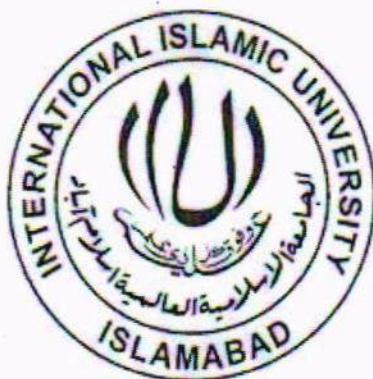


A Shari`ah Appraisal of Pakistani Law and International Law on Violence against Women

A thesis submitted in partial fulfillment
Of the requirements of the degree of
MASTER OF LAWS IN HUMAN RIGHTS LAW
(Faculty of Shari`ah and Law)
In The International Islamic University Islamabad
1437/2016



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Accession No IR-16883 *MS*

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Women-Violence-Law



Ejaz Mustafa

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الْحٰمِدُ لِلّٰهِ الْعَلِيِّ الْمُبَارَكُ

DEDICATED TO MY FAMILY

International Islamic University Islamabad
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Approval Sheet

This is to certify that we evaluated the thesis entitled "A Sharia appraisal of Pakistani Law and International law on violence against Women" submitted by Mr Ejaz Mustafa, Reg. no.73/FSL/LLMHRL/F11 in partial fulfillment of the award of the degree of LLM Human Rights Law. The thesis fulfills the requirements in its core and quality for the award of the degree.

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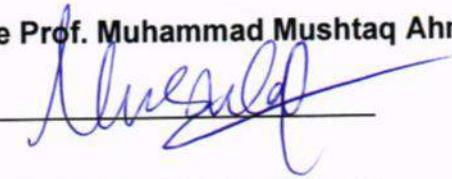
I, **Ejaz Mustafa**, hereby declare that this dissertation is original and has never been presented in any other institution. I, moreover, declare that any secondary information used in this dissertation has been duly acknowledged.

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Signature 

Date: _____

ACRONYMS

CEDAW	Convention on Elimination of All kind of Discrimination against Women
CII	Council of Islamic Ideology
CRC	Convention on Child Rights
CSOs	Civil Society Organizations
FIR	First Information Report
FOSH	Federal Ombudsman for Prevention of Sexual Harassment
GBV	Gender-Based Violence
ICT	Islamabad Capital Territory
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
NCSW	National Commission on Status of Women
PCSW	Provincial Commission on Status of Women
UNO	United Nations Organization
UDHR	Universal Declaration on Human Rights

ACKNOWLEDGMENTS

Praise be to Allah, the sustainer of the worlds, the Merciful, the compassionate and may his everlasting blessings and peace be on Muhammad, the last of his Messengers!

I could not have accomplished the task of writing this thesis without the help and support of my teachers, colleagues and family.

Most of all, I feel indebted my respected teacher and my inspiration Dr. Muhammad Mushtaq Ahmad, Associate Professor of Law, who has always been very encouraging and helpful. It was his knowledge that inspired me to work in this area of law. It was initially difficult to focus on this topic but his famous quote "A lawyer is the one who can argue from both side" encouraged me to take the task as challenge and complete it.

I also owe a debt of gratitude to Mr. Ahmad Khalid, Adjunct Faculty Member in the Department of Law, who remains a source of inspiration for me. He has been very gracious to me and has always taken keen interest in my humble efforts in analyzing minor issues.

My family members have been very supportive and encouraging. My father Mr. Ghulam Mustafa who is also my ideal and my role model encouraged me in completing my higher studies. He inscribed in my heart the love for seeking knowledge. My mother, my siblings and especially my wife has always been supportive in every walk of life and without her support it would not have been possible where I am today.

Allah bless them All.

ABSTRACT

Violence against Women is a global issue and it exists almost in every part of the world. Nature of violence may vary from place to place but by and large it is practiced everywhere in the world. The exact data cannot be obtained as what percentage it exists due to the nature of the problem. In some countries like Pakistan and India it is considered extremely private matter and no one is allowed to interfere and question this issue including the state agencies such as bureau of statistics. Similarly in developed countries the presumption is that the issue is not actually at alarming level rather the focus of media and civil society organizations have made this issue vocal.

The thesis studies the situation of violence against women from different perspectives. After examining the prevalent situation including statistical data on cases of violence against women, it discusses the legal regime of Pakistan in detail. Then, it discusses Islamic perspective on the issue, particularly the discourse on the concept of *Nushooz* (disobedience). Finally it discusses the International treaties and some examples of the other countries that enacted laws to prevent violence in their respective countries.

The thesis concludes that the situation of violence against women needs to be dealt more seriously by the government itself. One can hardly find ownership of Government institution on the issue rather the ultimate effort is to escape from such cases. Hence, professionally trained people, such as doctors, police personnel and judges should come up with concerted and comprehensive effort to deal this issue in more appropriate manner

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INTRODUCTION

The most prevalent problem of the society which exists almost everywhere in the world is domestic violence. Domestic violence is a vast term which includes violence in different forms such as physical, sexual, emotional, psychological and economic. Domestic violence can be defined as;

Violence perpetrated by intimate partners and other family members, and manifested through: Physical abuse such as slapping, beating, arm twisting, stabbing, strangling, burning, choking, kicking, threats with an object or weapon, and murder. It also includes traditional practices harmful to women such as female genital mutilation and wife inheritance (the practice of passing a widow, and her property, to her dead husband's brother).¹

The scope of definition is vast, it is not only confined to the ill-treatment by spouses but also it includes those evil practices which exist in society violating the rights of females. The definition suggests that deliberate criminal intentions are behind such kind of violent acts. The discussion here will be confined to the violence against women which is a kind of domestic violence.

Looking in to the history of violence against women we find that it was deemed to be the birth right of a male. However With the awareness of society and the stability of political and economic status of females across the world, it has been recognized as social issue. After the establishment of United Nations, the

¹ United Nations Children's Fund, *Innocenti Digesti. Domestic Violence Against Women And Girls*, <http://www.unicef-irc.org/publications/pdf/digest6e.pdf>: Last Accessed 08/10/2014

international community as a whole agreed to eradicate this social evil, for an instance, The general assemble of the United Nations on 23rd December 1993 passed a declaration and defined violence against women as; "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."²

The growing intolerance among the people is one of the reasons of violence against women. It has been observed that this issue exists even in developed countries like United States and Britain and also in underdeveloped countries like Pakistan and India. In this study we will be studying the violence against women generally and the efforts that have been made so far, for its prevention.

Pakistan is underdeveloped country, where there are many challenges; one of the major challenges is discrimination against women. Although the law of the land has guaranteed the rights of women, for example the constitution states, 'All citizens are equal before law and are entitled to equal protection of law. There shall be no discrimination on the basis of sex alone.'³ As mentioned in the constitution, the rights of women are equal to that of men but in reality the situation is contrary to what has been given in law.

There are some national and International organizations which keep eye on the situation of violence against women in Pakistan. One such organization working in Pakistan is Aurat Foundation. According to their report, 'the number of reports of

² The United Nations Declaration on Elimination of Violence against Women 1993,Article 1.

³ Constitution of Pakistan 1973,Article 25.

violence against women in 2008 was 7571 and in 2011 it was 8,539.⁴ Thus the passing years has observed increase in reports of violence against women.

Despite being signatory to the International Conventions, Pakistan has yet been unable to control the deteriorating situation of violence against women. The Parliament efforts for legislating for rights of women has not been proved fruitful so far. There is a need to further study this matter so that we get an idea as what needs to be done further in this field. What laws are required to prevent this social evil? And also how the current laws can be made more effective so that violence against women is prevented?

⁴ Aurat Foundation, *Beyond Denial Violence against women in Pakistan A qualitative review of reported incidents* (Islamabad, Aurat Publication and Information Service Foundation, 2013),2

CHAPTER-1

SITUATION OF VIOLENCE AGAINST WOMEN IN PAKISTAN

In this chapter the overall situation of violence against women in Pakistan is discussed in detail. Pakistan did not have established any mechanism where data on this topic is consolidated at any level. The only source available is the one which is also referred here is that of media reports. Here the reports of national and international organizations on situation of violence against women in Pakistan is discussed in detail.

The chapter has three sections; in the first section the discussion is about the term domestic violence and violence against women in specific. The second section discusses the overall situation of violence against women in Pakistan based on statistical evidence. The final part of the chapter discusses various forms of violence against women in our society and among those the most prevalent forms of violence such as honor killings, acid throwing and burning, forced marriages and rape are discussed.

1.1 Domestic Violence and Violence against Women

The most prevalent problem of the society which exists almost everywhere in the world is domestic violence. Domestic violence is a vast term which includes violence in different forms such as physical, sexual, emotional, psychological and economic. Domestic violence can be defined as;

Violence perpetrated by intimate partners and other family members, and manifested through: Physical abuse such as slapping, beating, arm twisting,

stabbing, strangling, burning, choking, kicking, threats with an object or weapon, and murder. It also includes traditional practices harmful to women such as female genital mutilation and wife inheritance (the practice of passing a widow, and her property, to her dead husband's brother).⁵

The scope of definition is vast, it is not only confined to the ill-treatment by spouses but also it includes those evil practices which exist in society violating the rights of females. The definition also suggests that deliberate criminal intentions are behind such kind of violent acts. The discussion here in this chapter will be confined to the violence against women which is one of the kinds of domestic violence.

Looking in to the history of violence against women we find that it was deemed to be the birth right of a male. However With the awareness of society and the stability of political and economic status of females across the world, it has been recognized as social issue. After the establishment of United Nations, the international community agreed to eradicate this social evil, for an instance, The general assemble of the United Nations on 23rd December 1993 passed a declaration and defined violence against women as; "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."⁶

⁵ United Nations Children's Fund, *Innocenti Digesti. Domestic Violence Against Women And Girls*, <http://www.unicef-irc.org/publications/pdf/digest6e.pdf>. Last Accessed 08/10/2014

⁶ The United Nations Declaration on Elimination of Violence against Women 1993, Article 1.

1.2 Situation of Violence against women in Pakistan

Pakistan is underdeveloped country and beside many other challenges; one of the major challenges is discrimination against women. Although the law of the land has guaranteed the rights of women, for example the constitution states, 'All citizens are equal before law and are entitled to equal protection of law. There shall be no discrimination on the basis of sex alone.'⁷ As mentioned in the constitution, the rights of women are equal to that of men but in practice the situation is contrary to what has been given in law.

There are some national and International organizations which keep eye on the situation of violence against women in Pakistan. The Human Rights Watch has highlighted in its reports the different forms of violence which exists in Pakistan. It states that;

Women in Pakistan face the threat of multiple forms of violence, including sexual violence by family members, strangers, and state agents; domestic abuse, including spousal murder and being burned, disfigured with acid, beaten, and threatened; ritual honor killings; and custodial abuse and torture.⁸

According to the latest report of Human Rights Commission of Pakistan, the ratio of suicides by women has increased in 2012 from the previous years, it says," According to media reports, out of 1,976 persons who committed suicide in 2012

⁷ Constitution of Islamic Republic of Pakistan 1973, Article 25.

⁸Human Rights Watch, *Crime or Custom? Violence against Women in Pakistan*, <http://www.hrw.org/reports/1999/pakistan/Pakhtml-06.htm>; Last accessed 13/10/2014

across the country 626 women. Of the 873 persons who tried to take their own lives but failed 382 were women.”⁹

1.2.1 Statistical Data on Violence against Women

Similarly another national organization by the name of Aurat Foundation in its annual report has given statistical data of cases of different forms of violence based on media reports. In its astonishing report regarding the violence against women, it is pertinent to mention that violence against women exists in every part of the country. According to the report the following Statistical data was presented in its fourth annual report on violence against women.

