

PAKISTAN

The independence of the judiciary was largely undermined by the order by General Musharraf in January 2000 that Pakistani judges take a fresh oath of loyalty to his administration. In May 2000, the Supreme Court, reconstituted after the dismissal of six judges who refused the oath, upheld General Musharraf's military *coup* of 1999, under the doctrine of state necessity.

Pakistan is a constitutional republic. On 15 October 1999, the Government promulgated the Provisional Constitution Order, (PCO), No.1 of 1999, overriding the 1973 Constitution of the Islamic Republic of Pakistan, previously suspended following the 12 October 1999 military *coup* led by General Pervez Musharraf. The PCO provided for the suspension of the National Assembly, the Provincial Assemblies and the Senate and mandated General Musharraf to serve as the new Chief Executive. On 20 June 2001, General Musharraf became President of Pakistan after dismissing the incumbent President, Muhammad Rafiq Tarar.

On 12 May 2000, the Supreme Court validated the October 1999 coup under the doctrine of state necessity. However, the Court ordered that the Government hold national and provincial elections by 12 October 2002. In response, President Musharraf presented a four-phase programme aimed at returning the country to democratic rule, with local elections to be held from December 2000 until August 2001. Subsequently, a series of local elections were held in December 2000, March 2001, May 2001 and July-August 2001. However, political parties were prohibited from participating in the contests and party leaders were disqualified from holding political office.

In the aftermath of the 11 September 2001 attacks in the United States, Pakistan played a major role in assisting the US-led campaign against Osama bin Laden, Al-Qaida and its Taliban supporters. President Musharraf has been a crucial ally in Washington's war effort, allowing American combat forces to be stationed in Pakistan while withstanding pressure from within his own country by those who are sympathetic to the Taliban. As a result, Pakistan has benefited economically from the lifting of sanctions and assistance from international financial institutions.

HUMAN RIGHTS BACKGROUND

The human rights situation deteriorated following the military coup. Pakistan has failed to ratify the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention Against Torture. The death penalty has been imposed liberally and some 4,000 individuals are presently on death row. However, a juvenile justice ordinance promulgated in July 2000 prohibited the death penalty to punish crimes committed while the accused had been under the age of 18. Torture and other ill-treatment of those in police custody and prisons, especially those unlawfully detained remained widespread. The sexual violation of child detainees by both guards and inmates remained prevalent.

In 2000, a number of individuals died in police custody or police "encounters". Police officers are rarely tried and convicted for the perpetration of such crimes. In October 2000, a police report detailing hundreds of "encounters" killings since 1990 was presented to the Punjab provincial government for further investigation. Some 967 criminal suspects were said to have been killed in

police "encounters" between February 1997 and October 1999 in Punjab. On a positive note, since the 1999 *coup*, extra-judicial executions of criminal suspects has substantially decreased.

"Honour killings", i.e., the tradition of punishing women who allegedly bring dishonour to their families, is prohibited under Pakistani law, however the practice has been *de facto* tolerated by successive governments. In April 2001, Pakistan's upper house, the Senate, rejected a bill condemning the growing incidence of honour killings. Indeed, President Musharraf's Government has made various declarations of intent against honour killings. However, the political will to combat the practice has been lacking, as police and the judiciary have not received training regarding honour killings and other gender sensitive matters.

Despite an improvement in the freedom of the press under President Musharraf's Government, self-censorship was widespread among Pakistan's journalists as a result of official pressures and threats of criminal charges under the 1985 blasphemy law. This law had been introduced to punish persons offending the name of the prophet Mohammed with the penalty of death. Unfortunately, the vague wording of the blasphemy law has led to numerous politically-motivated abuses. Although it applies equally to Muslims and non-Muslims, the law has been predominantly applied to harass religious minorities. Those who have allegedly breached the law are often arrested without any evidence other than the word of their accusers. In April 2001, President Musharraf announced a decision to introduce a procedural change in the blasphemy law whereby all accusations would have been reviewed by local deputy commissioners before proceeding to Court. Unfortunately, in the face of protest by some fundamentalists, the proposed amendment was withdrawn.

