

Low Conviction Rate in Pakistan: Causes and Way Forward

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Abstract

Conviction rate is the primary indicator through which the efficiency of a criminal justice system can be measured. Unfortunately, Pakistan has a poor conviction rate due to the collective inefficiencies of the Police, the Prosecutors, the Judiciary, and the Lawyers. In this paper, the author has highlighted reasons behind the low conviction rate in three main categories: Crimes against person, Crimes against property, and Crimes under Anti-terrorism Act. The major reasons outlined for low conviction rate are false statements by applicants, flaws in investigation due to limited resources, weak prosecution, and the lack of timely disposal of cases by courts due to overburdened judges. To resolve this problem, holistic changes must be made rather than mere cosmetic changes as the problem is deep rooted in the system.

Keywords: low conviction, criminal justice, law-and-order, police & prosecution, lawyers & judiciary, and anti-terrorism laws

Introduction

Maintenance of law and order in a society is one of the primary functions of a state. To efficiently perform this function, a criminal justice system is established by the state. The purpose of criminal justice system is to ensure justice by convicting those who are guilty of violating the law, while protecting the innocent. Four major stakeholders are directly involved in ensuring the criminal justice: Police, Prosecution, Lawyers and Judiciary. All four of these institutions have the key responsibility of ensuring justice in a society. A well-known maxim of law instructs that ‘justice should not only be done but must also be seen to be done’.¹ This justice can be seen in the form of successful conviction of perpetrators and high conviction rates. When criminals are convicted for their crimes,

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¹ Nasir Iqbal, ‘Justice Isa questions procedure to appoint judges’, accessed 10 May 2022, <https://www.dawn.com/news/1692028>

it creates a deterrence in the society and re-establishes the writ of state.² Unfortunately, conviction rate in Pakistan has been abysmally low in comparison to that of developed countries. All the stakeholders of criminal justice system are responsible for this below par performance in Pakistan. The focus of this paper is on factors which are responsible for low conviction rate in three major types of cases: Crimes against person, Crimes against property, and Crimes under anti-terrorism act. Moreover, in the later part of the paper, recommendations would be put forward to improve the rate of convictions in the country.

Methodology

The research methodology used in this study is primarily qualitative. Both, primary and secondary methods of data collection are applied. Such instruments of data collection include interviews with key stakeholders from criminal justice system, conviction records, legislative documents, and examination of trial verdicts. As a case study, performance of criminal justice system of Rahim Yar Khan was evaluated. This was done by collecting supporting data from various sources. These include Sessions court English branch, Accounts branch DPO office, Old Age and Survivors Insurance (OASI) branch, legal branch, and office of the District Public Prosecutor.

Conviction rate: Definition and atatus

Globally, the conviction rate is considered as one of the most significant indicators of the performance of a criminal justice system. It is usually broken down by geographical jurisdiction or by categories of crime. Conviction rate is the number of convictions, including the plea bargains, as a percentage of the total number of prosecutions undertaken within a given area or for a given time.³

$$\text{Conviction rate} = \frac{\text{Number of convictions}}{\text{Number of criminal cases}} * 100$$

a. Comparison with other countries

According to a report by Pakistan Institute of Legislative Development and Transparency (PILDAT), conviction rate in Pakistan was 8.66%. This rate is on the lower side when compared with other regional and

² Asif Chaudhry, 'Rise in habitual criminals due to low conviction rate' accessed 10 December 2021, <https://www.dawn.com/news/1336304>

³ US Legal, accessed 21 August 2021, <https://definitions.uslegal.com/c/conviction-rate/>

developed countries. Conviction rates of some of these countries are tabulated below:⁴

Country	Conviction rate
Pakistan	8.6%
India	37.4%
South Africa	39%
United States (Federal court)	85%
England (Crown court)	90%

Source: A. Hameed, 'Prosecution Service Punjab and Sindh', October 2015, accessed 2021

Reasons for low conviction rate

Efficient criminal justice system requires well thought out and coordinated efforts from all stakeholders. Unfortunately, in Pakistan, there are serious issues at every step, which begin from the registration of flawed First Information Reports (FIR), further to proceedings in courts and ends in faulty verdicts given by honorable judges.⁵ In this paper, factors behind low conviction rate in following three categories of crime will be discussed:

- a) Crimes Against Person
- b) Crimes against property
- c) Crimes under Anti-terrorism Act

All three above mentioned categories will be discussed in detail to pinpoint the areas which hamper the conviction rates at various stages of criminal justice system.

a. Crimes against person

The term 'crimes against person' refers to a broad array of criminal offenses which usually involve physical harm, the threat of bodily harm, or other actions committed against the will of an individual. Homicide, rape, assault, and kidnapping are some of the crimes that come under the category of crimes against persons. Under this category, following factors hamper the conviction rates:

- i. *Registration of FIR- False statements by applicants*: Section 154 of CrPC states that First Information Report (FIR) should be registered by Station House Officer (SHO) whenever an application relating to

⁴ *Prosecution Service and Media in Pakistan*, (PILDAT, February 2016), accessed 2022, http://www.pildat.org/Publications/publication/ROLR/ProsecutionServicesandMediainPakistan_MediaBrief.pdf

⁵ Shahrukh Shahnawaz, interview by author, Karachi, 05 June 2022.

commission of cognizable offence is received. However, this seemingly simple provision has and continues to create multiple problems which directly impact the investigation and prosecution of cases.

