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Beyond the Realms of Formal Justice: Critically Analyzing Pakistan's Standing at WJP Rule of Law



Abstract: Regretfully, Pakistan stands at 130th out of 139 countries in WJP's report observance of the rule of law (World Justice Project, 2022). Despite the fact that World Justice Project is a Multidisciplinary collaboration which prepares its reports on the basis of certain principles including the answerable government, good laws and Access to justice etc (Agrast et al., 2012). This paper aims to comprehend the approach and modus operandi of WJP reports on adherence to Rule of Law. It further depicts the tactic used to establish the WJP Rule of Law Index. The main theme of the paper is to rectify the layman's approach in understanding WJP report on adherence to rule of Law, carve up the onus on all the institutions fairly and discern whom to blame for the sole purpose of finding out where to improve.

Key Words: Rule of Law, Justice, WJP (World Justice Project), Index, Accountable Government, Access to Justice, Good Laws, Constraints on Government, Judiciary

Introduction

About WJP Index

The World Justice Project (WJP) is a self-governing institution offering to form information, construct alertness, and arouse policies to press forward the rule of law across the world. It offers an index in the WJP Rule of Law Index is the most important source for credible and independent statistics on the rule of law. The Index, which at present covers 139 jurisdictions, evaluates how the rule of law is practiced and professed internationally using statistics from more than 138,000 consumer surveys as well as 4,200 jurists and specialist questionnaires. Aiming to promote the reforms in course of action, directing programme expansion, and supplying present and reliable information to the stake holders, civil society, academics, citizens, and legal professionals, among others, the Index is designed to support the rule of law. (World Justice Project, 2022)

Comprehending the Notion 'Rule of Law'?

Before comprehending the approach and *modus operandi* of WJP reports on adherence to Rule of Law, it is necessary to conceptualize the phrase rule of Law itself. The title of the report published by WJP i.e. "Rule of Law Index" also implies that its focal point is the performance of the justice sector of the state. The concept of "rule of law" has an intrinsic flaw as it is often used without proper definition. The rule of law is "a rules-based system in which the following four universal principles are upheld," according to the World Justice Project (WJP). (1) The laws defend the Constitutional rights, such as the safety of people and property; (2) The government is to the law; (3) The enactment, enforcement and administration of law is transparent, equitable, and efficient; and (4) Convenient Justice is provided by competent, unbiased, and honorable judges who are numerous, well-resourced, and represent the interests of the people. A system in which the state and specific members of the ruling class are subject to meaningful limitations from the law is known as

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the rule of law."It denotes a principle of governance whereby all individuals, public and private institutions, and the State itself are answerable to laws that are enacted by the public, uniformly imposed, adjudicated devoid of any external pressure, and adhering to the standards of Human rights laid down by International Watchdogs." (UNSC, [2004](#))

If we analyze the above definitions of Rule of Law, we can discover a grundnorm for observing rule of Law that Political influence must be used in conformity with the law and not arbitrarily or selfishly, and disagreements between private citizens and the Sovereign must be decided by an impartial arbiter. Under the leadership of then CJ Umar Ata Bandial, the Law and Justice Commission of Pakistan (LJCP) characterised the World Justice Project's (WJP) report on the Rule of Law Index-2021 as derived from data gathered on a "presumptive scenario" and "perception," without consulting authentic figures during assessment. (Iqbal, [2022](#))

WJP's Strategy to Conceptualize the Rule of Law

The principles of Rule of Law laid down by different authorities as discussed in previous section does help but doesn't suffice to be employed by WJP in assessing the extent of a country's adherence to the rule of Law. Hence WJP bears a theoretical framework heavily inspired from philosophical work on rule of Law to report such adherence. This framework draws inspiration from the fundamental political idea of the rapport between the state and individuals, which includes the nonexistence of arbitrary abuse of authority, the efficiency of the state in performing out its fundamental duties, the contribution and association of the state and its populace, and the checks on the power of the government. The foundation of the WJP Rule of Law Index is thus the framework, which is arranged around nine fundamental concepts, or factors: order and security; fundamental rights; open government; efficient regulatory enforcement; access to civil justice; efficient criminal justice; and informal justice. Such determinants, which assume measly about the roles of the state, jointly indicate the grade of rule of Law, a certain state or society seek to achieve. (Abbasi, [2021](#))

