

# Reconstituting Local Order in Pakistan: Emergent ISIS and Locally Constituted Shariah Courts in Pakistan

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## ABOUT THE RECONSTITUTING LOCAL ORDERS PROJECT

Led by Brookings Senior Fellows Vanda Felbab-Brown, Shadi Hamid, and Harold Trinkunas, the Brookings Seminar on Reconstituting Local Orders seeks to better understand how domestic political order breaks down and is reconstituted. It draws out policy implications and recommends more effective action for local governments and the international community. It examines these issues by bringing together top-level experts and policymakers.

The present disorder in the international system is significantly augmented by the breakdown of domestic order across a number of key states. Around the globe, the politics of identity, ideology and religion are producing highly polarized societies and deepening conflicts among non-state actors and between non-state actors and the state. In the Middle East, the Arab Spring disrupted long calcified political systems in ways that are still producing unpredictable effects on the regional order. The collapse of political order in Libya has wide-ranging consequences for governance across the Sahel, intensifying Mali and Nigeria's fragility and highlighting the many deficiencies of their states. Meanwhile, Russia's annexation of Crimea was facilitated by a breakdown of political order in Ukraine, and Russia's aggressive external posture also partially reflects and compensates for its internal weaknesses. But even emerging powers such as India and Brazil face profound and persistent governance problems, including in public safety and the rule of law. Among the topics explored in the Seminar are the construction of institutions and counter-institutions in the Middle East and South Asia; the role of external interveners and local militias in conflict settings; and forms of governance in slums and prisons, such as by criminal groups.

The Seminar is a collaborative research space that serves as a launching pad for cutting edge debate and research around questions of local and transnational order. The core of the analytical and policy-prescriptive exploration focuses on how political and social orders are reconstituted, the resulting impact on regional order and the international system, and what roles the international community should play. Among the products of the Seminar are analytical and policy papers as well as shorter articles and blog posts that examine cross-regional comparisons and identify policy implications and recommendations.



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## Introduction

In the modern world, a state has the responsibility to organize and guarantee public order within its territory, and also to participate in constituting the international system—and, thereby, the global order. To enforce political order, the state needs to provide basic goods and services as well as socio-economic distributive mechanisms to the citizens. It must also ensure modes of political participation, the legitimacy of decision-making processes, the stability of political institutions, rule of law, and effective and accountable public administration.<sup>1</sup> Many believe that the present disorder in the international system is greatly amplified by the collapse of local order across a number of key states.<sup>2</sup> In Pakistan, the state has partially failed to establish local order in its region because of poor governance, lack of a coherent counterterrorism policy, and a disconnect between state organs. On top of this, unresolved questions around Islam's relationship to the state and attendant implications for state legitimacy and power relations between state institutions and Islamist groups have complicated the scenario. This has allowed non-state actors to undermine domestic order, particularly when the state's institutions have failed to protect human rights and provide justice.<sup>3</sup>

<sup>1</sup> Alan Bryden and Marina Caparini, *Private Actors and Security Governance*, (Geneva: LIT/DCAF, 2006).

<sup>2</sup> "Reconstituting Local Orders," The Brookings Institution.

<sup>3</sup> Syed Manzar Abbas Zaidi, "Terrorism Prosecution in Pakistan," (Washington, D.C.: United States Institute of Peace, 2016).

“A complex interplay between different systems of law and varying socio-cultural dynamics in Pakistan creates space for non-state actors to participate in dispensing justice.”

This paper seeks to examine how local political order fails and is reconstituted in Pakistan, and how non-state actors like *Jamaat-ud-Dawa* (JuD), *Tehreek Taliban Pakistan* (TTP), and emerging Islamic State (also known as ISIS) elements challenge the established pattern of local orders in the country and try to deliver local governance as an alternative to the state. Using examples of *Shariah* courts operating in the country, the paper also argues that a complex interplay between different systems of law and varying socio-cultural dynamics in Pakistan creates space for non-state actors to participate in dispensing justice. The paper concludes by providing policy recommendations for reconstituting social order in Pakistan to counter the tendency to create informally constituted dispute resolution mechanisms, which exploit the lacunae in distributive social justice.


### Background

Multiple challenges of regional, ethnic, and sectarian conflicts and mal-governance have resulted in a weakening of political authority in many areas of Pakistan, manifested by the state’s inability to fulfill state functions, or a “failing writ” of the state. At present, there are many governance issues at the local and national levels, including public safety and rule of law in Pakistan, which exacerbate public perception of insecurity. Recent news that *Shariah* courts have been established by JuD in Lahore demonstrates how non-state actors influence local governance in Pakistan, as well as policy directions to guide state and international responses. Although similar courts have existed in the tribal areas of Pakistan at one time or the other, this is the first time that JuD has established a *Shariah* tribunal in a major city in Pakistan. The implications of the move reveal an underlying popular dissatisfaction with the official judicial system, and the increasing influence of Islamist groups in the country to fill the resultant vacuum in distributive social justice.

