

Independent Judiciary and its Role in Nation- Building: Case Study of Pakistan

Vol. I, No. I (2016)
Page: 99 – 115
p- ISSN: 2616-955X

Sadaf Farooq* Abida Rafique† Ghulam Qumber‡

Abstract

Independent judiciary is the foundation of a fair and impartial and constitutionally balanced society. Independence means that judges can freely make lawful decisions whether involving influential politicians, governmental personals or ordinary citizens. Thus, ensuring decisions are based on constitution rather than is the result of political pressures or is favoring some majority. Endowed with independence, the judicial system serves as a safeguard of the people's rights and freedom. In Pakistan, although, our Constitution stipulates an independent judiciary but our governments, over the years, have been bent upon ensuring that our judges always live in a climate of fear and make biased and favorable decisions under the influence of the executives. The paper concludes that independent judiciary may not be the solution to all the problems of Pakistan but is the most important stride towards solving the problems faced by the state machinery.

Key Words: Independence, Accountability, Democracy, Media, Power

Introduction

In contemporary times, the system of Governance in most parts of the world is structured on the basis of separation of power between states' main organs i.e. the executive, legislature and judiciary. The constitution of a country prescribes clear guidelines of their functions, yet the interdependence of these organs has always been debatable. The system of accountability of one organ to another ensures transparency in decision making however, it introduces lags in the process which may be harmful in the end. It is for this reason that the extent of their independence is a sensitive issue that is decided on the basis of socio economic and political setup of a country. A well functioning and independent judiciary is backbone of nation-building process. The judiciary is the organ of the government which improves nation's sovereignty and promotes justice (Sana, 2016). Pakistan is a struggling

* Assistant Professor at the Department of Politics and International Relations, International Islamic University, Islamabad.

† PhD Scholar at the Department of Politics and International Relations, International Islamic University, Islamabad.

‡ Deputy Director, ISSRA, National Defence University, Islamabad, Pakistan.

Email: ghulam_qumber@yahoo.com

democracy plagued with a somewhat unstable political setup, security issues and an ever increasing debt burden (Ahmad, 2016). Most of the problems prevalent in Pakistan can be attributed to institutional weaknesses. With more than half of its life spent under dictatorship, calling Pakistan an infant democracy would not be an overstatement. Like every infant democracy the role of the organs of the state though prescribed are not always followed in spirit. We have an executive that functions without any checks and balances, a legislature influenced by political and bureaucratic elite and a judiciary struggling to evolve as an independent, impartial institution. This was brought about by a judicial movement initiated by the unconstitutional deferment of the Chief Justice by the earlier government. Critics of this movement criticize it on the basis of random incidents where the lawyers depicted unruly behavior under the garb of the new power they enjoy and the chasm it has created between the organs of the state. However, the accountability that has been created for the first time in Pakistan is a step in the right direction. Similarly, judiciary now has a greater responsibility towards speedy delivery of justice because of the support given to it by the civil society and the media.

In true essence judicial independence means the judiciary is able to make independent decisions in court of law with ordinary citizens being the main beneficiary of these decisions. This independence means that decisions should always follow law of the land even though it contradicts interests of the ruling party or any other powerful entity (Zaman, 2005). Independent judiciary implies that judiciary as an institution as well as individual judges should be free from all types of pressures and interference, whether the interfering elements be the executives, legislature, local bodies, political parties, military and paramilitary forces, political and bureaucratic elite, criminal networks and judicial hierarchy itself.

Nation-building is defined in Collins English dictionary as “government policies that are designed to create a strong sense of national identity” (Sinclair, 2004). Some argue that nation-building means a state that is re-building after the war/conflict etc, as was the case of Germany and Japan after World War II, or starting fresh from scratch like Pakistan in 1947 after its partition and independence from British controlled Indian Sub-continent. The Rand report defines national building as an attempt to “bring about fundamental societal transformations” (Dobbins, 2003). Since WWII Rand observes number of cases that fits its definition. Germany and Japan are the most important and successful examples of nation-building. Both states share number of commonalities like; a) never faced colonization b) were not having industrialized economies c) high literacy rate d) experienced democracy and media e) totally occupied f) totally defeated. The other not so successful cases include Somalia, Haiti, Bosnia, Kosovo, Ira and Afghanistan.

