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Statement

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A Statement by the Asian Human Rights Commission

PAKISTAN: Sharia Court Launches Major Challenge to Protection of Women Act

On 22 December 2010, after three years and four petitions, the Federal Shariat Court (FSC) of Pakistan declared several critical clauses of the Protection of Women (Criminal Laws Amendment) Act of 2006 unconstitutional. In place of this act that created protections for women, the FSC supports the reinstatement of the Hudood Ordinances VII of 1979, which were used to discriminate against, falsely convict and imprison, and otherwise destroy the lives of hundreds of women.

Although the FSC does not have the power to make or change law, Article 203DD of the Constitution does give the FSC to rule any law which is “repugnant” to Islam based on the Holy Quran and the Sunnah of the Holy Prophet (PBUH). The dangerous, potentially destabilising implications will not be legal but rather primarily social and political, as the FSC declaration will incite Islamic fundamentalists and their supporters to suppress the rights of women for fair trial which they have achieved after a long history of struggle.

The petitioners sought to diminish the Protection of Women Act and reinstate provisions of the Hudood Ordinances concerning the kidnapping, abduction, or forced induction of women for purposes of marriage; kidnapping and abduction to submit the victim to “unnatural lust”; the selling or buying of a person for prostitution; cohabitation under false pretences, such as claims of lawful marriage; and enticing or kidnapping a woman with criminal intent.

The FSC has claimed that elements of the Protection of Women Act are not consistent with Islam and thus violate Article 203DD because they conflict with the FSC’s support of the Hudood Ordinances. The sections in question, 11, 25, and 28, are those pertaining to zina (adultery, rape) and qazf (enforcement of hadd). The FSC advocates the restoration of provisions of Hudood that require women who have been raped to produce four witnesses to support her testimony—and the reestablishment of the right of police to arrest women on a charge of adultery on the basis of their report of rape.

The court also held that sections 48 and 49 of the Control of Narcotics Substances Act of 1997 and portions of the Anti-Terrorism Act of 1997 fall under the Hudood Ordinances and should not give judicial powers to the high court instead of deferring to the FSC. The court would attempt to extent the term “Hudood” to cover apostasy, human trafficking, war against the state, and the right of retaliation. The FSC stated that the provisions it states are unconstitutional should be eliminated by 22 June 2011.

The FSC does not have the legal authority to overturn these provisions of the Protection of Women Act, the Control of Narcotics Substances Act, or the Anti-Terrorism Act. The former president of the Supreme Court Bar Association, Qazi Anwer, stated that the FSC does not have the constitutional authority to declare laws unconstitutional. Only the high courts and the Supreme Court have that power. Meanwhile, Parliament is the only body that can make laws or amend the Constitution.

Yet the implications of the FSC declaration will be tremendous for Pakistan. Of most concern is the effect the ruling will have on Islamic fundamentalists and the likelihood of a resurgence of support for the Hudood Ordinances and the repeal of the Women's Protection Act. Extremists may start campaigns against women's rights and protections similar to those currently ongoing surrounding blasphemy laws. The possibility that these fundamentalists may be incited to vandalism, violence, and extrajudicial killings is very real.

Beyond civil society, conflict and insecurity could provoke the extra constitutional forces to take action to support this extreme religious group over secular opponents—and invite the involvement of external actors which would prefer an Islamic fundamentalist government in Pakistan. The effect may be the destabilization of the government as well as the erosion of authority and support for democratic and civilian rule.

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.