Improving the Provision of Justice in Pakistan

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Executive Summary

1. This is a proposal for organisational reform aimed at providing swift and inexpensive justice to the population. Unlike many earlier proposals, it seeks not to create a parallel judicial system, but to begin the long process of overhauling the existing mainstream system at the lower level.

2. With the above intention, the proposal focuses on four problems and their solutions, the four I's. The problem of motivation through the provision of appropriate Incentives; the problem of accountability through internal and external Institutions of monitoring and supervision; the problem of efficiency through upgrading and strengthening the Infrastructure of the system; and the problem of decision making through the provision of Information and training.

3. The recommendations emerging from the proposal are placed below. Briefly, the argument is for a phased approach to the overhaul of the system, beginning with pilot districts or regions. It advocates the establishment of a special judicial group to be selected on the basis of a rigorous system of examinations, from judicial officers, executive officers, as well as outsiders. The selectees should be provided proper training, and provided attractive salaries and benefits, and modern work conditions and support infrastructure. A number of improvements in procedures and arrangements are also recommended with the longer run objectives in mind.

An Action Programme

In view of the above, the following action programme is recommended. It is recommended that this be undertaken in the form of a pilot programme in selected districts or divisions, and expanded slowly to other areas if found successful. At this time, however, these are very broad suggestions. Details would have to be worked out with greater care if the overall programme is found acceptable.

I. Political Commitment

1. First, the government must make a public commitment, with a specific timetable to ensure the provision of swift and inexpensive justice to the population. The declaration on justice has to be made at the highest level of the government.

II. Motivation of Officials

2. A special group of judicial officials shall be formed, with salaries and benefits equivalent to private sector salaries for the best quality individuals. Together with this, special groups of support staff, including law clerks, staff officers, librarians, and sergeants at arms shall also be formed.

3. The salaries of all special groups shall be determined on the basis of demand and supply conditions in relevant markets for skilled professionals.

4. In addition to salaries, the judicial officials in the special group would be guaranteed preferential access to those public services that are not freely available on the market.

5. The selection of individuals to the special group shall be undertaken on the basis of a nationwide examination to be conducted by the Federal Public Service Commission. In the case of serving officials, the evaluation would be on the basis of the written
examination plus their entire service record. The professional record of outsiders would similarly be brought under scrutiny.

6. The move to separate the judiciary from the executive could begin through this special group, by giving it jurisdiction over all civil and criminal cases in its area.

III. Accountability

7. A system of statistical evaluation of decision made by every judge shall be instituted. This would include a measure of delays, judgements overturned in appeal, judgements remanded, etc. The idea would be to identify where a special examination is called for. The special examination could result in the appointment of additional judges where appropriate, or the inquiry into the conduct of the judge in question.

8. The system of a parliamentary protector of citizens rights may be examined in more detail.

9. The question tenure and conditions of work may be examined in greater detail.

10. The promotion and appointment of judges should be made through a transparent, participatory and fully public process.

11. A system of trial by jury should be introduced in all major cases. Jury service should be made mandatory for every citizen with more than a matriculate education.

12. In order to improve the accountability of the police officials, it should be made mandatory for judges to comment on the nature of the evidence and investigation, and the role of the police officials involved. Those found by the judge to be guilty of violation of law should be immediately dismissed from service, and otherwise proceeded against.

IV. Ensuring Efficiency

13. The annual allocation for court infrastructure shall be increased to meet realistic needs. This would include maintenance expenses, furniture, etc. The idea is to ensure that the majesty of the lowest court is visible in its appearance.

14. A special programme of computerisation of court records should be announced and implemented in a phased manner.

V. Decision Making

15. Selected law graduates would be attached to courts as interns on the basis of a lottery system. The interns would perform all support functions as determined by their supervisor. The report of the supervisor shall form a part of their permanent professional record.

16. Funds shall be provided to all courts for the maintenance of proper law libraries, including books, journals, and PLDs. The task of monitoring officials shall include the examination of the state of the library in lower courts.

