

ASSESSING THE EFFICIENCY OF THE DISTRICT COURTS OF PAKISTAN—WHY IS BETTER EVALUATION NEEDED?

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Abstract

In this article, the case is made for the need for appraisal of performance of the district courts of Pakistan from an efficiency perspective and a framework of practical tools are suggested to secure that end. It is argued that an effective appraisal system using empirical research is desirable in view of an absence of judicial accountability by democratic institutions and gaps in the internal official appraisal practice and in methods for locating the impact of the justice reform initiatives. The assessment can be done by analysing the relevant statistical data, qualitative feedback of the litigants and by comparing Pakistan's judicial performance with countries with similar conditions. Empirical evidence available so far suggests that the court service in Pakistan is plagued with delay, vexatious litigation and abuse of court process causing suffering for the end-users. Hence, for any future reform effort to eradicate these maladies, institutionalized empirically based scrutiny of judicial performance is indispensable.

Keywords: district judiciary, Pakistan, judicial performance, evaluation, court service, efficiency.

[A] INTRODUCTION

Taking Pakistan's district courts as a case study, this paper explores why it is important in the context and specific milieu of Pakistan to assess the work of the court service on the yardstick of efficiency and how to make such scrutiny possible. From a normative perspective and given the societal

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objective of establishing the rule of law generally, and catering for the legal needs of the citizens in a democratic polity for effective dispute resolution, it is desirable that an efficient and quality court service is offered for determining parties' rights and obligations in litigation. An ordinary user of the court system reasonably expects that resolution of the contentious matter would be factually and legally correct, arrived at by competent and impartial judges, within a reasonable time, at minimum possible cost, after affording fair treatment and equal opportunity of hearing and resulting in an efficacious remedy. In response, a well-functioning judiciary, directed towards achieving its organizational objective, would respond to these expectations by extending a service that is accessible, affordable, expeditious, efficient, fair and effective. A fundamental and important question needs to be addressed in this context: namely, whether or not courts on the ground in a particular jurisdiction are performing sufficiently well to live up to these normative ideals.

Inordinate delay, rampant misuse of the court process and frivolous proceedings (with high cost as the natural corollary) are generally cited to be core problems of Pakistani litigation culture. Without detracting from the importance of other institutional causes occasioning this malfunctioning, an inefficient court process is one major reason related to the outdated procedural law and poor case management. The study builds on the ontological assumption that an efficient court service is one where judicial activity and proceedings are managed in such manner, and with such planning and vigilance that, while handling litigation, the legal remedy is provided avoiding delay, vexation and resultant unnecessary cost. Several important studies have pointed to the significance of the efficiency of courts for access to affordable and timely justice, smart management, economic use of public resources, promotion of economic growth, good governance and so on (see e.g. Palumbo & Ors 2013).

With this perspective of the importance of efficiency, the paper explores why a better strategy and framework of evaluation of courts' performance at the lower rungs in Pakistan is needed and how an effective appraisal might be made possible. It will be argued that the official evaluation regime currently used is inadequate, and systemic democratic oversight is, sadly, non-existent. Internal judicial accountability is limited only to the collection of workload statistics without deducing meaningful conclusions to paint a vivid broader picture of the justice service. Also, the practice of using qualitative data—especially litigants' feedback and calculating the end-user satisfaction indicator—is alien to the official evaluation system. The paper starts with elaborating the contextual setting of Pakistan and the structural and functional contours of its

judicial system. This is followed by a critique of the official evaluation practice and insufficient judicial accountability. Lastly, it will be shown what suitable methods of appraisal may be applied in the case of Pakistan to identify issues of performance and their intensity and magnitude in order to pave the way for future reform.

[B] PAKISTAN AND ITS JUDICIAL SYSTEM

An Overview

Since the creation of the state of Pakistan in 1947 by seceding from the United India, development of the constitutional and democratic process has often been interrupted by intermittent military interventions (i.e. military-led coups establishing direct military rule for the periods 1958-1970, 1979-1988 and 1999-2002). Political institutions as well as the superior judiciary remained mostly subdued under the military thumb. Strained relations with India, the turmoil of the Afghan War in the 1980s and the later unleashing of terrorist outfits as an aftermath of the war have kept Pakistan's internal security concerns prioritized and its international geostrategic position significant. In all this mayhem, the military establishment attained the position of a dominant player in Pakistani politics.

