**Women and the law**

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The Islington Crime Surveys conducted in the 1980s by UK-based criminologists found that 73 per cent of women were concerned about going out alone at night, and 68 per cent took some form of avoidance action at night because of fear of crime.

This shows how women have to be extra cautious when they are out and alone. Ideally, law-enforcement agencies are there to protect the rights of individuals, but the cases of custodial death and rape in Pakistan say otherwise. In fact, the victim-blaming comments by the former CCPO of Lahore following a motorway rape case that occurred at night also show the bias of those who are supposed to protect women.

But the situation is not limited to Pakistan. There have been cases where countries have passed laws which violate the constitutional rights of individuals like what we saw in the US soon after the 9/11 terrorist attacks.

German philosopher Theodor Adorno and legal adviser Gustav Radbruch argued that laws passed by Nazi Germany to commit atrocities were ‘legal’ for being backed by legislation and the judiciary, but invalid and illegitimate for violating natural justice. This view led to the rejection of the Nazi officials’ plea of following their superior’s legal order for committing international crimes, during the Nuremberg Trials. States, however, continue to violate human rights, especially women’s rights, on the pretext of security.

It is worth mentioning that the UN Convention Against Torture and the UN Convention on the Elimination of All Forms of Discrimination Against Women protect women when arrested. Pakistan is party to both these conventions and, therefore, bound to implement and enforce every safeguard while arresting any woman especially during night.

The Criminal Procedure Code (CrPC) 1898 provides under Section 167 to not hand over the custody of a woman accused to the police for investigation. She will be interrogated in prison, in the presence of a jail officer and a female police officer. The police can have her custody in case of murder or dacoity, but in the company of a female police officer, and not between sunset and sunrise.

This principle of refusing the custody of a woman to police, especially during night hours, is also applicable while making arrests. It can be argued that Sections 165 and 166 of the CrPC empowers the police to arrest the accused on the possibility of escaping and destroying evidence. However, this is not applicable with respect to women accused who are vulnerable to custodial rape and torture. And they should only be arrested during daytime, in the presence of a female police officer.

But what we see is that the police abuse their ample powers of arrest under Section 54 of the CrPC – the colonial master’s favourite provision – and under Section 151 for preventive action, which usually violates human rights as individuals are arrested merely on suspicion, instead of on the basis of committing an offence.

Section 48 protects women when the police forcefully enter a house, by exercising restraint when breaking open the ‘zanana’ (occupied by women) and allowing them free ingress under Section 47. Under Sections 46 and 50, reasonable force should be used when arresting. The mode of searching women is provided under Section 52. Sections 53-A and 164-A protect victims of rape during investigation. And Sections 60, 61, and 167 provide for the production of arrested women within 24 hours before the magistrate.

Women can be released on bail by police officers in non-bailable offences under Section 497 as a rule, and not an exception. The Supreme Court of Pakistan recently upheld this view in ‘Mst Ghazala v The State.’

Article 10 of the constitution provides for producing arrested women within 24 hours before the magistrate and to be defended by the pleader of their choice. Article 13 protects women against double jeopardy and self-incrimination, while Article 14 protects their dignity and against torture.

Under Islamic law, allegations to the dignity of a woman are prosecuted under Qazf as Hudood, if she is arrested during night and in the absence of a woman police officer, because it is not permissible for a man to touch the face or hand of a woman who is not ‘mahram’, as Section 46 provides for touching the body when arresting someone.

In the past, Fatima Jinnah was unfairly treated in 1964 after she held the largest nationwide protests in Pakistan’s history in Dhaka and Karachi. Benazir Bhutto was arrested and her rights provided in the constitution, drafted by her father’s government, were violated many times before she became the first female Muslim prime minister.

Aafia Siddiqui was illegally arrested and handed over to the US under terrorism allegations but was never tried for terrorism, instead she was tortured – apparent from her released pictures – and convicted for firing upon an officer while in custody in self-defence.

Amnesty International wrote a letter to the former interior minister for the illegal arrest and arbitrary detention of Mahal Baloch. Just a few days back, Advocate Imaan Mazari was arrested during the night hours from her home, violating her constitutional protections and dignity at night.

Such incidents are stark examples of violations of human rights in Pakistan. The country must follow the law when making arrests, especially when a woman is involved in such arrests.

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