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<td><strong>Author(s)</strong></td>
<td>Najam Sethi.</td>
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Paper No. 16
Seminar on Freedom of Information
Bangkok, Thailand, 8th to 10th May 2000

The Press and Freedom of Information in Pakistan

By

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Pakistan: Current Political Structure 2000

Official name                   Islamic Republic of Pakistan  
Form of state                   Federated parliamentary system suspended by military coup on October 12th 1999
The executive                   As a result of the October 12th coup, the chief of army staff and chairman of the joint chiefs of staff committee, General Pervez Musharraf, is now designated the chief executive of Pakistan. The prime minister, who held supreme executive authority as a result of constitutional changes in 1997, has been dismissed. The president remains in place as head of state. The president is elected by an electoral college, consisting of both houses of the federal parliament as well as member of all four provincial legislatures
National legislature            Bicameral legislature: lower house, the National Assembly, was suspended on October 12th. It has 217 directly elected members who serve for five years, of whom ten represent minorities; the life of the suspended National Assembly will last until February 2002 unless it is abrogated earlier by the military authorities. The upper house, the Senate, has 87 members elected for six years with one-third retiring every two years. The next Senate election was due in March 2000 but no elections were held. Each of the four provinces elected 19 senators; the remaining 11 are elected from the Federal Capital Territory and the federally administered tribal areas
Provincial government           Pakistan has four provinces, which enjoy considerable autonomy. Each province has a governor and a cabinet of ministers headed by a chief minister, who is elected by a provincial assembly. All provincial governments stand dismissed and all assemblies suspended. Each province now has a governor appointed by the military and a cabinet of select civilians and military persons presided over by the governor.
National elections              Originally scheduled for December 2002 (presidential) and February 2002 (National Assembly), the next round of elections has been postponed indefinitely. The military-led government authorities have given no timetable for the next elections
National government             The PML(N) government of the prime minister, Nawaz Sharif, formed in February 1997, was ousted in a military coup on October 12th 1999
Main political organisations   Pakistan Muslim League (Nawaz) (PML(N)); Pakistan People’s Party (PPP); Jamaat-i-Islami (JI); Muttahida Qaumi Movement (MQM); Awami National Party (ANP); Jamiat-i-Ulema-i-Pakistan (JUI); Tehrik-i-Insaf (TI); Millat Party
President                       Rafiq Tarar
Chief executive                 General Pervez Musharraf
National Security Council
Chief of air staff
Marshal Pervaiz Mehdi Qureshi
Chief of navy staff
Admiral Abdul Aziz Mirza
Foreign affairs
Attiya Inayatullah
Law
Sharifuddin Pirzada
National affairs
Imtiaz Shahibzada

Key cabinet ministers
Commerce
Razaq Daud
Finance
Shaukat Aziz
Foreign affairs
Abdus Sattar
Interior
Lieutenant-General (retired) Moinuddin
Haider
Central Bank governor
Ishrat Hussain

[Source: Economist Intelligence Unit, Country Report Pakistan 1st Quarter 2000]

