



TO KILL A MOCKINGBIRD BENTHAM AND LOCKE IN GAMBAT, PAKISTAN

October 6, 1995: 'Are they going to kill me?' asked Rukhsana in a hushed tone that Ahsan Rana could barely hear, which sent chill waves down his spine. Ahsan did not have an answer, but he knew Rukhsana's future was uncertain. He himself was scared as he had no idea what was about to unfold for this young girl of 25 who, along with her husband, had voluntarily surrendered to his custody last night. As the Assistant Commissioner of Gambat sub-division of District Khairpur, Pakistan, he had lodged them in a government rest house under police protection. She was to stand before a grand *jirga*, i.e., a congregation of tribal chieftains, that he had arranged with great effort to settle the long-standing dispute between warring tribes in the Khairpur district. This tribal dispute had already claimed 174 human lives over the last five years, in addition to the retributive killing of countless animals and cutting fruit trees. Rukhsana had played no part in this carnage, yet fate had placed her in the eye of the storm. She lived and worked several hundred kilometres away in Karachi and recently contracted a love marriage without her parents' consent. However, unfortunately, she and her husband belonged to different tribes. She was a *Korai*, and her husband was an *Ujjan*, and the two tribes were daggers drawn. The *Korai* tribe wanted her back and threatened to walk away from the *jirga* otherwise.

Ahsan was at the end of his wits. Having failed miserably in controlling the tit-for-tat killings, he desperately sought a customary resolution to the dispute. He dreaded the thought of more innocent men caught unguarded and slaughtered, sometimes in their sleep, by armed marauders of the other tribe. The *jirga* could settle blood money and bring peace to the ravished area. Nevertheless, he knew returning Rukhsana to *Korais* entailed almost certain rape and/or honour killing. She was the sacrificial lamb whose blood gods wanted as a precondition to their mercy.

Ahsan could as well let the couple escape to Karachi or wherever and tell the *jirga* that Rukhsana was not a sacrificial lamb. Skies could fall if they must.

THE LANDSCAPE

Gambat was a fertile, agricultural sub-division in upper Sindh, Pakistan. It was part of the Khairpur District, an administrative unit of the Sukkur division. It was located on both sides of the main National Highway that connected upper Sindh to the coastal metropolis of Karachi. Its total population was 1,73,252. This population was spread over a large area of 547 sq. km in the form of four towns and 132 villages. These towns were: Gambat, Rani Pur, Khohra and Sobhodero. Population in villages was spread over multiple settlements, called *goth*, mainly on family/clan lines. Smaller *goths* had 15-20 houses from the same family, and larger *goths* had 100 or more houses of same-caste families. (See Exhibit 1 for summary statistics on Gambat). There were two police stations in the area, one in the town of Gambat and Sobhodero, and five police posts. The total number of police personnel working in the Gambat sub-division was 247. If need be, it was possible to requisition additional personnel from the police reserve in Khairpur. It was also possible to requisition paramilitary forces (e.g., Sindh Rangers or Frontier Constabulary) in emergencies.

This case was written by Dr Muhammad Ahsan Rana at the Lahore University of Management Sciences to serve as basis for class discussion rather than to illustrate either effective or ineffective handling of an administrative situation. This material may not be quoted, photocopied or reproduced in any form without the prior written consent of the Lahore University of Management Sciences.

A unique geographical feature of Gambat was its long border with the River Indus. The mighty Indus swelled enormously during the flood season (July – August), and to save adjoining towns and villages from its wrath, an earthen embankment ran along its sides. Since the river carried an average annual flow of 146 million-acre feet, the embankment was constructed several miles afar from its winter-time bed. Thus, an approximately 10-12 km wide strip (called *katcha*) ran between the riverbed and the earthen embankment. This allowed water to spread and be tamed easily. During off-flood months, the *katcha* area was cultivated. It was very fertile since the river enriched its soils every year as its water swelled and spilt during flooding. Given the annual flooding, it was difficult for the government to maintain a permanent road network in the *katcha* area. Human settlements were also either temporary or were built on high-altitude enclaves. Naturally, the government's outreach in this area was limited, and the area provided an excellent escape to all kinds of criminals and fugitives. It was a microcosm of John Locke's 'state of nature.'

Gambat's economy depended on agriculture and livestock. The total cultivable area in the sub-division was 67,554 acres. The main crops were wheat, rice, cotton, fodder, vegetables, mustard and sunflower. The area was also famous for its date gardens. Groundwater was brackish, except for pockets of sweet water. Hence, farmers depended almost exclusively on canal water for irrigation. Most farming households kept cattle and goats to meet their dairy and meat requirements. Livestock products were also marketed in nearby cities.

The gender ratio in Gambat was skewed in favour of men. For every 100 men, there were only 87.8 women, which was one of the lowest in Pakistan. (Pakistan's average was 94 women for every 100 men, which was quite low compared to 102 for Sub-Saharan Africa and 106 for Western Europe.) Gambat's low gender ratio spoke volumes about women's inferior socio-economic status. This resulted from gender-based discrimination in access to food, healthcare, education and other primary goods.

Domestic abuse was common. Violence was routinely deployed as an instrument of discipline. It was not uncommon for a woman to be accused of adultery or inappropriate sexual liaison declared *kari* – black in vernacular, someone who brought shame to the family – and killed with impunity. There were no complainants in such cases since the victim's family, who would have ordinarily pursued justice, were the ones who had committed the murder. Therefore, no prosecution took place. The unfortunate victim disappeared without a trace as if she never existed. Her story remained untold.

Like other parts of rural Sindh, Gambat had a heterogeneous population in terms of caste, social status and class. The main castes were *Syed*, *Sheikh*, *Ujjan*, *Kaleri*, *Korai*, *Tunio*, *Abbasi* and *Bhatti*. *Syeds* were a privileged caste mainly because of their land ownership and spiritual leadership that created ample opportunity for personal enrichment. *Sheikhs* and a few Hindu castes looked after the business and were the moneyed people in the area. *Ujjans* were small-time agriculturalists, mainly working as tenants on *Syeds'* lands or cultivating their own small plots of land. They were a large but poor tribe. *Kaleris* were not indigenous to Sindh. They had migrated from neighbouring areas of Balochistan several generations ago. Their numbers were small. They were considered a warrior tribe, aggressive in their outlook. They depended for their survival on small-scale agriculture and petty extortion. *Korais* lived mainly in the *katcha* area and depended on riparian agriculture. They often provided sanctuary to *Kaleris* and abetted them in petty crime. *Tunios*, *Abbasis* and *Bhattis* did agriculture and government jobs. The exact numbers of each tribe were not known.

The strong caste system was continuously reinforced by endogamy. Most marriages were consanguineous, and it was unusual for a girl to be married out of the family, much less out of caste. Most out-of-caste marriages were love marriages and had been the result of an elopement, sometimes with tragic consequences.

The Parallel Dispute Resolution System

Like other areas where people had strong tribal affiliations, Gambat had a parallel dispute resolution system. People rarely approached the police for help when they felt wronged or committed a crime because the police were widely perceived as a corrupt, self-serving and oppressive state institution, inspiring fear rather than confidence in the local population. Instead, they approached one of their elders, who organically emerged over time from within the neighbourhood based on their wealth, social status, political influence and ability to mediate

common person's relations with the state. Resolving everyday disputes was a key function of these elders. If a dispute involved people from different neighbourhoods, elders from both neighbourhoods would sit together and settle the dispute. In the case of disputes involving different castes/tribes, the process happened at a progressively higher level, often culminating in a *jirga* comprising chieftains from relevant tribes.

This was a parallel system complete with its judges, juries, evidence standards and punishments. Testimonies were far more truthful in these *jirgas* than in the formal judicial system. This was largely because facts in issue were mostly well known in the community, and subterfuge made little sense. Imprisonment was not available as a punishment, nor did it make economic sense for complainants to accept prisoners as retribution. Instead, almost invariably, wrongs were compensated, and crimes were punished through the imposition of fines – in money, cattle, or women. Blood feuds were also settled this way. The blood money for a woman is half the blood-money of a man. An elopement or abduction was settled with the return of the eloping/abducted woman and/or handing over an additional girl/woman to the aggrieved party. A woman so returned through a *jirga* decision was either killed as *kari* or treated most inhumanly until her death. Similarly, a woman handed over to the other party to settle a dispute had the most miserable and unfortunate existence. She lived her life as a slave.

Elders and *jirgas* were far from neutral and objective. Each party favoured their own people. Dispute resolution could also be a profitable venture since it involved the imposition and administration of fines. Elders were generally astute people. They were nimble enough to manipulate the narrative to their advantage.

Decisions were binding on parties who, by virtue of their participation in the *jirga*, had agreed to submit to its decision. There was no appeal or a review. *Jirga's* word was final and irrevocable. However, the elders saw that their decisions had custom sanctions and were broadly acceptable to both parties. The decisions were implemented rigorously for two reasons. First, the elders viewed non-implementation as a subversion of their authority and took it seriously. Second, a delinquent party ran the risk of losing their standing in subsequent *jirgas*. Generally, *jirgas* functioned like a well-oiled machine. They were convened at elders' readiness to mediate a dispute brought to them by one or all parties to a dispute.

The First Blood

Historically, Gambat had been a peaceful area. However, since 1991 it was in the grip of a bloody tribal feud which escalated from a series of skirmishes into a full-fledged tit-for-tat carnage. *Ujjans* and *Kaleris* lived side by side in the Khuhra area of Gambat, and the former had often felt mistreated, threatened and insulted by the aggressive and abrasive behaviour of *Kaleris*. The latter sometimes stole cattle and committed other crimes with impunity. They were also accused of sodomising poor *Ujjan* peasant boys if they could find one in the fields. In one such incident of attempted sodomy, the victim was rescued by nearby farmers, and the perpetrator, a *Kaleri* rogue, was given a sound beating on the spot. The local police got wind of the incident, arrested a few dozen people from both tribes and freed them after a few days once they extorted release money.

While the *Kaleris* felt insulted by the beating, the *Ujjans* felt emboldened. A few days after the incident, about 70 *Ujjans* assembled at the *Khohra* residence of one of their elders, Mian Himmat Ali, to strategise against *Kaleri* aggression in everyday life. One participant, Allah Wassayo, who ran a bicycle repair shop, spoke as follows:

For how long will we put up with this everyday insult? Who among us hasn't experienced or witnessed being wronged by a *Kaleri*? Will we wake up only when they barge into our homes to kidnap our women? The police aren't going to do anything. I personally went to the police station twice in the past couple of years to complain about *Kaleris* getting their bikes repaired but leaving without paying the money. Nothing happened. Instead, I was slapped by the person against whom I had complained.

Mian Himmat requested everyone to contribute to compensate their *Ujjan* brethren, who had paid money last week for securing their release. He was a shrewd man and could smell money as a mediator between *Ujjans* and police in future episodes of this nature. Over a week or so, PKR 23,000 were raised from the community. PKR

20,000 were paid to *Ujjans*, who had paid release money to the police. Mian Himmat kept the rest for miscellaneous expenses.

On their part, *Kaleris* were planning revenge. It was not difficult for them to find and beat a few *Ujjan* peasants mercilessly. In doing so, they did not discriminate between the *Ujjans* who had beaten the *Kaleri* rogue last week and the ordinary *Ujjan* completely unrelated to the incident. **These *Ujjans* were beaten for being *Ujjan* rather than for being party to a dispute. A personal feud was morphing into a tribal one.**

Ujjans did not take these beatings lightly. They retaliated by beating a middle-aged *Kaleri* who, by a stroke of sheer bad luck, found himself surrounded by a group of *Ujjans* at a bus stand. From this point onwards, there was no turning back. The first blood – an *Ujjan's* – was spilt in June 1991. It was retaliated in a few months with the murder of a *Kaleri*. The one-upmanship required that each murder was promptly revenged and, if possible, with more than one murder. In the first few years of the tribal feud, such murders were spaced by weeks or even months and happened in isolated places. Gradually, the spacing shrank. The news of one murder was quickly superseded by another in a nearby village. Ultimately, marauding gangs were barging into homes of the people from the opponent tribe, seizing a few men, lining them up and shooting them as if they were a firing squad executing a criminal.

Between June 1991 and October 1995, 112 *Ujjans*, 52 *Kaleris* and 3 *Korais* were killed. Another seven persons from various castes became collateral damage. (See **Exhibit 2** for quarter-wise data on casualties). To cause economic damage, they also slaughtered each other's cattle and cut trees whenever possible. It was no holds barred. Women were spared, however. There were no reported deaths or abductions of women on either side. Holding another tribe's woman was considered a sin too horrendous to commit. The other party could let all hell loose in such a case.

