Sindh Human Rights Commission

Consolidation of Research on Gaps in Violence against Women Laws and Implementation

Executive Summary

The document – prepared by the Sindh Human Rights Commission (SHRC) under the Gender Equity Programme (GEP) - compiles existing research on the lacunas in the implementation of a set of laws addressing violence against women, passed between year 2004-2010. These laws include:

(i) Criminal Law (Amendment) Act, 2004 (pertaining to honor crimes);
(ii) Protection of Women (Criminal Laws Amendment) Act, 2006 (pertaining to rape);
(iii) Criminal Law (Amendment) Act, 2010 (pertaining to sexual harassment);
(iv) Protection Against Harassment of Women at the Workplace Act, 2010;
(v) Prevention of Anti-Women Practices (Criminal Law Amendment) Act, 2011 (pertaining to forced marriages in the name of custom];
(vi) The Acid Control and Acid Crime Prevention Act, 2010.

The content presented in this compilation consolidates researches and studies conducted on the laws mentioned above. These researches have been conducted by legal and human rights experts, academics, NGOs, government commissions and others. These studies cover field research and interviews with police, medico legal officials, legal experts, human rights experts and victims of violence against women, among others. In addition, the compilation also includes experts' inputs presented at two consultations held by SHRC on pro women laws in 2016 under the Gender Equity Programme.

The purpose of the document is to comprehend the lacunas both in the law and in procedural practices that prevent the implementation of laws specific to addressing gaps in gender justice and violence against women. This may contribute to the Sindh Human Rights Commission's and other stakeholders' work on improvement in rights delivery.

Major impediments in law implementation, suggested by the research covered in this document, include lack of knowledge, training and resources on the part of those attached to rights and legal service delivery including police, judiciary, lawyers, medico-legal officers; a culture of anti-women bias; gaps in the development of the laws; refusal to revisit fundamental deficits in laws such as the compoundability clause in honour killings legislation; structural issues such as easy availability of acid deterring implementation of Acid Crime Prevention Act; and concrete follow up of laws.

There is immense amount of knowledge and scholarship available in the rights landscape of Pakistan with regards to the gaps in laws, seeking to address injustices and violence against women. This is evident from the important work of the researches referred to in this document. However, there is need for a concrete plan of action based on interventions in policy change, capacity development, and advocacy at all levels so that these gaps could be addressed. SHRC plans to follow its mandate with regards to engaging stakeholders and "formulate, implement and regularly

update policies with a view to protect human rights", provided for in the Sindh Protection of Human Rights Act 2011.

Introduction

The Sindh Human Rights Commission is backed by a strong mandate to achieve the agenda of the protection of human rights for all. The mandate places emphasis on a range of activities that support the objective including: to address cases of violation of human rights, formulate and update policies with a view to protect human rights, undertake research in the field of human rights and promote awareness for safeguards available for human rights. The Commission is also empowered to visit government facilities such as hospitals and jails to review living conditions of victims of violence and inmates and make recommendations for improvements.

Empowered by this mandate, the Commission, under a year-long-program "Institutional Strengthening of Sindh Human Rights Commission" has initiated the process of "Consolidation of Research on Gaps in Violence Against Women Laws and Implementation of these laws". The initiative has been undertaken to understand the lacunas both in the law and in procedural practices that prevent the implementation of laws specific to addressing gaps in gender justice and violence against women. The Commission considers this as an important human rights agenda as any improvement in rights delivery is only possible if access to justice for women – who have systematically faced discrimination at the hands of cultural traditions, non-democratic legislation (Hudood laws, for example) and a patriarchal social order – is made possible.

Under the program, the Commission sought to consolidate and thematically arrange findings and recommendations of research studies done pertaining to the lacunas in the implementation of laws protecting women, particularly, the following legislation:

(vii) Criminal Law (Amendment) Act, 2004 (pertaining to honor crimes);
(viii) Protection of Women (Criminal Laws Amendment) Act, 2006 (pertaining to rape);
(ix) Criminal Law (Amendment) Act, 2010 (pertaining to sexual harassment);
(x) Protection Against Harassment of Women at the Workplace Act, 2010;
(xi) Prevention of Anti-Women Practices (Criminal Law Amendment) Act, 2011 (pertaining to forced marriages in the name of custom];
(xii) The Acid Control and Acid Crime Prevention Act, 2010.

These laws were selected by the GEP Programme. The laws have been passed in the last ten to twelve years and have been followed up by procedural details (such as the Rules of Business and setting up of relevant implementation mechanisms, among others). It would be useful to trace the implementation of these laws in the backdrop of their significance, the fairly long time period that followed their promulgation and the challenges faced in the way of realization of rights by way of these important enactments.

Methodology

The exercise of compilation of this report involved extensive secondary research review of related laws and data assessment. Reports from NGOs, independent organizations, government commissions, human rights experts, research journals and credible media outlets were pursued for this purpose. Views from lawyers and human rights experts, expressed at SHRC's consultations on pro women laws – carried out under GEP programme in 2016 - were also documented and have been incorporated.

Chairperson SHRC conducted in-house capacity building sessions in the Commission during the course of the Gender Equity Programme. Notes from these sessions have been incorporated in the documentation exercise.

With this document, the SHRC hopes to contribute to the debate on continuous review and up-gradation of laws to respond to human rights deficits and create a more pro-rights environment as per the mandate of the Commission.

Section 1

Criminal Law (Amendment) Act 2004

Introduction/Background

Honour crimes are legally addressed by way of the Pakistan Penal Code, 1860 (PPC) which has been directly adopted from the Indian Penal Code inherited by Pakistan after partition. Experts point out that the Indian Penal Code drafted by the British in 1860 already carried a strong tradition of treating the offenders of honour killings with leniency. [1]

Until 2004, when the Criminal Law (Amendment) Act 2004 was introduced, there was no specific law dealing with honour killing. The detail of the Act follows shortly. However, it would be important to present a brief overview of the laws, provisions and influencing elements that dealt with honour crimes prior to the 2004 Act

Honour crimes were dealt by Section 302 of the PPC 1860 which prescribed death sentence or life imprisonment as punishment for murder (Qatl-e-Amd). However, PPC Section 302 also provided a number of exceptions most pertinent being "grave and sudden provocation". It "is not murder if the offender, while deprived of the power of self-control by grave and sudden provocation, causes the

[1] H. Wasti, T. (2010). The Law on Honour Killing: A British Innovation in the Criminal Law of the Indian Subcontinent and its Subsequent Metamorphosis under Pakistan Penal Code. *South Asian Studies*, Vol. 25, No. 2(July-December 2010,), pp.361-411.

death of the person who gave the provocation." Experts point out that the use of the clause of "grave and sudden" provocation as a plea can be found in the reported case law as far back as 1965.[2]

Apart from grave and sudden provocation, the Qisas and Diyat Ordinance introduced in 1990 and turned into Qisas and Diyat Act in 1997 brought about important changes to the way honour crimes were dealt with both by the perpetrators of the crime and the institutions of justice. The effect of the 1997 Act was that the crimes affecting human body were removed from the category of offences against the society or state. These are now considered offences against an individual, leaving it to the individual to decide the fate of the offender - this causing a wholesale privatization of justice in a range of offences.

According to the Qisas and Diyat Act 1997, the legal heirs of a deceased have the right to make a compromise with the offender at any stage under section 309 and 310 of the PPC. In Section 309, the legal heirs can forgive the murderer in the name of God. Under Section 310, the legal heirs can compromise and accept *Diyat* (compensation) for the act of the perpetrator of the murder. The minimum value of the blood money is set at 30,630 grams of silver based on the price prevalent on the first day of the new financial year (1 July)[3].

