

Augmenting the Conflict in Swat: Loopholes in Legal Governance

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Abstract

A quick, efficient, and cost-effective provision of justice is considered to be the integral part of good governance. Absence of such an efficient judicial mechanism lead to conflicts which is more significant in conflict societies and tribal structures. For ordinary man in dis-equilibrium societies, lack of good governance means rampant corruption, police brutality, dearth of education and health infrastructure, high costly and less accessed justice, criminalized politics and absence of social justice. The absence of justice and security constitutes a good reason for adoption of alternatives to the current legal and judicial governance structures. Structured violence against the state in lineage societies is a good manifestation of this perspective. The Swat conflict presents a complex picture where loopholes in legal governance structure contributed to the augmentation of the conflict. Costly and delayed justice system made ground for opting the presented alternative swift decision making system by the Taliban. Empirical data suggests that average instituted cases in Malakand's seven districts was almost half of the cases instituted in the whole province. This shows that communities here are comparatively more litigant. To address the cases district courts are understaffed and lack case management and delay reduction techniques. The average disposal of cases was less than the other districts in the province. Per court disposal is comparatively high, however, average court pendency is higher and average number of judges was lower comparatively. Such delayed, inefficient and costly judicial governance produced catalytic effect on the conflict. This study is aimed at examining how the gaps in the justice sector of governance led to augmenting the violence against the state and what sort of intervention at government level is needed to strengthen rule of law in the Swat valley

Key words: Swat, legal governance, Pakistan, terrorism, Khyber Pakhtunkhwa, national integration

Introduction:

Swat was famous for its rich tapestry and peace-loving people but the crisis which erupted suddenly in the beginning of the 21st century surprised many regional experts. 6680 killed (Islam; 2014), 6000 injured, 2.7 million displaced (UNDP; 2011), 8000 to 10500 houses (approximately) fully or partially damaged (Bangash; 2012), about five hundred schools destroyed, forty-three (43) bridges and 663 kilometers of road were either totally or partially damaged by military operations (2007 to 2009) in a valley famous for scenic beauty and peace: the Swat Valley. The conflict was multifaceted and complex with many factors contributing to the augmentation of the conflict. A number of conflicting theories regarding the causes and nature of conflict in Swat exist: academically and in public discourse. Some theories consider the conflict as one of state and anti-state actors, others would call it a war against extremism, or a strategic war, or a war of the state against her own people, or a class war in a society with volatile class boundaries. Therefore thought and emotions of the people who

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witnessed and were affected in the conflict are so impaired that perception of reality relating to the causes and nature of the conflict is severely disordered (Rome; 2009). The absence of security and justice – is cited as one of the main factors that allowed the Taliban to seize control and bring in their own brand of rapid justice in the valley. According to Schofield in Pakistan courts are incompetent and corrupt which simply means no justice leading to disillusionment in otherwise patriotic people of the state. Schofield asserts that this was the direct cause of the Swat uprising, and has contributed to the strength of Taliban elsewhere in Pakistan (Schofield; 2011). As the UN Humanitarian Coordinator succinctly put it: The failure of the legal system brought armed conflict, 2.7 million IDPs and \$2-3 billion in damages (UNDP; 2011).

The historic Swat valley is located in a geostrategically important region of the world, where three significant areas of Asia meet —South Asia, China and Central Asia. Swat, is a part of the Provincially Administered Tribal Areas (PATA) and is subject to the executive authority of the provincial government of Khyber Pakhtunkhwa. The valley has held prominence throughout its known history. It has been the cradle of a great civilization (Gandhara) and has also been periodically invaded by formidable armies (Rome; 2008); of which the present deployment of a huge number of the Pakistani armed forces (more than twenty thousand) is an example. Famous for its scenic beauty, peaceful environs, fertile land and high agricultural yield, minerals and emeralds, rich cultural heritage, and archaeological sites, which have attracted tourists from all over the globe; Swat has received prominence and attracted international media and community attention since the 1990s on another count: the demand for the introduction of Islamic laws; and the armed struggle that ensued for this cause. The demand and the struggle resulted in making the land a base for militancy, which however, was not new in the history of Swat(Rome; 2009). The activities of the Tanzim Nifaz-e-Shariat-e-Muhammadi (TNSM) since the 1990s and later the Tehrik e Taliban Swat (TTS) and the consequent uprising against the government and military operations in 1994, 2007,2008 and 2009, made the Swat Valley a focal point of global politics and the international media.