The economic ramifications of the feud were huge not only for warring tribes but for the entire area. Farmers abandoned their fields. Crops could not be tended to or harvested, and animals could not be grazed without fear of death. Each tribe was on the lookout for unsuspecting enemy continuing with their lives as usual. Shops were closed, businesses shut down, and routine tasks remained pending. ***Kuhra* and its surrounding areas were inhabited by people of other tribes/castes as well, but even they were reluctant to continue business in this area. No one wanted to become collateral damage. *Kuhra* in particular, and Gambat in general, had become a war zone.**

The Kaput Administration

Ahsan was posted as the Assistant Commissioner and Sub-divisional Magistrate of Gambat on September 11, 1994. Previously, he worked as Assistant Commissioner in the Sukkur and Ghotki sub-divisions of Sindh. Both were very similar to Gambat in their socio-cultural milieu. As the administrative head of Gambat, he was responsible for maintaining law and order and broadly overseeing various government departments' work. (See **Exhibit 3** for an outline of the administrative structure in Sindh). The Commissioner of Sukkur Division, Nisar Ahmad Siddiqui, called him the day he joined his new post in Gambat to say:

Gambat has suffered a lot due to this bloody feud between *Ujjans* and *Kaleris*. The police is quiet on the matter. All they are doing is keeping a count of dead bodies. Soon, even this will be beyond them. You must resolve the matter quickly. Do whatever it takes to restore peace.

Ahsan immediately set to work. In consultation with the local police establishment, he prepared a detailed plan of police picketing in various areas. Seven police pickets were set up on main intersections to check suspicious movements in the area. Six police posts were established near various villages for their protection against marauding brigades. The police chief in the area, Deputy Superintendent Taj Muhammad Noonari, said he could not spare more police personnel for the task. So, police presence could not be further enhanced in the feud's epicentre.

The police searched dozens of vehicles and countless passers-by every week and detained for questioning hundreds of *Ujjans* and *Kaleris* (See Exhibit 4). In January 1995, Mian Himmat Ali led a delegation of *Ujjan* elders to Ahsan's office and requested the discontinuation of police picketing. He said:

The police detain people indiscriminately and without rhyme or reason. None of the people detained for questioning has been formally charged. Most have to pay something before returning home after a few days of detention. I myself had to request a friend to secure the release of my nephew.

Mian Usman Ali, a respected peasant, said: 'We have to feed the police personnel deployed at the post in our village thrice every day. We are a poor community. Most households struggle to meet both ends.' In any case, the utility of these posts was limited, given that they could protect only large villages, whereas most people lived in small, scattered settlements that dotted the landscape in Gambat.

Alongside, Ahsan had asked his police counterpart Taj Noonari to identify key members of the marauding gangs and gather information on them. Soon he had a list of key suspects from both tribes containing around two dozen names. Some were more active than others, but all had reportedly participated in attacks and murders on various occasions. This, however, was the easier part. Getting to them, much less arresting and prosecuting them, was a Herculean task, given that no one knew what they looked like and where to find them. They did not have a record with the police, and their photographs were not available to identify them from within a crowd of suspects. The geography of the area, its vast expanse, its woods and ponds, and its proximity to the poorly policed katcha area meant escape was easy and convenient. One could spot an approaching police vehicle from miles and easily slip into the nearby wilderness or simply merge into the background. So, whenever a police party raided a village looking for suspects, they detained villagers indiscriminately, hoping that some of them would be on their most-wanted list. After that started the, who's who challenge. None of the villagers was ready to identify the suspects among them. Ahsan asked Taj Noonari if any of the police personnel could identify them. Taj replied, 'We have several *Ujjans* and *Kaleris* in our force, but no one wants to be the next victim. If not for their own lives, they fear for their families.' The police arrested not even a single key suspect between September 1994 and October 1995.

Nevertheless, the raiding parties rarely returned empty-handed. Here lay yet another extortion opportunity, which they found too good to miss. There was substantial heartburn on this account in the populace, *Ujjan* and *Kaleri* alike. Occasionally, villagers' cries reached his ears, but Ahsan was doing 'whatever it takes' to restore peace as advised by his boss, Nisar Siddiqui.

Ahsan also requisitioned the military's support to supplement police action in Gambat's trouble spots. The procedural formalities took several weeks to complete, but finally, one company of the Frontier Constabulary (FC) under the charge of Captain Muneeb was sent to Gambat. The first challenge was to find appropriate residence and transport for officers and sepoy. Ahsan lodged the captain and his two lieutenants in a government rest house at the shrine of 7th century saint Hazrat Sachal Sarmast. The constabulary was lodged in a nearby government school. Only 73 students were enrolled in this school. Hence, temporarily relocating the schooling activities to the nearby fields was not much of an issue. Over the next few months, the FC company conducted several raids. Often, the constabulary would surround an entire village and conduct a house-to-house search. It was unclear whom they were looking for, given that nobody could recognise the suspects. However, the raiders were hoping to at least seize some weapons during the house searches, which could also help them zero in on the suspects. Men were manhandled indiscriminately during these surround-and-search operations; several were beaten up publicly and brutally. Ahsan accompanied the raiding party once. He allowed the house searches but asked them not to manhandle anyone. Muneeb complied but was visibly perplexed and unhappy. He asked:

Why, Rana Sahib, why? These people are murdering each other by the dozens, and they are all complicit in this. Don't they celebrate the death tally of the other party? They don't deserve to be treated nicely. We must establish the writ of the state at all cost.

Arranging The Jirga

Gradually, Ahsan came to realise that administrative action was going nowhere. All that had been done so far was futile, rather counterproductive. Peace was as elusive as ever despite all the violence that had been perpetrated upon the warring tribes on his initiative. As his understanding of the area and its people grew, he started contemplating the possibility of a negotiated settlement. However, was this an appropriate course of action? Could he, a representative of the state in this area, bypass the official system of law enforcement, prosecution and justice and instead rely exclusively on the parallel system of dispute resolution, which would almost surely entail settling murders in terms of blood money? Baffled, he approached Nisar Siddiqui for advice. An old hand in such matters, Nisar Siddique, said, 'A negotiated settlement will be a welcome development in the given circumstances. However, you must ensure that all relevant parties agree to the terms.'

For this to happen, he had to reach out to tribal elders to see if they were willing to reach a settlement and on what terms. He invited Mian Himmat et al. from the *Ujjan* tribe and Ali Sher Kaleri et al. from the *Kaleri* tribe to his office on April 7, 1995. No headway could be made, however. Both parties had an earnest desire for peace but expressed their inability to take responsibility for the conduct of key suspects from their side.

Ali Sher said, 'Things are now beyond us. Gone are the days when we exercised enough influence in our community to control their actions. This new militant brand of youth charts their own course.'

Ahsan realised he had to reach out to the people beyond the erstwhile influential elders. He started visiting the trouble spots to establish an unmediated rapport with the villagers from both tribes. He was hoping to have direct contact with either the key suspects themselves or the people who could negotiate on their behalf. To win the villagers' trust, he often went without an escort. Taj Noonari advised him against doing so since there was a grave risk. However, Ahsan thought this was necessary. Gradually, his visits became acceptable, rather welcomed in the villages. Once they realised that Ahsan was neutral and sincerely wanted a resolution to the feud, people started to open up. Over the course of several months, he was able to refine and update the list of key suspects, some of whom might be present in his meetings, without divulging their identities. Gradually, the veil went off. Sanjar, Buddo, Gulsher, Shahmeer, ... who else? He also went to the *katcha* area a few times. There he met *Korais* and discovered how close a partner in crime with the *Kaleris* they were.

By mid-September, the necessary groundwork for holding a grand *jirga* had been completed. The willingness of parties to settle the dispute and end bloodshed was evident. Ahsan had a complete list of people who had been murdered or injured or had lost property in the feud. There had been no murders since early August (Exhibit 5). He also had nominees from the *Ujjans*, *Kaleris* and *Korais* to represent them in the *jirga*. Since this was going to be a major settlement, it was important for it to occur at the level of tribal chieftains, called Sardars, rather than the local elders. He had kept Deputy Commissioner Khairpur, Khusro Pervaiz and Nisar Siddiqui abreast of developments. He called upon them to contact tribal chieftains and schedule a grand *jirga*. They were happy to help. Finally, after a lot of coordination, October 6, 1995, was set as the date when a grand *jirga* would be held in the circuit house Sukkur (a grand place for high-level official meetings and banquets). Ahsan was happy – very happy. Ending a bloody tribal feud could be a crowning achievement of his career.

The Last Supper

There was a problem, however. *Korais* were insisting that Rukhsana should be returned to her parents. If the condition was not met, they and *Kaleris* would not participate in the *jirga*. Rukhsana was a *Korai* girl living in Karachi for the past decade or so. She hailed from Gambat but had moved to Karachi several years ago with her sister, Shazia, who worked in the Sindh Police Department as a constable. Rukhsana studied in Karachi for a few years and later found a job in a private firm. She had recently married Badar-ud-Din Ujjan, whom she had met a few years ago in her office. Badar also hailed from Gambat – his parents were still living there. The two shared a background, facilitating communication and eventually tying the nuptial knot. They married without the consent of Rukhsana's parents. Badar had approached Rukhsana's father, Allah Warrayo Korai, seeking Rukhsana's hand. The latter did not have an objection to the proposal *per se*, but the two could not settle on the dowry money. Allah Warrayo demanded a Willys jeep, which costed approximately PKR 28,000 (US\$ 931). Badar initially considered

buying him the jeep or giving him the money, but since Rukhsana was agreeable to marry him even if her parents did not consent or participate, he dropped the idea. Why spend one's money until it was absolutely necessary? The two got married in March 1995.

Allah Warrayo had talked here and there that he had been cheated, but hardly anybody listened since the marriage had taken place far away in Karachi and with the consent of the bride's sister, Shazia. However, now that the grand *jirga* was being convened, he had an audience eager to listen. More than anyone else, the elder of the *Korai* tribe in Gambat, Ali Muhammad Korai, and his eldest son, Shahmeer Korai, were keen to help. Rukhsana was an attractive girl. If she were returned to Allah Warrayo, she could be married to Shahmeer (who was already married), and Ali Muhammad could keep part of the fine imposed on *Ujjans* to compensate for the immense wrong that had been committed.

Nisar Siddiqui asked Ahsan to arrange for Rukhsana's presence in Sukkur on the 6th when the grand *jirga* was to be held. Rukhsana would not return on her own – she had no reason to. So, Nisar Siddiqui arranged her return through the good offices of Deputy Inspector General of Police Sukkur Abdul Hafeez Bangash, who approached Shazia through her police higher-ups in Karachi. Rukhsana was assured that her physical security would not be compromised and that she would be allowed to present her viewpoint before the grand *jirga*. Rukhsana and Badar arrived in Sukkur by bus on October 5 and were lodged in a government rest house under police guard at Ahsan's instructions.

In the evening, Ahsan went to the rest house and met the couple for the first time. They were a happy couple with plans for their future, owning a house and raising a family. Ahsan took them out in his official jeep for dinner at Forum Inn, Sukkur. As they entered the hotel, Rukhsana walked carefully, especially when climbing the stairs – as a pregnant woman would. At the dinner, they talked about the weather, Gambat and how it had changed over the years. Ahsan wondered if Rukhsana and Badar had any idea what tomorrow had in store for them. They thought they had not committed any wrong, and all they needed was to explain to the *jirga* that they had married out of volition. They had nothing to do with the tribal feud and did not want anything to do with it either. All they wanted was to return to Karachi – to their home and daily life. Ahsan told them about the demand from *Korais*. They were not surprised but knew it was a preposterous and illegal demand that could not be taken seriously. Ahsan said:

The *jirga* can decide anything. They might even decide to annul the marriage and return you to your parents. They think differently. For them, it is a big thing that a *Korai* girl is living with *Ujjans*. For them, it is a make-or-break point now. I know it is unreasonable, but this is how things are. The situation is serious.

