

Usage of Judiciary in Accessing Basic Human Needs and Rights

Syed Naeem Uddin

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The current generation has grown with a sense of injustice from enforcement agencies, people's lack of awareness and lack of access to the justice. There justice. The most corrupt and critical mechanism of the troubled states are the law are many examples in Pakistan when the members of parliament were elected while they were in jail and the time served was eulogized and helped them to be elected.

Since the political ethics has never been added to the dictionary of the political parties, many outlaws use political parties as a cover either to pretend as a political prisoner or a victim of political affiliation. If they ever caught, the political parties promptly issue the endorsement and the suspects get away brazenly. The time spent in jail is decreed as sacrifice and assassination as martyrdom.

What role can judiciary play in deliverance? Either about making decisions in routine filed cases or shows influence over the system to have citizens maintains their rights and accesses the basic needs.

The question of awareness again flashes in. If people are wary of the state affairs and judiciary is used as an enforcement agency by the political parties against rivals, the role of law is taken as untrustworthy and part of the corrupt political system.

Political parties in Pakistan are responsible to create a notion where the superior courts decisions are always string attached. From the appointments to the relinquishments, law is tethered. During last decade, the judiciary in Pakistan has been fractionized. The dispositions made by the superior courts hang in balance as the government either refuse to honor or delay the execution of the court orders.

Pakistan has always nurtured "Above the Law" cultured where politicians find immunity and strength in breaking the law and obstructing the justice. The despicable National Reconciliation Ordinance (NRO) has offered new opportunities to the corrupt politicians to embezzle and enjoy the public money worth hundreds of billions of rupees and ridicule the judiciary whereas thousands of women and children with very minor mistakes are in jails for indefinite period.

President Zardari and interior minister Malik top the list of 8041 NRO beneficiaries. NRO also included the names of serving and former ministers, federal and provincial secretaries, ex-chief secretaries, existing or former members of the national and provincial assemblies and others.

The NRO is a shame for the beneficiaries in a country where an estimated 3000 children and

women are wrongfully convicted and locked up. Overcrowded jails are exposing inmates to HIV, TB and other epidemics. An estimated 75 per cent women are sexually abused in custody.

As President Zardari enjoys immunity, the world powerful personalities like US President Bill Clinton, Richard Nixon and Italian Prime Minister Silvio Berlusconi have faced trial while being in the office and attended the court room.

The government, opposition and allies have divided the judiciary and use it as a meaningful tool to embarrass, manipulate, obstruction in justice and even physically abuse the political opponents. The objectives are not to maintain the rule of law but as a showcase of power in the judicial corridors and to have so called party workers bailed out of the jailed using the umbrella of “Political Prisoners.” Over the years and working as the party workers, the lawyers have violently attacked number of people. In August 2009 SI Riasat Ali was attacked by the lawyers and in November 2009, a group of lawyers of the Lahore Bar Association (LBA) physically assaulted TV journalists Muhammad Ashfaq and Irfan.

Prior going into more details, a brief overview and synopsis are needed to be looked at. This would help in understanding that the judiciary is under tremendous stress to deliver what the incumbents want from it. If judiciary resist, the verdicts remain unimplemented.

The law proceedings are performed in very scary, expensive and substandard surroundings. The placement of records, protection and privacy of the witnesses, investigation and trial are yet to be regularised. The Witness Protection Act of Canada, the United States and New Zealand are significantly helping the governments to deal with gangs, serial killers and violent offenders. The U.S. Marshals have protected, relocated and given new identities to more than 8,300 witnesses and 9,800 of their family members, since the program began in 1971 (Ref: <http://www.usmarshals.gov/witsec/index.html>). A movie, Family in Hiding released in 2006 is the best example of this programme. This programme also helped witnesses to testify against lynching of the notorious Ku Klux Klan after Civil War.

The overcrowded and overburdened courts remain under strains of shortage of staff because of political battle over selection of the judges. There is one judge for 100,000 citizens. The situation of the Lahore High Court in 2010 worsened when the former governor Salman Taseer put the appointments of the judges on hold. The delay was caused by the governing PPP taking anger out on judiciary and in retaliation of the verdict on infamous NRO.

