

**SPECIAL PAY AND ALLIED PERKS FOR JUDICIARY: A
CONSTITUTIONAL ABERRATION ON THE TOUCHSTONE OF
EQUALITY CLAUSE IN THE CONSTITUTION OF ISLAMIC REPUBLIC
OF PAKISTAN**

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ABSTRACT

Salaries paid to judicial staff are far more than the salaries of other same ranking officials, which is against the equality principle as enshrined in the constitution of Pakistan, 1973. Research in hand aims to propose equal amount of salaries for all the governmental servants serving in similar scales. This paper is an attempt to analyze the justification and implication of the said practice of additional allowance to the judicial organ in Pakistan. The methodology adopted is critical analysis of the issue. The limitations of the study were obtaining similar data from other countries regarding any dissimilarities in salaries to judicial staff vis a vis other organs of the government due to limited scale of the research and scarcity of resources. This kind of analysis to author's knowledge has not been undertaken before particularly in the context of Pakistan.

Key Words: Special Judicial Allowance, Equality, Judiciary, Article 25 Constitution of Pakistan.

Introduction:

The huge sum of salaries paid to judicial hierarchy and staff is a grave social problem that touches the roots of constitutionally proposed egalitarian society like Pakistan where economic inconsistencies are already glaring. Huge salaries to individuals of judicial organ militate against the equality principle as enshrined in the constitution of Pakistan, 1973. It is proposed in this study that huge salaries being paid to the judicial staff are against the equality clause and cause of concern for the society at large. A special class of people is being

created by virtue of said practice and desired result of efficient judiciary for masses is far from forthcoming besides, no rational or reasonable object is being achieved from huge sum of salaries being paid to judicial staff. The value addition of this article is that, it is being proposed to bring all the salaries of governmental servants at par with each other so that no demeaning is done of any institution and all individuals are placed equally with honor and dignity in accordance with the wishes of founding fathers and the constitution makers.

Salaries of Judicial setup:

Special judicial allowance has been allowed to the court staff and judges across Pakistan in their pay's and pensions respectively (*Muhammad Sher Shah and others vs Government of N.W.F.P and another, Dawood Sagar and others vs Government of Sind and others, Government of Punjab and others vs Syed Riaz Ali Zaidi, Secretary Law and Prosecution Gilgit Baltistan and others vs Aslam Khan and others*). The addition of special judicial allowance means that all the judges and court staff are entitled to three times more pay than other people working in similar governmental positions across Pakistan. This allowance has been added to the respective pays of the court staff and judiciary by the judiciary itself implying such powers of conferment from independence of judiciary hypothesis (*Muhammad Sher Shah and others vs Government of N.W.F.P and another, Dawood Sagar and others vs Government of Sind and others, Government of Punjab and others vs Syed Riaz Ali Zaidi, Secretary Law and Prosecution Gilgit Baltistan and others vs Aslam Khan and others*). Special judicial allowance has also been allowed to the prosecutors across Pakistan (*Abdul Haleem Siddiqui and others vs Federation of Pakistan and others*). This special judicial allowance doesn't come under deductions for the purpose of Income Tax Ordinance, 2001 (*Muhammad Asif and others vs Federation of Pakistan and others*).

Article 25 of the constitution of Pakistan stipulates that all citizens are equal before law and entitled to similar protection (*Constitution of Islamic Republic of Pakistan, 1973*). Supreme Court of Pakistan while elaborating and elucidating exception from the said article 25 has held as follows.

“Classification was only permissible under the law where the same had been made on a rational and reasonable basis. No singular standard of reasonableness could be deduced for such classification, it must be such that could be justified on an intelligible differentia identifying why the classification/distinction had been made and there must be a rational nexus to the object sought to be achieved by the classification (*National Commission on the Status of Women versus Government of Pakistan*).

