases are lesser than non-criminal cases )

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<sup>10</sup> <http://www.seamonitors.org/id81.html>

- Accused are being mishandled and exploited in police custody
- Women accused in cases are more prone to mishandling and exploitation
- Women are harassed and disrespected in rape cases
- The investigation is faulty and conducted by insufficiently educated and ineptly trained officials
- Evidence is destroyed or misappropriated by or at the request of various government officials or other influential parties

### **2.11 Criminal Procedures from Investigation to Prosecution:**

To analyze the weaknesses within the system, it is essential to outline and understand the procedural steps that are followed from the point of investigation of the crime committed to prosecution of the accused:

1. Complaint: 1.State or 2.Private
2. Complaint statement will be lodged
3. Report if no investigation is required
4. FIR lodged if investigation is required
5. Accused to be reported and brought before Magistrate. (Cognizable offence)
6. Written report sent to Magistrate. (Non-cognizable offence)
7. Challan or charge sheet is framed according to PPC offences by the investigation officer after completion of remand period. (173 Cr. Pc)
8. Police take remand of 15 days maximum for investigation (167 Cr. Pc)
9. Case examined to be transferred to session judge or the magistrate trial court **OR**
10. Judge takes custody of accused if there is no need of further investigation. (Judicial Custody)
11. Charge framed copy will be supplied to all parties involved in case.

12. Evidence will be examined
13. Plaintiff and defendant lawyers will be allowed to cross- examine the witnesses.
14. All testimonies will be heard
15. Statement of both accused and accuser will be heard
16. Arguments will be allowed from both parties' lawyers
17. Order/ judgment/ decree/verdict will be passed by the Honorable Judge of the court
18. Appeals by the convicted or acquitted or plaintiff

## **2.12 Investigation process:**

In order to fully understand entire process of criminal prosecution, it is necessary to view the process from the point of investigation outlined above, to the courts' procedure for prosecuting the accused once the case reaches trial. The latter procedure is explained below:

1. When any person is apprehended for committing a crime, after investigation – that is to be completed within 14 days u/Sec. 173 of Criminal Procedure Code (Cr PC) – he / she is subjected to rigorous trial in the prescribed criminal court
2. The court, before commencement of trial is duty bound to allow an alleged offender to appoint defense counsel of his / her choice under Article 10 of the Constitution of Pakistan
3. The court then pronounces a charge against an alleged offender that describes the nature of offence and the nature of act or omission that constitutes a specific crime
4. The prosecution is given an opportunity to present evidence that it has against the alleged offender. The defense counsel of the alleged offender is given an opportunity to cross examine and object to the prosecution evidence, within the prescribed limits of law
5. Though prosecution being the duty of the state is to be conducted by the state appointed counsels but any person who being aggrieved by the offence can appoint his

/ her own prosecution counsel, in addition to the state counsels already duty bound to prosecute

6. The prosecution concludes its evidence the presiding Judge put certain questions u/Sec. 342 Cr PC to the alleged offender. These questions are very crucial as the presiding judge gives an opportunity to an alleged offender to explain incriminating evidence against him / her
7. The alleged offender is also given an opportunity to appear as his own witness. Moreover he /she is also given an opportunity to present documentary evidence and witnesses in his / her defense
8. After the conclusion of defense evidence the trial is concluded and the presiding judge pronounces a judgment. Judgment can be of acquittal or punishment.
9. In both cases prosecution and alleged offender has the right to appeal against the judgment of the trial court
10. The appeal is made to the immediate superior court of the trial court<sup>11</sup>

### **2.13 Lengthy Prosecution, Delays and Problems of Jurisdiction:**

The criminal prosecution system is complex, lengthy and there are continual delays causing a severe backlog of cases in the courts. The entire process from the lodging of the FIR to the pronouncement of the verdict is in and of itself a timely procedure. Sometimes it takes years for a single case to be conducted depending on the complexities involved and therefore, the dispensation of justice is prolonged for a lengthy prosecution process and cases keep accumulating, adding to a continuous cycle of delays. It is quite obviously an extremely frustrating situation for parties seeking the attainment of justice and more often than not, losing hope for it. Ideally, the administration and dispensation of justice should be timely, efficient and certain.

