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## Independence of Judiciary Leading Justice System to Injudicious Outline

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### Abstract

*Independence of judiciary is a topic of protracted debate commonly involving essentials and merits of independence added by its constituents and due execution etc. First, the word independence has been adorned only with judicial organ although the meaning of this feature as a characteristic is essential ingredient of all institutions and their constituent sectors. Importance of the word independence has been applied in a distinguish sense to mean that judiciary as an organ maintained in self-contained composition, competence, and capabilities for administer of justice in the country. Being Independent of external interference or fairly performing judicial function is a privilege and a duty. Judiciary must obtain, secure, defend and continue with its independence by virtue of establishing rule of law in the country. Judiciary shall not only administer justice, but that also must ensure continuity of its organizational capacity at all costs. Meaning thereby its professional responsibilities must continue judiciously by overpowering any obstruction from any other person or organ. That is why Judiciary has been declared guardian of the constitution as well. This study must examine to what extent independence of judiciary has been exercised in Pakistan in the context of its actual meanings and requirements. Doctrine of independence of judiciary outstandingly elaborates that judiciary is to be equipped of self-sustaining condition and can never shift the burden of failure to external factors. When a judicial system under the constitution is given independence or it claims so, responsibility of its execution and maintenance is retained on its articulation humeri. The study will conclude that in case of failure judiciary shall have to acknowledge responsibility all alone.*

**Keywords:** Justice System, Independence, Responsibility, Injudicious, Guardian of Constitution and Rule of Law.

## Introduction

Ideology of justice in any form has been an instinctive aspiration of people all over the world. In the absence of organized justice system people in power believing in 'might is right' have been facing resistance and displeasure of helpless communities. Public resort to counter such supersession also has been in different form. Before the advent of state or rudimentary societal structure public disputes were resolved by persons of distinguished Judicious character. Impartial judicious working in a conformist form has also been an acclaimed memorial of Muslims communities. Pakistan movement was also inspired by the slogan of state system to be established under Islamic traditions. This perception earned its place in the preamble of Constitution of Pakistan in which it was claimed that independence of judiciary in a contemporary form shall be secured in the country (Pakistan & Assembly, 1973)

Historical account of state progression on justice system paints unpleasant picture of the notion. Judicial organ of the state as whole has small contribution to claim admirable input of peace, justice, and establishment of rule of law in the country (Zagel & Winkler, 1994). Nevertheless, judges in their independent capacity or occasionally number of judges jointly in single, division and full benches or in full court delivered marvelous judgements. Theses judgments as precedents have enough inspiration for intellectuals and earnest legal fraternity of the country. It is not uncommon that if judiciary works as required under the constitution and law, the first encounter of judicial organ shall be with those sections of society who enjoy state privileges and rights, under discriminatory laws, rules and regulation made by themselves. Doctrine of independence of judiciary mainly prescribes safeguards of independence first out of its own orderly working and secondly determining legal direction for other organs and institutions to work strictly for protection of public rights and obligations.

Theoretically Pakistan is sovereign state. Judiciary is independent under the constitution, but its pride and proceeds are yet to be materialized. The judicial insight and integrity have yet to grow within its own ranks. Judiciary must establish and protect its independence by strength of its speaking fair judgments. There is lot of distance for the judiciary to cover this deficiency and keep the system on track and change the autocratic culture in society. Power circles instead of changing themselves have change the system to continue with their perks. Courts have been less cognizant of the situation during military regimes. A power circle, custodian, and protector of discriminatory heritage of colonial legacy has emerged in the name of establishment, adopting more than one options to reshape the national institutions, control civilian governments, designing political parties and quietening section of the judiciary. Islamabad high court has recently renounced manipulated auction of plots to a section of judiciary (Asad, 2021).

