



Public Grievance Redress



Laws, Procedures & Mechanisms in Pakistan

Public Grievance Redress Laws, Procedures & Mechanisms in Pakistan

The State shall ensure inexpensive and expeditious justice

Article 37 (d) of the Constitution of Pakistan

Insaaf Series

TheNetwork Publications

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Preface

The crisis of governance in Pakistan is multi-dimensional and complex. Issues confronting citizens - from everyday administrative matters, such as basic services, to citizens' rights under a democratic dispensation, to underlying structural inequities of resource distribution - are manifold and impinge on the social fabric in a manner that can enable or disable social development and poverty alleviation efforts. And the situation shows no signs of improving.

One critical reason for the alarming status is the lack of trust of the citizenry in the system of justice - constitutional, criminal, civil and administrative. Without a basic trust in the state's position as final arbiter and underwriter of justice, citizen-citizen and citizen-state relations break down, as does the social contract holding a democratic state together. The Pakistani state has proven itself unable to restore the fractured social contract. That is partly because the social contract that constitutes a state relies, in no small part, on the active adoption by the state of certain collective responsibilities, including good governance and the provision of justice. Citizens are therefore 'consumers' of justice provided by the state, even though they are not 'customers' of justice in the marketplace. And, as consumers of justice they have certain rights that need to be protected and promoted. The recognition and exercise of rights is a fundamental requirement for a democracy.

In Pakistan, the recognition of the rights of consumers vis-à-vis justice is far from automatic. Rather, it must be *demand*ed by an informed and active citizenry if the provision of justice is to be reliable and equitable. While efforts to reform the justice sector continue apace, from frequent if meager resource allocations to infrastructural improvements to legislation, these are all focused on correcting the *supply* side of justice. However, the problems confronting the citizenry are not abating, nor are the policy measures being translated into relief for citizens: witness the growing rate of crime, increase in red tape, delay in decisions of courts, rising costs of legal aid, reports of corruption and excessive use of authority by officials, and a jump in the complaints lodged by citizens on administrative matters.

A critical problem, therefore, is that citizen-consumers are not engaging with the state to *demand* access to justice, to hold public officials accountable, to obtain redress for their grievances, to create a litigation environment conducive to blind justice, and so on. It is in this context that TheNetwork for Consumer Protection, a civil society organization, undertook to bridge this gap between citizens and the state, and help empower the citizenry, by providing information and facilitating platforms of engagement. TheNetwork's initiative includes a series of issue papers, a monthly newsletter on critical issues related to consumers' access to justice, a series of policy meetings, and a website providing basic information to citizens and facilitating their complaints on justice matters (www.insaaf.org.pk).

This is the second paper under the *Insaaf Series*, and focuses on *Public Grievance Redress Laws, Procedures and Mechanisms in Pakistan*. The paper is intended to generate an informed debate on the issue within and outside the government, and stems from the realization that public bodies including service providers need to be adequately responsive to citizen-consumer needs and fully accountable in the course of their performance. It has been prepared by TheNetwork, with extensive working by Hafiz Aziz-ur-Rehman, under the able guidance of the series editor, Raja Ehsan Aziz. I wish to thank the Asian Development Bank for extending the support to bring out this publication.

Ali Qadir
Executive Coordinator
TheNetwork for Consumer Protection

Public Grievance Redress Laws, Procedures and Mechanisms in Pakistan

1. Introduction

Right to petition the government or a public authority for grievance - both individual and collective - is historically and universally recognized, across different traditions, as an inalienable and fundamental human right. Likewise, public grievance redress is widely recognized as a basic right of every citizen-consumer and which lies at the core of citizen-state relationship. Many contemporary international instruments as well as national constitutions and legal proclamations enshrine these rights. This obligates public officials as 'servants' of the community/nation to take citizens' complaints seriously, and to respond promptly and positively. Yet people in Pakistan and elsewhere experience bureaucratic indifference on the part of institutions that are created to serve them, and public officials not bothering to reply or even acknowledge their communications.

Public grievance redress (PGR) laws, procedures and mechanisms are an essential part of any administrative machinery of a state to address citizens' problems and complaints relating to performance of government departments and agencies affecting their everyday life, and which are responsible for providing various services to the people. No public authority can claim to be responsive, accountable and user-friendly unless it has an efficient and effective citizens' grievance redress system in place. PGR mechanisms are an important measure of an organization's strength and provide valuable feedback on the working of public institutions, which are established in order to meet the various needs and demands of citizens-consumers.

PGR is an important aspect of citizens' fundamental right of access to justice whereby their grievances pertaining to goods, services and practices are adequately addressed. Moreover, justice is a public good and a basic social service that the state is obliged to deliver to all citizens and even non-citizens within its jurisdiction. There is a close linkage between social well-being and economic growth of citizens, and the manner in which justice system addresses their grievances and provides them protection against abuse of state authority. PGR also has a direct impact on poverty by ensuring that public entitlements reach out to the poor and needy.

In the case of Pakistan, effective PGR must respond to not just a large population but also citizenry that is in large measure illiterate, and has little

“ Right to petition the government or a public authority for grievance - both individual and collective - is universally recognized as an inalienable and fundamental human right.”

social and financial capital at its disposal. PGR must therefore proactively reach out to the ordinary citizen and beyond to the impoverished, marginalized and vulnerable segments of the society. Indeed, the critical test for the state and the justice sector in Pakistan is to ensure that those most needy are provided for and their grievances adequately redressed.

Non-redress of public grievances can have many negative social, economic and political consequences. Neglect of citizens' needs because of unresponsive state institutions and lack of accountability will inevitably result in public discontent and social unrest. It could even lead to political instability, erosion of state legitimacy, and institutional collapse. The absence of PGR seriously undermines productivity, aggravates poverty, and promotes nepotism, corruption and injustice. The ensuing situation sets the stage for social disorder, lawlessness and violence.

Among the most common public grievances in Pakistan are the long bureaucratic delays, of months and even years, on the part of various government departments and public bodies in taking decisions and releasing essential information being withheld from citizens-consumers, which they need to effectively pursue their everyday problems. Often, archaic rules, regulations, and instructions sustain departmental

incompetence and inaction, shifting the burden of work, including wastage of precious time and resources, on to helpless citizens. Weak administration, low service morale, indifference to work, lack of incentives, and absence of accountability breed inefficiency, delay and corruption in the public sector. The resulting situation contributes to mounting public grievance and increasing citizen-consumer alienation from the state.

Laws in Pakistan are often ill-conceived, defective, outmoded and discriminatory, and the processes involved are cumbersome, slow and expensive. Consequently, most people, particularly the poor, have inadequate and unequal access to justice where their complaints could be routinely addressed. In any case, citizens-consumers in Pakistan tend not to complain against unsatisfactory performance of public bodies for a number of reasons. Consumers who do wish to complain are constrained by generally time-

Box 1: Eight Basic Consumer Rights recognized worldwide, based on UN Guidelines for Consumer Protection 1985-1995 to which Pakistan is a signatory, and the Consumers International (CI) Charter:

- Right to Basic Needs
- Right to Safety
- Right to be Informed
- Right to Choose
- Right to be Heard
- Right to Redress
- Right to Consumer Education
- Right to a Healthy Environment

wasting and costly procedures for complaining and seeking administrative remedies.

One of the eight basic consumer rights recognized worldwide, including through the United Nations Guidelines for Consumer Protection, to which Pakistan is a signatory, is the consumers' right to redress of grievances. Despite the availability of a range of departmental and administrative recourses which are principally designed to address citizens' grievances, a very small proportion of people in Pakistan under the given conditions actually approach these bodies for redress of their grievances. The public often lacks confidence as much as awareness about these institutions/bodies/committees, which in most cases face a credibility problem that needs to be overcome.

PGR cannot be effective without access to information (FOI) and transparency on the part of public institutions. These two elements are an essential prerequisite for PGR, since people need relevant information and also proper understanding of the institutions being complained against to be able to effectively invoke PGR mechanisms. A minimum level of transparency is therefore absolutely imperative for meaningful PGR. Article 137 of the Local Government Ordinance 2001 provides for transparency, yet a culture of secrecy and corruption pervades much of the local government system.

What should be the level of transparency to ensure effective redress of people's grievances? This calls for the need to establish appropriate benchmarks. Of late, monitoring committees have also been proliferating to facilitate PGR. But without access to information, such committees have little to contribute.

In light of the points touched above, Pakistan is faced with a formidable challenge in terms of PGR. This brief study is therefore intended to provide a broad but critical understanding of the present state of public grievance redress (PGR) in Pakistan in order to generate an informed discussion and debate on an area of basic concern to citizens-consumers in the country, but which thus far remains grossly understudied and underdeveloped.

The paper presents an overview of the state of public grievance redress (PGR) in Pakistan. It seeks to identify major gaps and shortcomings in the existing public grievance redress mechanisms. It looks into the available avenues of redress such as the police, judiciary and ombudsman, and also briefly discusses alternate PGR models adopted by civil society organizations, Citizens' Charters and Administrative Procedure Law (APL).

“ PGR cannot be effective without access to information (FOI) and transparency on the part of public institutions.”

2. Citizens' Grievances: Scope and Options

The discussion herewith addresses two basic questions in terms of public grievance redress (PGR): What are the options open to citizens-consumers either individually or collectively to register complaints against public bodies in the justice sector and seek redress? What are the venues available to resolve PGR related disputes other than through recourse to courts?

Administrative law should have the means to hold the administration accountable in case of a responsible government, which by definition is a duly accountable government. In this regard, the Canadian Law Reform Commission has noted the various complaints procedures available to the citizen in these words:

““ The large number of grievance redress mechanisms includes adversarial as well as inquisitorial methods.””

Control of administrative action is a function that can be shared among many institutions or type of decision makers. Law and bodies entrusted with law application and creation are primary candidates for organizing control. However a plurality of independent modes, bodies and procedural regimes that reflect the diverse nature of the control function, is called for. For instance, legal control can address jurisdiction only, or question of law; control through an appeal can reach facts and merits of decision. Non-legal control bears not upon the legality of a decision, but upon its regularity, expediency or financial soundness. A legal dispute may involve several parties, or simply an individual and a decision maker. This we call a contentious procedure. It implies adversariness which is treated by following a trial-type procedure. This suitability of that model for all legal controls is questionable. ¹

The large number of grievance redress mechanisms includes adversarial as well as inquisitorial methods. This may involve some form of investigatory function, for example under the jurisdiction of the Ombudsman. Inquisitorial procedures include informal mechanisms for processing of complaints, appointment of tribunals, inquiries, inspectorates, etc. Unlike adjudication of rights in a court, this model is flexible and can adopt innovative modes such as fact-finding and assessments to arrive at certain conclusions. However, this does not deny the importance for the citizen of opportunities to seek legal redress in the courts. Thus an aggrieved citizen can successfully challenge the validity of regulations and administrative actions by a government department/ public body through judicial review in a court of law, besides availing these non-judicial options for redress of his/her grievance.

¹ *Towards a Modern Administrative Law* (Law Reform Commission of Canada), 1987, pp. 23-24.

In Pakistan, there is a range of formal bodies and avenues that are supposed to deal with citizens' complaints. Such bodies have - at least in theory - "specialist grievance" procedures for dealing with complaints arising in particular realms of activity. For example, in case of complaints regarding performance of various public utilities like gas, water, electricity and telecommunications, complaints may be lodged with the relevant utility agency or its regulators. A number of regulatory authorities² have been established in Pakistan in recent years, but most of them have failed to strike a balance between the interests of different stakeholders. Consequently, it is the citizens-consumers at the receiving end who bear the brunt of the service providers' failings and really suffer.

Thus, for example, under NEPRA Performance Standards (Transmission) Rules 2005, "Two years data will be used to set benchmarks which would be monitored for the purposes of fines and penalties"³ against power distribution companies that fail to meet the requisite standards of service. But these companies are granted 4 years of leeway to ensure quality services, and during this grace period penalties cannot be enforced. A consumer suffering poor quality of service in these interim years therefore has effectively no redress, and no enforceable service right. In the circumstances, poor quality of services, inadequate access, excessive billings and ineffective complaint handling procedures have undermined public confidence in these grievance redress mechanisms and procedures.

At least two unsuccessful attempts have been made to introduce a **Public Complaints (Removal of Grievance) Act**⁴ in the country, first in 1992 and then in 2003. Lack of progress on the proposed legislation is indicative of the fact that public grievance redress (PGR) remains low on the order of priority of successive governments despite promises to empower citizenry for their rights. It is also a fact that citizens have seldom demanded their right to administrative justice in the country. Such demands, if forcefully pursued, could lead to the development and actualization of effective channels for public grievance redress.

“ A consumer suffering poor quality of service in these interim years therefore has effectively no redress, and no enforceable service right.”

² For example Pakistan Telecommunication Authority (PTA), Oil & Gas Regulatory Authority (OGRA), National Electric Power Regulatory Authority (NEPRA), Pakistan Electronic Media Regulatory Authority (PEMRA), etc.

³ Rule # 13. See text at <http://www.nepra.org.pk/Standards/PST%202005.htm>

⁴ <http://www.ljcp.gov.pk/reports/report16.htm>

Table 1: Comparative Performance Rating of Regulatory Authorities in the Region						
Country & Sector	Categorization by Criteria					
	Clarity	Autonomy	Participation	Accountability	Transparency	Predictability
Bangladesh						
Electricity	B	B	A	B	A	A
India						
Electricity	B	C	A	B	C	A
Federal Electricity	D	E	E	D	E	B
Orissa Natural Gas	A	A	A	A	C	A
Telecoms	C	D	E	D	E	C
Indonesia						
Natural Gas	A	A	A	A	A	A
Transport	A	A	A	A	A	A
Malaysia						
Telecoms	C	C	C	B	A	A
Transport	C	C	B	B	A	B
Water	C	B	B	B	A	B
Pakistan						
Electricity	C	D	C	C	C	B
Philippines						
Electricity	C	C	C	B	B	C
Water	C	C	C	C	C	B

Source: *Private Interest vs Public Good: Governance Dimensions of Regulatory Frameworks for Private Sector Infrastructure Development*, Proceedings of an ADB/OECD Seminar, Geneva, 28 April 1998. www.adb.org/Documents/conference/Seminar_Governance/Proceedings_RET5758.pdf

3. Existing Public Grievance Redress (PGR) Mechanisms

Almost all government departments and organizations in Pakistan are supposed to have some kind of citizens' grievance redress mechanism in place. These mechanisms are intended to address day-to-day concerns of the people at the departmental level. In some cases dedicated human resource is available for this purpose. There is also a growing tendency, especially in recently established regulatory authorities, to have in-house complaint cells with detailed guidelines and standard operating procedures (SOPs). For instance, PEMRA has constituted a Council of Complaints under formal regulations in 2002.⁵

The justice sector institutions have a number of provisions to carry out internal accountability and address complaints regarding performance of the judiciary. Likewise, there is an elaborate mechanism for both accountability and public grievance redress involving the police, especially under the Police Order 2002 and the Local Government Ordinance 2001. The institution of Ombudsman, first established at the federal level in 1983 to address citizen's grievances against administrative excesses, has now been replicated in the provinces. Finally, the civil society has come up with its own alternate models of public grievance redress in the non-governmental sector. The mechanisms and provisions existing in these various sectors/institutions are briefly discussed below.

