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Pakistan's Action to Counter Terrorism (PACT)
Skill Assessment of Prosecutors
Working on Counter-Terrorism Matters
in Khyber Pakhtunkhwa

Not for Public Distribution





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LIST OF ACRONYMS / ABBREVIATIONS

ATC	Anti-Terrorism Court
Anti-Terrorism Act	The Anti-Terrorism Act, 1997
BPS	Basic Pay Scale
CDR	Call Detail Record
CPEC	China-Pakistan Economic Corridor
Constitution	The Constitution of Islamic Republic of Pakistan, 1973
Code of Criminal Procedure	The Code of Criminal Procedure, 1898
CSS	Central Superior Services
DNA	Deoxyribonucleic Acid
FATA	Federally Administered Tribal Areas
FGD	Focus Group Discussion
FIR	First Information Report
IED	Improvised Explosive Device
JIT	Joint Investigation Team
KPK	Khyber Pakhtunkhwa
KII	Key Informant Interview
NACTA	National Counter Terrorism Authority
PFSA	Punjab Forensic Science Agency
Qanun-e-Shahadat Order	The Qanun-e-Shahadat Order, 1984
UN	United Nations
UNODC	United Nations Office on Drugs and Crime

EXECUTIVE SUMMARY

Prosecution of criminals happens to be an integral part of a given criminal justice system without which rule of law cannot be established; nor can human rights be ensured. Prosecution service was established in Khyber Pakhtunkhwa (KPK) in the year 2004 through an ordinance, which was later replaced by the Khyber Pakhtunkhwa Prosecution Service (Constitution, Functions and Powers) Act 2005.

The Pakistan's Action to Counter Terrorism (PACT) project has been jointly developed with special reference to the KPK by the Government of Pakistan, UNODC and the European Union with an aim to strengthen the processes of investigation, prosecution and adjudication in terrorism-related cases in the province. The **Prosecution Training Needs Assessment**¹ was carried out as a part of the PACT project. Various quantitative and qualitative tools were used for the purpose, and future course of action has been suggested accordingly. During the process, available literature was reviewed; questionnaires were filled; Focus Group Discussions were arranged; Key Informant Interviews were held; meetings and discussions with the stakeholders were carried out; and field visits to the relevant departments were conducted. Input from all these sources was then used to compile the findings as well as the future strategy.

One of the most important activity undertaken as part of this study was the assessment of the professional knowledge and competence of the prosecutors attached with the ATCs in the province. It was carried out in the form of questionnaires which were designed primarily to assess the legal knowledge of the participants as well as their over-all understanding of the phenomenon of terrorism. 3 Focus Group Discussions, comprising the prosecutors, were also held to dig deeper into the issue of training needs of the prosecutors, and to suggest a way forward.

The results of the questionnaires revealed the need for imparting training and conducting refresher courses for the prosecutors along modern lines in substantive as well as procedural laws. As regards the Focus Group Discussions, the discussants not only identified extensive training needs in terrorism related legislation but also highlighted the importance of developing various types of professional skills.

It may be noted here that since the ATC prosecutors are selected from amongst the prosecutors working in the regular courts, their performance cannot be improved in isolation. In fact, entire criminal justice system, in general, and prosecution service, in particular, needs to be reformed for the purposes of result-oriented prosecutions.

¹This study has been conducted by Barrister Dr. Ehtasham Anwar, a civil servant belonging to Pakistan Administrative Service. Mr. Anwar completed his LLB from Pakistan, Graduate Diploma in Law (GDL) and Bar Vocational Course (BVC) from the UK, and Fellowship in Law and Human Rights from the USA, as a Fulbright/Hubert Humphrey Fellow. He has also been an executive magistrate and a presiding officer of various courts. Furthermore, he has served as Additional Secretary (Judicial) in Home Department of the Government of Punjab. Mr. Zafar Abbas Mirza, Director Monitoring, Prosecution Department KP supported in the organization of the event along with Mr. Yasir Khan, Programme Officer, Prosecution (PACT) from UNODC Pakistan.

Induction Training

- ♦ A comprehensive training programme encompassing theoretical as well as practical skills shall be devised for those inducted. Furthermore, the training programme shall have an on-campus component as well as field attachments with the relevant departments.
- ♦ A well-equipped and exclusive training academy, with residential facilities, shall be established for the training of the prosecutors.
- ♦ The duration of training shall be spanning over a period of at least 4-6 months. The prosecutors need to be trained in the entire anti-terrorism legislative regime, including the substantive as well as procedural laws. They shall have a good understanding of the Constitution too.
- ♦ The prosecutors shall be encouraged to keep tabs on important happenings that take place around them, especially on the legal, political and administrative landscape of the country. Book reviews, research work, case studies, syndicate exercises, dissertations and presentations shall be an integral part of the training.
- ♦ Similarly, the prosecutors shall be provided training on use of computers, Information Technology, and modern modes of communication. They shall also have a working knowledge of the phenomenon of cybercrimes.
- ♦ The prosecutors shall be trained in the existing forms of crime/terrorism financing, including the money laundering. They shall rather be given an overview of entire parallel/undocumented economy of Pakistan.
- ♦ The prosecutors shall be abreast of the modern developments taking place in the field of investigation, such as collection and analysis of all kinds of forensic evidence. A state of art forensic science laboratory also needs to be established in the KPK at priority.
- ♦ The prosecutors shall also have a good understanding of the working of police. The Police-Prosecution coordination needs to be enhanced through necessary interventions, such as designing joint courses and holding meetings at regular intervals.
- ♦ A research and data centre may also be established in the academy which would help develop and periodically review the training modules.
- ♦ The prosecutors shall also be given ample training in how to conduct case analysis, scrutiny and legal research.
- ♦ The importance of presentation and communication skills for the prosecutors shall also be realized in true earnest. The prosecutors shall particularly be trained in advocacy skills.

- ♦ Given the fact that legal/judicial/legislative work is mostly carried out in English language, and most of the resources are also available in it too, a separate module shall be prepared for the improvement of language skills of the prosecutors.
- ♦ The prosecutors shall receive comprehensive training in the management skills too to enable them to manage their entire workload on larger scale, and individual cases on smaller.
- ♦ Practical exercises, role plays, mock trials and other such tools shall be employed during the training to provide the prosecutors hands-on experience of professional work they would be required to perform later in life.
- ♦ There is a dire need to train the prosecutors in professional conduct and ethics too. They shall also be sensitized and trained in human rights, with special focus on the needs of special categories of persons.
- ♦ Sessions shall also be arranged with psychologists so that the prosecutors might better understand the psychology of criminals, in general, and the thinking process which goes behind the crimes, in particular.
- ♦ Appointments at administrative and faculty positions in the academy needs to be made attractive so that quality human resource is available/willing to be posted against those positions.
- ♦ It shall be ensured that in addition to permanent faculty of high caliber, reputed and knowledgeable persons shall be inducted/invited to deliver lectures and impart training at the academy.
- ♦ In order to create and maintain an orderly and disciplined environment at the academy, the administrative staff and faculty shall have ample powers with regard to the trainees.
- ♦ Every component of the training shall be thoughtfully designed and thoroughly implemented. More importantly, the entire training regime shall be so designed that it shall promote independent and critical thinking in the prosecutors.
- ♦ On completion of the on-campus learning component, the trainee prosecutors shall be sent on field training for around 4-6 months with all relevant departments. They shall also be attached with senior prosecutors for on-job learning/firsthand experience.
- ♦ A comprehensive and objective system of assessment on the outcome of both components of the training shall be devised and put into place. As an incentive, high performers may be offered appointments at stations of their choice.

Transition

- ♦ After a period of preferably 5-7 years, every prosecutor shall be promoted to BPS-18 subject to fulfilment of other necessary conditions. A comprehensive performance management

system shall be developed for the purpose. High performing prosecutors shall be offered to join the ATCs after objectively ascertaining their suitability.

Specialised Training for the ATC Prosecutors

- ♦ The prosecutors selected for the ATCs shall be imparted specialised training at the academy for 2-3 months. They shall be trained in relevant legislation as well as requisite practical skills.
- ♦ The prosecutors shall also be given good insight into the phenomenon of terrorism the country is currently faced with, so that they might have better understanding of the work at hand.
- ♦ In addition to a module comprising general topics, modules for training in **Criminal Procedure, Anti-Terrorism and Allied Legislation, Communication and Advocacy Skills, IT and Legal Research, and Forensic Evidence** are recommended to be designed/taught.
- ♦ With the increase in security and safety concerns for all concerned, the prosecutors shall also be trained in holding video trials as well as distant trials through other modes.
- ♦ A strict post-training assessment shall be conducted and only those succeeding shall be sent for field assignments.

Year-end Workshop

- ♦ One-week workshop shall be arranged for all ATC prosecutors preferably towards the end of each year to provide them a chance to interact with each other and discuss issues of mutual concerns.

Mid-Career/Senior Level Training

- ♦ Subsequent promotions of the prosecutors shall be linked with their performance, prescribed length of service, and successful completion of training courses. However, instead of organizing these courses in the proposed prosecution academy, the prosecutors may be sent for Mid-Career Management Course² (MCMC), Senior Management Course (SMC), and National Management Course (NMC), as the case may be, to Peshawar and other places outside the KPK.

Refresher Courses/Activities

- ♦ Prosecutors at all levels shall be encouraged to attend short courses, seminars, workshops and other such activities/events. It shall rather be mandatory for the prosecutors to spend a certain number of days attending these activities each year.

² These joint courses have been designed for officers of various service groups/departments and are a mandatory condition for their promotion to next grades.

Training of the Incumbent ATC Prosecutors

- ♦ As regards the prosecutors currently working with the ATCs, it is suggested that a 2-month notice shall be issued to all of them to refresh/update their knowledge of concerned legislation. A comprehensive assessment shall then be carried out at the end of the stated period.
- ♦ For those who would be able to qualify the assessment, a special, condensed and rigorous training course shall thereafter be designed and conducted on the lines suggested above, spanning over at least 4 weeks.
- ♦ A strict and meaningful post-training assessment shall then be carried out at the end of the course. The existing appointments in the ATCs may thereafter be thoroughly reviewed/revisited and made afresh, preferably based on the assessment results/merit of the training as well as the past performance.
- ♦ A proper performance management system shall later also be adopted to monitor and ensure continuous effectiveness of the prosecutors.
- ♦ Other recommendations, detailed in the above sections, shall also be implemented for these prosecutors as far as possible and practicable.

Implementation

- ♦ Spending resources on the criminal justice system, including the prosecution service, would improve the over-all security environment of the province, which would pay back in the form of greater economic and investment opportunities.
- ♦ All recommendations made above are complimentary and interdependent, and need to be implemented in entirety for desired outcomes. The recommendations shall rather be implemented in the form of a policy. The government may also constitute a supervisory body, comprising senior level representatives from all concerned departments, to oversee its implementation in letter and spirit.
- ♦ The training strategy/policy shall be reviewed every 3 years on the basis of experiences and feedback from the preceding years, and modern, scientific and other developments taking place in the meanwhile. Minor amendments may, however, be made as and when required.
- ♦ By implementing a comprehensive training and career progression programme on the aforementioned lines, it goes without saying that the prosecution service in KPK can become an example for the others to follow. The recommendations made above are equally applicable in other contexts and jurisdictions too.

METHODOLOGY

Following methodology, comprising quantitative as well as qualitative tools, was followed for carrying out the relevant research and compilation of the final report:

Desk review

Available literature on the subject was reviewed in detail, with focus on similar projects.

The existing training regimes, including the modules and the manuals, being used in the KPK and Punjab were also consulted/reviewed for the purpose.

A cursory glance on best practices elsewhere in the world, especially in the countries facing similar challenges, was also cast. The model of Crown Prosecution Department of the UK was reviewed with particular interest. Still, every recommendation has been worked out and made in local context.

Quantitative data

Three questionnaires were prepared, and used, to quantitatively assess the legal knowledge and preparedness of the prosecutors associated with the ATCs in the KPK. The results of the questionnaires have been shared in the report in the form of graphs for better understanding. The questionnaires³ were as follows:

- i. Personal Details Questionnaire
- ii. General Knowledge Questionnaire
- iii. Legal Knowledge Questionnaire

QUALITATIVE ASSESSMENT

Key informant interviews

Detailed discussions were carried out with prosecutors⁴ working with the ATCs in the KPK and Punjab to identify the areas of improvement. These interviews/discussions were mostly conducted in Peshawar, Islamabad and Lahore.

One-on-one discussion was also held with a senior member of the KPK judiciary who had served as presiding officer of the ATCs in the KPK for years. In addition, the honourable judge⁵ has also held important administrative positions in field of his work in the KPK.

³ All the three questionnaires have been attached as Annexure to this report.

⁴ The names are being withheld in the interest of confidentiality.

⁵ The name is being withheld in the interest of confidentiality.

Focus group discussions

Discussions were also held with at least 3 groups of prosecutors working currently with the ATCs in the KPK following the format of Focus Group Discussions. The detailed report as to the proceedings of the discussions have been enclosed as part of this report in a separate chapter.

Field visit / discussions

Field visits, and consequent discussions, were held as per following details:

- i. KPK Prosecution Directorate: In the first visit, comprehensive discussion was held with the officers holding senior administrative positions in the KPK Prosecution Directorate. In the second visit, detailed interaction was carried out with selective prosecutors from all over the KPK.
- ii. Punjab Forensic Science Agency (PFSA): Meetings were held with the Director General of the Punjab Forensic Science Agency at Lahore. Later on, a thorough visit of the entire facility was carried out along with the Additional Director General as well as the relevant staff members.
- iii. Center for Professional Development for the Prosecutors, Prosecution Department, Government of Punjab: Meeting/discussions were held with the Director of the Center to have a fair idea of how, and what kind of, training was currently being imparted to the prosecutors in Punjab at various levels.



BACKGROUND

As part of the PACT project, it was essential build a strong foundation for interventions in the KP Prosecution Department, thus a baseline assessment was conducted to gather better understanding of the skills of the prosecutors working with the ATCs.

Accordingly, a detailed assessment was carried out in Peshawar on October 12, 2017 in which prosecutors from all over the KP participated. The questionnaires used during the assessment were designed to assess, among other aspects, the following

- ♦ General knowledge as to the most important current happenings.
- ♦ General understanding of the phenomenon of terrorism.
- ♦ Broad outline of the Constitution of the Islamic Republic of Pakistan, 1973; only those aspects which a practitioner of law is expected to know.
- ♦ The Qanun-e-Shahadat Order, 1984; primarily those aspects/provisions which are related to collection of evidence in terrorism cases or which a prosecutor uses, more often than not, in conducting proceedings in the courts.
- ♦ The Criminal Procedure Code, 1898; those provisions which relate to conduct of investigation and prosecution in routine crimes, in general, and the terrorism cases, in particular.
- ♦ The Anti-Terrorism Act, 1997; practical aspects which a prosecutor is expected to deal with on a daily basis while advising police and conducting prosecutions in the ATC.

The assessment was conducted in a professional environment. A briefing was given to the participants/prosecutors at the very outset. The prosecutors were reminded that they were representing the prosecutors' community, in general, and those working with the ATCs, in particular, and therefore had a corresponding responsibility not only to understand the importance of the exercise but to take it seriously in order to generate credible results for later use by the concerned authorities.

The assessment was held in three sessions. The first session captured the understanding of the prosecutors on the phenomenon of terrorism as well as the Constitution, the Qanun-e-Shahadat Order, and the Criminal Procedure Code. The session lasted from morning till lunch time.

The second session went on for around two and a half hours and tested the knowledge of prosecutors as to the Anti-Terrorism Act.

The third and last session comprised Focus Group Discussions (FGDs) wherein the entire group was divided into three subgroups each of which was required to discuss amongst its members the deficiencies which they felt were there in the existing training regime, and the corrective actions and

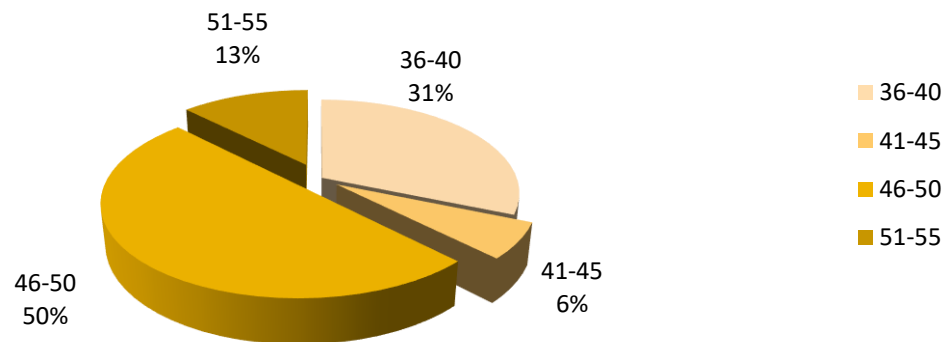
improvements they believed were required in the same. The proceedings that took place in the FGDs, and the recommendations which arose therefrom, would be detailed separately in this report.

Background interviews and discussions were also held with personnel of law enforcement agencies, government officers, lawyers, prosecutors, academicians, and above all, the relevant staff of UNODC and other international agencies working on similar interventions to have better understanding of the issue at hand, and suggest a way forward.

PARTICIPANTS' DEMOGRAPHICS/PROFILES

The prosecutors belonged to different age groups and had come from all over the KPK. A cursory glance on their profiles is as follows:

Age Groups



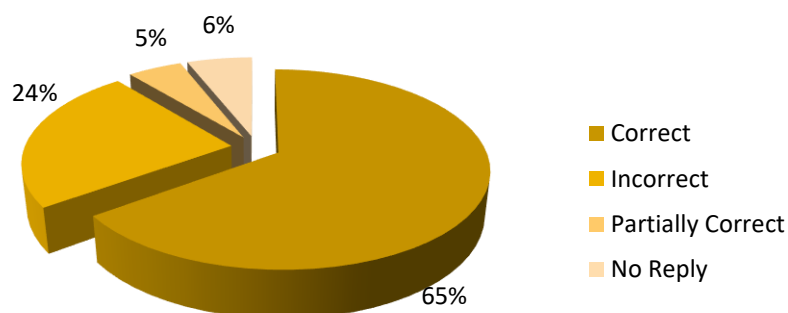
HIGHLIGHTS

- ♦ Basic qualification of all prosecutors was LLB; only one had acquired an LLM degree.
- ♦ 8 prosecutors had done master's in other subjects too. One prosecutor had two masters and one MBA degree as well.
- ♦ All prosecutors had acquired 8-week/3-month training from Lahore in counter terrorism related matters.
- ♦ 13 prosecutors had also done other short courses in allied matters/skills.
- ♦ 4 had attended week-long programmes in Thailand as well.
- ♦ Similarly, 4 had done Shariah courses at International Islamic University Islamabad.
- ♦ 7 prosecutors had worked as lawyers for 8 years or more before having joined the ATCs.
- ♦ 4 of the prosecutors had worked as lawyers for one year or less prior to joining the ATCs.
- ♦ 7 prosecutors had not remained associated with the ATCs whereas one had been working for two months only.
- ♦ Rest of the prosecutors had been working in the ATCs for 2 or more years, with the senior most having 9 years of work experience in such courts.

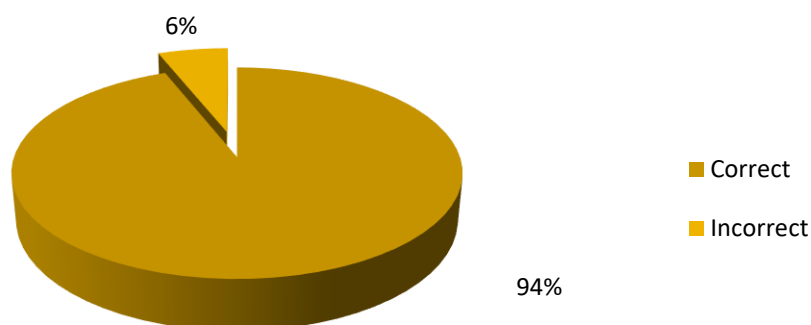
GENERAL KNOWLEDGE

In civilized societies, it is expected that the educated and responsible citizens would keep a keen eye on happenings around them. This is important as these happenings can have direct bearing on one's life; and also because one can hold the authorities accountable as and when they go wrong. The prosecutors constitute an educated segment of the society. If nothing else, they were expected to know at least what was happening on political and judicial landscapes of the country, especially at a time when happenings there were making headlines in the national media every other day. A brief questionnaire was therefore designed to assess how well were the prosecutors oriented as to the happenings around them. The results were as follows:

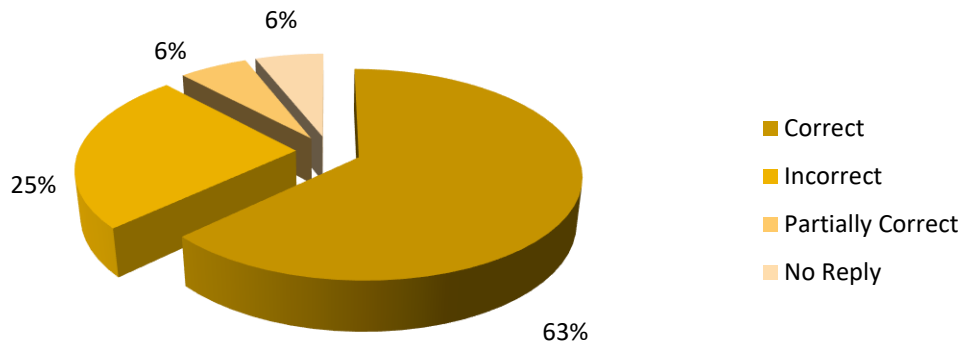
OVERALL RESULTS



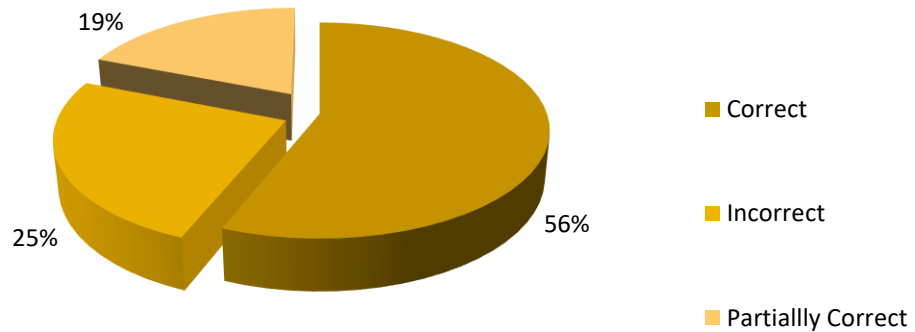
♦ Who is the Foreign Minister of Pakistan?