The reasons and arguments as preferred for allowing special judicial allowance and mentioned in one of the earliest judgments by Peshawar High Court (*Muhammad Sher Shah Session Judge Vs Government of N.W.F.P*), on the subject are as follows:

- i. Salaries paid to the court staff and judges do not match the job description, which involves complex work particularly after coming into force of National Policy Making Committee Ordinance, 2001 which inter-alia mandates quick disposal (*Muhammad Sher Shah Session Judge Vs Government of N.W.F.P*) (*Muhammad Sher Shah Session Judge Vs Government of N.W.F.P*).
- ii. Similarly placed other employees of judicial service in other provinces have been awarded judicial allowance (*Muhammad Sher Shah Session Judge Vs Government of N.W.F.P*).
- iii. Working hours are from 8 to 4 normally and in many cases they are increased hence, unparalleled work as compared to other departments (*Muhammad Sher Shah Session Judge Vs Government of N.W.F.P*).
- iv. Judges dictate lengthy judgments (*Muhammad Sher Shah Session Judge Vs Government of N.W.F.P*).
- v. Onerous duty(*Muhammad Sher Shah Session Judge Vs Government of N.W.F.P*).
- vi. To avoid corruption, high pays are indispensable(*Muhammad Sher Shah Session Judge Vs Government of N.W.F.P*).

The arguments can thus be summed up as that in view of the judicial hierarchy, the onerous job duty beckons for such huge pays and to avoid malpractices huge pays are indispensable. Islamic Republic of Pakistan was conceived as an egalitarian society and fundamental right of equality enshrined in all the constitutional documents of Pakistan. A huge governmental salary to one class of individuals militates against this equality clause particularly when equal and significant amount of work is put in by other governmental departments.

The objective of independence of judiciary is ensuring to people impartial judicial making, which is far from forthcoming from the judicial pillar of the state in Pakistan. One recent report by an international organization reveals that judiciary of Pakistan is ranked 120th amongst 128 countries of the world and better in South Asia to only Afghanistan (Correspondent, *Rule of law: Pakistan falls by one position in global ranking 2020*). The dubious constitutional history of Pakistan is also ample evidence of the fact where dictators have been legitimized on the pretext of revolution and even granted the power of amendments to constitution as was seen in the famous *Zafar Ali Shah case (Zafar Ali Shah vs Pervez Musharraf)*.

The salaries of judges and staff of Punjab High Court as detailed on the Punjab High Court Webpage is as follows (*LHC Salary Structure*):(annexed) As per reports these salaries have been further increased by virtue of enhancement in special judicial allowance for the judiciary across Pakistan.

Comparison of salaries:

The equality clause prescribed under the chapter for the fundamental rights read with other constitutional provisions inter-alia envisages an

egalitarian society so that all citizen of Pakistan are equal in dignity and entitled to draw equal amount of salaries in similar pay scales unless a case is made out for exclusion. But salaries drawn by judicial setup is far more than that of other civil services of Pakistan without any prerogative in this regard or creation of an intelligible differentia.

A University professor with the responsibility of shaping future of Pakistan, for example in juxtaposition is equally placed receiving far less amount of salary then judicial staff. Judicial staff is no more qualified than a university professor and in most of the cases holding basic degrees with elevated grades while drawing huge salaries. This aspect was never looked into by the courts while awarding huge amount of special judicial allowance for itself. An impression was given in the judgments for enhancing judicial allowance as if court staff and judiciary put in more work than other government servant. This is factually incorrect as judicial business comes to a halt after 3:00 and it's a more or less 8:00 to 3:00 job. Furthermore, other government departments also deal with important and onerous duties and confining this to judicial hierarchy is like demeaning the other government offices. The life of judges in juxtaposition to university teachers is far less competitive which should have been otherwise.

The university professors are supposed to write scholarly articles for their reappointment to higher grades while promotion is a routine affair in judges' life. The long working hours are same as compared with judiciary but if we look at the salary of a grade 19 officer of a university setup, it is far less as compared to a judicial staff. The BPS-19 of university is drawing around 100000/- while a court staff of similar rank in judiciary draws up-to 170000/-. This is manifest injustice on the face of it. This is no hidden secret that courts are inefficient and engage in corrupt practices.