It is important to mention that the Act also required higher standard of proof for offences (murder/*qatl-e-amd*) liable to *qisas*. This included a voluntary confession or two eye-witnesses who met the requirement of *tazkiya-ul-shahood*, i.e. they are truthful and abstain from major sins.[4]

Once this stringent proof criteria is met, it is inevitable that the defendant will be sentenced and hence murder sentences are based on evidentiary rules rather than nature and seriousness of the murder. In order to understand its significance, it would be useful to compare this with sentencing criteria in the UK, which is based on: (i) whether murder involved torture, detention, kidnapping; (ii) was of a public servant or a child; (iii) was motivated by race, religion, gender, sexuality etc of the victim or for ideological reasons; (iv) involved use of firearm or an explosive, or there were multiple victims. These are factors that make a murder more egregious (what shows up in Pakistan's law as aggravating circumstances or *Fisad-Fil-Arz*)

While making the act of murder compoundable, the Qisas and Diyat Act 1997 also introduced a provision (PPC 311), empowering the court to convict a person even if a compromise has already taken place, applying the principle of *Fisad-Fil-Arz*. This power granted to the court is discretionary depending on the facts and circumstances of each and every case. The sentence under this provision was 14 years of imprisonment.[5] The impact of this was felt more profoundly when, under the Criminal Law

[2] Sattar, A. (2015). *The Laws of Honour Killing and Rape in Pakistan Current Status and Future Prospects*. Aawaz Programme.
[3] Shah, W. (2013). Pros and cons of Qisas and Diyat law. *Dawn*. [online] Available at: https://www.dawn.com/news/1043236 [Accessed 19 Feb. 2017].
[4] Sattar, A. (2015). *The Laws of Honour Killing and Rape in Pakistan Current Status and Future Prospects*. Aawaz Programme.
[5] Shah, W. (2013). Pros and cons of Qisas and Diyat law. *Dawn*. [online] Available at: https://www.dawn.com/news/1043236 [Accessed 19 Feb. 2017].

(Amendment) Act 2004, honour crimes were also added to PPC 311, providing an imprisonment of not less than 10 years.

Criminal Law Amendment Act 2004

The Qisas and Diyat Act 1997 had a deep impact on honour crimes both on the side of the perpetrator, who could now draw relief from the compoundability element ingrained in the Act, but also on the way the institutions of justice sought to deal with the issue. Generally, it provided immense support to the rich and the powerful to settle any murder offence by way of blood money to the family of the victim. This was also achieved through pressure tactics for those unwilling to oblige. However, for honour crimes, particularly, the families were seen to settle the matter among themselves, while the case was still at the police station. In most such cases, the perpetrators belonged to the family (father, brother, husband, cousin, uncle, among others). Given the strict evidentiary requirements for *qisas,* those convicted of murder (where there is no waiver/forgiveness by the victim's family) are, in most cases sentenced under *Tazir* anyway.[6]

Apart from being discriminatory and passed non-democratically, Hudood laws generally paved the way for violence against women by sending out a message from the state to the society that women accused of adultery or fornication deserved to be punished[7]. Moreover, the *qisas* and diyat law, by turning murder into a private matter acted as an open invitation to commit crimes against women with impunity. Women were now targeted not only for adultery but over anything that provoked male and complicit female family members' sense of honour for perceived social transgressions which could also include something as minor as talking to an unrelated man. It is pertinent to note that these acts of violence are also directed at men believed to have been involved in actions that triggered the family's honour sensitivity. Thirty percent of the victims of honour killing are males.[8]

Criminal Law Amendment Act 2004

In 2004, responding to years long struggle by rights activists and immense international pressure on the government to change course, Pakistan's Parliament passed the Criminal Law

[6] Sattar, A. (2015). *The Laws of Honour Killing and Rape in Pakistan Current Status and Future Prospects*. Aawaz Programme.
[7] Ibid
[8] IRB - Immigration and Refugee Board of Canada: Pakistan: Honour killings targeting men and women [PAK104257.E], 15 January 2013 (available at ecoi.net)
http://www.ecoi.net/local_link/237371/346401_en.html (accessed 19 August 2017)

Amendment Act 2004. The law, in essence, created a specific offence for crimes carried out in the name of honour. Key features pertaining to curbing honour crime include:

- According to the Criminal Law Amendment Act 2004, the Pakistan Penal Code now carried a specific offence of honour crime, which was described as an "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."[9] In essence, the law gave a definition of honour crimes;
- Section 305 of the PPC was amended taking away the provision from the perpetrator to act as a *wali* (person entitled to settle a murder case on behalf of a victim under *Qisas* and *Diyat*) for murders that come under the description of honour crimes.

Quoting Maliha Zia Lari's paper "A Pilot Study on Honour Killings in Pakistan and Compliance of Law" (2011), the law brought about the following changes to the Pakistan Penal Code (Act XLV of 1860):

- Sentences have been raised from 14 to 25 years for *Qati-i-Amd*, not subject to *Qisas* (s308).
- Giving of women as *badl-i-sulah* (for marriage or otherwise in compensation for a crime committed) has been made illegal with penalties. (s301 and s310(A))
- Minimum sentences are also given for different related offences. In cases of hurt where *qisas* will not be enforced, the court, along with *arsh* (compensation for hurt) may award a punishment of *tazir*, and in cases of honour crimes this will be one-third of the maximum for that offence. (s337N)
- The discretion of the court to decide where according to the injunctions of Islam the punishment of *qisas* was not applicable has been removed in reference to murder committed in the name, or on the pretext of honour. (s311). It is pertinent to note that though the 2004 Act removes the words "in its discretion", section 311 still uses words that imply that the offender may be punish up to 14 and not less than 10 in cases of honor.
- In situations where the heirs choose to waive or compound the offence, in cases of honour crimes, the court can decide subject to conditions as the court sees fit according to the facts and circumstances of the case. (s338E)
- Changes in the CrPC include changes made to procedure, i.e. higher ranks of police officers will be assigned to investigate *zina* (sexual relationship outside marriage) offences. (new s156B)
- The CrPC also clarifies that anyone who can waive or compound the offence, the conditions have to be approved by the court.
- It also takes away the provincial government's power to remit or suspend any sentence on honour crimes.[10] (s401)

[9] PPC, "Definition of Offences Affecting Life"

[10] Zia Lari, M. (2011). *A Pilot Study on Honour Killings in Pakistan*. Aurat Publication and Information Service Foundation.

- Another important amendment pertained to inclusion of honour killing in section 311 (related to *Fisad-Fil-Arz* i.e. social disorder). Under this provision, the court has been authorized to punish an offender even when the right of *qisas* has been waived or compounded. The minimum sentence under the *Fisad-Fil-Arz* provision is 10 years.

Gaps in the 2004 Law

Various analyses have been carried out to trace the outcomes of the Criminal Law (Amendment) Act 2004. Though the refusal of the government to do away with the compoundability clause caused much damage to the cause of curbing honour crimes, other provisions that negatively impacted the goal also pertained to the use of grave and sudden provocation clause. This is despite the fact that this particular clause was removed by the *Qisas* and *Diyat* Ordinance, 1990, in compliance with an earlier ruling which declared it as un-Islamic. The provision is still used by the judiciary in honour killing cases, as can be noted in the cases presented below.