Rukhsana was stunned. So was Badar. 'Can I negotiate with Allah Warrayo?' asked Badar. 'Give me a day, and I'll arrange that his demands are met. I know he is a greedy person. I should have bought him the jeep.' Ahsan explained that the opportunity to negotiate had passed. Now the matter was in the hands of Ali Muhammad Korai and the tribal chieftains. Rukhsana took several moments to recover from what she had just been told. She burst out in anger:

How come? How can it be? Am I a guest here or a prisoner? I am an adult, an educated one. I have married with my own volition. I have a legal right to decide my own fate. What crime have I committed? Can anyone separate us just like that? Can you do that? Will you?

Ahsan dropped them at the rest house and told them to be ready by 9:00 a.m. the next morning.

Banality Of Evil

He went straight to the Commissioner's house. Nisar Siddiqui was waiting. They met each other with an uneasy silence. Abdul Hafeez Bangash and Khusro Pervaiz soon joined them. They had assembled to finalise the strategy for tomorrow's *jirga*. Ahsan briefed them on the arrangements – confirmations from the chieftains, the *jirga* convening time, security, food, etc. Ahsan also told them that Rukhsana and Badar had arrived from Karachi and

were presently lodged in a rest house under police guard. 'You better keep a strict vigil. They might try to escape,' said Khusro. 'Their room is locked from the outside, and we have two constables sitting at the door. Unless someone from the outside tries to rescue them, which is unlikely, they are safe for now,' Ahsan responded.

A lengthy discussion on the appropriateness and technicalities of the next day's *jirga* proceedings followed. Ahsan had rarely contested Nisar Siddiqui's advice during their years-long association largely because he respected the latter for his honesty, industry and public friendliness. Nevertheless, this was different. He felt heavy after his rendezvous with the unfortunate couple. He was the most self-critical in the room despite – or because of – being the junior most. He shared his concerns as follows:

I am not sure if what we are doing is appropriate. It is certainly illegal. Rukhsana is a married adult. We have no right to place her fate at the mercy of the chieftains. They are certain to order her return to her father. And we know what will happen next. Nobody even hopes for her to be treated nicely once she returns. I am sure Allah Warrayo will immediately marry her off to Shahmeer. This would be rape, pure and simple, given that she is already in wedlock. What if she's pregnant? Will they abort the baby, or will the child grow as an Ujjan in Korai captivity? While we will sleep peacefully tomorrow, cherishing our success with the settlement, she will be experiencing the most brutal physical and mental torture. I'll certainly hear her cries.

Nisar Siddiqui did not like the implicit suggestion or its tone. He said:

Why can't you hear the cries of those getting killed in the feud every week? You are worried about one girl, though there is a Rukhsana in every home. Why don't you lose sleep when they are widowed and their children orphaned? We can't let this stream of murders continue. Look what havoc it has already played with people's lives and livelihoods.

Khusro also thought the same. He chimed in: 'Believe us, we too have a heart and feel for them. Nevertheless, age has mellowed us down. We have seen more.'

Nisar Siddiqui added another dimension:

Badar is not as innocent as he is painting himself now. He cajoled Rukhsana into marrying him without her parent's consent. Is this conduct becoming of a gentleman? We are not living in Europe. Families matter a lot here. Hasn't Allah Warrayo's right to marry the girl he bore and raised been violated? How would you feel if your daughter or sister eloped with someone?

Ahsan was not convinced – at least not yet. He responded:

I think we are talking from two very different perspectives. What you are saying makes sense, but only if we accept the supremacy of parental rights over children's rights and give societal benefit a premium over individual wellbeing. Does Allah Warrayo's raising Rukhsana as a child confer a right unto him to dispose her off as he pleases? Can a parent sell their child into slavery? I wonder if we would be doing what we are doing if Rukhsana was our child.

'But we'll be returning her to her parents only,' added Hafeez Bangash, 'what they do next is their family matter.' 'So, what do you propose we do? Do you have an alternative plan?' asked Khusro.

'I don't have a plan,' Ahsan responded, 'but we should let Badar and Rukhsana go back to Karachi immediately. As of now, they are in our illegal custody.'

'And what do you think will happen next?' asked Nisar Siddiqui:

Do you think Korais will take it lying down? They will hunt her down in Karachi. They'll also kill Badar. They might attack his family in Gambat as well. And what about the *jirga* tomorrow?

It'll be finished before it starts. The moment people know you have sent her off, there will be no settlement. We'll return to the old days. We'll be picking up corpses again, not in ones or twos any longer but in dozens.

Ahsan could see the lurking danger. He had worked hard over the past several months to bring everyone to the negotiating table. One wrong step at this stage could crumble the entire house of cards. He asked:

Sir, can't you use your influence with the chieftains to leave Rukhsana out of the jirga tomorrow. They have 174 murders to settle. That's enough business for a day. Let's buy some time. I'll work with Korais and bring them to an amicable settlement on Rukhsana.

'I don't think this would be possible. I can, however, seek guarantees that Rukhsana is not tortured or killed,' said Nisar Siddiqui.

Since there was nothing more to be discussed, Hafeez Bangash proposed that everybody should get some sleep. Ahsan returned home around midnight. As he lay in his bed, he was still thinking about his options.

THE JUDGEMENT DAY

Ahsan reached the rest house at the appointed time. Rukhsana told him she couldn't sleep the entire night. She was scared – very scared. 'Are they going to kill me?' she asked. Ahsan didn't answer. The government rest house was almost equidistant from the Circuit House where jirga was to be held, and the bus stand for intercity travel. The two lay at the end of different roads. One road led to certain rape and possible death for Rukhsana but accoladed for Ahsan. The other led to Rukhsana's escape for the time being, but Ahsan's censure and shattering of the fragile calm that had existed in Gambat for the past few weeks. Ahsan had to make a choice.

Exhibit 1: Socio-economic profile of Gambat Sub-division (1995)

Total estimated population– 1,73,252
 Area –547 square kilometres
 Cultivable area – 67,554 acres
 Local governments – 1 municipal committee and 2 town committees
 Main towns

Name	Population
Gambat	28,311
Ranipur	19,053
Sobhodero	12,298
Khohra	7,255
Hingorjoa	19,099

No. of Union Councils and Villages – 9 and 132, respectively
 Number of police stations and police posts – 2 and 5, respectively
 Total police personnel – 247

Male/female ratio – 100/87.8

Educational institutions

Boys' high schools: 5

Girls' high schools: 2

Boys' colleges: 2

Girls' college: 1

Universities: 0

Religious seminaries (i.e., *madaris*): several (mostly unregistered)

Literacy rate – Male: 49%; female: 18%

Major health facilities – Taluka Hospital Gambat; Litton Rehmatullah Benevolent Trust Eye Hospital

Major irrigation source – Abul Wah (part of the canal network flowing out of Sukkur Barrage)

Major crops - wheat, rice, cotton, fodder, vegetables, mustard and sunflower

Pucca housing units – 19%

Source: Wikipedia; Housing and Population Census 1998; office records of district Khairpur

Exhibit 2: Quarter-wise deaths (June 1991- September 1995)

	1991		1992				1993				1994				1995		
	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3
Ujjan	1	-	1	2	4	3	5	12	8	9	6	11	8	12	14	11	5
Kaleri	-	1	-	1	2	5	3	2	3	3	5	4	6	4	6	5	2
Korai	-	-	-	-	-	-	-	1	-	-	-	-	1	-	1	-	-
Others	-	-	-	-	-	-	1	-	-	1	2	-	-	2	1	-	-
Total	1	1	1	3	6	8	9	15	11	13	13	15	15	18	22	16	7

Source: Constructed from Police Records from Gambat

Exhibit 3: Outline of administrative structure in Sindh (1995)

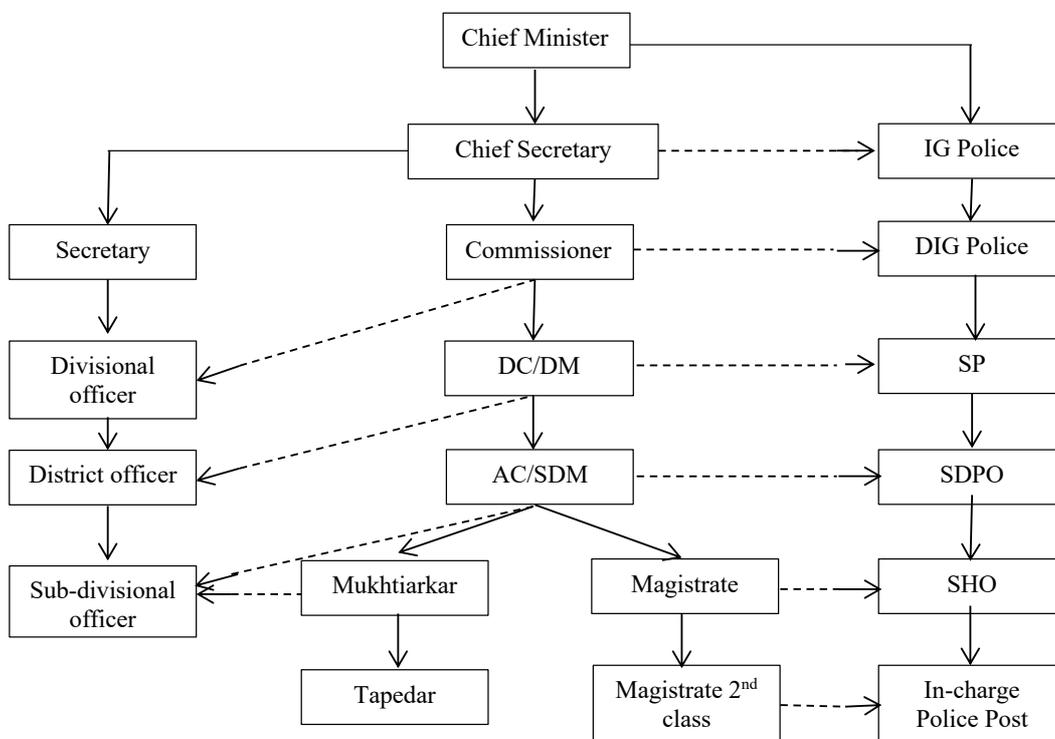
The district was the basic administrative unit in Sindh. All provincial government departments had district offices with substantial executive and financial autonomy. A Deputy Commissioner represented the government at the district level and acted as its Chief Executive Officer. He/she could directly communicate with the provincial Chief Minister and the Chief Secretary (the chief bureaucrat in the province) on matters of importance. He/she broadly oversaw the working of all provincial government departments at the district level, although these departments maintained their professional chain of command in technical and financial matters. The Deputy Commissioner was also the District Magistrate and District Collector of revenue. In the former capacity, he/she led a team of magistrates and exercised judicial powers under various laws, including the Pakistan Penal Code and the Criminal Procedure Code. Maintenance of law and order was also his/her responsibility. He/she could requisition support from the police or any other law enforcement agency in discharge of his judicial functions as the District Magistrate. As the District Collector, he/she collected land revenue, water rate and other agricultural taxes and cesses in his/her area of responsibility.

A district comprised a few (normally 3-4) sub-districts (called sub-divisions), a microcosm of the district. Various provincial government departments had their offices at the sub-divisional level as field posts of the district establishment. An Assistant Commissioner acted as the Chief Executive of the sub-division and oversaw the working of provincial government offices in the sub-division. He/she also acted as the Sub-divisional Magistrate and the Assistant Collector. In these capacities, he performed roles similar to those of the Deputy Commissioner at the district level. He/she reported to the Deputy Commissioner, who acted as the appellate authority against his/her judicial and executive decisions. The legal mandate of the Assistant Commissioner was far more restricted than that of the Deputy Commissioner. But since the former acted as the field representative of the latter, he/she could often play a role larger than the one enshrined in law. For example, he/she could seek support from law enforcement agencies by requesting the District Magistrate to send a formal requisition. Under him/her worked a team of magistrates, Mukhtiarkars (revenue collectors) and tapedars (street-level bureaucrats of the revenue department).

Districts were grouped to constitute an administrative division. The division was headed by a commissioner, who acted as the chief executive officer in the division. He/she did not exercise magisterial powers and had little legal role in maintaining law and order. However, given that he/she supervised the Deputy Commissioners and reported directly to the Chief Secretary, a commissioner could provide broad policy guidance to Deputy Commissioners and Assistant Commissioners in all matters, including law and order. He/she also played a political role to the extent that he/she maintained a liaison with senior political leaders and acted as a bridge between politicians and government officials.

