
Police Powers in Pakistan: The Need for Balance Between Operational Independence And Accountability

by Ahmad N. Warraich

THE COLONIAL LEGACY OF BEING RULED for the benefit of the colonizer meant that for most developing countries, law enforcement agencies, especially the police, have yielded great power. Pakistan falls into this category, as police excesses have always been a problem. This article examines the extra-legal activities of police in Pakistan, and the way the recent administrative and legal changes in the country, although well intentioned, have the potential to strengthen police without enhancing accountability. However, if the proper changes are introduced, the right balance can be struck between the need for police to have operational independence and the need for demonstrable accountability.

Recently, the government of Pakistan has made efforts to improve the police force nationwide. These efforts have not yet improved the image of the police in the public eye. The common person's perception is that the police more often exploit the victim rather than go after the criminal. Reports in the press about police torture are still commonplace, despite recent efforts by the authorities to improve police accountability. However, the silver lining is that the police officers involved in torture are being punished and that the Government is making efforts to hold the police accountable.

INTRODUCTION

IN PAKISTAN THE WAY A PERSON IS TREATED in the police precinct is reflective of the local power structure of the area. In the case of a minor theft or injury, most citizens do not report the crime for fear that the police will engage in extortion. The extra-legal use of police for state purposes is rare, however, the use of torture and illegal detention by police is believed to be done for personal gain and to cover inefficiency. Corruption is the root cause of this phenomenon. Any perusal of the newspapers, reports of national and international human rights NGOs, and reports such as the U.S. State Department's annual human rights report will illustrate that the police in Pakistan routinely misuse their powers. As explained later in this article, the recent changes in the legal and administrative structure of the country have made the police more powerful, without making them more accountable.

Police in South Asia have traditionally been used as an instrument for furthering state policy objectives. The Mughals and rulers before them were absolute monarchs and did not believe themselves answerable to the citizenry. The British, who enjoyed democracy at home, did not consider the virtue important enough to be exported to their colonies. As a foreign colonizer, they needed both the military as well as para-military forces, including the police, to control the local populace in the interests of the state. Consequently, the main purpose of the police was not to fulfill a function of the state toward its people, but rather to keep law and order in the interests of the colonizer. This naturally set the background for the modern day police forces in today's South Asia. One of the most important legacies of British colonization is the institution of bureaucracy, and the police force is a part of that legacy. Therefore, at the time of independence there was a strong bureaucracy and weak governance, which resulted in a lack of accountability mechanisms.

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CURRENT LEGAL SITUATION

PAKISTAN IS A SIGNATORY TO THE UN CHARTER, which mentions the promotion and protection of human rights as one of its objectives. Pakistan is also a signatory to the Universal Declaration of Human Rights (UDHR). The UDHR is a declaration, and therefore non-binding under international law. However, over the last half century legal experts have come to believe that most of it has become part of customary international law.

Customary international law is state practice that states in general have come to accept as law, and therefore consider themselves bound by it. The UDHR contains provisions on two broad categories of rights: civil and political rights, and economic, social and cultural rights. Civil and political rights "include the right to life, liberty, and security of persons; the prohibition of slavery, of torture and cruel, inhuman or degrading treatment; the right not to be subjected to arbitrary arrest, detention or exile; the right to a fair trial in both civil and criminal matters; the presumption of innocence and the prohibition against the application of ex post facto laws and penalties."

TORTURE AND OTHER CRUEL, INHUMANE, OR DEGRADING TREATMENT OR PUNISHMENT

The Constitution of Pakistan forbids torture and other cruel, inhuman, or degrading treatment. Although incidents of police torture have decreased over the past few years, the leading national human rights NGO in Pakistan, the Human Rights Commission of Pakistan (HRCPP), reports that, "the use of torture was extremely widespread in the country—with both police and prison officials responsible for



A Pakistani policeman.

inflicting it." Some human rights groups are of the opinion that this decrease is reflective of the influence of the army monitoring teams, which discourage the use of torture. These monitoring teams were instituted in 2000 to ensure good performance by civil departments.

ARBITRARY ARREST, DETENTION, OR EXILE

Article 10 of the Constitution of Pakistan prohibits arbitrary arrest and detention. However, the police are often accused of arbitrarily arrest-

ing and detaining citizens. There are reports that the junior police officials at Inspector level and below illegally detain suspects in order to extort money from them and often move prisoners from one police station to another if they suspect a surprise visit by higher police authorities.

