

**The civil service in South Asia has been neither very efficient nor effective in discharging its prime function to serve people**

legislation has run out. In a situation of rampant cynicism, people would like to make good with whatever they can get instantly. This is a bad reflection on the credibility of the parliament and its chosen executive. Short-term rather than long-term solutions of problems, pursued at an individual rather than collective level, seems to be the common political strategy in contemporary South Asia.

**The Executive: civil service**

The executive is made up of the Prime Minister, the cabinet, and civil servants. While the Prime Minister and the cabinet are political appointees, and hence their term of office is determined by the tenure of the government, the civil service is a permanent institution and is supposed to be above politics and of the highest professional quality. The institution of civil service implements government policies and oversees administrative functions of the state, lending stability to otherwise unstable political systems. To ordinary citizens, the government is most tangibly embodied by the civil service. It is this institution that they must approach on a daily basis for access to public services, the payment of taxes, and the disbursement of development funds. As such, the institution wields immense power and controls the destinies of millions.

The civil service in South Asia has been neither very efficient nor effective in discharging its prime function to serve people (figure 3.7). It has tended to stall reform initiated by politicians. Sometimes politicians have had to cooperate with the civil servants in order to get their jobs done; at other times, politicians have sought to influence the civil service through patronage. This has led to erosion of this institution. This institutional decay can be traced to the inability of the state to clearly define a role for the civil service; to articulate policies for priority concerns; to maintain high professional standards by recruiting the best talent and imparting quality training; to provide adequate

remuneration in order to discourage corruption; and to insulate the institution from politics.

During the colonial period, the role of the civil service was pervasive, touching various aspects of peoples' lives. These overblown responsibilities spilled over after the British Raj left the subcontinent. Today, there is at once too much and too little involvement of civil servants in the functioning of South Asian governments. The majority of functions remain economic, such as imposing tariffs, distributing import licenses, and handing out subsidies. Many equally important social and civic areas in which people require state intervention, such as the provision of social services, remain neglected. As true servants of the people, civil servants have failed to deliver the services that people most want and need.

*The bloated bureaucracy*

The South Asian civil service has expanded enormously over the years, even though liberalization necessitates a diminishing role of the public sector in economic activities. This increase represents a divergence from the world trend since the 1970s. Today, there are almost fifty civil servants for every thousand people in Sri Lanka. The corresponding figures for Pakistan and Bangladesh are twenty-two and ten, respectively. Out of every hundred employees in the organized sector in India, forty are civil servants (1989), compared to thirty-three in Sri Lanka, seventeen in Egypt, fourteen in Mexico, and less than three in Chile and Argentina. In Pakistan, 20 per cent of the non-agricultural workforce is employed by the government.

In early years after independence, state interventions in all areas were needed and thus the bulk of employment was in the public sector. However, as the state began to shed many of its responsibilities, it was not able to reduce the size of the bureaucracy accordingly. During the mid-1980s, it was estimated

that as many as 20 per cent of civil servants in Sri Lanka were redundant (Das, S. K. 1998).

Between 1951 and 1991, the size of the public sector has grown almost five fold in India and nearly forty times in Bhutan. The share of the public sector in total employment in the organized sector increased from 58 to 71 per cent in India between 1961 and 1991. Throughout South Asia, as growth has slowed, the civil service has been one of the few sources of employment for a rapidly expanding population. In Bangladesh and Nepal, the size of the public sector doubled between mid-1970s and the early 1990s. Much of this increase has occurred at lower levels of the civil service, where value added is low. The officer staff ratio in most countries—at 1:15 in Pakistan and 1:7 in Bangladesh—is much higher than the norm of 1:3 recommended for most agencies.

The number of ministries has also mushroomed. In India there were sixty-three in 1996, compared to twenty-three in 1951. In Bangladesh, there were thirty-five ministries in 1996, compared to fourteen in Japan which has a higher population.

Adding to this problem of overstaffing is the nature of recruitment in some countries. Recruitment in many countries is not based on merit but on assigned quotas for different regions and socio-economic groups. In Pakistan, for example, only 10 per cent of recruits to the highest cadre are selected on merit, compared to 40 per cent in Bangladesh.

The huge size of the bureaucracy not only breeds inefficiencies, it also imposes heavy costs. Even though individual wages are low, the sheer size of the government machinery makes the overall wage bill colossal. In Pakistan, spending on civil service employees now accounts for more than half of non-defence, non-interest expenditure. In Bangladesh, the wage bill of civil servants accounts for 40 per cent of government expenditure, having increased more than three times in nominal terms over the last decade. In

India, the wage bill of central and state governments together takes up 40 per cent of the governments' revenue.