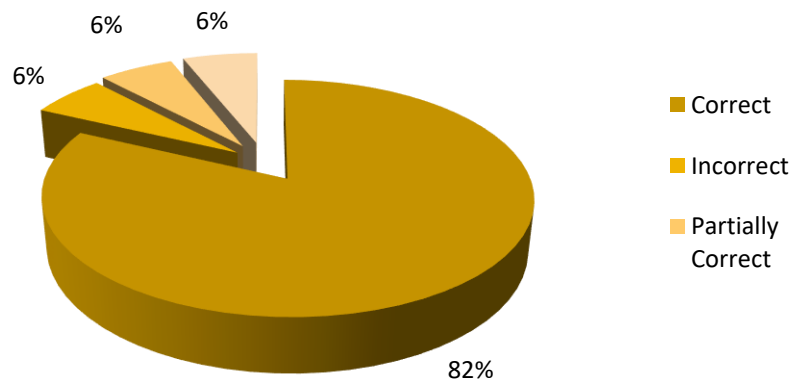
♦ Who is the Minister for Interior in the federal government?



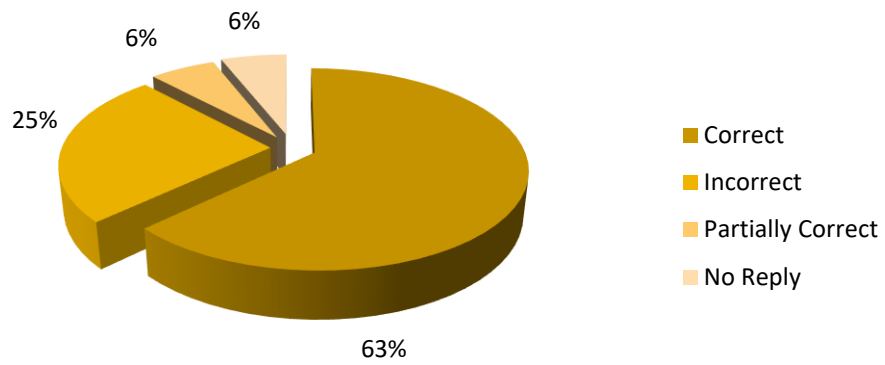
♦ State briefly the grounds on which the former Prime Minister has been declare disqualified by the Supreme Court?



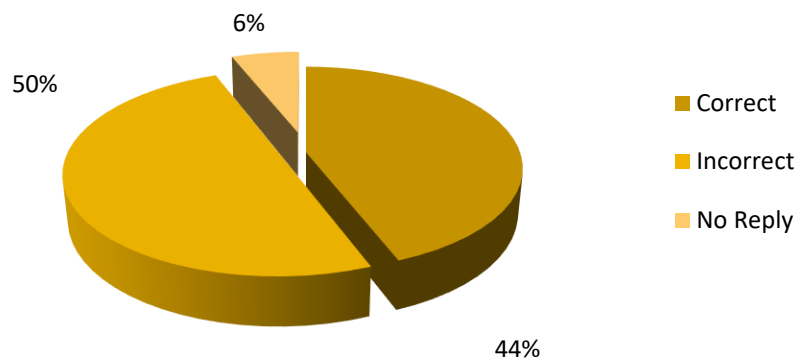
♦ What does CPEC stands for?



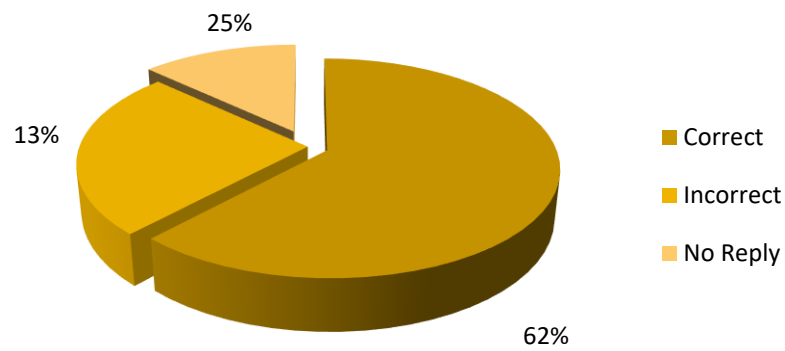
♦ Which political party US President Donald Trump belongs to?



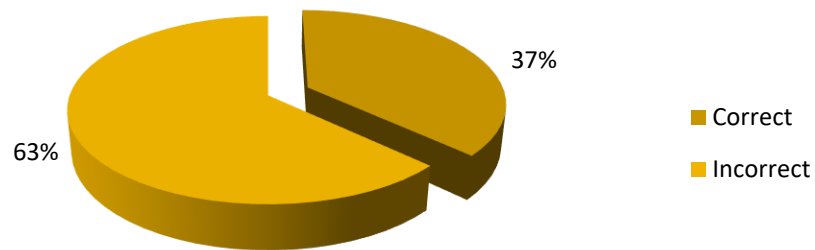
♦ What is the name of captain of Pakistani cricket team



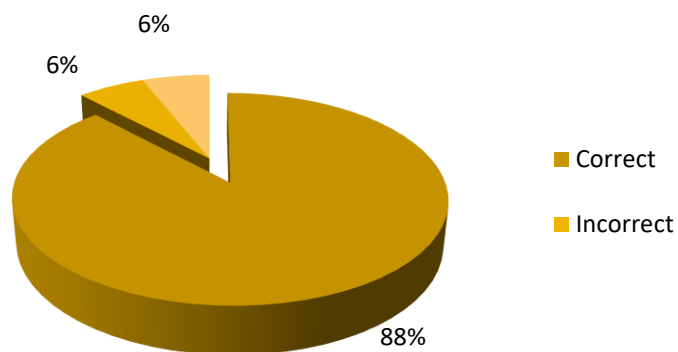
♦ Which cricket tournament Pakistan has recently won?



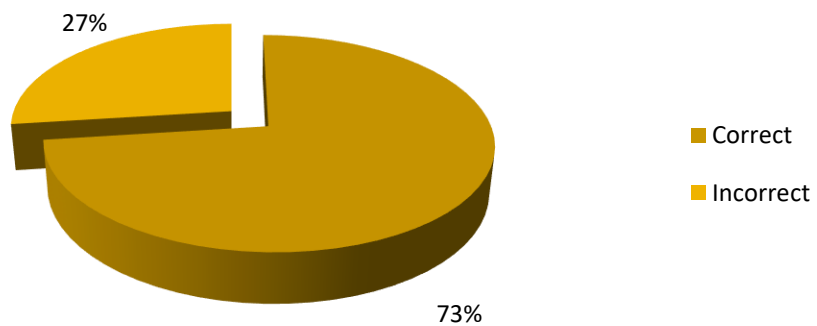
- ♦ What is the tenure for the post of Chief of Army Staff?



- ♦ What does FATA stand for?



- ♦ How many administrative divisions are there in the KPK?



HIGHLIGHTS

- ♦ At a time when the entire country was in a state of undeclared war, around 63% knew who was their Minister for Interior—the department which was leading the war at national level.
- ♦ Hardly a few could refer to the exact grounds on which the former Prime Minister had been disqualified, which was supposedly the biggest happening on political front in last 5 years.

- ♦ Not all could state what the CPEC stood for, at a time when it was probably the most oft-quoted term in national media.
- ♦ In a country which was passionate about cricket, and whose team had won Champions Trophy in recent past by defeating leading teams of the world despite the fact that the doors of international cricket remain tightly shut on Pakistan, it was a little surprising to see half of the prosecutors did not know which captain brought laurels for the country.
- ♦ There was general ignorance as to the tenure for the post of Chief of Army Staff—an office which has always remained in headlines in Pakistan.
- ♦ 1 in 4 did not know how many administrative divisions were there in the KPK.

THE PHENOMENON OF TERRORISM

Unless the prosecutors know the dynamics of current wave of terrorism which Pakistan is faced with, they are not expected to perform their job well. In other words, if a prosecutor does not know what motivates a terrorist or what is his thought process or narrative, the prosecutor cannot bring effective prosecution against him and secure his conviction. With this background, the prosecutors were assessed for their understanding of the phenomenon of terrorism. After having served as prosecutors in the Anti-Terrorism courts of the province which was in the forefront in war on terror, there were genuine expectations that the prosecutors would, by now, have a good understanding of the phenomenon.

The findings were as follows:

- ♦ Narrative of terrorists is something which we need to understand, and counter effectively, if we were to completely eradicate terrorism from the country. The importance of understanding the narrative of terrorists and developing a counter-narrative is therefore now acknowledged at all hands. Unfortunately, majority of the prosecutors did not seem to be aware of the term, 'Narrative', what to talk about the entire concept. When asked, many gave
- ♦ the names of the terrorist organizations in reply instead.
- ♦ Socioeconomic causes, such as illiteracy, poverty, unemployment etc., were identified by most of the prosecutors as the reasons behind the current wave of terrorism, and the remedial measures were suggested accordingly.
- ♦ Those who thought US intervention in the neighboring Afghanistan was the leading cause of current wave of terrorism in Pakistan were no less either. Similarly, 1 in every 4 prosecutors saw foreign hand or enemy countries as the underlying cause of terrorism.
- ♦ A good percentage of the prosecutors believed porous or unregulated border between Afghanistan and Pakistan was the leading cause of proliferation of terrorism in Pakistan.
- ♦ Around 25% prosecutors attributed terrorism to religious extremism. At least one of them identified unregulated religious seminaries as the cause of terrorism.
- ♦ Inaction on the part of government in the early stages, non-functional NACTA, weak administration, unimplemented National Action Plan, lack of coordination between government departments, faulty judicial system etc. were amongst other factors the participants identified as causes of terrorism in Pakistan.



- ♦ As regards the single most important measure which needs to be taken if the Government truly wants to eradicate terrorism from the country, majority of the prosecutors recommended socioeconomic uplift, in one way or the other, as the solution. Some believed that indiscriminate operation against the terrorists could do the job; others suggested to promote religious tolerance/harmony. Border management, training of the personnel of law enforcement agencies, proper coordination among the various government departments, amendments in relevant laws, functioning judicial system etc., were also quoted as suggested solutions.
- ♦ It was generally stated by the prosecutors that innocent civilians were targeted by the terrorist organizations because they were relatively soft targets and also because targeting them caused much panic and fear in the society. However, no one quoted an equally important reason: Many terrorist organizations believe that by choosing to remain silent the otherwise innocent civilians were in fact siding with the Government. Other terrorists believe that if the innocent civilians are killed as a result of terrorist attacks, solely or as collateral damage, it is still acceptable in view of the greater cause they are trying to achieve. They also believe that the innocent civilians would go straight to *Jannah*, i.e. the heavens, and are not ultimate losers therefore.

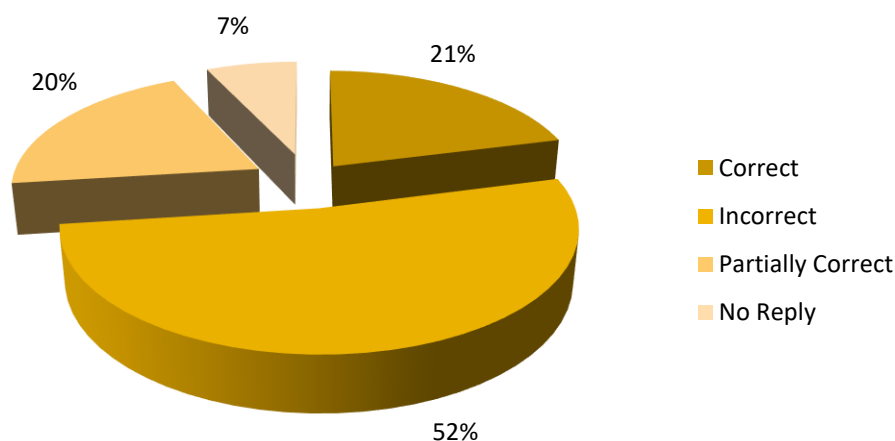
THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973

Constitution of any given country can rightly be termed as the supreme law of that country, and all laws of land flow, directly or indirectly, out of it. Amongst other things, it also determines the distribution of powers within various organs of government and the general principles on which these powers are to be exercised.

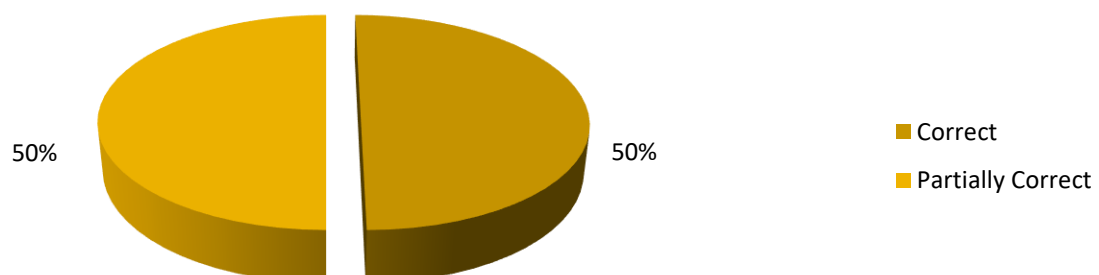
It also sets out broad outline along which the judicial system and higher courts of the country are to be constituted. Finally, it enshrines fundamental rights available to its citizens, and ways and means of realizing them. The importance of its knowledge for the prosecutors therefore cannot be understated. An attempt was made to assess the knowledge of prosecutors on those very few, yet important, aspects of the Constitution which either every legal practitioner is expected to know or are making headlines in the national media every other day. The results were as follows:



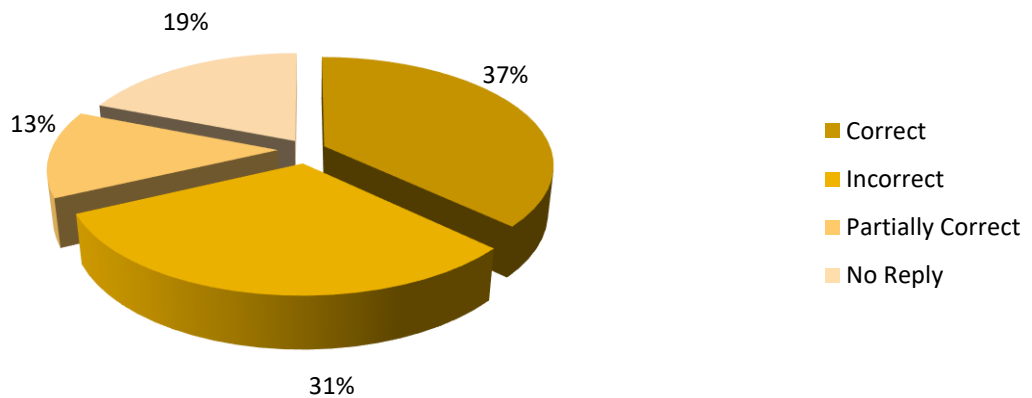
OVERALL RESULTS



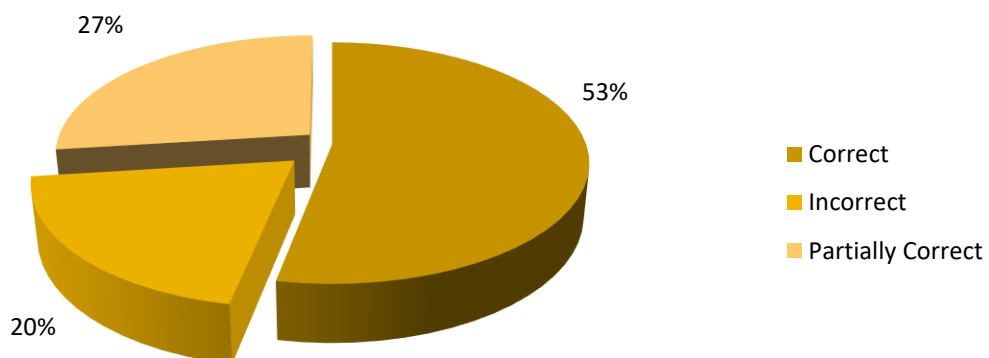
- ◆ Please list the fundamental rights available to the citizens of Pakistan as mentioned in the Constitution of the Islamic Republic of Pakistan?



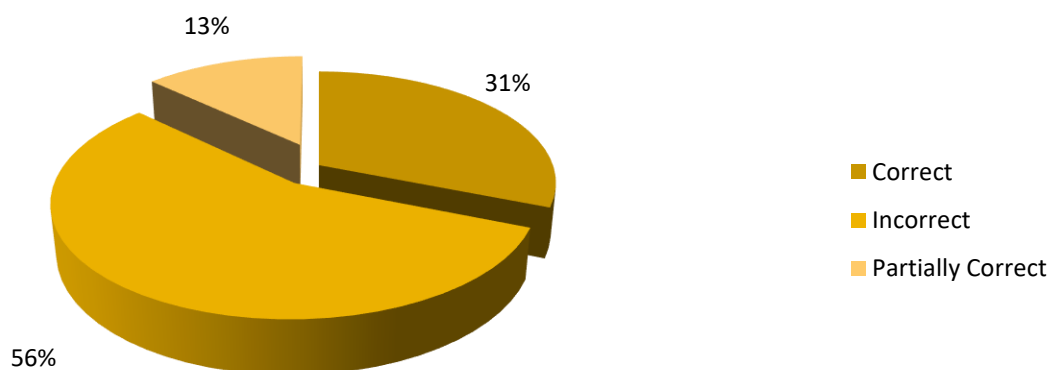
- ♦ What is 'High Treason'? Which article of the Constitution deals with High Treason?



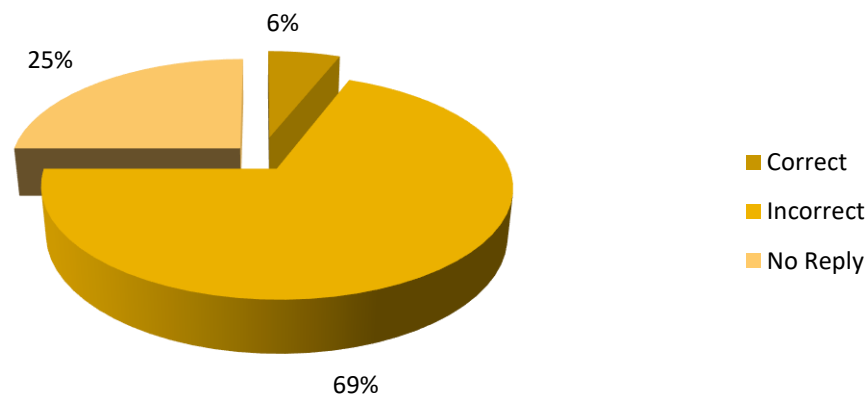
- ♦ What is 'Majlis-e-Shoora'? Which articles of the Constitution deal with the qualifications and disqualifications for the membership of Majlis-e-Shoora?



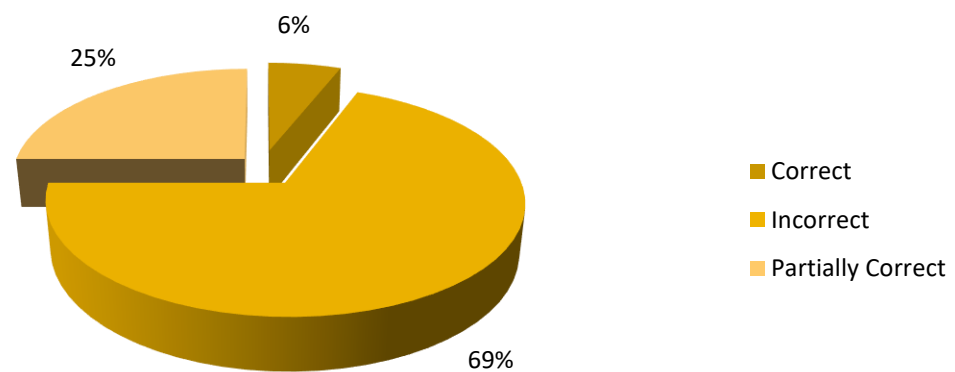
- ♦ From which article of the Constitution, the Supreme Court draws its suo moto powers?



- ♦ How many types of writ petitions are available under the Constitution? When can a writ petition be filed?



- ♦ What is the composition of Supreme Judicial Council?



HIGHLIGHTS:

- ♦ Only 1 in 5 prosecutors had correct understanding of those aspects of the Constitution which were being inquired into.
- ♦ None of the prosecutors could enlist all, or a substantial number of, the fundamental rights enshrined in the Constitution.
- ♦ 'High Treason' had been making headlines in not too distant past. Not many prosecutors knew what exactly constituted High Treason or what article of the Constitution dealt with it.
- ♦ Majority of the prosecutors either did not know, or partially knew, what actually was the Majlis-e-Shoora. They were also unaware of the articles dealing with qualifications and disqualifications of the members of Majlis-e-Shoora despite the fact that a number of proceedings are underway in higher courts under these articles at present.
- ♦ Only 31% knew from which article of the Constitution the Supreme Court drew its oft quoted suo moto powers.

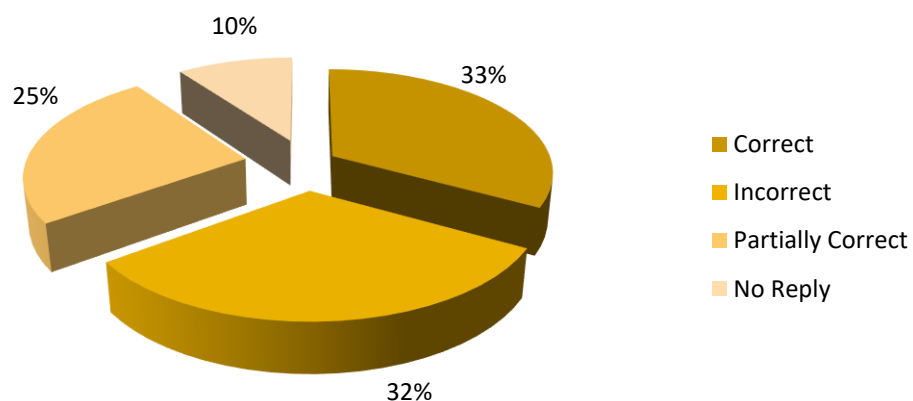
- ♦ Only a few knew, or could recall, how many types of writ petitions had been provided for in the Constitution.
- ♦ Supreme Judicial Council is the highest judicial body in the entire country as it can even hold chief justice of the Supreme Court accountable too. Unfortunately, only a fraction of the prosecutors, i.e. 6%, knew its composition.