First, phenomenon of false applications is very much prevalent. There is tendency to falsely accuse people in criminal cases to pressurize their opponents in other civil or family related issues.⁶ These false applications ultimately increase the burden on already overburdened police workforce.

Second, even when a cognizable offence has been commissioned, the tendency to misrepresent or exaggerate them to promote personal interests. This is often done by nominating people who were not directly involved in that case or exaggerating the extent of injury caused.

Third, according to legal provisions, FIR in cases of hurt should be registered on basis of Medico Legal Certificate (MLC). Unfortunately, there is growing trend of fake MLCs being produced by applicants with the help of medical officers who indulge in financial malpractice. This has been also highlighted by Chief Justice of Pakistan Anwar Zaheer Jamali.⁷ Medical officers charge different rates, depending upon the severity of injury mentioned in MLC starting from Rs. 40,000 to Rs. 100,000.

ii. *Flaws in investigation:* After registration of FIR, an investigation officer is assigned to perform the most important task- investigation of case. It requires professional competence of the investigation officer as well as support in form of resources and equipment. Following factors play a key role in the investigation of cases relating to crimes against person.

First, the establishment of homicide units have proven to be a positive development as they have better equipment and more funds at their disposal. Up to Rupees forty thousand could be utilized as cost of investigation in each case. Moreover, officers posted in homicide units are also required to have completed homicide investigation course before they can be posted in these units. However, in practical work, application of those training modules is rarely applied. Moreover, due to lack of awareness in public, crime scene is often polluted by the time the investigation officer reaches the scene.

⁶ Imtiaz Ali, interview by author, Karachi, 02 June 2022.

⁷ 'CJ says getting fake medical certificate very easy in Pakistan', 24 November 2016, accessed 2022, <https://www.dawn.com/news/1298230>

Second, as per guidelines, every investigation officer is supposed to take the evidence samples with him and deposit them in Punjab Forensic Science Agency (PFSA), Lahore. This may not seem very inconvenient for districts that are in proximity with Lahore. But for districts such as Rahim Yar Khan, which is around 10 hours' drive from Lahore, it becomes a huge problem. In certain circles, only one upper subordinate posted in homicide unit. If he proceeds for Lahore, then he is not available for two days in his home district, so any incident occurs in his absence he would be unavailable to reach there on time. Moreover, there are certain samples which need to be carefully preserved. It was observed that there were cases in which evidence samples had lost their utility by the time they reached PFSA, Lahore. Deliberate tampering of evidence by investigation officers is another growing cause of concern which requires immediate attention.

Third, lack of funds has been the most prominent excuse to justify below par investigation standards. However, provision for cost of investigation for different categories of crime in Punjab has been revised by order no. 4710-4820/RA. Provisions for crimes against person are mentioned below:

Crime	Cost of Investigation
Murder	Rs. 20,000/-
Attempt to murder	Rs. 7,000/-
Hurt	Rs. 5,000/-
Kidnapping	Rs. 20,000/-

With the establishment of homicide units, provision for cost of investigation in cases of murder has been increased to Rs. 40,000.

iii. *Prosecution and court proceedings*: Prosecution plays an integral role in ensuring that the case sent to court is free from any loopholes. Investigation officers are of the view that prosecution department is not effectively playing its role. On the other hand, prosecutors blame lack of professional competence of investigation officers. As a case study, District Public Prosecutor (DPP) was requested to give copies of objections raised by prosecution department in investigation related to crimes against person. Objections which were highlighted in majority of the cases are mentioned below:

- Scaled map of crime scene (*Naqsha-e-Mauqa*) which is made with assistance with revenue department is not attached.
- Carbon copy of FIR is not attached with the case file.

- Confession is not recorded according to provision of Section 164, CrPC.
- Previous criminal record of accused is not attached.
- Fake signatures of witnesses.
- Crime scene is not photographed properly.

