A LEGAL ANALYSIS OF THE ACCOUNTABILITY MECHANISM OF PAKISTANI POLICE FROM THE PERSPECTIVE OF HUMAN RIGHTS: A CASE STUDY OF KHYBER PAKHTUNKHWA

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Abstract

This paper is an overview of the power phenomenon of Pakistani Police from an angle of Human Rights. Police is the states’ most direct manifestation of power all across the globe. Unfortunately, in Pakistan it is the least trusted and the most largely feared states’ department. The paper is a critique of the current accountability model of Police in Pakistan. The history of Police structure right from the time of British colonial rule over subcontinent has also been discussed. The science of policing has complex history. The accountability has been looked from three perspectives under this paper. How accountability could be conceptualized from the perspective of human rights? What is the relation of internal and external accountability for the furtherance of good and effective policing? What are the major drawbacks in our current strand of accountability mechanism? This is the time to reject the super human role of policing. The service deliverance of Police in Pakistan has also been analyzed from Human Rights perspective. The use of force needs to be controlled for better Human Rights assurance. The idea of “political dependence” of police is a very real problem. The paper also looks to police powers in Pakistan. The paper is a legal determination of police powers and duties, in fact. The police’s main responsibility is to protect life, property and honor. When certain improper event is reported on the part of police, there is a failure in the

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required caution, which is a human rights failure, in fact. The paper attempts to identify the missing links in accountability mechanism of Pakistani Police. The component of procedural fairness is so largely debated in the prevalent police system. The law has seldom given any choice or legitimacy to exercise any discretion of power by police. In Pakistan, many police officials arrive and depart from public offices with a rapid rate. The police success is measured from the number of arrests made by police. Here a reference should be made to Robert Peel’s principles of modern policing that he principally demarcated for London Metropolitan Policing. Peel’s principles of policing are still recognized for their greater efficacy in the communities having imminent threats about policing powers. Here, the police success is to be measured not in terms of arrests and detentions made by police but in terms of safe communities (that are crime and disorder free). In Pakistan, unfortunately an under equipped and an under staffed police is increasingly called on to handle militancy and insurgency in the state. We happen to keep complaining about equipment and technology problems in police. There is something that matters more than equipment, technology and training. That is the feeling of being accountable for one’s actions and decisions.

Keywords:

Introduction:
This is important to tailor a new interpretation of Policing in Khyber Pakhtoonkhwa. In enumerating factors for failure of peace and public security Police is the most internal one. Likewise, in enumerating the failure of police, accountability is the most central one. The paper, therefore, represents the new paradigm of Police accountability conceptualizing a much better and refined Police System in Khyber Pakhtoonkhwa for future years. This would not be very strange to believe that the current police system is the reminiscence of a colonial legacy based on the Police Act of 1861 coupled with the Police Rules of
1934 that was meant to control people rather than serve them. It was only until 2002, when a reform-oriented Police Order replaced it. Police has been quite so excessively used as a tool of oppression by political as well as military rulers. Police system is the most poorly managed department in Pakistan. This sector has never been given any priority by the policy makers both political and military. Corruption, Unlawful shootings and encounters, allegations of excessive physical force, incidents of police misconduct are established problems in Khyber Pakhtoonkhwa Police.

The paper is an attempt to prescribe some central accountability measures for Police in Khyber Pakhtoonkhwa so that the frequency of complaints against police can be controlled. There has been considerable progress in Police Reforms in Khyber Pakhtoonkhwa but there are still great difficulties to be surmounted. There is a need for generating a serious attention about Police. For any civilized society, it is the public that authorizes police officers, even obliges them to use force. The police administration should ensure that police officers use that authority equitably, legally and sensibly on behalf of citizens. Police duty is a professional commitment.

A police executive should keep is at a higher priority to ensure public safety and human rights respect. A crime rise is seldom so problematic for their survival but their existence in police can be really jeopardized by their fear to be put to trial and stern mechanisms of accountability. This accountability puts police to both the law and procedure and policies within and outside the department. The paper is an attempt to discuss the procedure through which police administrators can confirm the accountability of individual officers before law for better guarantee of human rights.

The International Models and Reforms in Policing can furnish useful guidance for our local police system. The Metropolitan Police Force was
guided by the concept of crime prevention as a primary police objective; the belief is that such force depends on the consent and cooperation of public. Putting police to stern accountability can prove to be an accelerator in crime prevention and control. The mechanisms are recommendable for approaching public complaints against police as a management tool and indeed as a customer service matter to be used for tactful resolution. There is need for a corporate management approach where private sector management concepts are applied to a public organization for better management. Police situation in Pakistan is a profoundly difficult one.

Methodology:
A social research methodology was used. Primary data was collected from books and scholarly articles. For secondary data interviews were conducted from three categories of focus groups, the police officials, victims and general public.