THE QANUN-E-SHAHADAT ORDER, 1984

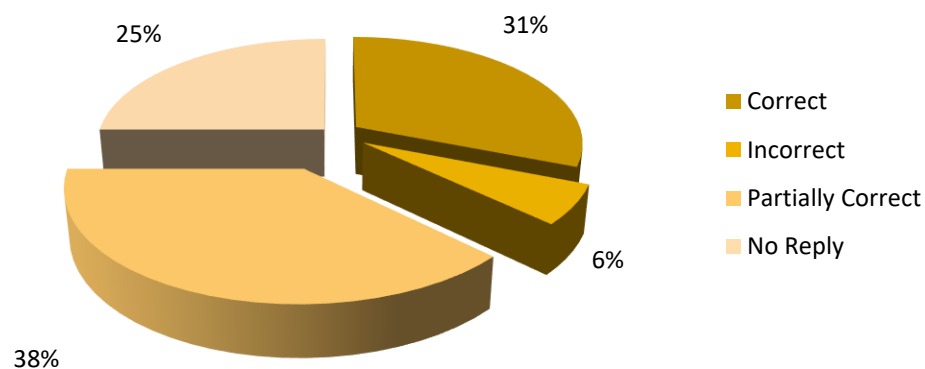
Any material item or assertion of fact that may be submitted to a competent forum as a means of ascertaining the truth of a matter under adjudication before it is called 'Evidence'. The Law of Evidence—the Qanun-e-Shahadat Order in this case—provides a framework for the collection of evidence, involving the testimony of witnesses and/or documents or physical objects, and presentation of the same during the conduct of trials. The importance of knowledge of law of evidence for the prosecutors may be judged from the fact that the entire edifice of a given case is built on the foundation stone of evidence. If evidence is weak or unavailable, or its collection during the investigation or presentation before the court is faulty, conviction cannot be secured. Accordingly, the knowledge or training of the prosecutors was tested on practical aspects of the Qanun-e-Shahadat Order. The results were as follows:



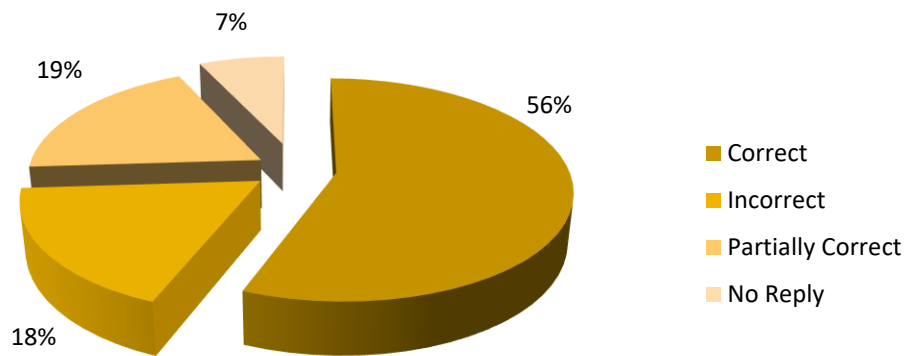
OVERALL RESULTS



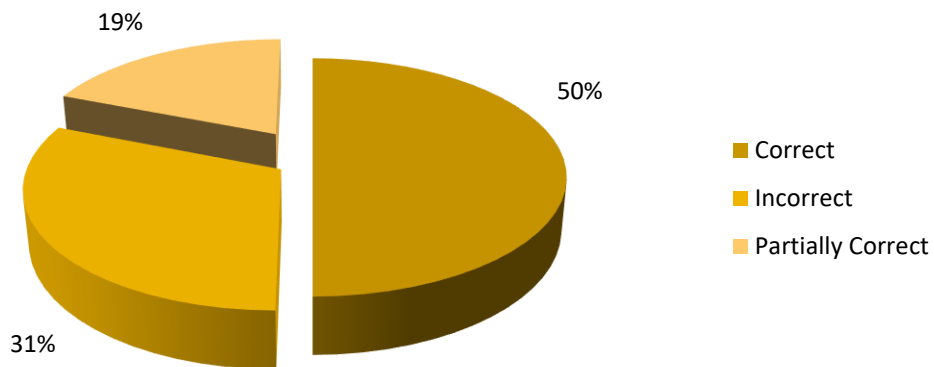
- ♦ What is 'Privileged Communication'? Give two examples.



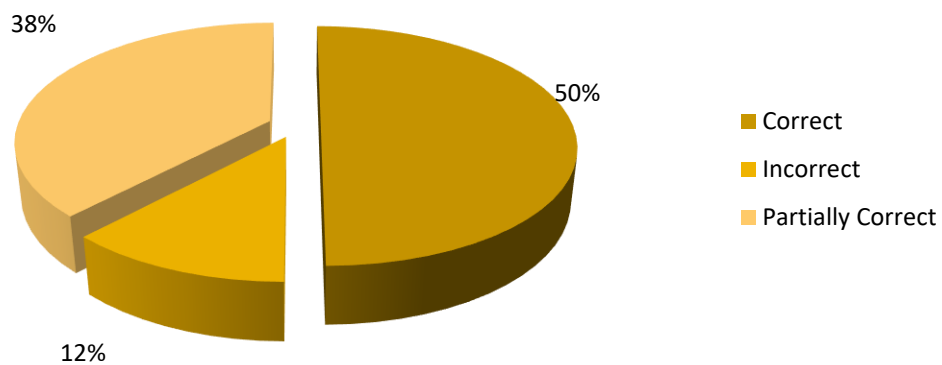
- ♦ Can conviction be based on sole testimony of a prosecution witness in a terrorism related case? What is the underlying principle?



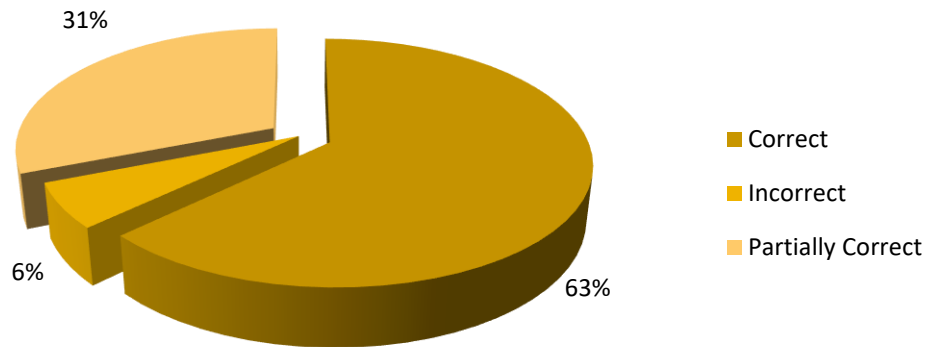
- ♦ Can conviction be based on circumstantial evidence alone in a terrorism related case? If so, what shall be the standard of evidence?



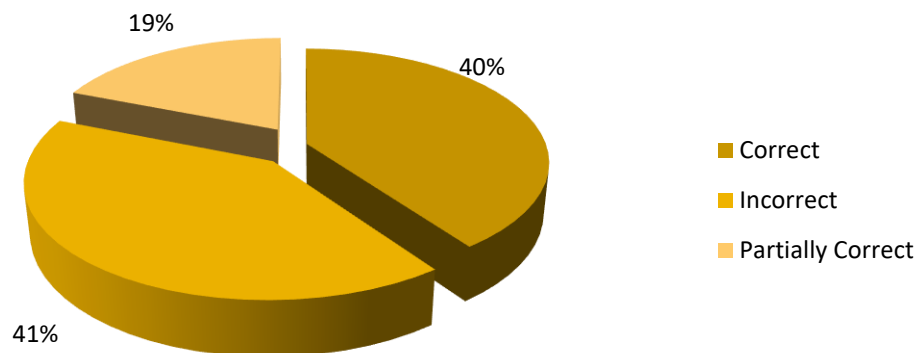
- ♦ How is an identification parade conducted?



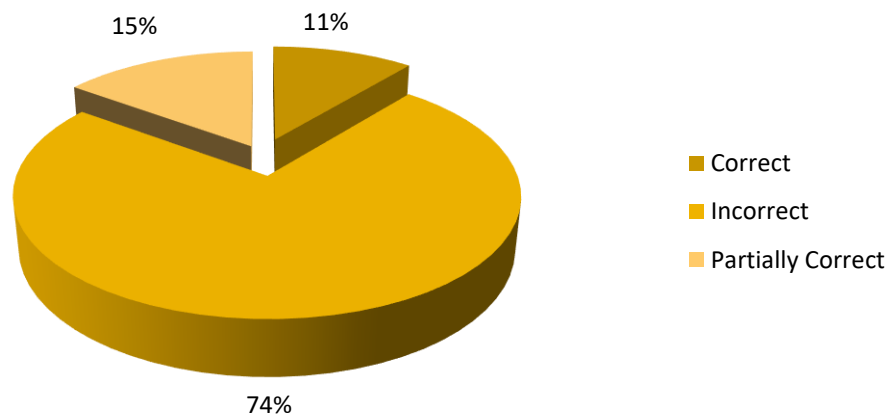
- ♦ What is the difference between an admission and a confession?



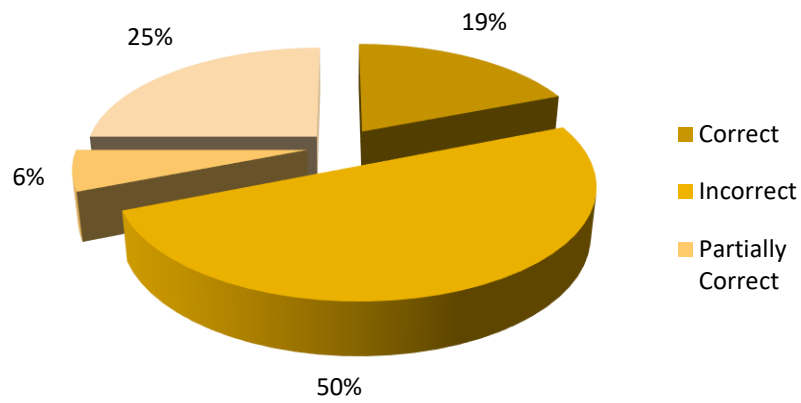
- ♦ Under what circumstances is a confession admissible or inadmissible in criminal cases? Is there any difference for cases being prosecuted in the Anti-Terrorism courts?



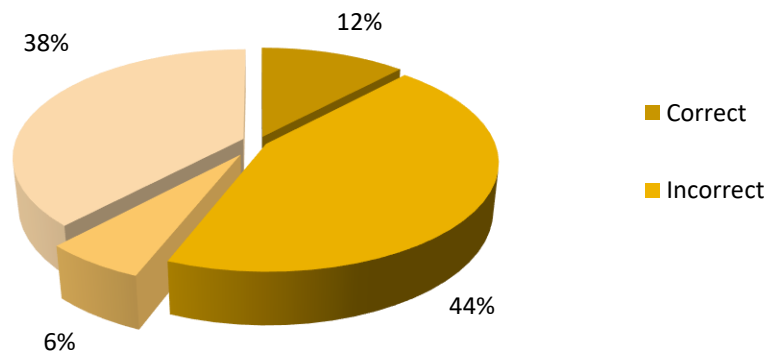
- ♦ What are the essential conditions on which a Dying Declaration is admitted in evidence?



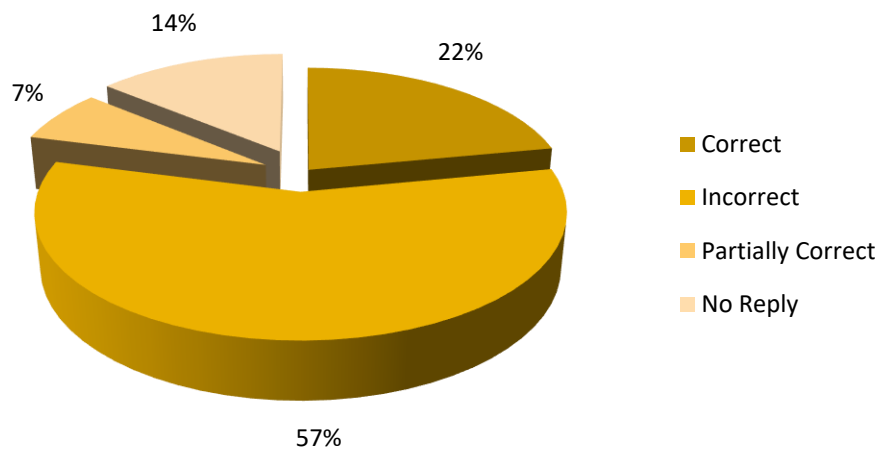
- ♦ When is evidence of bad character of the accused relevant in criminal cases?



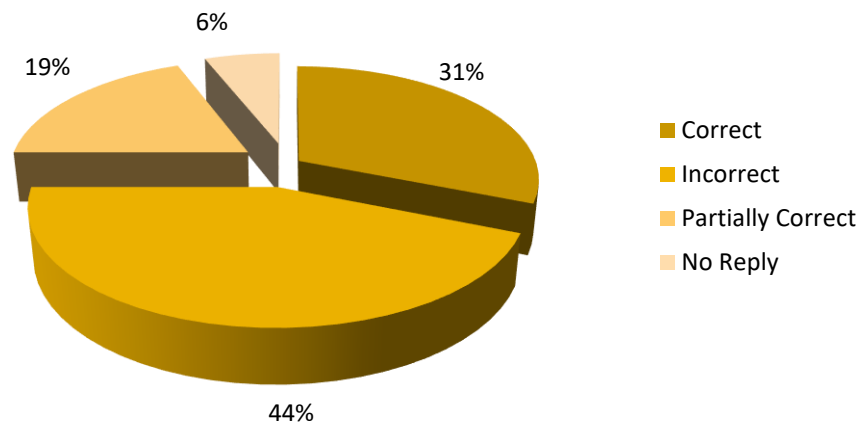
- ♦ Please state any exception to the general rule that oral evidence must be direct?



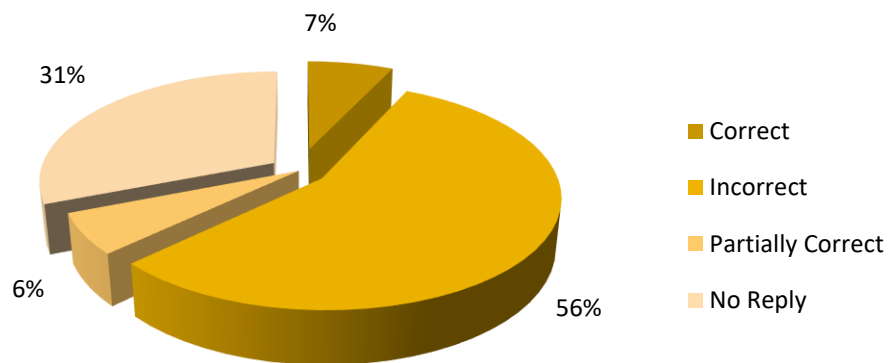
- ♦ Under what conditions secondary evidence is permissible in place of primary evidence?



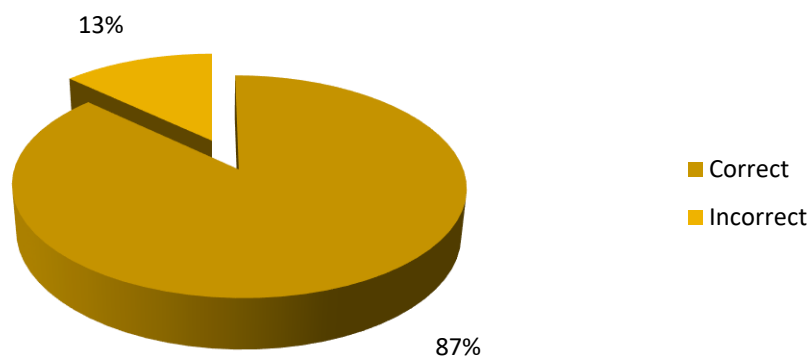
- ♦ How is expert opinion admissible in a trial in an Anti-Terrorism court? What is the provision of the law which regulates such an opinion?



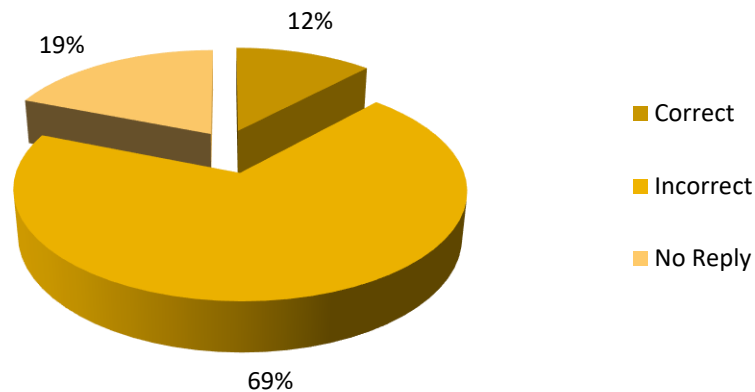
- ♦ Mention any exceptions to the general rule that the burden of proof lies on the party which asserts the affirmative?



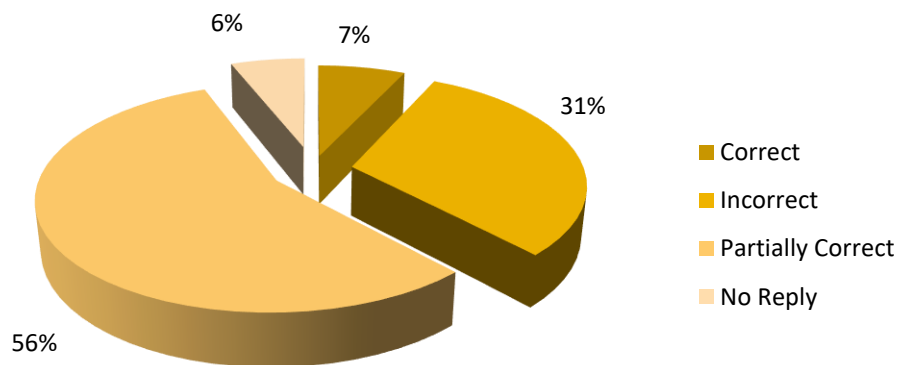
- ♦ When may a party cross-examine its own witness?



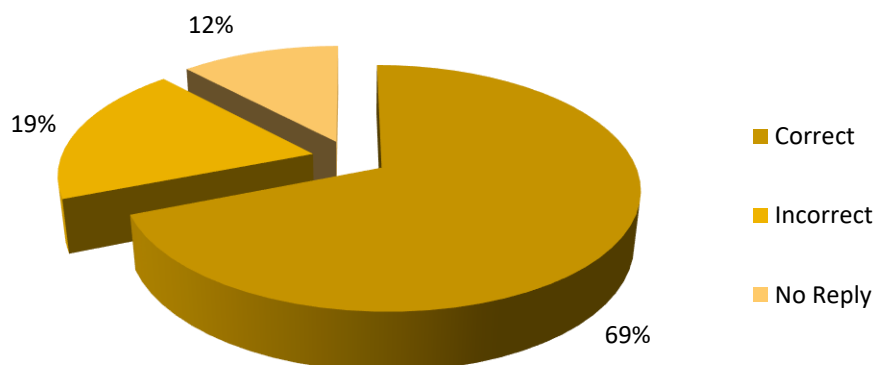
- ♦ Can leading questions be asked in examination-in-chief? If so, when?



- ♦ What do you understand by the terms 'Genes' and 'DNA'



- ♦ case of suicide bombing is being tried in an Anti-Terrorism court; there is no witness or direct evidence; however, the remnants of body of suspected suicide bomber have become available whereupon DNA analysis has been conducted to ascertain the identity of the suspect. Which provision of the Qanun-e-Shahadat Order would be relied upon by the Public Prosecutor to present the evidence before the court?



HIGHLIGHTS:

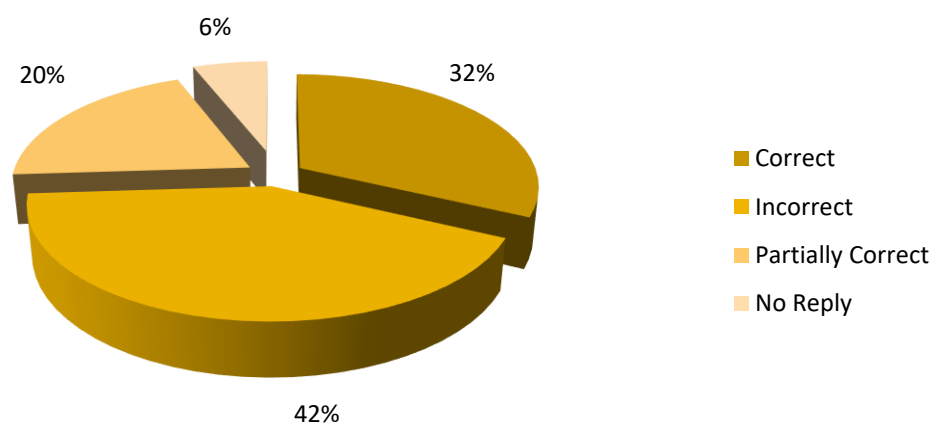
- ♦ Only 1/3rd of the prosecutors could be said as having satisfactory knowledge of the law of evidence.
- ♦ 18% of the prosecutors did not know that conviction could be based on sole testimony of a prosecution witness as the underlying principle was, evidence has to be weighed and not counted. In other words, it is the quality, and not the quantity, of evidence which is considered while adjudication. Does the lack of knowledge on this crucial point implying that these prosecutors might not have been pursuing those cases of terrorism diligently where only one witness was available?
- ♦ The lack of knowledge was further evident from the fact that one of the very senior prosecutors rose up during the assessment and addressed the entire gathering saying that conviction could not be based on sole testimony of a witness in any criminal justice system of the entire world let alone Pakistan.
- ♦ Similarly, only half of the prosecutors knew that conviction could be based on circumstantial evidence alone.
- ♦ Majority of the prosecutors did not know how confession by the accused should be recorded and made admissible in Anti-Terrorism cases. If so, one wonders, how they were guiding their counterparts in investigation branch of the KPK police on adducing the confession from the accused and then using the same before the trial courts.
- ♦ Overwhelming majority could not name all the essential components or requirements of the concept of dying declaration. That meant this important and irrefutable piece of evidence was being wasted in many cases where it was available or could be made available.
- ♦ Only 1 out of every 5 prosecutors knew when and how to use past criminal record/bad character of the accused during the trial proceedings.
- ♦ There was generally lack of clarity on how to proceed further where oral or primary evidence was not available.
- ♦ Majority of the prosecutors did not seem to know how burden of proof shifted from the party asserting it in certain cases. And if the prosecutors did not know with certainty which party had the burden of proof in which case, how could they be discharging their duties in the first place?
- ♦ As far as court proceedings are concerned, Examination-in-Chief is one of its integral parts. Only a fraction knew if and when can leading questions be asked during the same.
- ♦ 7% of the prosecutors had a fair idea what the terms 'DNA' and 'Genes' exactly stood for. Now that the collection of evidence was shifting from traditional to scientific means, this lack of

clarity meant our prosecutors were missing out on making use of this kind of evidence to secure convictions. This is all the more relevant in Anti-Terrorism cases, such as suicide attacks, in which the only available evidence is the body remnants wherefrom DNA can be extracted and analysed for identification of the perpetrator.