Jurisdiction is again a great problem for the criminal law and prosecution in Pakistan. It adds further to delays and other issues hindering the timely dispensation of justice. Criminal courts act within their prescribed jurisdiction under the law. The territorial jurisdiction of an ordinary criminal court can be tabulated as follows

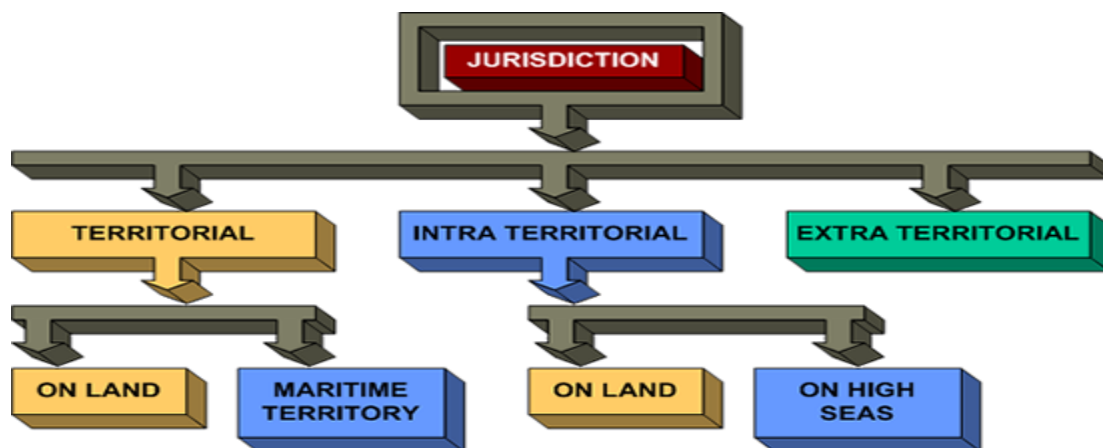
The following diagram shows the jurisdiction system in courts of Pakistan.<sup>12</sup>

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<sup>11</sup> [http://law.zafcointl.com/area\\_criminal\\_law.html](http://law.zafcointl.com/area_criminal_law.html)

<sup>12</sup> [http://law.zafcointl.com/area\\_criminal\\_law.html](http://law.zafcointl.com/area_criminal_law.html)





### **Systematic Issues:**

#### **2.14 Policing in Pakistan**

Pakistan's legislature has empowered the police with not only the administration of security, but certain legal powers as well. As mentioned above, the first complaint against the accused, also known as the FIR is lodged through the police station by the Station House Officer or Investigating Officer. Police are inadequately trained, given minimal resources and insufficient compensation, thus are affected by corruption, succumb to bribery and operate inefficiently, at most levels. According to Atif Kashmeri, a Sindh High Court advocate<sup>14</sup>, affluent and influential members of society in minor criminal cases get acquitted at the first step of criminal prosecution as they bribe the SHO not to lodge the FIR. The poor, on the other hand, get caught and convicted in most cases.

Police are not only responsible for lodging the first report of the offence; they are also the investigative authority in order to conduct investigations for offences and crimes. As iterated earlier, according to legal experts, police are an inefficient and ineffective institution for crime investigation. Police in Pakistan unfortunately lack the required resources to conduct research and are poorly trained for conducting a thorough and adequate investigation. The government has done very little to train police for investigation. Forensic, DNA, medical, etc. testing and investigations are outdated and ill-managed to conduct investigation.<sup>15</sup>

<sup>14</sup> Atif Kashmeri, personal communication, July 10, 2013

<sup>15</sup> [http://academia.edu/1261859/Law\\_of\\_Investigation](http://academia.edu/1261859/Law_of_Investigation)

It is imperative that necessary and sufficient resources geared toward police training and reforms are mandatory to have strong rule of law in the country.

### **2.15 Lack of Protection and Security during Prosecution:**

Among the people who are involved in the prosecution procedure such as the complainant, defendant, prosecuting lawyers, and judicial staff, all of them at some point in their careers will face issues of security. According to Jawed Ahmed, an advocate of the Sindh High Court, police officials encounter the worst of security threats. In all terrorism or high profile cases, police officials who lodge cases, face grievous consequences, says Jawed Ahmed.<sup>16</sup> Witnesses also encounter dangerous security threats. In urban centers of Pakistan, this problem is even more severe. Witnesses that are due to give testimony face threats to their own lives as well as those close to them. As such, particularly with regards to street crimes, witnesses abstain from giving testimony. Unfortunately, there are very few measures taken by the government to ensure the safety and protection of witnesses as evidenced by the incomplete or almost un-implementable legislation regarding witness protection.