Sindh had five administrative divisions (namely, Karachi, Hyderabad, Mirpur Khas, Sukkur and Larkana), 17 districts and 74 sub-divisions. Sukkur division comprised of the following four districts: Sukkur, Ghotki, Khairpur and Naushehro Feroz. Khairpur districts had the following four sub-divisions: Khairpur, Gambat, Thari Mirwah, and Kot Diji. Gambat sub-division comprised of two talukas, namely Gambat and Sohodero.

Administrative hierarchy of Sindh Province



Note: IG – Inspector General; DIG – Deputy Inspector General; SP – Superintendent of Police; SDPO – Sub-divisional Police Officer; SHO – Station House Officer; DC – Deputy Commissioner; DM – District Magistrate; AC – Assistant Commissioner; SDM – Sub-divisional Magistrate

Source: Author

Exhibit 4: Detentions and deaths (October 1994 – January 1995)

	Oct 1994		Nov 1994		Dec 1994		Jan 1995	
	Deten.	Death	Deten.	Death	Deten.	Death	Deten.	Death
Ujjan	32	2	174	3	236	7	214	3
Kaleri	28	1	85	2	177	1	165	2
Korai	4	-	18	-	34	-	18	1
Others	-	-	-	2	-	-	-	1
Total	64	3	277	7	447	8	397	7

Source: Constructed from Police Records from Gambat

Exhibit 5: Murders in 1995 (January – October 6)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
Ujjan	5	8	1	5	2	4	3	2	-	-
Kaleri	2	1	3	3	-	2	1	1	-	-
Korai	1	-	-	-	-	-	-	-	-	-
Others	-	1	-	-	-	-	-	-	-	-
Total	8	10	4	8	2	6	4	3	-	-

Source: Constructed from Police Records from Gambat



TO KILL A MOCKINGBIRD BENTHAM AND LOCKE IN GAMBAT, PAKISTAN TEACHING NOTE

SYNOPSIS

In Fyodor Dostoyevsky's *The Brothers Karamazov*, the elder brother Ivan challenged his younger brother Alyosha as follows:

Imagine that you are creating a fabric of human destiny with the object of making men happy in the end, giving them peace and rest at last, but that it was essential and inevitable to torture to death only one tiny creature – that baby beating its breast with its fist, for instance – and to found that edifice on its unavenged tears, would you consent to be the architect on these conditions? Tell me, and tell the truth. ... And can you admit the idea that men for whom you are building it would agree to accept their happiness on the foundation of the unexpected blood of a little victim? And accepting it would remain happy for ever? (Dostoyevsky 1879; P. 288)

'That baby beating its breast with its fist' is Rukhsana in this case study, and Ahsan Rana has been invited to be the architect of this brave new world where men could live in peace at last.

Rukhsana was an attractive young girl of 25 who lived and worked in Karachi. She had recently contracted a love marriage without her parents' approval. She belonged to the Korai tribe, and her husband belonged to the Ujjan tribe. These tribes were at war several hundred kilometres away in the Gambat sub-division of rural Sindh.¹ Between 1991-95, the tribal feud had claimed 174 lives (112 Ujjan, 52 Kaleri, 3 Korai and 7 from other tribes) in addition to substantial economic loss and a generalised disruption of livelihoods in the area. Rukhsana and her husband had nothing to do with the tribal feud, but now they found themselves at the centre of an effort to resolve the dispute through mediation by tribal chieftains.

Ahsan was the Assistant Commissioner and Sub-divisional Magistrate of the area. He had tried several administrative measures during the past year to capture murderers and troublemakers from both tribes but with little success. His strategy to use police and military personnel had unleashed further terror on ordinary citizens who had to bear the brunt of police/military brutality and extortion.

An alternative was to invoke the customary authority of tribal elders and convene a jirga (a tribal council) to settle the dispute. Sindh had a strong tradition of alternate dispute resolution, which normally punished crimes through the imposition of fines to be paid in money, cattle or women. Murders, too, were converted into blood money. An abducted or eloping woman was returned to her tribe, whereupon she was usually killed for honour. Decisions were binding on parties and were implemented rigorously under the customary authority of tribal chieftains.

¹ The feud began as an Ujjan-Kaleri clash but quickly engulfed Korais as well since they provided sanctuaries to Kaleris and were partner in crime.

This teaching note was written by Dr Muhammad Ahsan Rana. The analysis and questions suggested here aim to enhance students' understanding of business issues and stimulate engaging dialogue within classrooms. This material may not be quoted, photocopied or reproduced in any form without the prior written consent of the Lahore University of Management Sciences.

Though such dispute resolution had no legal sanction, administrative officers occasionally used them out of compulsion or convenience.

Their failure to bring peace and normalcy to the area through administrative measures forced Ahsan and his bosses to convene a tribal jirga. Since both Rukhsana and her husband belonged to families living in Gambat, the Korai tribe demanded her return as a precondition to their participation in the jirga. After some persuasion, Rukhsana and her husband agreed to appear before the jirga in Sukkur, but they had limited appreciation of the seriousness of the situation. They were hoping to return to their home in Karachi after testifying before the jirga that they had nothing to do with the feud and that they had married of their own volition.

Nevertheless, Ahsan and his bosses knew well that the jirga was likely to order Rukhsana's return to her parents, who would immediately marry her off to an (already married) son of the Korai tribal elder. Given that Rukhsana was already married and probably pregnant, the jirga decision would entail almost certain rape, forced abortion and a life of servitude for her.

This comprised the decision dilemma for Ahsan. Returning Rukhsana to her parents would doom her life but could bring peace to the area, thus averting further bloodshed and loss of livelihood. Allowing her to return to Karachi may spare her from rape and abortion but would effectively foreclose the possibility of settlement. Consequences were quite foreseeable in both cases. It was one life versus countless others. The utilitarian logic of maximum happiness for the maximum number of people was clear. However, did Ahsan have the right to sacrifice one life for the sake of others? Wasn't he supposed to protect life, liberty and property of all without qualification? Did Rukhsana not enjoy full ownership of herself and thus the exclusive entitlement to make a free choice regarding her life?

Who's Who In The Case

Abdul Hafeez Bangash – Deputy Inspector General Police, Sukkur Division
Ahsan Rana – Assistant Commissioner and Sub-divisional Magistrate, Gambat
Ali Muhammad Korai – Elder of the Korai tribe
Ali Sher Kaleri – An elder of the Kaleri tribe
Allah Warrayo Korai – Rukhsana's father
Allah Wasayo – Bicycle shop owner from the Ujjan tribe
Badar-ud-Din Ujjan – Rukhsana's husband
Captain Muneeb – Company Commander Frontier Constabulary
Khusro Pervaiz – Deputy Commissioner and District Magistrate, Khairpur
Mian Himmat Ali – An influential elder of the Ujjan tribe
Mian Usman Ali – A respected peasant from the Ujjan tribe
Nisar Siddiqui – Commissioner, Sukkur Division
Rukhsana – the Korai girl whose life is at stake
Shahmeer Korai – Son of Ali Muhammad Korai
Shazia – Rukhsana's sister
Taj Muhammad Noonari – Sub-divisional Police Officer

CONTEMPORARY RELEVANCE

The issues raised in this case are of enduring significance in public policy. The dilemmas recently presented by COVID 19 are a good example. To lockdown or not to lockdown – the entire world has been gripped during the past two years by strong arguments on both sides. An effective lockdown would substantially reduce the mortality rate and throw millions out of jobs and into poverty. Could a few hundred/thousand people be put in harm's way to save others from disrupting their lives and livelihoods? Decision-makers everywhere faced the same dilemma Ahsan faced about Rukhsana's fate in 1995.

Similarly, the demand for taxing the wealthy to provide basic social services to the poor has gained renewed import since the global financial crisis of 2007-08. On the utilitarian calculus, it may make sense if the net loss to

the rich from welfare taxation is smaller than the net gain to the poor. This, however, is a contested position. Hayek (1944) famously argued that each time an individual is taxed to provide welfare to another person, the former is effectively made to work as a serf for the latter to that extent.

Public policy on the persecution of religious, racial or sexual minorities has exhibited similar tension. Often, authorities turn a blind eye to such persecution simply because it is backed, if not perpetrated, by the dominant majority. Since the cost of persecution is localised to a small group of people (e.g., Ahmadis in Pakistan), the utilitarian calculus allows the political authorities to look the other way while the persecutors do their thing. From a libertarian perspective, however, such acts vitiate the inalienable civic and political rights that inhere in individuals.

TARGET AUDIENCE AND LEARNING OBJECTIVES

This case can be used in various public policy and ethics courses at the undergraduate and postgraduate levels. If the case is to be used in a public policy/management/administration course, the instructor should focus on assignment questions 1, 3 and 4 below. If it is to be used in an ethics course, the focus should be on questions 2 and 3 below.

This case can be used to introduce the following points to students:

- Frontline officials are subject to a set of dilemmas different from those faced by senior officials, and this divergence is often at the root of administrative failure. (**Assignment question 1**)
- Unresolved tension between utilitarian and libertarian principles manifests itself in decision dilemmas. (**Assignment question 2**)
- Evil is much more mundane and banal than we think. Despite the existence of options, often acts with extreme consequences for other humans are perpetrated by public officials who are kind and gentle in their everyday lives. (**Assignment questions 3 and 4**)

ASSIGNMENT QUESTIONS

1. Why has administrative action miserably failed in restoring peace in the area?
2. Why is Ahsan at the end of his wits? Is there a principle that should underpin his decision?
3. Are there other options, or is Ahsan facing a false dichotomy?
4. What are the unintended and unforeseen consequences of various administrative actions? To what extent Ahsan et al. are responsible for these consequences?

Before starting a discussion on assignment questions, the instructor should take a vote on what students would do if they were in Ahsan's shoes. It is likely to be a split vote. The instructor should invite one student from each camp to state their key argument in a few sentences. From those voting for Rukhsana's return to Karachi, the instructor should ask if there were any conditions/guarantees under which they would agree to return Rukhsana to her parents. For example, what if the jirga ordered Badar to divorce Rukhsana, and the latter could marry post her *iddat*² to a man of her choice with her parents' consent?

Then the instructor should change the parameters. What if Rukhsana was known to students as a family member or a friend? Would they still vote the same? What if it had transpired on the eve of jirga that there were similar claims on another two women (from Kaleri and Ujjan tribes)? How would they vote if three women, rather than Rukhsana alone, had to be returned to their parents with uncertain consequences? Would their calculus change if the number was higher or lower? Was there a point at which quantitative changes in the number of affected

² A mandatory period of 4 months during which a divorced Muslim woman cannot remarry and should maintain minimal contact with men outside her family.

women would translate into a qualitative change in their opinion? The instructor may take another vote on any of these hypothetical scenarios. The point is to make students realise that the choice here is less clear-cut than it appears at first sight. Change of parameters underscores the necessity of identifying the principle that should underlie decisions rather than mere facts of the case.

Q 1. Why did administrative action miserably fail in restoring peace in the area?

The situation was serious. What started as a physical altercation between neighbours had morphed into full-fledged tribal warfare. Economic activity had come to a halt in Khuhra and neighbouring towns. Already 174 people had lost their lives, and the feud was threatening to spread to other areas and tribes. The administrative machinery had miserably failed in controlling the situation.

When asked why this was the case, students are likely to cite police corruption, administrative inefficiency, inaccessible terrain, poor planning and strategy, lack of resources, etc., as the main causes. All of these are valid reasons, and the crisis can be understood in terms of a resource failure, a planning and strategy failure, a capability failure, or a combination of them. To take the resource deficit, there were only 247 police officers in Gambat, viz. 1 policeman for every 701 persons and 2.21 sq. km.³ Given other claims on their time – e.g., court hearings, guard duties at important places, heavy caseload – only a part of the police force was available for feud-related deployment. This was too small a force to effectively patrol and control the vast hinterland, especially the *katcha* area. A natural response was to secure reinforcements from the police reserve and the paramilitary force called Frontier Constabulary (FC). However, the police and the FC were neither trained nor willing to deal with an extraordinary situation. They had a weak intelligence network which produced little information on the suspects. They lacked the capability to deal with the situation. So, they resorted to indiscriminate arrests and beatings, adding to people's misery without providing any protection in return. Nevertheless, the death toll refused to decline.

The resource, capability and strategy failures are too evident to miss. But they tell only part of the story. There seems to be something more sinister at play as well. Senior officials' priorities and compulsions appear to differ from frontline officials, and their internal tension has some explanatory power over administrative failure. To the extent of the villagers, official policy is not what senior officials pronounce but what frontline officials enact. Furthermore, the discretion accorded to frontline officials to contextually deal with individual cases allowed them to personally profit from the administrative action.