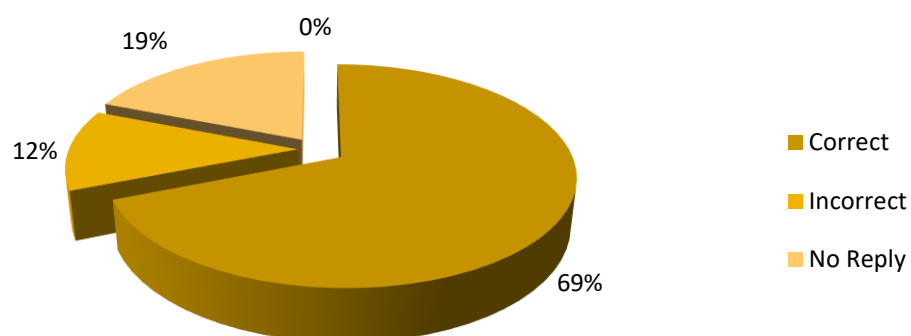
THE CODE OF CRIMINAL PROCEDURE, 1898

The criminal procedure is what governs the administration of criminal justice, from the arrest of an accused till the time he is acquitted, discharged or sentenced. Criminal Procedure Code does not necessarily define what a violation of the law is, but rather sets out how any given criminal case would be treated as it progresses through various stages of the criminal justice system. A prosecutor is therefore expected to have good command on Criminal Procedure so that he might guide, if not supervise, the entire process starting from the arrest of the accused to the final adjudication of the case. The results of assessment in this field of law were as follows:

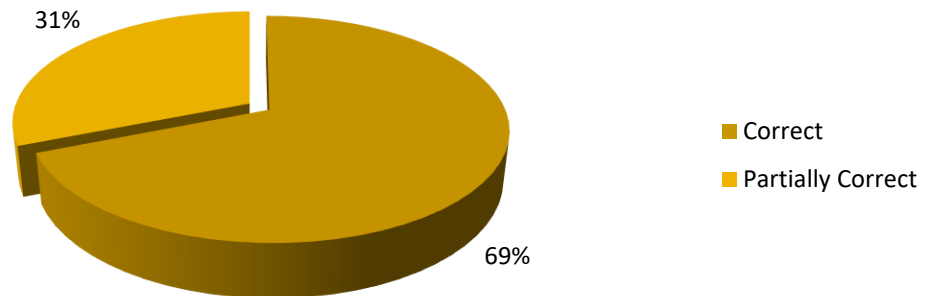
OVERALL RESULTS



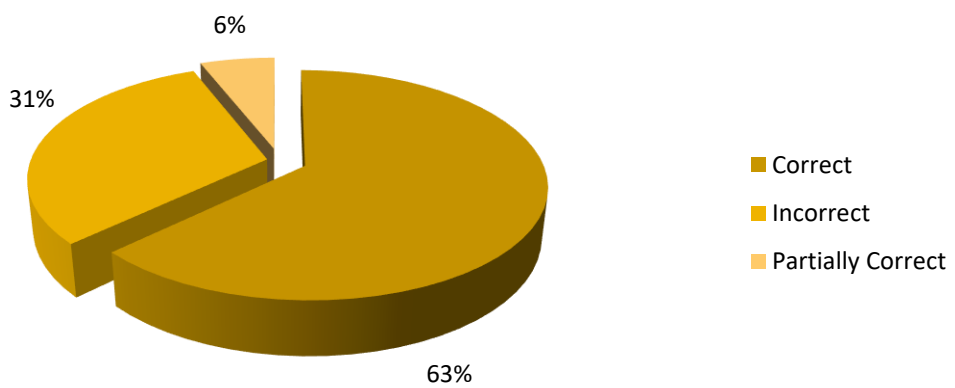
♦ Distinguish between Complaint and FIR.



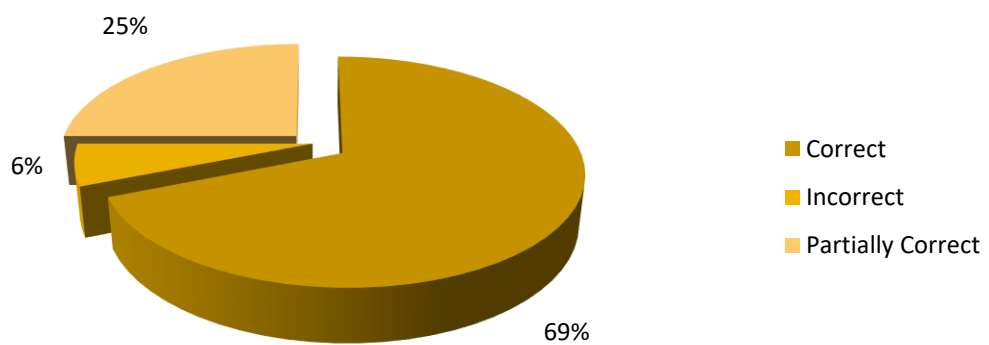
♦ Distinguish between Discharge and Acquittal.



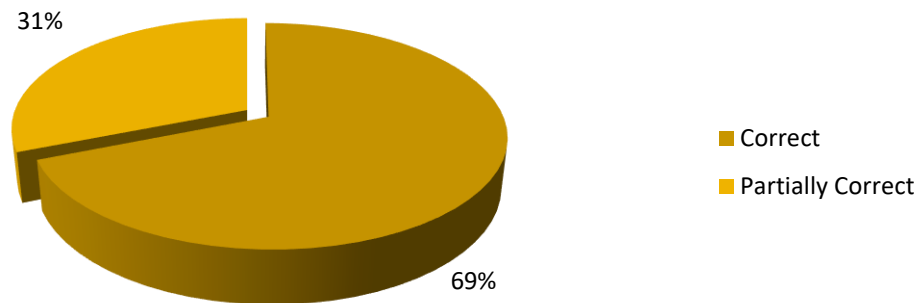
♦ Distinguish between Offence and Charge.



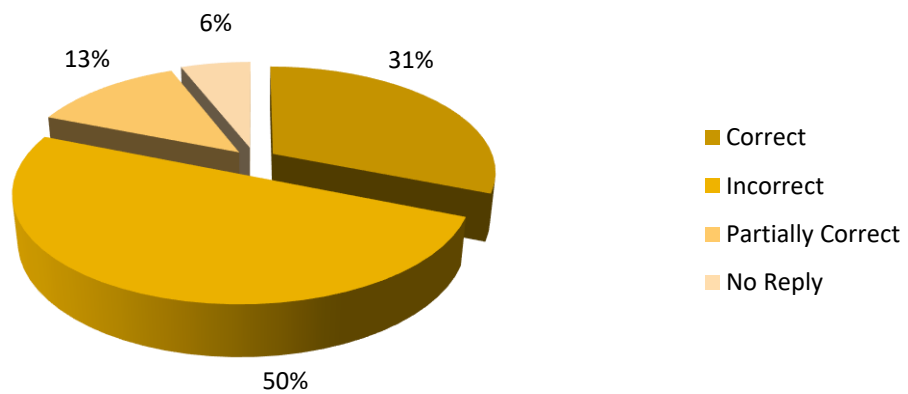
♦ Distinguish between Summon and Warrant.



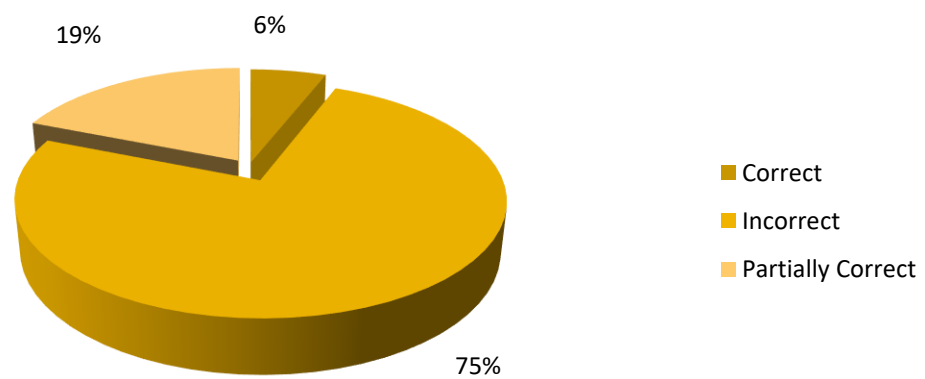
♦ Distinguish between Investigation and Inquiry.



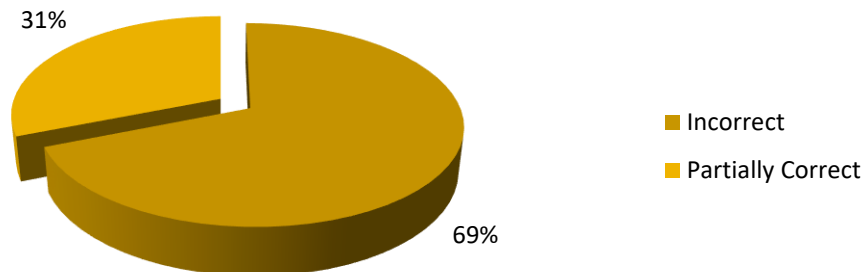
♦ What are the powers of a magistrate in respect of persons wrongfully confined?



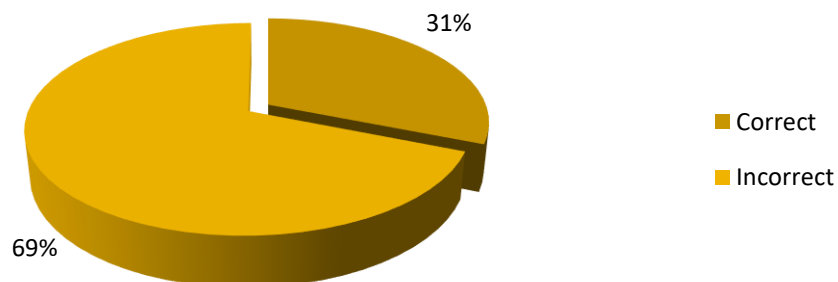
♦ What is the effect on the trial, if an irregularity is committed in the conduct of search under the Code of Criminal Procedure?



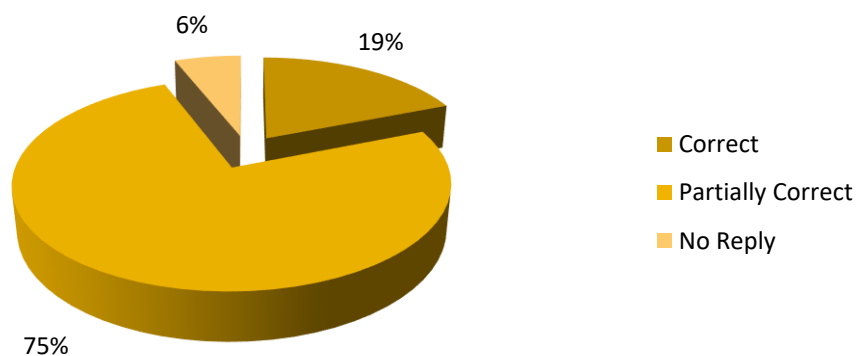
- ♦ How shall an officer-in-charge of a police station act when he receives information about an unnatural death within the limit of the police station?



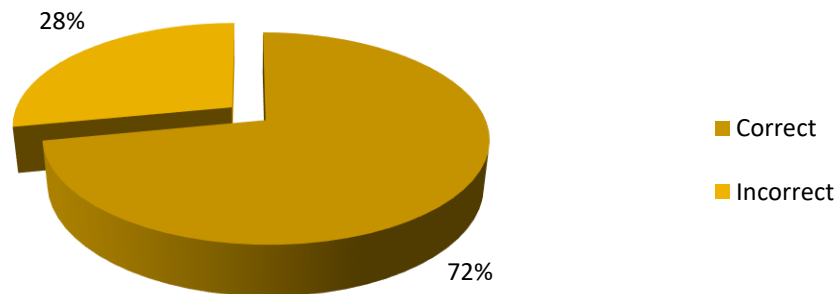
- ♦ An offence of theft was conducted in jurisdiction 'A'; the thief resides and possesses the stolen property in jurisdiction 'B'; the stolen property is passed on to a person knowing it to be stolen property in jurisdiction 'C'. In which jurisdiction would the offence be triable?



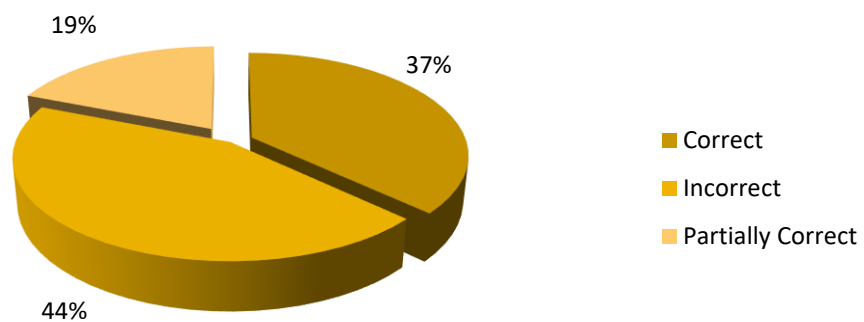
- ♦ Under what circumstances 'Sanction to Prosecute' is required?



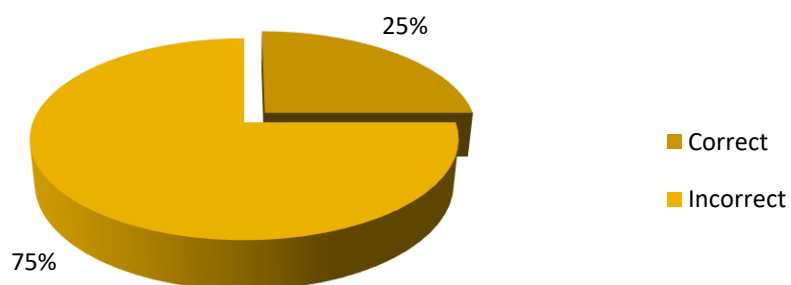
- ♦ What are the essential components/particulars of a Charge?



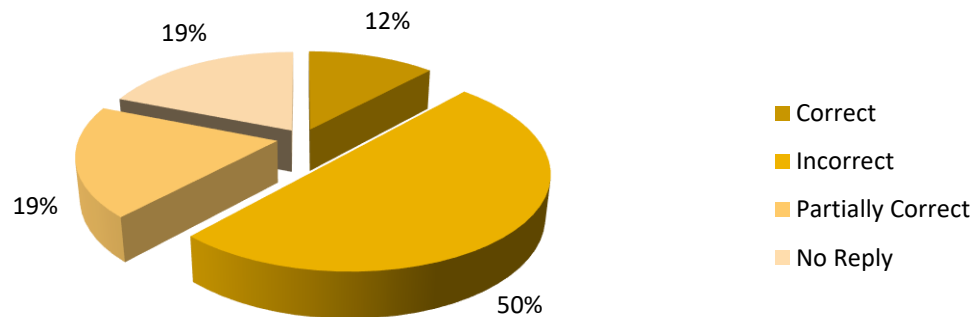
- ♦ A person 'A' was charged with one offence and tried; can he be convicted of another offence? If so, how?



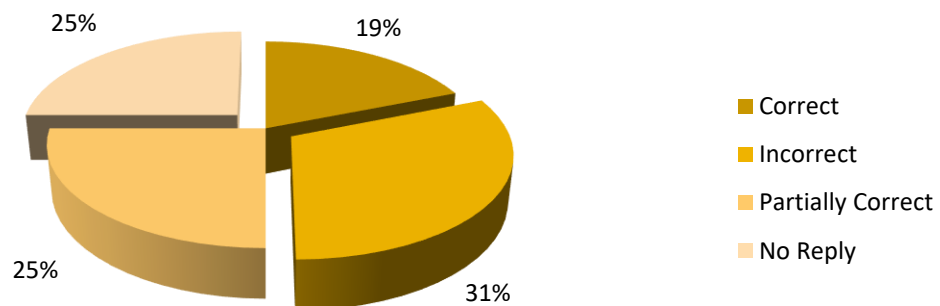
- ♦ What are the powers of a court when a witness refuses to give evidence on oath before it despite the court ordering him to do so?



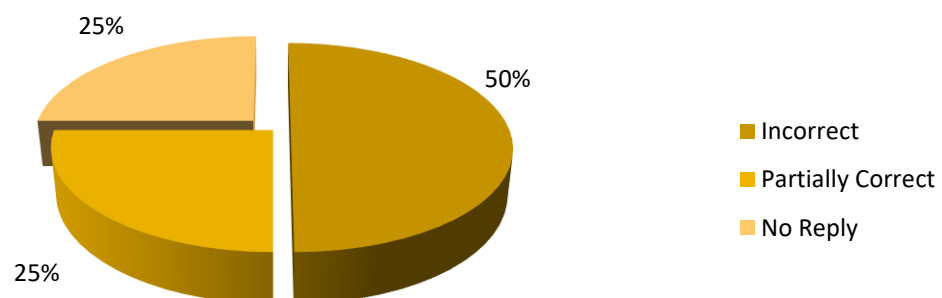
- ♦ What are the consequences of refusal by an accused to answer the questions put forth in examination by a court?



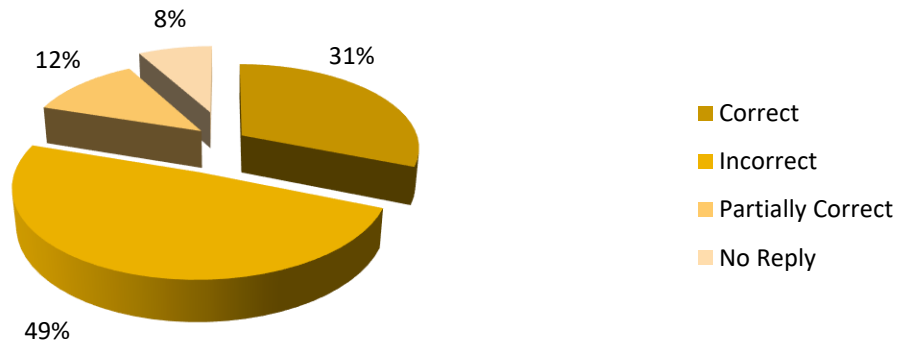
- ♦ Name at least 3 types of cases in which no appeal lies from the judgment of a court.



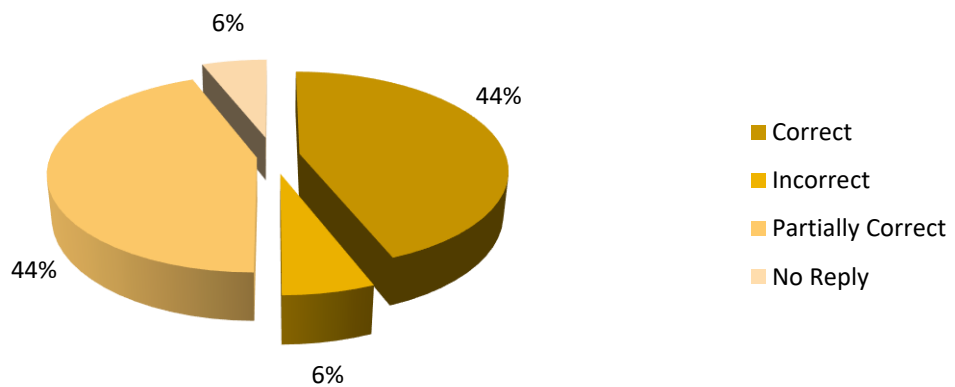
- ♦ What is the difference between the appellate jurisdiction and the revisional jurisdiction of a High Court?



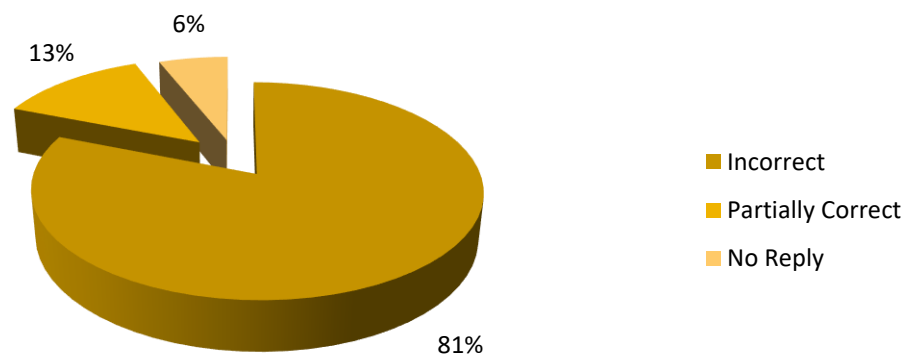
- ♦ What is the effect of withdrawal by the Public Prosecutor from prosecution of any person charged with an offence?



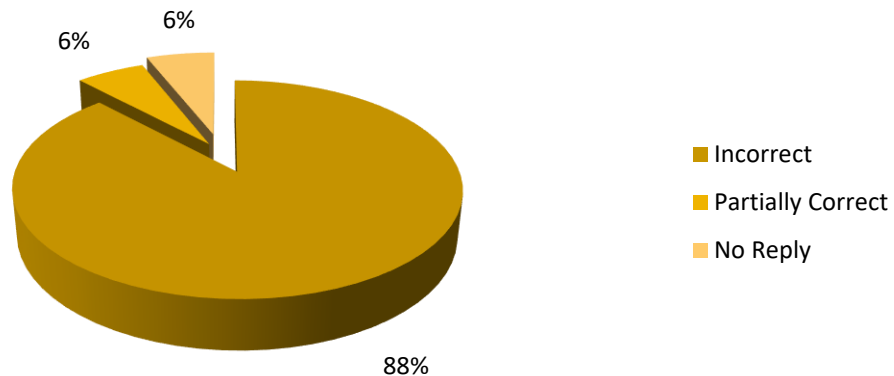
- ♦ Under what circumstances Bail before Arrest is allowed?



- ♦ What are the grounds on which application may be made to the High Court for the transfer of a case from a criminal court?



- ♦ Can the finding, sentence or order of a court of competent jurisdiction be reversed on the ground of an error or irregularity?



