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## Pakistan's Political Upheaval: The Demise of Nuclear Democracy

### Cover Page Footnote

J.D., Dec. 2007, Florida State University College of Law. Special thanks to my wife and colleague Ruth Jackson Lee.

## PAKISTAN'S POLITICAL UPHEAVAL: THE DEMISE OF A NUCLEAR DEMOCRACY

JARED M. LEE\*

The late Benazir Bhutto, twice former Pakistani Prime Minister and outspoken advocate of democracy, declared in an interview that “[t]he next few months are critical to Pakistan's future direction as a democratic state committed to promoting peace, fighting terrorism, and working for social justice.”<sup>1</sup> While her statement addressed the state of Pakistan years ago, it could not have been more applicable at this particular time. Her tragic death only amplifies the critical nature of Pakistan's unstable political environment.<sup>2</sup> Bhutto sacrificed her life the way she lived it—fighting to reverse the young nation's history of oppressive leadership.<sup>3</sup>

The Islamic Republic of Pakistan gained independence from Great Britain's colonial rule in 1947 when it was partitioned from India after religious disagreements.<sup>4</sup> Pakistan's history of governance since becoming a sovereign state has been episodic, being governed by three constitutions in addition to several authoritative documents during recurrent military rule.<sup>5</sup> According to several legal analysts, only the most recent constitution, instituted in 1973, is democratic in form and its creation.<sup>6</sup> Although the constitution, written on the foundation of an “Islamic moral standard,”<sup>7</sup> has been in existence for over thirty years, it has been adhered to for much less time.<sup>8</sup> Yet, despite the lack of political consistency

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1. Zahid Hussain, *Interview - Benazir Bhutto*, NEWSBEAT (2002), available at <http://www.newsline.com.pk/NewsJuly2002%5Cnewsbeatjuly2.htm>.

2. The disagreements among Pakistanis are hardly pure politics, instead they are rooted in large tears in the nation's social fabric over issues of religion, military, westernization and wealth. See Colum Murphy, *Pakistan's Last Bid for Democracy*, 170 FAR. E. ECON. REV. 17, 17-18 (2007).

3. See generally, CNN, *Bhutto photographer: 'Gunshots rang out and she went down'*, Dec. 27, 2007.

4. Jeffrey A. Redding, *Constitutionalizing Islam: Theory and Pakistan*, 44 VA. J. INT'L L. 759, 762 (2004). For a more detailed analysis of Pakistan's history see Abdullalh Ahsan, *Pakistan Since Independence: An Historical Analysis*, 93 MUSLIM WORLD 351, 351 (2003).

5. Redding, *supra* note 4.

6. *Id.*

7. Ahsan, *supra* note 4, at 359.

8. Farooq Hassan, *Pakistan's Federal Structure and the Constitution of 1973*, 93 MUSLIM WORLD 269, 279 (2006) (“[T]he civilian part of leadership in the country ruled under this document from 1973 to 1977, then from 1985 to 1999, and then from 2002 until the present time, but at all times the army remained in control of all-important state activities.”).

and occasional limitations on its power, prior to 2007, Pakistan's judicial branch "has never been forced to close shop."<sup>9</sup>

Rumblings of political upheaval ensued when Pakistan's current president Pervez Musharraf, who came in to power in 1999 by effecting a military coup d'état, attempted to suspend the Chief Justice of Pakistan, Iftikhar Muhammad Chaudhry, on March 9, 2007.<sup>10</sup> Chaudhry, a leading proponent of democracy, was detained by the government when he refused to resign. Widespread protests and massive demonstrations, however, compelled the Court to reinstate the Chief Justice<sup>11</sup>

Less than a year later, on October 6, 2007, incumbent Musharraf overwhelming won the presidential election.<sup>12</sup> But at the time, Musharraf was head of Pakistan's army.<sup>13</sup> Several political parties therefore boycotted the election and much of the parliament resigned in protest.<sup>14</sup>

With rumors that the Supreme Court might invalidate the election,<sup>15</sup> Musharraf declared emergency rule on November 3, 2007, seizing complete control of the country by suspending the function of the constitution and exerting executive power over the Supreme Court.<sup>16</sup> Musharraf mandated that members of the Court take an "oath of loyalty to a new 'provisional constitutional order.'"<sup>17</sup> Several judges either refused resulting in their dismissal, or resigned.<sup>18</sup> Unsurprisingly, most prominent among those defying Musharraf's dictatorial demand was Chaudhry.<sup>19</sup>

While Musharraf could not anticipate the outcome of the election's review by the former court,<sup>20</sup> new appointments indubitably endorsed his presidency, functionally "clear[ing] the way" for Musharraf to retain control.<sup>21</sup> This nominal legitimization was

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9. Redding *supra* note 4, at 764 (citing PAULA R. NEWBERG, JUDGING THE STATE: COURTS AND CONSTITUTIONAL POLITICS IN PAKISTAN 7, 12-13 (1995)).