Huge defence budgets eat up one-fifth of the nation's total revenue. In 2018-2019 the proposed defence budget was 21 per cent of the total allocations which amounts to 3.2 per cent of gross domestic product (Syed 2018). In addition to enormous military spending, massive public debt-servicing consumes more than half of the total revenue. Both these heads together eat up three-fourths of the entire budget of Pakistan leaving very little for socio-economic, human and institutional development (Rana 2017). The traditional political elite, the civil bureaucracy and the superior judiciary had also mostly remained accepting of the status quo at least until the 2000s. Due to these complexities and their mutual interplay, Pakistan has long been locked into problems of bad governance, institutional inefficiency and the resultant slow socio-economic development. In addition, the growing influence of non-state actors, radicalization and lawlessness are problems which have eroded Pakistani society, and are also posing a threat to global peace (see, generally, Siddique 2013; Khan 2016).

And yet, the elected governments, democratic institutions and the overall constitutional structure have somehow survived and gradually evolved. Since the turn of the century, the emergence of fresh political

forces, a strong and independent electronic media and an activist and vigilant superior judiciary have been positive developments. Even the new military leadership has helped to speed up the democratic process, institutional reform, accountability and good governance. These winds of change have also encouraged the process of reform in the justice sector. The court service had long been considered plagued with inordinate delay, inefficiency, and the resultant cost and incapacity. district courts, where 90 per cent of the entire country's litigation is conducted, were the most neglected and outdated area of the public sector. The judicial leadership, successive political governments and the international development community started putting serious and concerted efforts into improving access to justice at the grassroots level. It was increasingly recognized that the role of courts is not only very significant for dispute resolution, but also for the overall context of rule of law and for providing a conducive environment for entrepreneurship. The decade of the 2000s saw a major justice reform effort, alongside intensive investment in this development. However, institutional performance appraisal of the court service remained relatively underexplored, despite the problems in court performance. It is in this context that this paper presents the case for assessing district courts' performance in Pakistan and some ways to measure it.

Superior Courts and District Judiciary

The Constitution of Pakistan 1973 lays down the overall framework of the state institutions, including specifying the hierarchical and administrative structure of the superior courts. Pakistan is a federal republic, with the Federal Government and the legislature (Parliament) at the centre. Each province has its executive authority (Provincial Government), a legislature (Provincial Assembly) and provincial judicature (the High Court). Each province is further divided into basic administrative units called districts. Administration of the districts is mainly governed by the respective provincial governments through its field district officers and also by the elected local councils of districts under the overall supervision of the provincial government. There are 124 districts in total, clustered under each of the four provinces.

The Supreme Court and provincial High Courts are referred to as the 'superior judiciary' while the lower rung is called the 'lower', 'subordinate' or 'district' judiciary. The apex court of the country is the Supreme Court of Pakistan (SCP), but the district courts functions under the direct control of the High Court of a Province and this High Court has exclusive control and superintendence over the district courts within that Province. The High Court has authority under the Constitution to 'make rules

regulating the practice and procedure of the [High] Court or any court subordinate to it' (Articles 202 and 203, Constitution of Pakistan 1973).

At the district level, subordinate courts function in two hierarchical tiers: the first tier contains district courts (for civil matters) and sessions courts for (criminal cases), acting as courts of first appeal for civil litigation and criminal courts for serious offences respectively. The second tier consists of courts of civil judges and magistrates dealing with civil cases as courts of first instance and for certain minor or summary offences. Though criminal and civil courts act under different procedural law, all courts in a district function under a single administrative setup headed by one district and sessions judge under the overall supervision of the provincial High Court.

The Supreme Court of Pakistan, the apex court of the country, has no direct administrative role in the affairs of district courts. However, since 2002, it has attained and exercised considerable influence in the policymaking process for the district courts through the National Judicial (Policy Making) Committee (NJPMC)—a statutory forum created in 2002 and headed by the top judicial leadership, i.e. the Chief Justice of Pakistan and chief justices of the four provincial High Courts. The forum provides a platform for formulating and implementing a uniform judicial policy for all the courts of the country. Policy decisions of the Committee relating to the district courts are enforced through the chief justices of the provincial High Courts who are members of the Committee. A major initiative to clear the backlog and expedite the pace of disposal of cases was taken by the Committee in 2009 through the design and implementation of the National Judicial Policy (NJP) in 2009.

[C] WHY ASSESS THE DISTRICT JUDICIARY OF PAKISTAN

Generally, states not only need to have a formal court system in place, but the system must also be working *well enough* to cater for the legal needs and legitimate expectations of the citizens. One significant attribute of good courts is that judicial remedy to a litigant should be provided through an efficient process, so that expedition and economy is ensured as far as practicable. With this efficiency perspective, it is desirable to know whether or not the judicial system at the district level in Pakistan is functioning well.