Islamist groups in Pakistan have exploited flaws in state bureaucracy and judicial processes since the country’s independence. Since the state does not provide ready justice—due to a criminal justice system plagued with corruption, bureaucracy, and political patronage—this has created greater space and opened for community-based adjudication and dispute resolution through local and tribal councils (variously composed according to local



customs and referred to as *jirgas*, *panchayats*, and other terms in different parts of the country).<sup>4</sup> In certain areas of Pakistan, especially parts of the Khyber Pakhtunkhwa (KPK) and the Federally Administered Tribal Areas (FATA), the demand for surrendering greater authority to tribal councils has become increasingly coupled with the enforcement of Shariah laws. For example, the terrorist movements of *Tehreek Nifaz Shariat-e-Muhammadi* (TNSM) in the Swat district and TTP in both FATA and Swat have laid their foundation on the question of justice through attempts to reconstitute local orders in KPK and FATA.

Although judicial activism and a free media have enhanced understanding of human rights in Pakistan, delayed justice wears away at the public's confidence in the system. Media in Pakistan, especially the electronic media, has the potential to educate the public regarding their role in the establishment of the rule of law. However, in some cases  media channels actually wind up glorifying non-state actors. Similarly, the international community has made efforts to promote the rule of law and establish local orders in Pakistan, particularly through donor inputs into reforming the criminal justice process, but these efforts were not compatible with the situation on the ground in Pakistan. Engagement with local orders requires a deep understanding of the multiple types of authority that exist, down to the community level, as well as the socio-cultural dynamics at play in that particular population. Public consent strengthens the rule of law, while laws not synchronized with social and cultural values result in low levels of acceptance.

Indeed, a broken judicial system is always likely to attract novel, even unconstitutional, quasi-fixes. This is not just because of an inability of the state to synchronize state laws with Shariah-compliant laws, but also because any new policy or law in this environment suffers primarily from a lack of proper implementation and lack of structural and legal creativity, no matter how well the policy or law is drafted, which is not common to begin with.<sup>5</sup> Then, there is the issue of emotionality attached to many of the issues touched upon by these laws or policies, such as extremism, on

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<sup>4</sup> *Pakistan Rule of Law Assessment-Final Report* (Islamabad: USAID, 2008).

<sup>5</sup> Pakistan has an array of “Islamic” laws like the *Hudood* laws, Muslim Family laws rooted in Shariah but meted out by common law judges, common laws inherited from the United Kingdom like the Pakistan Penal Code, and laws rooted in tradition like the Frontier Crimes Regulation (notoriously known as FCR), only applicable to FATA.

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which there is no real national consensus. Policymakers will talk about eradicating extremism, but in a conservative society, they are unable to exactly delineate what extremism actually entails. Pakistan remains deeply divided by emotive discourses at variance with each other, and many of these narratives are able to command large followings, especially within the intertwining complexity of society, culture, religion, and extremism in Pakistan.<sup>6</sup>

Moreover, with stakeholders in Pakistan seemingly in denial about the need for a root-and-branch overhaul of the judicial system, both state and society are finding alternatives that include parallel “judicial” forums. Such self-styled “courts” may thus gain better social acceptance if they operate under a religious veneer because Islamist groups ostensibly cannot seem to be endorsing the “secular,” common-law-tradition courts prevalent in the country.

#### *The mechanisms for establishing local order*

Rule of law, good governance, and justice—alongside the protection of public rights—are the key components to constituting formal public order, and any deficient component leads to the deterioration of a particular local order. In such cases, interventions from non-state actors in reconstituting local orders emerge in different forms. Non-state local orders (tribal, Islamist, mafia-based, and others) may exercise significant control over their populations, supplementing—and occasionally replacing—state-level governance. Also, when the state fails to deliver, Islamist groups have the ability to mold any tradition or law according to their own interpretation in the name of religion in order to create local order and influence governance. In contrast, civil society tends to rely upon strengthening of laws of the land to decrease the opportunity for undesirable interpretations, such as draconian dictatorial measures like Hudood, to masquerade as Shariah laws.

In Pakistan, interrelationships among the common law tradition, Islamic law, and customary practices are complex. Local and tribal councils continue to play an important role in civil dispute resolution in some parts of the region, with a tendency to become incorporated in the formal legal

<sup>6</sup> “Reconstituting Local Orders.”

hierarchy. However, many actions of such local councils towards the furtherance of some customary practices are controversial. “Honor crimes”—such as giving women in marriage as compensation for wrongs done by an accused party or in dispute settlements—are not unanimously denounced. Discriminatory and oppressive punishments have also caused considerable controversy and have highlighted the need for effective legal oversight of these institutions.<sup>7</sup> Despite the fact that these customary bodies have no legal status, deep-rooted local traditions at the village or communal level have made them resistant to change, especially when the state is not perceived to provide effective justice at that level.

Pakistan’s legal regime does not support informal arbitration mechanisms. While civil arbitration has found a place in Pakistan in complex contractual disputes, the rules are internationally set—backed up by local law—and practitioners are duly licensed and accredited. Arbitration services, especially in an institutionalized manner, cannot be provided by anyone who “just wants to,” as the Islamist groups claim. However, many traditional arbitration bodies exist in KP and tribal areas, for example, where the jirga is a vital alternative dispute resolution process which often intervenes, even in terrorism cases.<sup>8</sup> It is not uncommon in such cases where a jirga has intervened to find out that the plaintiffs “withd[aw]” their cases through “out of court” s[et]t[le]ment, which may not even be brought on-record in court. Thus, existence of such bodies creates an ideological space for Islamist groups to create their own version of courts which also have no legal status and operate to fill in capacity gaps of the state to deliver expedient justice.

