

**“Evaluation of Judicial Structure with Particular Focus on National
Judicial Policy of Pakistan”**



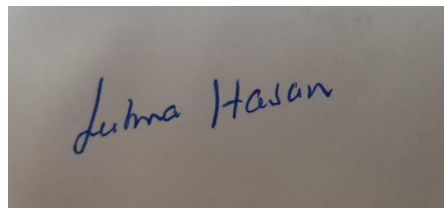
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CERTIFICATE

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Dedication

To my hero, Sarwar Ali, and his lovely wife, Zahida Parveen.

Acknowledgement

We have the pearl of our eyes to admire blessings of compassionate and omnipotent because, words are bound, knowledge is limited, and time is short to express His dignity. It is one of the infinite blessings of the Almighty Allah that He bestowed me with potential and ability to complete the present work and make a material contribution towards the deep oceans of knowledge. First, I avail this opportunity to bow my head before Almighty Allah in humility, Who has given me the wisdom and perseverance for completing this piece of work. I invoke peace for Holy Prophet Muhammad (P.B.U.H), Who is forever torch. I feel highly privileged to be part of Pakistan Institute of Development economics and I ascribe the most and ever burning flame of my gratitude and deep sense of devotion to, 'Ma'am Lubna Hassan' who gave me the guideline to do my work in the best possible way. I would like to express my deep emotions to my father who has built my personality by showing me the right path which will always enlighten me in every aspect of my life. Lastly, I would like to mention the efforts, love and support of my sisters and my friends (Aabshar ul Huda, Maryam Zohra, Rida Asad and Ali Haider) as this would not have been possible without their motivation and the level of comfort they have provided me.

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Chapter 01

Introduction

Background and Introduction:

Since its independence, Pakistan has been struggling with the constitution, political institutions and structure of the state. It has enjoyed democracy and has witnessed the bitterness of dictatorships. In the process of swinging between the poles of civilian and military rules, it has weakened its state institutions (legislative, executive and judicial) to a great degree. If a picture of Pakistan's history is drawn, it would be painted with the state's efforts to declare power over a frequently divided polity and attempts of the citizens to extort control from those in power. The institutional fabric of Pakistan has been carved with patterns of numerous disasters and curtailed resolutions. The result of this is unstable state institutions.

Efforts have been made to remove this instability and almost every day some reference is being made to the importance of national stability and institutional development. For the progress and development of any country, these institutions play a vital role. However, the development of state institutions in Pakistan is poor, lacking efficiency and professionalism. Every state revolves around these three fundamental institutions i.e., Legislative, Executive and Judiciary. These institutions are backed by Military and Civil Bureaucracies (Ahmad, Eijaz, & Rahman, 2014). For the purpose of this study the main focus will be on judicial institution of Pakistan.

After independence in 1947, the need for state machinery emerged. In judicial branches, less than fifty percent of the vacancies were filled. The loss of Quaid-e-Azam made things more difficult and hope for state building died with him as well. It was a time of crisis and there was no stable political institution. This created the basis for a clash over power between the legislature and executive. The tussle over power became devastating for the growth of judicial institutions and “constitution” which was supposed to be the supreme document of the country was abridged in its significance to make possible power bargains. Apart from political context, judicial institutions have proved to be inefficient and indolent in providing justice to the citizens.

A survey conducted by the Apex court in accordance with the petition in the Supreme Court, says that there is no Rule of Law in the country, right to justice is being violated in a systematic and wholesale manner and access to justice has become a privilege (Nation, 20 February 2018). Some other reports and studies by eminent social scientists including the world justice report, rule of law Index (Ponce, 2020) highlighted similar issues . It has been argued in the report that more or less all litigants, who seek justice through courts, experience unreasonable and unpredictable delays.

On the instructions of former justice Jawad S. Khawaja, a research was conducted by Supreme Court. It asserts that on average a case is wrapped up in 25 years. Similarly, a petitioner conducted a study on lower courts and it suggests that from institution to the passing of decree, an average case requires approximately 58 hearings and a shelf-life of over 37 months (Nation, 20 February 2018). Last year, Supreme Court was very active as the total number of pending cases in the start was 38,000 which arose to about 43,000 till the end of 2019 (SCP, 2020).

In the present circumstances an essential step for Supreme Court would be to formulate a policy on delay reduction. At present the number of pending cases in courts across Pakistan has crossed 1.9 million. As mentioned above, only in SCP roughly 43,000 cases are pending (SCP, 2020). These statistics sketch a pitiable picture of courts and if a policy is not introduced that openly bars delaying strategies by the lawyers and parties, the courts would not be able to deliver timely justice to litigants.

Furthermore, one of the main reasons in delay of justice is that the number of hearings a court takes in deciding one case is extremely high i-e 58 hearings. More number of hearings becomes a hurdle in concluding the cases. Another issue is of frivolous litigation that adds up to backlogging of the cases in courts. The petitioners' plea to penalize frivolous lawsuit also needs the attention of the bench hearing the petition. Here another question arises that whether a commission or committee will be formulated by the courts to devise a new judicial policy or the courts will look for legislative to make a new policy having a democratic outlook. Knowing that it is clear that legislative has the capability to amend existing structures.

Tensions among the judiciary and other political institutions of the State are also prevalent, making smooth functioning of the court a daunting task. Given that the courts have either dealt with, or are still hearing cases of mega-corruption and high-treason, reducing the already existing tensions among judiciary and other State institutions seems difficult.

Since the courts have not been successful in providing justice at large. Hence, rule of law which is a principle of justice is not much prevalent in Pakistani society. This

principle ensures timely availability of justice to all citizens of a state. Prevalence of rule of law helps in combating corruption, reduces poverty and shields people from injustice. It serves as a foundation for communities to achieve justice, prospect and peace which in turns creates accountable government and respect for fundamental rights in the society (Lopez-Calva et al., 2017).

Rule of Law is defined by The World Justice Project as a sturdy system of laws, institutions, norms and community commitment that delivers Accountability. The societies where rule of law prevail the governments are accountable under the law. The laws are comprehensible, firm and made known to the public. Moreover, the laws are applied uniformly which protect fundamental rights and ensure right to life and liberty as well. The processes by which the laws are enacted, administered, and enforced are accessible, fair, and efficient. Justice is delivered timely by competent, ethical, and independent representatives and neutrals that are accessible, have adequate resources, and reflect the makeup of the communities they serve (Ponce, 2020).

“Pakistan stands at 120th place among the 128 countries included in the survey and in South Asia it stands at 5th place among the six countries in the region showing a poor public perception of rule of Law in the country.”

World Justice Project, Rule of Law Index 2020 (Project, 2020)

During the last 72 years many efforts have been made to address these grave issues in the dispensation of justice. Various commissions, committees were made to bring reforms such as ‘The Law Reform commission 1958’, ‘The Law Reform

Commission 1967', 'High Powered Law Reform Committee Report, 1974', 'Pakistan Women's Rights Committee, 1976', 'Law Committee for Recommending Measures for Speedy Disposal of Civil Litigation, 1978', 'Secretaries' Committee Report, 1979', 'Committee on Islamisation of Laws and Establishment of Qazi Courts, 1980', 'Commission on the Status of Women Report, 1985', 'Commission on Reform of Civil Law, 1993', 'Commission of Inquiry for Women Report, 1997'.

All the reforms were meant to tackle the loopholes in the judicial structure of Pakistan. The suggestions regarding amendment in laws were accepted and approved by the government but the recommended changes in infrastructure and resources were ignored. Some of the reforms were completely shelved without implementation and the others were partially implemented.

