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Routledge Handbook of South Asian Criminology

Edited by K. Jaishankar

ROUTLEDGE HANDBOOK OF SOUTH ASIAN CRIMINOLOGY

Although the literature and cultural practices of the South Asian region demonstrate a rich understanding of criminology, this handbook is the first to focus on crime, criminal justice, and victimization in Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka.

South Asia's rapid growth in population and economy continues to introduce transformations in social behaviors, including those related to criminality and victimization. Readers of this handbook will gain a comprehensive look at criminology, criminal justice, and victimology in the South Asian region, including processes, historical perspectives, politics, policies, and victimization. This collection of chapters penned by scholars from all eight of the South Asian nations, as well as the US, UK, Australia, and Belgium, will advance the study and practice of criminology in the South Asian region and carry implications for other regions.

The *Routledge Handbook of South Asian Criminology* provides a wealth of information on criminological issues and their effect on the countries and governments' efforts to mitigate them. It is essential reading for students and scholars of South Asian criminology, criminal justice, and politics.

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*To my Sister K. Jayabharathi and my Brother K. Jaikumar who significantly
sacrificed for my School and Higher Education*



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FOREWORD

South Asia is a vast geographic area that inhabits almost a quarter of the world's population. With the rapid growth of its population and economy, its significant growth as well, and this region is impacting globally. Its nations, belonging to the developing world, are experiencing quick advancement of modernization that includes all life aspects: the entrance of modern technology into less developed areas, economical changes that impacts the societies' class systems, breaking of old traditions, growing secularity and tolerance, and adaptation to Western norms with stronger individualism and personal liberty, besides growing materialism and personal competitions and more. These transformations indicate changes in individual, group, and social behaviors; while some old inter- and intrapersonal issues are less significant; however, new ones have showed up. Furthermore, with their appearance, criminality and victimization also undertook some new transformations.

Do the new transformations of criminality and victimization represent the same old ones, or are they entirely new? One may claim, for example, that chain snatching, a traditional offense where the target victims might be adult women who can almost do nothing against the quick running or motor cycle-driven young male(s), is not much different than the victim of internet fraud of the same adult population, less familiar with technology, and this naiveté is abused by younger computer crooks. However, is it? The picture is even more complicated, since the old crimes still exist despite the appearance of the new ones. While, for example, the internet is intensively abused in the performance of modern forms of sexual harassment and offences. Children, women, and to a lesser extent also men, are still being sexually harassed, abused, and assaulted. In rapidly changing societies, old and new forms of criminality mix and challenge the criminologists and criminal justice researchers.

Criminology is highly influenced by social changes and cultural transitions that are typical to the contemporary globalized era. Hence, it is necessary for criminology to adapt itself to the changing social world, to the mixing of sets of values and norms of behavior. At present, criminology finds itself standing in between two poles. The first is the strong global aspect of criminological knowledge created by worldwide scholars and researchers—where knowledge created in one location can be easily adapted into another. The other pole is that of localization of knowledge; accordingly, criminological knowledge reflects a certain society with its typical norms and social problems. Each pole has its significance for enriching state-of-the-art criminology. It is better for criminology not to lose any of the insights of these poles and to be prepared to apply its knowledge according to the certain needs.

Having this in mind, the *Routledge Handbook of South Asian Criminology* seems to hold the stick of knowledge by both sides. First, its intensive list of topics reflects many other international handbooks of criminology that present issues on crime and criminal justice, politics of criminal justice, and

current issues of victimology. From this angle, this book is relevant and enriches other global works on criminology. Second, the topics and subtopics of different chapters present a localized knowledge. They cover criminological discussions related to all the South Asian nations: Afghanistan, Bangladesh, Bhutan, India, Nepal, Maldives, Pakistan, and Sri Lanka. Each chapter brings forward its own unique contribution, which reflects its local position. Altogether, however, they create a whole greater than its parts, that is, a cutting-edge, accumulated regional criminology that stands in between the two aforementioned poles.

Therefore, one can but congratulate the editor's (Professor K. Jaishankar) initiative of providing a comprehensive handbook related to criminology, criminal justice, and victimology in the South Asia region. The *Routledge Handbook of South Asian Criminology* is timely; it can advance the study and practice of criminology in the South Asian region and can carry implications for other regions.

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Due to some unforeseen circumstances, the book proposal did not materialize with Routledge, and I took it to CRC Press, which is also a part of Taylor and Francis Group. *Carolyn Spence*, the then acquisitions editor of criminal justice books at CRC Press, benevolently observed merit in this work and accepted my book proposal titled *Handbook of South Asian Criminology*. There are no words to express gratitude toward *Carolyn*, and without her this book would not have appeared. I am profoundly obligated to her. Additionally, I thank Editorial Assistant *Ashley Weinstein* of CRC Press for her assistance in the initial book production work.

In 2018, I was informed by *Ellen S. Boyne*, Editor, Routledge, that the CRC Press Criminology and Criminal Justice books were unified with the Routledge imprint and the *Handbook of South Asian Criminology* will be published under Routledge. *Ellen* was greatly supportive, and I thank her from the bottom of my heart.

Additionally, *Kate Taylor*, editorial assistant, Criminal Justice and Criminology, Routledge effectively coordinated with me in conveying this production to reality, and my earnest thanks are due to her. Also, she reported that this book will be renamed *Routledge Handbook of South Asian Criminology*. By this the book returned to its original idea.

Professor Natti Ronel, Bar Ilan University, Israel, has composed a convincing foreword, and I sincerely express gratitude toward him for the devoted help he gives all my scholarly endeavors. Despite the fact that we are miles separated, he is dependably with me scholastically, socially and spiritually.

A. Ravisankar designed the text work of the cover page of this book on the Image by Naturals, available at www.pixabay.com, which is released into the public domain under Creative Commons CC0. I sincerely thank him for dedication, patience and passion.

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I genuinely thank the peer reviewers of this book; some of them are additionally writers of this book. Without these individuals the quality of the book would not have been guaranteed.