Likewise, there are some human rights issues that are not well addressed in the constitution nor in local laws, but are well-defined in Islamic laws. For example, the property rights of women in Shariah are described in Islamic jurisprudence, but state institutions do not have robust enforcement mechanisms because of their entrenched positions in colonially-inherited common laws. In such cases, non-state actors approach local communities, and then leverage that access for the advancement of women’s rights. Efforts to protect the property rights of Muslim women may involve a simultaneous push to enforce Islamic law.

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<sup>7</sup> *Pakistan Rule of Law Assessment-Final Report.*

<sup>8</sup> “Reconstituting Local Orders.”

This becomes even more problematic when the rural landholding classes have to reconcile property rights of women against the inclination to hold on to accumulated land holdings. Islamic law clearly allows women to inherit their due share of property, but the landholding classes in Pakistan tend to resist this by marrying women among family to try and prevent women from “walking away” with land.<sup>9</sup> When Islamic law is asserted in such and many other cases, it tends to come in direct conflict with vested landholding and tribal interests. Courts can thus become battlegrounds between opponents of tribal custom and Islamic law. Since the more powerful—or the parties with access to political patronage—can sway the system (mainly by causing delays), such cases linger on for years until they are finally settled out of court. It is thus unsurprising that there is substantial supply and demand for arbitration-based informal mechanisms for resolving such matters.

As Matthew Nelson notes, “the challenge does not lie in replacing local orders with a monolithic appreciation for state power; the challenge lies in developing area-specific knowledge required to operate *within* local orders while, at the same time, appreciating the delicate balance—indeed, the difficult trade-offs—between them.”<sup>10</sup> Sometimes the state will have to think outside of box and provide solutions accordingly to reconstitute such complex local orders.

Military courts in Pakistan are another extraordinary move to reconstitute local order according to peculiar ground situations. In August 2015, Pakistan’s Supreme Court upheld the 21st amendment to the constitution allowing military courts to be established parallel to the existing civil judiciary for two years. The amendment allows civilians “claiming [to] or [who] are known to belong to any terrorist group or organization using the name of religion or sect” to be tried by the military courts, provided that their cases are referred by the federal government. This formulation presented a civilian façade but, in reality, it will mean that the military decides who is brought before the military tribunal. There is a deep divide over key questions ranging from how to define a terrorist and how states should treat them, to concerns over the legality of government responses to the menace of terrorism.

<sup>9</sup> Matthew J. Nelson, *Local Orders and International Engagement in South Asia* (Washington, D.C.: The Brookings Institution, 2016).

<sup>10</sup> Matthew J. Nelson, *Local Orders and International Engagement in South Asia*.

Many critics from civil society are against the formation of military courts, since they fear that the life of military courts might be extended beyond the current two years. At the same time, Pakistan's civilian courts—including its Supreme Court—have not been entirely effective in getting the executive to enforce their judgments, as evidenced by the back-and-forth tussle between the government and apex court over judicial autonomy. At present, the entire process in these military courts is military-controlled and carried out in complete secrecy, from the appointment of military judges to the trial itself. Even death sentences are confirmed or commuted by the chief of army staff, who moves with alacrity.

The amendment's supporters point out that Pakistan's criminal justice system has been unable to cope with the nature and number of crimes committed. The conviction rate, in a country ridden with terrorism, remains below 10 percent, according to an International Crisis Group report.<sup>11</sup> Civilian review processes can lead to frustrating delays in eliminating terrorism, while in the backdrop of civilian leadership's earlier dithering, the army and the people of Pakistan have increasingly refused to accept impediments to the effective dispensation of justice.

There is a tendency within the criminal justice system in Pakistan to make new structures and laws to compensate for the ones not working; but not enough energy, resources, or foresight is devoted to ensuring that these new structures actually work. Such new infrastructures gradually start resembling the older, inefficient ones, and subsequently, a set of new structures is established to replace them, and so the process continues. The foreseeable end result of such exercises—unless rectification is attempted—is several unworkable criminal justice systems and laws vying with each other in jurisdictional conflict.<sup>12</sup>

#### *Non-state actors and local governance: TNSM and TTP*

Due to the interaction with Islamic law and its appeal to many people, routine public disputes, and the sluggish dispensation of justice by state institutions, public frustration with the system stimulates Islamist groups

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<sup>11</sup> International Crisis Group, “Revisiting Counter-terrorism Strategies in Pakistan: Opportunities and Pitfalls,” 2015.

<sup>12</sup> “Reconstituting Local Orders.”

“Due to the interaction with Islamic law and its appeal to many people, routine public disputes, and the sluggish dispensation of justice by state institutions, public frustration with the system stimulates Islamist groups to form their own Shariah courts.”

to form their own Shariah courts. It might be pertinent to review some recent efforts in Pakistan by Islamist groups to form such Shariah courts.