National Judicial Policy (NJP) 2009, is the most recent and broad endeavour at reforming Pakistan's judicial system. It mainly focuses on the major issues; accumulation of cases and hindrance in court proceedings. It lays down many short and long term goals to augment the efficiency of judiciary such as optimum utilization of present judicial resources, further capacity building of the judiciary, accelerated settlement of some important categories of cases and increased judicial accountability especially of lower courts to combat corruption (Siddique, 2010).

The policy has divided the problem areas into four different categories namely:

- Judicial Independence from other Institutions
- Misconduct of judicial officers
- Curbing Corruption from judiciary
- Speedy Justice

NJP 2009 came in to effect on 1st June 2009. It was later revised in 2012 in the light of its implementation results by the national judicial policy making committee and published in 2012 under the title of ‘National Judicial Policy revised edition 2012’. NJP 2009 does not seem to have achieved its target of ‘expeditious disposal of cases’, as is apparent from the increasing rate of backlog of cases in Supreme court and all the High Courts of Pakistan as per annual judicial reports. Over the years, there’s a continuous increase in number of pending cases. Lower level judiciary shows grimmer picture in terms of backlog.

The purpose of this research is to examine and discover the factors that came in the way of achieving desired results from the judicial reforms which lead to incompetency and ineffectiveness of the judicial system in the country. As a case study, National Judicial Policy 2009 was examined through probing deeply into the policy making and implementation aspects. Developing an understanding about why the previous reforms have not been able to deliver the desired results is a good initiative for building a more result oriented and robust policy.

Problem statement:

At times when National Judicial Policy of Pakistan 2009 was formulated, there were 1.2 million pending cases in Pakistan. One of the major issue to address through this policy was an expeditious disposal of cases and speedy justice. While, as per current annual judicial report, the numbers of pending cases have increased to more than 1.8 million (SCP, 2020). Through this research, we will examine the factors responsible for this situation. Specifically, why the National Judicial Policy of Pakistan (2009)

has not succeeded in its stated objective of speedy and impartial dispensation of justice? Interactions of stakeholders during policy initiatives and implementation processes will be analysed through qualitative descriptive approach. The results from the study will contribute to literature on understanding the factors for suboptimal results of current judicial policy and will provide recommendations for better service delivery.

Significance:

This research will help in evaluating the lacunas in Pakistani judicial structure and will aid in understanding the factors responsible for lacklustre performance of various judicial reforms, with particular focus on ‘National Judicial Policy (NJP) 2009’ which is the latest judicial reform effort in Pakistan. It will yield recommendations and policy prescriptions which ought to be opted for transforming our judicial institutions into an efficient organ.

Chapter 02

Literature Review

Before proceeding further, the definitions of terms and concepts used in the analysis are necessary here. *UNEG Norms and Standards for Evaluation 2017* emphasizes that Evaluation is an assessment of policy or institutional performance conducted in a systematic and impartial manner (Barquero, 2017). Analyses must be based upon expected and unexpected outcomes by examining the processes and causality factors such as efficiency. The basic purpose of this is to promote learning and accountability. The aim of an evaluation is to understand why; and to what extent results were achieved. Furthermore, Evaluation must not be based for the purpose of disciplinary action or punishment rather it should be done for professional development and better service delivery (Salarzai, 2017).

Legitimacy of regime is dependent on trust on its institutions; particularly trust in judicial institutions. Nations succeed because of trust in judicial institutions and impartiality of public administrators (Dahlberg & Holmberg, 2016). In addition to that, States must ensure the adoption of measures that aim at promotion of accountability and independence of judicial institutions, which in return, enhances public respect and upholds public confidence in the judicial institution (Okeke, 2018).

In general, policy is a course of action while a policy which is an innovative one, having future orientation and in connection with other policies of the system is deemed as a successful policy (Hallsworth, 2011). The theory of policy diffusion is a process by which institutions, policies, administrative arrangement in one place or time is used in developing institutions, policies and administrative arrangement

through transplantation and adoption of knowledge (Dolowitz & Marsh, 1996).

This theory has four dimensions ranging from learning through earlier adopters, competition, imitation, and emulation (Shipan & Volden, 2008).

Whereas legal transplant is common in the twenty-first century, but finding from data of forty-nine countries has proved something on adoption and transplantation of law and its actual enforcement. As per those findings, States having adapted legal orders through transplanted phenomenon to local conditions and its population were familiar with basic foundations of transplanted law and its principles have more effective legality than those States that adapted transplanted law without such pre-disposition (Berkowitz, Pistor, & Richard, 2003).

Formulation of public policies and its implementation now-a-days are in multi-actor networks (Hermans, Cunningham, & Slinger, 2014). These multi networks are basically the mechanisms that are involved in implementation process. Such approach aids the designers in a three way process; understands the success in implementation, adjustment of existing designs and learning from the successful processes.

In India, the doctrine for the separation of powers is not followed as given in the constitution. Still in many cases the independence of judiciary is observed as part of constitution, but the judges are criticized being unfair and fearful (Richhariya, 2020).

In Bangladesh, on the other hand, there is a clear definition of judiciary and kept separate under the constitution but the judicial process of appointing, removal and interim processes are hold by the President. The problem of having delay tactics is

what faced by the people in Bangladesh as well which leads to the losing confidence on the judiciary of state (Hossain, 2020).

Similarly, there is a lack of confidence on judiciary in Sri Lanka, where the institution is seemed politicised. There are structural defects like dependence and partiality frameworks in the judicial policy as per the constitution which is why there is a dire need of introduce reforms in the legal system of the state (Anketell & Welikala, 2013). In comparison to these neighbouring states, Pakistan acquires a document of National judicial policy. Still there is a wide room of criticism and thus, change is required.

Therefore, Evaluation of judicial institutions can help in developing professional imperatives to do the right thing through development of various principles that can overcome the issues of compliance with procedures and achieving an excellence in performance of judicial function. Well-designed mechanisms drives the judicial institution towards responsive excellence (McIntyre, 2019).

Scenario of Pakistani Judicial System:

Rule of law damages due to judicial delays, accessibility and biasness (Zhang & Kaszycki, 2017). Wherever the situation of a Judiciary is derogatory and issues like accessibility, delays and biased outlook are prevalent; then reforms of limited nature targeting one characteristic will be less effective. There must be an impetus for kind of domestic reforms in judiciary to increase accessibility for slow and biased judiciary to alter the situation (Chemin, 2018). Judicial evaluation is under-

rated or overrated but not on par with the basic concept in States (Kosař & Spáč, 2018). These damages are also instilled in the judicial system of Pakistan.

Judicial reforms in Pakistan particularly for speedy and cheap justice have remained unsatisfactory (Waseem, 2012). An assertive judiciary has emerged in Pakistan which is an unnatural development that can lead to collapse of autonomy among institutions. First five decades of Pakistan has witnessed the erosion of rule of law at all levels. The Supreme Court of Pakistan has shown repeatedly interventionism that helped in diversion of attention from disposing of cases efficiently and effectively. Contemporary actions of courts against traditionally privileged people is helping it to maintain the questions of judicial performance as unanswered along the backlog cases (Niaz, 2020).

Access to Justice Program and National Judicial Policy of Pakistan (2009):

Since the beginning of this century, the world has changed a lot in terms of economic production and trade due to globalization. To serve their interests, Financial Institutions have an enormous power to influence policies formulation in different States. That has halted the power of national stake-holders to formulate policies as per their own agenda (Parsons & Greenwood, 1996). To an extent, the International Organizations (IOs) are acting as manipulators of global governance by playing a major role in agenda setting process and as an agent of policy coercion transfers (Gordenker & Weiss, 1997). These kind of policies mostly serve donors' interest while public interests and welfare remains neglected (Killick, Gunatilaka, & Marr, 1998).