At this stage, the instructor should introduce the concept of street-level bureaucrats (SLBs).

Street-Level Bureaucrats

Lipsky (1969) defines SLBs as 'people employed by the government who: 1) are constantly called upon to interact with citizens in the regular course of their job; 2) have significant independence in job decision-making, and 3) potentially have an extensive impact on the lives of their clients (P. 1).'

SLBs mediate the constitutional relationship between the citizens and the state. The policy is what they do, rather than what the state pronounces. The poorer the people are, the greater the role SLBs play in mediating this relationship because poor people depend more on state services. They also perform an important social control function. They require certain behaviours from the citizens they interact with. Citizens must anticipate the requirements of these public agents and must tailor their reactions and develop suitable attitudes towards the SLBs and the services they receive. It is fair to say that virtually all interactions between SLBs and clients in some way focus on the former's need to assert authority and gain client deference.

A key feature of their work is the inadequacy of personal and organisational resources. Often, they may be undertrained and inexperienced, or the ratio of workers to clients or cases may be low. Hence, there is seldom

³ In comparison, there was one policeman per 287 persons in Lahore and 571 persons in Karachi. Comparative data for rural areas in Sindh were not readily available.

enough time to process a case as it deserves. Since the demand for public services is unlimited (because they are free public goods), the resource problem in most cases is unresolvable. The cost of providing enough resources to teachers, police officials, etc., is unacceptable, and pressure quickly develops to provide services in less costly ways.

SLBs typically work in jobs with conflicting and ambiguous goals. This may be so because some issues are left unresolved at the policy design stage, which play out at the implementation stage. Alternatively, SLBs and the organisation may have different understanding or priorities of various stated and unstated goals. Since SLBs deal directly with clients (and their reaction to public policy), they often pursue client-centred goals (e.g., the health of individuals), whereas senior managers may pursue organisational goals (e.g., cost per patient). Furthermore, SLBs may be interested in the advancement of their personal goals, such as money and power, at the expense of organisational goals. This is enabled by the fact that measuring their performance is extremely difficult given the many variables at the junction of SLB-client interaction.

Since their clients are non-voluntary, SLBs cannot be disciplined by these clients. The latter cannot vote with their feet; if some clients step out, others will step in quickly. Often, SLBs are monopoly providers of services, which means citizens cannot opt-out. Poor people receive a qualitatively different treatment from SLBs because of their dependence on public services. Hence, public agencies with poor clients provide different treatment than those serving more affluent clients. This does not suggest that poor clients cannot impose any cost on SLBs. They can deploy a range of tactics, such as scorn and backbiting, i.e., 'weapons of the weak' (Scott 1985), to express their anger and frustration. Nevertheless, these are low-level costs and are inadequate as a disciplinary tool.

Unlike other low-level workers, SLBs have considerable discretion in determining the nature, amount and quality of benefits and costs provided by their agencies. This does not mean SLBs are unrestrained by the above rules, regulations and directives. Still, they exercise discretion because they are professionals and are expected to exercise judgement in their field. This makes them relatively free from supervision. Even when they are not professionals, their work conditions enable them to exercise discretion. For example, they have so many mandated responsibilities that they cannot discharge them all. So, they must choose when to act and when to look the other way. Often, rules regarding these multiple responsibilities are so voluminous and contradictory that they can only be enforced selectively. Also, they work in situations too complicated to reduce to simple instructions. Their work often requires them to respond to the human dimensions of the situation and exercise judgement. Society seeks not only impartiality from bureaucrats but also compassion. These aspects of public services render ineffective most efforts to reduce SLBs' discretion. Lipsky (2010: 16) rightly observes that 'to the extent that tasks remain complex and human intervention is considered necessary for effective service, discretion will remain characteristic of many public service jobs.'

Their nature of work also allows them relative autonomy from organisational authority. If SLBs do not share the organisation's objectives, the organisation may find it difficult to ensure compliance. Some of the ways they can withhold cooperation may include personal strategies, such as not working (absenteeism, quitting), aggression toward the organisation (stealing, cheating, deliberate wasting), and negative attitudes with implications for work (alienation, apathy). Alternatively, they may act collectively by forming trade associations and benefit from collective bargaining agreements and civil service protections. These personal and collective strategies allow them to perform at less than full capacity, undermining the organisation's capacity to achieve its objectives.

The conflict between SLBs and managers is ubiquitous. This may be due to their different job priorities. The SLBs are interested in minimising their job's discomfort and maximising their income and prestige, whereas the managers are interested in productivity, efficiency and effectiveness. SLBs may also prioritise micro-level goals, whereas managers are concerned with impersonal, macro-level goals. Sometimes, the policy directions by managers may be considered illegitimate because they may not make sense or make unreasonable demands. To the extent SLBs consider themselves professionals, they value their privilege to make critical decisions. Any intrusion by supervisors is deemed illegitimate.

Furthermore, SLBs may develop shortcuts and simplifications unsanctioned by supervisors because they need to process case load expeditiously (this is what they are judged against). Paradoxically, SLBs' coping mechanisms

to quickly process their caseload are contrary to agency policy but are basic to survival. The SLB-manager conflict may also arise because SLBs are in continuous interaction with clients and must deal with their reactions. Senior bureaucrats deal with categories of people, whereas SLBs deal with individuals. Individual clients are much more than what the official categories of age, sex, occupation, etc., can capture. SLBs must perform their functions in appreciation of these individual differences. Depending upon their history and ontology, SLB has personal standards of who is deserving. This may not always match perfectly with the categories imposed from above.

SLBs frequently routinise their work to escape responsiveness. When required to choose between processing more clients and quality of service, most SLBs would choose in favour of greater numbers (because their performance is measured so). It is not the case that they do not want to be responsive to all clients. But they can be flexible and responsive to some clients and not to all. They cannot treat everyone as a priority. This is their dilemma: if they are flexible and responsive with too many clients, their capacity to be flexible and responsive will disappear.

Most increases in responsiveness, e.g., doing more for clients or listening to them carefully, places an additional burden on SLBs. So, they subvert any effort to make them more responsive without strong rewards or sanctions. They develop routines that save them from giving individual attention to cases. Lipsky (2010: 101) is very sceptical of SLB's claim to be more responsive to citizens' needs.

The stated intention of street-level bureaucracies to become more client-oriented, receive more citizen input, and encourage clients to speak out are often questionable, no matter how sincere the administrators who articulate these fine goals. It is dysfunctional for most street-level bureaucracies to become more responsive. Increases in client demands at one point will only lead to mechanisms to ration services further at another point, assuming resources remain unchanged.

It is necessary for SLBs to interact with citizens in a manner that the latter's general consent for maintaining social order is achieved. Typically, this consent is partly coerced, partly given freely, and partly derives from the architecture of the alternatives presented to citizens. Several aspects of SLBs' work help them manufacture this general consent. SLBs interact with clients in settings that symbolise and reinforce their power. The courtroom and the classroom are good examples. Both are designed to structure the interaction between the SLB and the citizen and assert the former's control over the latter. These service settings draw the client's attention to the location of power and provide appropriate cues on how the client should behave. These settings are not accidental. They are deliberate and well-planned.

The citizen-SLB interaction is structured in a manner that the latter controls its content, timing and pace. Citizens are rarely able to tell their stories uninterrupted. The need to process cases quickly forces SLBs to frequently interrupt citizens and to use standardised formats for collecting information. This high degree of routinisation may dampen the tendency to differentiate among people. SLBs develop sanctions to punish disrespect to routines. These sanctions are invoked to affect compliance rather than to affect behaviour relevant to service. SLBs portray their services and procedures as benign and to citizens' advantage. Actions affecting citizens are always purported to be taken in their best interest, and they are expected to be grateful. This ideology is an important instrument of control because it recruits citizens as willing partners in their own control.

Finally, the ever-present indifference and apathy in SLBs' daily interaction with citizens should be understood in terms of the structure of their work that requires coping responses to job stresses. Generally, we seek explanations for this apathy in lack of education, training, social background, etc. These are important factors but do not adequately explain workers' bias and indifference. The same must be understood in terms of the alienation and stress that SLBs experience in their daily routines of work. This explains why SLBs tend to behave alike despite substantial differences in upbringing, social background and education. This is not to say that there are no individual differences between SLBs deriving from their education, previous experience, etc.

Nevertheless, these individual differences are minor. Their work conditions determine the essence of their performance. This warrants a change in the structure of their work to reduce their need for psychological coping mechanisms if we want them to be less indifferent to their work and citizens.

FURTHER READING

1. Evans, T. (2004). *The Street Level Bureaucracy: Perspective and Discretion*. In *Professional Discretion in Welfare Services*. London: Routledge.
2. Lipsky, M. (2010). *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services*. New York: Russell Sage Foundation.
3. Maynard-Moody, S. and Portillo, S. (2010). *Street-Level Bureaucracy Theory*. In *The Oxford Handbook of American Bureaucracy*. Oxford: Oxford University Press.

Returning To The Case

Frontline police/FC officials (and other lowly members of the administrative hierarchy) were SLBs. They were subject to a different set of dilemmas than what confronted Ahsan and other senior bureaucrats. They were part of two networks with often competing and occasionally conflicting demands. One network was official; the other was personal. As public servants, they had a duty to implement the policy handed down to them. As citizens, they were Ujjans, Kaleris, Korais and so on, with all the attendant responsibilities. They had a tribal identity to which they returned daily after finishing their day's job and to which they had to return lastingly upon their retirement from public service in a few years. Their tribe was an important source of support in times of need, which they risked losing if they prioritised official responsibilities over tribal ones when the two conflicted. They would also put the lives and livelihoods of their family members at risk by acting against criminal members of their tribe. Although they would have acted in an official capacity, they would face the consequences in a personal capacity. The Pakistani state would not stand with them if Buddo, Gulsher or any other rogues attacked their families in revenge for an action they had taken to implement one of Ahsan's or Taj Noonari's orders. They faced a clear physical and/or psychological threat. Hence they were reluctant to provide information or identify the suspects on Ahsan's list.

One mundane instance of SLBs facing a different set of dilemmas was their reliance on local provisioning for daily needs while deployed for villagers' protection. Having deployed them at various trouble spots, Taj Noonari conveniently forgot that SLBs were human beings who needed to regularly feed, wash and excrete. In the absence of temporary washrooms set up for them and arrangements for supplying three meals a day, police personnel had to impose themselves on the villagers. Thus, the villagers ended up directly bearing the cost of maintaining police personnel whose services were supposedly tax-financed. While little protection was offered, a tremendous administrative burden was added to the lives of ordinary citizens.

Furthermore, the official policy was how the SLBs acted rather than what Ahsan announced. The latter wanted case-by-case handling of each crime. He also expected the police and FC to respect human dignity during house searches, arrest people only if implicating evidence was available and professionally investigate all people who were arrested. But the frontline law enforcers had little time, training or patience for any of these. The structure of their jobs hardly allowed the same. It made matters worse as they were pursuing ambiguous and contradictory goals. They did not know whether the goal was to terrorise feuding tribes into submission, to bring culprits to justice or to find a political resolution to the problem. Ahsan and his team had pursued these goals simultaneously with serious consequences at the implementation level.

So, low-level police functionaries tended to routinise and 'mass-process' crime and detention. After each killing, they would spring into action and round up tens of dozens of people, most of whom were completely unconnected with the killing, except for their tribal identity. During detention, these people were not interrogated for information about suspects; instead, they had to secure their release by greasing the palm of relevant officials, who exercised considerable discretion in dealing with ordinary villagers. In this way, feud-related deployment became another rent-seeking opportunity for frontline law enforcers. The official policy disregarded human dignity and caused discriminatory action, brutality, extortion and indifference to the plight of the citizens; Ahsan's

pronouncements did not stand. Thus, individual actions taken in concert at the point of engagement with citizens effectively formulated the official policy.

Q 2. Why is Ahsan at the end of his wits? Is there a principle that should underpin his decision?

The jirga had been arranged as a last resort. It was not the preferred solution for Ahsan, given its extra-legal status and the transfer of decision-making to conservative tribal elders. But having tried administrative measures and failed in controlling the carnage, he was compelled to invoke the traditional authority of tribal elders.