Conviction rate in crimes against person is significantly hampered by the provisions of law which make certain crimes compoundable. In 2015, courts in Punjab issued judgements on 3,543 cases of murder. Following is the break-up of their results:⁸

Result	Percentage of cases
Conviction	24%
Acquittal	30%
Compromise	46%

Anti-honor killing law passed in 2016 was lauded as landmark development in curbing the cases of honor killings in country. There was a strong case for honor killings to be made non compoundable. However, only cosmetic changes were made, and the duration of minimum sentence was extended. Legally, once the suspect confesses to the commission of the offence and the court admits such evidence under section 304 (Proof of *qatl-i-amd liable to qisas*) of the Pakistan Penal Code (PPC), *qisas* becomes applicable even if section 311 is invoked. Consequently, waiver of the offence becomes a real possibility unless the court goes to the extent of declaring the criminal act as *fasad-fil-arz* in which case the court can hand down a minimum punishment of 10 years of imprisonment as *ta'azir*. Unfortunately, courts have failed to set strict example of those who are guilty of committing murder in the name of honor.

b. Crimes against property

Crimes against property include criminal acts which involve destruction of another person's property or depriving owner from his lawful property. Robbery, motor vehicle theft, theft, arson, vandalism and dacoity are some of the crimes that come under this category. Following factors hamper the conviction rates:

i. *First information report-distorted facts*: First, it has been noticed that majority of the SHOs are reluctant to register FIR in the cases related to crime against property. This is done to keep the overall crime figures

⁸ Reuters, Punjab Police Homicide Unit: Reforming the Criminal Justice System, 26 October 2015, accessed 2022, <https://www.dawn.com/news/1215506>

within the limits so that their performance is not questioned. Moreover, in certain cases, FIR is only registered once the accused are arrested and property is recovered. Hence, figures related to crimes against property are significantly distorted.

Second, tendency of complainants to give false statements. FIR is often used as medium to settle private scores. Rivals are nominated in FIR even though there is no reasonable doubt of their involvement.⁹ Similarly, number of people involved in robbery are often deliberately stated as more than five to register case of dacoity which is considered as far more serious crime and generates greater attention from the police. Moreover, complaints are received even when there has not been any incident of any crime against property. As a case study, calls received by Rescue 15 related to theft were examined.

Complaints received	113
FIR registered	11
Percentage	9.73%

Source: Data retrieved from Rescue 15 office, Rahim Yar Khan.

Third, the amount of loss of property is greatly exaggerated by the complainants. This is done to recover greater amount from the accused. However, they fail to realize that this exaggeration ultimately weakens their case.

ii. *Lapses in investigation:* First, the practice of identification parade is decreasing with passage of time. In cases where accused is not nominated initially, if during investigation there is sufficient doubt that a certain person is involved in the crime, it is imperative that identification parade is held before nominating him in the FIR. Article 22 of *Qanoon e Shahadat* order specifies the importance of identification parade, and it should be held under the guidelines proved in rule 26.32 of Police Rules. It is considered as important source of evidence, and often the fate of the prosecution case depends upon the satisfactory character of identification proceedings in such cases.

Second, when two or more persons are nominated in FIR and found guilty during investigation, recovery should be made separately from each accused rather than producing joint recovery in the case file. This practice is not being followed, which has negative impact during the trial of case.

Third, Investigation officers tend to blame lack of funds for substandard state of investigation. Provision for cost of investigation for

⁹ Zohaib Ahmed, interview by author, Karachi, 06 June 2022.

different categories of crime in Punjab was revised by order no. 4710-4820/RA. Provision of funds for crimes against person is mentioned below:

Crime	Cost of Investigation
Robbery	Rs. 11,000/-
Motor vehicle theft	Rs. 2,500/-
Theft 380 PPC	Rs. 2,500/-

iii. *Prosecution and court trials*: There are two stages at which prosecutors review police cases.

1) Under section 9(5) of CPS Act, when they receive the police file.

2) Under section 9(7) of CPS Act, when they send the case file to court. According to annual report of Punjab Criminal Prosecution Service, 2015, prosecutors issued 36, 285 under section 9 (7) of CPS Act.¹⁰ This shows that only 12.52% of the total number of reports sent to courts were reviewed by prosecutors under this section.¹¹

Moreover, according to same report, Prosecutors contested 239,025 applications in courts for grant of bail, out of which they were successful in getting 38.6% (92,254) applications dismissed. The success rate in cancellation of bail application was low. Only 153 out of 5,774 (2.65%) applications were successful.¹²

c. Crimes under anti-terrorism act

Pakistan has been ranked fourth in Global Terrorism Index, 2021.¹³ In the last twenty years, threat of terrorism has grown exponentially. To deal with this threat, various legislative changes were made. Nevertheless, conviction rate in terrorism cases remains low. Following factors are responsible for the poor performance of criminal justice system in terrorism related cases:

i. *Defective structural reforms*: A legal maxim holds that the certainty of law has a greater deterrent effect on criminal behavior than its severity. However, in Pakistan, this maxim is completely ignored. Emphasis has

¹⁰ Punjab Criminal Prosecution Service Report, Lahore, annual report 2015, <https://pg.punjab.gov.pk/system/files/PCPS%20Annual%20Report%202015%20-%20For%20Department.pdf>.

