

## WORKING PAPER 28 - (Mis-)Judging the state? The crisis in Pakistan's judiciary and its ramifications

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### Abstract

This SADF working paper sheds light on the flaws within Pakistan's judicial system and its ramifications for the country's political and economic development. The paper considers judicial risk assessments for potential foreign investors looking to engage in Pakistan, especially in the context of the China-Pakistan Economic Corridor (CPEC). After elaborating on the institutional imbroglio in Pakistan's political system, it is argued that at no point in the country's history was a functional, effective separation of power in place that could enable the emergence of a fully independent judiciary. Due to corruption, manipulation, and partisan interests, the judiciary branch not only failed to avoid extra-constitutional regime changes - namely military coups - but also endorsed and abetted the consolidation of illegally gained power and ancient, reactionary feudal-tribal structures. Moreover, by allowing the enactment of discriminatory (blasphemy) laws, the superior court failed to protect democratic processes in general and political & human rights in particular. Compromised by political chicanery from the two other branches of governance, internally corrupted by influential socio-economic pressure groups and religious fanatics, the judiciary is more engaged with safeguarding its corporate interests than carrying out necessary reforms to improve the efficiencies of its courts. Judicial practices are thus perceived by experts as very far indeed from the notions of justice and fair trails. They definitely fail to mirror the 'highest standards of judicial independence' recently claimed by Pakistani authorities. Despite the judiciary's relative ability to preserve the rule of law, its

failures certainly fail to provide an enabling environment for foreign investments. Not only the general public but also members of its highest benches doubt the judiciary's credibility and accountability, which cannot be seen but as the clear sign of a deep crisis – a crisis that profoundly affects the country's overall development.

### Keywords

Pakistan, Judiciary, Democracy, Separation of Power, China-Pakistan Economic Corridor, U.S. Department of State, Foreign Direct Investments

### ***Introduction - the evolving institutional imbroglio in Pakistan's political system***

Pakistan has had a turbulent political history, oscillating between military dictatorships and elected political authoritarianism. Despite the fact that most of the population shares a common religion, ethno-linguistic differences and regional diversity have seriously impeded the development of a national identity, state unitary ideology and a stable political system. Pakistan has also always suffered tremendously due to widespread religious- and separatism-motivated violence, socio-economic inequalities, and feudal and tribal dependencies. These have fostered innumerable crises. Intolerance of diversity, the inability to accommodate diverging views and build consensus have always been core problems within Pakistan's political traditions and socio-cultural practices. However, a most outstanding challenge remains the consistent and unrestricted struggle between different political institutions. Since its formation in 1947, Pakistan had to balance executive power between the two offices of the Prime Minister (PM) and President. Subsequently, powerful individuals and pressure groups have been reducing both institutions to ciphers, undermining the resilience of the whole system. At the moment, the conflict between PM and President is mitigated by some level of constitutional engineering. However, this initial conflict between PM and President has set a precedent for continuous involvement by the armed forces in Pakistani politics – wherein the office of President was degraded and used as a military proxy. The political system also was overshadowed by two other conflicts: the clash between the judiciary and the executive branches, and the conflict between the

judiciary and the legislative branches. These institutional cleavages are not only deeply entrenched in the country's political culture; they also had severe impacts on the state's overall economic development. Because of its central role in the Pakistani imbroglio, the judicial system came into the focus of not only domestic but also international observers.

