

Pakistan: Fault lines in law-making

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ABOUT a score of laws have been amended through extraordinary methods over the last few weeks. One measure has been widely hailed and another strongly resented while the rest of the changes have been received with customary indifference. This is something to be regretted because the amendments raise substantial doubts about the lawmakers' comprehension of the issues before them, their methodology and the effect of their assumptions about the sections of society sought to be extended relief.

At the moment the centre of debate is the ordinance promulgated by President General Musharraf on July 7, 2006, to amend Section 497 of the Criminal Procedure Code. The ordinance added a proviso to the section to the effect that except for terrorism, financial corruption and murder, all offences committed by women, including offences under the Hudood ordinances, had been made bailable.

The noise made by official spokespersons for days, both before and after the ordinance was issued, gave the impression that the women had been favoured with something they had not been entitled to earlier. In fact, the law already provided for special treatment for women and the effort to enhance relief for them had been going on for quite some time. As for allowing bail in non-bailable cases, the relevant CrPC provision deals only with bail in such cases and a great many people are released every year under it.

Let us take a look at this provision as it stood before July 7:

"497. When bail may be taken in cases of non-bailable offence: (1) When any person accused of a non-bailable offence is arrested or detained without warrant by an officer-in-charge of a police station, or appears or is brought before a court, he may be released on bail, but he shall not be so released if there appears reasonable grounds for believing that he has been guilty of

an offence punishable with death or imprisonment for life or imprisonment for 10 years.

Provided that the court may direct that any person under the age of 16 years or any woman or any sick or infirm person accused of such an offence be released on bail.

Provided further that a person accused of an offence as aforesaid shall not be released on bail unless the prosecution has been given notice to show cause why he should not be so released."

What the new ordinance does is this: The words 'or any woman' are deleted from the first proviso and a new proviso is added that says a woman accused of a non-bailable offence shall be released on bail as if her offence is bailable. However, the bar to bail mentioned in the main provision given above will apply to women, and no woman will be allowed bail if the court has grounds to believe that she has been guilty of an offence "relating to terrorism, financial corruption and murder" and the offence is punishable with death, life imprisonment or jail for 10 years. (It is easy to guess the name of the famous woman the drafter had in mind while putting the words "financial corruption" into the amendment, since they did not occur in the section earlier.) The new ordinance also offers relief to women whose trial does not begin for six months for no fault of theirs.

The ordinance has made it easier for over a thousand women to be released on bail and made the grant of bail mandatory in many cases in future. As such the measure is welcome and the relief offered to hundreds of women prisoners is substantial.

But was Section 497 the sole cause of women's extended distress on coming, or being pushed, into conflict with law? As pointed out above, the law as it stood before July 7 did admit the possibility of bail being granted in non-bailable cases and included a special provision favouring women of all ages, both healthy and infirm.

The issue was, partly, that women could not avail themselves of bail mostly for want of sureties. This because in most cases they were poor and suffered as a result of the social tradition that

abandons women accused of Hudood or drug offences. Indeed, in many instances those who could arrange surety for them (parents, siblings, husbands) were the complainants and prosecutors. Women also suffered as a result of the subordinate judiciary's extreme reluctance to allow bail under the unduly sanctified Hudood, anti-terrorist or narcotics laws. At the moment the state is providing surety for bail. Is it feasible to make such arrangements permanent and for women across the country?

As regards the Hudood laws, especially the main instrument of women's torture, the Zina Ordinance, the bail facility may be accepted as a mitigating factor but it offers no protection against unjustified prosecution, humiliation and disruption of normal life that results whenever a woman is charged under these patently bad and arbitrary laws.

Besides, how does one explain the government's failure to act on moves made earlier to facilitate the grant of bail to women? The law commission had proposed in 2002 an amendment in the law to make the grant of bail to women easier.

Then, on November 10, 2003, the government moved a bill in the National Assembly - Code of Criminal Procedure (Second Amendment) Bill, Bill No. 12 of 2003 - to provide for mandatory bail to a woman accused of a non-bailable offence punishable with less than a 10-year prison sentence. The statement of objects said the women accused of non-bailable offences and committed to prison pending trial "often fall prey to sexual harassment and other illegal demands of the unscrupulous elements in jail - There are many complaints of such happenings in the jails."

This was called the second amendment of 2003 to the CrPC because on the same date another bill to amend the CrPC had been tabled in the National Assembly. It was meant to make the offence of rioting under Section 147 and 148 of the PPC compoundable if committed along with other compoundable offences. This bill was titled Code of Criminal Procedure (Amendment) Bill. Obviously, the law ministry gave greater importance to providing relief to rioters than to women in prisons.

Quite obviously, there is need to pay more timely attention to the reform proposals made by the law and justice commission. Somebody should also be answerable for the lopsided priorities in legislative work. If a parliament can adopt bills favouring the rulers in a matter of days and does not proceed with due speed on a bill promising relief to women, the inescapable conclusion is that display of concern for poor women is merely a seasonal fit of politically motivated emotionalism.