10. Aamir Latif, *The Revolt of the Lawyers*, U.S. NEWS & WORLD REPORT, Nov. 19, 2007, at 31.

11. *Id.*

12. *Musharraf wins presidential vote*, BBC NEWS, Oct. 6, 2007, available at [http://news.bbc.co.uk/2/hi/south\\_asia/7031070.stm](http://news.bbc.co.uk/2/hi/south_asia/7031070.stm).

13. *Id.*

14. *Id.*

15. *Pakistan Emergency*, WALL ST. J., Nov. 5, 2007 at A18 [hereinafter *Pakistan Emergency*]; Lisa Curtis, *Musharraf's Emergency Rule Will Only Fuel Pakistan Crisis*, WEBMEMO 1 (2007).

16. Griff Witte, *Musharraf Declares Emergency Rule in Pakistan*, WASH. POST, Nov. 4, 2007, at A1.

17. *Pakistan politics: Emergency rule*, EIU VIEWSWIRE, Nov. 5, 2007 [hereinafter *Emergency Rule*].

18. *Id.*

19. *Id.*

20. *Pakistan Emergency*, *supra* note 15.

21. *Emergency Rule*, *supra* note 17.

nevertheless refuted and condemned by the opposition.<sup>22</sup> Just before being sworn in for his next term, Musharraf caved to political pressure and resigned his military command.<sup>23</sup>

Additionally, Musharraf dispatched army rangers to command the nation's capital, arrested domestic political leaders that disagreed with his authoritarian policies and shut down all privately owned media.<sup>24</sup> Musharraf also announced that parliamentary elections scheduled for January 2008 may be delayed for up to a year, further clouding the country's political future.<sup>25</sup> Claiming that Pakistan was "out of control," the president defended his emergency decree "as a response to rising Islamic militancy and political instability caused by an interfering judiciary."<sup>26</sup>

Six weeks later, Pakistan's ruling government revoked the state of emergency and revived the country's constitution by way of a three-page order.<sup>27</sup> The "Revocation of Proclamation of Emergency Order 2007" provided that government decisions made under the emergency "shall not be called in question by or before any court."<sup>28</sup> The decree also stated that parliamentary elections will be held as previously scheduled.<sup>29</sup>

Before reinstating the constitution, however, Musharraf instituted several significant changes.<sup>30</sup> Notably, he lowered the minimum age to qualify to be a judge by five years, altering the age requirement from forty-five to forty years of age.<sup>31</sup> Analysts suspect that this gives the president a greater pool of friendly appointees; however the stated reason for the amendment is merely that it allows judges to serve longer tenures.<sup>32</sup> Also important is the effect that all judges that resigned or were removed during the

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22. *Id.*

23. *Pakistan's Big Three - The Options*, BBC NEWS, Nov. 28, 2007, available at [http://news.bbc.co.uk/2/hi/south\\_asia/7115117.stm](http://news.bbc.co.uk/2/hi/south_asia/7115117.stm).

24. Witte, *supra* note 16; Peter Wonacott, *For Musharraf, Challenges Ahead; Emergency Rule's Legacy: A Galvanized Opposition and Warier Allies Abroad*, WALL ST. J., Dec. 17, 2007, at A4.

25. *Emergency Rule*, *supra* note 17.

26. *Pakistan Emergency*, *supra* note 15.

27. Laura King, *Musharraf lifts emergency rule, but restrictions stay*, LOS ANGELES TIMES, Dec. 16, 2007.

28. *Revocation of Proclamation of Emergency Order, 2007 (2007)* available at [http://www.pakistani.org/pakistan/constitution/post\\_03nov07/emergency\\_revocation\\_order.html](http://www.pakistani.org/pakistan/constitution/post_03nov07/emergency_revocation_order.html) (last visited Jan. 24, 2008).