17. A special budgetary support for law publications in colleges, training academies, and in local areas needs to be established. This could be accompanied by an allocation for prizes for best articles.

18. Funds shall be provided to all courts to organise seminars and workshops on legal issues for the benefit of the legal profession as well as the local community in general.

Introduction

1. The simplest legal case in Pakistan takes an average of **four and a half years** for disposal, and many are known to have dragged on for over twenty years. Even after such delays, the parties are not sure of receiving justice. There are widespread accusations of corruption, favouritism, negligence, and outright incompetence among judicial officers at the lower level of the judicial system. The powerful and the rich can get away with murder, while the minimum of rights of the poor and the weak are not protected.
Corruption, negligence and incompetence lead to bad judgements, which create further delays. The institutions of police is in a worse condition.

2. The result of all this is that there is a widespread feeling in the country that you cannot receive justice, nor protect your basic rights to human dignity, unless if you are powerful and well connected.

3. This situation is untenable. Justice is a fundamental human right guaranteed in the constitution, and governments are duty bound to ensure it. But this is not the only reason for its provision. In the short run, the absence of justice creates political disaffection against all government; in the long run, it destroys society by legitimising civic violence, intolerance, and polarisation. Besides this, justice is a wealth creating activity; a rupee in judicial institutions brings twice its worth to the society, by assuring people that their rights shall be protected and that they can cooperate with others on a long term basis to produce goods and services. Access to swift and inexpensive justice is essential not only for industrialisation and growth, but also for environmental conservation, decentralisation, educational uplift or social development.

4. These concerns are not new. Every well-intentioned government in Pakistan shared them and tried to do something about them. But the problem is still with us. This suggests that none of the earlier attempts was particularly successful. When introducing a new initiative, it is important to understand why the previous ones failed.

5. Previous solutions can be placed in two categories. Those that tried to bypass the system, and those that tried to make it work purely through coercion.

6. Many solutions assumed that the normal system would never function properly, so they tried to overcome the problem by introducing parallel judicial systems, such as military courts, industrial relations courts, speedy trial courts, or conciliation courts. However, as many observers have pointed out, these parallel systems had the potential of being used selectively, which could create even greater injustice. Another way of bypassing the system is to shift more and more powers to the higher courts; today, many people have to go directly to the High Court for redress of civil wrongs. Justice should be available near peoples' homes, and in smaller tribunals, not in distant ones. The root of the problem is the need to restore the normal system of justice in the country not to replace it with a number of parallel systems.

7. The other remedy tried was that to coercion. This was either in the form of exemplary punishments to be meted out to some selected malefactors, or harsh actions against corrupt officials. None of these succeeded either. The reason again was that if the normal system of justice is ineffective, harsh legislation tends to become a tool in the hands of unreliable officials, and therefore a source of greater injustice.

8. Both of these are temporary solutions, which avoid the structural problems in the provision of justice. They start from the point of view of the government which wishes to show some results, not by asking how to make the individual judge act in a way that we would like him or her to act. It is possible to change someone's behaviour for a few weeks through coercion, or through simple new arrangements. But to change behaviour permanently, you have to look at it from the perspective of those whose behaviour you want to influence. Otherwise, the solution will work only for a short time, and only the first or second time that it is used.

9. Let us state the problem as simply as possible. The problem is how to make our judges and police officials do their assigned work. We would like them to act impartially, quickly and intelligently. There is hardly any legal case which a judge would not be able to decide within a month's time. The question is how to make them do so. The following proposal looks at it from the point of the person who wishes to do so, and asks what he or she would need for the purpose.
Everyone needs two eyes, but a judge needs four I’s. These are: Incentives for proper motivation, Institutions of supervision and monitoring to ensure accountability, Infrastructure and support to ensure efficiency, and Information and training to ensure better decision making.

