**Saving the Supreme Court**

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Hippocrates condemned liberal dissent: Aristotle thought it less damaging than exposing people to unwanted discipline. Pakistanis and its institutions have been struggling of late to find the right balance that is pragmatic enough to account for changed post-partition ground realities and yet maintain the semblance of state’s parenthood that ensures nurturing its citizens towards social harmony cum their wellbeing. Over the last week, some leaked drafts and some deliberate statements made by some of the honourable justices of the supreme court suggest that the harmony within the institution stands disturbed and there exists a stark difference of opinion on how to interpret, both the constitutional law and the court’s own operational matters. Perhaps the judges will change their minds or hopefully develop a seemingly more mutually consensus-based working relationship in the coming days. However, one thing is for sure this inner demon will soon need to be tackled pronto since the court in the coming days is poised to take up some of the most contentious political questions in Pakistan’s governance history. This risks damaging itself and accelerating the division of the country into two extremely hostile blocs. The outsize power wielded by the court in general derives from a political system that struggles to strike compromises. For the politicians, sitting together to constructively brainstorm and evolve constructive policies or backing off in calling each other names or in getting each other’s throats has been elusive. In fact, they seem to think that controversies suit them, as they directly affect their popularity ratings and help them in securing particular backyard constituencies cum raising funds—solving national problems appears somewhere way down the priority list. Time and again on the thorniest national issues, our political parties have failed to reflect public opinion.

[Four rescue workers die due to collapse of factory building](https://www.nation.com.pk/13-Apr-2023/four-rescue-workers-die-due-to-collapse-of-factory-building)

So, by their dereliction, legislators dump big decisions on the justices. As a result, Supreme Court confirmations and thereafter bench formations have become a trial of strength. All the politicking heaps intolerable pressure on the court. Some say that some sort of correction in the outlook is long overdue since it is unhealthy for society at large if it perceives justice to be divided between divergent viewpoints. The reformists or libertarians may argue, for example, it would be wrong for the judges to simply give a ruling on the written law point and not to bend to public opinion, even if most Pakistanis tend to think otherwise about what may have been inked on a paper decades ago! Well, they may have a point, but the solution to an activist’s thinking is never in return a formation of an activist court to cater to such arguments. It is that when a legislature cannot pass laws on the big issues of the time, the courts bear a special responsibility, lest justice itself is compromised. In doing so the court must indeed feel that it can go against public opinion. But in whatever it does it should weigh tradition and precedent and exercise restraint. If the justices take it upon themselves to cut through legislative knots, using their power maximally, they will transform themselves into lifelong members of an all-powerful unelected power centre (we have seen this push in the not-too-distant past). Three bad outcomes may follow: First, the justices might find their judgements ignored or not received in their right legitimacy (and we are getting a hint of this currently). A Pakistani where the rule of law was weakened would be less free and more dysfunctional and the supreme court in general could lose its ability to settle national disputes peacefully.

[Committee formed to probe 'undercounting' in big cities during census 2023](https://www.nation.com.pk/13-Apr-2023/committee-formed-to-probe-undercounting-in-big-cities-during-census-2023)

Second, if in the name of Justice, the justices start tearing up precedents that have stood for half a century or more, there would be a growing political pressure to reconstitute the court (again, quite similar noises are being heard from some political quarters). & Third, Pakistan’s division into intra-court affairs would deepen. Like for example a perception of assigning camps to justices, which otherwise should be unthinkable. The ideal way to avoid this would be for the legislature/parliament to rediscover the art of compromise so that the apex court could act as the arbiter it was meant to be. Political questions are best solved by politicians, not judges. To avoid breaking a crucial institution, all the sitting supreme court justices also need to exercise self-restraint. Sadly, in such a charged and deeply polarised environment all these cautions look like distant possibilities. Also, rarely has any country been able to timely devise alternatives to quickly solving controversies laden with power and greed. The only one that of late comes to mind is Ireland where it struck a compromise by the formation of a citizens’ assembly that issued binding recommendations to the sitting government. Until then the supreme court itself should save itself by acting with prudence and by also doing some inner soul-searching in order to bolster its own legitimacy. To counter the straight jacket being proposed for the senior judiciary by the parliament, a good way would be for the judiciary to instead take the lead by itself now announcing its own revised code and stricter rules-of-ethics, so that it comes out stronger and more importantly, united. No two ways about it: Only a transparent and united supreme court can be the guarantor of a country’s brighter tomorrow!