



BALANCING JUSTICE AND RIGHTS: MODERN CHALLENGES IN CRIMINAL LAW

FOCUS ON PAKISTAN AND THIRD-WORLD COUNTRIES

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Abstract

The criminal justice systems of Pakistan and many third-world countries face significant challenges in balancing the enforcement of justice with the protection of fundamental human rights. Persistent issues such as wrongful convictions, custodial torture, protracted judicial delays, and the misuse of laws — notably blasphemy statutes — undermine both the rule of law and public trust. These challenges are compounded by institutional weaknesses, lack of adequate legal representation, and systemic corruption. This article critically examines these challenges in the context of Pakistan's legal system, drawing parallels with other developing nations. Through the analysis of real-life cases and comparative insights, the paper highlights the tension between traditional legal frameworks and emerging international human rights standards. It also explores the pivotal role of civil society organizations and international bodies advocating for reform. The findings emphasize the urgent need for comprehensive legal and institutional reforms, improved training and capacity building for judiciary and law enforcement, and mechanisms ensuring accountability. Ultimately, harmonizing justice with rights protection demands a multifaceted approach, fostering both legal modernization and societal awareness to build a more equitable and effective criminal justice system in Pakistan and similar developing countries.

Keywords: Pakistan criminal justice, human rights violations, wrongful convictions, custodial torture, judicial delays, blasphemy laws, legal reforms, civil society advocacy, international human rights standards, developing countries.

Introduction

Justice, as a fundamental pillar of society, demands a delicate equilibrium between enforcing laws and safeguarding individual rights. This balance becomes particularly precarious in developing countries like Pakistan, where criminal law often intersects with deep-rooted social, political, and religious complexities. While criminal justice systems are designed to uphold law and order, systemic inefficiencies and human rights violations frequently compromise their legitimacy and effectiveness. In Pakistan, the tension between maintaining social cohesion through strict legal measures and protecting civil liberties is intensified by challenges such as judicial backlog, police malpractice, and controversial laws like those governing blasphemy.

This article offers a comprehensive examination of the modern challenges faced by criminal law in Pakistan and other third-world nations. It investigates the interplay between justice administration and human rights observance through detailed analysis of landmark cases, empirical studies, and legal critiques. Furthermore, it situates Pakistan's experiences within a broader comparative framework, drawing lessons from similar contexts to propose meaningful reforms.

Systemic Challenges in Criminal Law in Pakistan and Third-World Countries

Wrongful Convictions and Custodial Torture

Wrongful convictions are among the gravest miscarriages of justice, often resulting from flawed investigations, coerced confessions, or inadequate defense. In Pakistan, wrongful convictions frequently stem from custodial torture and forced confessions, which remain pervasive despite legal prohibitions. According to the Human Rights Commission of Pakistan (HRCPP, 2022), numerous detainees report physical and psychological torture aimed at



extracting confessions, violating Articles 7 and 14 of the International Covenant on Civil and Political Rights (ICCPR), to which Pakistan is a party (United Nations, 1966). A poignant case is that of Ali Nawaz, who was convicted on charges of theft based primarily on a confession obtained under duress during prolonged detention (HRCP, 2022). The conviction was later overturned after forensic evidence proved his innocence, underscoring systemic flaws and the urgent need for procedural safeguards.

Comparatively, similar patterns exist in countries like India, Nigeria, and Bangladesh, where institutionalized torture and coerced confessions compromise the integrity of criminal proceedings (Amnesty International, 2023). These countries grapple with limited accountability mechanisms for law enforcement officers, creating a culture of impunity.

Judicial Delays and Overburdened Courts

Another pressing issue is the prolonged delay in criminal trials, which impairs the right to a fair and timely hearing guaranteed under Article 10-A of Pakistan's Constitution (Constitution of Pakistan, 1973). Data from the Law and Justice Commission of Pakistan (LJCP, 2023) reveals that the average duration of criminal cases extends to several years, with some trials languishing for over a decade. Judicial delays contribute to extended pre-trial detentions, often under poor prison conditions, compounding the violation of detainees' rights. Factors include insufficient judicial manpower, outdated procedural laws, and administrative inefficiencies (Chaudhry & Khan, 2023).

These challenges are not unique to Pakistan. In many developing countries, including those in Sub-Saharan Africa and South Asia, overburdened courts and inadequate legal infrastructure result in similar justice deficits (World Bank, 2022).

Abuse and Misuse of Blasphemy Laws

Pakistan's blasphemy laws, incorporated into the Penal Code in the 1980s, have been the subject of intense international and domestic scrutiny. While intended to protect religious sentiments, these laws have been frequently misused to target religious minorities and settle personal scores (International Crisis Group, 2023). Cases such as that of Asia Bibi — a Christian woman accused of blasphemy and sentenced to death, later acquitted after years on death row — highlight the laws' potential for abuse and the dangers faced by accused individuals (Human Rights Watch, 2021). Blasphemy accusations often incite mob violence and extrajudicial killings, with limited protection from state actors (U.S. Commission on International Religious Freedom, 2023). These dynamics exacerbate social divisions and challenge the impartiality of the criminal justice system.