(1) Judiciary

The responsibility of ensuring that rule of law is observed and actually enforced falls in practice upon the judicial department of the state. It is the judiciary upon which devolves the task of determining if any transgression of the law has occurred and, if so, of prescribing the necessary remedial action for correcting the wrong done. It is also the duty of the judiciary to review legislative and administrative action in order to ensure that the legislative measures that have been enacted or administrative action taken are in conformity with fundamental rights, constitution and the law. This is also true in cases where a citizen claims that such actions have violated any of

“ It is the judiciary upon which devolves the task of determining if any transgression of the law has occurred and, if so, of prescribing the necessary remedial action for correcting the wrong done.”

⁵ Text at http://www.pemra.gov.pk/Council_regulations.htm. Also see websites of Pakistan Electronic Media Regulatory Authority (PEMRA): <http://www.pemra.gov.pk/legal.htm>; Pakistan Telecommunication Regulatory Authority: <http://www.pta.gov.pk/>; National Electronic Media Regulatory Authority: <http://www.nepra.org.pk/>; and Oil & Gas Regulatory Authority: <http://www.ogra.org.pk> .

Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

Article 14 (2) of the International Covenant on Civil and Political Rights (ICCPR)

Full text:
http://www.unhchr.ch/html/menu3/b/a_ccpr.htm

his/her legal rights. Based on this premise the superior courts not only act as an arbiter (writ jurisdiction⁶) between citizen and the state, but also keep a watch over the acts of the legislature and the executive through judicial and constitutional reviews.

Under Article 37(d) of the Constitution of Pakistan, the provision of inexpensive and expeditious justice is a state obligation. Speedy justice is universally accepted as an important concomitant of the rule of law. Yet inefficiency, delay and corruption in courts are the main problems that an ordinary citizen faces in everyday life. On a regional index of the efficiency of judiciary on a scale of 0 - 10, Pakistan has been rated (5), below Bangladesh (6), Sri Lanka (7) and India (8).⁷

The system does not hold anyone accountable for such delays, and a citizen, as consumer of justice, cannot claim any damages for the time, energy and resources gone into years of litigation. Likewise, nobody is held responsible nor any compensation given to under-trial prisoners for the years spent in custody until they are finally found innocent by the court. An accused being "presumed innocent until proven guilty", even though universally recognized as a fundamental principle in the administration of justice, is often disregarded in Pakistan. In a highly shocking case that recently came to light, Afzal Haider, a 23 years old law student spent 18 years in custody proving 'innocent' in falsely implicated criminal cases at the behest of an SHO interested in his fiancé - until his release from Karachi Central Jail at the age of forty-one in January 2005. No one has been held accountable for wrongfully forfeiting 18 years of his freedom, and his entire youth, that he had to spend behind bars across the country.⁸

Judicial delays have shattered people's faith in the justice system, which they can no longer look upon as the ultimate guardian of their rights and interests. Notably, the existing system does not recognize 'delay' as a justifiable and somehow compensatable public grievance. Such chronic problems in justice sector can only be overcome through overhauling of the entire system. The existing judicial system, nonetheless, seeks to redress some of the citizens' grievances through the following administrative and monitoring mechanisms.

⁶ Article 199 of the Constitution

⁷ Figure 3.8, "How efficient is the judiciary" (Source: Mauro 1995), 'The Crisis of Governance', *Journal of Human Development in South Asia 1999*, The Mahbub ul Haq Human Development Centre, Oxford University Press, Karachi, p. 65.

⁸ Case 3, *Citizens versus State: Public Servant Immunity and Tort Law Reforms in Pakistan*, TheNetwork for Consumer Protection (*Insaaf Series*), Islamabad, May 2005, pp. 13-14 based on serialized account in April 2005 issues of *Jung Sunday Magazine*. See *Tort Law Reforms*: www.insaaf.org.pk

Box 2: Public perception about the courts

- Countrywide 46% of households thought that the courts were there to help them.
- Only 8% of households reported a contact with the courts in the last five years. Contacts were especially infrequent in Sindh (3%) and Balochistan (3%), but relatively higher in Punjab (9%) and in NWFP (8%).
- The great majority of reported court contacts in the last five years were for male household members (92%).
- Nearly half of the households (48%) who reported contact with the courts during last five years said they were satisfied with the way they were treated.
- 'Very vulnerable' households were less likely to have had contact with the courts.
- Only 7% households were aware of the alternative reconciliation committees at union council level.
- 'Very vulnerable' households were less than half as likely to have heard of reconciliation committees compared with less vulnerable households.

Table 2: Reasons why the courts are there to help: %

Reason	Male	Female	Reason	Male	Female
It's their duty	66	61	If you have money	3	2
Helpful/ trustworthy	24	29	If you have connections	2	1
Never contacted	3	3			

Table 3: Reasons why courts are not there to help: %

Reason	Male	Female	Reason	Male	Female
You need money	50	41	Never contacted	6	11
No justice	28	30	Takes too long	8	4
Not helpful	7	11			

Table 4: Reasons for court contact

Reason	Male	Female	Reason	Male	Female
Property rights	47	28	Physical assault	5	2
Domestic dispute	19	51	False custody	3	1
Murder	6	5	Traffic issues	2	1
Robbery	5	0			

Table 5: Reasons for satisfaction with court contact

Reason	%	Reason	%
Got justice	59	Good behaviour	11
Problem solved	18	Court helpful	10

Table 6: Reasons for dissatisfaction with court contact

Reason	%	Reason	%
Payments	41	Made problem worse	17
Took too long	35	Bad behaviour	5

Source: Adapted from National Reconstruction Bureau: *Social audit of governance and delivery of public services*, Baseline survey 2002, National report, CIET (Community Information Empowerment and Training), Islamabad, 2003, pages 55-57 including Tables 19-23 of the CIET report.

<http://balochistan.org.pk/pdf/Pak2002baseline.pdf> dated 12/7/05

(Note: *This nationwide baseline social audit by CIET (with NRB support in federal government) includes survey undertaken in 10 pilot districts in 2001 funded by UNDP and UNESCO and in remaining 87 district in 2002 funded by CIDA. The study involved 57,321 household respondents (half female), besides 751 school heads, 310 government health facilities heads, 757 union nazims, naib nazims and councilors, and 373 male and 364 female focus groups. Some 14% of households in the survey were categorized as 'very vulnerable'. Social audit, CIET, pp. v-xii & p. 5.)*

(a) High Court Monitoring & Inspection Team

A separate branch for monitoring and inspecting the lower judiciary exists within the High Courts through administrative orders, which are basically ad hoc measures and can therefore be scrapped anytime. These ought to be given the cover by law and duly institutionalized. This branch is headed by a High Court Judge, and supported by District and Sessions Judges (DSJs). The High Court Member Inspection Team (MIT) is assisted by Additional MIT and Assistant Registrar.⁹ There are three main responsibilities of this Inspection Team:

- Process complaints against lower judiciary;
- Inspect subordinate courts; and
- Monitor the performance of the lower judiciary.

The District and Sessions Judge (DSJ) is responsible for the district judicial administration. It is the obligation of DSJs to acquaint themselves with the working of the courts subordinate to them, and to take notice of any irregularities committed. Furthermore, they also have powers to inspect reg-

⁹ High Court Rules & Orders (Civil) Vol IV Ch I-G, Part C

Box 3: Social audit methodology

The CIET social audit methodology has been developed over two decades, working in over 40 countries worldwide. The concept of social audit is simple: collect information about public services from people supposed to be served, and from service providers, and use this as a basis for involving the public and service providers in making changes to improve the services. The key steps include:

- Collect information from households in representative communities about their use, experience and perceptions of public services;
- Link this with information from the services themselves; analyse the findings in a way that points to what actions might improve matters;
- Take the findings back to the communities for their views about what could improve the situation;
- Bring the findings and suggestions to discussions between service providers, planners and community representatives to plan and implement changes.

The loop is closed when a repeat fact-finding exercise assesses the changes and their effects.

Source: *Social audit*, CIET report, Islamabad, 2003, p. 7.

isters/records periodically and make observations. While inspecting the subordinate courts, it is also the duty of the inspecting officer to take note of unnecessary adjournments. The Presiding Officer must be initially warned, and if irregularity continues, it must be reported to the High Court. Inspection notes of the inspecting officer are forwarded to the DSJ who, after proper scrutiny, forwards these to the High Court with observations.

According to the *Sindh High Court Annual Report 2003*, for example, all judicial officers in Sindh are appointed under the Sindh Civil Service Act 1973. They fall under Efficiency and Discipline (E & D) Rules in case of any complaint received by the High Court alleging corruption, inefficiency, illegality and/or irregularity. In the first instance, comments are called from the very officer complained against. If any substance is found after examining the complaint and comments, the matter is referred to "competent authority" to serve "show cause notice or charge sheet and by conducting discreet inquiry." In case of false or baseless complaint, action is taken against the complainant: if an advocate the matter is referred to the provincial Bar

Council, and if a private individual it is sent to the DSJ for appropriate action. In year 2003, 50 complaints were received against judicial officers, only 12 were found fit for initial disciplinary proceedings, major penalties were imposed on 3 and minor penalties on 8 judicial officers, and 30 complaints were still pending.¹⁰ The annual report of the subordinate judiciary is based on reports submitted by the inspecting officer. Other High Court reports were silent on this aspect.

Box 4: Government Servants (Efficiency & Discipline) Rules, 1973

Rules and procedures for disciplinary action against government servants are laid down in the Government Servants (Efficiency & Discipline) Rules 1973. According to Rule 3 of the Rules, disciplinary proceedings can be initiated against a government servant if in the opinion of the authority he:

- (a) is inefficient or has ceased to be efficient; or
- (b) is guilty of misconduct; or
- (c) is corrupt, or may reasonably be considered corrupt because-
 - (i) he is, or any of his dependents or any other person through him or on his behalf is, in possession (for which he cannot reasonably account) of pecuniary resources or of property disproportionate to his known sources of income; or
 - (ii) he has assumed a style of living beyond his ostensible means; or
 - (iii) he has persistent reputation of being corrupt; or
- (d) is engaged, or is reasonably suspected of being engaged, in subversive activities, or is reasonably suspected of being associated with others engaged in subversive activities or is guilty of disclosure of official secrets to any unauthorized person and his retention in service is, therefore, prejudicial to national security, the authority may impose on him one or more penalties.

If any of the above grounds are established against a civil servant he can be awarded one or more penalties. These penalties are classified into minor and major penalties. The Rules further provide details regarding inquiry procedure, revision and appeals. Provincial governments have their respective E & D Rules.

The efficacy of these mechanisms from PGR standpoint is seriously in doubt. The system was envisaged with the sole purpose of monitoring and inspection of the subordinate courts. It has not been designed to address

¹⁰ *High Court of Sindh Annual Report 2003*, Law and Justice Commission of Pakistan, Islamabad, p. 74.

problems confronting consumers of justice. The perspective on redress of citizens' grievance redress is altogether missing. The *Judicial Statistics of Pakistan 2002*¹¹, for instance, is totally silent on the number of cases that were investigated and disposed of against subordinate judiciary on account of various alleged irregularities and malfunctioning. The mechanisms lack Monitoring & Evaluation as well as PGR framework.

(b) Citizens - Courts Liaison Committees

The disconnection and dissatisfaction of the most vulnerable classes with the judicial system has created a barrier in seeking justice. The non-availability of information pertaining to the courts, case lists, and the difficulty in obtaining order/judgment sheets are only a few examples of the utter helplessness experienced by ordinary citizens. These constraints force them to rely on the exploitative tout system operating throughout our courts. In light of this environment, Citizens-Courts Liaison Committees were created to provide necessary information, facilitate citizens in pursuit of their cases, and act as a watch on illegal activities, such as reliance on court touts. The DSJs chair these Committees, which are mandated to:

- Set up public information kiosk within the court vicinity for providing necessary information regarding the cases (established in the AJP model districts, for instance, in Karachi East and Peshawar).
- Promote legal literacy among citizens at large.
- Offer guidance to people on dispute prevention measures and alternate dispute resolution (ADR) mechanisms.
- Register reports and redress citizens' grievances regarding the functioning of judicial system in the district.
- Provide a channel for the citizens and other stakeholders to send suggestions for reform and improvement in the judicial system.

The Committees are required to prepare a progress report every month and submit it to the High Court Monitoring and Inspection Committee for perusal and comments. Citizens-Courts Liaison Committees (CCLCs) have been notified across Pakistan, and are already established in NWFP and Balochistan. But Punjab and Sindh are reluctant to set up CCLCs and do not seem to feel the need for these Committees.

(c) Insaaf Committees

Insaaf Committees of the Union, Tehsil/Town and Zila/District Council under the Local Government Ordinance are not monitoring committees *per*

¹¹ *Judicial Statistics of Pakistan* is an annual report published by the Law & Justice Commission of Pakistan

““ The disconnection and dissatisfaction of the most vulnerable classes with the judicial system has created a barrier in seeking justice.””

