

Pakistan: The government wants impunity on its track record of gross violations of human rights

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A Statement by the Asian Human Rights Commission

PAKISTAN: The government wants impunity on its track record of gross violations of human rights

It is diluting the UN ICCPR and CAT by having reservations against many of their provisions.

The ratification of the of UN International Covenant on Political and Civil Rights (ICCPR) and the UN convention against Torture (CAT) this June had come after a valiant struggle by the human rights movement and had raised new hopes among the civil society and made them convinced of Pakistan's commitment for restoring the rule of law. They were mistaken. All the happiness proved to be a premature celebration of a victory that was not worth the paper, which it was written on. The belief, that the ratification was a proof that Pakistan is taking slow but steady steps for consolidating the gains made by the democratic movement, turned out to be just that; a belief.

The hopes were short-lived. The President of Pakistan has ratified the convention but with 'reservations'. Even a cursory look at the reservations makes it absolutely clear that ratifying the convention was only a window dressing exercise with little meaning.

Through the reservations on UN Convention against Torture, the government of Pakistan has explicitly declared that it will not specify torture as the criminal offence in the domestic law.

The very first reservation in the ICCPR is that Articles 3, 6 7, 18 and 19 of the convention will be applied to the extent that 'they are not repugnant to the Provisions of the Constitution of Pakistan and the Sharia Laws'. What are the provisions in these articles? Article 3 guarantees equality to men and women while Article 7 ensures the right to life. Are not these rights the cornerstones of democracy? What is there in these two articles that can be 'repugnant' to the Pakistani constitution and the Sharia law?

Or is it about the simple fact that the Government of Pakistan wants to keep the traditional right to kill, which it has enjoyed intact? Having problems with a provision that ensures the right to life, meaning that it cannot be taken away without due process of law, exposes the nefarious designs of the government to continue the practice of extrajudicial killings with impunity. The irony is that this is being done by a government, which supposedly carries the legacy of slain Prime Minister Z A Bhutto. Does it want to perpetuate the regime of political vendetta, which often results in the 'elimination' of political leadership and culling any dissident voices?

Further, Article 7 of the ICCPR prohibits the practice of torture, Article 18 ensures the freedom of

thought, conscience and religion and Article 19 guarantees the right to freedom of opinion and expression. What is really nauseating is the use of the idea, that any of them could be 'repugnant' to the provisions of Pakistani constitution that guarantees a 'republic'.

After all, what republic can call itself a republic if it cannot ensure these basic minimum of the rights to its citizenry?

The same goes with the parliament's reservations on the Article 12, which guarantees the right to liberty of movement and freedom to choose residence. Reading Article 25, which ensures participation to public affairs, right to vote and universal or equal suffrage and equal access to public office can fill anyone believing in democracy with horror. What sort of a democracy would try to keep the kind of social control that the denial of these rights suggests? The possibility of having any reservations on these rights demonstrates the government's design to control movement of citizenry and betrays the fact that the government has a lot to hide. Or is it operating under the pressure of the army which certainly has a lot to hide?

This hideous game of ratifying the convention on paper while ensuring that it cannot be implemented, reaches its crescendo in the Government of Pakistan's dogged refusal to recognize the competence of the Committee provided for in Article 40 of the Covenant. This time there is no rationale provided, no excuses offered. Denial to recognize the committee ensures that there would be no mechanism to monitor Pakistan's record in implementing the ICCPR, barring the claims of the government itself. Even leaving the fact of the credibility of the government of Pakistan's claims on the status of human rights, this would result into not having any independent and impartial evaluation of the issues at hand.

The reservation on the article 40 of ICCPR shows that all that the Government of Pakistan wants is impunity on its track record of gross violations of human rights, by making a cosmetic change of ratifying the ICCPR.

Similarly, the government has shown its reservations on almost all important articles of the UN Convention against Torture (CAT), which provides protection against torture by the state. The government has conveyed reservations on Articles 3, 4, 6, 8, 12, 13, 28, and 30.

Inexplicably, these reservations are coming from a government whose president himself has been tortured in custody because of the absence of anti-torture law. Most unfortunately, president Zardari has been fighting a case against his custodial torture for more than a decade to bring the perpetrators before the law.

Article 3 of CAT states, that no State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. The government has declared that the pursuant of this article shall be applied to be in conformity with the provisions of its laws relating to extradition and foreigners. This, in effect, nullifies all protection that CAT could have offered.

Article 4 says that 1) each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person, which constitutes complicity or participation in torture. 2) Each State Party shall make these offences punishable by appropriate penalties, which take into account their grave nature.

Having reservations against this is an explicit demonstration of the denial of the protection from torture to people by the government through law.

Article 6 of CAT emphasizes legal measure against a person who committed an act of torture. Article

12 calls upon the prompt and impartial investigation in the case of torture. Article 13 provides the right to complain and to have his/her case promptly and impartially examined by the competent authorities.

On the article 4, 6, 12 and 13 of the CAT, the government of Islamic Republic of Pakistan declares that the provisions of these articles shall be so applied to the extent, that they are not repugnant to the provisions of the constitution of Pakistan and the Sharia Laws.

The government has not explained what the Sharia Law has got to do with law against torture. On the contrary, the constitution of Pakistan unambiguously prohibits the use of torture. What is the hidden agenda of the government of Pakistan behind these so called reservations? Clearly, they want to keep all the power and authority amassed by military dictators who usurped power through coups. But then, they were dictators and had no legitimacy. Only the use of brute force and torture could make them survive.

Why does a democratic government want to carry their legacy? Why is it hoodwinking the international community as well as the people of Pakistan by ratifying it while also making it toothless? The reservations are nothing but expressions of the true intent of the government, who does not want to criminalise torture. Denying the citizenry protection against torture is a criminal act: plain and simple.

P.S.

* About AHRC: The Asian Human Rights Commission is a regional non-governmental organisation monitoring and lobbying human rights issues in Asia. The Hong Kong-based group was founded in 1984.

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