

Mukhtar Mai: political class and judiciary must reflect national concerns

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Human Rights

STATE MATTERS



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The onus for change is on the state. Willing partners must come from the media and citizens' rights groups, as in the Mukhtar Mai case. The task is to make sure that there is no space left in the public realm for justifying such crimes. The sooner the political class comes round to this conclusion and nudges the judiciary to reflect its national concerns, the better

THE LAHORE HIGH COURT JUDGMENT setting aside the conviction of five of the six people sentenced by the anti-terrorism court to death for *jirga*-sanctioned gang-rape of Mukhtar Mai reflects four hard facts about today's Pakistan. One, the state has yet to emerge as the protector of citizens and a credible arbiter. Two, law enforcement is inefficient and controlled by the influential. Three, exceptions notwithstanding, the rights of the average citizen are invariably sacrificed at the altar of power play. Four, the judiciary has yet to engage in the judicial activism needed in a situation where social mores begin to fall apart.

Crimes against women are not being punished effectively, consistently and systematically. Therefore the question of the role of state and the political class becomes important. Is the factor of power and disruption always going to be the primary instigator of change, as for example in the case of Balochistan recently? The establishment of two parliamentary committees on Balochistan was important. But it was a crisis that prompted a long overdue exercise. Alternatively, policy shifts — even to our advantage — have been prompted by external pressure, as in some elements of foreign policy after 9/11.

Then there are many instances when the state has 'guided' the judiciary to serve its immediate ends. One such was the recent handling of Asif Zardari's case. When on December 21 a Karachi court cancelled his bail on 'technical grounds', both the cancellation and the readmission subsequently were probably at the behest of elements of the government and establishment. The 'higher' reason of power and politics prompted the intervention.

Exceptions to the rule notwithstanding, as in the case of General Asif Nawaz's court mar-

tial of an officer in Sindh in 1992, the state has generally failed to take serious steps to punish violations of citizens' rights and enforce the law. In Mukhtar Mai's case, it failed in its duty to adequately record and present the evidence

for effective prosecution.

Pakistani women still do not figure in the national power calculus. In addition to the curse of poverty they have to deal with the brute force of men. Even as human rights groups report hundreds of honour killings every year, the state has refused to accept major responsibility for aggressively challenging this practice. A majority of parliamentarians thus rejected the private bill calling for the state to be the *wali* (plaintiff) in cases of honour killings. They invoked 'Islam' — in defiance of the letter and spirit of the Holy Quran — to defend their position that the very people who plan the murders of their daughters and sisters should remain their "guardians, heirs and custodians" and they should decide whether the state should prosecute those charged with the crime, accept blood money or pardon them. This is how power and politics numb all other senses.

The amendments proposed by Kashmala Tariq, and earlier by Sherry Rehman, must be discussed seriously despite the law minister's explanation. A law free of loopholes is required to deal with the crimes being committed against women. All those involved in the facilitation, planning or execution of murder, rape or use of women to settle scores should be punished. No act in the chain of the crime — from inception to abetment, attempt, planning and implementation — should be "compoundable", meaning 'excusable'. The tragedy in the case of an 'honour killing' may be personal but the impact is societal. To the extent that it promotes a social evil, it is not a personal matter. Its prosecution, therefore, is a concern of state and the society.

No relative or custodian of the victim should be allowed to compound the offence. There should be no escape route left for the

convict. The state must be the *wali* to ensure this. The option of compounding a crime only upholds the murderer in a family that sanctions 'honour killings'.

Unfortunately none of the influential groups — from mainstream politicians to the military, the religious parties and the business class — have considered questions of rape, honour killings and violence against women as sufficiently critical to *their* own personal or collective welfare, certainly not enough to espouse sustained action against it. They do not see it as an issue that is directly linked to human, religious and civilisational values. Perhaps that is a reflection of the extent to which the bitter battling for power has stunted the development of our human sensitivities.

The agenda of power play has spun off myriad conspiracies and back-stabbings which amount to endless ways of compromising at the cost of rule of law. The result is a society in which some people desperately try to live by their own individual values. But a big majority, lacking power and 'powerful backing', is exposed to the law of the jungle.

Crimes like rape take place everywhere in the world. In better-managed societies the rule of law remains a major deterrent for such crimes. That is what we need in Pakistan. The onus for this change is on the state. Willing partners must come from the media and citizens' rights groups, as in the Mukhtar Mai case. The task is to make sure that there is no space left in the public realm for justifying such crimes. The sooner the political class comes round to this conclusion and nudges the judiciary to reflect its national concerns, the better.

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