¹¹ Ibid.

¹² Ibid.

¹³ *Global Terrorism Index* (Institute for Economics and Peace, 2021), accessed 2022, <https://www.visionofhumanity.org/maps/global-terrorism-index/#/>

always remained on increasing the severity of punishments while the fundamental flaws of the system have been ignored. Unfortunately, these structures are introduced without an in-depth analysis of the system. Hence, these new laws fail to address the major issues and they are replaced by another set of new legal structures.

This has resulted in creation of parallel judicial systems. Anti-Terrorism Courts were established because the session courts were not considered fit to deal with terrorism related cases. Major backlog of cases, delays in trials, and capacity of courts were cited as reasons for creation of ATCs. However, after a few years, ATCs also had major backlogs of cases and trials went on for years. New special courts were authorized under the POPA, 2014 to circumvent these problems. Furthermore, after attack on Army Public School, military courts were established. All three of these courts have overlapping jurisdiction. Despite plethora of laws and amendments, no significant long-term change has been observed in the counterterrorism prosecution in Pakistan.

ii. *Increased workload due to tangential cases:* The ATCs were established to provide speedy trials, and attempts were made to ensure that a court has only one case at a time. However, this became impractical because of broadening definition of terrorism.¹⁴ Since 1997, multiple amendments have been made in the ATA. With each amendment, new offences are included in the definition of terrorism. For example, following offences are included in the anti-terrorism act:

- Kidnapping for ransom
- Aerial firing that creates terror in the public
- Damaging an electrical transformer
- Forced sexual intercourse with a minor
- Breaking windows of vehicles during political rallies

Majority of the trials in the ATCs are related to these tangential cases. They take majority of resources and time of courts. Subsequently, these cases hamper the conviction rates in ATCs.¹⁵

i. *Problems with investigation:* First, cases in ATC predominantly rely on eyewitness accounts. Greater weightage is given to statements of

¹⁴ Rana Saifullah Hasan and Dr. Naeem Ahmed, *Evaluating Pakistan's Criminal Justice System against Violent Extremism, Policy Perspectives on Countering Violent Extremism in Pakistan*, Sustainable Development Policy Institute (SDPI), Islamabad, October 2021.

¹⁵ Ibid.

witness. Although, witnesses in majority of the cases do not come forward to give evidence due to threat to their personal security. This leads to fabricated evidence and witnesses. Moreover, emphasis is laid upon quantity rather than quality of witnesses. This often results in contradiction in statements of witnesses which weakens the case of prosecution.

Second, area of forensic science is not being utilized properly. Role of first responder and preservation of crime scene are integral in any terrorism related case. However, these are largely ignored as seen in the case of assassination of Benazir Bhutto where crime scene was washed away.¹⁶ Moreover, in 2014 ATA was amended to include section 27-b to include forensic evidence as primary source of evidence. However, this section of the law is not taken seriously; since 2014, of all cases nationwide, only one ATC judgment has explicitly considered forensic evidence to be the primary means of evidence. But even that case was corroborated by significant witness testimony.¹⁷

Third, there is lack of supporting infrastructure. PFSA has the only functioning DNA lab. Due to excessive burden, forensic reports are not received promptly. Moreover, Pakistan Automated Fingerprints Identification System, established in 2008, has still not been able to gather comprehensive data from all parts of the country.

Fourth, prosecution department also highlighted some common issues in the investigation. These include defects in identification parade, doubtful recovery, defects in confessional statements, late submission of challan, and defective medico-legal reports and material evidence.

ii. *Prosecution and court proceedings*: According to report by prosecution department, 2,252 cases pending before the ATCs in Punjab. In 2015, 1184 cases were adjudicated upon by the ATCs in Punjab. While 804 decisions led to acquittals, only 380 cases resulted in convictions. Hence, conviction rate was around 32%.

Terrorism cases are classified as non-compoundable. They are considered as a crime not only against the victim, but also against the whole society. Despite the legal provisions there have been cases in which parties reached a compromise while courts accepted and dropped

¹⁶ 'BB murder site washed off on SP's order: witness', 20 February 2013, accessed June 2022, <https://www.dawn.com/news/787429/>

¹⁷ Syed Manzar Abbas Zaidi, *Terrorism Prosecution In Pakistan*, (Washington DC: United States Institute of Peace, 2016), accessed 2022, https://www.usip.org/sites/default/files/PW113_Terrorism_Prosecution_in_Pakistan.pdf

the case.¹⁸ However, in most of the cases when a compromise is reached outside the court, the case ultimately results in acquittal due to lack of evidence.