Other gaps in the law could be summed up as follows:

- Punishment for honour crimes is not mandatory, which makes the purpose of introducing the legislation less impactful.
- The provisions of waiver and compoundability, which almost inevitably pave the way for compromises, particularly since most crimes of this nature take place within close members of the family, remain valid in cases of honour crimes. [No exclusion of the provisions of Sections 309, 310, 311, 338E PPC in the case of honour crimes - where waiver/compounding still permitted]
- While honour killing has been included in the definition of *Fasad-Fil-Arz* and a minimum penalty of 10 years as *tazir* laid down (with a maximum of 14 years), convicting and sentencing in cases where the victim's family waives or compounds the right of *qisas* has been left completely at the discretion of the court. As in the past, this provides the loophole for murderers to get away with minimal or no penalty.
- Apart from giving the court complete discretion in terms of awarding a *tazir* penalty, there is no minimal penalty laid down for such cases.
- While defining the term "honour crime", the Parliament should have specified that it also includes offences against persons where the defendant argues that that he was under a "grave and sudden provocation"

- With regard to penalties, the only penalties for honour killings (if there is no compromise) are death or life imprisonment (i.e. 25 years) as *tazir*. While the intention of providing a higher penalty may be a good one, this has proved to be counter-productive. Experts observe that harsher punishments dissuade the courts from convictions, just as has been witnessed in case of gang rape cases which has a mandatory death penalty, making conviction nearly impossible.
- There is no mandatory minimum sentence for honour killings irrespective of the relation of the perpetrator to the victim.
- There are also concerns as to the difference and non uniformity in the penalties for the same crime which denies defendants equal protection of the law. These include: death or life imprisonment (if there is no compromise) as mandatory punishments; and no penalty or 10-14 years (if *qisas* is waived or compounded) at the discretion of the court, among others. [Amendments to Sections 302, 311, 338E PPC].
- Under the general law, the abettors are punishable according to their role in the crime for eg theft or dacoity. However, honour crimes which are committed due to orders passed by *jirgas* or *panchayats* are not covered by the Criminal Law (Amendment) Act, 2004. It has been felt that there needs to be specific provisions penalizing all the actors participating in such crimes including the family members who validate and encourage such actions.
- There is no provision in the Act to ensure that when courts allow compounding of offences, they must first satisfy themselves that the offence is **not** an honour crime. If stronger penalties for such crimes are incorporated in the law, along with the court's discretionary power to impose those penalties despite waiver/forgiveness from the family, the offenders might well choose not to mention honour as a motive for the crime. Therefore, courts must properly determine the issue before allowing the compounding of offences.
- Despite the promulgation of this Act, legal experts agree that the existing laws leave ample space for judicial gender biases to intervene and result in lenient sentences to honour murderers, protect perpetrators from getting maximum penalties and facilitate compromises which allow perpetrators to get away with minimal or no penalty. These gaps, in effect, circumvent the entire idea of effectively prosecuting honour killings. There are so many loopholes that without diligence and activism on the part of the court, it will be hard to get very many convictions for honour killings under this law.[11]

[11] Zia Lari, M. (2011). *A Pilot Study on Honour Killings in Pakistan*. Aurat Publication and Information Service Foundation.

Post Criminal Law (Amendment) Act 2004: An Overview of Implementation

There are a number of researches tracking the implementation of the law, exploring the question of how well has this law served the cause of addressing honour crimes. Some of the key researches that will be cited here are:

- "The Laws of Honour Killing and Rape in Pakistan: Current Status and Future Prospects" by Adnan Sattar, Awaaz Foundation, 2015
- "A Pilot Study on: 'Honour Killings' in Pakistan and Compliance of Law" by Maliha Zia, Aurat Foundation, 2011
- "Judicial Patronage Of 'Honor Killings' In Pakistan: The Supreme Court's Persistent Adherence to the Doctrine Of Grave And Sudden Provocation" by Moeen H Cheema. Buffalo Human Rights Law Review, 2008
- "Legal Protections Provided Under Pakistani Law against Anti-Women Practices: Implementation Gaps between Theory and Practice" by Muhammad Zaheer Abbas and Shamreeza Riaz, The Dialogue, Volume VIII Number 2
- Pakistan NGO Alternative Report on CEDAW – 2005-2009
- "Honour Crimes in Pakistan: Unveiling Reality and Perception" by Neha Ali Gauhar, Community Appraisal & Motivation Programme (CAMP) 2014
- "Impact Assessment Report Public Private Partnership to End Honour Crimes in Pakistan Through the implementation of Criminal Law (Amendment) Act 2004", by the National Commission on the Status of Women (NCSW), 2010

The above mentioned researches have sought to focus on case laws, attitude of police, civil society (media, lawyers), community and experts to understand the impact of these laws. Below is presented a brief account of all these areas.

Case Law

Research demonstrates the provision of grave and sudden provocation still enjoys scope for practice and it is still considered as a valid justification for honour killing. Zia, in her study, "A Pilot Study of Honour Killings", observes that the Supreme Court has now "set a standard in cases of murder, if the accused is able to prove that he was deprived of the capability of self-control or was swayed away by circumstances immediately preceding the act of murder or there was an immediate cause leading to grave provocation may be allowed a mitigation in his sentence." This

ironically comes along with a series of judgments by the Supreme Court reducing the scope and application of the grave and sudden provocation defence to murder:

Cheema, in his article "Judicial Patronage Of 'Honor Killings' in Pakistan: The Supreme Court's Persistent Adherence to the Doctrine of Grave and Sudden Provocation" cites a 2006 case *Ali Muhammad v. Ali Muhammad*. The accused claimed that he had killed the deceased under grave and sudden provocation upon seeing him and his wife "lying on the same bed in an objectionable position." The trial court had convicted the accused under the old Section 304 without realizing that this provision was no longer on the statute books, and sentenced him to undergo imprisonment for seven years. On appeal, Ausaf Ali Khan, Judge of the Lahore High Court pointed out this error and noted that the Islamized provisions did not provide an exception in cases of provocation, but held, nonetheless, that the accused had raised a valid defense. He based this judgment on the Islamic law doctrine of the sanctity of home:

"And to enter a house without permission at night and commit Zina with wife/daughter/sister of owner of a house was obviously a vice which could be stopped with force**...** In fact Islam does extend the right to the aggressed to take life of the aggressor in such a situation". [12]

Relying upon verse 4:34 of the Qur'an, the Lahore High Court further held that this right of defense of person was available not only to the woman's husband, but also to any other person "in whose lawful custody she is residing." The court held that "the appellant as custodian of honor of his wife had the right to kill the deceased while he was engaged in sex act with his wife and he had not earned liability of *Qisas* or *Tazir* or even *Diyat*." Thus, the accused was acquitted.

As Cheema notes, citing numerous English precedents about provocation, the Supreme Court suggested that there lies a universal belief that the natural response for a man is to lose self-control upon seeing his wife in an adulterous situation, just as much as it is natural for a man to use force in self-defense.[13]

In another ruling, *Mohammad Ameer v. the State* the Supreme Court, while refusing to grant leave of appeal to a convict of double murder (and sentenced to life imprisonment as *tazir)* observed that:

[12] Cheema, M. (2008). JUDICIAL PATRONAGE OF 'HONOR KILLINGS' IN PAKISTAN: THE SUPREME COURT'S PERSISTENT ADHERENCE TO THE DOCTRINE OF GRAVE AND SUDDEN PROVOCATION. *Buffalo Human Rights Law Review*. [online] Available at: http://ssrn.com/abstract=1536258 [Accessed 19 Aug. 2017].

[13] It is important to note that in English law, in 2009, the Coroner and Justice Act, 2009 made the defence of provocation or loss of self control in murder cases, knocking murder down to manslaughter, categorically unavailable to those who murder after being provoked by sexual infidelity.

The commission of an offence due to Ghairat or family honour must be differentiated from the grave and sudden provocation in consequence to which crime is committed in the light of facts and circumstances of each case. The plea of grave and sudden provocation may not be available to an accused who having taken plea of Ghairat and family honour, committed the crime with premeditation.[14]

It appears uncontroversial that in cases where premeditation is not proved, plea of provocation would be acceptable by the courts as a loss of self control due to grave and sudden provoking circumstances. However, later court rulings did not even consider premeditation and erroneously made allowances for this defence.

As noted by Sattar, in a 2008 criminal appeal and murder reference (*Muhammad Akhtar v. the State*) the sentence of death for an honour crime was converted into life imprisonment because he had the "suspicion of illicit liaison" between the person he had murdered and his wife. The man poured acid over the suspect's body (eventually killing him). Despite the premeditated nature of the act, the court deemed it fit to award a lesser sentence because it could not be ruled out that the appellant had acted in the name of *ghairat*. As such the award of the death sentence by the trial court, in the words of Justice Ali Hassan Rizvi, "is a harsh order."[15] General observation was that even though the criminal law was amended in regard to honour crims, courts are still take the mitigated circumstances such as grave and sudden provocation and convert the death sentence into life imprisonment, as indicated by many cases.