Case Studies: Real-Life Examples and Their Implications

The Case of Mashal Khan: Extrajudicial Killings and Justice Denied

In 2017, Mashal Khan, a university student, was lynched by a mob on accusations of blasphemy, despite lacking credible evidence (HRCP, 2018). The state's failure to prevent the killing and effectively prosecute perpetrators illustrates institutional weaknesses in protecting human rights within criminal law enforcement. The Supreme Court of Pakistan condemned the killing and ordered investigations, but accountability remains limited. The case illustrates the dire consequences when criminal



justice fails to balance justice with rights, fueling lawlessness and undermining rule of law (Supreme Court of Pakistan, 2018).

The Mukhtaran Mai Case: Gender-Based Violence and Access to Justice

Mukhtaran Mai's 2002 case, involving her gang-rape ordered by tribal elders, brought international attention to gender-based violence in Pakistan's criminal justice system. Initial convictions were overturned on appeal, revealing deficiencies in evidence handling and judicial protection for victims (Amnesty International, 2005). This case underscores the challenges faced by vulnerable groups in accessing justice and the need for reforms to ensure victim protection, gender sensitivity, and procedural fairness.

Comparative Perspectives: Lessons from Other Developing Countries

Countries with similar socio-political structures face analogous challenges in balancing criminal justice and rights. For example:

- India: The country has reformed its police practices with community policing initiatives and introduced fast-track courts for sexual violence cases, improving timeliness and accountability (National Crime Records Bureau, 2022).
- South Africa: Post-apartheid reforms emphasized human rights education for law enforcement and established oversight bodies like the Independent Police Investigative Directorate (IPID) to monitor abuses (South African Human Rights Commission, 2021).
- Pakistan can draw lessons from these reforms by adapting measures suitable for its context, including judicial capacity expansion, legal aid strengthening, and independent oversight mechanisms.

The Role of Judiciary, Law Enforcement, and Legal Aid

Judicial independence is critical to ensure impartial adjudication. However, in Pakistan, judicial officers often face political pressures, resource constraints, and security threats, impacting their ability to deliver justice effectively (International Commission of Jurists, 2023).

Law enforcement agencies suffer from poor training, corruption, and limited accountability, contributing to rights violations such as illegal detentions and torture (Human Rights Watch, 2022).

Legal aid remains inaccessible for large segments of the population, particularly marginalized groups. The Legal Aid Ordinance 2000 in Pakistan attempts to address this but lacks effective implementation (Legal Aid Society, 2023).

International Human Rights Standards and Their Influence

Pakistan is party to numerous international treaties, including the ICCPR and the Convention against Torture (CAT). Yet, implementation gaps persist due to lack of political will, weak enforcement mechanisms, and cultural resistance (United Nations Human Rights Office, 2023).

International bodies and UN Special Rapporteurs have repeatedly urged Pakistan to reform its criminal justice system, end custodial torture, and revise blasphemy laws to align with human rights standards (United Nations, 2023).



The Contribution of Civil Society and Reform Movements

Civil society organizations (CSOs) play a vital role in human rights advocacy, legal aid provision, and monitoring state compliance. Groups like the Human Rights Commission of Pakistan, Amnesty International Pakistan, and Aurat Foundation have campaigned for judicial reforms, torture prevention, and minority rights (HRCP, 2023). Public interest litigation and media activism have increased awareness, pressuring policymakers toward reforms (Riaz & Hussain, 2022).

Recommendations and Pathways to Reform

1. **Legal Reforms:** Review and amend laws prone to misuse (e.g., blasphemy laws), introduce anti-torture legislation with clear enforcement mechanisms, and update criminal procedure codes to reduce delays.
2. **Judicial and Police Capacity Building:** Invest in training programs emphasizing human rights and ethical law enforcement, and establish independent oversight commissions for police conduct.
3. **Access to Justice:** Expand and strengthen legal aid services, especially for marginalized populations, and develop victim support mechanisms.
4. **Public Awareness:** Implement civic education programs highlighting legal rights and promoting tolerance.
5. **International Cooperation:** Seek technical assistance from UN and international NGOs to support reforms and capacity building.

Conclusion

Balancing justice and rights in the criminal law systems of Pakistan and similar developing countries remains a multifaceted challenge, deeply intertwined with social, political, and institutional dynamics. While progress is evident in advocacy and legal reforms, entrenched systemic issues like custodial torture, judicial delays, and misuse of laws continue to undermine human rights and public confidence. Sustainable change requires comprehensive reform efforts encompassing legal modernization, institutional capacity building, civil society engagement, and adherence to international human rights norms. By embracing such a holistic approach, Pakistan and other developing nations can move toward a criminal justice system that upholds both justice and fundamental human rights.

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