



NATIONAL CONSULTATION PROCESS - PAKISTAN

ACCESS TO JUSTICE & THE RULE OF LAW

By Muhammad Afzal Kahut



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This paper draws on Pakistan's recent experience of developing approaches to extend equal protection of law to all as an instrument to reduce poverty and the vulnerability of the poor, the women, the minorities and other marginalized citizens. These include various strategies of socio economic development aimed especially at protection of human rights, poverty reduction and creation of gender balance. In reviewing this spectrum, this paper questions the assumption underpinning the past and present strategies, critically examines the operational modes put into effect to realize the aims and suggests various approaches for the next phase, as presently at work under the rubric of Access to Justice.

The availability of fundamental rights to its citizens is the cornerstone of the Constitution of the Islamic Republic of Pakistan. The basis of fundamental rights is laid out in Article 4, which states that it is the inalienable right of individuals (citizens wherever they may be as well as individuals currently in Pakistan) to enjoy the protection of law and be treated in accordance with law. It also guarantees the protection of life, liberty, body, reputation & property of an individual. Article 8 states that any law or custom having force of law inconsistent with Fundamental Rights shall be void, thus making fundamental rights supreme. Articles 9, 12 and 13 recognize the citizens' right to life and liberty, while Article 11 prohibits slavery and forced labour. Moreover, Articles 25, 26, 27 guarantee equality and non-discrimination by acknowledging the following:

- All citizens are equal before law and are entitled to equal protection of law;
- There shall be no discrimination on the basis of sex alone;

(Exceptions: the state can make special provisions for the protection of women and children);

- No discrimination on any basis in access to public places, except those specifically reserved for religious purposes (Exceptions: the state can make special provisions for women and children); and
- No person otherwise qualified can be discriminated against in the matter of employment on the basis of race, religion, caste, sex, residence or place of birth (Exceptions: specific services can be reserved for members of either sex if such posts/services require duties which cannot be adequately performed by the members of other sex).

In addition to the fundamental rights, the Constitution also lists several 'principles of policy'. The government is to make policies accordingly, which the government, all public institutions and all government servants are expected to uphold. Some of the principles of policy specifically relating to women are outlined below:

- **Article 32-** Special representation shall be given to women in local government institutions.
- **Article 34 -** Steps shall be taken to ensure full participation of women in all spheres of national life.
- **Article 35 -** The State shall protect marriage, the family, the mother and the child.
- **Article 37(e) -** Make sure women are not employed in vocations unsuited to their sex, and that working women get maternity benefits.

Unfortunately, these high ideas have not as yet translated into real relief because the state, as in most other developing countries, has been unable to ensure their availability for citizens. Pakistan like other developing countries is also faced with an empowerment crisis for the poor. The vulnerability of the poor to those who wield power far exceeds the capacity of the judicial system to meet the demand for speedy and inexpensive justice. Unable to secure justice from state justice sector services, the poor and the vulnerable are forced to undersell by engaging with informal economies, living in poor and insecure environments of shanty towns built by encroachment on state or private land where they are continuously harassed by legislation and police, and resolving disputes through informal justice systems plagued by elite capture etc. Deprivation, disempowerment and exclusion of this kind is the result of imbalances of economic planning, flawed legislative framework, criminalization of poverty, and inability of the justice system to reach out and respond to the justice needs of the poor.

Governance and provision of basic amenities to the poor have emerged as Pakistan's foremost development priority in the prevailing situation. The ideas of legal empowerment embedded in governance reform and poverty reduction effort combine use of legal services and related development activities to increase the disadvantaged population's control over their lives. This approach is consistent with World Bank's concept that, "in its broadest sense, empowerment is the freedom of choice and action."¹ The use of a wide ranging array of legal services for the poor as part of an integrated strategy that features other development activities is in fact intended to advance those freedoms.

In developing a package of governance and economic reform based on the above concept lessons burnt into the body politic of Pakistan from corruption and political instability of 1990s in terms of declining business

¹ Available at www.worldbank.org/poverty/empowerment/whatis/index.htm

confidence, lower economic growth increasing poverty, serious undermining of State institutions and rule of law can be overlooked only at the people's peril. A study by the Asian Development Bank in 1999 concluded that an abysmally low level of confidence in the judiciary, especially in the subordinate district courts was seriously threatening its legitimacy².

