

FACTUAL AND STATISTICAL ANALYSIS OF GLOBAL RULE OF LAW TO ESTABLISH WHETHER JUSTICE IS A MYTH OR REALITY IN PAKISTAN

Sundus Rauf^{*1}, Hadia Ashraf², Sobia Sifarish³

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ABSTRACT

Justice is considered to be the hallmark of a functioning state. It is the only pillar which is responsible to provide a strong foundation to the state supporting other organs. The enforcement of fundamental rights enshrined in the Constitution of 1973 is not possible without rule of law and access to justice through strong judicial system. This paper is intended to analyze the fact and statistics which are available on the international data sites, to establish the current situation of rule of law in our country. The information about Pakistan has also been compared with that of other selected countries to observe the recent status of Pakistan among them. The required information has been collected using qualitative research methodology which was then compared and explained through descriptive approach. The research also helped in exploring the impacts of this rule of law situation and limited administration of justice, referring to the major causes responsible for it, ending the study with a solid conclusion that justice is a myth in our country and needed to be brought to reality by taking revolutionary and reformative measures.

Key Words: Access to Justice, Rule of Law, Fundamental Rights, AI-integration, ADR & ODR, Legal Reforms, Resilience, Crime rate, Safety Index, Pakistan.

INTRODUCTION

The provision of justice, or at least a measure of justice, is considered one of the hallmarks of a functioning state (Dawn, 2021). An independent judiciary is vital to the rule of law and ensuring rights of citizens, resisting undue influence, promoting equality and providing efficacious remedies to the problems of people (Satterthwaite, 2023). Access to justice is the basic principle of the rule of law. Every state deems its foremost duty to provide easy, fair, effective, non-discriminatory and prompt services to its citizens to promote accessible (United Nations, 2024).

Struggle for justice is the dilemma of almost every society and at all the times of mankind. As expounded in (Life Point, 2018) there is a paraphrase of ancient Greek proverb that “the wheels of justice turn slowly, but they grind exceedingly fine” which is said to be referred by a Greek biographer Plutarch in the first century AD when he made the complaint by saying:

“Thus, I do not see what use there is in those mills of the gods said to grind so late as to render

punishment hard to be recognized, and to make wickedness fearless”.

The first part of the Greek proverb quoted above best describes the judicial system of Pakistan which is running unexpectedly slow whereas we are far from achieving the second half of this reassuring dictum because justice is not being served in the country as it ought to be (Dawn, 2021). Most of the litigants get disappointed due to endless delays, umpteenth rounds of the courts and mounting legal expenses and the situation is getting worse than to get improved (Dawn, 2021).

The objective of this research is to observe the detrimental impacts of delayed justice in Pakistan, which have been identified by the researchers and are available through previous literature. An attempt has been made to highlight the challenging situation of justice administration of Pakistan at national and international level by providing factual and statistical evidence basing on the information collected from the official websites of various organizations round the globe. Qualitative research methodology has been used for this study

and the data has been collected from various primary and secondary sources available online as well as in libraries. The research has been concluded by providing solution to achieve the desired outcomes of efficacious, fair and prompt justice. It is expected that it would be a great contribution towards bringing significant digital reforms in the judicial system for providing swift relief to the litigants.

