

(A Very Basic Primer on....)

# Pakistan

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## Brief Pakistan History & Political Structure

*Judge Ginger Berrigan has traveled to Pakistan three times in the last year to participate in the training of new prosecutors and judges in that country. The Judicial College thought this might be of interest to its members, so she was asked to use part of her time on Thursday morning to talk about the experience. The below information is intended as basic background to make the talk more informative.*

### I. Historically

-Since its independence in 1947, Pakistan has been subject to nearly 40 years of military rule/dictatorship, off and on, with about 16 years of civilian democracy

-Three main political parties - the Pakistan People's Party, the most secular and progressive; the Muslim League-N and the Muslim League-Q, both Islamic based and more conservative

-The current government is a democracy - a parliamentary form of government whereby the elected Prime Minister is the locus of executive power and the President is a figurehead - the current Prime Minister is Yousaf Raza Gilani and the current President is Asif Ali Zardari, both of the Pakistan People's Party - Zardari is the widower of Benazir Bhutto, a very charismatic woman who was assassinated in December 2007 while running for Prime Minister - the Parliament is divided into an upper house, the Senate with each province having equal representation, and a lower house, the National Assembly, being based on demographics like the United States, each of their four major provinces have their own provincial ("state") legislatures - by law, 20% of the seats of Parliament must be occupied by women - this is assured by "women only" political races throughout the country.

-The upper court system consists of a Supreme Court and four provincial High Courts - the upper courts have the power to judicially review legislation as well as executive actions and ensure the enforcement of fundamental rights - the 1973 Constitution includes a Bill of Rights, some of which are absolute, such as freedom from slavery, double jeopardy, retroactive punishment, self-incrimination, torture and gender discrimination while others are more restricted, such as freedom of speech and association which are subject to "reasonable restrictions imposed by law" in "the interests of public order or national security" - a unique power of the Supreme Court is their self-anointed authority to take up cases "in the public interest" on their own accord, such as based on correspondence or media reports (see the recent New York Times article attached for more information on this controversial power).

-Pakistan also has a system of Shariat Courts who are empowered to review any law to determine if it conforms with Islam and declare any law void if it does not - very controversial are so-called Hudood laws which were enacted in the 1970's regarding sexual and property offenses, including stoning to death for adultery and whipping and amputation for fornication and theft - these laws create immense international controversy and are being criticized internally as violating human rights and being contrary to classic Islamic law - as an aside, the Shariat Courts

are frequently more liberal in their rulings than the secular courts, in large part because Islam is based foremost on equality among people - they have, for example, significantly expanded due process rights, entrenching them as rooted in Islamic law

-Criminal justice procedure is based on the Code implemented by the British in 1898 when India/Pakistan were British colonies - it contains two characteristics that minimized the role of prosecutors - (a) the separation between the police and the prosecution was not clearly stated; minor criminal matters are actually prosecuted by police prosecutors, lawyers who were also police officers; (b) the Code emphasizes the role of the police and the judiciary over the prosecution; for instance, the results of a police investigation are turned directly over to the judiciary and not screened first for validity by the prosecution; in fact, if the victim of an offense has money, they're likely to hire private lawyers to conduct the prosecution since there isn't much confidence in the public prosecutor

-Salaries for public prosecutors are low as are the salaries for lower court judges

-Police investigations are poor, due both to lack of training and the unwillingness of the public to cooperate, due to distrust of the police - corruption is a problem - police officers are frequently bribed, which is linked to baseless allegations - lower court judges reportedly have taken bribes

-On the other hand, the system is progressive in that statements or confessions by an accused are only admissible in court if made before a judge and signed by the accused - police interrogations are not admissible

-Judge trials only - not sequential trials - hundreds of cases set at a time - for example, on a particular day, a judge may hear the testimony of several witnesses, all from different cases - so it can take years to complete all the testimony - frivolous litigation is estimated to account for 25-50% of all the cases - the appellate court in Punjab, for example, has 20 judges and they reported a current caseload of 95,000 cases

-A unique and for us shocking aspect of Pakistan life is the so-called "honor killing" -- which are defined by Human Rights Watch as:

...acts of vengeance, usually death, committed by male family members against female family members, who are held to have brought dishonor upon the family. A woman can be targeted for a variety of reasons, including refusing to enter into an arranged marriage, being the victim of a sexual assault, seeking a divorce - even from an abusive husband - or (allegedly) committing adultery. The mere perception that a woman has behaved in a way that dishonors her family is sufficient to trigger an attack on her life.

