Of popular justice

Pak - Law & Justice.

By I.A. Rehman

ALTHOUGH the targets are quite challenging, the new judicial policy enforced this week should have brought relief to many a bruised soul, and one hopes it is now possible to address some basic weaknesses of the justice system. The measures proposed to discipline the judicial services are unexceptional.

One of these invokes the principle that judges should not accept assignments under the executive, a principle that has been vindicated in both theory and practice across the world. Considerable progress in this direction has already been made. About 150 judges have been repatriated from executive posts as a result of the National Judicial Policymaking Committee's (NJPMC) decisions. This should strengthen the judiciary's independence.

However, the provision that "no retired judge of a superior court should accept an appointment which is lower to his status or dignity" will be seen as a design to guard the status of retired judges more than the principle of the judiciary's independence. The door to the appointment of retired judges to posts higher than their (previous) status has been kept open, and clever politicians or retired judges may well be tempted to use it.

A relevant issue is the reservation of the office of the chief election commissioner for the judiciary. Democratic opinion has been critical of this provision in the light of some unhappy experience. It may be prudent to consider placing a bar on the appointment of retired superior court judges to any office while their experience may be utilised in areas related to judicial education and reform.

Quite popular with the people will be the scheme to weed out corruption from the judicial services. The public has much more to say on the subject than might have reached the ears of the high judicial authorities. The currency gained by the saying "hiring a judge is better than engaging a lawyer" has been one of the main causes of the decline of the justice system, in terms of both efficiency and credibility. Obviously it is necessary to ensure that the anti-corruption cells in high courts succeed in developing judicially sustainable procedures while punishing officials on the basis of a bad reputation.

The second set of policy measures relates to reducing delays in the law. All cases pending in the superior courts will be disposed of by May 31, 2010, and all fresh cases will be decided within a year of their institution (in case of the Balochistan High Court within six months). Short time-frames have been laid down for the disposal of bail petitions and the condition of submission of challans within 14 days after cognisance has been reasserted. Family matters are to be decided within three to six months, rent cases within four months and writ petitions as quickly as possible.

Millions of people will be relieved if the schedule for the disposal of cases can be observed in practice. But if lack of financial and human resources has been the cause of justice being delayed, the success of the new policy obviously depends on the allocation of the requisite funds by the government. One hopes the government will not be found wanting in will or capacity to meet the judiciary's (and the people's) expectations.

For students of law all this rhetoric about speedy justice is familiar territory. For decades Pakistan's rulers have been harping on the theme of speedy and inexpensive justice, the authoritarian satraps more vociferously than their elected followers. The attempts to set up quasi-military tribunals, anti-terrorist laws and laws to set up courts for speedy trial have been some of the bitter pickings during this search. Two important issues raised over the years are worth recalling.

> The fact that our laws, proceedings and judgments are in English, not understood in many areas, may be a factor contributing to the people's estrangement from the justice system.

Firstly, the search for speedier justice has more often than not ended in curtailment of the due process. Strict provisions have been laid down for timely submission of challans, denial of adjournments, admissibility in evidence of statements to the police, and sometimes the principle of presumption of innocence has been turned upside down. Such measures may speed up the disposal of cases, but the cost to justice can be prohibitive. Ways will thus have to be found to ensure that while expediting the proceedings and cutting through procedural delays the inviolable features of the due process are not compromised. Quick justice must above all be justice.

Secondly, the decades-long preoccupation with delays in the settlement of issues has created an impression, which is as dangerous as it is wrong, that nothing else is wrong with Pakistan's justice system whereas the fact is that this system cannot meet the demands of the country's diverse population.

We are paying a heavy price for believing that the assumptions underlying the colonial period laws required no change after independence or that the conflict between indigenous cultures and the British court culture did not matter. Much is being said about the Pakhtun tribesmen's antipathy towards the national judicial system. To assume that this is due only to delays and corruption would be a gross over-simplification. A better way to comprehend the matter may be an inquiry into the factors that make Pakistan's legal system appear alien to a large population. In areas where the English language is not widely understood and the number of English-knowing intermediaries is limited, the fact that our laws, proceedings and judgments are in English may be a factor contributing to the people's estrangement from the justice system.

Thus, there is a need not only to review the laws so that they can promote and sustain a modern, dynamic community but also for closing the gap between the law and society's perception of its legitimacy and efficacy. Attempts should also be made to probe the factors responsible for delays in the reform processes. Why does it take ages to implement reforms suggested by the Law Commission? What has happened to the proposed courts for petty causes or suggestions for alternative dispute resolution? And how can a system of periodic evaluation of new laws or amendments to older ones be put in place?

Of course, much of this is beyond the jurisdiction of the judicial policymaking committee. That only means that a broad platform for judicial reform is needed. The problem with the existing institutions is that they are wholly dominated by judges of the superior courts. Their capacity to reform laws and the legal system is not doubted but the risks in entrusting the task of reform in laws solely to their interpreters are pretty obvious.

The work of the NJPMC too will achieve greater acceptability if its recommendations are based on sufficiently broad consultations among the jurists, legal practitioners and the public. The possibility of debating reform propositions in open courts, to which lawyers and public representatives also can contribute, is worth exploring. ■