Asian Development Bank (ADB) has launched extended justice and law programs in various member States. Titled 'Access to Justice Program', judicial institution

reform program was launched in Pakistan during the first year of the new millennium with three-fifty million dollars loan. This reform program had contradictory approach because of taking many counterpoint ideas to improve judicial institution. On the one hand, considering the judicial provision and judicial empowerment of poor while on the other, foreign direct investment, free market and economic growth as basis for initiatives of reform which has made this program far from setting achievable goals (Armytage, 2011).

In Pakistan the formation of National Judicial Policy Making Committee (NJPMC) to enhance leadership for judicial institutions besides integrating uniformity in judicial policy making is an output of 'Access to justice Program'. National Judicial Policy of Pakistan 2009 was devised by this committee having ambitions of speedy justice, curbing corruption and judicial misconduct along maintenance of independence of Judicial Institution from other institutions of State (Chemin, 2009).

ADB's 'Access to Justice Program' deemed as an empowerment of judicial institution for poor and destitute factions of society is a by-product of a pro-market efficient judicial system rather than taking care of system's effectiveness (Siddique, 2013).

Policy Perspective:

From inception, the implementation process of policy is a form of political game; that means from policy initiatives, multiple actors at various levels, to fulfil their desires, try manipulation of an implementation process (Bardach, 1977). This kind of manipulation game deviates the implementation process from set goals. Global

institutions like Asian Development Bank (ADB) also try to influence for their interests during policy initiatives. Stakeholders at multiple levels of reforms try manipulation as per their interests and needs, hence, deeming reform process as ineffective as a consequence (Sara, Ansari, & Jabeen, 2018).

Resultantly, project evaluations face difficulties while explaining factors for failure of policies or programs; mostly they come across 'black box' of implementation which makes it impossible to differentiate between implementation failures and design failures (Bamberger, Rao, & Woolcock, 2010). Failures in implementation phase can be understood by enquiring into work of implementing actors (De Bruijn, 2007).

For successful implementation, collaboration is prerequisite among multiple actors while having different pressures, priorities and constraints. Therefore, in scenarios where one has interests in outcomes which results by decisions of multiple actors, a close stakeholder's interactions analysis is warranted (Firestone, 1989).

Research Gap:

The judicial system in an under researched area in Pakistan. The same holds true for the National Judicial Policy (2009). Limited Studies have been done in which an evaluation method is applied on judicial organization in Pakistan, in spite of its potential usefulness for analysing judicial performance and giving prescriptions to fill the gaps. A study was conducted which used the theory of Policy diffusion and Implementation as an evaluation method in 2018 (Sara et al., 2018).

The limitations of that study were that they collected data from legal practitioners of Punjab and the Federal area only. Subjects from other three provinces were not

included while analysing the National Judicial policy 2009 of Pakistan. This Study includes subjects from all provinces of Pakistan (Punjab, Sindh, Baluchistan, and KPK) and from different tiers of bar and bench along with clients to evaluate the objectives of study. Given the paucity of research on this topic, this study is an addition to the literature on National Judicial Policy of Pakistan. Four case studies are also selected to better understand the persistent issues in the judicial procedures focused and selected.

Research objectives:

The objective of this research is to explore the formulation and implementation process of National Judicial Policy (NJP) 2009 for the sake of investigation and comprehension of the responsible factors for the lack of success in terms of policy outcomes with the help of following research questions:

1. To what extent National Judicial Policy (NJP) 2009 of Pakistan has achieved its set targets?
2. What factors, in the view of the stakeholders were responsible for the success/failure of policy implementation?
3. What must be the part of New Judicial Policy making process for its successful implementation as per stakeholders?

Chapter 03

Research Methodology

Population / Sample:

To get better insight and deep understanding of the issue under discussion, in the light of knowledge and experience based expressions and opinions of stakeholders, the qualitative descriptive approach is used as a research strategy. The sampling technique used for this purpose is quota sampling and purposive sampling. For instance, purposive sampling will include subjects like former Chief Justices of High Courts, former justices of Federal Shariat, judicial officers from lower courts (session, civil and criminal), and experienced advocates of high court and supreme court bars. In depth semi-structured interviews will be conducted of purposive sample of twenty experts (individuals from bar and bench) affiliated with different tiers of judicial organ. Selection criteria of respondents from higher echelons of judicial organ is based on their experience and knowledge of National Judicial Policy (NJP) 2009. Whereas respondents who belong to lower judiciary were selected on the basis of their first-hand experience of policy implementation. In the case of quota sampling, subjects were divided as per quota system of Pakistan to give representation to experts of all provinces for sake of getting insights on judicial structure and judicial policy. Ten clients were also interviewed to better understand the ground realities and they were selected from different levels and areas on the basis of their experience.

Interviews were carried on to the point of saturation to get all the necessary and important information from the interviewees.

Data Analysis Technique:

In this research, the tool which is employed for data interpretation is thematic analysis. To draw logical inferences, information gathered from all interviewees was read multiple times to generate themes by comparing, contrasting and analysing important points. For this research, unit of analysis was individual, a person who has any experience of court case, lawyers, and judges from different tiers of the judicial organ. In the perspective of research questions, major themes arising from the primary data of this research will be discussed and presented in upcoming sections. The main issue in literature in the analysis of National Judicial Policy of Pakistan is the absence of literature with definite methodology. Although issues related to policy implementation are discussed occasionally. A focused study on the subject is woefully missing in the Pakistan. At the opening ceremony of the new judicial year, Chief Justice of Pakistan mentioned a number of problems that are present in the institutional procedures. According to him, this fight for justice can never be done alone at national level but the entire state including provincial judiciary needs to work hand in hand. In a similar fashion, the press release of February 2020 also shows that there are number of concerns related to the judicial institution and procedures.

The strength of the thematic analysis approach is that it does not include pre-determined algorithms. Rather, the categories that are part of study are found after the data is collected. It gives the researcher flexibility, given the qualitative nature of analysis to draw the maximum benefit out of data. On the other hand, the weakness of thematic analysis is that it does not specify the way of coding and identifying themes. The data can go haywire if not coded in a right way.

Most studies use statistical analysis to analyse the judicial process. The problem with this approach is that it does not draw its basis from any causation theory, rather it just focuses on finding patterns and correlation from the data. The data in the statistical analysis can also be fabricated as there is no check on its validity, and thus is liable to misinterpretation. This problem with statistical analysis renders thematic analysis as the best possible approach.

Chapter 04

Case laws, Client's Opinion and Expert's Opinion

Case Laws

The case laws that are being selected to analyse are on the basis of a persistent problem that has been faced by the clients. Including other issues, delay tactic is something that has been a continual resentment from the clients. The problem is that not only a fraction of society but even cases of national value has also been delayed for long. The reason to which can be elucidated broadly as the slow processing and a denied justice due to ignorance. Following four cases are explaining the problem in detail.

100-year-old property inheritance case:

In 1918, the case was first started in the Rajasthan court. After independence, it transferred to Bahawalpur trial court and heard there till 2005 regardless of the conclusion. Then, the Supreme Court of Pakistan took up the matter and decided after a century in 2018.

The matter was a dispute on 5600 Kanal land in Khairpur Tamiwali tehsil, district Bahawalpur. Shahabuddin, the owner died in 1918, and his brother Sher Khan was the complainant. The decision was given by the bench of SC consisting of three which includes Chief Justice of that time Saqib Nisar. He ordered the distribution of property to his heirs as per injunctions of Islamic law. He added, no one will deprive of his legal share in the property.

Thousands of land disputes and property cases have been pending for decades in Pakistani courts. As per experts of the field, elimination of a backlog in such matters is not possible without amendment in Criminal Procedure Code (CrPC) 1898, Pakistan Penal Code (PPC) 1860, and Evidence Act 1872.

