

Legal Justice System of Pakistan Imprisoned in Maneuvered Professionalism: Causes and Remedies

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Abstract

People of Pakistan are governed under the Pakistan Constitution 1973. All constitutional characteristics are of profound interest of each individual of the society. Astonishingly, most of the features, neither properly exist nor expected to grow in near future; instead, they are reverting back by the passage of time. Judicial organ with all its perks and privileges is illuminating yet facing criticism on escalating litigation backlog. Bar Councils and Associations are losing professionalism. Legal fraternity, to some extent, is abusing their facts finding mission and not performing their contributory role as officers of courts. This fragmentation has produced inclination in legal practitioners to practice alternative irregular options outside the courts. Witnesses' credibility has been pushed at stake and testimonial tendency is decreasing. Genuine litigants are losing hope for timely justice and frivolous litigation is increasing for vested interests and defeating the cause of justice.

The current study is aimed at investigating root causes of delay in disposal of cases, expressed or implied obstruction by legal professionals, evading tendencies of administration, ignorance of public for remedials and finally the decreasing role of judiciary for keeping the justice system at track. The doctrinal method of research has been adopted to conduct the study.

Key Words: Justice System, Legal system, Legal profession, Professionalism, Delay of justice, Social justice, Independence of judiciary, Pakistan.

Introduction:

The Constitution of Pakistan prescribes parliamentary form of government. There are three organs of State under the democratic structural organization. Trichotomy of power explicitly defines the working boundaries of three pillars of State. There is distinguished emphasis on specific eminence of each organ. Parliament has exclusive distinction to legislate for the legal system. Executive organ owes the responsibility to implement the intention of the parliament. Judiciary has been declared to interpret the law and explain the determining will of the

parliament along with adjudicate the controversies as custodian of the Constitution (Cohen, 2009). Nevertheless, in case of difference of opinion, this is the court which enjoys confidence of public to agree and act as neutral umpire. Since all the system and its output revolves around the law, the judiciary enjoys exclusive command and competence to support the working system of State (Diver, 1984).

The judicial system in its formulation possesses a monitoring system of check and balance. The judiciary can check and be checked in each case by contesting professionals from legal fraternity at the time of adjudication. Whatever comes after final stage of adjudication is technically processed conclusion or legal consensus of parties, lawyers, witnesses and presiding judges. The proposition for the study here develops that in the presence of such a delicate mechanism why the administration of justice system has become counterproductive in Pakistan.

Shortage of judicial staff is inexcusable drawback without justification. District judiciary is backbone of judicial system of basic level. In district courts across the country one thousand forty-eight (1048) posts of judges are laying vacant. In province of Punjab, seven hundred forty-eight (748) vacancies are yet to be filled. Fifty-four (54) vacancies are to be filled in province of Sindh. In Khyber Pakhtunkhwa courts one hundred twenty-four (124) seats are still waiting for the appointment of suitable judicial officers. In Baluchistan sixty-eight (68) posts and thirty-three (33) seats in Islamabad district judiciary are lying vacant. In the prevailing disorder of backlog and delinquency of pendency, it should have been intolerable situation for judiciary. These are the reasons which have provided justification to illegal parallel systems of predisposed *punchayet*, *jirgas* and tribal forums to exist. Similarly, declining credibility of civilian courts has allowed unconstitutional establishment of military courts to try civilian cases outside regular judicial system of the country (Munir & Mahmood, 2020).

Administration of Justice under the Constitution:

Administration of justice has become a wider term inclusive of social justice system as prescribed in the preamble of the 1973 Constitution. Legal justice is part and parcel of social justice. Administration of social justice is a political perception which is furnished and ensured by the social welfare system sponsored by democratic traditions and combined operation of all State institutions. No system grows under coercion or compulsion. Human nature has no inclination to admit external forceful compulsion rather develops confrontation and obscured resistance (Pound, 1913).