Lawyers, particularly prosecutors top the list for those receiving the highest amount of security threats. Numerous incidents have been reported where lawyers were killed, tortured, kidnapped and threatened for pleading criminal cases. Security is minimal for lawyers working within the criminal justice system, says one senior High Court advocate. Legislation and steps to ensure security for criminal prosecuting lawyers have not been a matter for concern for the authorities and government, which inadvertently results in a decreasing number of quality advocates for criminal prosecution.

Judges presiding over criminal cases are under threat as well. There are a number of criminal cases reported where judges are either being threatened or their lives are getting adversely affected, which can invariably affect their judgments, rulings and the administration of justice. Judges are the supreme authority for the dispensation of justice and strong measures should be taken to ensure their safety.

### **2.16 Corruption in Criminal Prosecution System:**

Corruption is also one of the many problems in the criminal prosecution system. This problem increases the impediments in the access to justice for the common man. Bribery and nepotism is widespread in police and court staff.

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<sup>16</sup> Jawed Ahmed(advocate), personal communication, July 10, 2013

The police and court systems are supposed to top the list of corrupt institutes in Pakistan as per Transparency International's report on Pakistan. The police is infamous for taking bribes for allowing illegal and illicit acts, not performing their duties and letting alleged offenders out of custody. On other hand, the court staff takes bribes for acquitting possible offenders without proper trial procedure being followed.

Corruption is one the main hurdles in providing access to justice in criminal law cases. It requires more consideration in respect of many other problems.

### **2.17 Expensive Justice:**

The costly attainment of justice is yet another hindrance for those with limited means. As to hire a lawyer for their cases, the accused and complainant both have to pay a large sum of money some times. The poor class is then left to the mercy of the legal aid provided by the government and a Government appointed prosecuting lawyer who has far less experience and interest in the case.

Moreover, additional court fees and fines compounded on top of an already too much. It makes the attaining of justice for poverty stricken members of society quite difficult. And instead, they turn to alternative means of attaining justice that is efficient, cheap and accessible, as well as more familiar than the impersonal, pragmatic outlook of the courts and formal justice system.

### **2.18 Lack of funding in lower courts:**

Lower courts in Pakistan have not had the attention required from the government and other donor agencies when it comes to funding and investment. The lower courts face issues because of the presence of a low graded infrastructure and developmental works. ADB (Asian Development Bank) has funded the judiciary of Pakistan back in 2006 and 2007 which were all invested in the higher and apex courts. This mismanagement of funds either by embezzlement or neglect led to the poor performance of the courts of first trial. It exacerbates the problems in crime deterrence and accessibility of justice for the common man.

### **2.19 Alternative Dispute Resolution in Crimes (JIRGAS):**

Alternative justice systems with no legally binding authority for criminal offences are prevalent in the rural areas of Pakistan. These are known by various names such as: *Jirgas*, *Feesla*, *Panchayat* etc...All of these forms are colloquially grouped together under the term *Jirga*. These *Jirgas* are almost always conducted by influential members of the rural community. They have no legal binding and are conducted under the complete discretion of a *Punchaet*, *Wadera*, *Sardar* or *Choudry* (*leaders of the Community*). It is disconcerting that these alternative dispute

resolutions have also started in urban centers of Pakistan and are being practiced by different religious and ethnic communities that reside within them.

## **2.20 Honor killings:**

The tradition of punishing women who allegedly bring dishonor to their families is another area where the educated populace of Pakistan has been expecting a vocal stand by the state or the higher judiciary. This black act is prohibited under Pakistani law; however, news of honor killings is reported quite frequently in the media. In April 2001, Pakistan's upper house, the Senate, had rejected a bill condemning the growing incidence of honor killings. The Senate had not even considered discussing the issue of honor killings by blocking a draft resolution condemning violence against women. It is on record of the house that two tribal *Sardars*, who were representing Baluchistan in the Senate had expressed their views in a sentimental way urging that this act of 'Honor Killing' is their tradition and it cannot be abandoned. Even higher courts could not take any notice of this tradition vs. law issue at their own.<sup>17</sup>

President (General) Musharraf's Government had also made various declarations of intent against honor killings but to the extent of slogans only. The political will to combat this practice had always been lacking and the judiciary has never taken a serious notice of respective cases.

