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Article:	National Legislation on Violence against Women in Pakistan
Author(s):	Dr. Rafia Naz Ali Assistant Professor, Department of Shariah and Law, Islamia College University Peshawar
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Author(s) Note:	Dr. Rafia Naz Ali is serving as an Assistant Professor at Department of Shariah and Law, Islamia College University Peshawar Corresponding Email: rafia@icp.edu.pk

ABSTRACT

Violence against women is a rampant crime and defilement of fundamental rights. Various international conventions and declarations bound the states to work for the eradication of discrimination and viciousness against women. In Pakistan, there is normative pluralism where set of overlapping state law, customary law, and religious laws are in practice. The 1973 Constitution is the supreme law of the land which guarantee equality of all citizens irrespective of any ground. But the legal framework lacks distinct or special legislation on violence. The legislature make several amendments in the existing criminal law to combat it. The aim of the paper is to describe national legislation in the context of rule of law as its theoretical framework on the subject. The study would analyse it qualitatively and present its findings as whether the existing laws are enough to prevent anti-women practices and protect their fundamental rights.

Keywords: Violence against women, crime, fundamental rights, anti-women practices, customary law, religious laws

Introduction

Violence against women is not a local or national issue, but a global one. Cultural, economic, religious, legal and political along with other consequential factors are responsible for perpetuating violence against women. Cultural definitions of sexes and their roles, male dominance, proprietary rights, customs, and the use of violence as a means of conflict resolution are all related examples. Other factors are women's dependence on males for basic economic needs, discriminatory laws, limited access to the judicial system, and participation in national life. Women are more often exposed to physical and psychological violence than men, which shows that males are the main perpetrators. Those societies where greater gender equality has been achieved indicate a lower level of violence at all levels (Lawson, 2015). The rule of law, a strong legal system, and institutions are regarded as prerequisites for the enforcement of fundamental rights and a country's long-term development (Lubna, 2011).

Violence against women is a salient issue in Pakistani society. According to a study (Sajid, Khan, & Farid, 2010), A total of 12,992 cases of women's violence were reported to police in the years 2006–08. These cases included domestic violence (55.8%), acid attacks (1.4%), rape (39.4%) and suicide (4%).

There is no conclusive definition of violence and violence against women. Several endeavours were made to provide a broad definition by including different forms of sexual, psychological, and physical violence. According to the "United Nations Declaration on the Elimination of Violence against Women" violence against women is, "any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or in private life" (CEDAW, 1993). In article 1 of the convention, discrimination is defined as "any distinction, exclusion, or restriction made based on sex in the political, economic, social, civil, cultural, or other fields". This convention required "all state parties to take all appropriate measures, including legislation, to ensure the development and advancement of women" (CEDAW Art 1). Under the convention, "the state is liable for violations of rights within both the public and private sectors regardless of whether those violations are committed by state or non-state entities" (CEDAW art.2). The ICCPR also discourages discrimination and imposes obligations on state parties regarding their legislation and application as its content should not be discriminatory (ICCPR art.26). However, the real implementation of these instruments by member states is missing.

There are many types of violence against women, like sexual, physical, and psychological. Kidnapping/abduction, forced marriage, rape, sexual and physical harassment, forced prostitution, trafficking, dowry abuse, femicide, honour killing, and domestic violence are frequently taking place in Pakistan (WHO, 1999).

There is a general unanimity that women face violence and discrimination throughout their lives (Heise and Germaine 1994; Ali and Gavino 2008; Saxena and Kumari 2016). Karmaliani et al. (2012) says that ferocity against women in Pakistan is pervasive at all levels of society. In addition, violence is scrutinised in terms of five contributing factors, namely: social and cultural context, economic context, political-legal context, and psychological context (UN, 2006). All of these factors create an unfavourable atmosphere for the understanding rights of females and lead to an overall unadventurous culture of patriarchy in

which violence is used as a socially acceptable means of treating women, negatively affecting their mental and physical health.

Pakistan became a signatory to several United Nations human rights instruments since its inception to modify Pakistan's national legal framework (Weiss, 2011). It ratified international conventions to discourage and eliminate anti-women practices in society. CEDAW was the first international convention on the rights of women which was ratified by the government of Pakistan in 1996 for the protection and promotion of the rights of women in Pakistan (Daud, 2013).

