

The Judiciary in Pakistan: Asserting its Autonomy and Importance

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Summary

The Pakistani government's extension of the army chief's term and intervention in juridical proceedings against General Pervez Musharraf have raised questions about the role of the military, the government's commitment to democratic institutions and the position of the judiciary.

The Pakistani government's extension of the current army chief General Qamar Javed Bajwa's tenure and its intervention in the juridical proceedings against the former military ruler, General Pervez Musharraf, pitted it against the country's Supreme Court and the Pakistan Bar Council. The Supreme Court initially suspended the army chief's extension only to grant him a six-month extension hours before he was due to retire. On its part, the Pakistan Bar Council called on its members to observe a countrywide strike on 28 November 2019.

Questions have arisen over the Imran Khan-led government's closeness to the military and its commitment to democratic institutions. The military has been accused of having rigged the 2018 elections, which brought Khan's Pakistan Tehreek-i-Insaf (PTI) party to power. Serious allegations have been levelled against it of censoring the media during the electoral hustings to ensure a PTI victory.

Since coming to power, the PTI has cemented its relations with the military. The current army chief has played a prominent role in negotiating Pakistan's relations with Afghanistan, China, the United States and Saudi Arabia. He was also appointed as a member of the National Development Council, which was established by Khan to tailor policies to achieve accelerated economic growth. Thus, the military is now also formally involved in economic matters. Tellingly, Bajwa has held meetings with prominent businessmen to assuage concerns over the economy.

There is also growing consternation within Pakistan of the government's authorisation of the arrest of a number of opposition leaders on corruption charges and censoring of the media. Such concerns were exacerbated when the government extended the army chief's tenure by three years in August 2019. Prior to this, only one army chief has had his tenure extended by a civilian government. Bajwa's extension was justified on the grounds that the "regional security environment", namely, tensions with India over Kashmir and the potential withdrawal of American troops from Afghanistan, necessitated continuity.

On 26 November 2019, the Supreme Court suspended Bajwa's extension and opened a hearing into whether the procedures adopted by the government were in line with the constitution. Over the course of the three-day hearing, a three-judge bench questioned representatives of the government and military over the grounds for granting the extension, the procedures involved and the legality of the process. The judges also highlighted the procedural errors made by the government in issuing the extension. For instance, the judges noted discrepancies within

the government's submissions over whether the extension was authorised by the Prime Minister, Cabinet or President. They also raised the fact that only 11 of the 25 members of the Cabinet had approved the extension.

The government threw its weight behind Bajwa. Khan, Bajwa, ministers and figures from the military worked together to respond to the court. No less than the Law Minister, Farogh Naseem, resigned to appear as Bajwa's lawyer. The government's staunch support and Bajwa's seeming reluctance to retire raise further questions over his role, influence and ambitions.

While the Supreme Court case was ostensibly about procedures involved in appointing the army chief, it is clear that the Supreme Court was asserting the judiciary's independence and relevance as an institution that can provide checks and balances. It is worth noting here that while the Supreme Court initially took up the matter in response to a petition filed by Riaz Rahi, it rejected Rahi's subsequent appeal to withdraw the petition. The Supreme Court deemed the issue to be of public interest.

The assertion of the judiciary's independence needs to be seen in the light of recent comments made by Khan, which seemed to question the judiciary's role. In response to former Prime Minister Nawaz Sharif being allowed to leave the country for medical treatment, Khan accused the judiciary of having different standards for the rich and the poor, and said that it had lost public trust.

The PTI government's intervention in the case against Musharraf raised further concerns over its respect for the judiciary's independence. Musharraf had seized power in 1999 and imposed martial law. Since 2014, he has been on trial for high treason on charges of having suspended the constitution. The verdict was due to be announced by the court on 28 November 2019. Three days before this, the PTI government intervened by filing a petition that called for the verdict to be deferred. In response to this "unjustified and unprecedented" interference, the Pakistan Bar Council announced a country-wide strike.

In sum, the Supreme Court and the Pakistan Bar Council have signalled their readiness to challenge what they see as "unconstitutional" steps taken by the government. Pakistan's Chief Justice, Asif Saeed Khosa, responded to Khan's "taunt" by asserting that a "silent revolution" had taken place in the country and that the judiciary was "completely independent". Perhaps more important is the fact that Chief Justice Khosa publicly called for an open discussion about the role of the armed forces and intelligence agencies in governance, and stressed that the military should not play a political role. It is worth noting that Chief Justice Khosa was a judge in the Lahore High Court when Musharraf seized power and was among the judges who refused to legitimise the military regimes suspension of the constitution.

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