The Federal Government, meeting the demands of TNSM in 1994, promulgated PATA Regulation 1994 (Nifaz-e-Nizame- Shariah Regulation). The regulation however, mainly dealt with the procedures of the courts. This didn't satisfy the demands and expectations of the TNSM and Sufi Muhammad expressed his disapproval of the emerged judicial format; and yet again voiced for practical changes in the judicial governance. Resultantly, 'Sharia-Nizam-e-Adl Regulation, 1999' was promulgated and PATA Regulation, 1994 was repealed thereon. The new regulation also didn't brought any practical changes in the judicial setup and neither redressed the people's grievances. Court procedures were still complex and lengthy. M. Ahmad Jan Advocate (Personal Communication, July 17, 2016, Peshawar) indicated that cases instituted in the Seventies or even before are still in courts and litigants are innervated by the tiring mechanisms of the English judicial system in vogue. Again

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there was witnessed a failure of the legal system which brought another conflict leading to paralyzing the state apparatus in 2007. This conflict was more intense and multiple actors had role in the wake of the globalized situation of the region. Three military operations were conducted in 2007, 2008 & 2009 with huge use of weaponry and massive destruction was brought to the operations' affected areas (Islam; 2014). A new regulation called *Shar'ai Nizame-Adl Regulation, 2009* was brought to the fore but it is still subjected to criticism as it also didn't redressed the peoples' grievances (Hassan; 2014). The regulation didn't provide for inexpensive justice, delay reduction in the disposal of cases, justice at the door step, and establishment of peace and good governance which were the ultimate objectives of the promulgation of the Regulation.

The problems of the English judicial system, a legacy of the British government, exists in the judicial system of the whole country but why people rise to conflict in the Swat valley? This question cannot be answered without understanding the history of judicial system in Swat State before her merger with Pakistan in 1969. Swat State had a unique judicial system in which procedures of litigation were simple and cases were decided in one or two hearings and the decisions quickly implemented (Rome; 2008). Abdul Ghafoor Qasmi states that "not a single penny is spent by the litigants on civil or criminal suits, small or great, which are usually decided on the first hearing or at the most on the second"(Qasmi; 1939). The Swat State allowed the disputing parties to agree either their cases be decided by customary law or sharia law(Barth; 1985). After merger into Pakistan in 1969, swat was administered under the Pakistan criminal procedure code. In 1975, the provincial government of NWFP passed new Provincially Administered Tribal Area (PATA) civil and criminal codes. The Pakistan penal Code was parted into two schedules; one set of criminal charges to be decided by the state code and the second schedule listed "Tribal" crimes to be decided by local, officially appointed councils nominated by the political division executive officer (Nichols; 2013).Prolonged legal procedures, resemblance to the frontier crimes regulations (FCR), undue delay, heightened expenditure, bribery, misuse of *riwaj* or customary laws, and the complicated nature of PATA Regulations aggrieved most of the people of Swat (Nichols; 2013). A judgment of the Peshawar High Court, on 24 February 1990, then of the Supreme court of Pakistan on 12 February 1994 declaring the PATA Regulations *ultra vires* to article 8 and 25 of the Constitution of Pakistan led to the creation of a stalemate in the judicial setup making a way for the unset and intensity of the conflict in 1994 (Rome; 2009). People rise to conflict in the popular plea that before merger the State's judicial system was based on Islamic Sharia laws, an inaccurate and unfounded accounts (Rome; 2008).The recent conflict which led to military operation in 2009 was also anchored in the same grounds and loopholes in the legal governance system was the fulcrum of the conflict in the region.

