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**Myth of trichotomy of powers**

On my first day of law school in September 2004, the professor for Public Law informed us that there are three pillars of government: executive; legislature and judiciary. And that, for a functional democratic state, there has to be separation of powers within these three pillars.

This appeared to be a pedantic concept in 2004, when General Musharraf’s hybrid regime was in power and the executive appeared to be too powerful for the legislature and the judiciary. I say this based on the fact that the judiciary had legitimized the dismissal of a democratic government and actually given General Musharraf the power to amend the constitution (a power that even the Supreme Court did not have) and then the legislature through the 17th Amendment had ratified or approved the Legal Framework Order of General Musharraf.

Things appeared to change in 2007, when the then chief justice of Pakistan Iftikhar Chaudhry said no to the executive. What happened afterwards in the form of the Lawyers Movement, supported by all political parties, was to make the judiciary independent (rightfully so). It is reported that the charges against Iftikhar Chaudhry began after the rescinding of the privatization of the Pakistan Steel Mills, which at that time was looked at as an overstep of judicial powers. The entire nation backed this movement because it was widely believed that the judicial system in Pakistan was not fully independent and controlled by the government, and hence not providing justice to the common citizen. The slogan of the Lawyers Movement resonated well among the people. For example, here is an excerpt from a poem authored by Senator (r) Aitzaz Ahsan: “Dunya Ki Taareekh Gawah hai/ Adal Bina Jamhoor Na Hoga/ Adal Hua Tou Des Hamara/ Kabhi Bhi Chikna Choor Na Hoga”.

Justice Iftikhar Chaudhry was restored as chief justice of Pakistan in 2009, and lawyers, political parties and common citizens breathed a sigh of relief. Lawyers were confident that the judicial system would finally be reformed, political parties believed that democracy would be strengthened and, most importantly, common citizens thought that justice would finally be done and there won’t be any delay in adjudication of disputes.

As far as I was concerned, I thought that yes there would be separation of powers – the legislature making laws, the executive making policies from those laws and government servants implementing those laws and policies, while the judiciary working towards reforming the system to ensure that people get relief through expeditious decision of cases. Unfortunately, this didn’t happen and we saw the emergence of an all-powerful judiciary which then went on to intervene in all spheres of the executive and the legislature without any sustainable attempt to reform the judicial system it was primarily responsible for.

The appointment of superior court judges was the start; CJ Iftikhar Chaudhry ensured that parliament will not have any role in the appointment of judges and judges will appoint judges (the Judicial Commission has a majority representation of judges and a symbolic representation of government and bar councils). In essence, from appointments to accountability of superior judges, neither the government nor the legislature has any role.

On the other hand, CJ Iftikhar Chaudhry and some others like him, while religiously safeguarding the independence of the judiciary, constantly intervened in the government’s decision-making process, which has made me again question if there is any actual separation of powers in Pakistan. The superior courts passed orders on appointments made by the government, though these matters should have been dealt with by the Service Tribunals. Court decisions in cases involving Reko Diq, Rental Power, PKLI, tax on mobile phone top-up cards have caused losses worth billions to Pakistan’s exchequer and have haloed a question mark in the mind of local and foreign investors about the sanctity and continuity of policymaking in the country. Court decisions in the JPMC and NICVD case or the decisions of the Water Commission have not helped us achieve better governance.

With regard to judicial reforms, I may say that though there have been some attempts at introducing reforms during the time of chief justices Tassaduq Jillani and Asif Saeed Khosa, unfortunately these efforts have not sustained since their retirement. Sindh is the only province which had passed a law in 2018 for mediation to be made necessary for adjudication of civil disputes; but unfortunately, courts have not applied the said law.

Every government in Pakistan talks about bringing in foreign investment. The current prime minister emphasizes the importance of the construction industry as a game-changer for Pakistan – but with the existing judicial system, where cases remain pending for years or stay orders remain operational for years, I question whether we have a sustainable system facilitating any commercial activity. There are reportedly 1.8 million pending cases in Pakistan; need I say more?

I have written this article based on my experience as a lawyer, senator and an adviser to the government of Sindh. By no means is this an attempt to undermine or ridicule anyone; I write this mainly to identify a problem from the perspective of a citizen and a lawmaker who has tremendous hope in Pakistan. People may disagree but we must always endeavor to introspect and find solutions, which is what a functional democracy is all about.

In my humble view, the three pillars of government that I have elucidated above are the pillars on which the structure of the state of Pakistan rests and if these three pillars work in aid and support of each other, the structure will remain stable. However, if the pillars work in different directions, the structure will not be stable. I conclude with the solemn hope that the structure of the state of Pakistan becomes stable sooner than later.

The writer is a former senator and currently adviser to CM Sindh.