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**[Judicial reforms and economic growth](http://tribune.com.pk/story/350937/judicial-reforms-and-economic-growth/)**

Bankin­g system cannot simply work if willfu­l defaul­ters obtain stay orders from courts and bank loans remain stuck.

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Growth rates in Pakistan since 2008 have declined to almost half of the level achieved in the preceding four years. The investment ratio in 2010-11 has been the [lowest in the history of Pakistan](http://tribune.com.pk/story/337103/july-january-foreign-investment-falls-64/). Most of the discussion on the stagnation and decline of the economy has rightly focused on fiscal deficits, energy shortages, inflation, and high interest rates. But the relationship between the rule of law and investment and business development is not much talked about in popular discourse. In the absence of a conducive legal environment, uncertainties created by other factors such as political instability, security, law and order, energy, etc., would make matters worse. But a well-functioning judicial system can reassure the investor and act as a countervailing force to these other negative attributes. [An investor will part with his financial savings and share his expertise and experience only when he is assured that the firm will make profits](http://tribune.com.pk/story/309465/sharif-tries-to-woo-businessmen-with-promise-of-tax-cut/). To achieve this, non-discriminatory and impartial application of law, enforcement of contracts, protection of property rights and speedy disposal of cases are necessary.

The recent judicial activism and suo motu actions by the Supreme Court and High Courts have done a [great deal of good in establishing a new equilibrium between the Executive, Parliament and the Judiciary](http://tribune.com.pk/story/306038/a-step-too-far/). This movement while commendable, should not distract the attention from the more mundane tasks of (i) ensuring broad based access to justice; (ii) revision of outdated procedures and laws; (iii) use of modern technology in case management; (iv) encouragement of Alternative Dispute Resolution (ADR) mechanisms, (v) tracking and enforcement of National Judicial Policy 2009; (vi) directing the Special Courts and Tribunals to abide by the deadlines for the disposal of cases. These measures will have a more lasting impact on the economic governance of the country and help remove some of the obstacles in the way of investment and equitable economic growth.

Access to judiciary is limited to only those who can afford good lawyers and pay their enormous fees and expenses. Unequal access to justice is one of the main factors that perpetuates the patronage capacity of politicians and, in turn, leads to poor economic governance. Feudalistic ethos that pervades our governance structure cannot be altered until all citizens are treated equally by law. Today, it is only the rich who can manipulate the system to their advantage.

The laws governing economic transaction, such as the Contract Act, the Evidence Act, the Registration Act, the Transfer of Property Act, and the Stamp Code, were made in the 19th or 20th century. They are not only deficient, defective and outdated but in some instances their applicability is limited. The most important law that needs updating is the Land Revenue Act to make it more germane to the modern demands. Land use for industrial, commercial and agricultural purposes is critical to the production of goods and service. Land disputes on title and possession in both, urban and rural areas, form the bulk of civil litigation at the local levels with appeals escalating all the way to the Supreme Court. The process of adjudication is not only tedious, cumbersome, expensive but time consuming. Transparency of land sales through clear land titles and market-based transactions would reduce the volume of litigation and promote efficient use of land — both urban and rural.

[Case load](http://www.google.com/url?q=http://tribune.com.pk/story/138303/resource-constraints-consumer-rights-will-have-to-wait/&sa=U&ei=h4NjT8-bNO6SiQecw42EDg&ved=0CAwQFjAE&client=internal-uds-cse&usg=AFQjCNHwRGW87i3BAu0yCtYjO6jXUewkvw) management in our courts, particularly at the lower level is ridden with inefficiencies. For the last decade, an attempt is being made to manage the load through a transparent computerised system but the results have been sporadic. Unless the top judicial leadership assigns a strict deadline, there is little chance that it will be completed. Rigorous supervision of the lower courts and taking penal actions against non-performers and rewarding those who are quick and fair in disposal of cases should be institutionalised.

While we all rightly criticise the informal jirgas, sardari practices and Qazi Courts, the fact remains that we have been unable to extract the essential ingredients of these informal systems and enrich the formal legal systems. The uprising in Malakand Division was inspired by the mullahs who contrasted the speedy and expeditious justice of the Shariah Courts in the days of Wali of Swat, with the established judicial system applied in the area since the merger of Malakand in the province of Khyber-Pakhtunkhwa. The Federal Board of Revenue had implemented an Alternative Dispute Resolution mechanism until 2008. As soon as the new government took power it abolished the mechanism rather than fixing its defects and weaknesses to make it more effective. Small Causes Courts and properly functioning village level Masalahit Committees and other means of ADR can take a lot of load off the present congestion in our courts and also provide access to justice at very little cost.

A ray of hope appeared in 2009, when the [National Judicial Policy](http://www.google.com/url?q=http://tribune.com.pk/story/331175/root-and-branch-reforms-needed/&sa=U&ei=JYRjT4OsMoGXiAfk_8nZBQ&ved=0CAQQFjAA&client=internal-uds-cse&usg=AFQjCNHyyZnyJoAjY-g3bbDOVlSkJVzvIg) (NJP) was announced. The policy made some very radical pronouncements such as that cases relating to banking and different taxes and duties such as income tax, property tax, etc., should be decided within six months. All stay matters should be decided within 15 days of grant of interim injunction. Rent cases should be decided within four months in trial courts and appeals within two months. Cases regarding suits upon bill of exchange, hundies or promissory notes should be decided through summary procedure within 90 days.

The banking system cannot simply work if willful defaulters obtain stay orders from the courts and bank loans remain stuck. Even where the courts have decided cases in favour of the lenders, the execution of decree takes a long time. The same is the case with income tax, sales tax, and customs pendency. Special Courts are either without judges or some of their judges do not have full competence over the specialised laws and regulations. The cases are adjourned and remain undecided for decades. The NJP should involve a more proactive monitoring mechanism.

As one of the leading Pakistani lawyers has so aptly commented that the English model –– on which the [Code of Civil Procedures](https://docs.google.com/viewer?a=v&q=cache:7yAbOzGebLEJ:www.pakistansocietyofcriminology.com/Admin/laws/CodeofCivilProcedure.doc+&hl=en&gl=pk&pid=bl&srcid=ADGEESjIKHcxgunkITZZ95rCMgbhzwPcQQna4-K4AlQWSlQFbfVS6oEBLwClNoNypU_BEka09dwcusQnupGpyhvNKjtGDFX-bwfeepkryQGwAY73skqObG9KIvXUweXvu9YKINMbHGd0&sig=AHIEtbT4btd7YsvbAGir4zLOIRnqtrz3EQ) (CPC) 1908 was based –– was discarded even in England, a long time ago. The English model “preferred form over substance on account of this fundamental flaw, litigations continue in Pakistan for decades while lawyers squabble over issues of virtually no consequence. In each litigation there is a lawyer seeking justice for his client and an opposing lawyer who will very successfully prolong and delay the litigation, while liberally drawing upon various dilatory provision of CPC. Knock outs on the basis of hyper-technicalities and the causing of abnormal delays are, in fact, appreciated and considered ‘assets’ and ‘qualities’ of astute lawyers.”

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