## **2.21 Problems of Communication:**

Means of communication between the populace and the justice system is problematic as a large portion of society is oblivious to the rights they enjoy under the law. Pakistani procedures, laws and rules are all written in the English language (While the language spoken by the majority and the national language is Urdu), and in spite of translations available, the alternate versions of laws can get lost in translation, create discrepancies and inaccuracies.

A May 2003 study sponsored by the United Nations Development Program (UNDP) has suggested that ordinary people in rural areas know very little of the institutional changes that are already being trumpeted as successful from offices in the capital, Islamabad. The survey was designed to assess progress in obtaining access to justice for ordinary citizens, and the role of police in the community after the introduction of Police Order 2002. The findings, under the title *a benchmark study on law-and-order and the dispensation of justice in the context of power devolution* found that:

Fifty-six respondents had approached the police, and of these, 54 percent thought it was difficult to file an FIR (First Information Report) that is necessary for a case to be investigated. The bulk of those who thought it was difficult said this was the case because the police required a bribe to file the FIR and, as poor people, they had difficulty in coming up with the requisite funds. Moreover, they thought the police generally catered to the rich and influential. Eighty-four respondents said that they had made up to an average of 19 visits (with the maximum in

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<sup>17</sup> <http://www.seamonitors.org/id81.html>

the range cited as 300). Given that the average distance of the police station from where they lived was nine miles, this represented a high time cost. Other expenses, including fee, documents, transportation, and particularly bribes, was also high. Sixty-four respondents claimed to have spent an average of Rs, 95,000 and another 10 claimed to have spent an average of over Rs. 40,000, significant amounts for poor households. Even so, two-thirds said they would go back to the police and 86 percent said this was because they had no other real choice. Only 4 out of 56 who responded to this question said they would go back to the police because they considered the police fair. Only ten respondents mentioned having gone to the local bureaucracy such as the assistant commissioner or the deputy commissioner.<sup>19</sup>

These problems of communication make it very difficult for large sections of society to find justice and the path to justice accessible or even lesser accessible. As such, there is a vast need to ensure the facilitation of public accessibility and accommodation within the criminal prosecution system.

## **2.22 Trickle-down effect:**

A point of intrigue can be seen the higher judiciary's reluctance in initiating *suo moto* actions against any functionary, private or government sponsored organizations before March 2009. It mostly remained subservient to the political controls, whether there has been a political party in power or army dictator. The history of Pakistan is replete with such glaring examples.<sup>20</sup>

In October 2000, a report detailing hundreds of killings in "police encounters" since 1990 was presented to the then Punjab provincial government for further investigation. Some 967 criminal suspects were reportedly killed in various police encounters between February 1997 and October 1999 in Punjab.<sup>21</sup>

During this period Shahbaz Sharif was the Chief Minister of Punjab and the head of provincial government. All these extra-judicial killings were carried out allegedly with his prior approval. It was an explicit demonstration of the miss-trust over the judiciary and an open defiance of judicial institutions. As per Police Rules, in Pakistan's administrative set up there are provisions that each death in police custody and each death in police encounter would be independently enquired into through a 'judicial enquiry' conducted under the supervision of District Magistrate. In the above mentioned instances either the enquiries were not made at all or if done in some cases, those were merely an eye wash because the killings were ordered, consented or backed by the Chief Executive of the province.<sup>22</sup>

Some legal experts/Senior advocates also of the view that the higher and apex courts are not functioning as effectively as they could in order to dispense justice for criminal cases, even after

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<sup>19</sup> <http://www.humanrights.asia/resources/journals-magazines/article2/0305/inaccessible-justice-in-pakistan>

<sup>20</sup> <http://www.seamonitors.org/id81.html>

<sup>21</sup> <http://www.seamonitors.org/id81.html>

<sup>22</sup> <http://www.seamonitors.org/id81.html>

the 2008 movement for the restoration of an independent judiciary. The implication is that *Suo Moto* actions are not being directed for severity, urgency or importance of the cases, but rather those that are either media impelled or high profile – and these more often than not have to do with cases involving affluent members of society. This inefficiency at the higher courts also affects the lower courts which initiate the criminal cases. This problem, some say, is caused by the trickle-down effect.

