



STANDING COMMITTEE FOR LAW
PARLIMENTRY AFFAIRS

REPORT

ON

JUDICIAL REFORMS

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Table of contents

1. Judicial system of Pakistan
2. Jurisdiction of courts
3. Problems in the judicial system
4. Recommendations for fair transparent and speedy justice in Pakistan

JUDICIAL SYSTEM OF PAKISTAN

The roots of the current judicial system of Pakistan stretch back to the medieval period and even before. The judicial system that we practice today has evolved over a long period of time, spanning roughly over a whole millennium. This system is based on British law. Where the Supreme Court is supreme, followed by high court and then session courts. The Constitution of Pakistan deals with the superior judiciary in a fairly comprehensive manner and contains elaborate provisions on the composition, jurisdiction, powers and functions of these courts. The Constitution provides for the “separation of judiciary from the executive” and the “independence of judiciary”. It entrusts the superior courts with an obligation to “preserve, protect and defend” the Constitution. The qualifications of Judges, their mode of appointment, service conditions, salary, pension, are also laid down in the Constitution. The remuneration of judges and other administrative expenditures of the Supreme Court and High Courts are charged on the Federal/Provincial Consolidated Fund, which means it may be discussed but cannot be voted upon in the legislature.

Hence it is clear that the constitution of Pakistan contains a detailed account of how the judiciary should be run in this country and clearly states the principal that executive and the judiciary should run parallel. There should be no clash between them for state affairs to run properly.

There is a High Court in each province. Each High Court consists of a Chief Justice and other judges. The strength of Lahore high Court is fixed at 50, High Court of Sindh at 28, Peshawar High Court at 16 and High Court of Baluchistan at 9. Article 175 (A) deals completely with appointment of the judges in high court, federal shariat court and the supreme court and their promotions. The judicial commission is consists of:

- (i) Chairman Chief Justice of Pakistan;
- (ii) Members ^[159B][four] most senior Judges of the Supreme Court;
- (iii) Member a former Chief Justice or a former Judge of the Supreme Court of Pakistan to be nominated by the Chief Justice of Pakistan, in consultation with the ^[159C][four] member Judges, for a period of two years;
- (iv) Member Federal Minister for Law and Justice;
- (v) Member Attorney-General for Pakistan; and
- (vi) Member a Senior Advocate of the Supreme Court of Pakistan nominated by the Pakistan Bar Council for a term of two years.

Qualifications mentioned for the post of a Judge are, 10 years' experience as an advocate of a High Court or 10 years' service as a civil servant. The standing practice for the appointment of Judges of High Courts is that initially the Chief Justice of the concerned High Court prepares a list of candidates which is submitted to the President through the Governor of the province and Chief Justice of Pakistan. The President finally selects Judges from the said list. The recommendation of the Chief Justice of Pakistan and Chief Justice of the High Court is binding on the President, except for sound reasons to the contrary. The most senior judge would have legitimate expectancy of being appointed as the Chief Justice except for concrete and valid reasons, to be recorded by the President.

JURISDICTION OF COURTS

The jurisdictions of the courts are as follows.

SUPREME COURT

- Original jurisdiction in inter-governmental disputes, issues declaratory judgments
- Enforcement of Fundamental Rights involving an issue of public importance
- Appeal from judgment/order of High Court in criminal cases, tried in original and/or appellate capacity and having imposed death penalty or life imprisonment

- Appeal in civil cases when the value of claim exceeds fifty thousand rupees;
- Appeal when High Court certifies that the case involves interpretation of the Constitution;
- Appeal (subject to grant of leave) from High Court judgment/order;
- Advisory jurisdiction on any question of law involving public importance referred by the President;
- To issue directions/orders for doing complete justice in a pending case/matter;
- To review any of its own judgment/order;
- To punish for its contempt;
- Appeal from Administrative courts/tribunals; and
- Its Shariat Appellate Bench hears appeals from judgments/orders of Federal Shariat Court.

FEDERAL SHARIAT COURT

- To determine whether a provision of law is repugnant to the Injunctions of Islam;
- Revisional Jurisdiction in cases under Hudood laws;
- To review its judgment or order and to punish for its contempt
- Under Hudood laws, hears appeals from judgment/order of criminal courts.