The huge costs of maintaining such a large civil service not only draws away resources from development sectors, it also forces cutbacks in education and infrastructure, thus undermining productivity and compromising quality of service. In the past, civil servants were trained in the finest institutions both within the country and abroad to ensure a high level of competence. Most governments today attach a low level of priority to training in budget allocation and promotion policies.

#### *Pay and incentive structure*

The bureaucracy in South Asia is not well compensated. This is due to the rapid rise in public sector employment in South Asia, which has far exceeded the increase in revenue collection base. Over the years, the governments in South Asia have not been able to maintain a balance between the pay scales and rates of inflation. As a result, wages have gone down in real terms. Bangladesh is a typical example, where wages have fallen by as much as 87 per cent at the highest level and 43 per cent at the lowest, in real terms since 1971. In Bhutan, the salaries in the highest grade fell by 40 per cent in real terms, between 1988 and 1994. Since the 1960s, the real pay of a high level civil servant in Pakistan has decreased by as much as 60 per cent.

Wages in the public sector do not compare at all favourably to those in the private sector. Over the last two and a half decades, while salaries in the private sector have risen dramatically and kept pace with inflation, those in the public sector have fallen drastically. In Bangladesh, salaries at the top management level in the public sector are 7 times lower than in the private sector. In Pakistan, even accounting for non-wage benefits, civil sector pays are typically 60 per cent lower. Starting-level salaries of civil servants in India are less

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than two-thirds of comparable wages in the private sector and this differential increases at higher levels.

In other parts of the world, public sector salaries as a percentage of private sector ones are favourable: as high as 110 per cent in Singapore. In fact, Japan and Singapore have laws that do not allow civil service wages to fall below two-thirds of those in the private sector. The low wages on offer mean that the bureaucracy in South Asia no longer attracts the most talented citizens. The low level of remuneration also hurts motivation, depresses efficiency, generates rent-seeking, and encourages corruption.

Accountability, both internal as well as external, is crucial to ensuring transparency. The civil service has seen its accountability mechanisms gradually erode in the face of falling wages, over centralization, and heavy political influence. Bureaucrats throughout the region are perceived to be corrupt and far removed from the demands and complaints of citizens. In India, it is estimated that 10 to 15 per cent of civil servants are corrupt (Das, S. K. 1998). It is thought that government employees, numbering over 20 million, routinely exchange development project funds, official approval, and public services for money on the side. Cases abound in South Asia of the abuse of power by civil servants with formidable discretionary powers. At times, corrupt bureaucrats have colluded with politicians in abusing their authority for personal enrichment and benefit.

*Politicization of the bureaucracy*

As the arm that implements government decisions, the institution has had to face intense political interference in the form of both coercion and patronage. This growing political interference started with a vengeance in the 1970s. In India, for example, the emergency years of 1975-7 have often been perceived as a watershed in the degeneration of the civil service. Those who were loyal to the government received better positions and promotions.

This pattern has continued virtually everywhere in South Asia. Politicians have used various methods to ensure loyalty, including the demotion of officers; political appointments to civilian posts; provincial quotas; lateral entry; *ad hoc* transfers, promotions and demotions; and the constant bureaucratic shuffles that accompany political changes.

In Pakistan, Ayub Khan dismissed 1,300 civil servants in 1959 by a single order; Yahya Khan dismissed 303 in 1969; and Zulfikar Ali Bhutto 1,400 in 1973. When the government changed in Uttar Pradesh in India in 1990, 326 out of 520 top civil officers were transferred. The average length of tenure for field officers in some states is as low as eight months. Under such circumstances, bureaucrats have scrambled for political patronage. In the bargain, the civil service has lost its traditional political neutrality and a vital state institution that interacts with people on an everyday basis has been gradually eroded and demoralized.

On the other hand, the bureaucrats exert powerful influence over politicians at all levels of governance. This is due to lack of sufficient maturity of political institutions, parties, and legislatures. By virtue of their permanent positions, civil servants last longer than the tenure of parliamentarians. Historically, the bureaucracy has been a powerful force under non-democratic governments, especially in Bangladesh and Pakistan.

*Servants of the people*

One of the most crucial reforms that is needed in South Asia is the restoration of its institution of civil service. This can only occur through a redefinition of the role of civil servants that will enshrine their overarching task of providing services to citizens to enable them to live fuller, more productive, and safer lives. A common complaint against the institution voiced by people throughout the region is continued bureaucratic obstruction placed in the implementation of any decision that may not be to their liking. Bureaucrats often forget that it is their

job to implement policies and not to make policies themselves. In turn, politicians must refrain from using bureaucrats in ways that are not in the interest of the country.