The latest conceptualization of nation-building however, essentially focuses on programs in which “failed states” are provided with developmental support in different sectors like infrastructure, economy etc, aimed at establishment of stability (Stephenson, 2005). This definition stems from historical experience, where a state not ridden with external security threats or influences may still find it hard to build its state machinery and institutions for consistent performance. This research focuses on development of governmental and non governmental institutions and its resultant impact on the socio-economic structure of a state as a positive externality of independent judiciary. The paper while analyzing the role of independent judiciary in nation- building will analyze the key processes and institutional arrangements required to bring about this process with maximum positive externalities.

Historical Explanations of the Problem of Nation-Building in Pakistan

Independent judiciary plays an important source of national unity and nation building. The doctrine of separation of power is based on division of powers between organs of government. The executive, judiciary and legislature work in their separate domains but they can keep check and balance on each other to ensure the transparency of the system. Through the mechanism of accountability, it promotes constitutionalism and enhance rule of law. The judiciary is the protector of the constitution whose purpose is to provide justice and equity (Sana, 2016).

Current judicial system in Pakistan has evolved during medieval time periods. It passed through different stages like Hindu era, Muslim rule in Indian subcontinent, British rule and post 1947 era. During all this, judicial system speculated gradual development and no major change were witnessed. We can divide historical evolution of the judicial system in Pakistan into four major time-periods namely; i) Hindu kingdom ii) Muslim-rule iii) British era iv) current era. Thus the judicial system of Pakistan has evolved through process of reform and development

First Phase: Nation Building and Judiciary (1947-1962)

Pakistan after independence exercised the “Government of India Act 1935” as its provisional constitution. As a result the rule and laws of colonial power sustained with little modifications but structure of judiciary remained the same. The high courts in four provinces of western wing continued to function but a new high court was established in Dacca (Shah, 2016).

Pakistan, since independence faced problems of nation building because of bureaucratic influence on institutional structure. The political institution was weak because the interim constitution strengthened bureaucracy and authoritarian governance through the doctrine of necessity. Thus, this was powerful tool in the

hand of military and bureaucracy to maintain their professional position in all matters. The judiciary was constitutionally independent and free to give autonomous decisions in the interest of people but it was not practically exercised.

The elite structure of the system is the reason for the failure of national building, which pushed civilian leadership into backdrop. Fragile political establishment found it tough to sustain itself without the collaboration of military. Consequently, military the elite structure of the system has become the cause of the failure of nation-building and pushing civilians into the back corridor. The military also affected the judicial system and used the judiciary for its own purposes. Military involvement in political affairs and judicial institutions has created conflict, which generated national disintegration.

After independence till a decade the state machinery was run with interim constitution. Provinces were denied revenue sources like custom duty, income and sales tax granted Under the Indian Act of 1935 (Hippler, 2016). To show the cultural uniformity, Urdu was introduced as a national language but a strong criticism rose from East Pakistan which affected the process of nation building in Pakistan. Therefore both 1956 and 1962 constitutions added Urdu and Bengali as state languages that resulted in the emergence of sub nationalism in Pakistani nationalism. (Islam, 2009). The judiciary instead of national unification legitimized the separate status of Bengalis nation.

The constitutional issues in the early decade of independence also promoted national disharmony. In 1954 when the first draft of constitution was almost ready the Governor General dissolved constitutional Assembly due to power sharing. The political instability brought the country into chaos and the process of constitutionalism further delayed. The other constitution related issue was the population or regional basis of representation in federal legislature, and finally One Unit problem provoked national disintegration (Mahmmud,1992) Thus, the territorial identity of other provinces was diminished and minority status was given to majority province.

Therefore, process of nation building has constantly futile in Pakistan. The military always enlarged its part in policy making and management. After independence, Pakistan had seen the institutional clash which badly upset the democratic process. The martial law 1958 derailed the democratic institutions in Pakistan and establish direct military rule in the country.