Efficiency, being an important value of the justice system, relates to how cases are treated and processed in the courts through the procedural law regime and case management tools. The most general and common

understanding of efficiency is the maximization of output by utilizing available resources. For a judicial remedy to be effective, it not only has to be adequate and accurate, but it also has to be timely, otherwise its utility is eroded—especially in cases where delay adversely affects one of the parties or entails undue advantage to the other. This is the legal parallel to providing medical care in good time, where such efficiency is not an independent aspect of treatment but an integral part of it (Zuckerman 2006: 18). Without undermining other attributes of an ideal court system (i.e. accuracy, fairness, impartiality, effectiveness and good quality outcomes), this paper looks into the court service from the efficiency perspective alone.

No doubt every organization and public sector entity needs to have a mechanism for, and a continuous process of, monitoring its performance. In the case of Pakistan's district courts, however, the need is pressing and imminent due to several peculiar factors. Indeed, it would be gratifying to put the district judiciary itself in the dock, given the inherent weaknesses of the official appraisal system; the dearth of empirical studies in the scholarship; the gravity of the issues in terms of the sufferings of millions of litigants; the absence or weak accountability and ineffective role of democratic institutions; and the elusive impact of two major justice reform endeavours. These factors are elaborated below in some detail.

Accountability of District Courts—The Role of Democratic Institutions

Performance monitoring and overall accountability of the district courts of Pakistan legally, and in practice, rests exclusively with the superior judiciary. Each High Court of a province exercises complete administrative control and supervision over the lower judiciary in that province. Under the Constitution, the structural and functional domain of the judiciary is designed to keep it independent and completely segregated from the executive and legislative institutions. Besides their extensive judicial powers, the High Courts of the provinces have exclusive administrative authority and adequate financial autonomy within the sphere of administration of justice. Apart from the payoffs of this independence, the phenomena in practice creates an insulating *aloofness* of the judiciary, allowing no room even for the genuine accountability of the court service through public oversight. In his recent treatise on the political history of the judiciary of Pakistan, Hamid Khan, a leading lawyer and prominent member of the Bar observed:

Pakistan has a chequered judicial history, replete with periods of independence from and capitulation to the executive. The relationship of

the judiciary and the executive in Pakistan has always been difficult because of struggles and vicissitudes in the life of the nation (Khan 2016: 1).

He concludes:

The judiciary in Pakistan has had to pass through difficult times, perform uphill tasks and face threats to its very existence during the course of its turbulent history. It is these vicissitudes that characterize the institution and define its strengths and weaknesses (Khan 2016: 537).

Recent political developments have further widened the gap in the strained relations between the superior judiciary and political governments. And the role of democratic institutions is further marginalized relative to the lower courts. The struggle by political actors and the military establishment to dominate the superior courts was mostly for political objectives and interests and not for the genuine accountability and performance monitoring of the justice sector. After 2005, the evolution and emergence of an activist judiciary incorporated a new brand of judicial leadership which has a highly reactive posture and an assertive demeanour towards political governments.

These developments further solidified the traditional aloofness of the judiciary and pushed the higher courts further away from representative institutions. That is why the locked legal community is viewed as having 'habitually displayed resilience to ideas of further training and professional up-gradation, quite often branding the same as contemptuous of the judiciary and a violation of its independence' (Siddique 2013: 226). Hence the political landscape of Pakistan and polarized relations between the higher judiciary and the executive has in practice made the possibility of judicial accountability through democratic institutions redundant. Even a genuine effort of reforming justice from without is viewed as an intrusion into the judicial turf exclusively occupied by the superior judiciary.

Appraisal of District Courts by Superior Judiciary— An Added Burden

As noted above, each provincial High Court has direct and complete administrative control over the district courts of the province. Supervision and performance monitoring by the High Court comes via two inter-related areas. Firstly, there is human resource management, which involves recruitment, training, job allocation and monitoring the individual performance of judges, their conduct, integrity, competence and quality of judicial work. In the second domain, performance of district

courts may be weighed as a whole at the institution level relative to the workload, legal needs and reasonable expectations of the litigants. This involves providing access to the justice system, timeliness and efficiency of the court service, affordability and cost of litigation, economic use of public resources, fairness of process, equality of opportunity, accuracy of decisions and effectiveness of relief (Fox 2012). Of these, expedition and economy are relevant attributes as this paper focuses on the 'efficiency perspective'.