29. *Id.*

30. Peter Goodspeed, *Expect Rigged Elections: Critics; Pakistan's Crisis*, NATIONAL POST, Dec. 15, 2007, at A24.

31. *Constitution (Second Amendment) Order, 2007 (2007)* available at [http://www.pakistani.org/pakistan/constitution/post\\_03nov07/po6\\_2007.html](http://www.pakistani.org/pakistan/constitution/post_03nov07/po6_2007.html) (last visited Jan. 24, 2008); Nirupama Subramanian, *Musharraf Makes Statute Changes*, HINDU, Dec. 15, 2007 available at <http://www.hindu.com/2007/12/15/stories/2007121562791900.htm>.

32. Rezaul H Laskar, *Musharraf amends Pakistan's Constitution*, REDIFF, Dec. 15, 2007, available at <http://www.rediff.com/news/2007/dec/15pakemergency.htm>.

emergency period will not be eligible to return to office.<sup>33</sup>

In addition, the leader created a loophole for the office of president, allowing a person to run for the position immediately after resigning a civil or military position, instead of being subject to the two year waiting period previously required.<sup>34</sup> Moreover, asserting the need to keep nuclear weapons safe from Islamic extremists, Musharraf assumed control of all nuclear weapons, removing the authority from the office of the Prime Minister.<sup>35</sup>

Continuing to defend his actions, Musharraf cited an “unspecified ‘conspiracy’” as the reason for his actions.<sup>36</sup> He attempted to justify his original coup in 1999 by claiming credit for leading Pakistan towards democracy, inspiring growth and development, and empowering women and minorities.<sup>37</sup> Finally, despite his contrary policies both during and after the state of emergency, the president extolled the virtues and importance of a “free and fair” press.<sup>38</sup>

During the state of emergency, Western nations gently rebuked—at most—Musharraf’s self-serving deeds, while many remained silent.<sup>39</sup> Despite this, these same nations fervently commended the return to constitutional rule.<sup>40</sup> The United States has been particularly concerned that political upheaval in Pakistan would undermine Musharraf’s ability to serve as an ally in the war on terror.<sup>41</sup>

In attempt to regain crucial political support, Musharraf took a few of the many important steps necessary to return the nation to democratic rule.<sup>42</sup> A day before beginning his third term as president, he resigned his military post, returning the Pakistan to civilian rule for the first time in eight years.<sup>43</sup> Yet, for many in his opposition, the harm is irreparable and the reforms are shallow.<sup>44</sup>

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33. *Id.*

34. Wonacott, *supra* note 24.

35. *Id.* See also Griff Witte, *Musharraf Ends 6-Week Emergency Rule; President Claims Success on Road to Democracy, but Jan. Elections Shadowed by Doubt*, WASH. POST, Dec. 16, 2007, at A28.

36. *Id.* See also Paul Alexander, *Pakistani Leader Ends State of Emergency*, AP, Dec. 15, 2007.

37. Kim Barker, *Musharraf Ends Pakistan Emergency*, MCCLATCH — TRIBUNE BUS. NEWS, Dec. 15, 2007.

38. *Id.*

39. Matthew Jones, *Western Allies Condemn Pakistan's Musharraf*, REUTERS, Nov. 3, 2007.

40. See Ali Dayan Hasan, *Pakistan's future imperfect*, GUARDIAN UNLIMITED, Dec. 21, 2007.

41. Barker, *supra* note 37.

42. Carlotta Gall, *After Six Weeks, Musharraf Lifts State of Emergency*, NY TIMES, Dec. 16, 2007, at 3.

43. *Id.*

44. Alistair Scrutton, *Despite emergency end, many Pakistanis feel duped*, WASH.

This sentiment is widespread as domestic and international support for his leadership has suffered dramatically.<sup>45</sup>

Many measures of the emergency rule still linger with much of the judicial branch under house arrest.<sup>46</sup> Judicial independence remains at the forefront of criticism and Aitzaz Ahasan, one of the nation's most influential lawyers spearheading protests, remains incarcerated while other attorneys continue "sporadic boycotts of the courts."<sup>47</sup> Restrictions also remain limiting the freedom of the press and prohibiting live political coverage, with penalties of up to three years imprisonment.<sup>48</sup> Furthermore, although accusations of plans to rig the parliamentary elections have been publicly denied, members of the opposing party are unconvinced.<sup>49</sup>