Second Phase: Nation Building and Judiciary (1962-1973)

The constitution of 1962 and referendum for Ayub Khan further damaged democratic process in Pakistan. The dictatorship of Ayub Khan and General Yahya tried to discredit political leadership and left them totally uncertain. Transformation of national assimilation was not addressed and institutional building process was deliberately denied. Military ruler General Ayub Khan

strengthen his rule, 1962 constitution was based on basic democracy which deprived peoples from their fundamental rights of universal franchise.

Ayub khan increased economic disparity instead of creating economically balance situation (Waterstone, 1963). The unequal distribution of economic resources and disparity of representation brought the East Pakistan to demand for their separate state. After very long period, Pakistan stimulated to democracy and legitimacy. In 1971, Pakistan confronted with new challenges like state and institutions building process.

Phase Three: Nation building and Judiciary (1973 onward)

After the disintegration of Pakistan into two states the Ayub khan basic democracy also left strong feelings of regionalism in the remaining four units of Pakistan. The people were not much concerned about state building they were asking for regional nationalism of Baloch, Sindhi, Punjabi and Pakhtoon (Islam, 2009). Thus the 1973 constitution was introduced as a federal parliamentary democracy by Zulfikar Ali Bhutto. Bhutto was elected democratically but persecuted by different types of blunders such as dissolved Baluchistan assembly and created disruption in NWFP (now KPK) assembly (Khan, 2009). His major blunder was that he reduced the authority of judges which evoked bad and non-democratic conduct of the government which destroyed nation building process. The judiciary as a guardian of constitution amended it many time to facilitate powerful executive. A way was given to the military to enjoy executive's powers again and the phenomenon of uniformity and national unity was violated. After Bhutto, martial law was enforced by Zia-ul-Haq who reinforced his ambitious political plans. Democratic government of Bhutto was disrupted and again concentration of authority was shifted under the control of military establishment. The political activities were banned and the people were not given the freedom of expression. In the light of necessity, General Zia was constitutionally accredited. The independence of judiciary was restricted and a PCO was introduced. The service judges for taking fresh oath under Provisional Constitutional Order (Dressel, 2012). Through this method the powerful military executive strengthen their regime.

Political landscape of Pakistan witnessed change with the decision of transferring the power to the civilian representatives with little authority. Thus democratic governments were extremely ill-treated. Among successive democratic representatives, Ghulam Ishaq, was the only one to won the confidence of military establishment. No doubt, the political leadership in both governments failed to demonstrate their competence and ignored democratic values. They lacked political education and training which badly spoiled their image in front of public. Consequently, military was a powerful stake holder which controlled the Nawaz Sharif government.

Military is the most powerful institute in Pakistan but remained unsuccessful in understanding the importance of a balanced relationship among states institutions. Each organizational construction of state has to play an important and effective role for amplification of state's institutional structure. However, in Pakistan's case neither the military nor any other institution could work for strengthening the relationship of state institution.

Benazir Bhutto's government could not retain good relations with judiciary to work for national integration. Benazir was subjugated by the impression that her father was hanged because of the unlawful judicial decision. Consequently, she wanted to contain the military interference in the judicial affairs. The institutional clash worsens Nawaz Sharif relation with the judiciary.

A huge clash between judiciary and executive was started during the second tenure of Nawaz Sharif. A clash was seen in 1997 when Prime Minister Nawaz Sharif's government encircled Supreme Court to notify SC to not hear some specific cases against the executives (Kalhan, 2013). During his period, the democratically elected PM could not cooperate with judiciary. The conflict between the two institutions once again paved way for the military to takeover in Pakistan. History repeated itself and in 1999, martial law was reinforced in Pakistan by General Musharraf and dismissed the advocates of democracy. He announced Provisional Constitutional Order (PCO), according to which judges who were in favor of military actions took the oath under the PCO. As in the former martial laws, a strong collaboration between judiciary and executive was seen in this era till 2005. During martial law, all the democratic leaders were exiled from the Pakistan. A new chapter was started in the history of Pakistan when General Musharraf appointed Chaudhary Iftikhar as a Chief Justice of Pakistan (CJP) in 2005. After his appointment, the subordinate judiciary came into front position and consequently military government faced a number of challenges. The judiciary for the first time in the history stood for national reconciliation and took steps for the restoration of democracy (Waseem, 2012).