Main function of administration of social justice is to create an environment or system in and outside the State where the citizen or alien could live and lead his life in accordance with reciprocal system of rights and obligation under national and international law (Eriksen, 2016). In this system, it is not the citizen from whom the State will demand series of obligations, rather State shall first take part in capacity building process of its national and then be beneficiary of his physical, intellectual, moral, political and qualitative existence (Eade, 1997). In the prevailing system, people of Pakistan are left themselves responsible for protection of their rights not only from rival citizens but also from the community in power which has usurped it by force, repeatedly by maneuvering the political system via manipulated elections.

Unfortunately, people of Pakistan for larger part of their political life have been governed under forcible system imposed by coercive apparatus of State as termed in Asma Jilani case (1972). Consequently, there is no natural inclination or urge in people to be beneficiary of conformism. Demand of unconstitutional obedience has changed aptitude and drive of unanimity of public in general. This is the national loss in response to autocratic rule enforced by martial law regimes in last many years. Every system works its own natural way and it is precondition of democratic rule to be applicable indiscriminately to all territorial entities without exception. System of Pakistan has been deliberately corrupted by the illegitimate beneficiaries of authoritarian rule. At present, State organs have lost credibility and population in the state no choice is helplessly abiding by working system of State (Khan et al., 2012).

Independence of judiciary: Theoretical Foundation

This is the chief characteristics of judicial organ as described in preamble of the Constitution of Pakistan, 1973 that there shall be independent judiciary in Pakistan. This study is also meant to examine the purpose and scope of this doctrine of juridical proclamation supported by democratic constitutions all over the world. Independence of judiciary is a historical evolution of trust upon the judicial organ of state devolved to create system of rule of law for administration of legal justice in the society. Judicial independence promises that judges would be able to give their impartial and honest verdicts according to the laws of the land without fear of influence, control, or interference from anyone (CJC, 2016).

The aforementioned sense denotes the character of individual judges inclusive of characteristic of the judiciary as a whole. If the judiciary as an institution is independent but this independence is guaranteed to the judges at the individual level, such judges may be compelled to follow the desires of their lordships, which would result in a poor implementation of the rule of law. The attainment of judicial independence may become difficult where the other twigs of government are in a position to defy or prevent the application of judicial verdicts. Alexander Hamilton was of the view that judiciary was the least perilous section which had “*no influence over either the sword or the purse*”, and was, thus, not able to defend itself against the other State organs. However, the real power of court is its judicial wisdom impartially applied speaking through judgments delivered under perspective of law (Law et al., 2019).

Administration of Justice in Courts:

Administration of justice in courts may be explained as adjudication of legal propositions under the constitution and law of the country. State system prescribes classes of courts from subordinate to superior courts working in the country. Besides, this there is additional system of special courts and tribunals dealing in conferred jurisdictions all over the country. This section of the study focuses on factors delaying legal justice system of the judicial organ. There is limited scope at this stage to emphasis that judiciary is one organ of the State system. Two other organs also function side by side of each other. Where there is the doctrine of trichotomy of functions keeping the three organs within their constitutional sphere, there is also theories of refined distinguished co-relations enabling each other to assist and ensure administration of legal justice. This is admitted fact that if any organ of State leaves behind its function or is not working in competitive spirit, that malfunctioning can spoil efficient working of all other

organs of State. No organ can independently accomplish its mission. If an organ moves in squeezed position, it leaves space for another organ to replace that or is pushed out of its orbit. Similarly, if any organ grows out of its limits that shall also occupy unjustified place of the other. This intermeddling harms the working of whole system.

State judiciary cannot claim administering the justice as required under the constitution (Javaid, 2010). Consequently, governing system is out of order, resulting in collective deprivation of fundamental rights of people. It is root cause of public grievances rendering merits of sovereignty out of reach of population. Present complexity of delayed decision-making means denial of justice involving anxiety, frustration destroying very means of public trust on judiciary (Zafeer et al., 2020). The society is reverting back to private retribution and vengeance. Incidence of revenge are accruing in court premises and handcuffed accused are murdered even in court rooms.