Numerous persons in KPK have been removed on charges of corruption (*13 lower court judges sacked in KP on CJ PHC's orders*). There is no scarcity of cases which can be quoted of judicial inefficiency. Instead of creating a special class of people that is superior in terms of money and status and faced with limited accountability, the focus should have been creating a professional service. Huge salaries are also not tenable as major chunk of professionals in government service supposedly come through merit policy while failed judges of public service commission have been also regularized and consequently serving by reason of the judgment of Peshawar High Court which was later confirmed by the Supreme Court of Pakistan on the basis of regularization of contract employees' policy by the Khyber Pukhtunkwa government (*Muhammad Sajid vs Govt of NWFP and others*). Thus unqualified people are also serving on judicial desk while compromising the efficiency of the institution. People of Pakistan's enshrined human and fundamental right of fair tribunals is regularly denied to them because the persons in judiciary are intellectually corrupt (Noorani, *Embarrassing verdicts in Pak history* 2017). Evidence of it can be gleaned from Pakistan's' turbulent constitutional history. The diverging verdicts of superior courts are also ample evidence of this fact

which manifests lack of analytical inconsistency. Independence of judiciary has been mainly cited as the reason for allowing itself the jurisdiction to decide the question of special judicial allowance by the superior judiciary. Thus a contentious question was decided and benefit was allowed to itself by the judicial organ. Majority of gazette officers in judicial organ of Pakistan have been sanctioned official car unlike other government functionaries which also is against the cardinal equality principle in the Constitution of Pakistan.

Workload comparison:

Different institutions have diverse workload in Pakistan. Universities timing are from 0800 hours to 1600 hours that is 8 hours while civil administration's office timing is from 0800 to 1400. While Police service is having 24 hours duty time. Judiciary's office time is 0900 to 1400 hours. Workload comparison shows that all institutions are having about same working hours. No intelligible differentia can be made out for the judicial institution and all the institution of government in their spheres have onerous significant duties to perform.

Conclusion:

Article 25 of the constitution of Pakistan stipulates that all citizens are equal before law and entitled to similar protection (*Constitution of Islamic Republic of Pakistan, 1973*). Supreme Court of Pakistan while elaborating and elucidating exception from the said article 25 has held as follows.

“Classification was only permissible under the law where the same had been made on a rational and reasonable basis. No singular standard of reasonableness could be deduced for such classification, it must be such that could be justified on an intelligible differentia identifying why the classification/distinction had been made and there must be a rational nexus to the object sought to be achieved by the classification (*National Commission on the Status of Women versus Government of Pakistan*).

Each and every department of government is of the same importance for state business. From the Tehsil Municipal Services to Judiciary and law enforcement agencies, all are indispensable for smooth running of social setup. No doubt judiciary is having a significant job but there is no reason for judiciary to collect more allowance based on their workload and such act on their part has created doubts in the minds of other sections of society as to the good faith of such a decision of allowing increased allowance vis a vis other sections of society.

Recommendations:

1. Salaries of all the governmental staff may be made at par in line with Article 25 of constitution of Pakistan enshrining equality for all. All the government servants are entitled to equal respects who are working with equal diligence e.g. police department which has to face night duties unlike the judicial staff.
2. Measures should be taken to convert judiciary into efficient relief giving professional body that can ameliorate the miseries of people and perform its function like an organized unit tirelessly as the case of Pakistan Army. The focus in Islamic Republic of Pakistan should be shifted from conferring of benefits on the judicial institution to selfless devotion to duty by the individuals within the judicial organ which requires training rather than showering of benefits.