Box: 5 AJP Model Districts

Model districts are established under the Access to Justice Program (AJP), with each High Court designating certain districts as AJP model districts. These AJP model districts are required to have:

1. Citizen Court Liaison System

- An information desk in each District Court complex with 1-2 court officials for providing guidance and information to litigants.
- Availability of legal awareness material comprising simplified explanations and translations (English to Urdu) of common use laws.
- One room designated (with a visible sign board) for women litigants/visitors to provide women and lactating mothers some measure of privacy.
- A large notice board, showing the layout of District Court complex, location of different courts, general guidelines and all cause lists.

2. Delay Reduction Guidelines

- All High Courts have issued detailed guidelines for addressing the problem of court delays for the model districts to implement in a planned manner.
- All Presiding Officers (POs) of model districts are required to maintain a complete inventory of pending cases, and display the 10 oldest cases pending in the particular court.
- The focus should be on Family, Rent and Small Claims cases in a prioritized manner.

3. Separation of Civil and Criminal Courts

- All model districts are expected to separate the civil and criminal courts (at lower level to the extent possible) so that civil judges do not undertake civil and criminal work simultaneously.
- POs should ensure that they do not have more than 350-450 pending cases at a time.

4. Adequately Resourced Process Serving

- AJP model districts should have sufficient process servers, consistent with the actual number of summons issued.
- Police in model districts must provide adequate number of personnel for service of criminal cases.
- Model districts should keep record of action taken against intentional failures of court orders.

5. Other Measures - Effectiveness of New Institutions

- Model districts must ensure proper arrangements for working of new institutions/provisions under the Police Order.

- Abolition of executive magistracy (e.g. Criminal Justice Coordination Committee).
- Such committees should meet regularly and a permanent record be maintained.
- Other monitoring functions including jail inspections should be carried out regularly.
- Alternate Dispute Resolution (ADR) mechanism must be established and become a permanent feature of the districts.

6. General

- A permanent and a proper record, and details of follow up of the above measures may be kept for general monitoring by respective High Courts.

se, because courts of law are independent institutions and outside the ambit of the local government system. However, these Committees have been assigned an important role in enhancing people's access to justice through:

- Facilitation of out-of-court settlement of disputes through alternative dispute resolution (ADR) system comprising *Musalehat Anjumans*, conciliation, mediation or arbitration; and
- Channeling citizens' grievances regarding delay in delivery of justice by the subordinate courts to the concerned members of the High Court Inspection Team.

Although monitoring administration of justice by the courts of law is clearly outside the scope of their functions, Insaaf Committees nonetheless have a significant role of mediation between litigants and the forums of alternative dispute resolution on the one hand and supervisory courts on the other. Currently, however, there are no rules or procedures 'connecting' Insaaf Committees and the MIT. Their function is aimed at bringing to the attention of the Superior Courts cases of serious injustice or inordinate delay and thus facilitates the citizens in getting justice from the courts of law.

(d) Supreme Judicial Council

Accountability of higher judiciary in Pakistan, however, still remains a neglected area. The Supreme Judicial Council composed of the Chief Justice of Pakistan, the two senior most Judges of the Supreme Court and the two senior most Chief Justices of the High Courts has sole responsibility for disciplining judges of the superior courts. The Council has no provision for receiving public complaints. Until 2004, the Council relied on references from the President. The recent Seventeenth Amendment to the Constitution gave the Council power to act on its own motion.¹² The Council, however,

“Accountability of higher judiciary in Pakistan, however, still remains a neglected area...”

¹² 1973 Constitution of Pakistan, Article 209

“ Recent initiative in UK to appoint a Judicial Appointments and Conduct Ombudsman under The Constitutional Reform Act 2005 is a noteworthy development. ”

has not acted against any Judge since the adoption of the 1973 Constitution. The legal and judicial reform project recommended the establishment of a judicial ombudsman in matters relating to 'mal-administration' i.e., relating to administrative functions only.

Some countries have adopted innovative approaches to ensure accountability and transparency in judicial conduct. In Spain, for instance, ombudsman had constitutional authority to oversee the administrative functioning of the courts. In Finland, as also in other countries, parliamentary ombudsman could make recommendations to the courts.¹³ Recent initiative in UK to appoint a Judicial Appointments and Conduct Ombudsman under The Constitutional Reform Act 2005 is a noteworthy development. The Ombudsman will ensure that judicial appointments complaints are thoroughly and independently investigated and judicial conduct complaints are properly handled.

In case of a complaint against judicial mal-administration in Pakistan, e.g. access to court records, non-service of summons, etc., a citizen cannot invoke the jurisdiction of existing Federal or Provincial Ombudsman. It is virtually impossible for an ordinary citizen to access court record as a matter of right to establish his/her claim against the mal-administration of a judicial officer. The office of judicial ombudsman can therefore play a positive and useful role in overcoming various administrative failings and wrongdoings of our judicial offices.

(2) Police

The capacity of police to both prevent and provoke conflict is increasingly recognized. Although some policemen have been displaying extraordinary courage and even sacrificing their lives to the call of duty, others are involved in staging fake encounters, rapes, robberies, and other heinous crimes. The police force can potentially play a vital role in providing the much needed security environment for peaceful social, political and economic development. A well-resourced, well-trained, professional and accountable police is vital to improving the quality governance and bringing about greater public trust in the state. On the other hand, a poorly maintained police force that is also misused for both partisan politics and criminal ends will lead to further deterioration in law and order and internal security environment. In Pakistan, unfortunately, citizens' grievances against

¹³ See R. Adolfo de Castro, *THE OMBUDSMAN AND THE MYTH OF JUDICIAL INDEPENDENCE*, California Caucus of College and University Ombudsman, UCI Ombudsman: The Journal 1994. http://www.ombuds.uci.edu/JOURNALS/1994/ombudsman_myth.html

police brutality, highhandedness and corruption are fairly common. Given its colonial tradition, repressive culture and lack of public trust, the police enjoy little credibility among the general public.

Box 6: Public perception about the police

- Countrywide, when asked as to whom they would contact in a problem of personal safety or threat to property, the most common response (40% households) was "Allah" or "only Allah could help me".
- Only 22% households said they would contact the police for a matter of personal safety, and 25% in case of a threat to their property.
- Only 12% of households across the country reported any contact with the police for any reason during the last five years.
- Nearly half (49%) household contacts with the police in the last five years reported that an FIR was registered. This was more likely when the contact was initiated by the household rather than by the police. Slightly less than half the reported police contacts (46%) were said to be initiated by the police, as opposed to the household member(s).
- Only 31 % households who contacted the police were satisfied with the way police treated them on that contact.
- Only 30% households say the police in their area make them feel safe.
- Nearly all the reported contacts (96%) with the police in the last five years involved a male household member.
- Only 5% respondents said they would go to the *nazim* or a councilor for help in matters of both personal safety and threat to property.
- Respondents from 'very vulnerable' households were less likely to say they would contact the police for a problem of personal safety or for a threat to property, or that police made them feel safe, compared with less vulnerable households. This was true in both urban and rural settings, and whether or not there was a police station in the community.

"The police are so threatening that one trembles just at the sight of them."

Female focus group, Badin

Focus group (male & female) participants felt that better recruitment policies for the police, ensuring that honest people were recruited in the force, and better salaries and incentives would improve the service, citing the example of Motorway Police.

Table 7: Source of help for personal safety & threat to property

Response	Source of help for the problem of personal safety: %		Source of help for a threat to property: %	
	Male	Female	Male	Female
Allah	39	46	35	39
Police	28	16	28	19
Community Source	9	10	10	11
Family	4	12	3	11
No one/Not Needed/Self	8	6	9	7
Nazim/ Councilor	5	4	6	5
Government	4	3	5	4
Friend/Neighbour	3	3	2	3
Courts	0	0	3	1

Table 8: Reasons for contact with the police: %

Reason	Male	Female	Reason	Male	Female
Domestic conflict	29	42	Murder	5	7
Robbery	19	15	Illegal arms/ drugs	3	1
Property rights	16	14	Support for friends	2	2
False charges	7	2	Missing person	1	4
Physical assault	7	2	Political/ tribal issues	2	0
Traffic issue	6	4	Lost documents	1	0

Table 9: Reasons for satisfaction with police contact

Reason	%	Reason	%
Problem solved	33	Had connections	5
Good attitude	23	Paid to get service	4
Police helpful	21	Got good advice	1
Got justice	13		

Reason	%	Reason	%
Payments	26	No justice	7
Bad attitude	21	Made things worse	6
Did not help	14	Favoured other party	4
Problem not solved	11	Had to use connections	2
Paid to get service	7		

Source: Adapted from National Reconstruction Bureau: *Social audit of governance and delivery of public services*, Baseline survey 2002, National report, CIET (Community Information Empowerment and Training), Islamabad, 2003, pages 49-54 including Tables 14 to 18 of the CIET report. <http://balochistan.org.pk/pdf/Pak2002baseline.pdf> downloaded on 12/7/05. (Note: Details of this nationwide baseline social audit by CIET already given on page 10.)

Not surprisingly, the issue of police accountability remains a point of concern in Pakistan, given the excessive powers and discretion in the hands of police officers. Accountability is vitally important with regard to police officers because of their powers to use coercive force in enforcing the law. Effective accountability is needed to transform police behaviour, based on a deep-rooted culture of repression, into a service-oriented role and to promote mutual confidence between police and the public. The success of police requires public cooperation and support, which is not possible without credibility and faith in the police accountability system - that is still lacking in Pakistan.

In the present liberal-democratic era, societies all over the world are engaged in developing and strengthening mechanisms to monitor and make public service organizations, like the police, duly accountable. In order to deal with this most critical aspect of administrative efficiency, modern societies have introduced accountability mechanisms for Police Departments comprising of Public Safety Commissions, Magisterial/Judicial institutions and Internal Accountability controls.

In original scheme of things under the Police Act 1861, the Police Department constituted two distinct structures: inspectorate and actual policing in the district. The Inspector General was assisted by several Deputy Inspector Generals (DIGs) of Police, each assigned a range of 3 to 5 districts. The DIG exercised "a general supervision over the District Superintendents in his range, and they were to look towards him for advice, guidance, leadership and co-ordination of police work within the range. As head of the district

“...the test of these punishments will only be known when cases of delinquent officers are referred to the courts, where earlier the Police Act 1861 was rarely if ever invoked to the full extent of its punishments.”

police, a District Superintendent was made responsible for all matters relating to the internal economy of the force, its management and the maintenance of its discipline and the efficient performance of all its duties connected with the prevention, investigation and detection of crime.”¹⁴ This inspectorate system gradually collapsed after independence as the police institution became increasingly centralized.

(a) Internal Accountability Mechanisms

The Police Order 2002 has provided strict punishments to police officers guilty of certain kinds of misconduct.¹⁵ This enactment has put in place a code of conduct for law enforcement officials and makes police an instrument of the rule of law by shifting the focus of policing from a concept of "rule" to one of "service."

Severe punishments have also been incorporated through making certain acts of disciplinary misconduct and abuse of authority as criminal offences, for which the punishment varies from one year with fine to five years with fine. Although harsh, the test of these punishments will only be known when cases of delinquent officers are referred to the courts, where earlier the Police Act 1861 was rarely if ever invoked to the full extent of its punishments. This repealed law provided for prosecution of a police officer

¹⁴ Muhammad Shoaib Suddle, *REFORMING PAKISTAN POLICE: AN OVERVIEW*. http://www.unafei.or.jp/english/pdf/PDF_rms/no60/ch05.pdf

¹⁵ Article 155 of Police Order 2002 provides:

155. Penalty for certain types of misconduct by police officers. - (1) Any police officer who-

- (a) makes for obtaining release from service as police officer, a false statement or a statement which is misleading in material particulars or uses a false document for the purpose;
- (b) is guilty of cowardice, or being a police officer of junior rank, resigns his office or withdraws himself from duties without permission;
- (c) is guilty of any willful breach or neglect of any provision of law or of any rule or regulation or any order which he is bound to observe or obey;
- (d) is guilty of any violation of duty;
- (e) is found in a state of intoxication, while on duty;
- (f) maligns or feigns or voluntarily causes hurt to himself with the intention to render himself unfit for duty;
- (g) is grossly insubordinate to his superior officer or uses criminal force against a superior officer; or
- (h) engages himself or participates in any demonstration, procession or strike or resorts to or in any way abets any form of strike or coercion or physical duress to force any authority to concede anything,

shall, on conviction, for every such offence be punished with imprisonment for a term which may extend to three years and with fine.

(2) Prosecution under this Article shall require a report on writing by an officer authorized in this behalf under the rules.

before a magistrate, if found guilty of indiscipline or inefficiency in performance of duties, and for committing unwarrantable violence against a person. If proven guilty, the officer could be punished with imprisonment for three months or fine equal to three months salary, or both.¹⁶

For the purpose of prosecution, the action was to be initiated by the police hierarchy, which would seldom send references to magisterial courts. The police command had always felt that conviction of a police officer before a magistrate would undermine the morale of the force and could bring a bad name to the organization, and so preferred to punish the guilty officer through internal disciplinary action. But in the absence of a dedicated internal monitoring and evaluation (M & E) or an effective inspectorate system, these departmental concerns ended up with complacent attitude of the police and no real change in police performance could come about over the years. It is pertinent to note that only an 'authorized officer' can proceed against a delinquent police officer even under Police Order 2002.¹⁷ Citizens have no remedy (except tort) and who suffer as a consequence of such delinquency.

(b) External Grievance Redress Mechanisms

The Police Rules, 1934 provided a role and power to the District Magistrate (DM) and Subordinate Magistracy for accountability of the police.¹⁸ Sections 1.15, 1.16 and 1.17 empowered the DM as head of criminal administration, making the police an instrument for the maintenance of public order. Although afforded powers to inspect police stations, the DM was forbidden to interfere in internal administration and discipline of the force. Under these sections, the DM could direct the Superintendent of Police (SP) to inquire against a police officer found negligent of his duties and guilty of misconduct that could affect the performance of police. He was also empowered to approve postings of Station House Officers (SHOs) and direct transfer of certain officers, where the activities of an officer were prejudicial to the welfare of a locality.

However, the law did not provide any effective mechanism to the DM to check police excesses. Furthermore, people were not provided any recourse against police misconduct. Sections 1.18, 1.19 and 1.20 required police officers and the subordinate magistracy to cultivate friendly relations to work as a team under the command of DM to maintain public peace. Since the DM was head of magistracy, and the law also envisaged him/her as a non-uni-

““ But in the absence of a dedicated internal monitoring and evaluation (M & E) or an effective inspectorate system, these departmental concerns ended up with complacent attitude of the police and no real change in police performance...””