To meet these challenges, the Government of Pakistan has embarked on an ambitious governance reform agenda. The main focus of these reforms is strengthening the rule of law and reforming key institutions as means to empower the poor. The pro-poor rationale of reforms assumes that efforts to limit the vulnerability of the poor due to vagaries in the systems of political, civil, criminal and administrative justice are as important as macroeconomic performance at poverty reduction. Besides a flawed legal framework and poorly performing justice sector institutions seriously constrain market based growth, especially foreign direct investment, because of implications for security of contracts.

On the political plane, the Local Government Ordinance³ promulgated on 14 August 2000 aims at providing governance and justice at the doorsteps of the people. Government has laid out the template of a citizen oriented, transparent and accountable administration. This includes measures for an affordable, accountable and predictable system of justice appropriate to local environments through mediators and conciliators appointed by justice committees of local government structures.

This would parallel similar options for alternate dispute resolution through mutually agreed third parties, introduced for statutory courts.

The reform process, including the Access to Justice Program, will contribute to this aim by supporting five inter-related governance objectives:

- Providing a legal basis for judicial, policy, and administrative reforms;
- Improving efficiency and effectiveness in judicial and police services;
- Supporting greater equity and accessibility in justice services for the vulnerable;
- Improving predictability and consistency between fiscal and human resource allocation and the mandates of reformed judicial and police institutions at the federal, provincial and local government levels; and
- Ensuring greater transparency and accountability in the performance of the judiciary, the police and administrative justice institutions.

Realizing that it is attempting a comprehensive reform against the background of a wide credibility gap, the Government's initial moves at confidence building have been based on appropriate diagnostic studies and policy dialogue for intended portfolios of improvement. Reforms under this approach were as a result responsively introduced to overcome public skepticism and attract a supportive constituency because of their consistency with one another.

The present context for wide ranging reforms including AJP is conducive to success as the Government has taken some significant steps to demonstrate its commitment to policy legal and structural reforms. Most

² The Asia Foundation. 1999: "Pakistan Legal and Judicial Reform Project," ADB, Integrated Report, September 1999, p.25. A brief description of Pakistan's legal and judicial system is provided in the Board paper for TA 3433- PAK.

³ Local Government Plan 2000, Government of Pakistan, Chief Executive Secretariat, National Reconstruction Bureau, 14 August 2000.

prominent of these commitments is the devolution support program. This has ensured that judicial and police reforms are supported by a framework of prior government commitment, reflected in setting up Pakistan Poverty Alleviation Fund to specifically cater to the needs of the poor, provision of safe drinking water to the poor through a network of filtration plants, Rozgar Pakistan Schemes for micro credits to the poor & women, crisis centres set up by the Women Development Ministry to provide for the women in distress, to name a few.

Access to Justice Program (AJP)

The funding of the AJP, the flagship national program, is provided through Asian Development Bank assistance (Program Loan US\$ 330 million) and Technical Assistance Loan (US\$ 20 million). The complementarities of program loan and technical assistance loan are focused on the following reform outcomes to strengthen:

- Judicial performance
- Legal empowerment
- Police and public safety
- Administrative justice
- Fiscal reform

A conspicuous start seems to have been made with US\$ 330 million worth of Program Loan assistance to address the chronic under-resourcing of the justice sector physical infrastructure and other capital intensive requirements. An amount of US\$ 25 million out of US\$ 330 million has been set up as an endowment fund placed at the disposal of Law and Justice Commission for investment in the justice sector beyond the life of AJP to sustain the reform process. The balance of US\$ 305 million was programmed to be released in four installments based on demonstrated progress on 64 policy actions. The remainder of US\$ 225 million has either been spent on completed buildings of court houses, related amenities for the public visiting courts, residences for court personnel, improvement to process service, court automation, police stations, additions to accommodation for prisoners/other amenities, or is being spent on other on-going schemes of this nature as well as major court complexes in principal cities to moderate the problem of courts functioning in inadequate structures at scattered places.