The scam of Haris Steel Mills in 2009 exposed the labyrinth of law and capitalisation of the situation by the stake holders including ministers, judges and lawyer.

Over the years, judiciary has been using suo moto or (motu) action referring to the Article 190,

204, 184 (3), Chapters 1 and 2 of Pakistan's Constitution on the issues where civil society and the government either turn the blind eye or instigate the situation on purpose like several massacres in Karachi and all over the country. This action also requires enormous resources and leaves plaintiffs vulnerable of repercussions in many cases. If the government is a party, the enforcement would always remain undone. In December 2009, while hearing a suo moto case, the Chief Justice Iftikhar Chaudhry asked The State Bank of Pakistan to produce a list of the loan defaulters from 1971 for the recovery of RS 54 billion written-off loans. The Chief Justice clarified that any overstepping of power is for the interest of the nation. This was viewed by a large number of the politicians belonging to both opposition and government as hostile. Around 60% of the politicians bureaucrats are defaulters and they interpret this as a challenge to their authority.

The legal experts of the country are divided over the use of suo motto. Recently, President Supreme Court Bar Association (SCBA), Asma Jehangir has strongly recommended further debate on suo motto, emphasizing upon bringing it under regulations. The International Commission of Jurists has also raised concerns about that what compelling circumstances be mandatory to suo motto. Using suo motto more often would create a situation like Plaintiff and Defendant between the arliament and judiciary.

If the examples of the recent hearing on Karachi's bloodshed, Rangers shooting victim Sarfraz Shah (2011) and the missing persons in Balochistan (2006) added honour to sue motto: the intervention in Atiq Odho's case seen unnecessary.

There are hundreds and hundreds of cold cases in Pakistan. But there are some of great importance and involving mass murders. The unsolved mysteries of former president Zia-ul-Haq, May 12, 2007 massacre in Karachi, murder of Benazir Bhutto in 2007, swift and bloody fallout of Benazir Bhutto's murder when 100 people killed in Karachi and rioters torched 176 bank and gasoline stations and the series of killing and extortion in Karachi have made people to believe that somehow and somewhere incumbents have either been the collaborators or the beneficiaries of the bloody crimes.

There are several testimonies and trial in the history where justice had been served after taking many turns like The Trials of Oscar Wilde and The Impeachment Trial of the President Clinton. The famous trial of Public Corruption like ABSCAM, Operation Greylord, Tennessee Waltz and White-Collar Crimes like Enron, Hurricane Katrina Fraud, Operation Senior Sentinel and Operation Stolen Dreams may positively be taken as the contemporary studies in Pakistan.

Recommended Readings:

Courting Social Justice:

Judicial Enforcement of Social and Economic Rights in the developing world.

Edited by Varun Gauri and Daniel M. Brinks. New York: Cambridge University Press, 2008.

Rule by Law:

The Politics of Courts in Authoritarian Regimes.

Edited by Tom Ginsberg and Tamir Moustafa. New York: Cambridge University Press, 2008.

The Political Scientists as Expert Witness:

Political Science and Politics: journal of American Political Science, July 2009, Volume 42, Number

3 By Richard L. Engstrom, Duke University and Michael P. McDonald, George Mason University

Judicial Review as a Response to Political Posturing:

Political Science and Politics: journal of American Political Science, May 2011, Volume 105, Number 2 By Justin Fox, Yale University and Matthew C. Stephenson, Harvard University

Judicial Politics in New Democracies:

Cases from South Africa

By Peter VonDoepp. Boulder, CO: Lynne Rienner, 2009

Democracy and Judicial Review:

Are They Really Incompatible?

By Annabelle Lever, London School of Economics

What Can We Learn About the Ideology of the Newest Supreme Court Justice?

