

Pakistan: DNA evidence for rape

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The refusal by a sessions court in Karachi to consider DNA tests as evidence in the retrial of the Mazar-i-Quaid gang-rape case is surprising, given that the Supreme Court had declared DNA evidence to be admissible in rape cases many years ago. A few days ago, the court acquitted for the second time the three accused in the gang-rape case. The court was holding a retrial of the case on the instructions of the Sindh High Court. According to the prosecution, the DNA evidence clearly showed that the three accused were involved in the rape, but the court decided not to consider the evidence. The victim's lawyer appealed for hearing the case under the Pakistan Penal Code, rather than the Hudood Ordinances. However, the court stated that since the Hudood laws had their own "standard of proof" the DNA evidence did not have any evidentiary value. The court decided to acquit the accused stating that the prosecution "failed to produce sufficient evidence through their witnesses of the incident". The trial court had also acquitted the accused in April 2013 on the same basis.

Meanwhile, the retrial court's decision is all the more perplexing given that the Sindh government made DNA testing mandatory in rape cases via the Code of Criminal Procedure (Sindh Amendment) Bill, 2017, and also allowed for the law's retrospective application in all ongoing cases. The decision seems to be controversial given the fact that the Mazar-i-Quaid gang rape case was registered by police under Section 365-B of the Pakistan Penal Code and Section 376 (ii) of the Protection of Women (Criminal Laws Amendment) Act, 2006, calling for life imprisonment of those found guilty. In a society where misogynistic mindsets have made crimes against women rampant, this selective application of the laws is akin to not only justifying the crime but also exonerating the perpetrators. One hopes that civil society and the higher judiciary take notice of this decision and provide alternative legal recourse to the victim.

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