

Pakistan

On 27 January 2000, the new Musharaf government gave instructions to judges in Pakistan to take a fresh oath of allegiance to the unconstitutional army-led administration. Chief Justice Said-uz Zaman Siddiqi and about 20 other judges, including five Supreme Court judges, have refused to take the new oath. Harsh measures were taken against these judges and the Chief Justice himself was replaced. The CIJL is aware of at least 34 judges and lawyers who were murdered in Pakistan during the last three years.

The 1973 Constitution of the Islamic Republic of Pakistan provides for a federal state and a parliamentary system. Federal legislative power is vested in the parliament, which is composed of two houses: the National Assembly (lower house) and the Senate (upper house). The National Assembly is composed of 207 Muslim members and ten additional members of other religions, all elected for a five year term. The Senate is composed of 87 members, elected for a term of six years. The President is the head of state. The Prime Minister, who is the head of the government, is elected by the National Assembly in a special session. The Constitution permits a vote of "no confidence" against the Prime Minister by a majority of the entire National Assembly, provided that it is not during the annual budget session.

According to the 1973 Constitution, the President, after consulting with the Prime Minister, appoints provincial governors, who act on the advice of the Cabinet or chief minister of the province.

On 12 October 1999, the government led by Prime Minister Nawaz Sharif was overthrown by the Pakistani armed forces, under the leadership of General Pervez Musharraf. The coup came after months of mounting tension between Mr. Sharif and the military and general public dissatisfaction with his government, especially after he cracked down on political opposition.

Mr. Musharaf declared himself Chief Executive Officer. He suspended the Constitution and all political offices except the office of the President, held by Mr. Muhammad Rafiq Tarar. He also abolished the National Assembly. Mr. Musharaf formed a civilian-military National Security Council and appointed a civilian Cabinet. After the coup Pakistan was suspended from the British Commonwealth.

The International Commission of Jurists (ICJ)/Centre for the Independence of Judges and Lawyers (CIJL) was highly critical of the manner in which the ousted civilian government of Mr. Sharif operated, and primarily of its undermining of the Rule of Law and its violations of judicial independence. The ICJ/CIJL stance remains, however, that there can be no solution outside the framework of constitutionalism and democracy.

Human Rights Background

The human rights situation remained poor in 1999. Sectarian violence remained a problem throughout Pakistan, especially between Shia and Sunni Muslims. The blasphemy law is also a cause of great concern among human rights activists, as it is often used to persecute religious minorities. Religious minorities such as Christians and Ahmadiyya were prosecuted under the blasphemy laws and 'fatwas' were spoken out against them.

Journalists faced severe harassment when the Sharif government was in power. Those critical of the regime faced financial difficulties, detention, torture and even murder.

Non-governmental organisations (NGO's) suffered from severe restrictions in 1999, mainly in the provinces of Punjab and Sindh. The authorities imposed registration restrictions on numerous NGO's. Many organisations were shut down and financial support from abroad was supervised by the authorities or even forbidden.

Several members of the opposition were arrested by the Sharif administration after they formed the Grand Democratic Alliance (GDA) and called for a protest rally in September. Some of them were kept in detention although most were released.

Killings in the Name of Honour

The death of Samia Imran, who was murdered in an "honour killing", drew international attention and condemnation (see also under Cases below). The legal system condones killings in the name of honour. Such killings are carried out if women are perceived to put shame on their family by seeking divorce, having an illicit relationship, refusing to marry a man that is chosen by their family or even when they are raped. Allegations are sufficient to justify an "honour killing". The tradition of honour killings is supported by a large part of the Pakistani population. The government tolerates these killings on religious or traditional grounds. As a result, the perpetrators often go unpunished. Even when the perpetrators are punished they only receive a very light sentence as judges are often gender biased.

The judiciary is also often reluctant to punish the perpetrators of the "honour killings" because they do not want to intervene in what is considered a family affair. Part of the problem of "honour killings" is that the police profit from the killings in that they often receive bribes for not investigating cases.

The successive governments of Pakistan did not take adequate action to combat this practice that is forbidden by law. The Senate even refused to discuss the issue of honour killings by blocking a draft resolution condemning violence against women.

Torture

Torture in Pakistan is only a crime when it is inflicted on a person to extract information. Pakistan has not ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In his report to the 1999 Commission on Human Rights the UN Special Rapporteur on Torture advised the government of information on individual cases. In addition he noted with regret that the government did not yet provide him with information on the steps taken to implement the recommendations contained in his 1996 mission report.