Although no execution has followed a blasphemy conviction and no death sentence has thus far taken place, hundreds of alleged blasphemers remain in jail pending the appeal of their original convictions. Even when acquitted, accused blasphemers often remain the targets of fundamentalist attacks (*see below: Blasphemy trials*).

Pakistan is composed largely of Islamic Sunnis. The Shi'a minority represents some 20 per cent of the population. During 2000 and 2001, sectarian violence between Sunni and Shi'a extremists dramatically increased. In August 2001, pursuant to plans to curb religious and ethnic violence, President Musharraf took harsh anti-terrorism measures, banning two groups involved in sectarian killings and barring extremist party leaders from obtaining political power. A national sedition law and section 16 of the Maintenance of Public Order Ordinance have been invoked to criminalize extremist political rallies and to legitimise police raids on political demonstrations.

After a brief lull, clashes between Pakistan's Sunni and Shi'a Muslims increased dramatically in October 2001, when at least 40 persons, mostly Shi'a, were murdered. The Government appeared to place the blame on the Taliban regime in neighbouring Afghanistan for allegedly training the perpetrators.

Following a trial marred by procedural irregularities, former Prime Minister Nawaz Sharif was convicted in July 2000 of hijacking and terrorism and sentenced to 14 years' imprisonment for preventing President Musharraf's plane from landing on the day of his military coup. In December 2000, Mr. Sharif was granted a presidential pardon and exiled to Saudi Arabia. The use of exile as a punishment has been widely denounced by President Musharraf's critics as an arbitrary and unconstitutional measure.

JUDICIARY

Until it was suspended on 12 October 1999, the 1973 Constitution provided for an independent and impartial judiciary. This guarantee was immediately curtailed following the coup. On 14 October 1999 the Government issued a Provisional Constitution Order which mandated that the judiciary not issue "any order against the Chief Executive or any person exercising powers or jurisdiction under his authority". This order effectively insulated the military Government's actions from judicial scrutiny.

On 26 January 2000, the Government further increased executive control over the judiciary through the promulgation of the Oath of Office Judges' Order 2000. This order required all Court Justices to take an oath to President Musharraf's regime. Refusing to swear allegiance to the military-led government, six Supreme Court Justices, including the Chief Justice, and nine Provincial High Court Justices, were removed from office. Suspiciously, the Oath of Office Judges' Order 2000 was issued on the same day that the trial of former Prime Minister Nawaz Sharif was set to begin and only days before the Supreme Court's hearing of the first case challenging the legality of President Musharraf's *coup*.

The first petition alleging military *coup* illegality was filed in November 1999. On 12 May 2000, a Supreme Court reconstituted by the military executive unanimously rejected the petition and endorsed the coup's legitimacy under the doctrine of State necessity. The Court went on to describe the military take over as an,

extra-constitutional... (step taken by)... the Armed Forces for a transitional period to prevent any further destabilisation, to create a corruption-free atmosphere at the national level through transparent accountability and to revive the economy before the restoration of democratic institutions under the Constitution.

Upholding the Government's legitimisation arguments, the Supreme Court added that as the Constitution did not offer any solution for the political crisis under the previous regime, the military intervention was "inevitable". Further, the Court ignored the Oath of Office Judges' Order 2000 and the March 2000 ban on public rallies in concluding that there was "an implied consent of the governed". Thus, the people of Pakistan in general, including politicians and parliamentarians, were deemed to have consented to the *coup*, as no protests had been launched against the army take-over and/or its continued rule. In addition to endorsing the *coup*, the Supreme Court granted extensive powers to the new Government, empowering it to unilaterally amend the 1973 Constitution and enact new laws without the approval of Parliament.

Judicial structure

The 1973 Constitution of the Islamic Republic of Pakistan provided for a federal Supreme Court and a High Court in each province. Additional Courts, established by Acts of Parliament or provincial assemblies, exercise civil and criminal jurisdiction.