Getting chapters from South Asian countries was a challenging assignment, as the field of criminology is still in nascent stages in some regions of South Asia. Hence, I had to utilize the services of some of my own contacts in India, and they graciously accepted to write chapters. Also, it was necessary to get permission from some authors/institutions/journals for republication of their works, and I thank them from my bottom of my heart.

In spite of different unexpected conditions through which this book got fundamentally postponed, be that as it may, the authors of this book had confidence in me and remained with me. Without their patience and assistance, it would not have been conceivable draw out this publication. I will forever remain grateful to them.

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INTRODUCTION

Towards a South Asian Criminology

K. Jaishankar

South Asia is a region that is rich in traditions and culture. Literature, religion and cultural practices of this region demonstrate a traditionally rich understanding of criminology, criminal justice and victimology. South Asian literature is replete with stories of victim justice and restorative practices. Reminiscences of crime and justice can be found in ancient texts like *Manusmriti* (for more details see Chapter 9 of this book), *Arthashastra* and *Thirukkural* (for more details see Chapter 11 of this book), which are more than 2000 or more years old. Hinduism, Buddhism, Jainism, Islam and various tribal religions played a great role with regard to the concept of justice and nonviolence at both individual and community levels.

The colonial period introduced a new and formal centralized criminal justice system dismantling the then-existing idea of justice. The 20th century saw the establishment of new states where ethnic, religious, linguistic, caste, communal, tribal and other identities played a role in the institution of constitutions and in the legal sphere of criminal and victim justice. Today, South Asian countries face acute problems of corruption, criminal violence, terrorism, extremism, poverty, environmental degradation, white-collar/cybercrimes, violations of human rights, state-sponsored terrorism, crimes against humanity and individual and collective victimization. There is a need to assess the status of such issues from a holistic perspective, and in this direction I developed the concept of South Asian criminology and I founded the South Asian Society of Criminology and Victimology (SASCV—www.sascv.org) in 2009. The *Routledge Handbook of South Asian Criminology* will be a treasure trove taking the concept of South Asian criminology to a worldwide audience.

The *Routledge Handbook of South Asian Criminology* is a comprehensive collection of chapters focusing on crime, criminology, criminal justice and victimization in South Asia. The book is intended to be a key resource for readers interested in the criminological, criminal justice and victimological aspects of the South Asian region consisting of nations such as Afghanistan, Bangladesh, Bhutan, India, Pakistan, Maldives, Nepal and Sri Lanka. Each chapter in the book addresses single or multiple topics across the region. Each chapter provides a comprehensive review of the issues, focusing on how crime and victimization are affecting the South Asian region and the efforts taken by the governments to mitigate them. Contributors are from all over the world, but the focus of the chapter(s) is South Asia.

This book is divided into five parts. Part I. Crime and Criminal Justice Processes, Part II. Historical Perspectives of Crime and Justice, Part III. Politics of Crime and Justice, Part IV. Crime and Justice Policies and Part V. Victims and Victimization. All the chapters focus on various criminological

issues of the South Asian region and have contributors from all the countries of South Asian region, the U.S., the UK and Australia.

Part I, Crime and Criminal Justice Processes, starts with Chapter 1. Chapter 1 highlights the state- and non-state-oriented criminal justice systems of Afghanistan. Afghanistan has always been in the limelight around the world for its increasing instability due to extremist groups and warlordism. The post-Taliban administration has paved the way for the need to rebuild the Afghan state-oriented criminal justice system. However, the progress to rebuild is still facing serious problems. The author hence highlights the need for alliance between state and nonstate criminal justice systems in Afghanistan. The current criminal justice system is ineffective and dysfunctional. The establishment of inter institution coordination and communication can pave the way for the renewal of the existing culture of abuses in the Afghan society. The author has proposed an integrated multidimensional model of a postwar criminal justice system in Afghanistan. The author believes that the rich legal culture of Afghanistan can be a boon to the development of an effective and accessible criminal justice system.

Chapter 2 focuses on Bangladesh's criminal justice system and discusses the issues of the criminal justice system. The authors start with highlighting the three main components of the system: the police, courts and corrections. The authors then give an overview of the structure and functioning of each of these subsystems, providing a detailed and comprehensive picture of the various agents of the law enforcement, judiciary and correctional systems. In addition to that, they discuss the various issues and the major concerns in Bangladesh over the last few decades such as the dissatisfaction of the general public with the police, severe overcrowding in the prisons, lack of judicial intervention, rise of domestic violence and several other issues. The chapter concludes by briefly talking about some of the law and policy initiatives in the country to mitigate the growing crime trends and their not-so-effective implementation.

Chapter 3 focused on the efficiency of the Bhutanese criminal justice system and its lack of proper reporting of crimes and national database of crime records, for which the author suggests the creation of university study centres to spread knowledge of criminology. As the author points out, crimes in Bhutan are facing a growing trend of sex trafficking and drugs abuse, mainly due to Westernization and globalization. The chapter describes the Bhutanese legal system and its influence from Buddhist ideologies, because of which the penal code divides crimes into four classifications: felony, misdemeanor, petty misdemeanor and violation (notably, the crime typologies are similar to those in the United States). The chapter also states what the Bhutan penal code criminalizes: crimes against women and children, prostitution, corruption, and damaging reputation of a person more seriously. The author emphasizes that the Bhutan penal code has been one of the first worldwide laws to deal with cybercrimes. The author then describes the Bhutanese legal system as a unique system which does not fall within the category of common law system or the continental civil law system. The chapter then focuses on the process of prosecution, which is entirely guided by the Bhutan civil and Criminal Procedure Code, Bhutanese Penal Code and the constitution, which ensure both the victim and the accused get justice and appeal. Furthermore, the Bhutanese constitution also ensures that underprivileged citizens should get free legal aid from the courts. Lastly, the author describes the role the Royal Bhutan Police, which is the main policing agency in Bhutan; the Bhutan Penal Code provides numerous provisions for effective policing, and the government has taken measures to check corruption in every field of governance including policing.