The institution must only target its main functions of maintaining law and order, providing a regulatory framework for economic activities, promoting human development by improving the quality and quantity of basic social services, and encouraging a more participatory process of governance.

Civil servants must learn to discharge their functions with efficiency and transparency. The challenges faced by the bureaucracies of South Asia are considerable. As the implementation arm of the government, nothing can start to move on the ground unless it is pushed by a responsible, upright, and responsive civil service. A revitalized civil service can serve as a powerful tool to achieve humane governance.

## **The Judiciary**

The present judicial system in India, Pakistan, Sri Lanka, and Bangladesh has evolved from institutions established during the colonial period. The traditional roles of the judiciary, that of settlement of disputes (civil jurisdiction) and the trial and punishment of those charged with crimes (criminal jurisdiction), have thus evolved over a considerable period of time. The basic elements of a modern system of civil and criminal justice have been in operation in most of the subcontinent for more than a century and in Nepal at least since 1951, when the Interim Constitution was promulgated.

A basic deficiency of the judicial system throughout the region has been the lack of effective access to justice for large sections of the population, mainly due to poverty. The Supreme Court and High Courts on the whole continue to enjoy public confidence and in a number of jurisdictions have earned increasing respect for their pro-active role in the enforcement of human rights and in developing public interest litigation to

protect the rights of the disadvantaged; but grievances regarding long delays persist, as increasing case-loads are not matched by an increase in the number of judges.

There has been an erosion of confidence in the subordinate judiciary (the courts below Supreme Courts and High Courts). These courts are generally perceived as being manned by an insufficient number of inadequately trained and ill-paid judges. This results in long delays, huge backlog of cases, and a generally poor quality of judgments. In a number of jurisdictions there are persistent allegations of corruption, which have become a source of genuine concern.

### *The challenges of the subordinate judiciary*

Lower courts in South Asian countries remain largely inaccessible to the poor, hugely backlogged, and subject to manipulation by politicians and other influential people. Outdated laws impede the protection of property rights and discriminate against women and other minorities, as in Sri Lanka and Pakistan. Grievances with regard to the functioning of the subordinate judiciary have been growing in most of the region.

SEPARATION OF POWERS. A basic institutional requirement, that is recognized by most South Asian constitutions, is the need for separation of the judiciary from the executive. While this has been largely implemented in India, it is yet to be achieved in the other countries of the region. In Pakistan, it was envisaged that separation would be effected within three years from the coming into force of the Constitution in 1973. This period was increased to five and then to fourteen years by later amendments to the Constitution. The steps initiated in 1996 for separation of the judiciary from the executive are still continuing and have yet to be completed. In Bangladesh, a High Court judgment recently held that the constitutional mandate calling for separation of the

judiciary from the executive was not being complied with.

TOO MANY CASES, TOO FEW JUDGES. Although the South Asian population has increased at a rapid pace in past years, this has not been matched by an increase in the judicial system's capacity to deal with this rising demand. That is why there are about 24 cases pending in South Asian courts for every 1,000 persons (see table 3.7). There is only one judge for 90,324 people in South Asia—thus, on average, each judge has 2,170 pending cases to address. This figure, however, ranges from more than 5,000 in Bangladesh to 300 in Nepal, as shown in table 3.8. In South Asia, there are about ten judges for every million people. In the United States, as far back as 1982-3, there were ten times that number, or 107 judges for every million people.

During the 1980s, the number of pending cases across High Courts in India more than doubled. This was not matched by a proportionate increase in the number of judges. In fact, between 1977 and 1995, their numbers only rose from 348 to 538. Across the region, difficulties in the selection, confirmation, and transfer of judges are responsible for this deficiency. The most important reason for the shortage of judges is the lack of funds needed to hire more judges. Consequently, judges are overburdened with cases and this acts as a major hindrance in the speedy delivery of justice.

For ordinary South Asian citizens, the wheels of justice turn slowly as thousands of cases lie buried in a sediment of delay, bureaucracy, and incompetence. Drawn out legal procedures see cases drag for generations. In Bangladesh, cases take, on average, between five to twenty years; in Nepal and Sri Lanka, they frequently last over a decade. In 1998, only 29 per cent of Bangladesh's total prison population had been sentenced while the rest were either awaiting trial or were under trial. In India, over 22 million cases are still pending in courts throughout the country. As many as 70 per cent of these involve

litigants from villages. In 1995, of the 66,000 cases before the Supreme Court in India, 10,000 had been in court for over a decade. The longer a case runs, the more expensive it is to pursue it.