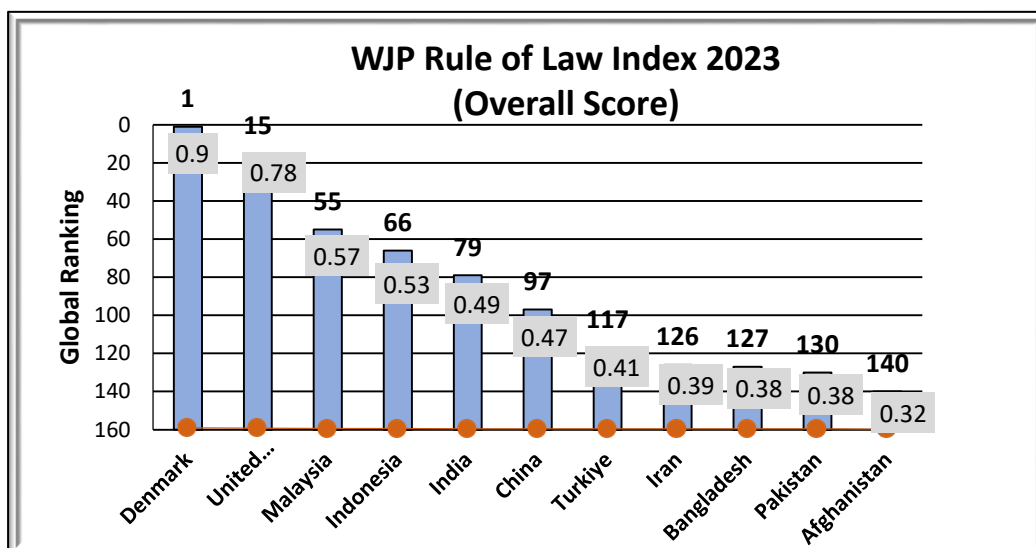
Justice Served or Denied in Pakistan: Factual and Statistical Analysis

The legal System of Pakistan has been inherited from the British Legal System and is characterized by the four separable sets of laws including 1) British-based law or Common Law which provides the basis of the penal laws, civil laws and criminals and relevant procedures since the time of inception of Pakistan in 1947 and can be dated back to colonial era (Kureshy, 2024); 2) Islamic law or Shari’ah law which includes Islamic injunctions according to the Holy Qur’an and Sunnah; 3) tribal law, which are applied in certain tribally administered areas; and 4) state laws, which have been codified by the state itself (Facts and Details, 2019).

The Constitution of Pakistan, 1973 guarantees independence of judiciary and the rule of law. The

justice system of Pakistan is three-tiered consisting of the lower courts, high courts and the Supreme Court (Facts and Details, 2019). There is also a Federal Islamic or Shari’ah Court which is a constitutional court and ensures the consistency of the laws and judicial approaches in accordance with the Islamic Law (Hussain, 2015). There are also the tribunals, small causes courts, labour courts, banking courts, family courts, commercial courts, anti-terrorism courts, traffic courts, drug courts, tax tribunals, military courts, accountability bureau etc so that the swift justice may be provided to the people without delay (Hussain, 2015).

Unfortunately, despite of having strong legal framework and judicial system, Pakistan’s justice system has been daunted by an endemic lack of capacity to administer justice as the citizens often find themselves hedged in by a number of institutional and social obstacles in trying to access the police and courts (Malik I. , 2023). According to the World Justice Project report of 2023 the overall global score of Pakistan for the rule of law is 0.38 and its Global Rank is 130 out of 142 countries whereas it stands at position 5 amongst 6 states in Regional Ranking (World Justice Project, 2023).