### **2.23 Conclusion:**

The fundamentals of criminal law are based on the principle of justice, equity and good conscience. They provide adequate guidelines for the formulation a rational penal policy. In order to be influential, criminal law must have four important elements: institutionally, specificity, uniformity and penal sanction. The functioning of the criminal justice system is wide enough to achieve its goals and objectives. Its ultimate goal is to make society safer for its citizens.

Institutionalism requires the competent functioning of each level of government and court of law in order for the proper administration of justice. Specificity requires disambiguation of the interpretation of laws in such a way that it removes obstacles to their understanding. Uniformity requires consistent and uniform application of the laws, such that every individual is certain of the laws they must abide by and those applicable to them. Penal sanction must be swift, certain and applied consistently so that it is clear that no one is above the law and so individuals are aware of the consequential punishment that will be endured upon the commission of a crime.

Criminal justice cannot, however, be isolated from the broader challenges of the democratic transition. The repeated suspension of the constitution by military regimes followed by extensive reforms to centralize power and to strengthen their civilian allies, has undermined constitutionalism and the rule of law. General Zia-ul-Haq's Islamisation of the constitution and laws during the 1980s altered the basic structure of parliamentary democracy, introduced religious, sectarian and gender biases into law and made the violation of fundamental rights not just common practice but a matter of state policy. As a result, Pakistan moved farther and farther away from international standards of justice. The current parliament has, through the eighteenth constitutional amendment, reversed many of these distortions and added new provisions that, if implemented, may indeed strengthen constitutionalism and political stability. More legal reforms are needed. Discriminatory religious laws remain in force, and the justice system is still predisposed towards the discrepant alternative dispute resolution systems remain in force, and the justice system is still predisposed towards the many faults and systematic issues that occur that require intervention and re-construction at every level. Inadequate police protection, corruption within government institutions, police and the courts, exorbitant costs of obtaining justice which a vast majority of the population cannot afford, inadequate access to and lack of comprehension of the law, and the insurmountable backlog of

court cases that delay justice require urgent evaluation and suitable resolutions if there is any hope of redemption in the faith of the justice system

Not just in Pakistan but the UN Correspondents on the independence of judiciary and criminal justice system and prominent lawyers had also expressed great concern over this open violation, attacks and exploitation of rule of law and criminal justice system. It was then openly said for Pakistan that *'unfortunately courts are everywhere but justice is beyond access of common person, it is a game for elite classes only.'*<sup>23</sup>

## **2.24 Recommendations:**

### **Enforcement of criminal law:**

- The enforcement of criminal law should reflect society's disapprobation for criminal activity through apprehending, convicting and punishing the offenders.
- Deterring criminals from indulging in criminal activities and at the same time, advising others as to how to avoid falling as a victim to a crime.
- Criminal law should be beneficially used to rehabilitate offenders and incapacitating those who might otherwise prove to be a potential danger to the society.

### **Safety of people:**

- Ensuring safety and security of people through maintenance of law and order.
- Helping victims to get adequate compensation from the offender wherever possible.
- Efficient and fair application of law ensuring proper treatment of suspects, defendants, those who are held in custody and witnesses. Also ensuring that the innocents are acquitted without harassment and guilt is duly punished.

### **Legislation and enactment of laws**

- Amend the 1997 Anti-Terrorism Act to refine its definition of terrorism to include only those acts that are large in scale and intend to create a sense of fear and insecurity among segments of the public; and disband anti-terrorism courts (ATCs) and try terrorism cases in regular courts.
- Amend the Criminal Procedure Code to establish a robust witness protection program, and make the protection of witnesses, investigators, prosecutors and judges in major criminal cases, particularly terrorism cases, a priority.
- Address over-crowding in prisons by:
  - a) Enforcing existing bail laws;
  - b) Holding accountable any trial judge failing to set bail where required by law;

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<sup>23</sup> <http://www.seamonitors.org/id81.html>

c) Passing a new law requiring judges to allow bail unless there are reasonable grounds to believe the prisoner would abscond or commit further offences; and

d) Reforming the sentencing structure for non-violent petty crimes to include alternatives to imprisonment such as fines, probation and treatment.

- Guarantee the rights of all prisoners under remand by:

a) Ensuring that prison facilities are fully resourced, including with enough vehicles to transport prisoners to court on the designated dates;

b) Ensuring that they are taken to court on the dates of their hearings;

c) Taking action against jail authorities who assign labor to remand prisoners, which is prohibited by law; and

d) Providing free legal aid to remand prisoners who cannot afford counsel.