After securing power as a CJP, Chaudhary Iftikhar did not cooperate with military and a lot of cases against the executive of that time were heard. The most popular case was steel mills case which cleared the fault lines between states institutions (Kausor, 2012). It is consider that, because of steel mills case, the judiciary denied the relegation of military and came into front as an independent institution of Pakistan. The steel mills case was a step toward nation building and to avoid corruption and speedy justice to the common man of the society.

Analysis

For Pakistan, like any other state of the world, it is important to have an independently functional judiciary. This is the single most essential element that could guarantee the protection of civic rights, supremacy of the constitution,

equality before law, and dispassionate justice to all. These factors collectively are the building blocks for national integration and cohesion. Similarly, a functional and independent institution of judiciary ensures that the justice is done whenever anybody's rights are violated, hence keeping the criminal and frictional activities under check. However an influenced judiciary is not endemic to Pakistan only, rather it is quite common in other parts of the world too. Nonetheless the ineffective judicial system of Pakistan and the consequent weakening of society's fabric have great implication for the nation building process in Pakistan.

The preceding debate and factual evidences prove that in Pakistan, unfortunately, the Judiciary has never been able to exercise its independence in a true sense. Recurrent disruptions in the political process by military, unbridled corruption, the never ending power sharing and power struggle between civil and military executives for their own vested interests, are but a few factors that have been instrumental in the weakening of Independent judiciary.

In Pakistan, the restrained judiciary continues to fall short at performing freely without external and internal influence, hence bringing worst consequences for both state and the nation. This claim can be easily validated by citing different relevant examples rampantly existing in the political and constitutional history of Pakistan. One most pertinent example could be when Gen. Musharraf in 1999 introduced Provisional Court Order (PCO) (Shah, 2106) and dissolved the National Assembly but the Supreme Court despite being supposedly the strongest institution could not take any measures against this illegal action. The lack of power, autonomy, independence and will later became more evident under the guise of "doctrine of necessity" (Qazi, 2106). Gen. Musharraf ironically was mandated to become the chief executive (Zulfikar, 1999) as well as chief legislature (Goldenberg, 2015) at the same time, completely undermining the judicial integrity and constitutional requirements. The helplessness of judiciary was further highlighted when 61 judges were removed by Gen. Musharraf and declared emergency in the country (Jan, 2015).

However this particular action was met with tough resistance by the judges as well as by the political parties and media, who actively took out nationwide rallies and protested against the removal of judges and Chief Justice (Wilkinson, 2007). It was one remarkable moment when the civil society also joined in to uphold the independence and integrity of judiciary. The level of awareness among common people and especially youth was incredible. The realization that the supremacy of the constitution and an independent judiciary, free from the claws of suppression, is the only way to achieve social independence, brought the whole nation together. Even though this shows that the judiciary of Pakistan underwent some drastic changes and has evolved into a relatively stronger institution, but some disrupting elements still continue to pose impediments in the free and independent working of judiciary.

The rule of law, which is ensured by the strong constitutional empowerment and should ideally make up the very edifice of democracy and nation building, has time and again been compromised, as can be seen from the frequent abrogation in the constitutional history of Pakistan. The 1956 constitution saw an early demise and was abrogated by President Iskander Mirza in 1958; (Ahmed & Sharif, 1999) the 1962 constitution was once again rendered futile by President Ayub Khan who abrogated it in 1969 (Pardesi, 2004). The 1973 constitution was flogged by General Zia-ul-Haq who followed suit in 1979 (Dossani, 2005) even though he termed it as the temporary suspension of the constitution; it was an act of abrogation nonetheless. Gen. Musharraf has lately been under scrutiny for abrogating the constitution twice; first in 1999 by taking over the then elected government and later in 2007 by imposing emergency in the country and directly implicating the Chief Justice Iftikhar Chaudhary and sending him in illegal custody.

