

The Impact of Judicial activism on The Economic Matters of Pakistan

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Abstract

A well-established judiciary ensures a conducive environment for economic growth; relations between legal fraternity and investment have been interlinked, if there is no stable judiciary political miser ability, loopholes in security matters, law and order scenario, and energy situation shall be in a worse position. On the contrary, an efficient judiciary shall safeguard and protect the confidentiality of the business class in the country. For the smooth functioning of the economic sector property rights, contracts, and non-discriminatory behaviour on the part of the government ensures economic growth, investors always fear fake accountability and threatening situation in the country.

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Introduction

Judiciary needs proper procedures to modernize itself to deal with all kind of cases, access to justice must be easy, redundant laws must be replaced, use modern technology like India have introduced, alternative dispute mechanism, and implementation of the judicial policy of 2009 are some of the measures which will this organ to meet the challenges of the twenty-first century. Investors feel frightened from the litigation cases, and the country's profile in this regard is threatening; if they face judicial constraints in their business their confidence has been shaken and they hesitate to invest in the economic sector. Sue Moto has been another weapon which has been utilized by the judiciary to blackmail the

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investors, stay orders, sue and other time-consuming methods are being used in developing countries.

Oil and Gas Regulatory Authority fiasco and Judiciary

The Supreme court of Pakistan declared the appointment of Tauqeer Saqib, chairman of OGRA illegal on December 25, 2012, the court objected to his qualification for the said post. NAB authorities have earlier confirmed that Raja Perez Ashraf, the then Federal Minister for Petroleum had appointed him as chairman of the Authority.

A report had been submitted by National Accountability Bureau that oil regulations had caused a loss of Rs. 83 billion to the national exchequer due to wrong policies of the authority; it adds that high officials i.e. Mansoor Ali Muzafar, Mir Kamal Bijarani and Jawad Jamil were involved in the high handedness which caused huge loss to the exchequer. They were also involved in misusing the offices for allotting various licenses of SNGL and SSGC to the people illegally, the policies made PSO and other regulatory companies unable to continue with the operating procedures. The NAB stated that " OGRA issued licenses for opening 306 new CNG stations in 2009-10 and 170 in 2010-11 instead of a ban imposed by the government in 2008 because of severe gas shortages." It opined that "OGRA increased the benchmark of unaccounted for gas [UFG] from 4.5% to 7% against the global practices without explaining the basis and rationale for it which resulted in irrational and unjustified benefits to gas companies." It increased the prices of Gas from Rs. 15-36, in which new investors were inducted into the industry for ulterior motives. It further submitted that a loss of 87 million had been accrued due to the illegal stay, the prices for consumers increased, from \$ 2.80- 3.9, and the authority hired a number of unqualified legal officers to vacate the stay of the court. It was reported that 47 new CNG stations have been rearranged illegally, there have been some instances in which the relatives of the ministers get kickbacks for such NOCs, and it was asserted that Mansoor Ali Khan received vehicles from the industry causing losses to the authority for two years. The Daily Dawn in his article analyzed that a loss of Rs. 11 billion has been accrued due to the outmoded pricing and a further Rs.34 billion due to the wrong policies of the government to the national Exchequer (The Dawn, 2009).

Tauqeer Sadiq and his family slipped to foreign countries, to escape the investigation but were successfully brought into the country by NAB authorities to probe the corruption of Rs. 82 billion; the government adds that:

"[Very few people know ... an independent regulator for oil and gas pricing and management was established in Pakistan through an ordinance of 2002 ... That tug of war between OGRA and the ministry was in full swing, when in the fall of 2008 Tauqir Sadiq stepped into the shoes of Munir Ahmad, using his political clout in the PPP.]"

It was reported that he had a secret bank account in the United Arab Emirates; the government requested the UAE government to provide information in this regard. It appealed that his account had all the money, kickbacks got in the commissions as the chairman OGRA shall be recovered. The government further adds that "An amount of Rs: 25 million has already been paid back to the accused Tauqir Sadiq and the remaining amount is still with him; he is willing to return the amount to NAB in instalments." It was also informed that he had a Benami account in the name of Ghafoor, government took action and confiscated his properties of him in the country worth Rs. 15 million.