National Legislation on the Rights of Women and Violence against Women in Pakistan

Many acts of violence against women have been declared as a crime under Pakistani criminal law, such as forced marriage, giving females in resolving a dispute, acid attacks, honour killings, and so on, but violence and violence against women are not defined by the legal system. Several enactments were introduced in Parliament for the protection of women against anti-women's practices. For example, the "Pakistan penal code" and the "criminal procedure code" both declare various anti-women practices to be criminal offences punishable by law. Major violence against women includes domestic violence, femicide, honour killing, rape, kidnapping, forced marriage, and giving a female to resolve a conflict as compensation (*badl-e-sulah*). Some of them are defined and made punishable under the Pakistan Penal Code (Chaudhary, 2016).

Pakistan has tried to safeguard and promote rights of women since its inception, and the following laws were enacted on the subject. The first progressive legislation on women in Pakistan started with the promulgation of the "Muslim Family Laws Ordinance" in 1961. The primary goal of MFLO was to protect women's rights in matrimonial matters such as polygamy, divorce, and marriage registration, among other things. In 1975, 1985, and 1994, recommendations were put forward and amendments were made in MFLO. The Dowry and Bridal Gifts (Restriction) Act, 1976 was promulgated to address the issues of dowry and bridal gifts.

In 1977, after the imposition of Martial Law, the Chief of Army Staff, General Zia ul-Haq, promulgated the Hudood Ordinances, which comprised the following five ordinances in 1979. The Ordinances deal with "The Offences Against Property (Enforcement of Hudood) Ordinance, 1979"; "The Offences of Zina (Enforcement of Hudood) Ordinance, 1979"; "The Offence of Qazf (Enforcement of Hudood) Ordinance, 1979"; "Prohibition (Enforcement of Hadd) Ordinance, 1979"; and "Execution of the Punishment of Whipping Ordinance, 1979". The "Qanun-e-Shahadat, 1984 (Law of Evidence)" was also amended whereby a woman's testimony was half that of a man's, or the testimony of two women was considered equal to one man's testimony (Daud, 2013).

The years from 2002–2007 are regarded as the "years of pro-women laws" because several laws were passed by the parliament to protect women's rights and prevent violence against her. In these years, around 17 bills were moved on social evils like bills on the issues of inheritance, marriage with Quran, citizenship entitlement rights, uplifting women's status and curbing injustice and discrimination against women, to bring reforms to Hudood

Ordinances and the MFLO. The newly-elected National Assembly amended "The Pakistan Citizenship Act, 1951," which declared the entitlement of the children of Pakistani women to citizenship of the country, but their foreign spouses were still not entitled to acquire Pakistani citizenship. The same year's amendments were introduced in the "Family Courts Act, 1964" to ensure that women have the right to get a "Khula" within a specified time. Women's representation in national and provincial assemblies increased during 2002. As a result, the proportional representation of women in national and provincial assemblies rose to nearly 20% (Mirza, 2011).

In 2003, a bill titled "The Protection and Empowerment of Women Bill" was passed by the National Assembly. For the uplift of the socio-economic conditions of women, "the Uplift and Welfare of Women Act" was passed by the House in 2004. "The Family Court (Amendment) Act, 2004" and "The Criminal Law (Amendment) Act, 2004" (on honour killing) were also enacted in 2004.

The object of the Act was to discourage and eliminate the custom of honour killing by declaring it an intentional murder, punishable with imprisonment of twenty-five years. Anyone who commits, attempts to commit, or causes harm under the guise of honour was also made punishable. The custom of badle-sulh, that is, giving a female in marriage or otherwise as compensation in a dispute, was made a punishable offence by providing rigorous imprisonment of 3–10 years (The Criminal Law (Amendment) Act, 2004). Section 156B of the criminal procedure code provide that in cases of rape, a police officer of the rank of SP or above can investigate only in order to protect a woman from the abuse of authority. In 2005, the government introduced further legislation related the rights and the prevention of violence against women by introducing bills on "Equality of Opportunity for Women Employment Bill", "the Prevention of Domestic Violence Bill, 2005", "the Hudood Laws (Repeal) Bill, 2005", "the Offence of Qazf Enforcement of Hudood (Amendment) Bill, 2005", "the Establishment of the Office of Wafaqi Woman Mohtasib Bill, 2005", "the Protection of Serving Women Bill, 2005", "the Inheritance for Women Bill, 2005", "the Economic Stability of Women Bill, 2005" and "the Hudood Laws Effective Enforcement and Protection Bill, 2005". Other significant legislative bills to discourage and eliminate violence and anti-women customary practises were presented in the form of "the Code of Criminal Procedure (Amendment) Bill, 2005," "the Code of Civil Procedure (Amendment) Bill, 2005," "the Code of Criminal Procedure (Amendment) Bill, 2005," "the Prohibition of Marriage with the Holy Quran Bill, 2005," and "the Dowry and Bridal Gifts Restriction Bill, 2005." The National Assembly promulgated "The Protection of Women (Criminal Laws Amendment) Act, 2006". Among so many state bills, only two got recognition: the law on "honour" killings in 2004 and the Protection of Women Act in 2006.