Pakistan: Current Economic Structure 2000

Annual Indications

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<tr>
<td>GDP at market prices(^b) (PRs bn)</td>
<td>1,882.1</td>
<td>2,165.6</td>
<td>2,414.6</td>
<td>2,759.5</td>
<td>3,029.5</td>
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<tr>
<td>GDP(^b) ($ bn)</td>
<td>61.0</td>
<td>64.5</td>
<td>61.9</td>
<td>63.9</td>
<td>66.2</td>
</tr>
<tr>
<td>Real GDP growth at factor cost(^b) (%)</td>
<td>5.2</td>
<td>6.8</td>
<td>1.9</td>
<td>4.3</td>
<td>3.1</td>
</tr>
<tr>
<td>Consumer price inflation (av: %)</td>
<td>12.3</td>
<td>10.4</td>
<td>11.4</td>
<td>6.2</td>
<td>4.5</td>
</tr>
<tr>
<td>Population (mid-year, m)</td>
<td>130.3</td>
<td>134.2</td>
<td>138.2</td>
<td>141.9</td>
<td>145.6</td>
</tr>
<tr>
<td>Exports fob ($ bn)</td>
<td>8.3</td>
<td>8.5</td>
<td>8.3</td>
<td>8.6</td>
<td>8.4</td>
</tr>
<tr>
<td>Imports fob ($ bn)</td>
<td>11.2</td>
<td>12.1</td>
<td>10.7</td>
<td>9.2</td>
<td>9.8</td>
</tr>
<tr>
<td>Current-account balance ($ bn)</td>
<td>-3.34</td>
<td>-4.42</td>
<td>-1.76</td>
<td>-2.03</td>
<td>-2.9</td>
</tr>
<tr>
<td>Reserves excl gold ($ bn)</td>
<td>1,733</td>
<td>548</td>
<td>1,195</td>
<td>1,028</td>
<td>1,500</td>
</tr>
<tr>
<td>Total external debt ($ bn)</td>
<td>30.2</td>
<td>29.8</td>
<td>29.7</td>
<td>31.4(^b)</td>
<td>34.5</td>
</tr>
<tr>
<td>Debt-service ration, paid (%)</td>
<td>26.5</td>
<td>27.1</td>
<td>35.2</td>
<td>27.0(^b)</td>
<td>16.3</td>
</tr>
<tr>
<td>Exchange rate (av: PRs:$)</td>
<td>30.93</td>
<td>35.27</td>
<td>40.12</td>
<td>44.55</td>
<td>49.22</td>
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February 18\(^b\) 2000 PRs 51.89:1

Source: Economist Intelligence Unit Country Report Pakistan 1st Quarter 2000
Pakistan: Political and Legal History 1947-2000

Following independence from British rule in 1947, Pakistan decided to retain the Anglo-Saxon/civil law legal justice system, including the Criminal Procedure Code, and the Constitution of India, 1935.

In 1956, however, a new constitution along the lines of the constitution in independent India was drafted and approved by a Constituent Assembly. This advocated a prime ministerial system in which a significant degree of provincial autonomy was granted to the five federating units: East Pakistan (East Bengal), Punjab, Sindh, Balochistan and NWFP.

This pseudo-democratic order was overturned in 1958 when General Ayub Khan, the army chief, declared martial law. In 1962, General Ayub gave Pakistan a new Presidential constitution tailored to suit his temperament for a highly centralised “one-unit” system in which the five provinces lost all autonomy. In 1968, General Ayub was brushed aside by Gen Mohammad Yahya Khan.

General Yahya held Pakistan’s first democratic general elections in 1970. But the results – the Bengalis in East Pakistan won an absolute majority of votes and seats to the national parliament and were entitled to have a prime minister of their choice -- were unpalatable to the military. A civil war followed. Thanks to Indian intervention, East Pakistan seceded to form the new nation-state of Bangladesh in 1971.

In 1972 Zulfikar Ali Bhutto was chosen by the army to become President and Chief Martial Law Administrator of Pakistan. In 1973 Mr Bhutto gave Pakistan its first “democratic” constitution (all the political parties signed it), which was federal, prime ministerial and Anglo-Saxon in content and form.

General Zia ul Haq overthrew Mr Bhutto in 1977 and abrogated the 1973 constitution. During his decade-long rule, General Zia amended the constitution at will and introduced sweeping Islamic provisions and laws into it. In 1985 the amended constitution was approved and indemnified by a parliament elected on a non-party basis in which the leading opposition party – Benazir Bhutto’s Pakistan Peoples Party – was missing (it had boycotted the non-party elections held by General Zia).

General Zia died in a mysterious air crash in 1988. In the general elections which followed the restoration of democracy in November 1988, Benazir Bhutto became prime minister. However, she was sacked by the President, Ghulam Ishaq Khan, in 1990 for alleged corruption under powers granted to his office by General Zia’s 8th constitutional amendment.

The Islamic Democratic Alliance won the 1990 general elections and Nawaz Sharif became prime minister. Mr Sharif amended the constitution to introduce the centrality of Islamic Shariah in the law of state and society under which all Anglo-Saxon laws repugnant to Islamic Shariah were declared unconstitutional. But in 1993 Mr Sharif and President Khan were both eased out of office by the army after they fell out with each other and created a constitutional deadlock.

