

# PAKISTAN

## Time to take human rights seriously

*“...it is the will of the people of Pakistan to establish an order -- ...  
Wherein the principles of democracy, freedom, equality, tolerance and social justice, as  
enunciated by Islam, shall be fully observed; ...  
Wherein shall be guaranteed fundamental rights, including equality of status, of opportunity and  
before law, social, economic and political justice, and freedom of thought, expression, belief and  
faith, worship and association, subject to law and public morality;  
Wherein adequate provision shall be made to safeguard the legitimate interests of minorities and  
backward and depressed classes;  
Wherein the independence of the judiciary shall be fully secured....”*

**Preamble to the Constitution of Pakistan of 1973**

If only these fine words had been matched by reality! As Pakistan celebrates 50 years of independence, the sad truth is that the people of Pakistan have rarely enjoyed all their fundamental rights. Economic development has passed by the vast majority of the population. Illiteracy and discrimination persist. A culture of violence is all-pervasive. In long periods of martial law, civil and political rights were suspended, political institutions destroyed and the Constitution distorted. Elected governments have failed to repair the damage, engaging in the politics of revenge and neglecting deep-seated social and economic problems. A small political elite has retained its monopoly on power, behaving as if there is one law for the rulers and another for the ruled. None of the organs of state, including the judiciary, has worked consistently to ensure that the rule of law is respected or that redress is provided when the law is broken.

The human rights situation in Pakistan is persistently grim. Torture, including rape, is widespread, leading to scores of deaths every year. Scores of other people are extrajudicially executed. Armed opposition groups have taken hostage their own dissidents and political opponents, some of whom have then been tortured and killed. Over the years, no government has taken seriously human rights protection and promotion; even those that have promised reforms have rarely matched their words with concrete measures to improve the enjoyment of human rights in Pakistan.

Pakistan is a country of widening economic disparity. The benefits of economic growth do not touch most of the population, as too few resources are put into job creation, education and healthcare. While a small group grows increasingly rich, some 35 million people in Pakistan (out of a total of 131 million) live in absolute poverty, 60 million people do not have access to any health facilities, 67 million people are without safe drinking water and 89 million people are deprived of basic sanitation facilities.<sup>1</sup>

Ordinary citizens have been let down. The will of the people of Pakistan as articulated in their Constitution has remained an unfulfilled wish. Today there is a mood of cynicism around the country as confidence in the democratic process has been eroded. Where once people fought for their right to political participation,

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<sup>1</sup> Human Development Report South Asia, 1997

they now turn their backs on politics. The low turnout of voters (around 35 per cent in the general elections of February 1997) is tell-tale evidence of this attitude. It appears that the electorate does not believe that its interests will be represented or advanced by either of the two main parties that have dominated Pakistan politics over the past decade.

Many factors have contributed to this dismal state of affairs in which human rights are violated with virtual impunity. No single government can be solely blamed: all have contributed to the present situation and all are collectively responsible.

### **Political Background**

Some two decades of martial law rule decisively weakened the social and political fabric of the state. During the last martial law period, from 1977 to 1985, when parliament was dissolved, sections of the Constitution were suspended or amended to suit the martial law administration. This had a particularly disabling effect on the organs of the state. Chief Martial Law Administrator, later President Zia-ul-Haq undermined the independence of the higher judiciary when he did away with the security of tenure of judges. Political parties were banned. Many continued to work clandestinely even though their leaders were imprisoned or exiled, but they lacked the opportunity to cultivate the parliamentary practice of democratic give and take.

Parliament was allowed to function again in 1985 after elections on a non-party basis. However, it was given an ultimatum: indemnify all martial law period initiatives or endure a continuation of martial law. It opted for the first alternative and passed the Eighth Amendment to the Constitution, giving a parliamentary stamp of approval to laws and institutions set up under martial law.

Ethnic and religious rivalries were encouraged during these years to weaken and divide the democratic opposition to the martial law regime. Once created, such divisions are not easily healed. Violence along the ethnic divide between Sindhis and Mohajirs (Urdu-speaking refugees from India in 1947 and their descendants) has continued to this day, resulting in hundreds of deaths. Resentment over the socio-economic, military or government positions of different ethnic groups -- Punjabis, Sindhis, Seraikis, Pathans and Baloch -- have deepened. Clashes between the Shi'a and Sunni Muslim communities reached a sad peak in 1996 when some 350 people were killed, often during attacks on places of worship.

In his effort to create a political constituency, Zia-ul-Haq embarked on an Islamization drive, replacing several sections of the Pakistan Penal Code (PPC) by laws derived from the Qur'an and the Sunnah. Introduced by presidential ordinance or by allowing existing laws to be scrutinized by a specially created Federal Shariat Court, these wide ranging legal changes were never endorsed by a duly elected parliament.

With the lifting of martial law in 1985, executive power was in theory taken out of the hands of the men in khaki. Most observers believe, however, that the army remains the most powerful element in the troika

that rules Pakistan -- the Chief of Army Staff, the President and the Prime Minister. The size of the defence budget, justified by the government on grounds of regional tensions, particularly the perceived threat from India, is consistently higher than the entire budget for development. Pakistan served for many years as a conduit for arms supplies to Afghanistan and extended support to various factions in the civil war there. Many of these arms did not reach the Afghan border but found their way to local markets, fostering a gun culture which is difficult to rein in.

The armed forces remain a taboo subject for the media in Pakistan. Abuses ascribed to soldiers are rarely reported, seldom investigated and rarely brought to trial. In a controversial move, the caretaker government of Prime Minister Meraj Khalid in January 1997 gave the army a permanent and visible role in a newly established Council of Defence and National Security, which is to advise the government on matters of national interest.

The Eighth Amendment to the Constitution also empowered the president to dismiss an elected government and dissolve an elected assembly if he was satisfied that the "government of the federation cannot be carried on in accordance with the provisions of the Constitution". This provision, by which Zia-ul-Haq secured his rule, has been used by subsequent presidents to dismiss four elected governments since 1985. None of the governments elected since 1985 has served its full term in office. The charge sheet against each of the dismissed governments included corruption, nepotism and abuse of office. The last statement of dismissal against the government of Prime Minister Benazir Bhutto also cited contempt of the judiciary and massive human rights violations.

The two main parties that have alternated in office since 1985, the Pakistan Muslim League of Nawaz Sharif and the Pakistan People's Party (PPP) of Benazir Bhutto, have failed to mend the torn fabric of the state. The rule of law has been relentlessly subordinated to a ruthless pursuit of power in which the ends -- to stay in power or to gain power -- appear to justify any means. The party in office has endeavoured to incapacitate political opponents by subjecting them to false criminal charges, arbitrary arrests, torture, intimidation and lures or threats to change allegiance. Aware that their term in office may be less than the constitutionally-fixed five years, many politicians have sought to extract maximum benefit for themselves and their relatives as quickly as possible. A political commentator summed this up as the "self-immolatory exercise of power being a constant in Pakistani politics".<sup>2</sup> At the same time, the party in opposition has tried to paralyse the government by calling countrywide strikes and refusing to cooperate on important legislation.

Much of the systemic abuse of office, which also accounts for the distressing human rights situation in Pakistan, relates to the nature of the ruling elite and the ways in which it has sought to perpetuate itself. Some analysts say that the fact that most electoral constituencies in Pakistan are rural facilitates the dominance of a rural feudal elite. This perspective ignores the emergence over the past decades of a much more heterogenous and complex political elite. Beside the traditional land owning class, the elite comprises

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<sup>2</sup> "Dawn", 29 October 1996

the local administration, the military and the newly emerging industrialists. These people are linked by marriage and structures of mutual obligation but crucially also by common political and economic interests which transcend party affiliation. This “incestuous oligarchy which dominates social, political and economic life of the country”<sup>3</sup> monopolizes and marginalizes the political system through its disregard for the rule of law and the rights of ordinary citizens. The political elite shares an indifference to social justice, equality of opportunity and fair distribution of national wealth.

## **The Legislature**

The governments elected since the lifting of martial law have failed to respect consistently the national parliament as the sole legitimate law-giver.

All recent governments have extensively made laws by presidential ordinance: the president may promulgate an ordinance when parliament is not in session and there is an urgent need to pass a law. Ordinances lapse after 120 days unless placed before parliament, which may then consider whether or not to pass them. In Pakistan, parliament has sometimes been prorogued to allow the president to promulgate an ordinance which might not have been passed by the legislature. Some ordinances have been repeatedly re-issued every 120 days even though the Supreme Court declared this practice unconstitutional. The Qisas and Diyat Ordinance, which governs the offences of physical injury and murder and is one of the laws most frequently referred to in the PPC, has been repeatedly re-promulgated since late 1990. The last government of Benazir Bhutto promulgated 335 ordinances while it was in office.

The power of the president to dismiss an elected parliament, a power abolished only recently under the new government of Nawaz Sharif, also served to undermine parliaments’ status and independence. At the same time legislators, by using the tactics of boycott and obstruction, have done little to restore the dignity of the institution.

The Federal Shariat Court, which has the power to annul any law it considers to be in conflict with Islamic injunctions, has been challenged by several legislators as a supra-legislature, imposed on a parliamentary democracy by a military dictatorship. However, no efforts have been made to amend its power or to abolish it.

## **The Judiciary**

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<sup>3</sup> “Dawn”, 10 June 1996

Successive governments have continued the attempts by the martial law ruler to keep the higher judiciary under executive control. This practice reached a peak under Benazir Bhutto's government: not only did her government undertake an unusually large number of appointments of judges in which considerations of political allegiance appeared to have outweighed those of merit; it also engaged in punitive transfers and personal harassment of judges and left many judges without secured tenure. In the second half of 1996, three of the four provincial high courts were headed by acting chief justices and there was a plethora of acting or temporary judges, all of whom had to assume that their services would be terminated if their rulings did not please Islamabad.

In March 1996 the Supreme Court, in a landmark judgment, reasserted its independence. It ruled that all permanent judicial vacancies should be filled promptly with permanent appointments rather than temporary ones. It also ruled that all judicial appointments must be made after meaningful consultation with the relevant chief justices, and that no judge could be transferred to the Federal Shariat Court. All

**Figure 1:** The Supreme Court of Pakistan, Islamabad.

previous appointments inconsistent with these requirements were declared void. The then Prime Minister, Benazir Bhutto, initially refused to implement the judgment despite a reprimand to do so by the Chief Justice. As the government failed to de-notify laid off judges and to fill judicial vacancies, the judiciary was thrown into confusion and the already considerable backlog of cases increased further. In November 1996, at the time of the dismissal of the PPP government, the Lahore High Court had only 33 permanent judges even though the officially sanctioned number is set at 50. These 33 judges faced a backlog of 65,000 cases. The situation in other high courts was similar: of a total of 113 posts of the higher judiciary, 38 were left unfilled in November 1996.

The independence of the judiciary, re-established in 1996 after successive governments' attempts to curb it, is not an end in itself nor a right of judges.<sup>4</sup> It is, however, the right of the users of justice. The right to justice is a fundamental right of every person, not granted as a favour or privilege by the state. It requires that the state should make the dispensation of justice possible by appointing a sufficient number of judges and other staff.

