**The Rule of Law: Concept and Practices in Pakistan**

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Although Pakistan has a comprehensive constitutional framework and accompanying legal procedures, the rule of law, in practice, is still confined to conventional concepts of internal security and law enforcement. The common perception amongst policymakers and practitioners defines rule of law as being about the control and elimination of crimes, and conventional and non conventional security threats. However, this concept appears inherently flawed as it misses out some very key principles constituting the rule of law which are meant to ensure accountability and transparency before the law, equal and even application of just and clear laws including protection of fundamental rights, and accessible and impartial dispute resolution, to name a few. The scope and differences in how the rule of law has been defined has created imbalance among security institutions and affected the functionality of the law enforcement departments.

The rule of law is a democratic concept of the successful functioning of the polity. Weak democracies or democracies in transition suffer because of another competing notion: the writ of the state. Although both these concepts aim to maintain law and order but the writ of the state, in particular, refers to a government based on the principles of law and not of men; though the terms are often used interchangeably. Arguably so, ‘writ of the state’ is often times used by law enforcement departments to justify their unconstitutional and extrajudicial practices. The question of the supremacy of the constitution or moral authority further confuses the discussion.

Part of this confusion also arises from the fact that in Pakistan military and paramilitary forces have, at times, also taken up the role of law enforcement and establishing writ of the state. Such temporary or situational arrangements, such as the deployment of paramilitary force Rangers in Karachi with diverse responsibilities also including policing, have contributed in the state’s lack of political will to reform and empower civilian law enforcement structures. A similar but much compounded situation exists in Balochistan and FATA, where extraordinary circumstances have led the FC and army, respectively, to take control of security as well as law enforcement, parallel to existing, though weak, law enforcement structures.

The interaction and coordination between military and civilian law enforcement agencies has also not been good, thus exposing some deeper structural issues linked to the rule of law and law enforcement in the country. Indeed, paramilitary forces have been encroaching on civilian law-and-order affairs and strengthening their institutional and moral authority. On the other hand, civilian law-enforcement agencies have become so weak that they cannot even clarify their position in certain instances where they could not act due to dominant role played by paramilitaries.

The following factors and practices have been weakening the internal security infrastructure and require strong reforms for countering and correction:

1. **Parallel Security Structures**

The unprecedented terrorism challenge has forced the state to take exceptional operational, legislative and administrative measures. In the process, parallel to the security forces, the government also engaged paramilitary forces to combat the threat. This process not only exposed old fault lines but also gave rise to new challenges, including those linked to coordination and authority.

Each province has parallel security forces to combat similar threats. Punjab has the Elite Police force, which was created in 1997 to tackle counterterrorism and violent crime, but the province raised another dedicated counterterrorism force in 2014. Experts and police officials favour the restructuring and expansion of the elite force which has shown its worth in the past.

1. **Increasing Role of Paramilitary Forces**

As cited earlier, apart from the police and their specialized operational units, paramilitary forces are constantly being employed to deal with conventional criminal and terrorist threats in parts of the country. In some cases, the security establishment pushed the civilian government to subscribe to the services of paramilitary forces.

The operational assistance of paramilitary forces in large-scale anti-terrorism operations has been significant and has usually come with very narrow terms of reference. However, in most cases, paramilitary forces have gradually expanded their role to include normal policing. Paramilitary assistance has not only put a financial burden on the provincial governments, but has also weakened the law-enforcement infrastructure of the provinces.

In Karachi, for example, it has become difficult to conceive of normal policing in the city, at least in the near future. Coordination among civilian security forces was already an issue but the *‘Rangerisation’* of security has further complicated the situation. Big institutions have big egos and they expect a bigger and leading role in managing affairs. Conventional law enforcement becomes passively dysfunctional and administration becomes habitual when these superior bodies are invited to handle critical situations so that the government does not have to take responsibility.

Engaging paramilitary forces in urban counterterrorism and anti-crime campaigns, and assessing the progress of the paramilitary forces is an issue that requires attention by the government. Empowering civilian security institutions and restoring paramilitary forces back to their original purpose of creation, is imperative to enabling a stable and sustainable rule of law in the country.

1. **Issues of Capacity and Resources**

The capacity building of law enforcement agencies, especially the police, is a long standing issue. In addition to capacity problems, the police is also under-resourced and lacks equipment. However, instead of addressing these issues and allocating additional resources, the federal and provincial governments are investing in ‘safe city projects’. These projects have not reduced the burden of the physical security infrastructure in Islamabad and Lahore: they have been completed but have yet to provide sufficient relief to the common man. The Punjab government allocated around an additional PKR 50 billion for such projects in 2017.[[1]](#footnote-1)

The government continues to spend abundant resources on improving internal security and most federal and provincial security allocations are for parallel and purpose-built security forces. The federal government allocated PKR 91.8 billion in the last budget towards the maintenance of law and order in the country.[[2]](#footnote-2) Besides, an amount of PKR 15.6 billion was allocated for CPEC security, along with another security layer that was being created in the country.[[3]](#footnote-3)

4. **The Case of NACTA**

The National Counter Terrorism Authority (NACTA) was established to create synergy in the state’s responses to counterterrorism, reduce the coordination burden of conventional security forces, and to some extent, provide operational cooperation. But NACTA has been lacking resources and capacity besides being a victim of bureaucratic and institutional control. The government has further put responsibility of implementing the National Action Plan (NAP) on the body, without addressing its capacity issues.