Political Science and Politics: journal of American Political Science, May 2011, Volume 105, Number 2

By Stephen A. Jessee, University of Texas at Austin and Alexander M. Tahk, University of Wisconsin-Madison

The direct discretion of justice was initiated in Pakistan in 1997 when the Supreme Court of Pakistan dismisses PML-N leader's plea against suspension. Ref : watch the video of Sharif's invasion at the Supreme

Court of Pakistan:

http://www.youtube.com/watch?v=xF2oj2B4pTg&feature=player_embedded#! , <http://criticalppp.com/archives/7654>

In contradiction to what people voted for in the past general elections, Sharifs had been able to restore their rule through courts. The restoration was seen as judiciary triumphant by many observers. Sharifs have never found courage in return to issue an official apology to denounce their attacks at the Supreme Court.

The sitting stubborn President and the Prime Minister defy the law without hesitation as in the case of LNG scam, NRO, appointment of inquiry officer in the Bank of Punjab scam, civil bureaucracy positions in Grade-22 in 2010. Surprisingly, the Prime Minister acting as a party sided with NAB and had NAB challenge the authority of the Supreme Court and the Chief Justice in the tug of war with judiciary.

The national accountability bureau-NAB has been used for bargains and trading political faith. The current incumbents have squeezed NAB out by blocking the funding, staffing and tools to prosecute the suspects.

In February 2010, the government geared up to defame the Chief Justice and apply embarrassing tactics to the level of physical abuse. The media was chosen for planting the stories titled “Conspiracy against the government”. The ruling party’s student wing PSF had been assigned the task to organise pro president and anti-chief justice rallies in the educational institutions and even in the Supreme Court.

In April 2010, the relatives and friends of the Prime Minister were demoted by the Supreme Court because they were promoted in grade 22 from 21 violating the promotional procedures. Maj (retd) Moeen, who is brother-in-law of the prime minister, a friend of the Prime Minister Agha Sarwar Qizalbash, and Ghulam Ali Shah, a close kin of Petroleum & Natural Resources Minister Syed Naveed Qamar has been elevated leaving behind the deserving officials.

Emotions, rhetoric and party loyalties are put above the law, in June 2010, the law minister Awan while defying the Supreme Court order to write to the Swiss government about re-opening the president file, the minister said “over my dead body”. He did not sound like a parliamentarian but a bully. The egoistic Law minister revengefully dismissed Aamir Rehman, as Deputy Attorney General (DAG) and DAG, Shah Khawar in 2010 for not showing up to give him reception.

The major defiance of the government included the cases of NRO, the appointment of NAB chairman, notification to de-notify PCO judges, investigations against former Chairman CDA, Kamran Lashari in the F-9 park case and the reinstatement of the investigation officer in NICL case.

Instead off maintain the rule of law, the sitting law minister has been busy to strengthen the PPP government and modify the law as directed by the presidency. The erratic behavior of advocate Abdul Basit in the Supreme Court in June 2010 and later his confession that his actions were endorsed by President Zardari, Prime Minister Gilani and Law Minister Awan to embarrass the

court and disrespect the Chief Justice of Pakistan left people shocked. He changed his statements so many times that he should have been stripped of his license immediately.

There is another parallel justice system in place alongside court of laws. The rural areas still depend on Jirga or Panchayat. This ruthless system has its own laws of punishment like marrying underage girls to 60 year old men and force women walk naked in the public. Ref: May 26, 2009 Bahawalpur. Women also being killed declared as kari (accusation of having physical relation). 15,500 women were killed and 600 committed suicide in the name of honor in 2010 in Pakistan.

Recommended Readings:

Parties, Partisanship and Democratic Politics

On the Side of the Angles: An Appreciation of Parties and Partisanship

By Nancy L. Rosenblum. Princeton: Princeton University Press, 2008.

The Politics of Presidential Appointments: Political Control and Bureaucratic Performance.

By David E. Lewis Princeton: Princeton University Press, 2008.

Citizens approach to the courts over incumbent's failure to deliver and stop Blood Sheds & Bombs; According to the South Asia Terrorism Portal (<http://www.satp.org>), the following data shows that the casualties spiked around 100% as the current government assumed the power.