Improvements in court related infrastructure, for example, will provide a workplace environment to judges commensurate with their perceived status as authority figures, attract talented young persons to the judicial service, and make life easier for the litigant public. Besides contributing to conditions for efficient working of the staff, these improvements will result in better citizens-state relations.

Legal Reforms

The other aspects of technical reform include capacity building/training, linkup of capacity/ performance to career planning, and reactivation of systematic monitoring and inspection of district courts by the High Courts. To reinforce the confidence of the public in the integrity and proper conduct of judges/presiding officers; the Superior Courts have started encouraging heads of subordinate judiciary to proactively monitor the conduct of juniors not only for professional competence but also for observance of rules for general probity and deportment. This kind of scrutiny relates to their lifestyle and observance of rules of self-discipline in supporting associations or accepting social invitations. The Justice Committees formed in each district under the devolution scheme are also supposed to bring matters such as inordinate delay or inappropriate conduct of a judicial officer to the attention of the Member Inspection Team (MIT).

In a legal system where success of a plaint is predominantly the responsibility of the party asserting the affirmative of a question, legal awareness is a sine qua non. As well as creating conditions for the pro-poor legal and policy environment, the justice sector reforms therefore, place great emphasis on initiatives to promote legal literacy, awareness of laws and entitlements under these laws. The measures initiated include:

- Simplified translations of the English text of laws frequently in use into reader-friendly Urdu. The information booklets so produced are being widely disseminated through District Courts and public as well as private sector distribution outlets.
- Public information kiosks set up in eighteen districts of the country selected as pilots at the entrance to District Courts. These information kiosks contain/provide information about cases fixed in courts, parties to these cases, advocates appearing on behalf of parties and location of courts. The information booklets containing simplified translations and answers to frequently asked questions are also stocked in these kiosks. Currently, the focus is on developing uniform designs of these public information kiosks, development of uniform customer service standards and training of personnel manning these kiosks. The program also provides for phased replication of these kiosks in all the 104 district courts of the country. Interestingly, the start to train the first batch of client service staff manning such kiosks has been made with the Balochistan High Court which held the concluding ceremony of its 2 day orientation workshops on 8th May 2007.
- To institutionalize mass awareness, it is planned to impart focused legal training to lay persons who are able to provide legal literacy, legal rights based education and legal advice assistance to the disadvantaged within their communities. Depending on their level of training and needs of the population they are required to assist, paralegal services can range from providing basic information and advice on the one hand, to representation in administrative processes and assisting litigants on the other. Training of paralegals was started as a pilot project in NWFP in collaboration with the Peshawar University and the Aurat Foundation. On the success of this project, Aurat Foundation is continuing the program with assistance from the legal empowerment window of Access to Justice Development Fund (AJDF). AJP, which initially provided the website under the style of Insaaf (Justice), is actively contemplating further augmenting the initiative by developing it into a networking forum for trained paralegals not only to interact with one another but also post queries and receive information from trained lawyers and NGOs.
- Waiver under the Court Fees Act to exempt all plaintiffs from payment of court fees for tort claims upto Rs.25,000 in Punjab and Rs.50,000 in Sindh is a noticeable pro-poor measure. It is expected that this will result in increased accountability of vendors and service providers thereby putting pressure on them to improve the quality of their products and services. The measure would gain added credibility if the limit for exemption is raised for tort claims upto Rs.250,000 to adjust for inflation since the court fee rules were last revised.
- The appointment of a large number of women judges as presiding officers of Family Courts under the Affirmative Action Policy facilitating entry of women to the judicial profession is a measure intended to address gender balance. This is a particularly welcome step when increasing number of women are seeking recourse to Courts for relief

under family laws for rulings on questions of dissolution of marriage (Khula)⁴, custody of children and maintenance etc.⁵.

