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## **ABSTRACT**

Domestic violence is a major social issue because of its various severe physical, psychological, emotional, and social implications. When a culture rationalises such anti-human practises and gives them a structural form, they become part of the structural framework. Domestic violence is considered a private matter, though it is the most common crime in Pakistan. No one paid heed to such violence unless disfigurement or death took place. Two provinces of Pakistan ratified a law on domestic violence, but there is no national legislation on the issue. Such violence comes under the ambit of the Criminal law, which prescribes a death sentence in the case of femicide and various terms of imprisonment depending on the nature of the wound. Domestic violence is a significant issue in Pakistan. To know the legal reality of a system, analysis of court decisions must be complemented by the research and work of other legal bodies. The study will help to improve the existing laws and lead to the introduction of new laws, social and political policies to solve the problem of domestic violence.

## Introduction

In philosophy, human beings are often referred to as "subjects". Subjects have a personal reality that is specific to them and is built upon their experience of natural and social reality. Natural reality exists independently of subjects, and social reality exists under inter-subjective interaction. Inter-subjectivity then denotes the interaction of human beings, and social reality exists because of inter-subjectivity, largely because a group of human subjects agree or believe, whether explicitly, implicitly, or subconsciously, that it exists. Inter-subjective social interactions designated women as inferior to men, a role description that grew to become an assumptive truth, and any contention to the contrary became an untruth. Violence, both overt and covert, became a tool of male inter-subjective behaviour to protect the social construct, the fortress of male dominance. It has its roots in patriarchy and its attendant perception that men are superior to women and that some forms of violence against women are acceptable (Saeed, 2013).

Women face subordination, discrimination, and violence across the world. The devaluation of status can be seen in many countries around the world. For example, aborting female fetuses in India and China (Sheron, 2001), female genital surgeries in Africa and the Middle East, and discriminations faced by black women in the US (Mesa & Marcting, 1993).

Domestic violence is a reality of life that exists in all cultures and societies irrespective of literacy, employment, economic development, effective laws and remedies, and women's empowerment. No country or society is free of domestic violence. Millions of women suffer from this kind of violence all over the world. It is a global issue that continues, often unreported. It ranges from abuse to torture, meted out to women within the family. Domestic violence in Pakistan is deemed a private matter. Women are usually ignorant of the fact that violence is a crime. Where the aggressor is a close relative, very few women come forward to report the violence. Social taboos and lack of family support are also factors that compel women to remain silent. In several cases, women were disfigured and even killed in their marital homes by the men of the family (father, brother, husband, uncles, and cousins) and, at times, also by the women of the family (mother-in-law, sisters-in-law, mother, and sister (Patel, 2010). This form of violence is the most common and least reported crime. Only those cases come to the court for adjudication where violence caused the death or disfigurement of the victim. It is dealt with under criminal law in Pakistan, and there is no special law on the subject.

## Literature review

Currently, there is no distinct law on domestic violence. If an incident of violence at home happens, it is dealt with by the PPC. The Family Court has been given jurisdiction over some offences that constitute violence against women. These are certain injuries to the head or face, wrongful restraint or confinement, assault or use of criminal force, and making sounds or gestures or exhibiting objects to insult the modesty of a woman. A bill titled "*Domestic Violence (Prevention and Protection) Bill, 2009*" was introduced in the lower house on August 12, 2008, and passed by the National Assembly on August 4, 2009, but lapsed in the Senate. The same bill with minor changes was again presented in the Senate and passed, but in the National Assembly, it was not put for consideration. The Bill on domestic violence defines it as:

"It includes but is not limited to, all intentional acts of gender-based or physical or psychological abuse committed against women, children or other vulnerable persons, with whom the accused is or has been in a domestic relation" (Domestic Violence Bill, 2009).

According to the procedure proposed in the bill, an aggrieved person could seek relief from the magistrate court. The court shall dispose of the case within thirty days, and it may pass two kinds of orders. One is called a protection order in favour of an aggrieved person and prohibits the accused from committing, aiding, or abetting domestic violence. The other is called a "residence order" to restrain the accused from dispossessing the aggrieved person. Some other remedies and steps have been enumerated which may be taken by the court to ensure the protection of the aggrieved person (Clause 4).

The worst form of domestic violence is when a woman is killed by her intimate partner, which is called femicide. Femicide can be defined as *"The murders of women by men motivated by hatred, contempt, pleasure, or a sense of ownership of women"* (Caputi & Russell, 1990).