Musharraf High Treason Case:

Article 6 of Pakistan's constitution states, "Any person who abrogates, subverts, suspends, holds in abeyance, attempts or conspires to abrogate/subvert/suspend/hold in abeyance the Constitution by use of force or show of force or by any other unconstitutional means shall be guilty of high treason."

Retired General Pervaiz Musharraf imposed emergency, suspended the constitution of Pakistan, and put several senior judges under house arrest on November 3, 2007. Supreme Court of Pakistan declared his decision of emergency imposition as illegal in 2009. In June 2013, the Nawaz government alleged him with charges of high treason. He was first booked on 17 December 2013. The trial of this case took six years to decide. Major factors responsible for this were his absence before the trial court, adjournment due to accused illness, reconstitution of a bench for six times, and change of prosecutions heads by government. Although his name was included in the no-exit list but was granted onetime permission to go abroad on medical grounds and never returned.

In the preceding year, the Supreme Court ordered the trial court to proceed and conclude the matter even without the statement of an accused as he refused to appear before the court. The special court announced its initial verdict on 17th December

and detailed judgment on 19 December 2019. He has the right to appeal against this decision in Supreme Court but it's clear on the basis of reactions of institutions of the military and current government that sentence would not carry out even though the Supreme court upheld the decision.

Criminal Matter (Sindh High Court, 2009 YLR 1777):

An applicant, accused of theft and murder, in the case of Sindh high court in 2009 was detained for a period of six years due to delay of trial. The court upheld that constitution provides security and liberty with subject to the law. If someone is detained than trial should be expeditious. Detaining for such a long period is an abuse of the rule of law. Court ordered to grant bail and set precedence to grant bail in cases of delay of proceedings and inconclusive trials even in matters of crimes where punishment is imprisonment of life or death penalty.

Saliha Shaheen 2012:

Under section 497 of the CrPC, accused women are entitled to bail in cases of punishment less than death sentence as per the law if their case is not concluded and they have spent six months in detention during the pre-trial period.

A young Muslim woman of 24-year age, Saliha Shaheen, faced allegations under section 295-B of PPC (An offence of desecrating or defiling the Holy Book) and detained during March 2012. After three years in March 2015, her lawyer appealed in the trial court for statutory bail but her application was dismissed. After that, her

pleader went to Lahore high court for bail request but her application revolved between different benches for two months and then rejected on the basis that her trial is near conclusion and delay is only due to adjournments taken by her counsel. The higher echelon did not acknowledge that they had only asked for a few times of the total 50 times granted adjournments. Much of the postponement in proceedings was due to the absence of prosecution's witnesses, life threats to the accused and her pleader, and strikes of bar and bench. After three and a half years, the Supreme Court accepted her appeal and grant her bail after all that time-period in detention.

Delay trial in Blasphemy Cases:

Pakistan is a signatory of the International Covenant on Civil and Political Rights (ICCPR). Article 9(3) and Article 14 (3-C) of ICCPR says trial must start in a reasonable time. Under section 426 of the Code of Criminal Procedure, appeal against three years or less sentence must be decided within six months by the trial court; for three to seven years sentence within one year; and for a sentence of seven years and above appellant within two years.

In contrast, ground realities are totally different. Two to three years is an average time of pre-trial detention in blasphemy cases. Mostly, accused of such cases are denied bail and have to remain in custody during the pre-trial period which is an infringement of their rights (expeditious trial, the presumption of innocence, and liberty etcetera)

For example, Asia bibi, arrested in June 2009, was detained for 16 months in the pre-trial phase. In November 2010, the trial court sentenced her with capital punishment

after finding her guilty. She went to the high court for appeal but had to wait for nearly four years for a decision. After that, In November 2014, she appeared in the Supreme Court but it took eight months to start proceedings of her case. Supreme Court of Pakistan acquitted her on October 31, 2018. She was released from jail in first week of November, 2018. The time period she spent in detention is a violation of her right to liberty and trial within a reasonable time.

In the case of Muhammad Sharif, the pre-trial period of detention was longer. In 2001, he was arrested and waited four years for decision at the session court level. In 2005, he appeared in the high court and again had to wait for two more years. Lahore high court finally acquitted him in 2007. He has to spend six years in prison for the never committed crime.

Muhammad Arshad, another accused, booked in 1989, and the session court took four years to decide the matter. In 1993, he appealed to Lahore High Court which took another two years for setting him free. Irrespective of his innocence, he had spent nearly six years in jail and his liberty deprived.

Some cases are more disturbing than these. For instance, under section 295-C of the PPC, an accused Wajih-ul-Hassan was arrested in 1999. His conviction took place at the trial court level after three years in 2002. He went to Lahore high court for appeal but had to wait eight more years for a decision against his appeal. After that, his appeal in Supreme Court concluded on 25 September 2019 in his favour. He has spent time in prison equivalent to the punishment of life imprisonment regardless of his innocence.

Clients' opinion

The themes in the clients' opinion are repeating yet multiple. These patterns are mostly based on failures in the implementation of policy. The study divides the themes in to the ones that are repeated and the others that are different but important to be analyzed. Some issues are persistently mentioned by the clients in different sorts of cases. Those continual obstacles in the smooth running of policy vehicle are delaying decisions, misconduct, non-professionalism and absence of judges, and vague laws. Others are poor implementation problems, Bribe, favoritism, lacking decree and forging of documents.

Taking the theme in to account, misconduct is explained as the dishonesty which is offensive for those looking for justice. The corruption is a form of power abuse that has been faced by the clients. Mostly it is taken as the intentional delayed decisions by the judges. In addition, the misconduct of judges and lawyers in the form of showing lack of interest in their jobs and depicting non-professionalism through their absence. This is an unethical act on the part of judges including the acceptance of gifts and bribe, and showing favoritism or special treatment given to a party. The regulatory procedure of cases are poor and so the implementation, which are being identified as a presence of vague laws.

Malik Momin a local businessman from Lahore has been revolving around courts for seven years. His case is company matter and dispute of share distribution between share-holders. His case is still lingering as opposite party resorts to delaying tactics. He has been through a lot that disappointment is what he is awarded with. He's of the view that cases of this kind take around thirty years to reach a decision. As per him, the number of cases per judge is very high, that is, nearly 700 cases per judge.

Similarly, Rana Afzal vs Rana Samar in civil court Okara in December 2017, a suit filled. This is a matter of inheritance. According to the legal framework, it should have been disposed within six months but the final decision of his case is still pending even after 3 years. He suggests that proper following of time limits as per legal frameworks, check and balance on delay tactics and high knowledgeable training to lower judicial staff can help in filling prevailing lacunas in the judicial organ.

Malik Momin, furthermore, showed a strong reaction by emphasizing on the issue of vague laws that lead litigators towards delay tactics. He suggested a dire need for competitive and more judges, clear laws, and quick litigation for better service delivery. In a similar way, Rana Muhammad Akram, a retired government officer from the health department, hold unsatisfactory views about the judicial system due to non-professionalism of the lower judiciary, its slow working procedure, and ensuing unnecessary lengthy litigation. He and his family members decided to separate inherited agricultural land by mutual consent.

In pursuing this, Sirdar Liaquat, a local businessman from Layyah, feels dissatisfied with the court working procedure on the basis of his experience. He's of the view that if you're politically affiliated and also have money than nothing in this country is impossible for you. The problem of bribe and favoritism is again highlighted. His opponent has taken stay on his site for new business and it's around 5 years and the case is still lingering. The opponent lawyer has used delay tactics. This case has also represented resentment by the client due to the issues like forging of documentation, and bribe to prolong the case. In similar fashion, Anila Naz, from Bahawalpur, is not satisfied with the judicial system of Pakistan. Her experience is considered corrupted because of the pending property cases in court. It's almost 7 years and still, the

decision is pending. Either lawyer took dates by use of delay tactics or judges are on leave.

