

COMMENTS

The Judiciary Misjudged

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Abstract

In this article, the author critiques the wrong perception that Pakistan's judiciary, which, despite resolving over millions of cases each year, is ranked 130th globally by the World Justice Project (WJP). The author also argues that the WJP's assessments—based largely on perceptions rather than empirical data or reality—are likely to misrepresent the judiciary's effectiveness. It has been highlighted that while the judiciary faces challenges, it performs better than half of the world in terms of judicial delays and independence as being established in the article. Ultimately, the article calls for a more nuanced understanding of the judiciary's role within the broader context of the rule of law in Pakistan.

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In a world where the judiciary of Pakistan, which is based on formal structures and modern jurisprudence, has the distinction of resolving over four million cases in a single year²—with the Supreme Court of Pakistan alone adjudicating 12,838 cases in one year, as per 2022 statistics—it is perplexing that our judiciary is being presumed to rank at 130th globally through incorrectly referring report(s) of World Justice Project (WJP). In fact, 130th is country ranking.

I will explain it little later. 'Perception,' which often overshadow the truth, defeats 'reality,'. In societies less literate, gossip rather than informed debate tends to shape these perceptions, placing a significant onus on the intelligentsia to guide the masses impartially, free from personal biases and affiliations.

The presumption that the World Justice Project (WJP) report(s) rank Pakistan's judiciary at 130th globally demands a dual response. Firstly, one must consider whether the report is specific to the judiciary or pertains to the overall state of the rule of law in the country. And secondly, it is essential to discern whether the report is based on perceptions or facts and figures, even if it is related to rule of law and not the judiciary, specifically.

The WJP's annual surveys, crafted through their methodology, assess the rule of law in various countries, focusing not solely on the judiciary but on the broader framework. It is a misconception to equate the judiciary with the rule of law entirely. The judiciary's role is confined to adjudicating cases based on the law. Can anyone estimate the fraction of cases not decided according to the law out of the millions of cases adjudicated each year by the judiciary of Pakistan? The WJP does not link its rule of law determinants exclusively with the judiciary, by any mean.

² LJCP, *Judicial Statistics of Pakistan, 2022*, Islamabad: Law and Justice Commission of Pakistan, 2022. Available online at <http://ljcp.gov.pk/nljcp/home/publication>. Last retrieved 24 December 2024.

The WJP employs eight³ factors to evaluate the rule of law, each with sub-factors—44 in total—offering a detailed view of the rule of law's various dimensions. Out of eight, only two factors, "Civil Justice" and "Criminal Justice," are associated with the judiciary. Even within these, many sub-factors are unrelated to the judiciary, and those that are related show the judiciary in a relatively favorable light compared to other departments. For example, within the criminal justice system, the judiciary's domain—'criminal adjudication'—is ranked 83rd, which is better than nearly half of the world/142 countries surveyed, though not ideal, but not to mention India ranked at 112th under this head or other democratic parts of world such as Turkey at 108th, Brazil at 133th, Sri Lanka at 113th or even Thailand at 87th in rankings.

In civil justice, the sub-factor of unreasonable delay, which is attributed to the judiciary, is ranked 111th, by no means is appreciable but yet again far better than India, whose ranking in this area is 136th. This issue is common in populous developing countries--specifically, the judiciary of Pakistan outperforms several other populous Islamic countries in this regard, even having lesser population than Pakistan, with Bangladesh, Turkey and Egypt ranking at 139th, 129th, and 117th, respectively, surely, indicating Pakistan's judiciary comparatively better control over judicial delays.

³ As reported in *WJP Rule of Law Index 2024*, “[t]he conceptual framework of the Index includes a ninth factor on informal justice that is not included in the Index’s aggregate scores and rankings. Informal justice systems often play a large role in countries and jurisdictions where formal legal institutions are weak, remote, or perceived as ineffective. As such, the WJP has devoted effort to collecting data on informal justice through our surveys. Nonetheless, the complexities of these systems and the difficulties of systematically measuring their fairness and effectiveness make cross-country assessments extraordinarily challenging. For this reason, the informal justice factor is not included in the Index scores and rankings.” See generally, *World Justice Project Rule of Law Index 2024*, available online at <https://worldjusticeproject.org/rule-of-law-index/downloads/WJPIndex2024.pdf>. Last retrieved 24 December 2024.