Chapter 4 draws special attention to the evolution of the criminal justice system in India. The author highlights the different techniques and methods that were used by rulers to establish law and order during ancient times. The chapter starts with the huge importance that was prevalent in the Indian civilization, i.e., dharma, which is the principles of righteousness. This chapter has covered the evolution of India's criminal justice system from three periods, which are Ancient India, Medieval India and Modern India. The author has shown the distinction that occurred in the establishment of police, courts and jails and punishment during Ancient and Medieval India. Modern India saw

renewed criminal justice system due to the British Rule. The present-day criminal justice system of India has hence welcomed many new reforms and developments to its existing system. The various components of the present system are still products from the British Rule, but there has been gradual shift from its retributive nature to a more reformative and rehabilitative nature of punishment.

Chapter 5 provides a brief overview of the crime situation in Maldives and the various components of criminal justice system of Maldives. Over the last years, Maldives experienced an increase in the reported levels of assault, illicit drug use, theft, domestic violence and increase of homicides; this last point has been mainly linked to criminal gangs. Furthermore, prostitution and abuse of illicit drugs are on the rise. The author describes changes that occurred after the introduction of the new Penal Code of the Maldives, which restructured criminal offences and their punishments. The authors give a flow chart representing the sequence of criminal proceedings for an adult and a juvenile who is charged as an adult. The authors examine the steps that lead to the creation of the Maldives Police Service (MPS), discussing its role and authority, and to the consequent reforms that lead to change of the presidential agenda and to the Maldives Police Act (2008). Then the authors describe the Maldivian judiciary system and the Maldivian court structure, prison administration in Maldives and changes into prison, police, human rights and political reform that occurred since the brutal murder of a young inmate in 2003. Lastly, the authors give recommendations to police and prison management and to establish effective restorative justice programs.

Chapter 6 outlines the functioning of the criminal justice system in Nepal and emphasizes the need for reform of both structural and legal frameworks. The author describes the institutions in the criminal justice system viz., the police and its various units, government attorneys and their administrative components as well as the structure and responsibilities of the judiciary and an overview of the correctional system. The author concludes by discussing the current issues in policing such as internal problem of accountability, crime investigation with respect to lack of evidence as well as issues in the trial process, defence and legal aid. The author also proposes solutions to the significant problems to form a stable foundation in the criminal justice system of Nepal.

Chapter 7 discusses the criminal justice system of Pakistan in the first part and, in part two, discusses the issues of the crime situation, policing, judiciary and prisons in Pakistan. The author beautifully illustrates the criminal justice processes (such as criminal law-making, the police structure and police functions, as well as the responsibilities of the judiciary and the prison administration). The author also briefly discusses the current crime situation in Pakistan as well as the police structure and issues in police administration highlighting the issue of gender disparity and lack of modernization in the system. The author concludes by focusing on the contemporary issues in the judiciary and the prisons by painting a grim picture of Pakistan's criminal justice system while also talking about some of the constructive steps taken so far by all the stakeholders of the system.

Chapter 8 discusses Sri Lanka's criminal justice system, focusing particularly on how the Sri Lankan constitution and other relevant statutes regulate the main agencies in Sri Lanka. Throughout the chapter the author describes rights guaranteed by the constitution of Sri Lanka and procedural laws relating to controlling the actions of the law enforcement agencies. The author describes how the Sri Lankan constitution governs police and law enforcement, pointing out different kinds of law enforcement regulated by the Sri Lankan constitution and the permissions given to the law enforcement officers. The author also describes rights that the Sri Lankan constitution recognizes to the accused. The author further describes the Sri Lankan judicial process, mainly focusing on the rights guaranteed by the constitution to the accused during the period of the trial and how these rights are ensured by the constitution. According to the Sri Lankan constitution, the presumption of innocence lies at the heart of the criminal law and protects the liberty and dignity of the accused. Lastly, the author describes how the constitution and the main laws regulate prison management in Sri Lanka.

Part II, Historical Perspectives of Crime and Justice, starts with Chapter 9. Chapter 9 addresses a critical assessment of the *Manusmriti*, which is considered by many a definitive work on ancient

Hindu law. The authors highlight the criminal justice tenets found in *Manusmriti* and present a critical analysis of the same. In the first section, the authors discuss the tenets of administration of justice. The authors have highlighted in this chapter how the *Manusmriti* characterized the organization of lawful justice and infliction of punishment according to the order of the castes, i.e., the Varna. This chapter also critically evaluates how the higher castes had privileges in Manu's notion of crime and punishment. In the chapter, the authors have also highlighted how the British colonial rule fitted well with the *Manusmriti*. The authors have also emphasized how the making of the Indian constitution eradicated the unjust and discriminatory laws of the *Manusmriti*. Finally, the authors portray how still the *Manusmriti* is indirectly prevalent in village justice system of India.

Chapter 10 focuses on the crime of witchcraft accusation and victimization in Nepal, describing some main findings of a study done by the author. The author first describes the Witchcraft Accusation Act, enacted in 2015 by the Nepalese government, and following laws that the Nepalese government has enacted in order to resolve the problem of witchcraft accusation, which, however, did not bring the expected results. The author describes the methodology of the research conducted and then describes, through tables and charts, the main results. Among the main findings, the author describes age and sex of victims, violence against them and interaction between victims and the Nepal criminal justice system. The author further describes difficulties that police face whenever they have to deal with the perpetrators and the role of the local community in supporting them. Furthermore, the author describes that the police are often influenced by the local community to file cases and save the perpetrators, stating the need of the police for more power to resolve disputes on local level. The author concludes that there is a clear failure of the Nepalese criminal justice system to control witchcraft accusation crimes.

Chapter 11 looks into the major contributions of classic Tamil literature from ancient south India (Sangam Age) such as *Thirukkural* and *Silappadikaram* into the justice and administration of the traditional Tamil society. The authors divide the chapter into two parts. The first part focuses on the history, literature and justice administration during the Sangam Age. The authors elegantly capture and peep into the ancient literature to describe the courts of justice and their functioning. The second part of the chapter focuses on the crime and justice in Tamil literature to throw some light on the various nuances of criminal jurisprudence, specifically focusing on crime prevention, forensic science, policing, penology and corrections as well as victimology and victim justice. The authors conclude by emphasizing the importance of the Tamil literature to the fields of criminology, criminal jurisprudence and criminal justice.