Recent events, along with the catalyst of Bhutto's assassination, may trigger violent attempts to overthrow current leadership.<sup>50</sup> Whether successful or not, political uprising risks stark global consequences as neighbors and superpowers carefully eye the safety of Pakistan's nuclear stockpile.<sup>51</sup> Although parliamentary elections offer hope that the struggling nation can jettison eight years of military rule and bring "a democratically elected, civilian-led government, a breakdown of that process would leave the nuclear-armed state vulnerable to increasingly popular Islamist extremists."<sup>52</sup> Despite fears vocalized by world leaders, Pakistani intelligence officials vehemently deny the possibility that weapons could be in jeopardy.<sup>53</sup>

Certainly, the United States has a multifactor interest in Pakistan. Even though the country has served as an ally in the war on terror, its nuclear weapons present a serious threat to global stability if they were captured or should radicals take control.<sup>54</sup> This concern remains an unspoken force behind the Bush Administration's foreign policies towards Pakistan. In fact, commentators

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POST, Dec. 16, 2007.

45. Wonacott, *supra* note 24.

46. *Id.*

47. *Id.*

48. *Id.*

49. Naween A. Mangi, *Musharraf's Lifting of Emergency Rule May Not Ensure Free Vote*, BLOOMBERG, Dec. 17, 2007.

50. See *Benazir Bhutto's supporters on the attack*, Herald Sun (Dec. 29, 2007) available at <http://www.news.com.au/heraldsun/story/0,21985,22982831-661,00.html>; Cf. *Benazir Bhutto Laid to Rest Amid Violence*, NPR.org (Dec. 28, 2007) available at <http://www.npr.org/templates/story/story.php?storyId=17668008>.

51. CBC NEWS, *Mourners overwhelm Bhutto funeral*, Dec. 28, 2007, available at <http://www.cbc.ca/world/story/2007/12/28/bhutto-burial.html>.

52. Murphy, *supra* note 2.

53. Nirupama Subramanian, *N-arms in secure hands: Pakistan*, HINDU, Nov. 13, 2007 available at <http://www.hindu.com/2007/11/13/stories/2007111368841300.htm>.

54. Tayyab Siddiqui, *Pakistan's political crisis and the US*, SOUTH ASIA MONITOR (2007) available at <http://www.southasiamonitor.org/2007/nov/news/23sm2.shtml>.

suggest that the United States merely uses issues of democracy, rule of law, fair elections, and human rights as a façade for the “real objective . . . to neutralize Pakistan's nuclear capability.”<sup>55</sup>

As despairingly spoken by Bhutto, perhaps Pakistan's most notable martyr for democracy, “President Musharraf's last term in office demonstrated that dictatorship has fueled extremism. The tribal areas of Pakistan have turned into havens for militants to mount attacks on NATO troops in nearby Afghanistan. Lack of governance has led to the expansion of extremism into settled areas of Pakistan.”<sup>56</sup> Unlike other states that have fallen to oppressive rulers during the last century, few have presented such a broad potential for peril.<sup>57</sup> When compared to other nations in chaos such as Sudan, Iraq, Iran and Somalia, “Pakistan is a heavyweight. It's the sixth-most populous country, and one of only eight or nine with nuclear weapons.”<sup>58</sup> Moreover, Pakistan's location and culture make it a uniquely attractive operations base for terror groups.<sup>59</sup>

The competing interests of nuclear security and good governance aside, Pakistan's democratic demise must not be ignored. Pakistan's crisis is the world's problem and failure to acknowledge the significance of the matter presents lasting consequences. Although overcoming instability ultimately requires the unification of the Pakistani people,<sup>60</sup> the United States and other nations must stand ready to assist, or to intervene to secure Pakistan's nuclear weapons if necessary.

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55. *Id.*

56. Benazir Bhutto, *Why the World Needs Democracy in Pakistan*, CHRISTIAN SCIENCE MONITOR, Dec. 10, 2007, at 9.

57. James Rupert, *Reporting From Pakistan, Why you need to care about Pakistan*, NEWSDAY, Nov. 11, 2007, at A23.

58. *Id.*

59. *Id.* See also OWEN BENNETT JONES, PAKISTAN: EYE OF THE STORM (2d ed. 2003) (noting Pakistan's volatile state).

60. “Overcoming the considerable obstacles ahead will take maturity, unity and consensus among a wide swath of Pakistan society, including the political parties, the military, the legislature, the media and civil society.” Murphy, *supra* note 2.