

Pakistan: Back to the Dark Ages?

Sunday 24 January 2021, by [REHMAN I. A.](#) (Date first published: 3 December 2020).

THE government seems to have decided to take a great leap backward with its proposed punishment for persons found guilty of rape, for which the penalty even at present is death.

It has decided to add to the Pakistan Penal Code section 376 B which says: "Exceptional first offenders or repeat offenders — Whoever is convicted of an offence under sections 375, 375 A and (or?) 376 may be subjected to chemical castration through a court order, irrespective of the applicable punishment; (i) In exceptional circumstances in respect of the first reported offence of section 375, or (ii) in case of a repeat convict of an offence under section 375". 'Castration' is explained as "a process whereby a person is rendered incapable of performing sexual intercourse, for any period of his life, as may be determined by the court, through administration of drugs which shall be conducted through a notified medical board. However, this process will be carried out subject to the accused's concurrence".

The language of the sections being added to the statute is so loose and clumsy that it will drive lawyers and judges to despair. For instance, the expression 'exceptional' is frequently employed. Who will decide what is an exceptional situation? And the accused's concurrence has no weight as nobody can opt out of his rights.

A more serious matter is the fact that the proposal is in flagrant violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, a core human rights instrument duly ratified by Pakistan. This convention is considered inviolable to such an extent that even the death penalty is to be carried out in a manner that it is not deemed to be cruel or degrading. Doubts have already been expressed about the punishment of castration getting the approval of Islamic scholars. Besides, castration is not included in the schedule of punishments that can be administered to convicts.

It would be a sad day for Pakistan if punishments ruled out two centuries years ago were to be reintroduced.

Above all, the very idea of castration offends against the present-day human sensibility and concepts of human dignity. It must not be forgotten that even persons convicted of the worst possible crimes, including murder, cannot be deprived of their inherent dignity of person. The modern mind will find the very idea of castration as punishment for any crime inhuman, vulgar and repulsive, and the product of a mindset in an advanced stage of morbidity.

The idea of punishing rapists with castration obviously springs from the theory of deterrent punishment which has caused much havoc in various societies. Will castration be a more effective deterrent than capital punishment? There is no evidence to support the possibility of an answer in the affirmative.

All theories of punishment are based on the premise that it will cure a wrongdoer of his aberration without damage to his inherent goodness or his capacity to reform his conduct. For that reason,

punishments that damage a person's mind or body to an extent that he is drained of any capacity to liberate himself of criminal tendencies or influences must be rejected as being counterproductive. The search for effective remedies for crime, especially its new manifestations, demands much more than routine executive orders. While rape is common in Pakistan, studies on the factors contributing to its incidence, and on the various forms it assumes in different parts of the country, are too few to help in the planning of adequate and effective responses.

No discussion on remedies to rape can be fruitful without taking into consideration a number of society's characteristics, including the treatment of woman as a chattel, the tradition of segregation between the sexes, the practice of buying brides which bedevils young men with meagre resources, and the relegation of a poor housewife to the level of an unpaid labourer.

Everybody knows that rape cannot be eliminated by laws alone even if they are administered in an ideal fashion, and certainty not by raising the scale of punishments. The theories of crime and punishment have been changing all over the world as the frontiers of knowledge are extended. Muslim societies generally lag behind because of their obsession with the past. While Iqbal is honoured by the posting of guards at his mausoleum his call for de-freezing Islamic jurisprudence and freeing it of an imperialist stamp remains unheeded. Not only that, no attempt has been made to undo the Ziaul Haq decision about perpetuating the stranglehold of the traditional jurisprudence.

The government would be well-advised to approach lawmaking with greater care than has been the case in the recent past. In any law even the full stops and commas matter as they affect the lives and interests of the people. When the authors of the Penal Code started their work in the fourth decade of the 19th century they rejected some of the punishments that were in vogue during the feudal period on the ground of their being derogatory to human dignity. It would be a sad day for Pakistan if punishments ruled out nearly 200 years ago were to be reintroduced in the 21st century.

The world has learnt through trial and error the dangers of hasty legislation. No great harm will be done if the government encouraged the people to discuss and debate the pros and cons of legislative proposals. The government may ask its underutilised law minister to find out how many states, Muslim as well as others, have discovered the benefits of castration.

The government must not forget that whenever the benefits of a proposed law are not plainly evident its life is limited to a couple of years. Let it fix the life of its experimental laws at two years at the most, so that their pros and cons are widely understood.

The fact that nobody should ignore is that the damage caused by castration could be irreversible.

The people of Pakistan face the daunting task of catching up with the world in their search for a dispensation that will respect all communities' right to live by their progressive ideals. Let their journey be facilitated as much as possible. In any case they do not deserve to be pushed back into the Dark Ages.

Tailpiece: Look at the order of detention passed against Ammar Ali Jan and the arrest of caterers in Multan and you will realise that the so-called New Pakistan is no better than a degenerated version of the old Pakistan.

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