### ***Pakistan's judicial (court) system at the glance***

The Pakistani constitution establishes the basic structure of and jurisdiction within the Pakistani court system. The constitution provides for a three-tier hierarchical structure represented by three types of courts: the Constitutional (Superior) Courts, the Ordinary Courts and the Special Courts (Shah, 2008: 70). Superior Courts lay at the top of the structure and include the Supreme Court (SC), the Federal Sharia Court (FSC), and the High Courts. The SC, as the highest (apex) body in Pakistan's judicial system, is both the final court of appeal and the 'final arbiter of law and the Constitution' (Hussain, 2015: 9). It is headed by the Chief Justice of Pakistan and a certain number of judges, as laid down by the Constitution (Mitra, Wolf, Schoettli 2006: 299). Decisions by the SC are binding on all other courts (Hussain 2015: 9). The FSC was established in 1980 and replaced the former system in which Shariat benches were set up in Pakistan's four High Courts (Mitra, Wolf, Schoettli, 2006: 299). The FSC comprises eight Muslim Judges, including the Chief Justice appointed by the President. Four of the judges must be qualified as High Court Judges, while three belong to the ulema (scholars well versed in Islamic Law). The FSC has the original jurisdiction - on its own motion or through petition by a citizen or a government [Federal or Provincial] (Hussain, 2015: 13) - 'to examine and decide any question of law whether or not it is repugnant to the injunctions of Islam'. In other words, 'to scrutinise the laws and ensure that they accord with Islamic values'. If a certain provision of law is declared to be repugnant to the injunctions of Islam, the Government is required to take the necessary steps to amend the law and make it conform with the injunctions of Islam.<sup>1</sup> According to Faqir Hussain, ever since its establishment the FSC 'has been the subject of controversy in the country. Created as an Islamisation measure by the Military regime [of General Muhammad Zia-ul-Haq] and subsequently protected under the

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<sup>1</sup> The FSC also exercises appellate and revisional jurisdiction over criminal courts, deciding Hudood law/cases (Hussain 2015: 14), 'to satisfy itself to its legality'.

controversial 8th Amendment, its opponents question the very rationale and utility of this institution’ (Hussain 2015: 14).

Besides the SC and FSC, [there are high courts](#) in Islamabad (Islamabad Capital Territory) and in each province, each headed by a Chief Justice and other judges. Appeals arising from civil and criminal cases in a given state are heard by the state high court. The HCs [exercise original jurisdiction](#) in the enforcement of Fundamental Rights and appellate jurisdiction in judgments/orders of subordinate courts in both civil and criminal matters.

The HCs supervise and control all subordinated courts (Hussain, 2015: 12). They appoint their own staff and frame rules of procedure for both themselves and subordinated courts (Hussain, 2015: 12).

Cases of appointment for superior courts (SC, FSC, HCs) are to be processed through two forums, the Judicial Commission of Pakistan and the Parliamentary Committee (Hussain 2015: 7-8).<sup>2</sup>

At a lower level are the Subordinate Courts (lower courts). The ‘district and sessions courts both have jurisdiction in civil and criminal cases’<sup>3</sup>. These lower courts (or Ordinary Courts) are also known as the ‘[courts of first instance](#)’ and ‘have been originated and their jurisdictions defined by ordinary laws’ (Shah, 2008: 70). In addition to these two classes of lower/subordinated courts (civil and criminal courts), [there also exist](#) other courts and tribunals of both civil and criminal nature created under special laws and enactments (Khan). There are a [number of other courts and tribunals specialising](#) ‘in corruption cases, narcotics offences, financial crimes, consumer rights and industrial relations’, among others.’ The jurisdiction of [Subordinated Courts](#),’ their powers and functions are specified in the statutes

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<sup>2</sup> Here, Hussain stresses that there is ‘an extremely controversial provision in the Constitution’, namely ‘the transfer of a judge from one High Court to another, without his consent or after consultation with the Chief Justice of Pakistan or Chief Justices of the concerned High Courts’ (Hussain 2015: 12-13).

<sup>3</sup> ‘[Sessions courts also are trial courts for the most serious offences](#)’. However, their rulings can be challenged in the District High Courts [DHCs] (Mehmood 2020: 7). In these DHCs ‘an individual can file a case against the government in the form of a constitutional petition against the State. Cases with the State as respondent involve the federal government, provincial governments, local governments, government agencies or any organ of the State with executive authority (such as the office of the President or the Prime Minister)’ (Mehmood 2020: 7-8). Otherwise, there are ‘[magistrates courts in cities and towns throughout the country, and all but the most serious cases \(for example where the death penalty applies\) come before these courts in the first instance](#)’. Here, subordinate courts further include the District and Session Judge; the Additional District and Sessions Judge; the Senior Civil Judge; the Civil Judges class First, 2nd & 3rd; the Judicial Magistrate Class First, 2nd & 3rd; Family Courts and Revenue Courts (Shah, 2008: 70).

creating them’ and are ‘assailable before the superior judiciary (High Court and/or Supreme Court) through revision or appeal’.