Detention of Officials of the Sharif Government

Several officials of the Sharif government were detained after the coup on 12 October 1999 without being informed of the grounds of their detention and without being assured access to a lawyer. In these cases the government used the term "protective" detention, even though there is no provision in the Constitution for this type of detention.

Nawaz Sharif was detained on 12 October 1999 and the military filed a complaint against Mr. Sharif accusing him of criminal conspiracy, hijacking, kidnapping and attempted murder. Mr. Sharif appeared before a Special Anti-Terrorist Court in Karachi in November 1999 without formally being charged with a crime and was only officially charged with hijacking, kidnapping, attempted murder and plotting to wage war against the state on 8 December 1999. On 12 December 1999, the Anti-Terrorist Court of Karachi adjourned the trial until 12 January 2000.

The Judiciary

The Constitution of the Islamic Republic of Pakistan provides for an independent judiciary. However, the judiciary is influenced by the executive. Very little respect for judicial independence was provided for under the Sharif government. On 27 January 2000, the new Musharaf government made very clear that it does not respect the independence of the judiciary when the military gave instructions to judges in Pakistan to take a fresh oath of allegiance to the unconstitutional army-led administration.

The Judges Order 2000 that instructs judges in Pakistan to take a fresh oath of allegiance to the military-imposed Provisional Constitutional Order, is a cause of deep concern. Chief Justice Said-uz Zaman Siddiqi and about 20 other judges, including five Supreme Court judges, have refused to take the new oath. Harsh measures were taken against these judges and the Chief Justice himself was replaced.

The International Commission of Jurists (ICJ) and its Centre for the Independence of Judges and Lawyers (CIJL) voiced their concern in a press release.

The UN Special Rapporteur on the Independence of Judges and Lawyers expressed his grave concern also on 28 January over the issuance of the Oath of Office (Judges Order 2000) calling upon all judges to take a fresh oath of allegiance to the Provisional Constitutional Order. An independent judiciary cannot be obedient to the executive and therefore the issuance of the Oath of Office is in clear violation of the principle of independence of the judiciary.

In its reaction to last year's edition of Attacks on Justice the government stated that "Both judiciary and the executive are the principal organs of the state. They operate in cooperation and coordination with each other. The independence of the judiciary is ensured through appointment, security of assignment and financial independence".

The rules regarding appointment, qualifications, tenure and discipline were described in last year's edition of Attacks on Justice. In light of the replacement of the Chief Justice because of his refusal to take the new Oath of Office and the dismissal of other judges it is feared that the Musharaf government will show further disrespect for the independence of judges.

In his report to the 1999 Commission on Human Rights, the UN Special Rapporteur on the Independence of Judges and Lawyers reiterated his wish to visit Pakistan. No invitation has to date been offered to the Special Rapporteur.

Shari'a Law

In October 1998, the National Assembly voted 151-16 in favour of a constitutional amendment to replace the legal system with Shari'a law. Criticism of the amendment focuses primarily on the article which gives the government the right to "prescribe what is right and forbid what is wrong" according to Islam, as this gives the government extraordinarily broad powers. In its reaction to last year's edition of *Attacks on Justice* the government stated that "the proposed 15th constitutional amendment (sharia law), does not provide for arbitrary interpretation".

Court Structure

The judicial system is composed of a Supreme Court of Pakistan, a High Court for each province and, at the lower levels, Civil and District Courts for civil proceedings, and Magistrate and Session Courts in the criminal system. There is also a Federal Shariat Court and there are Special Terrorism Courts.

The Supreme Court enjoys original jurisdiction in every dispute between the federal government and the provincial governments and appellate jurisdiction "from judgements, decrees, final orders or sentences of a High Court". The High Courts' jurisdiction is extensively detailed in the Constitution.

Federal Shariat Court

The Federal Shariat Court has the power to examine and decide if a law or its provisions comply with the injunctions of Islam. In addition, the Federal Shariat Court may call for and examine the record of any case decided by any criminal court under any law relating to the enforcement of Hudood. Appeals against the decision of the Federal Shariat Court are heard by a bench of the Supreme Court, known as the Shariat Appellate Bench.

The eight Muslim members of the Federal Shariat Court are appointed by the President for a renewable term of three years. The President has the power to "(a) modify the term of appointment of a judge, (b) assign a judge to any other office, (c) require a judge to perform such other functions as the President may deem fit".