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<sup>4</sup> Special Rapporteur on the independence of the judiciary reporting to the Human Rights Commission in Geneva, March 1997.

## **The Police**

Successive governments, as well as members of parliament irrespective of their party affiliation, have used the personnel and mechanisms of the law enforcement apparatus for their own political ends. Police officers have been appointed irrespective of merit and police station posts considered to afford the maximum opportunity for bribe-taking and graft have been auctioned to the highest bidder. The Inspector General of Police in Punjab reportedly said in 1996 that in the previous five years an estimated 25,000 police officers had been recruited by way of quotas allotted to politicians without any check on the officers' character or competence.

The connection between police officers and the criminal underground also contributes to police failing to protect the rule of law and using unlawful methods. The Inspector General of Police in Sindh disclosed in 1996 that some 500 members of his police force had been dismissed because they had close links with the criminals they were recruited to fight. Many police officers have been personally involved in crimes. Many appear to have killed without hesitation suspects in custody or to have hunted them down in "encounters". Others have helped politicians, local members of parliament and big landlords in unlawful activities, whether these be terrorizing opponents or bonded labour, covering up a crime or registering false criminal charges against an opponent.

Police training, particularly in human rights protection, including humane investigative techniques, has been woefully neglected over the years. This indicates that successive governments have not been overly concerned to make the police force independent and effective in fulfilling its legitimate purpose -- law-enforcement. Police salaries have remained inadequate over the years, leading to some police believing they are entitled to extract a supplement from detainees, often through torture.

In public discussions about the frequency with which police in Pakistan resort to undue force, often killing rather than arresting suspects, police have often cited in apparent justification for their actions the fact that trials take years to conclude, that witnesses can be bought and that criminals may never be brought to justice. In other words, to ensure punishment police feel free to use the gun rather than arrest. Again, the responsibility for this belongs to the government -- for not ensuring that judicial posts are filled and trials promptly concluded, for not ensuring that the bribery of witnesses is punished, and for not punishing police who take the law into their own hands.

The phenomenon of impunity is closely related to the persistence of widespread and systemic human rights violations in Pakistan. It also has its roots in the corruption of the police by political appointments. Since many police staff are recruited on the basis of political patronage and may have rendered unlawful services to their political mentors, the mentors are unlikely to ensure that police personnel responsible for human rights violations are brought to justice. Complicity and connivance stand in the way of ending impunity.

The picture, however, is not altogether bleak. The vast majority of people retain their sense of justice and seek to live within the law. Sections of civil society, women's groups, bar associations and journalists have grown in strength despite setbacks. Journalists and human rights monitors, who have been jailed on false criminal charges or beaten up and threatened with "dire consequences" for reporting local corruption and human rights violations, have withstood such pressures from the state with remarkable determination.

This report does not look at the record of any specific recent government and does not compare their performances. It aims to reveal the systemic nature of the present human rights situation and recommends steps that any government can take to ensure that human rights are protected in the future.

The new government of Nawaz Sharif, having gained a two-thirds majority in the National Assembly in the February 1997 elections, is uniquely placed to take concrete measures to protect and promote human rights. Amnesty International believes that now is the time to take human rights seriously. Now is the time to act.

## CHAPTER 1

### ARBITRARY DETENTION AND “DISAPPEARANCES”

The Deputy Superintendent of Police boldly told the Sindh High Court in Hyderabad on 27 August 1996 that Dr Rahim Solangi and Punhal Sario "were neither wanted, nor detained in any police station in the entire district". The relatives of the two men knew better. So too did their lawyers, who told the court that the men were being held in Tando Allayar police station, some 25 kilometres from Hyderabad. The court immediately sent its deputy registrar to Tando Allayar. He found no detainees in the police lockup but then discovered 27 people in the police quarters adjacent to the police station. Among them were Dr Solangi and Punhal Sario, officials of a Sindhi opposition party, the Sindh Taraqi Pasand Party (STPP). Both had been arrested at their party office over a month earlier. The duty officer refused to let the court official enter, but informed him that the detainees were being held on the verbal orders of the Senior Superintendent of Police. Just before the court official had searched the police station, the station's senior officers had fled, taking with them the daily diary which under Pakistan law may never be removed from the police station. The deputy registrar then issued orders that the two detainees be brought to court immediately.

That same afternoon Dr Solangi and Punhal Sario were charged with robbery. A magistrate, who was told that the men had been arrested the day before, remanded them to police custody. They were then taken to Hyderabad where the court had already adjourned. The following day the detainees were again brought to court where they confirmed that remand had been obtained the previous afternoon, after the visit by the court official. Orders for the release of the two men were issued on 3 September as there was no

**Figure 2:** Dr.Rahim Solangi and Punhal Sario and several other detainees were held in police quarters, Tando Allayar. Courtesy: *Dawn Newspaper, Karachi.*

evidence linking them to the robbery. However, they were immediately rearrested by police from Jamshoro on the basis of a "blind" First Information Report (FIR) -- a complaint registered with police which does not name a criminal suspect and can be used to detain anyone. In this case the blind FIR

referred to a robbery and did not name a suspect. When they were found innocent of this offence as well, they were again rearrested under similar charges involving unknown offenders and remanded to successive periods in police custody in Jamshoro, Badin and Thatta district. They had already been repeatedly transferred from police station to police station since their arrest in June 1996 before they were traced to the police station in Tando Allayar.

After four months of continuous detention in different police stations in connection with different allegations, a new arrest warrant was issued against Dr Solangi and Punhal Sario on 27 September 1996 from Thatta district citing charges of illegal possession of arms. Police claimed to have found unlicensed pistols in their possession. This was somewhat surprising given that the two men had been continuously held in detention and repeatedly searched. The police investigation concluded in early October and both men were transferred to Hyderabad Central Jail. In January 1997 the two men were released on bail but the charges are still pending against them.

The abuse of these two men is by no means an isolated incident. Dozens of similar cases have been reported over the past few years. Successive governments in Pakistan have arrested and detained political opponents on false criminal charges, under so-called blind FIRs or under preventive detention laws. Some of these political prisoners may be prisoners of conscience.

While it is difficult to assess whether particular criminal charges against political activists are justified, the repeated issuing of blind FIRs and consecutive remand orders suggests strongly that charges are not sustainable but are being brought solely for political reasons. One sign of the cycle of retribution that marks Pakistan political life is that more than a dozen blind FIRs with consecutive remand orders were issued in 1990 and 1991 against Pir Mazhar-ul Haq -- the man who was serving as law minister in Sindh when the same means were used to detain arbitrarily Dr Solangi and Punhal Sario.

#### **ARBITRARY LAYING OF CRIMINAL CHARGES**

Successive governments of Pakistan have brought criminal charges against political opponents to harass or intimidate them or to persuade them to change their allegiance. Members of the PPP leadership were charged with dozens of criminal offences when in opposition. Similarly, Nawaz Sharif, leader of the Muslim League, was charged with more than a hundred criminal offences during his period on the opposition bench. In June 1995, some 16 Muslim League leaders were charged with treason, an offence punishable with death, for allegedly seeking to oust the elected government in Punjab. The charges were withdrawn three months later. Activists of the Mohajir Qaumi Movement (MQM), the party claiming to represent Mohajirs, still face dozens of criminal charges brought against them under the government of Benazir Bhutto. The withdrawal of these charges was reportedly the subject of negotiations between the government of Nawaz Sharif and the MQM leadership when they formed a coalition in Sindh following the general elections in February 1997. Former Chief Justice Dr Nasim Hasan Shah had in February 1996 urged a review of such charges, suggesting that some 90 per cent of cases would prove to be unsustainable.

The ease with which criminal charges are brought and dropped indicates that they are not always based on solid evidence. Even in cases where there is evidence to suggest the commission of a crime, charges have sometimes been arbitrarily dropped, suggesting that what is at stake is not criminal responsibility but political expediency. In 1994 the government of Benazir Bhutto withdrew several criminal charges, including abuse of office and violation of women's rights, against Irfanullah Marwat, former adviser to the then Sindh Chief Minister, Jam Sadiq Ali. The non-governmental Human Rights Commission of Pakistan commented, "whether charges are true or not is a matter to be decided in the court of law. Summary withdrawal of these cases will strengthen the public impression that executive authority is being used to grant the guilty reprieve...", just as the arbitrary laying of charges creates the impression that executive authority is abused to persecute the innocent.

### JOURNALISTS FALSELY CHARGED

Journalists whose reports displease government authorities -- sometimes because they expose corrupt unlawful practices of officials -- have been charged with criminal offences in order to chastise or intimidate them. Often, charges are kept pending for years; they can be reactivated at any time and must appear to the authorities as a convenient tool to ensure the good behaviour of journalists.

Sedition charges were brought in June 1995 against Zafaryab Ahmed, a journalist of "The News". The Federal Investigation Agency alleged that in his writings he had "exploited the death of Iqbal Masih" (a child activist against bonded labour, see below) and "in collusion with the Indian intelligence agency RAW [Research and Analysis Wing]" had aimed at "causing a recurring financial loss to Pakistani business abroad ... to pave the way for economic warfare against Pakistan". Zafaryab Ahmed was freed on bail after six weeks but the charges remain pending.

M.H. Khan, a journalist who in 1996 uncovered the unlawful use of fetters in Hyderabad Central Jail, was charged with forgery and "cheating". Even though the superintendent of the jail was suspended after the provincial ombudsman's inquiry, the charges were not dropped against M.H. Khan. Zahid Qaimkhani, a 22-year-old journalist from Kandiaro in Sindh province, was sentenced in July 1996 to five and a half

**Figure 3:** Journalist Farhan Effendi chained to a hospital bed in Hyderabad, January 1997, shortly before his release on parole. He had been accused of possessing an unlicensed gun and tortured after arrest. *c.AI*

years' imprisonment after a telecommunications official accused him of an arson attack on the telephone exchange. Zahid Qaimkhani had earlier exposed corrupt practices in the telecommunications department. He wrote from jail to Amnesty International:

*“When will be the day when saying the truth, writing the truth, raising a voice against injustice and against oppression will not be considered a crime? ... Is unearthing corrupt practices of bureaucrats a crime? Why am I languishing in this jail?”*

Zahid Qaimkhani was acquitted in January 1997 upon appeal.

#### **USE OF PREVENTIVE DETENTION LEGISLATION**

While the use of repeated blind FIRs to detain political opponents is not overtly unlawful, the filing of false criminal charges and the holding of prisoners in undeclared places of detention without record and denying them access to a lawyer violate several safeguards contained in the Constitution of Pakistan and the Code of Criminal Procedure. Detaining prisoners without charge or trial is also prohibited under Pakistan law, except under its preventive detention law -- the Maintenance of Public Order Ordinance (MPO) of 1960. The MPO permits the authorities to detain people without trial for up to three months if they are considered to be “acting in any manner prejudicial to public safety or the maintenance of public order”. Under article 10 of the Constitution a review board can extend such detentions up to a limit of eight or 12 months depending on the grounds of detention. As detention orders under the MPO can be challenged in provincial high courts, government officials have preferred to issue a series of blind FIRs to detain their opponents.

