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Youth Perception about Judiciary: A Case Study of Pakistan

Abstract

The population of Pakistan according to the Population Division of United Nations Department of Economic and Social Affairs is estimated to be more than 20 billion¹ constituting with almost 50% male and 50% female. Almost 35% of the population comes under 15 years and is classified in group of children, rest of the 60% comes under the age group of 15-64 years and are hence classified in group of youth and working people, the remaining percent consist of old people aging more than 65 years. The pyramid of population is of expanding type that is considered common for developing countries with high birth and death rates. People with this trend usually have short life expectancy, low level of education and poor health care facilities which are the essentials for human existence.

Men have always struggled to build a society which guarantee essentials for human existence. The assurances of fundamental human rights are the basic ingredients of governments and for this judiciary can be thought of as the ultimate protector of such assurances. Government is an institution about decision making and implementation of policies made for the betterment of the society and Justice is the first virtue of social institutions and social development in all societies.

The research is aimed towards investigating what the youth of Pakistan which makes most of the population think about the role of judiciary in the process of good governance. Judiciary being the strong pillar of state has an important role in protecting the rights of people. For that we have taken the opinion of the students of Law and Public Administration through a questionnaire. The population is sampled by Judgmental sampling technique.

Key Words: Role of Judiciary, Youth and Judiciary, Youth Opinion about Judiciary, Trust level of Youth on Judiciary, Youth Perception about Lawyers and Judges, Distributive and Retributive Justice.

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¹The estimation data for section "Pakistan age structure" is based on the latest demographic and social statistics by United Nations Statistics Division

Introduction

Justice is mainly concerned with the best possible distribution of resources and welfare in the society. As an idea, it has been liable to the philosophical, lawful, and religious reflection and argument all through the history. “Justice is the first virtue of social institutions, as truth is of systems of thought” (Rawls, 1971).

The term justice is surrounded by a number of vital questions and has been aggressively argued throughout the history like, what is justice? What does its requirements and pre-requisite? What does it expect by individuals and by societies? What is the right and wrong? What is just distribution of resources and wealth? What is meritocratic, equal, according to status, or some other arrangement? There is a countless response to these queries from different viewpoints on the philosophical and political spectrum.

Youth is the backbone of any society as it is an important constituent to shape future of the society. To find out whom they are and who they want to be and how they want to shape their identity. The role that youth has to play is integral in adapting and even reshaping social norms. It is important for youth to appreciate the work of those who have labored tirelessly before them and have mentored the Youngers. They should return to society with what they have learned about themselves and the world.

The question arise why and how the youth is important and why we should study the opinion of the youth for judicial system. It is so because they are full of energy, enthusiastic, educated with rationality as their ultimate belief and yes of course young.

Reproduce: reproducing here refers to fulfilling the space that is left by the elder. Like son takes-up the position of father in a company.

Protection: Youth plays an important part in protecting the culture and tradition while embracing changes in the society. They can be an active part of political movement for remarkable changes in a country.

Growth: The youth has huge responsibility of growth in all the spheres like Social, political and economic spheres. The fresh and young blood can work way better in improving and ensuring the growth of society.

Young generations are gifted with the treasures of cultural, ethical, financial, social, and family inheritance. So if they are intelligent and smart enough, they will preserve and value what is real and productive, and leave behind that is obsolete and damaging. However, the expected role from Youth can only be fulfilled if they are able to achieve their basic rights and experience the rule of law prevailing in the society. If the image of the law making bodies is positive, the same positive energy can ignite youth to play their due part in betterment and prosperity of the nation.

Access To Justice

State should legislate appropriate procedures to uphold the access to justice, whatever the prevailing political climate, including the humane treatment of all detainees, disregarding evidence obtained through torture and the relevance of

applying international human rights law in decision-making. It states that, “human rights can only be protected through an independent and impartial judiciary free from any form of pressure and supported by an autonomous and well-resourced justice system” (Independence and Impartiality of Judges, Prosecutors and Lawyers, 2003).