### ***The judiciary in focus***

On July 21, the U.S. Department of State (USDOS) released the 2021 released its [2021 Investment Climate Statements](#). The report analyses investment climates in over 170 countries and economies that are current or potential markets for U.S. companies. Current assessments of Pakistan by US analysts, particularly those referring to the country’s judicial system, sparked much criticism among the country’s officials. Pakistan’s Foreign Office (FO) Spokesperson Zahid Hafeez Chaudhri took a vehement [position against](#) the USDOS statements: ‘We take strong exception to the gratuitous and unwarranted comments made in the report on Pakistan’s judicial system’. Chaudhri further declared that ‘as a vibrant democracy, Pakistan firmly believes in the separation of powers between the Executive, Legislative and Judicial branches of the state. There is no question of any coercion or pressure on Pakistan’s judiciary’.

The stumbling block and cause for the FO’s reaction were the following [statements](#) by the USDOS:

*‘Pakistan’s judiciary is influenced by the government and other stakeholders. The lower judiciary is influenced by the executive branch and seen as lacking competence and fairness. It currently faces a significant backlog of unresolved cases’.*

*‘While Pakistan’s legal code and economic policy do not discriminate against foreign investments, enforcement of contracts remains problematic due to a weak and inefficient judiciary. Theoretically, Pakistan’s judicial system operates independently of the executive branch. However, the reality is different, as the military wields significant influence over the judicial branch. As a result, there are doubts concerning the competence, fairness, and reliability of Pakistan’s judicial system.’*

In brief, the USDOS [questions](#) the Pakistani judiciary’s ability to independently perform its function in accordance with the Constitution’ and laws, a phenomenon which would have negative ramifications for foreign investors. In order to evaluate both the USDOS statements and the reaction by the Pakistan’s FO, one needs to see

both in larger economic and political frameworks - including the country's legal-constitutional sphere. In that endeavour, this article brings the following rationale:

*1) The separation of powers in Pakistan is a constitutional paper tiger!*

Contrary to what is stated in the FO spokesman's "clarification", at no point in Pakistan's history was a functional, effective separation of power in place – not by a very far stretch. Ever since its very formation the country was marked by political-constitutional cleavages between the institutions of Prime Minister and President. Also extremely consequential were the severe confrontations between the different branches of governance – foremost between the judicative, the executive, legislative and between the executive and the legislative. These persistent and crippling contestations between branches resulted both in very rudimentary check and balances and in a very crippled judiciary independence. The many military coups, rules of Martial Law, and army-backed civilian governments (like [the current one of Prime Minister \(PM\) Imran Khan](#)) say much about the quality of democracy in Pakistan (Wolf, 2013). Today, armed forces possess so much leverage (both formal and informal) within the institutional-administrative system, and so much influence in political decision-making processes, that they no longer need a direct military intervention to run all significant policy fields. This state of affairs became even more entrenched in the context of the China-Pakistan Economic Corridor (CPEC), the country's major development initiative (Wolf 2019). In this context, the so-called Apex Committees (ACs) are gaining a special significance. ACs are a relatively recent, civil-military hybrid system of political-administrative bodies - at both the federal and provincial levels - aimed to enhance interactions between the armed forces and civilians (Wolf, 2019: 295-296). It is crucial to stress that the ACs were set-up to coordinate security aspects according to both the National Action Plan (NAP) and the CPEC. In recent years however ACs are far exceeding their initial tasks and gaining increasing power. For, instead of functioning as subordinate, complementary entities to (parallelly existing) legislative bodies, ACs are replacing legislative functions. ACs thus provide the military with an increased formal role in the country's political-administrative system. They also transfer even more decision-making power away from lawmakers, thus further weakening their influence.<sup>4</sup> This processes peaked

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<sup>4</sup> The engagement of both active or retired military personnel within the bureaucratic-administrative institutional framework is not a new phenomenon. What is essentially different about ACs, however,

with the establishment of the [CPEC Authority](#) (CPECA). As a central institution, the CPECA has full authority over all corridor projects and is entrusted with far reaching autonomy and vast financial and administrative powers - thus raising additional questions over the separation of powers in the country.