Many of these compromises are not made voluntarily. Officials from prosecution department state fear as one of the major reasons behind witnesses retracting from their initial statements. In many cases they do not pursue the case or assist prosecution because they fear for their security. Particularly, in cases of high-profile militant organizations. This fear is very much logical as there have been incidents of witnesses being killed in high profile cases. Five witnesses and three of their relatives were killed during the trial of a leader of a sectarian outfit who was accused of killing 12 members of a Shia family during a Majlis in 1997. Moreover, there are also logistical and cost barriers which deter witnesses.

Judges in ATCs also tend to avoid conviction of hardcore militants. They face severe security threats, which prompts them to acquit the accused on basis on 'lack of evidence'. This is evident from the analysis of different court trials that Malik Ishaq, leader of Lashkar e Jhangvi, faced during his lifetime. He took pride in killing people of certain sect, and even announced in Urdu daily newspaper that he was involved in killing of 102 people. Yet, on multiple occasions he was acquitted due to lack of evidence. In March 2007, ATC judge Bashir Ahmed Bhatti, scheduled to hear another case against Malik Ishaq, was on his way to the court when a remote-controlled bicycle bomb exploded near his car, killing his driver and two policemen. Ishaq was charged with planning of the bombing. Two years later, the prosecution's witnesses suddenly turned hostile. Ishaq was acquitted in April 2009, because of lack of evidence.

Policy Recommendations: As discussed above, there are multiple factors responsible for low conviction rate. Holistic changes are required to improve the conviction rate and the current state of criminal justice system. In this regard following recommendations are proposed:

I. Legislative amendments

i. *Section 154 Criminal Procedure Code (CrPC):* On paper, provisions of section 154 CrPC are very straightforward. It states that FIR should be registered by officer in charge of police station when information is received regarding commission of cognizable offence. However, this relative provision creates multiple problems. As already discussed, the

¹⁸ Case number 66, dated 15-3-2010, Malakand, Swat ATC

trend of false complaints is very much prevalent in Pakistan. If we measure performance of criminal justice in terms of conviction rate, then these complaints have direct impact on conviction rate. It is suggested that the Section 154 of the CrPC should be amended to provide powers to the SHO to conduct initial inquiry to discard fabricated and false FIRs prior to registration of cases. This move will save a lot of time and resources which are utilized in the useless investigation and prosecution in courts.

The primary purpose of FIR is to set the criminal law in motion. It is settled principle of law that an FIR is not a substantive piece of evidence. In practice, in any criminal case the FIR has critical importance during trial stage. The defense relies heavily on the contents of the FIR. With passage of time, judges have started to give more weightage to its contents. That is why, in important cases, FIR is registered after hours of deliberations. Supreme Court should look into this growing trend, and issue specific guidelines regarding the scope of FIR.

ii. *Section 182 Pakistan Penal Code (PPC)*: As per the provisions of this section, any individual who gives false complaints to a public servant shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to three thousand rupees, or with both. With the increase in false complaints, it is imperative that punishments are given under this law. However, in practice, there is hardly any action taken. This needs to change. Police and judiciary need to make a joint effort to discourage this growing trend of false complaints. Moreover, as proposed by Senate Committee, the magnitude of punishment should also be increased to imprisonment of either description which may extend to three years or with fine which may extend to two hundred thousand rupees, or both.

II. Improving the state of investigation

Separation of Investigation and Operational Duties: The Police Order 2002 separated investigation and operational duties at the Police Station level. However, this was rescinded through amendments in Article 18 of Police Order 2002. Average workload of each investigation officer in District Rahim Yar Khan is tabulated below

Total cases registered	9,836
Total Investigation Officers in District	212
Average number of cases per IO	46

Source: Accounts Branch, DPO office, Rahim Yar Khan, 2016.

Each Investigation Officer (IO) has to handle investigation of forty-six cases on average in a year. This means frequent travelling to Lahore for submitting samples at Pakistan Forensic Science Agency (PFSA), visit to High court and session courts, and visit to offices of senior officers to apprise them of progress in various cases. Hence, investigation itself is a very hectic and time-consuming task. When it is accompanied by operational duties, it becomes almost impossible to carry out the task of investigation efficiently. Especially, during Ramazan, Muharram or other significant events when they are on security duties throughout the day. In last few years, new units like Special Protection Unit, and Riverine Patrolling Police have been formed considering the security condition of the country. Investigation is also a core function of policing, and it requires the similar level of attention. Only then, there will be improvement in quality of investigation which would ultimately improve the conviction rate.

Revamping Cost of Investigation Payment System: A flexible cost of investigation system should be introduced with the provision of advance payment to I.Os. At present, a fixed cost of investigation budget is issued from the office of Inspector General to each district. In most of the cases bills are refunded, at semi-annually or annually, when the investigation is completed. This practice has also promoted financial corruption, which ultimately creates a burden on complainants. Hence, it is suggested that cost of investigation budget should be linked to number of cases and nature of those cases. Moreover, as soon as FIR is registered, IO should be given a reasonable amount on advance basis. For instance, average cost in murder cases for last three year is around Rs. 8,600. Hence, when a murder case is registered, IO should be given average cost to fulfill his tasks. Once, the investigation is completed, cost can be reimbursed if the actual cost is lower than amount withdrawn.