Chapter 12 is divided into four sections. In the first section, the author traces the genesis of the Goondas and captures a detailed history of how the Goondas Act impacted the majority of the gangsters and how it changed Calcutta by taking some typical cases. The author also talks about how the history of Calcutta was linked with communal riots and institutional politics and how the Goondas evolved as a different community compared to the previous years. The author concludes the chapter by saying that till today, because of the matrix of the politics, the Goondas still pose a serious threat in independent India.

Chapter 13 provides an introduction to the size and scope of opium production in three South Asian nations (India, Pakistan and Afghanistan) and how it was different during the colonial times. The author discusses how these nations have taken up counter-measures to prevent the diversion of opium from the state monopoly. The author also draws interesting insights from two criminological perspectives: situational crime prevention and a routine activity approach to help identify the efforts and risks of diverting opium in those three countries.

Chapter 14 discusses the evolution of the concept of homicide in India till today. The authors divided the chapter into four sections. The first section deals with ancient Hindu codes regarding homicide, the responses to homicide and related punishments; the second section deals with the concept of homicide in the medieval period; the third section deals with a British colonial understanding

of homicide in India; and the last section deals with the contemporary understanding of homicide in post-independence and contemporary India. Lastly, the authors conclude that the level of punishment in ancient India for homicide varied between various Varnas and that further studies are needed in order to understand patterns in homicide throughout Indian history.

Part III, Politics of Crime and Justice, starts with Chapter 15. Chapter 15 discusses the practical application the routine activity theory to better understand terrorism and trafficking. The author first discusses terrorism in South Asia and its main reasons. Through a chart, the author shows terrorism incidents in South Asia since 1970, discussing the main reasons behind these acts, particularly religious reasons. The author then describes the phenomena of drugs and human traffic in South Asia, pointing out the reasons for people to initiate these activities. The author also compares South Asia's traffic activities with Africa and the Middle East and gives definitions of the traffic phenomena overall. The author then exploits the routine activity theory in order to provide a better understanding of the terrorism and traffic activities in South Asia and why people decides to join such activities.

Chapter 16 is divided into two parts. The first part of the chapter is fully focused on developing a Hobbesian analysis of the rise of the Taliban in Afghanistan. The author then discusses main conclusions in part two, affirming that the Afghanistan tragedy is a product of decades of policies that have been altogether too Hobbesian and insufficiently Jeffersonian. The authors discuss reasons for several Islamic tyrannies and civil wars associated with them. Lastly, the authors propose an alternative a kind of rural village republicanism supported by a democratic state.

Chapter 17 shows a detailed overview of the criminal organizations in Dhaka by exploring the mastaans as well as a variety of other criminal groups, including organized crime groups which are distinct from the mastaans, 'rich or upper-class' gangs, 'student groups' and then finally extremist groups and the ways in which terrorism is conceptualized in Bangladesh. The author discusses the nature of these groups and the associations they have with one another. Lastly, the author discusses the complexity of criminal groups in Dhaka and their implications for global understanding of crime and violence.

Chapter 18 provides a summary of the war crimes in Sri Lanka based on the studies done by the International Crisis Group. The author begins providing an overview of the political and military facts and the effects that the war had on Sri Lankan civilians. The chapter discusses the violence that civilians suffered from after the war. The chapter then discusses the possibilities that Sri Lankan security forces committed war crimes, among those attacks on civilians, hospitals and humanitarian operations, and gives a neutral overview of the war crimes committed by the LTTE and its leadership. Lastly, the chapter emphasizes the importance of investigating war crimes and prosecutes who is responsible for them.

Chapter 19 tries to explore the association between Madaris and suicide terrorism in Pakistan. The authors have made an effort to discuss a few questions, out of which the most fundamental question is the involvement of the Madaris in producing suicide bombers. The authors firstly present the historical background of Madaris, explore the relationship between Pakistan and Madaris and then extensively examine the association between Madaris and suicide terrorism through various research findings. The authors then point out through research findings the myth of emergence of suicide terrorists from Islamic fundamentalism due to the biases of media and present identical patterns and similar phenomena in the involvement of foreign occupation in triggering religious suicide terrorism. The authors conclude the chapter by highlighting the need for reforms in Madaris and also reconsideration of the policies of media.

Chapter 20 explores the trends, dynamics and drivers of post-conflict crime and violence in Nepal. The chapter is established through multiple fieldworks done by the author between 2008 and 2014 in Nepal. The author also throws light to the major types of post-conflict crime and violence issues that have occurred in Nepal. The author then presents various approaches to analyzing post-conflict crime and violence. In this chapter, the author has taken into consideration three

dimensions—the socio-economic, institutional and political and social dimensions—to analyze and understand the causes of post-conflict crime and violence in Nepal. The author presents his own analytical framework based on literature review and fieldwork to understand post-conflict crime and violence. The author concludes the chapter by describing the challenging and complex nature of post-conflict crime and violence in Nepal.

Chapter 21 presents the patterns, trends and causes of religious terrorism in Bangladesh. The authors draw attention to the relationship between religious militancy and terrorism. The authors then highlight the causes for growing terrorism and how it has flourished. The authors have analyzed the terrorist incidents from 1991 to 2001 through a content analysis of secondary sources of data and present a historical background of the emergence of religious terrorism in Bangladesh. The authors showcase the different types of terrorist attacks that occurred every year. The authors also throw light on the factors that have been identified as major causes for religious terrorism in Bangladesh. Finally, the authors conclude by suggesting certain measures and recommendations that can be utilized for counterterrorism.