Another case is about the poor implementation of laws and on leave judges which suggested to be taken into consideration and strict measures should be taken for better service delivery of judicial organ. As Sajid Hussain from Faisalabad, Punjab has also shown dissatisfaction with the judiciary's performance because of the absence of other party's lawyers, leave of judges, and time duration of cases. A brick company's owner has taken advance money from him but didn't deliver his order. His case has been pending since 2018 in Civil Court Lahore.

Amna Bibi, a resident of Multan had to go to court for custody of her child. After divorce, her husband didn't give her custody of their daughter. She said that custody matters should be decided in days as her daughter was only three months old and her in-laws were not handing over her child to her even though the child got sick during this entire dispute. In her case, the court took six months to give custody of the child to her. She is of the opinion that family laws are good but the implementation process is poor.

Aslam, an accused of Murder from Sadiqabad, has denied all charges against him and feels chagrin because of the institution's dealing of his matter. He spent 11 months in prison before getting bail from the high court. As per him, favoritism, bribe, and corruption culture are prevalent in police and some lower judicial officers are also part of it. The slow process is also a hurdle in the conclusion of matters. Many times innocents have to go through a long time in prison even before the start of trials. These discrepancies must be dealt with strong actions.

Raja Liaquat Ali, the retired principal of Murree Degree College, is dismayed with judicial organ due to multiple issues, that is, less number of judges; unsmooth

functioning of the system, and implementation issues. His experience makes him say that it's easier to get your case decided but to get decree is almost impossible. He added Justice System is also costly for timely service delivery. His case was a service matter. Annual Confidential Reports (ACRs) were ruined due to which grade was not updated and the salary was not as per grade. Court took three years to decide his matter. He won the case but took years to get his case decreed. According to him, more competent judges should be employed in the lower judiciary and time-frame should be followed for the decision of matters. Further, the Implementation mechanism must be improved as currently, it is poor. Even after the decision, the matter lingers for years in public departments for years.

Muhammad Khan, a resident of Mandi Bahuddin, showed hopelessness with the working procedure of courts. He's of an opinion that judges took years to decide a simple matter. The incompetence of the lower judiciary is at a peak. He booked for the case of murder in self-defence. He had spent 9 years in jail before getting bail. His concerns revolve around incompetence of lower judiciary, bribe culture in police and lower judiciary, forge F.I.Rs, and vague laws. He recommends a speedy system, clear laws, and proper checks and balances for an efficient justice system.

Anila Naz, from Bahawalpur, is not satisfied with the judicial system of Pakistan. Her experience is because of the pending property cases in court. It's almost 7 years and still, the decision is pending. Either lawyer took dates by use of delay tactics or judges are on leave. There is no proper check and balance system. There must be a time frame for the conclusion of cases. If a judge is going on leave then there must be his/her replacement for further proceedings of the case. Delay tactics should be reprimanded for the better and speedy delivery of justice.

Bukhtiar Ahmed Sabri, an overseas Pakistani, who has spent most of his life in UAE and Saudi Arabia was allotted a plot from the government many years ago. When he started to construct on his plot, his neighbor went to court and took stay on his plot. He has all the documents of allotment and was relaxed. But soon he lost hope due to the working of the court system. He discussed this matter with his relative who has been a civil judge for 15 years told him that normally these types of cases took around 20 years. Major flaws as per his experience are; absence of other party lawyers, absence of witnesses, lawyers' protests, and judges on leave. For speedy justice delivery, all these issues must be dealt with top priority.

Sirdar Liaquat, a local businessman from Layyah, feels dissatisfied with the court working procedure on the basis of his experience. He's of the view that if you're politically affiliated and also have money than nothing in this country is impossible for you. His opponent has taken stay on his site for new business and it's around 5 years and the case is still lingering. The opponent lawyer has used delay tactics, forging of documentation, and bribe to prolong the case. As per him, the state must enact on forge documentation, fabricated facts, and wrong witnesses. All these should be punished with strong hands to end these ill practices. Otherwise, justice will stay a dream for the majority population of the country.

The experience of clients discussed above have some commonly recurring themes. These themes include issues that have been faced by the public in a regularized pattern. The most important and repeated problem is delayed justice. Most frequently clients have shown their concerns in this regard. They have come across different problems of delay tactics like the absence of judges, lawyers, the provision of the next hearing date, a great number of cases per judge, etc. In addition to that, another issue that is faced commonly by people is the issue of judicial lawlessness which

includes favoritism by judges, bribery, corruption, political affiliation, etc. Clients showed their resentment about the matter as it produces an environment of hopelessness and distrustfulness.

At heart, the judicial system is found empowered by the judicial staff, and they run it ceaselessly and most importantly on an unprofessional basis. Clients have shown a disappointment over the working mechanism of the judicial system as they came across confederacy of lawyers and judges when it comes to delaying judgments and giving judgments on their sweet will. According to clients, the system needs a push to work in a better manner. There is a requirement of enough possible attention to run the system machinery smoothly. Regulatory action is necessary to have checks and balances on the judicial system of the country so to get justice in time.

Experts' Opinion

Punjab and Federal:

Akhtar Hussain Bhatti, An advocate of the Supreme Court, currently a member of the Judicial Commission of Pakistan favoured the step of Justice Khosa's policy of model courts but reprimanded the NJP 2009 and considered it as inappropriate. It was disputed and inoperative and ended up in smoke due to protests by the bar associations and legal organizations. Steps like the Top-down approach, neglecting potential stakeholders, 15 days investigation, 4 days bail, 7 days pre bail trial are far from ground realities. Also, there is no up to mark cooperation between bar and bench particularly in Lahore. By taking relevant stakeholders on board, enhance cooperation between bar and bench, setting a time frame of cases, putting fine on unnecessary adjournments can prove as vital steps in better functioning of the judicial organ.

Tahir Mahmood Ahmad Khokhar, Former Deputy Attorney General for Pakistan, Former Standing Counsel for Pakistan, Former Federal Counsel for Federal Government, and Former Legal Advisor of the Income Tax Department is of view that NJP 2009 is just a brief re-iteration of contents of various statutory laws contained in various statutes of Pakistan. It also reflects the interpretation adopted by the Superior Courts of Pakistan from time to time and problems faced by the Courts of law while adjudicating the matters before them. While enacting the NJP, the important stakeholders like the Supreme Court Bar Association, High Court Bar Association, and District Bar Associations were not consulted in any meaningful manner. Thus its formation itself was not perfect and free from blame. Kindly note that the basic law in this respect was promulgated in 2002 but the NJP was framed in 2009. No instructions/guidelines have been provided in the NJP

with respect to settling of any time frame for deciding the matters pending before the Apex Court of Pakistan. Besides, there is nothing in the NJP that binds the Courts for making their decisions on merits and not on hyper-technical grounds. The NJP has not touched the problems which ordinary litigants are facing on account of frequent transfer of judges and cases entrusted to them. Such abrupt transfers lead to enormous unimaginable delays in the adjudication of matters. With respect to its implementation, the NJP could not be implemented at any level and its true implementation remains a dream for litigants and those who relate with law. The real issue in Pakistan is not the paucity of laws on any subject or formulation of some deficient NJP. It is actually the lack of implementation of statutory law as well as policies in their true spirit. It is a hard and undeniable fact that even Superior Courts utterly failed to implement the NJP. After the retirement of the then Chairman of the Committee viz. Mr. Justice Iftikhar Muhammad Chaudhary, the former Chief Justice of Pakistan, the Courts in Pakistan never took the NJP as a serious matter to be implemented and failed to take any care of it. Thus the goal of expeditious (and inexpensive) justice still remains a dream till today and the NJP completely failed to adhere to the issue. Even establishment of Model Courts for the decision of cases failed to achieve this goal as most of the judges lack even basic knowledge of statutory law and common sense, thus without following and applying correct law they are actually crushing the justice in a reckless manner and have actually become a tool of swift injustice and oppression.