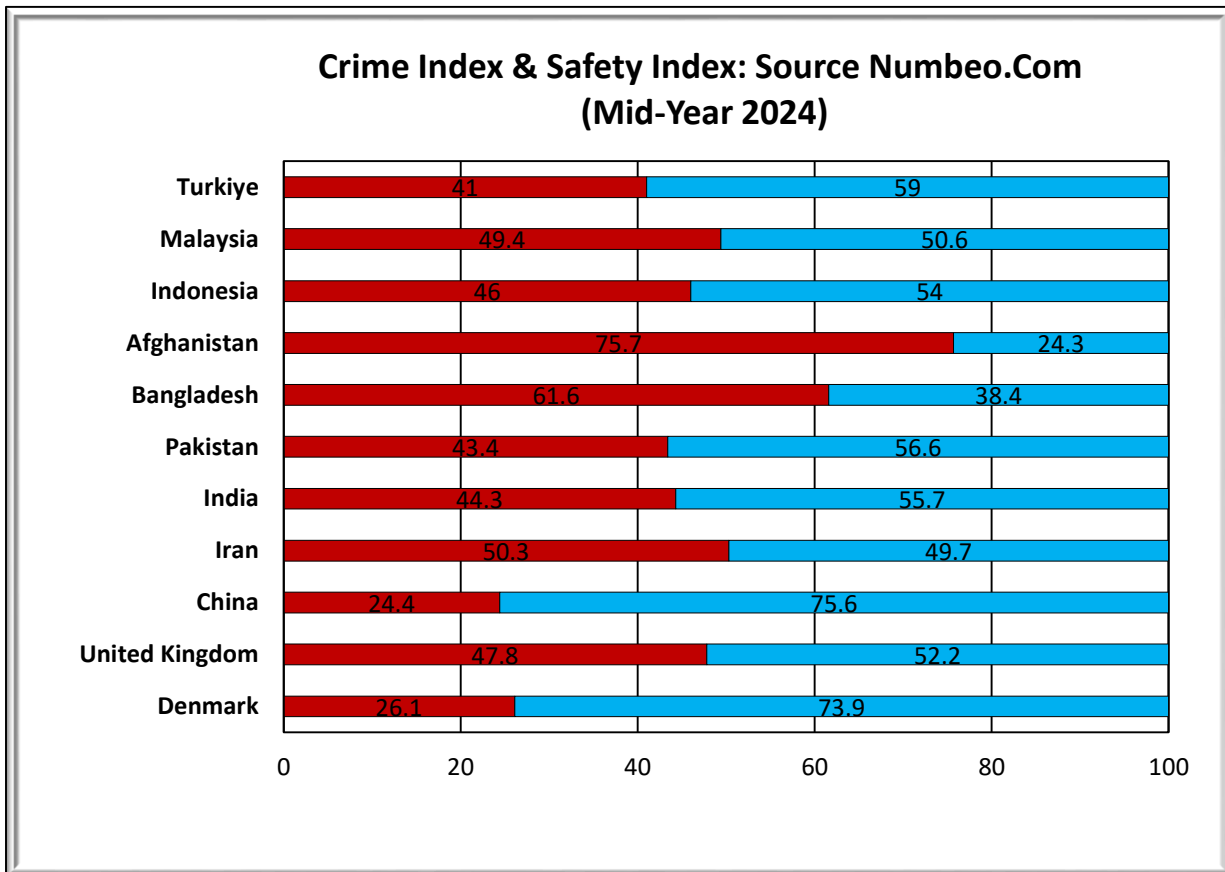
Source: (World Justice Project, 2023)

The graph is indicating the WJP Rule of Law global ranking and the overall score on the basis of evaluation of previously mentioned 7 indicators. According to the 2023 report Denmark is at rank 1

with 0.90 overall score, the UK ranks at number 15 with the score of 0.78, Malaysia is at 55 with 0.57 score, Indonesia is at 66 with 0.53 score, India is at 79 with 0.49 score, China is at 97 with 0.47 score, Turkiye is at 117 with 0.41 score, Iran is at 126

with 0.39 score Bangladesh is at 127 with 0.38 score, Pakistan is at 130 with 0.38 score and Afghanistan is at 140 with 0.32 score. The details about the rule of law are depicting a very