There is a popular maxim that “*Justice delayed is justice denied*”. Martin Luther King (1963) slightly modified the maxim by affirming that “*Justice too long delayed is justice denied*”. It is openly admitted by judiciary, executive and parliamentarians that justice system of State is not in alliance with democratic values. There is another maxim that justice should not only be done, that should appear to have been done. This is aim of the study to ascertain why judicial system is inflicting miserable consequences in family, guardianship, service, labor and tenancy in civil, along with terrorism, sexual molestation of women and children etc. in criminal cases.

Complex procedural limitations & its Simplification:

The system of law should have been enacted by the parliament in accordance with custom, traditions and emerging social requirements of the people. There should be consistency in principles of Constitution and ordinary law. Legal system is still operating under obsolete and redundant outline. Colonial penal substantive and procedural laws respectively enforced from 1860-1898 are in practice in courts without practical amendments. In several cases, litigants cannot get justice in their lives, so, the legacy of litigation is handed over to their descendants to continue seeking remedy from the courts.

In courts, cases go from subordinate to superior courts moving in trials, re-trials, remands, appeals, leave to appeal beside review and revisions. Complex procedural provisions open venues for reversal or fresh rehearsal of any orders or decrees at any stage of proceedings. The stage of evidence hardly comes at prescribed time. This is the most vulnerable and manageable stage of exercising ulterior motives of parties and practitioners. Witnesses are morally discredited and treated like beneficiary of the testimonial proceeds. Postponement and adjournment are ancillary options for reluctant parties and pleaders.

Simplification:

As described earlier, procedural laws enforced in Pakistan are too old to compete the requirement of present time (Javed & Javaid, 2020). Laws enacted in the past having no matching compatibility are susceptible to violating tendency and rest at disposal of abusers. Laws were enacted when reliance of judicial system was on manual work and technological accessories were not available. Finding the parties, witnesses without telecommunication

means and quick access to material and offenders by the beat of drum and pasting notices etc. People are using these facilities at home but there is limited use of technology in our judicial system. Advance technology and device are available to the offenders and is being used by crime designers (Perkins, 2021). Contrarily, assistance of this facility for judicial functions usually hangs between non-availability of resources or lack of interest. Misuser take personal material benefit as compare to public officials sustaining no personal loss for such negligence of duty.

Procedural laws are enacted in judicious sense to accommodate incidental eventualities of not only parties to proceeding also accommodating compulsions of councils and witnesses etc. The scheme of legal provisions genuinely incorporate contingency of all types with possibility to happen to any persons in any kind of seen or unseen circumstances. This sense necessitates to furnish provisions and space to meet all circumstances. Frivolous litigants are usually not time conscious and take refuge inside all spacious accommodating clauses of law. Non-vigilant clientage abuses the process with the assistance of lawyers. Contrarily, the council engaged by such client better understand the factual position and can play decisive role in preventing misuse of law. Therefore, these are converted into competition between vigilant vs. irresponsible client. It is therefore responsibility of lawyers and courts as a whole to take part in sacred mission to point out redundant provisions or provisions having space for abusers. This task includes proposing required provisions preventing misuse and facilitating better use of law in the interest of justice.

Frivolous litigation:

Frivolous litigation is dominant issue which disrupts regular hearing of the courts. It also causes delay in timely disposal of cases for those who are in court for genuine grievances. Such type of litigation has taken roots in all categories of courts for various reasons. Such reasons are cheap publicity or to pressurize public servants for personal gains. Sometimes, important issues of public interest are raised in such litigation to attract attention of the general public. It becomes difficult to visualize the motives of petitioners and courts have to continue with the superfluous litigation. Open criticism or condemnation is not possible for such ulterior motives wrapped in silky rehearsal. Nevertheless, courts weary of frivolous litigation do not miss the chance to shot such process abusers and have fined on various occasions. Such practitioners have been penalized on several occasions and their practice may be curtailed by imposing heavy fines on the perpetrators.

