



## JUDGING THE JUDGES: DYNAMICS OF THE PAKISTANI SYSTEM OF JUSTICE DELIVERY

### Preamble

*Dr. Nadeem ul Haque opened the second webinar on the judiciary and Justice system with a tribute to the famous US Supreme Court Judge, Justice Ruth Bader Ginsburg, for her extraordinary efforts on promoting women's rights, wage discrimination, healthcare, and the environment. When discussing the justice system, Dr. Nadeem discussed how justice delivery could only be possible with good quality judges.*

*Dr. Nadeem started the debate with stressing the importance of institutions. PIDE has initiated debates on institutions in Pakistan (bureaucracy, democracy, education, and more) as every institution is very weak. If we do not develop our institution the country will not grow. The judiciary is a part of our institutions and is important because it deals with property rights, which cannot exist without law or a justice system. Poor policy development, inconsistency including poor judgment have caused us a lot of harm to our justice system*



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## Webinar Key Points

1. Dr. Osama in his opening statement said that the judiciary has been treated like a sacred cow in Pakistan when it comes to open conversation and open discourse. When the judiciary is looked upon from an institutional standpoint (the structure, how it has been historically governed) that has a huge impact on the outcome.
2. Another important facet of the judiciary is the sociological standpoint, ultimately it is the people, their background, their class preferences, and their education, which has a bearing on all kinds of things.
3. Dr. Osama started the discussion by asking where do our judges come from? Before one gets to the legal appointment, one should look at legal education, which determines the quality of judgment and efficiency of justice disseminated in our courts.
4. Ms. Malkani shared her thoughts about the quality of education by pointing out that the minimum education required to be a judge in Pakistan is an LLB! The quality of lawyer's education is now being enhanced through external programs that are affiliated with the University of London. These programs are more popular in Karachi and Lahore, even more so given that the Pakistan bar council also recognizes these as a prerequisite for becoming a judge at a lower level. But still, it does not alter the local dilemma of the judiciary system.
5. There is varying quality of education available and access to quality education which depends upon class background and whether it is a private or public institution. There is quite a bit of variation in the education of judges and competency in education. Judicial academies also have a role in the training of judges, and it is their job to keep the judges up to date. Unfortunately, it does not appear judicial academies are playing their part in grooming of judges.
6. Dr. Nadeem suggested it is our education system or the ecosystem of the law which hinders the quality of judgment. Law is a profession where you have to keep yourself up to date because each and every case is different. So the question is why do we complain about the legal education system?
7. Dr. Osama highlighted the problem of a governance mechanism looking at law schools, their curriculum, and their pedagogy. Other big problems are the dichotomy between private and public law institutions. The problem with privately owned institutions is that they are owned by lawyers who would prefer to maintain the status quo so they will be resistant to reforms or changes in the prevailing system. Another problem is the pushback to the public-owned law school because the opposition of active law students to martial law has become the biggest reason they are being discriminated against.
8. Hurdles in entering the Pakistan legal profession are very low and become easiest to adopt so what has happened is that the number of lawyers enrolled over the last 5, 10 years have increased manifold. When there are so many people in the profession it is difficult to introduce new rules, standards, and regulations.
9. From the economist's perspective, Dr. Nadeem felt that when there are more lawyers, their fees will decrease through competition, and when competition will also help select the best lawyer, what is wrong with that.
10. Mr. Jamal said that there should be more controls and stricter restrictions than the one which is present now, which should help to exclude the incompetent and poorly educated lawyers from the system. As far as the number of lawyers concerned that there should be more lawyers and less will be the fee, that's not true, because all lawyers are not equipped with the analytical tools necessary to serve the litigant.

11. Dr. Nadeem raised the question of how we can select the best judges from the market?
12. Ms. Malkani said that there are several tests which must be passed by law students to become a judge. But how rigorously the authority examines the ability of judges to think critically is still a myth. Most of the time they are asked about the laws or codes which is not necessarily the best way to test critical skills of a law student. Cases are of dynamic nature that needs dynamic judges and up to date modern solutions.
13. Mr. Jamal raised the issue of whether the higher judiciary is in a position to monitor the district bar judiciary as they are doing now? There is a high proportion of manipulation of appointments, and transfers from one district to another, which is used by the higher judiciary, but that is scandalous, and it is the place where the system starts to rot.
14. Dr. Nadeem asks the host how can we take the matter of appointments from the senior judges without affecting their freedom? How can we fix it?
15. Dr. Osama said one big problem with the judiciary is the high centralization of power which means that the rest of the stakeholders are not taken into account and the other big problem is opaqueness which means no one knows what goes inside the judiciary system.
16. Against the backdrop of the issues raised, Dr. Nadeem questioned how we can bring about reform in our judiciary system?
17. Mr. Jamal said that if we want to bring reform in the judiciary, we have to start from basic education which should enable our students to think critically and creatively not just for the law field but in every field of life. When they enter law school, we must provide them with an environment where they can think independently and that is where the culture of independence will prevail; they should not be bothered by the higher judiciary. Otherwise, we will remain in this crisis.

### Concluding Thought

The debate concluded with the opinion that if we want to change our judiciary system, we must equip them with the tools of knowledge, and creativity. The judicial academies must update judges with a modern dynamic atmosphere. Low-quality institutions should be banned, and an atmosphere of research must be initiated and encouraged, only then will we be able to overcome the blunders of past.



<https://www.youtube.com/watch?v=j6-2QpdTdhA&feature=youtu.be>

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