In the constitutional and political scenario of Pakistan, the entire brunt of improvement and reforming of the justice sector, and of providing an efficient court service at the grassroots level, is on the superior judiciary alone, not only in line with its constitutional mandate but also due to public expectations and moral pressure. The constitutional arrangements and structure of the judicial system of Pakistan provide no accountability of lower courts by external and independent observers. No governmental executive agency, not even the legislature, has any constitutional or legal role in monitoring the judicial functioning of the lower courts.

That is why the dismal performance of the lower courts on the ground offers ripe material for critics to take a pessimistic view of the legal community itself. For instance, Siddique believes that judges and lawyers have an exclusive role in reforming justice, but they in turn are unwilling to review the fundamentals of the institution because they have technocratic perspectives and narrow agendas. He comments:

Current defenders and controllers of the justice sector reform agenda in Pakistan are by and large incapable of, unsuitable for, and disinterested in any deeper substantive issues of justice; it is about foreground institutions rather than background norms; and, therefore, it is inherently socially and politically de-contextualized (Siddique 2013: 260).

It is under these circumstances that an official monitoring system needs to bear the added burden to weigh performance consistently, candidly and most rigorously.

Gaps in Official Evaluation Practice as to Analysis of Statistical Data

In the official evaluation discourse, a consistent process of on-ground performance monitoring of the lower courts and its analysis based on empirical data appears weak in Pakistan. It was observed in the pre-reform study by the Asian Development Bank in 2001 that there 'is no coordinating body for developing legal and judicial policy, and no system

for collecting empirical data to evaluate performance of the system, improve accountability, or recommend reform' (Asian Development Bank 2001: 9). In 2002 when the Access to Justice Program (AJP 2002-2008) was initiated by the Asian Development Bank to promote law and justice reform in Pakistan, authentic statistical data of cases was badly needed. For that end a statutory forum was created, the NJPMC, as a central and permanent body to 'harmonize the judicial policy within the court system' for improving the performance of the administration of justice.² One function of the Committee was to compile and publish judicial statistics.

The Committee published the first report titled 'Judicial Statistics of Pakistan 2002' in 2003, followed by similar annual reports until 2014. Importantly, these reports merely offer abundant descriptive numerical data of cases, with no *analysis of performance* for public consumption and accountability purposes. The reports accumulated piles of data, but then the effort leaves short of necessary examination as to what it all means and what conclusions regarding court service can be extracted. The reports lack evaluative scrutiny of overall performance and comparison over time and across diverse regions of Pakistan to ascertain the trends of improvement or otherwise through objective quantifiable indicators: namely, the case clearance rate (CCR), the volume of backlog, the filing-disposal ratio and the average age of cases.

No doubt data compilation is the first important step towards the appraisal cycle. Though it is claimed that it is 'through these reports that the Courts ... present a measure of their performance' (Law and Justice Commission of Pakistan 2003: 1), yet this data lacks results as to the pace of determination and other attributes of a good court service. The reports, containing bare statistics on their own, never offer any 'measure' of performance; an in-depth and necessary analysis is most conspicuous by its absence. This scenario may be due to a lack of capacity, motivation or interest.

In the absence of a systematic, comprehensive and consistent institutional mechanism of evaluation based on rigorous empirical data and its deeper analysis, the judicial leadership and court administrators may develop their own perception as to performance of lower courts. These internal images of the output may not be easily sellable to external independent observers, justice reform experts and the court critics. In the context of the Indian legal system, Baxi has termed this lack of institutionalization as the crisis of law reform (1982). In contrast, in

² Functions of the Committee i.e. NJPMC is elaborated in the National Judicial Policy Making Committee Ordinance 2002. One function is the publication of the annual or periodic reports on the judicial statistics of all the courts.

certain other jurisdictions, the process of evaluation and reformation is highly institutionalized and sophisticated. For instance, in the United States, the National Centre of State Courts (NCSC)³ provides academic and research consultancy for evaluation and implementation of court management tools and methods. Such an external and institutionalized evaluative system is non-existent in Pakistan, while internal monitoring processes clearly appear to be underdeveloped.

The Elusive Impact of Justice Reform and the Evaluation Gap

Contemporary law and development scholarship supports justice reform in developing economies in socio-economic development. With the rise of New Institutional Economics (NIEs) and neo-institutionalism during the 1980s and early 1990s, justice reform, among other factors, was linked with entrepreneurial confidence, protection of property rights and economic transactions (North 1990). The rule of law is also regarded as an intrinsic social value and a political ideal in itself (Sen 2006). Justice reform in developing economies, therefore, remained high on the agenda of the international development community and law and development scholarship (Messick 1999).

