

Justice at a standstill?

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Charles Dickens, the famous author, often criticized the slow and bureaucratic British legal system in his novels. In his work “Bleak House,” he tells the story of a never-ending lawsuit, “Jarndyce v. Jarndyce,” which drags on for generations, draining the resources of all involved and symbolizing the system’s inefficiency.

This fictional example perfectly reflects Pakistan’s legal system regarding justice delayed, perhaps a gift of colonial legacy.

At present, there is a backlog of a staggering 2.26 million cases across the country’s court system with an increase of 3.9% in case pendency, reveals the Law and Justice Commission of Pakistan in its recent Bi-Annual Report of Judicial Statistics for the period from July to December 2023.

The vast majority, over 1.86 million cases (constituting 82 percent), are concentrated at the district judiciary level. The remaining 18 percent, amounting to roughly 390,000 cases, clog the upper tier courts, including the Supreme Court, Federal Shariat Court, and all high courts.

The report further highlighted that courts processed a significant number of cases during the period, resolving approximately 2.3 million.

However, this feat was overshadowed by the influx of new filings, totaling 2.38 million. This ongoing disparity between new cases and unresolved ones unfortunately contributed to the persistent backlog within the court system.

Furthermore, access to justice appears to be an economic commodity in Pakistan. On average, an ordinary Pakistani citizen has to borrow or sell some of their possessions to contest a case in civil courts. This is mainly because the cost of litigation is exorbitant, and delayed prosecutions lead to an even greater increase in costs.

A study conducted by the Pakistan Institute of Development Economics (PIDE) revealed a staggering reality for litigants in civil and magisterial courts.

The average case resolution time stretches to nearly four years, demanding immense patience from those seeking justice. Furthermore, the research highlights the burden of frequent court appearances, with litigants attending an average of 40 hearings during this period.

Compounding the frustration, roughly 15 of these hearings are rescheduled, causing further delays. Even after enduring this lengthy process, the study suggests that an additional three years might be

required for complete case disposal. These delays come at a significant financial cost, factoring in additional expenses like travel, accommodation, and meals, the true price of justice becomes far higher than anticipated.

A swifter, more efficient system is essential to ensure timely access to justice and prevent the scales of justice from tipping towards societal despair. In order to bring in such reforms, we can learn from the Malaysian 2009 reforms (also a former British Colony) whose legal system once suffered with a massive backlog of cases.

The World Bank also noted that the changes made by the Malaysian legal system offer a model for other countries dealing with similar problems.

Let us decode the structural changes and reforms introduced by the Malaysian courts from which Pakistan's judicial system can learn a valuable lesson.

To tackle backlogs, Malaysia separated judicial workloads. "T-Track" cases, requiring full trials and oral evidence, were assigned to dedicated judges focused solely on resolving these backlogged cases. "A-Track" cases, involving interlocutory matters and affidavits, were handled by separate judges, allowing for faster disposal without interrupting full trials.

Likewise, Pakistan could consider case classification and specialized judges to tackle different categories of cases. Notably, the Chief Justice of Malaysia met with judges and established a common goal: an average disposal of four T-Track cases per month per judge and a maximum of six A-Track matters per day. This concrete approach to case management could be a game-changer for Pakistan.

Another impactful reform was the creation of dedicated "New Commercial and Civil Courts" with a nine-month target for resolving new cases. This highlights the importance of setting clear time-frames and performance benchmarks for case resolution.

Whereas, in the Pakistan legal framework, there isn't a generalized obligation for parties to preserve documents or other evidence while awaiting trial, thus no one is compelled to follow the time limit of the case.

However, according to the Limitation Act 1908, civil cases must adhere to time limits, which specifies various periods for different types of claims, most commonly ranging from three to six years. There should be strict adherence to time limits in order to resolve cases on time and clear the backlog.

Furthermore, appointing separate judges for old and new cases after the structural adjustments, as Malaysia did, could allow Pakistani courts to focus resources on clearing the backlog while ensuring newer cases don't exacerbate the problem.

Where Pakistan's judicial system stuck to the old culture of a file system, Malaysian courts introduced modern technology to its legal system in 2009. It also played a crucial role in Malaysia's reforms.

Implementing an “E-daily reporting system” for case monitoring and upgrading court IT infrastructure with features like e-filing could significantly improve efficiency and access to justice in Pakistan.

Additionally, Malaysia’s emphasis on alternative dispute resolution (ADR) programmes, like court-annexed mediation.

This program is free and uses judges as mediators to help disputing litigants find a solution, and to encourage the settlement of disputes without trial. This offers a promising approach for Pakistan to reduce court burdens and expedite dispute resolution.

Finally, specialization of courts based on subject matter such as the Intellectual Property Court, the Construction Court, the Islamic Banking Court, the Environmental Court, etc., another reform undertaken by Malaysia, could be explored by Pakistan to enhance judicial expertise and expedite case processing.

While Malaysia boasts speedy resolutions, Pakistan remains buried under the deluge of pending cases. Can we bridge this justice gap? The challenges are significant, but the potential rewards are immense. Through bold leadership, strategic planning, and a commitment to innovation, Pakistan can transform its overburdened legal system. A future where justice is not delayed but delivered swiftly is within reach. As in the words of Honourable Tun Arifin Zakaria, former Chief Justice of Malaysia: “However good our laws may be and however independent and impartial our judges may be, justice cannot be achieved if it takes too long or is too expensive for the people to have resort to it.”

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