A study by the Aurat Foundation (2012) shows that in 2012, an average of six women were abducted, four were raped, three were committed suicide, and four were killed in Pakistan every day. Interestingly, these statistics reflect only reported cases and are collected from police records. The number of cases that go unnoticed, if added, can give an even direr picture of the existing scenario. The parliament passed this Act in 2006 to attain the following:

- 1) To prevent violence against women

- 2) To protect and assist victims of violence.
- 3) To prevent women's exploitation
- 4) To protect women from legal exploitation and abuse.

In order to reach the above purposes on the Act, two new section named as 365B and 371A were make the part of criminal law. These provisions prevent and discourage forced marriage, illicit sexual relation and selling of a woman by providing a punishment of twenty five years. Furthermore, this Act also enunciate capital punishment in cases of gang rape and rape by inserting two sections 375 and 376 in Pakistan Penal Code. Another objective of this law was to punish those who deceitfully cohabitante or entice her to cohabitante.

According to a survey of 1,000 women in Punjab, 35% of women admitted to hospitals were beaten by their husbands. The study reported that on average, two women burn every day in incidents of domestic violence, and about 70 to 90% of women experience marital abuse (HRCF, 2000). Another study shows that of 7895 women physically abused, only 14 reported it to the police (Anderson, 2010). During the regime of the Pakistan People Party from 2008 to 2012, many bills were moved and several enactments were made for the advancement and protection of rights of females. The government tried to promulgate the law on the "Domestic Violence (Prevention and Protection) Bill in 2009 but it lapsed in the upper House. In 2010, "The Protection against Harassment of Women at the Workplace" was enforced to address the issue of harassment and declared it an offence for the first time. The "Code of Criminal Procedure (Amendment) Act, 2011" amended sections 426 and 497 of the PPC to provide bail relief for women in jail. The Criminal Law (Second Amendment) Act, 2011 was passed by Parliament to prevent acid attacks. It has amended section 332 and inserted two new sections, 336-A and 336-B¹, in the PPC, which define corrosive substances, various kinds of hurt and disfigurement caused by them, and punishment for the offence (PPC 1860, S.336A).

The Criminal Law (Third Amendment) Act, 2011 was enacted to address several social practises that have been affecting the status and rights of women in Pakistani society. This is an important law on the prevention of anti-women's practises as it inserted a new chapter named "of offences against women". These practises include badl-i-sulh, Swara or Vanni (giving a female in marriage or otherwise to settle any civil or criminal liability) (PPC S.310A²), forced

¹ Section 336B of PPC provides punishment for hurt by corrosive substance. It says "whoever causes hurt by corrosive substance shall be punished with imprisonment for life or imprisonment of either description which shall not be less than fourteen years and a minimum fine of one million rupees".

²Section 310A of PPC says that "Whoever gives a female in marriage or otherwise compels her to enter into marriage, as badal-e-sulh, wanni, or swara or any other custom or practice under any name, in consideration of settling a civil dispute or a criminal liability, shall be punished with imprisonment of either description for a term which may extend to seven years but shall not be less than three years and shall also be liable to fine of five hundred thousand rupees."

marriages, marriage with the Holy Quran (PPC S.498C³), and prohibiting a woman from exercising her property rights (PPC S.498A⁴).

The Act enhances the punishment of badl-i-sulh and curtails the powers of the provincial government to suspend the punishment of rape. By inserting a new section 498A in the PPC, fraudulently prohibiting or depriving a woman from inheriting property was declared as an offence to protect her property rights (Rahman & Farhat, 2014). Anyone who commits any of the above acts will face rigorous imprisonment and a fine. "*The Women in Distress and Detention Fund (Amendment Act) 2011*" was passed to assist financially and provide legal aid to distressed women suffering in various jails (National Assembly of Pakistan, 2011).

The Pakistan Muslim League (Nawaz) won the general elections of 2013-2018 and formed a government at the federal level. Parliament passed enactments related to offences in the name or pretext of honour by making honour killing a non-compoundable offence and punishable with life imprisonment ("Criminal Law, Amendment, Offences in the Name and Pretext of Honour) Act, 2016"). In the same year, another amendment called the "Criminal Law (Amendment) (offences relating to rape) Act, 2016" was passed to provide relief to the victim of rape in the investigation, medical examination and during trial. The "Woman in Distress and Detention Fund (Amendment) Act" was enacted in 2017 (National Assembly of Pakistan, 2017).