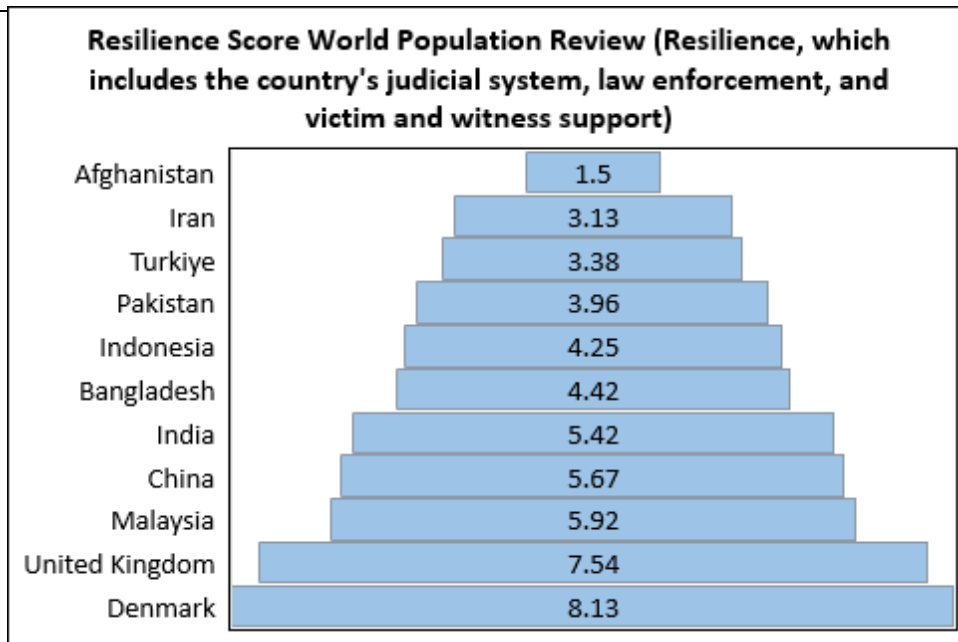
disappointing situation of rule of law in Pakistan as it is at the second last number in this list even the situation of many other developing countries is far better.



Source: (Numbeo, 2024)

According to the information provided at the (Numbeo, 2024) crime index and safety index position of Pakistan is also not as satisfactory as it should be. The description and statistics provided in the graph reflect that the crime rate in Pakistan is 43.4 % whereas the safety index is 56.6. Although, the situation of Pakistan is much better than many other developing countries, Muslim countries, and neighbouring countries but it should be improved much more due to its geo-political and

socio-economic importance in the region of South Asia and the world as a whole as it is providing access for China-Pakistan Economic Corridor (CPEC), which is being anticipated as the most important trade route for socio-economic progress world-wide. It is an admitted fact that the prompt and effective justice under the shelter of the rule of law and independent judiciary harnesses the ways to secured environment for transportation, communication, and international business by attracting Foreign Direct Investment (FDI).



Source: (World Population Review, 2023)

Resilience is the tendency of individuals to deal with the adversity or disaster caused by a man or nature and at the same time it is the ability of a system to deal with threats to its functioning, survival or further development (Godor & Hallen, 2021). Resilience score provided on the World Population Review provides evaluated information about the resilience of a country's judicial system, law enforcement, and victim and witness support (World Population Review, 2023). The resilience situation of a few of the countries along with Pakistan, on the basis of information depicted by the figure above, indicates that the Pakistan is the 4th last country among these with the lowest resilience score of 3.96 only. The resilience score of Denmark is the highest with the value of 8.13 and it also holds global rank 1 for rule of law index. The difference is clearly describing the poor resilience situation of the country and weak position of rule of law due to defective judicial system, poor law enforcement, and lack of victim witness support.

Conviction rate in Pakistan is also very poor which has been reported 8.66% only by the Pakistan Institute of Legislative Development and Transparency (PILDAT) which is significantly lower than the neighbouring countries (Burfat, 2024) including India's at 50% (The Economic Times, 2023), and China's at 99.96% in 2018 (Yanchao, 2020). Defective criminal investigation is one of the major causes for denial of criminal

justice in Pakistan, along with many others including political pressure, backlog of cases, insufficient judicial machinery, lack of legal aid and protection to victim and witnesses and outdated laws (Rauf, Saeed, & Zahid, 2021). Different types of cases are increasing the overall crime rate in Pakistan particularly the heinous crimes including murder, burglary, violence and sexual assault and rape cases. Rape myth acceptance by police is the root cause of dangerously increasing sexual assault cases 90% of which remain unreported with 3% conviction rate in 10% of the incidents which are reported (Zahid & Rauf, 2021).