Relation of Accountability and Police Performance
Accountability can be used as means to direct and control the administrative behavior of police. Strangely a long ignored phenomenon of Accountability bears a closer relation with human rights. This needs to be studied at a much closer distance. Accountability is a regulatory regime for police. By an accountable police a check can be placed on police. The Human Rights norms need to be institutionalized for better protection and the accountability is an institutionalizing of these rights. Bruggeman states that a “precarious relationship exists between police powers and the democratic control of the police in all democratic states” (Bruggeman, 2002, p. 259).

The main problem if diagnosed that present serious constraints in ensuring Accountability is a years old legal and administrative framework that is majorly composed of colonial fabric. Further, a vast level mismanagement and arbitrary control that is unfettered by any known norms of human rights is a serious threat to police in Khyber
PakhtoonKhwa. The inadequate accountability system and stern and severe under resourcing of law and discipline adds much awkward color to the picture of human rights. Accountability holds great promise for future protection of human rights in Khyber PakhtoonKhwa. Accountability has its basis in a relationship between an actor and a forum, where the actor has to explain his or her misconduct to the forum, and the forum is in a better position to put questions and pass judgments about the actor for the alleged misconduct” (Bovens, 2006, p. 6). Accountability has a conspicuous role in the success and failure of human rights.

**Types of Accountability**

There are two major processes of Police accountability that complement each other. These include External Accountability and Internal Accountability. Internally, a department can keep a better and stronger check on its officers through a specified hierarchy from upper most to down right to the bottom. The state organs like executive and judiciary can intervene for better results. The state is best suited and adequately potent to handle its institutions. Therefore, under state accountability police is to be put to a competent state organ authorized enough to keep police control. The judiciary can exercise independent oversight over police in public interest. This is from where stems the concept of public accountability. For maintaining control over force and misconduct accountability intervention is must.

**Mechanisms and Recommendations:**

Police indulgence in abuse is in preponderance in Khyber PakhtoonKhwa. The cycle of reform and accountability has been so many times intermeddled with in Khyber PakhtoonKhwa. The most fresh one in this context is the Khyber PakhtoonKhwa Act,2017. The mechanisms prescribed under Khyber PakhtoonKhwa are based on the Police Act 2017. According to the Act the alleged misconducts are immediately reported and entertained within and outside the department.
Article 66 of the Act suggests a Regional Police Complaint Authority for inquiring into Police excesses against public. The inquiry officers should be authoritative enough to control police. Fine, censure, removal from service, reduction in pay is the important threats to ensure control and discipline in Police. All these recommendatory measures are centered on correct and honest reporting and regular evaluation of police performance. The complaints procedure needs to be improved. Accountability, therefore, is a necessary accelerator to overpower violations of public rights. Police accountability is a mixed process of different factors having their due parts and roles in guarantying human rights.

In Pakistan like all across the globe, policing is motivated by different set of philosophies and principles. Two major public expectations shape police first is to deal with crime and nuisance and secondly to make those accountable who are indulged in misconduct. People’s views about policing are largely based on their personal experiences. The same is true for Khyber PakhtoonKhwa, where police do not enjoy public admiration. It is a globally admitted fact that a police of any state and law enforcement agencies has a significant role against terrorism and insurgency. For this, Public trust needs to be built in policing. Investigations into complaints should be thorough, speedy and complete. Unfettered access to records and involvement of all the stakeholders could make it practically appropriate. On a real level, depriving police of its monopoly still requires a self-sustainable accountability that can keep itself erect and enlivened for better human rights guardian ship. Furthermore, for making police accountable for their actions and the consequences produced by these actions ethical considerations cannot be sidelined. Police profiling ensuring high virtue and character should be compiled for better policing. Responsibility refers to bundle of obligations and accountability is the most scientific means to achieve that. This guideline can be applied to the Khyber Pakhtoonkhwa police system. In policing, the desired targets can be achieved by designing
certain perceptions of accountability and reacting accordingly for developing meaningful social relations with public and to develop an acceptable self-concept of policing.

Conclusion:
Accountability has tremendous role on thoughts, feelings and actions. For a shifting representation of Police, making meaning of Police Accountability is very important in Pakistan like country. Public problems will be needed to designate official status. We need to set a new agenda of police work by introducing the concept of Accountability in the local police system. Only this way a democratic, genuine and responsible police force can be generated. For police performance management on institutional level accountability is inevitable. The main problem is to regulate police authority to permit officers to enforce law.

Notes and References:

7Kelling, G., Wasserman, R., & Williams, H. Police Accountability and.
Another problem of policing is regulation. Constitutional Law alone is inadequate to regulate police while also protecting individual liberty. Policing is meant to protect the constitutional rights of citizens and giving a lawful definition to policing. A meaningful and sound reform in accountability is inevitably important. Nor an administrative neglect, nor a legislative nor a departmental one can anymore be tolerated.