¹⁶ Section 29, Police Act 1861

www.pakistanlawsite.com/lawonline/law/statutesnext.asp?selectcasetype=policen%201861

¹⁷ Article 155

¹⁸ Section 1.15 - 1.120 Police Rules, 1934

Box 7: Police Encounters: Jan-Dec, 2005

- **Killed**
271 (39.7%)
- **Escaped**
154 (22.6%)
- **Arrested**
257 (37.6%)

Source: *State of Human Rights 2004*, Human Rights Commission of Pakistan

formed commander of the force, the spirit of law was that both wings under his/her command should work as a cohesive team to maintain public order.

A study of the powers and functions of DM and magistracy clearly shows that the powers of check and balance over the police were not intended to provide safeguards to the public, but sought to emphasis on the effectiveness of the system. Whatever little control was provided under the law eroded with the passage of time, as it became a priority for the DM to enjoy cordial relations with his/her counterparts and not upset them by employing the checks available to him/her under the law. The DM, being head of a district, was responsible for public order and needed total police cooperation, thus condoning police excesses at the cost of the public. This indifferent and biased conduct of the DM contributed towards the gradual brutalization of police behaviour, which ended up as an oppressive force with little regard to the basic rights of citizens.

Additionally, under Criminal Procedure Code¹⁹, the DM and subordinate magistracy were provided powers of judicial scrutiny in cases of illegal detentions/arrests, and of judicial accountability in incidents of police excesses (including custodial killings). Unfortunately, those powers were seldom used independently and judiciously, and actually served to provide judicial cover to police brutalities.

(c) Grievance Redress Mechanism through Public Safety Commissions

The Police Order (PO) 2002 replaced previous police legislation, and introduced additional accountability mechanisms. The Public Safety Commissions created under the police reforms in 2002 have been vested with powers to make the police accountable at all functional levels through appropriate provisions of law. This is a case, at least in theory, of democratization of police regulations.

■ District Public Safety & Police Complaints Commission

These multi-stakeholder bodies have been assigned the powers to receive complaints of police neglect or excesses, and to direct the head of police to take action within a specified period. However, the merger of PGR and public oversight functions reduces specialization, and therefore both require separate specialist entities. In cases of police excess, these bodies may conduct a fact-finding enquiry themselves and, if finding proof, they may direct the head of police to suspend the delinquent officer and take action under Police Order and Rules. In case the head of police does not take any

¹⁹ See Reference provisions of the Code of Criminal Procedure

action, they may report to the provincial police officer or the provincial government for appropriate action.²⁰

This is apparently an effective mechanism to make the police accountable to public bodies, yet implementation has been extremely weak. The spirit of the new law was to create neutral public bodies, but faulty selection procedures have by and large resulted in many members with strong political affiliations and incentives to enjoy close connections with the local police. These bodies have no original powers. Recent amendments in Police Order have opened the door for direct political interference in Public Safety Commissions.²¹ The real purpose of these public bodies to act as an insulator and watch over the police is not being realized. Likewise, if the Commissions do not have solid support of the provincial governments, they may prove like other toothless Police Committees of the past. The Commissions mostly continue to suffer from infrastructure deficiencies and lack of support from vertically and horizontally connected departments/institutions that could otherwise make them truly functional.

The concept of Public Safety Commissions relies on the constructive and assertive engagement of civil society. However, it appears that the democratic traditions required to engaging citizenry in governance and accountability are not yet crystallized. The Commissions have insufficient staff, inadequate resources, no M & E framework, no training, no rules, and no public awareness! The lack of will across the board to make this mechanism function indicates a strong likelihood that the Commissions may not be fully effective during initial years. Political will is needed to improve the quality and performance of members of these Commissions with the passage of time.

■ Role of Public Safety and Police Complaints Commission in Grievance Redress

This Commission has been assigned an important role in the selection and removal of the senior police command, but at the same time to act as insulators for the police officers against unlawful or *mala fide* orders. In this way the Commission can make senior police hierarchy accountable for unsatisfactory performance.²² The original PO 2002 envisaged two separate

“ The concept of Public Safety Commissions relies on the constructive and assertive engagement of civil society. However, it appears that the democratic traditions required to engaging citizenry in governance and accountability are not yet crystallized.”

²⁰ Articles 44 & 56, Police Order 2002

²¹ According to the Police Order (Amendment) Ordinance, 2004:

38. Composition. - (1) The composition of the District Public Safety and Police Complaints Commission shall be as follows:-

(a) one-third members shall be appointed by the Government from amongst the Members of the Provincial Assembly and National Assembly of the District concerned as ex-officio members, including a woman member.

²² Article 80 and 92, Police Order 2002

“...through these amendments the concept of Police Complaint Commission has also been introduced at District level by reconstituting District Public Safety Commissions as District Public Safety & Police Complaints Commissions.”

Grievance Redress bodies, namely, Public Safety Commissions (Chapters V to VIII) and Police Complaints Authority (Chapter X) at Federal and Provincial levels. However, under recent amendments the Provincial Police Complaints Authority has been merged with the Public Safety Commission. The reconstituted body is known as Provincial Public Safety & Police Complaints Commission.²³ It is important to note that through these amendments the concept of Police Complaint Commission has also been introduced at District level by reconstituting District Public Safety Commissions as District Public Safety & Police Complaints Commissions.²⁴

The National Public Safety Commission and Provincial Public Safety and Police Complaints Commission will be headed by the Interior and Home Minister²⁵ with powers of recommendation, so it is yet to be seen to what extent the Commission will be effective in its functioning. It is also perceived in some quarters that this body will dilute the authority of provincial governments, which are constitutionally responsible for the maintenance of law and order in the provinces. Since government minister with recommendatory powers heads the Commission, its effectiveness will largely depend upon the political will of the provincial and federal governments. Its oversight functions are liable to be compromised and its PGR role will not expand. An alternate viewpoint sees it as a self-serving and superfluous argument from the vested interests, who wanted control over micro-management of policing decisions, e.g. transfers and posting rather than monitoring quality of service and performance. They don't want to concede operational autonomy and view the changes as zero sum game. However, recent amendments in Police Order seemingly expand the grievance redress function of the District Commissions.²⁶

(d) The District Nazim

The District Nazim has been assigned powers to regulate and check any police working detrimental to the interest of general public. He/she has been given the power to enforce the provisions of Section 144 of the Criminal Procedure Code at his/her own discretion, visit the police stations, check illegal detentions, order registration of First Information Report (FIR) and direct the head of police to take appropriate action.²⁷ Under the Police Order

²³ Section 2 (c) Police Order (Amendment) Ordinance, 2005

²⁴ Section 15 of Police Order (Amendment) Ordinance, 2005

²⁵ Article 87 of Police Order 2002 provides that the Federal Interior Minister will be ex-officio Chairperson of the National Public Safety Commission. Whereas Article 75 provides that Home Minister will chair Provincial Public Safety and Police Complaints Commission.

²⁶ See Chapter V. Police Order 2002

²⁷ Article 33-35 Police Order 2002

Box 8: Section 144

Section 144 of Cr.P.C. provides for temporary orders in urgent cases of "nuisance or apprehended danger", where immediate prevention or speedy remedy is desirable. It confers extraordinary power to district authorities directing any person to abstain from certain act or to take certain order with respect to property under his/her ownership or management in order "to prevent obstruction, annoyance, or injury to any person lawfully employed, or danger to human life, health or safety, or a destruction of the public tranquility, or a riot, or an affray." The order may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place. The order may be passed *ex parte* in cases of emergency, or when serving notice in due time to the person against whom it is directed is not possible. Orders under Section 144 usually interfere with and infringe on individual rights and freedoms. The Section is a transitory and stop-gap provision till alternate measures can be taken to safeguard interest of individuals and preserve public peace and tranquility. It's also a handy tool to deny civil liberties, typically through enforcing suspension of people's right to assembly and speech.

and the Local Government Ordinance, he has been envisaged as the head of district government and responsible to ensure law and order. In this regard, he has been given the power to evaluate the performance of the head of police, although the required amendment in rules has not yet been stipulated. Evidently, Nazims are not exercising these powers assigned to them to redress people's grievances against police misconduct. This may be owing to the desire on their part to maintain good relations with the head of police to serve their own political needs, or lack of government support and the absence of provincial public bodies to support their actions. The Nazims are yet to demonstrate their commitment to enforce their legally endowed powers to check the police and redress citizens' grievances.

The Nazim's should have actually supported strengthening local accountability by getting appointment of District Police Officer (DPO)/Tehsil Police Officer (TPO) confirmed (ratified) by the District/Tehsil Council through a special resolution to screen out appointees with corrupt and criminal record. Ideally, the District/Tehsil Council should be able to choose from three nominees for a post. Similarly, the TPO/TPO should be removable for poor performance and other wrongdoings by a special resolution of the relevant Council.

(e) District Criminal Justice Coordination Committee

The District Criminal Justice Coordination Committees constitute

“ After the separation of the judiciary from the executive, some important powers have been delegated to the district judiciary, including powers to... ”

another avenue to regulate instances of misconduct of police administration.²⁸ A District and Sessions Judge heads this Committee, which has the responsibility to oversee the activities of police, subordinate courts and jails, and to take reasonable measures against their unlawful activities. The Committee convenes once a month and the report of the meeting is looked into by the High Court. It should be noted that this is an executive body and, as such, no public representation has been provided in the composition of the Committee. It lacks a direct public grievance redress focus and no rules have been formulated to make its proceedings public and accessible to ensure transparency and accountability.

(f) Grievance Redress through Independent Judiciary

In addition to the inherent powers of the superior judiciary and the powers given under the Constitution, the judiciary at the district level has been assigned very significant powers to provide relief against almost all police-related actions affecting the general public. After the separation of the judiciary from the executive, some important powers have been delegated to the district judiciary, including powers to:

- Issue orders and appoint a bailiff in *habeas corpus* petitions;
- Order registration of FIRs;
- Direct a change of person assigned to investigate if satisfied that the petitioner is otherwise likely to suffer an injustice; and
- Conduct judicial inquiries in cases of death, rape or serious injuries in police custody on the request of Police Complaints Authorities, to be ordered by the Chief Justices of High Courts.²⁹

The problem, however, has been the extent of utilization of these powers in light the high incidence of police excesses.

(g) Human Rights Wing of the Law, Justice and Human Rights Division

Human Rights (HR) was a subject under the Interior Ministry in 1994. The Human Rights Cell was later transferred to the Ministry of Law, Justice & Parliamentary Affairs, and a separate Ministry of Human Rights created in November 1995. This Ministry was reduced to a Wing and merged with Ministry of Law, Justice & Parliamentary Affairs in 1996. Presently, a full-fledged Human Rights Wing is working under the Ministry of Law, Justice & Human Rights with four Regional Directorates based in Peshawar, Lahore, Quetta and Karachi.

²⁸ Articles 109-111, Police Order 2002

²⁹ Articles 100 (d) & 106 (c), Police Order 2002

Under the Rules of Business 1973, the main functions of Human Rights Wing include: Review of human rights situation in the country including implementation of laws, policies and measures; Co-ordination within the federal and provincial governments; Harmonization of legislation, regulations and practices with the international human rights instruments to which Pakistan is a party and monitoring their implementation; Obtaining information, documents and reports on complaints and allegations of human rights violations, from federal and provincial governments and other agencies; Refer and recommend investigations and inquiries in respect of any incident of violation of human rights; Pursue, defend and represent Pakistan nationally and internationally including before non-governmental bodies in consultation with Foreign Ministry; Human rights advocacy, awareness, training and education; and Deal with Human Rights NGOs.

Its Regional Offices are required to act as the watchdogs to ensure protection of basic human rights throughout the country. The Offices hold fact finding probes in cases of gross Human Rights violations. Over the past few years the Wing has processed 3876 internal complaints/cases of HR violation including 1232 cases of domestic violence against women. Given its mandate, resources and country-wide presence, the output, outreach and impact of Human Rights Wing seems very limited. The Wing ought to be far more effective, assertive and proactive.³⁰

An instructive contrasting example to look into is India's National Human Rights Commission (NHRC), a high-powered and autonomous statutory body enjoying enormous prestige and operational independence. The Commission has its own investigating staff headed by a Director General of Police for investigation into complaints of human rights violations. NHRC is legally empowered (under the Act which created NHRC) to utilize the services of any officer or investigation agency of the Centre or any State Government. In a number of cases, NHRC has associated non - governmental organizations in its investigation work.

NHRC derives its autonomy from, inter-alia, transparent method of appointing its Chairperson and Members, statutory protection of their fixed tenure, the status accorded to them and the manner of appointment of the staff responsible to the Commission - including its investigative agency. The Commission also enjoys financial autonomy under Section 32 of the Act. The Chairperson and Members of the Commission are appointed by the President on the basis of recommendations of a Committee comprising the Prime

“ Given its mandate, resources and country-wide presence, the output, outreach and impact of Human Rights Wing seems very limited. The Wing ought to be far more effective, assertive and proactive.”

³⁰ See Chapter on Human Rights Wing in Law, Justice and Human Rights Division Annual Report 2005. <http://www.pakistan.gov.pk/divisions/law-division/media/AnnualReport2005.pdf>

Minister as the Chairperson, the Speaker of Lok Sabha, the Home Minister, the leaders of the opposition in the Lok Sabha and Rajya Sabha and the Deputy Chairman of the Rajya Sabha as Members.³¹

(3) Ombudsman - Administrative Review

The establishment of the Ombudsman in Pakistan was advocated on several occasions. It was Article 276 of the Interim Constitution of 1972 that provided for the appointment of a Federal Ombudsman as well as Provincial Ombudsmen for the first time. Subsequently, the Constitution of 1973 included the Federal Ombudsman in Item 13 of the Federal Legislative List in the Fourth Schedule. The institution was first established in Pakistan in August 1983 under the Establishment of the Office of *Wafaqi Mohtasib* (Ombudsman) Order 1983.³² The Office was vested with the power to redress public complaints against administrative excesses.

