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978-1-107-03815-8 - Pakistan's Experience with Formal Law: An Alien Justice

Osama Siddique

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PAKISTAN'S EXPERIENCE WITH FORMAL LAW

Law Reform in Pakistan attracts such disparate champions as the Chief Justice of Pakistan, USAID, and the Taliban. Common to their equally obsessive pursuit of “speedy justice” is a remarkable obliviousness to the historical, institutional and sociological factors that alienate Pakistanis from their formal legal system. This pioneering book highlights vital and widely neglected linkages between the “narratives of colonial displacement” resonant in the literature on South Asia’s encounter with colonial law and the region’s post-colonial official law reform discourses. Against this backdrop, it presents a typology of Pakistani approaches to law reform and critically evaluates the IFI-funded, single-minded pursuit of “efficiency” during the last decade. Employing diverse methodologies it proceeds to provide empirical support for a widening chasm between popular, at times violently expressed, aspirations for justice and democratically deficient reform designed in distant IFI headquarters that is entrusted to the exclusive and unaccountable Pakistani “reform club.”

OSAMA SIDDIQUE is Associate Professor at Lahore University of Management Sciences. He has previously worked as a transactional lawyer at two leading US law firms and as an advocate in the Pakistani appellate courts. His research articles have published in a number of international academic law journals.

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CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town,
Singapore, São Paulo, Delhi, Mexico City

Cambridge University Press
The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org

Information on this title: www.cambridge.org/9781107038158

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First published 2013

Printed and bound in the United Kingdom by the MPG Books Group

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication data

Siddique, Osama.

Pakistan's experience with formal law : an alien justice / Osama Siddique.

pages cm. – (Cambridge studies in law and society)

Based on the author's thesis (doctoral – Harvard Law School, 2011), under the title:

An alien justice : Pakistan's experience with formal law : a historical,
sociological and institutional review.

ISBN 978-1-107-03815-8 (Hardback)

1. Justice, Administration of—Pakistan. 2. Law reform—Pakistan. I. Title.

KPL470.S56 2013

349.5491—dc23

2012048656

ISBN 978-1-107-03815-8 Hardback

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ABBREVIATIONS

ADB	Asian Development Bank
ADB PCNA	ADB Post-Conflict Needs Assessment
AJP	Access to Justice Program
APR	Annual Performance Review
BBLC	Bench-bar liaison committees
BJA	Baluchistan Judicial Academy
CCO	Civil Courts Ordinance 1962
CELE	Center of Excellence in Legal Education
CLA	Corporate Law Authority
CLT	classical legal thought
CRF	Conflict and Risk Framework
CrPC	Criminal Procedure Code 1898
DDA	Development Deficit Assessment
DFID	Department for International Development
DPRC	Development Policy Research Center
DSJ	District and Sessions Judge
EB	Enumeration Block
EC	European Commission
FATA	Federally Administered Tribal Areas
FILE	Fund for Innovations in Legal Education
FJA	Federal Judicial Academy
FOSI	Foundation Open Society Institute
FSC	Federal Shariat Court
GB	Governing Board
GMI	gross monthly income
HRCPC	Human Rights Commission of Pakistan
IBAHRI	International Bar Association Human Rights Institute
IFI	International Financial Institution
ILO	International Labor Organization
KP	Khyber-Pakhtunkhwa
KPJA	Khyber-Pakhtunkhwa Judicial Academy
LEAPS	Learning and Educational Achievements in Punjab Schools

LIST OF ABBREVIATIONS

LEF	Legal Empowerment Fund
LJCP	Law & Justice Commission of Pakistan
LUMS	Lahore University of Management Sciences
MICS	Multiple Indicator Cluster Survey
MIT	Member of the High Court Inspection Team
MoL	Ministry of Law
MTBF	medium-term budgetary framework
NAR	Nizam-e-Adl Regulation, 2009
NJP	National Judicial Policy
NJPMC	National Judicial Policy Making Committee
NRB	National Reconstruction Bureau
NWFP	North West Frontier Province
OGC	Office of the General Counsel
OSI	Open Society Institute
PATA	Provincially Administered Tribal Areas
PBC	Pakistan Bar Council
PJA	Punjab Judicial Academy
PJDF	Provincial Judicial Development Fund
PMU	Program Management Unit
PPBS	planning-programming-budgeting systems
RFP	Request for Proposals
RFQ	Request for Quotations
ROL	Rule of Law
SAB	Shariat Appellate Bench of the Supreme Court
SCJ	Senior Civil Judge
SJA	Sindh Judicial Academy
SJP	Strengthening Justice with Pakistan
SOCT	Sector Coordination Team
SPSS	special statistical analysis program
TAF	The Asia Foundation
TEC	Technical Evaluation Committee
ToR	terms of reference
TRF	Transitional Results Framework
UNDP	UN Development Program
UNODC	UN Office for Drugs and Crime