- In order that the Access to Justice Agenda is carried forward beyond the life of the project, an Access to Justice Development Fund (AJDF) has been created with an endowment of US\$ 25 million. The proceeds from investment of the endowment fund are intended to be used for nine windows, one of which is dedicated to legal empowerment. The Fund conducts advocacy for the rights of the poor and the deprived, especially the women, in addition to initiating Public Interest Litigation.
- To moderate the perception that the public, especially the poor in Pakistan, are inadequately protected against the tortuous acts of public servants, the General Clauses Act 1956, has been amended to delete the protection to public servants against negligent acts. This has brought the standard of good faith for the citizen and the public servant on the same footing. A perception however still persists in the human rights circles that benefits of this amendment would be better harnessed if a special tort law for public servants was enacted and administered by dedicated tribunals contemplated under Article 212(1)b of the Constitution instead of leaving it to the common law courts. But the superior courts in Pakistan are inclined to the view that a special law on torts will be more likely to be riddled with exemptions favouring public servants: this will erode the liberal approach to citizens rights built into the case law on torts over time. The superior judiciary also disfavours special tribunals for two reasons. First, being not as well spread out geographically as the civil courts, tribunals would be less accessible. Secondly, compared with tribunals, civil courts act far more within the glare of the High Courts monitoring mechanism and are consequently more conducive to relief.
- Consumer Protection Laws have been enacted by all four provincial governments in 2005-2006 to empower the citizens, especially the poor, in the market place. These laws provide not only for setting up of Consumer Protection Courts initially in pilot districts but also for instituting Consumer Protection Councils. The Councils will be civic bodies meant to articulate and prioritize consumers' concerns regarding the state of supply of products and services so that the courts remain attuned to such concerns. In scope and concept, the Consumer Protection Laws represent a vast improvement on the superseded legislation by extending the operation of these laws for example to pharmaceuticals, professional services i.e. legal/medical practitioners, architects and contractors, besides a range of manufactured articles and services not included in any earlier law on the subject. It is expected that as a potent pro-poor legislation, it exert great pressure on unscrupulous commercial, professional and industrial interests. The Punjab provincial law also provides as a balancing measure, adequate safeguards against frivolous/irresponsible claims by vesting the power to prosecute either in the District Coordination Officers (DCO) or in the Secretary to the Provincial Government department responsible for administering the Act.

⁴ Khula is divorce initiated by a woman and is the most common form used by women in Pakistan. A woman can ask the court to dissolve her marriage when from her point of view she can no longer live with her husband. (Source: Balchin, Cassandra (ed.) An action manual: Women, Law and Society. Lahore, Pakistan: Shirkat Gah, March 1996.)

⁵ The sociolegal study conducted under TA 3015-PAK (ADB) shows that an increasing number of women are parties to suits filed in the courts. The difficulties of accessing of courts by women underline the need to improve the capacity of the formal court system to deliver justice. Without such improved capacity, women are effectively disempowered.

Public Safety and Independent Prosecution Service

- Access to Justice reform has promoted civic participation/oversight of policing, professionalism within police service, and greater role to self-governing and self-financing civic bodies in large urban centers, to act as a bridge between citizens and the police.
- The Police Order 2002 promulgated as part of justice sector reforms seeks to replace the concept of police as a coercive arm of the state with an efficient civic service focused on citizens and acting within the consent of the community. To re-orient the police towards these values, norms and practices, Police Order 2002 provides for the setting up of citizen centered oversight bodies at national, provincial and district levels. The mandate of these Public Safety and Police Complaint Commissions is to ensure policing in accordance with a professional plan prepared on an annual basis. The plan features improved service delivery based on functional specialization by separating investigation from watch and ward, and transfer of the prosecution function from the police to an independent provincial prosecution service. The other concerns emphasized by the Annual Police Plan relate to human rights protection, gender sensitization, professional preparedness and response. The Public Safety and Complaint Commission in particular is intended to insulate police from extraneous influences/pressures and act as a safeguard against any collusive relationship between the District Police officer (DPO) and the political interests including the elected District Nazim (Mayor). To make civic oversight of this kind happen, a set of monitoring procedures have been developed for members of Public Safety Commissions at all levels. The monitoring procedures include protocols for complaint handling and grievance redress by Public Safety Commission members. When fully activated, the Public Safety Commissions (PSC) have the potential to become potent instruments of citizen empowerment. The nature of the task demands sustained commitment of the Governments at all levels.
- The setting up of an Independent Prosecution Service (IPS) is another significant step towards citizens' empowerment. By ensuring that only fit cases are prosecuted in courts, the IPS will not only act as an incentive for Police to improve the quality of its investigation but also ensure that the innocent are not harassed. It will thereby act as an extra check on police arbitrariness, as well as serve the purpose of a public defender system to an extent. The provincial governments are being urged to organize capacity building courses based on prototype manuals in order to adequately equip prosecutors to exercise their critical functions including the power to withdraw from prosecution in fit cases in a transparent manner. Arrangements are in place to revise the prototypes in line with the needs of an Independent Prosecution Service as its work gathers pace.

