

PAKISTAN AND THE RULE OF LAW

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Judged & Found Wanting

When former Prime Minister Benazir Bhutto's son Bilawal became the leader of her Pakistan People's Party, following her assassination, he told the crowds that 'My mother always said democracy is the best revenge'. Yet, despite the fact parliamentary elections are now scheduled for February 18, Amnesty International sensed a general mood of hopelessness during a recent visit to the country. 'Pakistan is lost' was a refrain heard in many places.

pEOPLE FEEL DEJECTED ABOUT THE CURRENT political landscape. On the one hand, even Benazir Bhutto's die-hard critics, including those in the human rights community, came to see her as the country's best chance for positive change. True, they recognise her many flaws, including an unimpressive human rights record during her previous terms in office, but believed she was older and wiser and things would have been different.

On the other hand, there is a fear that the government will resort to harassment, intimidation and vote-rigging to remain in power. Not that fixing election results is anything new in Pakistan. But this time around, any aggrieved parties will be able to do little about it, given that elections are supervised by judicial officers accountable to the Election Commission – 'in cahoots with the executive' – and ultimately to the superior judiciary hand-picked by General Pervez Musharraf.

Even if the elections are free and fair, people believe that there is not much a new parliament can do as long as the independent judiciary is not restored, the changes Musharraf made to the constitution are not reversed, and the west 'continues to meddle'.

CLEAR PATH

Although the present situation is grim, there is a clear path out of it – if only the Pakistani establishment displayed the will and courage to do what is right for the country rather than think only of its narrow interests and permanence in power.

Almost a year ago, there were signs that some were indeed moving in that direction. Chief Justice Iftikhar Chaudhry departed from the Pakistani tradition of judicial compliance with the executive and challenged the government on several issues, including enforced disappearances linked to the 'war' on terror.

When Musharraf suspended the Chief Justice – in breach of the United Nations Principles for the Independence of the Judiciary – thousands of people, led by judges and senior lawyers, went onto the streets in protest. The Supreme Court ruled in favour of his reinstatement and Musharraf had to back down.

At the time, some senior lawyers hoped that the way in which civil society responded to the President's strong-armed interference with the judiciary could mark the beginning of something new, away from the existing political party set-up which they felt was too compromised.

Their expectations were soon crushed. Last November, as the Supreme Court was about to deliver the verdict on a challenge to Musharraf's constitutional eligibility to run for president while remaining Army Chief of Staff, he accused the courts of 'working at cross purposes with the executive and legislature in the fight against terrorism and extremism'. At the time, the Supreme Court was hearing the case relating to the thousands of 'disappeared' individuals, which had upset the intelligence agencies and caused a serious rift between the Chief Justice and Musharraf.

Acting in his capacity as Chief of Army Staff – but beyond any powers legally granted to him – Musharraf hijacked the legislative process, and made himself the supreme legislator



whose 'laws' and actions could not be challenged by anyone. He imposed a state of emergency and suspended the constitution, proclaiming a Provisional Constitution Order that in turn suspended all fundamental rights. He again deposed the Chief Justice and barred judges of the superior judiciary from office unless they took an oath swearing to abide by the Constitution Order.

REVOLVING DOOR

Thousands of lawyers, human rights defenders, journalists and opposition politicians were arrested. Lawyers and human rights activists were ill-treated in prison. Musharraf

installed a caretaker government and – after the new judges confirmed his eligibility as President – left the army. He then lifted the state of emergency.

This did not end the constitutional crisis, or ease the threat to human rights. Chief Justice Chaudhry; the former Supreme Court Bar Association President Tariq Mahmood, who has a serious medical condition; and the former Vice President of the Pakistan Bar Council Ali Ahmed Kurd, a key leader of the movement for the independence of the judiciary; are still under house arrest.

The President of the Supreme Court Bar Association Aitzaz Ahsan was briefly released and then re-arrested. Munir A Malik, who was the President of the Supreme Court Bar



Association during the protests for the reinstatement of the Chief Justice, was only released because he is gravely ill and there were fears he might die in prison.

The government also operated a revolving-door policy, quietly re-arresting many people. Even those who have not been detained again remain at risk. Criminal charges brought against those freed on bail are still pending, and can be pursued whenever the accused appear to protest too vigorously against government action.

In addition, many of the complaints registered by police do not mention specific names and so can be used to arrest anyone at their discretion. One senior lawyer told Amnesty International that he was 'sitting at the mercy of the police. It's only through their "kindness" that I am not arrested and if they arrest me, I have no recourse', because none of the new judges would rule against the arrest.

The judiciary is now a shadow of its former self, approving legislation that suspends fundamental rights and prohibits judicial review of government actions. For this reason, most lawyers who were candidates in the coming elections returned their nomination papers, refusing to participate in what they argue will be a fraudulent exercise unless the independence of the judiciary is restored.

EMERGENCY, WHICH EMERGENCY?

In any event, most people reckon there will probably be no elections. So much so that even in Lahore, the country's political capital, there was hardly any electioneering as late as mid-January. There is serious anxiety over the possibility of sectarian killings and suicide attacks during the mourning month of Moharrum. And a recent increase in military activity in the tribal areas of Swat and Waziristan, on the Afghan border, added to the belief that Musharraf will raise

the spectre of unrest, killings and the ever elastic Islamist threat to postpone polling yet again.

If the elections do go ahead, the new legislature, once in power, must restore the judges and find ways to undo the constitutional and other legal changes Musharraf has made.

After all, Musharraf first assumed power and consolidated it in 1999-2002 on the back of a similar proclamation of emergency. Moreover, his was not the first takeover in Pakistan's history. Successive governments, military and civilian, have ignored their constitutional duty to respect and enforce human rights.

If suspending the constitution and reshaping the composition of the high judiciary can be regularly repeated, only to be rubber-stamped by each obliging Supreme Court, Pakistanis are doomed to see history repeat itself. They deserve better. And they deserve our solidarity, as lawyers, women's rights activists, journalists, students and human rights defenders in Islamabad, Lahore, Karachi and other cities continue their protest, often at extreme risk, as was graphically illustrated by the suicide bomb attack outside the High Court building in Lahore on January 10.


GENERAL STRONGMEN

And what of the view that the west should stop 'meddling'? Even if Musharraf's position is increasingly precarious, there may be little prospect for his restoring the rule of law while he continues to enjoy backing and generous military aid from the United States and its western partners as their 'trusted' ally in the 'war' on terror.

Musharraf even agreed to meet me on Human Rights Day 2001 in Islamabad. We discussed the human rights situation in Afghanistan and in Pakistan itself. He was open and constructive. We talked about sectarian killings - he said they had come down since his coming to power; the killing of Christians - he would look into it; and the application of the death penalty, especially in connection to juveniles - he would do something about it.

Alas, the human rights situation has actually worsened on Musharraf's watch, while he pursued the 'war' on terror for his own purposes. Thousands of people have been arrested. The cases of hundreds of victims of enforced disappearances which the Supreme Court under Chief Justice Chaudhry was pursuing rigorously, now risk remaining unresolved. Many hundreds of people are incommunicado in secret detention.

Media reports from the US say officials there are looking with increased interest at General Ashfaq Parvez Kayani, who replaced Musharraf as Chief of Army Staff. Surely their experience with backing military authoritarianism must have exposed the foolishness, folly even, of this, given the fragile cohesiveness of the country and the complexities of its political landscape.

In the long run, the only real option is to exert pressure on the authorities to respect human rights and uphold the rule of law. To insist instead on backing military strongmen, or flawed politicians, does not provide a bulwark against extremism but may also end up opening the floodgates. 

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