“A well-resourced justice is that in which;

- i. Every individual and group should be guaranteed equal access to justice, free from discrimination, regardless of status.
- ii. A society is respected for its fair treatment of all individuals within its jurisdiction regardless of their opinions, actions or status. All individuals should be free to enjoy equally their human rights, regardless of race, religion and belief, Gender, sexual orientation, disability or other status.
- iii. An impartial and independent judiciary unrestricted from any system of pressure and reinforced by an independent and well-resourced justice system can protect human rights.
- iv. All state and non-state institutions and actors are under an obligation to observe and respect the independence of the judiciary and not subject it to threats, intimidation or any other form of interference or harassment.
- v. Whilst it is recognized that all governments are faced with the difficult task of protecting the security of their citizens, this should not be achieved at the expense of human rights and equal access to justice. It is the duty of judges to ensure equality of access.
- vi. Access to justice requires a full understanding of the language and procedures of the court and it is the duty of all judges to ensure this is provided.
- vii. Effective access to justice cannot be achieved without provision to the public of sufficient and reasonably accessible information of their rights under the law.
- viii. All detainees, whatever their status and the nature of the offences they have been charged with, should be treated humanely in accordance with international human rights standards, and any evidence obtained directly or indirectly as a result of torture, cruel or inhuman treatment must be disregarded.
- ix. Emergency powers resulting in derogations from human rights protections should be always limited in time and subject to judicial scrutiny.
- x. Recognizing the increasing significance of international human rights law in all jurisdictions, judges should use such law in the interpretation and application of domestic law.
- xi. Legal education and training should include international and comparative human rights law and its practical application” (Asian Human Rights Chapter: A Peoples Chapter, 1998).

The judiciary is entitled to take decisions of the matters neutrally, and the foundation of the provided facts should be in accord with the law, without any limitations, unsuitable inspirations, inducements, compressions, pressures or interventions, either exercised directly or indirectly, from any sector or for any motive.

Literature Review

The classical Greek philosophers apprehend the justice, “as a virtue, a property of people, and only derivatively of their actions and the institutions they create. Others emphasize actions or institutions, and only derivatively of the people who bring them about” (Oshisanya & Oshitokunbo, 2013). The foundation of justice has been attributed to natural law, harmony, human creation or divine command. It may be constituted upon certain ethical and cultural value of a society.

The two areas in which demands of justice are persistent are;

- ✓ Distribution i.e. Distributive Justice
- ✓ Retribution i.e. Retributive Justice

Distributive Justice

“Giving people what they deserve, maximizing benefit to the worst off, require equality, protecting whatever comes about in the right way or maximizing total welfare” (Oshisanya & Oshitokunbo, 2013).

“Distributive justice is concerned with the proper distribution of good things, wealth, power, reward and respect between different people” (Lamont & Favor, 2016). Considering equality is a theory of distributive justice, “the proper distribution of wealth (and perhaps other goods) is an equal distribution no one in the relevant group should have more or less than anyone else in that group” (Barry, 1989).

Distributive justice has following domain;

- ✓ What is the proper distribution?
- ✓ What goods are to be distributed?
- ✓ How the resources are to be distributed between the entities?
- ✓ Individuals, responsive beings, the followers of a civilization or nation.
- ✓ The combination of wealth, power, and respect.
- ✓ Equal, meritocratic, in accordance with social status and needs.

“Generally distributive justice’s theories do not cover questions like, who has the right to enforce a particular favored distribution?” (Lovett, 2009).

Retributive Justice

If someone does something wrong, one should respond to it. Wrongdoing must be balanced or made good in some way, and so the criminal deserves to be punished. “Retributivism emphasizes retribution payback rather than maximization of welfare” (Sourav, 2012). Like the concept of distributive justice as giving everyone gets what he / she deserves, it links justice by reward. It says that, “all guilty people, and only guilty people, deserve appropriate punishment. This matches some strong intuitions about just punishment that it should be proportional to the crime, and that it should be of only and all of the guilty” (Maiese, 2001). Though, it is from time to time claimed that, “retributivism is merely revenge in disguise” (Kaufman W. , 2012).

