

Various laws framed to curb freedom of expression

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ISLAMABAD, Feb 10: The government has at its disposal various laws to curb freedom of information, including the latest addition of the Provisional Constitutional Order No 1, 1999, allowing freedom of expression to the extent that is not in conflict with President Gen Pervez Musharraf's orders.

The Human Rights Commission of Pakistan (HRCP), in a study titled "Global trends on the right to information: A survey of South Asia", said Pakistan offered a glaring example of a secretive government where people had been denied information about state policies and actions that directly or indirectly affected their interests as a matter of both law and practice.

The information regime has inhibited the ability of the people to assess their governing bodies, to participate in decision-making or shaping relations between the government and the rest of the society, the study said, pointing out an obvious fact known to the journalists despite counter claims of the government.

Through the Provisional Constitutional Order No 1 of 1999, the HRCP study said the president had effectively equipped himself with the power to abridge the right to freedom of expression.

"In a judgment in 2000, upholding the military takeover, the Supreme Court ruled that while 15 of the 21 fundamental rights set out in the Constitution would remain in force, the executive could derogate from the other six, including the freedom of expression."

The freedom of expression, like all other fundamental rights, is now available to the citizens only to the extent that it is not in conflict with the president's order following the upholding of the PCO 1 of 1999 by the Supreme Court, the study said.

Tracing the origin of the laws, the study said most of the laws

restricting freedom of information and expression were framed either by the former British colonial regime or by the military dictators.

According to the study, following is a list of some of the laws which impose severe restrictions on the free flow of information both by imposing secrecy and by subjecting the media to excessive restrictions and government interference:

The Official Secrets Act 1926: A legacy of the British colonial era, the Act requires the accused persons to prove their innocence and the grounds for presuming guilt are broadly defined. Mazhar Ali Khan, Hussain Naqi and Mahmud Sham all faced charges under the Act in the 1970s, but, were released without the charges being proved or withdrawal of the case.

The Act is still on the statute books as a threat to journalists and their sources.

The Security of Pakistan Act 1952: Section 11 of the Security of Pakistan Act 1952 gives the federal government the power to require an editor, publisher or printer to disclose the name of a confidential source and to prohibit the publication, sale or distribution of a document and to forfeit the same if it is of the opinion that the document contains matters likely to endanger the defence, external affairs or security of Pakistan.

The Act is a continuous source of threat for news organizations as any police officer can be ordered to carry out a search and siege operation under this law.

The Maintenance of Public Order Ordinance 1960: It empowers the government or a district magistrate, to pass an order prohibiting the publication of any material; requiring a publisher to publish material supplied by the government within the time and in a manner prescribed; imposing prior censorship; closing down a publica-

tion or a press for a specified period; requiring the disclosure of a confidential source; requiring delivery of relevant material.

A number of journalists have been detained under the law to date.

Pakistan Penal Code Section 123-A: A widely worded section which criminalizes anything which is prejudicial to the safety or ideology of Pakistan or which amounts to abuse of Pakistan. The law can be applied to anyone giving out information which presents the ideology of Pakistan in a way which displeases the authorities.

Pakistan Penal Code Section 124-A: Dr Maleeha Lodhi, Pakistan's ambassador to the US and former editor of an English daily, faced threats of persecution under the extremely broad law dealing with sedition. The law can be invoked for mere criticism of the government as happened in the case of Dr Maleeha Lodhi who was not prosecuted, but, the official pressure led to her becoming the only editor in the country's history who was not allowed to write for the paper she edited.

Pakistan Penal Code Section 153-B: The law penalizes incitement of students or others to take part in political activity which disturbs or is likely to disturb public order.

Pakistan Penal Code Section 292: Left to the subjective interpretation of the authorities, the extremely broad and wide law prohibits the sale, exhibition and possession of obscene books with the exception of material "used bona fide for religious purposes".

Pakistan Penal Code Section 295-C: Known as the Blasphemy Law, it is excessively vague and does not require intent. The law has been invoked against writers, journalists and newspapers. The late Akhtar Hameed Khan, a pioneering social worker, English language daily *Frontier Post*, Urdu newspapers, *Jasarat*

and *Mohib*, have faced changes under the law.

Code of Criminal Procedure Section 99-A: The law provides the executive with sweeping powers to prescribe publications and has been used in an indiscriminate fashion. Seizure of an issue of *Herald* magazine for publishing a report on religious militants and a report on Pakistan issued by the UN special rapporteur on torture fell under its axe. Several publications issued by dissidents in Kashmir and Northern Areas have been banned under the law.

Laws of Contempt and Defamation: Written into the law by General Zia, the influential persons in authority have used this provision to harass journalists. Arif Nizami, at one time a reporter in *Nawa-i-Waqt*, was sentenced to one month imprisonment for contempt of court under the law. Many other journalists have restricted their pens for fear of the law, specially in case of reporting about the judiciary.

Registration of Printing Presses and Publications Ordinance 1988, reissued in March 1997: The position of the current government is that since it lapsed after four months, the Press and Publications Ordinance of 1963 is in force. A Sindh High Court ruling that the 1963 Ordinance had lapsed has been overruled and the government has been taking action against publications under the repressive 1963 Ordinance. Under the 1963 Ordinance, newspapers are obliged to publish only authorized versions of assembly and court proceedings and the official press notes had to be published verbatim.

According to the study, many cases registered under the laws were either withdrawn or forgotten after an initial blow had been struck and the objective of harassing a person or an institution had been achieved.