The criminal law of Pakistan did not provide any definition or law for femicide. The cases of femicide are adjudicated under section 302 of the PPC, which provides punishment for murder. A detailed account of hurts and kinds of hurts is provided by section 332 of the PPC. The *"Criminal Law (Second Amendment) Act, 2011"* amended section 332 and inserted two new sections, 336-A and 336-B, into the PPC. Section 336A defines hurt or disfigurement caused by corrosive substances, and Section 336B provides imprisonment for life or imprisonment for not less than 14 years and a one-million dollar fine. Because of Supreme Court of Pakistan decision in the Naila Farhat case, which asked for laws about acid violence to be made (Human Rights Case No. 12912-P, 2009). This amendment was made in response to that decision.

Some sections (offences, aid, and abetment thereof under sections 337A (1), 337F (1), 341-346, 352, and 509 of PPC) of the PPC specify categories and punishments for Islamic crimes which family courts have now been empowered to adjudicate between spouses. Prior to the *"Family Courts (Amendment) Act 2002"*, a court with jurisdiction may award the specified punishment for an offence regardless of the marital relationship between the offender and the victim. Now, the amended law empowers the family court to adjudicate and order punishment for offences between spouses only (Patel, 2010).

## Methodology

"Descriptions can provide the basis for explanation and understanding, but for them to serve this purpose, we must have an understanding of the way "law in action" relates to the law in the book." If the interpretative approach is an essential step in generating hypothesis and insights, the explanatory approach is the only way we can test their applicability to a wider range of cases (Nelken, 2010). The study is limited to the cases decided by the superior judiciary of Pakistan in the years 2016-2018.

## Data Analysis

Domestic violence is not specifically recognised as an offence in the Pakistan Penal Code, but various acts that fall under the definition of violence such as qatal-i-amd (intentional murder), hurting, and assault are declared offences. The law of sexual violence comes under the Hudood ordinance. In 2006, the Women's Protection Act was passed to safeguard against assault, zina, and dowry-related violence. Honour killing is also declared as "intentional murder

if committed in the name or on the pretext of honour” (Section 302), making it a non-compoundable offence under Section 345 of the Criminal Procedure Code (PHC, 2015). The punishment for giving a female in marriage or otherwise in badal-i-sulh is defined by the Pakistan Penal Code (PPC 1860 Section 310A) as an offence punishable by three to seven years in prison. The proposed domestic violence bill, though not passed by the parliament, defined domestic violence and laid down various provisions for its prevention (Pakeeza, 2015).

Domestic violence comes either in the definition of "hurt" or "intentional murder" if any of the offences are caused. Several attempts were made to enact laws at the national level but failed due to the absence of consensus on the subject. But provinces were successful in making a law on domestic violence. Domestic violence is the most common and least reported crime in Pakistan. Very few cases were tried by the courts. These few cases include those where murder or grievous harm was committed.

The decided cases of the superior judiciary in the years 2016–2018 show that only those cases were brought to the court where either a murder was committed or grievous hurt in the form of mutilation took place, as shown in table .The Sindh High Court decided a total of eight cases where no cases were brought to the jurisdiction of the court. In the last three years, the Lahore High Court entertained only two cases, while the Peshawar High Court decided only one case of domestic violence. Surprisingly, the Balochistan High Court has not presented a single case of domestic violence. In two cases where the murder was committed, the Supreme Court gave its verdict. In fact, the number of reported cases as decided by the courts is very low, compared to the number of crimes that happen.

In the years 2016–18, only four cases of murder as a result of domestic violence were entertained by the courts. One from each province except Balochistan as shown in the table. The Court awarded a death sentence in one case, while in three acquittals were granted due to insufficient evidence (PLD, PCr.LJ, YLR, and SCMR of 2016-18).

The word femicide is not explicitly mentioned by the Penal Code, but a kind of intentional murder where a woman is executed by her inmate partner, whatever the reason may be, is declared as an offence punishable with capital punishment (PPC 1860, Section 300).

**The total number of murder cases decided by the Superior Court of Pakistan in the years 2016-2018**

| Offence: Domestic Violence caused Murder | 2016 | 2017 | 2018 | Total |
|--|------|------|------|-------|
| Balochistan High Court                   | -    | -    | -    | -     |
| Lahore High Court                        | -    | -    | 1    | 1     |
| Peshawar High Court                      | -    | -    | 1    | 1     |
| Sindh High Court                         | 1    | -    | -    | 1     |
| Supreme Court                            | 1    | -    | -    | 1     |
| Total                                    | 2    | -    | 2    | 4     |

**Conviction percentage in Domestic Violence caused Murder**

| No. of Cases & percentage | Execution | Life Imprison. | Long Term Imprison. | Short term Imprison. | Fine | Acquittal |
|---------------------------|-----------|----------------|---------------------|----------------------|------|-----------|
| 4                         | 1         | -              | -                   | -                    | 1    | 3         |
| 100%                      | 33%       | -              | -                   | -                    | 33%  | 75%       |

Other kinds of cases were those where the grave injury was caused by an intimate partner in the form of mutilation or disfigurement. Only seven cases were adjudicated by courts in three years as given in the table. The conviction percentage was only 33% because of the absence of evidence, while acquittal was 67% (PLD, PCr.LJ, YLR, SCMR of 2016-18).