Number of Cases of VAW in Pakistan during January and December 2009 to January and December 2011

Categories of Crime	Year 2008	Year 2009	Year 2010	Year 2011	Grand Total	Percentage Increase/decrease in VAW cases between 2010-2011
Abduction/ Kidnapping	1784	1987	2236	2089	8096	-6.57%
Murder	1422	1384	1436	1575	5817	9.68%
Domestic Violence	281	608	486	610	1985	25.51%
Suicide	599	683	633	758	2673	19.75%
Honor Killing	475	604	557	705	2341	26.57%
Rape/Gang Rape	778	928	928	827	3461	-10.88%
Sexual Assault	172	274	74	110	630	48.65%

⁹ Human Rights Commission of Pakistan, *State of Human Rights in 2012*, (<http://hrcp-web.org/hrcpweb/wp-content/pdf/ar/ar10e.pdf>) Last accessed: 11/03/2015

Categories of Crime	Year 2008	Year 2009	Year 2010	Year 2011	Grand Total	Percentage Increase/decrease in VAW cases between 2010-2011
Acid Throwing	29	53	32	44	158	37.5%
Burning	61	50	38	29	178	-23.68%
Miscellaneous	1970	1977	1580	1792	7319	13.42%
Total	7571	8548	8000	8539	32,658	6.74% ¹⁰

The statistical data shows that the situation of Violence against Women in recent past years remained almost same. There has been increase or slighter decrease in cases.

The actual number of cases cannot be accessed due to absence of any centralized mechanism for collection of data in this regard; the statistical data is based on electronic and print media reports. The cases of Violence against Women are less often reported due to several reasons the foremost among them is cultural constraints. Another reason is the situation of law and order in the country which has diverted the attention of law makers and pressure groups towards that issue and thus problems related to women violence, are less highlighted.

1.2.2 Complex Legal Procedure and Social Constraints

Social Constraints and complex legal procedures are also contributing to discouraging masses from reporting the violent cases against women. According to observation in report of Human Rights Commission of Pakistan the incidents of violence against women is less reported than the real number of cases; it states;

¹⁰ Aurat Foundation, *Beyond Denial Violence against women in Pakistan A qualitative review of reported incidents* (Islamabad, Aurat Publication and Information Service Foundation, 2013), 47

Incidents of domestic violence seemed to have increased in the Punjab province or perhaps were more adequately reported, while Sindh showed a downward trend and cases in Balochistan remained largely unmonitored and unreported. Parts of Khyber Pakhtunkhwa remained under threat of religious militancy and the state of Afghan refugees, particularly the condition of women, was inadequately monitored.¹¹

The social norms of the people in Pakistan do not allow the family matters to be disclosed in front of strangers which also includes state agencies. It is considered that women shall bear all kind of problems she faces in her home. These cultural and social values which bear positive aspects also have some negative impacts, especially in cases of violence against women. For Instance it is considered highly immoral for women to report to police against her domestic problems. According to human Rights watch;

Comprehensive studies on domestic violence indicate that domestic violence is a structural rather than causal problem. It is the structure of the family that leads to or legitimizes the acts, emotions or phenomenon that are identified as the "causes" of domestic violence under the causal analysis. This family structure is a "structure that is mirrored and confirmed in the structure of society, which condones the oppression of women and tolerates male

¹¹ Human Rights Commission of Pakistan, *State of Human Rights in Pakistan 2011*, <http://hrcp-web.org/publication/book/annual-report-2011-english/> : Last accessed 05/06/2013

violence as one of the instruments in the perpetuation of this power balance."¹²

According to the study of Human Rights Watch it has been observed that the state agencies have never taken the issue of violence against women seriously. All the state actors which are involved in handling this matter, lack professionalism and they do not believe in the reality of its existence. The police from very beginning do not take the cases reported seriously and treat the person who reports to them with suspicion, that the person who came to the police must have some benefits in alleging other person. The investigations by the police in most of the cases are not up to the standard and this misguides the courts in such matter. The report of Human Rights Watch states that all state actors such as police, judiciary or the doctors to whom the cases are referred, never believes in the seriousness of the matter and thus the women seeking relief gets nothing at the end. According to Human Rights Watch Report:

From the initial lodging of complaints until the final resolution of cases, women seeking redress for sexual and other assault regularly confront law enforcement institutions and officials with hostile, or at best indifferent, attitudes to their complaints. Police, prosecutors, judges, and doctors denied that sexual and domestic violence were critical problems for women and asserted that the occurrence of such crimes was precluded by Pakistani social and religious norms. Officials even failed consistently to acknowledge

¹²Human Rights Watch, *Crime or Custom? Violence against Women in Pakistan*, <http://www.hrw.org/reports/1999/pakistan/Pakhtml-06.htm>; Last accessed 13/10/2014

the criminal status of domestic violence, instead dismissing it as a "family matter" not serious enough to be handled by the criminal justice system.¹³

According to report there have been a numerous cases of rape and sexual assault, but due to certain reasons such cases do not gain attention of the concerned authorities. The Human Rights Watch and other organizations criticize the procedure for collection of evidences in such cases. In April, 2011 the verdict of Supreme Court was highly criticized in Mukhtara Mai Case by civil societies and human rights activists where Supreme Court acquitted five accused out of six for lacking evidence. In a report of Human Rights Watch as regard to the collection of evidences its states that;

The current procedures for obtaining medical evidence in assault cases, particularly in cases of sexual assault of women, are woefully inadequate, neither ensuring that perpetrators are convicted nor providing women with appropriate treatment. Other barriers encountered by women victims of violence who attempt to navigate the criminal justice system include inveterate and widespread bias against them and their cases, official incompetence and corruption at all levels, systemic lack of professionalism and administrative inefficiency.¹⁴

The overall system is to be blamed for increase in cases of domestic violence across the country. The lawmakers are not the sole responsible for the happening of honour killings but all the state agencies enforcing the laws are responsible, from

¹³Human Rights Watch, *Crime or Custom? Violence against Women in Pakistan*, <http://www.hrw.org/reports/1999/pakistan/Pakhtml-06.htm>: Last accessed 13/08/2014

¹⁴Human Rights Watch, *Crime or Custom? Violence against Women in Pakistan*, <http://www.hrw.org/reports/1999/pakistan/Pakhtml-06.htm>: Last accessed 31/12/2013

taking of evidence till the trial and court procedure is so complex that person has to lose a lot before being compensated for the wrong done to them.

1.3Types of Violence against Women

There are different types of violence reported against women. However most common of them are the Honor Killings, Acid Throwing and Burning, Forced Marriages and Rape. Here each of the topic shall be discussed in detail.

1.3.1 Honor Killings

The Asian Commission on Human Rights in its report has highlighted the crime of honour killings as follows;

Hundreds of women are killed every year for alleged misdemeanors such as adultery, marrying without the family's consent, pre-marital sex or having been raped. According to the Adviser to the Prime Minister on Women Development, Ms Neelofer Bakhtiar, as many as 913 women had been killed in 'honour- related crimes' in the country during the year 2003 with 638 cases of honour crime committed in Sindh, 463 in Punjab, 120 in the North West Frontier Province and 40 in Balochistan. But many incidents are not reported in the newspapers and the vast majority of the victims come from rural areas.¹⁵

In order to punish the perpetrators involved in heinous crime of Honor killings, the parliament amended the Pakistan Penal Code by passing criminal law (amendment) act in 2004 which introduced punishments for those

¹⁵ Asian Commission on Human Rights, *Confronting Honour Killings* 2004, <http://www.countercurrents.org/hr-achr291004.htm> Last accessed: 19/11/2013

offences carried out in pretext of honour. The wrong interpretation of religion in some cases and social pressure in most cases leads to happening of such crimes. The number of cases reported to police and law enforcing agencies are less than those cases which are not reported. Despite existence of laws the government has so far completely failed to control honour crimes in the country. Instead it has been observed that number of cases is increased with time. In its latest report the Human Rights Commission of Pakistan has highlighted the honour crimes in such manner,

According to media monitoring by HRCP, as many as 913 girls and women were killed in the name of honour in 2012. These included at least 99 minor girls. The number of victims of these attacks was believed to be higher than the figures suggested because of gaps in reporting. Out of the 913 victims of honour killings, at least 604 were killed after being accused of having illicit relations with men, often without any proof; 191 were killed because they had married according to their own choice and against their families' wishes¹⁶

It has been observed that in cases of honour killings particularly, and in domestic violence generally, the perpetrators are the close relatives of the victims. The Human Rights Commission of Pakistan states in its annual report;

The perpetrators of these crimes were usually close relatives. In 202 cases it was brothers of the victim, in 71 cases the father, in 209 the husband, in 61

¹⁶ Human Rights Commission of Pakistan, *State of Human Rights in Pakistan 2011*, 173, <http://hrcp-web.org/publication/book/annual-report-2011-english/> : Last accessed 05/06/2013

in-laws, and in 138 cases other close relatives of the victim. Of the victims, at least 16 were raped and 13 gang-raped before being killed¹⁷

It is very unfortunate to find the women treated in such manner. The obvious reason is ineffective laws to counter the crime and provide adequate relief to the victims and punish the culprits. It happens in most cases that women are brutally killed or disgraced without even giving her opportunity to clarify the allegations on her. The number mentioned in the report is only those which are either reported or got accessed by media. There are a large number of cases where the cases are not even reported to the concerned authorities.

According to news report the cases of honour killings reported this year i.e. 2013 were higher in number than the previous year, 'The number of reported honour killings in the city during 2013 was 17 while it was 10 during the previous year'¹⁸. The report indicates that the crime of honour killings has been increased by 70 percent from the previous year. The situation of Islamabad is not different in perspective of age of the victim and involvement of family members in commission of honour killings, 'most of the victims are below 25 years and killed by their family members'¹⁹. Police has successfully managed to arrest the accused in majority of the cases but due to lack of effective legislation the accused were set free by the courts, 'Police arrested 13 accused in 2013 and submitted their challans in courts, showing 76 percent detection rate'. The judicial system rarely relies on scientific methods of investigation and considers them as additional evidence; cannot convict the accused

¹⁷ Ibid, 172.

¹⁸ Muhammad Faisal Ali, *State to be complainant in Honour Killings*, Dawn, December 12th, 2013.

¹⁹ Ibid.

solely on scientific method of investigation. The only solution to prevent these heinous crimes is to prescribed separate procedure for these crimes and State should solely pursue the matter where the victims could assist the state and the accuse do not get bail solely upon reconciliation with the victims' family.

1.3.2 Acid Throwing and Burning

Acid throwing and burning is among the cruelest forms of domestic violence that happens across the country. In Acid throwing cases it has been witnessed that it do not only cause physical damage but it has a catastrophic effect on victims' life. It causes serious body harms such as loss of eyes, limbs corrosion of organs or infectious diseases such as septicemia and gangrene. One of the impacts of these incidents is that victims suffer isolation in the society. The year wise cases of acid throwing and burning is reflected in the annual report of aurat foundation as follows,

Categories of Crime	Year 2008	Year 2009	Year 2010	Year 2011	Grand Total	Percentage Increase/decrease in VAW cases between 2010-2011
Acid Throwing	29	53	32	44	158	37.5%
Burning	61	50	38	29	178	-23.68% ²⁰

²⁰ Aurat Foundation, *Beyond Denial Violence against women in Pakistan A qualitative review of reported incidents* (Islamabad, Aurat Publication and Information Service Foundation, 2013), 47.

The statistical data shows that acid throwing and burning crimes remains almost in same number over the past years. The continuous existence of Acid crime compelled the lawmakers to amend Pakistan Penal Code and provide punishment for those involved in this act. In order to avoid complications in terminology the law used corrosive substance which includes Acid material and any other material having similar effect. In acid throwing cases the perpetrators in majority cases are close relative of the victim. There are numerous cases where the women are become victim from the hands of their own family members on several claims. The Asian Commission on Human Rights has highlighted a few cases of Acid incidents as follows,

1. Shehnaz was burned with acid by a relative due to a familial dispute five years ago. Shehnaz has undergone plastic surgery 10 times to try to recover from her scars.
2. At the age of five Najaf was burned by her father while she was sleeping, apparently because he didn't want to have another girl in the family. As a result of the burning Najaf became blind and after being abandoned by both her parents she now lives with relatives. She has undergone plastic surgery around 15 times to try to recover from her scars.
3. Zainab was burned on her face with acid thrown by a boy whom she rejected for marriage five years ago. She has undergone plastic surgery several times to try to recover from her scars.²¹

There are number of cases where children have become victims as result of collateral damage in acid burn cases. From the view point of victims, the existing

²¹ Asian Commission on Human Rights, *Confronting Honour Killings* 2004, <http://www.countercurrents.org/hr-achr291004.htm> Last accessed: 19/11/2013

criminal system does not offer them adequate relief. From the reporting stage till the trial and conviction, the victims have to face a lot of hurdles even before establishing their case.

