

Criminology, Police Corruption and Police Reforms

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Professor Tim Newburn states that ‘criminology is a strange beast’. He cited with approval David Garland’s understanding of criminology as a product of two streams of *governmental project* (that studies administration of justice, police, prisons and measurement of crime) and *Lombrosian project* (that studies characteristics of criminals and non-criminals). However, he noted that now a new stream of ‘scientific’ criminology is emerging. This scientific stream of criminology puts lot of premium in empirical study of social activities. In line with this scientific paradigm, academia have started contributing knowledge on the subject by carrying out research. The tradition of academic and research based criminology is not very rich in Pakistan. Nonetheless, a recent empirical study based on qualitative research on police corruption has provided a good point of departure for further research and discourse. The study has been titled as ‘A Study of Economic, Cultural, and Political Causes of Police Corruption in Pakistan’ and has been carried out by Professor Nadeem Malik of the University of Melbourne and Mr. Tariq Abbas Qureshi, a senior police officer of the Police Service of Pakistan. After exploring the theoretical criminological perspectives related to explanations about police corruption, the authors have identified the typologies of police corruption followed by three main causes of corruption that inform on police reforms and can be used to design police reforms for future; these three causes are: (1) economic, (2) cultural, and (3) the politicization of the police. The study makes excellent reading and must be examined by anyone interested in criminal law and justice reforms. It must also be noted that all the debates about reforming justice sector, in general, and criminal justice system, in particular, are occupied by corrupt and corruption related matters, which invariably eclipse discussion on structural issues related to justice sector. It is also a moot point whether police corruption is a structural issue of police reforms, or is it only symptomatic of other structural police reforms. In any case, some interesting insights from the study may be noted and analyzed for the sake of informing public policy on legal and judicial reforms in the country.

First and foremost is the criminology of police corruption. The paper by Professor Nadeem and Mr. Tariq Abbas referred to six perspectives that have roots in sociology and criminology; these are: (a) the Public Choice Theory, (b) the Rotten Apple Theory, (c) the Organizational Culture Theory, (d) the Cultural Constraint Theory, (e) the Ethos of Public Administration Theory, and (f) Correlation Theory.

Two of the perspectives are very interesting and are briefly elucidated here as these may be of interest to people working on justice sector reforms in Pakistan; these are:

i. The Rational Choice Theory

The paper refers to the Public Choice Theory, but it is a variant of the Rational Choice Theory (RCT) that became mainstream due to work of Nobel laureate Gary Becker who coined the term ‘expected utility’ as a motivation for committing crime. His concept of ‘expected utility’ was later explained as the measurement of positives against negatives. In the context of corruption as an offence and as a delinquent act, the RCT proves that corruption is based on calculation of a rational thinker about the consequences of his act. For police corruption, it means the probability of accountability in terms of departmental punishment, criminal prosecution and exclusion from substantial assignments.

ii. The Rotten Apple Theory

The Knapp Commission on Police Corruption in the New York Police Department (NYPD) was appointed in 1970 by the Mayor of New York; its report has brought to limelight the Rotten Apple Theory. The Report noted:

“According to this theory, which bordered on official Department doctrine, any policeman found to be corrupt must promptly be denounced as a rotten apple in an otherwise clean barrel. It must never be admitted that his individual corruption may be symptomatic of underlying disease...”

The Rotten Apple Theory generated a lot of debate within police. It was rejected by many including the reformist Police Commissioner of NYPD, Patrick V. Murphy who opined:

“The ‘rotten apple’ theory won’t work any longer. Corrupt police officers are not natural born, nor morally wicked men constitutionally different from their honest colleagues. The task of corruption control is to examine the barrel, not just the apples-the organization, not just the individuals in it-because corrupt are made, not born”.

Whether the barrel or apples need cleaning in the context of Pakistan is a point worth ruminating in its own right.