Dr Khushk, a medical practitioner from Karachi, had not committed any offence. Yet he was arrested in December 1994 and detained for well over a year. At some points he was held under consecutive detention orders in relation to a series of blind FIRs, some of which related to offences committed while he was in custody. At other points he was held without any charge at all. In March 1995, a detention order under the MPO was passed on the ground that he was a “habitual criminal, gangster and ... [constitutes] harassment to the general public”. The order cited three criminal cases of 1990 against Dr Khushk. However, the Karachi High Court, hearing a constitutional petition challenging the lawfulness of the detention order, found that in the first two cases Dr Khushk had been found innocent and in the third case he was the complainant, not the accused. In mid-April 1995, while the High Court was still considering his case, the detention order was extended by a further month, citing the same grounds as the first order. Before the second order expired, it was extended by a further 30 days. This time no grounds were given at all. High Court orders to the state authorities to provide it with material supporting the detention of Dr Khushk were repeatedly ignored. Finally, in late May 1995, when a state representative was directed to appear before the court on 1 June 1995, the detention order under the MPO was suddenly revoked. Dr Khushk was not set free as a new series of blind FIRs was issued. He was eventually released in February 1996 after the intervention of a friendly member of parliament. By that time he had spent 14 months in detention in at least 14 different police stations. Dr Khushk told Amnesty International that the

reason for his treatment was a land dispute with a locally influential person who secured the help of members of the executive to detain and harass him.

### **BREAKDOWN OF JUDICIAL REDRESS**

Dr Khushk's case illustrates the breakdown of legal safeguards and the judiciary's impotence to enforce its decisions in the face of the executive's determination to ignore judicial orders. Police unquestioningly followed unlawful orders of those in authority, ignoring legal safeguards relating to arrest and detention. Dr Khushk's arrest was entirely arbitrary as there was at that time no charge against him. He was held in incommunicado and unacknowledged detention, without access to a lawyer or his family. He was not brought before a magistrate during the first part of his detention and was not informed of any reason for his arrest. When Dr Khushk was held under the MPO, successive detention orders were issued by the magistracy on grounds that had already been found to be untenable. The detaining authorities did not obey the High Court's directives. They did not appear before the High Court or submit the required material to it. Neither the police who arbitrarily held Dr Khushk, nor the detaining authorities who refused to follow judicial orders, nor the magistracy who issued manifestly unlawful detention orders were held to account for denying Dr Khushk important legal safeguards.

### **DETENTION WITHOUT CHARGE**

**"Undeclared detention is normal in Sindh... how many cases can you take up?"**

This was the response to a question by Amnesty International from a human rights activist who had investigated dozens of cases of arbitrary and undeclared detention in Sindh.

Successive governments in Pakistan have persistently detained people arbitrarily without laying any charges against them. Every search of police stations by court officials or human rights organizations uncovers numerous detainees held without proper charge or detention order. The court official visiting the police station in Tando Allayar in search of Dr Solangi and Punhal Sario found some 25 other men held there: some had been held for almost two months. Many were not aware of any charges against them.

The detention of people without access to a lawyer or their relatives is frightening both to detainees and their families. Shaukat Ali Kashmiri, the Secretary General of the Jammu and Kashmir People's National Party, was abducted in August 1994 and held for a month without any charge. He was initially blindfolded and did not know who held and interrogated him. He told Amnesty International:

*"They told me that I would go mad in custody and at some stage threatened to kill me, nobody would know ... and they said that my family had been informed that they would never see me again".*

Shaukat Ali Kashmiri believes he was in the custody of the military intelligence service, the Inter Services Intelligence, because of his advocacy of an independent Jammu and Kashmir.

#### ‘DISAPPEARANCES’

*“Babar was arrested on 28 April [1995] in Latifabad [in Hyderabad, Sindh province]. He was taking his sister’s young children home. On that day a post office was set on fire and they were arresting a lot of people. ... When he did not come home I searched for him everywhere. After five days I located him in Kebrahi police station. The SHO [Station House Officer, in charge of a police station] said that Babar was in his custody but I was not allowed to see him. They asked for a lot of money ... I could not raise so much and after a month, the SHO got angry and said that he knew nothing about Babar, that he had never arrested him ... I fear that my son has been killed. I spend all my time looking for my son now and trying to find people who can help me find him. I have no more time to work ...”*

Saraf Sultan Ran has become a broken man since the “disappearance” of his 17-year-old son, Babar Sultan. He has approached all the officers in the police service in Hyderabad and followed every lead. When released prisoners told him that Babar might be among a construction gang in a forest project nearby, he went there to look for his son. He followed rumours that some prisoners, including perhaps his son, were working at a river bank. Again the lead proved false. Saraf Sultan believes that his son was arrested because he is a “big and healthy Mohajir boy” -- though not an MQM member -- whose arrest and continued detention would intimidate the community. Such stories are not uncommon. The extended detention of prisoners in unacknowledged detention, often in undeclared places of detention, sometimes leads to prisoners “disappearing” in custody. The fate of some “disappeared” people remains unknown years after their arrest. Gradually relatives give up hope.

**Figure 4:** Saraf Sultan Ran has been searching everywhere for his “disappeared” son, Babar Sultan (inset). *c.AI*

Customs inspector Allah Rakhio was last seen in the custody of the paramilitary Rangers in Hyderabad in November 1991. Police constable Mohammad Afaque, abducted during a training session in Hyderabad

by the paramilitary Rangers in February 1993, has not been heard of again. The Ansari family of Zamin Hasan Ansari, his wife and adult son and daughter “disappeared” from their home in Islamabad in May 1996. A police inquiry failed to find them. A *habeas corpus* petition filed by another son before the Lahore High Court, which directed the various law enforcement agencies to testify before the court, also failed to establish the family's whereabouts. The MQM stated that in early 1997 eight members of the party had "disappeared".

## RECOMMENDATIONS

International human rights standards prohibit arbitrary arrest and detention and lay down specific rights of prisoners and detainees. They are contained in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Amnesty International is concerned that vital legal safeguards provided under Pakistan law to all prisoners are habitually set aside, that some of them fall short of international standards, and that the judiciary is often powerless to provide redress as its directives are ignored by the executive with impunity.

Amnesty International calls on the Government of Pakistan to:

- C release unconditionally and immediately anyone who is being held as a prisoner of conscience (people who have been arrested or detained solely for their political or other beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status -- who have not used or advocated violence), and ensure that no other people are held as prisoners of conscience;**
- C ensure that Article 9 of the Constitution of Pakistan, which says that “*No person shall be deprived of life or liberty save in accordance with law*”, is meticulously adhered to. This means that arbitrary arrest and detention, whether by holding people without any charge or on the basis of politically motivated criminal charges or under a series of blind FIRs, should be condemned by government and stopped forthwith;**
- C ensure that all provisions of the Code of Criminal Procedure relating to arrest and detention are carefully implemented. These include informing detainees of the grounds of arrest, giving them prompt and regular access to a lawyer, bringing them before a magistrate within 24 hours of arrest and recording all arrests and transfers in a police station diary;**

- C** carefully train all law enforcement personnel in the observance of these laws and to hold all personnel to account if they deny prisoners and detainees their rights, including those who refuse to carry out directives of courts with respect to prisoners' detention;
  
- C** ratify international human rights standards relating to arrest and detention, particularly the International Covenant on Civil and Political Rights, and ensure that police and other law enforcement personnel fully abide by the Standard Minimum Rules for the Treatment of Prisoners approved by the United Nations Economic and Social Council in 1957 and 1977, as well as the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the United Nations General Assembly in 1988.

## CHAPTER 2

### TORTURE, DEATHS IN CUSTODY AND EXTRAJUDICIAL EXECUTIONS

#### TORTURE AND ILL-TREATMENT

*“They made me undress, then two of them tied up both my wrists and both my ankles and then passed a wooden pole through them. I swung around upside-down when they lifted up the pole, with my bare buttocks up ... they then beat my buttocks and my feet with a leather belt... They continued doing this even when they were bleeding... they said they would make me impotent by hitting my genitals and they would bring criminal charges against me if I did not pay the bribe...”.*

A former detainee in Pakistan.

Torture and ill-treatment of people in the custody of police and other law enforcement personnel is widespread, almost routine, in Pakistan. Many victims consider beating as part of normal procedure and do not even report it when questioned about torture. An Amnesty International delegation visiting Pakistan in December 1995 witnessed by chance an army officer in an open square in Karachi interrogating a suspect while a plain clothed man repeatedly hit the suspect in the face with a rubber pipe.

Prisoners and detainees are beaten, kicked with heavy boots, given electric shocks and burned with cigarettes when police want to punish them for alleged wrongdoings, to intimidate or frighten them and, most often, to extract money from them. Prisoners arriving at jails for the first time are often placed in solitary confinement and put in bar or cross fetters to “discipline” them. Women, children, the poor and mentally ill people are most at risk of ill-treatment and least able to find redress when constitutionally secured rights and legal safeguards are ignored.

#### DEATHS IN CUSTODY

Javed Masih, a 32-year-old Christian, was arrested by police in Hyderabad on 2 August 1995 accused of theft. Eye-witnesses said that police began beating Javed Masih outside his house, punching and hitting his head against a wall until he lost consciousness. They

**Figure 5:** Javed Masih died of torture in police custody in Hyderabad.  
c. AI

revived him with water from the gutter. In the police station police gave him electric shocks and inserted bottles filled with ground red chillies and kerosene into his anus. He died in the early morning of 4 August. Police then reportedly hung him by the neck to disguise his death as suicide. They later took the body to a hospital claiming to have found it on the street. Javed Masih's teeth were broken, and his body was swollen and bore multiple injuries.

Javed Masih's family was informed on 4 August by police that he had been hospitalized after a heart attack and had died of heart failure a short time later. The medico-legal officer at the hospital told the family that he had refused to admit Javed Masih's body and that police had attempted to bribe him to do so. He stated that Javed Masih had died of torture, not of heart failure.

Javed Masih's brother lodged a complaint with police alleging that four named police officers were responsible for the murder. All four suspects were freed on bail. In September 1996 Javed Masih's legal heirs agreed to an out of court settlement and pardoned the accused. Sessions judge Abdul Rasool Memon said: "I am of the considered opinion that the compromise arrived at between the parties is free from coercion, inducement or pressure and the parties have settled their dispute on intervention of [influential persons of the locality]". The police officers were acquitted and have resumed their posts. Local human rights activists believe that police delayed the investigation of the case to allow the suspects to put pressure of the victim's family not to pursue the complaint.

Almost a hundred people die as a result of torture in Pakistan every year but virtually no one is ever punished. Police almost always refuse to register complaints against police. If they do -- perhaps because the victim has influential friends -- they distort the charges, force medical personnel to issue false post mortem reports, or simply refuse to investigate the complaint. Perpetrators have also been allowed to intimidate the victims or victims' families to the extent that they do not pursue their complaints to the end.

Yusuf Jakhrani, a politician from Kandhkot in his early forties, died in military custody in Pano Aqil, Jacobabad district in Sindh, in June 1992, after reportedly suffering torture for six days. A witness who saw the corpse reported:

*"The whole body was covered with injuries, his neck was broken. His back appears to have been roasted and there was a burn and fracture on his right arm. Even his genitals had cigarette burns. It seems that someone had attempted to pull out his fingernails ... His nostrils were oozing blood..."*

Another person arrested at the same time testified that he had heard Yusuf Jakhrani being beaten and crying out and then to have heard army personnel boast that they had killed Yusuf Jakhrani.