Gen. Musharraf's actions led to a massive strike by the lawyers across the state, which led to the restoration of Chief Justice Iftikhar Chaudhary. However, while on one hand the Lawyer's movement, re-installation of Chief Justice and the charges and legal trial against President Musharraf, reflect on the revival of the judiciary ad rule of law but then at the same time, the ease with which he was able to leave the country, with charges still leveled against him, shows that Pakistan has a long way to go before it could really rejoice the independent working of its institutions, especially judiciary.

The supremacy of the constitution is an essential part of the rule of law, which clearly had been played havoc with, not just by military regimes but by all the successive governments since 1973, through corruption and nepotism, that too with impunity. This in turn has severely affected the process of nation building in the country, where the elites of the state intentionally allowed for the provisions to keep a large number of people illiterate and without basic life necessities. The life, property, honor and dignity of the citizens could never feature on the priority list of the state authorities. This rendered the very idea of nation building a least preferred concern for the state leaders and an alien concept for the common citizens. How could one expect people to adhere to the notion of social, political and economic integration when these have never been known to them? These evils have made the fabric of Pakistan's society is so threadbare and the nation has been constantly made to push into worst kind of suppression. More than nation building, the concept of "nation breaking" is more relevant in case of Pakistan, where the social and economic disparities have been further played out to win one's own gains. The bigger "good" of the nation has conveniently been replaced by individual's personal prosperity, of which Panama Leaks is a recent example, this time with evidences.

The nation building also proves to be a challenging task because of the inherent complications that are part of this process. Its highly dependent nature, on the social, political, economic and diplomatic factors makes it an ever changing and

evolving phenomenon. This very fluid character of nation building makes it difficult to come up with a single framework which could be used as a guide to construct a standard formula of nation building for all the settings and times. Hence nation building or national integration is a never ending process which requires a constant engagement, timely management, and regular updating as per the emerging conditions and scenario.

Social integration in Pakistan is missing to a great extent where there is hardly any cohesion of language, culture, rule of law, and where ethnic pluralism is essentially an archaic expression. Similarly the economic integration has been taken over by a calculated and premeditated designs aimed at intended polarization and stratification of the society. The interdependence between “supremacy of constitution”, “equality before law” and “civil liberties”, is what makes the crux of an ideal democracy, independent judiciary and nation building. However Pakistan does not present any hopeful picture in these fields. The brief democratic interludes between the long spells of military coups, made it easier for the army to gain stronghold over the political system of the state. At the same time the incapability of political leadership, and lack of satisfactory performance by the state machinery, led to the loss of popular support and trust in the civil leadership thus creating a natural space for the military to cash in on the opportunity and make inroads into the political, diplomatic and legal sectors.

Factors Causing Hurdles in the Independence of Judiciary and Nation-Building in Pakistan

In order to understand the reason as to why the nation building and judiciary have been a failed institution it is important to look at the factors that are serving as impediments in the way of successful nation building and independence of judiciary. Some of these can be enumerated as:

Lack of Power Separation

This is particularly related to the smooth and un-influenced working of the state machinery which rests on the three main institutions; Executive, Legislature and Judiciary. These Branches of the state have to work independently and separately within their respective areas of responsibility. The idea is very simple i.e. to prevent the power from being used by any single branch and to keep any one institution or branch from exercising complete control over the other branches of the state (Sultana, 2012). This also allows for keeping strict checks and balances on the working and performance of these institutions.

However, unfortunately in case of Pakistan, the executive branch seems to be the most empowered entity. The power seems to rest in the hands of executive has many a times suppressed and curtailed the freedom and autonomy of other state

institutions and has directly compromised the very essence of democracy and rule of Law. The executives have become so strong and powerful that the whole state system has almost been obliterated. Also the option for checks and balances has come close to naught since executive is not accountable to anyone. The military executive goes as far as passing the bill, amending the constitution and later the implementing it as well, which should ideally have been the task of legislature and judiciary respectively.

In Pakistan one single entity i.e. military executive is enjoying the “absolute power” (Jones, 2016) and most often tends to abuse this power in whichever way it wants. Not only does the state machinery face setbacks in its smooth running but the concern for nation building doesn’t even figure anywhere. When the institutions that are responsible for safeguarding individual rights are themselves being compromised, how could they extend their services towards nation building?

