**Independence of judiciary**

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Last week, Pakistan was ranked 130th among the 139 assessed countries globally in “adherence to rule of law”, evaluated by the World Justice Project. Sadly, it was only Afghanistan that ranked behind Pakistan in the region. Similarly, Pakistan’s criminal justice system and civil justice ranked fourth among the six evaluated nations in the region.

The questions for the survey were: can ordinary people resolve their grievances peacefully through the civil justice system? Second, is the civil justice system accessible and affordable as well as free of discrimination, corruption and improper influence by public officials? Third, are court proceedings conducted without unreasonable delays and decisions enforced effectively? Many would know what the public response to these questions would be in Pakistan.

Similarly, the World Justice Project has assessed rule of law by dividing it into four fundamental components -- accountability, just law, open government and accessible and impartial justice. If we estimate, the majority of these factors strengthening adherence to rule of law are directly or indirectly associated with the performance of the judiciary.

Admittedly, adherence to rule of law can only be achieved when there is complete judicial independence and impartiality so that people can take their disputes to court and have them resolved according to law. Without judicial independence, other rule of law principles such as applying laws equally to all without discrimination would be undermined.

Justifiably, the UN Basic Principles on the independence of the judiciary highlights that “the independence of the judiciary shall be guaranteed by the state and enshrined in the constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary”.

Historically, since Pakistan’s independence, there has been a desire for an independent judiciary with separation of powers from the legislation and executive. Which became practicable with the advent of the 1973 constitution and finally with the incorporation of the 18th and 19th Amendments. Today, on paper, the country’s apex judiciary is more independent than it should have but still the challenges from internal and external factors are the respect and observance of the independence of the judiciary by the government and other institutions, which somehow not only undermines judicial performance but also undercuts its true and due independence.

Recently, some serious and legitimate questions have been raised by researchers, lawyers, human rights organisations and even sittings judges of the apex courts; if it is the appointments of the judges of the apex courts, fixation of the cases, the constitution of the benches and marking of cases to them, decade-long trial, increasing cases pendency, judicial activism or interference in the administration of justice from top to bottom; all issues are of serious concern.

Indisputably, the establishment of the ‘Red Cause list’ and ‘model trail courts’ and other judicial reforms is encouraging. Still there have been issues some cases getting special treatment and being disposed of in days when similar nature cases are pending for years.

Besides urgency, another criterion for selecting cases for early fixation should only be the question of public importance and human rights. The Supreme Judicial Council, which is the country’s premier constitutional body, has also come under the spotlight for hearing and deciding fresh references while older ones were pending.

Recently, media-hyped and other cases have been fixed, heard and decided in months whereas cases of the same nature have been pending for years, even waiting to be fixed for hearing. The same happens in bail matters, as in media-hyped cases courts often resist giving bails.

Justice Baqir rightly explained internal and external interference in the judicial process in Pakistan when he was speaking at an event organised by the Sindh High Court Bar Association. He spoke about the need for the judiciary to be free from executive influence and also undue pressure of peers and unnecessary and unwarranted control.

Justice Baqir shared that exclusion of a judge from decision-making in sensitive matters because of independent and impartial views and approach certainly has an adverse bearing on the impartiality and independence of the judiciary and may tarnish public perception about its integrity.

Similarly, “assigning sensitive cases to particular judges also impairs independence of judiciary”. He emphasised that “it is absolutely imperative that individual judges are free from unwarranted interference in their decision making”. He stressed that “the concept of independence of the judiciary is not limited only to independence from executive pressure or influence but it is a much wider concept which takes within its sweep, independence from many other pressures and prejudices”.

The concept of the independence of the judiciary should not be limited to its separation from the executive and legislature but it should be internally and externally independent to achieve public trust. The Supreme Court in the famous Justice Isa case has also held that the “judiciary must enjoy the confidence of the litigants and the general public in its impartiality and commitment to dispense justice in accordance with law”.

Ostensibly, the judiciary can achieve public trust and confidence by improving its performance delivery, impartiality and by avoiding internal and external interferences in the judicial process. Once the judiciary becomes free from internal interference, it might be able to face and handle pressure from external interferences, which would ultimately result in true judicial independence and improved observance of rule of law.

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