Following the police refusal to register a complaint, Yusuf Jakhrani's father pursued the case for six months until the High Court directed police to register the First Information Report, the first record of a complaint by police which starts the process of investigation and prosecution. Later the father lodged a

petition in the High Court complaining that police were not pursuing the investigation into his son's death. The family's lawyer told Amnesty International in late 1996 that the old man had given up the struggle as he did not believe that justice would ever be done. The Government of Pakistan had in October 1992 written to Amnesty International saying that the cause of death would be determined once the chemical analysis of Yusuf Jakhmani's viscera had been completed. The results of the inquiry are still not known.

#### WITHHOLDING MEDICAL TREATMENT

**Figure 6:** Yusuf Jakhmani died following torture in military custody in Pano Agil in 1992. No one was held to account. *c. AI*

In jails, prisoners are frequently denied basic facilities, sleep and medical attention, sometimes causing death. A former prisoner told Amnesty International that medical staff would routinely withhold medical supplies and only release them on payment; poor

prisoners would have to go without them. Sometimes medical treatment is withheld to increase the suffering of prisoners. Ali Mohammad Hingoro, a former legislator and member of the PPP (Shaheed Bhutto), was held on criminal charges in Sukkur Jail up to the moment of his death of untreated cancer in April 1995. Until he was terminally ill and vital organs began to fail, doctors did not acknowledge that he needed treatment. A fellow prisoner reported that "*he would cry with excruciating pain the whole day and night...*" but dismissed offers of "compromise" with those in office in exchange for medical treatment.

#### EXTRAJUDICIAL EXECUTIONS

Naeem Sherry, a 26-year-old MQM activist, had been in hiding for several months. The government had offered a large financial reward for his arrest or death. In March 1996 he visited a friend, Amjad Khalil Baig, in Karachi. Within minutes of arriving, police and paramilitary Rangers raided the house. During their search they found Naeem Sherry hiding behind a television cabinet and, according to eye-witnesses, shot him dead at point-blank range. Amjad Baig was taken outside the house and, despite the pleas of his father and mother, was shot dead as well. A government spokesperson stated that police had fired in self-defence when Naeem Sherry opened fire. But no police were injured and several eye-witnesses refuted this version of events. The federal cabinet subsequently expressed its "satisfaction" about the killing of

Naeem Sherry and said it “admired the courage of the law enforcement agencies” who had killed him. The then Minister for Human Rights, Iqbal Haider, said:

*“It will be most unfortunate if the death of a ruthless terrorist is once again portrayed as an extra-judicial killing ... Such allegations only lend support to the terrorists.”*

Around a hundred extrajudicial executions, deliberate and arbitrary killing by or on the orders of state agents, are reported every year. Such reports come from all parts of the county, although in 1995 and 1996 the majority were in Karachi where they occurred in the context of a struggle between the government and armed opposition groups. President Farooq Leghari, in his order of dismissal of the government of Benazir Bhutto in November 1996, said: *“during the last three years, thousands of persons in Karachi and other parts of Pakistan have been deprived of their right to life in violation of Article 9 of the Constitution. They have been killed in police encounters and in custody.... The Government’s fundamental duty to maintain law and order has to be performed by proceeding in accordance with law.”*

The validity of the government dismissal order was confirmed by the Supreme Court of Pakistan in early 1997, yet no systematic investigation of extrajudicial executions in Karachi has been initiated. The accountability process begun by the caretaker government and continued under Prime Minister Nawaz Sharif focusses only on economic crimes and does not extend to criminal accountability for human rights violations.

Allegations of extrajudicial executions have usually been explained by the authorities as deaths in “encounters” between “terrorists” and law enforcement personnel firing in self-defence. The eye-witness accounts have often told a different story. Relatives have in sworn affidavits stated that the victims had been arrested days earlier and died in the custody of security personnel, or that they had been shot dead at point blank range in front of family members. The families’ testimonies have not prompted investigations against the law enforcement personnel responsible for such killings.

## **CRUEL, INHUMAN AND DEGRADING PUNISHMENTS IN PAKISTAN LAW**

While torture and extrajudicial executions violate the constitutionally guaranteed right to life and security of the person, Pakistan law also allows for, and in some cases prescribes, punishments which are considered cruel, inhuman and degrading under international human rights law.

The use of bar fetters and chains as instruments of restraint and punishment are permitted in specific circumstances by Pakistan law, including as punishment of convicted prisoners for breach of prison discipline or as means of security for prisoners under trial during transport to court hearings. Women are exempt from the imposition of bar fetters, although children are not. In late 1996 the use of fetters was banned in Sindh but fetters continued to be in restricted use in Punjab.

**Figure 7:** Iron fetters cause abrasions on the ankles of prisoners. *c.AI*

Even before the 1996 partial ban on fetters, prisoners who were ill usually had their fetters removed.

However, there have been cruel exceptions. A terminally sick 70-year-old political prisoner, Sheikhu Rahoo, died in February 1996 with his fetters still on. His family told Amnesty International that during the last weeks of his life in hospital, as he slowly died of cancer, one of his legs was placed in a fetter. The government wrote to Amnesty International that it regretted the

*“unfortunate incident” but “since the accused was involved in serious crime and the local authorities apprehended that he might try to escape, a fetter was used.”*

The use of iron chains persisted even after the ban on fetters. In January 1997 an Amnesty International delegation saw a journalist, Farhan Effendi, chained to his hospital bed in Hyderabad. He had been charged with possessing an unlicensed gun and was subsequently released on parole. He may well have been a prisoner of conscience.

The Abolition of Whipping Act 1996 banned the punishment of whipping for all offences except where prescribed as a mandatory punishment under sections of the penal code reflecting Islamic law. It continues to be imposed by courts for offences relating to the consumption of alcohol or drugs. However, to Amnesty International’s knowledge, whipping has not been carried out in recent months.

Other cruel punishments which remain on the statute books but are not being carried out include judicial amputations, which may be imposed for theft; stoning to death, which may be imposed for unlawful sexual

intercourse and rape; and the imposition of bodily “hurt” as *qisas*, punishment equal to the hurt or injury caused.

Flogging, judicial amputation and infliction of hurt as *qisas* may only be carried out in the presence of or by a qualified medical practitioner. Amnesty International welcomes the consistent opposition of medical personnel in Pakistan to their prescribed participation in the infliction of these cruel punishments.

## RECOMMENDATIONS

The prohibition of torture is one of the most fundamental norms of international human rights law and is contained in a number of international human rights standards. The prohibition can never be suspended, whatever the circumstances. Article 5 of the Universal Declaration of Human Rights says that “No

one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” The same prohibition is also found in Article 7 of the International Covenant on Civil and Political Rights (ICCPR). **Figure 8:** A prisoner was publicly flogged in the Khyber Agency in the tribal areas in 1994. *c. AI*

Extrajudicial executions violate the right to life as unequivocally guaranteed by Article 3 of the Universal Declaration of Human Rights: “Everyone has the right to life, liberty and security of the person”. Similarly, Article 6(1) of the ICCPR states: “Every human being has the inherent right to life. This right shall be protected by law, no one shall be arbitrarily deprived of his life.” The United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions in Principle 1 stipulates: “Governments shall prohibit by law all extra-judicial, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances...”.

Amnesty International calls on the Government of Pakistan to take decisive steps to ensure that article 9 of the Constitution of Pakistan is upheld in all circumstances. The article unequivocally states: “No person shall be deprived of life or liberty save in accordance with law.” Amnesty International urges the government to:

- C publicly and unequivocally condemn torture and extrajudicial executions;**
- C subject every reported instance of torture, death in custody or extrajudicial execution to prompt, thorough and impartial investigation, to publish its findings and to bring all perpetrators to justice in prompt, fair and open trials;**
- C compensate and rehabilitate victims of torture and compensate families of those who have died in custody or who have been extrajudicially executed;**
- C implement preventive measures by strengthening existing legal safeguards against torture and extrajudicial executions and by introducing a strong human rights component in the training of law enforcement personnel with effective follow-up;**
- C replace all cruel, inhuman and degrading punishments, including flogging, fettering, judicial amputation and stoning to death, by punishments which are permitted under international human rights standards;**
- C ratify relevant human rights treaties, including the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights.**

### CHAPTER 3

#### PRISONERS OF CONSCIENCE CHARGED WITH RELIGIOUS OFFENCES

*“I was talking to the shopkeeper when someone struck me on the shoulder with a meat cleaver and then struck me again on the head. The shopkeeper helped me up, I was in a daze and I thought I was yet another victim in the city’s dacoities [armed robberies]. Then my driver rushed to tell me that Bushra was also bleeding. She was unconscious and lying in a pool of blood.”*

Samiya Bukhari and Bushra Taseer, two elderly women, had gone shopping in Karachi on the evening of 26 March 1996 when the tailor who had made their clothes for many years attacked them. They were rushed to hospital. Both survived but Bushra Taseer remains partially paralysed.

The tailor, Mohammad Arif, was arrested for attempted murder. He kept repeating that the women were Ahmadis and that he would go to heaven if he killed them. Six days later, Mohammad Arif’s colleague, Mohammad Arshad, registered a criminal complaint against Bushra Taseer. He alleged that Mohammad Arif had warned Bushra Taseer not to wear the new clothes as the name of the prophet Mohammad was printed on the cloth and that he had become outraged at her refusal. The charge was under section 295-C of the PPC, which says that anyone found guilty of “defiling the name of the Prophet” must be punished with death. She was arrested in hospital but later released on bail as there was no evidence against her -- there was no writing on the cloth. The charges, however, remain pending.

Several sections of the PPC which deal with religious offences have over the years been used to harass, intimidate and punish hundreds of people solely for the exercise of their right to freedom of religion. The victims are mostly members of Pakistan’s religious minorities -- Ahmadis and Christians -- although some Muslims who advocate novel ideas have also been targeted.

Most of these cases are motivated not by the blasphemous actions of the accused, but by hostility towards members of minority communities, compounded by personal enmity, professional jealousy or economic rivalry. The individuals convicted of blasphemy or facing

**Figure 9:** Samiya Bukhari and Bushra Taseer in hospital after the assault by an Islamist. *c. AI*

such charges are or could become prisoners of conscience, detained solely for their real or imputed religious beliefs. Since the introduction of the mandatory death penalty for blasphemy, such prisoners of conscience can and have been sentenced to death.

Ahmadis view themselves as Muslim but are considered heretical by orthodox Muslims on account of doctrinal differences. In 1974, under the government of Zulfikar Ali Bhutto, Ahmadis were declared a non-Muslim minority. Their rights to profess, practice and propagate their faith were severely curtailed during Zia-ul-Haq's Islamization drive during the 1980s. New sections (298-B and -C) of the PPC made it a criminal offence for Ahmadis to call themselves Muslim, to employ nomenclature and appellations associated with Islam, to use Muslim practices of worship and to propagate their faith. In practice, this means they can be and are imprisoned for calling their place of worship a "mosque" or for using the popular greeting "*assalam-o-alaikum*". The Supreme Court of Pakistan ruled in 1993 that the criminalization of much of Ahmadi religious belief and practice did not curtail their right to freedom of religion and that Muslims had a right to Muslim nomenclature, rites and rituals much as a company has a right to its brand name.