Daniyal Ijaz Chadhar, the partner of Ijaz and Ijaz Law firm, contested for the seat of General Secretary in 2019 Punjab bar elections, is of view that Judicial policy remained successful to a certain degree but mostly failed in its implementation because it was not practical. The shortage of judges and strikes of lawyers are potential factors for lack of its implementation. The time frame set for cases in the

National Judicial policy is very short for the conclusion of matters. The Justice system is very costly in Pakistan. It should be cost-effective and accessible to everyone not only to the rich. The judicial policy should have been implemented in phases and to particular courts in the beginning rather than across the board. There should have been gradual implementation at a larger scale. Frivolous litigation should be discouraged by handing down punitive sanctions in the forms of heavy fines and jail terms.

Imran Muhammad Khan has been a judge in the lower judiciary for 20 years. He sees National Judicial Policy as controversial due to its jurisdiction and time-stress policy compromising meritocracy. As per his take, it has achieved figurative success at the cost of people's expectations regarding justice. In achieving its outcomes, it has made decent progress. It lacked in achieving standard justice because of its stress on disposal of cases rather than conclusive evidence. Lack of will of litigants, lawyers, and stress of session judges for early disposal of cases are potential factors for lack of its implementation. There is a need to overhaul the structure of advocacy which can be improved by appointing the professionals. Consequently, it will provide the society with inclusive access. There should be a representation of the lower judiciary in the National Judicial Policy Making Committee (NJPMC) for better outcomes.

A civil judge from Mandi Bahuddin with more than 25 years of working experience in the field explained the circumstances under which National Judicial Policy was formulated. During the lawyer movement, the slogan was raised for the demand for constitutional supremacy and rule of law. After movement, when the government restored Chief Justice of SC and Chairman NJPMC Iftikhar Chaudhary, the judiciary

wanted to thank the nation and tried to repay its debt to the nation under its authority. So the main objectives of the NJP were to present a clean and positive image of the judiciary, by separating it from the executive and ridding from the menace of corruption. Early disposal of civil, criminal, financial, and family matters are crucial for economic development and family values. Outcomes of this policy are not up to mark but the disposal of cases increased and the judiciary as a department reorganized and become well managed. Higher courts started acting as guardians of the constitution. Lack of cooperation between bar, bench, legislature, cases per judicial officer ratio, and law enforcement institutions are potential factors for lack of its implementation. For viable and efficient judicial policy and its effective implementation, NJPMC must enhance its members by taking input from all players particularly representatives of the bars Associations, civil societies, judges of lower courts, and law enforcement institutions.

Nisar Ahmed Gondal, a senior practicing lawyer for the past 30 years from Chakwal, said that NJP 2009 made the judiciary more powerful and independent than before. It was an attempt to streamline the judicial system in-country by making it responsive to the present-day requirement of society and the main focus was on clearing the backlog in the system. Judges' fear of giving unpopular decisions due to security threats, corruption in the lower judiciary, and lack of professionalism are potential factors. The state should increase awareness in society by imparting basic rights through different mediums. Supreme Court should take active steps to fully implement the National Judicial Policy's recommendations on the eradication of corruption in the administration of justice and ineffective responses to complaints of corruption.

Zafar Iqbal Hmwana is an advocate from Layyah with nearly 28 years' experience in the field of litigation, views NJP 2009 as a good step to decide the matters in time but the burden of pending cases was the first problem. The major focus of Policy was on deciding the matters within time by improving the quantity of justice while compromising the quality. There's a larger number of seats vacant for judicial officers and currently, it is nearly impossible for a judge to decide around 100 cases on a daily basis. By looking out properly on filling the vacant vacancies of a judicial officer without any influence and on special merit can improve service delivery. He is of view that quantity and quality both must be improved rather than compromising on anyone of it.

A civil judge from Rawalpindi for the last 25 years is of an opinion that the judiciary is one of the most vital parts of any society and it must be a value-added organ in any country. The speedy and merit-based judiciary is necessary for the growth of society. NJP 2009 was an attempt in this regard but didn't achieve its objectives at large. Many internal and external factors are responsible for the failure of its implementation including; delay tactics by lawyers, personal and ideological biases, political influence, the security of judicial officers, and interference of powerful institutions. Centre of excellence comprising of legal experts should be set up to frame new laws in place of vague and post-dated laws that provide loopholes for prolonging proceedings. A holistic approach should be adopted to take input from all stakeholders for viable and efficient policy and its successful implementation.

Hassan Raza, a practicing lawyer from Gujrat, Punjab, views NJP 2009 as a partial success in independence from other organs and in the eradication of misconduct and corruption of judges. Lack of expeditious proceedings and backlogs are areas where

NJP 2009 has failed. Frivolous litigation, absence of judges, and power politics of bar members are potential factors in prolong proceedings. Intake from lower bars, district judiciary, and strict laws for frivolous litigation is necessary to improve the efficiency of the system. Vacant seats of judicial officers ought to be filled on a priority basis without any compromise on merit.

Miss Nausheen Tahira, a senior civil judge from Multan, said that NJP 2009 has dragged the Judicial Officers in the game of maximum disposal of a number of cases which automatically decreases the quality of work and also resulting in more appeals, revisions, and writ petitions filed on higher forums. Outcomes drew from the NJP 2009 is not up to the mark. But at the same time, it is fruitful in speedy and expeditiously decision/disposal of family cases as the enactment according to the Family Court Act 1964, time period stipulated for the decision of the family case is six months while acting upon NJP 2009 the family cases be decided in a period of six to 12 months easily. Absence of coercive measures against those lawyers who used to remain absent from appearing their cases in the court, lack of knowledge regarding basic laws of the land (e.g. Civil, Criminal Family, Rent etcetera) in society at large, and culture of taking adjournment are potential factors in lack of implementation. Legislation for professional misconduct of Lawyers before the Court, strict criteria for admission in LL.B and afterward issuance of the license for the practice of law, quality, and quantity of work on equal weightage, time frame for disposal of each and every kind of application for the specification of time (adjournment) for submission of written reply and arguments and the decision of said application, and unless an application is accompanied with a relevant and cogent piece of evidence there must not behold any inquiry against judicial officer merely

on an application of lawyer or litigant are steps must be taken to ensure the efficient performance of the judicial organ.

Sindh:

A partner of SVUM law associate from Karachi, Sindh holds a perspective that lower the judiciary is not much qualified at large to conclude cases on time as per NJP 2009. In addition, the lawyers resort to the delay of proceedings to secure money from clients. Delay tactics, unqualified lower judiciary, lack of representatives from the lower judiciary, and experienced lawyers are potential factors in lack of implementation. For better service delivery, there is dire the need for the qualified judiciary, strict measures against the party which try to delay the proceedings and representation of experienced lawyers on board particularly from lower bars who have clear ideas regarding the working of the judiciary.

Imran Kalmati, a senior legal practitioner from Karachi views NJP 2009 as a thanksgiving step of the higher echelon of the judiciary. The Top-Bottom approach was adopted which resulted in a lack of achieving its objectives because input from relevant people was not taken during formulation. Rather than criticizing the current performance, a review of NJP 2009 should be made. Opinions from lower bars and judicial officers must be taken while formulating a new policy. Vague laws, delay tactics, and the absence of judicial officers must be dealt with in top priority.

Technical training of public prosecutors, judicial officers, and bar members have the potential to improve service delivery of justice.