The Courts have showed their displeasure on wastage of their time due to filing of frivolous litigation and took action in many cases. Mr. Justice Shoukat Siddiqui imposed a fine of Rs. 100,000 over a lawyer for filing frivolous petition. Justice Athar Minallah fined (the same petitioner) Rs. 10,000 on filing petition challenging judicial policy and electoral system of the country. (Gishkori, 2018). In Wafaqi Mohtasib Secretariat, Islamabad v. SNGPL, Lahore (2020), the Supreme Court dismissed the petition and imposed a fine of Rs. 100000 for filing frivolous petition. The chief Justice of Lahore High Court dismissed a petition and directed the petitioner to pay a fine of Rs. 100000, who tried to create uncertainty and panic in the society regarding the issue of COVID-19 (Dawn, 2020). Justice Faisal Zaman Khan of the Lahore High

Court, also imposed a fine of Rs. 500000 for filing a malicious and frivolous application challenging the fixing of tariff of the utilities in decimal digits (Tribune, 2021). The Islamabad High Court imposed a fine of Rs. 20000 on a citizen who tried to create controversy regarding the Government's policy of COVID-19 (Asad, 2021).

As discussed above, filing petition is a legal matter. Its perceived character for disposal at the earliest stage or resisting its initial proceedings is not an arbitrary function all the time. In order to get rid of such practice a deterrent action under the law was deemed necessary to curtail that eventuality. The federal government enforced the Cost of litigation Act, 2017 in the Islamabad Capital to get rid of frivolous litigation and registration of false cases. This legal step has yet to signify its outcome. Further preventive steps are also needed to be taken to discourage frivolous, habitual, litigation (Asad, 2018).

Leftovers and Adjournments:

Legal fraternity and their clients are occasionally playing within the complex definitions and provisions of procedural law. At the opening stage of the civil case, service of summon is time consuming job. Service of summon is avoided by the defendant by all means until all enabling provisions of the Code of Civil Procedure are applied in favor of defendant avoiding due process of law. This extra-legal service is assisted by technocrat solicitors. Needless adjournments of cases are main reason for delay abused by lawyers and their coterie. Each court has to publish cause list of each day and parties are bound to attend the court proceedings in time. Often cases are left without hearing for several reason including excessive workload of the courts. Lawyers have to appear in different courts, sometimes in different cities so adjournments are sought so frequently. Adjournments on several genuine or some fabricated pretexts are in practice delaying delivery of justice. Adjournments seeking is legal facility but in practice it is defeating the very cause of administration of justice.

Delay in administration of legal justice is not inflicting harm to the parties to suit or proceeding alone. This is also reducing efficiency of state working system involving extra energy and wastage of resources. If any organ of system has not delivered the task, resources stand consumed creating space for malpractices and irresponsibility. These are some of the reasons for preceding economic recession of economy of Pakistan. Modern age prospers on calculated economic policies to strengthen public welfare system. Established legal and economic system keep an eye on consumption of resources on each public sector. Public welfare priority system cannot afford purposeless wastage of resources on judiciary by declining other welfare projects of state. Each action of state system is evaluated in terms of delivery of public welfare. In civilized states not only, trials are monitored their expenditure is also scrutinized. There is an example from USA. The longest trial in USA was the McMartin pre-school abuse trial which continued for seven years and it's cost of investigation was 15 million dollars (Reinhold, 1990). The lengthiest trial in the United Kingdom was the Jubilee line corruption trial which continued for 21 months and cost of the trial was 60 million pounds. This cost monitoring system enables State to boost up welfare projects of population (Leigh, 2005).

Backlog statistics:

The number of pending cases in Pakistan has risen as 2,159,655 cases. The Supreme Court has to adjudicate 51,138 pending cases in the coming years. In Islamabad High Court the numbers of undecided cases have reached to 16,374. The District and Sessions Court of Islamabad have to adjudicate 51,849 pending cases. The Lahore High Court has accumulated larger number and has crossed the volume of 193,030 cases. The Punjab district and sessions courts have imaginable pendency of 1,345,632 miscellaneous civil cases. In Sindh High Court 83,150 cases are pending for adjudication. In district courts pendency of cases has risen up to 115,296. The Peshawar High court has 42,180 cases awaiting adjudication. Range of cases pending in district and sessions courts is 240,436. Lastly, Baluchistan High Court has 4,663 pending cases and its district judiciary stands with total of 15,729 cases (Nawaz, 2021).