No Respect for the Constitution

Constitution as a written document clearly demarcates the jurisdiction of the branches of the government. Not only does it identify the parameters of power and authority for legislature, executive and judiciary, it also ensures that each institution and branch abides by the principles laid down in the document. The aim is to avoid any confrontation and to uphold the supremacy of the constitution itself.

The Constitution of the state should be the supreme law. It should be safeguarded and upheld at all costs. At the same time the constitution should also ensure the basic human rights, rule of law and civil liberties. Yet again both these aspects are missing in case of Pakistan. Not only has the constitution been frequently and recurrently abrogated, annulled and amended as per the wishes of civil and military leadership, the constitutional loop holes and weaknesses with regards to provincial and federal rights and representation, has severely affected the nation-building process (Niaz, 2008). Hence a fragile or compromised constitution, constantly being tampered at will is what Pakistan has which will never be an effective tool for the nation building.

Corruption and Nepotism

The political corruption and nepotism are the biggest menaces of Pakistan today. These ills are found in the judicial system as pervasively as in any other institution of the state. The nation has been led to the brink of collapse where these factors are directly responsible for the widespread internal non-traditional security threats such as unemployment, illiteracy and poverty. A large number of deprived and agitated population resorts to all sorts of illegal means for its sustenance and subsistence. Hence the factionalism on the basis of individual’s influential background strengthens societal stratification. The lesser privileged may be

tempted to hold on to any source which could guarantee their survival. This fact creates an ideal setting and provides a huge potential for the society to turn into a breeding ground for criminals and law violators.

This is exactly what has happened to the Pakistani society as well. It has been victimized by the perils of corruption and political nepotism where the state authorities and leaders have either been buying the votes or most often been rigging the electoral processes. Bribe serves as a great incentive as any amount of extra money is seen as favorable. An upright leadership, dedicated for the cause of nation building and social, political and economic has never been experienced by the nation. For this, individuals themselves have to be blamed too, to some extent, as they are usually unable to break away from the long held biases towards a particular political party (Shah, 2013).

Corruption and nepotism more often ignores the merit based criteria only to result in the wastage of deserving talents. Many a dejected individuals have either resorted to the life of crime or left the country causing massive waves of brain drain. In Pakistan, recruitments on the basis of nepotism and favoritism are allowed to go unchecked and remain unaccountable because the very law making body is made helpless to perform its duties with freedom and autonomy, hence rendering it non-existent.

Dishonest and Corrupt Judges

The socio-economic and political matrix of Pakistan offers a glimpse into a society where the value system has almost lost its relevance. Corruption is rampant and widespread owing to various factors such as; lack of accountability, low salaries, monopoly of power, lack of transparency, nepotism and red tapism etc. It is believed that people make rational choices to advance their interests and to gain the maximum benefits for themselves.

Non-existent Democracy

Continuous interventions of non civilian forces into political domain, the constant disruptions in the political processes, short lived political terms, weak party system, and exploitation of election process, collectively could not allow for the democracy to flourish and prosper in Pakistan in its true sense (Bukhari, 2016). Democracy is believed to bring solution to a lot of state problems. People's voices are listened to, their grievances are taken into account, and they are allowed to express their opinions without the fear of punishment or a lash back. Similarly, democracy ensures that all the state institutions are equally respected and should never be undermined.

Socio-Economic Inequality

The socio-economic inequalities also tend to undermine the prospects of nation building. Mostly, these socio-economic inequalities flow from the malpractices in the judicial system. When the ideals of common citizenship and belongingness are lacking in a society, it is hard to expect national solidarity and unity. When people are divided on the lines of personal preferences, gains and favoritism, the social and economic structure of the state tend to be perceived differently by different people, so is their level of adherence to the constitutional and judicial laws.

Pakistan in its current situation doesn't offer equal avenues of development and economic opportunities to all. The people are unable to enjoy the socio-economic rights collectively at the same level. The society is highly polarized and with a large gap between privileged and marginalized individuals. Hence the social inclusion in judicial process is an important factor that should not be overlooked.