Pakistan has the sixth largest population in the world and has long been beleaguered by problems of bad governance, institutional inefficiency and the resultant socio-economic regress (Ahmed 2005). Therefore, in addition to other areas, international development agencies have engaged with Pakistan to reform its justice sector. The largest ever funding intervention came from the Asian Development Bank for its AJP (2002-2008). USAID also proposed a project offering \$90 million for the Strengthening Justice with Pakistan Program in 2010 (Siddique 2013: 139). The UK government, through the Department for International Development (DFID), also initiated projects for strengthening the rule of law in Pakistan.⁴

Such huge funding interventions for reform initiatives call for robust systematic appraisal and ongoing monitoring of the lower courts'

³ The National Centre for State Courts (NCSC) is a non-profit court improvement organization based in the United States. It works in collaboration with the Conference of Chief Justices, the Conference of State Court Administrators, and other associations of judicial leaders. It is a think-tank which provides research studies, information, education and consultation to the courts in judicial administration. Information about NCSC is available on its [website](#).

⁴ See DFID development projects i.e. Strengthening Rule of Law, Justice System Support Program (JSSP) 2016-2020 funding £25 million, and also Accountable Justice in Pakistan available on the [DFID Development Tracker](#).

performance on the ground. In developmental scholarship, there are voices which regard justice reform enterprise as generally misdirected and ‘based on inadequate theory, selective evidence and insufficient evaluation’ (Armytage 2012: 2). These observations also suggest that rigorous evaluation is required as part of reform policy and practice. The need in this direction becomes more pressing in the case of Pakistan where the official and internal process of review and development of court service is inadequate. Moreover, it is highly undesirable for struggling economies like Pakistan to go for costly reform programmes, taking long strides ahead on the path of trial and error without being sure as to the impact.

Law and development sceptics have raised concern over the direction of reform by claiming that its impact has remained tenuous. Armytage, building on the academic commentaries of Trubek, Carothers, Jensen and Hammergren, identifies growing disappointment with the outcomes and prospects of judicial reform. His critical analysis ‘shows that both judicial reform practice and evaluation are demonstrably deficient’ (2012: 17) and he describes this as an ‘evaluation gap’ which obscures actual performance. That is why it is difficult to conclude whether performance deficit is due to ineffective reform or inadequate evaluation of design and practice.

In the case of Pakistan, the effect of two major reform waves in the country—the AJP 2002-2008 and the NJP 2009-2011—have remained elusive and unexplored. The impacts of these efforts have not been comprehensively analysed through empirical scrutiny in the subsequent years to date, either in the official realm or through academic research; hence, the impacts remain elusive. There is generally an evaluation gap in the justice reform landscape the world over which necessitates empirical inquiry into court services. However, it has become especially pressing for a country like Pakistan.

Access to Justice Program (2002-2008)

The justice reform drive started for the first time in Pakistan during the early 2000s. Importantly, the first ever foreign funding intervention came in 2002 when the Asian Development Bank launched for Pakistan the AJP of 2002-2008, funding a loan of \$350 million to improve Pakistan’s justice service—the biggest ever foreign funding in Asia at that time for the justice sector (Asian Development Bank 2009). Under the AJP the number of judges in the subordinate judiciary was considerably increased (i.e. from 1362 judges in 2001 to 2061 in 2008), the infrastructure for courthouses and judges’ residences was constructed, salaries and benefits were increased, and court facilities were enhanced (Asian Development Bank

2009). However, it is hard to find any empirical study which examines the precise effects of these capacity-enhancing measures, especially the impact on the speed and efficiency factors of the court process. Generally, and especially from the 1990s onwards, judicial reform has been an important component of the development enterprise the world over. But, despite the push for these reform programmes, there appeared a ‘mounting chorus of disappointment in the literature’ as to the success of these efforts (Armytage 2012: 1).

National Judicial Policy (2009-2012)

In 2007 the semi-autocratic regime of General Pervez Musharraf in Pakistan sacked the judges of the superior judiciary in an unprecedented move. This ignited a countrywide agitation—the Lawyers’ Movement (2007-2009)—that succeeded in building enough pressure so that the judges were ultimately restored to their posts in 2009. The freshly revived and triumphant judicial leadership took a major initiative to speed up the disposal rate of court cases and clear the years-old backlog. It was resolute in re-invigorating the justice system at the grassroots level by inhibiting the twin problems of delay and backlog in the lower courts. To that end the NJP 2009-2011 (Supreme Court of Pakistan 2009) was ushered in by the NJPMC.