The Supreme Court is the highest judicial body in Pakistan. The President appoints the Chief Justice and, in consultation with the latter, additional Supreme Court Justices. The Supreme Court has original, appellate and advisory jurisdiction and is competent to pronounce declaratory judgements in any dispute between the Federal and provincial government(s) or between provincial governments. It also has the power to issue orders for the enforcement of fundamental rights ensured by the Constitution. As the final appellate body, the Supreme Court determines appeals

from judgements, decrees, final orders or sentences passed by High Courts, Federal Shariat Courts and appellate Tribunals.

There is a High Court situated in each of Pakistan's four provinces. Judges are appointed by the President after consultation with the Supreme Court Chief Justice, the governor of the province and the Chief Justice of the High Court to which the appointments are to be made. A High Court has original and appellate jurisdiction against decisions, including judgements, decrees and sentences, issued by civil and criminal courts.

Accountability process

In November 1999, a Government ordinance created the National Accountability Bureau, (NAB), with companion accountability courts to try corruption cases. Under the ordinance, the NAB was granted extensive powers of arrest, investigation and prosecution. The extra-judicial tribunals were prohibited from granting bail. However this prohibition was later modified following a Supreme Court ruling restoring the right. The ordinance also allowed for detention periods of up to 90 days without charge and did not allow accused access to counsel prior to the institution of formal charges. Further, the burden of proof at trial continues to rest with the defendant and convictions for ordinance violations may result in 14 years' imprisonment, fines, property confiscation and the loss of the right to hold public office for a period of 10 years.

Persons charged with corruption by the NAB have included former Prime Ministers Benazir Bhutto and Nawaz Sharif. In April 1999, Ms. Bhutto and her husband, former Senator Asif Ali Zardari, were sentenced to five years' imprisonment on NAB corruption convictions. In April 2001, the Supreme Court overturned the convictions following revelations concerning the political manipulation of Bhutto trial judges. Various tape recordings surfaced which demonstrated that the then head of the NAB, Saifur Rehman, had directed High Court Justices to impose the maximum sentence after Ms. Bhutto and Mr. Zardari were convicted. Thus, in addition to infringing the separation of powers principle, the NAB and the accountability tribunals are prone to deny due process and fundamental rights.

Anti-terrorist courts

Under the 1997 Anti-Terrorist Act, (ATA), special Military Courts were established to try suspected terrorists expeditiously. These courts lacked essential due process and fundamental rights guarantees, including the right of appeal. In February 1999, the Supreme Court declared Military Courts unconstitutional and ordered their dissolution. The Military Courts were then replaced with Anti-terrorist Courts. Through amendments to the ATA, the jurisdiction of Anti-terrorist Courts was extended to cover the same types of offences as had been tried before Military Courts, and the executive completed the transition through an April 1999 ordinance transferring Military Court cases to the Antiterrorist Courts. As was the case with Military Courts, Anti-terrorist Courts were established to dispense summary justice, conducting trials within seven working days. The Courts are not required to adhere to due process or provide fair trial guarantees.

Sshari'a and Shariat courts

In October 1998, the Sharif Government proposed a 15th Constitutional Amendment to impose *Shari'a*, (Islamic law), as the supreme law of Pakistan. The "Shariat" Amendment would have superseded all constitutional and common law provisions in empowering the executive to issue binding directives concerning permitted and forbidden conduct under Islamic teachings. Despite strong pressure from fundamentalists, a majority of the Senate opposed the amendment. A 1998

European Parliament resolution had also appealed for its rejection. President Musharraf later took a positive step by abandoning his predecessor's plan to make Islamic law omnipresent throughout Pakistan.