The valley of Swat has endured many challenges and transformations in its recorded history, but none may have such a lasting impact on space and society as the occupation of the area by the Pakistan Taliban in the mid-2000s and the subsequent

invasion by the Pakistan military to root them out in May 2009 (Weiss; 2013). Initiatives and polemics of ideological advocates, both Islamist and political, offering alternative visions of Justice, order and legitimacy (Nichols; 2013) existed with the usual praise for the functions and services provided the State's governance structure (Edwards; 2013). Popular perceptions about the reason/reasons of the conflict exist in different discourses but this is scratching the surface. Deep ploughing would show that looming specter of loopholes in legal governance structure to which the people of Swat were subjected after merger of the State in 1969 is the fulcrum of the uprising against the Pakistan State's legitimate authority.

This paper is an attempt to provide an analysis of the major flaws in the governance structure and procedures of the courts which aggravated the justice sector perception of the people and provided for mistrust of the people on the Pakistan State's judicial setup. Primary argument here is that it was the failure of the Justice system which brought such a catastrophe to the people of the valley. The paper is divided into three sections: first section would narrate about the enforced judicial structure in the area at the time of the conflict, second section would provide for the key issues in the legal governance system and the last section would come-up with certain recommendations how the judicial system in the area may be improved to redress the grievances of the people and provide for rapid justice without delay, bribes, and in line with the local customs and considerations. Evidently this paper deals with loopholes in legal governance as the cause of the conflict in Swat therefore empirical data placed here is comprised of the period before the 2009 conflict. Developments after the said period are beyond the scope of this paper.

The Structure of Legal Governance in Swat

The state of judicial setup in Swat is comprised of both formal and informal institutions. Formal institutions include formal courts or District Courts, the Prosecution department and Investigation wing, while the informal institutions include arbitration or *Jirga* system in the area.

Formal Justice Institutions:

Formal Justice Institutions include Formal Courts, Investigation and Prosecution services.

i. Formal Courts

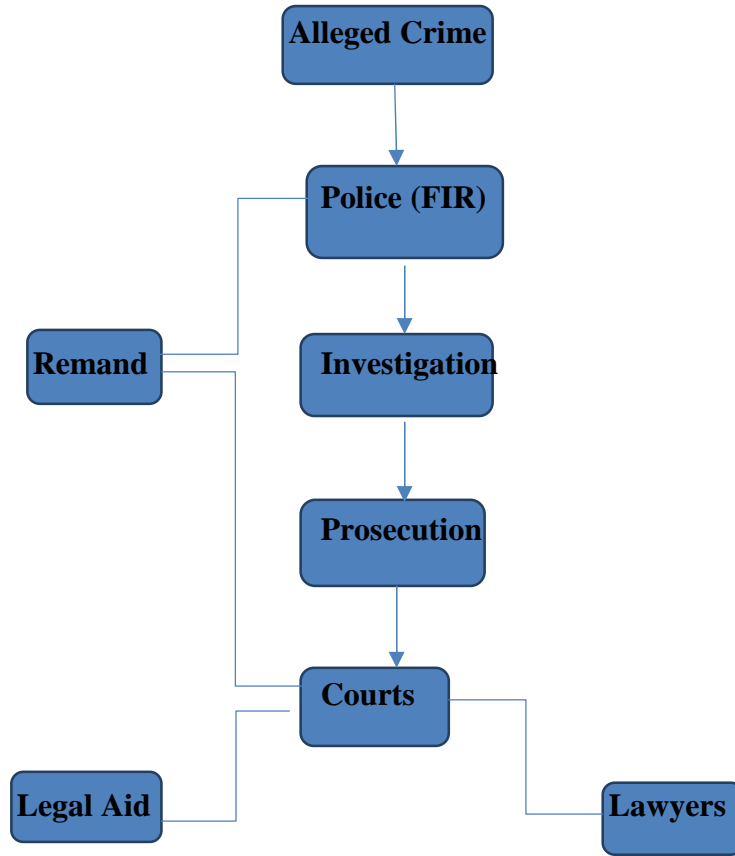
In District Swat under the High Court there lie two levels of courts, District and Sessions courts headed by a District and Session Judge who is assisted by Additional District and Session Judges in his job. Under the District and Session courts is the