Part IV, Crime and Justice Policies, starts with Chapter 22. Chapter 22 draws attention to the regional cooperation and responses to human trafficking in South Asia. The author kicks off by showing data on where the victims of trafficking from South Asia end up being exploited. The author then highlights how the lobbying of some NGOs has led SAARC to take up the issue of human trafficking in its agenda and further draws attention to the various other transnational crimes where the SAARC has engaged at various levels. The author also points out the limited role of NGOs in the task force and presents a picture of the slow cooperation among SAARC that has happened on issue of trafficking, unlike other issues on which there has been steady progress. The author then explains the need to integrate the dialogues on human trafficking from security and legal perspectives. Finally, the author concludes by presenting recommendations that could be of significant utility.

Chapter 23 draws attention to the religious, societal reflection and rights of transgender people in India. The author firstly presents the picture of neglect and trauma faced by transgender people in India. The author also points to the violations of several fundamental rights and the inadequacy of the government in tackling such sensitive issues and throws light on the various kinds of encroachments faced by transgender over their rights and institutionalized exploitation. The author also highlights the need for the existence of transgender rights in Indian society and goes onto to describe various other pressing issues that the transgender community has to face on a daily basis. Finally, the author concludes by bringing forth some notable proactive steps taken by various state governments and organizations to address the issues of the transgender community. The author also suggests various recommendations and implementations to bring the transgender community into the mainstream of the society.

Chapter 24 focuses on the transitional justice processes in Bangladesh. The main focus of this chapter is to explore whether transitional justice could be an option in re-establishing human rights and ensuring their enforcement in Bangladesh. The author firstly presents the transitional justice mechanism in Bangladesh and its effects. Secondly, the author explores the consequences of applying transitional justice mechanisms in Bangladesh in comparison with other countries in which similar situations have occurred. Finally, the author questions the delay of 40 years to start a trial process against the main perpetrators in the Bangladesh case and concludes by offering some recommendations and implementations to better serve justice to the war victim community in Bangladesh.

Chapter 25 presents a situational analysis of the Nirbhaya incident and juvenile justice policies in India. The author has made an effort to understand and investigate the new concepts and amendments brought into the laws governing juvenile delinquency in India. The author starts the chapter by highlighting how the new juvenile legislation defines heinous offences, which was lacking before, and then focuses attention on the introduction of a new legal proviso called the judicial waiver system. Further, the author makes an effort to understand juvenile delinquent behavior through various

debates that arose during the Nirbhaya incident and draws attention to the psycho-social maturity of juveniles and how it could be a reason for committing crimes. The author then focuses on how the influence of peers can have a detrimental effect on decision-making and judgement during adolescence. The author concludes the chapter by explaining the need to examine the changing philosophies of the juvenile justice system.

Chapter 26 draws attention to the trends, factors and determinants of crime among young offenders in Bhutan. The authors firstly present a descriptive analysis of crime data (of young Bhutanese people), sourced from the Royal Bhutan Police (RBP). Then secondly the authors outline a complementary discussion on the outcome of a qualitative research with 44 young convicts and further present an analysis of the broad categories of crime among the youths of Bhutan. The main focus of the analysis is on understanding the many facets of crime, which include nature of offences, seasonality of crimes, socio-demographic and demographic characteristics and crime trends across gender, age and regions. The authors also highlight the reasons for criminal deviance among young people, which would help establish better crime managing tools in the country. Finally, the authors end the chapter by focusing attention on the young convicts and establishing a common ground to understand the most probable reasons for them to resort to criminal acts.

Chapter 27 emphasizes women victims of war and crime in Afghanistan. The author explores the current situation of women in Afghanistan, from the Taliban rule to the present day. The author also tries to understand why women are easy targets in Afghanistan and presents a criminological examination of violence against women and elaborates on various factors that could be potential causes for the atrocities against women in Afghanistan. The author further examines how the profound demonstration of the ideas of patriarchy took the shape of active violence against women in Afghanistan and points out how cultural practices have given rise to crimes against women. The author also explores the role of the social practice of masculinity as a potential cause for violence against women and then highlights how the limited legal standing of women in Afghanistan is also a potential cause for violence against them. Finally, the author mentions the need to involve people at every level as a solution to give the women of its country a better status.

Chapter 28 presents a victimological perspective of human trafficking in Nepal. Firstly, the author presents the current situation of human trafficking of Nepal. Secondly, the author draws attention to the laws and policies regarding counter-trafficking in Nepal. The author then presents a valid point as to how important it is to consider protecting and restoring the rights of the trafficked persons along with imposing trafficking policies and laws. Further, the author describes the special needs and rights for the protection and support of trafficking victims and witnesses. Also, the author advocates the implementation of certain packages of services like physical and psychological security of victim, right to privacy of victim, victims' participation in court proceedings, right to information, timely advice and assistance, right to compensation, victims' right to rehabilitation and reintegration and no penalization of trafficked persons. The chapter ends by bringing attention to the well-being of the trafficked persons in order to give them justice.

Chapter 29 presents political crime victimization in Bangladesh. The author first portrays the historical background of political crime in Bangladesh. Secondly, the author outlines an emphasis on political crime and victimization after the independence of Bangladesh by providing a contrasting image during two different governments. The chapter outlines political clashes, civil disobedience, terrorism, hate crime and political assassination, illegal surveillance, torture and deadly force as the major forms of political crimes in Bangladesh. The author then draws special attention to individual cases of victimization and points out the increasing rate of political crime due to the criminalization of politics and the politicization of criminals in the country. The author also provides various causes for the political crime and outlines the social consequences of political crime. Finally, the author ends the chapter by addressing how to eradicate political crimes in Bangladesh. The involvement of the government, civil society and the conscious people is a necessary and crucial step.

Chapter 30 delineates the traditional practices and victimization of women in Nepal through the narratives of Chhaupadi (practice of secluding women during menstruation). The authors have highlighted how certain cultural practices are still prevalent in Nepal that disregard basic human rights. In the chapter, the authors provide a detailed discussion of the evil practice of Chhaupadi in Nepal and its repercussions, with findings of a content analysis. Through this chapter, the authors have shown how prevalent Chhaupadi still is in Nepal and how often there have been incidences of Chhaupadi-related violence every year. The authors have also found the Chhaupadi-affected areas in Nepal and portrayed the details regarding violence against women during this cultural practice. Violence against women has been divided into socio-cultural violence, sexual and reproductive violence and physical violence. The authors then highlight the physical, psychological, educational, sexual and reproductive and social effects of the practice of Chhaupadi on women. Finally, the authors end the chapter by drawing attention to some positive initiatives taken by government of Nepal in eradicating this rampant practice of Chhaupadi.