LOW PAYS, HIGH COSTS, RAMPANT CORRUPTION. Low levels of remuneration for judges have led to corruption, judicial incompetence, long and drawn out trials, and expensive justice. The average cost of a case is very high. High court judges' salaries are low—less than three times the average per capita income in India, leaving them susceptible to bribes. People are forced to grease the wheels of the system in order to get a quick verdict. According to a 1998 survey, 63 per cent of the respondents reported that they had to bribe court officials in order to get a verdict in their favour (TI 1997a). Another survey shows that 80 per cent of people in India feel that they need influence or have to pay bribes in order to see a case through (Seshan 1995). The poor do not have the resources to offer bribes nor can they afford the time costs of lengthy procedures. In this situation it is they who suffer most. The vast majority of South Asians thus feel alienated by their judicial systems and learn to live with injustice and violation of their rights.

#### *The Supreme Courts: expanding frontiers*

Following the independence of India and Pakistan in 1947, Sri Lanka in 1948, and Bangladesh in 1971, written constitutions were adopted. Each of these constitutions contained a 'bill of rights'. In these national constitutions, a dichotomy was maintained between civil and political rights which were enforceable in courts and were placed in a chapter entitled: *Fundamental Rights*; while economic, social, and cultural rights were placed in a separate chapter entitled: *Directive Principles of Policy*, and were stated not to be judicially enforceable.

While economic and social rights may not be regarded as justiciable, the judiciary in a number of jurisdictions has developed a role for itself in this sphere

Table 3.7

Justice delayed, justice denied, 1996

Country	No. of cases pending in courts (millions)	No. of cases pending per 1,000 persons
Bangladesh	6.5	52.9
India	22.0	23.1
Nepal	0.08	3.6
Pakistan	0.75	5.2
<b>South Asia</b>	<b>29.3</b>	<b>24.0</b>

Source: HDC Governance Tables.

Table 3.8

Judging the judges, 1996

Country	No. of persons per judge	No. of cases pending per judge
Bangladesh	94,937	5,142
India	90,909	2,137
Nepal	85,377	314
Pakistan	85,038	454
Sri Lanka	76,339	—
<b>South Asia</b>	<b>90,324</b>	<b>2,170</b>

Source: HDC Governance Tables.

by adopting innovative modes of judicial review. Thus, a number of economic rights (the right to food, the right to shelter, the right to employment, the right to education, the right to health and others) have been treated as aspects of the right to life, which is a justiciable civil right. The right to equality, another justiciable right, is invoked to correct abuses of executive power which have a negative impact on economic rights (including the right to a healthy environment)—such as in cases relating to allotment of public land by way of political patronage or award of contracts induced by illicit payments.

Discriminatory and arbitrary administrative action or action which has a negative impact on economic rights, such as displacement of population and environmental degradation, have been corrected by judicial review. Judicial review is also available where a legal infrastructure has been developed through legislation, such as pension rights and workers' rights and the right to safety in the workplace.

The Supreme Courts of the region are now actively involved in examining violations of fundamental and constitutional rights of citizens. The technique of public interest litigation has provided a speedy and effective remedy for violation of fundamental rights. It has fostered the concept of participative justice. Applications are made before the highest court of the land, and proceedings begin with a single application. In most cases, an application is disposed of within two years, which is appreciably quicker than in other areas of the law.

The judiciary, by expanding the frontiers of judicial review and by developing public interest litigation, has demonstrated that a pro-active judiciary can make significant contributions to redress human rights violations and to correct abuses of executive authority. In particular, the Indian Supreme Court has overtaken the judiciaries of other countries in expanding the frontiers of judicial review.

In the late fifties and early sixties, the Court used to receive between 500 and 600 petitions a year. In the nineties, this number has increased more than fifteen times. Opinion polls indicate that it is the most trusted institution in the country. Today, the judiciary can pass judgment on any aspect of governmental and public functions. It is now impossible to say that there is any area where there is no judicial review in the first instance or at the threshold, as the Indian judiciary has propounded the theory that every organ functioning under the Constitution has limitations and it is for the court to determine those limits.

The scope of judicial review has also been expanded in the other countries of South Asia. In Nepal, the Supreme Court has recently made landmark judgments overturning major decisions by the executive. Abuse of executive powers, the failure to discharge legal duties, and pervasive human rights violations, have called for redress. This has accounted for the expansion of the scope of judicial review.