HIGH COURT

- Enforcement of Fundamental Rights;
- To supervise/control subordinate courts;
- To punish for its contempt;

- Power of review and revision
- Appeals against acquittal
- Appeals against judgment/decreed/order of tribunals under special laws;
- Inter-Court appeal at Lahore High Court and High Court of Sindh,

SESSION COURTS

- Appeal against judgment/decreed of a Civil Judge
- Murder trials
- Criminal trial under Hudood laws;
- Appeals
- Power of revision under S.435 of Cr.P.C;
- Decides pre-arrest bail applications under S 498 of the Cr. PC.
(In Karachi District, the original jurisdiction of Distt Judge is limited to Rupees 3 million)

FLAWS IN JUDICIAL SYSTEM OF PAKISTAN

People of Pakistan are not satisfied with its judicial system. They believe it is a punishment to file a case due to its tedious time consuming fruitless procedures and hence it is the need of the hour to revise the system. Some of the problems are as follows:

- Absence of speedy trial and justice makes the system cumbersome. There is No quick disposal of cases. Be it civil or criminal the cases go on for years, in some cases the

circumstances rise to such an extent that during the time of the case either the complainant or the accused dies.

- Secondly Jails are filled up with prisoners owing to slow legal process. And hence extra money is needed to counter the number of problems faced by these prisoners that include health and hygiene issues.
- Trust on the judicial system from the hearts of citizens is decreasing at a fast rate due to slow legal process by legal representatives in order to fetch more money. That's due to Lack of legal knowledge among the masses and Lack of efficiency in bar councils.
- Judges are also indulged in Malpractice hence justice is not served. A murderer is set free to commit more crimes and an innocent is sent to prison who in turn becomes a criminal to take revenge. There is political favourism in courts. There is Influence of chieftains and feudal lords to get fair and transparent justice, especially in rural areas and tribal belt of the country.
- One major problem is the lack of awareness about the judicial system of this country amongst the masses. People are hence exploited by the lawyers who keep fetching money for little things and at the end gives no positive results, this results in Unimportance to the judicial system by the people.
- The Judicial policy 2009 which was to target corruption is not being implemented in letter and spirit.
- There is Lack of coordination between judicial and police in order to dispose cases as soon as possible the Police exploits the people too. Judiciary is in doldrums due to police, which makes fabricated cases.
- No sufficient funds allocation by the government for effective administration in the courts
- No use of Information technology for filing a case/petition/writ
- No computerized record of cases.

RECOMMENDATIONS FOR FAIR, TRANSPARENT AND SPEEDY JUSTICE IN PAKISTAN

The judicial system of Pakistan is in urgent need of reforms. For that recommendations are as follows.

- Proper legislation by the parliament is required. A law is to be legislated that would bind judges not to adjourn the case for more than 7 days. This point totally depends upon the quick delivery of facts and figures by the police. For this the gap between the police and lawyers should be reduced coordination and corporation should be entertained.
- A committee to be formed by CJ province which will hear complaints of the litigators and other issues pertaining to law.
- Free legal advisor to be provided to deserving and poor people. A committee should be formed that keeps the working of employees in check and determines who is really in need.
- E-justice: all cases be computerized and maximum 15 days to be set to dispose of cases (final verdict b given maximum in two weeks)
- Administration of court should be made efficient and effective for speedy judicial system, for this right man on the right job.
- Postings, transfers and other related issues of judges should be dealt by superior judiciary instead of law ministry.
- Few provision of law should be part of the middle class syllabus for prevention of crime and augmentation of awareness about judicial or legal matters.
- The discouragement of the liberal adjournments granted by the subordinate courts and high courts.
- Bar council should be more effective and contesters should be honest and loyal.

- Judicial investigation wing be set up to verify the fabricated charges.
- Salaries of judges should be increased to discourage malpractice.

It is extremely important for Pakistan to have a well established system judicial system on the pillars of speedy and transparent trial system in order to provide fair justice to the people of the country. Judicial system is a guarantee for the development of a nation as it builds trust and confidence among the masses.

It is very necessary to reform the judicial system of Pakistan as it is in the dilapidated condition and only the apex court is now building confidence in the masses. But, the apex court can not alone solve the problems of the people. 90% cases are registered in the lower courts which are so far unable to provide speedy and fair justice to the common men.

The above mentioned reforms, no doubt, will change the shape of the judicial system and it will start to perform in letter and spirit and this surely set the path the nation as envisaged by the Qauid-e-Azam Muhammad Ali Jinnah.