In addition to the ordinance of July 7, 20 laws have been amended vide the Finance Act 2006. Only eight of these laws - Profession Tax Limitation Act 1941, Public Investments (Financial Safeguards) Ordinance 1961, Customs Act 1969, Securities and Exchange Ordinance 1969, Finance Act 1989, Sales Tax Act 1990, Income Tax Ordinance 2001, and Federal Excise Act 2005 - fall in the category of tax-related laws which alone, it is said, can be changed through a finance bill. Eight other laws amended vide the latest Finance Act belong to the labour code - workmen's Compensation Act 1923, Factories Act 1934, Industrial and Commercial Establishments (Standing Orders) Ordinance 1968, Companies Profits (workers' participation) Act 1968, Shops and Establishments Ordinance 1969, Minimum Wages for Unskilled Workers Ordinance 1969, Workers' Welfare Ordinance 1971, and Employees Old Age Benefit Institution Act 1976. Three laws deal with institutions of different kinds - Price Control and Prevention of Profiteering and Hoarding Act 1977, Microfinance Institutions Ordinance 2001, and Public Procurement Regulatory Authority 2002. And the 20th law amended by the Finance Act is the unavoidable Criminal Procedure Code 1898.

For the present we are concerned with nine non-tax measures - the eight labour laws and the CrPC. Let us briefly examine what the amendments are and how they can be categorised:

1. Criminal Procedure Code: A new section-14-A has been added to empower provincial governments to appoint special magistrates to try cases of violation of price control laws. While ideas such as price control and trial of traders who exploit the citizens will be welcomed by people groaning

under spiralling prices, the wisdom of appointing special magistrates is not clear.

2. Workmen's Compensation Act: Workers with higher wages made entitled to compensation, that is, the number of beneficiaries raised.

3. Factories Act: Working hours in factories increased and working hours for women also increased. Change termed anti-labour.

4. Standing Orders: Contract worker included in the definition of workman. Positive change.

5. Companies Profits Act: Changes in definition of 'workers', relaxation of condition of payment of interest and penalty by an employer who defaults on creation of a trust, enhancement in paid-up capital and assets for companies to pay profit share to workers, and changes in categories of workers for entitlement to share in profits. A mixed bag.

6. Shops and Establishment Ordinance: Provides for non-day weekly rest to each worker and fixes weekly holiday for establishments, raises overtime hours per year from 150 to 624 for adults and from 100 to 165 for young persons (14 to 17 years old), excludes piece-rate workers from payment of overtime, and limits working hours upto 12 hours a day.

7. Minimum Wages Act: Raises minimum wage for unskilled workers from Rs 3,000 to 4,000 per month. A welcome move.

8. Workers Welfare Fund: Largely technical changes.

9. EOB: Minimum pension rate revised.

Most of the changes noted above are unlikely to invite adverse comments except for the increase in working hours. On this point trade unions have already launched a vigorous campaign.

Under an amendment to the Factory Act (Section 38) the spread of duty has been extended from 10.5 hours to 12 hours per day in ordinary factories and from 11.5 hours to 12 hours per day in seasonal factories. No justification can be advanced for this increase. Traditionally the trend in labour legislation has been to reduce the working hours for factory workers. For

instance, in 1946, when a number of progressive labour measures were adopted the spread of duty hours was reduced from 13 hours to 10.5 to 11.5 hours per day for ordinary factories, and seasonal factories respectively. Now we find a movement in the opposite direction.

Similarly, the amendment in the Shops and Establishment Law increases the period of overtime for adults four-fold from 150 hours in a year to 624 hours and by more than 50 percent for children. This can only be described as a prescription for turning factories and other commercial establishments into sweat shops.

Further, the extension in working hours for women cannot be defended. The condition of provision of transport by employers for requiring women to work up to 10 clock at night is meaningless in an environment marked by absence of control and inspection and where employers are free to throw workers out at the slightest pretext.

More objectionable than the contents of the amendments is the manner of making them. It has been vigorously argued, and with substantial justification, that the Finance Bill cannot be made a vehicle for legislation which bears no nexus with taxation. Backdoor tampering with laws can under no circumstances be condoned.

Nobody has been told why the amendments are considered necessary. In case of labour legislation, the bypassing of the system of tripartite consultation is always reprehensible. If the Criminal Procedure Code can be amended through the Finance Bill the government can bring all the changes in this code and the Penal Code and the anti-terrorism laws without going through the hassle of debate in the houses of parliament. The quick fix method employed in the instant case circumvents the need for public debate as well. Where the call of law-reform institutions is not heeded, parliament is deprived of its right to debate legislative proposals, and the public is completely excluded, such fault lines in lawmaking can make any state liable to be indicted for bad governance.

P.S.

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