In the new general elections later in 1993, Ms Bhutto was re-elected prime minister. But she lost her job again in 1996 when her handpicked President, Farooq Leghari, sacked her for misgovernance and corruption. Fresh elections in 1997 returned Mr Sharif to power again, but this time with a two-thirds majority to his Muslim League party. He now amended the constitution to strike down the 8th constitutional amendment which had been used by three indirectly elected presidents to dismiss five directly and democratically elected prime ministers in the past. He also banned all forms of parliamentary dissent and mauled the judiciary and the press. Mr Sharif was planning on
a final 15th amendment to make himself an Islamic “Amir ul Momineen” (absolute leader of the faithful) with total powers to perpetuate himself indefinitely when he was overthrown by General Pervez Musharraf, the Pakistani army chief, in October 1999. The two fell out over Pakistan’s India policy.

General Musharraf’s military junta says the constitution is in “abeyance” and that most fundamental rights, including freedom of the press, are operative. At the time of writing (May 2000), this is, by and large, true. But there is no guarantee that the political situation will not change for the worse.

Introduction

“In order to start a magazine, an applicant has to have his form cleared by, in turn, the city magistrate, the local police, the city magistrate, the provincial press information department, the chief minister’s office, the provincial press information department, the federal press information department, the intelligence bureau, the federal press information department, the provincial press information department, the deputy commissioner, and, once again, for luck, the provincial press information department. Applying for a newspaper is more difficult.” — Emma Duncan in “Breaking the Curfew”

We applied for permission to publish The Friday Times in 1984 and went through the route described above by Emma Duncan, the South Asia correspondent of The Economist, London. The paper was eventually launched in 1989. When I explained all this to Emma, I omitted to tell her one last personal detail which finally clinched the paper for us. After we had struggled for four years nudging the file delicately through the maze of the bureaucracy and intelligence services, the file landed on the desk of Nawaz Sharif, who was chief minister of Punjab province in 1987, and twice prime minister later. After months of trying, my wife Jugnu managed to contrive an “interview” with Mr Sharif.

“So you want to publish a magazine”, asked Mr Sharif suspiciously, “what sort, may I ask?”

“Oh, just a social, chit-chat glossy”, she battred her eyelids sweetly, “I’ve just returned from England after graduating from Cambridge University and I don’t want to sit at home or waste my time attending coffee parties.” And then she added: “Oh, yes, my uncle sent his very best regards to you. He thinks very highly of you. He’s in your parliamentary party, you know.”

“That’s why I agreed to see you”, said Mr Sharif smugly, drumming his fingers on the table. “I suppose that with your liberal education, you’ll be a little critical of certain government policies, won’t you?” he asked, raising his eyebrows, a faint smile playing at the corners of his mouth. “If only to sell the paper”, he added, by way of explanation himself.

“Heavens, no!”, protested Jugnu, avoiding the trap deftly, “my family supports your party, how could you possibly think that?”

“No, no, of course not, you come from such an old and respected family. And your uncle does belong to my party. All right, I’ll sign the permission letter”, granted Mr Sharif generously. When she got up to leave a little while later, he made a point of reminding her to “give my best regards to your uncle. He has a bright political future”.

Many years later, Mr Sharif rued the day he had breathed life into The Friday Times by allowing us to publish it. And I was to pay a nasty price for refusing to buckle under pressure to tow his government’s line.

Press Laws

At independence, Pakistan inherited two laws which impinged on the press: The Press and Registration of Books Act, 1867, and The Indian Press (Emergency Powers) Act, 1931. The former obliged publishers/printers to merely register printed material with the authorities. The latter prescribed punishments on specific grounds. It remained in force until 1960 when the military government of General Ayub Khan promulgated the notoriously repressive Press and Publications Ordinance 1960. This was amended in 1963, becoming harsher and more punitive. It also became impossible to obtain a licence for publication unless one was overtly pro-government.

This law ruled the roost until 1988 when, following the death of General Zia ul Haq in an air crash and the announcement of democratic general elections, a caretaker government repealed it and enacted the more liberal Registration of Printing Press and Publications Ordinance (RPPPO). Under the RPPPO a licence to publish became a publisher’s right unless the government could satisfy a court of law that it should be denied. This Ordinance was continuously re-promulgated as an Ordinance after every four months but not passed as a permanent Act of Parliament until June 1997 when it was allowed to lapse. As of May 2000, no new Ordinance or Act has since been enacted to confirm or amend the provisions of this lapsed Ordinance.