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level of Civil and Magistrate courts, headed by a Senior Civil Judge and assisted by Civil Judges and Judicial Magistrates for dealing of civil and criminal suits respectively. The District and Sessions Courts serve as the appellate courts for the decisions of the Lower or Civil and Magistrate Courts (USAID; 2008). The structure of the criminal and civil judicial system in Swat is as under.

Criminal Judicial System in Swat

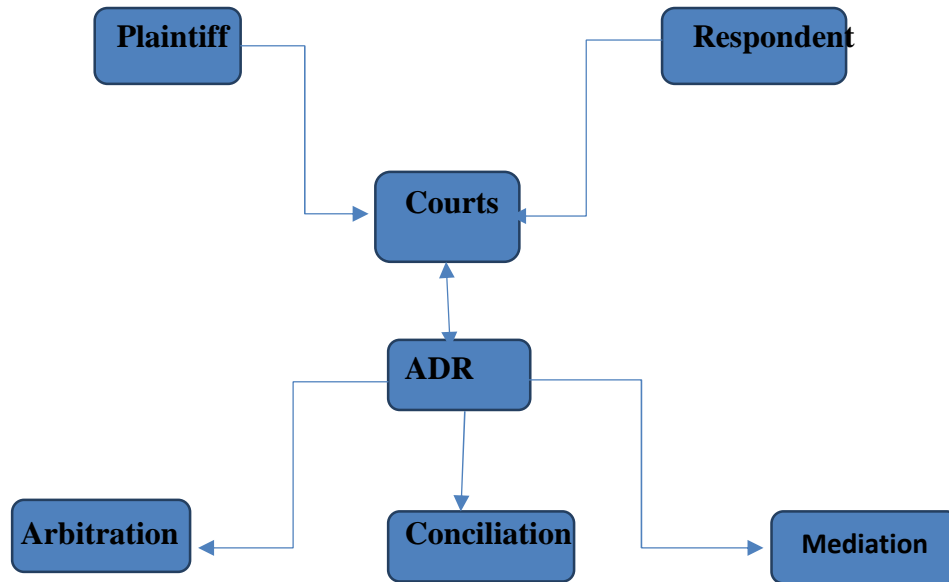
After a crime is committed the accused is nominated by the aggrieved party through a First Information Report (FIR) in the police station. The police after arresting the accused would file the investigation or challan and would present the challan to the prosecution department and the accused to the court of Judicial Magistrate. The court may again handover the accused to the police on judicial remand if requested by the police. Offences committed are divided into bail able and non-bail able offences and in case the crime committed came under the bail able offences section the accused may be set free by the courts after filling of sureties to the court. In case of non-bail able offences the accused is sent to prison on custody who would than need a lawyer or legal aid to argue and pursue his case in the court for bail or trail. In many case even after years of imprisonment the accused is given a decision by the trail court that he or she had not committed the crime and shall be set free. District Courts works as appellate courts for the decisions of the lower courts; the decisions of the District Courts may be appealed in the High Court; and that of the High Court may be appealed in the Supreme Court of Pakistan. *The criminal judicial system in Swat is represented by the following flow sheet diagram.*



Civil Judicial System in Swat

The plaintiff would file a suite in the court of Civil Judge through his lawyer and the court would than issue notices to the Respondent/Respondents who would come in the next hearing date fixed. Lawyer is a necessary assistance needed by the court and both the plaintiff and the respondents. The court may through arbitration act refer the case to Arbitration, Conciliation or Mediation. *The Civil Judicial System in Swat is represented by the following flowsheet diagram.*