Under the Policy, stringent measures were enforced and directions issued to the lower courts for the speedy disposal of cases and clearing of the huge backlog piled up over decades. The Policy was rigorously pursued for three years until 2012, but after the retirement of the then Chief Justice of Pakistan, Justice Iftikhar Mohammad Chaudhry, the chief architect of the Policy, the vigour slowed down. Importantly, the impact of the stringent measures was never explored officially or in the scholarship. This would have required weighing and critically examining the measures and the extent of improvement, if any, in the efficiency and overall quality of the court service. The lack of attention within Pakistan to the effects of three years of consistent directions under the NJP (2009-2011) meant that the need to examine performance appraisal as a priority in the post-NJP years was also overlooked.

[D] HOW TO MEASURE JUDICIAL PERFORMANCE

For judicial performance appraisal, various tools have been developed the world over, covering both quantitative and qualitative methods to weigh various attributes of court services. For instance, for finding out the expedition factor, indicators like average age of cases, volume of backlog

and CCR have been utilized. Comparison of performance based on these indicators across regions, over time and within different categories of cases may unveil the underlying causes and problem areas (Lewin & Ors 1982). Under the growing influence of socio-legal research, there is also abundant empirical research in the scholarship based on litigants' surveys and ethnographic fieldwork exploring the humanistic aspects of the real-life litigation experience. Elite and expert interviews may reveal the worldview of insiders and the way they see the problems. Court service assessment tools can be grouped under the following headings:

- a) **workload analysis:** data of cases is analysed to measure speed of disposal, backlog, and age cases;
- b) **litigants' experience:** on the touchstone of end-user satisfaction, litigant feedback as to court service;
- c) **ethnographic inquiry:** studying specific cases and observing court proceedings;
- d) **expert interviews:** collecting views of court officers, judicial administrators and the legal community;
- e) **elite interviews:** gathering views of superior court judges and policy-makers to assess the vision and overall direction of the judicial and political leadership and
- f) **international ranking:** the relative position of a jurisdiction among countries of similar conditions as to performance of justice institutions.

These evaluative tools may be utilized for assessing various attributes of the court service and for different purposes. But this paper attempts to present an evaluation framework for the court service of Pakistan by weighing the efficiency aspect. For that specific purpose, three different approaches are suggested as multi-pronged strategies for effective triangulation. These are workload analysis, end-user satisfaction level and the comparative position of the judiciary of Pakistan among similar jurisdictions.

Workload Analysis—Exploring Judicial Statistics for Efficiency

The tradition of collecting and analysing quantitative court data for judicial efficiency started in the early 1980s, deviating from the traditional qualitative approach in Latin America and Europe (Merryman & Ors 1979). Statistical analysis of data of court cases offers the most objective method of assessing efficiency and timeliness factors. The indicators mainly employed in this respect are CCR, time of disposition, age of cases, volume of backlog and number of adjournments. The Massachusetts trial courts metric reports is a good example of using these measures

extensively.⁵ It reveals the capacity of the court system to deal with the cases filed, the time it takes on average to dispose of these and the growth of the backlog relative to the influx of new cases.

The CCR, which shows the difference between cases filed and disposed of during a fixed period, is the most revealing indicator in this regard. It reflects the demand side (i.e. the total number of registered cases) in terms of legal needs of the citizens and the supply side (i.e. cases finally determined) in terms of services provided by the courts within a fixed period. The CCR represents the ratio of incoming cases as a percentage of the outgoing cases. For instance, if the CCR for one year is 90 per cent, this indicates that cases decided during that year are 90 per cent of the cases filed, leaving 10 per cent of cases at the end to be carried forward in the next period as a backlog. If the CCR is consistently lower than 100 per cent, the backlog would bulge over time. A steadily low CCR would thus have a snowball effect⁶ causing gradual expansion in the volume of the backlog. Growth or decline of the volume of backlog during a longer period is a related significant indicator showing improvement or regress from a wider angle.

Such statistical indicators can be calculated from the official data and reports available on cases in the district courts of Pakistan from 2002 until 2014 on the website of the Law and Justice Commission of Pakistan (LJCP).⁷ The reports contain voluminous numerical information for each year as to cases of all types filed and decided in all district courts. On their own, these reports do not show any measure of performance. This numerical data pertaining to 13 years of the courts' output was thoroughly scanned by the author in a research project at Newcastle University (2015-2019); performance indicators were worked out and compared over time, across different regions of Pakistan and among different types of cases.