Inaccessible or far-flung courts, high litigations, professional and travelling expenses, legitimacy concerns including pervasive corruption, harassment, unfair treatment and/or ineffectiveness (Jackson, Asif, Bradford, & Zakar, 2014), clientelism (Shami, 2022), limited access to legal aid, political interference and backlogged cases (Humayun, 2023) are few of the major barriers to accessing justice in Pakistan. Backlog of cases is considered to be the most serious issue needed to be addressed at present with swift reforms, which is due to lack of technological advancements, insufficiency of infrastructure, poor administrative facilities and judicial machinery far lesser than required which is raising a question on rule of law and access to justice (Rauf, Saeed, & Zahid, 2021). The report issued by the Law and Justice Commission of Pakistan for the period from July to

December revealed that the overall pendency of cases has increased by 3.9%, reaching a staggering 2.26 million cases with 82% cases (1.86 million) at the district judiciary level and remaining 18% (0.39 million) at the upper tier, including the Supreme Court, federal Shariat Court and the High Courts of the country (Dawn, 2024). Due to delayed administration of justice the backlog of cases is hitting all the times high with 54,965 pending cases only in the apex court as of June, 2023 which is the highest level of pendency since the creation of the country in 1947 (Malik, 2023). A quarterly report issued by the Supreme Court of Pakistan revealed that the number of pending cases has become more than doubled in last 10 years. The backlog of SC cases is increasing at the rate of 18% (Abbasi, 2024).

Impacts of Delayed Justice

Access to justice and right to fair trial have been enshrined in all the constitutions and international covenants. Being an Islamic State, our constitution also provides for the security of person and property of every citizens and protection of their fundamental rights by the rule of law through independent judiciary following the injunctions of the Holy Qur'an and Sunnah (Constitution, 1973). However, the right to speedy justice is hampered by the unjustified and inordinate delays in disposing of the matters by the judicial system of the country due to several reasons discussed in previous researches (Ali & Hassan, An Evaluation of Pending Cases in the Judiciary of Pakistan: Figures and Statistics, 2022). This research paper has been structured to analyze whether justice in Pakistan is a myth or reality, and whether it is actually served or not. The facts have been briefly discussed to identify the causes and impacts of delayed justice to find out the probable solutions of the problem in order to take effective measures to expedite the process of access to justice.

1. Violation of Fundamental Rights: Article 10-A of the Constitution of Pakistan (Article 10-A, 1973) and Articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR) (Article 9 & 14, 1966) provide for the right to fair trial which is colloquially referred to as speedy trial or speedy justice. The strong legal system of Pakistan is meant to provide expeditious justice all according to the time-frame provided in the law (National Judicial Policy, 2009). Unfortunately,

the justice is not being served as it ought to be rather it is delayed for a time unnecessarily long. The civil matters take decades to be decided whereas in criminal matters the accused keeps on waiting for several years for the decision of the court regarding allegations against him and at the end either he dies while being in jail without hearing the decision or is simply exonerated. In every situation there is no compensation for the satisfaction of the torture and physical restraint, financial loss, mental agony and sufferings that he and his family bear during this situation. In 2016, the acquittal of Mazhar Hussain, who had already died in prison two years earlier and hence couldn't be around to see justice prevail, took around 12 years since the day he was initially awarded the death penalty (Malik T. , 2018).

2. Psychological and Mental traumas due to unaffordable expenses: Delayed justice is considered as denial of justice which causes psychological distress and emotional trauma to the accused as well as victims and their families, due to financial burden while paying unaffordable professional fees and bearing other litigation expenses, waiting for hours in the court for their turn and ending with adjournment, arriving the courts on the date of hearing and finding about the strike of the advocates, lack of transparency about procedural formalities and delaying tactics on the part of the counsels themselves (Ali & Sadia, 2022). Justice Syed Mansoor Ali Shah identified delays in disposal of cases as the biggest challenge facing the criminal justice system, regretting that the pendency in cases devastates the families and the litigants (Malik, 2023).

3. No Deterrence due to Low Conviction: Delays in administration of justice are detrimental to the society as the objective of causing deterrence by punishing the offender or culprit is compromised. They are either exonerated due to political influence, lack of evidence, benefit of doubt or forced compromise with the opposite party in criminal cases or have to keep on waiting for the decision while being in jail during trial. In civil matters as well, the people bear more amounts of expenses due to delays than the actual claim for which they come to the court to seek help. Such situations encourage the deviants and criminals to commit crimes as they know that in the absence of rule of law and effective judiciary, no one can put them behind the bar or hold them liable.