Addressing Training Needs: It was witnessed in the reviews of prosecution department that the mistakes were repeated in the investigation process. To address these issues, there is need to decentralize the training practices to district level. Each district should have a master trainer working with the legal branch. Trainer should maintain close liaison with the prosecution department and address the common mistakes which weaken the case of prosecution. After National Action Plan, a lot of legislative acts were introduced but IO were not properly trained to deal with cases under those laws. They only learned

with trial-and-error method. Hence, it is imperative that strong training network should be developed at district level. Moreover, despite growing reliance on call data records and geo-fencing, there are only couple of individuals at district level who are technically equipped to handle and analyze data. It is imperative that in each sub-division, there should be at least two individuals well versed with the technical analysis.

III. Changes in counter terrorism prosecution

Narrowing Down Definition of Terrorism: ATCs were established for quick dispensation of specific cases related to terrorism. With passage of time, major backlog of cases has hampered its efficiency. With each amendment, definition of terrorism was expanded to include more offences under ATA, 1997. Offences mentioned in ATA have gradually increased. It includes offences under section-6 of ATA which defines terrorism, containing 17 actions. Moreover, there are offences mentioned in third schedule of ATA as well which can be tried in ATCs. This issue was highlighted recently by Reema Omer, legal adviser for the International Commission of Jurists. She wrote, ‘While there is no agreed universal legal definition of terrorism, international standards clarify that laws related to terrorism must be clearly and precisely formulated, and they must be limited to countering terrorism, as properly defined. This means that the “action” must be a serious crime such as grievous physical violence, and the intention with which it is carried out must be to provoke a state of terror in the general public or a segment of it, or to compel the government to do or abstain from doing something. The definition of terrorism under the ATA falls foul of these standards: it is vague, overbroad, and allows even acts driven by reasons other than spreading fear or coercing governments to be considered terrorism’.¹⁹

The cases in ATCs related to offences such as extortions, kidnapping and aerial firing must be meticulously analyzed to determine what percentage of them are directly related to terrorism. Based on available studies, an estimated 80 percent of cases in ATCs would turn out to be unrelated to terrorism.²⁰ This would save a lot of time and resources of the ATC, which would enable ATCs to focus on cases that are directly related to terrorism.

¹⁹ Reema Omer, ‘Defining Terrorism’, 21 August 2017, accessed 2022, <https://www.dawn.com/news/1352821>

²⁰ Syed Manzar Abbas Zaidi, *PW113 - Terrorism Prosecution in Pakistan* (Washington DC: United States Institute of Peace, April 2016), accessed 2017, https://www.usip.org/sites/default/files/PW113_Terrorism_Prosecution_in_Pakistan.pdf

Protection of Witnesses, Prosecutors, and Judges: It has been witnessed in high profile cases that there are serious threats to lives of witness, prosecutors, and judges. Hence, conviction in these cases becomes almost impossible. Section 21-A of ATA provides for witness anonymity, usage of screens, live links, and in-camera trials. It is imperative that these provisions are applied in an effective manner. Moreover, Sindh witness protection act, 2013 has also failed to serve its purpose. This law provides for establishment for Witness Protection Unit (WPU) and financial assistance to witnesses in case of any injury caused to them. However, there has not been any practical application of these provisions.²¹ This is evident from the fact that witnesses were killed in murder cases of Wali Khan Baber and Sabeen Mahmood. Hence, we do not need any more laws in this regard, it's their implementation that needs to be ensured.

IV. Increasing reliance on forensic science

Historically, Pakistan's law-enforcement and justice systems have overwhelmingly relied on ineffective and outdated methods of investigation and evidence collection. However, in the last decade, there have been improvements in this regard. To make further improvements, following changes are suggested:

- PFSA has been a success story. Rest of the provinces should follow this model by having at least one lab of such standard in their jurisdiction.
- Due to the high volume of cases, there should be two central forensic facilities in Punjab. This would reduce the amount of time taken by the PFSA to deliver results. Moreover, there should be multiple satellite forensic evidence collection centers throughout the province; these centers would then send the evidence to the main laboratory for processing. This would improve preservation of evidence as well as time of investigation officer who are overburdened.
- Preservation of crime scene, and role of first responder are essential parts of forensic science. These areas require greater attention of senior Police officers. There is no point in having state of the art facilities if the investigation officers are not trained to make the best use out of the evidence.