Later, provincial *Mohtasibs* were appointed in Azad Jammu & Kashmir (AJK), Sindh, Punjab and Balochistan,³³ while a separate Federal Tax Ombudsman was appointed in 2000 to address citizens' complaints against tax functionaries.³⁴ A Banking Ombudsman was also appointed on April 29, 2005, based in Karachi and with regional offices in Lahore, Peshawar and Quetta to handle complaints in the banking sector, a task earlier dealt by the State Bank of Pakistan.³⁵

Box 9: Maladministration

'Mal-administration' includes:

"(i) a decision, process, recommendation, act of omission or commission which (a) is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bona fide and for valid reasons; or (b) is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory; or (c) is based on irrelevant grounds; or (d) involves the exercise of powers or the failure or refusal to do so, for corrupt or improper motives, such as, bribery, jobbery, favouritism, nepotism and administrative excesses; and (ii) neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities."

Source: Article 2 (2) of the Establishment of the Office of *Wafaqi Mohtasib* (Ombudsman) Order, 1983

The main functions entrusted to the *Wafaqi Mohtasib* were to diagnose,

³¹ See NHRC website: www.nhrc.nic.in

³² President Order No.1 of 1983

³³ Azad Jammu and Kashmir Establishment of Office of Mohtasib (Ombudsman) Act 1992; Punjab Office of the Ombudsman Act 1997; Establishment of the Office of Ombudsman for the Province of Sindh Act 1991; and Establishment of the Office of Ombudsman for the Province of Balochistan Ordinance 2001.

³⁴ Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000. http://www.law.ualberta.ca/centres/ioi/fr/members_f.html

³⁵ See <http://www.jang.com.pk/thenews/apr2005-daily/30-04-2005/business/b2.htm>

investigate, redress and to rectify any injustice done to public through maladministration of an agency of the Federal Government. This Order provided a speedy and inexpensive mode of addressing public grievances against the state. The *Mohtasib* was vested with wide jurisdiction to inquire into the affairs of all the offices of the Federal Government, except the Supreme Court, the Supreme Judicial Council, the Federal *Shariat* Court and the High Courts. S/he could investigate any complaint, except in respect of matters which are *sub judice* or which relate to external affairs or the Armed Forces. The Supreme Court of Pakistan appreciated this extended jurisdiction of the *Wafaqi Mohtasib* in redressing public grievances caused due to maladministration of an agency of the Federal Government, and observed that this institution was the most appropriate forum for the purpose.³⁶

Table 11: Complaints Trend by Volume of Receipts

Year	Receipts	Increase	Decrease	%
1998	38887	-	199	1
1999	38068	-	819	2
2000	36334	-	1734	5
2001	29717	-	6617	18
2002	27906	-	1811	6
2003	22350	-	5556	20

Table 12: Complaints Trend by Causes

Year	Delay	Bias	Admin Excesses	Favouritism
1985	2909	194	1584	158
1986	3867	1191	288	184
1988	3431	1612	371	206
1990	4053	2703	491	313
1992	5969	2992	114	793
1994	4553	3267	756	269
1997	6004	3872	1024	634
1999	3656	7171	2075	379
2000	2747	15560	3151	245
2002	1239	13045	506	70
2003	1857	9974	404	22

Source: Tables 4 on p. 17 and Table 7 on p. 20, *Wafaqi Mohtasib's Annual Report 2003*, Wafaqi Mohtasib (Ombudsman)'s Secretariat, Islamabad.

³⁶ PLD 1989 SC 109

Agency	2000	2001	2002	2003	2004
WAPDA	15,034	13,642	13,167	9,545	9,253
PTCL	4291	2772	1957	1331	1227
SNGPL	1358	1181	1394	1005	832
AIOU	593	588	415	324	342
SLIC	576	525	402	284	216
Estate Offices	633	215	185	172	195
Banks	1080	984	714	991	142

Cause of Complaint	2003			2004		
	Received	Admitted	%	Received	Admitted	%
Excessive/wrong/inflated billing	8861	7462	78.2	8944	7187	77.7
Imposition of penalty	60	16	0.2	552	513	5.5
Disconnection	333	216	2.3	310	136	1.5
Delay in providing connection	285	176	1.8	265	138	1.5
Delay in replacement of defective meter	264	143	1.5	255	135	1.5
Delay in installation of poles/transformers	124	62	0.6	115	35	0.4
Others	2064	1470	15.4	1991	1109	11.9
Total	11,991	9545		12,432	9253	

Cause of Complaint	2003			2004		
	Received	Admitted	%	Received	Admitted	%
Excessive/wrong/inflated billing	850	625	47.0	748	572	46.6
Delay in providing connection	228	138	10.4	220	151	12.3
Disconnection	195	115	8.6	61	44	3.6
Others	781	453	34.0	1046	460	37.5
Total	2054	1331		2075	1227	

Cause of Complaint	2003			2004		
	Received	Admitted	%	Received	Admitted	%
Misconduct of officials/admin excesses	111	45	17.4	219	60	28.3
Delay in payment of pension/G.P Fund	88	51	19.8	91	55	25.9
Discrimination in appointments	44	9	3.5	11	5	2.4
Delay in payment of outstanding service dues	42	18	7.0	25	12	5.7
Delay in refund of excess amount	21	11	4.3	15	12	5.7
Others	265	124	48.0	108	68	32.0
Total	571	258		469	212	

Source: Tables 6 to 12, *Wafaqi Mohtasib (Ombudsman) of Pakistan Report 2004*, Wafaqi Mohtasib (Ombudsman) Secretariat, Islamabad, pp. 8-11.

Since its inception in August 1983 to December 2000, the Federal Ombudsman dealt with 401,897 complaints. Of these, 66 percent related to federal agencies, while the remaining 34 percent were provincial matters and thus not falling under the purview of the Ombudsman. Of the complaints against federal agencies, about half were admitted for thorough investigation, while the remaining were not entertained for the reason that these were *sub judice*, service matters or premature, or no mal-administration appeared to have been found.³⁷

Despite an average of roughly 40,000 complaints received annually by the Federal Ombudsman over past two decades, this number is still very low when seen against the country's population of 150 million. This is one indicator of the modest outreach and effectiveness of the institution. Many systemic and institutional hindrances have diluted the effectiveness of the institution and there is evidence of government agencies not taking the Ombudsman's recommendations seriously.

Lack of a separate implementation mechanism is another problem. The process of implementation will be facilitated if the powers vested under Articles 12 and 16 of the *Wafaqi Mohtasib (Ombudsman) Order, 1983* are also made exercisable in respect of cases under implementation by all *Mohtasibs*. In the absence of such provision, the *Wafaqi Mohtasib* is presently confronted

³⁷ *Wafaqi Mohtasib (Ombudsman) of Pakistan Annual Report 2000*.

with the critical problem of executing his orders and decisions.

A particularly problematic aspect of the Ombudsman's jurisdiction is its appeal process. The orders and determinations of Federal Ombudsman are appealable before the President of Pakistan where these appeals gather dust and are subsequently disposed of without any judicial appreciation.

Box 10: Ombudsman Sindh

Ombudsman Sindh received 7813 complaints against provincial maladministration in 2003, in line with most years since the institution was established in 1991. Under the leadership of the incumbent Mohtasib Khan Yousaf Jamal, the office of Mohtasib Sindh is undergoing significant restructuring and reorganization to enhance citizen access and ease complaint investigation processes. Their plans include use of all possible channels of communication - electronic media, outdoor publicity, leaflets distributed through gas stations, space on milk cartons, fliers, brochures, etc - to spread the message: *citizens need to hold government accountable by standing up, by organizing, and by writing to the Mohtasib*. The office has also embarked on automation plans not only for internal efficiency but to facilitate and expand citizen access through the internet. Instead of waiting in their office to receive complaints, Ombudsman Sindh's senior staff went out to Karachi Civic Centre and other public dealing spots with loudspeakers last January informing the public about Mohtasib Sindh's office and how to avail its services.*

*See full report in *Monthly insaaf*, TheNetwork, February 2005.

In December 1992, the Pakistan Law Commission reviewed the organizational structure of the Wafaqi Mohtasib and the powers under President's Order No. 1 of 1983 to implement his orders/decisions. It noted certain deficiencies which needed to be overcome. Firstly, the term 'Agency' in Article 2(1) of the Order did not expressly include a body, authority or organisation, not directly controlled by the Federal Government. Thus a subsidiary or associated company or a holding company established by the Government, escaped the jurisdiction of Wafaqi Mohtasib. The Commission recommended amendment of the term 'Agency' by inserting 'directly or indirectly' after the word 'controlled'.

Secondly, in the absence of any prescribed qualification for the appointment of Wafaqi Mohtasib the Commission recommended that Article 3(1) of the Order be amended to expressly provide for appointment to the office of Wafaqi Mohtasib from persons who are or have been a Judge of the Supreme

Court of Pakistan, excluding its Chief Justice.

Thirdly, the Wafaqi Mohtasib faced problems in getting his orders/decisions implemented. Under Article 11 of the Order, the Wafaqi Mohtasib could not implement his findings by his own order. He was required to communicate these to the agency concerned for taking action on the lines recommended by him. In case the agency did not comply with his recommendations and it appeared to him that the injustice was not likely to be remedied, he could lay a special report to this effect before the President for seeking implementation of his orders. The Commission viewed this anomaly with concern, and opined that Wafaqi Mohtasib should not be helpless to redress a grievance when he reached the conclusion that the situation was unjustified and should be corrected. Such a situation would shake public confidence in the institution of the Wafaqi Mohtasib and lead to piling of complaints and grievances against the government. The Commission, therefore, recommended that the Wafaqi Mohtasib be empowered to pass appropriate order for seeking execution of his orders before placing a special report to this effect before the President.³⁸ However, amendments in the 1983 Order made in October 2002 do not incorporate these recommendations.

(a) Appointment of Principal Officers

To facilitate the administrative oversight role of Ombudsman, Article 10 (4) of the Ombudsman Order provides that all government departments are obliged to notify a Principal Officer (PO) of their department who is supposed to receive all written complaints and grievances of the public with regard to the functioning of the department. In addition, he should be placed under a duty to respond in writing. The Ministry of Law, Justice and Human Rights (Access to Justice Program Management Unit), Government of Pakistan, Islamabad notified a list of designated Officers (giving regular designations only) nominated by the respective Federal and Provincial Departments as Principal Officers (Ex-Officio) for dealing with Public grievances pertaining to their respective Departments vide Notification No. F. 2(10)/2002-AJP dated September 30, 2002 covering 33 federal and 53 provincial Divisions/Departments (see Appendix 1).

However, upon telephone calls in August 2005 by TheNetwork research staff to five randomly selected designated federal Officers from the above-referred list (Commerce, Health, Narcotic Control Division, Petroleum & Natural Resources, Kashmir Affairs & Northern Areas, and Food, Agriculture & Livestock), none of the responding officers of notified designations

“ Such a situation would shake public confidence in the institution of the Wafaqi Mohtasib... The Commission, therefore, recommended that the Wafaqi Mohtasib be empowered to pass appropriate order for seeking execution of his orders before placing a special report to this effect before the President.”

³⁸ *Enhancing the Powers of Wafaqi Mohtasib* (Law & Justice Commission of Pakistan, Report No. 15.) <http://www.ljcp.gov.pk/reports/report15.htm>

“*...Government had notified these POs in September 2002...their performance can be assumed to be negligible and absolutely unsatisfactory... information regarding their existence, including their valid contact points, has never been disseminated for public so that citizens can avail this avenue for redress.*”

said they were POs for addressing Public Grievance. All five were totally unaware of the above-stated notification. Another five officers to whom each of them referred to upon request were equally uninformed regarding the existence of any POs in their respective Ministries/ Divisions.

Even though the Federal Government had notified these POs in September 2002, their performance can be assumed to be negligible and absolutely unsatisfactory. The information regarding their existence, including their valid contact points, has never been disseminated for public so that citizens can avail this avenue for redress. These officers lack training in handling of public grievance complaints, and their departments do not have any PGR system in place. Efficiency and Discipline (E & D) Rules are also silent about agency/ department level performance indicators of POs. All this has led to one conclusion, that grievance redress mechanisms already inbuilt in the Ombudsman law could not be fully activated.

Administrative Grievance Redressal Rules 2003 for the Principal Officers also apparently point to lack of seriousness of the Government to deal with public grievances redress. These draft Rules, which were supposed to fill the gap of Administrative Procedure Law, fail to elaborate even some very basic and fundamental PGR issues. No procedure whatsoever has been suggested in the rules and wide discretionary powers were retained by the government agencies/ departments. Citizens' right to hearing, access to information, and compensation-based remedies could not be incorporated and the Rules failed to describe the administrative procedure of fact-finding and assessments. These draft Rules are also deficient in terms of rationalizing time factor in complaint disposition by administrative authorities.

(b) Appointment of FOI Officers

Effective PGR require access to information for the citizens to know their entitlements and be able to pinpoint the nature and extent of their grievances requiring redress. Under FOI Rules 2004 and pursuant to the Freedom of Information (FOI) Ordinance 2002, the Federal Government designated officers in June 2004 in various Ministries/Divisions under its control, besides the National Reconstruction Bureau, to provide citizens on request photocopies of their record/officially held information. (see list: Appendix 1).

Upon telephonic check in July-Aug 2005 by TheNetwork research team with nine randomly chosen designated federal officers from this list, only three Divisions (Information Technology & Telecommunications, Interior, and Labour, Manpower & Overseas Pakistani) responded positively and on first instance. These officers knew their mandate under FOI Rules. However, remaining six Ministries/Divisions called upon (Population Welfare, (Popu-

lation Welfare, Religious Affairs (Zakat & Ushr), Education, Women Development & Social Welfare Division, National Reconstruction Bureau, and

Box 11: The Freedom of Information Rules, 2004

The Federal Government/Cabinet Division issued FOI Rules governing Freedom of Information on June 18, 2004 vide notification No. S.R.O.514(1)/2004. (I)/2004 and under Section 25 of the Freedom of Information Ordinance, 2002. The FOI Rules applied to all public bodies and came into force at once. The Rules provided for the following:

Designated official: The Head of every public body shall designate a senior official not below BPS-19 for a public body under his administrative control for providing duly attested photocopy of the public record to the applicant, in accordance with Sections 7, 11, 12 and 13 of the Ordinance. In case no such official has been designated or in the event of his/her absence or non-availability, the person in charge of the public body shall be the designated official.

