**Judicial reforms**

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Why is Pakistan’s justice system perceived to be a ‘weak’ system? Why is it failing to safeguard the lives and property of citizens and protect contracts to boost the economy? Why is timely justice not being delivered to the people? Can our justice system be reformed?

Such questions are often raised as rule of law, constitutionalism and judicial independence deteriorate in the country. The World Justice Project’s Rule of Law Index 2021 report shows that Pakistan is among the lowest-ranked countries in its adherence to rule of law, ranking 130th out of 139 nations. This is alarming.

There may not be straightforward answers to these questions. Easy entry into the bar, the failure of bar councils to provide professional training and maintain accountability of lawyers, lack of objective criteria and merit in judicial appointments and political offices of the bar, lack of sustained institutional dialogue and engagement between the bench and bar, and poor government support for legal and judicial reforms could be some reasons for the weakening of our justice system.

Institutional reforms are a complex phenomenon. Judicial and legal reforms require government commitment and support, and the implementation of court decisions depends on the executive branch of government. Thus, lawyers and judges may not be held solely responsible for the poor administration of justice. However, they can play an effective role to improve the system, focusing their energy on addressing the lack of institutional capacity – including judicial and legal capacity – and accountability and inexcusable delays.

Institutional reforms in the judiciary require a robust effort within constitutional parameters. This requires awareness, momentum, the will to bring reforms, amendments to laws governing the appointment and accountability of judges, capacity building and the accountability of the bar, and integration of technology as well as improvements in other institutions such as the police and prosecution to reduce delays.

The existing constitutional scheme for the appointment and accountability of superior court judges, and the procedure prescribed for entry into the legal profession as well as the training and accountability of lawyers have failed to improve the quality of our justice system. The procedural conduct of bar elections without meaningful reforms results in income inequality and class- and gender-based discrimination among lawyers.

Despite the poor performance of our justice system, there seems to be no motivation for reforms, and bar politics remains afflicted with an acute and pernicious sort of stagnation. There is a perception that some bar members exert their political clout to get favorable decisions from the courts which lack independence. This weakens judicial independence and fuels patterns of discrimination amongst lawyers. Also, effective and transparent accountability proceedings against judges and lawyers are rare. There are also incidents of violence and attacks on judges, lawyers, and litigants without any effective action against those involved.

The performance of judges should be audited, and those who fail to meet the standards prescribed by the judiciary may be provided additional training or removed from office. Similarly, bar members engaged in professional misconduct and the misuse of political offices should be dealt with. At the same time, bar councils should support professional lawyers in terms of training and matters relating to the public interest. When talented young lawyers do not see any means of progressing based on merit, they sometimes turn to violence and exploitative politics.

The founding fathers of Pakistan envisaged a homeland where the rights of citizens would be fully protected without any discrimination. The people of Pakistan want a strong state with rule of law and a well-functioning democracy – a state where the constitution is supreme, the judiciary is independent, and all citizens are equal before the law and are entitled to equal protection of the law. To achieve these broad objectives, the legal fraternity should focus on three specific reforms: the welfare and responsibility of the bar, bar councils elections, and the appointment, independence and accountability of judges.

As lawyers, we need to pursue amendments in the Legal Practitioner and Bar Councils Act, 1973 and the 1976 rules made thereunder focusing on professional training and financial support for young lawyers and the regulation of bar council elections. For example, bar councils should engage young lawyers in public interest cases and pay them fees from the funds of the bar council. The tenure of elections at each level may be extended from one year to two years. There should be a direct election to the Pakistan Bar Council (PBC) – like elections to the provincial bar councils. It would help reduce alleged corruption – vote trading in the election of the highest regulatory body of lawyers. To implement existing provisions and pursue appropriate amendments, lawyers should engage with bar councils, government, and parliament as a whole.

Amendments in Article 175A of the constitution, ‘Appointment of Judges to the Supreme Court, High Courts and the Federal Shariat Court’ and Article 177 ‘Appointment of Supreme Court Judges’ may be sought to increase transparency and merit in appointments. The Judicial Commission of Pakistan should make a criterion for the appointment of judges through specific rules. An amendment in Article 209 ‘Supreme Judicial Council’ should be pursued to remove judges on the ground of ‘incompetence’ and ‘judicial misconduct’ through a transparent procedure – open enquiry. In this regard, lawyers may insist on the publication of the result of related proceedings. 'Incompetence' and 'judicial misconduct' must be defined more precisely and applied more objectively.

Bar councils need to analyse other justice systems and produce material on legal and judicial reforms here. Collaborating with law schools and international lawyers’ bodies, and forging issue-based alliances with civil society can help build the case for legal and judicial reforms in Pakistan. Keeping in mind their professional reputation and prospects, young lawyers may be encouraged to support and also hold the bench and bar and government accountable for the performance of our justice system. No nation can prosper without a strong justice system.

Further, theme-specific seminars may be conducted to cultivate broad support. Some members of the legal fraternity may oppose these reforms to maintain the status quo. However, the majority is expected to appreciate the need for reform owing to their experience with elite capture, discrimination and corruption in the profession.

Finally, young lawyers may consider participating in bar politics – without compromising professional duties – to support justice system reforms so that each member of the bar gets a fair opportunity of hearing in independent courts. An interview by the enrollment committee of the PBC for the grant of licence for appearing before the Supreme Court of Pakistan may be abolished. There is no such requirement even in our neighbouring country, India. It would allow an opportunity for young lawyers to appear before the SC and will promote talent in the bar. It will also reduce the alleged misuse of the authority for the grant of licence to procure the support to the elections of the Supreme Court Bar Association of Pakistan.

Bar councils need to prepare the legal fraternity to meet the challenges posed by the fast-changing legal landscape. There is a dearth of lawyers in Pakistan who could advise on legal issues in the domain of international law such as lawfare, cyberspace, international arbitration, etc.

Briefly, bar politics on the above lines will upgrade the legal profession and promote the independence of the judiciary. An enhanced focus on professional training will prepare lawyers to advise our government on national legal issues and defend Pakistan at international forums effectively. Above all, it will help deliver an expeditious and meritorious justice system to the people of Pakistan.