-Honor killings appear to be tribal in source, with a long history in Arab culture - while followers of all the major religions have, at times, cited their religion as a justification for the killings, they appear to have no religious source and indeed the practice arguably precedes formal

[http://www.law.tulane.edu/uploadedFiles/Institutes\\_and\\_Centers/Eason\\_Weinmann/Pakistan Primer.pdf](http://www.law.tulane.edu/uploadedFiles/Institutes_and_Centers/Eason_Weinmann/Pakistan_Primer.pdf)

religions, dating back to 1200 B.C. - they appear to be based more on the notion that women are property with no rights of their own, that men are responsible for them and women are to be virtuous and obey their husbands

***The New York Times*, Monday, January 23, 2012**

## **Pakistan Court Widens Role, Stirring Fears for Stability**

By DECLAN WALSH

ISLAMABAD, Pakistan — Once they were heroes, cloaked justices at the vanguard of a powerful revolt against military rule in Pakistan, buoyed by pugnacious lawyers and an adoring public. But now Pakistan's Supreme Court is waging a campaign of judicial activism that has pitted it against an elected civilian government, in a legal fight that many Pakistanis fear could damage their fragile democracy and open the door to a fresh military intervention.

From an imposing, marble-clad court on a hill over Islamabad, and led by an iron-willed chief justice, Iftikhar Muhammad Chaudhry, the judges have since 2009 issued numerous rulings that have propelled them into areas traditionally dominated by government here. The court has dictated the price of sugar and fuel, championed the rights of transsexuals, and, quite literally, directed the traffic in the coastal megalopolis of Karachi.

But in recent weeks the court has taken interventionism to a new level, inserting itself as the third player in a bruising confrontation between military and civilian leaders at a time when Pakistan — and the United States — urgently needs stability in Islamabad to face a dizzying array of threats.

Judges say their expanded mandate comes from the people, dating back to the struggle against the military rule of Gen. Pervez Musharraf that began in 2007, eventually helping to pry him from power. Memories linger of those heady days, when bloodied lawyers clashed with riot police officers, and judges were garlanded and paraded as virtual saints.

In recent months, however, the Supreme Court has ventured deep into political peril in two different cases. Last week, as part of a high-stakes corruption case, it summoned Prime Minister Yousaf Raza Gilani to testify in court under threat of contempt charges that, if carried to conviction, could leave him jailed and ejected from office.

The court has also begun an inquiry into a scandal known here as Memogate, a shadowy affair with touches of soap-opera drama that has engulfed the political system since November. It has claimed the job of Pakistan's ambassador to the United States and now threatens other senior figures in the civilian government, under accusations that officials sought American help to head off a potential military coup.

Propelled by accounts of secret letters, text messages and military plots, the scandal has in recent days focused on a music video featuring bikini-clad female wrestlers that is likely to be entered as evidence of immorality on the part of the central protagonist, Mansoor Ijaz, an American businessman of Pakistani origin.

Hearings resume Tuesday when Mr. Ijaz is due to give evidence. The fact that the courts have become the arena for such lurid political theater has reignited criticism, some from once

staunch allies, that the Supreme Court is worryingly overstepping its mark.

“In the long run this is a very dangerous trend,” said Muneer A. Malik, a former president of the Supreme Court Bar Association who campaigned for Justice Chaudhry in 2007. “The judges are not elected representatives of the people and they are arrogating power to themselves as if they are the only sanctimonious institution in the country. All dictators fall prey to this psyche — that only we are clean, and capable of doing the right thing.”

The court’s supporters counter that it is reinforcing democracy in the face of President Asif Ali Zardari’s corrupt and inept government. On Saturday, Justice Chaudhry pushed back against the critics.

The court’s goal was to “buttress democratic and parliamentary norms,” he told a gathering of lawyers in Karachi. Deep-rooted corruption was curtailing justice in Pakistan, he added. “Destiny of our institution is in our own hands,” he said.

Mr. Chaudhry was appointed to the Supreme Court under General Musharraf in 2000. Two years later he wrote a judgment that absolved the military ruler for his 1999 coup. But Mr. Chaudhry shocked his patron and his country seven years later with decrees that challenged General Musharraf’s pre-eminence. Senior security officials were ordered to track down individuals being illegally held by the military intelligence agency, the Inter-Services Intelligence Directorate, or ISI, in some cases working with the F.B.I. and C.I.A. The privatization of state companies came under sharp scrutiny.