Application for obtaining information: Subject to Section 12 (2) of the Ordinance, any citizen of Pakistan may apply on prescribed Application Form for obtaining photocopy of the public record available with the respective public body along with an initial fee of Rs. 50 for up to 10 pages to be deposited with the Cash Branch of the respective Department or in the State Bank of Pakistan or National Bank of Pakistan or Treasury under the given heads of account. An amount of Rs. 5 per page of photocopy shall be deposited in the heads of account specified for every additional page (standard size) if the number of the pages of the record requested exceeds ten pages per requisition. Subject to the availability of the facility each public body shall make available the Application Form (Annex-I) on its website.

Procedure for disposal of application: The designated official of every public body shall give an intimation to the applicant on the prescribed form (Annex-II) and duly attested photocopy of public record subject to Rules 6 and 7 except information exempted under Sections 8, 14, 15, 16, 17 and 18 of the Ordinance, as well as, any other instructions of the Government for restricting the disclosure of information by that public body.

Procedure for filing of complaint with the head of public body: In case the requisite information is not provided by the designated official of a public body within 21 days, the applicant may, file a complaint with the head of that public body who shall dispose of the complaint under intimation to the complainant within 31 days of its receipt. In case the application is sent through mail it shall be disposed of within prescribed time limit beginning from the date of receipt in the office concerned.

Note: This is an edited version of FOI Rules. See the original/full text at: <http://www.cabinet.gov.pk>

“ Federal bodies had been initially denying public information to citizens on the pretext of non-framing of Rules. However, the Federal Ombudsman had courageously ruled that public information could not be denied to citizen. He also laid down the procedure... ”

Communications) gave totally blank responses. They all were unaware FOI Rules or any designated officers under those Rules. The officers they further referred to on request, when called, were equally uninformed about FOI Rules or any designated officers thereunder.

Thus despite FOI laws, and notification of designated officers to facilitate citizens' access to information, people continue to suffer a highly indifferent and restrictive FOI regime in the country. The scope of existing FOI law is confined to federally held information and excludes the provinces. The law suffers from basic defects whereby, for instance, it did not override existing laws that could be used to deny information to citizens, e.g. under the Official Secrets Act any document could be labeled 'classified' to hide information from the public.

Federal bodies had been initially denying public information to citizens, to which they were entitled, on the pretext of non-framing of Rules. However, the Federal Ombudsman had courageously ruled that public information could not be denied to citizen on such pretext. He also laid down the procedure for investigating complaints regarding denial if information to be completed within 21 days.³⁹ FOI Rules 2004, however, make it costly, cumbersome and time-consuming for citizens to access public information. The prescribed application proforma requires an applicant to state the purpose of acquisition of information or record.⁴⁰ It smacks of citizens' access to information not being treated an entitlement or right. The Rs. 5 per page cost is equally prohibitive for an average citizen.

(4) Alternative Models of Grievance Redress: Role of NGOs

Against the backdrop of the advances in globalization and the debate on the 'retreating' state, the role of non-state actors such as advocacy non-governmental organizations (NGOs) in public administration has become increasingly important. Experience shows that organized public demand and feedback can be used as an effective voice to demand greater public accountability. The system of "Report Cards" for public services in the Indian city of Bangalore has been replicated and used by civil society institutions to create greater public awareness about poor performance of their public service providers, and to challenge the latter to be more efficient and responsive to their consumers.

³⁹ See Chapter 3, "Institution and Disposal of Cases under the Freedom of Information Ordinance, 2002" *Wafaqi Mohtasib (Ombudsman) of Pakistan Annual Report 2004*, pp. 13-14. http://www.mohtasib.gov.pk/publications/ar_2004.pdf

⁴⁰ Text of FOI application form at: <http://www.cabinet.gov.pk/> See also comments on FOI law in *Monthly Insaaf*, TheNetwork, Feb & March 2005 issues. insaaf.org.pk

Box 12: The Bangalore Citizen Report Card (CRC)

The basic concept underlying Citizen Report Card (CRC) is that citizens as users can provide useful information "reflecting actual experience of people with a wide range of public services" on the quality and adequacy of services and the problems they face with the service providers. Such feedback is valuable to judge the performance of a service provider and serve as an input for policy making and reform. Pioneered by the Public Affairs Centre (PAC), Bangalore, Citizen Report Card (CRC) provides an assessment of the satisfaction levels of citizens regarding public services in the city and ranks public service agencies (PSAs) in terms of their service performance.

The first CRC survey by PAC in 1994 carried out stratified random sample survey of 1140 households (including the poor), focus group discussions, visit by investigators to offices of service providers to assess the extent to which information was provided or denied to the public, and interviews with a limited number of lower and middle level staff from selected public agencies. The survey covered PSAs dealing with water, power, municipal services, transport, housing, telephones, banks and hospitals and addressed the following aspects:

- Overall public satisfaction (by agency).
- Public satisfaction with respect to:
 - ▶ Staff behavior
 - ▶ Quality of service
 - ▶ Information provided
- Speed money (bribe) actually paid.
- The cost of compensatory investments made by citizens.

Major findings of the 1994 CRC survey:

- None of the eight PSAs received a satisfactory rating from the respondents
- The proportion of those dissatisfied far exceeded that of the satisfied.
- Only 35% or less were satisfied with the behavior of the staff in these PSAs.
- 14% respondents paid speed money (bribe).
- Most PSAs were not citizen friendly.
- People paid a heavy cost for the inefficiency of the public sector.

The second CRC survey in 1999, which also included the Police and Ration Shops and increased sample size to 1339 for general households and 839 for slum dwellers, revealed only a partial improvement. Important findings of the 1999 CRC are:

- Citizens rated the quality of services of most agencies at fairly low levels.

- Respondents had to make an average of three visits to a public office to get a problem solved.
- Not many agencies were efficient at solving people's problems.
- The usage of grievance redress mechanism was very poor.
- Corruption was widely prevalent in most agencies.
- Many users were willing to pay more for improvement in service delivery.
- Satisfaction level and the usage of public services were much higher among the poor than among the general households.

Comparison between the two CRCs (1994 & 1999) revealed that after five years:

- Overall satisfaction had increased from 9% to 34%.
- Proportion of people paying a bribe among general households increased from 14% to 22%, but declined by 22% among the poor.
- Satisfaction ratings given by the urban poor were considerably higher, possibly because their
- expectations were lower.
- On the whole, though satisfaction levels continued to be low, there was some evidence of improvement. This did not, however, apply to the problem of corruption (bribery).

The impact of CRCs on the whole has been positive:

- Helped increase public awareness of the quality of services and stimulated citizen groups to demand better services.
- Influenced key officials in understanding the perceptions of ordinary citizens and the role of civil society in city governance.
- Bangalore witnessed a number of improvements following CRCs, particularly the second one.
- The state government and public agencies launched a number of reforms to improve infrastructure and services in the city, and streamlining of agencies' internal systems and procedures.
- Enhanced transparency in the operations of government agencies and better responsiveness to citizens' needs. While a number of other factors contributed to the transformation of Bangalore, CRCs acted as an important catalyst in the process.
- Reforms and resultant improvements, for instance in Karnataka Electricity Board (KEB), include training program for staff aimed at behavioral change and skill development, creation of a citizen's charter, launching of website to provide information to customers, computerization of billing to overcome wrong billing, electronic payment facility, adequate supply of application forms, non-routing of

applications through electrical contractors, setting up of reception counters to receive applications and complaints, introduction of voice recording systems to reduce response time, and creation of a mobile facility for receiving payments in remote areas.

- Bangalore Water Supply and Sewerage Board (BWSSB) took several measures towards customer orientation. A good public grievance redress system had been developed. Water *adalats* (water courts) meet periodically in different localities to sort out consumer problems. Modern communication facilities such as e-mail and mobile phones are now used to reduce response time. The various services provided by the agency, along with response time targets, are displayed in all BWSSB offices thereby promoting access to information. Services to the poor had improved through provision of individual water connections to their houses. CRC prompted the agency to start interacting with civil society. The role of citizen groups and resident associations in demanding better services was acknowledged.
- CRC led Bangalore Municipal Corporation (BMC) to rationalize property tax system. Based on data provided by CRC, BMC improved garbage collection system and solid waste management practices, and privatized streetlight maintenance. Time limits were also prescribed to attend to public complaints. Staff behavior had improved and there was greater interaction with citizen groups. The Report Card had served as a good tool to keep up public pressure and increase accountability.
- CRC found that only 39% patients in Bangalore Maternity Homes received medicines free of cost, 52% used disposable syringes, and only 43% toilets were clean and usable. Pursuant to CRC recommendations, cleanliness improved by entrusting it to private contractors, and washing of linen was outsourced. Qualified nurses replaced untrained staff nurses, which made a difference in the quality of service. A Help Desk was set up in each hospital with the help of NGOs, and this guided the patients on hospital procedures and services. User fees have been introduced and the revenue from this source is utilized by the same hospital. A citizens' charter has been created, which provides information about available health services. On the whole, patients' awareness had increased, and people are happy with the services. The majority of patients are poor, or lower middle class.
- The period following the second CRC saw marked improvements in the quality of service provided by almost all agencies. There was greater awareness about Report Card findings, facilitated partly by presentations that PAC had made to each of the major PSAs. These presentations helped to highlight the issues and challenges to senior officials of each agency. Subsequently, PAC organized a public meeting to bring together the major PSAs and citizens. This provided an opportunity to the PSAs to respond to the Report Card findings and to inform the people of their own

efforts to improve services.

- After the second CRC in 1999, and following a general improvement in services, PSAs have become more conscious of catering to the needs of their clients. Most public services such as water, power, and municipal amenities are still monopolies, and all citizens constitute clients for these service providers. However, civic activism and proactive initiatives by the government have induced PSAs to give the customer a more prominent place in their scheme of things. Citizen charters, the publication and supply of information under the Right to Information Act, the creation of PSA websites, documents explaining procedures and norms regarding availability of public services (for self assessment of property tax, sanction of building plans, issue of driving licenses, etc) are all examples of client orientation on the part of PSAs. Meanwhile, PAC completed its third CRC in 2003.
- The contribution of the Report Cards to these outcomes should not be viewed in isolation; these improvements reflected a congruence of government initiatives, proactive civil servants, a civil society itching for improved governance, and a positive environment for reform. The Report Cards came at the right time to act as a catalyst.
- Citizen Report Card in Bangalore, the first of its kind in the world, has been replicated in other Indian cities such as Ahmadabad, Chennai, Delhi, Hyderabad, Mumbai and Pune. In addition, two cities in Ukraine and a social development project in the Philippines have adopted Report Card based on the PAC Bangalore model.

Source: *Adapted from An Assessment of the Impact of Bangalore Citizen Report Cards on the Performance of Public Agencies*, ECD Working Paper Series ??12, The World Bank, Washington, D.C., www.worldbank.org/oed June 2004. [http://lnweb18.worldbank.org/oed/oeddoclib.nsf/24cc3bb1f94ae11c85256808006a0046/d241684df81fce2785256ead0062de10/\\$FILE/eecd_wp_12.pdf](http://lnweb18.worldbank.org/oed/oeddoclib.nsf/24cc3bb1f94ae11c85256808006a0046/d241684df81fce2785256ead0062de10/$FILE/eecd_wp_12.pdf)

Some advocacy NGOs in Pakistan are also adopting innovative approaches to encourage and facilitate citizens-consumers to avail (create a demand side of) grievance redress procedures that have been put in place for their benefit. The strategies include community empowerment to raise a voice for the entitlements of citizenship, policy advocacy to create space and avenues for public grievance redress, and service provision to facilitate consumers to articulate their complaints. Sungi Development Foundation (SUNGI), a leading civil society organization in Pakistan, for example, mobilizes local communities to address citizens' grievances, on issues such as poor quality of utility services, non-functional schools, delays in local courts, etc.⁴¹

⁴¹ <http://www.sungi.org>

Organizations like SUNGI work to bring about policy and institutional changes by mobilizing deprived and marginalized communities with a view to creating an environment in which local communities could transform their lives.

Another innovative model is the Consumer Complaint Cell (CCC) of TheNetwork for Consumer Protection. TheNetwork began its CCC in Islamabad in 2002 to facilitate aggrieved consumers, recognizing that the demand side of justice had not been explored or activated in the country. Facilitation of consumers to gain redress for grievances is not only a basic consumer right, it is also a primary function of legal empowerment. CCC aims to activate the demand for public and private providers to offer safe, affordable and high quality goods and services, and to be consumer-responsive, particularly in areas that affect traditionally disadvantaged consumers. At the same time, by its very functioning, CCC aims to orient the appropriate mechanisms, for example complaint windows, in government and the private sector to respond to consumer concerns.

Box 13: The insaaf.org.pk website

The insaaf.org.pk website is a civil society initiative managed by TheNetwork with support from the ADB and aimed at improving access to justice for citizens-consumers in Pakistan. This bilingual English/Urdu and interactive site became functional in February 2005, though some of its features are still under construction and further development. The site provides information on laws and citizens' rights vis-à-vis public bodies, and is being developed into an alternate and independent grievance redress channel with relevant links for people to access and activate the appropriate online official public grievance websites.

Box 14: Websites of the Bench and Bar

Supreme Court Of Pakistan: <http://www.supremecourt.gov.pk>

Lahore High Court: <http://www.lhc.gov.pk>

Lahore High Court Bar: <http://www.lhcbar.com.pk>

Sindh High Court Bar: <http://www.sindhhighcourtbar.org>

Judiciary: <http://www.pak.gov.pk/public/govt/judiciary.htm>

Box 15: Websites & Links on Public Grievance Redress, Consumer Rights and Access to Justice

- www.karachieast.org is the website of Karachi East judicial district. Several services are available online which include reporting of illegal custody, tracking movement of court cases and online display of daily court orders. Other features are under construction.
- insaaf.org.pk is a bilingual and interactive website managed by TheNetwork to improve access to justice for citizens in Pakistan. It seeks to provide information on laws and citizens' rights vis-à-vis public organizations and to enhance citizens' access to the forums for redress of their grievances.
- **Consumer Complaint Cell of TheNetwork for Consumer Protection:**
complaintcell@thenetwork.org.pk (Islamabad)
ccc_peshawar@thenetwork.org.pk (Peshawar)
- <http://darpg.nic.in/> is website of the Department of Administrative Reforms and Public Grievances, Government of India, with many instructive features.
- **Kerala State Government (India) websites of Consumer Redressal, Ombudsman and Chief Minister's Grievance Redressal Cell:**
<http://www.kerala.gov.in/grievanceredressal/redressal.htm>
<http://www.kerala.gov.in/grievanceredressal/ombudsman.htm>
<http://www.kerala.gov.in/grievanceredressal/chief.htm>
- http://www.ti-bangladesh.org/cgi-bin/cgiwrap/Wtiban/bpvoview.cgi?../BP_PDFfiles/Citizens_Charter/980418649_cc.pdf contains detailed and useful information on Citizen's Charters in UK.
- www.consumersinternational.org is the website of globally represented Consumers International (CI) which seeks to promote a fairer society through defending the rights of all consumers, especially the poor, marginalized and disadvantaged.