In Pakistan, legal structure has been manipulated and there are so many laws made by the influential circles in their own interest. State resources have been converted to their vested interests in the name public safety and state security. Parliamentarians have enacted numerous privileges by legislation made by themselves (Gurmani, 2020). Bureaucracy empowered to disburse state resource for welfare of public has reserved state property for corruption. Several modes of corruption have been institutionalized in the country. There are so many parallel economic organizations produced by state resources adversely competing the ailing economy of the country. Judicial organ must be at the forefront to safeguard legal system as most of the violation passes through judicial scrutiny. Judges of superior courts alleged that state intelligence agencies influenced the courts. Justice Shaukat Siddiqui has been an outspoken judge of the Islamabad High Court. He passed several judgements prominently of public interest. He suffered victimization as he publicly pointed out accusations against establishment. Consequently, a reference was filed against him in the supreme judicial council. The judge had to face superfluous protracted victimization just for begging fixation of date

of hearing of his case. Judiciary in the prevailing circumstances must ensure rule of law in the country. It must perform its functions efficiently to maintain its independence by being vigilant to eliminate injustice. Superior judiciary must examine validity of laws made in contradiction of social order of state as guardian of the constitution (Z. Hussain, 2019).

## **Governing Principles of Independence**

### **Magnanimity of Independence of the judiciary**

Judicial organ is responsible to protect fundamental rights of people of state as priority. People mostly suffer violation of their rights from state officials. Courts must protect life and liberty and freedoms of the people. Judiciary must ensure a balance of rights and duties of public and protect proprietary interest of citizens. Judicial proceedings do concentrate over resolution of public grievances. This effort of judiciary continues unabated by fixing liabilities of individuals without determining causes of repetition of cases of identical nature thereafter. State system cannot afford repetition of similar administrative misdeeds and treatment of the same involving huge financial resources over already over-burdened courts at the cost of pendency of millions of cases. Eradication of root causes of backlog and pendency needs combined strategic planning by the administration and judiciary. These efforts can put a stop to wastage of precious time and energy of judiciary exonerating judges to work with eloquent strength for establishing rule of law in the country. There must be adequate practicable guidelines relating to selection, professional training, and constant upgradation for participants of justice system. Following fundamental principles may be applied under the constitution and respected by each organ of the state.

1. Judiciary itself is not as much armed like other organs of state but has to rule by force of its judgments and judicial declarations. All state institutions have to observe due respect and honor in execution of judicial verdicts. Constitution requires all governmental and other institutions to assist implementation of its decisions.
2. All Courts in return shall decide issues judiciously and impartially, based on facts and law disregarding external threats or interference.
3. The Courts shall exercise exclusive jurisdiction to determine any proposition submitted for its decision falling in its domain as prescribed under the law.
4. Independence requires the institution to guarantee that jurisdictional proceedings are led impartially by respecting rights of parties before the court.
5. The state shall continuously provide financial stability to empower judiciary to execute its functions.
6. The tenure of services of judges shall be guaranteed with adequate remuneration and retirement benefits under the law.
7. The promotion of judicial officers in all circumstance must be according to their ability, authenticity of adjudication. (Choudhry & Stacey, 2013)

### **Institutions Streamlining Justice System**

Judicial organ is one of the main branches in the state structural system under the constitution. Theoretically the organ has been empowered to act independently and fairly for the administration of justice in the country. Principles of policy particularly prescribes for administering speedy justice

system for general welfare of the public. Special responsibility has been ordained for judicial organ to ensure uninterrupted availability of fundamental rights of the people. Contrarily standard of each one is losing its direction. Superior courts responsible to protect and guide subordinate judiciary inflicted more loss by introducing culture of imperialism during its determination of validity of military rules. Supreme Court passed mutually inconsistent and contradictory judgments in a very short span of time soon after independence of the country. Constitution provided more than enough institutions to keep the institution well facilitated for preservation of its independence. The detail of its allied institution with their legal and moral support is produced in the following lines.

### **Supreme Judicial Council**

Supreme Judicial Council is principal monitoring institution and the most significant institution working under Article 209 of the Constitution of Pakistan 1973. This is comprising of Chief Justice as chairman and two seniors most Judges of the apex court of state. The body also comprises two senior chief Justices from provincial high courts of Pakistan.

Under the law it is the primary function of the council to regulate conduct of superior courts judges. The council can investigate reference/ receive complaints against judges of courts. Article 209 of the constitution details the function by authorizing the council for the above stated objectives. The grievances relating to judicial conduct are filed, received, and investigated by the council. There are two modes of filing reference which are either received to the council from presidential office or by its own action. After receiving such reference, the council proceeds and probe the complaint against the conduct of judges to report the conclusion to the president. If it is found by the council that the complaint or reference is based on material facts, the finding is submitted to the President for necessary action who may order removal of judge on the recommendations of the council.