Section 295-C of the PPC, added in 1986, said that anyone defiling the name of the prophet Mohammad is to be punished with life imprisonment or death. The life imprisonment alternative was later removed, leaving the death penalty as the mandatory punishment for anyone found guilty of blasphemy.

The new vaguely formulated laws have been extensively abused to arrest and detain people, and take no account of the intention of the "offender". Currently, over 2,000 Ahmadis have various religious charges pending against them; some 119 Ahmadis face charges of blasphemy under section 295-C. Many are implicated in several cases making it necessary for them to attend court frequently, often in different places which is both an expensive and time-consuming duty. Trials often take years to complete. At the end of 1996, all but six Ahmadis and at least two Christians charged with blasphemy were free on bail.

Bail has sometimes been denied for long periods for those charged with blasphemy. Riaz Ahmad, his son and two nephews have remained in prison since their arrest in November 1993 in Piplan, Mianwali district. They were detained on the allegation that they had "said something derogatory" and had claimed that the founder of their religion had worked wonders. Observers believe that rivalry over Riaz Ahmad's position as village headman is the real motivation for the complaint against him. The bail application of the four men was rejected by the sessions court (the lowest court) and by the provincial High Court in Lahore, and has been pending since 1994 in the Supreme Court. The trial has not yet begun. In a similar case, Anwar Masih, a Christian from Samundri in Punjab, has been in detention since February 1993 when a Muslim shopkeeper alleged that Anwar Masih had uttered insulting words against prophet Mohammad in the course of an argument over money owed.

Cases involving religious offences do not always appear to be tried impartially. Several judgments betray a distinct religious bias by the judges. Gul Masih, who was charged with blasphemy after a quarrel about a broken community water tap, was sentenced to death in November 1992 solely on the strength of the

statement of the complainant whom the judge did not doubt because he was “a young man ... with a beard and outlook of a true Muslim”. Arshad Javed, a Muslim man certified mentally ill by independent experts, was tried for claiming that he was Jesus Christ and sentenced to death in February 1993.

To date, six men -- three Christians, one Sunni Muslim man and two Afghan Shi'a Muslims -- have been sentenced to death under section 295-C. The fact that all were acquitted on appeal indicates that the convictions were based on little or no evidence.

Members of religious minorities such as the Ahmadis suffer discrimination in many forms, including denial of freedom of speech or assembly, closure of mosques, restrictions on their press, discrimination in jobs and education, forced religious conversion, social and economic boycott, and threats to their lives. The threats are not always empty words.

The widening of the scope of religious offences, the introduction of harsher punishments and the often heated public debate of these issues have contributed to an atmosphere of religious intolerance. Fanatics have sometimes believed they are entitled to take the law into their own hands -- and police have all too often permitted this to happen. In April 1994 a Muslim practitioner of indigenous medicine was stoned to death by a mob in Gujranwala following a rumour that he had burned pages of the Qur'an. The mob tried to set him on fire while he was probably still alive and dragged his body through the streets. A year later, two Ahmadis were attacked by an angry group of people on the court premises in Shab Qadar, North West Frontier Province. The two men had gone to the court to provide bail for an arrested co-religionist. One of them, Riaz Khan was stoned to death; the other, his father-in-law, was seriously injured. Police stood by passively and later declared, “everything was spontaneous and we could do nothing”. At least 17 Ahmadis have been killed in deliberate targeted attacks over the past two years. In not one of these cases have the attackers been brought to justice as police have failed to investigate the incidents.

In February 1997 a dozen Christian churches and several schools in Khanewal in Punjab were burned down and some 50 people injured after a rumour was spread over mosque loudspeakers that pages of the Qur'an had been found crumpled and with names of Christians scribbled on them. A teacher present at the time reported:

*“A couple of hours after our contact with the administration [to express apprehension about mobs gathering to storm the village], we saw a group of 200 people heading towards our church. They broke into the church, ransacked it, the priest's house and the school and set it on fire by throwing bombs and sprinkling petrol on carpets. The furniture was gutted and we had to flee for our lives. The police did nothing to stop the mob and protect us”.*

Police are believed to have instigated the incident with the help of Islamist groups in retaliation for the suspension of several police officers disciplined after desecrating the Bible during an earlier raid.

Following national and international protests about the abuse of the blasphemy laws, particularly section 295-C, the government in 1994 said that it would introduce two amendments. Under these, a formal authorization by a judicial magistrate would be required before a complaint of blasphemy could be registered and arrests made. In addition, the false allegation of blasphemy was to be made a criminal offence punishable by imprisonment. However, protests by Islamists led the then Prime Minister, Benazir Bhutto, to back down in mid-1995. She announced: "we will not amend the law".

In 1995 President Farooq Leghari assured the Christian community that magistrates had been instructed to scrutinize all cases against Christians before charges could be registered. Such administrative orders are not binding, although for almost two years the instruction seemed to have a positive effect. However, Christians have again been imprisoned in recent months on such charges. Ayub Masih, for example, has been in Sahiwal Jail since October 1996 after allegedly insulting the prophet Mohammad during a squabble with a Muslim neighbour. Local human rights activists believe that resentment over land recently allocated to Ayub Masih's family triggered the charge.

**Figure 10:** Destruction of a church in Shanti Nagar, Khanewal. *Courtesy: Pakistan Christian Community Council, Lahore.*

Ahmadis have never benefited from official assurances that complaints of blasphemy against them will be scrutinized before they are formally registered.

In fact, in some cases, charges under section 295-C were added to other charges on the state's initiative -- on occasion against explicit rulings of the superior judiciary. Dr Majoka was arrested in February 1994 under section 298-C for allegedly inviting neighbours to listen to broadcasts of the community's spiritual head. Police later added charges under section 295-C to the complaint. Despite rulings by the sessions court and the Lahore High Court that the addition of section 295-C charges was "without legal basis", the Khushab court in October 1996 agreed with the state representative's plea to retain the additional charge.

## RECOMMENDATIONS

Laws that limit or ban the right to freedom of religion contravene important international human rights standards. Article 18 of the Universal Declaration of Human Rights lays down: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change one’s religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

Amnesty International calls on the Government of Pakistan to ensure that the law against blasphemy is not abused to imprison prisoners of conscience and that no one is sentenced to death. It urges the government specifically to:

- C immediately and unconditionally release any prisoners of conscience held solely for the exercise of their right to freedom of religion;**
- C drop the charges of blasphemy if based solely on enmity to the defendant because of his or her minority belief;**
- C introduce legislative measures to curb the abuse of the blasphemy laws as a first step towards their abolition. Such legal changes should encompass magisterial scrutiny before formal registration of complaints and make it a criminal offence to falsely lay charges of blasphemy;**
- C ensure fair trial and the physical safety of anyone charged with blasphemy while the blasphemy laws remain on the statute book;**
- C end state connivance in violence against religious minorities by extending adequate protection to them and ensuring that all complaints of violence, including religiously motivated killings, are thoroughly and promptly investigated and those responsible brought to justice.**

## CHAPTER 4

### WOMEN AND CHILDREN DENIED THEIR RIGHTS

Razia Masih, a 40-year-old Christian woman, married with 11 children, was questioned on 17 August 1995 about an alleged theft in the house of the Superintendent of Police (SP) on Shahdadpur police training college campus, where she was employed as a cleaner. She denied the allegation and a search of her house yielded no evidence. The issue seemed to be closed.

Four days later, however, one female and two male police officers questioned her again in the SP's private residence. After the SP told them "to get the confession from her in their own way", they beat and threatened her, and then raped her. Members of the Christian community who were protesting outside said that a woman member of the group was eventually let in and saw Razia Masih lying on the floor, apparently unconscious and injured.

When Razia Masih's uncle tried to lodge a complaint against her arbitrary detention, the police filed a First Information Report (FIR) accusing Razia Masih of theft. Days later a magistrate called for a medical examination of Razia Masih. The medical report listed 21 contusions on her body but denied that she had been raped. Observers believe that police exerted pressure on the medical officers to admit only injury, not rape which carries a heavier punishment. Based on this report, a judicial inquiry on 5 September 1995 concluded that: "Razia Masih was illegally detained malafidely and tortured by [named police officers and one civilian]. So far as sexual intercourse is concerned, it is crystal clear from the final medical report of the Medical Officer... that neither rape was committed, nor the modesty of ... Razia Masih has been damaged... Action against the police individuals may be taken according to law and the case on Razia Masih may be disposed on merits".

The police officers accused of torturing and raping Razia Masih denied the charges and were released on bail. Razia Masih was released upon payment of a personal bond of 10,000 Rs (\$300) on 7 September 1995. The investigation into the case appears not to have been concluded.

Razia Masih's case is typical of many other violations of women's human rights in Pakistan. Societal attitudes, legislation which explicitly discriminates against women, a frequently biased judiciary, inadequate medical reporting and obstructive police behaviour result in women being held in police custody without charge, beaten, kicked and raped with virtual impunity.

Under the first government of Prime Minister Nawaz Sharif, several women political activists were tortured, including sometimes by rape, to make them change their political allegiance or denounce their fellow party workers. In the few cases where police were prosecuted and sentenced for torturing or raping women, the convictions were overturned on appeal.

Razia Masih's case is exceptional in that she had adequate support from her family and the Christian community to seek redress. Most women lack such support. Moreover, most women do not report violations they suffer as they are aware that the letter of the law, its implementation and the agents of enforcement all discriminate against women.

The ratification by Pakistan of the United Nations Convention on the Elimination of All Forms of Discrimination against Women in March 1996, and the ensuing obligation to amend domestic laws which conflict with the Convention and to end discriminatory practices against women, have had no impact on women in Pakistan. Article 3 of the Convention states that:

*"States parties shall take in all fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms in a basis of equality with men."*

One year after Pakistan's ratification of the Convention, nothing has been done to fulfil this pledge.

Constitutional guarantees of equality to all citizens of Pakistan (article 25) and of equal protection under the law are not reflected in reality. Throughout their lives, women in Pakistan are disadvantaged. The discrimination is rooted in endemic societal and religious attitudes towards them. The birth of a girl is frequently met with disappointment, even anger, and the mother is usually blamed. As the child grows, she will generally receive less food, less access to education and less health care. As a result, girls are more likely to die of childhood diseases.

Since a woman's primary role in Pakistan is domestic, female education is not considered a priority. Only 28 per cent of girls of primary school age and a mere 11 per cent of older girls attend school, as they are forced to do household chores and look after younger children. Government statistics state that 24 per cent of women are literate, compared to 49 per cent of men: women's groups say the female literacy rate is between 12 and 15 per cent.