The last chapter of the book, Chapter 31, provides an examination of collective and secondary victimization of Rohingyas in Myanmar and Bangladesh. The author points out extensively the atrocities faced by the Rohingyas at the hands of Myanmar armed forces. The author also urges study of the collective victimization and victims of abuses by criminologists and victimologists from international perspectives. The chapter has been divided into three parts in which the author firstly introduces the Rohingya Muslims and their historical background. Secondly, the author describes the secondary victimization faced by them as refugees in Bangladesh. And thirdly, the author examines the phases of Rohingyas' victimization in Myanmar and Bangladesh. In the chapter, the author has also suggested short-term and long-term policy recommendations to solve the Rohingya refugee crisis.

PART I

Crime and Criminal Justice Processes



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AFGHANISTAN

State and Non-State-Oriented Criminal Justice Systems¹

Ali Wardak

Introduction

Afghanistan is a land-locked country that lies at the crossroad between South and Central Asia. To the north and northwest of the country lie the former Soviet republics of Uzbekistan, Tajikistan and Turkmenistan; to the South and East is Pakistan; to the West of Afghanistan lies Iran, and to its north-east is China. It is this strategic geo-political location of Afghanistan that has made it both a crossroad between civilizations and a battlefield between competing global and regional powers (Wardak, 2004).

The total population of Afghanistan is estimated to be between 20 and 25 million, composed of various ethnic and tribal groups, most of whom have lived together in the country for centuries. These include: Pashtun, Tajik, Hazara, Uzbek, Turkmen, Aimaq, Baluch, Brahui, Nuristani, Pashaie, Pamiri, Kirghiz, Qizilbash, Mongols, Arabs, Gujars, Kohistanis, Wakhs and Jats. Among these, the Pashtuns constitute the largest ethnic group (estimated around 50% of the total Afghan population), followed by Tajiks, Hazaras and Uzbeks (Dupree, 1980; Canfield, 1996; Glatzer, 1998; Wardak, 2004).

Although these various Afghan groups are generally distinguishable from one another by their members' distinct language (or accent) and ethnic origin, for generations trade and commerce, universities/colleges, government institutions and cross-regional employment opportunities have pulled thousands of Afghans from different ethnic/tribal backgrounds to live and work side by side. Furthermore, inter-marriages, service in the national army and police, and participation in shared cultural, religious and social activities have strengthened citizenship at the expense of ethnic/tribal affiliations in urban centers and cities. This interaction among Pashtuns, Tajiks, Hazaras, Uzbeks, Turkmen and other Afghan ethnic and tribal groups has resulted in a cultural fusion among various Afghan ethnic and tribal cultural traditions at the national level. The richness of Afghan national culture owes much to this centuries-old multi-cultural fusion (Wardak, 2004).

However, since the Soviet military intervention in Afghanistan in 1979, the country has been used as a battlefield between competing global and regional powers and groups—a battlefield between the former Communist USSR and the capitalist West (mainly the USA) in the 1980s; in the 1990s a battlefield between Pakistan, the Arab Gulf countries on the one hand and Iran and Russia on the other; and a battlefield between foreign Muslim extremist groups and a right-wing U.S. administration. In this process of rivalry, Afghanistan's main immediate neighbors infiltrated deep into Afghan politics. With competing interests in the country, they created their client factions/warlords and sponsored them militarily, financially and politically. The factions gradually became so dependent

on their foreign sponsors that they saw Afghanistan's interests through the eyes of these foreigners. These neighbors also exploited Afghanistan's existing ethnic and religious composition and justified their interventions on the grounds that they had common religious and ethnic ties with their clients. Thus the armed conflict (which continued for several years even after the defeat of the former Red Army) resulted in the extensive destruction of Afghanistan's economic, political and social infrastructure. The Western world, particularly the USA, which lured the Soviets to invade Afghanistan, and strongly supported the Afghan *mujahedin*—Islamic warriors—almost completely, abandoned the ruined country after the Red Army was defeated (Wardak, 2004).

The destruction of the country's economic infrastructure, particularly, provided opportunities for foreign players and their client Afghan warring factions to exploit the situation, seeking their strategic goals and sectarian interests at the expense of the Afghan population. The almost total collapse of the Afghan pre-war economy gradually resulted in the emergence of a "war economy" (Rubin, 1999; Goodhand, 2003)—economic conditions that mainly centered on the manufacturing, repair, use and smuggling of weapons and ammunition, on the one hand, and on the smuggling (and production) of illicit drugs and national treasure on the other. The nearly a quarter-of-a-century-long conflict also resulted in a generation of young people who were largely deprived of the opportunity of gaining educational qualifications and other useful skills. This "war generation" of thousands of young people has been deeply traumatized by the war—many lost their parents, relatives and homes. The various factions were able to recruit their fighters from amongst this war generation so that the conflict in which they had a stake continued. Fighting for one or other warlord provided these young men with a source of income, social status and a way of channeling their energies. More importantly, this situation provided the opportunity for foreign Muslim extremist groups—mainly *Al-Qaeda*—to use Afghan soil as headquarters for terrorist activities against other nations. There now exists an increasingly convincing body of evidence which links the Afghanistan-based *Al-Qaeda* to the 9/11 terrorist attacks on New York's Twin Towers and on other targets in the United States.