To fill the void, security institutions took control of much of that process, which included activating and leading the provincial apex committees, launching anti-militant military actions across the country, running the military courts, etc. As a result, this made NAP far too military-centric and squeezed space for civilians. The sporadic waves of terrorist attacks inside the country also led security institutions to create a dedicated mechanism to monitor the implementation of NAP and duties were assigned to the national security adviser, retired Lt. General Nasser Janjua.

NAP was devised to correct counterterrorism practices and function as a set of guiding principles. But the government barely even invested in structural reforms, preferring parallel monitoring institutionalisation instead. The international donor agencies also encouraged such practices by providing pilot or kick-off financial assistance for such initiatives.

Lackadaisical handling of the same kind stymied the functioning of NACTA as well. Till date, the authority is unclear regarding its exact role is; that is, coordination among law-enforcement agencies or providing policy insights to the government.

Apparently, NACTA has established a Joint Intelligence Directorate (JID) consisting of 413 officers from Military Intelligence, Inter-Services Intelligence and other agencies and departments.[[4]](#footnote-4) Although the JID is consuming most of the NACTA budget, little is known about its functions and what it has achieved so far. Moreover, it seems unlikely that it will be operating under civilian supervision, even though initially, a JID under the supervision of the Prime Minister’s Secretariat was proposed. It was a workable idea. Parliamentary oversight would have ensured transparency and the initiative’s success.

While on one hand the intelligence agencies appear reluctant to cooperate with NACTA, on the other, the organisation’s bureaucratic structure makes it incapable of producing intellectually sound policy insights. It is unfortunate that the government is expecting a national narrative from a non-functional counterterrorism body.

Given it has failed to perform its main functions, it is unrealistic to expect very much from NACTA. Fortunately, the provincial counterterrorism departments of police are performing well, both in terms of launching anti-militant operations and gathering information. The Counter Terrorism Departments (CTDs) of Sindh and Punjab police have, especially, done a commendable job in that regard. If the federal and provincial governments introduce a few accountability and transparency reforms and improve their capacity, these departments can perform even better. So far, these CTDs have been operating on traditional police lines, meaning they also inherit all the institutional ills of the police.

**The Way Forward**

Legal experts and practitioners have long been suggesting structural reforms for ensuring the rule of law in the country.

For one, the universally established principles of the rule of law should constitute the larger debate on the subject in Pakistan. That will not only correct the institutional balance in implementing one or another element of the rule of law in the country, but also ensure better coordination.

Second, the security or law enforcement aspect of the rule of law should also be improved, mainly through enhancing the capacity of civilian law enforcement structures. For instance, as a new counterterrorism approach is evolving, the government and security institutions must incorporate the recommendations of law-enforcement agencies, which are usually ignored by the military establishment. These recommendations have the potential to enhance the capacities and capabilities of law-enforcement agencies in combating terrorism.

One of the ways to reduce reliance on parallel security structures is to build capacities of formal structures in counterterrorism. It is for that purpose that the police are demanding that a national databank be synchronised with the country’s police departments, NADRA, NACTA, FIA and the State Bank. The databank should have the following: a synchronised national ‘red book’ containing updated information about wanted, suspected and apprehended terrorists and their affiliations. If some institutions have reservations in sharing information publicly, the national databank could be divided into two categories-one for public consumption that would include details about terrorists and their activities, and the other dedicated to police and law enforcement agencies containing details of bank accounts, financial transactions data, property and other assets of suspected and active terrorists, and those who have been listed under the Fourth Schedule. A common website can also be developed under the supervision of NACTA and all police and relevant authorities could be bound to provide regular weekly or monthly updates.

The new security framework takes the National Action Plan as a major component of the counterterrorism strategy. It is a well-known fact that a major hurdle in the way of effective implementation of NAP was the lack of a centralized mechanism. To deal with the issue, the government has developed overlapping monitoring mechanisms. It appears that the government invested much more in monitoring the implementation of NAP, than directly in counterterrorism initiatives.

Such an approach shifts the burden on to the police and its counterterrorism departments. However, it is important to understand that the police cannot function in silos, and will always needs the strategic insight of the government and the support of other institutions to make their operations effective.

1. ## Malik, Mansoor (2017). DAWN, “Rs600bn ADP to help Punjab govt complete major projects.” Available at <https://www.dawn.com/news/1335828>

   [↑](#footnote-ref-1)
2. # The Nation (2017). “With peanuts for Nacta, law & order given Rs91 billion.” Available at <http://nation.com.pk/27-May-2017/with-peanuts-for-nacta-law-order-given-rs91-billion>

   [↑](#footnote-ref-2)
3. Ibid [↑](#footnote-ref-3)
4. Amir Rana, Muhammad (2017). DAWN, “The Case of NACTA.” Available at <https://www.dawn.com/news/1354227> [↑](#footnote-ref-4)