The Convictions rate of perpetrators has been significantly increased in the recent past years. Media reports indicate conviction rate is almost three times more in 2012 than the previous years. According to Newspaper report, 'Statistics are patchy but Valerie Khan Yusufzai, chair of the Pakistan branch of the Acid Survivors Foundation, says the conviction rate rose from an average of six percent before the amendment to 18 percent in 2012'.²²

However this is not the end of the story, it needs further attention from governmental organization and serious steps need to be taken to completely eradicate this social evil. The effective implementation of the laws can help in eradicating this social evil.

1.3.3 Forced Marriages

Forced Marriages is one of the forms of domestic violence in Pakistan. There are number of cases where women are married against their will and without getting their consent prior to such marriage. There are places where families consider it insult to ask girls about their opinion in matters relating to marriages. According to Human Rights Commission of Pakistan Report on forced marriages it states that; 'As many forced marriages went unnoticed and unreported, exact figures were not easily available, but reports suggested that in just the month of January about 338 cases of

²²*Tough law sees acid conviction rate triple in Pakistan*, Dawn, April 16th, 2013

forced marriages took place in 31 districts across Pakistan'.²³ The situation may be only understood where we study the child marriage from Human Rights Perspective and Islamic Perspective and also the laws which deals with child marriages. According to the Human Rights Commission of Pakistan,

A report by United Nations Population Fund (UNFPA), titled 'Marrying too Young: End Child Marriage', noted that the number of child marriages was on the rise globally and might increase by 14 percent if the trends persisted. According to the report, South Asia had the highest prevalence of child marriages at 46 percent. In Pakistan, the report said that about 5,000 new cases of obstetric fistula occurred every year, with young girls disproportionately affected due to early pregnancy²⁴

The legal perspective of the child marriage needs to be studied in detail. The international Human Rights in its different instruments speak about child marriage. According to CEDAW convention, 'The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory'.²⁵ Similarly in Convention on Rights of Child 1979 establishes the age of child as, 'A child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier'.²⁶

²³ Human Rights Commission of Pakistan, *State of Human Rights in Pakistan 2011*, 177, <http://hrcp-web.org/publication/book/annual-report-2011-english/> : Last accessed 05/06/2013

²⁴ Ibid, 192.

²⁵ Article 16 (2), CEDAW 1979

²⁶ Article 1, CAR,

Poverty plays a central role in causing and perpetuating early marriage. Poor countries and families often have few resources to support healthy alternatives for girls, such as schooling. It is usually assumed that marriage may turn the life of their girls in to better one. But it is not the case. Those people remained poor for the rest of their lives. Children face responsibilities at the stage where they are not mentally and physically ready for it, moreover it is observed that children who marry at early stage usually leave their education and experience many medical complications such as mental stress etc.

Child marriage can also result in bonded labour or enslavement, commercial sexual exploitation and violence against the victims. Because they cannot abstain from sex or insist on condom use, child brides are often exposed to such serious health risks as premature pregnancy, sexually transmitted infections and, increasingly, hiv/AidS. Parents may consent to child marriages out of economic necessity.²⁷

In early child marriages usually they are expected to perform all duties which are supposed to be performed by adult family members. They are not usually given right to choose work for themselves rather it is imposed upon them, so it is nonetheless but enslavement. Husbands force them for sex which causes serious problems to their health. They are usually not aware of medical complications which results in premature pregnancy and other kinds of infections. This is one of the reasons of growing hiv/Aids across the globe.

²⁷ United Nations International Children's Emergency Fund, *Early Marriage Child Spouses*, (Florence Italy, Innocenti Research Center, March 2001) 19

1.3.4 Rape

Among the social evils one of the problems which are reportedly increased from time to time is the crime of Rape. Rape or forced adultery like other domestic crimes exists in an alarming situation but it faces the same problem as the other domestic crimes i.e. like the victims becomes again victim of the society and law enforcing agencies for reporting of such crimes. It is a common perception among the society and particularly in law enforcement agencies that the victim of Rape is not entirely innocent and it is always believed that the victim may either have provoked the perpetrator for commission of act or the consent of the victim would have brought such situation.

The unfortunate dilemma of Pakistan is that despite existence of laws for Rape, it cannot be effectively implemented for social reasons and lack of professionalism by law enforcing agencies. The annual Report of Aurat Foundation reflects the existence of Rape and Gang rape as follow,

Categories of Crime	Year 2008	Year 2009	Year 2010	Year 2011	Grand Total	Percentage Increase/decrease in VAW cases between 2010-2011
Rape/GangRape	778	928	928	827	3461	-10.88% ²⁸

Thus over the period of time the crime of rape and gang rape remained there.

²⁸ Aurat Foundation, Annual Report 2011, Last accessed 05/02/2013: <http://www.af.org.pk/PDF/VAW%20Reports%20AND%20PR/Violence%20Against%20Women%20Annual%20Report%202011.pdf>

Instead of blaming the culprit the society point their fingers towards the victim. It is believed in our society that women who becomes victim of Rape deserves no more respectable place in the society. According to the news report by Express Tribune the victim of Rape becomes victim of society again when the perpetrator is not brought to face justice in the society,

While we do have names for other perpetrators of crimes like qaatil, chor or daku; we don't have a definite word in Urdu for a rapist. We do not even have a proper word for the act of rape. We use words like izzat lut gai (lost her honour) and Daaghi ho gai (stained) or more lyrical phrases like kati patang (torn kite) and sheeshe me baal aa gaya (a stained glass). All these phrases refer to the woman who was raped, showing how we are conditioned to reinforce the patriarchal cruelty of blaming the victim whilst shielding the rapist from any responsibility for the crime. More recent terms like zina bil jabar (adultery by force) do not aptly describe the crime.²⁹

It has been observed that society blames women for happening of rape. People all around the society believe that women must have provoked the perpetrator for commission of Rape. It is always women who is said to have brought the day on her, by walking alone or wearing cloths which provokes men for commission of crime like rape.

It is astonishing to know that rape cases which have been registered in Islamabad alone in last five years are 103, and not a single accused has been convicted. This was revealed in senate when a senator raised the issue, according to

²⁹ Saeed, Fauzia, "The words describing 'rape': Blaming the victim, shielding the rapist", The Express Tribune, July 4th, 2013, <http://tribune.com.pk/story/572286/the-words-describing-rape-blaming-the-victim-shielding-the-rapist/>

news; 'The government on Thursday stunned the senators by informing them that out of the 103 rape cases registered in Islamabad during the last five years, not a single accused has been convicted'³⁰. The legislation, prosecution, courts and society are equally responsible for the existence of crime in our society. One of the TV reports reported that the number of rape cases in 2012 were 7516.

These kind of cases are also common in other parts of the world as well. As discussed here above the only source available for data on this topic in Pakistan is that of media reports. It is very important for government to take initiative to compile data from all sources such as police, judiciary, hospitals etc so that everyone can have a clear picture of the situation. This approach on part of the government will strengthen the decision making process at every level and to choose the right direction for its control.

³⁰ Wasim, Amir, "103 rape cases: Zero conviction stuns Senators", Dawn, December 13th, 2013

CHAPTER 2

PAKISTANI LEGAL REGIME ON WOMEN RIGHTS

Pakistan being a responsible member of the international community has taken various steps for protection of its citizens by means of legislation beside their implementation. If we study the legal regime on pro women laws in Pakistani legal system one can understand that the country has adopted several laws that are exclusively for protection of women. The civil and criminal laws have been adopted from time to time to ensure equal rights to women and also to provide them safe and secure environment for living.

In this chapter which starts with historical background on pro-women laws; it also discusses the current legal system in detail. The major discussion in this chapter is about criminal laws that have been adopted by the parliament from time to time to eliminate evil practices of the society. The discussion of child marriages is also very important and its shari'ah perspective which has been discussed in detail. Beside discussion on civil and criminal laws on the topic, the chapter ends with discussion on other relevant pro-women laws.

2.1 Pakistani Legal Regime on women Rights

Pakistan is underdeveloped country where its people belong from different culture and religions; here one can find extremely diversified practices of cultures. In Pakistan although Muslims are in majority but while framing the laws, due regard is kept in mind to satisfy people belonging to different sects of Muslims. Unlike the neighbor country India, Pakistan has not legislated on the issue of women rights exhaustively, however the issue is not ignored altogether and one can find laws are

made from time to time to implement and protect the rights of women effectively. The study of this chapter will help in understanding what steps have been taken so far to counter the problem of violence against women.

2.2 History of Legislation on rights of women

The issue of women right was addressed through different legislation before partition of sub-continent, however this did not help in greater extend to solve the problems faced by women. Beside many social evil practices against women, the most common among them was; the inadequate treatment during the marriage and deprivation from enjoyment of their due share in property to which they were entitled. Before the partition, the Muslims were in minority but still a large number of populations were affected due to absence of adequate legislation for the protection of their rights. Here in this chapter the discussion will be confined to the different laws made for the protection of rights of women.

2.2.1 before Partition till 1950

Prior to Partition of sub-continent, different laws were made to counter the problems faced by Muslims in their daily lives, which particularly involved issues related to Marriage and Divorce. In order to counter those issues we find different laws were made like, Muslim Personal Law (Shariat) Application Act 1937³¹ which

³¹The Muslim Personal law was the demand of the Muslims of the British India which were governed by customary law. The customary law has deprived women from their right of property to which they were entitled under Islamic law. Thus they demanded for legislation in this regard. The largest Muslim religious body, Jamiat-ul-ulema-i-Hind supported the call and thus the Muslim Personal law (Shariat) Application Act was adopted in 1937

was applicable to the whole of India except in the Province of N.W.F.P. Similarly the act regulating marriage and divorce matters was Dissolution of Muslim Marriage Act 1939.

The Muslim Personal Law (Shariat) Application Act 1937 exclude matters related to agricultural land. The customs relating to inheritance of agricultural land by the male heirs, excluding females continued. This resulted in deprivation of large number of females of their legitimate share as prescribed under Islamic Law. Thus the purpose of Act to provide relief was ultimately failed and there was need to amend the act. In 1948 another act The West Punjab Muslim Personal Law (Shariat) Application Act was enacted. The scope of the act covered questions regarding succession including Agricultural Land. A similar Amendment was introduced by the Muslim Personal Law (Sindh) Amendment Act 1950.

2.2.2 from 1955 till Date

In the Era of Field Martial Ayub Khan a seven member commission³² was appointed in 1955 to resolve the issues related to family particularly with legal aspects of matrimonial matters. In the light of recommendations of the commission the then President Field Martial Ayub Khan, promulgated the Ordinance named as Muslim Family Laws Ordinance 1961. The Ordinance in the light of the

³²The government formed commission on 4th of August 1955 on marriage and family laws consisting of seven members. The commission was assigned the task to report that whether the existing laws give women a place in society according to teachings of Islam? The commission was asked to report the mechanism for registration of marriages and divorces. Also The mechanism for exercise of divorce and establishment of special courts dealing expeditiously with cases affecting women's right. The commission presented their report on 1st June 1956, it is important to mention that report included the dissenting note of Ehtisham ul Haq Thanwi, member of the commission.

recommendation submitted by the commission established separate family courts which had jurisdiction to exclusively deal with issues related to family matters which were previously dealt by the Civil Courts.

In 1964 The Family Court Act was enacted which aimed to shortened and simplified the legal proceedings of the family court to provide speedy justice. It was amended in 1971 and then later in 2002. Similarly in 1962 the West Pakistan Muslim Personal Law (Shariat) Application Act³³ was enacted. The enactment of West Pakistan Muslim Personal Law (Shariat) Application act was milestone in the history of legislation for the rights of Muslim women which gave the right to the Muslim women to inherit their property as prescribed by the principles of Sharia and the act also included the principles governing the matters related to gifts prescribed by Islamic Law.

2.3 Violence against Women and Pakistani law

The Law of Pakistan in general ensures the rights of women to be protected from any kind of discrimination on the basis of gender. Moreover to control physical abuse and emotional torture; different kind of laws have been enacted by the parliament. The Pakistani Law can broadly be classified in to three categories.