#### *Politicization of justice*

New challenges are presented by recurrent political crises precipitated by confrontation between government and opposition parties, or between different organs of the state: the parliament and the courts, and the executive and the courts. As an alternative centre of power with the jurisdiction to hold the executive and other public officials accountable, the judiciary has often collided with other civil institutions.

The responsibility for effective execution of legislative mandates rests clearly upon the executive. If the executive defaults on its legal and constitutional obligations however, courts and judges cannot sit silently for too long. As reflected in the Indian Supreme Court judgment, if the duly authorized constitutional officers do not appoint judges in time, creating a situation of massive arrears, an activist justice may feel

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justified in issuing directions to them to do their jobs expeditiously. If there are large numbers of prisoners not brought to trial for a long time, such a judge might feel more than justified in ordering expeditious trials or their release. If conditions in jails are inhuman and debasing, such a judge may order creation of minimum facilities.

In Pakistan, the activist role played by the Supreme Court in recent times has led to a confrontation with the executive. The credibility of the courts was attacked by manipulating constitutional provisions regarding the appointment, tenure, transfer, and promotion of judges. Successive governments appointed temporary judges, whose insecurity of tenure made them more likely to yield to political interference. Traditionally, the process of appointment of judges to the Supreme Court and the High Courts is an integrated 'participatory consultative process' for selecting the best and the most suitable persons available for appointment. However, the view of the Chief Justice holds primacy. The clash between the executive and the judiciary saw the Chief Justice resign amidst mob attacks on the Supreme Court. The independence of the judiciary has since been severely damaged and the government has shown a desire to circumvent the judiciary by setting up military courts and anti-terrorist courts.

A major issue regarding the relation of the courts to the parliament arose in a number of cases in connection with the determination of the legality of the dissolution of parliament. This issue was referred to the judiciary in Pakistan more than once, and has also been the subject matter of a reference in Nepal. Related issues have been referred to the court in Bangladesh.

In this context, the traditional wisdom that political issues should be resolved politically and not be imposed upon the judiciary acquires heightened relevance. The reference of these issues to the courts is symptomatic of the

weakness of the political process to deal with situations which call for resolution through the political, rather than the judicial, process. While the judiciary has managed so far to provide some kind of resolution in the cases referred to them, this has not been without attracting controversy about the propriety of such a role and raising questions regarding their impartiality in dealing with such issues.

*Promoting a just society*

In democratic societies, fundamental human rights and freedoms are more than paper aspirations. They form part of the law. And it is the special province of judges to ensure that the law's undertakings are realized in the daily life of the people. Fundamental human rights and freedoms are enshrined in the public law of every nation, protecting individuals and minorities against the misuse of power by public authorities of all kinds.

In a society ruled by law, all public institutions and officials must act in accordance with the rules. The judges bear particular responsibility for ensuring that all branches of government—the legislature and the executive, as well as the judiciary itself—conform to the legal principles of a free society. Judicial review and effective access to courts are indispensable. The urgent necessity remains to bring the principles of human rights into the daily activities of government and public officials alike, and of ordinary men and women. In this way a culture of respect for human rights can be fostered.

In South Asia, judicial reforms must include an increase in the number of judges, a rise in salary levels, improvement in infrastructure, better legal education, and the promotion of alternative dispute settlement mechanisms to help clear the massive backlog of cases. The guiding principle of any democratic society is a bill of rights, transparently enforced by an impartial judiciary.

## **In search of good political governance**

As stated at the outset, good political governance stems from a universal respect for the political process. This is best achieved by doing the obvious: securing the sovereignty of citizens, ensuring their participation at all levels of decision-making, and building institutions that protect the sanctity of established procedures. In the words of Plato, a society rooted in two basic percepts—*'law one: everyone is free; law two: no one can change the first law.'*

South Asian leaders must realize that unless democracy works for the betterment of people's lives, it loses much of its relevance and only delays social conflict. People need to understand how the political process works and should work. This can be achieved by promoting

civic consciousness and opening democratic spaces where demands can be articulated. For their own part, ordinary citizens must continue to push their states for a more equitable distribution of power.

Sound economic management is not possible amidst political instability and a weak institutional framework. Lack of good political governance has hurt South Asian economies and their citizens by allowing privileged classes to usurp resources and influence policy making. This is the subject of the next chapter. In opening their economies to the outside world, states should remember that it is democracy built on strong institutions, the rule of law, and a stable framework to resolve political conflict that will best enable them to take advantage of the benefits of globalization—and to avoid its pitfalls.