



JUDICIAL REIFICS AND THE QUEST FOR JUSTICE

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Independence, equality, accountability and transparency are supposed to be the hallmarks of a functioning judicial system. One would assume that a country founded by a man who was known for his legal exploits would have succeeded in making its judicial system equitable, independent, accountable, and transparent. Yet, 77 years down the road, the state of the judiciary is such that six sitting judges of the Islamabad High Court, who are constitutionally tasked with securing the fundamental rights of the people of Pakistan, decried the lack of such basic fundamental rights for themselves.

The chaos that ensued such cry for help by the said Judges was a perfect embodiment of the dire state in which Pakistan's judiciary finds itself. For one and all, the fact that Pakistan's judiciary had failed, at least in the moment, to protect its own self from alleged 'interference' in judicial functions was not only shocking but downright depressing – particularly because these are the same judges who whilst being responsible to met out justice to the whole of Pakistan seem unable to protect their own constitutional mandate.

What has ensued over the past couple of months in Pakistan's judicial dispensation is just the foul smell which comes from an already rotten corpse. The only reason why it has garnered such airwaves is because this time, it was the infallibles, the individuals representing Pakistan's judicial elite, those with crisp, ironed robes with various different coloured laces, who had shown themselves to be vulnerable. For the first time, it wasn't

about politicians or bureaucrats sweating themselves before they were taken to task by the Courts, instead this time it were the guardians of the Constitution, who were having to look over their shoulders for a guardian of their own.

In spite of all this, the problem with Pakistan's judiciary, is not as much the widely talked about 'interference' which supposedly concerns matters relating to the Pakistani political elite, but the lack of effective dispensation of justice to the ordinary litigants.

The key to understand the problems with the judiciary is to understand its workings and what better way to do that than to visit a court. When you step into a court room in one of the opulently designed High Courts of Pakistan, you will be met with a sea of litigants and lawyers crammed into airy rooms, with modern air conditioners but archaic practices.

Sitting atop a stage like platform, with tens of files which are almost in tatters, is the judge, a man (given the gender imbalance in Pakistan's judiciary) modern in his appearance but often regressive in his decision making. This man, fancily clad in a judicial robe has the liberty to get up and leave for his chamber and call it a day notwithstanding that tens of people who were waiting for their day in court would have to leave for their homes empty handed, notwithstanding that some of them may have had matters of life and death which they had hoped the judge would settle or at least listen to.

On any given day that there are tens of litigants at the mercy of such judges at the High Courts conducting cases singly or in the form of a double bench. The situation in the lower courts is worse. There, shanty rooms with a creaking bench awaits litigants. A judge soiled by sweat and agitated by the sheer number of incoherent and often illegible bunches of papers, often called cased files, welcomes litigants. Such a judge is expected to dispense justice and decide hundreds of cases which are taking up most of the court and the record room's space. There exists a need for enhanced investment in infrastructure for the lower judiciary. The grandeur of the Supreme Court's building or that of the new High Court of Islamabad would amount to nothing if the first gateway to justice i.e. the lower courts are housed in buildings fit for slums. Similarly, there exists a very real need for increase in the number of judges at all levels of the hierarchy – failing which, access to justice will continue to remain impeded.

Lack of adequate judicial appointments is one thing and the quality and aptitude of such appointments another. Take political cases as a benchmark. Why is it that most of the cases which render a verdict against political leaders end up being overturned by the High Courts or the Supreme Court. This can signify one of two things. Either the judges in the lower courts lack the character to withstand 'external pressures' or simply lack the aptitude and competence to adjudicate matters of such complexities. Whichever one it may be, this raises serious question marks about the quality of judicial appointments.

Andrew Jackson, the 7th President of America once quipped that "All rights secured to the citizens under the Constitution are worth nothing, and a mere bubble, except guaranteed to them by an independent and virtuous judiciary". Thus, it is incumbent upon the Courts to ensure that bubble of the Constitution and the rule of law does not burst and yet to expect such intricate handling from individuals otherwise incompetent to adjudicate amongst people would be tantamount to living in a fool's paradise.

Serious introspection needs to be conducted by the decision makers, most certainly those at the helm of affairs in the judiciary so that the quality of judges can be improved. One way to do that is to ensure that the wealth of resources otherwise directed towards the salaries and pensions of superior court judges are also diverted to lower court judges, so that pre-retirement decisions are not dictated by the lure for post-retirement benefits.

Another problem which flows from the quality of judicial appointees is the manner of judicial appointments. The lack of transparency involved in judicial appointments has meant that the post of a judge has become more a lottery than a test of merit. The judiciary needs to work with the executive and determine a transparent and well-defined procedure in respect of judicial appointments, which ensures that people responsible for adjudication have undergone the rigours of judicial and administrative scrutiny.

In the United Kingdom for example, the procedure for judicial appointments is transparent, such that it is readily available on the website of their Supreme Court. The process, a step-by-step illustration of which is available, prescribes how even such posts for judges of the Supreme Court are widely advertised and written applications sought. Such written applications are thereafter scrutinised, shortlisted and interviews conducted. Thereafter, a report is compiled detailing the reasons for each recommendation and only once the said process has been completed does the appointment get approved by the King and announced by the Prime Minister.

Similarly, as far as judicial proceedings are concerned, there exists a very real need for automation and streamlining of procedures, which supplement and not hinder judicial decision making. For starters, when the economy's best bets of revival are fixated on technology, why isn't such technology and automation being inculcated in judicial processes. Why is it that Pakistan's courts are filled with hundreds of thousands of physical case files, containing millions of papers and each such file often hanging by the barest of threads to safeguard the sanctity of their records? Visit a court's records room and chances are you will be able to find a dead rat or an insect infestation before you are able to find the file you are looking for.

The judiciary's obsession with papers needs to be quelled. There needs to be a realisation that we have moved into the 21st Century and that our processes with automated filings need to reflect that. Take the infamous trial of Johnny Depp and Amber Heard as an example. The case filed in Fairfax County Circuit Court, Virginia involved hundreds of exhibits being displayed online, depositions being televised and video conferencing being used for evidence. Purely on the basis of the sheer volume of the paperwork involved in the said case, it is safe to assume that if it were to be taken up in a court of law in Pakistan, the matter would still have continued to remain pending.

One understands that judicial reform is easier said than done, and yet if we look towards our east and towards our west, we see examples of judicial reforms done right. In the east, India for example has drastically enhanced the infrastructure of its courts, with internet connectivity being at the forefront. India has also substantially enhanced the sanctioned strength of its judges, so as to allow for expeditious dispensation of justice.

In the west, the United Kingdom, from whom we have taken our judicial system, has now modernised itself and continues to do so. For example, they now have automated filings of cases, issuance of notices via email and allowance for conducting of much of the pre-trial proceedings including accepting of the claim filed or disputing of it to be done online via a dedicated website. This substantially decreases the time pre-trial stages would otherwise consume.

For Pakistan's judiciary to reform, two things must be kept in mind. The first is that a judge's time is an invaluable commodity and must not be wasted on things which can otherwise be conducted by an automated system. The second is that Pakistan's judiciary is only as good as its weakest link i.e. its lower courts. For Pakistan to flourish, its judiciary needs to provide speedy and effective justice and for that it needs to relegate the relics of procedures to the doldrums of history.

The author is a lawyer and political analyst, in which capacity he regularly appears on TV shows and has written for various publications such as Dawn, The News and The Friday Times. He can be reached on X/Twitter at @Jaferii.