These factors are greatly being ignored in Pakistan and citizens are easily being denied their basic rights of education, health, food, employment etc. Resultantly the variation in experiencing the socio-economic rights is quite glaringly visible in our society. Those that lie in the marginalized group don't feel motivated to participate and support state actions, as for them these actions are not serving and looking out for their basic needs. They tend to lose respect, trust and hope in the state machinery. The people stay divided as they keep suspecting the motives and intentions of state institutions, emerging out of their sense of deprivation and hopelessness.

Conclusion and Recommendations

A protracted and participatory process, ensured by a higher judiciary, should be installed in order to educate and bring awareness among the people about their basic rights. This awareness will lead to strong adherence to the law and law making bodies, preventing any instance of abuse of power or authority. A flourishing civil society is the one which recognizes that it is an equal stakeholder in the political process and can hold the authorities accountable for their misdeeds.

The civil society should make sure that the power of judiciary is not undermined and the constitution remains supreme. Nation building can become a reality only when the writ of the state is reigned absolute. Following measures can be taken to enhance the role of Judiciary in nation-building:

1. Pakistan is in a dire need of a functional democracy where the courts of law should be able to take decisions without discriminating against anyone on the basis of power, influence, status or personal liking. Unfortunately in Pakistan, the ease of access to justice is non-existent. Poor and under privileged individuals have to wait for years before their appeals are heard in the courts,

and most of the time are not even summoned in their lifetime, even when they are innocent and wrongly implicated in the case. This sorry state of affairs goes against the probability of nation building where individuals are disgruntled and struggling with their problems. Therefore the rule of democracy is the only way out that can warranty unbiased and impartial judiciary.

2. Pakistan in its current situation doesn't offer equal avenues of development and economic opportunities to all. The people are unable to enjoy the socio-economic rights collectively at the same level. The society is highly polarized and with a large gap between privileged and marginalized individuals. Hence the social inclusion in judicial process is an important factor that should not be overlooked.
3. Pakistan is in the tight stranglehold of socio-economic inequalities which need immediate attention if national integration is to be achieved. Because people who don't even have basic life commodities to survive on, can hardly be expected to promote the idea of nation building or to play their positive role for this cause.
4. Social integration in Pakistan is missing to a great extent where there is hardly any cohesion of language, culture, rule of law, and where ethnic pluralism is essentially an archaic expression. Similarly the economic integration has been taken over by a calculated and premeditated designs aimed at intended polarization and stratification of the society. Hence particularly in case of Pakistan, a country which is still struggling with the integration and cohesion at various levels, such as; economic, social, political etc., which are few of the many aspects of nation building, it remains a daunting task.
5. Judiciary should take it on itself to implement the laws that should actively look at the regulation of resources and equal distribution of power and opportunities among the people. Only certain legal provisions looking out for the basic rights of individuals and uplifting their socio-economic conditions, can rekindle people's loyalty and support for the state and society and ultimately for the overall national integration and nation building.
6. Similarly the process of appointment, hiring, promotion and removal of judges should be done without any personal inclinations and strictly without the nepotistic biases. The example of appointment of Chief justice Iftikhar

Chaudhry is again quite relevant, where he was appointed by the same person who later on removed him. The short lived judicial and executive collaboration couldn't stand the test of times and power sharing soon turned into power struggle, plunging the whole nation in chaos and frenzy. Even though it did lead to almost all the nation come together and stand for one cause but the larger prospects of nation building still remained bleak to this day.

7. Last but not the least, the character and integrity of the judges is important to win and retain the trust and respect of nation in the institution of judiciary. It is only the honest and rational judiciary that can lead to functional democratic setup, safeguarding the rights of all individuals

