

Book Review: Pakistan's Experience with Formal Law: An Alien Justice

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This book ventures to lay bare the long-term history of Pakistan's tryst with formal or Western law up to and including recent attempts at law reform supported by the Asian Development Bank, the USAID and others. The author is fit for his ambitious project. As a consultant repeatedly engaged in reform projects, Osama Siddique has gained an insider's view of what he refers to as the "reform club", i.e. the circle of people who conceptualize, fund and monitor legal reform. The author also builds on his experience as a lawyer in appellate courts in Pakistan and in the USA. Thirdly, Siddique draws on his wide readings in the legal history of South Asia and on his interactions with sociologically inclined legal scholars in the USA, where he did his doctoral work under Duncan Kennedy at the Harvard Law School. The result is an impressive work, which is analytically powerful, empirically rich, and highly critical of the ongoing projects in which Siddique has himself participated. The author does not compare the process of legal reform with other reform processes, structural adjustments or innovative experiments taking place in Pakistan with or without international development assistance. Hence, the book does not allow us to judge whether reform in the legal sector has been more of a failure than reform in other areas. The author also refrains from taking a close look at what appears to me to be the most pressing alternative to formal law in Pakistan, i.e. Islamist justice. Siddique's attention is not on the sharia until in the end of the book, where he discusses the rebellion in Swat. He only fleetingly discusses Afghanistan in the text, and the country does not even figure in the index. Had Siddique's focus been on Islamism and tribal law-ways, the book might have been more charitable towards what has survived of formal law in Pakistan. The mere fact that formal state law has been able to hold on to its domain in spite of Taliban's attempts to extend its rustic form of sharia justice, could be taken as a confirmation of the basic strength of formal law. Among Pakistan's neighbors, it is India, which attracts Siddique's attention. The two countries share a colonial legal history, and they have a surprisingly large part of their post-colonial legal history in common, too. However, they differ as regards the ability of religious law and of martial law to threaten and undermine the liberal legacy.

The Introduction of the book provides a “broad snapshot” of Pakistan, which takes us back to the time of those who created the formal law in British India. Were those early reformers to rise from the dead and visit a court compound today, they would recognize much of what they saw, Siddique observes.

Chapter 1 is an incisive discussion of the “narratives of colonial displacement.” Rehearsing and elaborating on the discussions started by BS Cohn and others, Siddique distinguishes three views on the transition from Mughal to British rule, and on the displacement of Muslim criminal justice. In Chapter 2, the author jumps straight from the nineteenth century to an analysis of law as practiced in 2010-11 in the Lahore districts courts as revealed by a large survey of 440 more or less randomly selected litigants undertaken by Siddique and his team of students. The sample appears somewhat hazy in terms of ethnicity and caste, and even in terms of class (pp. 114-5). Nevertheless, it graphically portrays the “uneven playing fields” that the less fortunate litigants experience. Thus, the survey reveals that two-third of the rural litigants have experienced coercion, typically as threats of violence or as actual violence by their legal opponents (p. 129). As for the court language, more than half the litigants stated they were unable to understand court proceedings and legal texts, because these are largely in English. More surprisingly perhaps, almost half the respondents were unable to understand the technical Urdu used in courts proceedings (p. 139). While a number of litigants declined to answer questions relating to the judges, about one-third expressed doubts about the impartiality and integrity of the judges (p. 143). Not surprisingly, many litigants expressed preference for alternative fora of dispute settlement. They listed their preferences in the following order: family, neighborhood, caste, panchayat, local influential people, local large landholder, and lastly the local bureaucracy as preferred forum for conflict resolution (p. 173). The survey does not report any preferences for sharia courts of various ilk. One wonders whether the survey offered the respondents this option.

Chapter 3 broadens the scope from Lahore to the Punjab as a whole where some 2,108 households were asked about their perception of criminal justice. Their answers revealed a general sense of insecurity. Security was not primarily sought in state institutions. Instead, people put their faith in “personal influence”, “influential relatives”, “not falling foul of criminals or local powerful people”, and on “having male children”! (p. 195). Chapter 4 reviews law reform approaches in Pakistan spanning from Zia-ul-Haq’s Islamization drive on the one hand to the Pakistani form of Public Interest Litigation on the other. Notably, Siddique holds Public Interest Litigation responsible for judicial overreach and populism. In substance, his critique is not unlike Upendra Baxi’s critique of reform attempts in

India. Baxi formulated his critique already in the 1980s. Perhaps, Siddique could have relied more on recent sources relating to India (pp. 253-5).