**Incentives**

In order to motivate people, there must be proper incentives. This is the opposite of the view that sees coercion as the primary vehicle for motivation. The example of colonial governments, in this region or more contemporarily in South Africa, and also the example of the USSR shows that pure coercion does not work for long, and that end it undermines the system. In fact, even during its limited life, it cannot induce people to act creatively, justly, and impartially. A society that values creativity, justice and impartiality cannot base its system on coercion alone.

Incentives include income, dignity, self respect, conditions of work, protection from pressures, a sense of community, and access to basic necessities of life.

The first and most obvious incentive, and indeed the most contentious one, is income. Most observers wish to avoid this issue, but it cannot be avoided any longer. The fact is that income levels are such that the government of Pakistan, like virtually all other governments in the developing world, finds it difficult to ensure that its public officials (not only judges, but bureaucrats, politicians, academics) act in the public interest. True, a number of people continue to act honourably no matter what the incentive, and we should be grateful that they exist. But as practical people, we should not base an entire system on the hope that there are enough of such people around. The system should be based on the needs and priorities of the average person.

This is especially true of judges. Except for the honourable minority mentioned above, most public officials survive on official salaries only through some form of misuse of authority. This does not necessarily mean outright corruption; it may include giving favours to other officials in order to receive favours from them, or obtaining preferential access to public resources (plots of land are most obvious, but there are many others), or by pursuing some business on the side. From judges, the first thing we ask is that they should not exceed their authority. In other words, that they should not use this method of survival. But then, we have look at the issue of salary more carefully.

On way of asking the question is whether an honest public official can afford a decent (not affluent) standard of living. In other words, can he or she afford the basic expenses of food and clothing, send their children to decent schools, afford their marriage expenses, build a house of appropriate quality, buy a limited number of household appliances, and not become a pauper on retirement. At existing salary rates, the answer must be in the negative.

Another way of asking the question is whether the brightest of the young men or women in colleges and high schools are attracted to this profession as a way of life. It turns out that the brightest of these individuals are today looking for other opportunities, many of them outside the country. It will become increasingly difficult to run a government or any organisation if it cannot attract at least some of the best people.

Recent discussions on economic development have looked at the experience of successful countries, especially Singapore and South Korea. One factor that has not been emphasised sufficiently is that these countries have honest officials, and one of the reasons for this is that they get paid very well.

In Korea, starting judges receive 500,000 Won per month plus a bonus of approximately 100 per cent. This works out to Rs. 33,000 per month, plus other benefits (including assistance for schooling and housing). The head of a local court receives about Rs.
80,000 plus benefits. These are higher than salaries of public officials in equivalent ranks (Please See Annexure I).

19. Similarly, in Singapore salaries and benefits of public officials are quite comparable to the private sector. Even within this, judges receive more than the average civil servant (although the best lawyers make even more). A magistrate starts with the equivalent of Rs. 36,000 per month (including bonus) plus normal benefits, and a superior court judge at Rs. 4,25,000. Housing is subsidised by the Singapore, but public officials do not get special treatment. (Please see Annexure II).

20. The upshot of this is that in the long run the government of Pakistan should be reconciled to a substantial increase in the salaries of public officials. And second, that the salaries of judges should be higher than those of other professions.

21. This, however, is still a simplistic statement. Clearly, government salaries cannot be increased overnight. It would only lead to inflation, and, in any case, not get rid of corruption or incompetence. What needs to be done therefore is a phased programme, starting with the judicial officers, and expanding over a ten year period to the rest of the government.

22. Even among the judiciary, simply increasing salaries is not enough. It will not change people overnight. A practical solution would be to announce the formation of a special group, for service in selected districts or areas, with special terms and conditions of service. The selection of this group should be made through a competition conducted by the Public Service Commission, with the participation of the superior judiciary, and would be open to judicial officers as well as others. The selected individuals would receive appropriate training before being assigned to their positions. The only warning is that they should not believe that they will immediately get promoted to higher courts. The idea of the special group is to ensure the availability of justice at the local level, not simply another means of strengthening the higher courts at the expense of the lower courts.