References

- Ahmed, M. and Sharif, S.M. (1963) Islamic Aspects of the New Constitution of Pakistan. *Islamic Studies*. 2(2). 213-249.
- Bukhari, S.J. (2012, June 24). Why Democracy Could not Flourish in Pakistan?. *Express Tribune*., Retrieved from <http://tribune.com.pk/story/398541/why-is-democracy-not-delivering-for-pakistan/>
- Dobbins, James. (2003). *America's Role in Nation Building: From Germany to Iraq*. US: Rand Corporation.
- Dossani, R. (2005). *Prospects of Peace in South Asia*. UK: Stanford University Press.
- Dressel, B. (2012) *The Judicialization of Politics in South Asia*. Canada: Routledge Publishers.
- Dugger, C.W & Zulfikar, R. (1999, October 15). Pakistan Military Completes Seizure of All Authority. *The New York Times*. Retrieved from <http://www.nytimes.com/1999/10/15/world/pakistan-military-completes-seizure-of-all-authority.html?ref=pervezmusharraf>.
- Goldenberg, S. (1999, October 16). Musharraf Strives to Soften Coup Image. *The Guardian*. Retrieved from <https://www.theguardian.com/world/1999/oct/16/pakistan.suzannegoldenberg>
- Hippler, J. (2016, April 19). "Problems of Democracy and Nation Building in Pakistan". Retrieved from <http://www.jochenhippler.de/html>.
- Islam, N. (2009). Challenges of Nation-Building in Pakistan and Bangladesh: Quest for a Crisis Management. *Journal of Political Science*. 27(6), 52-71.
- Jan, M. (2014, April 13). Ghost of Musharraf. *The Nation*. Retrieved from <http://nation.com.pk/columns/13-Apr-2014/the-ghost-of-musharraf>
- Jones, O.B. (2015, September 28). Does The Military Still Control Pakistan?. *BBC NEWS*. Retrieved from <http://www.bbc.com/news/world-asia-34333470>

- Kalhan, A. (2013). Gray Zone, Constitutionalism and the Dilemma of Judicial Independence in Pakistan. *Vanderbilt Journal of Transnational law*, 46(1), 44-60.
- Kausor, T. (2012). *Pakistan's Stability Paradox: Domestic, regional and International Dimension*. London: Routledge.
- Khan, H. (2009). *Constitutional and Political History of Pakistan*. Karachi: Oxford University Press.
- Mahmood, M.D. (1992). *The Judiciary and Politics in Pakistan*. Lahore: Idara Mutalia-e-Tareekh.
- Niaz, I. (2010). *The Culture of Power and Governance of Pakistan 1947-2008*. Karachi: Oxford University Press.
- Pardesi, Y.Y & Panhwar, K.N. (2004) Constitutional Crisis in Pakistan from 1969-1971: Critical Analysis. *The Dialogue*. 7(1). 69-80.
- Qazi, S. (2015, March 27). Necessity as the Mother of Laws. *Herald*. Retrieved from <http://herald.dawn.com/news/1152911>
- Sana, K. (2016, May 22). The Role of the Judiciary in Nation Building: Lessons from Rebuilding Native Nations in the United State of America. Retrieved from www.academia.edu/9755931.
- Shah, A. (2013). Constraining Consolidation: Military Politics and Democracy in Pakistan (2007–2013). *Democratization*. 21(6). 3-25.
- Shah, S.A. (2008, January 07). PCO and its Victim Judges. *DAWN*. Retrieved from <http://www.dawn.com/news/841674/pco-and-its-victim-judges>
- Sinclair, J. (2004). *Advanced Learner's English Dictionary*. London: Harper Collins.
- Stephenson, Carolyn. (2005). *Nation Building beyond Intractability*. Colorado: Conflict Information Consortium. Retrieved from <http://www.beyondintractability.org/essay/nation-building>.

- Sultana, T. (2012). Montesquieu's Doctrine of Separation of Powers: A Case Study of Pakistan. *Journal of European Studies*. 28(2). 60-67.
- Waseem, M. (2012). Judging Democracy in Pakistan: Conflict between the Executive and Judiciary. *Contemporary South Asia*. 20. (1), 51-66.
- Waterstone, A. (1963). Planning in Pakistan: Organization and Implementation. Baltimore: The John Hopkins Press.
- Wilkinson, I. (2007, March 17) Crisis for Musharraf over Justice Chief's Sacking. *The Telegraph*., Retrieved from <http://www.telegraph.co.uk/news/worldnews/1545843/Crisis-for-Musharraf-over-justice-chiefs-sacking.html>