Then, on March 9, 2007, General Musharraf tried to fire Justice Chaudhry and placed him under house arrest. Protesting lawyers rushed into the streets in support of the chief justice. New cable television channels broadcast images of the tumult across the country. Power drained from General Musharraf, who resigned 18 months later.

The euphoria was soon tempered, however, by growing tensions with the new government. Mr. Zardari hesitated to reinstate Mr. Chaudhry, believing that he was too close to his political rivals and the military.

The standoff led to fresh street protests in 2009, led by the opposition leader Nawaz Sharif. That March, amid dramatic scenes that included a threatened march on the capital, Mr. Zardari relented and Justice Chaudhry returned to the bench.

Within months, the Supreme Court had cleared the way for the possible prosecution of Mr. Zardari in a Swiss corruption case dating to the 1990s. The government cited Mr. Zardari’s presidential immunity, and argued, along with some international analyst groups, that the court was specifically targeting the president.

But among the wider public, the court was winning broad support. It engaged in a series of muscular interventions to champion the cause of ordinary Pakistanis, some of which broke new ground. Judges expanded the civil rights of hijras, transgendered people who traditionally suffered discrimination, called senior bureaucrats and police officials to account, halted business ventures that contravened planning laws, including a McDonald’s restaurant in Islamabad and a German supermarket in Karachi, and issued a decree against the destruction of trees along a major road in Lahore.

The court's populist bent has infuriated the government but won cheers from urban, middleclass Pakistanis — the same people who had supported the lawyers' drive against General Musharraf. Largely young, frustrated by traditional politics and angered by official graft, they constitute a political class that has in recent months flocked to Imran Khan, the cricket star turned politician who is enjoying a sudden surge in popularity, and is a strong defender of the judiciary.

But the court's activism has also taken many erratic turns. Justice Chaudhry has fought trenchant battles to win control of judicial appointments, a process traditionally in the government's purview. While the judiciary has vigorously pursued Mr. Zardari, it absolved Mr. Sharif of his alleged crimes. And critics accuse Mr. Chaudhry of failing to reform the chaotic lower courts, which remain plagued by long backlogs. "Three years after the restitution of the chief justice, the delivery of justice remains as poor as it has ever been," said Ali Dayan Hasan, of Human Rights Watch.

The gravest charges, though, swirl around the memo scandal. Mr. Ijaz claims to hold an unsigned memorandum showing that Mr. Zardari's government sought covert United States government help to avert a military coup in the poisonous aftermath of the American raid that killed Osama bin Laden in May.

But the memo's provenance is unclear and Mr. Ijaz's credibility has come under assault in the news media. Last week a music video that went viral on the Internet showed Mr. Ijaz acting as the ringside commentator in a wrestling contest between two bikini-clad women and that, in one version, featured full nudity — a shocking sight in conservative Pakistan.

The furor, which made front-page news, injected a fresh sense of absurdity into proceedings that already were under question, and that many here insist would never have started without military intervention: the Supreme Court ordered the inquiry on Dec. 30 at the direct request of the army chief, Gen. Ashfaq Parvez Kayani, and the ISI director general, Lt. Gen. Ahmed Shuja Pasha, who harbor little love for Mr. Zardari. Also, the court ignored other claims by Mr. Ijaz that the army secretly sheltered Bin Laden, and sought outside support to mount a coup — acts that, if proven, could be equally treasonous.

Suspicious about the court's impartiality were renewed last Friday, when Mr. Chaudhry ordered the government to disclose whether it intended to fire General Kayani or General Pasha — even though such decisions are normally the government's prerogative. The titanic three-way struggle among generals, judges and politicians comes at a time when Pakistan has become increasingly chaotic. Taliban insurgents continue to roam the northwest, the economy is in dire straits and urgently needed reforms in education, health and other social sectors have been largely ignored.

From the standpoint of the United States, the deadlock has diverted the spotlight from military airstrikes that killed 26 Pakistani soldiers in November and brought the two countries' troubled relationship to a new low. But it has also drawn attention away from a pressing priority of the United States in Pakistan: engaging cooperation here to help negotiate a peace settlement with the Afghan Taliban as a major troop withdrawal slated for 2014 draws near.

"In the midst of this institutional wrangling, nobody has a clear plan as to how politics or



foreign policy are going to move forward, said Dr. Paula Newberg of Georgetown University, who has written a book about Pakistani constitutional politics. “Pakistan could easily have a much brighter future. But it gets itself worn down by these incessant disputes about where power lies.”