Box 16: TheNetwork Consumer Complaint Cell (CCC)

- Established in February 2002 in Islamabad as the first Cell of its kind in Pakistan, TheNetwork Consumer Complaint Cell (CCC) had no independent civil society models to draw upon, and therefore spent considerable time developing its complaint handling systems, publicizing the service, and gathering and training human resources. CCC has progressed considerably in this regard, learning and adapting as it evolved, while also generating awareness among the public.
- To date, CCC has received 2,200 complaints against defective goods and services, with the number of complaints per week rapidly increasing. Of these, 450 complaints have been successfully resolved out of court to the satisfaction of the complainants, while many remain outside CCC's ambit (mostly on issues that affect only upper-middle income class consumers). About half the complaints received were against defective utility services or incorrect billing, mostly from lower-middle income class consumers.
- Complaints are entertained in person, over the phone, through fax, or by e-mail, all free of charge.
- Upon receiving a complaint, CCC first advises complainants/ consumers about the available options, then facilitates consumers to lodge effective complaints (along with following up), and lastly represents consumers in the court if necessary. CCC has evolved standards and procedures that it implements to ensure that the staff facilitates complainants/ consumers, maintains a record, follows up promptly, and monitors progress.
- CCC receives a number of complaints of similar types, including over-billing of utility services, quality of public services, environmental degradation through harmful practices such as garbage dumping, and - importantly - negligence affecting the lives and health of citizens-consumers. In such cases, CCC follows up by activating the judicial system, and has thus far filed 22 cases in different courts.
- In certain cases, CCC also files and pursues Public Interest Litigation (PIL), typically based on a complaint that affects the public at large. In doing so, CCC is exploring and expanding the neglected aspects of PIL in Pakistan.

Email: complaintcell@thenetwork.org.pk (Isb) & cccpeshawar@thenetwork.org.pk (Pesh)

“ A paradigm shift in the existing policy mindset is required whereby redressing citizen's grievances is considered an obligation rather than merely a matter of courtesy or favour on the part of public officials.”

4. The Way Forward

This brief overview of existing grievance redress mechanisms reveals that the existing of a multi-dimensional system in Pakistan has not worked well for the common man. Despite options apparently available to a consumer to raise his/her voice against mal-administration and other grievances against performance of public bodies including justice sector institutions, no real change is noticeable so far. The situation has given rise to the critical problem of regulatory 'burden' where so many regulatory bodies and committees have been established without tangible outcomes. Given this backdrop, a coherent approach is needed to advance a comprehensive model of citizens' grievance redress system. A paradigm shift in the existing policy mindset is required whereby redressing citizen's grievances is considered an obligation rather than merely a matter of courtesy or favour on the part of public officials.

- The first and foremost measure, therefore, required is to bring about a change in administrative *culture*. The prevalent bureaucratic culture is mostly responsible for much of the failure in existing mechanisms at the agency/department level. In this regard, the police department is a classic example where, despite perfectly valid accountability mechanisms envisaged in Police Order 2002, the system remains basically unchanged. The police department did not internalize the change brought onto the statute books, with the infamous "police culture" still in place. Changing this culture is a policy issue, and requires resolute policy solutions.
- Another problematic aspect is the lack of consistency and coherence between existing channels of public grievance redress. The model adopted for the accountability of the police is substantively and procedurally different from the model for the accountability of other public departments. The grievance redress code and mechanisms may vary from one department to the other according to their respective departmental needs and structural imperatives. However, good law demands that the procedural aspects of all agency level grievance mechanisms be harmonized as far as possible.
- Both transparency and citizens' access to information are critically important in establishing a functional and effective public grievance redress regime in Pakistan. Lest people have ready access to basic information affecting their lives to be able to lodge their complaints and can understand and trust key public institutions, grievance redress will remain a distant dream. The problem is further compounded with nearly half the population being illiterate and poverty ridden. There is

hardly any change in the pathetic state of our police stations and courts (*thana* and *kutchery*), and the municipalities and most other public services. Efforts to improve these public institutions are far half-hearted, inadequate and largely cosmetic.

- Procedures must be standardized to facilitate the poor and illiterate citizens in accessing grievance redress mechanisms. Besides, there is the need for standardization of complaint handling processes, time required for necessary action, etc. In more advanced jurisdictions, administrative procedure codes/acts have been promulgated to chalk out the procedural details of grievance redress systems and to bring about maximum uniformity at agency/department level. Unfortunately, such a law could not be enacted in Pakistan despite the obvious need.

Other major areas that need to be focused are identified and discussed as follows:

(1) Citizens' Charter

Administrative reforms may appear in several different forms. Citizens' Charter could offer the potential for new developments in setting standards and promoting good administration in the public sector. A Citizens' Charter seeks to provide the citizen with standards for public services, more effective complaint handling procedures and published performance targets, and therefore greater consumer choice, transparency and accountability. A Charter also has the far reaching potential of seeking to make all public services, such as government departments, agencies, public utilities, the remaining nationalized industries, local authorities, the courts and police, conform to a minimum specified standard of quality and service.

The concept of the Citizens' Charter enshrines the trust and relationship between the service provider and its users. The concept was first articulated and implemented in UK by the Conservative Government of John Major in 1991 as a national program aimed at continuously improving the quality of public services for the people of the country so that these services respond to the needs and wishes of the users. The program was relaunched in 1998 by the Labour Government of Tony Blair, which re-named it 'Services First'. The basic objective of the Citizens' Charter is to empower the citizen in relation to public service delivery.

“ Procedures must be standardized to facilitate the poor and illiterate citizens in accessing grievance redress mechanisms. ”

Box 17: The Six Principles of the Citizens' Charter Movement as originally framed

- **Quality** - improving the quality of services
- **Choice** - wherever possible
- **Standards** - specify what to expect and how to act if standards are not met
- **Value** - for the taxpayers' money
- **Accountability** - individuals and organizations
- **Transparency** - rules/procedures/schemes/grievances

“ Citizens' Charter focuses on how public services are delivered and managed...The approach is consumer-oriented, and extends complaints mechanisms and the right to redress when services fall short of certain standards.”

The UK Citizens' Charter initiative aroused considerable interest around the world and several countries implemented similar programs, including:

- **Australia** - Service Charter, 1997⁴²
- **Canada** - Service Standards Initiative, 1995⁴³
- **India** - Citizens' Charter, 1997⁴⁴
- **Malaysia** - Client Charter, 1993⁴⁵
- **Portugal** - The Quality Charter in Public Services, 1993⁴⁶
- **European Union** - European Quality Observatory⁴⁷

Citizens' Charter focuses on how public services are delivered and managed. The purpose, therefore, is to provide such economy, efficiency, effectiveness, and high quality in services, that complaints will become a means to ensure standards as well as dealing with citizens' grievances. This approach is consumer-oriented, and extends complaints mechanisms and the right to redress when services fall short of certain standards. In other words, it is the substantive side of an administrative procedure code. It also raises expectations and, by emphasizing "rights" rather than remedies, reverses the tradition in our system that focuses on remedies.

The Indian experience shows that Citizens' Charter has an important role in creating an environment of responsibility and accountability.⁴⁸ It has significantly improved the complacent and authoritative culture of public bodies, while motivating people to assert and demand their rights as citizens.⁴⁹ Unfortunately, we in Pakistan are not yet moving in that direction, nor learning any lessons from the internationally recognized good practices to provide suitable public grievance redress avenues to consumers. The very argument of international trends and practices that policy makers frequently use to justify market-based deregulation policies is conveniently swept aside when it comes to safeguarding the citizen-consumer interest.

(2) Zila Mohtasib (District Ombudsman)

The Office of District Ombudsman is a well-established and effective PGR institution for addressing numerous local and community level problems and complaints in many parts of the world (see box 17). The Local Government

⁴² <http://www.apsc.gov.au/charters/>

⁴³ http://www.tbs-sct.gc.ca/pubs_pol/oepubs/TB_D3/guid2_e.asp

⁴⁴ <http://goicharters.nic.in/>

⁴⁵ http://www.mampu.gov.my/mampu/bi/program/Circulars/Clients_Charter.htm

⁴⁶ http://www.unic.gov.pt/UMIC/Media/Comunicados/discurso_arnaut_roma.htm

⁴⁷ <http://www.eqo.info>

⁴⁸ http://darpn.nic.in/content/Citizens_Displayed.asp

⁴⁹ Arvind K. Sharma (Edited By Alka Dhameja), *The Citizen Charter Initiative in Contemporary Debates in Public Administration*, Prentice-Hall of India Ltd., New Delhi, 2003, p. 322.

Ordinance 2001 under Article 134 provides for the appointment of Zila Mohtasib (District Ombudsman) in every district to redress citizen's complaints against maladministration within the local government, with District Ombudsman's Organization, Duties and Powers spelt out in Third Schedule of the Ordinance modeled on the Wafaqi (Federal) Mohtasib Order 1983.⁵⁰ Despite lapse of almost four years since promulgation of the Ordinance this vitally important institution at grassroots level has not been established. The Office of Zila Mohtasib is a well-conceived proposition in the Ordinance with lot of potential in addressing people's everyday problems and lending strength and credibility to the local/district government system. It is highly

Box 18: Functions of District Ombudsman

District Ombudsman is an independent, confidential resource to assist community members in resolving problems, complaints, conflicts, and other issues when normal procedures have failed. The Office of District Ombudsman caters to citizen services. The District Ombudsman provides a neutral point of contact to address citizen issues and concerns, and findings are reported directly to the Executive Authority. District Ombudsman's most significant role is problem solving and service to the public.

The functions of District Ombudsman cover a wide spectrum of services for the community both individually and collectively:

- Addresses inquiries and complaints regarding all District policies and practices, including but not limited to regulatory matters, budgeting issues and general operational processes.
- Monitors laws, regulations and policies affecting long-term care of the community.
- Provides training for volunteers and promotes the participation of citizens' groups in the ombudsman program.
- Serves an alternative to the formal complaint process.
- Assists complainants in clarifying issues and generating options for resolution.
- Serves as a resource to community and administration by providing the tools for effective problem resolution.
- Makes recommendations.
- Hears anonymous requests for information and provide referrals.
- Conducts informal interventions and mediations.

⁵⁰ See full text of The SBNP (Sind/ Balochistan/ North-West Frontier/ Punjab) Local Government Ordinance 2001. http://www.nrb.gov.pk/publications/SBNP_Local_Govt_Ordinance_2001.pdf

- Handles issues relating to unfair treatment.
- Clarifies district policies and procedures.
- Deals with issues relating to use of district facilities.
- Gets the people with the questions to the people with the answers!
- Clarifies or explains the sometimes complicated actions of an Agency.
- Helps to resolve disagreements with the public and the regulated community before they get out of hand.
- Ensures that all members of the community receive fair and equitable treatment in matters of concern or complaint.
- District Ombudsman is one of the public's advocates inside the government system.
- District Ombudsman can be contacted by post, telephone, fax, email and online complaint form.

Based on expressed mandates of four different Offices of District Ombudsman in Austin (Texas), East Tennessee and Florida:

<http://www.austinisd.org/community/ombudsman/index.phtml>

<http://www.dep.state.fl.us/northeast/omb/default.htm>

http://www.ltcombudsman.org/ombpublic/49_468_4513.cfm

http://www.sfwmd.gov/gover/3_cwilliams.html

desirable from PGR standpoint that Zila Mohtasibs are appointed under the prescribed procedure and this institution is allowed to develop at the earliest.

It is also noteworthy that the Ordinance has specific provision for local government level Transparency under Article 137: *(1) Every citizen shall have the right to information about any office of the District Government, Tehsil Municipal Administration and Union Administration; (2) Every office shall provide requisite information, if not restricted under any law for the time being in force, on the prescribed forms and on payment of such fee as may be prescribed; (3) Information about the staffing and the performance of the office of a local government during the preceding month shall, as far as possible, be displayed at a prominent place within the premises of the office for access by the citizens.* This Transparency and Access to Information, if actually practiced, will reinforce Accountability and strengthen the role of Zila Mohtasib in addressing local grievances.

(3) Administrative Procedure Law

Presently, the life of an average Pakistani is more directly affected by the decisions of administrative agencies than by those of the courts. Adminis-

trative Procedure Law (APL) is critically important in holding public authorities accountable within a given timeframe and system. The objective of APL is to achieve and promote good administration and access to justice in administrative matters. The general law also promotes the quality and productivity of administrative services, covering good administration and the procedures applicable in administrative matters.

Many countries in the world have enacted Administrative Procedure Acts or Codes to take care of administrative action in various matters.⁵¹ An Administrative Procedure Act is recognition of the fact that for effective administration, authorities may be required to perform functions like rule making and, in some cases, adjudication, typically undertaken by other institutions. Recognizing this fact, APL generally lays down the parameters within which administrative authorities are required to act while performing the functions of the other entities. APL is an attempt to bring in transparency, accountability, and public action in administration, while specifying clear checks on the administrative action to minimize and preclude arbitrariness, and to uphold the rule of law.⁵²

APL prescribes that any rule or regulation of an administrative authority has to be published (notified) to bring it to public notice. This is to ensure that people are aware of all rules and regulations before they approach authorities, in order to promote credibility and efficacy in administrative action, provide information on their scope of working, and clarify the specified area of concentration of a concerned authority. The law also provides that in case any person approaches an authority for information on the rules prepared by it, then subject to the conditions mentioned in APL, it has to be made available to him.