**The total number of hurt cases decided by Pakistan's Superior Courts (2016 -2018)**

| Offence: Domestic Violence caused Hurt | 2016 | 2017 | 2018 | Total |
|--|------|------|------|-------|
| Balochistan High Court                 | -    | -    | -    | -     |
| Lahore High Court                      | 1    | -    | -    | 1     |
| Peshawar High Court                    | -    | -    | 1    | 1     |
| Sindh High Court                       | 4    | 3    | -    | 7     |
| Supreme Court                          | -    | -    | -    | -     |
| Total                                  | 5    | 3    | 1    | 9     |

**Conviction percentage in Domestic Violence caused hurt in Pakistan**

| No. of Cases & percentage | Execution | Life Imprison. | Long Term Imprison. | Short term Imprison. | Fine | Acquittal |
|---------------------------|-----------|----------------|---------------------|----------------------|------|-----------|
| 9                         | -         | -              | 3                   | -                    | 3    | 6         |
| 100%                      | -         | -              | 33%                 | -                    | 33%  | 67%       |

Every society/community may have their own rituals, traditions, and customs to lead their lives, but they should not in any way conflict with the dictates of the laws of the land. Society shall have to honour the laws of the land to let the sense of good governance prevail, as is the demand of article 5 of the Constitution of Pakistan, 1973.

### Findings

Domestic violence is the most common and least reported offence against women in Pakistan. It is considered a private matter. Most women are ignorant of the fact that domestic violence is a crime and are even killed in homes by their close relatives. Domestic violence became an everyday occurrence due to the lack of a law and the authorities' casual attitude toward it. A distinct law should be made on the subject, with emphasis on its enforcement. Issues of domestic violence must be comprehended within indigenous social dynamics. Family relations and their respective roles should be mobilised in the event of a conflict in the home. Police and court procedures must be made friendlier, more responsive, and more efficient to restore the confidence of the masses in these authorities. Attention should be paid to how existing institutions can be run rather than how to recruit new ones.

The family of a female is also responsible for perpetuating anti-woman practises and violence. As in cases of forced marriage, honour killing, and domestic violence, it is the parents, husband, or close relative who are the main culprits of the offence.

Domestic violence is one of the major reasons for abortions and miscarriages (*Asad and others v. The State*, 2017). Other causes of violence against women include lawsuits for annulment of Nikah, recovery of dower, and maintenance allowance (*Sharafat Ali v. The State and others*, 2018). But such cases are patched up by her legal heirs and lead to the acquittal of the accused (*Hazir Zaman v. Bakht Zaman and 2 others*, 2018). The medico-legal aspect falls into two categories.

- False history
- Late reporting

In cases of violence where the perpetrator is a close relative of the victim, she is compelled to give a false history of the occurrence, which leads to non-reporting of the case. Late reporting of the incident of rape destroyed shreds of evidence as blood and saliva on the body of the victim were washed or cleaned. In laceration and hurt, wounds get to heal and make it difficult to classify them properly, whereas in femicide or homicide, there are signs of resistance, but family members deny facts and emphasise suicide or accidental death (*Nazar Hussain v. The State*, 2017).

### Conclusion

Cultural constraints remain a major factor in reporting cases of violence. In such cases, the perpetrators are either intimate partners or close relatives of the victim. The victim and other family members are not ready to report a case against a family member. In honour killing or domestic violence cases, for example, family members play a big role in reporting or giving evidence to the police.

The principles of equality and non-discrimination are often not respected, especially in the area of women's rights. Despite international legal obligations requiring member states to abolish, amend or repeal laws that discriminate against women, and promote their execution by strengthening the institutional mechanisms to cope with the issues.

Violence against women exists in its customary, traditional, or religious form all over the world. Women are prevented from exercising their rights like education, jobs, property rights, and the right to contract marriage. The most prevalent forms of violence against them are child marriage, marriage without consent, domestic violence, honour killing, and rape. Due to the weak mechanism of enforcement of laws, most of the cases were not reported. It is the responsibility of the state and the international community to enforce laws on the prevention of violence against women.

Many instances of violence are not reported because of fear of being killed. Women continue to be the victims of forced marriage, child marriage, honour killing, domestic violence, and rape, but the prosecution of the perpetrator is rare because most of the violations are not reported and kept away from the legal domain of institutions. Ignorance and reluctance to enforce human rights laws as a result of societal perceptions and restraints has become a further aggravating factor (UNESCO, 2006).



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