ENHANCED SECURITY CONCERNS

Due to the tragic and unfortunate events of September 11, 2001, the worldwide security situation has changed, and internationally security concerns sometimes outweigh human rights concerns. As a result, police forces have gained increased power in countries all over the world, including Pakistan. It is assumed by law enforcement agencies that security can only be ensured at the cost of curtailment of some human and due process rights.

Conversely, in the opinion of leading international human rights NGOs such as Amnesty International and Human Rights Watch, security consists of not only protection from politically motivated violence but also of protection from arbitrary detention, freedom of expression, and security of due process rights, among other rights. It is therefore important that a state should provide both kinds of security to its people.

2002 AMENDMENT TO THE ANTI-TERRORISM ACT-1997

The Amendment to the 1997 Anti-Terrorism Act of Pakistan (Act) allows the detention of people suspected to be terrorists for up to one year. It also allows for investigation of the accounts and property of suspects. The Act defines a terrorist act very broadly. All laws which infringe on the citizen's liberty need to be narrowly defined, otherwise there is a possibility of their misuse by the police. The state in the post-September 11 scenario rightly feels that it needs to strengthen its security apparatus to protect its citizens from politically motivated violence. However, it should be done in such a way that due process rights are not affected and police personnel are not given a loophole to misuse their powers.

RECENT CHANGES IN THE POLICE AND ADMINISTRATIVE STRUCTURE OF THE COUNTRY

Pakistan is a federation with four separate provinces and one federally administered area. In the police structure each of these divisions is headed by an inspector-general of police. The smallest administrative unit is the *thana*, or police precinct, headed by a police inspector.

The Government of President Pervez Musharraf, introduced certain reforms into the administrative structure of the country and replaced the 1896 Police Act with the Police Ordinance 2002 (Ordinance). This Ordinance has brought about many needed changes in the century old Police Act. However, the new Police Ordinance does not fully meet the requirements of the time and has in some ways made the police stronger, especially in conjunction with the recently introduced Devolution Plan, which has brought about major administrative changes at the district level. There is much to commend in the Devolution Plan, as it is based upon the democratic principle of local participation in governance. However, the flip side of the current situation is that it leaves the police more powerful and less accountable. Interestingly, the *Nazim*, the political head of district government under the Devolution Plan, has little control over the police. This is juxtaposed with, for example, a mayor in the United States of America who usually has significant control over public departments of the city. The *Nazim* has a supervisory role over the

police, but lacks enforcement power. If the objective is to devolve power to the local level, then an important aspect of devolution is the maintenance of law and order, which has been denied to the elected *Nazim*.

A significant number of police officers in Pakistan are federal employees and are lent to the provincial governments for posting as police officers. If they are not under the elected officials of the district or the province, then their operational independence can lead to a lack of accountability. Under the new Police Ordinance, the provincial government does not have any significant say on who is to be appointed the inspector-general of police of a province. However, under the Constitution of Pakistan, law and order are provincial subjects, and the chief minister is the executive head of the provincial government.

Under Section 33 of the Police Ordinance 2002, the head of district police shall be responsible to the District *Nazim* for police functions; but this shall not include "administration of the district police, investigation of criminal cases and police functions relating to prosecution," which shall rest with the police. The *Nazim* may visit a police station to find out if any person is under unlawful detention, and, in

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appropriate cases, may also direct action in accordance with law. However, the order does not state what will happen if the district police officer disobeys the orders of the *Nazim*, other than that the detainee can refer it to some authority without her or himself having any enforcement power.

As mentioned above, the government has introduced a new district administrative structure through its Devolution Plan. Key changes include transferring oversight of the district superintendent of police from provincially appointed district commissioners to elected district mayors. The Plan allows the district police officer to order the use of live fire on their own authority and establishes public safety commissions, which have partial oversight over the district police. The public safety commissions under this Ordinance exist at the district, provincial and federal level. The commissions are to consist of appointed members recommended by various bodies, such as the district council and the provincial government.

While the commissions has rightly transferred power to elected officials, they have also strengthened the powers of the police. The

Nazims and the public safety commissions have oversight powers over the police, but they do not have any enforcement power. In an environment where the police are prone to misuse their powers, it is necessary to have mechanisms to control potential abuse. In addition, the members of the public safety commissions are restricted to a single term of three years, thereby ensuring complete turnover where no use can be made of the experience acquired by members of the last commission.