Secondly, the paper alludes to two types of conceptualizations of police corruption. One is the legal conception and the other is the organizational conception. The legal definition's threshold is high and is usually criminal in its content. Contrarily, the organizational conception is spread over a spectrum of activities that is hierarchical in nature and that may attract departmental penalties to criminal prosecutions. The legal definition of corruption is stated in the National Accountability Ordinance, 1999 as well as the Prevention of Corruption Act, 1947. Professor Tim Newburn categorized organizational corruption as 'corruption of authority', 'kickbacks', opportunistic theft, 'shakedowns' (based on omission of duty by not enforcing it, or enforcement in diluted manner), protection of illegal activities, 'the fix' (undermining criminal investigation), direct criminal activities, internal payoffs and 'flaking' or 'padding' (planting or adding evidence). The paper by Nadeem et al has referred to all these corrupt practices in their paper. An interesting typology has been offered by Knapp Commission that talks about 'meat eaters' (those who actively and brazenly extort money from victims and complainants alike) and 'grass eaters' (those who abuse authority in subtle manner like misappropriation of police funds etc.).

Thirdly, in terms of police reforms, almost all reports related to police reforms talk about cleaning the barrel (organization). As *raison d'être* for publishing the paper, the authors linked the issue of police corruption and noted:

"It is demonstrated that police corruption in Pakistan is politicized, institutionalized, and a legitimized phenomenon. Since the independence of Pakistan in 1947, there have been over 21 reports on recommendations for police reforms that were rarely implemented and the Police Act, 1861, which was introduced by the British colonial powers to quell political uprisings remained operative. It, therefore, is imperative to analyse multiple causes of police corruption in Pakistan, which may have relevance to other developing countries in South Asia".

What type of police reforms will affect corruption and whether it is an organizational or, a cultural issue, are questions that beg serious introspection and research.

Fourthly, police accountability in its present form does not properly attend to the issue of police corruption. In the first instance, the internal control (i.e., the disciplinary regime within police) is woven in and around efficiency and discipline and not around police corruption. The legal framework applicable to police organizations does not empower police leadership to take action on the charge of

corruption. Only the external organizations like the provincial anti-corruption establishments, the Federal Investigation Agency along with the National Accountability Bureau are authorized to initiate a corruption related case against a police officer. Resultantly, police corruption charges seldom get prosecuted. At the same time, it may be noted that the literature on organizational development considers internal controls to be the most important checks on the working of its employees. Therefore, there is a strong case to empower police leadership to prosecute corrupt police officers. Still there are some types of organizational corruptions and malpractices that may require a different response. For example, the issue of defective investigation, if carried out in a mala fide manner and in return of pecuniary benefit, is police corruption; it has been criminalized by amending the Pakistan Penal Code in 2016, but its implementation is not straight forward due to multiple investigations, prosecutorial opinions and adjudication of the matter.

Fifthly, the regime of police accountability is highly judicialized in the sense that despite the caveat of exclusion contained in article 8 of the Constitution of Pakistan, the courts extend the delinquent police officers protection of fundamental rights. This extension is not arbitrary and must be minutely studied as the nature of police job is very delicate and highly politicized. Often police officers are victimized. If a criminal can be extended the protection of fundamental rights under the constitution, why an officer who enforces the law can't be extended the same level of protection. The framers of the Pakistan's constitutions excluded armed forces from the application of fundamental rights due to the distinction in the nature of their work that is outbound. There is no parity in nature of work that is done by armed forces and police: both have separate spheres of responsibilities. In any case, besides protection of fundamental rights, the police officers also get protection through service law and service tribunals, which are high fora as appeal against their orders lie to the Supreme Court of Pakistan.

Sixthly, the excesses of police in form of torture or unwarranted and excessive use of force (or extra-judicial killings) or illegal detentions, if committed in return of illegal consideration, are not treated as police corruption as these do not fall in the legal conception of corruption. The minds of police officers accustomed to committing such excesses gets polluted with criminal tendencies. The criminal and delinquent propensities breed contempt for the rule of law and ultimately the very complexion of the police organization gets changed over a longer period of time.

Finally, it must be noted that police is not the only agency of social control. As Professor Michael Banton stated:

“The cardinal principle for understanding the police organization and activity is that the police are only one among many agencies of social control”.

Too much onus on police without neat and distinct lines of responsibility may lead to unrealistic expectations. This must be changed. In this age of specialization, every state functionary has to discharge his duty as per law and assigned function. The archaic laws on police and policing have created more confusion than clarity. The Code of Criminal Procedure is of 1898 and has little or no preventive legal framework. Unless the basic architecture of governance of criminal justice system is improved, there are minimum chances of effective and above board police accountability leading to elimination of police corruption and excesses.