4. Irreparable losses to the parties due to delays without compensation strategies for false decisions: Financial losses are also caused as a result of delayed justice particularly in the matters where speedy relief is necessary for the enforcement of certain rights of the victim or aggrieved and immediate action is required for preservation of some evidence or protection of property. In most of the civil matters the aggrieved party loses their property through fraudulent act of others just because the delays in receiving injunction order from the court to that effect. Likewise, in criminal matters the biological evidence has more chances of being spoiled due to delayed court orders in criminal matters. There is no compensation mechanism provided by the law of the state to mitigate the sufferings of the aggrieved or victim caused to them due to the faulty justice system.

5. Consequential Recidivism: Recidivism is also a product and consequence of poor administration of justice. The criminals who are kept in jails for a longer period of time during delayed trials have been more often observed to be inclined towards recurring criminal behavior in future as well, due to various reasons including development of rebellious attitude towards state and defective justice system, psychological impact due to societal rejection, labeling and redundancy, peer influence in jails or prisons, encouragement to commit more crimes if the punishment is lesser than their expectation or they falsely get exonerated.

6. Retaliation, hatred and distrust against system resulting in mob justice: Delayed justice also results into retaliation with the development of hatred and distrust among people against the system who start enforcing their rights through mob justice. It causes situations of law and order disturbing the peace of the society. It often ends in commission of more crimes, destruction of properties and infringement of rights of others. Most of the times, people with extreme religious beliefs also get impulsive while alleging someone with Blasphemy and starting public trial of him causing his death in most of the cases without letting law enforcement to interfere in the matter and take it to the court to be decide it on merit after scrutiny of the evidence.

7. Contamination of biological evidence due to delays resulting high acquittal rate: Due to

procedural delays, in most of the criminal cases, the evidence is wasted due to environmental effect, contamination or lack of following required collection and preservation protocols resulting into false exoneration or false conviction of the accused (Rauf, DNA Evidence and its Admissibility in the Criminal Justice System of Pakistan, 2020). It happens due to lack of proper and advanced measures which ought to be taken from the stage of crime scene investigation to forensic analysis and report preparation. Delays in obtaining court orders often have adverse consequences and prove fatal to the cases.

8. Financial burden on state due to remunerations and other expenditures of judicial system without desired outcomes: In Pakistan, there are different scenarios which amount to be responsible for justice delayed or not served. These include prolonged litigation or trial due to procedural delays or over burdened courts, litigation or trial withdrawn or compromised by the parties frustrated due to delays or political influence or biased judges, cases which are indecisively closed due to lack of or insufficient evidence after unnecessary delays. These situations result into heavy financial losses to the state as the whole machinery of judicial system including law enforcement, prosecution, judiciary, prison and probation and parole are working in routine but the desired outcomes are not achieved in the form of administration of justice. Financial burden is on the state in the form of expenses incurred on the payments of remuneration and allowances of official, staff and judges; expenditures on stationary, transport, utilities, infrastructure its maintenance and enhancement and pensions and other emoluments.

9. Detrimental to worldwide reputation of the country: Delays in administration of justice are detrimental to the worldwide reputation of the state. Strong legal institutions can attract more foreign direct investment (FDI) by exhibiting efficiency in law, effective contract enforcement, judicial autonomy and market-oriented regulations as concluded in (Lee, Biglaiser, & Staats, 2014). The study highlighted that the FDI in the developing countries with common law legal system is more than those having civil law or Islamic legal system because the common law legal system is more inclined to promote the rule of law. The researchers demonstrated this fact on the basis

of information collected from the panel data for 114 developing countries from 1970 to 2007 (Lee, Biglaiser, & Staats, 2014).