In Swat, there was popular demand to implement Shariah. It was first demanded by Sufi Muhammad (head of the Malakand-based non-state organization called Tehreeke-Nifaz-e-Shariat-e-Mohammadi (TNSM; Movement for the Enforcement of Islamic Law) and his follower Fazlullah. It was then implemented by the government through the promulgation of Provincially Administered Tribal Areas (PATA) Nifaz-e-Nizam-e-Shariah Regulation 1994. This was an effort by the Pakistani state to emulate the effective Shariah system of criminal justice delivery, which had existing during the tenure of Swat’s princely rulers.

When former princely states were abolished and merged with Khyber Pakhtunkhwa (called North West Frontier Province until 2010) in 1969, regulations known as the PATA Regulations were enforced. They were a hybrid of tribal customs and “settled” area laws, and included tax exemptions, abolition of the Frontier Crimes Regulation, establishment of courts as in the rest of Pakistan, and representatives elected to the provincial assembly, among other things. This was ostensibly to keep the locals appeased under the new regime of direct rule by the state.

This was also a legacy of nostalgia for the old Swat monarchical system under the *Wali-e-Swat* (its ruler), who had dispensed free and speedy justice. This dispensation of justice was carried out under a Shariah branding, though in reality it was a mixture of customary and tribal law with a spattering of Islamic laws such as *diyat* (blood-money compensation for murder) thrown in. In 1975, PATA Regulations were introduced, which transferred the decision-making powers of both criminal and civil cases from the judiciary to the executive. This seemed a poor substitute to the Swatis, and even though courts annulled it in 1990 (and the annulment ratified in 1994), an expectation gap had already arisen, which was ripe to be exploited by Islamist groups led by Sufi Muhammad and Fazlullah.<sup>13</sup>

<sup>13</sup> Muhammad Usman Amin Siddiqi and Hanif Ullah Sajid, “Rise and Rebirth Of Non-State Actors In Swat: A Phenomenological Study Of Shariah As A Popular Demand,” *Journal of Political Science XXXII* (2014).

When non-state actors appeared in Swat with their Shariah courts, local Swatis nostalgic for the Wali's times flocked to these courts in the hope of speedy dispensation of justice. It was only later, when terrorism reared its ugly head, that the inhabitants of Swat started realizing the true intentions of these non-state actors, by which time it was already too late.<sup>14</sup> In sum, non-provision of speedy and inexpensive justice, along with nostalgia for the Shariah of the Wali-e-Swat (which was actually quick tribal and customary justice), created an expectation gap between the people and the judicial system of Swat. This gap was prone to exploitation by non-state actors—and it was this judicial gap which was symbolized (or mislabeled) as Shariah by the state actors in Swat to gain support from the people.

A more recent scenario is in context to Jamaat-ud-Dawa (JuD), known as a reincarnation of Lashkar-e-Taiba (LeT). JuD has recently expanded its social services, which range from health care to education, and its ability to assist affected populations during natural disasters outside its center of power in the province of Punjab. The JuD's establishment of a parallel judicial system, which the United Nations has listed as a "terror outfit," is a challenge to local order, and again, a response to the vacuum left by the judicial system.

The JuD is not a proscribed organization in Pakistan, and claims to render social welfare services in addition to running charitable schools and hospitals in calamity-hit cities of the country. In recent history, the JuD played an important role in aiding the victims of Pakistan's 2005 earthquakes, floods in 2010 and 2015, and rehabilitating those affected during military-led counterterrorism operations in Swat. JuD is considered to be one of the best-organized Islamic charities in South Asia, with a social network unmatched by other Islamic groups. JuD and its associated charity, *Falah-e-Insaniyat* Foundation (FIF), have massively expanded their activities in Pakistan in the last few years. Beside charity work, free education is provided to the poor and JuD operates a network of over 300 schools, universities, and religious centers across the country, all registered under its own name: *Al-Dawa* model schools.<sup>15</sup>

<sup>14</sup> Syed Manzar Abbas Zaidi, "New Taliban Warlords and Organization," *Defence Against Terrorism Review*, Vol. 1, No. 2 (Fall 2008).

<sup>15</sup> Asad Hashim, "Despite Sanctions, Pakistan's 'Terrorists' Thrive," *Al-Jazeera*, May 21, 2015.

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By responding to social and economic ills under the platform of Islamic social justice, JuD has done exceptionally well by meeting the population’s expectations in times of crisis or natural disasters to win their loyalty. Through social service provision, JuD is able to connect with the people in a way that surpasses the state’s ability. With local support and sympathy from a needy population, the group raises awareness of its activities and promotes a particular religious doctrine that guides its associational work, like recruitment for LeT. The organization manages their services across the country through the following departments:

- Falah-e-Insaniyat Foundation Pakistan: Charity wing of JuD working for welfare, relief, and rehabilitation
- *Al-Muhammadia* Students Pakistan (AMSP) and Youth of *Ummah* (YoU): Student organizations based out of universities, colleges, and *madrassas*
- Education Wing: Composed of more than 50 religious seminaries, 206 Al-Dawa model schools, and five colleges; *Al-Aser* publications prepare the curriculum of these schools.<sup>16</sup>
- *Taqwa* Islamic Center (*Markaz al Taqwa-Jamia Dirasaat*): JuD’s Karachi wing runs a network of model schools in Karachi with the name of *Taqwa* model schools, *Aqsa* model schools, and Times model schools, while also supervising a network of mosques and *madrassas* with links to JuD in the city
- Media and propagation: Engages print, electronic, and social media

Moreover, JuD and its charity wing have been engaging with the community by arranging youth-oriented activities like scout camps, summer camps, trainings, and workshops. In addition to activities like scavenger hunts, dart games, river crossing, basic first aid, and firefighting training, these camps and workshops also offer courses on Islamic education and personality grooming in the light of Islam.