2) *The democratic façade is crumbling!*

The International Crisis Group (ICG) [underlines](#) that the ‘erosions in judicial independence are thus a symptom of the broader failure of democratic, constitutional governance’ in Pakistan. The country never experienced any serious consolidation of democracy. Democracy has never been allowed to function effectively in Pakistan: for instance, governments have been destabilized through extra-constitutional measures (ranging from intrigues and conspiracies to direct military interventions) and ‘the opposition has never been allowed to play its democratic role’ (Khan, 2001: 548). Democratic processes are further challenged today by PM Khan’s increasingly authoritarian style of governance – for instance in the strategy to implement his agenda via presidential ordinances that bypass both the National Assembly and the Senate.<sup>5</sup> [According to the political opposition](#), this ‘backdoor legislation’ is ‘nothing short of a display of contempt for Parliament and a misuse of the government’s arbitrary powers’ through (ab)using the presidential powers. Khan thus continues his predecessor’s trend to degrade the legislative to a ‘[rubber stamp](#)’ body. His persistent attempts to push centralisation of both agenda-setting and decision-making, as well as his apparent unwillingness to empower either national and provincial assemblies, provides a grim perspective for parliamentarism in Pakistan. The [PM’s appreciation](#) of China’s one-party system as ‘offering a better model for societies compared with electoral democracy’ is symptomatic of the erosion of any remaining democratic norms and values. Indeed, Khan publicly praised a political system which is ‘exclusively controlled’ by one party and where there ‘are no direct elections for major positions or the country’s parliament’. Khan’s open laudation for an authoritarian regime wherein rules complete surveillance of and state terror against its own citizens (including genocide of minorities, most noteworthy being the plight of the

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is that this setup formally merges military and civilian governments. It thus enhances the army’s role in the administrative management of state affairs and legally strengthens their position in all decision-making areas relating to the CPEC and beyond.

<sup>5</sup> An assessment reflected by Imran Ahmed when [stating](#) that ‘at the outset of his term, Khan declared that since he lacked a majority in the senate, he preferred to run the legislative affairs of government through presidential ordinances rather than through parliamentary processes’.

Uyghurs<sup>6</sup>) is revealing. It combines well with his reluctance to adopt a governance style based on consensus-building and inclusion of the legislative (the actual representative of the people and source for democratic legitimacy). All this, again, provides grim perspectives for democracy in Pakistan.

Finally, it would be also informative, particularly for potential foreign investors, to understand how far Imran Khan and his administration share Chinese views on intellectual property rights, industrial espionage, and cyber threats. The CPEC, combined with the Chinese Digital Silkroad program – one of the most overlooked parts of the Belt and Road Initiative (BRI) – have made it so that Pakistan is overwhelmingly, soon exclusively, [provided with](#) Chinese information and communication technologies (ICT).<sup>7</sup> The fact that the new digital connectivity between China and BRI countries involves the control of data transfer and large-scale surveillance raises concerns not only about data security but also about personal freedoms and privacy. Pakistan in particular faces rapidly shrinking rights to privacy in all spheres of life. The Pakistani government enforced a strict [control and regulation of the internet](#). The report on the Freedom of Net published by the Freedom House, which [ranks Pakistan](#) as ‘fairly repressive’ and ‘not free’<sup>8</sup>, was banned in the country (Wolf, 2019: 220). Another report [states](#) that law enforcement and intelligence agencies in Pakistan are actively expanding their surveillance capabilities, ostensibly to counter terrorism and maintain law and order under the

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<sup>6</sup> The Uyghurs are a distinct and mostly Sunni Muslim ethnic community residing in China’s Xinjiang Uyghur Autonomous Region (XUAR), a politically unstable province inhabited by around eight million mostly Uyghur people. The Uyghurs are systematically oppressed and systematically persecuted by China’s political leadership in a way that [must be described as ‘genocide’](#). There are growing international concerns about the human rights situation in the province of Xinjiang, especially considering extra-legal internment camps set up for Uyghur Muslims. The UN reports China to hold around one million Uyghur Muslims in [‘re-education camps’](#). Several journalists and scholars documented a systematic campaign to detain and ‘re-educate’ various ethnic religious minorities in the country. Until recently, international attention regarding Xinjiang is generally low to non-existent—the scale and apparent intent of internment campaigns targeting the Uyghur identity tends to go unnoticed. Findings by the UN Committee on the Elimination of Racial Discrimination [pointed out](#) that it was alarmed by the ‘numerous reports of detention of large numbers of ethnic Uyghurs and other Muslim minorities held incommunicado and often for long periods, without being charged or tried, under the pretext of countering terrorism and religious extremism’. The US Congressional Executive Commission on China [described](#) the phenomenon as the ‘largest mass incarceration of a minority population in the world today’.