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District Courts Capacities:

District Courts capacity in Swat are much lower as compared to the other districts of the province. District Swat has four tehsil courts: Kabal, Matta, Bahrain, and Khwazakhela alongwith the Main or Babozai courts. The District Session Judge (DSJ) is the head of the Judicial setup in the district beneath High Court and is stationed at the main or Babozai Courts. He is assisted by three Additional district and Session Judges (ADJ) at the main station and one each at Kabal, Matta, and Bahrain tehsil courts, while in Khwazakhela there is a camp court usually heard by ADJ Kabal. Beneath the district judges is the Civil Judges (CJ) and Judicial Magistrates (JM). This lower tier of courts is headed by a senior Civil Judge stationed at the Main or Babozai Tehsil courts. In the lower courts civil and criminal cases is divided among CJs and JMs respectively. Senior Civil Judge is assisted in his job by five CJs and two JMs at the Main, one CJ and one JM at Kabal tehsil courts and one Civil Judge cum Judicial Magistrate at Matta, Khwazakhela and Bahrain tehsil courts. Thus a total nineteen judges are appointed at the courts in the whole district. *The structure of the Subordinate Courts and Lower Courts and the number of judges appointed in the district courts are as under as indicated by Nisar Ahmad Advocate(Personal Communication, 15 August 2016).*

A UNDP data shows that only in the month of December 2009 there were 987 new cases instituted in the courts in Swat with the previous pendency of 11423 cases (UNDP; 2011). This shows how much the district courts are overburdened as only nineteen judges have to deal all these cases. Infrastructure of the district courts is also devastated and resources are limited. Courts are operating in devastated buildings and grants and funds allocation for stationary and other legal proceedings is also very low. A district court needs at least Rs. 10000/= per week for stationary but the provincial government has allocated only Rs. 300 per month under this head (UNDP; 2011).

(ii) Investigation

Investigation and policing are separated by the police reforms in 2002 however, still the investigation in cases is done by the police personals. UNDP study shows that the total investigation staff in all the six districts of Malakand is highly overburdened with a total of 792 staff having average case load of 81 cases per officer (UNDP; 2009). Investigation report is required to be submitted within two weeks before the court which is clearly impossible in every case. Additionally the terrorism cases requires a specialized expertise in investigation lacked by the investigation team in the District. The strength of the investigation officers in Swat is very low with limited resources and infrastructure. Swat has one SP investigation, no DSP, seven IP, twenty two SI, forty ASI, fifty nine HC and 164 FC, a total of 293 officials in the investigation wing (UNDP; 2011): a clearly less figure for a population of about 2.5 million. The investigation work is further impeded by the absence of a forensic laboratory in the region. Improvement in the number of women police is direly needed as only 36 women police are appointed in the region against the sanctioned posts of 81 (UNDP; 2011). Overall, investigation officials in Swat need proper training, equipment and resources, both human and material to undertake effective investigation required for provision of speedy justice.

(iii) Prosecution

The prosecution services Act 2005 governs the prosecution services in the province and creates the prosecution institution led by a Director General (DG). The DG is assisted by deputy directors, assistant directors, regional directors, district public prosecutors (DPP), public prosecutors (PP), additional public prosecutors (APP), deputy public prosecutors, assistant public prosecutors, etc. The prosecutors are meant to safeguard public interests in cases before the competent courts. In a recent interview (District Pubic Prosecutor Swat, Personal Communication, 15 August, 2016) I learned that, prosecution staff in Swat is very limited in number as for a total

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28 operational courts only eight public prosecutors are appointed led by a DPP. The Anti-Terrorism Courts in Swat has only one Public Prosecutor posted (UNDP; 2011). The Prosecution Directorate is under the direct control of the provincial government and DG prosecution is required to submit a performance report of the Department on yearly basis. This report is placed before the Provincial Assembly for consideration. However less staffing and limited resources and infrastructure make the Prosecution a potential hurdle in the Justice System in Swat and non-prosecution of cases often results in delay of cases in the courts in Swat.