1. Constitutional Provisions on women rights
2. Family Laws

³³The West Pakistan Muslim Personal Law (Shariat) Application Act established that; All the customs and usages in questions regarding succession (whether testate or intestate), special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, legitimacy or bastardy, family relations, wills, legacies, gifts, religious usages or institutions, including waqfs, trusts and trust properties, the rule of decision shall be Muslim Personal Law where the parties are Muslims.

3. Criminal Law related with protection of women rights

2.3.1 Constitutional Provisions on women rights

Constitution which is a sacred document not only as a principle guide of the nation but it also defines and establishes the roles and responsibilities of the state run machinery. The constitution of Pakistan 1973 establishes as principle of Policy that steps shall be taken to enable the Muslims of Pakistan to order their lives, individually and collectively in accordance with the fundamental principles of Islam. According to constitution, 'All citizens are equal before law and are entitled to equal protection of law. There shall be no discrimination on the basis of sex alone.'³⁴ Thus constitution protects the rights of each individual and prohibits discrimination. Similarly the constitution says, 'No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of sex'³⁵. The purpose of principle of policy in constitution is to establish the guidelines for the future and it declares that where appointments are made in civil services; the criteria shall be merit and not the gender.

As regard to the protection of women rights other than the social life the constitution says, 'the state shall protect the marriage, the family, the mother .The state shall, [ensure] that women are not employed in vocations unsuited to their sex'.³⁶ The protection of women and the institution is the sole responsibility of State, as it has been established under the aforementioned clause of the constitution.

³⁴ Article 25, Constitution of Islamic Republic of Pakistan 1973

³⁵ Article 27, Ibid

³⁶ Article 37, Ibid

Moreover keeping in view the social norms, the law prohibits working of women in places where there is likelihood of violation of their honor and dignity which includes the possibility of sexual exploitation. However the women of different age faces serious problems in their daily lives and the cases of crime committed against them are increasing day by day. This indicates not only non-serious attitude of government machinery to control the crimes committed against the women folk but also empathy of male dominated society towards this matter.

2.4 Family Laws

2.4.1 Dissolution of Muslim Marriage Act 1939

The dissolution of Muslim Marriage act provides different grounds for the dissolution of marriage of a Muslim Woman. The act provides almost all grounds provided by Islam for dissolution of marriage for a Muslim woman through court decree. These grounds such as the imprisonment of husband for more than seven years or in cases where the whereabouts of the husband is not known for more than four years etc are framed after due recommendations' of the Muslim scholars of the sub-continent. After the promulgation of Muslim Family Laws Ordinance the Dissolution of Muslim Marriage Act has been amended and the act incorporated further provision such as in case where the husband enters in to another marriage in contravention to the procedure prescribed by the family laws ordinance entitles the wife to seek divorce through court.

2.4.2 Muslim Family Law Ordinance 1961

In the Era of Field Martial Ayub Khan a seven member commission³⁷ was appointed in 1955 to resolve the family problems particularly with legal aspects of family and matrimonial matters. In the light of recommendations, Ayub Khan, the then president, promulgated Muslim Family Laws Ordinance 1961. One of the recommendations of the commission was to establish separate courts for issues related to family laws, which was previously in the jurisdiction of civil courts. Due to its lengthy procedure and technicalities it was rather inconvenient for those seeking justice particularly in such issues. Thus in 1961 family courts were established.

In 1964 The Family Court Act was enacted which shortened and simplified the procedure and adopted all possible means to provide speedy justice. It was amended in 1971 and then later in 2002.

2.5 Criminal law for Protection of women rights

Beside Constitutional protection and special laws like Dissolution of Muslim Marriage Act and Muslims Family Laws Ordinance there was a need to amend the criminal law to provide adequate punishments to the perpetrators who are involved in the crimes against women. For that matter different amendments have been made to the criminal laws which are discussed below;

³⁷ The government formed commission on 4th of August 1955 on marriage and family laws consisting of seven members. The commission was assigned the task to report that whether the existing laws give women a place in society according to teachings of Islam? The commission was asked to report the mechanism for registration of marriages and divorces. Also The mechanism for exercise of divorce and establishment of special courts dealing expeditiously with cases affecting women's right. The commission presented their report on 1st June 1956, it is important to mention that report included the dissenting note of Ehtisham ul Haq Thanwi, member of the commission.

2.5.1 Criminal Law (Amendment) Act 2004³⁸

Among the issues of domestic violence, one of the most prevalent crimes that exist in the society is the crime in the name of honour. The recognition of crimes in the name of honour became important and it was essential to amend the criminal laws for this purpose. For the said reason the national assembly and senate approved the Criminal Law (amendment) Act 2004, it has been given assent by the president on 4th January 2005. The amended act has enhanced the punishments of crimes carried out in the pretext of honour.

The word used in the act is honour crimes, instead of honour killings as to cover all crimes carried out in the name of honour. The criminal law (amendment) act has enhanced the punishments and brought various changes to the Pakistan Penal Code, 1860 (Act XLV of 1860), and the Code of Criminal Procedure, 1898 (Act V of 1898), for instance in the definition clause of chapter XVI of Pakistan Penal Code, a subsection (ii) has been added to clause 'h' it states that, "offence committed in the name or on the pretext of honour" means an offence committed in the name or on the pretext of karo kari, siyah kari or similar other customs or practices;³⁹ The amendment intends to include all those evil practices against women carried out in the name of honour like karo kari, siyah kari and other similar practices.

³⁸ Criminal Law (amendment) Act 2004 was approved by the parliament to amend the Pakistan Penal Code, 1860 and Code of Criminal Procedure, 1898. It has received the assent of President on 4th January 2005. The objective of the act was to incorporate the offences related to honour crimes and enhance the punishments for them.

³⁹ Section 3, Amendment of section 302, Act XLV of 1860, Criminal Law (Amendment) Act, 2004

2.5.2 Protection of Women (Criminal Laws Amendment) Act, 2006

The Protection of Women (Criminal Laws Amendment) Act, 2006 was approved by the parliament and assented by the then president General Parvaiz Musharraf. The act was aimed to enhance the punishments related with Zina and apparently it was propagated among the masses that the act is aimed to protect the rights of oppressed women. The act reintroduces the offence of fornication in Pakistan Penal Code bringing it to ordinary Ta'zir from Hadd Punishment. However the religious political parties opposed the bill strongly when it was tabled in the National Assembly calling it to be an attempt to amend laws of Allah I.e. Hudood Laws. The copies of the proposed bill were torn apart on the floor of the assembly.

The Women Protection act was challenged in Federal Shariat Court and the court was requested to declare the provisions which are against the Islamic Law as violation of the constitution and thus holds no right to be retained in the Pakistani Legal System. In the said consideration the Federal Shariat Court in a petition Mian Abdul Razzaq Amir Vs Federal Government of Islamic Republic of Pakistan⁴⁰ declared sections 11, 25, 28 and 29 of Protection of Women (criminal Law Amendment) act in violation of Article 203DD of the Constitution.

The act has brought changes to offence of zina (enforcement of Hudood) ordinance 1979 and offence of Qazf (enforcement of Hudood) ordinance 1979. Those offences in the ordinance which were liable to ta'zir were removed from the ordinance and were inserted in Pakistan Penal Code. Similarly the procedure to deal

⁴⁰ The federal Shariat court on 22nd December 2010 declared, some of the provisions of Women Protection act as violation of the constitution directed the federal government to legislate in the light of the decision of the court.

the cases of adultery and qazf were changed by inserting difference sections in Code of Criminal Procedure 1898.

2.5.3 Offence of Zina (Enforcement of Hudood Ordinance) 1979

Under the presidency of General Zia Ul Haq in 1979 The Offence of Zina (Enforcement of Hudood Ordinance) 1979 was enacted to penalize the offence of adultery under Islamic Laws. The act was aimed to punish the perpetrators in the light of Islamic laws. The protection of women criminal law amendment act 2006 brought drastic changes to existing ordinance. The offence of Zina Bil jabr was removed from the ordinance and was inserted in Pakistan Penal Code as offence of Rape as ordinary ta'zir.

2.5.4 Legislation on offence of Rape

The Pakistan Government in acknowledgement to the existence of this heinous crime over a period of time brought different legislation. In a legislation of criminal law amendment act of 2006 the definition of rape was inserted in Pakistan Penal Code as follow;

Rape:-

A man is said to commit rape who has sexual intercourse with a woman under circumstances falling under any of the five following descriptions,

- (i) Against her will
- (ii) Without her consent
- (iii) with her consent, when the consent has been obtained by putting her in fear of death or of hurt,
- (iv) with her consent, when the man knows that he is not married to her

and that the consent is given because she believes that the man is another person to whom she is or believes herself to be married; or

(v) With or without her consent when she is under sixteen years of age.

Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.⁴¹

In order to give relief to victim of rape the act also amended the procedure in case the victim fails to establish her claim of rape committed against her. According to Islamic law in order to seek relief under Islamic laws by victim of rape the criteria need to be fulfilled otherwise the victim shall be punished for the offence of Qazf⁴². Many scholars believe that where the victim does not have any recourse to justice the state can enact laws to deal with such cases.

The punishment of rape was incorporated in Pakistan Penal Code as follow;

Punishment for rape

- (1) Whoever commits rape shall be punished with death or imprisonment of either description for a term which shall not be less than ten years or more, than twenty-five years and shall also be liable to fine.
- (2) When rape is committed by two or more persons in furtherance of common intention of all, each of such persons shall be punished with death or imprisonment for life.⁴³

The unfortunate dilemma of Pakistan is that despite existence of laws for Rape, it cannot be effectively implemented for social reasons and lack of

⁴¹Section 375, Pakistan Penal Code

⁴²Qazf is the punishment where one person alleges another for commission of adultery and he failed to bring four witnesses for testimony of such act, (shall be punished with 80 stripes), as he has committed the offence of Qazf. (Surah Noor, Verse 4-13).

⁴³Section 376, Pakistan Penal Code.

professionalism by law enforcing agencies. In order to establish the legal system of Pakistan instead of facilitating the victim favors the perpetrators. The famous case of Mukhtara mai⁴⁴ fell prey to the legal complications of the country and resulted in criticism of international community of the weak legal system. The rape victim is often not treated as serious victim by the police when report is made to them. The investigation of the police does not provide adequate information which can be prosecuted in the court of law. The ignorance from scientific method of establishment a fact leads to weaken the establishment of case.

2.5.5 Criminal law (second) amendment act 2011

The act of acid throwing and burning had become more frequently practiced in the society and there was a need to legislate specifically on this issue. The crime of burning the victim is practiced by the family members to give a shape of suicide to

⁴⁴Mukhtar Mai, resident of the southern Punjab village Meerwala, Tehsil Muzafarghar was gang raped allegedly In June 2002, on the orders of a village council. The accused with charged with different nature of offences including the sections of Anti Terrorism Act. The Anti terrorist court was set to be trial court of the matter which announces its verdict in a special midnight session, sentencing six men to death. Four of the men in custody were sentenced to death for raping the victim while the other two were sentenced for death penalty for being part of the Punchayat. The other eight members who were held for being involved in the case however were released due to insufficient evidence against them in their involvement in the commission of the offence. The victim filed an appeal against the acquittal of the eight accused in Multan bench Lahore High Court. On 3 March, 2005 the Multan bench of the Lahore High Court reverses the trial court's judgment calling it to be based on insufficient evidence and faulty investigations. The court orders the released of five out of the six accused previously sentenced for death penalty and reversed the sentence of one accused from death penalty to life imprisonment. The acquittal was criticized by the international as well as the national communities of women rights and Human Rights watch for being unreasonable and encouraging the commission of the offence. On 11 March, 2005 the federal Shariat Court suspended the decision of the Lahore High Court calling it to be interference in the jurisdiction of the highest Islamic court of Pakistan. The decision of the Shariat court was challenged in the Supreme Court seeking its intervention in the matter. On 28 June, 2005, the Supreme Court yet another time reversed the decision of the Shariat court releasing the apprehended accused and order for retrial of the case.

the murder. In case of Mst Naila Farhat,⁴⁵ the Supreme Court suggested the government of Pakistan to study the relevant law applicable in other countries like Bangladesh who legislated on the matter for its prevention. Thus in order to control the crime of acid throwing and burning; The Acid Control and Acid Crime Prevention Bill 2010 was presented in the National Assembly which received unanimous approval and it approved to amend the Pakistan Penal Code 1860 in section 336-B as such, '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 minimum fine of one million rupees'.⁴⁶

The amendment to the penal code severs the punishment in acknowledgment to the suffering of acid victim. The acid throwing crime is in no case lesser than the crime of murdering the person as it leaves life lasting impact on the victim and in most cases the victims commit suicide. The act however failed to comprehensively involve those actors who are involved in its illegal business.