Year	Security Force Personnel	Civilians	Terrorists/ Insurgents	Total
2003	24	140	25	189
2004	184	435	244	863
2005	81	430	137	648
2006	325	608	538	1471
2007	597	1522	1479	3598
2008	654	2155	3906	6715
2009	991	2324	8389	11704
2010	469	1796	5170	7435
2011	515	1775	1792	4082
Total*	3840	11185	21680	36705

The failure of the governments has resulted in 36,705 people killed from 2003 until 2011 is far greater than the number of people killed together in the wars of 1965 and 1971.

The paramount responsibility of the government is to protect the citizens and their property. Why the government never fired or put on trial any minister, governor or the chief ministers responsible. Why no one resigned to accept the inability to govern? This factual situation makes it obvious that the privilege of power is far more superior to the lives of citizens. When a killing takes place, it adds into the numbers of widows and orphans without any resources to rehabilitate them and pluck them out of extreme poverty and vulnerability of becoming easy target of social

and violent crimes. The attack on Chaudhry Aslam's residence claims lives of a mother and her 8 year old son besides other innocent lives. The provincial government was informed through a letter dated August 27, 2011 by the Federal Government about the attacks but failed to prevent. The bereaved families must take the authorities responsible to the court not only for the penalisation but for compensation as well. The situation in Karachi is seen worse than of Waziristan by the Director-General Rangers Major-General Mohammad Ejaz Chaudhry. Karachi is as important to Pakistan as New York to the U.S.A.

Power Shortages

The power policies of 1998 and 2002 had made it very clear that the country would plunge into the severe power crisis. In January 2007, the government anticipated a shortfall of about 5,300 MW because of 50 per cent increasing demand. The then Minister Liaquat Jatoi acknowledged it. In January 2008, situation worsened and the country's financial capital Karachi was hit hard. By August 2008, the production of Karachi's 5 industrial sectors dropped to 50 percent and caused enormous job losses. The government could add only 70 MW. Current shortfall has surged to 5,645MW. Big cities like Karachi have been turned into ghost towns by the incumbents. In October 2009, Minister for Water and Power Raja Pervez Ashraf promised maximum reduction in load-shedding within days, instead situation went out of control. The unfortunate fact is there is no data collection about the deaths and heinous crimes caused by either power failures, electrocutions and suffering's off sick, elders and school going kids. If the government responsible is sued and the official are penalised, this would be a compelling tool to make politicians to deliver for what they are in the office for. South Korean energy minister resigned in September this year following five hours power outage. South Korean President Lee met with the personals responsible and told the officials "You have done something that should never happen. I feel ashamed of even talking about it." The government is compensating companies and individuals affected by this break down: A lesson for the government of Pakistan to follow.

Food Scarcity

The International Centre for Chemical and Biological Sciences (ICCBS), University of Karachi (KU) has estimated 45 per cent of women and 67 per cent of children under five are anaemic in Pakistan. The Oxfam's international GROW campaign has recently painted a pathetic picture of Pakistan's food crisis and revealed that 57 per cent of people in the country are not eating the same food as they did two years ago due to the rising costs. It has also reported that in May 2011, food & Beverage cost rose 15.88 percent whilst food cost went up 17.85 per cent in comparison to the same period last year. Hence the failure of incumbents to cope with inflation has become a menace for the generations to come. The perils of nutrition deficiency are disastrous.

There are some useful links to know about food nutrition, deficiencies and intakes:

<http://www.phac-aspc.gc.ca/index-eng.php>

<http://www.irinnews.org/report.aspx?ReportID=93430>

<http://www.cdc.gov/nutrition/everyone/basics/vitamins/iron.html>

<http://www.health-heart.org/>

Floods

The poor people of this country were still trying to get some relief from last year's catastrophic floods and hit by another one. Why did the government fail to put a system in place that could minimize the losses? Apparently there are only two reasons: either the calamities are being seen by the incumbents as capital gains for them or their cronies running so called NGOs or inability to deal with it. In either case punishment must fit the intentional criminal negligence which has resulted in hundreds of deaths and \$millions in losses. This tragedy lingers even after water recedes. People suffer from water borne diseases, destruction off crops, property and displacement. As UNICEF Canada maintains, an estimated 20 million people – 6 million of them children – have been affected by the recent floods in Pakistan.