In the wake of the US-led military campaign in Afghanistan that resulted in the collapse of the Taliban regime, the Bonn Agreement of December 2001 was signed among the representatives of Northern Alliance warlords, pro-Zahir Shah (former king of Afghanistan) technocrats/intellectuals, and two other small Afghan groups that were mainly based in Pakistan and Iran. Although the four anti-Taliban groups did not consult (or represent) the people of Afghanistan, the Bonn Agreement, which was signed in a rush, did open the possibility of a new participatory political order for Afghanistan. It provided a framework of state formation processes that aimed at the eventual creation of a "broad-based, multi-ethnic and fully representative" government by 2004. The agreement, which resulted in the establishment of the Afghan Interim Administration in December 2001, raised hopes among many Afghans that there was an opportunity to end warlordism in Afghanistan and to rebuild the country's social, political and economic institutions.

However, the reinstatement of most warlords as key political and military leaders in the post-Taliban administration and the US government's emphasis on the "war against terrorism" rather than on rebuilding Afghanistan has spread disillusion among many Afghans about the prospects of lasting peace. The US's military and financial support for warlords, who may cooperate in hunting down remnants of the Taliban and *Al-Qaeda*, continues to be a major obstacle to the development of national participatory institutions in Afghanistan and therefore a major source of increasing instability in the country. Central to political stabilization and to the re-building of social and political order in Afghanistan is the establishment of an effective system of justice in the country. This chapter assesses the rebuilding of the criminal justice system in Afghanistan from the perspectives of both the state-oriented criminal justice system and the non-state-oriented criminal justice system (the historical and cultural system) and proposes a synergy of the two systems.

Criminal Justice System in Afghanistan

1. State-Oriented Criminal Justice System

Although it is difficult to draw a clear dividing line between state- and non-state-oriented criminal justice systems in Afghanistan, the former generally refers to positive law that functions through legal codes and state institutions, such as the courts, prosecutors, police, the prison service and the bar of law. Thus, in the context of Afghanistan, key state justice and judicial institutions include the Supreme Court (*stara mahkama*), the Attorney General's Office (*loy saranwali*), the police (*sarandoi*), the Ministry of Justice (*wezarat-e-adelia*) and the prison service. Although these institutions are supposed to be closely interconnected, in reality there exists little organic chain-like interaction among them, and therefore they hardly operate as a system (Wardak, 2009). Nevertheless, the totality of these generally justice institutions has historically been referred to as a *nezam-e-adlee wa qazaiee* (justice and judicial order/system), which was central to the maintenance of social and political order in pre-war Afghanistan (Wardak, 2013).

While progress in rebuilding the Afghan state criminal justice system during the past 10 years has been slow and patchy, it has nevertheless been noticeable: significant work has been done on legislation; several hundred judges, prosecutors and prison wardens and thousands of police personnel have been trained; some criminal justice institutions have been refurbished; and several new ones have been built from scratch (UNDP, 2007). Progress has also been made with regard to building administrative capacity within the existing justice institutions and the publication and distribution of a large body of law to legal professionals (UNDP, 2007). Progress in rebuilding Afghanistan's state criminal justice system has included the establishment of the Independent Bar Association of Afghanistan, legal aid departments in Kabul and in three provinces, the Independent National Legal Training Centre (INLTC) in Kabul and a committee for the simplification of judicial bureaucracy (UNDP, 2007, p. 33). Moreover, there has been an agreement between the Attorney General and Ministry of Interior on the development and implementation of measures to improve prosecution processes and the introduction of common telephone numbers for use by the public to register complaints (UNDP, 2007, p. 33) (Wardak, 2013).

However, despite the above-mentioned achievements, the post-Taliban state criminal justice system is far from delivering justice to the Afghan people and faces serious problems. The nature and severity of these problems appear to have heavily overshadowed what has been achieved thus far. These problems include endemic corruption, high levels of professional incompetence, inadequacy of physical infrastructure such as courtrooms and detention/correctional facilities, very low levels of public trust and the provision of minimal international funding for the rebuilding of justice and rule-of-law institutions in post-Taliban Afghanistan (Carter & Clark, 2010; Wyler & Katzman, 2010). Due to the United States' overemphasis on the War on Terror in Afghanistan, the issue of rebuilding justice and rule-of-law institutions has, until recent years, been largely neglected (Wardak, 2013).

Some of the problems that Afghanistan's criminal justice system currently faces, particularly the lack of sufficient professional, human and legal resources, inadequacy of physical infrastructure and low salaries for justice officials, could be directly traced to the very low level of investment in this sector. Other than insufficient investment in the justice sector, national and international efforts have primarily focused on strengthening the pre-war state justice institutions in Afghanistan—they have mainly focused on patchy legal engineering and quick fixes and on meeting targets and the technical aspects of reform at the expense of its normative dimensions (Carter & Clark, 2010; Wardak, 2004). Different donor countries concentrated on different aspects of the justice sector without effective coordination among them and with the Afghan state institutions (UNDP, 2007; Wardak, 2009). This situation also seems to have resulted in the continued absence of a coherent vision for rebuilding and

reforming the justice sector in Afghanistan. The outcome has been a fragmented justice system, the key components of which (the judiciary, police, prosecution and prison service) do not operate as a system at all (Johnson, Maley, & Wardak, 2003; Wardak, 2009). All these problems, combined with a growing insurgency and persistent institutionalized corruption, have further complicated the task of rebuilding an effective criminal justice system in post-Taliban Afghanistan (Wardak, 2013).

2. Non-State-Oriented Criminal Justice System

The role of the Afghan central government and its formal institutions of criminal justice (courts, police, corrections etc.) in maintaining social order in Afghan society has always been limited (Wardak, 2002a; ICG, 2003). This particularly applies to rural Afghanistan, where it is estimated that more than 80% of the Afghan population live. In some southern and eastern parts of the country, formal institutions of criminal justice have no (or just nominal) existence, and yet there exist a reasonable degree of social order in these areas.