2.5.6 Prevention of Anti Women Practices Act 2011

Prevention of anti-women practices criminal law amendment act was approved in 2011 by the parliament to criminalize the giving of female members to settle feud. This practice also known as Badli-e-Sulh. The Pakistan Penal Code has

⁴⁵ Mst Naila Farhat was defaced by throwing upon her acid by the accused namely Irshad Hussein. The offence was committed when the parents of the victim rejected the proposal of the later. The case was decided by the Lahore high court awarding 1.2 million Pakistan Rupees to the victim in damages and also 12 years imprisonment to the accused. The judgment however stated that the accused may be released upon payment of the fine. The Supreme Court in its judgment 12912-P/2009 dated 11th November 2009 recommended the government of Pakistan to take appropriate steps to enhance the punishment of the offence and also to ensure that such events may not take place.

⁴⁶ Section 336-B, Pakistan Penal Code

been inserted section '310A' which states that, "whoever gives a female in marriage or otherwise in badal-i-Sulh shall be punished with rigorous imprisonment which may extend to ten years but shall not be less than three years". This act is applicable to all those similar practices carried out for the said reason including swara, wanni etc.

2.6 Child marriages and Pakistani law

Pakistan has initially adapted child marriage restraint act 1929. It was declared that child marriage is an offence. Later on some amendments have been made to this act in 2009. Now it is called as child marriage restraint (amended) act 2009. According to this act the punishments are enhanced for violating this act,

Whoever, being a male above eighteen years of age, contracts child marriage shall be punishable with rigorous imprisonment which may extend to two years, or with fine which may extend to one hundred thousand rupees, or with both.⁴⁷

The act has further criminalized the act of solemnizing child marriage and all those people who are involved in such marriage shall be punished. According to child restraint (amendment) act 2009,

Whoever performs conducts or directs any child marriage shall be punishable with rigorous imprisonment which may extend to two years, or with fine which may extend to one hundred thousand rupees, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage.⁴⁸

⁴⁷ Section 4, child marriage restraint (amendment) act 2009

⁴⁸ Ibid, Section 5.

One cannot prove from the text of Quran or traditions of the Prophet (s.a.w.w.) that the girl cannot repudiate from her marriage entered by her father or grandfather. Scholars have given this absolute right to father and grandfather is based on assumption that the nature of this relationship is such that they doesnot have any bad intentions for their child⁵⁰.

According to Mawdudi, there is a need to amend the principle of wilayat al ajbar in the light of recent approach of the society where one can hardly find teachings and practices of sharia' among masses. This principle may be replaced with the principle of Khayar-ul-buloogh.

2.7 Other Relevant Laws

2.7.1 Domestic Violence (Prevention and Protection) act 2012

In addition to the above mentioned efforts made in different times, there has been recent legislation on the issue of domestic violence. The parliament approved a bill by the name of Domestic Violence (prevention and protection) Act only for Islamabad capital territory. The bill was aimed to criminalize the offence of domestic violence and it was proposed to effectively utilize the governmental machinery to stop the offences of domestic violence.

2.7.2 National Commission on Status of Women

National Commission on the Status of Women is a statutory body, established in July 2000. It is an outcome of the national and international commitments of the Government of Pakistan like Beijing Declaration and Platform for Action, 1995; and

⁵⁰ Mawdudi, Abul Ala. "Huqooq-e-Zawjain", P- 36

National Plan of Action (NPA) for Women, 1998. Three Commissions have completed their respective term of three years.

The National Commission on the Status of Women (NCSW) was established with the specific purpose to: Examine policies, programs and other measures taken by the Government for women's development and gender equality; Review laws, rules and regulations affecting the status of women; Monitor mechanisms and institutional procedures for redress of violations of women's rights and individual grievances; Encourage and sponsor research to generate information, analysis and studies relating to women and gender issues; Develop and maintain interaction and dialogue with NGOs, experts and individuals in society at the national, regional and international level; any other function assigned to it by the Federal Government.

2.7.3 Provincial Commission on Status of Women

After the eighteenth amendment several subjects were removed from federal legislative list to provinces including the subject of women development and empowerment. The provincial commissions in provinces has the same mandate as that of National Commission on Status of Women that is to review, policies, programs and other measures taken by the provincial Governments for women's development and gender equality; Review laws, rules and regulations affecting the status of women; Monitor mechanisms and institutional procedures for redress of violations of women's rights and individual grievances. They also has the mandate to propose new legislation if required for strengthening the situation of gender equality in a province.

2.7.4 Jactitation

Jactitation is denial of existing of relationship of husband and wife from either side. According to Black's law dictionary; 'jactitation of marriage is a cause of action which arises when a person falsely alleges that he or she is married to the petitioner and the remedy sought is perpetual injunction against the respondent to cease making such allegations'⁵¹ It is suit when filed in court of law praying the later to compel the opponent party from to approach for any rights which would have been existed if there was any relationship. In another definition the court defined the word jactitation as follow;

In mozley & whiteley's law dictionary meaning of jactitation have been given as " boasting of something which is challenged by another. Specially with reference to the suit of jactitation of marriage where one of two parties has falsely boasted or where one of two parties has falsely boasted or given out that he or she was married to the other, whereby a common reputation of the matrimony right ensure, and the other sues for an order enjoining perpetual silence on the head"⁵²

It can be experienced in courts that when a woman files suit for jactitation it is countered by suit from her husband for restitution of conjugal rights in which the husband prays the court to compel women to perform her duties. It is the duty of court to determine whether any such relationship existed between the parties from available evidences. In case if the court is of the opinion that suit for jactitation is wrongly filed and proof of marriage is enough, the women is asked to perform her

⁵¹ Black's law dictionary page 910

⁵² PLD 1976 Quetta 97

duties. However the courts do not compel wife to live with her husband. In one of such cases the supreme court azad Kashmir decreed as; 'Women not ready to live with her husband due to certain reasons in such court the latter is not authorized to compel such women to live with her husband under all compulsion and circumstances'⁵³

Pakistan has taken significant steps towards improvement of legal regime on pro-women laws in the past fifteen years. One can find laws almost on every topic but the situation has not improved as far as statistical data on this topic is concerned. There is a need to ensure implementation of these laws. The law making process is not mature enough reflecting actual needs of the citizens. In law making process there is need for pragmatic approach in dealing with cases on this topic. Government needs to ensure implementation of laws effectively so that no one can dare to take laws in to their own hands.

⁵³ PLD 2004 SC AJK 17

CHAPTER 3

NUSHOOZ

Islam is a complete code of life and it provides laws on every aspect of life. Therefore it is very important to study Islamic principles on the topic of violence against women. Here in this chapter the term nushooz (disobedience) is discussed in detail. It is very common in our society that people interprets beating of their wives as religious right.

In this chapter it has two sections. The first section discusses the word Nushooz (disobedience) in detail. Different interpretations from known scholars has been studied. The second section discusses the next steps required for settlement of disputes among disputed parties which is arbitration.

3.1 Nushooz

The word Nushooz (disobedience) is reflected in Quran as follows;

'And (as for) those (women) from whom you anticipate rebellion, admonish them, avoid them in the sleeping place and hit them. If they obey you, do not desire and further way to (harm) them. Surely, Allah Knows, Great'.⁵⁴

The meaning of Nushooz is disobedience⁵⁵. It is the denial from performance of duties and Obligations either by husband or by wife. However the reference in this verse of Quran is towards the disobedience on part of wife from her duties towards her husband. An example of Nushooz in order to understand before explaining

⁵⁴ Verse 34, Al-Nisa

⁵⁵ Shafi, Muhammad. Volume 5, "Maaraf ul Quran"; P 399

further is, Nushooz on part of wife is the woman leaving the house of her husband without his permission. The Quran has suggested stepwise solution for such nushooz, at first instance to admonish wife, at second stage to avoid his wife at the sleeping place and finally to strike her. According to Amin Ahsan Islahi it is the duty of husband to understand the meaning of nushooz and where he is convinced that the disobedience by his wife falls under nushooz only then he shall apply the steps for solution. According to Amin Ahsan Islahi;

It is highly recommended that one should understand well the definition of Nushooz before applying the punitive measures. Any negligence or expression of any desire for her own sake or expression of an opinion or a expression of natural feelings does not mean nushooz, it is only disobedience when she takes steps which challenges the superiority of men that causes disturbance within the home.⁵⁶

Thus an expression of opinion or expression of desire does not mean nushooz, it is the denial of performance of obligations imposed upon her by Allah. Some scholars are of the opinion that nushooz does not only cover denial from obligations towards husband but also it includes non-performance of duties imposed by Allah such as fasting during Ramadan or covering her awra.

3.1.1 STEPS TO COUNTER NUSHOOZ:

The Quran itself has laid down the procedure to counter the problem of Nushooz. The verse indicates at the first instant the women shall be advised to

⁵⁶ Islahi, Amin Ahsan. Volume 2, "Tadabbar I Quran", P 292

refrain from her disobedience. According to Abul Ala Maudidi, "where a women disobey her husband and deny the performance of his rights in such case the husband is bound to advise her before taking further steps"⁵⁷. It is commonly seen that women gets convinced once they are advised by their husbands therefore it is not permitted for husband to exhaust the other remedies before advising his wife as suggested by Quran. Similarly according to Amin Ahsan Islahi, "The first method to deal nushooz is to advise her that she should avoid doing such disobedience"⁵⁸.

The scholars are of the opinion that advice must indicate the reward and punishments for performance or non-performance of an obligation. Husband being head of the family owes the responsibility to peacefully settle his family problems. He should convince his wife that such denial of her obligations is not in the interest of family and for herself and that if such disobedience is continued she may lose her rights to which she is entitled from her husband. Where the wife continues to disobey her husband and the obligations imposed upon her by shari`a the Quran has referred to apply the second stage. According to Mufti Muhammad Shafi;

The scholars have interpreted the word "Fil-Madhajia" in the verse of Quran separately only to the extent of bed and not home as this may saddened the wife more than what is required and may create problems.⁵⁹

The purpose of separating the sleeping place to give a clear message to wife that such continuance of nushooz is not in the interest of family and this separation also invites another rule if it is prolonged i.e. According to Abul Ala Mawdidi, 'The natural time frame has been established by Allah for such refrainment from physical

⁵⁷ Mawdudi, Abul Ala. "Huqooq-e-Zawjain", P- 45

⁵⁸ Islahi, Amin Ahsan. Volume 2, "Tadabbar I Quran", P 293

⁵⁹ Shafi, Muhammad. Volume 5, "Maaraf ul Quran"; P 500

interaction which is four months (ila), where the wife continues Nushooz, it is recommended to divorce her'.⁶⁰ Thus the matter shall be taken very seriously by the woman which come across this situation from her husband. According to Amin Ahsan Islahi; "Where a woman does not refrain from such disobedience the second method is to avoid meeting her with frankness and the husband should separate his bed from her".⁶¹

The scholars have generally consensus that separation shall limits only to extend of beds and not further, as the ultimate purpose of such separation is to give message and not ruin the family bond forever. The same is reflected in the following tradition of the Prophet S.a.w.w;

"Once a companion reported, 'I asked the Prophet S.a.w.w. that what the rights of our wives on us are. The Prophet s.a.w.w. replied that when you eat your food; feed your wife with same food. When you wear your cloths make sure you also have given cloths to your wife, and do not slap your wife on their face and if you want to separate yourself, only do so in your beds and in that case do not leave your houses'".⁶²

Thus one should not exceed the limits while punishing his wife as this will give her the right to ask for compensation. Islam believes in the balance of rights and where in case there is violation on part of either party, the punishment shall only be limited to the amount of offence committed. According to Abul Ala Mawdidi;

If a woman knowingly the purpose of separation of bed by her husband, does not mend her ways and start obeying her husband's commands, it will be

⁶⁰ Page, 46, Huqooq-e-Zawjain

⁶¹ Tadabbar I Quran, Volume 2, Page 293

⁶² Maarat ul Quran, Volume 5, Page 400.