The renewable term and ability to transfer judges violates the UN Basic Principles on the Independence of the Judiciary.

Special Terrorism Courts

In violation of the Constitution and international standards, the Sharif government enacted the Anti-Terrorist Act (ATA) in August 1997 to "provide for the prevention of terrorism, sectarian violence and for speedy trial of heinous offences and for matters connected therewith and incidental thereto". Eleven courts were set up under the ATA in Punjab and presiding judges for these were appointed, after consultation with the Chief Justice of the Lahore High Court. In May 1999 several courts were set up in Karachi. Ironically, Mr. Sharif himself is now being tried before these courts.

In May 1998, the Supreme Court ruled that a number of provisions of the ATA are unconstitutional. These include: the lack of appeal in Anti-Terrorist Courts, the far reaching powers of the police, and the right of the police to shoot to kill.

Military Courts

Two people were sentenced to death by a Military Court in Karachi in November 1998. However, the Supreme Court decided in January 1999 to halt the executions pending the review of the legality of the establishment of these Military Courts.

In February, the Supreme Court ruled unanimously that the establishment of the Military Courts in Karachi were "unconstitutional, without lawful authority and of no legal effect" and that the pending cases should be transferred to Anti-Terrorist Courts. The judgement was accepted by the Sharif government and the Anti-Terrorism Act was amended accordingly.

Cases

The CIJL is aware of at least 34 judges and lawyers who were murdered in Pakistan during the last three years. Many more lawyers face harassment ranging from administrative provocation to physical abuse. The protection of lawyers cannot be effective in the absence of the Rule of Law and an independent and impartial judicial system that guarantees it.

Rana Bhagwandas (judge of the High Court of Sindh): On 1 September 1999, the Chief Justice of the Sindh High Court ordered a full bench to hear a petition challenging the appointment of a non-Muslim to the superior judiciary. The petitioner had filed an appeal before a Division Bench of the Sindh High Court challenging the order of the Income Tax Appellate Tribunal in Karachi, but this appeal was dismissed. The Division Bench which heard the case was presided over by Justice Rana Bhagwandas and Justice Sabihuddin Ahmed. The petitioner then filed a constitutional petition (No. 1069/1999) against the Government of Pakistan and Judge Bhagwandas to declare the bench unconstitutional as Judge Bhagwandas is a Hindu and only Muslims can be appointed to the superior judiciary.

The case was heard on 22 September 1999 and then postponed until 19 October 1999 but it had not yet taken place by the time of writing.

Asma Jahangir (lawyer and chairperson of the Human Rights Commission of Pakistan) and Hina Jilani (lawyer): The two lawyers received death threats from religious extremists as a result of their defence of Ms. Samia Imran, who sought their help in divorcing her husband. Ms. Imran was shot dead by a hired gunman in front of Ms. Hina Jilani in their office in Lahore. The killer was later shot dead by a policeman when he took a colleague of the two lawyers, Shahtaj Qizalbash, hostage after the murder. Ms. Qizalbash was later released. This so-called "honour killing" was carried out on the orders of the family of Ms. Imran.

The influential father of the victim, President of the Peshawar Chamber of Commerce, used his power to issue death threats against the two lawyers and to prevent the arrest of the ones who ordered the killing. On 8 April, the family of the victim organised a meeting of members of the Peshawar Chamber of Commerce who support Samia's murder as being in keeping with traditional laws. This meeting also issued fatwas denouncing Asma Jahangir and Hina Jilani as kafir, and asking that they be punished according to tribal law. In addition they accused the law firm of Asma Jahangir and Hina Jilani (AGHS) of being responsible for Samia's death and organised a public demonstration of businessmen and religious extremists on 9 April 1999 in Peshawar where statements were issued that they will take the law into their own hands and kill Asma Jahangir and Hina Jilani.

The killer, the father, mother and uncle of the victim were named in the First Information Report (FIR) lodged by Hina Jilani immediately after the murder and were fully identified by witnesses. Nobody, however, was arrested and the family of Ms. Imran was allowed to leave Lahore. The investigation in the case did not proceed further than the collection of evidence from the site of the murder and recording the statements of eyewitnesses of the occurrence in the office of AGHS. The police failed to investigate and procure statements of important witnesses. Only on 30 April 1999 did the police obtain warrants for arrest of the accused.

Iqbal Raad (lawyer): Mr. Raad, who was one of the lawyers for Mr. Sharif, was gunned down on Friday 10 March 2000 by unidentified men in broad daylight in his Karachi office.