Limited Government Powers

The primary determinant reads the degree to which the states and its stake holders are subject to law. It covers the elementary standard that the Government is exposed to legal chains. It covers the fundamental requirement that the government be constrained by the law. It consists of constitutional and legal checks and balances that limit the authority of the state and its institutions and hold them legally accountable. It also consists of non-governmental restraints on governmental authority, like an open and self-regulating media. (Ali, [2021](#))

Absence of Corruption

This determinant suggests the application of public power for personal interest. Measuring the degree of Corruption is imperative to any estimation of a state's compliance with the rule of law as it is a demonstration of the amount to which the state institutions' malpractice and abuse of their power. Bribery, inappropriate pressure by public for private interests, and misuse of public money or other resources (misappropriation) are the 3 types of corruption that WJP takes into consideration. Particular attention is paid to these types of corruption when it comes to executive branch state institutions, such as the military and the police. A wide range of events, suggesting corruption by these institutions, are taken into consideration e.g. including delivering public services, following procurement protocols, and enforcing administrative laws pertaining to labour, the environment, and health and safety, among other things. (Iqbal, [2022](#))

Order and Security

Security and protection of citizen is not only the Fundamental constitutional right in all the jurisdictions but also one of the significant features of any rule of law. (Thomas Hobbes and John Locke, "the fundamental role of government is to provide security, peace, and defense in a civil society) In addition to inflicting harm on society, violence obstructs the accomplishment of other goals, like the enjoyment of liberties and access to the legal system. When laws are not upheld, extreme circumstances may turn violent behaviour into the norm. Hence the third factor, considered by WJP, signifies how well a state guarantees the

safety of its citizens and their property. This factor essentially covers three areas: the nonexistence of crime, control of political aggression including terror campaigns, armed conflict, and political turbulence, and the absence of aggression as a publicly tolerable way to settle individual's grumbles. (Botero & Ponce, 2010)

Fundamental Rights

The protection of fundamental human rights is gauged by the fourth criteria. Three areas of fundamental human rights can be distinguished: rights to development and the environment, which are protected by nearly all international legal frameworks; social, economic, and cultural rights; and civil and political rights. Thus, respect for rights such as those to life and personal security, Freedom of religion, movement and speech (including freedom of the media), freedom of association, prohibition against forced and child labor, right to privacy, rights of the accused, and the application of criminal laws retroactively are all covered by this factor.

Open Government

Open and inclusive government promises a wide stage of admittance, contribution, and alliance between the states and its populace and plays a critical role in the endorsement of Government's answerability. Demanding explanation from governmental officials is a significant implement to enable citizens by providing them with an opportunity to raise their apprehensions and claim liability of the state e.g. nation-wide grievance management platform which was endeavored to be achieved by then Prime Minister Imran Khan in the name of Pakistan Citizen's Portal (PCP) in October 2018. WJP considers four basic elements while measuring the extent of Open Government i.e. laws that are transparent, stable, and easy to understand; public participation in administrative proceedings; publicly available official draughts of laws and regulations; and access to official information. (Supra Botero) The first of these components has to do with the transparency, stability, and public awareness needed to let people know what the law is and what behaviour is allowed and banned. For the general population to be able to follow the law, it must be adequately clear, understandable, and communicated to them

in simple terms. People are less likely to be aware of and comprehend their responsibilities, recognize their rights, and take legal recourse to address their complaints if laws are not easily accessible. This is especially true for the underprivileged and marginalized groups in society, such as women and the impoverished. These are some of the most fundamental requirements for creating and preserving a society governed by the rule of law, which is able to ensure fundamental rights, personal safety, and public order. Additional components of this aspect include the accessibility, equity, and efficiency of the laws, as well as the procedures used in their enactment, administration, and enforcement.

Effective Regulatory Enforcement

This feature evaluates the evenhandedness and efficacy in put the government regulations into effect. In today's society, public enforcement of government legislation is a subtle way to influence people to behave in a "good" way. The fact that the government duly upholds and enforces laws is a crucial component of the rule of law, particularly in light of the possibility of official misconduct and neglect when enforcing the law. WJP focuses on the circumstances that are faced by all the nations such as business activity, public health set of laws, workplace safety Laws, and environmental restrictions. The idea is that how well government sector respond to scenarios acts as an indicator of how capable they are of responding to more challenging situations.