<sup>7</sup> This will [include](#) an ‘network of regional terrestrial connectivity, the establishment of internet exchange points, the development of nationwide public and government cloud centres, the development of smart infrastructure using 5G and IoT technologies, and collaboration in the development of state of the art centres of excellence (COEs) based on technologies identified as part of the 4th Industrial Revolution such as Artificial Intelligence (AI), Blockchain, 5G, Robotics, cloud technologies and nanotechnologies’.

<sup>8</sup> An assessment which the Freedom House [reconfirmed](#) it its latest Freedom on the Net 2020 annual report.

mandate given to them by the National Action Plan's larger framework. These measures often come at the cost of civil liberties and rights (e.g., the right to privacy) by both individuals and organisations. Digital surveillance of journalists, human rights activists, and ordinary citizens is increasingly common. As Pakistan lacks proper democratic checks and balances, the new digital connectivity risks to reinforce attacks on political rights and freedoms in general and on free journalism in particular (Wolf, 2019: 220). When it comes to freedom of press in Pakistan, the international media watchdog Reporters Without Borders [identified](#) 'disturbing dictatorial tendencies'. In this context foreign companies considering FDI in Pakistan, particularly in its new SEZs, might consider China's exclusive leverage in the country's technology ecosystem and Critical Infrastructures (CIs) as a worrying factor. The rapidly advancing [capture of Pakistan's media sector](#) by Beijing and Islamabad's massive attempts to [regulate and control \(censor\) the social media sector](#) are both quite obvious. The U.S. Department of State (USDOS) not only [pointed out](#) the flaws within the country's legal system but also made a clear statement regarding the deteriorating status of freedom of press and opinion in Pakistan, especially the role of state institutions in curbing the free flow of information: 'However, fear of contempt of court proceedings inhibits businesses and the public generally from reporting on perceived weaknesses of the judicial process'.

### *3) Judiciary independence remains a myth!*

Theoretically, 'promises of an independent judiciary are embedded deep in Pakistan's constitutional fabric' (ICG 2004: 1). However, as indicated above, the country's judiciary, like all other branches of governance, has known much misfortune. In fact, at present Pakistan's judiciary presents all the shortcomings a man-made system can have, through and through. When the country gained independence, it inherited a credible and solid judicial system with a reputation for integrity, competence, and high standards of conduct (Khan 2001: 562). However, over time these high standards [eroded](#) and the judiciary '[struggled to secure its independence](#)', particularly from the executive. It is crucial to [highlight](#) that 'both civil and military governments have attempted to keep the judiciary subservient.'

The persistent interventions in the political sphere by the army also allowed causal interferences.<sup>9</sup>

Nevertheless, Pakistan's superior [courts](#) have ‘played a critical political role by reviewing the legitimacy of changes of government’. However, such [judicial activism](#) usually met vehement reactions by the various military rulers, who all tried to eliminate potential judicial challenges and keep the judiciary weak. The International Crisis Groups [states](#) that the army’s top brass goal was to keep the judiciary in a ‘subservient position among national institutions, ensuring that politics trumps the rule of law, and weakening the foundations for democratic rule’. Here, the obvious army rationale was to use judges ‘to obtain “constitutional indemnity” for their military coups’ (Mehmood 2020: 9). The military leadership thus disillusioned all who hoped the judiciary would be able to shield the emerging democratic processes in general and function as a barrier against “extra-constitutional” changes in government enforced by the military. This is reflected by the International Crisis Group’s [assessment](#) that due to corruption, manipulation, and partisan interests, the judiciary ‘not only failed to check extra-constitutional regime change, but also endorsed and abetted the consolidation of illegally gained power’ (ICG 2004). In this context, [according to Zia Ullah Ranjaj](#), advocate of the Supreme Court, ‘some pliant judges have also damaged the independence of the judiciary, endorsing extra-constitutional regime changes, for example in 1958 by General Iskandar Mirza (Dosso’s case), in 1977 by General Ziaul Haq (Nusrat Bhutto case), and in 1999 by General Pervaiz Musharraf (Zafar Ali Shah case).’ Moreover, the Superior Courts hardly did anything to avoid the enactment of discriminatory laws, especially those disadvantaging the country’s religious minorities. The [judiciary was](#) (and still is) all too often ‘unwilling to uphold fundamental freedoms ... these laws have undermined the rule of law, encouraged vigilantism and emboldened religious extremists’.