Prisons

To make for better administration of the prison population, new prisons/renovations and extensions to existing accommodation have been developed. Some funds are committed to the provision of amenities e.g. toilets, coolers for inmates, construction of women/juvenile wing in Rawalpindi Central Prison and provision of prison vans in North West Frontier Province (NWFP) for production of under trial detainees in courts. A uniform management information system across prisons in the entire country is also being instituted. This digitized system would include biometric data regarding all prisoners for trial and post-trial purposes.

Administrative Justice

■ Numerous studies have confirmed that for reasons of a number of constraints including lack of awareness, lack of security to the vulnerable in accessing rights overarched by a perception that courts provide relief only to those possessing means of access, only 25% of the grievances pass through the formal justice system. In view of this, while amendments in existing laws and passing of pro-poor legislation remains a priority, the quasi-formal sector which includes institutions of administrative justice, like the office of the Ombudsman, has a significant role to play for the empowerment of the poor. The interaction between the formal and the quasi-formal sector i.e. civil society and institutions of administrative justice has tremendous potential for relieving enormous pressure from the formal court system. For this reason, emphasis is on extending the outreach of the Ombudsman. In its devolution scheme, the government has provided for office of the District Ombudsman to cover grievances arising out of functions devolved to the district level. Such officers will take time to come on the ground. The vacuum can however be filled by the Provincial Ombudsman. The measures to extend the Provincial Ombudsman's outreach include:

- Review of business processes to simplify them;
- Engagement of civil society organizations to act as centers for receipt of complaints and their processing for the Office of the Provincial Ombudsman;
- Information campaigns through the media regarding the interventions exercisable by the Ombudsman for redress of public grievances; and
- Dissemination of foregoing kind of information also through public and private sector distribution outlets like petrol/gas service stations, retailing outlets etc. In the Province of Sindh, this option includes the use of rural barber shops resorted as community outlets in view of the community role of barbers as communicators.

Websites for the Provincial Ombudsmen have been set up to enable citizens to access it electronically. Currently, an Inter-Ombudsmen Conference is being held to articulate issues of common interest to federal, provincial, tax and utility Ombudsmen in the country in order to reach out to the citizens for grievance redress. The agenda for the Ombudsman Conference also includes review of ways and means to use a designated officer in each ministry/department as the forum for an inexpensive first opportunity for review of a decision internally.

Strengthening judicial independence by complete separation of the judiciary from the executive and ensuring that mandates of the judiciary are adequately funded is an important objective. The most decisive measure introduced in this field as part of the Devolution Plan in 2001, was the abolition of the fundamental instrument of the colonial system of governance introduced in the subcontinent by the British three hundred years ago the Executive Magistracy. This measure separated the executive from the judicial branch of government at the lower and middle levels of government and thus demolished the prime colonial instrument of coercive rule.

To ensure adequate funding for the judiciary beyond the Access to Justice Program, Medium-Term Budget and Expenditure Framework (MTBF) are being used to ensure that stability and predictability are provided with respect to judicial budgets and those budgets are more consistently planned through annual work plans against mandated responsibilities at different levels of the judiciary.

NEXT STEP

Cognizant of the arduous task ahead, the Government through its wide ranging reform initiatives enumerated above, is determined to make a positive contribution to the lives of the vulnerable. The Government is of the view that the measures outlined earlier, along with the automation of the courts, shall create a multiplier effect thereby increasing the pace of empowerment and has drawn up a comprehensive legal empowerment strategy, which includes the following initiatives:

It is planned to restart the Project whereby an independent civil society website was created in order to provide citizens with comprehensive information about the specific Government Authorities/Organizations to contact regarding their problems/grievances. Eventually, the website is also intended to facilitate networking between trained paralegals and civil society activists.