## **Working against all odds**

Huma Yusuf | Opinion | July 11, 2011 Pakistan English Newspaper “Dawn”

It comes as no surprise that the anti-sexual harassment bill passed with great fanfare in March last year is not being implemented.

Some days ago, members of the National Implementation Watch Committee (NIWC), tasked by the prime minister to ensure that the law is effective, announced that both public- and private-sector entities have failed to submit compliance reports pertaining to sexual harassment at the work place. Shamefully, these entities include the army, judiciary, government departments and major media outlets.

It was a given that most organisations would continue to treat sexual harassment as a low-priority issue, law or no law (hence the need to create the NIWC in the first place). The question is why? Charges of sexual harassment continue to be perceived as another vanity or indulgence of women who, some argue, shouldn't be working if they can't handle interactions with men. No one takes the crime of sexual harassment seriously because there is a prevalent misconception that women who are teased, touched, assaulted, or raped at the workplace did something to invite the advances, or worse, that they enjoy the attention.

A more perverse line of thinking suggests that sexual harassment legislation is an inconvenient trapping that flips the power dynamic, allowing scheming women to exploit men on flimsy charges. This mentality was publicly demonstrated in Pakistan, albeit in a slightly different context, by former president Pervez Musharraf when he suggested that women cry rape so that they can get travel visas. And it's a mentality that will be vindicated and perpetuated by the outcome of the sexual assault case involving former IMF head Dominique Strauss-Kahn. His accuser seemingly fits the description offered by many harassment sceptics: inconsistent, duplicitous, and alleging assault for financial gain.

Cases such as Strauss-Kahn's, where the accuser's credibility is doubted, are few and far between. But the knee-jerk response to harassment claims is often misgiving. Why do deep-rooted suspicions about women's actions and motives persist?

It seems to me that the dichotomy applied to women in the public sphere — by the

international media, legislation and political rhetoric — is doing the female victims of sexual harassment a great disservice. By this dichotomy, women are either pure and asexual, or tainted and sexualised. Conceptualised differently, in a throwback to the Christian scriptures, women are either mother/virgins or sex workers. Victimhood can only be the privilege of the former category of woman; the latter are believed to have brought the trouble upon themselves through poor moral choices. The sad irony for women is that, no matter how they were perceived before, the moment they allege sexual harassment in the workplace, they are sexualised, and therefore viewed suspiciously.

The underlying contempt for women who claim to have been sexually mistreated has been highlighted in recent days. As soon as Strauss-Kahn's accuser's credibility came into doubt, the international media unleashed its scorn. Slate France published the accuser's name, thereby compromising her privacy and safety. Soon thereafter, the New York Post reported that the accuser is a sex worker, a claim for which the paper is now being sued. The Post also carried a story implying that the accuser is HIV-positive, by reporting that she lives with her daughter in a building set aside exclusively for adults with HIV/AIDS. Through such sensationalist reportage, a familiar narrative is being developed: women who allege sexual harassment are deceiving, disease-ridden sex workers who invite encounters for personal gain.

I have recently argued with many people who think that any vilification campaign against Strauss-Kahn's accuser is justified. To them, I like to point out that even before her credibility was questioned, the international media was more concerned about the impact of the assault allegation on the IMF chief's career than about the security of thousands of women globally employed as hotel maids and constantly vulnerable to harassment. Moreover, demonising Strauss-Kahn's accuser and making her a media spectacle is counterproductive, as it will foster scepticism of the charges brought by genuine victims.

Those not yet convinced of the dangers of typecasting women as either chaste or corrupt should consider the growing popularity of the Obedient Wives Club (OWC), a women's group that teaches Muslim wives how to "keep their spouses happy in the bedroom" and has chapters in Jordan, Malaysia, Indonesia, and Singapore. The OWC emphasises female submissiveness and encourages women to serve their husbands as sex workers would; the club's logic is that more obedient and willing wives will help curb societal ills such as prostitution, trafficking and domestic violence. This logic relies on the simplistic perception of women within the good/bad framework, and concludes, much like public debates about sexual harassment, that women are ultimately sex workers. Women's rights groups across Southeast Asia are protesting the OWC, but like the NIWC in Pakistan, to no avail.

The fact is, Pakistan's women's rights record is appalling. Women suffer the plague of 'honour' killings and domestic violence, are incarcerated by the state under the most discriminatory and insufficient rape laws, find themselves vilified by rabid clerics on private television channels, and have their schools blown up by militants. The Protection Against Harassment of Women at the Workplace Act is a glimmer of hope in otherwise oppressive and discriminatory times.