HIGHLIGHTS:

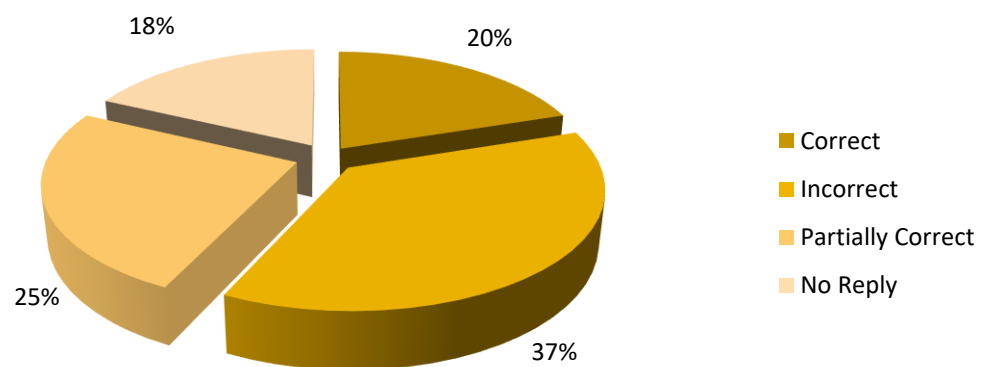
- ♦ As regards the overall results, 1 in 3 prosecutors can be said as having good grip on the criminal procedure.
- ♦ 75% of the prosecutors did not know what was the effect of an irregularity committed during the conduct of a search on a trial. How were they then be guiding their fellow policemen on how to conduct a search and how to get an irregularity remedied?
- ♦ The prosecutors were generally unaware of how relevant police officers should act if and when an unnatural death was reported to him.
- ♦ Only 31% could give correct answer on where to try an offence when its various elements had taken place in different jurisdictions.
- ♦ Majority did not know if a person being tried for one offence could be sentenced for another offence or not, and if so, how.
- ♦ A prosecutor, being a lawyer, is in fact an officer of the court—the one who is expected to assist the court in discharge of its functions. 3/4th of the prosecutors, however, did not know as basic matter as what were the powers of the court if a witness refused to give evidence before it. Similarly, only 12% knew how exactly to proceed further when an accused refused to answer a question put forth by the court.
- ♦ 31% prosecutors could not name any 3 cases in which no appeal lied from the judgment of a court.

- ♦ There was a general lack of clarity on what was the difference between the appellate and revisional jurisdictions of the High Court. If so, how were they looking after the interests of the State in cases where favorable decisions could not be obtained from the trial courts?
- ♦ The overwhelming majority did not know all the grounds on which they, or the accused, could seek transfer of case from one criminal court to another.
- ♦ Only a fraction knew if finding, sentence or order of a court could be reversed on grounds of an error or irregularity, or not.

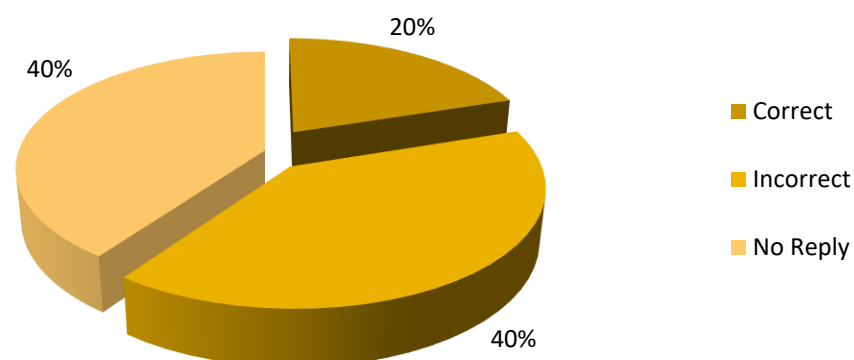
THE ANTI-TERRORISM ACT, 1997

The Anti-Terrorism Act, 1997 is a piece of special legislation that has been enacted in view of the prevalent security situation of the country to provide speedy trial for most heinous of the offences. No one else is expected to know better, and have command on, Anti-Terrorism Act than the prosecutors working in the ATCs. With this presumption, the assessment was conducted, and the results were as follows:

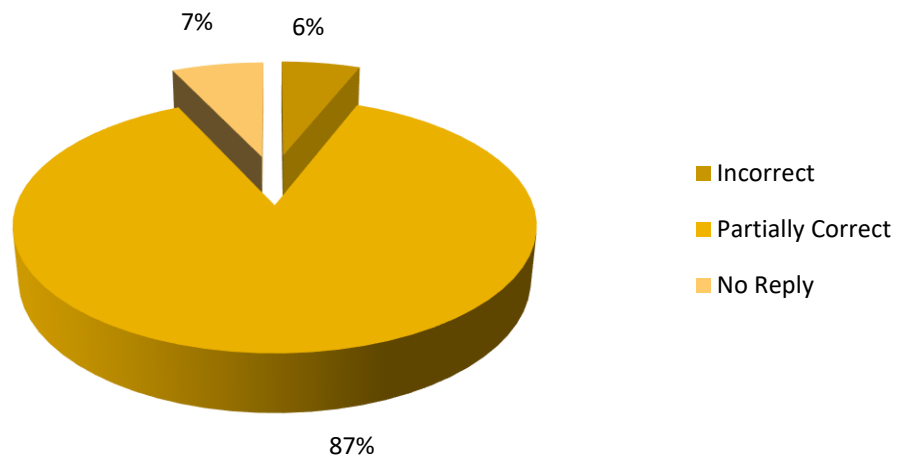
OVERALL RESULTS



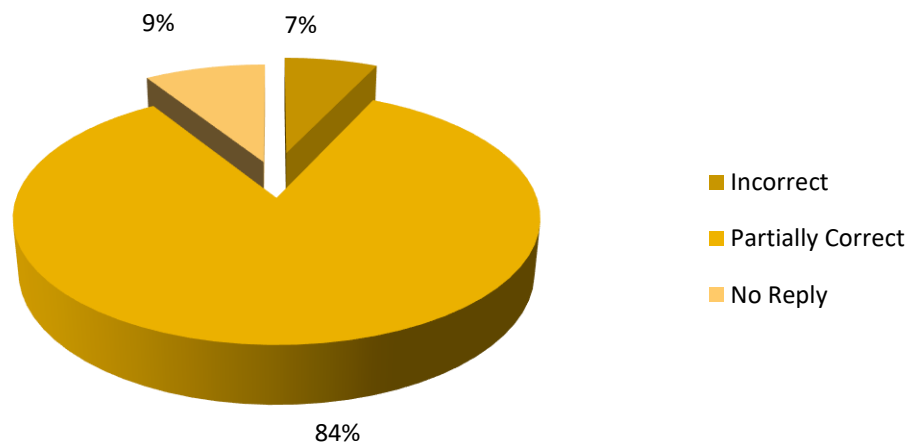
♦ Who is a 'proscribed person'?



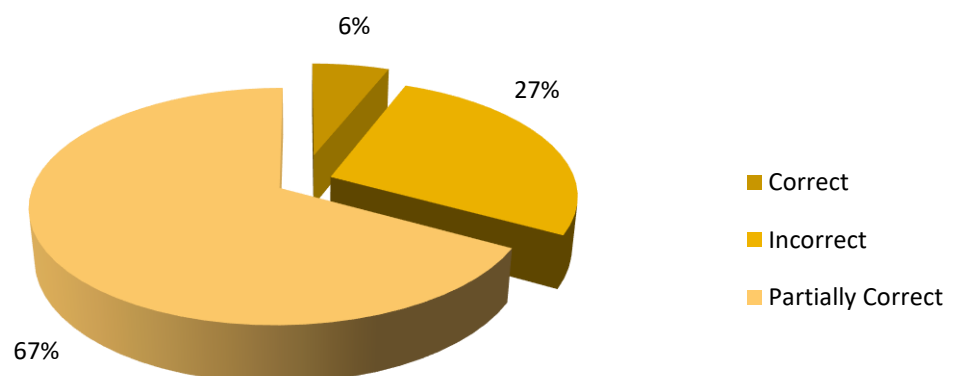
- ♦ Which are the actions which fall within the meaning of 'terrorism' in the Act?



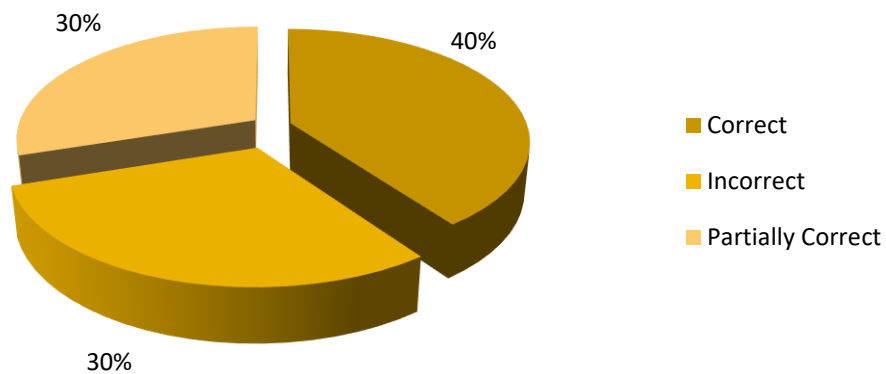
- ♦ Which are the actions which fall within the meaning of 'terrorism' in the Act?



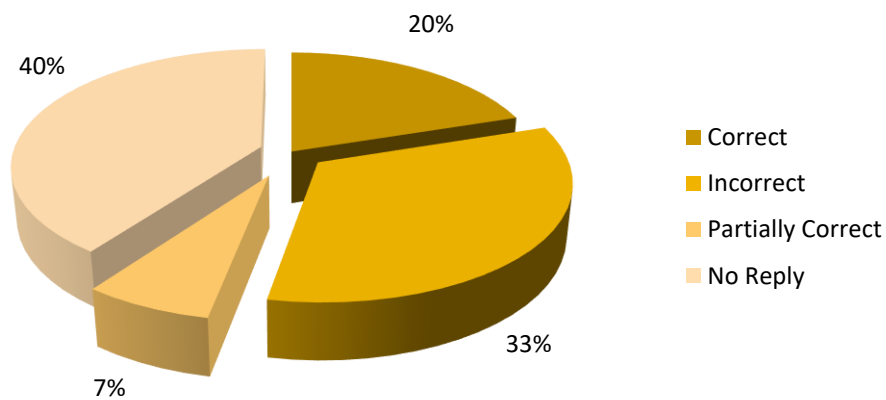
- ♦ What is an IED? Give 2 examples.



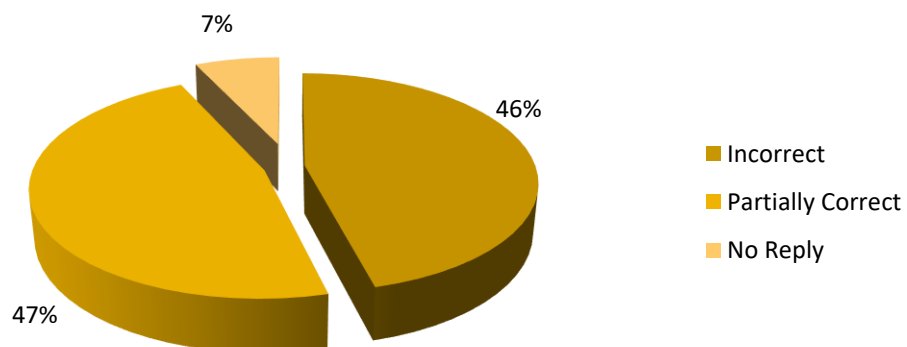
- ♦ What is the punishment provided for the offence of kidnapping for ransom or hostage-taking in the Act?



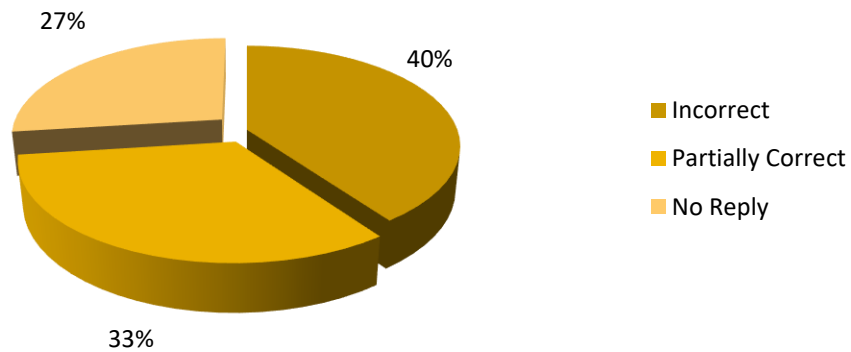
- ♦ What remedy is available to any person who is aggrieved by the order of placing him in the fourth Schedule?



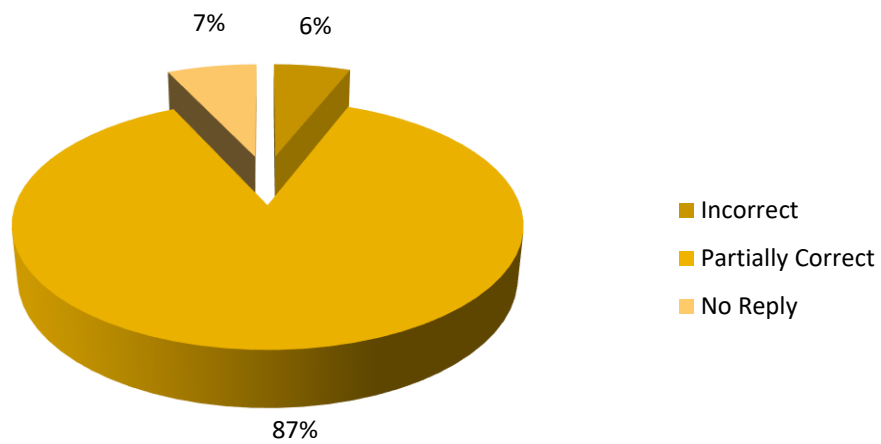
- ♦ For how long may the Government order preventive detention of any person who has been concerned in any offence under the Act for the purpose of inquiry? Who conducts such an inquiry?



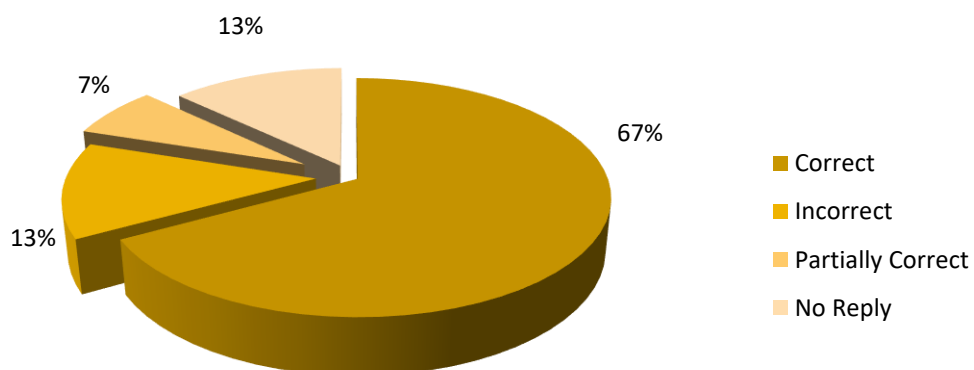
- Under what circumstances may the Government make an order to try a scheduled offence committed in any area be tried by an Anti-Terrorism court established in relation to any other area?



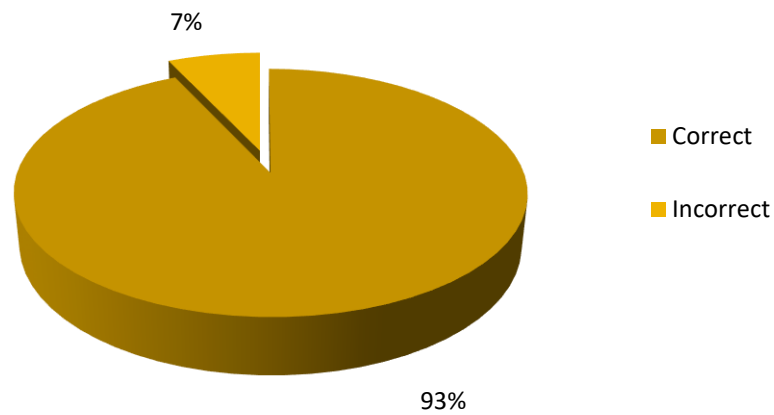
- What are the qualifications for being appointed the presiding officers of Anti-Terrorism courts? In other words, who can be appointed presiding officer of such court?



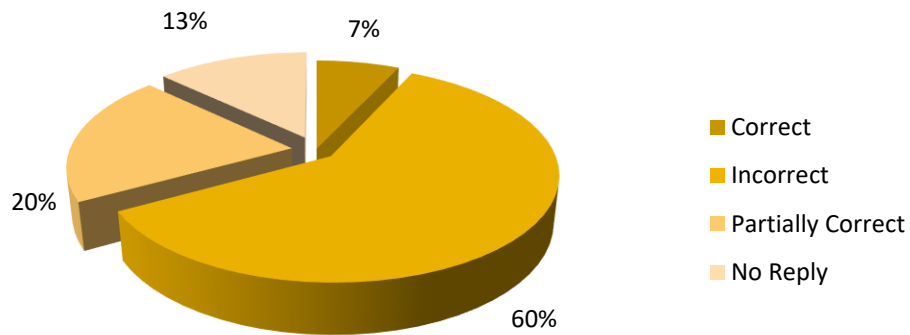
- Which section of the act deals with the appointment of Public Prosecutors to the ATC?



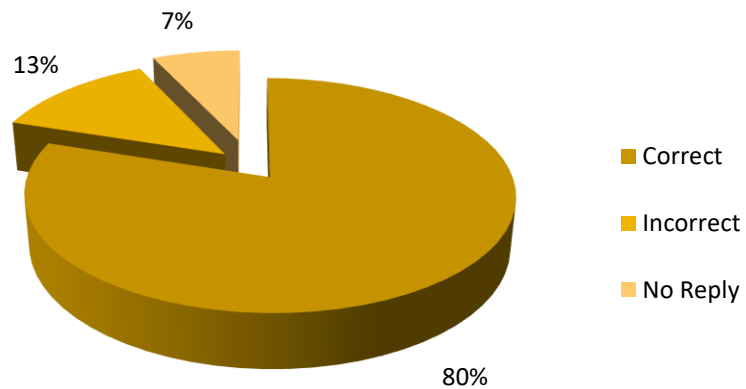
- ♦ What is the rank of investigating officer as specified in the Act?



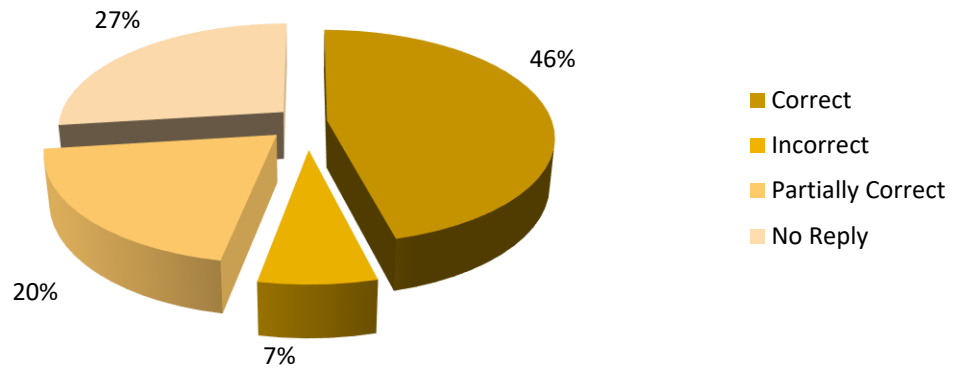
- ♦ What is the prescribed composition of JIT under the Act?



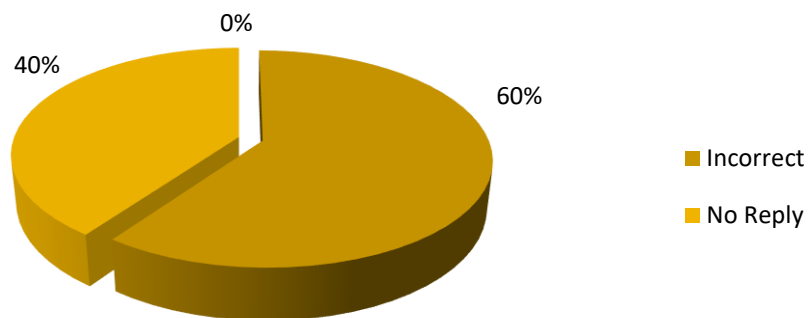
- ♦ What is the duration within which an investigating officer or the JIT is bound to complete the investigation?



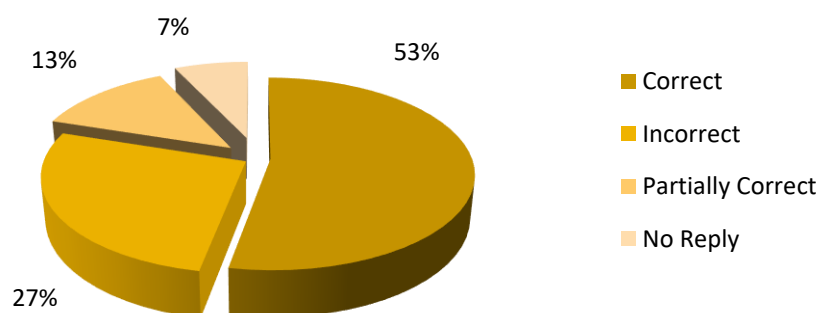
- ♦ What course of action has been provided for in the cases where the investigation is not completed within the prescribed period? What is the role of Public Prosecutor in such a case?



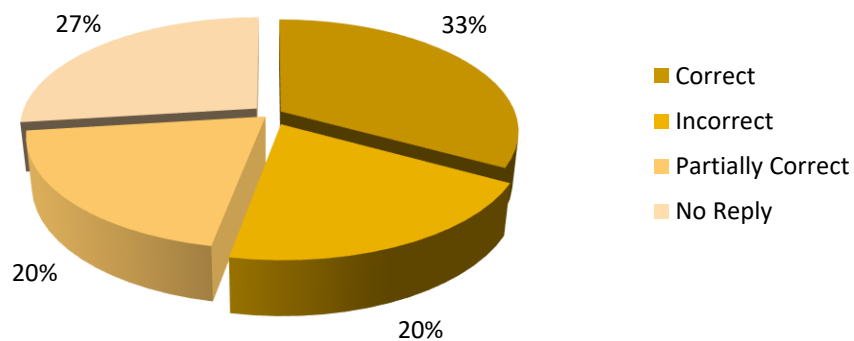
- ♦ What is the punishment provided for any default on the part of an investigating officer who delays investigation or submission of the due report?



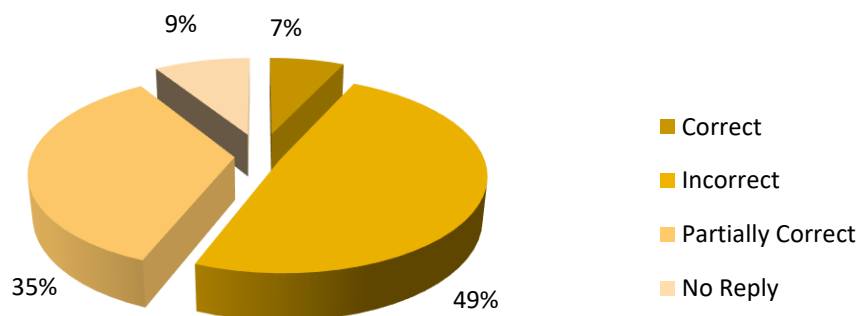
- ♦ Within how many days shall an Anti-Terrorism court decide a case? How many adjournments can the court give during the trial of a case?