However, [according to](#) Zahid Hussain, ‘it is not only military regimes and the *establishment* that purportedly seek to control the judiciary; civilian governments and political parties are also accused of trying to manipulate the system for their own vested interests’. Members of the (civilian) executive used their influence ‘to have their own favourites and members of their own political parties appointed’

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<sup>9</sup> On [three occasions](#) since the creation of Pakistan military coups have ended direct democratic rule in Pakistan – with severe consequences for the judiciary and its (independent) functioning.

(Khan 2001: 563) and to achieve other partisan interests. It is interesting to note that both military and civilian administrations used (more or less) the same tactics and strategies. Obviously, the military had more coercive options available to influence and manipulate the judicial process, particularly as concerns the use of the intelligence apparatus – the [Inter-Services Intelligence \(ISI\)](#)<sup>10</sup>. Nevertheless, there are remarkable commonalities between the various consecutive (or alternating) civilian and military administrations (Khan, 2001). Every government instrumentalised processes of judge appointment<sup>11</sup> and removal, conducted measures of harassment and intimidation, and interfered in the general judicial affairs to ensure a “submissive judiciary”<sup>12</sup>. Moreover, the army’s top echelon and politicians were involved in the ‘manipulation of the judges for getting favourable decisions, curtailing the powers and jurisdictions of the courts’ exposing their ‘dishonour and disregard for the judiciary’ (Shah 2008: 19). In this context, Hamid Khan stated that ‘the role of the judiciary has at times been relegated from that of an organ of the state to that of a department of government’<sup>13</sup>.

Pakistan’s judicial system however is not only pressured from without – it also experiences serious tensions from within. It is reported that ‘[judges themselves compromise the judiciary’s independence](#)’. For example, ‘chief justices concerned have often used the system to get their relatives or favourites appointed to high offices’ (Khan 2001: 563). [Zahid Hussain states](#) that ‘self-serving judicial activism and populism arguably damaged the sanctity of the apex court’. We further believe that the higher judiciary spends too much time and effort battling the executive and not enough on much needed internal reforms. The judiciary is yet to realize where its own limitations lie when it comes to promote a “healthy democratic culture”. Instead, the country witnesses once and again deconstructive struggles between the

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<sup>10</sup> Several judges alleged on record that the country’s intelligence agencies, especially the ISI, openly influence the judicial bodies, e.g. ‘[Justice Shaukat Siddiqui of the Islamabad High Court went public with his accusations against the ISI. He was known for his retrogressive views and some highly controversial judgements](#)’.

<sup>11</sup> It seems that there is a common understanding among experts that corruption in appointment mechanisms and a [lack of ethics](#) are major factors in the decline of the judicial system in Pakistan. Here, the USDOS [recalls](#) that ‘political involvement in judicial appointments increases the government’s influence over the court system’.

<sup>12</sup> There is clear evidence that not only the military, but also civilian leadership tried to manipulate judges. It is [reported](#) that judges confessed being blackmailed, intimidated (even physically threatened), and bribed by top politicians and their families.

<sup>13</sup> Hamid Khan quoted in Shah (2008: 15).

different branches of governance, always marked by remarkable judicial overreaches (Wolf 2021, June 29).

This overreach is crucial because of the obvious “soft-corner” by the Pakistan’s judiciary towards Islamist segments of state and society – widespread among lower court judges but also detectable in top layers. The judiciary’s stand in the [2010 Facebook ban](#)<sup>14</sup> (only [one event of a series](#) in which the judiciary contributed to the censorship of social media and the [suppression of freedom of expression](#)) or the [Daniel Pearl scandal](#) - in which the SC ordered the release of the man convicted in the killing of the Wall Street Journal Reporter - can be seen as clear indications of the deep inroads Islamists have made into Pakistan’s judiciary. The International Crisis Group states that Pakistan’s superior judiciary, ‘motivated by self-preservation and self-interest’, not only ‘repeatedly failed to uphold the constitution’ but also ‘failed to oppose Islamic legislation that violates fundamental rights’. The fact that judges failed to safeguard the people from discriminatory laws based on religion and gender, including the blasphemy laws, anti-Ahmadi laws, Hudood Ordinances and the Qisas (retribution) and Diyat (bloody money) law can be seen as a proof for the judges’ willingness to give into Islamist demands. Several analysts thus [state](#) that ‘today, judicial independence is hampered not only by the state but also by right-wing religious groups.’ That the executive is either not willing or able [to provide judges \(or lawyers\) physical security](#) - an essential condition for those engaged in the judicial sphere to work without hindrance and interference – is most un-reassuring.