### **Policing and Prosecution reforms:**

- Initiate a broad dialogue with stakeholders, including serving and retired senior police officials, jurists, criminologists, NGOs and other civil society groups to assess the strengths and weaknesses of the original Police Order (2002), and produce fresh bills in each legislature to strengthen law enforcement that have public support and political sanction.
- Develop mechanisms for individual police stations to articulate resource needs and for these to be reflected in provincial police budgeting processes.
- Carry out a comprehensive assessment of the gaps in investigation and prosecution, based on analyses of crime patterns, with the goal of identifying personnel, training and resource needs at the national, provincial and district levels; invest in producing cadres of specialists within investigation branches and agencies, in such fields as kidnapping, homicide, counter-terrorism and cyber-crime.
- Strengthen the criminal prosecution services and police-prosecutor coordination by:

a) Raising police and prosecutors' salaries;

b) Providing security of tenure to prosecutors, empowering them to reject weak cases, as well as specialized training in such fields as homicide and counter-terrorism, and integrating it with related police training programs;

c) Mandating joint police-prosecutor committees to oversee investigations; and

d) Establishing a committee within each prosecution service, headed by the prosecutor general and comprising respected jurists, to examine the number of cases an individual



prosecutor prosecutes, reasons for trial delays, and the number of convictions and acquittals, including identifying causes for acquittals.

### **Government's role:**

- Engage the public as an effective partner in policing by establishing and empowering neighborhood committees, citizen-police liaison committees and public safety commissions at the national, provincial and district level to oversee critical aspects of policing and by ensuring that police have adequate resources and operational independence.
- Strengthen the police's investigative capacity by introducing new system of laws and strengthen the whole investigation institution. This can be done through:
  - a) Computerizing and maintaining centralized, serviceable records of all FIRs;
  - b) Amending the Telegraph Act to establish clear protocols for investigators' access to mobile phone data, and ensuring that this access is not undermined by the military's intelligence agencies;
  - c) Amending the Evidence Act to require investigators to incorporate scientific methods and data in investigations;
  - d) Modernizing the police force by enhancing scientific evidence collection, including DNA analysis, automated fingerprinting identification systems, and forensics, with particular emphasis on the provincial and district levels; prioritizing completion of forensic science laboratories in Islamabad, in the case of the federal government, and Lahore, in the case of the provincial Punjab government; and allocating resources for similar laboratories in Sindh and Khyber Pakhtunkhwa provinces;
  - e) Bringing the national forensics science laboratory under the Federal Investigation Agency, and the provincial laboratories under the respective criminal investigation departments, while guaranteeing operational independence and oversight;
  - f) Appointing highly qualified scientists to head the forensic science laboratories, and making recruitment open to the private sector, with competitive salaries; and
  - g) Requiring all potential candidates to the investigation branches to first serve as understudies to senior investigators; recruiting those who show potential; requiring them to undergo specialized training in specific fields such as homicide, counter-terrorism, cyber-crime and counter-narcotics; and providing regular refresher training, including through foreign exposure.
- Prevent external interference in investigations by:

a) Requiring the approval of the relevant public safety commission before an investigating officer in an ongoing investigation can be replaced; and

b) Publicizing instances of military interference in investigations, including pressure on the police to surrender prisoners to the military's intelligence agencies, and raise such cases with the higher judiciary.

- Ensuring that the criminal justice system is accountable to the society.

### **Disbanding all alternative/other confusing systems:**

- Disband all state-supported *lashkars* (militias) and take action against any individuals or groups pursuing vigilante justice, including against alleged militants.
- Disbanding all *Jirgas* in rural areas and all community conflict resolution.

## **3. LITERATURE REVIEW**

### **3.1 Summaries**

#### **A- Reforming Pakistan's Criminal Justice System**

##### **International Crisis Group, Asia Report N°196, 2010**

The International Crisis group report on the reformation of the criminal justice system in Pakistan is a comprehensive and thorough analysis into the institutions operation within this sector. Namely the Police, the Judiciary and the Government. It places its analysis via a timeline oriented approach starting with the reforms undertaken in the Musharraf regime to the year 2010. It identifies individual institutions and then proceeds to target problematic areas within the respective institutions. The report's recommendations call for the application and implementation of universal concepts such as the rule of law and the separation of powers.

