**Reforms for justice**

Thursday, Oct 20, 2022

Part - I

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In a widely circulated video, Justice Isa asks those assembled for the 9th International Judicial Conference in Islamabad if they are satisfied with the justice system. No one raises their hand. This is alarming.

At the same conference, CJP Umar Ata Bandial noted that “with [the] right people and the right energy Pakistan can soon become a nation endowed with prosperity and progress.” Does our judiciary lack the right people with the right energy?

The World Justice Project’s Rule of Law Index (2021) shows that Pakistan is among the lowest-ranked countries in terms of adherence to rule of law, ranking 130 out of 139 nations. Why is Pakistan’s justice system perceived to be a ‘weak’ system that fails to provide speedy justice, safeguard the lives and property of citizens, or protect contracts to boost our economy? Can our justice system be reformed?

Judicial and legal reforms require the support of the legislature to upgrade the legal framework, and the implementation of court decisions depends on the executive branch. Thus, judges and lawyers may not be held solely responsible for the poor administration of justice in Pakistan. However, they can play an effective role, focusing on the training and accountability of judges and lawyers as well as technology-based efforts to reduce delays within existing constitutional parameters and international norms.

A lack of objective merit-based criteria for appointments in the superior judiciary, the office of the attorney general for Pakistan, and the offices of provincial advocate generals, easy entry into the bar, a failure of bar councils to provide professional training or ensure accountability, and weak government support for judicial and legal reforms could be some reasons for the weak status of our justice system.

Amendments to laws governing the appointment and accountability of judges, capacity building and the accountability for lawyers, and an appropriate integration of technology (as well as improvements in other institutions such as the police and prosecution services) are essential. To achieve these broad objectives, three specific reforms regarding the appointment and accountability of judges, training and accountability of lawyers, and integration of technology into the judicial system demand the attention of the legal fraternity and the government.

The existing constitutional scheme for the appointment and accountability of superior court judges has failed to improve the quality of our justice system and promote judicial independence. 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’, the Judicial Commission of Pakistan Rules 2010 (the Rules) may be framed to increase transparency and merit in judicial appointments.

Specifically, the Judicial Commission of Pakistan should outline the criteria for the appointment of judges through specific rules. Here, an amendment in Article 209 ‘Supreme Judicial Council’ should also be pursued to remove judges on the ground of ‘incompetence’ and ‘judicial misconduct’ through a transparent procedure involving a systematic disposal of complaints and the presidential reference against judges either through recorded proceedings or an open enquiry.

‘Incompetence’ and ‘judicial misconduct’ should be precisely defined to avoid vagueness that might be abused; such definition is necessary to protect the independence of judges. For example, the quality of judgments and not only the number of cases decided by a judge may be made a basis to determine competence or incompetence of a judge. Succumbing to influence may furnish ground for judicial misconduct.

To clarify the relationship between political and judicial accountability, the power of the chief justice of Pakistan regarding the exercise of suo-motu jurisdiction should also be more clearly specified. For example, the CJP along with the two senior-most judges of the SC should decide on these matters.

In the UK, the Judicial Appointments Commission of the UK recommends a candidate to the appropriate authority for appointment as a senior judge after considering reports written by panels comprised judicial and non-judicial members as well as evidence provided in independent assessments and any comments from statutory consultees. In Pakistan, however, the appointments process remains opaque and exclusive, as the first nomination is made entirely at the subjective discretion of a chief justice of a high court. The same is the case for the elevation of judges to the SC. Effective institutional consultation is neither made with colleagues/judges, nor with a parliamentary committee, nor with the bar. Even the basic attributes of judgeship – judgment-writing skills, legal reasoning, and judicial aptitude – are not assessed in any transparent manner.

Existing rules providing chief justices with the discretion to nominate candidates for appointment may be amended to ensure that this discretion is exercised more objectively. For example, the first nomination may be made by a body of judges headed by a chief justice. Further, the whole process may include short-listing of candidates on the basis of assessments by panels comprising judicial and non-judicial members, interviews by members of the Judicial Commission of Pakistan, and so on.

Further, the performance of judges should be annually audited by the Supreme Judicial Council on the bases of a defined criteria, and those who fail to meet the standards prescribed by the judiciary may be provided additional training or removed from office.

In 2021, there were 2.2 million pending cases and 38.5 million new cases were filed. There are about 5000 judges to handle these cases. Clearly, the number of judges should be increased with the rising population of the country. But the process of appointment, particularly in our higher courts, deserves further attention.

The bench and the bar are the two wheels of the judicial chariot. The bench also works in coordination with other government departments, which means the inefficiency of the other departments also contributes to the overall under-performance of the judicial system.

Lawyers are officers of the court and play a pivotal role to achieve the ends of justice. However, the training of lawyers, which underpins their professionalism and performance, is not adequately prioritized by law colleges, bar associations, or the government. There is an urgent need for the capacity building of lawyers through continuous legal education (CLE). The law continues to change, so lawyers must learn continuously. CLE is mandatory in the US. Every lawyer has to undergo a certain number of hours of compulsory education to remain a member of a state bar. In the UK, the four Inns of Court provide continuous training to barristers. The Law Society of England conducts such training for practising solicitors.

The government should establish centers of excellence for legal education at the federal capital and provincial headquarters with a specific focus on mandatory CLE provision (paid for by lawyers themselves). The bar councils must also focus on the effective training and accountability of lawyers. Mandatory annual training for a specific number of hours may be made the basis for renewal of the legal practice licence. The tribunals that decide the complaints of professional misconduct should comprise senior lawyers who do not hold a political office of the bar. Civil servants and representatives of civil society may also be appointed members, ensuring the independence of these tribunals. Insurance cover for the provision of legal services could be provided saving litigants from any loss caused due to professional misconduct.

Bar councils must also regulate bar politics to ensure that politics does not prevail on the primary role of the bar councils – regulation of the legal profession. The judiciary, government and civil society should stress on the role of the bar councils vis-a-vis training and accountability of lawyers. Our bar has huge potential. It has stood at the forefront of any movement aimed to promote rule of law, constitutionalism, independence of judiciary and democracy in Pakistan. The proposed reforms will help materialize these goals.

To be continued

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