Last but not least, the judicial system’s (especially the lower tiers’) adequate functioning is hampered by rampant corruption and inefficiency<sup>15</sup> as well as [lack of resources and equipment](#). This of course constitutes another significant hurdle. Major cases of financial corruption among judiciary members themselves much damaged the higher judiciary’s reputation – contributing to the diminishing ‘[public confidence in the judiciary and the rule of law](#)’. There is a widespread belief [-even shared by some of the highest judges-](#) that ‘legal fraternity does not observe ethical values in legal practice’.

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<sup>14</sup> Facebook was blocked after alleged anti-Islamic activities of some of its members.

<sup>15</sup> There are [reports](#) that the ‘judicial system of Pakistan has millions of unsolved cases alarming in delaying justice’.

It goes without saying, that these had severe impacts on the overall state of the country's judiciary. In fact, although there were several windows of opportunity for the judiciary to establish itself as a strong and independent part of the country's institutional setup, all were either missed or ruined. Doubtless, judges are 'subject to pressure from prominent wealthy (from industrialist to feudal lords), religious, political, and military figures' -as rightly [pointed out](#) by the USDOS in its report - making them [vulnerable to manipulation](#). Yet one should keep in mind that the judiciary has its very own history – and, most importantly, agenda. It is obvious that there is a certain 'traditional affinity' between judges and the military – as well as a "kind of blindness" towards religious extremism by the judiciary. Moreover, numerous judges either belong to the country's feudal landlord families or act under their influence. Alongside religious fanatics, these feudal landlord dynasties must be identified as one of the most serious roadblocks for any modernisation, development, or democratic blossoming in the country. In fact, it is crucial to remember that not only judges but also the majority of the lawmakers and executive – as well as the army top brass – share this same feudal and tribal background, even kinship. The complicity by judges in the [entrenchment of](#) 'centuries-old patriarchal practices which remain an outright obstruction towards the development of judicial and constitutional system in Pakistan', their systematic favouring of feudal landlords' prerogatives, are of course systematic and most revealing. Such partisan interests are one face of the judiciary's lack of independence.

In sum, numerous observers [conclude](#) that 'the independence of the judiciary and the notion of fair trial are myths.' The [inability of Pakistan's courts to provide timely justice](#) (especially without the medium of a bribe), much less in a fair and transparent manner, is clear for all to see. Hence the Civil Justice Index by the World Justice Project (WJP) [ranks Pakistan 118](#) among 128 countries around the globe<sup>16</sup>. The public, too, lost their confidence in the judiciary. A fact [confirmed](#) by PM Imran Khan last year, when he stated that the 'people's trust in the judicial system has been shaken'. It seems that the Foreign Office's interpretation of ground realities in Pakistan differs from that of the Prime Minister's office.

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<sup>16</sup> The [World Justice Project \(WJP\) Survey](#) is conducted by Gallup Pakistan in terms of civil justice.

### ***Conclusions - Ramifications of a flawed judicial system in Pakistan's development***

USDOS statements can be interpreted as a severe setback for Islamabad's efforts to [transform the nature of its bilateral relations](#) with Washington – which are hoped to slide away from a geopolitical, Afghanistan-related focus towards primarily economical, trade and investment ties. It appears that Pakistan attempts to diversify its Direct Foreign Investments (FDIs) portfolio, particularly through the attraction of investors from the US and Europe to counterbalance its rapidly growing economic dependence on – and the [enormous trade deficit](#) with – Beijing. This need for diversification is felt more acutely as the CPEC is entering its second phase<sup>17</sup> (Wolf, 2019). Said phase focuses on the set up of [Special Economic Zones \(SEZs\)](#) to push the industrialisation and modernisation of Pakistan's overall economy. Yet FDIs have declined in the first half of the Fiscal Year (FY) 2021 compared to that same time period in FY 2020, which does not look promising. Shrinking in FDIs underline both Islamabad's urgency to attract more foreign investments and the scepticism among investors to identify Pakistan as a safe place for business.<sup>18</sup>