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ACKNOWLEDGEMENTS

Both my parents' families migrated during the great migration of 1947 – under acute anxiety and at great personal cost – from Eastern Punjab in modern India to the fertile canal colonies of Western Punjab in Pakistan. In the adopted new home of my grandparents, some of my fondest childhood memories are those of staying in quaint colonial rest houses with sprawling verandahs. Dotted all over the Punjab countryside, surrounded by sprawling lawns full of flowers and situated at advantageous locations vis-à-vis local villages and towns, they are the disappearing remnants of a bygone era. I was captivated by their romance. I cherish recollections of long walks in the early morning winter fog along the tree-shaded canals – one of the most significant contributions of British rule to the region – fringed by tall bulrushes that screened the bounteous orchards and fields beyond. I also recall the gripping narratives of perennial rural disputes and legendary lawsuits from my paternal grandfather while he sucked at his *hookah*; my maternal grandfather keenly perusing the crumbling rest house logbooks and reading aloud the staid observations of colonial administrators from another century; and my maternal grandmother telling me of relatives who had worked for the colonial police as well as of those – and they particularly intrigued me – who had defied it. My earliest lessons on the political economy of the Punjabi village, the endless intricacies of the colonial administrative and judicial system in the *tehsils* and the districts, and the inherited village governance networks comprising local collaborators and petty official titleholders, were imparted by my father – himself a gifted and empathetic administrator. It was he who introduced me also to the mystifying notion that the law does not necessarily translate into justice. In many ways, therefore, the seeds of this book lie in these early years.

These seeds germinated and grew as they were fed my various impressions and perceptions during my subsequent work as an advocate in the Pakistani courts, as a university teacher and researcher, and as a policy advisor to various law reform projects with which the Pakistani reform

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elite experimented over the past decade. The contours of the present work further developed as I endeavored to comprehend the spectacle of the all too frequently hapless litigants in a courtroom or attempted to decipher how a reform menu imagined in a distant land would suit the palette of local consumers of official justice. Its necessity was made obvious to me as I entered and re-entered the physical as well as epistemological labyrinth of Pakistan's post-colonial formal legal system – often losing my way or getting bewildered by its complex vistas, confusing features and misleading passageways – to emerge every time with greater concern and anguish for my fellow travelers, especially the most vulnerable and disempowered members of my social milieu. Finally, my ideas and insights took on greater solidity and structure during my doctoral work at Harvard Law School, where I was constantly encouraged to question all my convenient assumptions and gently compelled to succinctly spell out my as yet vague hypotheses.

Duncan Kennedy – Carter Professor of General Jurisprudence, Harvard Law School and my primary doctoral supervisor – asked all the tough questions while simultaneously, not unlike magic realism, unfolding to me the vital intricacies of the sociology of law and the essential linkages between law and society. An hour-and-a-half of discussion and debate with Duncan would leave me more exhilarated and exhausted than an average week in the library. David Kennedy – Manley O. Hudson Professor of Law and my secondary doctoral supervisor – adroitly inspired me to deconstruct and learn anew the multiple interfaces and connections between law and development. In the presence of David's vast intellect there was never a dull moment or room for a dull thought. Sugata Bose – Gardiner Professor of Oceanic History and Affairs, Harvard University – introduced me to the fascinatingly disparate historical literature on India's experience with colonial law. Ayesha Jalal – Mary Richardson Professor of History, Tufts University – evoked many a gripping conversation, masterfully sized up the strengths and weaknesses of my arguments, and offered much valuable advice. Duncan, David and Ayesha also read reams of manuscript produced by me and painstakingly introduced panache to many an inelegant argument and pizzazz to any dreariness of expression. To all of them I am deeply indebted and simply want to say that it has been a privilege to learn from you.

To this primary list, I would like to add the names of Henry J. Steiner – Professor of Law, Emeritus, Harvard Law School, and Marc Galanter – Professor of Law, Emeritus, University of Wisconsin Law

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ACKNOWLEDGEMENTS

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School, both of whom have inspired, encouraged, mentored and guided me in multiple ways. They continue to overwhelm me by their ceaseless intellectual energy and *joie de vivre*. In addition, both Sally Falk Moore – Victor S. Thomas Professor of Anthropology, Emerita, Harvard University, and Sally Engle Merry – Professor of Anthropology, New York University School of Law – were very generous with their time and offered both inspiring anticipation as well as sound tips for the anthropological and sociological aspects of the project. At HLS – which granted me the matchless opportunity to pursue a fully funded doctorate – the entire graduate program administration and staff and in particular William Alford – Vice Dean and Henry L. Stimson Professor of Law, Assistant Dean Jeanne Tai, Jane Fair Bestor, Trinie Thai-Parker and Heather Wallick, were always helpful, gracious, accommodating and full of good cheer.

