**Judiciary, judges and justice**

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By Raoof Hasan

The adjudication by the 10-member bench of the Supreme Court (SC) about Justice Qazi Faez Isa’s family proves that justice in Pakistan has virtually slipped beyond the pale of the judiciary. This key pillar of the state has assumed the role of operating unconcerned with its core responsibility of applying the laws equitably in cases pertaining to all people, including judges.

In my article last week, I had raised some queries: “How can one think that a person who is empowered for dispensing justice will himself be beyond the pale of accountability? How can the conduct of the judiciary be justified in not holding a fellow-judge to account?” After the release of the detailed SC judgment, these queries have gained even more importance and relevance.

Are laws of the country, as contained in the constitution, only meant for people excluding the tribe of the judges? Are the judges operating within their legal jurisdiction in ‘interpreting’ laws for the benefit of a fellow-judge? If not, why are the ordinary mortals of the country dealt with through one interpretation of the law and judges through a different one? How can the SC give a judgment based on one interpretation of the law in June 2021 and then alter the interpretation in January 2022? The laws have not changed. Only the judges’ interpretation has changed which, in the current instance, proved to be of benefit to a fellow-judge, when it was not merited.

It is an established reality that Sarina Isa has three properties which were not declared in the wealth statement of her husband. The matter falls within the domain of concealment of assets. During the course of the proceedings before the court, Sarina Isa failed to disclose the sources of these properties. Thereafter, the bench had instructed the Federal Board of Revenue (FBR) to investigate the undeclared properties and submit its findings to the Supreme Judicial Council (SJC). In this latest judgment, the SC bench revised its earlier judgement on the plea that it was in “violation of the principle of natural justice”.

This judgment is loaded with verbosity, but low on content and fairness. It claimed that “the judges boldly and courageously upheld the law even against the mightiest in the land, without fear and favour, in full public gaze”. The history of such conduct is long and belittling, which I would not like to go into as the purpose is not to ridicule an institution, or those who sit on judgement upon others. It is to bring across the reality that they are liable to err and, in the current instance, they may actually have done so which can potentially cast a long shadow on the reputation of the judiciary as an institution.

The fact that it has happened in a matter that concerned a fellow-judge and his family is bound to create doubts about not only the veracity of the judgment, but also about the conduct of the judges who were instrumental in drafting it. Questions will also be raised regarding the dynamics which resulted in the bench altering its earlier judgment to benefit a fellow-judge. Notwithstanding the vicissitudes of time, what is legally right today cannot become wrong tomorrow unless, of course, the law on which the judgment is based is altered, or different judges hear the petition! This was a review petition which was heard by nearly the same bench which had conducted the previous hearing, but they opted to change their earlier judgment.

Instances of bending the law to suit some favourites have occurred in the past. Some people are even hurling threats at the judiciary regarding cases pending before it. Why are the judges silent on this? Why are the rich and powerful getting away with these threats? A poor person would not dare do this. If, however, in a moment of anger or frustration, someone ends up criticising the judiciary, s/he would be summarily punished. So, why should there be two laws in the country: one for the mighty and powerful and the other for the poor and enfeebled?

Another impression which is gaining ground is the unwarranted intervention by the judiciary in matters which fall within the constitutional domain of the executive. This is gravely impacting the working of the latter in matters that are of immense importance for the state. This judicial outreach needs to be restrained so that the government elected by the votes of the people can operate effectively to deliver on its charter. Creating unnecessary impediments in its path should be a matter of concern to the judges who believe in working by the letter and spirit of the constitution.

It is a matter of record that similar judgments in the past have resulted in the state incurring massive financial losses and earning ignominy in the international circuit. One such example is the Reko Diq case which the prime minister, through his personal efforts, has resolved after a long phase of embarrassment that the country had to endure.

In a federation, institutions must stay within their respective domains. Instances of certain institutions acting beyond the constraints of their constitutional jurisdiction are likely to not only cause misunderstandings, but also lead to serious issues arising in matters of governance. This would not be damaging for one institution alone, but for the entire institutional spectrum operating in the country. It can paralyse the working of the executive. A course which is not in conformity with the constitutional strictures may cause irreparable loss to the federal structure.

If questions are raised about the merit of people belonging to other professions in the country, it can happen in the case of judges too, particularly in view of the average stock available and the manner of their appointment on various benches – with the judiciary appointing judges. The matter is critically important. I believe that there is a dire need to bring amendments in the appropriate clauses to add checks and balances in the system of appointment of judges and strengthen the role of parliament in the matter. The government, I understand, is keen to do this alongside other reforms that it wants to introduce. The challenge is to rise beyond petty political point-scoring and help the amendments sail through parliament. The matter is of vital importance for the cause of ensuring justice for all people, at all levels.

The institution of the judiciary should be strengthened. It should win respect and credibility by operating even-handedly and transparently. The spectre of justice slipping beyond the pale of the judiciary and the judges casts a harrowing shadow on the state. To fix this, justice will have to be dispensed equally and equitably to all – starting with the judges.

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