Analysis carried out in that project reveals that the CCR in most of the years has been consistently low (under 100 per cent), causing gradual bulging of the backlog throughout. Capacity-building measures under the AJP (2002-2008) and stringent measures under the NJP (2009-2011) did boost the CCR and reduce the overall volume of the backlog, but only temporarily. During the reform years, the CCR surpassed 100 per cent,

⁵ See Massachusetts Government, *Court Data, Metrics and Reports* (2019).

⁶ See National Centre of State Courts *CourTools*.

⁷ The *Law and Justice Commission of Pakistan Law* is a statutory body headed by the Chief Justice of Pakistan and Chief Justices of the High Courts of the four provinces having a support secretarial set-up.

but it remained around 90 per cent for most of the years from 2002 to 2014. As the reform measures focused on certain aspects of the court system (like infrastructure, human and financial resource capacity etc.), it appears that some other aspects were not addressed; some deeper institutional drawbacks and practices causing slow pace of disposal and growing backlog remained. In particular, the outdated procedural law and poor case management was an area which remained almost entirely underexplored and overlooked.

Litigants' Experience—End-user Satisfaction as A Measure of Efficiency

Another approach to assessing court service efficiency is to study the experiences and take into account the views of users of the system who interact with it in real-life situations. This inquiry suggests how the litigants and general public rate the Pakistani judiciary in terms of delivery of service and efficiency relative to their legal needs and expectations. This approach is important in the context of Pakistan as, within the administration of justice and official evaluation discourse, public opinion and litigants' feedback has never been used as a tool to assess institutional performance. No official data is compiled and published as to the problems faced by the very citizens generally for whom the entire façade of justice is erected. The *folk concept* of justice issue thus has remained almost invisible. Although delay is often cited officially as an issue faced by the litigants, this official view remains untested empirically; the very nature, extent and gravity of the issue and its adverse impact on the parties' welfare remain elusive and unfelt. Courts and judicial administrators in Pakistan focus on numerical data and at the institutional level remain aloof from the difficulties parties face at the grassroots level. Real-life stories of litigants can directly and truly reflect the miseries of such individuals which simple digits would miss out. Bare data may let the problems be seen, but the human agony may not be conveyed and experienced.

The litigants who interact with the court system are well placed to offer first-hand information as to the efficiency and effectiveness of the judicial service; their stories are more revealing. According to Rottman and Tomkins, 'A court that does not have the trust or confidence of the public cannot expect to function for long as an effective resolver of disputes, a respected issuer of punishments, or a valued deliberative body' (1999: 24). Therefore, it is important to assess the performance of the court system on the judgment of the very people for whom the entire façade of justice

is built to serve. While building on his theory of disconnects between Pakistan's justice sector reform discourse and litigants' problems on the ground, Siddique observes:

Pakistani justice sector policy dialogue and reform agenda has never made an attempt to be informed and shaped by any rigorous empiricism that looks to probe the nature of actual problems faced by disputants who seek recourse to courts (2013: 105).

This humanistic aspect of court experience was explored in detail by the author in his research project in which the secondary data collected in the shape of surveys and face-to-face interviews already published as the Lahore District Courts Litigants Survey (2010-2011) was re-analysed (Siddique 2010). The data consists of extensive interviews of 440 randomly selected litigants when they were attending the district courts on various days to pursue their cases in the Lahore District Courts Complex. Results of the analysis alarmingly reveal that there is enormous abuse of the court process, with strategic vexation of the opposing party by design, rampant deliberate delaying manoeuvres and abundant frivolous litigation. The court system appears not capable, motivated or directed to contain such practices effectively. Misuse of court process, lawyers' high-handedness and financial interests, disruptions of court proceedings, lack of motivation and mismanagement on the part of the judicial administration, and resultant delay are key features intensifying litigants' anguish. The stories, some of which are deeply shocking, reveal that generally 'for the majority of respondents, a civil suit is synonymous with a costly, exhausting, and frustrating wait' (Siddique 2013: 124). These responses place a big question mark on the costly decade-long justice reform efforts during the 2000s.

The analysis also reveals an important anomaly between the official conception of delay and the actual prolongation of the litigation process. In the official data, a 'case' is counted as a single unit pending or decided by a judicial forum; it does not indicate actual time taken by the judicial system to resolve a single controversy between the same parties on the same subject matter going through the preliminary, trial and appellate phases in different tiers of judicial fora. When the litigants complained of delay, they were actually referring to the often very extended time spent on unresolved differences between the parties on the same subject matter.

