**Anti rape ordinance**

BY A L E F I A T. H U S S A I N 2020-12-31

THEglobalcampaign,16Daysof Activism against Gender-Based Violence, from Nov 25 to Dec 10, is behind us. So, what did Pakistan gain from it this time? Easily the best bit extracted is the anti-rape ordinance of four months, after which it awaits parliamentary approval.

President Arif Alvi promulgated the AntiRape (Investigation and Trial) Ordinance, 2020, on Dec 15, 2020, which creates special courts and a national sex offender registry with the help of Nadra, promises speedy justice, sets up a crisis cell for medico-legal examination within six hours of the incident, and makes disclosing the victim`s identity a punishable offence.

The law introduces chemical castration as punishment for rapists an immature response to a grave offence such as rape. It misses the point that rape is not merely a physical act and that it is triggered by many serious social and psychological conditions.

More stringent measures are required to deter sex crimes; it may indeed be a step in the right direction, but why be inspired by such punishment? The solution to sex offences lies in strengthening the system -more evidence-based investigations, where the victim has easy access to competent prosecutors to ensure a fair, speedy trial. But, in most rape cases in Pakistan, prosecutors f ail to prove the case in court for lack of police evidence. The police fail to gather credible evidence because the medico-legal officers (MLOs) conducting physical examinations do not back them competently. At the end of this vicious circle, credible evidence is lost, which takes the conviction rate down to three per cent across the country.

The MLOs undergo short training during the third year of their degree course and provide the first line of support to survivors.

They conduct a physical examination of the complainant, collect chemical and biological evidence, seal the evidence for chemical/ DNA testing, provide first aid,issue a medicolegal certificate, and refer the case to the police for registration and testifying in court.

However, studies conducted by legal experts and women`s rights activists have identified many lacunae in the medico-legal practice at public-sector hospitals. Doctors are disinterested in joining this specialised department; they are insufficiently trained in forensics and pathology, and often absent in hospitals at the THQ and RHC levels which limits access to their services in rape cases.

Although there are SOPs for the examination of rape victims, few are followed because MLOs are not trained in collecting and preserving evidence, especially DNA, and using equipment, such as rape kits.

Dr Arif Rasheed Malik, who oversees sur-geon medico-legal duties in Punjab, says that although the Primary and Secondary Health Department prohibits ad hoc medical persons from undertaking medico-legal work, there is rapid induction of regular doctors in the teaching cadre as inexperienced postgraduate trainers. Medico-legal work then is conducted by newly recruited medical persons through the Punjab Public Service Commission after training for one to three months only.

The Anti-Rape (Investigation and Trial) Ordinance, 2020, prohibits the two-finger test for the purposes of the medico-legal examination of a survivor. It`s a positive change. But implementation of the ban will require a corresponding focus on the training and capacity building of MLOs. It will be interesting to see how the new ordinance and its associated rules interact with the revised guidelines for medico-legal examination issued by the Specialised Health Care and Medical Education Department, which reportedly retains other invasive processes.

Fatima Yasmin Bokhari, who authored TheAccountability for Rape A Case Study of Lodhran, points out that a hymen check at the provincial level will inevitably give some probative value to the two-finger test, as the two are interlinked.

A pertinent question is whether it isenough to make new laws. In Pakistan, laws don`t always translate into practice.

In 2012, the Supreme Court observed that `DNA test provides courts a mean of identifying perpetrators with a high degree of confidence`. However, the court also held that `consent of victim is necessary and she cannot be subjected to DNA or other medical test forcibly for prosecution purposes because that would amount to infringement of personal liberty of such persons`.

Bokhari found that MLOs often do not collect and forward samples for DNA testing of victims and DNA tests of the accused are also not consistently done. Greater reliance is placed on the presence of semen on the victim as oppose d to other means through which DNA evidence may be collected.

We may have improved our approach to victims of sexual violence but still must rethink our attitudes and approach to a horrific crime, besides ensuring that the laws we have are enforceable. The writer is a freelance journalist based in Lahore.

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