This has created a dangerous legal vacuum. The Supreme Court of Pakistan had earlier declared that a re-promulgated Ordinance is not a valid piece of legislation. Yet this did not deter various governments from re-promulgating this and other ordinances. The court’s opinion was disregarded because every government was obstructed from passing legislation by every opposition, regardless of the merits of the proposed legislation. In the case of the RPPPO, 1988, the problem was accentuated by the fact that no government was able to develop a consensus with representative bodies of the Press, like the Council of Pakistan Newspaper Editors, about further amendments or improvements to the law. So every government decided to “mark time” by re-promulgating the Ordinance until there was a better opportunity to develop a consensus.

In strictly legal terms, however, if one goes by the Supreme Court judgement, there has actually been a legal void between 1988 and now. Worse, after the re-promulgation stopped in 1997, it is not legally clear whether the press is now once again to be governed by the draconian 1963 RPO which stood repealed by the 1988 RPPPO.

So two questions remain: What is the legal status of the RPO 1963 after the re-promulgated ordinance of 1988 has lapsed? Does the old ordinance come back by default or is there a legal void? Meanwhile, the government of the day has chosen to interpret the situation as if the provisions of the 1963 ordinance had come back in force. Astonishingly enough, though, the press has not challenged this interpretation of the law. That means that the situation could get out of hand if any attempt is made to apply the 1963 RPO provisions to silence any aggressive member of the press.

Penal Code applications

Certain sections of Pakistan’s Penal Code are also detrimental to the cause of press freedom. Under Section 123-A, anyone who is deemed in any way to prejudice the ideology or sovereignty of Pakistan can be imprisoned for ten years. Under Section 124-A (sedition),
whoever brings into hatred or contempt, or excites disaffection towards, the central or provincial government can be sentenced to twenty five years in prison. Under section 153-A, whoever incites disharmony or feelings of enmity between different racial, religious or linguistic groups, can be sentenced to five years in prison. These laws have been used to detain journalists and silence them.

**Official Secrets Act, 1923**

This law is based on two British Indian laws (Indian Official Secrets Act 1889 and Indian Official Secrets (Amendment) Act 1904) and the England Statute (Official Secrets Act 1911). A conviction under carries 14 years imprisonment. For a conviction under this act, it is not necessary to prove that the accused is guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the state, and even when no such act is proved against him, he may be convicted if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was prejudicial to the safety or interests of the state. This law has been misused against independent journalists in the past.

**Other Laws/Rules relating to Media**

**Constitution of the Islamic Republic of Pakistan**: several sections and articles deal with Fundamental Rights, including freedom of speech and expression and freedom of the press, and how these may be curtailed under certain circumstances. These include the Preamble to the constitution; Part I (Introductory, Articles 1 to 6); Part II (Fundamental Rights and Principles of Policy, Articles 7 to 40); Article 89: Power of President to promulgate Ordinances; Article 128: Power of Governor to promulgate Ordinances; Article 159: Broadcasting and telecasting; Article 184: Original jurisdiction of Supreme Court, Article 199: Jurisdiction of High Court; and Article 233: Power to suspend Fundamental Rights, etc. during emergency period.

**Print Media: Newsprint (Control)**: Various Acts and Ordinances have been passed since the Essential Supplies (Temporary Powers) Act, 1946, providing for the continuance of the government's powers to control the production, treatment, keeping, storage, movements, transport, supply, distribution, disposal, acquisition, use or consumption of, and trade and commerce in, certain “essential commodities, including paper (which included newsprint). Under these laws, the press has been harassed to support the government and stay in line.

**Print Media: News Agencies and Trusts**: Through the Associated Press of Pakistan (Taking Over) Ordinance, 1961, amended by Ordinance No XX of 1961, the government took over a principal source of supply of news and features to newspapers and media. Originally APP was created through the formation of the Eastern News Trust in 1949 which, in turn, inherited Reuters' branch offices in Karachi and Lahore. But despite government subsidies APP could not take off. Since then, APP has remained the principal conduit for the government's viewpoint and it is not averse to disseminating false and concocted stories against the government’s critics.