### **The Pakistan Law and Justice Commission**

The is an institution with distinguished functions like making policies regarding legal reforms as well as ascertaining range of modalities required for efficient working of the judiciary. This commission is led by the chief justice of Pakistan. Having wider range of jurists, the commission is also comprising of federal shariat court chief judge, chief justices of all high courts and attorney general of state. In its wide statutory representation law secretary and chairperson of commission constituted for the status of women are the participants. Commission further comprises of members, one from each province, who are distinguished lawyers or jurists, of integrity representing civil society. Keeping in view islamization of legal system, representation of council of islamic ideology through prominent university teachers of law is a distinction. The Commission must perform the following functions.

1. To ensure inexpensive and speedy justice, commission prescribes simple and effective procedural enactment.
2. To eliminate multiplicity of laws the commission works on codification and unification of laws. In this way anomalies in legal system are removed.
3. The Commission identifies obsolete or unnecessary provisions in the legal system for deletion.
4. Commission works to simplify laws for its easy understanding to make the society law conscious.

5. The Commission recommends introduction of general reforms in the system of administration of justice.
6. Commission works out proposals for removal of inconsistencies between the laws within the legislative competence of Parliament and Provincial Assemblies.

The Law Commission frequently holds meetings to propose legislative reforms for improvement of justice system. Recently Commission revised presentation of its secretariat which were placed for legal reforms based on working of various bodies and research proposals investigated by researchers on procedural reforms. The Chief justice while examining working of the secretariat constituted several committees to appraise the improvement on proposals for implementation and timely results of the recommendations. (Masood).

### **The National Judicial (Policy Making) Committee**

This committee is headed by Chief Justice of Pakistan. Federal shariat court chief justice and chief justices of provincial high courts are members of committee. The committee co-ordinates and complements policies in coordination with law and justice commission to ensure its execution. The committee works to improve capacity and performance standards for judicial officers. The committee publishes reports on administrative as well as judicial working of the supreme court, shariat court, provincial high courts and rest of lower courts of the country (F. Hussain, 2011). Performance review of the committee in 2020 analyzed the statistical data regarding the pendency, institution, and disposal of cases. The committee prepared report analyzing inclinations on institution and disposal of litigation for the last 10 years (Tabassum, Kamboyo, Mangrio, & Siddiqui, 2021). Committee reviewed numbers of vacant position in all courts and recommended to take up the matter for increase of strength of judges for facilitating addition of cases due to additional work of tribal areas.

To modernize and introduce efficient facilities of information technology several projects have been launched. There are national judicial automation units working along with online and E-case technological information system for technical support of the judiciary.

### **Judiciary as Guardian of the Constitution**

Judicial organ commands distinguished constitutional status as compared to others, under the constitution of 1973. This distinction has been bestowed because of its capability for the functions it has to perform in addition to requirement of the preservation of the constitution itself. Doctrine of separation of power empowers judiciary to maintain fine delicacy of proportional interaction maintaining a strident valedictory of seclusion amongst the three organs. This is a complex domain of constitutional structure. Judiciary reserves and deserve the right position to execute the patronage of guardianship of the constitution (Kelsen & Schmitt, 2015).

The Supreme Court of Pakistan is the apex judicial forum of the country. Superior Courts have detailed constitutional jurisdiction under structural framework. The supreme court has been designated as final interpreter and protector of the Constitution because it is the responsibility of the Supreme Court to uphold the supremacy of the Constitution (Licht, 1993). It has been given jurisdiction to review constitution amendments bills passed by the Parliament. When any question or legal proposition demands legal interpretation, supreme court has been given special advisory jurisdiction on legal questions and a distinguished function of the power of judicial review. If any law passed by parliament is found contrary to the provision of the constitution, it can declare such law unconstitutional (Corwin, 1914). Similarly, executive orders fall under the judicial scrutiny of superior courts. All executive and related institution whenever and wherever required to act as require by the supreme court for execution of its mandate. Supreme court exercises exclusive primary

jurisdiction for settlement of inter-governmental disputes between federal and provincial governments. Federal government may submit president to refer the supreme court for opinion and advise on any question of law from the court (Daudpota, 2021).