Given the tradition of tribal settlements, the jirga was likely to order Rukhsana's return to her parents. Her father, Allah Warrayo Korai, appeared to be a greedy man. He had demanded a Willys jeep when Badar-ud-Din Ujjan (her husband) had initially approached him for Rukhsana's hand. Unluckily, Badar had considered it an unnecessary expense. If he had paid Allah Warrayo his asking price at that time, Rukhsana would not have found herself in the eye of the storm on 'the judgement day.'

Allah Warrayo was also a weak man with little concern for her daughter's well-being. He was under the influence of Korai tribal elder Ali Muhammad, who had his own axe to grind. Allah Warrayo realised that the chances of Rukhsana's return depended upon Ali Muhammad's active support of his cause before the jirga and that the latter's support was not gratis. Rukhsana's marriage had already been challenged because Ali Muhammad Korai had threatened to abstain from the jirga otherwise. Thus, Allah Warrayo was obliged to consult Ali Muhammad in deciding Rukhsana's future post her return. If Ali Muhammad could marry her off to his son, he could keep the girl as well as part of the money received in the settlement. The hearsay was that this was the *fait accompli* once Rukhsana returned to her parents.

From Rukhsana's point of view, this was a terrible fate. She would be forcibly separated from her husband, whose baby she carried in her womb. The baby's fate was sealed; it would be aborted or grow burdened with history. Rukhsana herself could not expect to be treated nicely. In Ali Muhammad's household, her status would be that of a woman who had disgraced her family and tribe through an elopement and an exogamous marriage. Her new marriage would be an imposition upon her to atone for her sins. She was to be looked down upon, to carry shame and to inherit the same to her offspring. It was a terrible fate from Badar's point of view as well.

For Nisar Siddiqui and his colleagues, it carried a promise of peace. They were optimistic and were ready to 'admit the idea that men for whom [they were] building it would agree to accept their happiness on the foundation of the unexpiated blood of a little victim. And accepting it would remain happy for ever' (Dostoyevsky 1879: p. 288). Ahsan, however, was unsure. He felt unease about building an edifice of happiness on the torture of an innocent soul. He wasn't sure he had the mandate to send Rukhsana to the altar to achieve administrative objectives. Although Allah Warrayo would double-marry Rukhsana, and Shahmeer et al. would do the subsequent acts, Ahsan realised that his action would trigger the chain of unfortunate events. As such, he felt responsible for the imminent forced marriage, abortion and rape.

After laying out the dilemma, the instructor should introduce basic arguments from the utilitarian and the libertarian tradition.

Utilitarianism:

'What is the right thing to do' is the central question in moral and political philosophy. This question can be answered in several ways – to act in accordance with the will of God, to maximise power or to pursue virtue, for example. Utilitarianism answers this question with reference to human happiness. We ought to do what produces the best consequences for everyone, where the best consequences are understood as the greatest possible net increase in the surplus of happiness over suffering. Utilitarianism is, thus, a variety of consequentialism in which an act is to be judged for its overall effect on human happiness or well-being. Its core principle is to try to make the world a better place, i.e., maximum happiness for the maximum number of people. For this reason, utilitarians have actively strived to bring about practical changes in society that promote well-being and alleviate the suffering

of not only humans but also animals. They were early advocates of female suffrage, sexual freedom and an end to animal cruelty.

Utilitarianism has a long tradition, and its roots can be traced to the hedonistic ideas of Epicurus in the 3rd century BC. As Christianity became dominant, the idea of pleasure as the sole guiding force fell out of favour for the next 1,500 years. In the 18th century, Jeremy Bentham expounded utilitarianism as a systematic ethical theory and the basis of societal reform. He considered the principle of utility as the foundational principle for assessing every action, whereas utility was defined as the tendency of something to produce pleasure or prevent suffering not merely for the agent but everyone. Thus, happiness was the only thing desirable as an end; everything else was desirable only as a means to this end. He proposed to sum up the total value of pleasures and pains (measured in terms of intensity, duration, certainty, etc.) and use it as the evaluative basis of action.

Bentham's protégé and student, John Stuart Mill, greatly expanded these ideas. He distinguished between low-order (e.g., carnal) and high-order (e.g., intellectual) pleasures and considered the latter more desirable. He noted that most people lose their intellectual tastes through disuse. Otherwise, anyone with experience of both types of pleasures was bound to prefer pleasures of the soul over pleasures of the flesh. For him, 'it is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied' (Mill 1957; p. 12). Since the utility standard is the greatest amount of happiness altogether, utilitarianism can achieve its end only through the general cultivation of nobility of character, argued Mill. He also tried to reconcile utilitarianism with acting-in-accordance-with-the-will-of-God by noting that God desires, above all things, the happiness of his creatures. According to Mill, utilitarianism was more profoundly religious than any other moral doctrine.

Utilitarian ideas were further elaborated and refined by the academic philosopher Henry Sidgwick during the second half of the 19th century. Sidgwick conducted a systematic comparative study of existing moral philosophies and made a number of important claims to support utilitarianism. He dismisses common sense morality – the one based on the so-called conscience – since it is not self-evident and requires deeper explanation, which the cardinal principle of utilitarianism, viz., maximising happiness, can provide. For Sidgwick, a self-evident truth must treat similar cases alike, have an impartial concern about all parts of our conscious life and consider the good of the whole rather than a mere part. Together, these three preconditions of a self-evident moral postulate anchor the utilitarian principle into a form of egalitarianism that treats the well-being of all individuals - our present as well as future well-being at an equal footing.

In utilitarian theory, a key distinction is between act utilitarianism and rule utilitarianism. The former evaluates consequences of particular actions, and the latter evaluates the classes of actions. In the former, general rules (e.g., keep promises or do not cheat) are merely rules of thumb, which act as guidelines to be followed in the usual course, but which can be violated in specific instances if it yields a surplus of benefits for all concerned. In the latter, general rules are more than mere rules of thumb; they act as the evaluative basis of particular actions, i.e., the rightness or otherwise of an act is to be evaluated by testing its adherence to rules rather than its consequences. Rules, of course, are selected for their consequences. Rule utilitarianism is, therefore, a two-step process. First, rules are selected on the utility criterion, and then, actions are tested for conformity with rules. Thus, act utilitarianism is an extreme version, and rule utilitarianism is a restricted one. The following example will clarify the distinction between the two.

Suppose A has an affair with X, which is deeply satisfying for both. They live in different cities, frequently travel for business to remote places, and meet at mutual convenience whenever possible. Both are married and have successfully kept their affair a secret. Thus, A's wife B and X's husband Y have no idea what has been happening. If at all, they have noticed a positive change in their spouses over the past few years and have been happy to find them less irritable, more generous and generally in a good mood. The risk of the affair being discovered is negligibly small given that A and X have been very discreet in their trysts and that B and Y have sedentary lifestyles and non-prying temperaments.

Although the general rule 'thou shall not cheat' has been violated, on the calculus of act utilitarianism, there has been a clear surplus of happiness. Not only A and X have been happier, but B and Y have also been so. Cheating will cause heart aches *only* when it is known and will become a precedent if it is commonly known. Thus, until

and unless it 'causes' something of the sort, its potential to produce pain or suffering to specific persons or, more generally, is hypothetical. On the calculus of rule utilitarianism, however, the affair is wrong. What would happen if most or several people in society started to cheat? This will lead to a general breakdown of a key social institution (i.e., family) and produce a net surplus of suffering. The concern here is not with the actual consequences of the A-X action but its hypothetical consequences. The rule against cheating exists because generalised cheating is harmful. And a qualification 'unless thou can keep it secret' cannot be added to the general rule 'thou shall not cheat' because it will place too great a burden on individuals to evaluate the consequences of their actions. Moral rules are rules of thumb, but they are not bad rules of thumb. Of course, they are not bad, an act utilitarian would retort, but they are not perfect either. Blindly following a rule when breaking it will prevent avoidable misery erecting it into an idol and must be rejected. According to Smart (1967), rule utilitarianism either fails or collapses into act utilitarianism on close scrutiny.

A relevant question is: should we consider the consequences of only what we do, or should we also include in our calculus what we do not do and the actions of others pursuant to our action? A and X trysting in a secluded retreat or in *my* holiday resort appears to be two different acts, although the consequences are the same. The orgasmic pleasures belong solely to the A-X duo in both instances, but I share the responsibility for flouting the rule thou-shall-not-cheat by allowing them to use my resort. It appears that we somehow feel more responsible for what we do rather than the consequences *per se*, and our responsibility extends to what others do pursuant to our actions. Thus, what someone else does can also be included in the outcomes of what one does. Similarly, my knowledge of the A-X liaison somehow makes me complicit (and hence responsible) even if they were not using my resort. The idea of negative responsibility, i.e., we are responsible not only for what we do but also for what we ought to or could have done but do not do, is also inherent in the utilitarian doctrine.

Furthermore, the integrity of acts is an important aspect of the utilitarian doctrine. We want things to actually be, rather than just their sensation. Since we prefer real over fake, we would prefer being Socrates, rather than just a feeling of the same, which a psychedelic can easily induce. In 1974, Robert Nozick proposed a thought experiment in which we are invited to plug into an experience machine, which can give us whatever experience we want while we float in a tank with electrodes attached to our brain. We may stay plugged into this machine for life if we want to, and all of us may do so simultaneously since the machine is self-servicing. Hedonistically speaking, we'll all be at the highest level of pleasure, but Nozick (1974) thinks that we would not plug in and draws on this to conclude that other things matter to us (in this case, the reality of the hedonistic experience). We value 'real' friendship, knowledge and achievement, all of which are lacking to people hooked on to the experience machine (or should we say the Matrix?).

Similarly, we would want our loved ones to be well even when we have no means of knowing if they are indeed well (e.g., posthumous). Given a choice between them being well but us knowing that they are not and them not being well but us knowing that they are, we are likely to prefer the former. We desire a state of things and not a mere sensation. This is called preference utilitarianism because it seeks to maximise well-being through the maximal satisfaction of our weighted preferences.

There are several unsettled questions within utilitarian thought. For example, should we aim to increase the total surplus of pleasures over pains or its average? It is possible to achieve one without the other. Suppose a country annexes a neighbouring country with a net surplus of pleasure over pain, but the surplus is lower than the one enjoyed by the annexed country. This will increase the total surplus of the (enlarged) country but lower its average surplus.

Conversely, if a country gets rid of a province with the lowest average pleasure surplus, its average surplus improves though its total surplus declines. Similarly, it makes sense for a country to have a contraceptive program if it wants to increase average well-being but not if it seeks to increase total well-being. Rawls (1971) thinks that the best consequences are those with the highest average utility. But this may create perverse incentives as well. For example, once a country has gotten rid of the lowest-performing province, another one will take its place.

Similarly, should we evaluate actions on their actual consequences or on foreseen, foreseeable, intended or likely consequences? Suppose C has some left-over food in good condition, which he gives to a poor boy who happens

to be passing by. Unfortunately, the boy gets sick from eating the food. Perhaps the food was stale or did not suit the boy's physiology. Either way, the consequences were bad. C's action was wrong if actual consequences are considered but right if foreseen, intended, or likely consequences are considered. It is possible to argue that C could have been more careful in checking food quality before giving it away. Thus, bad consequences were foreseeable, though not intended or foreseen.

Another important point of contention is the future effects of an action and its effects on non-human beings. For example, most debates on climate change revolve around current effects versus future consequences of human action, and the utilitarian calculus will change substantially if we consider effects on future generations. What about effects on non-human beings, e.g., animals? Should their pleasure and suffering be accorded weightage equal to that of humans? Or should we construct a hierarchy and assign weights accordingly? Either way, our verdict will be very different from what it is today if we consider animal pain and suffering concomitant to their industrial production and mass consumption.

Like other moral philosophies, utilitarianism has been subjected to criticism. One common criticism is that pleasure and pain are not measurable and cannot provide a valid evaluative basis for action. However, this criticism applies to all comparisons of our desires and needs since we have no objective measure of our pain and pleasure. So, we must rely on common sense or measures based on what we are ready to give for something to compare pleasure and pain across time and people. A second criticism is that utilitarianism makes no room for justice since it does not distribute happiness equally or in relation to the moral desert (i.e., what we deserve or merit). In principle, 'maximum happiness for the maximum number of people' everyone counts for one and no more. Thus, a unit increase in total or average happiness is completely agnostic to whether it happens through A or B. But this sounds counter-intuitive. Shouldn't a better society distribute happiness according to the nobility of character or at least equally?