Informal/Traditional Justice Mechanisms:

Informal or traditional judicial mechanisms in Swat include Arbitration, Conciliation, Mediation and Jirga. Usually these institutions don't enjoy formal judicial systems approval but Pakhtunwali compels the implementation of the decisions. In Swat most of the cases are decided by the informal Justice Mechanisms whereby arbitration or mediation or conciliation is done by socially influential people. Both the conflicting parties refer the case to a third party whom trustworthiness and understanding is trusted by the society and the conflicting parties. The cumbersome and costly procedures of the formal justice system paves the way for higher adaptation of the informal mechanisms by the local people.

Above arbitration, mediation or conciliation the Pakhtuns' foremost judicial institution is Jirga based on the traditions and customs of the community. Jirga is an assembly of the leaders of the society including the Religious Leaders, Malaks, Khans, or Tribal Chiefs whereby the members of the assembly sit in a circle with no chairman or convener etc. The conflicting parties are heard by the Jirga members and while arguing there cases each and every party will address the Jirga members and not the other party. *Waak* (authority) is given by the conflicting parties to the Jirga to decide the case between/among the parties. *Narkh* (precedence) is considered by the Jirga members while deciding the case and the parties have the right of *Maraka* (appeal) if not satisfied by the decision of the parties. *Tiga* (literally meaning stone) is being placed to force the parties to abide by the decision. The decision of the Jirga is usually implemented by Pakhtunwali and the collective voice of the society and is considered the speediest tool of dispensation of justice in the society. However, Jirga is often criticized for commoditization of women in its procedures through the custom of *Swara* (Giving girls/women as compensation to settle disputes).

Key Issues in the Legal Governance

Inadequate Court Capacities:

District Courts are understaffed and have limited resources and infrastructure as indicated by Bakht-I-Amin Advocate, (Personal Communication, June 30, 2016,

Swat). A total nineteen judges are appointed in the district to deal with a huge burden of cases along with the lack formal training in case management and cases delay reduction mechanisms. Cases relating to Islamic Law need special understanding of the Sharia and Pakistan's Constitution's Islamic Provisions of which the judges are acutely short of. The courts also lack facilities like communication, public information, information technology tools and outreach materials.

Weak Monitoring Tools:

An Inspection Wing in the High Court monitors civil and criminal cases in the subordinate courts, but the process is weak and needs further strengthening. Weak monitoring mechanisms is responsible for delay of cases in specific consideration of the Pakistan's Civil Servants official culture (ADB & WB; 2009).

Barriers in Accessing Justice Services:

Critical barriers exist while accessing Justice Services in Swat. Usually the Public don't recognize their legal rights in the Justice System and are thus unable to claim. The Justice system is expensive and people can't pay in courts and to the Lawyers, indicated by M. Ahmad Jan Advocate (Personal Communication, July 17, 2016). Free Legal Aid and Counselling services are unavailable to the populace.

Overburdened formal justice systems:

Formal Justice System in Swat is understaffed and overburdened with cases leading to long delays, ineffective administration and less accessibility especially to the people of the rural and mountainous areas. Resultantly excessive demand for alternative judicial services exists which worked as a fueling resource for the recent Talibanization program. Fazal Hamid (Personal Communication, June 23, 2016, Mingora, Swat), a litigant pursuing his civil case in the Civil Judge courts told me (the author) that Taliban would have decided a case just in one setting and after the decision execution of the orders would have taken place in no time, while in Pakistani courts I would have to get a decree in years from the lower courts, wait to the other party for appeals in the appellate courts, than in the High Court and the Supreme Court. If the Supreme Court decides the case in my favor than the execution of the orders of the lower courts in my favor would be done for which I have to wait for years. That's why people in Swat supported the voice of the Taliban for alternative speedy and cost effective Justice System.