The Supreme Court can also be approached for relief in matters relating to the violation of fundamental rights. It has a constitutional mandate under Article 32 to provide remedies against such violations (Masroor Ashiq, 2013). Its orders/decisions are binding on all other courts in the country. The narrative on the subject discussed above clearly indicates that judiciary is naturally capacitated to firmly perform its own functions and assist rest of the state system to undertake steadfast observance of legal obligations. This cherished interaction bestowed by virtue of guardianship shall promote rule of law in the country. This is exact execution of the trust reposed in judiciary to defend constitution by acting as guardian of the constitution and ensure its own independence. The Independence of judiciary is in essence recompense of this prestigious working of the organ.

As described above causes of decomposition of judicial organ are not unidentified. These factors obtained origin with the decline of political system of the state and have far-reaching implications for state institutions constitutionally bound to act in aid of supreme court. Contrarily Supreme Court acted in aid of usurpers and martial law dictators by legitimizing military ruling by misconstruing doctrine of law of necessity. The Constitution lost guardianship of supreme court soon after independence. In return judiciary also lost its own independence as recompense of illegitimacy. Consequently, state structural growth has no direction and rest of the organs have lost moral strength for obedience of courts.

### **Execution and Maintenance of Independence**

Judiciary under the principles of constitutional law is custodian of the constitution (Chayes, 1988). Custodian has special role to maintain its integrity as prescribed under the law. If judiciary claims guardian of the constitution that must first guard its judicial strength from induction of judges on excellence to its purity in ranks and decisions on merit. Timely action on perceiving any interference to its independence should be priority to be dealt. It enables the judicial organ to obtain popular support for preservation of its integrity. Internal accountability of judicial staff, analysis of procedural shortcomings under legal framework applied on indiscriminate grounds may help to improve deteriorating image of the institution. Rectification of repeated reversal of judgments in appeals and revision via professional training may help in improvement of justice system (Guthrie, Rachlinski, & Wistrich, 2007).

### **Lawyers' Significance for Independent Judicial System**

Judiciary and legal fraternity are two constituent parts of justice system. Lawyers have been at the forefront in dealing any impediment against judicial supremacy. Constitutional history of Pakistan has been a mixture of parliamentary and dictatorial ruling overwhelmed by martial law regimes in the country. Democracy and independence of judiciary suffered a lot by autocratic rule enforced here in last many years. Independence of judiciary is an indispensable feature for promotion of rule of law enabling lawyers to work in courts for administration of public justice system. Independent judiciary and efficient legal fraternity have been co-existing requirements of democracy. Organizations of lawyers have long history of struggle for democracy and rule of law in the country. After independence such struggles in 1958 were launched at Lahore, Karachi, and Dacca bar associations against imposition of first martial law in the country. Later another better organized movement by lawyers was launched for restoration of democracy against the military dictator General Zia ul Haq. Lawyers had to face oppressive and cruel rule of military dictator in 1977. The dictator made illegal alterations in regulatory laws of professional affairs for controlling legal fraternity from supporting

political parties of state. He introduced in the legal practitioners Act prohibition of activities of political nature conducted by bar councils and bar associations of the entire country for restoration of democratic rule. (CHAKRAVARTY).

Organizations of legal profession cognizant of dictatorial rule and professionally affected by autocracy had to take long expedition for rule of law in the country. An important lawyers' convention was organized in Lahore in 1980 by over two thousand lawyers against military regime for return to parliamentary system in the country. There was a desperate situation when elected prime minister Zulfikar Ali Bhutto had been hanged as the supreme court had endorsed the sentence. The regime established summary military courts for public hanging of certain convicts for creating deterrence of lawyers. These actions sparked the consciousness of legal fraternity for legal action in courts, but judicial institution was found not as enthusiastic as supposed to be for administration of justice for political workers ("Independence of the judiciary in Pakistan," 2008).