### Establishing local courts

In a sign of people’s growing distrust in the contemporary judicial system and the growing influence of religious organizations in society, JuD has set

<sup>16</sup> Abdullah Islam, “Jamāt-Ud-Dawā Pakistan... Aik Jaizaa, Aik Taaruf,” July 11, 2013.



up *Darul Qaza* (House of Legal Judgments) in Lahore, the provincial capital of Punjab, to provide “justice” among people in light of Shariah laws.<sup>17</sup> The “court” has been established at the organization’s headquarters, Jamia Qadsia, in Chauburji under a *qazi* (judge), who is assisted by *khadims* (court associates) to decide the complaints. The complaints are addressed to the chief of the religious organization who later refers them to a qazi for further proceedings.

While legal experts point out that this is a violation of the Constitution of Pakistan, the organization claims it offers arbitration only, and resolves disputes in light of Shariah. The organization’s “Shariah Arbitration Court” has been taking up complaints of citizens approaching it for justice, and summoning “defendants” in person or through a legal counsel, with warnings of strict action under Shariah in the case of non-response.

The plaintiffs approach the “arbitration court” in the hope of speedy solutions, as litigation before conventional state courts takes much more time, especially in civil cases. The organization’s spokesman, Yahya Mujahid, defends the functioning of the “Shariah Court,” saying it is not a parallel system to the constitutional courts of the country. He has stated that disputes have been resolved in accordance with Islamic laws, and that offering arbitration to confronting parties is not illegal. The JuD maintains that the arbitrary council, presided over by *ulama* (clerics), merely provides arbitration services to consenting parties in the light of the Quran and *Sunnah*. The arbitrary council is not a parallel court, and does not issue any kind of summons or seek money for arbitration. The spokesman, however, failed to justify issuance of summons carrying a warning of strict action in case of non-compliance, when he was told that there can be no coercion of any of the disputing parties in arbitration.<sup>18</sup>

In one such case, a property developer summoned by JuD’s “Shariah Court” on a complaint regarding a financial dispute moved his case before the Lahore High Court, seeking action against a qazi of the organization’s “court” for running a parallel judicial system. For allowing such courts to function, Khalid Saeed of Samanabad filed suit, naming Pakistan’s interior secretary, Pakistan’s federal law minister, Punjab’s chief secretary, Punjab’s inspector

<sup>17</sup> Wajih Ahmad Sheikh, “Sharia Court Dispenses ‘Justice’ in Lahore,” *Dawn*, April 7, 2016.

<sup>18</sup> *Ibid.*

general, Lahore’s capital city police office, and Qazi Hafiz Idrees of JuD as parties to his petition. The petitioner stated that he received summons written on the letter pad of *Darul Qaza al-Shariah, Jamaat-ud-Dawa, Masjid Al-Qadsia*, in Chauburji, Lahore, with a direction to appear before its “Shariah Arbitration Court.”

The summons warned that in case of non-appearance, no excuse would be considered, and the petitioner would be proceeded against in accordance with Shariah law. The petitioner alleged that he also received telephone calls from the JuD “court” qazi in a “threatening tone,” asking the petitioner to appear before him. The petitioner has urged the court to order the respondent authorities to look into the matter and take action against the organization for committing illegal acts and subverting the constitution by establishing a parallel judicial system.<sup>19</sup>

According to media reports, such JuD Shariah courts operate across the country, and the Lahore court alone has issued verdicts in 5,550 cases to date, including murder trials. Most strikingly, this parallel judicial system has been working even in the federal capital of Islamabad since 1990. During an interview with media, Mufti Muhammad Idrees, judge of *Shar’i Adalat* at *Masjid Qadsiya*, claimed that seven “Shariah courts” have been functional for many years, one each in Lahore, Gujranwala, Bahawalpur, Multan, Karachi, Quetta, and Islamabad. JuD chief Hafiz Muhammad Saeed is the head of all these “courts” and he is empowered to appoint judges as Head Qazi (chief judge).<sup>20</sup>

Mufti Idrees was of the view that these courts are extremely efficient, with the Lahore court alone settling 5,529 cases expeditiously; the crimes include murder, property, and monetary disputes decided by the Lahore “Shariah court” since November 10, 2015. According to the Mufti, once a plaintiff approaches the court, it sends a summons to the accused party, who appears before the court and explain their position. The qazi hears both parties and issues “verdicts” in the light of the Shariah law, and ostensibly both parties accept the verdict. The Mufti claimed that the “Shariah court” is not only approached by people of *Ahl-e-Hadis* (Salafi) sect, but also people from other schools of thought. The Mufti clarified that “Shariah courts” do not

<sup>19</sup> “Man Summoned by JuD ‘Sharia Court’ moves LHC,” *Dawn*, April 20, 2016.