Another area that could be considered as influencing the approach and decisions passed in honour killings cases relates to the tone and language used in the court orders and conversations related to these cases. Zia in her study notes a 2006 case of honour killing where the court simply states that "Record having established that it was a case of family honour, award of capital sentence to accused, was not justified."[16]

In a 2007 case, the term masoom-ud-dam (whose blood is protected by law) is shown to be used suggesting how social set-up and customs are given priority. The court stated that "while human life was very sacred, but at the same time prevalent social set up, traditions and customs prevailing in the society could not be ignored where men would sacrifice their lives to safeguard the honour of their womenfolk, which was not considered a big sacrifice in any manner and that no religion allowed widespread immorality to destroy the fabric of a family life Such judgments reflect a pattern of deep gender bias and misogyny and institutional condoning of violence against women.

[14] Muhammad Ameer v. The State, PLD 2006 S.C. 283, at 288, cited in Sattar, A. (2015). *The Laws of Honour Killing and Rape in Pakistan Current Status and Future Prospects*. Aawaz Programme.
[15] Sattar, A. (2015). *The Laws of Honour Killing and Rape in Pakistan Current Status and Future Prospects*. Aawaz Programme.
[16] Zia Lari, M. (2011). *A Pilot Study on Honour Killings in Pakistan*. Aurat Publication and Information Service Foundation.

There are other elements too that have sought to contribute to a culture of executing and upholding violence against women. This is interlinkage of the so called cultural traditions with procedural gaps in government institutions; their conduct and capacity deficits that have sought to normalize and reinforce violence against women.

Role of police

In her Pilot Study focusing on understanding registration of FIR of honour killing cases, Maliha Zia Lari notes various gaps in Police's approach towards registering the initial report. The study, conducted in Naseerabad, Balochistan, Ghotki, Sindh, Nowshera, Khyber Pakhtunkhwa, and Gujrat, Punjab makes following observations:

- How the cases are categorized is very important. In Nowshehra, there were no cases of honour killings reported even though there were informal reports of such cases happening in the district.

- Cases of honour killings are reported under Section 302 of the Pakistan Penal Code, categorizing it as a mere murder rather than a murder with honour being the motive. "This reflects a social bias in such areas against the concept of reporting honour killings as a public issue, as opposed to a private, family issue."

- On the other extreme are cases that are reported as honour killings even though by their nature, they are cases of domestic violence and domestic homicide. "This exhibits a lack of knowledge of the aspects of both honour killings and/or domestic violence." The justification given by the police to categorize them as honour killing cases is that a woman killed in an argument with her husband or in laws counts for an honour killing case as she trespassed her gendered boundaries and "argued too much". This biased mindset of the police and its implications needs detailed discussion.

- The police's approach is also informed by their own gender biases. The report cites DPO Nowshera who, apart from being unaware of the 2004 law, also made a comment: "If you come to know that your wife is involved with someone, what will be your reaction? Won't you kill her?"
- This is perhaps more pronounced in the language used in FIR, - almost universally in all districts under study - carrying a judgmental tone and a total disregard for the murdered victim. The motives for murder described in the report are: "bad character", "bad morals", "leaving the house without permission", "being outside the house too often", "being the victim of abduction and being murdered for the shame of abduction", "revenge", "meeting/friendship/conversation with a man not from the family".
- This is on top of the curt language used in the FIR that is devoid of gender sensitivity, reflects a dismissive attitude to violence against women. FIRs carry no details necessary for a cohesive report. "The complete lack of details, the similarities across the nation, display that a particular format has been adopted by the police on the type of reporting it will do when registering cases."

- Police also have poor incentive for investigation especially since there is no pressure from the family. In areas where women's bodies are found dumped in rivers, after having been killed by gun shots, the police stated that in such cases they take the dead body in their custody and file the case as unknown dead body. *This was also found in SHRC's consultations with local stakeholders in Sukkur. Police have no incentive or direction to investigate these cases since nobody stands for the victims. In cases where the women's bodies are identified, families refuse to acknowledge that they even had a daughter.*

- One reason cited for lack of reporting of honour killing cases is that they usually take place within the family and the perpetrators are family members themselves. "The victim and perpetrator's families are relatives or members of the same family, so no one is interested in filing cases."

- Police was also observed not maintaining records of or update case files that are passed on to the court. This way even if the police have registered a case, they have no follow up information on the end result.
- The research also finds that the police in many areas were also ignorant of the existence of the 2004 amended criminal law. "This ignorance is extremely problematic because rather than implementing any of the new procedures or rules laid down in the law, the police follows its own chosen procedures and methods. As a result, justice is not always given according to standards set by the law.
- Other problems of the police also include lack of evidence, lack of resources for investigation, family's own connivance to weaken the case, and political interventions (especially by powerful landlords or tribal leaders) in honour killings cases.[17]

Victims' Experiences

Victims' families interviewed cited extreme pressure from the perpetrator and their family to withdraw the case and enter into a compromise.

In another study "Honour Crimes in Pakistan: Unveiling Reality and Perception", explaining the reason presented by respondents on resolving the issue within the family, 38 percent of the respondents said they were fearful of future violence and 30percent chose to forgive their perpetrator.

A quarter of respondents (26 percent) did not want to go against their local traditions and wanted to protect their family's honour. 18 percent were not supported by their families to access either formal or informal justice, while 8 percent decided to stay quiet as they couldn't afford the formal system or had no trust in it.

This was further elaborated in the key informant interviews, where respondents explained that many victims and their families chose to remain silent due to the corruption and cost of the formal justice system. Some of the key informants were in favour of honour crimes being resolved within the family, because then neither money nor time is wasted. Another group of key informants added that people chose not to react because they cannot afford the financial burden of court and lawyers' fees.[18]

[17] Zia Lari, M. (2011). *A Pilot Study on Honour Killings in Pakistan*. Aurat Publication and Information Service Foundation.

[18] Gauhar, N. (2014). *Honour Crimes in Pakistan Unveiling Reality & Perception*. Community Appraisal & Motivation Programme.

Views of the Perpetrators

In interviews with perpetrators, there was noted total disregard for the law. "They note that due to the involvement of powerful factions of the community in such crimes, they are not considered offensive. Further, due to the overwhelming social acceptance of the act, action rarely follows. And if it does, they are convinced that money will be sufficient to deal with the issue."[19]

There is also a view that since the community or potential perpetrators do not know much about the 2004 Law, they may have acted differently if they had knowledge of the consequences of their actions.

Community's role

Society's general disregard for government and legal institutions also cloud their decision to turn to these institutions for resolution of violence against women and honor killing cases. The idea of it being a matter of dishonor to bring a family issue into public limelight also prevents people from going to legal institutions. People usually prefer turning to *waderas, jirgas* or *panchayats* to settle such disputes.

In another study "Impact Assessment Report Public Private Partnership to End "Honour Crimes" in Pakistan through the Implementation of Criminal Law (Amendment) Act 2004 by the National Commission on the Status of Women (NCSW), the following trends were noted in community's approach to the issue:

• People attribute "honor" crimes to religious customs and 'traditions' and assume that they are not criminal acts. Even if an "honor" crime is acknowledged as a punishable crime, the assumption is that the perpetrator will go unpunished, because society sanctions the act. This is in part because of the mistaken but socially sanctioned idea that Islam condones and even requires this response.

• Honor crimes are part of the pervasive 'culture' of violence against women and the resultant 'requirement' that violence should not be made public. This culture of violence can be attributed in part to illiteracy, extreme poverty, a feudal socio-economic system and a lack of awareness of women's human and civil rights. However, violence is not limited to the poor. There is a widespread assumption that violence against women is acceptable, that it is in fact not a form of violence and that it is easy to avoid being held accountable for it.