In 2009, an estimated 308 people have been killed by an earth quake I the Italian region of L'Aquila. Six scientists and one government official are charged with manslaughter for not warning people ahead of tremors. The flood victims in Pakistan can follow the same legal ramifications. The flood victims in Pakistan can also study the efforts and struggle of the people of New Orleans after deadly Hurricane Katrina pounced in 2005. The Hurricane victims won \$719,698 in the first trial for the government failure to deal with pre, existing and post hurricane disaster.

Useful links:

<http://www.ec.gc.ca/ouragans-hurricanes/default.asp?lang=En&nav=CA3BC939-1>, <http://www.fema.gov/>

<http://www.mrsc.org/Subjects/PubSafe/emergency/ps-flood.aspx>

Dengue Fever

In 2010, 700 case of Dengue fever had been reported. This year, Dengue fever has infected more than 6000 people with 106 dead (as of September 26, 2011). Again what caused this rampant epidemic and why no one had been prosecuted? Why sarcasms and mockery is thrown at each other?

Recommended sites for the awareness of this fatal fever.

<http://www.fema.gov/>

<http://www.who.int/mediacentre/factsheets/fs117/en/>

Concluding argument

The members of the civil society have been incompetent to let people feel that the justice and law exist for deliverance. Why the incumbents and high profile government functionaries have not been taken to the courts

when people are dying because of insecurity, flood disease and starvation? The political street power is being used to kill political opponents but not for basic rights. The so called charities of political parties only support people for political gains and media coverage but they do not establish awareness system, hospitals and a system to maintain law. Since it has been exposed publicly that all the political parties maintain armed wings, why not the leaders of the parties put under trial for civilian deaths and not charged with manslaughter, breaching voter's trust, first degree murders or being accessories and collaborators? Why the incumbents have failed to determine the serial and organised killers after decades long civilian killings in Pakistan? This is not a Mexican or Columbian drug war but a war to control people, economy and parliament. This civilised and modern era does not tolerate people to be left behind and live at the mercy of relentless politicians. This nation must learn lesson from Arab Spring and seek resolution through the court of justice before it gets as violent as the situation in Egypt, Tunisia or Libya.

American Example

The U.S. Justice system is tremendously safeguarding the citizen's rights and the District Attorneys playing a vital role to serve justice. The American Civil Liberties Union (ACLU) works vehemently to keep underprivileged side by side with the influential and elites in getting justice and maintain self-esteem. There are many examples that the government, sitting senators and the legislatures have been sued and defeated in the U.S. Court of law. The corrupt U.S. Politicians are dealt and punished more severely than normal citizens. Their respective parties and friends absolutely disown and isolate them.

The U.S. Government and states have been sued number of times. Former Canadian Prime Minister Brian Mulroney had to face trial on his dealing with a German businessman. The U.S. President Richard Nixon succumbed to the pressure at Watergate Scandal. Some other of the U.S. Politicians who paid the price of their corruption in the courts included: J.D. Alexander, Rod Adair, Joe Walsh, Rick Santorum. Tommy Robinson, Ted Stevens , Wayne Hays, Dan Rostenkowski, James Traficant, ,Jimmy Walker, Orville Babcock, William Belknap, Dusty Foggo, Bill Jefferson, Otto Kerner, Jim Wright, J. Parnell Thomas, Andrew Jackson May, Simon Cameron, Albert Fall, Spiro Agnew, Richard Kelly, Randy "Duke" Cunningham, Schuyler Colfax, Rod Blagojevich, Charles Forbes and William Marcy "Boss" Tweed.

List of federal political scandals in the United States could be seen at:

http://en.wikipedia.org/wiki/List_of_federal_political_scandals_in_the_United_States