The district public safety commission's task is to oversee complaints against the police and evaluate police performance. However, there is no concrete action that the commission can take against a recalcitrant or errant police official, except referring the matter to the provincial government or police complaint authority. Effectively, the police have no authority controlling them, except their own hierarchy. In Pakistan it is reported that police officers often protect their subordinates, irrespective of their fault. In such situations, where the police are beyond the control of both the *Nazims* and the provincial government, they are likely to abuse their powers.

In Pakistan, politicians have tended to interfere in purely administrative and police affairs, and it is therefore understandable that the government aims to make police immune from such interference. However, the police must be held accountable for the use of their powers, and in the attempt to provide them with operational independence, they must be ruled unaccountable. There has to be a system of effective checks and balances.

CONCLUSION AND RECOMMENDATIONS

IN ANY MODERN, DEMOCRATIC SOCIETY, it is important that the people enjoy basic human dignity and the knowledge that they are protected by properly-enforced laws. It is therefore imperative that Pakistani police are brought within the realm of Pakistani law and internationally acceptable standards for police conduct. In this regard there are certain steps that must be taken to ensure that the national police use their powers for the purpose for which the constitution intended—that is, the maintenance of law and order within the ambit of the law.

Mandatory action should be prescribed against recalcitrant police officers. For example, in case of reported torture in a police station, a report should be registered against the station house officer, and upon the occurrence of two such cases in a subdivision, a report should be filed against the assistant superintendent of police for criminal negligence of duty.

Greater disciplinary and legal action should be taken against police officials who misuse their powers, so that the corrupt are weeded out of the service and the public have better confidence in the force. In addition, the general perception that police officers protect their subordinates to a fault needs to be addressed.

Civil society in Pakistan is small but vibrant and has already withstood an attempt to be curtailed. Under the Nawaz Sharif regime, an effort was made to ban a large number of NGOs. Civil society acts as a watch-dog on governmental action on behalf of the people and should therefore be encouraged to play a role in monitoring police excesses and accountability. In this way, civil society can act as a bulwark against police excesses.

There is also a need to better train the police. In this regard, refresher courses should be held for in-service officers, as they need to be kept up to date with modern methods of crime detection as well as

sensitization on important issues such as human rights, women's rights, children's rights, the rights of minorities, etc.

To hold the police accountable for their actions, a better mechanism for accountability is required. This could be realized through the establishment of a special police ombudsman at the district level, who could deal exclusively with cases of police excesses. Until such a plan is fully implemented, one ombudsman may look after two or three districts. In addition, the civilian authority, that is, the provincial government and the *Nazim*, should have greater control over the police, since control of police is an instrument of civil governance, not something beyond its authority.

The proposed public safety commissions should have more effective control over the police. Their role should not be just to recommend action, but should be to effect change—that is, it should be mandatory for higher authorities to take action on the commission's recommendation. The *Nazim* should be made the co-signer of the annual confidential report of the district police officers, as this would enhance the elected officials' control over the police.

The provincial police need to be administratively under the provincial chief minister, as she or he is the head of the provincial government, and law and order is a provincial subject. The Executive of the province cannot be truly effective without the police under its control.

With regard to the use of torture during investigations, it is recommended that the interrogation rooms in the police precincts be equipped with cameras, so that the interrogatory process is taped. This would go a long way toward controlling torture as an instrument of interrogation. In addition, as in the case of Britain, this would also be good for the police, as a confession made in front of the camera would be difficult to retract.

Police in the West rarely wear uniforms unless on duty, and detectives also do not wear uniforms. Given that the police uniform instills fear in the Pakistan citizenry, the police should be made to wear plainclothes when not on the beat. The police should also have a code, as in the English legal system, which defines the procedure to be followed by an officer while performing various duties such as arrest, detention, and interrogation. Any violation of such a code should result in an automatic initiation of disciplinary action against the infringer. The *Nazim* and the concerned Public Safety Commission should be kept informed of any such proceedings.

In cases where torture is proved, action should not only be taken against the perpetrators, but also against the officers in charge of that precinct for criminal negligence. In addition, there is a need to establish as many forensic laboratories as possible in the country, so that the latest scientific tools are available for investigation of crimes. Regarding the general perception that the police protect their fellow officers, in cases of failure of the police to take action against an officer for misuse of power, the matter should automatically be referred to an outside administrative authority. In addition, some inquiries against police officers should be given to non-police personnel. In this regard, the district coordination officer, the head of the district bureaucracy, or the provincial government should be able to nominate a member to the inquiry committee.

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