<sup>20</sup> Sher Ali Khalti, “JuD’s ‘Sharia Courts’ Working in Seven Cities,” *The News*, April 9, 2016.

issue *qisas* (Islamic retaliatory penal punishment) judgments, because it is the duty of the state to adjudicate *qisas*.<sup>21</sup>

## ISIS influence in Pakistan

The emerging Islamic State (ISIS) does not directly challenge the established patterns of order, and does not deliver governance or local order of any kind in Pakistan, but it has created an ideological space for itself by creating deep divisions between the existing militant Islamist groups, like the JuD, *Sipah-e-Sahaba Pakistan*, and TTP. The timing during which it has arisen was not fortuitous for ISIS, since by 2015 and onwards, the Pakistani military has been quite firm in its resolve against anti-state militant groups, as a result of its efforts against TTP. However, ISIS has a number of followers, sympathizers, and links with many banned militant groups in the country. By propagating the idea of a transnational caliphate, ISIS has a sort of road map by which it can disrupt and reconstitute local orders in potentially every Muslim-majority country. Pakistan is no exception.

At the end of 2015, reports about the arrests of militants with alleged links to ISIS from Karachi, Sialkot, and other parts of the country have raised the specter of ISIS in Pakistan. Unclear messaging from the government demonstrates a lack of consensus about the individual or organizational presence of ISIS in Pakistan. However, ISIS' ideas have been silently and pervasively making their way into religious segments of Pakistani society—indeed, as numerous reports have revealed, many Pakistanis have apparently traveled to Syria to join the group.<sup>22</sup>

Moreover, ISIS shares the common objective of establishing a transnational caliphate with many violent and non-violent Islamist organizations in Pakistan. This further creates a space for ISIS to continue to gain traction in Pakistan. The Taliban, sectarian outfits, and ISIS also share a sectarian ideology, with all three declaring that the Shiite community is *kafir* (non-Muslim); these groups have been consistently anti-Shiite and have targeted them through terrorist attacks. There is always the possibility of these groups joining hands to achieve their sectarian agenda; some reports

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<sup>21</sup> Ibid.

<sup>22</sup> “Over 100 people from Punjab have left to fight for ISIS: Sanaullah,” *The Nation*, January 4, 2016.

**“The ISIS cell in Sialkot was run by militants affiliated with JuD. The rise and success of ISIS could play a very dangerous, inspirational role in Pakistan, where more than 200 religious organizations are operating on the national and regional levels.”**

have already unveiled that sectarian groups like *Jundullah* and *Lashkar-e-Jhangvi* have collaborated with ISIS in the country.<sup>23</sup> *Lashkar-e-Jhangvi* is a Sunni, sectarian, anti-Shiite organization which has been associated with al-Qaida, while *Jundullah* and other splinter groups from TTP have arisen due to internal differences over allegiance to ISIS.

On December 28, 2015, the Counter Terrorism Department (CTD) Punjab busted a militant cell affiliated with ISIS in Sialkot. The eight suspects arrested in the operation, believed to be affiliated with JuD as well, had reportedly taken an oath to impose a caliphate in Pakistan. Initial interrogations revealed the suspects had been expanding their presence using social media, a major source of recruitment worldwide for ISIS. The alleged ISIS cell in Sialkot was formed after 15 months of networking. According to reports, the eight men swore allegiance to ISIS’ self-proclaimed caliph Abu Bakr al-Baghdadi in June when they joined the “Islamic State in Daska.”

In September 2014, three months after ISIS announced a global Islamic caliphate in Iraq and the Levant, their propaganda literature began to appear in Pakistan. A pro-ISIS booklet titled *Fatah* was distributed in Peshawar and North Waziristan, and graffiti in favor of the group was spotted in major Pakistani cities during ensuing months. In December 2014, students of the girls’ seminary *Jamia Hafsa* associated with controversial cleric Abdul Aziz’s Lal Masjid, pledged allegiance to ISIS in a video message. In January 2015, ISIS announced the “Islamic State of Khorasan,” encompassing Afghanistan and Pakistan.

The important takeaway for Pakistan’s security machinery is that the ISIS cell in Sialkot was run by militants affiliated with JuD.<sup>24</sup> The rise and success of ISIS could play a very dangerous, inspirational role in Pakistan, where more than 200 religious organizations are operating on the national and regional levels. These organizations pursue multiple agendas such as transformation of society according to their ideologies, enforcement of Shariah law, the establishment of a caliphate, fulfillment of their sectarian objectives, and the achievement of Pakistan’s strategic and ideological objectives through militancy. Such organizations could be influenced by the success of ISIS in various ways. A few would limit themselves to providing

<sup>23</sup> Omar Warraich, “ISIS Faces a Crowded Landscape of Terror in Pakistan,” *TIME*, February 26, 2015.

<sup>24</sup> Khuldune Shahid, “ISIS in Punjab?” *The Friday Times*, January 1, 2016.

just moral support, but others might actively provide donations and financial assistance on ISIS' call.<sup>25</sup>

JuD is one of the Islamist groups in Pakistan whose disgruntled cadres are joining ISIS in Pakistan. This may be due to incongruity between the theory and practice of JuD. The group commonly proclaims sovereignty over the whole world through *jihad*, including the “infidel” West. However, the group has traditionally avoided violence against the Pakistani state, instead focusing on India, the near enemy. This becomes problematic to explain away to some of its followers: How can the Pakistani state, obviously allied with the American-led “war on terror,” not be subject to the overarching umbrella of *jihad* when it is allied with the far enemy, the United States? This narrative creates implications for the cohesion of the group, especially to its more devout followers, and may explain some of the schisms within the group. This could also mean that in order to retain loyalty of its members, the group could be forced to become more and more extreme to “save face,” especially in context of the onslaught of ISIS' ideology, or face attrition in the ranks of its membership.