National coordination committee of lawyers was established for restoration of justice system under the constitution. Lawyers were arrested and several prominent lawyers remained in prison for considerable time. Lawyer's movement in March 2003 was another reaction against military rule of General Musharraf. One of the key motives of the ruler was an attack on the judicial system resulting in ousting Chief Justice of Pakistan. (Faqr, Islam, & Rizvi, 2013). A frivolous reference against chief justice was filed before the Supreme Judicial Council. The CJ had passed orders in certain cases relating to missing persons. Lawyers practicing at all levels fully participated the protest movement. The main objective was restoration of the Chief Justice of Pakistan who took a courageous step for rule of law and preservation of fundamental rights of the people of Pakistan. The deposed judge was later restored by the order of an eleven members bench of the Supreme Court (Abbas, 2021).

Independence of judiciary has been targeted by several other means. Martial law regime devised allegiance of judges via administration of oath to selected judges. Administration of oath is most sacred obligation under the constitution and is administered to awaken consciousness and mindfulness in the mind of incoming state functionaries. Oath taking official makes solemn promise of truthfulness and pledges to be answerable to God for his actions to be performed in exercise of his duties. Some judges under military regime diverted their oath administration from constitution to personal understanding of legal issues imposed by General Musharraf. All judges of superior courts were required to take fresh oath of office. This illegal demand was practically made for shifting allegiance of judges from constitution to dictation of unlawful ruler. Most of judges refused and rest of the judges took altered oath and could act as judges. The movement of lawyers made reversal of dictatorial actions and succeeded in restoration of illegally deposed judges. Lawyer had to call a long march through all regional organization of Pakistan. This movement opened fresh venue for restoration of dignity of legal profession including awakening consciousness of judges. Democratic Lawyers Association was at the forefront. Seminars were organized at Lahore and Karachi for restoration of constitutional democracy frequented by independent Judiciary in Pakistan (Z. S. Ahmed & Stephan, 2010).

### **Implications: Fragmentation Within the Judiciary**

One of the pre-requisites of producing, maintaining, and executing independence of judiciary is that judicial organ must always stand undisputed, well integrated in all administrative and procedural declarations (Habib & Zahraa, 2012). The institution under constitutional responsibility must command respect of the public by their acknowledged confidence and character. If judges of most reverend forums are in dispute on simplest issues, what impression, they will produce in the mind of public and litigant for resolution of their disputes. Independence of judiciary is material strength of judicial organ against all institutions from whom judges must implement their commandments for

execution of public rights and create deterrence for prevention in future (Shah, 2009). The rift within the judiciary is extremely harmful for independence of judiciary.

In recent history rift surfaced in the meeting of Judicial Commission wherein difference of opinion emerged on elevation of judges for supreme court. That was unpleasant experience for Chief Justice whose recommended name could not be carried out for elevation to apex court. Division among the senior judges of supreme court on criteria of elevation of judges became a controversial issue openly discussed at public forums. (Editorial, 2021). A senior judge justice sardar Tariq Masood presented his written objections on nomination to the judicial commission. Another senior judge Justice Baqar had to comment that criticism regarding composition of supreme court without set criterion is jerk upon our independence and our perception of independence is eroding. Justice Tariq emphasized that principle of seniority should not be ignored. This situation may compromise independence of judiciary and its outcome may result in derail of democracy. The judge had to refer famous judgment of the leading case known as Al-Jehad Case. PLD 1996 Supreme Court 324. The trust case emphasized on the seniority principle for elevation of judges (Editorial, 2021).

The Supreme Court Justice Maqbool Baqar at a conference on October 17, 2021, observed that assigning cases of sensitive nature to specific judges shall have an adverse bearing on impartiality and may tarnish integrity and independence of judiciary (Correspondent, 2021). Justice Baqar pointed that it would be devastating if tenure of office of a judge is made dependent on the satisfactoriness of his judgments by other organ allegedly exercising undue modes of powers of state. Elevation of judges in this way is jeopardized by the reason of his judgment not being well received by certain quarters. The judge expressed his belief that constitution of benches, ousting judges having independent and unprejudiced interpretations on sensitive cases would damage sanctity of the judiciary (Correspondent, 2021).

Mr. justice Baqar on the issue of elevation of judges also added if prospects of elevation of a judge on merit is not adhered to it will deal a blow to the entire institution. Public trust of the judiciary stands jeopardized if principle of ratio decedendi is not liked by certain quarters. Judiciary protects fundamental rights of the people which is due to its independence that basic rights stand ensured and protected in vulnerable environment fabricated based on force. Therefore, it is independent approach of the judge which enables him directly to translates in material term the independent character for the benefit of citizens of Pakistan.