23. This recommendation is relevant to the well discussed issue of the separation of the executive and judiciary. A start could be made by giving the judges from the special group the jurisdiction over all serious civil and judicial cases. This jurisdiction too could be gradually expanded as the system takes root. One advantage would be that it would attract good and honest officials from the executive to opt for the special group, with a higher pay and benefits to compensate for the perquisites of the executive.

24. Income may be an important ingredient of incentives, but it is not enough. Other ingredients are dignity, independence, self-respect, conditions of work, the esteem of the community to which one belongs, protection from arbitrary treatment, and access to basic services if not available through the market. Their existence would help ensure that young people would be attracted to the profession as an honourable way of life. In principle, a civil judge or magistrate must be treated with the same dignity and respect as a judge of the High of Supreme Court.

25. The selection process mentioned above, as well as an increase in salary will contribute to the environment of respect. Two other factors are important. First, allocations for improving the conditions of work--cleanliness, order, distance, etc.-- are absolutely essential. The disorder, filthiness and poor maintenance of the premises contributes to the lowering of esteem for the profession; it can and should be remedied at very low cost. Second, preferential access would have to be ensured to those public services which require misuse of office today, such as schooling, health, utilities. In some case, the higher salary will suffice, but if an item is not available through the market alone, it will have to be specially provided for. In particular, all judicial officers should be provided with cars.
Institutions for Accountability

26. Motivation is only one part of the answer. The second ingredient of public action is accountability. There are two forms of accountability: internal and external. The former is the normal form of ensuring accountability in day to day operations; it operates within an organisation, through such mechanisms as direct supervision, ACRs, deadlines, or peer pressure. The latter is used in extreme or rare cases, and takes the form of media or public opinion or political intervention. There is a need to strengthen and channelise both means of ensuring accountability.

27. Normal supervision takes place through channels that are well known. Some of them may have atrophied over time. There may be a need to do a detailed study to reinvigorate them. This may involve setting detailed and clear procedures of monitoring. For example, judges may be required to send a written report and explanation on all cases pending for more than one month. If the number of such cases exceeds more than a target level, the higher court should automatically set up a commission of inquiry to determine whether it is because of increased workload (which may justify additional officials) or because of the negligence of one or more persons involved.

28. Similarly, the higher courts should regularly prepare statistical data on judges, including for instances, the number of decisions made by a judge that were turned down in appeal, the number of times cases were remanded, the total delay in the settlement of cases initiated before a given judge. These could be undertaken through consultants, law students, interns or otherwise. The object would be to keep a lookout for judges whose performance needs closer scrutiny. These could then be examined more closely. All of these should normally form part of the personnel record of judges.

29. In order for this procedure to have meaning, two other elements would be necessary. First, a concerted effort would have to be made to ensure that the courts are not overburdened with work. Where there is evidence, there should be immediate response in the form of additional judges. Second, the promotion and reward process of judges should be tied to the statistical evaluation of performance, in addition to the more qualitative measures used hitherto.

30. This would have relevance to the process of external accountability as well. It would mean that selection, promotion and rewards would have to be more transparent and participatory processes than has hitherto been the case. Elevation to higher courts should be preceded by open evaluation processes, in which the entire record of the individual is discussed and presented to his or her peers in the profession, as well as to the public at large.

31. Other possibilities for external accountability also exist. The first is an institution used in Finland, whereby the parliament appoints one of its members (or even an outsider) as the protector of citizens’ rights. This individual moves the parliament to look at actual and potential violations of the rights of citizens, either because of the enactment of bad laws, or by a miscarriage of justice in application.

32. Another option is the so called Missouri Plan, in force in a number of US states as well as in Japan. The names of judges of superior courts are placed on the ballot every ten years; if more than 50 per cent of the voters vote against them (which has happened only in very, very rare instances) the judges are dismissed from office. Of course, this applies only to superior court judges, who otherwise enjoy life time tenure. It is possible, however, to think of such conditions applying to District and Sessions Judges. While this would have to be discussed further, it would mean that the post of District and Sessions Judge would not be a transferable one.