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Annexures

**DETAIL OF PAY & ALLOWANCES OF
HON'BLE CHIEF JUSTICE**

BASIC PAY	713,280
SUPERIOR JUDICIAL OFFICER ALLOWANCE	269,525
MEDICAL ALLOWANCE	67,733
*HOUSE RENT	65,000
TOTAL	1,115,538

*The Hon'ble Chief Justice is not drawing House Rent @ Rs.65000/-as he is occupying official accommodation

**DETAIL OF PAY & ALLOWANCES OF
HON'BLE JUDGES**

BASIC PAY	685,847
SUPERIOR JUDICIAL OFFICER ALLOWANCE	269,525
**HOUSE RENT	65,000
MEDICAL ALLOWANCE	65,128
TOTAL	1,085,500

**The Hon'ble Judges who are residing in official accommodation are not drawing House Rent.

PRIVILEGES TO SITTING JUDGES

Official Car	500 litter petrol per month
Contingent Staff Mali, Sweeper, Ordely/cook	Rs.25000/- per month
Garden Charges	Rs.25000/- per annum
Utility Bills	Unlimited
Generator	22KV with 200 22KV with maximum of 4.5 liter fuel per hours for 5 hours per day

1	Registrar BPS 22	Pay 301728 + increment 4870
2	Member Inspection Team 21	222287+ 4150
3	Additional Registrar 20	204592+3750
4	BPS 19	171233 + 2560
5	BPS 18	116495+2400
6	BPS 17	94336+1930

DETAIL OF PAY & ALLWANCES BS-3 TO BS-15, LAHORE HIGH COURT, LAHORE

Designation	BPS	Initial Pay	House Rent	Conveyance Allow	Medical Allow	Judicial Allow	Utility Allow	Spl. Judl. Allow	A.R-10	A.R-16	Washing Allow	Other	TOTAL PAY	Annual Increment
Computer Operator	15	13510	2349	2856	1500	9000	4000	15660	2610	1351	***	***	52836	1120
Sr.clerk, Sr/Auditor, Telephone Operator	14	12720	2214	2856	1500	9000	4000	14760	2460	1272	***	***	50782	905
DEO, Network Associate, Data Coordinator	13	11930	2090	2856	1500	9000	4000	13935	2323	1193	***	***	48827	880
Telephone Technician	12	11140	2090	2856	1500	9000	4000	13065	2178	1114	***	***	46943	800
Jr. Clerk, Imam Masjid, Proof Reader, Jr. Auditor	11	10610	1852	2856	1500	9000	4000	12345	2058	1061	***	***	45282	740
Motor Mechanic, Electrician, Calligraphist, Generator Operator Store Keeper	9	9850	1719	1932	1500	9000	4000	11460	1910	985	***	***	42356	610
Technician	7	9220	1589	1932	1500	9000	4000	10590	1765	922	***	***	40518	510
Electrician	6	8900	1544	1932	1500	6000	3000	10290	1715	890	***	***	35771	470
Qasid, Daffari, Driver, Book Binder, Head Mali, Fireman, Electrician Helper	5	8590	1503	1932	1500	6000	3000	10020	1670	859	150	300	35524	420
Naib Qasid, sweeper, Mali, Bearer, Bakiar, waterman, Dustloader Farash, Chowkidar, Moazan, Washerman	3	8040	1413	1785	1500	6000	3000	9420	1570	804	150	300	33882	325

Note:

- * Overtime Allowance Rs.2500/- P.M Only (Drivers)
- * Integrated Allowance Rs.300/- P.M Only (Daffaries, Qasid, Naib Qasid)
- * Integrated Allowance Rs.200/- P.M Only (Sweeper, Bearer, Farash etc)
- * Computer Allowance Ps.750/-P.M Only (Data Entry Operator)

Note: Basic Pay, House Rent, Cony.Allow, Medical Allow, Judl.Allow, Utility Allow, Spl.Judl.Allow, Adhoc Relief 2010, Adhoc Relief 2016, Washing Allow and Other Allow of Non-Gazetted Staff vary in their respective Pay Scale according to the annual increments earned.