Lack of Coordination Between Formal & Informal Justice Systems:

Article 89 of the civil procedure code of Pakistan provides for the Informal Justice system and reads as "*The Court may, where it considers necessary, having regard to*

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the facts and circumstances of the case, with the object of securing expeditious disposal of a case, in or in relation to a suit, adopt with the consent of the parties alternate dispute resolution method, including mediation and conciliation” (CPC; 1908). However there is no provision in the Code or the Justice System that the awards of these informal systems is recognized by the courts and thus these awards are not converted into a legal decree. In spite of numerous inadequacies, individuals seeking justice from the informal institutions are increasing (Cockcroft et al; 2005). The informal systems is considered discriminatory against women but they are embedded and traditional justice mechanisms. Thus lack of coordination between the formal and informal justice systems is a crucial issue in provision of justice services to the people of Swat.

Scant Investigation Services:

Article 4 (1) of the criminal procedure code of Pakistan reads as *“Investigation’ includes all the proceedings under this Code for the collection of evidence conducted by a police-officer”* (CrPC; 1898) Thus the law requires the Police to investigate and submit report to the Judicial Magistrate within a given time. However, the police lack proper training, specialized skills, adequate staff and resources for the job having grave implications for the Justice system in Swat.

Execution of Decrees:

After award of decree in favor of one party by a civil court execution is barred due to the cumbersome procedure of Pakistani Courts. The aggrieved party is given the right of appeal to the appellate Court i.e. the District and Session Court within a prescribed time limit of Ninety Days. The decision of the District Courts can then be challenged in the High Court and the Supreme Court further by any of the contesting Party. Execution of the decree already awarded by the Civil Court is thus stayed till the final decision of the Supreme Court of Pakistan indicated by Mian Kausar Hussian Advocate, (Personal Communication, August 15, 2016, Swat). Usually the losing party, for the reason of giving torture to the winning party, file a suit in the appellate courts just to withheld the implementation of the decision which is known to come in decades and not years. Thus the courts are burdened with futile litigations and the precious time of the courts is wasted resulting into delay in the processes of the courts. The process also waste the time of the litigants giving costs, damages and mental torture to the litigants and thus the courts are mistrusted by the people.

Recommendations

Development of the Courts' Capacities:

To make the Justice Institutions in Swat able for effective delivery of Justice requires long term planning, holistic approach and deeper commitment. The High Court should augment the Courts' capacities through enhanced staffing, budget and development of the existing resources, both personal and infrastructural. A policy for file tracking, backlog clearance, case management, judicial accountability and fast track disposal of cases be devised according to the new national judicial policy. Mobile Courts capacities be enhanced and expanded to the rural areas for access of the distant population to the justice system of the State. Special trainings be arranged in the provincial Judicial Academy Peshawar to improve the knowledge of the Judges on Constitution, Islamic Provisions of the Constitution, the Local Customs and the Islamic law. Selected laws be translated into Urdu for easy understanding by the litigants, the Judges and the Lawyers. The monitoring mechanism be improved in order to provide speedy justice and the cases for the chronic delivery be reported and tackled accordingly. The managerial and administrative capacities of the provincial Judiciary be developed for better outcomes.

Improvement in Investigation and Prosecution Capacities:

The investigation and prosecution services in Swat necessitate exigent attention. Proper training, technical support, sufficient staffing and e-governance tools provision is required at the earliest to improve the capability of these two institutions. Furthermore investigation is suggested to be detached from police services and a separate department of investigation be established with skilled and trained staff for the required job. The Judge/*Qadi* shall have the authority to control directly the investigation staff, the prison administration and all the other organs of the justice system. Resultantly a centralized authority of the courts would effectively deal with the disposal of cases with less complexities in the procedures of the courts.