It is remarkable how much support, affection and trust imbues and underwrites a project such as this – spread as it is over at least a decade from its inception to completion, even if the actual doctorate only took just about 3 years. Some of my really notable and influential teachers and mentors in the world of legal practice, at my various institutions of learning, and in the academy, to whom I am deeply indebted for their unstinting confidence in me over the years, include: Abid Hassan Minto, Khawaja Harris Ahmed, Dr. Shahnaz Rouse, Dr. Anjum Nasim, Dr. Imran Ali, Dr. Syed Zahoor Hassan, Dr. Anwar Khurshid, Syed Babar Ali, Hamid Sharif, Tahir Shadani, Talib Hussain, Riaz Ahmad, Zafar Iqbal Mirza (ZIM), Hussain Naqi, Dr. Tariq Banuri, Dr. Lucia Zedner, Robert W. Sparks, Thomas W. Bark, Rory Kelleher, Dr. Ijaz Nabi, Justice (Retd.) Fazal Karim, Dr. Mohammad Waseem and Dr. Rasul Bakhsh Rais. Some of my closest friends have been constant pillars of support as well as purveyors of unceasing hospitality and stimulating discussion – in particular, Dr. Asim Ijaz Khwaja and Seher Jalal in Cambridge and Dr. Ali Cheema and Laila Rahman in Lahore. My list of gratitude and appreciation also extends to Haseeb Aslam, Dr. Faisal Bari, Ayesha Haroon, Bilal Hasan Minto, Zulfiqar Hameed, Ali and Zarina Al Makky, Mahmood Farooqui, Prashanto Sen, Dr. Yug Mohit Chaudhry, Aamir Ghauri, Dr. Ananya Vajpeyi, Ali Khan Bajauri, Akshay Jaitly, Isabelle Faure Jaitly, Nick Robinson, Fawad Zakariya, Muqees Salam, Dr. Farooq Naseer, Raza Rumi, Ahsan Latif, Abdullah Wahid, Maria Faraz and Faraz Karamat, Anjum and Shahid Khan, Neelum and Shahid Dad, Faisal Mahmood Khan, Muhammad Imran, Muhammad Khalid, and many, many other trusted friends, family

Cambridge University Press

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members, colleagues, co-workers and collaborators who have always overlooked my foibles and have been faithfully generous with both assistance and affection. I also owe much to my many excellent students and research associates over the years, my superb student volunteers who made the surveys in this book possible, and my razor sharp colleagues and friends in the HLS SJD Program community, especially Nimer Sultany and Goncalo Almeida Ribeiro. A special word of thanks here for Syed Ali Murtaza who has been a trusted friend for many years as well as a close comrade in the various battles that we have fought together in order to try and make reform work despite the depressing odds. Much of the reform policy analysis in this book owes its existence to our always exhilarating collaborations and conversations.

I dedicate this book to my mother Nusrat who taught me how to feel deeply and to my father Siddique who taught me how to care selflessly and to all that they have always done for me and continue to do. This is a humble token of my deep appreciation for your confidence in me which I sincerely hope I have deserved. To Hatim – that charming handsome 13-year-old son of mine – who probed me with telling questions about what I had set out to do even when he was 8 years of age. To my delightful and devoted 9-year-old daughter Nawaal – who would often, sensing my fatigue, hush everyone and encourage me to take a nap, even when she was 5 years of age. To both of them also because they were always ready to administer a shoulder massage after a very long day. Not to forget how they would often stoically forego their nightly impromptu stories from their father since he was too tired. To baby Zoya just for being there and for the joy with which she fills our days. And to my bosom buddy, fellow academic, soul mate, and loving wife Maryam for truly valuing and cherishing what I had set out to do in both word and in deed, for sharing my thrill at its eventual completion, and for being the ultimate editor and constructive critic. If I am able to reciprocate by helping out even half as much towards the completion of her forthcoming book as she has helped me out with mine – and that too always with a smile – I would consider myself no less than an *uber* spouse.

My sincere appreciation also for the always pleasant and helpful editorial and production team at Cambridge University Press.

And now, finally, the obligatory lawyerly disclaimer. All the above are neither individually nor severally nor vicariously liable or morally or ethically responsible for any and all of the flaws, omissions and limitations of this book, which indeed are solely my responsibility, even though they did knowingly or sub-consciously play an important part in its

ACKNOWLEDGEMENTS

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Osama Siddique, November 2012