Raja Pervez Ashraf appeared before the court to explain his position; he stated that he had approved only 69 CNG stations till he became prime minister of Pakistan, adding that “.....He had given the verbal orders.” To open the said stations, there is no written proof in this regard. A new reference has been initiated against two prime ministers for causing an Rs. 82 billion loss to the national exchequer, a nine-member list has been issued on ECL; a commission has been constituted to probe the matter of corruption, and the bench shall be presided by Jawad s. Khwaja but however it was ironically reported that “no one has been proven guilty in the matter”.

KPT land Scam

HR case no 22978-S/2014 was registered in the Supreme Court of Pakistan on the allegation of the illegal sale of 350 acres of land in Clifton beach Karachi; an application was submitted by Syed Adil Gillani an advisor to Transparency International Pakistan. In this context Sindh branch of the National Accountability Bureau was called on to investigate the matter on dated 21-08-2014, the details of the allegations were as under.

It was stated that Chief Minister Sindh had constituted a Board of revenue for this purpose while originally the land belong to the Federal government; it allotted various plots to SZABIST and others, according to article 172 of the constitution all minerals, lands within the continental shelf belong to the federal government, section 3 of the KPT states as:

“Government may by notification in the official gazette (a) define the limits of the port for the purpose of this act and (b) from time to time alter such limits...maintenance and good government of port, whether within or without a high-water mark, and subject to any rights of private property therein, any portion of the shore within fifty yards of high-water mark” (Section 3, of KPT).

The NA Mangrove in IB after investigating the scam declared that 75 acres of land in the Sea water and 989 belongs to KPT, it decide the case as stated " After evaluation of the whole evidence brought on the record by either party, it has been established that 75 acres of KPT land were not lawfully transferred to the Government of Sindh by KPT as such the chief minister or member L.U were not competent to transfer, sale, alienate or in cumber the said land of the KPT in any manner what so ever in any one unless the ownership devolved in them lawfully as such the transfer of the whole land or any part of it being the property of KPT are void, ab –initio. Since the chief minister Government of Sindh transferred /exchanged the 75 acres of KPT land or its part to the private accused as such it has emerged that the accused Ghulam Abbas Soomro and Ramesh M.Udeshi seems to have not caused any loss to the Government and since the Government of Sindh and these accused posses no responsibility could be fixed on the meaning accused also”.

While investigating the scam it was found that a plot of 8 acres had been awarded to the private university and in another case, a plot of 4 acres was honoured to a TV channel on through away prices; the government planned to construct luxury apartments for politicians in 45 acres of land, besides all these events KMC violated the orders of Supreme Court dated 28th November 2012. The court after investigating the whole process concluded that the KPT land belongs to the federal government and the Sindh government is neither entitled nor has the authority to allot or sell the said property as a complaint has been lodged by Transparency International Pakistan.

Margalla enclave Scheme

M/S Bahria town Islamabad advertised a society scheme in “The Daily Jang” dated 19th September 2011 with the statement that the selling price is less than the price structure of Capital Development Authority; while responding to the news CDA published a notice in “The Dawn” dated 21st September 2011 which states that:

“Margalla Retreat is surrounded by residential sectors of CDA and all the land around Margalla Retreat is acquired and owned by Capital Development Authority; therefore neither any land is available nor owned by any private housing scheme nor has CDA issued NOC to any new private housing scheme in or around sector E-11...”(Daily Dawn, 2011).

The action taken by Bahria Town was a clear violation of section 10 of the Competition Commission of Pakistan ordinance 2009 which declares such events as "Deceptive Market Practice" but ironically it couldn't take action against the firm. Bahria Town has been registered with SECP and bound to comply with its terms and conditions but in this case, it violated its rules under section 17(d) of the said ordinance; it has also violated the Building rules of the government of Sind; in the same manner, it violated Procurement of Land from DHA Islamabad against public procurement rules 2004 which have been pointed out by the advisor of Transparency International Pakistan. In this case, GHQ has negated the stance of DHA vide letter no MOD D -18 section U.O No. 2/2/D-18/2009 dated 31st January 2011 to comply with the rules established under procurement rules 2004. These pieces of evidence were enough to declare the illegal housing societies void but no strict action was taken in this regard; in light of the above rules chief justice of Pakistan was asked to do justice in this issue of public importance.