A comprehensive communications strategy has been prepared with an aim to publicize access to justice initiatives, providing easier access to justice for the public, creating a better understanding of the reform effort and mobilizing demand for a sustained reform process even beyond the AJP. The Government of Pakistan and the AJP have initiated a scheme whereby they intend to educate people about their legal rights and acquaint them with the means to achieve such rights by facilitating programs and 'infomercials' through the media. Under the scheme, the government and AJP shall finance the airing of programs/infomercials prepared by NGOs as well as other organizations and pertaining to legal empowerment of the vulnerable.

Policy commitments with regard to improving the status of women, i.e. affirmative action policy for women, gender sensitization policy etc, need to be fully complied with. However, mere compliance of policy actions would not be of much benefit unless the public, civil society organizations and even government officials are provided adequate information about such measures. This process is to be achieved through the holding of seminars and training workshops on a regular basis.

AJP plans to strengthen the Law and Justice Commission's legal awareness cell to facilitate greater public awareness about laws through dissemination of, simplified Urdu translations of the country's laws ('Qanun-e-Fehmi').

Recognizing that public grievance redress in a timely manner will considerably improve the plight of the vulnerable, the outreach of the Ombudsman offices needs to be expanded. There is also a need to increase public awareness about the Ombudsman's functions and the notification of public grievance redress officers within government departments by organizing seminars and consultations on a regular.

The government is conducting a review and overhaul of the Prison and Probation Service by instituting Prison Management Information System (PMIS). Moreover, pilot programs of providing video conferencing facility to prisons and Judges are showing encouraging results. It is expected that in addition to reducing the time and expense involved in transporting under trial prisoners to courts, this measure shall also result in decreasing the time period and cost for the vulnerable. Additionally, a proposal for outsourcing the process of production of under trial prisoners is being studied. This would prevent delays in legal proceedings.

In addition to law reforms which have already been carried out, the government is presently finalizing a comprehensive Law Reforms Bill which is expected to have an extremely positive influence on the state of legal empowerment. The Bill is likely to be announced soon. It is pertinent

to mention that all reforms, including AJP, signal a shift towards legal pluralism.

Access to Justice Policy Analysis Research Fund (AJPARF)

Under the Access to Justice Policy Analysis Research Fund, the AJP plans to engage learning institutions, such as schools, training institutions, academic researchers, analysts, and policy makers of practitioners, to effectively analyze, deliberate, publicize, and formulate reforms and strategies for implementation, to enhance the quality and responsiveness of justice services and institutions, in order to address the diverse justice needs. The endeavor to institutionalize justice reforms through engaging institutions aims at creating an informed and articulate constituency, and wider public participation in the reform process, to avert policy reversals and institutional failure. The AJPARF will support new and on-going initiatives, including, but not limited to, identifying justice needs, promoting monitoring, and analyzing public debate on the provision of justice needs, services and policy; studying and analyzing the impact of laws and justice services on the poor and vulnerable; formulation, impact and evaluation of legal empowerment strategies such as freedom of information, transparency, accountability and public grievances redress. These are expected to lead to strengthening the justice knowledge infrastructure, creating knowledge product, promoting the study and the use of the rights, rule of law and justice services as a poverty reduction strategy, advocacy, promoting rights-based development, citizen oversight of justice institutions and strengthening the rule of law. The justice sector needs and legal empowerment so addressed are expected to:

- Ensure the provision of security and equal protection of the law to the citizens, in particular the poor and the vulnerable;
- Secure and sustain entitlements for reducing the vulnerability of the poor;
- Strengthen the legitimacy of state institutions; and
- Create conditions conducive to pro-poor growth, especially by fostering investor confidence.

A dedicated Human Rights Division, independent from the Ministry of Law in due course of time, is likely to make much more headway in empowering the vulnerable population of the country. Presently, there is a conflict of interest as the issue of human rights falls within the domain of the Ministry of Law, Justice and Human Rights. A 'Mazloom Foundation' (Foundation for the Oppressed), for example, created under the dedicated Human Rights Division can cater to the needs of the vulnerable by ensuring that their rights are not trampled upon by anyone, even state institutions.