In the conference another speaker was President Sindh High Court Bar Association Barrister Salahuddin Ahmed. He strengthened the views of judge by adding that there must be quality of self-determination in the decisions making of a judge without internal and external pressure. The judiciary is facing internal and external pressure. This is important that how can the judiciary be pulled out of this crisis (Correspondent, 2021).

### **Backlog and Consequences**

Public awakening on accessibility and redressal of their rights has increased. Huge number of cases are being filed before all types of courts for decision. Disposal of cases is not proportionate as compare to registered entries. Continuous accumulation of cases is a serious responsibility reflecting inefficiency of the institution. Chief justice of Pakistan expressed his concern on prolong pendency of cases. The Court although decided 12,968 cases inclusive of civil petitions, civil appeals and review petitions. The court also decided 2,625 criminal petitions, 681 criminal appeals, 37 criminal review petitions and 100 criminal original petitions during the outgoing judicial year. Chief justice expressed concern that around forty-six thousand cases were still pending before the court. Whereas entry of fresh cases has risen to twenty-one thousand a year. (Nawaz, 2021).



Volume of pending cases in the country has increased up to 2,159,655 cases. Supreme Court of Pakistan in the coming years must adjudicate 51,138 pending cases. Numbers of undecided cases In High Court Islamabad have touched to 16,374. Same is the plight of district courts in Islamabad that must decide 51,849 cases. At Lahore there is huge accumulation of cases. Lahore High Court has crossed the volume of 193,030 cases. District and sessions courts in the Punjab province have pendency of 1,345,632 miscellaneous civil cases. Same is the situation in High Court Sindh where 83,150 cases are pending for decision. In district courts pendency of cases has risen to 115,296. Peshawar High court has 42,180 cases awaiting adjudication. Range of cases pending in district and sessions courts is 240,436. Lastly Balochistan High Court has 4,663 pending cases and its district judiciary stands with total of 15,729 cases (Nawaz, 2021).

All preparations to deal pendency issue are limited to drawing future outline issuing vague directions to subordinate courts only. Courts in certain case are crossing prescribed statutory limits without hesitation and without justifying the delay in disposal of cases. Earlier in 2018 Judicial Conference chalked out proposals for improving the working of the judiciary. It was realized that filing miscellaneous applications during civil proceedings or submission for interlocutory orders were being misused by parties to proceedings.

### **Pakistan Bar Council Criticism**

Judiciary and Bar are presumed working wheels of same carriage and must work in identical enthusiasm for rule of law and system of administration of justice. There are quotable examples of mutual understanding at crucial moments of history on shared concurrence for upholding democratic principles. Both have been occasionally found critical of each other on matters of internal discipline and procedural complications. Keeping in view certain judgments passed in recent time, Pakistan Bar Council has alleged that superior judiciary is not strengthening democratic institutions. Relationship between judges and Bar some time turns uncordial. Prominent lawyers have been holding leading positions in different governments. Therefore, mostly difference of opinion emerged on legal propositions. Chief Justice and former Supreme Court Bar Association President Kamran Murtaza had to exchange unsuitable words in the courtroom. The President Bar expressed concern on not observing independent status by some judges. He alleged that a section of top judiciary and the federal government is not fairly working on certain issues, rather have remained on the same page in the last couple of years. He claimed that Judges are being elevated on personal likings disregarding competence of judges on expertise in matters of constitutional law. This controversy mainly demanded that expertise of judges in constitutional courts must be in the field of constitution. President Bar deplored that there is pendency of more than fifty thousand cases for which competent and efficient judges are needed. However, both sides should evolve consensus on issue, otherwise differences among the SC judges will weaken the whole institution of judiciary (Malik, 2021c).

Attorney General also concurred with Bar Council and submitted that reservation of Bar on appointment of judges must be dispelled as by-passing senior judges is pervasive and destructive of this august institution (Maik, 2021). The attorney general in full court ceremony proposed that settled criteria be enforced through directive of the Court. Attorney general proposed that petitions filed by Sindh High Court Bar Association and Waqar Ahmed Seth may be decided by the Court. The Attorney urged to reconcile ambiguities in the judgment delivered in Bar vs. Federation PLD 2002 SC 939. (Shah, 2009).