Conclusion with Recommendations

After analyzing the general facts and basic statistics about the rule of law, crime rate, safety index and resilience about Pakistan, it can be clearly and aptly established that access to justice is more than a myth in our country. The detailed comparison of the prevailing situation of justice system of Pakistan with that of other countries revealed the bitter reality there it is the weakest pillar of our state and its weakness is a continuous danger for the collapse of the other pillars as well, economic growth, social well-being, freedom to live a secure lives, free trade and investment, and worldwide reputation. The developed countries are far ahead in their progress which is primarily due to the rule of law. The neighbouring countries of Pakistan, specially India and China have remarkably better situation of law and order and justice system with their much greater population and much larger territorial limits to administer, in comparison to Pakistan. Even the Muslim countries like Turkiye, Malaysia and Indonesia are providing relief to their citizens in more effective way by ensuring rule of law and administration of justice. After elaborated discussion about the situation of rule of law and judicial system of Pakistan it can be easily concluded that the whole system needs revolutionary transformation in every aspect. For the improvement of the system the following reforms must be brought with immediate effect to protect the country from further disaster and degradation, at societal, national and international level.

Quick Legislative Reforms: Legislative reforms are the dire need of the time in this age of universality and globalization. Outdated British laws are no more of any value to handle the needs and crimes of modern day time. Even the British government had been updating its laws according to the changing requirements of the recent time in a more sustainable way keeping in mind the future needs. We are still using the same inherited patterns of civil, criminal and penal laws with slight amendments which usually create more complications.

Revolutionary Conversion to Advanced Technology and IA-integration: Routine

administrative and procedural formalities must be regulated through installation of advanced technology. In our ever-evolving digital world, rapid technological advancements are transforming the world and changing the human lives in every aspect. Incorporation of Artificial Intelligence (AI) and Machine Learning (ML) are contributing towards well-being of individuals and organizations through their advanced systems, tools, applications and software (Rauf, Rana, Anees, Ashraf, & Sifarish, 2023). Technology has enabled man to complete its routine tasks in unimaginably lesser time through various tools, convenient traveling across the world within hours, treatment of various diseases in more effective and advanced ways thus saving lives, providing education through advanced learning modes, communication beyond borders, making worldwide financial transactions within minutes, and performing surveillance through modern devices addressing security concerns.

Countries all around the world are now integrating AI in legal system to address various issues including tackling emerging challenges in cross-boundary litigations, handling of legal complexities, ensuring proactive advisory services and updates to clients, managing documents and data, conducting legal research and updating all relevant information in the system (Rauf, Rana, Anees, Ashraf, & Sifarish, 2023). Use of AI in legal landscape is not only facilitating the lawyers and judges but also enhancing the clients' satisfaction due to transparency and accessibility during the process of fostering justice. The countries around the world have shifted their working environment to cyberspace due to the cognitive skills exhibited by AI generated programs showing human-like learning, reasoning, self-correction and creativity. Swift administration of justice has been observed through its employment in the legal system. This AI-integration can not only help in providing expeditious judicial relief but also can also support the people by preventing them to manage frequent court visits from far-long and remote areas, cutting down their expenses with more accessible online information and updates about their pending cases, while staying at their homes.

Alternative Dispute Resolution (ADR) & Online Dispute Resolution (ODR): Alternative modes of dispute resolution may also be very beneficial if

introduced in realistic and effective manner keeping in view the international arbitration standards, UNCITRAL Model Law, and other formalities of trans-boundary conflicts involving questions relating to conflict of laws, arbitration clause, jurisdictional clause, arbitral seat, issues of enforcement and recognition of awards and other connected formalities. Pakistan's Arbitration Act of 1940 is completely obsolete now. The new reformed law is under the process of finalization which has been tried to be legislated in line with the UNCITRAL Model Law. many problems can also be resolved through online ADR (ODR) which will not only facilitate the parties from travelling but also will help them in curtailing their expenses and allowing them to focus on other business engagements. People in Pakistan, at domestic level, also try to avail informal modes for dispute resolution e.g. jirga, panchayat etc. where the village headmen try to resolve the dispute without going into the technicalities of the court system. ADR system can be further updated to remove the burden on of the judiciary and to manage the backlog of cases by deciding small and lesser legally technical matters without resorting to the court.

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