**Broadcasting: Statutes**: The government still retains a monopolistic control over the electronic media. The government-controlled media is always partisan, upholding the government-of-the-day’s viewpoint and lambasting the opposition’s. It has also been used to run down and criticise the independent media. However, a new policy was formulated during the caretaker regime in 1996-97 when proposals to allow the private
sector to establish radio and TV broadcasting units were mooted and an Ordinance was announced laying down rules and regulations for such ventures. However, the next democratically elected government allowed the Ordinance to lapse. The military government has now said that it will consider the same proposals afresh.

**Motion Pictures: Censorship Code:** The Censor Code prescribes "the principles by which Film Censorship shall be guided". The Code sets out "in detail certain curbs which have to be imposed on the exercise of the freedom of expression in the interest of the majority of cinema audience". The stipulated curbs covered the following heading: (I) Security, law and order, (II) International Relations, (III) Religion, (IV) Immorality and obscenity, (V) Nudity, (VI) Dances, (VII) Crime (VIII) National sentiments, (IX) Titles, (X) Bestiality and (XI) Plagiarism.

**Freedom of Information: Statutes:** Until 1997, there was no specific law under which the press was entitled to demand information as a matter of right. But the caretaker government in 1996-97 unveiled a Freedom of Information Ordinance in January 1997. This Ordinance sought to provide access to the public record. It enabled citizens to obtain a wide range of documents consisting of the record of all public offices including policy statements, contracts and papers relating to transactions, licences, agreements and official orders given on various subjects. At the same time it excluded certain types of documents such as nothings on files, record of banking companies, material relating to the personal privacy of an individual, etc. The law provided for a simple and easy procedure to obtain such documentation and also contained a provision for an appeal to an Ombudsman (Mohtasib) in case the request for a document was declined. However, the law enabled the government to categorize documents as "classified" and thereby refuse access to such documentation. But the next democratically elected government dragged its feet over making rules and regulations and classifications impacting this Ordinance. Four months later, it allowed the Ordinance to lapse. Since then, there has been no attempt by any civil or military government to moot such a law.

**Contempt of Court Act 1976:** The definition of contempt of Court is provided for in section 3 and includes the doing of "anything which is intended to or tends to bring the authority of a Court or the administration of law into disrespect or disrepute, or to interfere with or obstruct or interrupt or prejudice the process of law or the due course of any judicial proceedings, or to lower the authority of a Court or scandalise a Judge in relation to his office, or disturbs the order or decorum of a Court". Under this law, journalists have been hauled up for contempt of court from time to time. But the courts have taken a lenient view and most have been let off after receipt of an apology or made to pay a nominal fine of Rs 1 if adjudged guilty. Interestingly enough, though, several cases are pending in the supreme court of Pakistan against top political leaders of the country, including former prime ministers Bhutto and Sharif. The case of a senior columnist, Ardeshir Cowasjee, is also pending before the supreme court for contempt. Under the Constitution of Pakistan, Article 204, Contempt of Court is dealt with thus: 

"...A Court shall have power to punish any person who:- abuses, interferes with or obstructs the process of the Court in any way or disobeys the order of the Court; Scandalizes the Court or otherwise does anything which tends to bring the Court or a judge of the Court into hatred, ridicule or contempt, Does anything which tends to prejudice the determination of a matter pending before the Court; or Does any other thing which, by law, constitutes contempt of the Court..." Contempt of Court within the ambit of this Article is restricted to the High Courts and the Supreme Court. Although the Article does not give a definition of the word 'contempt', it stipulates what constitutes
contempt. Contempt of court may be classified into three different categories. One kind of contempt is scandalising the Court itself. Similarly, there may be contempt in abusing parties who are concerned with causes. Contempt may also take place by prejudicing the Court in respect of the judges. Article 204 contains a constitutional safeguard against any attempt to scandalise the Court or undermine its dignity and, in a way, restricts the fundamental right of freedom of speech. Even Prime Ministers cannot escape from the ambit of this Article. Consequently, it was held in Ch. Zahur Ilahi versus Mr Zulfikar Ali Bhattu that if the Prime Minister’s speech prejudiced pending proceedings and also contained a veiled threat to the Court, then it amounted to contempt of Court and was not protected by Article 248.