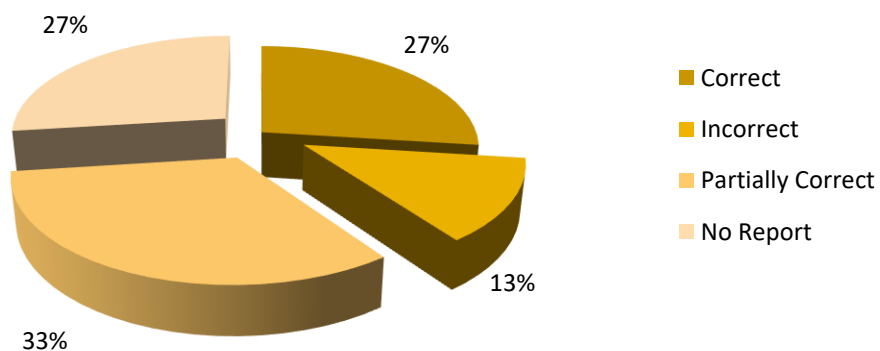
- ♦ What course of action is available to an Anti-Terrorism court if the defense counsel does not appear after two consecutive adjournments?



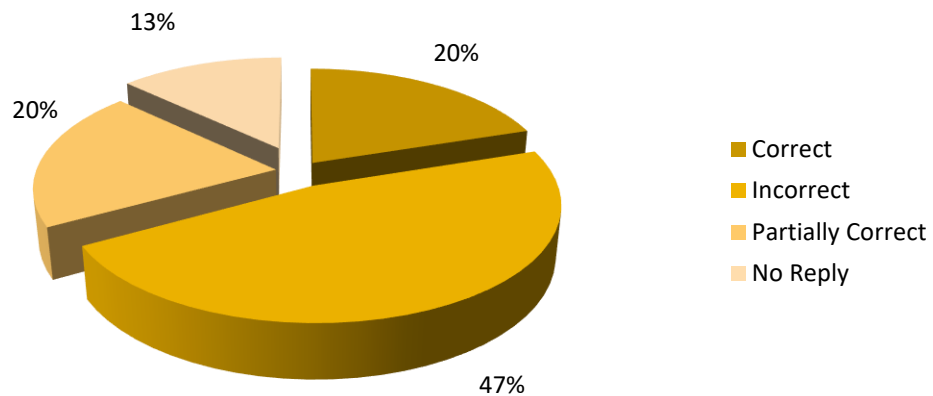
- ♦ When can an accused person be tried in his absence? What course of action shall be followed by the Anti-Terrorism Court in such a matter?



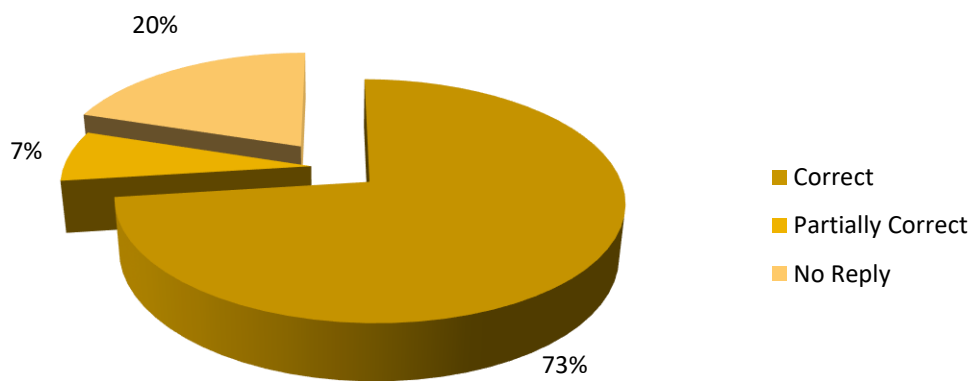
- ♦ What course of action shall be adopted by an Anti-Terrorism court if a person who has been convicted in his absence appears before the court, within 60 days of his conviction, and proves to the satisfaction of the court that he did not abscond or conceal himself for the purpose of avoiding the proceedings against him?



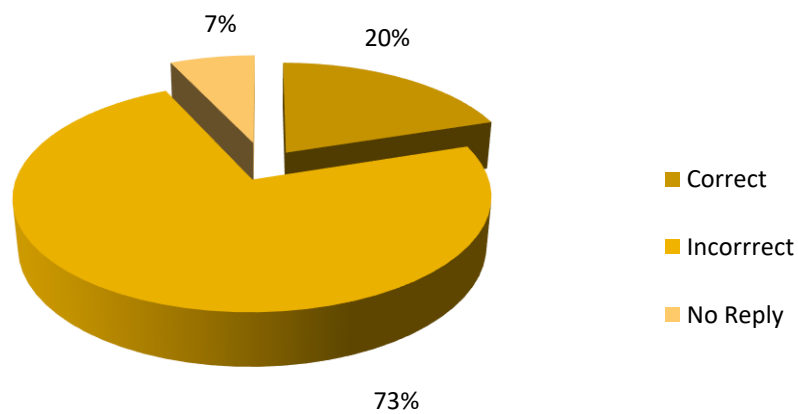
- ♦ Under what section of the Act a Public Prosecutor scrutinizes the case file before the trial of a case and why?



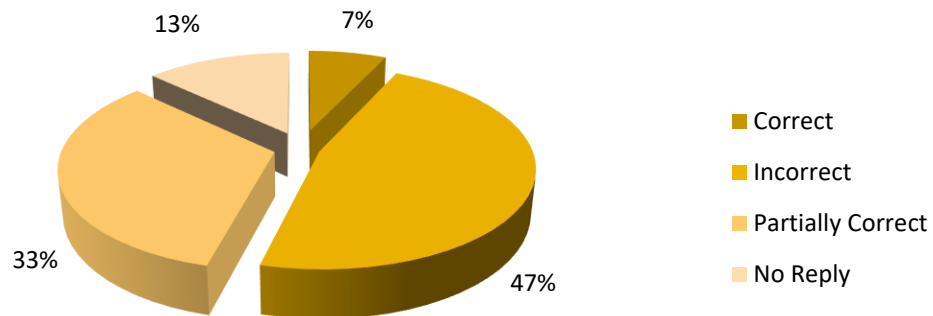
- ♦ What are the protections available for the safety of a Public Prosecutor concerned with Anti-Terrorism court for an offence under the Act?



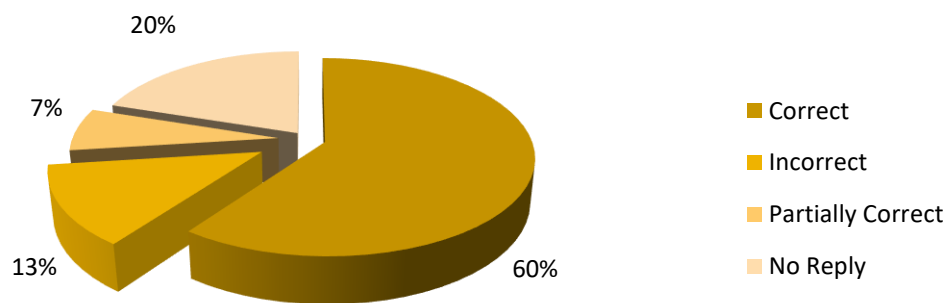
- ♦ Which officer is empowered to designate a crime scene a cordoned area for the purposes of investigation under the Act?



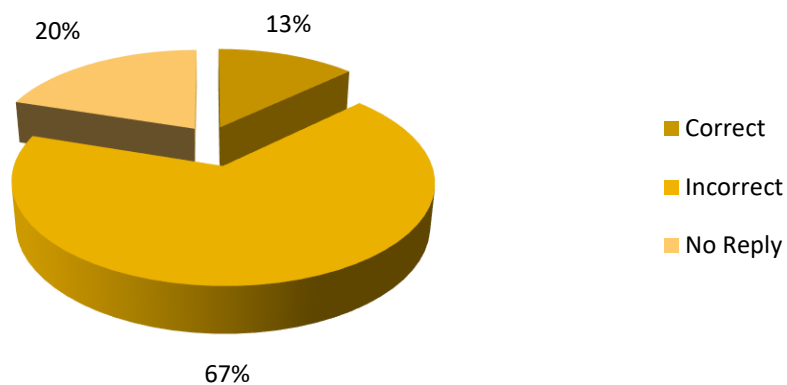
- ♦ What is the total period for which a person detained for the purposes of investigation may be remanded to police by the Anti-Terrorism court?



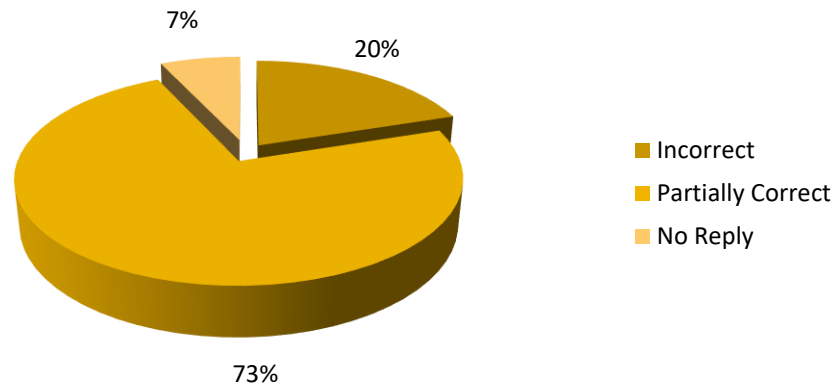
- ♦ 'A' is an investigating officer who believes that he would not be able to produce a person 'B', detained for investigation, before the concerned Anti-Terrorism court within the stipulated period of 24 hours; what should he do next?



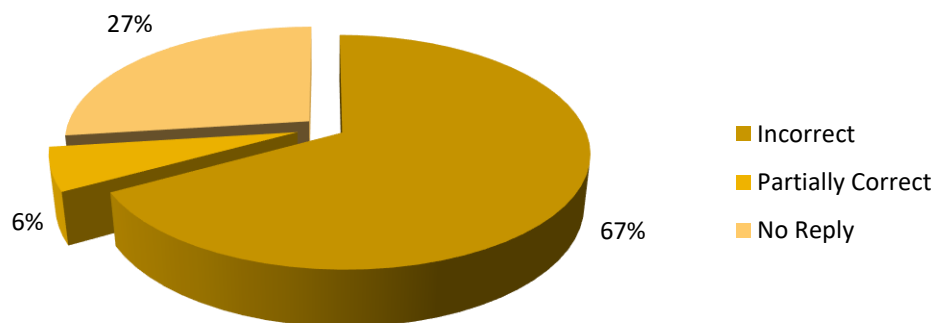
- ♦ What is the procedure of obtaining call detail record of a mobile phone being used by a person suspected to be linked with commission of an offence under the Act?



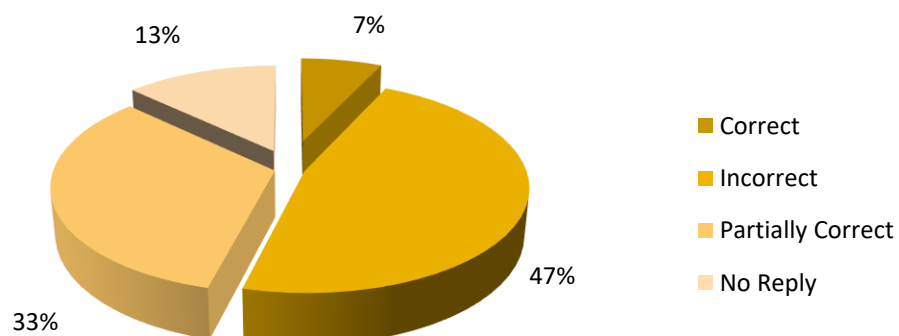
- ♦ Is any remission in a sentence allowed to a person who is convicted and sentenced for any offence under the Act?



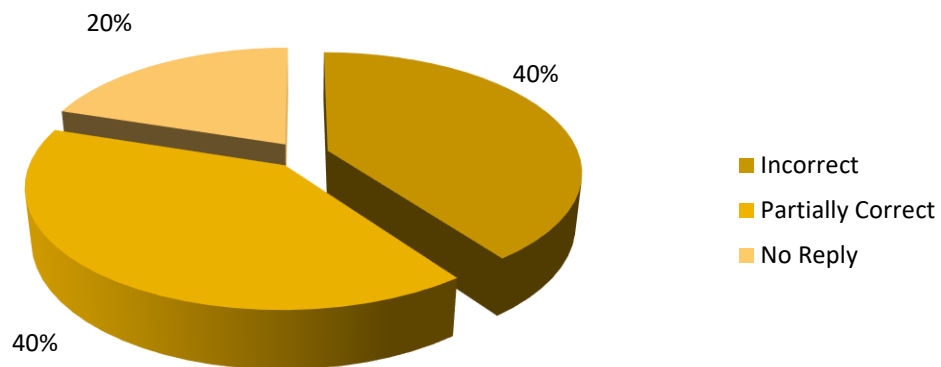
- ♦ 'A' is a person who is charged with the offence of providing training to 'B', a 30-year old man, and 'C', a 12-year old boy, in the making of explosives, without valid authorization of the competent authority. Who can be proceeded against under the Act?



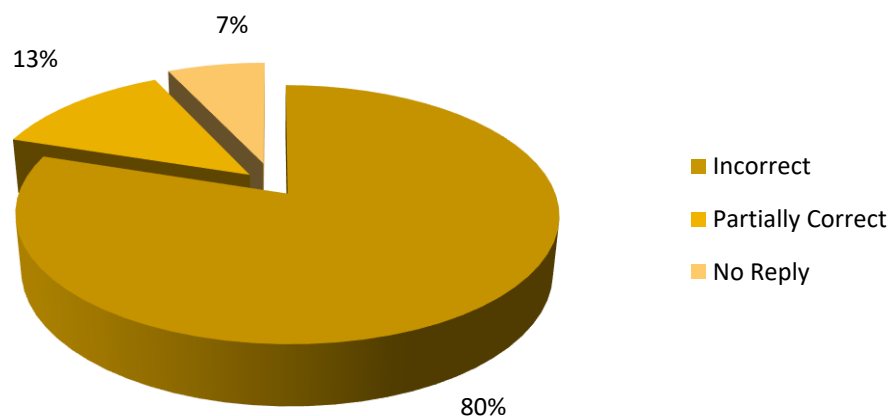
- ♦ Circumstantial evidence suggests that 'A' had committed an offence. Is 'B', the Public Prosecutor, allowed to present a confession made by the accused before a police officer during the course of investigation as an evidence against 'A'? Justify your answer.



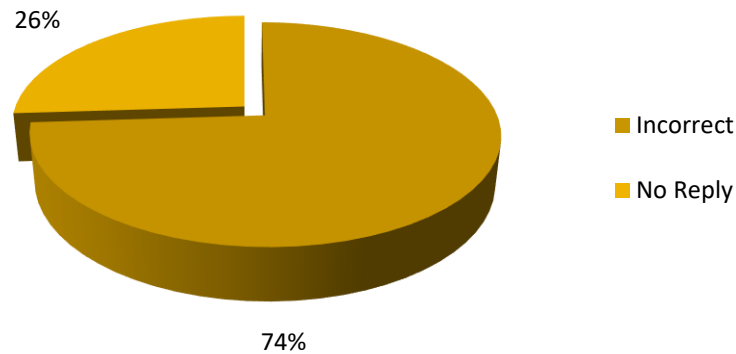
- ♦ A' and 'B' have been tried for an offence under the Act. 'A' is acquitted by the court whereas 'B' is sentenced to imprisonment for ten years. The Government is not happy with the order of acquittal of 'A'. 'C' is the legal heir of a victim and is also aggrieved by the order of acquittal of 'A'. 'D' is the relevant Public Prosecutor who has been instructed to file an appeal in the High Court against the order of acquittal of 'A'. 'B' also intends to challenge his sentence by way of appeal before the High Court. How many days are available to 'B' and 'D' for filing such appeals? Is 'C' also allowed to file an appeal under the Act or would he have to depend upon the Public Prosecutor for filing of the appeal?



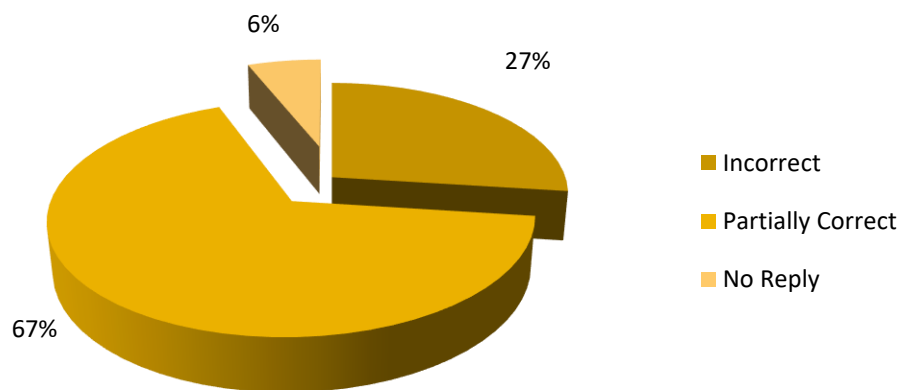
- ♦ What is the punishment which an Anti-Terrorism court may award to the delinquent officer if the court comes to the conclusion that the investigating officer has failed to carry out investigation or has failed to pursue the case properly?



- ♦ What is the punishment which may be awarded to an investigating officer for having dishonestly and falsely implicating a person in the commission of a scheduled offence? What is the precondition?



- ♦ What are the circumstances in which a case may be transferred from one Anti-Terrorism Court to another? What is the mode or procedure of such transfer?



HIGHLIGHTS

- ♦ As regards the overall results, only 1 out of 5 replies were correct.
- ♦ Majority of the prosecutors did not know, or could not provide exact definition of, 'Proscribed person' or 'Scheduled offence' under the Act.
- ♦ Unfortunately, or rather alarmingly, none of the prosecutors could provide exact definition of 'Terrorism' as provided for in the Act. Almost all of them tried to play around the generic definition of the phenomenon of terrorism.
- ♦ At a time when most of the havoc in terrorist attacks is being played by IEDs, only 6% of the prosecutors could state what actually an IED was!
- ♦

- ♦ Kidnapping for ransom falls within the ambit of the Act, yet only 40% could quote the punishment provided for the offence.
- ♦ 33% of the prosecutors did not know what was the remedy available to a person aggrieved by the order of placing him in Fourth Schedule.
- ♦ None knew for how long could a person be placed under 'Preventive detention' for the purposes of inquiry, and who conducted such an inquiry.
- ♦ Similarly, no one could state under what circumstances exactly could an offence committed in one area be tried in an Anti-Terrorism court established for another area, or a case might be transferred from one Anti-Terrorism court to another.
- ♦ Still worse, no one knew what were the qualifications for being appointed presiding officer of an Anti-Terrorism court.
- ♦ Only 7% of the prosecutors could tell exact composition of the JIT—an important mechanism of investigation provided for in the Act.
- ♦ More than half of the prosecutors did not know what course of action had been stated for the cases in which investigation was not completed within the due time, or what was their role in such an eventuality.
- ♦ Around half of the prosecutors only knew within how many days an Anti-Terrorism court should decide a case or how many adjournments an Anti-Terrorism court could give.
- ♦ Only a fraction had an idea under what circumstances a person could be tried in his absence and what was the course of action which the Anti-Terrorism court was supposed to follow in such cases. Similarly, not many prosecutors could tell what course of action was to be adopted by an Anti-Terrorism court if a person who had been convicted in his absence appeared before the court and proved that he had not absconded or been hiding.
- ♦ 4 out of 5 prosecutors did not know under what provision of the Act were they scrutinizing the case files.
- ♦ Safety of the prosecutors was a serious matter, and was of direct concern to them, yet many did not know what were the protections available for them under the Act. If they were unaware of something which was of direct and personal relevance for them, one can well imagine what was the level of understanding of other matters!
- ♦ Only 20% of the prosecutors knew which officer of the police could designate crime scene a cordoned area for the purposes of investigation.

- ♦ While 7% of the prosecutors knew for how many days a person detained for investigation could be remanded to police, one wonders how the prosecutors were applying for the remands then.
- ♦ Call Detail Record constitutes an important and irrefutable piece of evidence, yet only 13% of the prosecutors knew what was the exact procedure of getting the record. If so, how were they helping, or guiding, the investigators in collection of such an incriminating piece of evidence?
- ♦ Overwhelming majority did not know if remissions were available for the juveniles or how the law dealt with them. This ignorance may be seen in the backdrop where many of the terrorist organizations were using juveniles for realizing their objectives.
- ♦ The Anti-Terrorism Act was a unique law in the criminal justice system of Pakistan where a confession before a police officer was also admissible as evidence before the court, yet only 7% of the prosecutors knew what was the procedure for making such an important evidence admissible.
- ♦ None understood the appeals' regime under the Act. One wonders how the prosecutors were guiding the State or other concerned parties then on how and when to file appeals in the cases where either of the parties was not satisfied by the judgment of the court.
- ♦ No one knew what was the punishment provided for any default on the part of investigating officers which could lead to delay in the completion of investigation or submission of report.
- ♦ None of the prosecutors knew what were the punishments available for the police officers who failed to undertake investigation or pursue a case properly; nor could they state punishment for dishonestly or falsely implicating a person in the commission of an offence.

FOCUS GROUP DISCUSSIONS

The entire group of prosecutors was divided into three subgroups with 5-6 prosecutors placed in each subgroup. Discussions were held around following themes:

1. What are the training needs of prosecutors/areas of improvement?
2. What are the three most important needs, in your opinion, and why?
3. Recommendations/way forward.

The gist of the discussions was as follows:

GROUP 1

- ♦ The discussants were of the opinion that the prosecutors should be trained in the terrorism related legislation namely, the Anti-Terrorism Act, 1997; the Code of Criminal Procedure, 1898; the Qanun-e-Shahadat Order, 1984; the Pakistan Penal Code, 1860; the Investigation of Fair Trial Act, 2013; the Pakistan Arms Ordinance, 1965; the Khyber Pakhtunkhwa Arms Act, 2013; and the Explosive Substances Act, 1908. In other words, they shall be trained in substantive as well as procedural laws. It was further said that the prosecutors should know not only the exact definitions of all the offences they dealt with but also all the components which constituted such offences.
- ♦ Referring to the Qanun-e-Shahadat Order, it was said that unless the prosecutors had good grip on the law, they could not effectively conduct the proceedings in the courts; nor could they raise objections as and when required. The knowledge of the Qanun-e-Shahadat Order in fact enabled them to understand what evidence was to be collected, how it should be collected, and how it should be used in the courts.
- ♦ The prosecutors shall also be given extensive training in making use of all kinds of forensic evidence for the purposes of prosecution.
- ♦ The discussants raised concerns as to their security too. They were dealing with most hardened of the criminals—the terrorists—yet didn't have any security worth the name. Moreover, since they mostly travelled through ordinary means/public transport, they were quite vulnerable on that count too.
- ♦ It was further suggested that every ATC should have at least three prosecutors to divide amongst themselves various jobs such as court work, scrutiny of the case files, coordination, and legal research, etc. This measure would increase the effectiveness of the prosecutors, on



one hand and on the other, would not let the proceedings of the courts get affected if one of them proceeded on a leave as the replacement would be readily available. When the replacement came from amongst the prosecutors working in the regular courts, as was the current practice, since he had not seen the case file before or get a chance to know the facts of the case, there was likelihood that the proceedings would go wrong for the prosecution, the Group argued.