unnecessary to keep continue the separation of beds for more than four months. The behavior of the woman indicates that she does not want to live with her husband anymore and she may be given divorce as she does not change herself.⁶³

The Quran has further suggested the third step where the two steps are applied and brings no result is to punish the wife with physical punishment. According to Amin Ahsan Islahi;

"The third and last resort where the wife does not mend her ways is physical punishment, which is also established in the tradition of the prophet S.a.w.w that it should not be on face and should not in any case cause permanent damage".⁶⁴

This is to be strictly applied only where the rightful commands of her husband is not followed. It is not allowed in any circumstance to give physical punishment to wife who does not fall under the definition of nushooz. Punishing wife more than what she deserves is crime and husband shall face legal punishment for such infringement. According to Abul Ala Mawdidi;

"Physical punishment is given in extreme circumstance where the acts of women are not bearable and beyond the limits where one can forgive another, however it should be kept in mind that even in awarding physical punishment the limits shall not be exceeded described by Prophet S.a.w.w. in

⁶³ Mawdudi, Abul Ala. "Huqooq-e-Zawjain", P- 46

⁶⁴ Islahi, Ami Ahsan. Volume 2, "Tadabbar I Quran", P-293

any case. If man exceeds the limit, the woman shall have the right to get remedy under the law".⁶⁵

The tradition of the Prophet S.a.w.w. as described above establishes the limit of physical punishment as;

"Once a companion reported, 'I asked the Prophet S.a.w.w. that what the rights of our wives on us are. The Prophet s.a.w.w. replied that when you eat your food; feed your wife with same food. When you wear your cloths make sure you also have given cloths to your wife, and do not slap your wife on their face and if you want to separate yourself, only do so in your beds and in that case do not leave your houses".⁶⁶

Thus a man should not in case punish his wife beyond the limits described by the tradition of the Prophet S.a.w.w.

3.1.2Nushooz on part of Husband

And if a woman fears from her husband contempt or evasion, there is no sin upon them if they make terms of settlement between them - and settlement is best.⁶⁷

The verse of Quran establishes the principle where nushooz is done on part of the husband. According to Amin Ahsan Islahi, 'Refusal to accept the rights of wife and instead tries to get rid of his wife is nushooz on part of husband'.⁶⁸ Now the

⁶⁵ Mawdudi, Abul Ala. "Huqooq-e-Zawjain", P- 48.

⁶⁶ Shafi, Muhammad. Volume 5, "Maaraf ul Quran", P-400

⁶⁷ Al-Quran, Verse 128, Chapter 4

⁶⁸ Islahi, Amin Ahsan. Volume 2, "Tadabbar I Quran", P-398

principle is where man starting turning away from his wife out of dislike or any other reason, they should work out the terms of peace. The wife does not have the same authority in case where nushooz is done on part of her husband, as the powers and status vested by Almighty Allah to man are different from that of woman.

The wife can advise her husband and reminding him of obligations imposed upon him by Allah and that he will be answerable for his deeds but cannot further go beyond it. The wife cannot separate her bed from her husband. The husband has absolute right to demand for sexual intercourse any time except the time not permissible under Islam. According to Imran Ahsan Khan Niazi; 'The husband has the right to look at his wife and touch her as he likes, as long as she is alive. This right ceases with her death according to the Hanafi School'.⁶⁹ Furthermore there are certain conditions where women can stop their husbands from sexual intercourse which are; 'The (marriage vests the right of) permissibility of intercourse, except in the state of menstruation, post-natal bleeding and Zihar prior to expiation'.⁷⁰

The verse of Quran indicates that in case where the husband expresses his displeasure with the relationship and immediate conciliation may be sort in order to avoid permanent rift in relationship. According to Amin Ahsan Islahi;

'In case of Nushooz on part of husband, both the parties shall compromise. In case where one party is not willing for such compromise, in that case one party must compromise for the sake of relationship. The status of the man

⁶⁹ Nyazee, Imran Khan. "Outlines of Muslim Personal Law", P-69

⁷⁰ Nyazee, Imran Khan. "Outlines of Muslim Personal Law", P-68

suits him to offer his wife with more comfort and needs she demand for; instead of asking her back'.⁷¹

The practice of the Prophet s.a.w.w. shows that way out can be sort where it is within the permissible limits. According to one tradition;

Ibn Abbas said: "Saudah feared that the Prophet (sas) was going to divorce her so she said to him, "O Messenger of Allah, do not divorce me but keep me and make my day for Aisha." The Prophet (sas) did so and the verse was revealed concerning that.⁷²

Thus the practice of the Prophets establishes general rule with regard to conciliation in matters of nushooz which is, a party must compromise to have greater advantage in the coming life.

3.2 ARBITRATION

And if you fear dissension between the two, send an arbitrator from other people. If they desire reconciliation, Allah will cause it between them. Indeed, Allah is ever knowing and acquainted (with all things)⁷³

Quran has established another rule to resolve the matter between husband and wife, where the problem is not solved after applying the aforementioned steps. The utmost effort of Islam is to save the family from getting scattered in the shape of divorce. The impact of divorce is not limited only to the couple who part there ways but it affects the entire family including the society. The husband can divorce his wife and the woman can seek divorce, but before taking any such decision all the efforts

⁷¹ Islahi, Amin Ahsan. Volume 2, "Tadabbar I Quran", P-399

⁷²<http://www.java-man.com/pages/Marriage/Marriage09.html> last accessed, 06/03/2014.

⁷³ Verse 35, Chapter-3, Al-Quran,

shall be made to save the bond of the family. Here Allah establishes another rule by asking the society and elders of the family to play their role in saving the family from destruction. According to Abul Ala Mawdidi; 'Here both parties mean arbitrators as well as the disputed couple. Misunderstandings can be solved provided the parties are willing to do so and also the arbitrators have the will to remove misunderstandings'.⁷⁴

According to Amin Ahsan Islahi, sometimes it is not possible for the parties to realize the impact of misunderstanding i.e. dispute may be due to some temporary problem which can be removed. Islam believes in the strength of the family system and thus encourages the society to intervene in the problem and provide a way out for the family having trouble. According to Amin Ahsan Islahi;

(The procedure laid down for nomination of arbitration is) to appoint one arbitrator from husband's side and another from wife's side. Both arbitrators shall make their efforts to resolve the matter. Sometimes it is difficult for parties to resolve the matter themselves and that is why it is resolved by well-wishers of both sides.⁷⁵

Family issues are very sensitive, it is usually not limited only to husband and wife but it affects the whole family from both sides. The trend of the society once they come to know about such problems they usually provoke the parties and make the problem more serious. However there are people within the family which tries to mediate between the parties and solve the matter. Islam believes in solution of the

⁷⁴ Mawdudi, Abul Ala. "Tafheem Ul Quran", P-350

⁷⁵ Islahi, Amin Ahsan. Volume 2, "Tadabbar I Quran", P- 294

matter within the family before the matter is referred to court. The Quran thus gives the procedure in the verse mentioned above. According to Abul Ala Mawdudi;

The verse of Quran establishes the procedure for solution of misunderstanding between husband and wife within the family. The procedure is that each party shall nominate their representative for arbitration who shall try to figure out the problem between the couple and give the best solution for the problem.⁷⁶

There is general consensus among the scholars that even where the matter is referred to the court, in that case even the court shall formulate an arbitration having members from both sides and resolve the matter.

3.2.1Who shall be the arbitrators?

The verse of Quran according to scholars establishes the criteria for appointment of arbitrators. The purpose for establishing the procedure for arbitration by Quran itself is actually discouraging those elements which are outside the family. The obvious reason is to protect family from embarrassment in the society and keeping their honor. According to Mufti Muahmmad Shafi,

The verse of Quran has addressed the rulers, the elders of the parties, those people who have stakes with the disputed family and the Muslims in general, the procedure which not only removes the misunderstanding between the parties but also stops the blame game by the parties. The procedure solves

⁷⁶ Tafheem Ul Quran, Volume 1, Page 350

the misunderstanding and most importantly it stops the matter to reach the court and save from further embarrassment.⁷⁷

Sometimes it is not possible for couple to nominate representatives by themselves or situation does not favor the formulation of arbitration from couple side. Even in this case it is the duty of the society to intervene in the matter to resolve it at the earliest. According to Abul Ala Mawdidi;

Allah has authorized the couple to nominate who so ever they want for solution of their dispute. In case where they failed to nominate arbitrators, the elders of the family shall intervene in the matter and try to resolve it. In case where the matter is reached to the court, the court shall resolve the matter through family members by nominating the arbitrators.⁷⁸

Similarly Amin Ahsan Islahi has interpreted the verse of Quran in his book of Tafseer; Tadabbar I Quran, for establishment of arbitration in the following manner; "In my opinion the verse addresses well-wishers of husband and wife and also to the elders of their family and tribe. The mandate of the arbitration is limited to bring peace through suggestions and recommendations."⁷⁹ Some scholars have deducted the criteria for arbitrators from the verse of Quran. According to Mufti Muhammad Shafi;

To resolve the matter, each side shall nominate their representative. The term 'Hakam' describes the qualification of the arbitrators that they must be

⁷⁷ Shafi, Muhammad. Volume 2, "Maraful Quran", P-403.

⁷⁸ Mawdudi, Abul Ala. Volume 1, "Tafheem ul Quran", P-351

⁷⁹ Islahi, Amin Ahsan. Volume 2, "Tadabbar I Quran", P-294

capable to resolve the matter and the matter of fact is; capability can be possessed by a person only when he is honest and knowledgeable.⁸⁰

It is very important to understand that the people who are appointed must have the capacity to look in to the matter and able to resolve it. For the convenience of people Islam has not imposed restrictions as regard to how the arbitration can be carried out. It is the sole discretion of the arbitrators to resolve the matter they deem fit. According to Mufti Muhammad Shafi; "the procedure as to how to resolve the matter has been left over to the arbitrators. Allah will help them and will help them by uniting the family".⁸¹ The matter can only be resolved where the parties are willing to do so; the verse indicates Allah will help in solution of the matter by bringing the hearts of the couple closer.

3.2.2 What are the powers of arbitration?

Scholars are of the opinion that the arbitration formed has only authority to give recommendations to the couple regarding the solution of the problem. There is one famous tradition of Hazrat Ali r.a. as follow;

Once a man and his wife came to Hazrat Ali r.a. accompanied by large number of their family members. Hazrat Ali r.a. asked both sides to nominate one person from each side for arbitration. After nomination, Hazrat Ali r.a. addressed both arbitrators and asked them do you have any idea about your role? (Being arbitrator) and what you need to do? You have the responsibility to agree on terms that can remove misunderstanding and reunite the family

⁸⁰ Shafi, Muhammad. Volume 2, "Maaraful Quran", P-403

⁸¹ Shafi, Muhammad. Volume 2, "Maaraful Quran", P-403

where you believe there is a way out. However where you are convinced that no way out is possible then you have the authority to dissolve the marriage. The woman agreed and declared that she will submit to the reward of the arbitration; however her husband refused to accept to the extent of dissolution of marriage. Instead of dissolution he agreed to accept any monetary penalty to be paid to his wife where the arbitrators decide so. Hazrat Ali asked him to authorize the arbitrators as authorized by his wife. The scholars conclude from this that the arbitrators must have authority to take any decision (including the decision to dissolve the marriage). However the practice establishes the principle that they do not have the authority themselves unless given by the husband and wife.⁸²

Mufti Muhammad shafi holds the view that in the light of the above stated case, the arbitrators do not have the authority to dissolve the marriage if they do not reach any peace deal. They can dissolve the marriage only once they have been expressly authorized to do so by the couple. According to him;

The only purpose for nomination of arbitrators is to remove the misunderstanding and resolve the matter through dialogue. They have no other power (To dissolve the marriage). They can be further empowered by the couple by declaring that their decision will be accepted. In that case where the arbitrators agreed to dissolve the matter, the parties shall be bound to accept their decision.⁸³

According to Abul Ala Mawdidi, as regard to acceptance or rejection of the recommendations of the arbitrations is concerned; the scholars holds different

⁸² Shafi, Muhammad. Volume 2, "Maaraful Quran", P-404

⁸³ Mawdudi, Abul Ala. Volume 2, "Tafheem Ul Quran", P-404

opinion. According to one group of scholars, it is up to husband and wife to accept or reject the recommendations of the arbitration. The other group of scholars believes that they can enforce their decision.