A nationwide network of trained paralegals is likely to have a tremendous effect on empowerment as the paralegals shall be directly providing assistance to the vulnerable and needy at the local level. While not easy by any standards, this goal is achievable provided there is adequate financial and political support for the project

The introduction and establishment of a Jury System is also likely to have a positive effect with respect to empowering the people as it is a well accepted mode of participative judicial governance.

Challenges

While the above reforms being implemented and carried out by the state are big steps towards empowering the vulnerable, they will fall short of their true potential in the absence of complete separation of the three branches of the government i.e. legislative, judicial and executive. Complete

separation shall ensure the presence of an effective system of checks and balances by discountenancing any branch from overshadowing the others or collusion between two branches. One such example is judges of Superior Courts acting as Secretaries of Ministry of Law, Justice and Human Rights in federal Government, and senior Sessions Judges acting as Secretaries of provincial Departments. At a lower level is the widely held view of collusion between the District Nazims, Police and the Provincial Governments, resulting in non operationalisation of the District Public Safety Commission (DPSC) as mandated under the Local Government Ordinance 2001.

Despite perceptions of complicity inherent in judges occupying executive positions, the two branches have been, paradoxically enough, far from a comfortable relationship with each other. The policy dialogue between the management of Access to Justice Reforms and the judges of superior courts has had a hesitant and halting start. The judges suspecting an 'invisible design' of the executive in the reforms agenda have been cautious and wary: the bureaucrats mostly representing the executive, felt constrained in broaching changes that affected the ways the judiciary did business; they were also chary of suggesting anything that would tread upon the sensitivities of judges. But once initial suspicions had been overcome and the dialogue got underway, the executive is obliged to lay out implementation credibly to ensure that all deliverables are provided within timelines. This includes careful planning of the complexities of procurement of stores and launching of the complementary capacity building effort. Any slippage in either can affect the mutual understanding & trust built sedulously over time under difficult conditions. This can also imperil the vision of a phased integrated justice sector conceiving automation of courts in phase I; followed in phase II by automation of core justice sector institutions viz Police, Prisons, Probation, Prosecution and their inter connections with one another as well as courts; in phase III, contemplating automation/connectivity of quasi formal institutions of justice i.e. ombudsmen's offices and civic institutions viz District Public Safety Commissions, Citizen Courts Liaison Committees and Anjuman-e-Musalihat (Reconciliation Council) at Union Council level; and in phase IV, concerning cross functional horizontal/vertical integration of all institutions included in phases I to IV thereby bringing them in one automated loop. The potentials of such cross functional integration of all justice sector/institutions to access information, review performance, provide oversight/public grievance redress or follow through on implementation are self evident. Any managerial slip or inefficiency in ensuring adroit management of consensual arrangements with the judiciary can put the realization of a great vision of public relief at risk.

Statutory provisions for promoting access to justice or relief to the public in these enactments, though momentous, would require long fostering and care by consistent public policy to encourage their exercise by the authorities in whom powers have been vested. Mere legal provisions can not and will not translate into access to justice unless adequate awareness is promoted through a sustained campaign and the officers responsible at the point of service supported in the exercise of pro-poor legislation.

Then there is institutional resistance. The provision of District Ombudsman, for example, has remained inoperative so far, perhaps due to the desire of the fledgling district governments for space before being hemmed in by more than one countervailing institutions. The existing provincial ombudsmen also do not wish to see their jurisdiction diluted although the vacuum created by other's default can very well be filled by them.

New legislation also needs to be complemented with an institutional

framework. The provisions of ADR in 89-A in The Code of Civil Procedure or Small Causes and Minor Offenses Ordinance 2002, for example, have yet to be operationalized for lack of a body of mediators and conciliators. The premise in these laws that retired district judges or senior practicing advocates would be available as mediators has not proved to be valid in most cases. Retired district judges are too old; while senior practicing lawyers are too busy with their professional practice to offer themselves as mediators. Nor can it be assumed that all of them are necessarily skilled negotiators in order to be successful mediators or willing to work on honorary basis. Serious thought deserves to be given to their compensation which has eluded consideration because of a starry eyed approach to the issue.

The raising of this corps requires a serious effort by a high powered selection board preferably under a retired Supreme Court Judge to identify a sufficiently large number of persons with the temperament and potential skills to act as mediators, further honing of their skills and their registration. On registration, such mediators should also be carefully monitored through appropriate arrangements to encourage them to the normative standards. It is feared that without these measures being in place, the provision for ADR would remain a dead letter.