The criminal law of Pakistan tries to discourage violence against women by prescribing severe penalties for major offences against women like kidnapping or abduction of girls or women, procurement of a girl or her importation from abroad (PPC 1860 S. 366B & 366A), forced marriages, honour killing, badl-i-sulh, and hurts under the Pakistan Penal Code, 1860. Under ordinance LV of 2002, the Family Court was given the jurisdiction to entertain cases of domestic violence. However, effective implementation of these laws is still a challenge.

The Ministry of Women's Development is the national institution for the advancement of women and the implementation of laws on women's rights in Pakistan. There are Provincial Women's Development Departments (WDDs) to assist MOWD at the provincial level. The main tasks of the Ministry are to formulate policies, to check other institutions of the state to ensure equal rights, to provide opportunities in learning and work, and to conduct research on women's issues and provide them with enforceable solutions (Ministry of Women Development, 2008). Another commission, named as "National Commission on the Status of Women", was established in 2000 to examine policies and programmes on women's development, their implementation and provide effective recommendations; to review the existing laws and suggest new laws affecting the status and rights of women; to safeguard the

³ Section 498C of PPC further provide that "whoever compels or arranges or facilitates the marriage of a woman with the Holy Quran shall be punished with imprisonment of either description which may extend to seven years which shall not be less than three years and shall be liable to fine of five hundred thousand rupees".

⁴ Section 498A of PPC says that "whoever by deceitful or illegal means deprives any woman from inheriting any movable or immovable property at the time of opening of succession shall be punished with imprisonment for either description for a term which may extend to ten years but not be less than five years or with a fine of one million rupees or both".

interests of women. It monitors the institutional mechanisms and procedures, encourages and supports women's issues and rights-based research and collaborates with national and international organisations on the status of women (National Commission on the Status of Women, 2002).

In Pakistan, the Ministry of Human Rights is an executive institution that was established for the promotion, protection, and review of the status of human rights and to take actions for its implementation. The Ministry is also given the task of coordinating among the institutions working in the area of human rights. The Ministry has a women's centre to provide shelter, medical and legal aid to victims of violence. A National Commission for Human Rights was established under the Ministry. The Commission is mandated to take Suomoto actions in human rights violation cases (Ministry of Human Rights, 2015).

The Human Rights Commission of Pakistan was established as a non-governmental organisation in 1987 with the objective of working for the implementation of human rights under the UDHR, Conventions, Protocols, and Charters. The missions are to promote human rights studies, to prevent violations of human rights, provide legal aid to the victims, and to ensure cooperation among the relevant institutions working for the protection of human rights. The Commission published its report annually on the status of human rights violations, including violence against women (History of the Human Rights Commission of Pakistan, 2016).

Finding/Discussion

Pakistan not only provided and protected the rights of women constitutionally, but also enacted various enactments to safeguard the rights of women and prevent violence against them. Furthermore, it is bounded by several international instruments like UDHR and CEDAW on the abolition of discrimination and ferocity against women. Apart from legislation, different institutions and organisations were established with the objectives of implementing and protecting women's rights, preventing anti-woman practices, and discouraging and eliminating discrimination and violence. But the laws are not sufficient to tackle the issue of violence against women and institutions are facing executive, procedural, and cultural constraints in implementing these laws, particularly against major violence (forced marriage, honour killing, rape, femicide, and domestic violence). There is no national legislation on the subject of violence. In Pakistan, the province of Punjab passed an act called the "Protection of Women against Violence Act, 2016". The existing legal system do not cover all types of violence but only specific and major ones like honour killing, rape, and kidnapping etc. It also lacks any particular procedure to provide speedy justice or access to justice to women as required by rule of law. Moreover, other institutions such as police, the judiciary, and prosecutors are working independently and relatively for women's rights, but they are not bound by any specific law. The role of "National Commission on the status of women" and Ministry of Human Rights is weak in taking cognisance of abuses of women's rights.

Conclusion

All societies are susceptible to some type of exploitation. There are many instances in which children and women are the victims of exploitation in society. President Ayub Khan paid