The report states a multitude of problems plaguing the country such as a heavily politicized Police force, Ad-hoc courts, parallel systems etc. It also then calls for assistance from the International Community and how it can play a role in the reform of the system.

The report provides an in depth look at the flaws plaguing the criminal justice system in the country but does via an international perspective basing its recommendations upon an arguably western set of values and idealism. Some of its recommendations are inherently implausible and impractical considering the ground realities and religiosity surrounding many an issue. But the report does succeed at making apparent an absence of strong reformative will within the system.

**B- Reforming Pakistan's Police and Law Enforcement Infrastructure**  
**United States Institute of Peace, 2011**

The report by the United States Institute of Peace focuses itself on the Police as an institution and provides an analysis into its workings and flaws. The report surmises quite optimistically that the policing system has indeed an opportunity to strengthen itself via reform. The report recommends a multi pronged approach towards a revamp of the police infrastructure. Namely as the report states the upgrading of the policing system cannot occur in isolation and requires a collaborative effort between the various stakeholders and agencies involved. It also recommends specified investment by donors into the Law enforcement sector.

This report provides a very intrinsic view of the functioning the police on a ground level. Though it has to be noted the report analyzes the police as a more effective solution to curbing terrorism in contrast to the constant military solution being proposed to solve said problem. Because of this the report becomes arguably narrow and limited in respect of the reforms suggested.

**C- Stabilizing Pakistan Through Police Reform**

**Asia Society, Independent Commission on Pakistan Police Reform, 2012**

This study talks about two aspects of the Pakistani Judicial System however only one of these is relevant to our cause, this cause is as follows:

The Judiciary of Pakistan:

The study identifies the weaknesses of the Judiciary as follows:

1. Inadequacy of judges and court staff;
2. Lack of adequate compensation of judges at lower courts;
3. Lack of experience of judges in criminal trials;
4. Inadequate regular training courses
5. Inadequate infrastructure
6. Insufficient budgetary appropriation

As reforms to the Judiciary, it proposes the following:

1. Demands of the executive branch on judicial officers;
2. Strengthening all support and ancillary institutions;
3. Consequential and progressive legislative changes.

This study gave us a very good comparative insight into the judiciaries of nations similar to Pakistan as it very extensively talks about the system in place in India and Bangladesh. However, with such a wide scope, it is very limited as to the information it has on Pakistan.

**D- Strengthening the Criminal Justice System**  
**Asian Development Bank, 2006**

This report seeks to provide a framework for police and law enforcement reform in Pakistan. Its key recommendations are as follows:

Legislative

- a. Anti-Terrorism Act 1997 should be revised to clarify the definitions of the crimes that it covers and to create categories for crimes that are currently outside the Act's scope.
- b. At present, information collected by the country's intelligence agencies during interrogations cannot be used against suspects in legal cases. Legal provisions to make this information permissible, provided that arrests are made by law enforcement agencies and due process of law is followed, would greatly benefit the criminal justice system. Similarly, legal provision for wiretaps (involving court approval) would aid police investigations and prosecution.
- c. Modification of the Evidence Act and High Court Rules is essential to convening incognito trials, maintaining
- d. the protection of the identity of witnesses, and facilitating a simpler procedure for the admissibility of modern types of evidence (e.g., cell phone call data) in terrorism cases.

Institutional

- a. An overhaul of the current system of promoting and hiring police would help to ensure reasonable and fair opportunities for advancement. This system must be transparent and free from political interference.
- b. To check police corruption, the federal government should establish an independent police complaint authority under the leadership of a reputable retired Supreme Court/High Court judge in order to guarantee accountability at all levels of the force. Civil society and nongovernmental organizations should play an active role in guaranteeing the independence of all such oversight bodies.
- c. An improvement in working conditions and salaries and changes to organizational culture would help to create a force that is respected by the people and thus is more effective in maintaining security and stability. The success of the National Highways and Motorway Police is particularly instructive in this respect.
- d. Training and curriculum throughout the police academies should be revamped to address the needs of vulnerable groups, including women, children, and minorities. This can help increase their sensitivity, and strengthen the relationship between the police and the community. Training course books should be written in the standard, user-friendly style of contemporary training manuals, rather than in the dense style currently being employed.
- e. The National Assembly and Senate should appoint intelligence committees to monitor the performance of the intelligence agencies, including the Intelligence Bureau.