• The culture of violence against women arises from women's vulnerability resulting from their exclusion from decision making in their families; this social deprivation results from the perception that women make no financial contribution to their households' incomes. The poor as a class also

[19] Zia Lari, M. (2011). *A Pilot Study on Honour Killings in Pakistan*. Aurat Publication and Information Service Foundation.

suffer from a lack of control over their own lives, especially in areas where feudal traditions still prevail.[20]

Badl-e-Sulh

The Criminal Law Amendment Act 2004 also declares illegal and places penalties of "Rigorous imprisonment up to ten years, but shall not be less than three years" on *Badl-e-Sulh* (marriage or otherwise in compensation for a crime committed). (The amendment was proposed by the NCSW in a 2003 Report on *Qisas* and *Diyat*). Around the time when the law was passed, the Sindh High Court also banned these practices in 2004, but both these actions have had no significant results. An Amnesty International report notes that in 2007 60 girls and women were handed over to rival's families to settle disputes and as compensation for murder in Mardan and Swabi districts.[21] It is in response to this that the Prevention of Anti-Women Practices (Criminal Law Amendment) Act, 2011 was introduced, criminalizing giving female in marriage or otherwise as *badal-i-sulh*, *wanni* or *swara* or any other custom or practice to settle a dispute.

Criminal Law (Amendment) (Offences in the name or pretext of Honour) Act, 2016

Owing to the failure of the Criminal Law (Amendment) Act 2004**,** to curb honour crimes, legislators introduced a new law "Criminal Law (Amendment) (Offences in the name or pretext of Honour) Act, 2016". Important developments informing the backdrop of the law include rise in the incidence of honour killing, a series of shocking gruesome killings of women in year 2016, including social media star Qandeel Baloch, British Born Pakistani Samia Shahid, Sumaira from Karachi and a young girl Ambreen in Abbottabad who was burnt alive. There were countless other cases that were unreported or did not gain as much media attention. With Pakistan increasingly gaining notoriety for rising violence against women cases, the government was morally compelled to pass a bill pending in the parliament since 2015.

Both Qandeel Baloch and Karachi's Sumaira~~'s~~ were killed by their respective brothers. The police, for the first time registered their murder as a crime against the state. Culprits of both the cases are behind the bars. However, it may be mentioned that both the accused are under trial and not yet convicted.

In the law passed in October 2016 by the National Assembly in Pakistan, amendments have been made to Sections 299, 302, 309, 310, 311, and 338 E of the Pakistan Penal Code and related provisions in the Code of Criminal Procedure. By way of these amendments, Parliament further amended the waiver of *qisas* or compounding the offence under section 309 and 310 vis-à-vis the principle of *Fasad-Fil-Arz*. According to these amendments, there is mandatory life imprisonment for the culprits of honour crime. Pardon by relatives is only applicable if the murderer is sentenced

[20] Hussain, Z. (2010). *Public Private Partnership to End "Honour Crimes" in Pakistan National Commission on the Status of Women (NCSW) Through the implementation of Criminal Law (Amendment) Act 2004*. National Commission on the Status of Women.

[21] Abbas, M. and Riaz, S. (n.d.). Legal Protections Provided Under Pakistani Law against Anti-Women Practices: Implementation Gaps between Theory and Practice. *The Dialogue*, VIII(2).

to capital punishment. Mandatory life sentence would still be applicable on the culprit, in spite of pardon.

According to the new 2016 law, in cases where all *wali* do not waive/compound or where there is *Fasad-Fil-Arz*, having regard to facts and circumstance, the court can punish the offender with death, life in prison, or up to 14 years as *Tazir*. For honor killing, this new law increases ten years (prescribed in 2004) to a life sentence as a minimum. However, section 311 of the PPC can only be invoked in situations where offence is proved on basis of the Islamic standard of stringency (a voluntary or true confession or proof in accordance with *Qanoon-i-Shahadat*).

There has been a great deal of criticism against what has been described as a watered down law. Some of this criticism pertains to the fact that the compoundability element has still not been removed. Applicability of *Fisad-Fil-Arz*, which was already in place in the 2004 act and giving the courts the power to decide the sentence in case of pardon by the relatives, is not a new provision, as it was already being sanctioned by the 2004 Act. The only addition is that the sentence has been increased from 10 years to life imprisonment.

Critics also point out that for applying the principle of '*Fisad-Fil-Arz*' the offender has to be proved guilty under the strict rules of evidence described above, which is inordinately difficult under a crippled justice system.

Some express concern that because of the crime being seen as a family affair and the poor investigation by the police, the perpetrators are often acquitted.[22]

Box:

According to statistics available with the Human Rights Commission of Pakistan (HRCP), 8,057 cases of honour killing have been reported in local and national newspapers since January 2004. In these cases, an overwhelming majority of those killed were women. The motive behind 1,443 such cases was a marriage of choice, while 6,051 cases were said to have taken place over suspected illicit relations. At least 460 women were killed because they were thought to have brought shame and dishonour to the family name, as rape survivors. The reasons for the rest include enmity, financial issues and property disputes.

In 2,420 cases, the perpetrator was the husband of the deceased. In 624 cases, parents killed their daughters and in 1,816 cases, siblings were involved in the murders. In other cases, in-laws, sons and daughters were responsible for the killings.

Newsline, August 2016, http://newslinemagazine.com/magazine/murder-name-honour/

Separate Box

As a part of SHRC's visits to Darul Amans (government-established shelters for women), several cases of women seeking shelter to escape from honour killing threat have been observed. In the

[22] Shah, W. (2016). VIEW FROM THE COURTROOM: Experts see little change in law to curb honour-related offences. *Dawn*. [online] Available at: https://www.dawn.com/news/1289149 [Accessed 19 Feb. 2017].

March 2017 visit to Larkana Darul Aman, at least two cases, one of a woman accompanied by a child, were noted. The cases are under hearing in sessions courts, however, the future of these women outside Darul Aman remain uncertain.

In a document submitted to the SHRC by the Darul Aman Larkana authorities, thirty cases of women seeking refuge from Karo Kari threat were noted from the period of 19 September 2013-21 March 2016.These cases were under hearing at different points at related courts.

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Section 2

Protection of Women (Criminal Laws Amendment) Act, 2006

Introduction

General Zia ul Haq's Islamisation campaign in the late '70s ushered in the infamous Hudood Ordinances 1979 which purported to bring criminal laws in Pakistan in compliance with Islamic teachings. Theft, consumption of alcohol, extra-marital sex, rape, and making false allegations of adultery were brought under the Islamic system of punishment of *hadd* (described as "mandated and fixed by God") by way of the Hudood Ordinance 1979. As observed by Chairperson, Sindh Human Rights Commission, these laws were drafted under the guidance of Ma'ruf ad-Dawalibi, adviser to the then King of Saudi Arabia.

The fundamental issue with the Hudood Ordinance was that it prescribed the same punishment for rape and adultery, i.e. the punishment of stoning to death. The Islamic law treats rape under the same category of the general law of *zina*. Rape is a sub-category of zina and the general term used to describe it is *zina bil jabr* or *al-watt bil ikrah* (forced penetration). "This understanding of rape is due to the fact that the Quran does not directly deal with the offense of coercive sexual relationship and only mentions the rules and penalties for consensual sexual intercourse"[23].

It is under this light and based on no apparent rationale that the then lawmakers classified the same punishment for both crimes of *zina* and rape in Hudood Ordinance. The Ordinance also outlined the same nature of evidence required to prove both the acts. Section 8 of Hudood Ordinance stated:

[23] Saboor, R. (2014). Rape Laws in Pakistan: When Will we Learn from our Mistakes?. *Islamabad Law Review*, [online] 1(1). Available at: http://www.iiu.edu.pk/wp-content/uploads/downloads/journals/ilr/volume1/num-1/Article_4_Vol1_1_010817.pdf [Accessed 17 Feb. 2017].