“Retributive Justice May require backward-looking retaliation, or forward-looking use of punishment for the sake of its consequences. Justice must often be secured by institutions, which raise their own questions of legitimacy, procedure, codification and interpretation” (Oshisanya & Oshitokunbo, 2013).

The right² response to the wrongdoing is retributive justice. The law of retaliation (Lexation) is a philosophy of retributive justice that says, “the proper punishment is equal to the wrong suffered, life for life, eye for eye, burning for burning, wound for wound, or stripe for stripe” (New World Encyclopedia Contributors, 2014).

The domain of retributive justice is castigation for wrong doing and need to answer the following questions;

- ✓ What punishment should they receive?
- ✓ Who should be punished?
- ✓ Why punishment?

Judiciary In Pakistan

In this part, we will begin our literature review with the constitution and the judicial system of Pakistan from past till today, how the legal framework has developed and how the judiciary has impacted the administration.

“Before its freedom from Britain in 1947, this territory was initially administered under the Government of India Act of 1935. The act was drafted by the colonial Britain, worked as Pakistan's constitution at the time and accommodated an independent government, a governor-general with unreviewable forces, and exceptionally restricted representation which proceeded with feudal-like politics” (Bates, 2011). “After independence, a constituent assembly was elected and entrusted with drafting another Constitution. On 23 March 1956, after a troublesome drafting process that incorporated a substitution of the assembly by the governor general, another constitution was adopted” (Hussain E. , 2010).

² “You might believe that what makes an action right or wrong has to do with the person who does it. Maybe you believe that good people do good things, bad people do bad things, and it's the character of the person doing the action that makes it right or wrong”.

According to this constitution “a president and a prime minister shared the state’s functions instead of governor general. It made a unicameral legislature with equivalent seats for the West and East Pakistan of that time, yet it kept up the focal force of the government by ensuring that the President and national government stayed powerful than provinces” (Parliamentary History, 2017).

Prior to the nation's first parliamentary elections were to be held; President Iskandar Mirza repealed the constitution and enforced martial law. The President expected that the impact of East Pakistan would undermine his hang on power. He designated armed force chief Ayub Khan as the military administrator, which gave the military a solid swing on power, with Khan at its head. He was later elected president by 1958 overthrow, and on 1 March 1962, he declared new constitution. This record built up a council whose sole design was to favor and legitimize government decisions. It canceled the office of the prime minister, giving sole official authority to the President, who, it commanded, needed to have held a rank higher than lieutenant-general in the military for no less than 20 years. While Ayub Khan was re-elected in 1965, he was compelled to leave in 1969. General Yahya Khan supplanted him, martial law was declared, and the Constitution was suspended. After East Pakistan proclaimed its autonomy in 1971, turning into the new state Bangladesh, Zulfikar Ali Bhutto took the control over the administration and set up another constitution on 14 August 1973, current to date (Parliamentary History, 2017).

According to the constitution of Pakistan, “judiciary is a different and autonomous framework. Assembly and Executive are not permitted by the Constitution to involve in the working of judiciary. The courts work as a watchdog for these two bodies. The working of judiciary is independent however it doesn't imply that it is not accountable. In democratic government, the power lies with the general public. The judiciary must concern with in this way actuality amid their working. Considering the judicial framework independent and unaccountable by the courts, for the most part it gives ease and solace to the judges that eventually prompt to defer in choosing the matters” (Office of The High Commissioner for Human Rights, 2003).

The growth of any nation is measured by the judicial system along with its economy, legislative setup and expectation for living standards of individuals includes expedient justice. Because of delay in cases, the entire democratic and financial structure of nation is influenced. Significant changes in the judicial framework for appointments, promotions and removals of judges, as well as the jurisdiction of the lower courts, are needed to restore confidence in the judiciary.

