

Regular law in ordinary courts

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On August 8, black coats of the Balochistan uniform-clad legal fraternity were covered with dust, blood and tears when a large explosion went off in a Quetta hospital. Generations of lawyers lost their lives, Pakistan lost the security that hospitals are a safe space. Balochistan lost the little hope of normalcy it once had. Yet again.

The silence had not fully set in when, a few weeks later, a bomb blast went off in Mardan's district and sessions court, killing 13 people.

Bar Councils and the legal fraternity around the country came out in full solidarity over the attack in Quetta and then went on a day's strike after the Mardan attack. But among the expected chaos of raucous voices, of who to blame for the bloodshed in the hospital, the Bar and black coats have been drowned out. But after the dust settles, what is the long term damage to the already fragile rule of law, of which courtrooms and lawyers are an integral part. This is a fundamental question, which we have failed to ask.

A just society is one where the rule of law is the cornerstone of its very foundation. The 19th century constitutional scholar, Dicey, articulates rule of law in three basic ways. As absolute supremacy of regular law over the influence of arbitrary power; equality before the law where the ordinary law of the land is administered by the ordinary courts of the land; and lastly, the constitution being not the source but the consequence of the rights of individuals, as defined and enforced by the courts.

To ensure regular law through ordinary courts on all citizens is no ordinary and regular feat. It's not a box one can just tick. Evolved societies consider rule of law a goal to be strived towards, where the fundamentals of embedding the rule of law requires the building and the constant strengthening of institutions; multi-layered, gender sensitive and accountable

structures that allow less dependence on individual and political leadership to deliver justice to those seeking relief.

In the past, Pakistan's establishment has shied away from encouraging judicial institutions to take on an independent role. Because too often has illegitimate and arbitrary power been laundered into legal action, using the courtroom and its judgments as the perfect washing machine. The last dictatorship lasted eight years. Musharraf legitimised his rule in 2001, rubberstamping his authority through Supreme Court approval. Ironically, the system that once approved his tenure turned out to be the very reason he was ultimately ousted. But Musharraf is not alone, Pakistan and its dictators have always used courts to legitimise a constitutional wrong — power of men over the power of law. And there is no denying that the judiciary has not raised cries of foul play. Silence by the judiciary since the 1950s. A silence too long to ignore perhaps.

But we are moving forward. Two relatively unobstructed elections, devolution of power to the provinces, opposition parties on the side of democracy, and in turn the right side of history, when they supported the government over self-proclaimed political change makers knocking on parliament's door. The lawyers' movement in 2007 recognised the importance of ridding the country of dictatorship, followed by the National Judicial Policy in 2009. The Judicial Policy, adopted by the Supreme Court, recognises the flaws in the judicial system and articulates transparency and swift deliverance of actual justice. Progressive case law, such as the declaration of jirgas and panchayats as illegal by the Supreme Court and the Sindh High Court, are signs of things moving forward.

But these important developments are followed by bombs in the district court in Islamabad, on lawyers in Quetta, in the courtroom in Mardan. Two steps forward and two steps back means we are still standing in the same place.

The rule of law flourishes in a strong democracy. And vice versa. Democracy thrives in a society where the rule of law is well-embedded. But the judicial machinery, which was once cracking under the might of men in uniform, steering from the illegal to the legal, is now crumbling under suicide bombers and bomb blasts.

If anything should accelerate the National Action Plan it should be that pivotal institutions of the state are cracking under the pressure of a force determined to break down constitutional structures. And in turn our central value and the only real protection we have — equality before the law.

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