

# Justice as public good

Law & Justice

By Ahsan Butt

IT may not seem so at first glance, but the national response to the floods is connected, albeit loosely, to the murderous and horrific scenes witnessed in Sialkot recently. Both episodes relate to the perception — and reality — of a state unable to deliver on the promises it makes to its citizens.

At the outset, it is worth revisiting the basic model to which states from Singapore to Sweden to South Africa aspire. The relationship between the modern nation-state and its citizens can be conceived of as a mutually beneficial bargain: the former provides security from foreign invasions, protection of private property, streetlights and other public goods that small groups of people cannot provide for themselves.

In return, the citizens pay taxes and observe the law of the land. Of course, no relationship between the state and citizens plays out exactly in this way anywhere in the world, but the model is useful as an analytical construct.

The problem in Pakistan is obvious: the state has miserably failed to live up to its side of the deal. Whether under the control of a praetorian military, rural landed interests or the commercial-industrialist class, the state has been criminally removed from representing the interests of the 'average' Pakistani. From education to electricity, from water to security, Pakistanis have been left to fend for themselves.

Many assume that only the elite are able to 'opt-out' of state-society relations in this manner; certainly the number of power generators (in place of KESC/Wapda) and private security guards (in place of a functional police force) in affluent areas would attest to that belief. But crucially, there is one public good that both elites and less advantaged people often now implement for themselves, and that is 'justice'.

As a public good, the deliverance of justice is as significant as any other the state is meant to deliver. It is first and foremost meant to be an act of compensation: if someone else has broken the law, say by stealing your goat, or cheating your business, or kidnapping your daughter, then you deserve that your grievance be redressed.

The state's authority as a dispenser of justice exists only when citizens believe it exists. Authority is socially constructed.

Secondly, and perhaps as importantly, the deliverance of justice is meant to temper the worst excesses of revenge. The theory goes that if a citizen has been harmed by another, then the state stepping in on his or her behalf precludes him or her from taking revenge personally.

With a set of codified punishments for crimes, the decision on what constitutes 'appropriate' punishment is taken out of the hands of the aggrieved party. Imagine if this were not the case: anyone who had a crime committed would escalate the conflict by going above and beyond what most people would deem 'fair', causing violence to spiral.

Conceivably, this spiral is what the state obviates; it acts to restrain and contain conflict by punishing the first infraction in such a manner so that there is no second infraction. Or as John Locke wrote in his *Second Treatise on Government*, "ill-nature, passion and revenge will carry [men] too far in punishing others; and hence nothing but confusion and disorder will follow; and ... therefore God hath certainly appointed governments to restrain the partiality and violence of men".

In most well-functioning countries, this is the way the law keeps a lid on violence and anarchy. But what this model presupposes is that citizens themselves believe in the capabilities of the state to deliver justice. The state's authority as a dispenser of justice exists only when citizens believe it exists; authority is socially constructed. If citizens lack confidence in the state they will take the law into their own hands, and by those very actions erode the ability of the state to deliver. Of course, in Pakistan's case, the state's reputation of inad-

plement for themselves, and that is 'justice'.

As a public good, the deliverance of justice is as significant as any other the state is meant to deliver. It is first and foremost meant to be an act of compensation: if someone else has broken the law, say by stealing your goat, or cheating your business, or kidnapping your daughter, then you deserve that your grievance be redressed.

Secondly, and perhaps as importantly, the deliverance of justice is meant to temper the worst excesses of revenge. The theory goes that if a citizen has been harmed by another, then the state stepping in on his or her behalf precludes him or her from taking revenge personally.

With a set of codified punishments for crimes, the decision on what constitutes 'appropriate' punishment is taken out of the hands of the aggrieved party. Imagine if this were not the case: anyone who had a crime committed would escalate the conflict by going above and beyond what most people would deem 'fair', causing violence to spiral.

Conceivably, this spiral is what the state obviates; it acts to restrain and contain conflict by punishing the first infraction in such a manner so that there is no second infraction. Or as John Locke wrote in his *Second Treatise on Government*, "ill-nature, passion and revenge will carry [men] too far in punishing others; and hence nothing but confusion and disorder will follow; and ... therefore God hath certainly appointed governments to restrain the partiality and violence of men".

In most well-functioning countries, this is the way the law keeps a lid on violence and anarchy. But what this model presupposes is that citizens themselves believe in the capabilities of the state to deliver justice. The state's authority as a dispenser of justice exists only when citizens believe it exists; authority is socially constructed. If citizens lack confidence in the state, they will take the law into their own hands, and by those very actions erode the ability of the state to deliver.

Of course, in Pakistan's case, the state's reputation of inadequacy and incompetence is well-deserved. Citizens are well aware of the several years of backlog of court cases, of the police force being corrupt and of powerful local interests controlling the legal process from a distance. This often results in citizens losing patience with the state, and administering 'justice' themselves, a process also known as vigilante justice.

This is why, in apportioning blame for the gruesome Sialkot killings, it is necessary to point to the state for its historical ineptness just as much as to the perpetrators themselves. While the latter were directly responsible, it is poor governance that has set the context within which such acts have become 'normal'. Karachi residents, in particular, will be familiar with numerous instances of vigilante justice in the last few years.

The spectrum of state failures in Pakistan is vast and encompasses issues such as disaster relief along with justice and many others. Importantly, the magnitude of these failures is now being broadcast via a diffuse and easily accessible electronic media to an increasingly aware and impatient population.

Pakistan has undergone a great deal of structural changes, demographically and developmentally, in the last decade. These changes have brought with them greater visibility of the state's shortcomings. In turn, this widening visibility brings with it greater demands for good governance.

The rising demand for a functional, and functioning, state must be met with a rising supply of the same. To that end, the question of how to bring about more effective governance should and will be the public policy issue for Pakistani analysts and activists in the next decade. How those analysts and activists transfer their knowledge to the ruling elite, of course, is another matter. ■

---

The state's authority as a dispenser of justice exists only when citizens believe it exists. Authority is socially constructed.

---