Amendments in the Courts' Procedures:

The courts' procedures in Swat are stricken with delays and is expensive, and require deeper changes. However, three sections are hereby recommended for amendments to develop people trust on the Justice system. *Firstly*, as stated earlier, the execution of the decisions of the Civil Courts is delayed till the consequent appeals are finally decided by the Supreme Court of Pakistan. Thus the winning party is deprived from possession of the award for many years. Therefore, Rule 36 of the Civil Procedure Code be amended as “*after announcement of the Judgement by the Trial Court, the Court shall on its own initiate the execution of the Judgement/order/decree and before the finality of the execution procedures shall not consign the case file of the suit to the*

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record room” according to Mian Kausar Hussian Advocate, (Personal Communication, August 15, 2016). Thus the Trail Court (Usually the Civil Court) is powered to execute the decree awarded. The aggrieved party possess the right of appeal to the Appellate Court which can stay the order of the Trail Court by awarding interim order if so sought/requested by the appellant and if/whereby found justified by the Appellate Court. The aggrieved parties going for litigation in the appellate courts with no justified reasons and just to withhold the execution of the order would thus be barred from further litigation leaving the courts with less burden of cases in the form of appeals and providing of timely justice to the people.

Secondly, the right of appellate review must be included in the law as every Judicial System accepts the fact that court decisions are subject to errors as are humans. However, jurists in the Islamic law have discussed very deeply as which type of cases are subjected to appellate review and enclosure of the Islamic Juristic principles in the cases of appellate review may lower the burden of cases in the superior and upper courts (Appellate Courts). Also it may enhance the provision of speedy and timely justice to the general populace. Islamic law pleads that only those cases may be referred to a higher court for appeal having perjury, serious fault, evidence contrary to obvious facts, additional evidence, affects the right of someone else, and/or beyond Jurisdiction of the Court (Kamali; 1989). Thus a large number of cases would be removed from appellate proceedings and the court burden would be lowered significantly.

Thirdly the Civil Procedure Code be amended for the costs and damages sought to be awarded to the decreed party. Section 35 and 35 A of the CPC deals with the Costs of the suits and needed that a separate suite be filed by the decreed party for costs and damages done to him/her by the other party in terms of false litigation and the costs of the litigation (CPC; 1908). Empirical data suggests that almost none of the damages suites are successful in terms of award of the damages costs to the decreed parties. Bakht-i-Amin Advocate (Personal Communication, June 30, 2016, Swat), a lawyer in the bar room in Swat told me that I don't remember a case in my eighteen years career that the decreed party had succeeded in getting the damages costs. Therefore, article 35 and 35 A of CPC be amended as;

1. At the time of final decision of the case the court shall award the cost of the suit to the successful party which shall include the Counsel fee paid by the successful party, his/her per day remuneration as per court order sheets, regard been made to the status of the successful party for earning per day to be estimated by the Court.
2. That mental torture and threats of losing the property be estimated by the Court with a regard to the value of the property and the status of the successful party.

Enhance Access to Justice, Legal Aid and Representation:

Legal empowerment and awareness are crucial to the improvement of Justice Delivery in Swat in order that the marginalized communities may utilize law to improve their living. In order the Justice is accessed by the poor two developments are necessary. First, free Legal Aid Clinics are being established by the Government to provide free counseling services and free representation in courts to the poor population of the area (UNDP; 2011). Second, every citizen shall not be bound to be represented by a lawyer and thus subjected to financial burden in the form of counsel fee.

Strengthening of Alternative Dispute Resolution (ADR) Mechanisms:

CPC provides for ADR mechanisms and states that the court with the object of speedy disposal of the cases may adopt ADR mechanisms including Mediation and Conciliation with the consent of the parties (CPC; 1908). However for speedy disposal of cases it is recommended that the ADR mechanisms be strengthened by amending the CPC. The court shall convert if a mediation, conciliation, arbitration, Jirga, or other settlement agreement is presented before it into a rule of the court and shall pass a decree accordingly. Provided that no such settlement shall be converted into rule of the court if it has obtained as a result of fraud, misrepresentation, coercion, or undue influence or is illegal, against the principles of natural justice or contrary to public policy. Provided further that the court may conduct such inquiry as it deem proper and necessary to ascertain the authenticity and voluntariness of such settlement.

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