²¹ Gulbina Bilal Ahmed, 'Where is the Sindh Witness Protection Act 2013', 12 March 2017, accessed 2022, <http://dailytimes.com.pk/opinion/13-Mar-17/where-is-the-sindh-witness-protection-act-2013>

- There should be central database system for fingerprints and DNA profiles. Pakistan Automated Fingerprint Identification System (PAFIS), established in 2008, could play a key role in this regard if given proper attention. Moreover, only Punjab province has the facility of DNA profiling. Developed countries have multiple Forensic facilities, which are connected through national database. National DNA Database of United Kingdom hosts a staggering 5.7 million arrestee profiles and 460,000 crime scene DNA profiles.²²
- Chapter-XXV of Police Rules pertaining to investigation needs to be amended to incorporate modern forensic techniques to be adopted by the police while carrying out investigations.
- It is not just the Police department that requires extensive training of forensic science. Prosecutors and Judges should also be given trainings in forensic science as they are integral part of criminal justice system. They need to be well versed with these techniques. Moreover, with inclusion of Section 27-B in ATA, offenders can be incriminated solely or mainly on forensic evidence.
- There is no denying the fact that above mentioned recommendations will not come cheap. It is reported that establishment of PFSA cost \$31 million. However, considering the condition of security and the state of criminal justice system it is a necessary investment. Law enforcement agencies can ill afford to continue fighting crime and terrorism using obsolete methods.

V. Reducing burden on legal institutions

According to report published by Law and Justice Commission of Pakistan, there were 1,954,868 cases pending in different courts of the country. Following is the break-up of these cases:

High Courts	Number of cases	District Courts	Number of cases
Lahore	159,577	Punjab	1,274, 310
Sindh	84, 077	Sindh	121, 180
Peshawar	30, 730	Khyber Pakhtunkhwa	188, 561
Balochistan	6, 110	Balochistan	13, 882
Islamabad	13, 789	Islamabad	31, 018

Source: Report by Law and Justice Commission of Pakistan.

²² Sharjil Kharal, 'Forensics for Justice', 2 September 2015, accessed 2022, <https://www.dawn.com/news/1204306>

This shows that there is a major backlog of cases in courts of Pakistan. Mazhar Hussain was handed down the death sentence by Sessions Court in 2004. It was in 2016 that his review appeal was finalized by Supreme Court, and he was exonerated. The only problem was that he died two years before his review appeal was finalized.²³ Existing number of judges and prosecutors are not adequate to deal with this alarming situation. Moreover, there need to be substantial changes in Pakistan Penal Code, the Civil Procedure Code, the Criminal Procedure Code, and the Evidence Act.

Burden on courts can also be reduced by developing Alternate Dispute Resolution (ADR) mechanisms. This platform is particularly useful for minor offences and allows courts to focus on cases of serious nature. Introduction of Dispute Resolution Councils (DRC) in Khyber Pakhtunkhwa has proved to be successful. Three DRCs operate in Peshawar: Gulbahar, Gulbarg and Tatara. The three DRCs in Peshawar have resolved 1,681 cases since 2014.²⁴ M. Aftab Iqbal Chaudhree-Advocate-General, for the Punjab, highlighted following advantages of ADRs:²⁵

- Quick resolution of disputes, through flexible procedure, which is cost efficient and brings about greater amity and understanding between the litigant parties, which is not possible in adversarial courtroom battles;
- The mechanism offers significant relief to the courts. It increases access to justice for people who cannot or will not use the court system to resolve conflicts in culturally appropriate ways; and
- It offers a wide range of remedies to solve the dispute in hand.

VI. Reforming the prosecution department

Role of prosecution department varies in different parts of the world. In Germany, Police acts as investigative body of prosecution department, and prosecutors are authorized by law to lead the investigations by

²³ Hasnaat Malik, 'SC Acquits Man two years after his Death', 9 October 2016, accessed 2022, <https://tribune.com.pk/story/1195917/sc-acquits-man-two-years-death/>

²⁴ Javed Khan, 'Dispute Resolution Councils Reduce Crime, Violence in KP', 3 May 2017, accessed 2022, http://pakistan.asia-news.com/en_GB/articles/cnmi_pf/features/2017/05/03/feature-01

²⁵ A. I. Chaudery, 'Alternative Dispute Resolution', accessed 2022, <http://www.supremecourt.gov.pk/ijc/Articles/7/10.pdf>

themselves. Whereas, in countries with common law traditions such as Pakistan, role of prosecutors is more of advisory or supervisory.²⁶

It is suggested that the prosecutors should be empowered to terminate unjustified and unwarranted cases by amendment to section 173 of CrPC. Prosecutors should assess challans before submitting them in courts and decide if they are fit for trial or not depending upon the evidence produced by IO. This practice would save time and money of the courts, police, prosecution department, and of the litigants. Moreover, this would also shift greater accountability towards prosecution department. If they deem a case is fit for trial, they will be directly responsible for ensuring conviction in that case.