The Federal Shariat Court consists of eight Muslim judges, including the Chief Justice. They are appointed by the President. Four of the Justices are persons qualified as High Court Justices and three are *Ulema*, (scholars well-versed in Islamic Law). The Court has original jurisdiction to determine the repugnance of any provision of law to the dictates of Islam. Following a Shariat Court decision, the President, in a case involving federal law, or a Governor, in a case involving provincial law, must amend the offending law in accordance with the Court's ruling. The Court has exclusive appellate jurisdiction over the decisions of criminal Courts relating to enforcement of *Hudood* Law. Cases may be appealed to the *Sharia* bench of the Supreme Court.

Blasphemy trials

The independence of the judiciary has been jeopardised by pressure brought to bear by Islamic fundamentalists over blasphemy trials. Many lower court judges fear reprisals should they render acquittals against accused blasphemers. As recourse to higher Courts is available for the convicted, lower Court judges are forced to convict accused blasphemers on weak evidence rather than face the prospect of verbal and physical attacks for releasing them.

On 25 July 2001, the Multan Bench of the Lahore High Court in Pakistan turned down an appeal lodged by Ayub Masih, a Christian convicted of blasphemy under Section 295C of the Pakistan Penal Code. This decision marked the first time in the nation's legal history that a bench of the High Court refused to overturn the ruling of a lower court that had delivered a death sentence for a blasphemy conviction. Ayub Masih had been arrested on 14 October 1996 on a complaint filed by a person alleging that he heard Mr. Masih utter, "if you want to know the truth about Islam... read Salman Rushdie." The defence alleged that the accusations were fabricated in order to force fifteen Christian families to drop a local land dispute involving the complainant. The case appeared to have been registered without a proper investigation and no substantive evidence was proffered to prove Mr. Masih's guilt at his trial and unsuccessful appeal. The appellant level verdict is believed to be the result of immense pressure brought by fundamentalists who, on the day of the appeal, surrounded the Appeal Court to intimidate the proceedings. On numerous occasions Mr. Masih and his lawyers were threatened with death if the accused was acquitted. The case is presently on appeal to the Supreme Court.

CASES

Rana Bhagwandas {judge}: Mr. Bhagwandas is a Justice with the Pakistan Supreme Court, who had previously been appointed to the Sindh High Court in 1999. His situation was reported in the 1999 edition of *Attacks on Justice*. In 1990, a constitutional petition was filed against the Government and Justice Bhagwandas, based on his Hindi beliefs, as under the Constitution only Muslims are capable of being appointed to Sindh High Court. As a compromise measure, in February 2000, Mr. Bhagwandas was appointed to the Supreme Court after taking an oath of allegiance to the Musharraf administration.

Mansoor Ali Qureshi {lawyer}: Mr. Qureshi, a human rights lawyer, was killed under murky circumstances on 15 September 2001. He was gunned down outside his office while in the process of defending two high profile defendants accused of terrorist activities. In response, on September

17, 2001, a large number of lawyers protested against what they deemed a "target killing" and effected a complete suspension of proceedings in 150 Courts.

Iqbal Raad {lawyer}: Mr. Raad, chief counsel to ousted Prime Minister Sharif in the above-mentioned conspiracy case, and two others were killed on 10 March 2000, by unidentified assailants. (His case was reported in the 2000 edition of *Attacks on Justice*.) Witnesses alleged that three men had entered the lawyer's office and opened fire, immediately killing Mr. Raad, who died from a volley of bullets to his chest. Other members of the Sharif defence team charged that the government had failed to provide them with adequate protection, despite repeated warnings that they were targeted for death. The Pakistan Muslim League, the party of Mr. Sharif, has said that Mr. Raad had received a number of threats, but had declined to press the matter, as he did not want to hamper Mr. Sharif's defence.

Ghulam Shabbir Chohan {lawyer}: Mr. Chohan, a Shia leader and former president of a political opposition party, was shot dead in February 2001. He was a representative of more than 34 lawyers who were assassinated over the last two years in Pakistan for being Shias. The killing was apparently sparked by sectarian violence that has witnessed hundreds of people killed in recent years in clashes between militants from Sunni and Shiite sects.