APL also takes care of the inquiries conducted by administrative bodies,

“ APL is an attempt to bring in transparency, accountability, and public action in administration, while specifying clear checks on the administrative action to minimize and preclude arbitrariness, and to uphold the rule of law.”

⁵¹ For statutes and experiences of Administrative Procedure Laws in different jurisdictions see: www.law.fsu.edu/library/admin/ (USA); <http://www.unpan.org/> (Greece, Latvia and many other jurisdictions).

⁵² A distinction needs to be drawn between administrative Procedure Code/Law in terms of PGR discussed above and Administrative Law in general. Administrative law has been defined by one source as follows: The third source of primary law is administrative law. Administrative agencies are created by statute and charged with regulating an area of conduct. For example, the federal Food and Drug Administration regulates drug safety by requiring pharmaceutical companies to adhere to testing and reporting procedures. Agencies operate under the jurisdiction's administrative procedures law and the statute that created them (the "enabling law"). The most common form of administrative law encountered by law students (in US) and the public is formal rule-making by agencies that produce regulations. The terms "rules" and "regulations" can be used interchangeably. <http://www.lawschool.cornell.edu/library/guides/legre-search/3.html>

Box 19: Supreme Court Judgement on Performance of Duties by Public Officials

- **In a leading judgment of the Supreme Court of Pakistan, Justice Shafi ur Rehman held:** A public official, who undertakes to perform an act, even if it is discretionary, must do so reasonably and in complete good faith without such delays as would frustrate its ultimate objective. One who accepts a public office does so 'cum onere' (a term usually employed to show that something is taken, subject to a charge or burden--editor), or with the burdens and obligations with its benefits. He thereby subjects himself to all constitutional and legislative provisions relating thereto and undertakes to perform all the duties of the office and while he remains in such office the public has the right to demand that he performs such duties. The acceptance of every public office implies an agreement on the part of the officer that he will execute his duties with diligence and fidelity.
Source: PLD 1991 SC 14

and lays down the procedure to be followed. It further makes it mandatory for all administrative inquiries to follow the principles of natural justice while hearing the parties, and contains other procedural provisions to ensure that there is no arbitrary action in the entire procedure. Administrative procedure for filing a complaint against any of the administrative bodies in discharge of their functions is also an important element of APL.

In Pakistan, however, administrative decision-making is at the absolute discretion of authorities and no guidelines in the form of administrative procedure law are available. Despite repeated judgments of superior courts, situation in this regard hasn't significantly improved.

Even though civil and criminal procedure codes exist to lay down procedural details of litigation before the courts of law, no procedural law has been designed for administrative purposes. There is thus a clear need for an APL to be enacted in Pakistan to bring in an element of certainty, standardization/uniformity and accountability in the whole process of administrative action. At the moment, the entire administrative law in Pakistan is made rather haphazardly with various ambiguities, inconsistencies and uncertainties. An appropriate Administrative Procedure Law (APL) being enacted on a priority basis will ensure improved grievance redress to citizens-consumers.

The following general principles should be followed in the codification of APL discussed above:

- Recognition of citizen's Right to Petition,⁵³
- Observance of the Rights of Citizens-Consumers;
- Equality;
- Rule of Law;
- Transparency;
- Accountability;
- Reasonable application of the Norms of Law;
- Redress to Citizens' Grievances through Mechanisms other than the available Lengthy Procedures;
- Right to Compensation;
- Access to Information and other Procedural Details including, but not limited to, Public Hearings and Consultations, Evidence-related Requirements, Jurisdiction, and Execution.

An APL will not work in isolation. It would require infrastructural and administrative support to bring some meaningful change in the existing static judicial environment in the country. In this regard, it is instructive to refer to repeated recommendations of the Federal Ombudsman Office to establish internal grievance redress mechanism at the agency/department level.⁵⁴ The Ombudsman has so far failed in making POs effective 'departmental mohtasibs' and even their existence within federal Divisions/Departments remains in doubt. Presently, for all practical purposes, the Office of Ombudsman is approached as a forum of first resort to address complaints regarding departmental mal-administration.

Redressing genuine grievances of the public at large should be declared as primary responsibility of every agency under APL, since it is unfair and burdensome to complainants having to invoke last resort option of approaching the Ombudsman for matters that could be readily addressed within the concerned agency/department in the first instance. For this purpose, each agency must establish a genuine and well-publicized grievance redress system in line with the proposed APL. Every *thana* (police station), government office and service entry should regularly display performance information and quality of service. Besides, PGR procedures should be suitably display. These informations should also be available online.

⁵³ The Petition Clause of the First Amendment to the U.S. Constitution guarantees the right of the people "to petition the Government for a redress of grievances." <http://en.wikipedia.org/wiki/Petition>
For historical, political and constitutional significance of citizens' Right to Petition the Government please see: <http://fact.trib.com/1st.petition.html>, <http://www.illuminationnews.com/anthony-hargis-5.htm> <http://www.givemeliberty.org/FreedomDrive/PostFD/SchulzSpeech.htm>

⁵⁴ See *Wafaqi Mohtasib (Ombudsman) Annual Reports* for years 1985, 1987, 1992, 1993, 1999 & 2000.

“ Redressing genuine grievances of the public at large should be declared as primary responsibility of every agency under APL, since it is unfair and burdensome to complainants having to invoke last resort option of approaching the Ombudsman in the first instance.”

“ An extremely important aspect of PGR is the availability of information, which people generally lack and find it hard to access - despite the FOI Ordinance and Art. 137 of the Local Government Ordinance.”

(4) Enabling Demand for Accountability

The existence of Citizens' Charter and an APL may not be sufficient to effectively bring about the most fundamental change: a culture of accountability. These largely "supply side" measures rely, at the end of the day, on the efficacy of public servants. However, experience of civic entrepreneurs demonstrates that even existing procedures and mechanisms could be made functional if the "demand" of citizens for their needs, entitlements and rights is effectively channeled. That is, to pull up the quality of services through demand rather than rely only on pushing them up through supply. For the present, though, civil society organizations are continually striving for the space to channel citizens' voice through to administrative agencies, which are more hostile and unresponsive to them than to the occasional complainant. Encouraging civil society to effectively channelize complainants' voice would, in fact, facilitate government agencies/ departments in redressing public complaints.

Civil society can greatly assist the state in public grievance redress through its local presence and outreach. Such is the experience with those few individuals in a few agencies/ departments that have opened themselves up to constructive engagement with civil society in the country. Countries such as India and Malaysia, let alone the UK, Canada and the USA, already enable civil society organizations to represent consumers and work with these associations to strengthen grievance redress systems. This is done through affording space to civil society in an open and structured manner.

However, such enabling and facilitation requires a mature and democratic attitude by policy makers. This facilitation of civil society now requires policy actions by all concerned stakeholders. The predisposition of the state is to co-opt civil society into delivering services that, as a matter of its obligation vis-à-vis citizens' rights and entitlement, it ought to be delivering itself. By "contracting out" such services, the state prevents civil society from playing its due democratic role of enabling accountability across the board, another indication of the lack of maturity in democratic thinking. The problems discussed above call for meaningful policy changes, backed by strong political will to effectively address structural issues pertaining to governance in Pakistan.

Lastly, people need to be positively informed about PGR procedures. This should be a mandatory requirement in all public organizations. Accessibility of these institutions to the common citizen-consumer must be ensured. An extremely important aspect of PGR is the availability of information, which people generally lack and find it hard to access - despite the FOI Ordinance and Art. 137 of the Local Government Ordinance. People's access to information must be significantly facilitated and enhanced.

Appendix 1

Designated Officers under FOI Rules 2004

The Cabinet Division through notification issues The Freedom of Information Rules, 2004 on June 18, 2004, made by the Federal Government vide S.R.O.514(1)/2004. (I)/2004 in exercise of the powers conferred by Section 25 of the Freedom of Information Ordinance, 2002 (Ordinance No.XCVI of 2002). Under these Rules, the head of every public body is bound to designate an official, not below BPS-19, under his administrative control for the purpose of providing duly attested photocopy of the public record to an applicant in accordance with the provisions of Sections 7, 11, 12 and 13 of the Ordinance.

Given below is the list of some of the ministries/divisions which had so far appointed designated officers respectively to fulfill this obligation.

List of Designated Officials		
	Name of Ministry/Division	Telephone #
1.	Cabinet Division	9202926
2.	Board of Investment	9217231
3.	Population Welfare Division	9202057
4.	Scientific & Technological Research Division	9202613
5.	National Reconstruction Bureau	9207056
6.	Local Government and Rural Development Division	9203521
7.	Religious Affairs (Zakat & Ushr) Division	9201378
8.	Education Division	9203015
9.	Communications Division	9202535
10.	Interior Division	9202149
11.	Labour, Manpower & Overseas Division	9203167
12.	Information Technology & Telecommunications Division	9217275
13.	Women Development & Social Welfare Division	9201894
14.	Ministry of Education	9201717
Source: http://www.cabinet.gov.pk/ downloaded 30/7/05		

Appendix 2

Mohtasibs, MIT and Consumer Complaints Officers

Federal & Provincial Mohtasibs

Federal Ombudsman

Mohtasib Secretariat
Benevolent Fund Building
Zero Point, Islamabad
Tel: 9201665-8 Fax: 9210487
Email: wms@isb.paknet.com.pk
Website: <http://www.mohtasib.gov.pk>

Provincial Ombudsman Sindh

Sharah-e-Kamal Ataturk
Opposite Sindh Secretariat, Karachi
Tel: 021-9211026 Fax: 021-9211056
E-mail: mohtasib@cyber.net.pk

Provincial Ombudsman Punjab

2-Bank Road, Lahore
Tel: 042-9211773 Fax: 042-9212069
E-mail: mohtasibpunjab@hotmail.com

Provincial Ombudsman Balochistan

Provincial Ombudsman Secretariat
47-Zarghoon Road, Quetta
Tel: 081-9201827 Fax: 081-9202366

Ombudsman Azad Jammu and Kashmir (AJK)

Mohtasib (Ombudsman's) Secretariat
Muzaffarabad (AJK)
Tel: 058810-42142 Fax: 058810-44895, 9206288
E-mail: mohtasibajk@yahoo.com

Member Inspection Team (MIT)

Member Inspection Team-II

Sindh High Court, Karachi
Tel: 021-9203182 Fax: 021-9203221

Additional Member Inspection Team-III

Peshawar High Court, Peshawar
Tel: 9210135 Fax: 9210170

Member Inspection Team

Lahore High Court, Lahore
Tel: 042-9212303, 042-9212951(165)
Fax: 042-9212282/042-9200993

Member Inspection Team

Balochistan High Court, Quetta
Tel: 081-9202077 Fax: 081-9202784

Consumer Complaints Officers

Chief Executive Monitoring and Complaints

IESCO Head Office
Street No. 43, G-7/4, Islamabad
Tel: 051-9201197 Fax: 051-9204184
Email: iesco@iesco.com.pk
Website: <http://www.iesco.com.pk>

Head Consumer Care

Pakistan Telecommunication Company Limited
Room No. 205, Rizwan Centre
Blue Area, Jinnah Avenue, Islamabad
Tel: 2802048 Fax: 2201376
jamil.khwaja@ptcl.net.pk

Chief Complaint Officer

Capital Development Authority
One-window Directorate
Sector G-7/4, Khayaban-e-Suharwardy, Islamabad
Tel: 9206961, 9208301-4 (Ext: 265) Fax: 9218720

Supervisor Complaint Cell

Water and Sanitation Authority (WASA)
Liaquat Bagh (Near Rescue 15), Rawalpindi
Tel: 5531347

Registrar NEPRA

OPF Building
2nd Floor, Shahra-e-Jamhoriyat
Islamabad
Tel: 92-51-9207200 ext. 330/9206500 Fax: 92-51-9210215
Email: info@nepra.org.pk Website: <http://www.nepra.org.pk>

About TheNetwork

TheNetwork was founded in 1992 as a non-governmental organization with focus on medicines and public health, later expanded its attention to consumer protection in general, governance and citizens' access to justice. Over the years, the organization has emerged as an effective advocacy group, working at the local, national and international levels. TheNetwork activities include public policy advocacy, building of informed opinion, action-oriented research and publications. Its programmes are aimed at influencing public policies including legislation in keeping with the needs, rights and aspirations of citizens-consumers on a range of key issues. A Consumer Complaint Cell in the organization is dedicated to addressing people's complaints against public and private bodies/services including necessary legal guidance and support. TheNetwork enjoys a robust track record in compiling, analyzing and disseminating information, mobilizing action around key public policy issues and promoting citizens-consumers rights and interests as part of the civil society struggle in Pakistan. For further information including membership of TheNetwork contact: (051) 2261085 or main@thenetwork.org.pk

Website insaaf.org.pk

The website insaaf.org.pk is aimed at improving access to justice for citizens-consumers in Pakistan. This bilingual (English/Urdu) and interactive site provides information on laws and citizens' rights vis-à-vis public bodies, and is being developed into an alternate and independent grievance redress channel with relevant links for the citizens-consumers to access and activate the appropriate online official public grievance websites. Any comments or queries may be mailed to: info@insaaf.org.pk

Monthly [insaaf](http://insaaf.org.pk) newsletter

The monthly [insaaf](http://insaaf.org.pk) is a bilingual (English/Urdu) newsletter intended to inform citizens-consumers on significant developments and critical issues pertaining to justice sector in Pakistan. Besides awareness raising, monthly [insaaf](http://insaaf.org.pk) serves as a dedicated forum to encourage discussion and debate and mobilize public opinion towards improving the state of justice services in Pakistan. For further information contact: monthlyinsaaf@insaaf.org.pk

“Right to petition the government or a public authority for grievance is universally recognized as an inalienable and fundamental human right. Likewise, public grievance redress (PGR) is widely recognized as a basic right of every citizen-consumer...

...The Ombudsman has so far failed in making POs effective 'departmental mohtasibs' and even their existence within federal Divisions/Departments remains in doubt.

...Administrative reforms may appear in several different forms. A Citizens' Charter could offer the potential for new developments in setting standards and promoting good administration in the public sector.

...The first and foremost measure required is to bring about a change in administrative culture. The prevalent bureaucratic culture is mostly responsible for much of the failure in existing mechanisms at the agency/department level.”