"Proof of *zina* or *zina bil jabr* liable to *hadd* shall be in one of the following forms, namely:-

a) The accused makes before a Court of competent jurisdiction a confession of the commission of the offence; or

b) at least four Muslim adult male witnesses, about whom the Court is satisfied, having regard to the requirements of *tazkiyah al-shuhood* (the mode of inquiry adopted by a Court to satisfy itself as to the credibility of a witness) that they are truthful persons and abstain from major sins (*kabair/kabeera*), give evidence as eye-witnesses of the act of penetration necessary to the offence:

Provided that, if the accused is a non-Muslim, the eye-witnesses may be non-Muslims."

The most critical part of the law was that when *zina bil jabr* victims were unable to provide with the prescribed evidentiary requirements, i.e. of four male witnesses, the courts had the authority to decide that the intercourse was consensual, and thus the rape victims would be charged as *zina* offenders.[24] Thousands of women and men languished in jails in the 27 year period, when the law was enforced, over the charges of "zina". Many of them were merely nabbed on the basis of false accusation.

Protection of Women (Criminal Laws Amendment) Act, 2006

Finally in January 20006, Parliament amended these discriminatory laws. This was after intense politicking and confrontation between the liberal forces (civil society, progressive government institutions, liberal political parties and rights advocates), including sections of the then military-led government and religious parties which described the amended law as "un Islamic" and fought it till the end.

Before the Protection of Women (Criminal Laws Amendment) Act, 2006 was passed by the parliament, the then President General Pervez Musharraf promulgated an ordinance amending sections 496 and 497 of the CrPC. The Ordinance granted bail to all detained on charges of violation of

[24] Ahmed, S. ed., (2010). *Pakistani Women: Multiple Locations and Competing Narratives*. Oxford University Press. cited in Saboor, R. (2014). Rape Laws in Pakistan: When Will we Learn from our Mistakes?. *Islamabad Law Review*, [online] 1(1). Available at: http://www.iiu.edu.pk/wp-content/uploads/downloads/journals/ilr/volume1/num-1/Article_4_Vol1_1_010817.pdf [Accessed 19 Aug. 2017].

Hudood Laws, which was a non-bailable offence. This facilitated the release of at least 1300 women facing trial of various offences. [25]

The Protection of Women (Criminal Laws Amendment) Act, 2006 brought amendments to the Pakistan Penal Code, 1860; the Code of Criminal Procedure, 1898; the Dissolution of Marriages Act, 1939; the Offence of *Zina* (Enforcement of Hadd) Ordinance, 1979; and the Offence of Qazf (Enforcement of *Hadd*) Ordinance, 1979.

By way of these amendments, the following changes were affected:

- The offence of *zina* (extra marital consensual sex, fornication and adultery) and rape were separated. Rape was now removed from the Zina Ordinance and placed under the section 375 of the Pakistan Penal code, as it was before the Hudood Laws.

- The definition of rape, nature of confession, and the procedure governing complaints in cases of *zina* were laid down;

- The accused of *zina* can no longer be arrested without court permission. This is on top of the modification in the CrPC effected by the Criminal Law (Amendment) Act, 2004 requiring that the investigation in cases where a woman is accused of *zina* should be carried out by Superintendent of Police or a higher ranked officer;

- The Protection of Women Act laid down a clear definition of rape. Rape was described as a man having "sexual intercourse with a woman" under the following circumstances:

(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;

[25] Ebrahim, Z. (2006). *PAKISTAN: No Hope for Women Raped and Jailed for Adultery*. [online] Global Sisterhood Network. Available at: http://www.global-sisterhood-network.org/content/view/1136/76/ [Accessed 16 Feb. 2017].

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

- Amendments in Section 376 of the PPC provides for rape to be a non compoundable offence with a penalty of death sentence or life imprisonment or a term of prison not exceeding 25 years with a mandatory sentence of minimum of 10 years. The penalty for gang rape is death or life imprisonment [(s376(2)]
- As rape prosecutions were moved to the Pakistani Criminal Code, the previous evidentiary standards necessary under the Zina Ordinance were no longer applicable.[26] The Zina Ordinance required the testimony of four male witnesses with good moral standing who had actually witnessed the act/crime, the PPC enables a victim to bring forth credible witnesses of either gender to support her claim[27];
- The 2006 Act also removed references to *tazir* punishments for the offense of adultery. The offence of adultery can only be established if witnessed by four pious, male Muslims who testify or if the accused confesses;
- Because of the changes made in the Criminal Procedure Code, a complaint of adultery can only be lodged directly in a court of sessions, eliminating the role of police officers altogether;
- Making a false accusation of adultery (*qazf*) was made punishable according to the authority of the judge who was given the powers to pass a sentence if "satisfied that the offence of *qazf* liable to *hadd* has been committed."[28]

Implications

- The most important impact of the Protection of Women Act lies in the separation of the offence of zina from rape. With an improved definition of rape, and by bringing the prosecution of rape under the PPC, the crime no longer conflates zina;
- Moreover, allegation of consensual fornication (still outlined as a crime), could no longer result in instant arrest or action by the police without a full investigation;

[26] Duty Or Faith?: The Evolution Of Pakistani Rape Laws And Possibility For Non-Domestic Redress For Victims. (2016). *Emory International Law Review*, 30.

[27] Mehdi supra note, cited in "Duty or Faith…":, After the passage of the PWA, with the removal of rape crimes from the Shariat Court to the Pakistani Criminal Court, the requirement of four pious male witnesses was eliminated in exchange for the evidentiary requirements of the Penal Code, which are not gender specific as applied to witnesses.

[28] Sattar, A. (2015). *The Laws of Honour Killing and Rape in Pakistan Current Status and Future Prospects*. Aawaz Programme.

- One more observation about the definition of rape is that since the statutory language does not restrict the offence of rape to non consensual sex outside marriage, the Protection of Women (Criminal Laws Amendment) Act, 2006 could be interpreted in a way to criminalise marital rape as rape when it is against the will or consent of the wife, or where consent is obtained by putting her in fear of hurt
- Experts also believe that there are important implications with regards to child protection/rights in the definition of rape that designates sexual intercourse with a woman below the age of 16 as rape irrespective of consent.[29]

Lacunas

Major lacunas noted by experts in the Women Protection Act 2006 are as follows:

In an interview with the Herald in 2008, Justice (R) Majida Razvi, interviewed as the former Chairperson of the National Commission of the Status of women, noted the following:

- The definition of adult is the same as it was in the ordinance where a female adult is either 16 years of age or has attained puberty. This is in contradiction with other prevalent laws of the country, for example the age of majority under family laws is 16 for females, 18 for males whereas the Majority Act 1875 prescribes the age of majority for males and females as 18 years.
- Moreover, the Act does not distinguish between juvenile and adult offenders under its definition of fornication.
- The PWA 2006 retains legal discrimination against women and religious minorities whose status as witnesses under the hudood ordinances has been retained and cases of hudood offences cannot be heard by non-Muslim judges. In other words, the Protection of Women Act continues to discriminate against minority population groups who are not treated as equal citizens.
- It has also been noted that the Protection of Women (Criminal Laws Amendment) Act, 2006 retains the corporal *hadd* punishments of stoning to death. Though stoning to death is never executed in Pakistan and the only punishment which in fact has been executed is lashing, the fact that corporal punishment is in the statute books is a matter of grave concern.[30]

[29] Ibid

[30] Mehdi, R. (2010). The Protection of Women (Criminal Laws Amendment) Act, 2006 in Pakistan. *Droit et Cultures*, [online] 59(1), pp.191-206. Available at: https://droitcultures.revues.org/2016#tocto1n3 [Accessed 8 Mar. 2017].