**Figure 11:** A high school student in Lahore. Girls in Pakistan only have limited access to education.  
*c. Sean Sprague / Panos Pictures.*

Parents negotiate the marriages of their daughters when they are still quite young. Once married, a young woman is considered and treated as the property of her husband and may not defy him. It is assumed that she has given permanent consent to sexual intercourse with her husband and marital rape is only an offence if serious injuries result. On average a woman will produce six children, and both maternal and infant mortality rates are high. Domestic violence against women is widespread and considered a private matter. Women who survive such attacks have nowhere to go but back home to their violent husbands; consequently, they rarely bring charges. They also do not trust the police, who usually accept the husband's version of events without question. Police always seem to believe that a cooking stove exploded when yet another woman dies of burns. A disfigured young woman whose husband had poured kerosene over her and then lit a match told Amnesty International:

*“What is the use? I belong to a respectable family. .. if a woman goes to the police station, she cannot protect her honour. Everyone knows that no woman comes out of the police station with her honour intact”.*

#### **LAWS DISCRIMINATING AGAINST WOMEN AND GIRLS**

Despite constitutional guarantees of equality, some laws explicitly discriminate against women. The Zina Ordinance, promulgated in 1979 during President Zia-ul-Haq's Islamization drive, redefines sexual offences in Islamic terms and prescribes specific punishments in accordance with the evidence on which conviction is based.

The Zina Ordinance encompasses the offences of *zina* (extra-marital sexual intercourse), rape and abduction for the purpose of committing a sexual offence. The most severe and mandatory punishments are *hadd* (literally: the limit). If *hadd* punishments cannot be imposed but the court is convinced of the guilt of the offender, it may impose the lesser *ta'zir* (literally: to punish) punishments. Judges have some discretion within certain well-defined limits with *ta'zir* punishments.

Where the seriousness of the crime, whether rape or *zina*, is considered to merit a *hadd* punishment, the woman loses any right to present her evidence. Conviction is based exclusively on the confession of the offender or the testimony of four male Muslim eye-witnesses of good repute. The raped woman's testimony, expert opinion, medical reports or documentary evidence are all irrelevant. Such evidence is only taken into account when the lesser *ta'zir* punishments are to be imposed. *Hadd* punishments for rape and *zina* range from death by stoning to public flogging, imprisonment or fines. *Ta'zir* punishments involve imprisonment, flogging and fines.

About half of all women in Pakistan prisons are charged with *zina*. Such charges are often brought by the father who claims that his daughter is not lawfully married to the man she lives with. Often, a woman who remarries after a divorce is charged with *zina* by her former husband who claims that the first marriage is still valid and the woman's new partnership is therefore unlawful (*a case of zina*). As it is the husband's duty to formally register divorce with the local authorities, a woman depends on her divorced husband's

good will to complete the divorce. This is often not done or is delayed, which facilitates a husband suing his former wife for *zina*. A man may sue his former wife to force her back into the marriage, to humiliate or punish her, or simply to prevent her remarrying.

### RAPE AND THE ZINA ORDINANCE

Safia Bibi was 18 years old and blind. In 1983 she was raped. Because she was blind she could not identify the rapist. Her pregnancy was considered proof that intercourse had taken place so she was charged with *zina* and sentenced to three years' imprisonment, 15 lashes and a fine. The alleged rapist, who was her co-accused on the *zina* charge, was acquitted. Only widespread protests by women's and human rights groups led to her eventual acquittal on technical grounds.

Rape is difficult to prove anywhere in the world, but women in Pakistan face the unique problem of risking criminal charges if they fail to establish that they have been raped. The very fact that a complaint of rape is brought establishes that intercourse -- a criminal offence if between unmarried partners (*zina*) -- did take place. Pregnancy arising from rape is further undeniable proof of intercourse. The possibility of a rape victim ending up being accused of *zina* is not a mere twist in the law or of academic interest. It frequently happens to women in Pakistan. The knowledge of this perverse reality has emboldened men, particularly police officers familiar with the law, to rape women in their custody and has effectively stopped women from seeking redress.

### Cruel punishments for rape and *zina*

The Zina Ordinance prescribes punishments which are cruel, inhuman and degrading and thus prohibited under international human rights standards. The *hadd* punishment for *zina* and rape are either stoning to death in a public place or 100 lashes administered in public. The *ta'zir* punishment for rape is imprisonment for between four and 25 years, 30 lashes and fine; for *zina*

**Figure 12:** Shahida Parveen was sentenced to death by stoning in 1987. A court ruled that her sexual relations with her second husband constituted rape, after her first husband denied having divorced her. She was acquitted on appeal. *c. Associated Press.*

it is imprisonment of up to 10 years, 30 lashes and a fine. Though applicable to both men and women, in practice courts have been more lenient to men.

### **Girls under the Zina Ordinance**

Fifteen-year-old Jehan Mina became pregnant after being raped by her uncle and cousin. Her family filed a complaint of rape but since there were no witnesses, the alleged rapists were acquitted. Jehan Mina's pregnancy was taken as proof that *zina* had taken place. She was sentenced to the *hadd* punishment of 100 lashes in public. Her conviction was upheld by the Federal Shariat Court which argued that she could not satisfactorily explain her pregnancy. The punishment was converted, however, to the *ta'zir* punishment of three years' imprisonment and 10 lashes, deferred until her child reached the age of two.

The Zina Ordinance discriminates against girls as they may be sentenced to harsher punishments than boys. Under the law, *hadd* punishments may not be imposed on children, but its definition of adulthood discriminates against girls. A boy is deemed to be an adult at the age of 18, but a girl is considered adult for the purposes of the law once she has attained puberty. Thus girls may be subjected to *hadd* punishments such as public stoning to death when they are as young as 11 or 12, while the same punishment may only be given to men at the age of 18.

### **OFFICIAL INDIFFERENCE TO VIOLATIONS OF WOMEN'S RIGHTS**

Rather than make special efforts to protect women and children, police routinely contribute to the human rights violations they suffer and ignore violations of their rights by non-state actors. Every few months there are reports of the public humiliation of women, who are paraded naked through the streets by locally influential people while police look on.

The widespread abuse of women in their homes, in their tribal settings and in the context of bonded labour continues unabated. Such abuses are widely reported in the news media and by human rights groups, yet governments have persistently failed to protect the victims and prevent the recurrence of rape, injuries and killings. In addition, the perpetrators have rarely been charged and tried. Women and children at risk cannot, therefore, rely on the state to protect them or to provide redress when their rights are violated.

Many tribal practices infringe women's rights. In vast areas of Balochistan, lower Punjab and northern Sindh, local systems of tribal law prevail and disputes are rarely taken before organs of Pakistan's official judicial system. Women alleged to have committed theft, betrayal of trust or adultery are made to walk over burning coals to prove their innocence. This practice of *sakh* applies, theoretically, to both men and women, but is in practice inflicted mostly on women. The *karo-kari* tradition decrees that any man or woman involved in an illicit relationship should be killed by the family whose honour has been offended. Again, in practice its victims are mostly women and they number hundreds every year. In Pakistan's North West Frontier Province, the practice of *swara* persists according to which young girls or women are handed over to opponents to settle feuds by the establishment of blood ties. A woman given as *swara*

usually does not enjoy the full rights as a married woman in her new family. A woman's rights are also sometimes deliberately violated to punish her husband or father. Village councils are known to have sentenced a woman to be raped to punish her husband if he has been found guilty of rape.

The bonded labour system, forbidden since 1992 but still operative, has particularly detrimental effects on women's rights. Landlords and their farm managers habitually use women for sexual gratification. Many women bonded labourers, freed by human rights groups, reported that they did not know the identity of the father of their children. A freed woman reported in 1994:

*"All of us women were gang-raped ... Several of us bore children as a result of these rapes... Our husbands could do nothing; they were locked up or sent away if they objected."*

### **VIOLATIONS OF CHILDREN'S RIGHTS**

Children need and have a right to special protection, yet in Pakistan they are the most exploited and least protected members of society. Formally, there is some protection. Child labour was banned in certain contexts and regulated in others by the Employment of Children Act of 1991. Other laws, as well as the Constitution of Pakistan, guarantee the protection of children, and in 1990 Pakistan ratified the UN Convention on the Rights of the Child. In reality, however, children's rights continue to be habitually ignored and violated.

Child mortality is high. According to UNICEF, only 862 of 1,000 live births reach the age of five and only 37 per cent of children complete four years of primary education. Some parents hand their children over to religious schools, some of which put children in iron chains to prevent them escaping. In March 1996 a police raid of two religious schools in Multan, Punjab province, found 64 children between the ages of eight and 14 held in chains or ropes. Some had been held like that for as long as a year. The superintendent of one of the schools was subsequently arrested. He defended his actions by saying:

*"Parents leave their children with us and ask us to chain them because they have fallen into bad habits of watching television ... We are imparting religious education which is good for them".*

Nobody knows for sure how many children are in full time employment in Pakistan. Government sources in 1996 estimated the labour force of children aged between five and 14 at 3.6 million. The Bonded Labour Liberation Front (BLLF) speaks of 7.5 million and the Human Rights Commission of Pakistan of 11 to 12 million child workers, at least half of whom are under the age of 10. Each year over a million new children join this pool. Despite this, in recent general elections none of the main political parties spoke of any program for the elimination or even reduction of child labour.

All over Pakistan children can be seen working in brick kilns, often alongside other family members. Usually the children receive little or no money. They, too, are bonded to the factory owner, often born into bondage by parents who are bonded labourers themselves. Other industries which thrive on child labour are the carpet industries, construction, mining, agriculture and domestic service. A report of the

Government of Pakistan and the International Labour Organization said in October 1996: "A good proportion of the children at the national level work more than 56 hours [a week]". Yet the state authorities have done little to end this practice or to implement the law (see Chapter 6: Government failure to uphold the rule of law).

Child labour is caused by many factors. These include poverty, the inability of the state adequately to provide education and welfare support for economically deprived sections of society, and the plain greed of employers who want to keep down labour costs. Many children are sold into bonded labour by parents who desperately need some money. Human rights activist Asma Jahangir stated: "*Parents have been known to sell their children to mitigate poverty -- at times for the price of one day's meal*".

**Figure 13:** A child worker in a small town in Punjab. Children are the most exploited and least protected members of society. *Courtesy: BLLF.*

The issue of child labour became hotly debated after Iqbal Masih was murdered in suspicious circumstances in April 1995. He had been sold into labour bondage by his parents at the age of four. His father received a loan of Rs. 600 (\$12) from a carpet factory owner. To repay this loan, Iqbal Masih worked for over 12 hours every day, often chained to the loom and beaten. Despite years of work, the debt increased. It stood at Rs. 13,000 when, at the age of 10, Iqbal Masih heard a lecture about labour rights. He decided to confront his "owner" and sought the help of the BLLF, which secured his freedom and education. Subsequently, Iqbal Masih saw his task as liberating other children like himself, and addressed many gatherings urging child labourers to defy their masters and insist on their rights. In April 1995 he was shot dead in Muridke while visiting relatives. The accused was subsequently acquitted and the murder remains unsolved. A judicial inquiry set up in mid-1995 produced an unpublished report which recommended that the killing be re-investigated by senior police officers. To Amnesty International's knowledge this has not taken place.

The leader of the BLLF and an associate, journalist Zafaryab Ahmed, were subsequently charged with sedition for the plan "to exploit the murder of Iqbal Masih with a view to causing a recurring financial loss to the Pakistan business interest abroad... to pave the way for economic warfare against Pakistan".