“The Supreme Court has original, appellate, and advisory jurisdiction. The President of Pakistan appoints the judges. Every province has a high court, the judges of which are also named by the president. Underneath the high courts are district and session courts, and beneath these are subordinate courts and village courts on the civil side and magistrates on the criminal side. There are no jury trials in Pakistan” (Hussain F. , 2015).

The British legacy of a free legal system has been undermined in Pakistan by advancements in the course of the 60 plus years. In May 1991, for instance, the National Assembly received enactment which joined the Islamic legitimate code,

the Shariah into Pakistan's lawful framework. A Federal Shariah Court has the ability to invalidate any law it discovers hostile to Islam (Federal Shariat Court of Pakistan, 2012)

In Pakistani situation, we fail to achieve the above essential standards that create dissatisfaction and disappointment. After passing of Father of the Nation Quaid-e-Azam Muhammad Ali Jinnah, no government qualified as responsible and able to provide good governance. The outright infringement of rule of law with respect to civilian and military rulers alike nullified the foundation of a democratic law based structure in the country. Unfortunately, that even after almost 70 years of her independence, the State is searching for agent and supportable vote based system i.e. *representative and sustainable democracy*.

In any society, “administration and dispensation of justice should be the top most priority as without it representative democracy cannot be established” (Bukhari & Haq , Lessons from November 3, 2007, 2016). A society without a dependable and speedy judicial framework, which does not guarantee powerful dispensation of justice, can't make due for long and cannot enjoy the perks of good governance. “The treatment dispensed to judges of higher judiciary as of late is doubtlessly the most terrible and dull section of our history”. (Bukhari & Haq, Dream of democratic Pakistan, 2010)

Research Instruments

Research Objectives

Judiciary being the strong pillar of state has an important role in protecting the rights of people. Youth is the promising constituent of prosperous nation if they have positive image of their state institutions. This research aims to investigate the prevailing perception of the youth of Pakistan about the role and competence of judicial system. The opinions of the respondents are taken on the following questions.

- Pakistan’s judiciary is competent.
- Pakistan’s judiciary is independent.
- Lower courts are more corrupt than higher level of Judiciary.
- Pakistan has best Judicial System but its implementation is not proper.
- In Pakistan lawyers and Judges are trust worthy.
- In Pakistan working conditions for lawyers and Judges are favorable.
- Lawyers and Judges got proper infrastructure in Pakistan.
- Lawyers and Judges in Pakistan are competent in their work.

Questionnaire And Data Gathering

A set of pre-formulated written closed ended questions was given to the graduate and undergraduate students of Law and Public Administration, University of Karachi, who are the most aware and relevant audience for this research. The 308

samples were selected Judgmental sampling technique. In Pakistan the average age group for graduation is around 20 to 25 years. Survey of this sort can only be a snapshot, an attempt to feel the pulse of a relevant community.

Analysis

The analysis is based on data collected by conducting primary survey by more than 300 individuals and its statistics have been tabulated in IBM-SPSS ver. 21. The tables have been divided in three groups, **G1_Table 01 to 04** demonstrating demographic data of the individual's age, gender, education and their department. The second group from **G2_Table 05 to 08** will have a look at the perception of respondent about the judicial system of Pakistan and third group from **G3_Table 09 to 12** will try to investigate the perception of youth about the two most relevant stakeholders i.e. Judges and lawyers.

