

# Appeasing the Mullahs: Protection of Women (Criminal Laws Amendment) Bill 2006 of Pakistan

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Today, 13<sup>th</sup> September 2006, the government of Pakistan is scheduled to present the revised draft of the Protection of Women (Criminal Laws Amendment) Bill, 2006 before the Parliament. On 11 September 2006, the government had to defer a vote on the proposed bill, which seeks to amend the Offence of Zina (Enforcement Of Hudood) Ordinance, 1979 following stiff opposition from the hard-line Islamic lawmakers belonging to the Muttahida Majlis-i-Amal (MMA) and Pakistan Muslim League (Nawaz). The Hudood Ordinance introduced by then military general Zia-ul-Huq in 1979 to appease the fundamentalists in order to consolidate his rule has victimized thousands of women of Pakistan.

Apart from vehement opposition from the MMA and the PML (Nawaz), President Pravez Musharraf did not have any intention to repeal the Hudood ordinance. The government only sought to amend the requirements under the Hudood Ordinance to prove rape, while silencing the likes of Mukhtar Mai by making disclosure of the identity of any alleged raped woman or her family member a punishable offence under the proposed law. Therefore, it is not surprising that government has already given in to the MMA and the PML (Nawaz) and proposed to keep both the Hudood Ordinance and Penal Code to try rape and adultery cases. It is the judge, not the victim, who will decide whether to try the rape and adultery cases under Hudood Laws or Criminal Laws.

## **Plight of women under Hudood Law:**

The Hudood Ordinance, among others, criminalizes adultery and non-marital sex, including rape. It further victimizes the women victims by providing virtual impunity to the rapists and prosecuting the victims instead.

Under section 8 of the Ordinance, a rape victim is required to produce at least four adult male Muslim eyewitnesses, who have physically seen the act of rape against the victim, in order to prove her case. Section 8(b) further provides that in order to testify as witnesses, the Court must be satisfied that the witnesses are truthful persons and abstain from major sins (kabair). The four-witness requirement makes it virtually impossible to prosecute the rapists. It places the onus of proof on women in the most discriminatory manner. But if a woman who claims she was raped fails to prove her claims she can be convicted of adultery, which is punishable by death in the most stringent circumstances.

The Hudood Ordinance also considers sexual intercourse as adultery whether it is with or without the consent of a woman, who is not married with the man. As a result, thousands of victimized women face conviction. According to the National Commission on the Status of Women, 80 % of the 6500 women prisoners in the jails are victims of the Hudood Ordinance. The Hudood Ordinance does not allow the women's release on bail.

According to a 2002 report by the Human Rights Commission of Pakistan, a woman was raped every two hours and gang raped every eight hours. However, because of social taboos, discriminatory laws and victimisation of victims by police, many were not willing to reveal the crimes committed against them.

## **Half hearted reforms:**

On 7 July 2006 President General Musharaff promulgated an ordinance called "Law Reform Ordinance 2006" to facilitate release of women detained on various charges, including violation of the Hudood laws. As many as 1,300 women

prisoners out of the total 6,500 languishing in jails were expected to have been released.

On 21 August 2006, the proposed Protection of Women (Criminal Laws Amendment) Bill 2006 was tabled in the National Assembly. The Bill inter alia seeks to bring rape under the purview of the Pakistan Penal Code, to repeal the requirement of four-witnesses to prove a rape, and to make adultery a bailable offence.

While these measures are welcome, Pakistan government also sought to silence Mukhtar Mais. The proposed Bill introduced a new offence under Section 502 B of the Pakistan Penal Code which provides that "Whoever publicises any case of zina or rape whereby the identity of any woman or her family member is disclosed shall be punished with imprisonment which may extend to six months or fine or with both".

This has been opposed by Pakistan Peoples Party which proposed the victim must have the right to speak to the press.

### **General caves in before the Mullahs:**

When the Protection of Women (Criminal Laws Amendment) Bill 2006 Bill was tabled in the National Assembly on 21 August 2006, it was promptly rejected by the opposition Muttahida Majlis-i-Amal. Pakistan Muslim League (Nawaz) joined the MMA which accused the government of "following a Western agenda to secularise Pakistan". The bill was then referred to a special committee of the National Assembly for a review and evolving a consensus before being debated. However, the MMA and Pakistan Muslim League (Nawaz) boycotted the committee.

On 4 September 2006, the parliamentary select committee approved the Protection of Women (Criminal Laws Amendment) Bill 2006 and presented it before the National Assembly. However, the MMA threatened to quit Parliament and provincial governments if the government did not withdraw the proposed bill. This forced the government to defer debate on the bill.

But on 11 September 2006, the government virtually withdrew the original bill when it

agreed to review and revise the bill.

The government has reportedly reached an agreement with the MMA over the changes in the proposed bill. Under the agreement reached with the MMA, rape will remain under the purview of the Hudood Ordinance, but judges can also choose to use secular evidentiary procedures and standards such as DNA tests or other medical means, to establish rape under the Pakistan's Penal Code if the circumstances of evidence and witnesses call for it.

President General Musharraf, who drew international condemnation by his remark that rape was a "money-making concern" in Pakistan in reference to gang rape of Mukhtar Mai, is unlikely to get any kudos for caving in to the fundamentalists.

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