A great many potentially serious disputes, relating to domestic violence, divorce, inheritance and marriage, are normally settled within the “private” sphere of the Afghan extended family without the involvement of local/tribal or state institutions (Wardak, 2002a). They are dealt with on the spot before becoming a “public” problem and a burden on other societal institutions. However, those disputes that are considered “public” are resolved by public institutions at local and tribal levels. The main institution that has traditionally operated as a mechanism of dispute settlement (at village and tribe levels) is *jirga*/*maraka*² among the Pashtuns and its approximate equivalent—*shura*³—among the non-Pashtuns of Afghanistan (Carter & Connor, 1989; Farhadi, 2000; Gletzer, 1998; Hashemi, 2000; Malekyar, 2000; Wardak, 2004).

The particular form and composition of a *jirga* or *shura* are determined by the nature of a dispute at hand, but typically by a body of respected *marakachian* or *rishsafidan* (local elders and leaders) who refer to customary laws in order to reach a settlement that is acceptable to disputants and to the community. *Jirga* and *shura* address issues ranging from minor bodily harm and agricultural land boundaries to serious and sometimes violent conflicts concerning communal lands and murder (Wardak, 2013).

Jirga in every day practice refers to a local/tribal institution of decision-making and dispute settlement that incorporates the prevalent local customary law, institutionalised rituals, and a body of village elders whose collective decision about the resolution of a dispute (or local problem) is binding on the parties involved (Wardak, 2002b). Those on the *jirga* combine “traditional authority” (based on personal qualities, social status and leadership skills) and “competent authority” (based on the individual’s recognized expertise and skills), which play a central part in achieving a *prikra* (ruling) that is satisfactory to both parties (Wardak, 2004).

One important form of tribal *jirga* is *nanawate*, which means seeking forgiveness/pardon and the obligatory acceptance of a truce offer. This happens when the tribal *jirga* makes a *prikra* (decision) that relatives of the *par* (guilty party) send a “delegation” to the victim’s house. This consists of a group of people that include elders, a female relative of the offender holding a copy of the holy Quran, and a *mullah* (Muslim priest), alongside the offender’s other close relatives (and sometimes the offender himself), who bring a sheep and flour to the victim’s house. The sheep is often slaughtered at the door of the victim’s house. Once inside the house, the delegation seeks pardon on behalf of the offender. As it is against the tribal code of behavior to reject a *nanawate*, the victim’s relatives pardon the offender, and the two parties are reconciled. This reconciliation is called *roggha*. Thus unlike formal state justice, which often labels offenders as different and evil and excludes them from the community, *nanawate* reintegrates them into the community. Existing criminological knowledge suggests that reintegrative social control is, by and large, more effective in reducing crime than disintegrative social control, normally exercised by formal state institutions (Braithwaite, 1989; Wardak, 2004).

The processes, rituals and outcome of *jirga* as a traditional tribal/local Afghan institution resemble closely the spirit, values and principles of “restorative justice”—one of the most recent paradigms in modern criminology and criminal justice. Although the phrase “restorative justice” is defined differently in different social contexts, it proposes a community based model of justice that places special emphasis on the restoration of dignity, peace and relationships between offenders and victims; it provides restitution to victims and promotes the reintegration of offenders into the community (Braithwaite, 2002a; Braithwaite, 2002b; Braithwaite, 2003; Bottoms, 2003; Hudson, 2003; Johnston, 2001; Van Ness, 2003; Wardak, 2004).

Jirgas and *shuras* place strong emphasis on reconciliation and making peace among disputants. Thus, unlike the state justice system, which creates losers and winners, *jirgas* and *shuras* reach community-led decisions that promote restorative justice (as opposed to retributive justice), and help to restore peace and dignity among the victims, offenders and the community (Coburn & Dempsey, 2010). These local Afghan institutions also aim to reintegrate offenders back into the community after holding them accountable for a wrongdoing (Coburn & Dempsey, 2010). As a form of alternative dispute resolution, these practices can also reduce strain on a capacity-deficient state-oriented criminal justice system (Coburn & Dempsey, 2010, pp. 2–3). In addition, *jirgas* and *shuras* are shown to be more accessible, more efficient (in terms of time and money), perceived as less corrupt and more trusted by Afghans compared to formal state courts (Asia Foundation, 2010; Wardak, 2013).

The main reasons that Afghan people have preferred *jirga/shura* to formal criminal justice is because the former is conducted by respected elders with established social status and the reputation for piety and fairness. In many cases, the disputants personally know the local elders and trust them. In addition, in the context of *jirga/shura*, elders reach decisions in accordance with accepted local traditions/values (customary law) that are deeply ingrained in the collective conscience of the village/tribe—they have a profound existence in the collective mind of the village and in the minds of its individual members. Also, unlike state courts, *jirga/shura* settles disputes without long delays and without financial costs. Illiteracy plays an important role in discouraging people from using the formal courts—the overwhelming majority of Afghans are unable to make applications, read/understand the laws or complete the paperwork (Wardak, 2004).

However, *jirga/shura* has its own problems: in some cases of murder, *jirga* may recommend *badal* (direct vengeance) or the marriage of a woman from the *par's* tribe to the victim's close relative. Although these practices have become increasingly rare in recent years (Johnson et al., 2003), the first punishment is in direct conflict with Afghan state laws, and the second one is a clear violation of fundamental human rights. In addition, *jirga/shura* is generally a male-only institution; it can also be excessively influenced sometimes by powerful elders. More importantly, in areas where warlords exercise direct control over the population, *jirga/shura* decisions are influenced (or undermined) by those with guns and money (Wardak, 2004).

Interim Legal Framework and the Current Criminal Justice System

The Afghan Interim Administration (AIA) that was established as a result of the Bonn Agreement in December 2001 inherited a criminal justice system devastated by the 25-year-long civil conflict in Afghanistan. However, under the Bonn Agreement, the 1964 Afghan constitution and “existing law” were reinstated with some important modifications. In effect, this constitution and the “existing laws” currently provide an interim legal framework for Afghanistan. This “framework” represents a mixture of *shari'a* and positive laws that were enforced until the Military coup in 1978 (Wardak, 2004).

Despite the formal reactivation of the formal Afghan criminal justice “system” throughout the country, it is far from prepared to deliver justice. It is a hugely devastated institution. The devastation not only includes extensive damage to buildings, office furniture, official records, and essential office