**The judiciary**

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February 24, 2021

Has Pakistan’s judiciary come of age? Some think it has had some independent status in the near past. A lot of people disagree with this view as well and consider the judiciary as still being under the establishment’s influence. Yasser Kureshi’s chapter on judiciary in the new book on “Pakistan’s Political Parties: Surviving between Dictatorship and Democracy”, edited by Mariam Mufti, Sahar Shafqat, Niloufer Siddiqui is a welcome addition to the literature and we are going to refer to it today in this article.

The superior courts have been the redefining the balance of power in the tussle between the political forces and the military. Courts have traditionally been seen as “the junior partner” of the military; however, they have charted more independent postures since the lawyers’ movement in 2007. Yet, the judiciary looks down upon political parties and shares “military’s disdain” for them. The judiciary has been consistently undermining the elected governments even after the lawyers’ movement.

The judiciary has used its power to protect its own “institutional interests” and did not safeguard the supremacy of the Parliament. Political parties and the military both want to gain “acquiescence” and support of the judiciary either by weakening it or by building “institutional interlinkages” with it.

There is “dissonant institutionalization” whereby the contesting and contrasting vision of political and bureaucratic state keep on reshaping the institutions of the state as the military cannot depoliticize the state during its rule and politicians cannot ride over the indirect military intervention when they rule. The judiciary is the “arbiter” of this “dissonant institutionalization”. Due to the power of the judiciary to decide on everything including the regime change and both sides seek to become an ally of the judiciary.

Overall, the judiciary has played a role in managing the institutional conflict between the military and political parties. It has traditionally favoured the military but as well provided a shied to transition towards democracy

Historically, the judiciary has had close links with the military and this relationship was institutionalized through judicial appointments and recruitment. The judiciary has been active in the legitimation of coups, it provided legal cover the military government’s political actions and hence undermined the democratically elected governments. However, during the military governments, a section of the judiciary also gave some space to the political parties to resume activities. There was a limited divergence with the powers that ruled. Judiciary provided the cover in transitions towards democratic rule.

However, judiciary’s independence from the military did not mean that the judiciary supported the political parties or parliamentary supremacy. Kureshi states, “In a period after military rule, democratic consolidation continues to elude the state as the dissonance grows. An independent judiciary may help facilitate democratic transitions but may also undermine democratic consolidation and the supremacy of elected government.”

The judiciary has been assuming more institutional power for itself as evident in the Al Jehad Trust v Federation of Pakistan (1996), the Supreme Court gave the chief justice a central role in the high court judges appointment by amending the process of judicial appointments. In Al-Jehad case, the judiciary took over the control of judicial appointments with the help of the President and opposition. Yet, the judiciary is still under the influence of the military and its more independent posturing has not helped the political parties and democratic governments.

Overall, the judiciary has played a role in managing the institutional conflict between the military and political parties. It has traditionally favoured the military but as well provided a shied to transition towards democracy. Yet, the judiciary has also undermined democratic consolidation.

The author concludes, “Today Pakistan’s judiciary has not reconciled the institutional dissonance between the military and political parties. Instead, three institutional visions of the state survive: a military-centered praetorian democracy, a party-centered parliamentary democracy, and a court-centered judicial democracy. These three visions coexist in a state of constant tension, leaving political parties susceptible to interventions by the military and the judiciary and a democracy that is unstable and unconsolidated”.

The judiciary has its severe limitation as the above analysis shows. We as citizens need to be constructively critical of the judiciary just as we are of the military and political parties. This constructive criticism is needed to reform the superior judiciary so that it supports democratic consolidation rather than undermining it. There is a need to come up with short-term, medium-term and long-term judicial reforms agenda.

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