### Resource Allocation

- a. Police must be provided with the technology needed to combat criminals and terrorists. For instance, police should be given independent facilities for the interception of terrorists' communications, mobiletracking systems, and telephone call data analysis. Investment in developing national databases on vehicles and weapons is long overdue.
- b. Capacity building within the Intelligence Bureau should be made a priority to cater to the needs of intelligence-led policing operations in selected areas of the country.
- c. Women should be encouraged to join the police. Equally as important, however, are more woman friendly laws and gender-sensitized law enforcement personnel, whether male or female.
- d. Greater international support in the spheres of technical assistance, training, and modern equipment would assist Pakistan in building a police force that is capable of meeting the challenges of the twenty-first century.

This study provides an extensive understanding of how the Policing system of Pakistan can be reformed and gives excellent insight into the operation of the police and the problems that it faces, however it is limited in the sense that the Police is the only body that it focuses is on and fails to give an understanding on a wider scale.

### **3.2 Comparative analysis**

The reports produced by the International Crisis Group (ICG) and the United States Institute of Peace (USIP) provide an international perspective on the criminal justice and policing system ignoring at times the ground realities present in the state in regards to the reforms suggested. While the reports by the Asian Development Bank (ADB) and the Asia Society provide a systematic analysis of each institution involved in the criminal justice system. They identify on a socio-political the various flaws and deficiencies plaguing each institution on a grass root level.

Each report, though presents a plethora of reforms and recommendations without extensive adherence being given to feasibility and viability of implementation considering the socio-political and cultural environment they would be placed in.

### 3.3 Keywords:

**Acquittal:** accused is freed of all charges after being proven innocent.

**Accused:** The defendant or defendants in a criminal case.

**Anti-terrorism Court (ATC):** a special court to try cases for terrorism offences. It's governed by its own statute known as the Anti-Terrorism Act (1997).

**Apex court:** The final court of appeal with the highest authority – The Supreme Court of Pakistan

**Appellate court:** The court that re-examines the decree, where a convicted person appeals for re-consideration.

**Bail:** (Law) the person or persons so binding themselves; surety/ (Law) the system permitting release of a person from custody where such security has been taken

**Challan:** a charge sheet for the offences of accused to be presented in the court of trial/law.

**Cognizable offense:** where police is empowered to take the accused in their custody.

**Criminal Prosecution:** the official system and procedures to handle criminal cases in the law and courts

**Defendant:** One who defends himself in the court of law and is accused of offences.

**First Report:** if there is no need for investigation in criminal cases, the SHO prepares the first report.

**FIR:** First Investigation Report – “report that is part of the police’s investigations process in the criminal case.”

**Guilty:** Found by a jury or judge to have violated a criminal law.

**Investigation Officer:** The police officer appointed by the government to investigate the criminal case, he may also be known as the Station House Officer.

**Judicial custody:** accused in the custody of court/judge.

**Litigant:** a party to a lawsuit; someone involved in litigation; "plaintiffs and defendants are both litigants"

**Lower courts:** the court of first trial where criminal and basic civil cases are heard.

**Magistrate:** The judge at the lower district level, he/she can hear cases of criminal nature as well as civil case.

**Non-cognizable offence:** where police is not authorized to take the accused in their custody.

**Prosecution lawyer:** usually a government lawyer for criminal cases, mostly for defendant.

**Prime witness:** the main witness for the offence.

**Prime evidence:** the main and most important evidence.

**Plea:** an accused person's answer to a charge or indictment in criminal practice

**Plaintiff:** a party to a lawsuit; someone involved in litigation; "plaintiffs and defendants are both litigants"

**Police custody:** accused in the custody of police.

**Remand:** when the accused is taken back into police custody awaiting trial proceedings or when a case is deferred to another authority for decision.

**SHO:** Station House Officer. He heads the police station at a basic level. He is responsible for lodging the FIR or criminal report and also serves as the Investigation Officer.

**Sessions Court:** The court that hears criminal cases of a more severe and punitive nature, for example, a murder case will be heard in Sessions Court rather than First Magistrate.

**Trial court:** any court where a case is being tried.

**Under Trial prisoners (UTP):** an accused under police custody.

**Verdict:** the finding of a jury in a trial. An expressed conclusion; a judgment or opinion

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