The constitutional petition No 1559 of 2009 was launched in Transparency International Pakistan VS Sindh Building controls Authority & others (2009); the court ordered on 06-05-2011 as stated "By the consent, this petition is allowed in total but with a caution that any violation of this order, meaning thereby that any non-compliance of the prayer/relief granted and converted into direction by this honourable court is violated, and /or not enforced in letter and spirit, the officers responsible for such default/violation/defiance shall expose themselves to the contempt of court proceedings. However, Mr Munawar Malik, Advocate at this stage submits that though DHA shall also comply with this order in letter and spirit, however, it may be clarified that the question as to whether or not the Karachi Building & planning Regulations 2002 are applicable, is yet to be decided by this honourable court. Since we have not delved into the question of applicability of regulations, such clarification is not required and the DHA shall comply with the order without prejudice their contention, the regulations are not applicable to them".

Apart from the above statements, Bahria town was working without NOC and it had the following features as stated “The Bahria town icon tower is a multi-use commercial building project. It will be constructed on a 1.45 hectares (3.58 acres) area plot located in Clifton, Karachi get the proposed site is through Shahrai e Iraq, Clifton road, 26th street Khayaban e Saadi, Khyaban e Ghalib and Khayaban e Sahil. The structure has been designed as a skyscraper comprising 7 basement parking floors, split upper and lower ground floors and 59 office tower floors. Although it's a skyscraper the planned structure is confined within the KBCA (Karachi Building Control Authority) Bye-laws with a floor area of 1:5.5."

The floor certificate was not posted on the website of the Bahria town as shown vide regulation 3.211, to KBCA (SBCA) since 2008; in this regard, Transparency International Pakistan has issued a letter to explain the position on 27th June 2011, this is a clear violation of the court's orders. Condition no 7 is also a violation of the court's order, it states that "The VENDEE if so wishes can withdraw from allotment of that flat/shop/offices/house/plot on surrendering the original letter of allotment/allocation to the vendor and in that event, the VENDOR will refund to the VENDEE all amount deposited till date time after deduction of 4% of the paid amount as establishment/service charges within 60 days. However, in case of further delay in refunding by VENDOR a surcharge at prevailing bank rate shall be paid to the VENDEE on the amount to be refunded".

The petition submitted by Transparency International Pakistan was accepted in total with the remarks that no party shall violate the orders of the court otherwise will have to face contempt of court. The court further adds DHA shall also comply with the orders but yet the rules set up by Karachi Building and Planning Regulations 2002 have not been finalized whether it is applicable to the case or not.

Liquid Natural Gas and the role of the Judiciary

While taking Sue Moto in respect of corruption being done in the LNG project worth \$25 billion; the court ordered the ministry to present a full record of the project till April 14th 2010, the bench constituted to deal with the case included Chief justice Iftikhar Mohammad Chaudhry, Justice Ijaz and Justice Rabbani. According to the information taken from a reliable source, the government lost billions of dollars in the project; but the government was insisting that they have profited from the ministry; the Government already submitted a fake report to the Assembly committee on petroleum ministry. The government awarded a contract of billion dollars to a French firm while ignoring the national companies; when the court asked to clarify the matter it was told that Fouji firm couldn't submit a proposal to the Economic Coordination Committee formed for this purpose but the firm objected the reply and argue that complete details were not kept before the committee. Even the Qatar government was interested in the said project but it was not honoured which infuriated president Zardari who dismissed Mr Tareen on the next day; certain letters from abroad were shown to the court to confirm the irregularities in the project. Special secretary on petroleum affairs reported:

"[informing him that the petroleum minister had stopped him from giving any reason for ignoring the lowest bidder, FF / Vitol...Having considered what you shared with us and in view of our understanding of your requirements, we wish by this letter to provide you with an amended proposal...The head of the GDF Suez London threatened the government to be prepared for a sue in London because our company had been badly defamed worldwide in Pakistan; the government had to apologize to the company CEO Mr Hamilton" (Sabri, 2013).