As it is the case with other stakeholders of criminal justice system, employees of prosecution department are under-trained and overburdened. Following data was gathered from Annual report of Prosecution department, Punjab:

Cases handled by Prosecution department	712, 888
Members of the Punjab Prosecution Service	1, 067
Average case-work load per Prosecutor per annum	668

This shows that, on average each prosecutor handles around 668 cases in a year. It becomes difficult to prepare extensively for each case. Moreover, training of prosecutors is an area that requires greater attention. Center for Professional Development of Public Prosecutors, Punjab should be utilized to play greater role in this regard. Especially, in the area of forensic science to familiarize themselves with technological advances that can assist them in presenting their cases.

There needs to be greater coordination between Prosecution and Police. As of now, role of prosecution department is similar to that of a post-office. As per law, Prosecutor is empowered to return the report to IO for the removal of defects. However, it is not binding on the police to remove such defects and there are, in practice, no penalties or consequences, for the failure of the police to do so.²⁷ In cases where IO fails to meet the standards of quality investigation, prosecutor should

²⁶ UNAFEI, *Cooperation Between The Police And Prosecutors*, accessed 2022, https://www.unafei.or.jp/publications/pdf/RS_No60/No60_21RC_Group2.pdf

²⁷ A. Hameed, *Prosecution Service Punjab and Sindh*, 1 October 2015, accessed 2022, http://www.pildat.org/Publications/publication/ROLR/ProsecutionServicesinPunjabandSindh_PositionPaper.pdf

report that to senior Police officer. It was observed that, in majority of the cases IOs did not get reported or punished for their below par investigation.

VII. Revamping the judicial system

A lot was expected from Pakistan's judiciary after successful lawyer's movement. It was expected that judicial system of Pakistan will be revamped to improve the efficiency of the courts. However, after all these years, no substantial change has been witnessed. Only those issues which are in personal interest of honorable judges have been addressed. Supreme Court refused to allow its accounts to be audited by the Public Accounts Committee. Moreover, have increased three times without any significant improvement in performance of courts.²⁸ Apex Court has regularly issued directions to reform land revenue records, policing system and other such areas while ignoring the judicial system itself. It is high time that Supreme Court diverts its focus toward enhancing capacity and performance of all courts.

National Judicial Policy was introduced by Chief Justice Iftikhar Chaudhary in 2009. Object of the policy were to strengthen independence of judiciary, eliminate corruption in courts, and clear the backlog of cases at all levels. However, as it is the case with most of the policies in Pakistan, implementation part has been missing.²⁹ It requires constant attention of senior judges of Apex court. A commission comprising of senior judge of Supreme Court along with judges specializing in criminal and civil law should be formed. The mandate of the commission is to identify the hurdles in implementation of Nation Judicial Policy and suggest measures to remove those obstacles. It should be a time-bound commission.

There is also shortage of judges in courts which needs to be addressed. Current strength of judges in different courts of country is not adequate to cater to the huge case workload. Considering the scarcity of resources, rather than going for general increase, places with greater pendency should be identified. For example, there are more cases pending in the Islamabad High Court (17,789) and Islamabad district courts (31,018) than in the Balochistan High Court (5,110) and the Balochistan district courts (13,882). Even within provinces, there are

²⁸ Salauddin Ahmed, Justice Delayed Is Justice Denied, 19 December 2016, accessed 2022, <https://www.dawn.com/news/1303096>

²⁹ 'Some loopholes in judicial policy', 16 June 2009, accessed June 2022, <https://www.dawn.com/news/471641/some-loopholes-in-judicial-policy>.

certain districts which have greater pendency than others.³⁰ Hence, placement of new judges should be made with assistance of empirical data rather than going for general increase in number of judges.

Finally, reliance on short term solutions without addressing the fundamental issues proves to be detrimental in the longer run. Military Courts were established in January 2015 as a short-term solution to be operational for a period of two years. It was said that in those two years, criminal justice system would be reformed. However, no serious effort was made for substantial reforms and military courts were revived for three more years even though it is inconclusive that military courts had an impact in reducing terrorism.³¹ It is imperative that our policymakers realize that there are certain challenges for which there are no shorter-term answers.

Conclusion

Conviction rate in Pakistan has been appallingly low in comparison to that of the developed countries. False information by applicants, outdated legal provisions, capacity of investigation officers, and overburden criminal justice system are some of the key structural problems that hamper the performance of criminal justice system. Reliance on short term solutions has already taken a huge toll on the public as well as the state institutions. Hence, there is a need of concrete, pragmatic long-term solutions by the authorities. This can be done by legislative amendments, addressing the needs of investigation officers, narrowing definition of terrorism, empowering prosecution department, and revamping the judicial system.

³⁰ Faisal Siddiqui, 'Is Speedy Justice Possible?', 3 May 2016, accessed 2022, <https://www.dawn.com/news/1255917>

³¹ Shahrukh Shahnawaz, interview by author, Karachi, 05 June 2022.