The improper influence of governmental bodies on the foundational elements of the civil justice system, which includes the judiciary, is a subject of extensive discussion, especially in our country. Pertaining to this matter, as per WJP, the Pakistan's position is ranked 81st, which signifies a more favorable standing than nearly half of the global community surveyed concerning the undue influence exerted on the civil justice system--linked with question of judicial independence. Particularly, when considering the undue influence of government institutions upon criminal justice system, Pakistan is ranked 67th which is even comparable with most developed Islamic county Malaysia standing at 62, not to speak about several other Islamic countries, in this regard, with Bangladesh, Turkey, and Egypt ranking at 120th, 139th, and 105th, respectively.

The World Justice Project's evaluation specifically dedicated a sub-factor to assess ability and independence of Pakistan's judiciary to check on government powers so not be utilized improperly, categorizing this under head of "Constraints on Government Powers." This specific assessment is crucial as it focuses solely on the judiciary's independence and its adeptness in enforcing the rule of law. Pakistan's judiciary has been positioned at the 83rd rank. Once more, Pakistan's judiciary is demonstrated its ability and independence, outpacing nearly 60 other nations.

This analysis does not claim that Pakistan's judicial system is flawless but highlights that the WJP report indeed encompasses the overall rule of law, with the Pakistani judiciary showing better rankings within its own domains, if one bases his judgment on the WJP report.

Turning our attention to the second facet of the discussion, we must examine whether the WJP report is grounded in perceptions or facts and figures. Surely, the methodology employed by the WJP suggests that such reports are predominantly perception-based, derived from surveys with participation from approximately 1,000 individuals (representing a mere 0.00004% of Pakistan's total population). These participants are selected from the three largest cities, which is noteworthy considering that 84% of Pakistanis do not reside in major urban centers. Furthermore, among these 1,000 participants, the survey also included individuals who are commoners.

The survey's design is such that it engages two distinct categories of respondents: the general public and experts. The general public's survey is centered around subjective questions aimed at capturing the populace's perceptions, beliefs, and self-claimed experiences. These inquiries delve into matters such as confidence in institutions, perceptions of corruption, personal experiences with corrupt practices, safety, interactions with law enforcement, and instances of discrimination. The subjective nature of these questions means they are susceptible to being shaped by hearsay and individual biases. Although the survey does gather some objective demographic information, its primary focus is to explore the subjective experiences and viewpoints of the participants concerning the rule of law and justice in their nation.

On the other hand, the survey targeting experts is directed at individuals with specialized knowledge in various legal domains. This portion of the survey also relies on perception-based questions, prompting respondents to evaluate the 'likelihood' and frequency of different scenarios based on their 'professional experiences' and 'hypothetical situations'. These experts are asked to use their personal judgment to assess the 'probability' of police misconduct, the accessibility of legal representation, the

equitable treatment of marginalized groups, and the extent of issues within the various justice systems. The findings from this expert survey, akin to those from the general public's survey, are predicated on perceptions and subjective evaluations, which may not necessarily reflect the actual state of the rule of law.

It is pertinent to mention that the WJP also acknowledges many of the aforementioned limitations.

Conclusion:

The conclusion of this debate is left to the discernment of the readers. However, it is hard to offer disagreement that it would have been more judicious for the WJP to base its reports on empirical data and statistics rather than on subjective perceptions, as perceptions do not necessarily reflect the true state of affairs. By taking up the debate of perception v. reality, Plato, in his “Allegory of the Cave” as found in *The Republic*,⁴ exemplifies prisoners who are shackled in a cave in such a manner that they can only gaze upon the wall before them, where shadows are cast by objects passing before a fire situated behind them. These shadows constitute the entirety of the prisoners' perceived reality, given that they have never witnessed anything outside the cave's confines.

For those who still subscribe to this view that perception is reality, then let me cite, something, directly from WJP's one of the most comprehensive works on Pakistan in form of a special report titled *The Rule of Law in Pakistan: Key Findings from the 2017 Extended General Population Poll & Justice Sector Survey*.⁵ It is also a perception based report though but stands out due to its thorough research and the significant number of participants

⁴<https://web.archive.org/web/20170110212132/http://webspace.ship.edu/cgboer/platoscave.html>. Last retrieved 24 December 2024.

⁵https://worldjusticeproject.org/sites/default/files/documents/Pakistan_Report_2017_Final-Online%20Version-Reduced.pdf. Last retrieved 24 December 2024.

involved. It encompasses surveys conducted in multiple areas across Pakistan with the participation of thousands, specifically under head of ‘Trust in Pakistan’, ranked the Judiciary as the most trusted Institution of Pakistan amongst the citizens when compared with all other departments.

References

1. Dawn. (2022, January 26). Over two million cases pending in courts across country. <https://www.dawn.com/news/1699337>. Last retrieved 24 December 2024.
2. World Justice Project <https://worldjusticeproject.org/>. Last retrieved 24 December 2024.

