**Base of the World**

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For most of us, in this incorrigible time, Imam’s wisdom has been reduced to a mere quote, at the start of some random article, in a small paper – ignorable, at best. But for a believing heart, in a grieving time, it means much more. It is not just a statement of fact (which it is), it is also a statement of hope; hope for redemption and, if we are lucky, hope for forgiveness.
It is this promise of justice that has been translated into many a societal systems, from the earliest of civilizations to the clumsily put together system of Pakistan’s constitutional democracy. In fact, the very text of our Constitution emphasises that the virtues of ‘equality’, ‘freedom’ and ‘justice’ shall be ‘fully secured’ through an independent ‘judicial system’ that stands guard vis a vis infringement of the fundamental rights of our people.
As such, at its core, one assumption is immutably wedded to the legitimacy of our constitutional framework: that an independent judiciary, which enjoys the confidence of the people as well as the Constitution – is holding the scales of justice, and will adjudicate without passion or prejudice. The tenuous tug of political, social, religious and ideological biases, which threaten to tear our diverse society apart, are held together, voluntarily, on the basis of a judicial system that protects the dignity and freedom of each participant. If this assumption (of an independent, resolute and compassionate judiciary) fails, there would be no reason to follow the command of the Constitution, or believe in the enterprise of our democracy.
And so, it is pertinent, if not imperative, to ask: has the judiciary, in Pakistan, lived up to its constitutional promise? In particular, even as our courts declare themselves to be the final enunciator of constitutional will, is their constitutional expression in line with public will? Specifically, do the people of Pakistan – the final constituents of justice in our land – believe that the courts are doing justice, in accordance with law?
No matter how subdued you are by citadels of power, or how much you want to stretch the contours of truth in service of the judicial king, there is no real way to deny that (an overwhelming) majority of this hapless nation no longer views the honourable Court as an institution that dispenses justice to those who need it the most.
Too harsh an assessment? Let’s take a closer look.
The past 15 years of jurisprudence in Pakistan, starting from restoration of the judiciary in 2009, have been dominated by personalities that momentarily occupy the seat of paterfamilias of the Supreme Court. Inebriated on the opiate of a populous movement, Iftikhar Chaudhry deemed himself saviour of the people, and turned the seat of the Chief Justice into a dominion of unbridled power. The result: the honourable Supreme Court of Pakistan, in exercise of assumed constitutional authority, interfered with matters ranging from the setting of sugar price, to the undoing of Reqo Dik project. Till date, our brittle democratic construct, has not fully recovered from the shade of that tainted jurisprudence.
In the years to follow, despite some notable exceptions (e.g. Chief Justice Tassaduq Hussain Jillani), successive Chief Justices have persisted with their own brand of what is boorishly called ‘judicial activism’. During this time the honourable Courts have continued to be inextricably linked to the non-judicial drama of Pakistan, and at several occasions have casted the deciding vote.
Fed by a media machine that specialises in ignoring the important and glorifying the ridiculous, our Courts devised new jurisprudence to oust Prime Ministers, to grant blanket bails (sometimes, even when the accused does not leave his house in Model Town), to welcome an absconder, to make space for (unavoidable) delay in holding of general elections, and to provide the necessary ‘level playing field’ to the prodigal son of the 1985 Political Project.
During these many years, as the honourable Courts have grappled with judicio-political questions, the plight of the mango litigants have multiplied. Thousands languish in jails, awaiting conclusion of judicial proceedings, even as political trials were fast-tracked through judicial orders, towards (pre-determined?) conclusions. Fundamental rights of the many took taken a back seat to the protection of the few. Matters such as electoral timelines and accountability woes, were sidestepped at the behest of procedural issues of bench formation. And then, over the course of a few weeks, proceedings on Supreme Court’s internal procedure were televised, through judicial order, even as pressing issues of national interest were relegated to closed-door proceedings.
This arc of jurisprudence has, unfortunately, created a unprecedented distress between the people and their Courts – evidenced, of course, in repeated surveys concerning judicial performance in Pakistan.
But there is time, still, to stem the rot, and to set sails for a more credible judicial enterprise. And the next six months, leading up to the announced general elections, will be critical in this regard. In weeks to come, the honourable Courts will (most likely) be required to adjudicate multiple issues that test the judicial resolve – matters concerning fairness of the respective interim governments and the ECP, electoral disputes, incarcerated political activists, and legitimacy of military trials. Not to mention, while holding my tongue, the seemingly caustic divide within the bench itself.
How the honourable Court, and its leadership, navigates these treacherous waters, will eventually be judged by the merciless writ of history. Will another generation of Pakistanis lament about their judicial woes, or will be finally be able to break the yoke of prejudices, and embrace the ethos of justice that forms the base of our society? We will soon find out.
For now, all we can say to our honorable Lords, is: Good Luck!