Similarly, saving the life of a drowning sweetheart appears more urgent than saving the life of an equally noble stranger who is drowning by the side. We have a greater obligation towards our family and friends, which the agnostic utilitarian calculus seems to miss altogether. A third criticism of utilitarianism is that it includes all types of pleasures, including those we consider inherently bad, e.g., cruelty. On what logic can we count raping a child as a 'pleasure?' How can the sadistic pleasure of killing be equal to the pleasure of saving lives? Nevertheless, in the utilitarian calculus, they can cancel each other out. A fourth criticism is that utilitarianism does not factor in our moral obligation to keep promises if breaking them yields a net benefit on the utilitarian calculus of pleasure and pain. Intuitively it appears that we have an obligation to keep a promise even if it was made secretly, and breaking it does not produce the risk of encouraging generalised disregard of promises. In the above example of A-X love affair, both are guilty of breaking promises with their spouses, *albeit* clandestinely, and their trysting seems wrong.

Box 1: A Mental Map of The Utilitarian Argument

- The argument
- Major proponents (Epicurus, Bentham, Mill, Sidgwick)
- Key strands (Act, rule and preference utilitarianism)
- Important (unsettled) questions
 - Is utilitarianism compatible with religion?
 - Does the calculus extend to non-actions, and to actions of others consequent to our actions?
 - Should the aim be to increase total happiness or the average?
 - Should actions be evaluated on their actual consequences, or on foreseen/foreseeable or intended consequences?
 - How far into the future should we go to evaluate consequences?
- Critiques
 - How to measure utility and how to compare it across people?
 - Where is the room for 'justice' in utilitarian calculus?

FURTHER READING

1. De Lazari-Radek, K. and Peter Singer (2017). *Utilitarianism: A Very Short Introduction*. Oxford: Oxford University Press.
2. Perry, J., Michael Bratman and John M. Fischer (2016). *Introduction to Philosophy: Classical and Contemporary Readings* (7th ed.). Oxford: Oxford University Press. (p. 480-526)
3. Sinnott-Armstrong, Walter, "Consequentialism", *The Stanford Encyclopedia of Philosophy* (Summer 2019 Edition), Edward N. Zalta (ed.), <https://plato.stanford.edu/archives/sum2019/entries/consequentialism/>

Libertarianism:

Libertarianism is a comprehensive moral, economic and political philosophy which places individual rights and liberty at its core. Rights to life, property, contract, exchange, freedom of occupation, etc., are taken seriously, and their protection is deemed a societal responsibility. Libertarian conceptions of justice place strong limits on coercion of an individual by another or the state. Thus, while it is justified to force people to do certain things, such as refraining from violating others' rights, they cannot be coerced for the overall good of society or their own good. Libertarians reject theories that merely look at end-state distributions or outcomes.

Libertarianism enshrines a negative concept of liberty, i.e., the absence of constraints. One is free to the extent one can pursue what one wills. The only acceptable constraints are the ones necessary for protecting individual liberty. Our individual and collective responsibility is to refrain from constraining others unless necessary to protect our freedom. For example, restricting the maximum speed at which one can drive on a national highway is acceptable, but mandating wearing a seat belt is not because the former puts others' safety at risk, but the latter does not. Libertarians oppose distributive taxation and paternalistic legislation for this reason.

Libertarians also oppose positive conceptions of liberty. They argue that it is not the state's responsibility to provide resources to individuals so that they can make good use of their liberty because it requires the state to define what is a 'good' use of one's liberty, and it takes away resources from other individuals against their will (e.g., through taxation). Thus, our right to own property means that we shall not be legally or forcefully stopped from owning property, but it does not require the state to provide us with the means to own property. Similarly, our right to marry a person of our choice lies in the absence of physical or legal force (or its threat) but does not extend beyond that, e.g., creating the conditions that we may marry that person. Doing so may be coercive for the person concerned or others whose personal or financial resources are used against their will.

The idea of self-ownership is very important in libertarian thought. It has the status of the foundational principle, which does not require any value to support it. It is argued (e.g., by Nozick (1974)) that while we have certain moral powers to acquire property rights in other things, we have full ownership of ourselves. This gives us all the rights that property ownership entails, such as the right to use ourselves as we please, the right to restrict others from using us without our consent, and the right to transfer any of these rights to others (by sale, gift, etc.), protection against involuntary loss of these rights, and responsibility of others to enforce these rights. As self-owners, we are protected against things done to us without our consent, except when it is required to protect similar freedom of others. For this reason, forced marriage and rape are wrong though marriage and sexual intercourse *per se* are not, physical assault is wrong, freestyle wrestling is not, stabbing is wrong but performing an open-heart surgery is not.

Full self-ownership has special significance in three areas of public policy. First, women have the full and exclusive right to use their bodies. They cannot be bought, sold, transported, prostituted, forced into marriage, etc. Each of us has the responsibility to refrain from doing so, and the state has the mandate and the duty to take all measures necessary, including deployment of force, in case someone refuses to fulfil this responsibility. Their right to terminate unwanted pregnancies also stems from self-ownership. Second, people cannot be used as a mere thing or traded against one another. They are individual persons with their aspirations, life plans and preferences. It is morally wrong to use a person against their will for the benefit of others or the so-called greater good.

For this reason, human sacrifice is wrong even if it is necessary to please the gods who would otherwise wreak havoc on the entire community. Similarly, it is wrong to use women to settle disputes, even if the dispute is particularly bloody and cannot be settled otherwise. Third, a majority cannot coerce a minority (even if it be one person) to protect its interest. Since rights are inalienable and inherent in each individual, one person's rights cannot be trumped by the wants of the majority. This saves minorities from discriminatory treatment in a majoritarian rule.

There is little room for any kind of redistributive taxation. Since people are the primary controllers of their lives, labour and bodies, they have the right to work or not, choose their profession and employer, and use the proceeds of their labour as they please. Taking anything away from them would be coercion unless they freely choose these purposes. However, this produces counter-intuitive results. We can often help quite a few people through a relatively minor sacrifice at our end, such as taxation. Moreover, if our responsibility extends beyond refraining from coercing people, e.g., helping them, we cannot object to redistributive taxation.

A theory based on the idea of full self-ownership also allows voluntary enslavement. On what grounds does society have a right to prohibit that? After all, ownership includes the right to transfer by gift or sale any or all of the rights associated with ownership. We'll need recourse to a higher principle to avoid a proposition which seems abhorring. Furthermore, full self-ownership seems to restrict a lot of legitimate activity by declaring wrongful, even minor, infringement of individual rights. For example, if an industrial or agricultural activity pollutes the environment even in a minor way, it restricts our ability to breathe and drink unpolluted air and water. Since we have not consented to this pollution and there is no principled difference between minor and major infringements into full self-ownership, we seem to be coerced. Objections of this kind have led to some watering down of the full self-ownership thesis. It is now accepted that while we have protection against unwanted use of our lives and bodies, others have liberties to use us for purposes for which a reasonable person shall not withhold consent. Similarly, some responsibility to help others is also accepted. This shift from full self-ownership to self-ownership maintains the foundational character of the latter without landing us into counter-intuitive conclusions identified above.

Generally, libertarianism is considered a right-wing philosophy, but this is not true. There seems to exist a continuum from right-libertarianism to left-libertarianism, depending upon what stance is taken on ownership of productive resources and distributive justice. Right-libertarians support the first acquisition of property by mixing one's labour with natural resources (i.e., the Lockean argument). They oppose distributive arrangements that seek to equalise outcomes. On the contrary, left-libertarians think natural resources belong to everyone since they cannot be created. Hence, one can only co-own natural resources with the rest of humanity. They also consider wealth creation a social process and admit others' claim about the wealth supposedly generated by individuals. In

this view, societies should work for the benefit of the least well-off (e.g., Rawls' difference principle). Libertarians of both hues see their ideas as promoting general good and see this as a key justification for them.

Box 2: A Mental Map of The Libertarian Argument

- The argument
- Negative conception of liberty and reasons for opposing the positive conceptions
- Self-ownership as the foundational principle
- Significance for public policy
 - People have full and exclusive right to the use of their bodies.
 - They cannot be coerced for their own good or for the general good.
 - A majority cannot coerce a minority to protect its interests.
- Views on redistributive taxation
- Right libertarianism and left libertarianism
- Critiques
 - We ought to prevent suffering if we can do so without comparable cost to us.
 - Other people can coerce us for purposes for which a reasonable person will not withhold consent.

FURTHER READING

1. Van Der Vossen, Bas, "Libertarianism", *The Stanford Encyclopedia of Philosophy* (Spring 2019 Edition), Edward N. Zalta (ed.), URL = <<https://plato.stanford.edu/archives/spr2019/entries/libertarianism/>>.
2. Freedon, M. (2015). *Liberalism: A Very Short Introduction*. Oxford: Oxford University Press.
3. Perry, J., Michael Bratman and John M. Fischer (2016). *Introduction to Philosophy: Classical and Contemporary Readings* (7th ed.). Oxford: Oxford University Press. (p. 595-645)

The instructor may also use the well-known trolley problem or the organ transplant dilemma to elaborate upon the tension between utilitarianism and libertarianism. Trolley problem: a runaway trolley is set to kill five people sitting on the trolley track, completely oblivious to what is coming their way. You can possibly divert the trolley to another track where it will kill only one person. Would you do that? Organ transplant: you are a surgeon treating a terminally ill person who is likely to die in the next day or two. Waiting next door are five people, each needing an organ transplant immediately. You can possibly kill the first person with impunity and transplant his organs to the five people needing them and save their lives. Would you do that?

Returning To The Case

Returning Rukhsana to her parents with all the foreseen consequences will be right from an act-utilitarian perspective since the act is likely to produce a surplus of benefits over suffering. Since everyone counts as one and no more, Rukhsana's suffering will be cancelled out by the lives saved. A lot, however, will depend upon what can be legitimately counted as pleasure, whose pleasure and suffering are included in the calculus and how weights are attached. Arguably, Shahmeer Korai will derive pleasure from securing an attractive young girl to his sexual servitude, but is it legitimate to count this pleasure in the utilitarian calculus? Aren't some pleasures inherently bad, including (or perhaps especially) the pleasure of rape? Will it matter that Rukhsana has done nothing to deserve her fate? Is Rukhsana's suffering at par with the similar suffering of someone who lives in Khuhra and has *ipso facto* a greater connectivity with the tribal feud? What should we say of a principle that has no consideration whatsoever for the moral desert of individual agents?

Furthermore, who are the people whose pleasures and suffering will be counted? Will it be Ujjans, Kaleris and Korais living in Gambat, or will the ones living in neighbouring districts be included, given that the feud is threatening to expand? What about the public at large, which is not directly affected by the feud for now but may

discover in future that life and liberty are no longer sacrosanct and can be taken away by state agents for an opaquely defined larger public interest? What about the baby that Rukhsana is carrying in her womb? Given that it cannot even cry, will he/she count? Finally, how many negative utils⁴ (or any unit of suffering) should be assigned to the baby's abortion or Rukhsana's rape? Will the assignment of utils change if marital rape is not considered a crime (as is the case under Pakistani laws)? While assigning positive or negative utils for calculation purposes, will we consider the observer or agent or the affected individual's perspective? For Rukhsana, it is doom's day. Hence, no amount of benefit gained by others can cancel out her suffering. An observer will expect tribal elders to be fair in their judgement and cancel out equal sufferings. An agent like Ahsan will feel responsible for the consequences on either side and may assign utils accordingly.

These are difficult questions, and answers will not come by easily, especially since there is no time for detailed calculations. That is why agents are not expected to assess all the possible consequences each time they have to make a decision. Instead, they can rely on the rules that have evolved over ages to guide human action in difficult situations. From a rule utilitarian perspective, the action will be wrong because it violates the principle that no one will be deprived of their life or liberty without due process of law. Since jirga is an extra-constitutional arrangement and the Pakistani law does not sanction human sacrifice to settle disputes, due process is missing. But will it not fetishise a rule if its consequences are ignored? After all, rules are made to serve humans and not *vice versa*. Should a rule be still followed if it is abundantly clear that doing so will produce disastrous consequences? Perhaps we should because not doing so will become a precedent. But this appears to be a fallacious argument. If an act produces bad consequences under one set of conditions, it can act as a precedent *only* for an act carried out under the same conditions. In these conditions, it will produce bad consequences each time; hence, no rule can support this act under utilitarian logic. If the conditions are different in the subsequent act, the first one cannot serve as a precedent. So, perhaps Ahsan should violate rules since their observance produces bad consequences but doing so will return Ahsan to act utilitarianism.