To take the law's spirit and implementation seriously, the Pakistani state and activist network must overcome the cultural prejudices not only of the Pakistani public, but also of the world at large. It's a tall task, but one that should not be neglected.

After all, working women are among the few bright lights of Pakistan, and all efforts should be made to secure their contributions to society, the economy and Pakistan's progressive future.

*New York Times*     January 9, 2011

## **My Father Died for Pakistan**

By SHEHRBANO TASEER

Lahore, Pakistan

TWENTY-SEVEN. That's the number of bullets a police guard fired into my father before surrendering himself with a sinister smile to the policemen around him. Salmaan Taseer, governor of Punjab, Pakistan's most populous province, was assassinated on Tuesday — my brother Shehryar's 25th birthday — outside a market near our family home in Islamabad.

The guard accused of the killing, Mumtaz Qadri, was assigned that morning to protect my father while he was in the federal capital. According to officials, around 4:15 p.m., as my father was about to step into his car after lunch, Mr. Qadri opened fire.

Mr. Qadri and his supporters may have felled a great oak that day, but they are sadly mistaken if they think they have succeeded in silencing my father's voice or the voices of millions like him who believe in the secular vision of Pakistan's founder, Muhammad Ali Jinnah.

My father's life was one of struggle. He was a self-made man, who made and lost and remade his fortune. He was among the first members of the ruling Pakistan Peoples Party when it was founded by Zulfikar Ali Bhutto in the late 1960s. He was an intellectual, a newspaper publisher and a writer; he was jailed and tortured for his belief in democracy and freedom. The vile dictatorship of Gen. Mohammad Zia ul-Haq did not take kindly to his pamphleteering for the restoration of democracy.

One particularly brutal imprisonment was in a dungeon at Lahore Fort, this city's Mughal-era citadel. My father was held in solitary confinement for months and was slipped a single meal of half a plate of stewed lentils each day. They told my mother, in her early 20s at the time, that he was dead. She never believed that.

Determined, she made friends with the kind man who used to sweep my father's cell and asked him to pass a note to her

husband. My father later told me he swallowed the note, fearing for the sweeper's life. He scribbled back a reassuring message to my mother: "I'm not made from a wood that burns easily." That is the kind of man my father was. He could not be broken.

He often quoted verse by his uncle Faiz Ahmed Faiz, one of Urdu's greatest poets. "Even if you've got shackles on your feet, go. Be fearless and walk. Stand for your cause even if you are martyred," wrote Faiz. Especially as governor, my father was the first to speak up and stand beside those who had suffered, from the thousands of people displaced by the Kashmir earthquake in 2005 to the family of two teenage brothers who were lynched by a mob last August in Sialkot after a dispute at a cricket match.

After 86 members of the Ahmadi sect, considered blasphemous by fundamentalists, were murdered in attacks on two of their mosques in Lahore last May, to the great displeasure of the religious right my father visited the survivors in the hospital. When the floods devastated Pakistan last summer, he was on the go, rallying businessmen for aid, consoling the homeless and building shelters.

My father believed that the strict blasphemy laws instituted by General Zia have been frequently misused and ought to be changed. His views were widely misrepresented to give the false impression that he had spoken against Prophet Mohammad. This was untrue, and a criminal abdication of responsibility by his critics, who must now think about what they have caused to happen. According to the authorities, my father's stand on the blasphemy law was what drove Mr. Qadri to kill him.

There are those who say my father's death was the final nail in the coffin for a tolerant Pakistan. That Pakistan's liberal voices will now be silenced. But we buried a heroic man, not the courage he inspired in others. This week two leading conservative politicians — former Prime Minister Chaudhry Shujaat Hussain and the cricket-star-turned-politician Imran Khan — have taken the same position my father held on the blasphemy laws: they want amendments to prevent misuse.

To say that there was a security lapse on Tuesday is an understatement. My father was brutally gunned down by a man hired to protect him. Juvenal once asked, "Who will guard the guards themselves?" It is a question all Pakistanis should ask themselves today: If the extremists could get to the governor of the largest province, is anyone safe?

It may sound odd, but I can't imagine my father dying in any other way. Everything he had, he invested in Pakistan, giving livelihoods to tens of thousands, improving the economy. My father believed in our country's potential. He lived and died for Pakistan. To honor his memory, those who share that belief in Pakistan's future must not stay silent about injustice. We must never be afraid of our enemies. We must never let them win.

*Shehribano Taseer is a reporter with Newsweek Pakistan.*