attention to women's rights by promulgating the Muslim Family Law Ordinance 1961. Later on, President Zia ul-Haq introduced the Hudood Laws of 1979, which remained an ineffective law as it was not enforced due to strict criteria. President Musharraf highlighted the issue of protection of female rights by introducing the Women's Protection Act 2006 and the Code of Criminal Procedure (Amendment) Ordinance 2006 (Noreen & Mussarat, 2013). Tenure from 2002 to 2007 paved the way for gender-based legislation. The regime of the Pakistan People's Party plays a vital role in ensuring women's equal status. Despite legislation on the subject, serious challenges to the effective implementation of existing legislative frameworks exist because of inefficient and under-trained governmental machinery, as well as the predominance of religious and military figures. Poor mechanisms for the protection of women are reflected in Pakistan's dismal ranking in 2011 on the Gender Equality Index, which ranks 133 out of 135 countries on the index. Furthermore, findings of the Gender Equality Program state that women are subject to "violence, including physical, sexual, or psychological harm, and sexual violence, including rape and prostitution" (Daud, 2013). Pakistan is well-known for its discrepancies and variability in terms of social position, economic development, rural-urban divide, and so on. Other causes contributing to women's misery include issues with the judicial system, religious fundamentalism, and religious abuse. In this context, the female plight and situation have varying connotations for women from various socioeconomic strata. They do, however, suffer in unique ways. For Pakistani women, institutional and individual violence are not unfamiliar phenomena (UN, 2011: 3).

References

- Anderson, N., Cockcroft, A., Ansari, U., Omer, K., Ansari, N. M., Khan, A., & Ullah, U. (2010). Barriers to Disclosing and Reporting Violence among Women in Pakistan: Findings from a National Household Survey and Focus Group Discussions. *Journal of Interpersonal Violence*, 25(11), 1965–1985. <https://doi.org/10.1177/0886260509354512>.
- Article 1 & 2 of UDHR, <http://www.un.org/en/universal-declaration-human-rights> retrieved on 8/05/2019.
- Article 1 & 2 of CEDAW, <http://www.un.org/womenwatch/daw/cedaw> retrieved on 25.9.2021
- Article 26 of ICCPR, retrieved from <http://www.ohchr.org> on 26.9.2020
- Chudhary, A.G., (2016), *Pakistan Penal Code*, Lahore: PLD Publisher, Sections 53A, 154,161A, 164A-164B, 156B, 299-311, 336-336B, 337-337 A (1), 337F (1)-338E, 341-346, 352, 361-369,375-376B, 498A-498C &509
- Criminal Law (Amendment) (Offences in the Name or on pretext of Honour), 2016, Section 6
- Chaudhry, G.M., Chaudhry's Annotated Constitution of Pakistan, Lahore, Federal Law House, 2010, Article 11,25-27,37(g), 199 &184(3)
- Criminal law (Amendment) (offences in the name and pretext of honour) Act, 2016, Government of Pakistan, Official Gazette, Islamabad
- Criminal Laws (Amendments) Act II of 1997
- Criminal law (Amendment) (offences relating to rape) Act, 2016, Government of Pakistan, Official Gazette, Islamabad
- Daud, B. (2013). Women's Rights in Post War Countries: Pakistan Case Study , *Willy Brandt School of Public Policy Project Group for medica mondiale*, 4-7, retrieved from <https://scholar.google.com.pk> 9.5.19
- History of Human Rights Commission of Pakistan, Retrieved from <http://hrcp-webb.org/hrcpweb/about> on 26.9.2021.
- History of Ministry of Human Rights at http://www.mohr.gov.pk/index.php/home/pps_page/19 retrieved on 27.9.2021.
- History of Ministry of women Affairs, <http://mowa.gov.af/en/page/1331/1332/mowa-history> retrieved on 29/7/2021.
- Lawson, S. (2015), *Theories of International Relations*, Cambridge: polity press, p.173.
- Lubna, H. (2011). Rule of law, legal development and economic growth: Perspectives for Pakistan. *Journal of Advanced Research in Law and Economics (JARLE)*, 2(03), 48-59.
- Mirza, N. (2011), *seven pro-women laws in seven years*, *Legislative watch, Islamabad, Issue No. 38*, 1-3.
- Rahman, K. & Farhat, K. (2014), *Legislation on Women and Family in Pakistan: Trends and Approaches*, Islamabad: Institute of policy Studies press.1-13, 116
- Sajid, I. A., Khan, N.A. & Farid, S. (2010). Violence against Women in Pakistan: Constrains in Data Collection, *Pakistan journal of criminology*, April 2010, 2(2): 93-110
- United Nations (2006), *In-depth study on all forms of violence against women: Report of the Secretary-General*, A/61/122/Add.1, para 76.

- Weiss, M.A. (2012), Moving Forward with the Legal Empowerment of Women in Pakistan, *US Institute of Peace*, 3-5, retrieved from <https://scholar.google.com.pk/scholar> on 9/05/2021
- World Health Organization (1999) '*Putting Women's Safety First: Ethical and Safety Recommendations for Research on Domestic Violence against Women*'. WHO/EIP/GPE/99.2 Geneva: World Health Organization.