The superior courts have observed that subordinate courts were supposed to deliver their judgements within a period of 30 days from the conclusion of trial. The district courts were also supposed to do so within 45 days and High Courts were bound to follow the time frame of 90 days (Dawn, 2020). Chief Justice Iftikhar Chaudhry designed double shifts for judges to hear cases. Asif Saeed Khosa, focused on setting up model courts in every district to expedite the hearing of criminal cases. Supreme Court also initiated video link connectivity in May 2019. It was deployed on a very narrow scale at the level of the higher courts (Dawn, 2021).

Justice delivered in time is important because delayed decisions endanger peace of the society and discourage the people deprived of their rights and encourage the culprits to repeat the crime. This is important reason of multiplication of litigation, delay and backlog. Culprits have also been found amongst lawyers. Legal fraternity is under embarrassment to find that some forged degree holder were their elected leaders holding administrative offices of Bar Councils. They were representing authentic, well reputed, amicus curiae, meticulous lawyers at apex forums of judiciary and administration. They although have been de-seated yet without ruling their liability and future prevention. They have to lose nothing earned by deception practiced against lawyers' forums and judiciary on the basis of prolonged dishonesty. Judiciary taking notice of that forgery simply referred fate of the serious crimes committed against public, lawyers and judiciary to Bar Councils for decision. This clemency of Bar and Bench has boosting role in imprisoning administration of justice system.

Justice system in mandatory working conditions is pre-requisite for peace and progress and has no alternative. Slightest ambiguity in its operation has irreparable consequences for each national individually and entire nation collectively. Backlog condition has necessarily bended already overloaded judicial system. Judiciary is not working in the air or ignorant of ground realities. Constitution has provided supervisory institutions to watch, guide and assist their working conditions to ensure timely and judicious disposal of cases. Responsibility goes to Supreme Judicial Council, National Judicial Policy Making Committee and Judicial Commission of Pakistan at one side and Ministry of Law and Justice and Bar Councils on the other.

Bar Councils and Bar Associations:

The Legal Practitioners and Bar Council Act (1973) is relevant law laying down the ideals of legal education, competence, professional conduct and legal ethics for advocates. The Council enrolls advocates and monitors professional responsibilities and discipline as prescribed under rules. In addition, the law prescribes the procedure which is followed by disciplinary committees. The law safeguards the rights, interests, privileges and of advocates and promote and support law reforms in the judicial system. Bar Councils and judiciary are described the wheels of justice system. Bar Councils and lawyers are first barrier of preventing frivolous litigation. First encounter of litigants is with lawyers' community. Their guidance as to validity of claim and determination of remedy, instead of increasing clientage can reform the institution. This kind of merited professional service can eliminate entry of corrupt mafia patronized by forged law degree holders in courts.

The Bar Councils and Bar Associations are comparable participants of justice system to ensure the streamlined professional contribution for the judicial proceedings. Their professional share in resolving the dispute is mandatory and commendable. The attorneys are equally familiar like the judges with the facts and issues of the cases. They are supposed to play significant role to formulate the litigation plan and execute the same responsibly. The judges are also expected to maintain control over the complex litigation which burdens the lawyers. The lawyers must uphold mutual co-operation and respect not only between the Bar and the Bench but also among those who are called for legal assistance as experts (Federal Judicial Center, 1995).

Bar Councils and Associations are facing considerable criticism regarding their deteriorating organizational role in maintaining professional contribution of legal fraternity in courts. Consequently, their working conditions in dealing clients, courts and junior lawyers have degenerated. There are several instances of legal community in playing active and positive role in designing precise direction of legal and political perceptions in the country. By the passage of time this tendency is losing ground. Elected bodies of lawyers are observing non-professional attitude in and outside courts. Pleadings are substandard, hearings of case are postponed, submissions for adjournment are common. Strikes are frequently notified and observed on insignificant matters switching operating system of the courts to stop (Shah et al., 2014).