Children also suffer human rights violations. They are sometimes arrested by police when the adult criminal suspects cannot be found or beaten and kicked in the presence of family members to extract confessions, money or services from them. According to a 1996 Human Rights Commission of Pakistan estimate, "nearly 40,000 children and juveniles are imprisoned annually, most of them first offenders ...

Presently, thousands of youths are languishing in jails in the company of hardened criminals". A Lahore High Court survey several years ago showed that of 200 child prisoners, 63 had been sexually abused. Human rights activist and lawyer Asma Jahangir, in a study of child prisoners in Pakistan in 1993, pointed out that after prolonged periods in police detention with the attendant risk of exposure to police brutality, long pre-trial detention in prison "*where physical and sexual abuse is commonplace ... only a very small percentage of the under trial child prisoners, some 13 per cent to 17 per cent, are actually convicted in the end. Hence for the majority of children, the time they spend in prison is completely unnecessary. This ... loss of liberty is not even considered as an unwarranted punishment for the innocent child.*"

Conditions of detention and imprisonment are woefully inadequate for any prisoner in Pakistan and fall considerably short of international standards for detention. The treatment of children in detention, denied the special protection which they require and have a right to, appears to be consistently cruel, inhuman and degrading.

**Figure 14:** A child brick maker working as bonded labour to the brick kiln owner in Punjab. *Courtesy: BLLF.*

Despite the ratification of the Children's Convention in 1990, even basic legal safeguards have not been secured for children in Pakistan. The Child Offenders Bill has been pending since 1995. Once approved by parliament, it will ban the death penalty, the use of fetters, whipping and amputation for any child under the age of 16. The Children's Convention outlaws these punishments for anyone below the age of 18. Death sentences of children have not been carried out for many years in Pakistan, but children continue to be sentenced to death. Mumtaz Ali, for example, was sentenced to death in May 1996 for murdering his friend in Swabi, North West Frontier Province: at the time of the offence Mumtaz Ali was only 14 years old. His appeal is pending in the Peshawar High Court.

## RECOMMENDATIONS

Amnesty International urges the Government of Pakistan to take seriously constitutional safeguards of women's rights and its newly assumed international obligation to protect and promote women's rights

following the ratification of the Women's Convention. It also urges the government to protect and promote children's rights, and calls on it specifically to:

- C abolish the Zina Ordinance because it discriminates against women, effectively permits their imprisonment on grounds of gender, prescribes cruel, inhuman and degrading punishments, discriminates against girls, and permits rape victims to be prosecuted for *zina*;**
- C ensure that unlawful practices -- including bonded labour, tribal justice systems which adversely affect women, and child labour -- are ended and those still engaging in them are held to account;**
- C implement fully and speedily all provisions of the Convention on the Elimination of All Forms of Discrimination against Women and other relevant international standards on women's rights;**
- C implement fully and speedily all the provisions of the UN Convention on the Rights of the Child, particularly those relating to the abolition of cruel, inhuman and degrading punishments and the death penalty for children.**

## CHAPTER 5

### THE DEATH PENALTY

Salamat Masih, a Christian boy, was sentenced to death for blasphemy in February 1995. At the time he allegedly scribbled blasphemous words on the walls of a mosque he was only 14 years old. He was also illiterate. He said that a quarrel between him and another child about pet pigeons had sparked the charges; animosity against Christians in the village, some of whom were fairly well off, appears to have been the underlying cause. Salamat initially did not know why he was being detained. He was acquitted on appeal within a month of being sentenced as there were no witnesses and no material evidence against him.

Soon after the arrest of Salamat and his two Christian fellow accused in May 1993, inflammatory posters calling for their deaths appeared and processions of local Islamists began demanding that they be hanged. During trial hearings, Islamists shouted slogans and interfered with proceedings. Death threats were made against the accused, their lawyers and the judge. The state provided police protection to the accused after their release on bail but they were told by Islamists after court hearings that they would be killed once protection was lifted. In April 1994 the three accused were shot at in the streets of Lahore. Manzoor Masih, was killed; Salamat Masih and Rehmat Masih were injured. Their friend, John Joseph, was also injured.

**Figure 15:** Salamat Masih was sentenced to death for blasphemy in 1995. He was acquitted as there was no evidence against him. *c. AI*

John Joseph filed a murder charge against the three attackers identified by him: they were the three Muslim men who had brought the blasphemy charges against Salamat Masih and his two co-accused Christians. In March 1996 the alleged murderers were acquitted. Salamat Masih and Rehmat Masih had for security reasons left Pakistan and the court did not permit them to record their statement abroad. The testimony of the remaining eye-witness was rejected as he was considered by the court to be “a biased partisan, inimical and interested witness”. His complaint was described by the court as an act of vengeance against the men who had accused the three Christians of blasphemy.

This case highlights the inherent dangers of the death penalty. As in several other cases monitored by Amnesty International, an innocent person was sentenced to death and imprisoned on death row. Six

people so far sentenced to death for blasphemy have been subsequently acquitted. Their trials were seriously flawed: none of them should have been tried and convicted as there was no evidence to connect them with the offence. In other trials relating to different types of charges miscarriages of justice are also known to have taken place, with police presenting false evidence to achieve a good crime resolution record.

The blasphemy law, loosely formulated, facilitates such miscarriages of justice. It has often been abused for reasons of religious animosity, enhanced by economic rivalry or personal dislike. During Salamat Masih's trial, the intimidating presence of interested parties shouting slogans in the court room impaired its impartiality. The judge himself appeared not to have been free from religious bias. Once Salamat Masih was found guilty of blasphemy, the judge had no option but to impose the death penalty -- the mandatory punishment.

As a juvenile, Salamat Masih should not have been sentenced to death at all. The sentence was passed because despite the ratification by Pakistan of the UN Convention on the Rights of the Child, which precludes the death penalty for anyone aged under 18, the government has not put in place such safeguards into its laws. In fact, Pakistan remains one of the few countries in the world which allows juveniles to be sentenced to death.

The attack on the three accused, and the murder of one of them, also highlights the way in which the death penalty, by sanctioning killing by the state, contributes to a brutalization of society. Private individuals feel entitled to take the law into their own hands and execute the accused. During the countrywide debate about the blasphemy law in Pakistan in 1994 and 1995, several religiously motivated murders took place in which people apparently believed they had the right to execute a suspect even before guilt had been established.

It is always dangerous to retain the death penalty. Under any judicial system, an innocent person may be sentenced to death, and the punishment is irreversible. In August 1994, when setting aside a death sentence in a murder case, the Supreme Court in Pakistan observed that the sentence had been seriously flawed and suffered from lack of jurisdiction, gross carelessness and illegality. It added,

*"the error committed by the court... is so serious that had the accused eventually been hanged, we are afraid it would have amounted to murder through judicial process".*

Regrettably, many people in Pakistan continue to favour the death penalty. Amnesty International agrees with the assessment of the director of the Human Rights Commission of Pakistan, I.A. Rahman, who said:

*"Even in countries where the system of justice is unexceptionally sound, the death penalty is considered a miscarriage of justice. Considering the state our system of justice has fallen into and the known penchant of police for prosecuting the innocent even when the guilty ones can be apprehended, in Pakistan the death penalty can only be described as unmitigated bestiality."*

Frequently, when a gruesome murder, gang-rape or dramatic shoot-out is reported, the authorities have announced and the public demanded that the culprits be publicly hanged. The truth, however, is that the death penalty is no more of a deterrent than other punishments. International crime statistics prove that the availability of the death penalty is unrelated to the incidence of a major crime such as murder. In 1995 some 459 murders were reported in Lahore, 1,995 in New York and 174 in London whose populations are 7 million, 10 million and 12 million respectively. Murder is punishable by death in the former two countries but not in the latter. A UN Committee on Crime Prevention and Control concluded in 1988 that "*research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment. Such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis*".

Today more than half of the world's countries have abolished the death penalty in law or in practice: 58 countries have abolished the death penalty for all crimes, 15 countries have abolished it for all but exceptional crimes such as wartime crimes, and 27 countries are abolitionist de facto, that is, they have retained the death penalty in law but have not carried out executions for the past 10 years or more. The tendency clearly is towards worldwide abolition with more than two countries on average joining the abolitionist majority every year.

Under Pakistan law, the death penalty may be imposed for the offences of murder, blasphemy, *zina* and rape, hijacking and harbouring a hijacker, *dacoity* (armed robbery), kidnapping a person under the age of 10 with intent to murder, waging war or abetting the waging of war against the state, drug trafficking, planning to or sabotaging the railway system and arms trading. In March 1997, on the very day when the UN Commission on Human Rights called on states to suspend executions with a view to abolishing the death penalty, the Pakistan national assembly passed a bill presented by government to extend the death penalty to gang-rape.

In Pakistan, most death sentences are imposed for murder. The offence is regulated by the Qisas and Diyat Ordinance which was introduced in 1990 to redefine the offence and its punishment in Islamic

**Figure 16:** A public hanging in 1988. *c. Reuter.*

terms. If specific requirements of evidence are fulfilled, the court will convict the accused of murder and pass a sentence of death as *qisas*, punishment equal to the crime committed. The heirs of the victim, however, have the right to forgive the convicted person and instead accept *diyat*, compensation. This has led in some cases to the family of the convict haggling with the family of the victim over compensation while the convicted prisoner waits with the noose around his neck. Obviously, prosperous people are more likely to be able to pay compensation and gain a reprieve.

All death sentences have to be confirmed by high courts before they can be carried out; they may also be appealed before the Supreme Court provided the court accepts the appeal. Most prisoners on death row spend many years there while their appeals go through all the stages of appeal. Death sentences imposed by court martial could not be appealed before 1992; some people sentenced to death before that time were denied the fundamental right to appeal. Death sentences imposed as *qisas* punishments cannot be commuted by the provincial and federal governments except with the consent of the heirs of the victim. *Hadd* death sentences for *zina* and rape, and death sentences for blasphemy, cannot be commuted to life imprisonment.

Death sentences imposed as *hadd* punishments under the Zina Ordinance are carried out in public; a 1994 government directive banning all public executions as incompatible with the constitutionally guaranteed dignity of man was ignored in 1995 when at least two men were hanged in prison in front of hundreds of prisoners, including other prisoners sentenced to death.

In 1995 Amnesty International recorded 144 death sentences; at least three people were executed. As prison authorities do not publish the number of condemned prisoners and newspapers do not cover every death sentence, the real figure is likely to be much higher. In 1996 newspapers reported 140 people sentenced to death and five executions.

## RECOMMENDATIONS

International human rights standards concerned with the application of the death penalty, such as the International Covenant on Civil and Political Rights and its Second Optional Protocol aiming at the abolition of the death penalty, contain numerous safeguards against the arbitrary application of this punishment. These include the rights to seek pardon or commutation, to fair trial and to appeal. The extension of the death penalty in Pakistan in recent years goes against the spirit of a UN General Assembly resolution of December 1977 which says that “*the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment*”.

Amnesty International unconditionally opposes the death penalty because it is a violation of the most fundamental right -- the right to life. The organization also opposes the death penalty because the possibility of errors can never be excluded yet the punishment is irreversible, and because the penalty is a cruel, inhuman and degrading punishment and as such is prohibited under international human rights law.