Age in Years				
		Frequency	Percent	Valid Percent
Valid	17-22	42	13.6	14.4
	23-28	177	57.5	60.8
	29 - 34	72	23.4	24.7
	Total	291	94.5	100.0
Missing	System	17	5.5	
Total		308	100.0	
G1_Table (01)				
Gender of Respondent				
		Frequency	Percent	Valid Percent
Valid	Male	212	68.8	71.9
	Female	83	26.9	28.1
	Total	295	95.8	100.0
Missing	System	13	4.2	
Total		308	100.0	
G1_Table (02)				
Level of Education				
		Frequency	Percent	Valid Percent
Valid	Graduation	138	44.8	48.3
	Master	148	48.1	51.7
	Total	286	92.9	100.0
Missing	System	22	7.1	
Total		308	100.0	
G1_Table (03)				
Department of Respondent				
		Frequency	Percent	Valid Percent
Valid	Public Administration	159	51.6	53.4
	School of Law	139	45.1	46.6
	Total	298	96.8	100.0
Missing	System	10	3.2	
Total		308	100.0	
G1_Table (04)				

G2_Table (05)

Pakistan's judiciary is competent					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	11	3.6	3.7	3.7
	Agree	99	32.1	33.4	37.2
	Undecided	64	20.8	21.6	58.8
	Disagree	63	20.5	21.3	80.1
	Strongly Disagree	59	19.2	19.9	100
	Total	296	96.1	100	
Missing	System	12	3.9		
Total		308	100		

Table (05) shows the response of the youth on the question about competency of the Judiciary of Pakistan. The competency within the state's officials is one of the key elements in running the state's affairs and as judiciary is an interpreter of law and responsible to keep an eye on all the affairs run by the state has to be more competent.

According to the survey 33.4 % of the respondent were found agree on the statement and 3.7 % respondent are strongly agree that judiciary of Pakistan is competent, while 19.9 % of the total respondent have strong disagreement on the statement of "Pakistan's judiciary is competent" also 21.3 % of respondent shows disagreement with the above statement and a huge 21.6 % youth who is studying law and administration cannot decided or remains neutral.

The result shows that the Pakistan's judiciary is competent enough to have a positive and constructive role in the betterment of the nation.

G2_Table (06)

Pakistan’s judiciary is independent					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	25	8.1	8.4	8.4
	Agree	79	25.6	26.5	34.9
	Undecided	41	13.3	13.8	48.7
	Disagree	84	27.3	28.2	76.8
	Strongly Disagree	69	22.4	23.2	100
	Total	298	96.8	100	
Missing	System	10	3.2		
Total		308	100		

Table (06) shows the response on the question about independence of the Judiciary in making any type of decisions. Judiciary is a pillar of state, it’s meant to dispense justice and resolve conflicts and disputes. This objective is attainable if all the stakes involved try to make it independent of the other institutions and authorities.

It is important that the judicial powers must not be under any pressure or under the influence of any pressure group but unfortunately only 26.5 % of the youth were found agreeing on the statement and just 8.4 % respondent strongly agree in Pakistani domain. Among the total respondent 23.2% of the total respondent have strong disagreement on the statement of “Pakistan’s judiciary is independent” while 28.2 % of respondent shows disagreement with the above statement. The undecided or neutral respondents are 13.8%.

The result shows that higher percentage of youth thinks that Pakistan’s judiciary is not completely independent as it is supposed to be.

G2_Table (07)

Lower courts are more corrupt than higher level of Judiciary					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	93	30.2	31.4	31.4
	Agree	123	39.9	41.6	73
	Undecided	33	10.7	11.1	84.1
	Disagree	38	12.3	12.8	97
	Strongly Disagree	9	2.9	3	100
	Total	296	96.1	100	
Missing	System	12	3.9		
Total		308	100		

Table (07) shows the response of the question about corruptions in the judiciary and according to the youth which one is more corrupt lower or higher level. What perception the youth have about these courts? As the decisions taken in the lower courts are mostly challenged or re-filed in the higher courts it can be expected that the ratio of dishonest or fraudulent conducts by the lower judiciary is more than higher level of Judiciary. Our findings of this question also give us same impression.

A massive 41.6 % and 31.4 % makes aggregate 73.0% of the youth in Pakistan thinks that lower judiciary is more corrupt than higher one. On the other hand only 3 % and 12.8 % gives their opinion in favor of lower judiciary while 11.1 % youth remain neutral.

The result shows that the most of the population do not have the reliability on the decisions taken in the lower courts and this is the reason of delay in provision of timely justice.