Strikes and protest have been a customary tool of demonstration of displeasure or emotional discontentment. The practice of this demonstrative tradition is not confined to legal fraternity. It is also permissible as fundamental right under the constitution. This is alternative modes of dormancy like keeping quiet, prolong state of expectancy, compromising attitude etc. This is more political strategy than social, cultural and communal demonstration. Strikes in professional institutions on individual concern are not admissible as adding backlog in justice administration.

Improvements to increase efficiency:

Problems of developing societies are numerous and their resolution is also not as simple as believed by critics and commentators. Litigation is a better substitute of private vengeance and

retribution. Public in general take roots of courts not simply for legal resolution, their intention to file action is occupied by irritation and annoyance. The sensation of retribution has been modified to larger extent yet its velocity is not redeeming to the level of formal belief that peaceful resolution should be favorable choice of each contestant. Efficiency as alternative has to earn attraction and decency only after legal modes and manners of judicial proceedings produce their practical worth in the minds of variety of social characters. Public in litigation is generally not literate and is possessed by expeditious nature. They have yet to develop firm belief that dispute may be difference of opinion and peaceful resolution in all circumstances must be the first choice and courts are neutral umpire. Public must believe that judiciary is public service arrangement managed by public exchequer and has ability and integrity to pacify the emotions of parties by their intellectual struggle and litigation must end in believable resolution. Alternative Dispute Resolution, Arbitration, Reconciliation and Mediation are best modes of efficiency.

Conclusion and Recommendations:

Litigation is not a problem or curse, it may originate in difference of opinion, misunderstanding, deprivation or enforcement of right and occasionally to push the opponent toward disadvantageous position. It may also originate in ignorance of facts, erroneous presumption of law and provocative inducement by opportunist ally. Besides parties, lawyers are intentionally or otherwise involved in instituting or prolonging the suits in courts already burdened by backlog of cases. This is obligation of all including judiciary to treat this obstacle for timely administration of justice. If legal justice system is not capable to regulate discipline in its own ranks, how the society would expect delivery of justice for the litigants.

Justice system consume lion share of financial resources. Judges are lucratively remunerated out of public exchequer. There should be professional return of this recompense for public in the form of national confidence, rule of law, human rights, social peace, deterrence of accountability, etc. Judiciary in important cases against high-ranking public officials is depending on illegal modes of action like preaching fear of God, expressing words of infuriation, moral advisory codes, threat of action in future or next calling high-ups in courts, etc. In return, public officials and professional criminals have devised identical and popular mode of managing momentary anger of judicial officer by expression of repentance, instant apology and verbal commitments in the courts. Meanwhile, alternative modes of diminishing cogency of facts are applied limiting merits of case at the mercy of judge. In courts, after petitions are filed, category of respondent to be summoned is extremely weak. Lower ranking officials attend the courts and responsible official escape to face and answer the courts. This is major cause of leftover of legal proceedings in courts. Another tendency of referring the legal contentions back to the authorities for decision against whom petitions are filed is not legal. This policy is hanging petitions in prolongation.

Modern technology has assisted judicial system in several ways. Addition of such courts is promising step. Its usage from investigation to stage of proof is swift and authentic. Its application is increasing to interlink the parties, counsel, witnesses and court. The current health precautionary measures have further necessitated the efficacy of these courts for

resolution of the problem. United Kingdom, India, Australia, United Arab Emirates along with several other countries have speed-up to apply the system to protect lives of their nationals threatened by COVID pandemic.

The role of legal fraternity cannot be under-estimated in efficient administration of justice. Encouraging strength of lawyers are working with devotion and are pride of nation. Their legal assistance is controlling sanction against impolite public servants and bureaucracy. First encounter of litigants is with lawyers' community. Their guidance as to validity of claim and determination of remedy, instead of increasing clientage can reform the institution. This kind of merited professional service can eliminate entry of corrupt mafia patronized by forged law degree holders in courts and a good professional support for courts.

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