- ♦ The prosecutors shall also be taught how to conduct legal research. They shall thus be able to refer to case law, where required, and know what principal was established in which decision.
- ♦ The Group insisted that only terrorist cases shall be referred to the ATCs. A prosecutor shall therefore also know how to conduct scrutiny of the cases, and be able to distinguish terrorist cases from other forms of heinous offences.
- ♦ They also pointed out that the prosecutors did not even have offices of their own. They therefore could not carry out conferences with the witnesses or investigating officers; nor could they prepare their cases in a peaceful and secluded environment. For the same reason, the coordination with the police got affected as they did not have a place to sit and discuss the cases together.
- ♦ The prosecutors needed to be trained in advocacy and case management skills also. These skills could be improved by making use of mock trials during the trainings. A mock trial would also help the authorities see if the prosecutor had learnt anything or not.
- ♦ It was finally suggested that the prosecutors should be trained on the pattern of officers who passed the CSS exams. If nothing else, they should at least be given specialized training in conducting prosecution in the ATCs. It was argued that since the prosecutors had to face different sorts of pressures in court, e.g. the pressure exerted by leading lawyers hired by the criminals, the pressure from the court environment, and the pressure due to the presence of media, they could face those pressures successfully only when they had been provided appropriate training and grooming.

GROUP 2

- ♦ The Group was of the view that most importantly, the prosecutors should be trained in case analysis as it took place at various stages. First of all, it takes place when an FIR is registered. A copy of the same is also shared with the magistrate as well as the prosecutor at this stage. The prosecutor sees if the right section of law has been quoted or not, and if not, is ought to pass necessary instructions to the police. Analysis is also conducted at the stage where the prosecutors seek remand from the court on the pretext that if the same is given, the police might be able to secure more evidence. The third analysis takes place after the conclusion of investigation. The prosecutor sees what deficiencies, if any, are still there, and may accordingly give directions or guidance to the investigators to address the same. The prosecutor also ensures if there is any evidence available and, where available, whether it is sufficient for prosecuting the accused or not. Finally, he confirms there is no mala fide

involved. If the prosecutor is not satisfied as to the sufficiency of evidence, he might recommend discharge, which is still better option than referring a weak case for trial as that might lead to acquittal.

- ♦ Management of cases is second area which needs to be attended to, but this may be considered part of case analysis training.
- ♦ Presentation skills, i.e. how to present a case before an ATC, need to be imparted/improved too.
- ♦ The prosecutors shall also be well versed as to how to conduct scrutiny of the cases.
- ♦ Training in money laundering may also be considered as prosecutors are not trained in this aspect at all. This is despite the fact that money laundering has, over the time, become an integral part of terrorist acts as much of the financing comes through this mechanism.
- ♦ Cybercrime is another important yet hitherto ignored area requiring training.
- ♦ Referring to the trial advocacy skills, the discussants thought, training should be imparted immediately after the recruitment. Here the prosecutor who was making the presentation on behalf of the Group quoted his own example and highlighted the fact that he was recruited in 2008, but first ever training of any sort was imparted to him in 2012.
- ♦ It was reminded that the advocacy skills included how to conduct an opening speech, the examination-in-chief, cross examination, arguments, and finally the closing speech thereby giving the final arguments and winding up the case.
- ♦ The need of training in forensic evidence was also highlighted. It was rather said that training should be imparted on all forms of modern evidence.
- ♦ The prosecutors should be trained in management skills too as they happened to be senior prosecutors and, at times, were also appointed as district prosecutors where they had to manage work load of entire districts, it was argued.
- ♦ Training in Police-Prosecution coordination/liaison might also be given as the Police considered itself a force and thus superior to the prosecutors; the prosecutors, on the other hand, considered themselves superior on account of their better legal knowledge. This training might entail giving them joint tasks/exercises.

GROUP 3

- ♦ The discussants believed that the need of personality grooming of the prosecutors was first and foremost. If a prosecutor was very learned, yet did not have communication skills or an effective personality, his knowledge might then be of no use, and he would fail in his most important duty of assisting the courts, they argued.

- ♦ The importance of command over legal knowledge did not need a mention. Even the judges would insist on being told relevant legal principles, which was only possible if the prosecutors had extensive, appropriate and relevant legal knowledge.
- ♦ The need of applying management skills in one's life could not be overemphasized. The prosecutors should therefore also be trained in the same. This would also enable the prosecutors to manage their individual cases outside as well inside the courts.
- ♦ Training in advocacy skills was suggested at length, more so because it also entailed how to get the attention of, and establish eye contact with, the judge, and to convince him within the given short span of time.
- ♦ Imparting technical/practical training in forensics came under discussion too. It was said that the prosecutors should visit the Punjab Forensic Science Agency and its various sections, and learn how DNA analysis, finger prints analysis and the like was being carried out.
- ♦ It was insisted that the prosecutors should be given training in Police-Prosecution coordination too, as the former had primarily the responsibility of preparing a case whereas the latter was required to present it before the court. Unless there was an effective coordination between them, convictions could not be secured. Furthermore, the prosecutors should be trained to perform their supervisory role—as envisaged in the relevant law—and oversee the process of investigation. Combined training of both the departments would bear more fruits than giving them theoretical knowledge separately, it was argued.
- ♦ In conclusion, it was suggested that the prosecutors should also be given at least 6-month training on the pattern of the training imparted at the Civil Services Academy. It should be followed by specialized training in conducting prosecution in the ATCs, the discussants recommended.

CONCLUSIONS

- ♦ During the course of research study, available literature was reviewed; questionnaires were filled; Focus Group Discussions were arranged; Key Informant Interviews were held; meetings and discussions with the stakeholders were carried out; and field visits to the relevant departments were conducted. Most important activity undertaken was though the assessment of the professional knowledge and competence of the prosecutors attached with the ATCs using carefully designed questionnaires. The assessment took place in Peshawar on October 12, 2017 and was attended by 16 prosecutors from all over the KPK. As regards the profile of the participants, whereas the youngest prosecutor was 35 years of age, the oldest was 55. Half of the lawyers were within the age group of 46-50 years. Needless to say here, all the prosecutors were law graduates; and one had an LLM degree as well. 8 had done master's in other subjects too. Most of them had worked as lawyers for considerable period of time before having taken over prosecutorial positions in public sector. Similarly, all had been imparted 8-week or more training at Lahore in carrying out prosecutions in the ATCs; and majority of the prosecutors have had other short term trainings in associated matters too. 4 had done Shariah course from International Islamic University Islamabad and as many had received trainings from abroad. As regards the work experience, around half of the trained prosecutors had not worked with the ATCs yet; others had work experience mostly ranging from 2 to 9 years.
- ♦ The prosecutors did not do very well in the General Knowledge assessment. In the given security scenario, most of them did not know who was the Minister for Interior of Pakistan. Similarly, only a few were able to name the Foreign Minister. There was lack of clarity on who actually were the Rohingyas too. Furthermore, at a time when CPEC had become a buzz word, there were some who could not name the term of which it was the acronym. Pakistan had won the cricket champions trophy in not too distant past. It was a big news for the nation, all over the media, as even though international cricket was not being played in Pakistan for many years then, its team had been able to defeat leading teams of the world and become the champion, yet not many could name its captain. Furthermore, hardly anyone knew what was the tenure of posting of the Chief of Army Staff in Pakistan. Many prosecutors might say current affairs do not interest them or that they do not get time to follow such matters in media. This might be accepted for the sake of argument but then majority of them did not even know how many administrative divisions were there in the KPK.
- ♦ General understanding of the phenomenon of terrorism was also tested. It was believed that since they dealt with various aspects of terrorism, on almost daily basis, they would have reasonably good understanding of the phenomenon. It was also thought that unless they had such an understanding, they could not perform their jobs fully well. However, majority of them could not state the underlying narrative of the terrorists, which is, in many ways, the driving force behind the entire phenomenon. Still worse, at a time when it is being discussed at all relevant forums, many did not seem to have even heard the word 'narrative' or know its

meaning. When asked about the narrative of the terrorists, more than half responded by naming the terrorist organisations operating in the country instead.

- ♦ The Constitution happens to be the supreme law of the land, and all legislation flows out of it, directly or indirectly. Legal practitioners are therefore expected to know at least its broad outline, if not more. However, the understanding of the Constitution did not turn out to be satisfactory. Unfortunately, none of them was able to state as basic a concept as the fundamental rights available under the Constitution. It was also surprising to see that the majority did not know what was High Treason, of which former president, Pervez Musharraf, had been accused. Others could not state what was the basis on which former prime minister, Nawaz Sharif, was ousted not too long ago. In the same context, many could not tell what were the provisions of the Constitution which dealt with the qualifications and disqualifications of the legislators in the country. Suo moto powers of the Supreme Court are something which have assumed central position in our judicial system for more than a decade now; still, most of them did not know where did these powers come from. Filing writ petitions was most common way of invoking jurisdiction of higher courts in our country, yet not many knew how many types of writ petitions were there. Finally, Supreme Judicial Council is the highest judicial forum in the country, as it may even hold judges of Supreme Court accountable, but not even a single prosecutor was able to tell its composition. So much for the understanding of the Constitution.
- ♦ The knowledge of the Qanun-e-Shahadat Order was far from satisfactory too despite the fact that majority of the prosecutors were seasoned practitioners; and many had even practiced as lawyers for many years before having taken up the prosecutorial job. Majority did not know that conviction in terrorism cases could be based on sole testimony of witness or circumstantial evidence alone. DNA analysis could be the only evidence available in the terrorism cases, yet not many knew exactly what DNA was and how could it help. Similarly, there was general lack of awareness on what were the essential ingredients of dying declaration, which, in many cases, could be the only available piece of evidence.
- ♦ As regards the Code of Criminal Procedure, only 1/3rd could be said as having good understanding. Majority could not give satisfactory answers to even simple questions like what was the effect of irregularity or error on order, finding or sentence of the court, or where should an offence be tried if its different elements were carried out in different jurisdictions. Similarly, not many knew how to proceed further where the accused refused to answer the questions put forth to him by the court, or whether or not a person tried for one offence could be sentenced for another. So on and so forth.
- ♦ Contrary to the general belief that since the Anti-Terrorism Act was the law the prosecutors were directly dealing with and following in their day to day work, they would have a good command on it, their knowledge turned out to be minimal, deficient, erratic and lacking in many respects. So much so that hardly any of them could enlist the acts which fell within the legal definition of 'Terrorism'; most gave general answers. They seemed unaware of various concepts associated with terrorism such as IED, CDR or DNA. Scrutiny of case file was one of the most important jobs prosecutors were ought to perform, yet only 20% knew what was the

provision of law under which this power of scrutiny was being exercised. The prosecutors are supposed to provide a check and balance vis-a-vis the investigative branch of police, and provide necessary guidance, but hardly anyone knew what was the punishment provided for any delay on the part of investigating officer in completing the investigation or submission of challan, or falsely implicating someone in the case. They did not seem to know as basic a concept as how could a confession before police be made admissible as evidence before the ATCs. So much so that half of them did not even know within how many days was an ATC supposed to complete its proceedings. If so, how were our prosecutors doing justice to their job!

- ♦ During the Focus Group Discussions, the prosecutors insisted on providing them training in advocacy, presentation, case management, scrutiny, legal research and other such requisite professional skills. They also showed keen interest in personal grooming. Need of enhanced Police-Prosecution coordination was also highlighted. Furthermore, they sought training in modern developments like money laundering, cybercrimes, forensics analysis etc. It was also pointed out that the prosecutors should have exceptionally good command over the Anti-Terrorism legislation and allied laws. It was suggested that the prosecutors should be provided training on the pattern of Civil Services Academy at induction level; and later, specialized training shall be provided on carrying out prosecutions in the ATCs. It was said that other needs of the prosecutors should also be taken care of, and amongst them, the need of providing them security was the most important. It was also suggested that at least 3 prosecutors should be appointed in every ATC court to share the burden of work and to provide replacements as and when anyone of them proceeded on leave. It was also emphasised that only hardcore terrorism cases should make their way to the ATCs, and others should be filtered out at the stage of scrutiny.

RECOMMENDATIONS

Induction Training

- ♦ As far as training needs of the prosecutors are concerned, it is extremely concerning to note that no formal training is imparted to the prosecutors after the induction. Whatever they learn, they do so mostly from their on-job experiences. As a result, they remain lacking in many areas, especially in essential skills like drafting, communication and the like. It is therefore extremely important to devise a comprehensive training programme encompassing theoretical as well as practical skills. Furthermore, the training shall have an on-campus component as well as field attachments with the relevant departments.
- ♦ A well-equipped and exclusive prosecution academy, with residential facilities, shall be established for the training of the prosecutors, preferably in a purpose built campus. It shall be ensured that the trainees would have to stay there during the course of their training to truly cut them off from their surroundings, and attempt to build their personalities afresh.
- ♦ As far as the duration of the training is concerned, it shall be spanning over a period of at least 4-6 months as a condensed or short training course neither casts long term and sustainable impact nor brings the desired change in the conduct of the trainees.
- ♦ As regards the academics, the trainee prosecutors shall be taught all relevant law subjects—substantive as well as procedural—with particular focus on the Code of Criminal Procedure, 1898; the Qanun-e-Shahadat Order, 1984; and the Pakistan Penal Code, 1860. They shall also be imparted working knowledge of the Khyber Pakhtunkhwa Police Act, 2017 and the Police Rules, 1934. Finally, teaching of the Constitution of Islamic Republic of Pakistan, 1973 shall also constitute integral part of the curriculum with particular focus on those provisions which deal with the fundamental rights; structure and functioning of the courts; and rights and responsibilities of other pillars of the state.
- ♦ The prosecutors shall themselves be encouraged to keep tabs, and remain updated, on important happenings that take place around them, especially in the legal/judicial realm by developing, for example, the habit of reading books, newspapers and magazines. Furthermore, as responsible and educated citizens, the prosecutors shall know the happenings that take place on political and administrative landscape of the country too. Book reviews, research work, case studies, syndicate exercises, dissertations and presentations pertaining to their field of work as well as current affairs—both local and international—shall therefore be made integral part of the training.
- ♦ The need of imparting training on use of computers, Information Technology and modern modes of communication cannot be overemphasised. This would not only help them discharge their work more effectively and at a greater pace but would also enable them to make maximum use of case flow management systems, which are increasingly being adopted

by prosecution and other relevant departments at home and abroad. The prosecutors shall also understand allied concepts from crimes' perspective such as online scams and frauds, identity theft, hacking, and other types of cybercrimes, reasonably well. Likewise, they shall also know what is the importance and relevance of Call Detail Record, and how it might be acquired and used as evidence during the court proceedings.

- ♦ The trainee prosecutors shall also be given substantial understanding of parallel/undocumented economy of Pakistan and the way it operates. All modes of funding/financing of organised crime as well as terrorism shall also be identified and dwelt upon with special focus on money laundering since most of such funding/financing takes place through this mechanism.
- ♦ The prosecutors shall be abreast of the modern developments in the field of investigation, such as collection and analysis of all kinds of forensic evidence, and know how to present the same as evidence before the courts. In this regard, given the importance of DNA analysis in detecting the accused, there shall be particular focus on training the prosecutors in this phenomenon. Likewise finger print analysis, polygraph, firearm forensics, digital evidence, toxicology, postmortem and other such concepts/modes of evidence collection shall also be taught to the prosecutors. Finally, they shall also be adept at reading, analyzing and making use of medicolegal reports. One may highlight here that a state of art forensic science laboratory in the KPK is need of the time, and shall be established without any further wastage of time.
- ♦ The prosecutors shall also have a good comprehension of the process of investigation, especially of the collection of evidence by the police. They shall be able to fully comprehend and analyse police reports. They shall also understand how crime scenes are managed/preserved and how the chain of custody operates. In short, they shall completely understand the mode of working of their counterparts to be able to present their case more effectively before the courts.
- ♦ The Police-Prosecution coordination shall be enhanced through all available interventions. One such intervention can be by designing joint courses comprising practical exercises for both these agencies. Likewise, meetings of the high-ups of both the departments shall be held on regular basis to further improve the liaison and coordination.
- ♦ A research and data centre may also be established in the academy, which shall not only collect all statistics related to crimes, such as occurrence, prevalence, arrests, prosecutions, convictions, acquittals etc, but also identify the underlying causes of low conviction rates, as and where applicable. This research and data, particularly the ones pertaining to low conviction rates, may thereafter be used to accordingly develop and periodically review the training modules.
- ♦ The prosecutors shall be given ample training in how to conduct case analysis, scrutiny and legal research. For the purposes of legal research, and even for remaining updated on the developments taking place in the realm of law, the habit of reading law journals regularly and

consulting other online/offline resources shall also be inculcated in the prosecutors during the training.

- ♦ The need of presentation and communication skills for the prosecutors shall also be realized in true earnest. In fact, there is no use of legal knowledge if one cannot put it across effectively during the court proceedings. More and more opportunities entailing speaking assignments shall therefore be created for the trainee prosecutors. It would not be out of place to mention here that more than presentation and communication skills, the entire personality of the prosecutors needs to be groomed to help them discharge their responsibilities in an effective manner. On the same grounds, the prosecutors shall learn, and rather become adept at, advocacy skills. They shall have good command on how to make opening speech, how to introduce evidence, how to advance arguments, how to conduct examination and cross examination, and finally how to wrap up the arguments and make a closing speech. They shall be trained in the art of counselling and subtly preparing the witnesses too to subsequently extract useful information from them during the court proceedings.
- ♦ It may be reminded here that in our legal system, most of the court work, especially in the higher judiciary, is carried out in English language. Legal drafts and pleadings are mostly prepared in English too. More importantly, decisions are also generally written in English. Similarly, almost all legislation is carried out and laws are drafted in English. Law journals and other legal resources/reference material are also mostly available in English. Furthermore, research in legal issues is generally conducted and published in English too. The need of a good working knowledge of English language therefore cannot be overemphasized. An entire module shall rather be dedicated towards the improvement of English language of the prosecutors. They shall also be taught other practical ways and means of improving their language skills.
- ♦ The need of teaching management skills to the prosecutors shall not be ignored either. At macro level, they are required to manage the entire case load and prosecutorial work of a given court and sometimes, at senior positions, of the entire district; on micro-level, they have to manage each case individually. It would therefore not be a farfetched idea to comprehensively train the prosecutors in all facets of management namely, but not restricted to, stress management, time management and even conflict management. Similarly, office management, including the file work and record keeping, needs to be taught to them for better dispensation of their official work. Finally, since the prosecutors have to manage official finances too, especially at senior levels, they shall also be imparted financial management skills.
- ♦ Practical exercises, role plays, mock trials and other such tools shall be extensively employed during the training to provide the prosecutors hands-on experience of professional work they would be required to perform later in life. The underlying idea is to ensure that the training shall not become dull, monotonous and non-engaging, and shall rather be truly engrossing, beneficial and interactive.

- ♦ Considering the fact that there is unfortunately a growing tendency among the lawyers to go unruly on even slightest of the provocations, and every now and then they are found involved in incident of one sort or another, there is a dire need to train the prosecutors in professional conduct and ethics too. Not only a separate module may be introduced on the subject but it shall also be taught subtly as a cross-cutting theme during the instruction of other subjects and skills too. Similarly, the prosecutors shall be sensitized and trained in human rights with particular focus on the issues and needs of special categories of persons such as women, children and non-Muslims. Also, since intolerance is on the rise in the society, and is in fact becoming endemic and reaching new heights, the prosecutors shall also be taught subtly, amongst others, the values of tolerance, moderation and showing respect towards the diversity of opinions, ideas and beliefs.
- ♦ Sessions shall also be arranged with psychologists so that the prosecutors might better understand the psychology of criminals, in general, and the thinking process which goes behind crimes, in particular. Such an understanding would also enable the prosecutors to carry out effective examination and cross examination during the conduct of trials. In addition, the psychologists would also teach the prosecutors how to leave a mark on others and be effective while communicating/arguing, especially during the court proceedings. In fact, more than mere lectures, practical exercises shall be designed for the prosecutors with the psychologists to have maximum benefit.
- ♦ A lot of prestige, and material benefits, need to be attached to staff positions of the training academy, and the prosecutors, who perform exceptionally well while at training or on job, shall be appointed against these positions. Such an appointment shall rather be a definite recipe for further elevation to make these positions even more attractive. This recommendation is being given in the backdrop of existing scenario where deadwood and low performers are, at times, posted to such academies, which erodes the credibility and quality of the trainings imparted there. Likewise, in order to bring further professional excellence in the prosecutors, their career path shall be so designed that the best performing prosecutors might eventually be considered for elevation to higher judiciary at later stages of their careers provided they have a certain number of publications in reputable law journals to their credit too.
- ♦ As regards the faculty, it shall be ensured that in addition to permanent faculty of high caliber, reputed and knowledgeable persons shall be inducted/invited to deliver lectures and impart training at such an academy as trainees generally do not tend to take inspiration or learn from trainers of low profile. On the other hand, a high profile speaker is not only well respected but also listened to attentively and carefully, and is likely to become source of inspiration for the young trainees. It shall further be ensured that each subject is taught by expert/specialist/practitioner of the same discipline. For instance, forensics shall be taught by the scientists or experts working in forensic science laboratories; knowledge as to the working of police shall be imparted by those with ample and practical experience of policing; law subjects shall be taught by eminent lawyers and, where possible, by judges; and so on and so forth. In fact, judges shall also be invited to interact with prosecutors in classroom

environment as well as during the mock trials, so that the latter could comprehend the entire process from judges' perspective too and understand what the judges look for and appreciate.