Mehmood Channa, Lawyer at high court Sindh, is unsatisfactory with the outcomes of NJP 2009 as its main objective was to initially reduce and ultimately eliminate the backlog of cases. Data shows that backlog has doubled rather than elimination. As per him, Bars did not accept the quick disposal clause and claims that it will compromise the quality of justice. Also, the focus of reform was not realistic as it ignored many important aspects like quality of justice, accessible and inexpensive justice, and frivolous litigation which is a major obstacle in the elimination of backlog. Lack of training and development is a major factor for the under-performance of Pakistan's judicial organ. Like Japan's approach for its three pillars of judiciary (judicial officers, lawyers, and prosecutors) should be trained at the same academy to have common denominators otherwise maintenance of quality will be a mere dream.

A senior civil judge from Shahdadkot, Sindh, views loopholes in the form of empty vacancies of judicial officers and a higher number of cases per judge in comparison to other countries. NJP 2009 as per him is only successful in maintaining the independence of the judiciary from other organs of state. Otherwise, no major change has occurred in the working of judicial proceedings and its overall functioning. Frivolous litigation, influence during the appointment of judges, and many post-dated laws are potential factors for a lack of achieving outcomes. Check and balance and strict measures ought to be adopted to end the practices of delay tactics and nepotism.

KPK:

A senior civil judge from Abbottabad is of opinion that many judicial reforms have failed in Pakistan due to the neglect of relevant stakeholders. NJP 2009 is not much different. No input has taken from bar councils and the judiciary of higher echelon decided the course of action on its own. Bar and bench are two pillars of the judicial organ so there must be cooperation between both for better functioning of the institution. The long-term solution to eliminate the backlog lies in cooperation and representation from all potential stakeholders in NJPMC and increasing the capacity and number of judicial officers. Frivolous litigation, absence of accountability mechanism, and no check and balance have further strained the system.

Ahmad Umar Gandhapur, a lawyer of Peshawar high court, considers a lack of political will as a major hurdle in service delivery of the judiciary. Executives have no serious concern about backlogs. No interest of executives in building new courts, the appointment of new judges, changing vague laws are potential factors for the current situation. The population of Pakistan has increased from 65 million to 210 million but SC judges are constant, that is, 17. The legislature must consider the seriousness of the situation and work for the provision of funds, infrastructure and legislations on vague laws rather than blaming the judiciary on intervention and portraying it as a factor of the backlog.

Ashfaq Yousuf Zai from Dir, NJP 2009 was taken as a panacea but failed in achieving its outcomes due to the non-implementation of policy in true spirits. Unfilled vacancies and understaffing of courts have overburdened the system. The low disposal rate of cases is due to the culture of adjournments at the district and high court level. Low budgetary allocation, traditional working procedures, absence

of e-governance, and no modern data storage data system are factors responsible for lengthy court proceedings. To some extent, NJP 2009 has undermined the procedural laws and justified the prolonged proceedings. For instance, Section 173, 265 C, and D of CRPC provide nearly one month's time for framing of charge which includes fourteen days for police challan, three days allowance in case of no submission, and provision of copies and documents to accused before seven days of trial. In contrast, NJP 2009 has provided space to extend it for one year. Even after a long procedure if decisions are given, then decree take the time of years for implementation. NJPMC ought to devise police not only for judicial delays but also to put an end to administrative delays by engaging relevant departments and potential stake-holders.

Balochistan:

Javid Iqbal Nutkani, a senior lawyer from Quetta, Balochistan with more than 30 years' experience in the field holds an opinion that National Judicial Policy 2009 remained failed at large and it's an active example of saying, 'Justice hurried is justice buried'. In the light of judicial policy 2009, disposal of cases exceeded but the backlog is still an issue. In addition, the majority of the cases have been decided in a haphazard manner which is against the canon of national justice. First of all special oath must be adopted. Secondly, judicial officers, judges of the high court, and judges of the Supreme Court must be directed to avoid the deliverance of the convergent judgment which has created confusion in the judicial system of Pakistan. Committee of retired judges from higher echelons must be enacted to review convergent judgments. As police are the major institution and do initial responsibilities in the criminal justice system. Thus, Annual Confidential Reports (ACRs) of all District Police Officers (DPOs) partly be written by relevant session judges and likewise, ACRs of Regional Police Officers (RPOs), Additional Inspector

General (AIGs) and Inspector General (IG) should be written by judges of High court and chief justice of High court.

A Justice of Quetta high court commented that when the NJP was not implemented in its true perspective, therefore, no question arises of any positive outcome. Thus the NJP completely failed in achieving its outcomes. The only outcome is achieved is that better and reasonable packages have been offered to the Judges. The potential factor which caused the lack of implementation of NJP and achieving its outcomes is the passive, lethargic, and non-serious approach by the Judges of Subordinate Judiciary. Unless the Judges of Subordinate Judiciary show reasonableness in their conduct, while dealing with the matters and adopt a justice-oriented approach and a hyper-technical approach till the dispensation of justice, will remain an illusion. Today most of the Judges of Subordinate Judiciary have no desire and will to do their assignments honestly, fairly, and reasonably. They are required to decide the matters by strictly abiding the law and take interest in resolving the disputes amongst the litigants in accordance with law and record without fear, pressure, and favour of anybody. Corruption levels have increased manifold, there is almost zero accountability of Subordinate Judges and no check and balance upon the judiciary. Poor cannot get justice in Courts and genuine litigants have completely lost their faith in courts. There is a frequent and unwarranted transfer of judges/cases in the subordinate judiciary which has caused a delay in the adjudication of matters pending before it, thus leading to non-implementation of NJP.

A civil judge from district Dera Bugti is of view that there is no area in which the NJP 2009 has succeeded in achieving its targets. Corruption is still one of the biggest problem hampering the dispensation of justice in Pakistan. Enormous delay in

adjudication of minor disputes on criminal, civil, and banking matters are an everyday phenomenon. Today, the criminals are sure that they will be able to dodge the Courts. They are fully sure that they will be able to evade or avoid the due process of law with the active connivance of Police/Investigating agencies/authorities as well as the Officers of the Court (Advocates). Heavyweight lawyers are being given undue favour by the Courts of law and the poor have no say in the judicial system. The truth is that rich and influential can get justice of their own choice in contradiction of law and poor and helpless litigants completely failed to get justice and rights even in terms of statutory law.

Chapter 05

Major Themes

Vacant Posts and Understaffed Judiciary:

First of all, judiciary is woefully understaffed. Vacant posts in special courts and administrative tribunals is nearly 1500 in federal and provincial jurisdiction. An estimated 2 million cases are pending while judicial officers are approximately 4000. For 50,000 people with court cases in Pakistan, there is one judicial officer, while in Australia there is one judge for 10,000 people and one judge for 29,000 people in England. Currently, it is nearly impossible for one judge to decide plenty of cases on daily basis in efficient and effective manner. Thus, vacant post ought to be filled on priority basis and there must be increase in number of judicial officers to eliminate the backlog of cases and to make workload manageable.

Timely Justice and Reducing the Backlog of Cases:

Nearly all participants have converged on the view that NJP 2009 has failed in achieving its major objective of speedy justice and eliminating backlog of cases. Only one judge has said that it has achieved only partial success in case of family matters. Otherwise, situation is becoming worse with every passing day particularly in criminal, civil and banking matters. Annual statement by Supreme Court of Pakistan is depicting this picture and is evidence of increase in number pending cases.

Lack of Consultation with Potential Stakeholders:

Majority of participants considers NJP 2009 as a policy outcome of Asian Development Bank's (ADB's) 'Access to Justice' program and it is an accepted position that global institutions programs merely serve their institutional interest rather than making any sincere ground level improvements in national system. Stakeholders have also questioned the role of National Judicial Policy Making committee (NJPMC) formed in 2002 to make judicial policy as an unconstitutional one. All participants have agreed that NJP 2009 was formed by few high member of bench in exclusive manner without consultation of bar, representatives of lower judiciary, and other potential stakeholders.