This could already be happening; a media report has highlighted that JuD is losing its affiliates to Da'esh (the Arabic abbreviation for ISIS, more popularly used in Urdu-language press in Pakistan) and recent arrests in Sialkot also testify to this. An arrested suspect, Khalid, who had remained affiliated with JuD before his inclination with ISIS, shared with interrogators the messages received from his wife, urging him to join them for *jihad*. His wife Bushra left home along with her four children, telling her husband that she was going to Kasur for a Quran study session, but never returned, as she had travelled to Syria for training.<sup>26</sup> If this is the impact that ISIS has had on JuD—which has never been anti-state in its outlook—one can imagine the effects ISIS' ideology must have on entities with more dubious worldviews.

Militant organizations in Pakistan are specialized in their tools, demographics, and geographical areas. However, most Islamist groups in Pakistan pursue similar agendas such as transformation of society according to their ideologies, the enforcement of Shariah law, the establishment of a

**“Most Islamist groups in Pakistan pursue similar agendas such as transformation of society according to their ideologies, the enforcement of Shariah law, the establishment of a caliphate system, and the achievement of Pakistan's strategic and ideological objectives through militancy.”**

<sup>25</sup> Muhammad Amir Rana. “What ISIS and the ‘Caliphate’ Mean for Pakistan,” *Dawn*, July 3, 2014.

<sup>26</sup> Umar Cheema, “20 Men, Women, Children from Lahore Join Daesh, Go to Syria,” *The News*, December 31, 2015.

caliphate system, and the achievement of Pakistan's strategic and ideological objectives through militancy. In this context, ISIS is similar to another proscribed organization in Pakistan: *Hizb-ut-Tahrir* (HuT). In terms of message, the renowned HuT does not explicitly espouse violence to further the caliphate project, though it categorically denounces democracy. The message recovered from the suspects arrested from Sialkot in December 2015 says: "Overthrow democracy and introduce *khilafat* [caliphate] in Pakistan through armed struggle." The potential for the violent transformation of such messaging in the minds of HuT activists are also clear, especially given that many HuT members have been arrested recently, presumably on suspicions of being linked with terrorist entities.

Because of ISIS' rise in the world, their "achievements" are inspirational to religious extremist and militant organizations in Pakistan. For example, the students of Jamia Hafsa Islamabad issued a message in Arabic in a video to all *mujahedeen*, including IS's global leader.<sup>27</sup> Splinter groups from jihadi organizations have already emerged espousing the ISIS message, at the same time deploring the moribund state of their own organizations. The biggest anti-state group, TTP, has also suffered schisms due to the stresses of ISIS. At the very least, ISIS influence in Pakistan is dangerous as an overarching umbrella of transformational ideology, with many entities potentially amplifying their message by emulating ISIS tactics and strategies.

With the common agenda of establishing Shariah rule in Pakistan and beyond, many Islamist organizations want to create an elaborate judicial system that can replace what the organizations consider an un-Islamic judicial system. These courts could (conceivably) work like ISIS courts, doling out punishments for all crimes.<sup>28</sup> In this context, many sorts of courts have been in Pakistan for years, but no group prior to ISIS had the caliphate's legitimizing appeal.

The JuD is not the only Islamist organization that runs a parallel judicial system in the country; many jihadi groups are "dispensing" Islamic justice in accordance with their interpretation of Shariah. The popularity of these Shariah courts implies that many citizens are dissatisfied with the criminal

<sup>27</sup> Munawer Azeem, "Police to Act Against Jamia Hafsa over Daish Video," *Dawn*, January 9, 2015, <http://www.dawn.com/news/1155803>; Wasit Ali, "Female Students of Jamia Hafsa Issued Video Expressing Their Support for ISIS (Daish)," *UNewsTV*, December 19, 2014.

<sup>28</sup> Mara Revkin, "The Legal Foundations for the Islamic State," *The Brookings Institution*, July 18, 2016.

justice system due to its non-responsiveness. Concomitantly, the pragmatism underlying militants' strategies suggests that they first challenge the very foundation of the state by providing alternative socio-cultural and political narratives, then march onto its physical territory.<sup>29</sup> ISIS in Pakistan is dangerous not because of any imminent capture of territory, which does not seem probable, at least temporarily, due to the current anti-militancy drive in Pakistan displacing many anti-state groups. Rather, ISIS is dangerous in Pakistan in almost the same way it is dangerous to Europe, i.e. by the permeation of its ideology into indigenous extremists, and in Pakistan's case into the dozens of well-entrenched militant organizations. These organizations also have tapped into the alternate dispute resolution mechanisms in Pakistan, and if the notion of the ISIS caliphate were to creep in, it may start dispensing justice on the same model, perhaps with even harsher punishments.