33. The main idea is that the merit of each individual should be recognised by their peer group. A third channel for achieving this is through support for law journals and law conferences, in which the evolution of the law through the judgements in specific cases would come under discussion.
34. The section on external accountability would be incomplete without mention of judicial procedure. At the moment, the potential for miscarriage of justice resides not in the examination of questions of law, but those of questions of fact. The supervision by superior degree of supervision on matters of fact can be achieved through community involvement in the judicial process in the form of the jury system. Trial by jury could be made mandatory for all cases above a certain level; and jury duty made mandatory for everyone with more than a metric level education.

35. A related point in this respect is that procedures need to be established to deal with the distortion in evidence before it gets to the court because of corruption or incompetence in the police department. For this purpose, it could be made mandatory for judicial officers to comment on the nature of the evidence and the investigation. Where a judge finds evidence of incompetence or corruption in the police officials, immediate dismissal should result.

**Infrastructure for Efficiency**

36. The third ingredient of mobilising the judicial system and upgrading its quality is to ensure proper infrastructural support for it. First, judges of lower as well as superior courts need support to enable better organisation for their time. This means professional secretaries, law clerks (who would normally be interns from law colleges), better hardware for data and information management, and better libraries and journals in each court.

37. A major obstacle to proper decision making in Pakistan is the absence of properly trained lower staff, such as secretaries, clerks, and other staff officers (or, say nurses in hospitals). A major reason is that such functions, although important, have not been treated with the respect that they deserve. There is a need to upgrade the quality of the professionals in these positions. This means that there may be a need to establish proper training schools and institutions for such people. There is no training school in Pakistan for clerks or secretaries, let alone law secretaries or the like. In the private sector, a good private secretary costs anywhere between Rs. 10,000 and 20,000. But they have received training only through experience. This needs to be changed. The country needs more and better trained secretaries; also, it needs to ensure that some of them would be within the reach of the government even at the middle levels.

38. The argument is that if a special group of judicial officers is selected, they would also need to be accompanied by proper supporting staff, who would be computer literate and efficient. In longer terms, a secretarial training institute for general secretaries as well as specialised ones could be established.

39. In general, and this is the second point, the use of computers for record keeping, monitoring, etc., should be introduced at the local levels. Again, this can be done as a pilot programme, and expanded later.

40. In addition to this, a tradition of law interns should be established. Under this programme, it would be made mandatory for law graduates to undergo training for, say, one year, with judges before being accepted to the bar. During this period they could assist with the normal functions of the court, or help in compiling statistical reports and data.

41. Third, budgetary allocations should be made for establishing proper libraries, with trained librarians, including law books, journals, case material, analyses, for use by the judges at each court level. The use of these should also be monitored through statistical measures, as well as qualitative ones.

42. Lastly, none of this programme would be successful without appropriate political support at the highest level.
Information for Decision Making

43. The fourth ingredient for improving the judicial system is the ensuring of proper information, knowledge, and training in the hands of the officials. First, pre-service training needs to be improved; this means looking at the syllabi of law colleges, as well as judicial training institutions. The idea of law interns has already been mentioned as a means of improving training as well as providing support to sitting judges.

44. The syllabi need to include management issues, computer use, and newly emerging areas of judicial action—human rights, sectarian and ethnic issues, water rights and environmental rights in general, public interest litigation, institutional development. These issues need to be introduced at law colleges and training institutions. They also need to be brought in through a planned programme of in-service training for judicial officers. This could be done through NIPAs and the Administrative Staff College, and could be supported by appropriate training courses in selected areas within the country and abroad.

45. An important area in which Pakistani students in general and those aspiring to judicial positions in particular, need training is that of writing skills. This needs to be built into law school curricula. Institutions such as law reviews, law journals and other publications could be handsomely for this purpose.

46. Besides the training component, information can be provided also through libraries, seminars, conferences. Funds for such things could be included within the general budget of local courts.