G2_Table (08)

Pakistan has best Judicial System but its implementation is not proper					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	74	24	24.7	24.7
	Agree	104	33.8	34.7	59.3
	Undecided	43	14	14.3	73.7
	Disagree	51	16.6	17	90.7
	Strongly Disagree	28	9.1	9.3	100
	Total	300	97.4	100	
Missing	System	8	2.6		
Total		308	100		

Table (08) inquire from the youth about their opinion whether judicial system is strong enough to carry out the state's affairs progressively and it's just a matter of proper implementation or whether the system has loopholes which needs to be addressed. The collected response of youth showed that out of the total respondent 34.7 % were found agreeing on the statement and 24.7 % respondent strongly agree. 9.3 % of the total respondent has strong disagreement on the judicial system while 17.0 % of respondent shows disagreement with the above statement. The undecided or neutral respondent was 14.3%.

The findings showed that most of the youth who know the theory of the system has trust in judicial system, but they are not satisfied with the way things by the courts are implemented.

G3_Table (09)

In Pakistan lawyers and Judges are trust worthy					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	17	5.5	5.8	5.8
	Agree	39	12.7	13.2	19
	Undecided	46	14.9	15.6	34.6
	Disagree	111	36	37.6	72.2
	Strongly Disagree	82	26.6	27.8	100
	Total	295	95.8	100	
Missing	System	13	4.2		
Total		308	100		

Table (09) shows the response on the question that “Is Pakistan Lawyers and judges are trustworthy. As trust deficit prevails all over the country in every sector so it’s important to take youth opinion in this regard too. Only 13.2 % of the respondents were found agreeing on the statement and 5.8 % respondents strongly agree.

While out of total respondents 27.8 % have strong disagreement on the credibility of lawyers and judges while 37.6 % of respondent showed disagreement with the above statement. The undecided or neutral respondents were 15.6%.

The statistics showed a huge number of youth that is 69.4 % have trust deficit on lawyers and judiciary and this can be one of the major causes of problems.

G3_ Table (10)

In Pakistan working conditions for lawyers and Judges are favorable					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	39	12.7	13.1	13.1
	Agree	86	27.9	29	42.1
	Undecided	52	16.9	17.5	59.6
	Disagree	73	23.7	24.6	84.2
	Strongly Disagree	47	15.3	15.8	100
	Total	297	96.4	100	
Missing	System	11	3.6		
Total		308	100		

Table (10) shows the response on the question that “In Pakistan working conditions for Lawyers and judges are favorable”. Working conditions are the most important factor to have an effective and efficient organization and same is the case with the judiciary and the people associated with it.

The collected response showed that out of total respondent 29 % were found agreeing on the statement and 13.1 % respondents strongly agree. 15.8 % and 24.6 % of the total respondents have strong disagreement and disagreement respectively. The undecided or neutral respondents were 17.5%. On the other hand, almost 50 % of the youth is of the opinion that working conditions are good and favorable to deliver the best while 50 % think against this opinion.

G3_Table (11)

Lawyers and Judges got proper infrastructure in Pakistan					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	33	10.7	11.2	11.2
	Agree	93	30.2	31.5	42.7
	Undecided	57	18.5	19.3	62
	Disagree	80	26	27.1	89.2
	Strongly Disagree	32	10.4	10.8	100
	Total	295	95.8	100	
Missing	System	13	4.2		
Total		308	100		

Table (11) shows the response on the question that “Lawyers and Judges got proper infrastructure in Pakistan”. Environment and facilities supports the overall improvement in the system.

The collected response shows that out of total 31.5 % were found agreeing on the statement and 11.2 % respondents strongly agree. 10.8 % of the total respondents have strong disagreement on the proper infrastructure while 27.1 % of respondent shows disagreement with the above statement. The undecided or neutral respondents were 19.3%.

Infrastructure plays a vital role in development and most of the youth feels that infrastructure in case of judiciary is there but there is something else which is missing.

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