[**Judicialisation of everything**](https://www.dawn.com/news/1721418/judicialisation-of-everything)

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*“In Heaven, there will be no law, and the lion will lie down with the lamb. … In Hell, there will be nothing but law, and due process will be meticulously observed”.— Grant Gilmore*

THE request for the formation of a full court judicial commission (ie, comprising all 15 serving Supreme Court judges) by the prime minister of Pakistan to inquire into the firing incident against Imran Khan and others at Wazirabad is not only unprecedented but also a virtual declaration that the state of Pakistan has imploded — to the extent that it has become completely dysfunctional and untrustworthy as there are no institutions or state officials who are capable of conducting a fair and impartial inquiry into this firing incident, except a full court judicial commission. A closer examination of this request letter further unravels the imploding nature of the Pakistani state.

Judicial commissions of inquiry: There are past precedents for the formation of such judicial commissions of inquiry in matters of grave public importance or political deadlock — for example, the Hamoodur Rahman Commission (1971), the Memo Commission (2011) and the General Elections 2013 Inquiry Commission. The commissions have always comprised a limited number of judges (for instance, the aforementioned commissions comprised only three judges) of either the Supreme Court or the high court, or both.

There are valid reasons for such a limited number of judges in such commissions. Firstly, a commission does not conclusively decide any controversy; it merely leads to an inquiry report with recommendations for further action. It is not a substitute for normal civil or criminal proceedings.

Secondly, if a commission of inquiry does not decide anything conclusively, what is the need of having all 15 serving Supreme Court judges devote themselves to this task?

What is the need of having all 15 Supreme Court judges devote themselves to the task?

Thirdly, if all the Supreme Court judges are part of this commission, who will hear the challenges to the commission report or appeals from future criminal trials of this firing incident? Will the entire Supreme Court not be considered biased to hear such legal challenges?

In short, if the PML-N-led federal government was serious and unbiased about an inquiry into this firing incident, it could have just followed its own past practice of passing a special law, like the General Elections 2013 Inquiry Commission Ordinance, 2015, and left it to the chief justice of Pakistan to constitute a commission of three or more Supreme Court judges, with perhaps a legal requirement that it should be composed of the senior-most Supreme Court judges.

Strange request: There are four aspects of this request which show its absurdity and mal-intent. Firstly, nowhere in the letter of the prime minister is there a reference to the provisions of any law under which such a full court judicial commission is to be formed. Is the full court judicial commission to be formed by the Supreme Court itself under Article 184(3) of the Constitution, or under the Pakistan Commissions of Inquiry Act, 2017? Moreover, can such a full court judicial commission even be formed under any of these laws? The letter is silent on these critical issues because, sadly, what it discloses is that the dysfunctionality of the federal government is only matched by its legal incompetence.

Secondly, why a full court judicial commission? Why not three or five judges of the Supreme Court, as in the General Elections 2013 Inquiry Commis­sion, which was formed as a result of the electoral dispute between the then PML-N government and the PTI, and comprised the then chief justice of Pakistan and two judges of the Supreme Court? The reason is unstated but apparent: this government does not trust the chief justice of Pakistan to form such a commission with his own selection of judges. In short, the distrust of the federal government in certain judges of the Supreme Court further reveals the dysfunctionality of the state.

Thirdly, the language and tenor of the letter itself, especially the opening and second paragraph, is full of allegations against the PTI. After making such allegations, the question arises whether the federal government can be viewed as an unbiased and fair institution that can assist this full court judicial commission.

Lastly, the legal and practical impossibility of such a request seems to indicate that it is a request made with the intention to shift not only the entire responsibility of resolving the crisis onto the Supreme Court but also shift the entire blame for any refusal or failure to conduct a fair inquiry. In short, the mal-intent of the federal government is writ large.

Judges as false panacea: “The world is filled with law: anything and everything is justiciable,” Aharon Barak correctly noted. The constitutionalisation and judicialisation of mega politics is a global phenomenon, and Pakistan is no exception. A new political order — juristocracy — has been globally established, with judges becoming the final arbitrators of mega political and social conflicts.

Secondly, there is another global trend which has emerged. Samuel Issacharoff notes in his book Fragile Democracies that in fragile democracies or in post-Cold War emerging democracies, constitutio­n­­al courts have been assigned the task of ensuring that democracies are safeguarded against one-party political takeovers, and of protecting vulnerable minority groups or individuals from majoritarianism. In other words, constitutional courts protect democracies against democratic or popular forces. Therefore, both these trends show that political sovereignty is now being colonised by judicial sovereignty.

Thirdly, can judges cure mega political and social conflicts? Francis Fukuyama in his book, Political Order and Political Decay, suggests that the problems of societies are solved by three elements, namely: state capacity and force, rule of law, and democracy. Any political system which reduces most mega politics and social conflicts to legal disputes adjudicated by judges is a dysfunctional state.

Any judicial commission tasked with inquiring into this firing incident might deflect this present political civil war for the time being. But sadly, the dysfunctional Pakistani state is now in the ICU and the judiciary can only provide chemotherapy to this rapidly imploding entity.

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