- Another problem pointed out by experts is the retention of the evidentiary law in the Qanun-e-Shahdat Ordinance, 1984 (The Law of Evidence). The rule allows the defence to present evidence regarding a woman's past conduct and relationship history to establish that the complainant is generally of 'immoral character'.[31]
- The law has no provision for rape of male or transgender victims in its definition of rape. However, PPC section 377 does cover unnatural offences accounting as "carnal intercourse against the order of nature with any man, woman or animal". These offences are punishable with life imprisonment or a prison term not exceeding ten years and not less than two years. Similar the absence of the object rape i.e. rape by penetration with an object, from the definition of rape, has been noted with concern by experts.[32]

Factors that obstruct the implementation of the law

- In the opinion of experts, multiple, overlapping legal systems are a major impediment to the implementation of this law. Apart from regular state judicial system, Pakistan has the Federal Shariat Courts and the Shariat Appellate Bench, the Special Trial Courts, the Customary Practices and the Frontier Crimes Regulation, among others. This not only causes confusion among the law enforcement agencies, but it also leads police to file charges under any system they prefer, as all are equally recognized by the constitution. This leads to people being punished differently for the same crime~~.~~ and results in non uniformity and disparity in application of the law.

[31] Sattar, A. (2015): "In Pakistan, the Qanun-e-Shahadat Order, 1984, provides that "when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix is generally of immoral character." The provision (Section 151, Sub-section 4) was challenged before the Federal Shariat Court in 2009 as being repugnant to the teachings of the Quran and Sunnah and incompatible with Article 25 of the Constitution (gender equality). In what can be construed as their lack of commitment to women's rights and victims of rape, the Federal Government and the Governments of Balochistan, Punjab, and Sindh filed comments in the court opposing the petition. To its credit, the Government of Khyber Pakhtunkhwa supported the petition. In a remarkably progressive ruling, the Shariat Court held the Sub-article 4 (Article 151) of the Qanun-e-Shahadat Order, 1984, to be repugnant to the Quran and Sunnah, directing the government to repeal it within six months, "failing which the said provision shall cease to have effect whatsoever," The government never followed through on the court's direction. Technically, the provision is legally void but lawyers report that evidence concerning a woman's attire and social standing is routinely presented and her behaviour put on trial during cross-examination to discredit the complainant.

[32] Sattar, A. (2015). *The Laws of Honour Killing and Rape in Pakistan Current Status and Future Prospects*. Aawaz Programme.

- Experts have conflicting opinion on criminal law's provision for death penalty for gang rape. It has also been shared that this deters judges from proceeding with convictions as they give the defendant benefit of the doubt when sentencing options remain harsh (i.e. 10 to 25 years in prison, mandatory death or life in prison).

- The prevalence of gender bias is also seen as a reason for resistance against the 2006 Act. As noted in the court cases cited below, there is a bias attitude of the judiciary and the police against women. As noted by Maliha Zia and Sarah Zaman in their study Sexual Violence and the Law in Pakistan (2011), "Proceedings become more traumatic if the prosecutrix's actions prior or subsequent to the offence do not fit the 'scripts' or the 'ideal patriarchal tale' of lawyers and judges who may have fixed ideas of how s/he should have acted before, during and after the assault. As the courts are male-dominated, there is no accounting for or understanding of the behavior differentials between male and female survivors or adult and minors. These scripts, prejudicial as they may be, often filter into judgments, causing moral values and beliefs to influence verdicts".[33]

- The stigma attached to rape also forces victims and families to either refrain from turning to legal course or accept intimidation of the perpetrators to enter into a compromise.
- The absence of reforms in the investigation methods that results in loss of evidence is also seen as a factor working against the implementation of the law.[34]
- Pakistan has a very low number of female police officers. Rape victims usually end up encountering male police officers when they go to report the incident. The discomfort coupled with lack of gender sensitive training reflected in the attitude of the male police officials is known to act as a major disincentive to women filing complaints.
- Police has also been witnessed to act slowly in reporting of FIRs related to rape cases.
- Lawyers have also pointed out that the FIR is sometimes registered under Section 377 (unnatural offences) and not Section 376 (rape).

[33] Lari, M. and Zaman, S. (2011). *Sexual Violence and the Law in Pakistan,*. War Against Rape.
[34] Duty Or Faith?: The Evolution Of Pakistani Rape Laws And Possibility For Non-Domestic Redress For Victims. (2016). *Emory International Law Review*, 30.

- Apart from flawed and outdated investigation, the medico legal procedure is also under resourced and devoid of skilled handling of the process. This negatively impacts the evidence collection.[35]
- As with the Criminal Amendment Act 2004, there has been observed very limited awareness of this law among the police, medico legal officers and even sections of the judiciary.

Cases

Case 1:

Despite the Protection of Women (Criminal Laws Amendment) Act, 2006 and the very high profile nature of Mukhtaran Mai case, justice was compromised. She suffered a gang rape on the order of a panchayat. The ATC convicted all six defendants of several offences under the Hudood Ordinance and the Pakistan Penal Code.—There were eight other defendants who had participated in the *panchayat* that had ordered revenge on Mukhtaran Mai, and were charged for unlawful assembly. All eight were acquitted by the ATC. The Multan bench of Lahore High Court acquitted all but one of the six defendants. The SC upheld this verdict. Experts and human rights advocates heavily criticized the move noting that the case shows how the country's constitutional legal system is assisting in protecting the outcomes of the parallel, unconstitutional traditional justice system . . . [i]t is preposterous that only one person can be sentenced under charges of gang-rape, with the other alleged perpetrators being released."[36]

Case 2:

In October 2010, a 16-year-old girl was kidnapped and repeatedly gang-raped by a group of criminals involved in land-grabbing, who are reportedly connected to the police, for over a month in Khairpur Mirs. When the girl's father went to the police to report the crimes, they refused to record the gang rape in their report. Two people were eventually arrested, but they were released within two hours

[35] Sattar, A. (2015). *The Laws of Honour Killing and Rape in Pakistan Current Status and Future Prospects*. Aawaz Programme.

[36] Asian Legal Resource Centre (2011). *Pakistan: Impunity for violence against women must end*. [online] Available at: http://www.scoop.co.nz/stories/WO1105/S00523/pakistan-impunity-for-violence-against-women-must-end.htm [Accessed 15 Mar. 2017].

after allegedly bribing police officials. The Interior Minister was made aware of the case and promised to look into it; to date, no action from the ministry has been taken.[37]

Case 3

In 2008, a woman who was visiting Karachi from Lodhran was gang raped at Mazar-e-Quaid where she had come to visit with her family. The accused, an assistant manager of security at the mausoleum, an accountant and a personal assistant to the resident engineer of the Quaid-i-Azam Management Board were charged with subjecting the young woman to sexual assault.

However, Additional District and Sessions Judge (east) Nadeem Ahmed Khan, after five years of trial, in 2013, dismissed the case and acquitted the three accused using the provisions of the Hudood Laws.

Concluding the case, Judge Khan also referred to a verse from the Quran, stating that someone who made a charge of zina was required to produce four witnesses to support the allegations and upon failure the complainant was liable to suffer punishment prescribed in the said verse. The court also reproduced a page in its verdict from Maulana Abul Ala Maududi' voluminous Tafheem-ul-Quran on the point of four witnesses in rape cases. This is on top of the fact that the DNA test was ruthlessly dismissed as evidence as it was not in accordance with the hudood law. To date, no action has been taken from the superior judiciary over the wrong use of the Hudood Laws that were amended eight years before the judgment was passed.[38]

Case 4:

A historic judgment was delivered by the Supreme Court in a 2013 constitutional petition, *Salman Akram Raja v. the Government of Punjab through Chief Secretary and Others.* The case turned on the validity of compromise in cases of rape and an entire gamut of issues related to evidence and court procedure. It concerned Ayesha, a 13-year-old girl from Rawalpindi who was raped in March 2012. There was an unexplained delay in the registration of an FIR even though her father had approached the local police station following the incident. Ayesha, in the meantime, attempted suicide. Following a *suo motto* action by the Lahore High Court, the FIR was eventually registered. However, when the case was fixed before the Sessions Judge, the complainant (Ayesha's father) informed the court that he had reached an out-of-court settlement for a consideration of Rupees 1 million. Fearing that the accused

[37] Case 1 and 2: Ibid

[38] Case 3: Tanoli, I. (2013). Three acquitted in Mazar rape case for 'want of evidence'. *Dawn*. [online] Available at: https://www.dawn.com/news/800742 [Accessed 19 Aug. 2017].

would be acquitted, the petitioners (Salman Akram Raja and other activists) approached the Supreme Court and pleaded that the out-of-court settlement be declared invalid and the criminal liability of the offender be deemed unaffected in what is a non-compoundable offence (rape). The petitioner also requested that the court issue directives to the government to collect DNA evidence in every rape case.

