

APING THE WEST: THE COST OF MULTIPLE JUDICIAL STREAMS

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Prof. Ang, author of 'How China Escaped the Poverty Trap', empathically talked of the pragmatism of China going from Communism to developing a market for high growth and then moving to curbing the excesses of the market.

All our leaders talk of learning from China whilst in practice we seem to copy everything that happened in the West. All manner of consultant sells us that the West has started something, and that we should simply reproduce it. We end up making a new agency—a budget line with many perks that are often eyed by the powerful seeing a job opportunity. The agency then justifies its budget by creating further hurdles for effective transactions in the market. Thus, we have made a Fannie Mae, a Competition Commission, countless regulatory bodies, several MDG and SDG cells, institutes of corporate governance, a commodities exchange, project offices, and many arbitrary and ill thought-out initiatives for education and health.

Despite independence, we have never been able to modernise our colonial inheritance to bring our country into the modern era. The judiciary continues to chug along at a snail's pace giving controversial decisions and failing to earn trust among the people. 'Access to Justice' projects have been run by donors spending a lot of money but the old systems and procedures remain intact.

International consultants or consultants hired by the lender/donors often find the old colonial systems cumbersome and market unfriendly and propose bypassing them to add new agencies or projects. Behavioural economics however suggests that the old systems will game the add on systems to retain their old messy methods of work which often involve rents. Consumers too will use both systems to obtain less than optimal ends.

In order to deal with the overburdened judiciary suffering from low levels of trust, lenders have often added on systems that will supposedly help increase the efficiency of dispute handling. Ombudsmen in many different areas, tribunals and now 'alternate dispute resolution' have been put in place. Whilst these entities were established with the intention to provide alternate dispute resolution mechanisms and expedite justice, they have, in many cases, contributed to prolonged delays.

Pakistan's legal landscape is characterised by a multitude of judicial bodies, including ombudsmen, tribunals, and specialised courts established for specific purposes, e.g. banking courts, anti-terrorism courts, etc. According to research, this proliferation of judicial entities has led to administrative complexities and overlapping jurisdictions, contributing to delays in the dispensation of justice.⁸

Litigants find that hopping from judiciary to tribunal to ombudsman can be used as a means to delay dispute resolution when gains can be made from such delays. Alternate dispute resolution forums such as ombudsmen and tribunals want to keep their dockets full and entertain more and more cases. The extrajudicial dispute resolution offices are filled with retired people who often have connections to and are steeped in the old system. The fact is that there is little in the form of redress that they can offer.

Strangely enough, even the President's office has been made into an appellate judicial office offering litigants another stop in their search for delaying justice. Experience shows that in each court it is easy to take 2-3 years in resolving a dispute. Knowing this, litigants who want to hold up economic transactions can easily delay the fulfilment of a contract – which often leads to a suboptimal resolution outside the court. Judicial officers in all these multiple streams are in no hurry to solve an issue, nor do they understand economics or human resource management or the value of a transaction to be able to make an informed decision or understand the need for speedy disposal of cases.

Whilst a substantial caseload is economic in nature, none of the judicial officers have any training in economics. Without an understanding of the time value of money or the economic intricacies involved, we end up with decisions that are suboptimal. Law and economics a discipline has been in vogue in the rest of the world for half a century, but it remains relatively unknown in Pakistan. Few understand the cost of judicial delays and the poor understanding of economics even though the whole nation knows that Rekodiq, the steel mill, the sugar pricing and the Nesla towers decisions were very expensive to the economy.

The overburdening of the judicial system has resulted in significant case backlogs in each of these dispute resolution entities. According to data from the Law and Justice Commission of Pakistan, the backlog of cases in various courts across the country is alarmingly high, leading to prolonged delays in case disposition. Delays in the legal system disproportionately affect vulnerable populations who lack resources and face barriers in accessing justice. Studies have shown that prolonged legal proceedings can lead to increased costs for litigants, loss of confidence in the justice system, and impediments to economic development.

The proliferation of tribunals and ombudsmen may also raise concerns about the quality and consistency of dispute resolution. Research has indicated that the specialisation of courts and tribunals can result in varying interpretations of law and uneven application of justice, impacting legal certainty and predictability. Recommendations from experts and stakeholders emphasise the consolidation and rationalisation of judicial bodies, enhancement of judicial capacity through training and technology, and improvement of court administration to streamline processes and reduce delays.

Clearly, there is no escaping a deep modernisation of the judiciary especially in the area of law and economics. The system must be made robust, eliminating the multiple routes, getting competent and wise decisions, and reducing the number of appeals and the possibilities of gaming the system.

Do we have the capacity to do this? Relying on international experts is only going to lead to more aping the west—a suboptimal solution that we have tried to our detriment.

⁸Efficiency of Justice Sector Institutions and its Impact on the Investment Climate in Pakistan," World Bank, 2014

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