- ♦ In order to create and maintain an orderly and disciplined environment at the academy, the administrative staff and faculty shall have ample powers with regard to the trainees. Besides writing an internal report/pen-picture in respect of every trainee individually, they shall also be empowered to rusticate, and even expel, any trainee, where necessary, under exceptional circumstances. This empowerment would go a long way in making the entire training more meaningful and result oriented.
- ♦ Training shall not be merely planned and executed as a routine exercise as is mostly done all around us. In fact, nothing shall be done for the sake of doing only, and every component of the training shall be thoughtfully designed and thoroughly implemented. The training modules and material shall be carefully prepared by the experts of every field depending upon the importance and utility of different subjects and topics. For example, some of the topics would be too important to be taught in merely one or two lectures; preparing separate modules for them may therefore be considered. Training material and best practices from around the world shall also be consulted. Furthermore, each module and training session shall have well-defined learning objectives/outcomes, and pre and post assessment shall be carried out to ensure the same. Similarly, a comprehensive system shall be devised and implemented to get feedback from the trainee prosecutors at every stage with the purpose of bringing improvements where required. More importantly, the entire training regime shall be so designed that it shall promote independent and critical thinking in the prosecutors.
- ♦ On completion of the on-campus learning component, the trainee prosecutors shall be sent to field training for around 4-6 months. They shall be attached/associated with police, judiciary, prison, forensic laboratory, administration and other such authorities/departments, on rotational basis, for at least half of this duration to have a better understanding of all components of the criminal justice system operating in Pakistan, in general, and in the KPK, in particular. For the other half, each trainee prosecutor shall be attached/posted with a senior prosecutor. It shall be ensured that the senior prosecutor not only teaches his trainee prosecutor the work he would be required to perform later in his professional life but also assigns him appropriate work for on-job learning/firsthand experience. A proper system of checks and balances shall be put into place to ensure that the attachments are done in the manner, and for the purposes, they have been conceived. After this field training, the officers of a batch shall go back to the academy for at least a week, submit write-ups and make presentations on what they would have learnt during their attachments with different departments. These presentations shall be a graded activity and contribute substantially towards the over-all result of a trainee.
- ♦ It goes without saying here that unless a comprehensive and objective system of assessment on the outcome of both components of the training is devised and put into place, trainee prosecutors, in general, would not take their training seriously; nor would the required results be achieved. The assessment shall rather be carried out by external/independent 3rd party assessors to rule out any compromise on results and to bring in more credibility in the system

of assessment. A stick and carrot policy shall in fact be introduced in this regard whereby the high performers may afterwards be offered the stations of their choice whereas those showing poor results shall be made to repeat the training with the next batch. The ones who would not be able to show substantial improvement in the second attempt too shall then be relieved from the service. In a nutshell, only a strict enforcement of training regime would establish its credibility and quality, and yield the required results.

Transition

- ♦ It goes without saying that a clear career progression path shall be introduced for the prosecutors and after a certain time period, preferably 5-7 years, every prosecutor shall be promoted to BPS-18 subject to the conditions that no disciplinary or other proceedings are pending against him and that he has acquired satisfactory performance evaluation report for the concerned time period. It is rather advised that instead of relying on outmoded and ineffective system of writing performance evaluation reports, a comprehensive performance management system shall be developed whereby the performance of every prosecutor shall be continuously judged against clear-cut and certain targets/work assigned to him. For example, acquittal and conviction rates can serve as one parameter/indicator for assessing the performance of individual prosecutors. It is at this stage that the high performing prosecutors shall be offered to join specialized cadre/group of prosecutors working with the ATCs. An entry test, comprising written paper as well as a comprehensive interview, is advised for the purpose so that only the most appropriate candidates are selected. It may be reminded here that special pay packages, and other perks and privileges, shall be announced for this specialized cadre otherwise no one would be interested to join this cadre and take up this sensitive and perilous job of conducting prosecutions in the ATCs.

Specialised Training for the ATC Prosecutors

- ♦ Once selected, the ATC prosecutors shall be sent to the proposed academy for a specialized training programme spanning over at least 2-3 months. As regards the academics, the focus of the specialized training shall be on teaching the Anti-Terrorism Act, 1997, and the allied legislation such as the Investigation of Fair Trial Act, 2013; the Pakistan Arms Ordinance, 1965; the Khyber Pakhtunkhwa Arms Act, 2013; and the Explosive Substances Act, 1908. At the same time, refresher courses shall also be arranged, at a minimum, in the Code of Criminal Procedure, 1898; the Qanun-e-Shahadat Order, 1984; and the Pakistan Penal Code, 1860. Similarly, besides other necessary skills, the prosecutors shall also be imparted training on understanding and presenting circumstantial as well as forensic evidence during trials in ATCs; strategies for examining and cross-examining the terror suspects; evaluation of fitness of cases; administrative management; and auditing/accounting skills.
- ♦ In addition to imparting them the knowledge of anti-terrorism legislation, the prosecutors shall also be given good insight into the phenomenon of terrorism the country is currently faced with. The better the prosecutors would understand the narrative, dynamics, pattern and underlying causes of terrorism, the more effective they would become in carrying out result oriented prosecutions in the ATCs. On the same pretext, they shall also have a good working knowledge of the National Internal Security Policy and the National Action Plan of the

Government of Pakistan. One would rather like to suggest here that interactive sessions of the prosecutors shall also be arranged with the victims and survivors of the terrorist attacks to enable them to understand the assignment at hand in an even better way and to motivate them to achieve greater professional excellence and commitment.

- ♦ The specialised training shall comprise other elements too. Knowledge of all subjects as well as the skills needed by a prosecutor—which would have already been imparted during the induction training, and which they might have been using for years thereafter—may further be strengthened/refined through appropriate interventions. The prosecutors shall also be introduced to new developments which might have taken place in the field of forensic evidence and other disciplines meanwhile. It would rather not be out of place to emphasise here that since not many witnesses are available or willing to come forth in terrorism cases, the prosecutors, at this stage, shall be trained to make maximum use of forensic as well as circumstantial evidence.
- ♦ As regards the modules to be taught to the ATC prosecutors, in addition to one comprising general topics, modules for training in **Criminal Procedure, Anti-Terrorism and Allied Legislation, Communication and Advocacy Skills, IT and Legal Research, and Forensic Evidence** are recommended to be designed.
- ♦ With the increase in security and safety concerns for the accused, witnesses, judges, prosecutors, and other counsels, especially in the terrorism cases, coupled with development in Information Technology/modes of communication, the trend of holding video trials is taking roots. Since the dynamics of such trials happen to be quite different from the trials which are held generally in the courts, the prosecutors shall be trained in holding video trials as well as distant trials through other modes too. The point of identifying/highlighting this seemingly trivial, yet an important matter is that nothing shall escape the attention of the planners and executors of the training regimes.
- ♦ Finally, a strict post-training assessment shall be conducted and only those coming out successful shall be sent for field assignments. As an incentive for high performing prosecutors, not only they may be offered postings of their choice but also sending them abroad at later stages for further training in relevant disciplines may also be considered.

Year-end Workshop

- ♦ One-week workshop shall be arranged for all prosecutors working with the ATCs preferably towards the end of each year. More than a training activity, it would in fact be a chance for the prosecutors to interact with each other, identify the problems and challenges they might have been facing individually or as a group during the course of their work, exchange views, learn from each other's experiences in similar situations, and finally discuss/suggest solutions. This interaction shall also be conducted in a structured manner where every prosecutor would be required to make presentation on various aspects of his work experience of the preceding year. The need and importance of such a workshop cannot be overemphasized; suffice to say

here, it would probably be one of the best ways to increase the effectiveness of the prosecutors.

Mid-career/Senior Level Training

- ♦ Subsequent promotions of the prosecutors shall be linked with their performance, prescribed length of service, and successful completion of training courses. However, instead of organizing these courses in the proposed academy, the prosecutors may be sent for Mid-Career Management Course (MCMC), Senior Management Course (SMC), and National Management Course (NMC), as the case may be, to Peshawar and other places outside the KPK. Where possible, the high performing prosecutors, after selection through an objective and transparent system, may be sent on specialized trainings to other countries too under exchange programmes or other arrangements. This would, on one hand, broaden the horizon of the prosecutors and provide them with much needed grooming and exposure, especially required for the higher positions, and on the other, provide them opportunities of networking and better understanding the working of other departments and organizations.

Refresher Courses/Activities

- ♦ Similarly, prosecutors at all levels shall be encouraged to attend short courses, seminars, workshops and other such activities/events, as and when an opportunity comes up. In fact, the proposed academy shall itself take the lead and have at least one lecture by a distinguished guest, a seminar, a workshop or other such activity arranged every month on any theme relevant to the prosecutorial work. Participants shall be invited through open invitations and through nominations. Calendar of such activities shall be issued/updated well in advance so that the interested prosecutors might plan accordingly. Depending upon their own schedules and preferences, it shall be mandatory for the prosecutors to spend a certain number of days attending these activities each year.

Training of the Incumbent ATC Prosecutors

- ♦ Whereas the recommendations made above can be implemented in respect of new recruits, the challenge at hand is how to improve the effectiveness of available lot of the prosecutors currently working with the ATCs in the KPK. As seen in the previous sections of this report, working knowledge of the anti-terrorism and allied legislation of the prosecutors is alarmingly below the desired level. The same inference may be drawn in respect of requisite professional skills of majority of them.
- ♦ It is suggested that a 2-month notice shall be issued to all of them to refresh/update their knowledge of the relevant legislation. A comprehensive assessment shall then be carried out at the end of the stated period.
- ♦ For those who would be able to qualify the assessment, a special, condensed and rigorous training course shall thereafter be designed and conducted at an appropriate place on the lines suggested above, spanning over at least 4 weeks. The course shall be held in a minimum of two batches to ensure that the ordinary work of the ATCs is not affected to a great extent.

(It goes without saying here that the work of the ATCs would momentarily be affected during this interim phase but then, for long term gains, this bitter pill would have to be swallowed by all stakeholders.)

- ♦ A strict and meaningful post-training assessment shall then be carried out at the end of the course to ensure that the prosecutors take the training seriously, and come out as more learned professionals; otherwise the entire exercise would become merely an eye-wash and wastage of resources. It may be reminded here that almost all of the prosecutors had received 8-week or so training in anti-terrorism litigation at Lahore, yet that training did not seem to have cast any real or long-term effects on most of them. It is therefore necessary to send them again for a training but only after putting a proper system of checks and balances in place.
- ♦ On completion of the training, the existing appointments in the ATCs may be thoroughly reviewed/revisited and made afresh. Whereas those showing poor results in the assessment may be discharged from their duties in the ATCs, others may get appointments based on their past record as well as their assessment results.
- ♦ Once the new appointments have been made, a proper performance management system shall also be adopted to ensure continuous effectiveness of the prosecutors.
- ♦ All of the above would, however, be an interim arrangement as a few years from now, one hopes, young and fresh prosecutors, recruited and trained on modern lines suggested above, would also become available for taking up appointments in the ATCs thus further widening the pool of prosecutors for the KPK government to choose from.

Implementation

- ♦ To many, the recommendations would be too ambitious. Others might contend that huge funds would be required to put them into practice. One may, however, argue here that every penny spent on the prosecution service, or for that matter on reforming any or all components of the criminal justice system, is worth spending as it would improve the over-all security environment of the province which would, in turn, mean greater economic and investment opportunities. All such spending would thus pay much more dividends in return.
- ♦ One must, however, forewarn here that a piecemeal approach or tinkering here and there would not do. All recommendations made above are complimentary and interdependent, and part of a larger scheme of things. Until and unless these are implemented in entirety, and that too in letter and spirit, desired outcomes would not be achieved. It is further suggested that these recommendations shall be converted into a policy paper and accepted/issued as such so that no one shall be able to deviate from them in future. The government may also constitute a supervisory body, comprising senior level representatives from all concerned departments, to oversee implementation of the proposed policy.
- ♦ It may be noted here that the policy suggested above shall not be a static phenomenon; it shall rather be a dynamic and living document. Whereas it shall have room for minor

amendments on as and when required basis, gross review shall, however, take place every 3 years on the basis of experiences and feedback from the preceding years, and modern, scientific and other developments taking place in the meanwhile.

- ♦ Regarding those who might argue that at least some of the recommendations are too ambitious and novel, and that those have not been tried elsewhere before, it may be said that instead of following others, here and now is a chance to lead the way and become trend setters. Let's introduce a comprehensive training and career progression programme on the aforementioned lines for the prosecutors for the first time in the entire country and let others follow. After all, why would one not like to have the honour of being the best prosecution department in the country?
- ♦ It may further be noted here that even though the recommendations have been made from the perspective of the KPK, yet those are equally applicable in other contexts and jurisdictions too.



**Skill Assessment Workshop for Prosecutors working on Counter-Terrorism Cases
12 October 2017
Peshawar**

PERSONAL DETAILS QUESTIONNAIRE

NAME:

DATE OF BIRTH:

AGE:

EDUCATION

QUALIFICATION/ DEGREE	YEAR	INSTITUTE	MAJOR SUBJECTS	MARKS/ DIVISION/GRADE
INTERMEDIATE				
GRADUATION				
MASTER'S				
LLB				

PROFESSIONAL TRAININGS

COURSE	VENUE	DURATION	CONTENTS

PRESENT POSTING:

WHETHER YOU HAVE PRACTICED AS LAWYER BEFORE JOINING AS PROSECUTOR? Yes ☐ No ☐

IF YES, FOR HOW MANY YEARS?

FOR HOW LONG HAVE YOU BEEN WORKING WITH ATCs

HOW MANY CASES HAVE YOU DEALT WITH/PROSECUTED IN ATCs TILL TO-DATE?

- ♦ CONVICTIONS:
- ♦ ACQUITTALS:
- ♦ UNDER TRIAL:

GENERAL KNOWLEDGE QUESTIONNAIRE

- ♦ Who is the Foreign Minister of Pakistan?
- ♦ Who is the Minister for Interior?
- ♦ State briefly the grounds on which the former Prime Minister has been declared disqualified by the Supreme Court.
- ♦ What does CPEC stand for?
- ♦ Who are the Rohingyas?
- ♦ Which political party US President Donald Trump belongs to?
- ♦ What is the name of captain of Pakistani cricket team?
- ♦ **Which cricket tournament Pakistan has recently won?**
- ♦ **What is the tenure for the post of Chief of Army Staff in Pakistan?**
- ♦ **What does FATA stand for?**
- ♦ How many administrative divisions are there in the KPK?

KNOWLEDGE ASSESSMENT QUESTIONNAIRE

GENERAL UNDERSTANDING OF THE PHENOMENON OF TERRORISM

- ♦ What is the underlying narrative of leading terrorist groups operating in Pakistan?
- ♦ What, in your opinion, are the top 3 reasons for proliferation of terrorism in Pakistan?
- ♦ What, in your opinion, is single most important measure which needs to be taken if the Government truly wants to eradicate terrorism from the country?
- ♦ Why do the terrorist groups target innocent civilian population too for their goals?

THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973

- ♦ Please list the fundamental rights available to the citizens of Pakistan as mentioned in the Constitution.
- ♦ What is 'High Treason'? Which article of the Constitution deals with High Treason?
- ♦ What is 'Majlis-e-Shoora'? Which articles of the Constitution deal with the qualifications and disqualifications for the membership of Majlis-e-Shoora?
- ♦ From which article of the Constitution, the Supreme Court draws its suo moto powers?
- ♦ How many types of writ petitions are available under the Constitution? When can a writ petition be filed?
- ♦ What is the composition of Supreme Judicial Council?

THE QANUN-E-SHAHADAT ORDER, 1984

- ♦ What is 'Privileged Communication'? Give two examples.
- ♦ Can conviction be based on sole testimony of prosecution witness in a terrorism related case? What is the underlying principle?
- ♦ Can conviction be based on circumstantial evidence alone in a terrorism related case? If so, what shall be the standard of evidence?
- ♦ How is an identification parade conducted?
- ♦ What is the difference between an admission and a confession?
- ♦ Under what circumstances is a confession admissible or inadmissible in criminal cases? Is there any difference for cases being prosecuted in the Anti-terrorism courts?
- ♦ What are the essential conditions on which a Dying Declaration is admitted in evidence?
- ♦ When is evidence of bad character of the accused relevant in criminal cases?
- ♦ Please state any exception to the general rule that oral evidence must be direct?
- ♦ Under what conditions secondary evidence is permissible in place of primary evidence?
- ♦ How is expert opinion admissible in a trial in an Anti-Terrorism court? What is the provision of law which regulates such an opinion?
- ♦ Mention any exceptions to the general rule that the burden of proof lies on the party which asserts the affirmative?
- ♦ When may a party cross-examine its own witness?
- ♦ Can leading questions be asked in examination-in-chief? If so, when?
- ♦ What do you understand by the terms 'Genes' and 'DNA'?
- ♦ A case of suicide bombing is being tried in an Anti-Terrorism court; there is no witness or direct evidence; however, the remnants of body of suspected suicide bomber have become available

whereupon DNA analysis has been conducted to ascertain the identity of the suspect. Which provision of the Qanun-e-Shahadat Order would be relied upon by the Public Prosecutor to present the evidence before the court?

THE CODE OF CRIMINAL PROCEDURE, 1898

- ♦ Distinguish between
- ♦ Complaint and FIR.
- ♦ Discharge and Acquittal.
- ♦ Offence and Charge.
- ♦ Summon and Warrant.
- ♦ Investigation and Inquiry.
- ♦ What are the powers of a magistrate in respect of persons wrongfully confined?
- ♦ What is the effect on the trial, if an irregularity is committed in the conduct of search under the Code of Criminal Procedure?
- ♦ How shall an officer-in-charge of a police station act when he receives information about an unnatural death within the limit of the police station?
- ♦ An offence of theft was conducted in jurisdiction 'A'; the thief resides and possesses the stolen property in jurisdiction 'B'; the stolen property is passed on to a person knowing it to be stolen property in jurisdiction 'C'. In which jurisdiction would the offence be triable?
- ♦ Under what circumstances 'Sanction to Prosecute' is required?
- ♦ What are the essential components/particulars of a Charge?
- ♦ A person 'A' was charged with one offence and tried; can he be convicted of another offence? If so, how?
- ♦ What are the powers of a court when a witness refuses to give evidence on oath before it despite the court ordering him to do so?
- ♦ What are the consequences of refusal by an accused to answer the questions put forth in examination by a court?
- ♦ Name at least 3 types of cases in which no appeal lies from the judgment of a court.
- ♦ What is the difference between the appellate jurisdiction and the revisional jurisdiction of a High Court?
- ♦ What is the effect of withdrawal by the Public Prosecutor from prosecution of any person charged with an offence?
- ♦ Under what circumstances Bail before Arrest is allowed?
- ♦ What are the grounds on which application may be made to the High Court for the transfer of a case from a criminal court?
- ♦ Can the finding, sentence or order of a court of competent jurisdiction be reversed on the ground of an error or irregularity?

THE ANTI-TERRORISM ACT, 1997

- ♦ Who is a 'proscribed person'?
- ♦ What is a 'Scheduled offence'?
- ♦ Which are the actions which fall within the meaning of 'terrorism' in the Act?
- ♦ What is a Road Certificate? What is its significance for a Public Prosecutor?
- ♦ What is an IED? Give 2 examples.
- ♦ What is the punishment provided for the offence of kidnapping for ransom or hostage-taking in the Act?
- ♦ What remedy is available to any person who is aggrieved by the order of placing him in the fourth Schedule?
- ♦ For how long the Government may order preventive detention of any person who has been concerned in any offence under the Act for the purpose of inquiry? Who conducts such an inquiry?
- ♦ Under what circumstances the Government may make an order to try a scheduled offence committed in any area be tried by an Anti-Terrorism court established in relation to any other area?
- ♦ What are the qualifications for being appointed the presiding officers of Anti-Terrorism courts? In other words, who can be appointed presiding officer of such court?
- ♦ Which section of the Act deals with the appointment of Public Prosecutors to the ATC?
- ♦ What is the rank of investigating officer as specified in the Act?
- ♦ What is the prescribed composition of JIT under the Act?
- ♦ What is the duration within which an investigating officer or the JIT is bound to complete the investigation?
- ♦ What course of action has been provided for in the cases where the investigation is not completed within the prescribed period? What is the role of Public Prosecutor in such a case?
- ♦ What is the punishment provided for any default on the part of an investigating officer who delays investigation or submission of the due report?
- ♦ Within how many days shall an Anti-Terrorism court decide a case? How many adjournments can the Court give during the trial of a case?
- ♦ What course of action is available to an Anti-Terrorism court if the defense counsel does not appear after two consecutive adjournments?
- ♦ When can an accused person be tried in his absence? What course of action shall be followed by the Anti-Terrorism court in such a matter?
- ♦ What course of action shall be adopted by an Anti-Terrorism court if a person who has been convicted in his absence appears before the court, within 60 days of his conviction, and proves to the satisfaction of the court that he did not abscond or conceal himself for the purpose of avoiding the proceedings against him?
- ♦ Under what section of the Act the Public Prosecutor scrutinizes the case file before the trial of a case and why?
- ♦ What are the protections available for the safety of a Public Prosecutor concerned with Anti-Terrorism Court for an offence under the Act?

- ♦ Which officer is empowered to designate a crime scene a cordoned area for the purposes of investigation under the Act?
- ♦ What is the total period for which a person detained for the purposes of investigation may be remanded to police by the Anti-Terrorism court?
- ♦ 'A' is an investigating officer who believes that he would not be able to produce a person 'B', detained for investigation, before the concerned Anti-Terrorism court within the stipulated period of 24 hours. What should he do next?
- ♦ What is the procedure of obtaining call detail record of a mobile phone being used by a person suspected to be linked with commission of an offence under the Act?
- ♦ Is any remission in a sentence allowed to a person who is convicted and sentenced for any offence under the Act?
- ♦ 'A' is a person who is charged with the offence of providing training to 'B', a 30-year old man, and 'C', a 12-year old boy, in the making of explosives, without valid authorization of the competent authority. Who can be proceeded against under the Act? What if those convicted and sentenced for the offence apply for remission on account of good conduct?
- ♦ Circumstantial evidence suggests that 'A' had committed an offence. Is 'B', the Public Prosecutor, allowed to present a confession made by the accused before a police officer during the course of investigation as an evidence against 'A'? Justify your answer.
- ♦ 'A' and 'B' have been tried for an offence under the Act. 'A' is acquitted by the court whereas 'B' is sentenced to imprisonment for ten years. The Government is not happy with the order of acquittal of 'A'. 'C' is the legal heir of a victim and is also aggrieved by the order of acquittal of 'A'. 'D' is the relevant Public Prosecutor who has been instructed to file an appeal in the High Court against the order of acquittal of 'A'. 'B' also intends to challenge his sentence by way of appeal before the High Court. How many days are available to 'B' and 'D' for filing such appeals? Is 'C' also allowed to file an appeal under the Act or would he have to depend upon the Public Prosecutor for filing of the appeal?
- ♦ What is the punishment which an Anti-Terrorism court may award to the delinquent officer if the Court comes to the conclusion that the investigating officer has failed to carry out investigation or has failed to pursue the case properly?
- ♦ What is the punishment which may be awarded to an investigating officer for having dishonestly and falsely implicating a person in the commission of a scheduled offence? What is the precondition?
- ♦ What are the circumstances in which a case may be transferred from one Anti-Terrorism Court to another? What is the mode or procedure of such transfer?

THE INVESTIGATION FOR FAIR TRIAL ACT, 2013

- ♦ Is covert surveillance, wire-tapping of phones and communication interception legal in Pakistan? If so, under what law?
- ♦ Which piece of legislation especially regulates the use of evidence gathered through CCTV, computers or IPDR (Internet Protocol Detail Record)?
- ♦ To promote the fair, impartial and expeditious pursuit of justice.
- ♦ To ensure safer communities.
- ♦ To promote integrity in the prosecution profession and effective co-ordination in the criminal justice system.



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