Chapter 4 serves as an introduction to chapters 5 in which Siddique gives the reader privileged access to the Asian Development Bank (ADB) sponsored “Access to Justice Program” which was implemented between 1998 and 2010. This program “remains to date the largest externally funded justice sector reform program in the world” (p. 263) costing around \$350 million. The program had a large infrastructure improvement component, but apart from building better court houses, it largely aimed at making justice more accessible by “delay reduction in courts” (p. 263; p. 331, note 187). To evaluate the program, Siddique interviewed around fifty independent experts, reform consultants, donor organization officers, government officials, as well as judges and lawyers. Most of these interviews were conducted when he was a short-term consultant on these very projects (p. 271). This raises the question of the status of expert knowledge. In the UK this issue was raised by David Mosse’s book *Cultivating Development* in which Mosse similarly redeployed the knowledge he had gained as a consultant for critical academic purposes. Although some of the stakeholders agreed with Mosse’s conclusions and consented to the publication of his work, others did not (see Devi Shridhar’s review of Mosse’s book in *Anthropology Today* 21, 6, 2005). In the Introduction, Siddique dares the reader to sue him for his work. This shows that he knows he is on thin ice, but that does not prevent him from spilling the beans in later chapters. His justification for doing so is his conviction that legal reform should not be decided behind closed doors by an unaccountable “reform club”, but by the wider circle of legitimate stakeholders.

The reform process led to some remarkable results. The number of female judges increased from 85 to 171 and the salaries of judges increased threefold. However, there were many flaws. While alternative dispute resolution mechanisms were created, the courts did not refer any cases to them. While it was decided that key laws were to be translated into simple Urdu, this was not done. Centers of excellence in legal education were to be established, but they were not. Importantly, the judicial process was to be accelerated by bringing the benches in various courts up to their full, sanctioned strength, but even if that were to happen every judge at the Supreme Court would still have 1,120 cases to decide upon, while every judge in the Lahore High Court would have 1,411 cases to deal with (p. 306). The ADB-funded program was mostly implemented during Pervez Musharraf’s rule when terrorism in Pakistan had not yet turned inwards to the same degree as it did after Musharraf lost power. Hence, the project was carried out at a slower pace, which allowed the project authorities to ensure what they called “full compliance” with the 64 policy actions laid down. This situation changed and in Chapter 6 called

“Reform nirvanas and reality checks”, Siddique paints a dramatic picture of the situation in Aidland after the Taliban started attacking the Valley of Swat in earnest. Thus, the reader learns about the “subtle institutional and individual political biases, agendas, blind spots, and idiosyncrasies that characterize important players in the reform discourse and process...” (p. 341).

In 2010, the USAID started working on a program worth \$90 million to “Strengthen the Judiciary to Achieve Progress in Judicial Efficiency, Transparency, Accessibility, Independence and Accountability” (p. 342). The program was shelved but it was followed up by “Local Court Efficiency Assessment Program”. Along the way, differences widened between the donors and the Pakistani lawyers, who were mobilizing against the government at that time. Differences also developed between the judiciary of the Khyber Pakhtunkwa province and the USAID wanting to focus on the Valley of Swat which the judiciary rightly considered atypical of the province as a whole (p. 349). As the goals of judicial reform were merged with the war on terror, local consultants were charged with studying out-of-bounds detention centers and to propose legal and constitutional amendments to handle the situation in Swat. The local consultants – including Siddique - were not inclined to venture that far and pointed out that this could cause a diplomatic row (p. 357, note 33). The project folded, but it was followed by the “ADB Post-Conflict Needs Assessment of FATA, PATA, and Khyber Pakhtunkwa” (the ADB PCNA). The period of two weeks allotted for collecting data for this difficult assessment was too short, and it was made even more unrealistic by the highly complex institutional setup embedding the project. Lawyers are generally considered tough people able to swallow a lot, but it seems Siddique was in for more than he could stomach (p. 368, note 60). As his team faced impossible deadlines, it was to allocate time for mandatory sessions with a “Conflict Sensitivity Advisor”, a “Gender Sensitivity Advisor”, and a “Development Deficit Assessment Expert” saying nothing which was not already stated in the Terms of Reference (p. 370). Finally, the “Results Expert” would descend upon the team. “It was the almost fanatical quibbling over mostly pointless details that diabolically sucked the soul and marrow out of the entire endeavor”, Siddique concludes (p. 373). The ADB PCNA also petered out and was followed by other initiatives during which Siddique actually visited detention centers (p. 394, note 124) and spoke to a sensible person acting as the Anti-Terrorist Court Judge in Swat, “arguably conducting one of the most dangerous jobs in Swat, if not the country” (p. 393).

In his final chapter, Siddique sums up the existing approach to reform: He finds it too narrow and summarizes his wider and deeper approach to reform, which would focus on “the adequacy of the existing court structure and its ambit; a review of the process through

which judges are appointed, evaluated, and held accountable for their performance; a qualitative review of the judicial function and output; a more drastic review of procedural law and legal processes; and, finally, more meaningful and deeper legislation directed at substantive law reform, in order to address legal persecution and misuse of legal remedies” (p. 423).

Altogether Siddique’s analyses and prescriptions appear relevant to legal reform of the formal law inherited from the colonial period and insufficiently revised since then. Siddique is evidently inspired by Indian attempts at law reform, but Pakistan is confronted not only with a colonial legacy in need of reform, but also with a range of problems arising after 1947. Though Siddique’s canvas is very large, it does not cover all that should be covered.