The scholars disagree as regard to the powers of the arbitrators. One group of scholars is of the opinion that arbitrators can only present recommendations to the couple. It is up to husband and wife to accept or reject such recommendation. The second group believes that they can impose their decision by asking the parties to agree on the terms they have decided but they don't have the authority to dissolve the marriage.⁸⁴

There is unanimity as regard to power of dissolution of marriage is concerned that the arbitration cannot dissolve the marriage unless vested the power by the couples themselves. Mawdidi says;

Where the couple have vested their decision to dissolve the marriage in arbitrators, in that situation if the arbitrators reach to the conclusion to dissolve the marriage; the couple will be bound to accept their decision. This principle is followed in Hanafi and Shaafi Schools.⁸⁵

Allah has vested the power to dissolve the marriage in husband and unless it is delegated it can only be exercised by the husband himself. There is a dispute as regard to dissolution by the court. According to some scholars the courts do not have the authority to dissolve the marriage, but some believe they can dissolve the marriage in some circumstances.

⁸⁴ Mawdudi, Abul Ala. Volume 1, "Tafheem Ul Quran", P-351
⁸⁵ Mawdudi, Abul Ala. Volume 1, "Tafheem Ul Quran", P-351

Women are not servants of men in Islam, they have been given all the rights to live their life within the described boundaries of sharia'. Exploitation of women is strictly prohibited and men are not allowed to treat their wives unjustly. In order to settle disputes of family the teachings of Islam provides the best opportunity in every sense. Sharia' teachings for settlement of disputes can be proved better than dragging courts in every family matter.

Chapter 4

INTERNATIONAL LAW ON VIOLENCE AGAINST WOMEN

International conventions are one of the key elements of international law. Sovereign states bind themselves in the light of agreed terms and conditions on a particular subject matter in result of convention. There are several conventions that discuss the issue of violence against women and urge member states to take necessary steps to prevent their respective citizens from becoming victim to such violations.

Here in this chapter which is divided in three main sections. The first section discusses the background and primary documents adopted by international community as first instruments of human rights. The second section discusses international conventions having provisions for rights of women and preventing them from violence and finally in the last section the chapter discusses pro women laws in other countries especially in India and America.

4.1 UN CHARTER

The preamble of the United Nations Charter describes that the purpose of establishment of United Nations is to provide fundamental human rights to every individual of the world and also to create a harmony among the member states where every individual is treated equally without any distinction on the basis of gender. In order to achieve world peace the member states are urged to ensure the application of the principles lay down in the charter in their respective states in letter and spirit. The charter says, 'to reaffirm faith in fundamental human rights, in

the dignity and worth of the human person, in the equal rights of men and women and of nations large and small'.⁸⁶

The UN charter which is legal instrument and binding upon its member states urges all necessary steps to be taken to ensure human rights to every individual. The First Article of the Charter provides 'To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace'.⁸⁷ The UN charter further establishes that no distinction is to be made on what so every ground either on the basis of religion, sex or race. The member states have agreed to promote universal peace by providing fundamental rights to every individual irrespective of any race, religion or sex. According to UN charter,

To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;⁸⁸

In order to achieve world peace; it is essential that all nations get their fundamental rights without distinction of religion, race or nationality.

4.2 UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights is the first instrument of Human Rights approved by the United Nations General Assembly setting forth the principles

⁸⁶ Preamble of UN Charter

⁸⁷ Article 1 (2), UN Charter

⁸⁸ Article 1 (3), UN Charter

of Human Rights for the world community. The articles of the Universal Declaration of Human Rights⁸⁹ where establishes the fundamental rights of the people of the world for the world peace also emphasis the equal treatment of all people around the world for prosperous and better living world. The first article of the declaration provides that all human beings are born free and equally entitled to rights⁹⁰. State members have agreed to take necessary steps in their respective countries for to ensure the fundamental right of freedom and equal treatment to their citizens. Similarly the second article of the UDHR declares that no discrimination is to be made what so ever on any ground and that the fundamental rights are to be honored⁹¹.

The UDHR as obvious from its name did not bind the member states legally however it has great moral importance and it provided basics for other human rights treaties that were adopted by international community at the later stages. UDHR establishes that it is the fundamental right of the human being to be provided liberty of life and to be protected from torture and inhumane treatment⁹². It also recognizes the fundamental right to exercise the right to choose one own life partner. The member states are urged to ensure this right to be exercised by their citizens without any interruption. The UDHR binds the states to take every step to ensure the safety and security of the family units.⁹³

⁸⁹ The Universal Declaration of Human Rights was the first ever Human Rights instrument adopted by international community in 1948. The UN general assembly adopted the declaration setting forth the guidelines for human rights to be adopted with passage of times. It was presented in the general assembly and 50 members states took part in voting in which eight abstained with none gave dissenting vote. The UDHR is always deemed to be the significant achievement of the world community as it was adopted after the atrocities of World War II. This declaration provided platform for other human rights treaties adopted at later stages by the world community

⁹⁰ Article 1, UDHR

⁹¹ Article 2, UDHR

⁹² Article 5, UDHR.

⁹³ Article 16, UDHR

4.3 UN Conventions on Human Rights

The international community stresses member states for provision of equal rights to men and women in their respective countries. It emphasizes the need to bring laws of states in conformity with standard established by International instruments i.e. UN charter and its conventions. Pakistan has made sincere efforts to become signatory to UN Treaties. Given below are the UN Treaties on the subject of women rights and which Pakistan has already ratified:

1.	Convention on the Elimination of all Forms of Racial Discrimination (CERD)	1966
2.	International Convention on Civil and Political Rights (ICCPR)	1966
3.	International Convention on Economic, Social and Cultural Rights (ICESCR)	1966
4.	Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)	1979
5.	Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	1984
6.	Convention on the Rights of the Child (CRC)	1989

4.3.1 Convention on the Elimination of all Forms of Racial Discrimination (CERD)⁹⁴

CERD was the first UN instrument on Human Rights after Universal declaration on Human Rights. In its preamble it provides the purpose of the instrument is to promote the basic concept of United Nations charter and UDHR to promote universal harmony and equal rights to every human being without

⁹⁴ Convention on the Elimination of all Forms of Racial Discrimination was passed 7th March 1966 by UN general assembly. This convention urges member states to amend their local laws in accordance with provisions of this convention and remove all form of discrimination on what so ever ground. This convention has 30 articles, Pakistan ratified convention on 21st September 1966

discrimination on the basis of sex, caste, religion or any other ground. According to it racial discrimination is

distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.⁹⁵

This definition of discrimination has provided wide scope for interpretation of all those acts, laws or definitions which can be construed as racial discrimination.

4.3.2 International covenant on civil and political rights⁹⁶

The United Nations charter and the Universal declaration of human rights provided platform for other international instrument adopted to promote human rights in the world. Although the UDHR itself did not bind member states due to its nature of legal value but it played significant role to guide other instruments adopted at later stages of time. One of such instrument is international covenant on civil and political rights 1966. The covenant binds member states to ensure the rights to be available to human family. It prohibits any discrimination made on the bases of sex, colour, race, religion or political differences. The covenant says:

⁹⁵ Article 1, CEDR

⁹⁶ The International Covenant on Civil and Political Rights (ICCPR) is ratified by majority of the countries of the world. It was approved by the United Nations General Assembly on 16 December 1966, and in force from 23 March 1976. It urges the member states to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. As of April 2014, the Covenant has 168 signatories and 168 parties.

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁹⁷

The world peace can only be attained when every individual is ensured the fundamental right. Apart from steps from refraining discrimination, the ICCPR urges member states to ensure equal right of men and women to exercise their civil and political rights without any coercion. It says; 'The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.'⁹⁸ Moreover the covenant ensures the right of life to be protected by all member states and that no one should be deprived of enjoyment of life. The covenant says; 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.'⁹⁹

ICCPR provides special provisions for those women involved in any crime against which any sentenced has been passed by the court. In case where the convicted female is less than eighteen years it urges that no execution of death penalty shall be carried out, similarly in cases where the convicted woman is pregnant even in that case no execution of death penalty shall be carried out. The covenant says; 'Sentence of death shall not be imposed for crimes committed by

⁹⁷ Article 2, ICCPR

⁹⁸ Article 3, ICCPR

⁹⁹ Article 6 (1), ICCPR

persons below eighteen years of age and shall not be carried out on pregnant women.¹⁰⁰ The purpose of the international covenants is to ensure fundamental rights to human family.

4.3.3 International Convention on Economic, Social and Cultural Rights (ICESCR)¹⁰¹

ICESCR upheld the fundamental phenomena of human rights to every citizen living in every state. It emphasizes the equal role of man and women in the exercise of fundamental rights. It further establishes that the convention acknowledges equal rights of men and women and to be provided by member states. According to the text of this convention; 'the States undertake to ensure the equal right of men and women to the enjoyment of all rights in this treaty'¹⁰². ICESCR forbids all those elements which result in economic exploitation of citizens in every state and particularly women and children. Furthermore the articles forbid child labor in any kind and advocates protection of family unit in accordance with principles of international law.

¹⁰⁰ Article 6 (5), ICCPR

¹⁰¹ Convention on economic, social and cultural rights together with International convention of civil and political rights and UDHR is also called as International bill of human rights. The UN general assembly adopted ICESCR in 1966. It has 31 articles, Pakistan ratified ICESCR in 2008

¹⁰² Article 3, ICESCR

4.3.4 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979¹⁰³

CEDAW is considered one of the most significant developments for the rights of women in particular at international level. The convention defined the term discrimination as

"...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."¹⁰⁴

The definition of discrimination provided boundaries and limits to member state to modify their national legislation in the light of convention. The following articles of the convention compel member state to amend existing laws and to repeal all those provisions which are considered discriminatory in the light of this convention. The convention further emphasizes on establishment of mechanism which can prevent discrimination against women by establishing tribunals etc. The convention further establishes that women shall have equal political rights to which men are entitled in state. According to it;

'States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

¹⁰³ Adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble and 30 articles. Pakistan became party to it in 1996 with reservations on article 29 para 1 and declared any inconsistency with constitution of country shall not be accepted.

¹⁰⁴ Article 1, CEDAW

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.¹⁰⁵

Moreover the convention provides that women shall have equal right in representing government and working at international level. Member state shall provide equal opportunity of employment to women with that of men and ensure their equal participation in every field of life.

4.4 Laws on Violence against Women in other countries

It is important to study comparative laws on issue of violence against women in other countries. In this study we briefly discuss laws enacted on the issue in India and United States of America.

4.4.1 Indian Laws on Violence against Women

Indian laws have greater similarity with that of Pakistani laws in context of definition of offences and its punishments. The offences of murder, causing body injury are defined in Indian Penal Code which also covers the offences committed against women. In order to prevent the rights of women and to ensure punishment

¹⁰⁵ Article 7, CEDAW

for perpetrators the Indian law has criminalized the act of kidnapping, abduction of women to compel her for marriage.¹⁰⁶ Similarly kidnapping for any other reason and causing hurt etc is punishable under provisions of Indian Penal Code.

In recent past the Indian state has emerged with stigma of growing cases of rape across the country. The brutal act of rape, acid throwing and other customary evil practices are widely practiced across the country. The frequent cases of rape across the country has compelled the Indian lawmakers to legislate specifically in this regard, hence the following provision was enacted

(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the women raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,—

(a) being a police officer commits rape—

(i) within the limits of the police station to which he is appointed; or

¹⁰⁶ S 366, Indian Penal Code

- (ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or
- (iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1 — Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2 — "Women's or children's institution" means an institution, whether called an orphanage or a home for neglected woman or children or a widows' home or by any other name, which is established and maintained for the reception and care of woman or children.

Explanation 3 — "Hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.¹⁰⁷

Indian penal code has incorporated punishment for non-consensual intercourse of husband with his wife that is the husband is not authorized to have intercourse with his wife when they are living separately and the consent of wife has not been obtained.¹⁰⁸ It can also be said that the law recognizes the term marital rape and has provided punishment for those who violate the same. The customary practice of dowry death is criminalized. According to it,

- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was

¹⁰⁷ 376. Punishment for rape —

¹⁰⁸ 376A, Intercourse by a man with his wife during separation

subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation —For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.¹⁰⁹

Apart from prescribing punishment for customary evil practices it also prohibits the violation of the dignity of women and committing any act with intention to outrage the modesty of women.