Amjad Shah addressing the ceremony as Pakistan Bar Council representative maintained that historically judiciary has not produced impression of its neutral umpire. He cited the reservation from an institution of United States up-stretching on impartiality of our judiciary. The report alleged that under the constitution judicial system operates independent of executive branch as per principle of

trichotomy of power (Cheema, 2018). Nevertheless, it is not so as certain quarters exerts significant influence over the judicial branch of the country. Resultantly, there are reservations concerning the capability, impartiality, and reliability of Pakistan's judicial system. The fear of contempt of court proceedings constrains the public from reporting softness of the judicial process. Pakistan ranked 140 out of 180 countries on corruption perceptions Transparency International's 2020 Index. Lower judiciary is often considered not efficient and absorbs pressure from prominent religious, political figures (A. Ahmed, 2022). Pakistan strongly rejected USA report criticizing judicial system of Pakistan. Bar representative Mr. Amjad Shah was of the view that the judiciary must play a greater role for the state democratic institutions. The judiciary cannot disown responsibility when prime ministers were punished in ordinary cases (Malik, 2021b).

### **Executive Overreach for Judicial reforms**

Executive organ frequently faces criticism on its failure to control crimes and timely introduce procedural reforms facilitating justice system to deliver. Law ministry found a convenient way to shift its own responsibility by proposing action against judicial officers. In the prosed reforms 2021 insertion of section 265-P in procedure code 1898 (CrPC) is inserted for prescribing timelines for the completion of a trial (India, 1941). Court must give reasons for its failure to conclude the trial in time. Most derogatory provision also demands submission of copies to the federal and provincial law secretaries for information. This bill is reflection of an undemocratic move by executive to dictate the judiciary. This unprecedented move seems a chance to disgrace the judicial independence. If it is believed that the delay was attributable to the presiding officer of court, matter shall be reported to the high court for proposing suitable action (Malik, 2021a)

Failure of system is comfortably attributed in general to political governments. Government requested the Asian development Bank to assist in designing a comprehensive program for legal and judicial reforms. Asian Development Bank prescribed technical support for legal and judicial reforms in Pakistan. Very little has been done to analyze and address its problems and to increase its efficiency as proposed to Pakistan. As a per finding in report and the result, the system is heading towarded collapse due to massive backlogs with severe dissatisfaction among litigants about the quality of justice in courts. Legal profession is rapidly deteriorated with falling legal education standard. Most of the judiciary is recruited from the bar, has decreased quality and caliber of the judiciary. Judgment of the Supreme Court in 1996 to separate the judiciary from the executive multiplied work loads of courts (Posner, 1996). Judiciary and legal fraternity both are victim of self-styled reservations outside of ground realities.

The judicial organ is under constitutional, legal, and dignified moral obligation to give due direction to its independence. Exclusive State welfare lies under indiscriminate enforcement of rule of law. Responsibility for nor performance of duties should be fixed against exact responsible authority and beneficiary of default at the root cause. Independence of judiciary demands that it is the judiciary that must rectify its own transgressions as purity and accountability must begin at home. Courts should not confine their response limited to displeasure, censure, advice, and disappointments. Courts enforce law exactly through speaking orders not against lower category of public servants pushed by high-ups to avoid direct contact of court. Courts should call responsible authority by keeping in mind relevant Latin maxim "Fiat Justitia Ruat Caelum" Let justice be done though the heavens fall. The maxim signifies the belief that justice must be realized regardless of consequences (Freeman, 2019).

In the prevailing circumstance instrumental options both carrots as well as stick is in the possession of judiciary. Judiciary can dictate under the law but cannot expect that dictation may be enforced against that from any side provided judiciary is determined to act as guardian of the constitution. Under the doctrine of independence, judiciary is under obligation not to be part of executive in any

way by keeping away from any incentive offered from any side whatsoever. As observed earlier nothing is more dangerous for dignity of the judiciary than rift within the judicial ranks. This is merit of adjudication process to observe difference of opinion or writing contra or minority judgment in decision making of contentious cases to the extent of law and relevant facts. The divided opinion of learned judges purely on merit may prove as academic addition for intellectual lawyers and analytical property for legal researchers all over the world. Nevertheless, criticism of senior most judges of superior courts on exclusively internal and sensitive matters regarding elevation and constituting benches are inflicting devastating effects not inside of the judiciary also damaging image of the institution outside court rooms. In the circumstance doctrine of independence of judiciary is being seriously affected and lessening its due attraction in public.