Absence of Political Will in Reforming Institution:

Strong political will is vital to reform any institution in its true spirits. In case of NJP 2009, there is evident lack of political will in the form of vacant posts, absence of requisite budget for reforms, and contrasted vested interests of government. Few members have made a point that politicians always hide under the garb of judicial intervention and claim it as a reason for backlog. They should stop running from their responsibilities and act on filling the vacant seats, provision of requisite budget, and legislate against vague laws.

Meritocracy in Appointments of Superior Judiciary:

There is no denying the fact that appointment in the Superior Judiciary should strictly be merit based. For selection/elevation, their ability and knowledge should be tested through written examination. Their ability to resolve the issues must be checked and examined by an honest, competent and neutral body. Presently, appointments of judges have been made in a non-transparent and unfair manner on the basis of personal liking and disliking and the selection has nothing to do with merit cum fitness. Most of the time appointments have been made on the basis of nepotism, relationship, approach, personal liking and disliking of the recommenders body. This lead to dearth of ability and knowledge at the cost of favouritism. That is why the quality of most judges is low and backlog of cases has increased manifold. Majority of the judges lack even reasonable knowledge of law, they have no capacity and ability to grasp and find out the issue. This being so no question arises to decide the issue correctly in terms of law and record/facts of the case. It is quite dismal that matters which can be resolved within minutes took decades for their resolution by the Pakistani Courts of law. Thus, it is not surprising that in 2020, Pakistan stand at 120th place out of 128 countries in the World Justice Project Rule of Law Index.

Statutory Law Ought to Prevail:

The Judges of Apex Court should immediately examine the precedents laid down by it in oblivion of law or the binding precedents. Instead of following the precedents blindly, statutory law is to be given preference and the Judges be directed to follow correct law in its true spirit. They should not shy away from setting aside or over-

ruling those precedents if they are contrary to statutory law and common sense. This will help the country in creating certainty in decision making and remove chaos and baseless precedents from the scene.

Appointments in Lower Judiciary through Public Service Commissions:

All appointments in the lower /subordinate judiciary should be made through the Public Service Commissions and the members of the Commissions must be honest and person of high integrity. The idea that on account of selection by the Services Commissions, the independence of judiciary will be in danger is fallacious one and has nothing to do with reality. Selection through Commission will be in accord with the Constitution and it will stop the appointments in lower judiciary on the basis of personal liking and disliking of the judges of the Superior Judiciary.

Recorded Proceedings in Courts to maintain Check and Balance:

In order to increase the transparency in working of courts, full day Audio/Video proceedings of the court must be recorded through CCTVs. The record of the proceedings must be made available to public or litigants subject to payment of reasonable charges. This will certainly check the corrupt practices in the courts. Further, this will also hamper the absenteeism amongst the Judges of Subordinate Judiciary. Most of the judges of the Subordinate Judiciary never sit in the Court Rooms or even in Chambers. They remained absent from duty for the whole day without getting any leave. In order to ensure regularity and punctuality,

arrangements should also be made for marking the attendance of Judges of Subordinate Judiciary through biometric device after every two hours in order to avoid the phenomena of unauthorized absenteeism. It is commonly noticed that if a party requests a Judge to sit in Court and hear and decide the matter, they punish the party by deciding the matter against the party who pressed for early adjudication.

Prompt Accountability:

All the judges should be subject to accountability and the process of accountability must not be sluggish and should be reasonably prompt. The matters which were decided by the judges in highly doubtful and unprecedented manner should be dealt with seriously. These kind of verdicts must be examined and those involved in deciding the matters in arbitrary, illogical, and unreasonable manner should not be spared for a minute. It is not a solution that a judge making highly unjust decision should be spared by just setting aside his/her verdict by a Judge of Superior Court examining his judgment/verdict.

Training and Development:

The Judges should be given basic knowledge of law. Frequent refresher courses be arranged for them so they will be able to decide the matter by applying relevant, latest and correct law. Members of bar and bench should be trained at same centre to maintain quality and common denominator. Their promotions must be based on passing various courses and legal knowledge along their experience for better quality

work of the system. Tight scrutiny should be done while issuing the license of legal practise to new practitioners for improved human resource in the system.

Chapter 06

Conclusion and Policy Implications

The approach used for this study is explanatory research with intentions to find the factors responsible for the failure of the National Judicial Policy (2009) of Pakistan. This research has concluded, on the basis of primary data collected from the experts of this field, clients' experiences and cases that NJP 2009 has failed in achieving its intended outcomes. Potential reasons for this quandary, as per participants of the research, are; lack of consultation with relevant stakeholders, absence of evaluation mechanism, absence of political will to reform judiciary, lack of ownership by policy implementers, traditional working system of courts, and strained relationship between the bar and the bench.

Our interactions with the end users of judicial system reveal that clients are not satisfied with the judicial system in the state. The incapability of institutions is just the tip of the iceberg; rather there are many core issues in the system. Vague Laws, lack of training of judicial staff, no check upon time frame, and lack of professionalism, and the endemic presence of nepotism and corruption are major flaws. The legal maxim of justice delayed is justice denied, has been disavowed and thus, innocents victims and justice seekers are found suffering for years. This delayed justice has also rendered people with the option to resolve their issues out of court either by cooperation or by force. As within courts, faulty decisions due to bribery culture have inculcated hopelessness in the public, with the result that they have lost confidence in the impartiality of the judicial system.

According to the experts' opinions, the policies need to be framed keeping in mind the ground realities. The top down approach adopted in formulating the NJP 2009, and lack of consultations with relevant stakeholders rendered the policy largely ineffective. The implementation of correct laws according to the core problems is

the best way to prevent injustice. If the frivolous litigation process is dealt with in the form of heavy fines and imprisonment in the right manner, then public will have faith on the judiciary and an environment of trust will be achieved. In addition, there is a requirement from the legislature to fill vacant seats, increase the number of judges, and provision of funds for better outcomes of policies. Legislature ought to understand the gravity of the issue and act to curb prevailing ills rather than paying lip service and hide under the garb of intervention mantra. This will not only be a virtue to the profession, but also to the poor faction in the society, because after that they would have a hope of getting timely justice from the judicial branch.

Policy Implications:

The findings of this study suggest that if the policy is indigenous and formulated with consultation of all stakeholders, after understanding the ground realities, then the prospects of implementation would improve. Rather than Top-down approach, importance ought to be given to bottom up approach as it gives representation to all relevant stakeholders and creates a sense of ownership to implement the policy in its true spirits. Undue resistance in reform process can be overcome through proper training and development of implementers. During policy formulation phase, proper planning must be done to cover possible constraints and to prevent the formation of vague laws.

The corruption in judicial process is the result of these vague laws and unprofessionalism. A strict check on the implementation of policy should also be done through proper channelling. Similarly, the number of solved cases must also be checked on a monthly basis to analyse the progress under National Judicial Policy. In this area, the absence of judges and the delay tactics must be called for explanation.

Further, there must be an implementation process of punishment for forging of documents, and bribery. The extrinsic motivators can be achieved by formulation and regulation of strict laws.

Policy should not remain a mere paper work but has be implemented to achieve its intended objectives. This implementation process is a multi-facet, multi-tiered, and a continuous process. Proper funding is crucial as there is no policy success without financial support for it. Evaluation mechanism is vital in implementation phase to maintain checks and balances on the partial results, and to monitor what has been delivered and what must be revised and reviewed again to achieve the overall set targets of policy.

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