Another point to consider is how important it is for Ahsan to keep his promise of protecting the life and liberty of all people in his jurisdiction. He has an unwritten, unspoken covenant with Rukhsana. It feels bad that he will be reneging, his noble intentions notwithstanding. Furthermore, as the Sub-divisional Magistrate, he is duty-bound to act in accordance with the law, but as the Assistant Commissioner, he is required to resolve the matter sooner than later so that business as usual can resume in the Gambat sub-division. Demands of office seem to be conflicting in this case.

Seen from a libertarian perspective, the act of returning Rukhsana to her parents seems patently wrong. Whether her self-ownership is full or limited, she is protected from using her life and body for purposes she has not freely chosen. She has contracted a marriage out of volition, and nobody has a right to override that for any consideration. Doing so will be coercion. In a libertarian framework, everybody must refrain from infringing upon her self-ownership, and the state can/should deploy force if anybody refuses to refrain. Thus, far from facing a choice, Ahsan is duty-bound to help Rukhsana and Badar to return to Karachi. He is holding them in captivity without any legal or moral authority whatsoever. If he takes the unfortunate couple to the jirga, he will not only be complicit but also be fully responsible for whatever happens to Rukhsana after the jirga. Although he would not have caused the impending abortion, rape, etc., his action would have triggered the chain of events that would foreseeably lead to these abominable outcomes. His action would be the proximate cause, and he cannot escape responsibility.

It is clear from the above discussion that utilitarianism and libertarianism rely upon two different foundational principles. The former uses utility maximisation, and the latter self-ownership as the core value from which everything else derives. Often the two have competing demands, which are conflicting in this case. Depending upon which principle is used, the act of returning Rukhsana to her parents will be right or wrong.

⁴ A hypothetical unit measuring satisfaction.

Q 3: Are there other options, or is Ahsan facing a false dichotomy?

Williams (1973) believes that most people lie when they say they were left with no choice. Existential philosophers (e.g., Sartre and Camus) have also argued that there is always an option, even under a guillotine. Ahsan's case is no exception.

Admittedly, Ahsan had limited his options, having summoned Rukhsana and Badar to Sukkur. As long as the unfortunate couple was in Karachi, it was not under his direct control and could exercise greater agency. It was possible for him to 'fail' to persuade them to join the jirga proceedings, and the couple could disappear into Karachi's urban vastness. Ahsan's failure to secure their presence before the jirga would have been an omission but letting them escape from Sukkur would be a commission, and the latter generally feels more grievous than the former.

Even on the eve of the jirga, his options were not restricted to the two laid out earlier. For example, he could talk to Nisar Siddiqui again in the hope of finding some palatable alternative. He commanded a degree of respect and trust with the latter and now was the occasion to fully capitalise on the same. Another possibility was to talk to local political and business leaders to see if anyone could influence any tribal elders. Particularly helpful would be people who could influence Ali Muhammad Korai, given that he was the key person at that stage. Since Ali Muhammad lived and worked in the Gambat sub-division, there must be people around who were close to him, whom he was indebted to or were his support base, people he couldn't afford to take lightly. Couldn't Ahsan approach these people and try to induce flexibility in Ali Muhammad's stance? Couldn't he make an offer Ali Muhammad wouldn't refuse?

Similarly, he could address the jirga directly and make a forceful, impassioned appeal for a less noxious resolution. If nothing worked, he could still refuse to be part of the jirga, even if this meant an end to his civil service career. It is doubtful, though, if it would change the jirga outcome and if Ahsan's responsibility would be any smaller if he walked away so late into this endeavour.

Nisar Siddiqui also had multiple options. For example, he could use his influence with tribal leaders to keep Rukhsana out of the jirga. After all, he was the administrative head of the division, and the jirga leaders needed his favour on a regular basis. He could use his office for his purposes rather than allow others to use it for theirs. It was also possible to push the jirga forward by a few days/weeks, during which backchannel contacts with Allah Warrayo and Ali Muhammad Korai could bring them to a more palatable settlement. If murders and other crimes could be settled through the imposition of fines, so could be an exogamous marriage in a distant place. After all, Rukhsana was neither abducted nor did she elope. She married as a consenting adult with the support of her elder sister. It was unfortunate that she was in the eye of the storm. Given a few more days, she could once again vanish into obscurity in Karachi. It would not have been difficult for Nisar Siddiqui et al. to think of a legitimate excuse to reschedule the jirga to a later date.

Rukhsana, too, had several options. She did not have to take it lying down. For one, she could try to escape from Ahsan's illegal custody. Given that she valued her own life and liberty much more than Ahsan et al. did, she could worry less about the consequences of escaping from custody. She could also resist being forced to return to her parents. She could create a scene, kick, fight, and make it known that she was being abducted. She could also refuse to sign off any attempts to remarry her. It would be understandable if she chose not to do any of these for fear of brutal physical punishment, but to say she did not have options would be a misstatement.

The case of tribal elders was straightforward. They could claim that tribal customs tied their hands, and they *had* to decree Rukhsana's return to her parents. However, that would be a false claim. Tribal customs were mere precedents, and no two cases were the same. Elders interpreted tribal customs to their advantage all the time. They were quite astute in that.

Furthermore, there were plenty of extenuating circumstances – Rukhsana had married on her own accord; she lived far away; she was pregnant – to enable the jirga to take a lenient view. The elders could conveniently exclude

the case as *coram non judice* or compensate Allah Warrayo through a share of the fine imposed on Ujjans. All the persons involved seem to have the most convenient options.

Q 4. What are the unintended and unforeseen consequences of various administrative actions? To what extent Ahsan et al. are responsible for these consequences?

Hannah Arendt (1998) argues that human action unfolds in a complex web of human relations and produces unintended, unforeseen, unforeseeable and unlikely consequences. Our action – verbal as well as physical – is how we disclose ourselves to others. It is the essence of our self-expression. It is through action that we distinguish ourselves from others. That is why we are judged by actions rather than dreams, aspirations and intentions. The full range of consequences of human action does not become evident during the lifetime of the agent. Hence, evaluating the future consequences of our actions is far from easy. This makes public management and policy-making an arduous task that regularly throws surprises.

Scott (1998) makes the same point using anthropological evidence. Through detailed case studies of five largescale public interventions to improve the human condition, he argues that these schemes went awry because they tried to impose schematic visions on groups of people without understanding their complex interdependencies. These interdependencies cannot be fully comprehended because of the plurality of human agents relevant to any individual action, whose effects are felt far beyond its immediate spatial and temporal surroundings. According to Scott (1998), the tragic failure of public interventions is due to the confluence of the following four elements: 1) a vision for administrative reordering of nature and society (called 'high modernism'); 2) a strong belief in state's capacity to do so; 3) state's willingness to deploy its apparatuses to affect the desired social reordering; and 4) a prostrate civil society that fails to resist when social change is handed down. The ideology of high modernism provides the desire, the state's coercive apparatus provides the means, and a weak civil society creates the conditions for implementing these high-sounding schemes, typically the brainchild of well-meaning, progressive, forward-looking public officials. Therefore, he advises public officials to plan for surprises and choose schemes that can be reversed easily if they turn out to be mistakes.

Although dilemmas presented in this case study do not emanate from any high modernism *per se*, it is easy to see plenty of unintended and unforeseen (mostly negative) consequences of various administrative acts. The effort to find a police solution to a tribal feud backfired and caused immense hardship to people. Ahsan demonstrated a weak understanding of the strengths and weaknesses of his police force as well as of tribal dynamics. The fact that no one was ready to provide information either due to tribal loyalties or for fear of reprisal converted police/FC raids into exercises of high-handedness and extortion. During these raids, villagers were manhandled, and their houses were searched with scant regard to privacy. Hundreds of people were detained for questioning and kept in illegal custody until they could grease the palms of uniformed men. Perhaps the worst part was that there was nothing to show for the immense hardship imposed upon people.

Ahsan had neither intended nor foreseen this to be so. However, these consequences were quite foreseeable had he given careful thought to (or demonstrated a better understanding of) the challenges of policing in tribal landscapes, especially of the katcha. Now, he could not escape responsibility by hiding behind the absence of bad intent. It was his decisions which translated into misdirected and mismanaged police action. His decisions led to a chain of events that produced unfortunate consequences. He turned a deaf ear to the occasional feedback from local people on their hardship since he knew no alternatives. People paid dearly for his incompetence and lack of imagination. His supervisory officers, M/s Khusro Pervaiz and Nisar Siddiqui, shared the responsibility since they were complicit in whatever was happening. The latter asked him to 'do whatever it takes,' which was nothing less than a *carte blanche* to pursue the lofty ideal of restoring peace.

Summoning Rukhsana to attend the jirga was a grave mistake. Ahsan et al. did not, though they should have, foresee(n) that they were strapping their hands and limiting their options. Their failure to appreciate the complexity of the situation led them to act in the way they did. Unfortunately, administrative and police officials at the highest level used their official clout to lead an unsuspecting couple into a potential minefield.

Ironically, all of this was happening with good, noble intentions. Both Nisar Siddiqui and Ahsan were widely respected for their integrity, hard work and concern for public well-being. They had illustrious careers in public service behind them. Nevertheless, their everyday actions, mundane administrative decisions and broader overall policies designed and implemented with utmost sincerity had already caused indiscriminate suffering in Gambat and were now putting entire communities into a potentially explosive situation.

As Arendt (1963) demonstrates in *Eichmann in Jerusalem: A Report on the Banality of Evil*, otherwise normal but thoughtless, unoriginal and predictable bureaucrats can undertake actions that for them might be part of their job with their daily routines but which may quite literally be the end of the world for people on the receiving end of their actions. Eichmann was a Lieutenant Colonel in Nazi Germany and an upwardly mobile career officer of the elite SS (abbreviation of Schutzstaffel), specialising in resolving the Jewish question. He was responsible for transporting millions of Jews from Europe for settlement elsewhere and, in several cases, for extermination. Ironically, he did not commit these heinous acts (for which he was tried and executed in 1962) out of any anti-Semitism or a desire to inflict pain. His psychological assessments during the trial showed that he did not derive any sadistic pleasure from killing. Instead, he was doing his job and following the law. He took his supervisors' orders seriously and put his heart and soul into their implementation. He desired to be a good and successful public official, making him the thoughtless and unoriginal bureaucrat he was, says Arendt. He was not a monster; far from it, he was terribly and terrifyingly normal. He did precisely what other public officials in the Third Reich were doing. If anything, he was more efficient and was duly rewarded in bureaucratic terms. His eagerness to do his duty made him incapable of looking at things from his victims' perspectives. The real tragedy, argues Arendt was that he did not think he had done any wrong.

Ahsan also seems to have acted like a thoughtless, unoriginal and predictable bureaucrat, first administering police action and later organising a patently illegal tribal jirga that would impose fines to be paid in money and women. His dedication to his job and desire to rise in the bureaucratic hierarchy cost him self-reflexivity. Worse still, this was true of the entire administrative hierarchy. No one, absolutely no one – from the frontline constable to the Deputy Inspector General of Police, from the FC soldier to the chief magistrate in the district, from the lowly clerk to the chief bureaucrat in the division – realised that they were doing something wrong. No one stood up for the villagers when they were beaten, and their houses were searched or when they paid bribes. Instead, these bureaucrats kept issuing and following orders thoughtlessly without questioning their legality or considering their quintessential responsibility of protecting life, liberty and property. They were facing a crisis, and as Arendt (1963) argued, only exceptional men could behave normally in a crisis. Public service in Sukkur, sadly, seemed to comprise ordinary people.

The instructor may also use the well-known Stanley Milgram experiments to further elaborate on the banality of evil.

CONCLUSION

The instructor should conclude by summarising the main points from the discussion. The class discussion for Assignment Question 1 introduces the student to the characteristics of street-level bureaucrats who face a set of dilemmas different from their senior officers. This tension is an important cause of the administrative failure in Gambat. Discussion in Question 2 introduces students to utilitarianism and libertarianism. The two derive from different foundational principles. The former is based on the principle of utility maximisation and the latter on self-ownership and rights deriving from there. Ahsan's dilemma arises from the tension between these two principles and their competing demands. Discussion in Questions 3 and 4 shows that often people undertaking actions that have extreme consequences for other human beings are not evil in nature. Instead, they may be kind and gentle in their everyday lives and yet undertake these actions to discharge their official duties. Their desire to comply with orders and rise in ranks costs them self-reflexivity.

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