However, the key to a successfully established and smooth functioning SEZs is the provision of an overall enabling environment.<sup>19</sup> This includes the provision of an adequate judicial framework for potential investors and their business activities. Without appropriate legal protection for foreign entrepreneurs, attracting non-Chinese FDI will be most challenging. On the other hand Pakistan would be wise not to take Chinese FDIs for granted (contrary to the official Chinese rhetoric),

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<sup>17</sup> The CPEC consists of a program to promote economic performance, but also serves as a tool for Beijing to extend its strategic influence from the South China Sea to the Indian Ocean and the Arabian Sea. The development side of the CPEC initiative is divided into several phases. Most projects — also known as the 'Early Harvest Projects' of the first phase — came to an end in 2020 (after officially starting in 2015). These focused mainly on the build-up of road infrastructure and energy generation capacities. The ongoing second phase (2021-2025) and establishment of Special Economic Zones aim to industrialise and modernise Pakistan's economy. The latter goal is the main feature of every economic corridor project; however, it is far too early to measure the CPEC's economic viability and sustainability. The third phase (2025-2030) focuses on the inclusion of both regional and extra-regional countries as participating partners in the CPEC (Wolf 2019: 16).

<sup>18</sup> [According to the USDOS](#), 'an improving but unpredictable security situation, lengthy dispute resolution processes, poor intellectual property rights (IPR) enforcement, inconsistent taxation policies, and lack of harmonization of rules across Pakistan's provinces have contributed to lower FDI as compared to regional competitors'.

<sup>19</sup> E.g., the provision of security, energy and water resources, multimodal infrastructure, health and educational centres and other services guaranteeing a smooth functioning of daily life and ensuring adequate standards of living for the SEZ workers and their families.

especially not in areas linked with the production of advanced and modern technologies. It remains to be seen how far Beijing is willing to relocate industrial units for high-end products and respective research and development (R&D) capabilities towards Pakistan (or to any other state who joined the Belt and Road Initiative /BRI). The persistent [attacks against Chinese citizens](#) on Pakistani soil definitely cast shadows over both current and future Chinese-Pakistani economic interactions. Moreover, the worrying security situation, large-scale Islamisation of state and society – and growing anti-Western sentiments (most noteworthy being the [Islamist agitations against France](#)) orchestrated by an increasingly authoritarian government –, the omnipresent corruption<sup>20</sup>, bureaucratic hurdles (red tape), vague promises of potential incentives for FDIs<sup>21</sup>, low standards of living, and a flawed judicial system all conspire against investors ever entering the Pakistani market. Most particularly the “French Affair” should serve as a [warning to all foreign investors](#) regarding the volatile political situation in Pakistan, especially the fact that Islamabad is rather [willing to give into Islamist demands](#) instead of protecting the interests of foreign nationals and their investments in the country. Additionally, the recent military takeover of Afghanistan by the Taliban, the threats of another Afghan civil war and the increase of militancy into Pakistan does not help boost the confidence regarding sustainable economic development in the region.

Considering the negative impacts of the USDOS report on the reputation of Pakistan’s judicial system – and on the country as a destination for investments in general – it does not come by surprise that the Foreign Office was so outraged and ignored the international diplomatic etiquette. However, dismissing assessments by international experts as ‘[baseless](#)’, ‘[gratuitous](#)’, ‘[factual incorrect and misleading](#)’ is not only short-sighted but is also an attempt to distract from the reality that the country’s courts and judges are under enormous eroding pressure from several corners – from the political sphere, the state apparatus and society. In fact, Pakistan’s judiciary is in a deep crisis and not able to function in accordance to the constitution, a situation which can hardly be ignored by any potential investor.

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<sup>20</sup> Pakistan ranked 134 out of 180 countries on Transparency International’s [Corruption Perception Index](#) (CPI). ‘The organization noted corruption problems persist due to the lack of accountability and enforcement of penalties, followed by the lack of merit-based promotions, and relatively low salaries.’

<sup>21</sup> This gap is also reflected by the [USDOS highlighting](#) that Pakistan ‘has to implement sectoral policies designed to provide additional incentives to investors in those specific sectors’.

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