## Conclusion

The ability of the state to maintain the trust of its citizens remains a challenge in Pakistan—where state control and service provision is weak, and where non-state actors can critically undermine the state's legitimacy by providing public services to citizens outside of state institutions, such as criminal or land-related dispute resolution. Declining use of state institutions for these services may indicate a shift in citizens' allegiance towards non-state actors, especially in peri-urban areas which have not experienced the harsh reality of Swat-style courts. Since such courts have not been able to inflict violence upon the populace at the levels experienced in Swat and FATA, they may not create the revulsion associated with such courts in the tribal areas. It will be important to understand and evaluate the impact of various degrees of exposure to state and non-state services on citizens' trust.

In Pakistan, non-state actors such as religious organizations, local leaders, and informal town councils have been playing an increasingly important role in providing criminal and land-related dispute resolution services. They have been potentially undermining the local courts and police, which have the legal authority to redress these disputes. The main reason for the

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success of this alternative dispute resolution mechanism is the state's poor judicial system, which often fails to provide timely relief to litigants who ultimately look for other channels to address their grievances. In this situation, non-state actors come on stage by exploiting vulnerabilities of citizens. Without any electoral power and almost non-existent representation in parliaments, it is a matter of concern how these non-elected organizations wield so much power in a country like Pakistan. If the lacunae in distributive social justice are not considered in policymaking, and anti-state sentiments are not addressed properly, there is a high probability that these non-state actors will increasingly evolve into viable alternatives to the state in the future.

In another potential scenario, these entities could start meting out harsher punishments in emulation of ISIS. This strategy has been counterproductive for Pakistani militant organizations in the past; harsh judgments by such courts, followed by terrorism, have led to military operations, and eradication or displacement of the militant entity has resulted in both Swat and FATA. However, before such entities go down the route of outright violence as a means for the enforcement of their judgments, they may indulge in some experiments, such as extended jurisdictional outreach by the courts themselves, which in itself is a challenge for the over-stretched criminal justice system. As stated above, since such courts have yet to (or may not be able to) reach thresholds of violence perpetrated by Shariah courts in Pakistan's tribal areas, they may continue to operate under the radar and not attract the same amount of attention.

Conflict resolution through non-state actors breeds disorder, so the government should take preemptive measures to reconstitute local orders. Even though there seems to be substantial reform needed to the justice delivery mechanisms, with the system delivering very little, all is by no means lost. The issues are of regulatory quality rather than just a lack of laws or poor legislation, and in the aftermath of the Peshawar school massacre whereby over a hundred school children were murdered in cold blood by terrorists, there seems to be a renewed resolve to fight terrorism and unruly elements.<sup>30</sup>

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<sup>30</sup> "Reconstituting Local Orders."



In this context, Pakistan has had significant experience with alternative dispute resolution processes—both traditional and modern. The development of judicial system-linked alternative dispute resolution mechanisms should be promoted at state level, and should be legalized. This has to go hand in hand with policies to improve the role of government in dispute resolution by providing better services and better access for a wider segment of the population to the police, courts, and judicial system. With better case management systems and business processes in place, the courts in Pakistan have the potential to improve, spurred on by the emergent drive for judicial independence and activism.

The panoply of laws prevalent in the country need to be rationalized, inasmuch there needs to be clarity over which kind of law prevails over the other, and how these are operationalized in clearly demarcated jurisdictions. The criminal and land laws in particular need drastic revamping, as these generate perhaps the most perplexing litigation, causing fatigue and a crisis of confidence in the state, and generate the tendency to look for alternate venues to settle these issues out of court. Expeditious grievance redress for citizens will go a long way toward re-instating local orders and state legitimacy.

International donors wishing to assist Pakistan in reforming justice service delivery frequently make the mistake of trying to revamp the entire process all at once. Perhaps they don't fully comprehend that justice service delivery is inextricably tied up into the socio-political landscape of the country. Conversely, sometimes daunted by the enormity of the task, donors limit themselves to reforming niches of the criminal justice system like "business processes" or content themselves by making showcase "model police stations." These are superficial and cursorily thought out cosmetic touches to a judicial system that is itself a part of, and influenced by, the socio-cultural dynamics of Pakistan.<sup>31</sup> It is not easy to institute widespread changes in such processes without touching upon influencers such as political patronage, systemic corruption, center-province relations, and limited legal creativity in the system, among a host of other factors. Daunting as it is, this should not deter the international community from intervening to support the country in reforming the delivery of justice. However, this

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<sup>31</sup> Ibid.

needs to be done through meticulously informed interventions and thorough research.

Shariah and other types of informal dispute resolution processes may continue to thrive in Pakistan until the dichotomies within the judicial processes are resolved and the state is seen to provide readily-accessible justice. However, Shariah courts are intertwined with other complex issues of religion, militancy, terrorism, extremism, and the implications of ISIS' encroachment on Islamist groups in the country. As such, these courts may start off by exploiting gaps in distributive social justice and may even provide some relief to citizens at first. Admittedly, such initiatives have had a tendency to become more dictatorial and extreme. Unless social order is re-constituted in areas where perceptions of injustice prevail in Pakistan, these courts may continue to thrive and may even assume more ominous overtones with time, in no small part inspired by ISIS' ideology.

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