**Asking questions**

BY B A S I L N A B I M A L I K 2021-03-03

THE recent dissenting note of Justice Qazi Faez Isa has given the public a sneak peek into the internal workings of the apex court, whereas the lawyers` recent attack on the Islamabad High Court is yet another incident which has exposed the flaws of Pakistan`s justice system. Although these events and incidents may be of profound significance, in order to fully understand our predicament, it is important to take a step back and analyse what exactly is happening in Pakistan.

Pakistan has always had a troubled relationship with its judicial set-up, which as per various historians, has had a `chequered past`. This chequered history of the judiciary tends to refer to, amongst other things, its past role in legitimising military rule at the expense of the very constitutional provisions which gave it life. Additionally, it is also a loose reference to its perceived acquiescence and support for political victimisation of the opponents of whichever government is in power, involvement in issues which are beyond its knowledge base and intervention in matters that would qualify as purely political.

The lawyers movement, as it was then known, had set out to change all this, and I must admit, I had found myself to be amongst its staunchest supporters. But where the movement succeeded in bringing about an awareness about the importance of the rule of law, it f ailed miserably in forcing reform which could have actually culminated in far-reaching and long-lasting change.

The reason for this was and is that we have been consistently asking the wrong questions. Where we should have been asking tough and dif ficult questions in order to break with our past, we sought refuge in convenient rhetoric which felt safe, and obscured the real issues we were f acing. For example, when we should have been asking whether the judiciary`s independence f aces a greater threat f rom external aggression or internal weakness, we sought refuge in only conversing about and identifying external threats as possible impediments to an independent judiciary.

When we should have been asking if a non-transparent mode of appointing and removing judges weakens the judiciary and opens it up to possible outside influence, we preferred to mull over the question of whether or not such appointments or removals, and by necessary corollary judicial independence, can only be protected by keeping them within the purview of the judiciary.

When we should have been asking whether self-regulation works in a largely unelected institution or within the bar, wewere redirected to ask whether third-party institutions or persons could be trusted to f airly adjudge issues of accountability.

All in all, the questions that the lawyers movement postulated, as do many in the bar and across Pakistan today, are not questions at all. They are a cop-out which allows the framers of the questions to pander to their personal likes and dislikes and to their vested interests. Unfortunately, even if we earnestly provide answers to these questions, we would not be any closer to a lasting solution for the simple reason that we seek to remedy cancer with Panadol.

And there is a very logical reason for this.

The status quo in the overall judicial set-up, including the bar, brings with it privileges in society, as well as interests within an already established system of judicial work.

Asking tough questions means possibly compromising those privileges, rethinking one`s perception of how things should operate, allowing those who hold others accountable to be held accountable themselves in a transparent manner, and to be judged with the same yardstickas those in other professions or institutions. This is no small feat.

This entitlement to privilege and a paramount status is one of the reasons why you will see lawyers barging into hospitals and highcourts with impunity, vandalising property and causing damage, and yet showcasing their entitlement to protest against the `brutalities` they had faced whilst rampaging across the country and breaking the law. It is also manifested in how the judicial apparatus is perceived by many to scoff at the mere mention of greater openness and transparency in terms of appointments, removals, misconduct proceedings, as well as the internal administration of the judiciary itself.

These acts and omissions are symptoms of a larger issue at play, and as such, it is high time that serious conversations took place about the present and future of the judiciary and the bar. Perhaps, in this vein, it would be pertinent to raise the red flag and point out to the bar and bench that in relation to our justice system, for which we have much respect, the time to avoid asking tough questions is past and the time for action is upon us.  The writer is a lawyer based in Karachi.

basil.malik@rmaco.com.pk Twitter: @basilnabi