International Ranking of Pakistan's Judiciary— A Comparison among the 'Equals'

Generally, it can be argued that external factors like social and cultural conditions, level of economic development and the geopolitical scenario of a particular jurisdiction may have an impact on the performance of its institutions. However, comparative ranking and the score of various public sector entities among countries of similar conditions can offer valuable insights for locating institutional drawbacks. Comparison among the equals may bring forth the real performance when other external and possibly instrumental factors are, more or less, constant. The ranking of countries of the world based as to the rule of law by the World Justice Project (WJP) can be a good way to measure relative performance of justice sectors. Being an independent international entity to advance the rule of law the world over, the WJP measures the rule of law through extensive empirical research. The *WJP Rule of Law Index 2016* uses more than 110,000 household survey and expert interviews to 'measure how the rule of law is experienced and perceived in practical, everyday situations by the general public worldwide' (World Justice Project 2016: 13).

For performance appraisal, the WJP uses nine factors, namely constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement and civil, criminal and informal justice. On the yardstick of civil justice and criminal justice factors (Factors 7 and 8), Pakistan's overall ranking is 106 among all the 113 jurisdictions of the world surveyed. Within the South Asian region, Pakistan ranks at number five out of six countries, below Nepal, India, Sri Lanka, and Bangladesh. Importantly, among 28 lower-middle-income jurisdictions in the World

Table A: World Justice Project Rule of Law Index (World Justice Project 2016)

WJP Rule of Law Index 2016	World ranking	Regional ranking	Lower-middle income group ranking
Civil justice (Factor 7)	106/113	5/6	23/28
Criminal justice (Factor 7)	81/113	4/6	14/28
RoL (all 9 Factors)	106/113	5/6	25/28

Justice Project survey, it is ranked 23rd (2016: 122: see Table A). The analysis suggests that the justice sector in Pakistan is malfunctioning and, quite importantly, despite having similar geopolitical and socio-economic difficulties, judiciaries in identical or very similar jurisdictions are performing *relatively* better.

[E] CONCLUSION

Given the internal political and socio-economic conditions of Pakistan and the importance of the judicial service at the grassroots level, performance appraisal of the lower judiciary has remained an underexplored and neglected area especially from the developmental and institutional reform perspective. Strained relations between the higher judiciary and the government and political actors has in practice diminished the possibility of public accountability of court performance through representative institutions. Absence of oversight by democratic bodies and the marginalized role of other state agencies in justice appraisal necessitates that the internal processes of monitoring for correctional purposes are highly significant. The superior judiciary, therefore, is under a heavy responsibility to assess judicial performance consistently through a robust institutionalized system employing rigorous empirical methods. There exist visible gaps in the official evaluation and accountability process as numeric data is compiled and published without the necessary analysis as to performance in terms of speed and efficiency. Official reports containing bare statistics miss out what all this data *means* as to court performance. In the context of socio-economic development and justice reform to establish the rule of law, rigorous and continuous evaluation of the court service is required to inform reform policy and practice. The impact of two major reform initiatives in Pakistan during the 2000s (AJP 2002-2008 and NJP 2009-2011) has remained elusive. Qualitative feedback of the litigants is not used at all as a tool of assessing the system's output in the official discourse. Therefore, in view of these gaps, empirical research on these lines and a comprehensive and in-depth analysis of issues of performance as to efficiency is highly desirable.

The framework of evaluation suggested for Pakistan may include: (a) appraisal through quantifiable indicators like CCR and volume of the backlog of cases; (b) collection of data of litigants' real-life experiences and looking into the problems through their eyes; and (c) comparative ranking of Pakistan's justice service among countries with similar conditions. Using these three different sets of indicators, the author analysed the performance of Pakistani courts in his research project at Newcastle

University. The findings revealed a consistently low clearance rate which resulted in a gradual bulging of the backlog throughout. Capacity-building measures under the AJP (2002-2008) initially improved the CCR; emergency surgical measures under the NJP (2009-2011) also reduced the backlog. However, these reforms had only temporary effects; the CCR remained low in most of the years from 2002 to 2014. Moreover, the measures were not directed to explore other areas, specifically the root causes of problems and deeper institutional factors which in the first place had slowed the pace of disposal and let the backlog bulge.

Qualitative feedback of the litigants reveals inordinate delay and human suffering, largely due to lawyers' self-interest, disruption of court proceedings through parties deliberate conduct and administrative mismanagement. Inevitably, court processes are prone to be misused and frivolous litigation is prevalent, but the court system appears unable to contain such practices effectively. International ranking of Pakistan's court service among countries of identical regional and economic conditions gives Pakistan a low position, indicating the instrumentality of institutional factors. Only by empirical scrutiny and effective appraisal may we better understand the long-standing issues of delay, misuse of court process and vexatious litigation.

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