The dilemma resulted in the scrapping of 500 million cubic feet of natural gas which created an energy crisis in the country. Imports couldn't be managed till 2013 as a result prices at the world level went high thus making the project impossible; on the other hand intervention of courts in this matter made it further worse. Due to all these events government, energy and industrial sector face shabby conditions at home as discussed in the media. "Thus with irregularities of the people concerned and the omissions and

prejudices of the judiciary, this wonderful deal, possibly the only transparent mega project in Pakistan at least in the last decade, died its poison-injected death, ruining the energy sector and ultimately Pakistan's economy at large”.

Conclusion

Dr Ishrat Hussain considers the judiciary as the main vehicle for economic development; it impacts the daily life of the citizens in all respects, and even the legislature and executive can do nothing but enforce the orders of the court. Dr Hassan Askari Rizvi argues that: "Democracy is based on liberal constitutionalism... An independent judiciary ensures that the Rule of Law is available to all citizens. The civil and political rights have to be protected not only from the excesses of state institutions and functionaries but also secured against powerful interest groups that resort to violence or a threat thereof against any particular community or region"(Rizvi, 2016).

In Pakistan access to justice for the poor people has become a difficult task because of the prolonged litigation as discussed by S. R. Khan (2007); India has also a peculiar situation in this organ as discussed in the "Judiciary and the Poor" opined that: "The judiciary of the country is not functioning as an instrument to provide justice to the vast majority of the people in the country. On the other hand, most of the judiciary appears to be working in the interests of wealthy corporate interests... [The judicial system] cannot be accessed without lawyers ... And the poor cannot afford lawyers..." (Khan, 2007).

The German cooperation Agency in its report of 2015 argues that: "98.2 per cent of respondents in a survey opined that the poor and lower classes do not have access to justice in the formal justice system; in the same survey, 42.8pc felt that women and 25.2pc that landless peasants and agricultural labourers' similarly lack access. One of the reasons for limited access to the formal justice system, as perceived by half the respondents, is the high legal fees charged by lawyers" (The German cooperation agency, 2015).

Recommendations

The World Bank survey states that many firms working inside Pakistan are having constraints by the justice system; its index is reported as 38% while the rest of South Asia was at 14%; it was endorsed by chief justice Saqib Nisar in 2015, he states that:

“A judiciary which ... is tardy ... and has no urge ... and ability to decide the cases/disputes before it expeditiously ... is a danger to the state and the society”. In the MFMY V. Federation he argued that “the courts must, thus, exercise all the authority conferred upon them to prevent any delays which are being caused at any level by any person whosoever" (Nisar, 2015).

In Pakistan main focus of the judiciary has been on the structural issues but it did nothing for bringing drastic reforms to ameliorate the shabby litigation concerns in the country; it was endorsed in the International seminar when Dr Ishrat Hussain presented his paper he adds that:

“Pakistan’s country risk profile which was already quite high... After all the approvals have been obtained there is the fear that the Supreme Court might take sue motto cognizance of the transaction... A large number of frivolous petitions are filed every year that have dire economic consequences. The penalty for filing these is insignificant but their cost to the economy is enormous” (Husain, 2014).

Muhammad Raheem Awan has opined that authorities in Pakistan should exercise their powers positively otherwise it shall remain a curse for the State, although Sue Motto's jurisdiction of the Supreme Court is constitutionally legalized action, the court's role in the optimistic development of State organs and various other institutions are vital, when the constitution has been violated regarding the jurisdiction of various organ, judiciary came forward to rescue. Supreme Court played a pivotal role to stop the privatization of Pakistan Steel Mill, although it shook the International investors. In the case of Rental Power Plant, Supreme Court ordered the recovery of the amount from the firms which was ultimately not recovered; the government faced hard consequences in the implantation of court decisions, and the Turkish company approached the International forum, which imposed the penalty of billion of rupees on the government of Pakistan. In the case of Reko Dik, billions of rupees has been saved due to the intervention of the judiciary in the project; however the process of implementation mechanism and arbitration in International forums has defamed the State at large, Supreme Court of Pakistan couldn't introduce a new mechanism in the economic spheres of the State to uplift economic development in Pakistan, except taking sue motto actions against National and International firms, the implementation process of various decision have been pure (Awan, 2014).

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