4.4.2 American Laws on Violence against Women

Violence against women is a global issue and it exists everywhere in the world however the nature of offences varies from place to place. The offence committed in Pakistan and India is different from those which are committed in United States or Western Countries. In order to prevent women from violence each state has adopted laws. The laws of United States prohibit discriminatory acts as well as violent acts against their women citizens. In this regard Violence against

¹⁰⁹ 304B, Indian Penal Code

Women Act (VAWA)¹¹⁰ has been enacted. Some of the provisions of VAWA are discussed below;

4.4.2.1 Interstate travel for commission of Domestic Violence:

Any person who travels between states for the purpose of killing, injuring or harassing their intimate partner¹¹¹ or dating partner¹¹² is a federal crime. The law provides that intention of the perpetrator needs to be established to punish under this section of law. i.e. the perpetrator has travelled from one state to another for the purpose of killing, injuring or harassing their intimate partner or dating partner.¹¹³

In pursuance of criminal intention any person who causes their intimate partner or dating partner to cross state lines by force, coercion, duress or fraud; during which they commit or attempt to commit a crime of violence such act shall be a federal crime. This does not require intention of the perpetrator to be established however the element of force, fraud, and duress needs to be proved.¹¹⁴

¹¹⁰In recognition of the severity of the crimes associated with domestic violence, sexual assault and stalking, Congress passed the Violence Against Women Act of 1994 (VAWA 1994) as part of the Violent Crime Control and Law Enforcement Act of 1994. The protections and provisions afforded by the 1994 legislation were subsequently expanded and improved in the Violence Against Women Act of 2000 (VAWA 2000) - <https://www.legalmomentum.org/history-vawa#sthash.VPscd6wm.dpuf> Last seen 13/07/2013

¹¹¹The term "intimate partner" includes a spouse, a former spouse, a past or present cohabitant (as long as the parties cohabitated as spouses), and parents of a child in common

¹¹² According to the Act: The term "dating partner" refers to a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship

¹¹³18 U.S.C. §2261(a)(1)

¹¹⁴18 U.S.C. §2261(a)(2)

The law further states that any travel between states for the purpose of violating a valid protection order or any portion thereof shall be considered federal crime. According to statute;

It is a federal crime to travel between states, or to enter or leave Indian country, or within the SMTJ with intent to violate the portion of a valid protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to another person. To establish a violation of this statute, the Government must demonstrate that a person had the specific intent to engage in conduct that violates the qualifying portion of the protection order at the time of interstate travel and that a violation actually occurred. This statute does not require an intimate partner relationship - although this relationship may be required by the state or other governmental body issuing the order – nor does it require bodily injury¹¹⁵.

The federal law of Violence against Women apart from condemning physical and sexual abuse of intimate partner prohibits any measures taken thereof in pursuance to achieve the criminal intent. The punishment prescribed for the aforementioned offences varies from imprisonment for five years in case of no injury to life imprisonment in case of victim's death.

4.4.2.2 Interstate Stalking and Cyber Stalking:

According to Violence Against Women Act it is a federal crime to travel

¹¹⁵18 U.S.C. §2262(a)(1)

between states with intention of killing, injuring or harassing intimate partner or dating partner or to place the intimate partner or dating partner under surveillance with intent to kill, injure or harass and also in the course of such travel the victim or their immediate family¹¹⁶ is placed in reasonable fear of death or serious body injury or emotional distress member.¹¹⁷

The law also prohibits cybercrime committed against intimate partner. According to it;

It is a federal crime with intent to (1) kill, injure, harass, or place under surveillance with the intent to kill, injure, harass or intimidate, or (2) cause substantial emotional distress, or place in reasonable fear of death or serious bodily injury a person in another State or within the SMTJ; to use the mail, any interactive computer service, or any facility of interstate commerce (including the Internet) to engage in a course of conduct that causes substantial emotional distress or places such person in reasonable fear of the death of, or serious bodily injury to, that person or a member of that person's immediate family or that person's intimate partner. A single communication is not sufficient. The statute defines a "course of conduct" as a "pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose¹¹⁸."

The law is only applicable when the offence has been committed more than once. According to the law the penalty for the afore stated offences in case of no

¹¹⁶"Immediate family" includes a spouse, parent, sibling, child or any other person living in the same household and related by blood or marriage

¹¹⁷18 U.S.C. §2261A(1)

¹¹⁸18 U.S.C. §2261A(2)

injury is imprisonment for five years or in case of death of the victim the penalty is imprisonment for life.

4.4.2.3 Crime Victims' Rights Act,

The following rights under the Crime Victims' Rights Act are enjoyed by victim of violence including domestic violence victim:

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
- (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- (5) The reasonable right to confer with the attorney for the Government in the case.
- (6) The right to full and timely restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.¹¹⁹

¹¹⁹18 U.S.C. §3771

4.4.2.4 Restitution,

In Violence against Women case, the Court is under obligation to order for compensation for the victim and to reimburse the entire losses the victim suffered including medical, psychological care, physical therapy and the attorney's fee and other cost incurred in obtaining a civil protection order.¹²⁰

International community monitors performance of every state in fulfilling their international commitment which has impact on trade and other important international affairs. It is impossible for any member state to violate its international commitment. Pakistan has taken several steps to fulfil its commitments on human rights conventions. It is primarily responsibility of the government to portray actual picture of the society, since it is presumed in outside world that Pakistan is amongst the leading violator of human rights in international community. Furthermore Pakistan needs to improve its governance to provide justice to its citizens and improve their living standard.

¹²⁰18 U.S.C. §2264

CONCLUSIONS AND RECOMMENDATIONS

Awareness on Rights of women given in Islam

In order to aware the masses on the subject of women rights in Islam, the government shall take necessary steps in this regards i.e. Add chapters regarding this subject in curriculum from the school level and also in higher studies. Beside state responsibility it is also mandatory upon each individual to learn and seek knowledge given to every individual in Islam. A man is strictly forbidden to misuse the power given to him as head of the family in Islam, so that the relationship of husband and wife may not turn into those of master and servant. On the other hand woman is not supposed to take over the position of a man rather she is encouraged to be useful member of a society and not a deprived third class citizen of it, as it used to be before Islam. Exemplary punishments shall be given to perpetrators who deprive women from their rights given in Islam and also in Pakistani law.

Steps for Effectiveness of Pro-Women laws

The government shall take the following necessary steps to ensure effectiveness of pro-women laws in the country;

Implementation of Laws:

Although advancements have been made through passage of new legislation for protection of women in the country, ongoing challenges to implement these laws effectively are persisting. The following areas need to be addressed:

- Rules are to be developed for the implementation of the Women's Protection Act 2006;

- Implementation of the Protection for Women from Sexual Harassment at the Workplace Act is required, through appointment of an exclusive Ombudsperson and functioning Inquiry Committees within each organisation which are responsible for the implementation of the law;
- Complaint mechanisms for hearing cases of sexual harassment at the workplace need to be formulated;
- The government mechanism for a convincing implementation of CEDAW needs to be improved. After the 18th amendment the need to systematize the mechanism at the provincial level needs to be built up. Invigorating CEDAW committees and soliciting their effective contribution to CEDAW report needs to be secured.

Support to expedite law making for women

Legislation for women is fraught with impediments which not only emanates from objection to the women empowerment agenda but also from shoddy preliminary work undertaken in preparation and contextualization of bills:

- Domestic violence bill was unable to be approved from national assembly due to absence of consensus on the bill among the stakeholders. Government need to draw strategy in this regard and take necessary measures to on board those who have reservations over it;
- As part of NCSW's mandate, alongside assessing the need for required legislation for women or working for improving the existing one, it also has to work on lobbying with the Members of the National Assembly, senate and civil society for it. The lobbying system needs to be systematized so that instead of taking up each bill under an ad hoc arrangement, a

permanent working group that meets after stipulated time for a pre-determined period and mandated with the task to lobby, would bear more effective results;

- Standing as well as Select Committees in the parliament are the backbone of legislative process. After the bill is presented and gets admitted to the house, and it passes the acceptance stage, it gets referred to the Standing Committee for final processing of it. Post 18th amendment, the women's development subject stands devolved to the province. Increased and meaningful legislation can be achieved if the Women's Development Standing Committee is sensitized and strengthened.
- Standing as well as Select committees can solicit external technical advice to make its work easier. Development partners can help in providing this technical support in the process;

Improved System for Women's Protection

Alongside improvement in legislation and rules, the systems that implement these laws and rules have to be reformed for effective protection and redressal for women:

Law enforcement system

- Revised Standard Operating Procedures for the police force, need to be implemented, with more policewomen recruited, trained and placed in the system formulated as Government's response mechanism in cases of violence against women;
- The case investigation process is archaic and the police department needs to take measures to adopt the latest mechanisms of investigation. This

includes establishing and training an exclusive team for the investigation of cases of violence against women;

- Staff in the medico-legal system should be sensitized to gender issues so that they perform their duty professionally and sympathetically to women who are victims of abuse or rape, being focused on the injuries of the females alleging rape;
- Forensic departments should be established in district hospitals where cases of violence against women can be examined locally.

Judicial system

- The federal government as well as provincial governments should make arrangements to provide free legal aid to women at district level;
- The federal government and provincial governments must develop strategy to provide support to higher and lower judiciary to ensure expeditious disposal of cases and so prevent 'Justice delayed Justice Denied'.

Protection, Monitoring and Response Mechanism for Violence against Women:

An effective protection, monitoring and response mechanism that is systematized instead of delivering under ad-hoc arrangements or case by case basis has to be put in place by the respective provincial government for countering violence against women. This system would evolve into encompassing other areas like resettlement and rehabilitation of victims in the future. This would entail the following:

- A government oversight mechanism at the district, tehsil and village/neighbourhood council level needs to be constituted for monitoring

violence against women cases and not only countering but also preventing them through timely interventions;

- A government response mechanism in cases of violence against women needs to be systematized;
- The provincial commissions established in the light of NCSW shall be made more autonomous so that they are able to effectively pursue their mandate
- An overall protection mechanism, including a monitoring procedure, a response mechanism, and the appointment of a Protection Ombudsperson needs to be established by each provincial government for countering gender based violence in the province effectively.

Civil Society Organizations (CSOs)

- CSOs should contribute to building capacity of police and the judiciary especially in cases pertinent to violence against women;
- CSOs should assist Government in compiling information for CEDAW report and also provide them technical assistance in writing CEDAW report
- CSOs should focus on constructive activities and bring in to light genuine cases of violence against women
- CSOs should play constructive and positive role in writing CEDAW report which suggests improvements in system rather criticising the existing one

Development Partners

- The allocation of funds for the provision of free legal aid, crises centres and shelters as well as for the training to police/judiciary/ medico-legal staff should be prioritized;

- Technical support to establish an inclusive protection system for women by the provincial government should be provided;
- The development of comprehensive guidelines for establishing an effective provincial government's monitoring and response mechanism for gender based violence, should be supported;
- The lack of legislation at the provincial level for the protection to women and respective implementation mechanisms for laws and treaties should be addressed. Interest groups should be fostered so that the provincial government fulfils the aforementioned as part of its commitment under the international CEDAW agreement;
- As the Standing and the Select Committees should be sensitized, strengthened in their role of lobbying for women's rights. Through regular consultations gender groups can be sensitized that effective legislation is required to improve women's legal situation, which is the constitutional right of women in Pakistan, and the state's responsibility under CEDAW. Members of the Standing Committees should be supported in lobbying and receive trainings, women's development and other relevant areas for the prevention of violence against women;
- The Standing and Select Committees should be encouraged to solicit external technical support to expedite the process of legislation;

If the Pakistani state is to make lasting improvements in the field of improving the legal situation for its women, it must find avenues that not only seek to benefit women in the country but also create consensus among the male citizens and conservative lobbies, on the most favourable way to deliver on the rights for women while adhering to Islamic precepts. Once it achieves this task, most of

the other challenges in providing protection to women that emanate from entrenched patriarchal set up and inherent gender biases will become increasingly surmountable.

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