Access to Civil Justice

Expedient and inexpensive justice is crux to the rule of law. Every person of a state that strives to provide the best possible legal system must be able to access remedies that uphold their fundamental rights. WJP supports a moderate approach and discusses the dispensation of justice as the access to instruments for resolving disputes, primarily in terms of access to lawyers and tribunals.

Effective Criminal Justice System

An efficient system of criminal justice is a pitch of the concept of the rule of law, as it comprises the legal machinery to address accusations and sentence the culprits for the crimes committed by them against state or community at large. Suspects'

and victims' rights are safeguarded while criminal crimes are investigated and decided in an efficient and unbiased manner by competent criminal justice systems. Nonetheless, a wide-ranging assessment of these systems must account for the police, counsels, prosecutors, judges, and prison staff.

Informal Justice

Lastly, WJP examines the part that traditional, or "informal," legal systems—such as community-based and traditional, tribal, and religious courts—play in settling legal disputes in numerous nations. These systems frequently have a significant impact on societies when official legal institutions are viewed as foreign, corrupt, and ineffectual, or if they are unable to effectively provide remedies for significant portions of the populace. This element encompasses two concepts: (1) the degree to which informal judicial systems uphold and safeguard fundamental rights; and (2) the efficacy and impartiality of traditional, community, and religious dispute resolution methods.

Departure from Layman's Perception (A Detailed Panorama of Pakistan's Standing at WJP Index)

As we remonstrated a home truth earlier that whenever we hear the phrase rule of Law, the first things that flash across our minds are Courts, Bars and prosecutions. In this section we will try to rectify the layman's approach in understanding WJP report on adherence to rule of Law and carve up the onus on all the institutions fairly. If we analyze the detailed study of states' Standings in WJP report on adherence to Rule of Law, we get to find Pakistan's best ranking, after constrains on Government powers, lies in the Criminal Justice System. Only two categories out of nine, set out for purpose of determining adherence to the rule of law index across the nations, relate directly to the judicial system i.e. Civil Justice and Criminal Justice, while rest of the seven relay to the administration system, executive competence and attitude of the community. In Civil Justice, Pakistan stands at 124 out of 139 states, while in Criminal Justice it was ranked at 108 amongst the 139 jurisdictions which is second best after the constraints on Government while it stands at worst in the category of order and security i.e. at 137th

out of 139. ("WJP Rule of Law Index Country Press Release," 2021) These two variables, in addition to the Justice Sector, also involve other state agencies including the police, prosecution, and prisons, as well as the legal community and society at large. Pakistan stands at 123th spot out of 139 in Absence of Corruption, at 126th in Fundamental Rights, at 137th in Order and Security, at 123 in Regulatory Enforcement and at 124th in Civil Justice. (WJP Rule of Law Index Country Press Release, 2021)

Inconsistency between the Title and Strategy of WJP's Reports.

The Judiciary's role in maintaining WJP's defined rule of Law equates a very limited portion of what's considered by WJP in preparing reports whereas it bears the entire onus for such tragic standings in the report on rule of Law merely because of the inconsistency between the title of report and strategy applied to prepare the report. For instance, besides two discussed above, all other factors calculating a state's adherence to the Rule of Law i.e. "Constraint on Government Power, Absence of Corruption, Open Government, Security and Order, Regulatory Enforcement and Informal Justice" are either not or quite scarcely linked to the performance of Judiciary and those are the exact spots where we are lagging behind. Pakistan stands at 123th spot out of 139 in Absence of Corruption, at 126th in Fundamental Rights, at 137th in Order and Security, at 123 in Regulatory Enforcement and at 124th in Civil Justice. (WJP Rule of Law Index Country Press Release, 2021)

Criminal justice system comprises both the adjudication and investigation system. Both should be timely and effective and free from any influence. Further, the right to a covert trial, regular detention processes, prohibitions against abusive conduct towards suspects in detention, proper application of law, and rights of the accused In addition, prisoners' rights and legal counsel should be guaranteed. Very diminutive fraction of these standards relate to the judiciary of Pakistan. Standards like mode of detention, restrictions against custodial Torture and abusive treatment to suspects and provisions of right of prisoners are to be maintained by the Law enforcement agencies. Even the adjudication system is influenced by what is presented before the court in the form of

investigative and medical reports. Hence the conviction or acquittal, besides the contentions of counsels, entirely depends upon the extractions from those reports. Court has to act mere as an overseer. The other thing which might not be appraise by the WJP but is definitely taken into consideration by Public and pressure groups is the conviction rate. They take the critical quotes like “*Laws are like cobwebs, which catch small flies, but let wasps and hornets may break through*” way too seriously. That’s the factor to be redressed as a long term approach by legal fraternity and Legislature of Pakistan. The legal provisions offering convenient bails, granting acquittal because of absence of irrefutable evidence and being lenient towards the supporting crew to a criminal trial e.g. Investigation and Medical teams should be though over.

