**How to access justice**

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Justice is the soul of a government. The term ‘access to justice’, as understood and used, means approaching judicial institutions for expeditious and inexpensive redress of a wrong committed to a person, and his/her body or property.

The preamble to Pakistan’s constitution, primarily based upon the Objectives Resolution of March 12, 1949, passed by the first Constituent Assembly of Pakistan, promised that the constitution would guarantee fundamental rights, including equality of status, opportunity and before law, social, economic and political justice, and freedoms of thought, expression, belief, faith, worship and association, subject to law and morality. It also promised the independence of the judiciary – a sine qua non for access to justice. Article 37 of the constitution sets out a goal for the state: that it shall ensure inexpensive and expeditious justice.

The constitution makes elaborate provisions for the creation of courts and other tribunals exercising the judicial power of the state. At the apex of the judicial pyramid is the Supreme Court of Pakistan that exercises appellate and original jurisdiction. The Supreme Court has seventeen judges including the chief justice. There are five high courts, one in each province and one for the Islamabad Capital Territory. The provincial high courts have benches at places other than their principal seats. The Lahore High Court has three benches at Rawalpindi, Multan and Bahawalpur, where judges are supposed to be nominated for a year. The Sindh High Court has its benches at Sukhar and circuit benches at Hyderabad and Larkana. The Balochistan High Court has its benches at Sibbi and Turbat. The Peshawar High Court has benches at Abbottabad, Dera Ismael Khan, and Mingora-Swat. High courts have constitutional, original, appellate and revisional jurisdiction. The purpose of establishing these benches was to ensure expeditious justice.

In addition to the above constitutional and appellate courts at the state and province levels, there are civil and criminal courts organized under the provincial laws at the district and sessions levels. A large number of courts are created under special laws – Anti-terrorism Courts, Banking Court, Special Court for Customs, anti-narcotics courts.

Courts perform three essential functions under the constitution. The first and foremost is dispute resolution between private individuals or between the state and individuals. The state here means a branch of the government. Second, the courts are obligated to enforce and protect fundamental and constitutional rights of the people against the executive and legislative branches of the government. This is the domain of the constitutional courts – high courts and the Supreme Court – which are vested with the power of judicial/constitutional review under Articles 8, 184 (3) & 199 of the constitution.

The third and most onerous function of these constitutional courts is to defend and enforce the constitution. Since the judiciary has neither the purse nor the sword but only the moral authority, this task is thus wholly dependent upon independent and fearless judges. Those who sit to judge others and are willing to be judged by the court of the people must have no skeletons in their judicial closets. Unfortunately, like other branches of government, the judicial branch has been dragging its feet from accountability too. In the last 75 years, only three judges of the high courts were removed for alleged misconduct.

Data collected by different organizations about the judicial system of Pakistan shows that its performance is abysmal. The huge pendency of cases in the Supreme Court shows a sorry state of affairs. Other courts too have huge pendency running into hundreds of thousands. According to a report, it normally takes 20 years for a case to complete its final judicial stages.

There are three main reasons for the denial of access to justice in Pakistan. One, there are not enough state resources to provide for a sufficient number of courts and judges. A loan of over $350 million was obtained in the early 2000; the loan was used to replace the colonial hardware and furniture in the courts. A very little amount was spent on the training of judicial officers belonging to the subordinate judiciary. The annual budgetary allocation for the Supreme Court and high courts and subordinate judiciary is mainly expended on salaries, pensions and other benefits. A very little amount of money is left for the improvement of the justice delivery system.

Two, the judicial system, which is weak and hugely unaccountable, is used as a tool of revenge. The docket of criminal and civil cases is full of false, frivolous and petty cases. A litigious culture is largely responsible for this huge pendency which denies people with legitimate cause access to expeditious justice.

Three, state institutions – mainly the executive branch and to some extent the legislative and judicial branches – are also responsible for the denial of access to justice. A survey of cases pending in the courts would show that the executive branch – federal and provincial – is the largest litigant in Pakistan. This is mainly for two reasons. There is no internal check on executive power. Since most of the powers vested in the state officials are discretionary, the resultant abuse and corruption translate into unending litigation. Further, a licence culture, public contracts and abuse of police power and regulation of business and trade are discretionary powers that become the main cause of litigation.

The legislature passes laws with little or no application of the mind. Tens of laws are passed overnight without even following the legislative procedure. The result is that almost every law, rule and regulation is challenged in the courts. The judiciary has for the last decade and a half, owing to judicial activism, become embroiled in political causes and the policy domain. Judicial activism and interference in the political and policy domains has affected the credibility of the judiciary.

Access to expeditious and inexpensive justice may be achieved by making a few structural changes and taking some practical steps. For one, there used to be jirga/panchayat institutions all over the Subcontinent which successfully dispensed expeditious and inexpensive justice. All small causes, (goat theft, petty property disputes), can go to these panchayats. In India, these panchayats have been given constitutional recognition and protection under Part IX of the Indian constitution. This will help with social cohesion and strengthen social institutions. Even family disputes can be resolved through these institutions. Our family law provides for an arbitration council but due to our litigious culture it has failed. In addition to the above social institutions, the state must encourage alternate dispute resolution.

Courts must start awarding actual and exemplary costs. There is no practice of grant of costs. Advocates and litigants need to realize that in the West where courts grant actual costs, lawyers and litigants don’t die paupers. It is heartening to note that the Islamabad High Court has started obtaining a certificate of costs. It will soon start granting actual costs. The Supreme Court has also started imposing costs for frivolous litigation. It needs to start granting actual costs to the aggrieved parties.

The state needs to allocate more resources for the judiciary. Induction of judges on merit and proper and proportionate allocation of resources will make the justice delivery system expeditious and inexpensive.

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