The same is true of the panel of conciliators/mediators supposed to be appointed by the Justice Committee of the Union Council (Musalihat Anjuman). The general perception that as an extension of a political institution i.e. the elected local body at the basic tier, they are politicized is liable to inhibit their acceptance. This would be more so in the phase of polarization in the aftermath of an election. One can only hope that despite the perception of politicization and the reality of polarization subsisting before and after an election, the community would learn to honour persons of sound reputation, good sense and judgment, volunteering as conciliators as they learn by experience. But at this stage, this prospect can be conceived of more as a hope than a certainty.

An important constraint has been relative lack of civil society participation, an underlying theme of these pluralistic reforms. There are two reasons for this. Existing actors are unwilling to create space for such elements (elite capture of district public safety commission wherever formed, for example). Secondly, the demand for change and empowerment ultimately has to come from the civil society. That process can only happen with increased maturity of rights groups at all levels and sectors of society.

Conclusion

There are many reasons to be optimistic though. Presently legal empowerment reforms have entered the break-in phase. An engagement between the state and stake holders has started. The initiation of the dialogue has started to result in a demand led profile of the programme initiatives based on need assessment, ownership and commitment of the implementers. Thus, reforms are shedding off a supply driven complexion which caused certain misgivings and resistance initially. There is a need to sustain meaningful dialogue and engagement of this kind if the gains of policy shifts have to be consolidated and sustained for a break-through.

A far reaching agenda of this kind demands not only apex support and interest at the national level but patience by all concerned including donors. The programme administration for its part has to remain geared to a culture of openness, communicativeness and dialogue so that different parts are introduced over time consistently with one another and responsively to the objective requirements. Every citizen has to commit to a long haul in this colossal change management.

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- 9 The Asia Foundation. 1999: "Pakistan Legal and Judicial Reform Project," ADB, Integrated Report, September 1999, p.25.
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Muhammad Afzal Kahut - Brief Resume

Federal Secretary (Retd) Government of Pakistan

Personal:

Date of Birth: 5th December, 1940
Nationality: Pakistani
Address: Annex 42-A, Nazim-ud-din Road, F-7/4,
Islamabad. (Pakistan)
Telephone No.: 0092-51-9224244, Fax No: 0092-51-9209077
Email: makahut@hotmail.com

Work Experience:

- Program Director, Access to Justice Program, Ministry of Law, Justice and Human Rights, Islamabad (January, 2006 To-date)
- UNDP funded Focal Consultant/ Head of Think Tank on Local and Provincial, Government Reform, National Reconstruction Bureau, Prime Minister's Secretariat Islamabad
- Secretary Establishment Division, Cabinet Secretariat. Government of Pakistan, Islamabad
- Secretary Narcotics Control, Government of Pakistan
- Chief Commissioner, Islamabad Capital Territory
- Chief Census Commissioner, Government of Pakistan

International Conferences:

- Leader of Pakistan Delegation to Public Administration and Civil Service Management Workshop at Asian Development Bank Institute Tokyo, Japan (29th March, 1999 to 4th April, 1999).
- Presented state of the drug abuse in Pakistan, its causes, problems, successes achieved in addressing issues and outlined the avenues for international cooperation in 1996 session of UN Commission for Narcotic Drug, Vienna, Austria (April 1996).
- Leader of Pakistan delegation to tripartite Pakistan Iran UNDCP collaboration conference held in Tehran (April 1996)
- Represented Pakistan at bilateral India Pakistan. Drug control talks at the level of respective Permanent Secretaries (1996).
- Visited US Census Bureau as Chief Census Commissioner as Chief Census Commissioner Pakistan (Jan, 1991).

Education:

- M.Sc (Strategic Studies), Quaid-e-Azam University, Islamabad, Pakistan (1987-88)
- Graduate Diploma in Development Studies, University of East Anglia, United Kingdom. (1980-81)
- Masters in English (Language & Literature) University of Punjab, Pakistan (1959-61)
- B.A Honours (Economics) University of Punjab, Lahore, Pakistan (1957-59)