Besides the Civil and Criminal Justice system, the other category which might indirectly relate to the performance of Judiciary is the Safeguard of Fundamental Rights. The supreme court of Pakistan possesses the authority to issue directives in cases where it deems a matter of public concern concerning the implementation of any of the fundamental rights granted under Chapter I of Part II of the Pakistani constitution. After passing two tests—the enforcement of fundamental rights and matters of public importance—the Supreme Court is granted suo moto jurisdiction. (Constitution of Pakistan, 1973, Art. 184(3)) The Supreme Court is invested with the *suo moto* jurisdiction after going through a two pronged test i.e. matter of Public importance and enforcement of Fundamental Rights. The Honorable Supreme Court has exercised the said jurisdiction multiple times, mostly in the cases of Political nature related to Legislature Branch of Pakistan. If that act is considered to be consistent with the concept of Rule of Law then the critics generally and WJP particularly should be expected to nullify the criticisms based on breach of a country’s trichotomy, Court’s interference in the matters of Parliament and Judicial dictatorship. This is another instance where World Justice Project should define its policy and priorities as to what should be adhered to whether to trichotomy or to protection of Fundamental Rights to achieve the standardized rule of Law.

All other factors calculating a state’s adherence to the Rule of Law i.e. Government

Power, Absence of Corruption Security and Order etc are either not or quite distantly related to the performance of Judiciary and those are the exact factors where we are lagging behind.

Hence the Judiciary’s role in maintaining WJP’s defined rule of Law equates a very limited portion of what’s considered by WJP in preparing reports whereas it bears the entire onus for such tragic standings in such report on rule of Law merely because of the inconsistency between the title of report and strategy applied to prepare the report. The title of the report published by WJP i.e. “Rule of Law Index” also implies that its focal point is the performance of the justice sector of the state. The phrase “rule of law” has a flaw of its own since it is often used without proper definition. (PR No. 15, 2022) States still need to come to an agreement on a definition of the rule of law that is accepted worldwide. It is necessary to distinguish between the rule of law and the judicial system in this case, though. The research released by World Justice Project seems to overlook the significance of the interaction between the two. Pakistan’s judiciary has consistently supported the rule of law and made sure that cases are decided fairly quickly.

Conclusion

WJP reports on adherence to the rule of Law have been misconceived by the Public and media sector of Pakistan. It has been misapprehended as the scale of judicial performance. A number of articles were published in response to WJP reports suggesting betterment in judicial functions which captivated the onus on single branch of Government and raised Public pessimism against the Judiciary. After going through the detailed study of WJP report on adherence to Rule of Law, we get to find Pakistan’s top ranking, after constrains on Government powers, lies in the Criminal Justice System. Only two categories out of nine factors set relate directly to the judicial system i.e. Civil Justice and Criminal Justice, while rest of the seven speaks about the administration system, executive competence and actions of the society. Even those two are subject to the supporting crews e.g. Police and medical personnel in Criminal Justice system. Besides these, the other category which might indirectly relate to the performance of Judiciary is the Safeguard of Fundamental Rights which is expected from the apex judiciary by constitutional provision but that

have also been countervailed by the concept breach of a country's trichotomy, Court's interference in the matters of Parliament and Judicial dictatorship. . Pakistan stands at 123th spot out of 139 in Absence of Corruption, at 126th in Fundamental Rights, at 137th in Order and Security, at 123 in Regulatory Enforcement and at 124th in Civil Justice. (ibid)

This paper tried to comprehend the WJP reports on adherence to rule of law and strategy applied to calculate such adherence. After going

through the detailed study of WJP study, concept of rule of Law and functions of governmental institutions, we are in position to discern that two things are incumbent here, *first*, WJP to appreciate the differences and relationship between the concept of Rule of Law and reconsider the title of its reports and *secondly*, us, to rectify the layman's approach in understanding WJP report on adherence to rule of Law, carve up the onus on all the institutions fairly and discern whom to blame for the sole purpose of finding out where to improve.

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