### **Recommendations**

Judicial organ although commands independent position yet it must work, materialize and execute its verdicts assisted by rest of the two organs. The procedural laws applicable in Pakistan are as redundant as framed in 1860-1898. These are complex, lengthy, and expensive as compared to other developing countries. Periodical review of legislation is routine work which is to be done by legislature. Judiciary must co-ordinate parliament to in time up-date legislation. Therefore, time limit on maintenance of status quo should be fully observed. It was proposed that superior courts should only consider points of law without going to examining decisions of courts on facts. Frivolous cases should be dealt with cost and fine calculating wastage of time of courts.

Entry into the legal profession be regulated strictly as per Bar Council Act. This will improve institutional capacity of the Pakistan Bar Council and provincial bar councils to carry out their statutory functions. Un-professional strikes and adjournments of lawyers must be treated under the legal cover for the sake of improvement.

Adoption of continuing education of all serving judges to update them on new legal developments, and to standardize court practices and procedures of judges can help a lot. Time frame for disposal of cases must be strictly observed. Deficiency of judicial sanctioned strength be enforced by order of court. Summer and other vacations be brought at par with general schedule. When Judges are on leave without auxiliary replacement and information of parties to suit or their councils and witnesses, entire system of the court stands distressed. Superior regulatory institution of judicial organs must continuously guard its working being sufficiently conscious of its status of independence.

The present plight of judicial disconcertment is generating its own consequences. Overburdened lawyers repeatedly submit for adjournments on account of being busy in other courts. This option is critical and is also being misused for vested interests of senior lawyers. Accumulation of litigation around influential lawyers have adverse effect on grooming of junior lawyers. Legal Practitioners and Bar Council Act, 1973 is governing law for creation of Bar councils. Elected office bearers of Bar Associations and Councils obtain positions of influencing judges for soft relief. As soon as a lawyer is elected, influx of opportunist litigants inclined towards office holders as additional clientage. Elections of Bar has been twisted into profiteering exercise for office holders and supporting lawyers materially affecting administration of justice in courts. This issue can be treated by rigidly observing procedural framework on adjournment of cases.

All the above-described demerits are to be treated timely, firmly with planned joint action of state machinery. It is the confidence building process for maturity of entire judicial machinery to command actual independence meant for material interest of the nation.

### **Conclusion**

Administration of justice system in Pakistan is neither as much delivering nor may be expected in near future to come to the position of performing as aspired by the nation. Judicial institution is under criticism at home and abroad for reasons like ordained delays, complex procedure, conservative modes of adjudication and state interference etc. Non-compliance of judicial orders and non-implementation of verdicts are material reasons for failure. In contemporary and competitive world this institution is remarkably offering safe enclave for destitute and helpless community for preservation of their fundamental rights. Judicial organ by its nature is a harmonizing as well as compelling constitutional entity. An orderly working judiciary is source of satisfaction and has greater influence over functioning of rest of the institutions of state. Timely dispensation of justice creates force of obedience and leaves no space for asymmetrical expectation. This is the reason that judiciary has been ornamented the title of independence.

Judicial institution is not exclusively working as prescribed under the constitution. There are several reasons for non-adherence of this obligation. Irresponsibility, negligence, and corruption at certain level are openly alleged and admitted in public by government. Corruption do expand illegal tendency, but non-functioning institutions are more harmful for democratic system. Judiciary has been described as guardian of constitution which literally means this is guardian of impoverished community. When judiciary is not responsive it produces disregard of obligatory sense all around.

World Justice Project Rule of Law Index measured performance of judiciary in Pakistan in 2018. That was aimed at determining that are common people beneficiary of the system and can obtain resolution of their complaints through existing justice system. The score of Pakistan was worst in the region as globally it ranked one hundred five out of one hundred thirteen. No curative options were applied, and present position is not different from that required to be rectified.

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