Court judgments: Defamation: A few judgments which embody the principles of freedom of expression as applied to the dissemination of material through the mass media may be noted for illustrative purposes here.

Ghulam Nabi Khan vs Azad Government of State of J&K: It was held that the plaintiff’s claim to damages for defamation were justified as the plaintiff enjoyed a good reputation for his honesty, integrity and efficiency and the criminal prosecution not only caused mental and physical torture to the plaintiff, but also provided a jolt to his reputation. The State vs Pakistan Medical & Dental Council, Islamabad: In this case it was decided that journalists should be most watchful not to publish defamatory attacks upon individuals unless they first undertake responsible pains to ascertain that they are strong and cogent grounds for believing truthfulness of the information which is sent to them. Adeeb Javedani, Printer and Publisher, Moon Digest: Vs Yahya Bakhtiar: In this case it was decided that the language contained in the article was “hard, oppressive, detrimental and could cause damage to the reputation and integrity of the respondent/plaintiff.” Therefore, the editor was reprimanded in order “to check such a glaring instance of baseless, alarming, sensational and cheap journalism.” Sheikh Rashid vs Nawa-i-Waqt and The Nation: It was held that it is the duty of the publishers to have made reasonable inquiries about the correctness of the allegations contained in the said news item before publishing them as they cause serious allegations regarding their entire political career. The Superior Courts have consistently been of the view that in such suits the cost or damages are not to be awarded by way of penalty nor are they to be made a source of profit for the successful party. Damages for defamation are purely compensatory and there is no room for importing the concept of exemplary and punitive damages. Justice Ijaz Nisar’s judgement on split decision by LHC bench on Sheikh Rashid vs Nawa-i-Waqt and The Nation: It was held that while newspapers are required to ensure accuracy before publication, in this particular instance no mala fide was manifest and that therefore the newspapers could not be deemed to have intentionally committed defamation. In general, the courts have been reluctant to award heavy damages in defamation cases and are inclined to nudge the contesting parties to settle out of court. Nor have the courts been particularly keen to conclude defamation proceedings, allowing hearings to be postponed for years at end.

Court Judgments: Balanced Election Coverage on Radio & TV: Muhammad Aslam Saleemi, Advocate vs The Pakistan Television Corporation and another: It was held that equal time was to be given as far as possible to activities with regard to election campaigns of two major participants in election. Both parties to be permitted equal usage of television and broadcasting facilities. The Corporation is to project the election campaign of parties in an impartial manner.
Television Corporation, etc: The Corporations being public functionaries are expected to act in fair, just and equitable manner and to treat all alike as enjoined by Article 4 of the Constitution. It is the duty of the Corporation to maintain a balance and present the news about the election campaign in as factual, accurate and impartial a manner as possible.

Islamic Reforms Advocated: Tamseel Javed vs Federation of Pakistan and the Ministry of Law: The Federal Shariat Court held that in Islamic journalism it is very important that journalists should verify all news in the dissemination of truth. The Superior Judiciary specially created during the regime of General Zia-ul-Haq to promote the cause of Islamization also gave its opinion regarding the redundancy of various sections of the Press and Publications Ordinance; Federation of Pakistan and others - appellants vs Public at large and others: Consequent to the judgement by the Federal Shariat Court in 1984 holding numerous sections of the Press laws to be repugnant to Islam the Federal Government appealed to the Supreme Court for a review. In considering the appeal, the Shariat Appellate Bench of the Supreme Court in January 1988 concurred with certain opinions rendered by the Federal Shariat Court but also over-ruled certain recommendations by the Court for changes in the law.

Court Judgments: Fairness and Balance in Government-Controlled Media: Benazir Bhutto vs Federation of Pakistan and others: Pending further hearings in the Constitutional Petition filed by the Leader of the Opposition in the National Assembly against a “media trial” being conducted against her person in the press and on state-run media by the Federal Government, the Chief Justice of the Sindh High Court passed two orders directing Government-controlled radio and TV to ensure that a person accused of malpractice during a broadcast is given the opportunity to present his own view-points and also receives fair and balanced coverage to achieve greater credibility for state-run media.

Select Bibliography

DAY TWO

May 9, 2000