Amnesty International urges the Government of Pakistan to join the worldwide trend to abolish the death penalty and specifically to:

- C stop all executions;**
- C abolish the death penalty, at least in the first instance for children (anyone below the age of 18);**
- C ratify relevant international human rights instruments, including the International Covenant on Civil and Political Rights and the Second Optional Protocol aiming at the abolition of the death penalty.**

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## CHAPTER 6

### GOVERNMENT FAILURE TO UPHOLD THE RULE OF LAW

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Successive governments in Pakistan have ignored their obligation to ensure the rule of law which, vitally, includes equality of all before the law. They have failed to live up to the Constitution of Pakistan which unequivocally says in Article 25(1):

*“All citizens are equal before the law and are entitled to equal protection of law”.*

The rights of the more vulnerable groups of society -- minorities, women and children -- are most likely to be violated and these violations most often go unpunished. However, citizens from all walks of life often find they cannot obtain justice. As a consequence many people in Pakistan believe that they may be subjected to arbitrary denial of their fundamental rights and that they will not be able to obtain redress if such violations occur. All the institutions of state -- the executive, the legislature and the judiciary -- have in some way or another failed the citizens of Pakistan and share a collective responsibility for ensuring that the rule of law is upheld.

Human rights have been violated with virtual impunity by agents of the state. Abuses committed by non-state agents have been allowed to persist because of the indifference or active connivance of the authorities. The Constitution and laws of Pakistan guarantee a range of fundamental rights and provide many safeguards relating to arrest and detention, fair trial and treatment in detention. In practice, however, these have been persistently ignored. Successive governments have also failed to demonstrate to the international community sincere commitment to human rights protection by ratifying and implementing international human rights treaties.

#### IMPUNITY

The phenomenon of impunity is one of the main contributory factors for the continuing pattern of human rights violations the world over. By bringing perpetrators of human rights violations to justice, governments send a clear message that such violations will not be tolerated and that those found responsible will be held fully accountable. When there is failure to investigate human rights violations and those responsible are not held to account, a self-perpetuating cycle is set in motion.

To stop the high level of human rights violations in Pakistan it is vital that those responsible are promptly brought to justice and are punished according to internationally recognized human rights standards. The authorities have failed to investigate scores of reported cases of torture, deaths in custody, extrajudicial executions and “disappearances” allegedly perpetrated by law enforcement personnel. Almost none of the perpetrators have been brought to justice. Failure to investigate and to prosecute encourages the view that the government is condoning such violations; this perception in turn encourages law enforcement personnel to continue committing human rights violations.

So far governments of Pakistan have failed to give a clear signal that human rights violations will not be tolerated. Victims of abuse by law enforcement personnel continue to find it difficult, if not impossible, to lodge complaints against perpetrators, to have such complaints investigated, to ensure that prosecution proceeds and is concluded, and to see that those convicted receive an appropriate punishment which is implemented. The chance of obtaining redress is further limited by the fact that police put pressure on medical staff to issue fake medical reports, on witnesses to falsify the evidence, and on the complainants to withdraw the complaint. Threats or physical assault on the victims seeking redress, or on their families, and the actual or threatened laying of false criminal charges or of blind FIRs have stopped many from seeking justice. The country's media has uncovered many such cases, but the daily occurrence of new abuses has stopped them from following up every new incident. Public memory is short; as new reports cause outrage the object of yesterday's anger is forgotten, preventing a sustained campaign to uncover the truth. Sooner or later the victims of human rights violations are forgotten, and their relatives often give up the struggle to obtain redress.

The setting up of special inquiries has not helped to end impunity. On the contrary, it has given the false impression that action is being taken. Following a spate of reported extrajudicial killings in Karachi in 1995, the government said it had initiated some 20 investigations; however, the terms of reference, composition and findings of the inquiries were never revealed. No one has been held criminally responsible for the unlawful killings.

Another government initiative was the setting up of local vigilance committees in Sindh in February 1996. These involved local residents who were to monitor the implementation of the law. However, these have not yielded any improvement. In March 1996 the government announced that henceforth senior police staff would be held personally responsible for any human rights violations in police stations within their jurisdiction:

**Figure 18:** Hope is never crushed. A prisoner during the martial law years. *c.AI*

*"If found guilty of torturing any accused or innocent person by any police official, an adverse entry would be made in the HCR [highly confidential report] of the Senior Superintendent of Police or the Superintendent of Police if he fails to exercise necessary vigilance".*

Government authorities have responded to Amnesty International's expressions of concern by stating that police officers have been sufficiently punished by dismissal or demotion. Amnesty International maintains

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that torture and extrajudicial executions are not minor breaches of discipline but criminal offences for which perpetrators must be tried and punished. Covering up the crimes of law enforcement personnel or diminishing criminal responsibility by equating criminal offences such as torture with a lapse in discipline represents acquiescence with such acts and gives impunity to the perpetrators.

### **GOVERNMENT COLLUSION IN ABUSES BY NON-STATE ACTORS**

Successive governments have ignored many human rights abuses committed by non-state actors. Among such abuses are domestic violence against women, the holding of bonded labour, including child labour, tribal systems of retribution such as *karo-kari* killings, the trafficking of women and children, and forced prostitution. It is common knowledge that these unlawful practices persist, but they are not stopped because of the inaction, complicity or acquiescence of state officials.

The Bonded Labour System (Abolition) Act of 1992, which forbids bonded labour and cancels bonded labour loans given under the system, is widely violated. Human rights organizations free hundreds of bonded labourers, including women and children, every year and the media extensively reports on examples of bonded labour. The practice is hence widely known. Yet it is still tolerated by the authorities. Some of the labourers are in bondage to and held in the private jails of members of parliament, police officials and administrators, and local police consistently refuse to register and pursue complaints against locally influential personalities. Not a single person has been arrested or tried for violating the prohibition of bonded labour.

Tribal practices including the honour killings known as *karo-kari*, the practices of handing over young women to end family feuds, of making women walk over fire to prove their innocence, and of punishing a man for rape by raping his wife or daughter, are all widely reported. Yet they too are tolerated by those in authority.

Domestic violence by some accounts affects 95 per cent of women. Yet police consistently side with a husband who has battered, burned or strangled his wife or disfigured her with acid. They connive with the husbands to declare that the deaths or injuries were the consequence of accidents or suicide. Domestic violence is considered a private matter, not subject to government "interference". The pattern of impunity surrounding these abuses point to the gross failure of the state to honour its commitment to guarantee women the exercise of their fundamental rights to life and safety of the person on the basis of equality with men. This commitment was reinforced in 1996 when Pakistan ratified the Convention on the Elimination of All Forms of Discrimination against Women.

Past governments also appear to have connived with specific armed opposition groups and permitted them to commit human right abuses with impunity. In the context of the armed conflict between politically organized ethnic groups and the government in Karachi since 1992, members of the MQM(Haqiqi) group have reportedly taken hostages, tortured and killed unarmed civilians, mostly members of the main MQM. This was apparently done with the approval and sometimes in conjunction with law enforcement personnel.

People known to belong to militant groups favoured by the government could move around freely in Karachi despite arrest warrants against them. If wanted members of such groups were not arrested it was not because they could not be found; their headquarters and main operation areas were public knowledge.

### **RATIFICATION OF INTERNATIONAL HUMAN RIGHTS TREATIES**

Pakistan has ratified none of the main international human rights treaties. Whenever Amnesty International has urged government authorities to consider ratifying or acceding to major treaties, including the International Covenant on Civil and Political Rights (ICCPR), the organization has been told that the Constitution of Pakistan adequately guarantees all the fundamental rights of Pakistan's citizens. This is not true. The protection afforded by the ICCPR goes well beyond that contained in the Constitution of Pakistan. For instance, the Constitution prohibits in Article 14(2) the use of torture "for the purpose of extracting evidence"; the ICCPR prohibits torture irrespective of purpose and extends the prohibition to cruel, inhuman or degrading treatment or punishment. Similarly, the safeguards relating to arrest and detention in the ICCPR are detailed and specific, while those in the Constitution are few and rudimentary, and are explicitly suspended by the Constitution for people held in preventive detention.

Ratification of international human rights treaties places a state under an international obligation to safeguard and promote fundamental rights. This obligation is absent from national bills of rights or constitutional guarantees of fundamental rights. Some treaties contain provisions for the establishment of bodies that monitor treaty implementation. To be held accountable before such bodies is a burdensome, sometimes shameful task for governments, but it contributes to ensuring the protection of fundamental rights for everyone within a country.

When a government ratifies international or regional human rights instruments, it affirms to the international community its commitment to respect and promote human rights. This is also a guarantee to all people in the country that future governments will honour the international obligation to protect human rights. It not only invigorates domestic efforts to improve human rights protection. It also preserves important achievements of today against retrogression tomorrow. Amnesty International regards ratification of these instruments as an important indication of a government's commitment to the concept of human rights as a concern that transcends national boundaries.

Pakistan ratified the Convention on the Rights of the Child in 1990 and the Convention on the Elimination of All Forms of Discrimination Against Women in March 1996. States party to international treaties enter an international obligation to amend or repeal domestic laws which conflict with treaty provisions and to take measures to end practices which contravene treaty provisions. This obligation has not been taken seriously by Pakistan. Explicit discrimination in law against women has not ended and no efforts have been made to stop social practices which subject women to cruel treatment or even death. Legal safeguards for children remain poor. Children may legally be subjected to cruel punishments and the death penalty -- despite the fact that the Convention on the Rights of the Child bans these for children.

Clearly, ratification of human rights conventions by itself is not enough. The implementation of treaty provisions must be honestly pursued and monitored. The persistence of pernicious social practices must be met with adequate and sustained educational programs and punishment for those who continue to engage in them.

## RECOMMENDATIONS

Several international standards set out the obligation of governments to investigate human rights violations, including the methods by which this should be done. If governments permit or tolerate human right abuses, they are in breach of Article 8 of the Universal Declaration of Human Rights which says: *“Everyone has the right to an effective remedy by a competent national tribunal for acts violating the fundamental rights granted him by the constitution or by law.”* Persistent failure to investigate abuses or to take effective steps to prevent abuses against minorities or especially vulnerable groups also violates provisions of the Constitution of Pakistan which in Article 25 states: *“All citizens are equal before law and are entitled to equal protection of law”*. The principle of equality before the law is essential to the rule of law and to human rights protection and promotion. It should be upheld at all times and in all circumstances.

Amnesty International calls on the Government of Pakistan to:

- C ensure that every report of torture, death in custody, extrajudicial execution and “disappearance” is investigated promptly, thoroughly and impartially and that all those responsible for human rights violations are promptly brought to justice in accordance with international human rights standards;**
- C ensure that judicial inquiries into complaints of human rights violations include investigation of those who actually perpetrated the offence as well as all those who incite, order, attempt, consciously cover up or are otherwise implicated in such practices;**
- C investigate human rights abuses committed by non-state actors with a view to bringing them to justice and ensure that no further abuses are committed;**
- C ratify international human rights treaties, beginning with the International Covenant on Civil and Political Rights and its first Optional Protocol, and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;**
- C fully and without delay honour all treaty obligations including the amendment or repeal of domestic laws which conflict with treaty obligations.**