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**Rape and the law**

In a previous column (‘Reform the System’, Sep 18) on these pages, I had stated that severity of punishment alone does not stop criminals from committing sexual crimes; the real effective deterrent is the high probability that the culprit will be caught, prosecuted and punished.

There are serious flaws in our criminal justice system where culprits are either not caught as assaults go unreported or, if caught, are not convicted leading to a feeling of impunity amongst criminals. The public was already tired of the inaction by successive governments. For the prime minister, who was already concerned, the Sialkot Motorway Incident was the final straw which eventually led him to publicly promise legal reforms. In the subsequent discussion, of which I was a part, the prime minister laid down the foundations for a proposed law to address the core problems of the criminal justice system regarding sexual offences, ensure certainty of conviction by improving procedures of investigation and trial while also providing victims and their families legal aid, counselling and compensation.

Keeping in view these aims, it was important to bring a law which is simple and practical and not one which creates bureaucratic hurdles and complicates the process. Does the latest Anti-Rape Ordinance fulfill these objects?

First, thanks to Minister Human Rights Shireen Mazari, the definition of ‘rape’ has been made comprehensive to include acts which were not previously covered -- failure to physically resist an act of ‘rape’ does not mean ‘consent’, the archaic vaginal test of the victim has been prohibited and sexual offences against transgender persons can also constitute rape.

The problem with the system has been that the conviction rate in sexual offences in Pakistan is one of the lowest in the world and the principal reason for that is failure of investigation and faults in the medico-legal reporting procedures. To address this, the latest law provides that serious sexual offences shall now be investigated by a Joint Investigation Team headed by a DPO and comprising one woman, while Special Crisis Cells headed by the DC and comprising Medical Superintendents will ensure immediate medico-legal reports and secure collection of evidence.

Lacunas in prosecution and court proceedings have been addressed by providing for the appointment of prosecutor-generals, special prosecutors and legal aid to the victims, and specifying that sexual offences will be tried by Special Courts mandated to complete the trial within four months.

In the past, the lack of victim/witness protection meant that criminals were able to force victims/witnesses to retract statements and ensure acquittals. The law addresses this by providing special security arrangements for victims/witnesses, concealment of their identities, recording of testimonies through video-conferencing and availability of victim/witness protection programmes. In addition, initial statements of victims/witnesses are to be video-recorded and preserved while their cross-examination is only through counsel.

We saw in the Sialkot Motorway incident that the police do not take any action for crime prevention if the offence is committed outside their territorial jurisdiction. The law now provides that police officers are bound to act immediately upon receiving information of any sexual offence irrespective of the area. NADRA is also mandated to prepare and maintain a register of sexual offenders.

Notwithstanding these steps, the law has been criticized in print/social media. One objection is that the government, instead of an ordinance, should have presented a Bill before parliament. I agree that ordinances are not the ideal solution, and it is parliament only which should make law after full debate. However, the circumstances in which the Anti-Rape Ordinance has been promulgated are unique.

First, owing to the rising tide of sexual offences against women and children, a loud and clear message had to be sent to the public that the government is serious about tackling such crimes. Second, owing to the prevailing political situation, it is extremely difficult to pass laws through parliament, and this required immediate action. Third, an ordinance has a limited life under the constitution and eventually this law too will have to go to parliament. The ordinance hence acts as a catalyst for this important law. However, I agree that the promulgation of ordinances as substitution for law is to be discouraged.

Another criticism relates to the punishment of chemical castration which has been introduced as a deterrent. Many believe that this is unconstitutional. The objectors have failed to notice that this punishment is voluntary, and the court can only give this sentence if the convicted person opts for this in lieu of reduction in sentence. I believe that this would not be deemed to be violative of any fundamental rights.

A third objection is that the issue is not one of law but its implementation. I agree that ultimately all laws fail if they just remain on paper. The law therefore still admittedly contains some gaps in this regard. For example, in the matter of appointment of grievance committees and rule-making, the government has been excluded leaving decision-making at the ministerial level and, hence, the concept of collective responsibility, as laid down by the Supreme Court, has been avoided.

The law does not provide for the training of investigating and medical officers, prosecutors and the courts to sensitize and enhance their capability to deal with matters of sexual crimes. The other ‘cracks’ that need to be fixed are the compulsory involvement of female investigating officers and judges (currently the law states that the investigators and judge may “preferably” be female) and more responsibility for providing financial assistance and support mechanisms for victims needs to be put on the government. Similarly, the registry of sexual offenders must be made compulsory and the police must be assigned the obligation to report such convictions to NADRA. I am sure these changes will come when the matter is debated in parliament.

Last but not the least is to change the mindset that ‘shames’ victims. No law can change society’s attitude to social crimes or eliminate rape culture. The government too can only create more awareness, which it should be doing, but the responsibility lies upon the educated class to play an active role so that sexual offences are reported and the effectiveness of this law too is not nullified.

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