Accepting the petitioners' arguments, the Supreme Court held that rape was a crime against society, and where the complainant did not pursue the matter, or dropped charges on account of an out-of-court settlement, the State should step up to take the trial to its culmination. Considering the advances made in DNA evidence collection and citing domestic case law where such evidence has been deemed admissible, the Court directed that the collection of DNA evidence be made mandatory in rape cases subject to a victim's consent. The court further directed that such evidence be preserved for a certain number of years keeping in mind instances in other countries where DNA evidence led to re-trials where previously wrongful convictions were overturned.

In addition, Former Chief Justice Iftikhar Chaudhry drew heavily on a judgment of the Delhi High Court to issue a range of guidelines. Most notable among them are: the liaison between police stations and NGOs for the purpose of providing legal aid and counseling services to rape victims, holding in-camera trials, and providing screens during the trial to prevent the encounter between the complainant and the accused and to minimize re-victimization and humiliation of the victim.[39]

Box 1

The importance of an environment conducive for amendments in the Hudood Ordinance: The Role of the NCSW

The 2006 amendments in Hudood Ordinance were an outcome of a long drawn process that included a solid movement by the Women's Action Forum, persistent raising of voice by the civil society and consistent struggle by institutions that were clear about the injustices that this Ordinance was resulting in.

It took 27 years for the amendments to finally take place. However, no action would have been possible without the struggles and a conducive environment for a debate on the subject by the actors involved. Each step towards this direction was a milestone in itself, and made the most meaningful contribution to washing away the impression of untouchability attached to the Ordinance.

[39] Case 4: Sattar, A. (2015). *The Laws of Honour Killing and Rape in Pakistan Current Status and Future Prospects*. Aawaz Programme.

One such milestone can be counted in the contribution made by the National Commission on the Status of Women (NCSW) that undertook a year long process to review the Hudood Ordinance, involving scholars, legal professionals, experts and retired judges. The recommendations made by way of this process played an important role in challenging the perception that these laws were a divine intervention and had no flaws.

The National Commission on the Status of Women was established in the year 2000. It is a statutory body comprising a Chairperson, with other members including scholars, 2 members from each province and one member from minorities, Azad Jammu and Kashmir, Federally Administered Tribal Areas, Federally-Administered Northern Areas and the Islamabad Capital Territory.

The objectives of the Commission, as stated in the Ordinance, are the emancipation of women, equalization of opportunities and socio-economic conditions amongst women and men, and elimination of all forms of discrimination against women.

Keeping in view its role, the Commission, in its meeting held in April 2002, took up the review of the Hudood Ordinances 1979. The review – a year long process from April 2002 to August 2003 – involved an in depth study of these ordinances. For the purpose, the Commission set up a special Committee comprising prominent retired judges, eminent lawyers, scholars, representatives of minorities and members of the Commission having legal background. To develop a consensus, the Council for Islamic Ideology (CII) was brought into the fold.

The committee comprised Justice (R) Majida Razvi (Chairperson National Commission on the Status of Women), Justice (R) Nasir Aslam Zahid (Former Judge Supreme Court of Pakistan), Justice (R) Shaiq Usmani (Former Chief Justice of Sindh High Court), Ms Hina Jillani (Advocate Supreme Court and Human Rights Activist), Dr M Farooq Khan (Religious Scholar), Ms Nahida Mahboob Elahi (Advocate), Dr Farida Ahmed (Religious Scholar), Syed Afzal Haider (Legal Expert), Dr Faqir Hussain, Ms Shahla Zia (Lawyer and Activist), Ms Charmaine Hidayatullah (First Women Bank), Ch Naeem Shakir (representing Non Muslim Pakistanis), Dr SM Zaman (Religious Scholar), Ms Rahila Durrani (lawyer), Allama Aqeel Turabi (Religious Scholar), and Noor Muhammad.

The Committee held five meetings in Karachi, Islamabad and Quetta and discussed all the four ordinances, clause by clause, referring to Quran and Hadith and the prevalent law. During discussion, Zina and Qazf ordinances were also discussed. As the ordinances were most severely affecting rape victims, the review focused on amending the rape and the adultery clauses in the Ordinance.

All the meetings were documented and the reviews and recommendations of participants were recorded. The details are available in the 2003 publication “Report on Hudood Ordinance 1979”.

The said document notes that “out of fifteen members, who actively participated in the deliberations regarding the Hudood Ordinances and gave their views in person and in writing, 12 members have recommended that the Hudood Ordinance should be repealed, while only 2 members have recommended that these should not be repealed but amended with a view to removing lacunae and

defective parts of it. One member stated that the recommendations of the Committee should be given effect to."

The Special Committee, in its public record, noted that "the participating members of the Committee are unanimous in arriving at the conclusion that the Hudood Ordinances, as enforced, are full of lacunas and anomalies and the enforcement of these has brought about injustice rather than justice, which should be the main purpose of the enforcement of Islamic Law. Consequently, by a majority, this special committee recommends that all four Hudood Ordinances, 1979 should be repealed and the original laws with regard to the offences mentioned in these ordinances be restored. However, in order to give due consideration to those members in minority (2) who have recommended amendments to the ordinances rather than their repeal, the special committee suggests that if, after repealing as recommended by the Committee, Hudood Laws are required to be enforced, the draft Bill should be first widely circulated with a view to seeking the opinions of various sections of civil society in general, and women's right groups in particular, and subsequently it should be placed before the parliament for a full fledged debate."

These recommendations were later taken by the then government and members of the parliament, advocating for the repeal of the law. After an intense political battle and resistance put up by the conservative elements, the amendments were finally introduced in year 2006 in the form of Protection of Women (Criminal Laws Amendment) Act, 2006.

Box 2

Interview with Asia Muneer, War Against Rape

Introduction

Asia Muneer is an Advocate High Court and a practicing lawyer. She has studied MA Political Science from the University of Karachi and LLB from SM Law College. She has been working with the War Against Rape (WAR) since 2003. As WAR's lawyer, sShe has secured convictions in ~~won~~ 22 cases of rape and sexual violence against women. ~~on behalf of WAR.~~

SHRC conducted a brief interview with Asia to understand courtroom experience of rape cases. Following are the excerpts from the interview:

What are your views on the Hudood Ordinance?

Hudood Ordinance is an example of poor law.

Earlier FIRs on rape accusations were registered under the Hudood Ordinance but the case would never proceed. The law required evidence from four "Pakbaaz Gawah", something that could never be materialized. Instead the women survivor would be put behind the bars for committing adultery. Since none of this could be proved, jails would be full of people, especially women booked under Hudood Laws.

Ever since these 2006 Protection of Women (Criminal Laws Amendment) Act, 2006, FIRs are registered and penalties are prescribed under the PPC which is where the rape crime was originally located.

It is also surprising to see that despite the Protection of Women (Criminal Laws Amendment) Act, 2006, the courts are still getting away with making references to Hudood Laws. The 2008 Mazar-e-Quaid rape case judgment, announced in 2011 had cited Hudood Ordinance even though the case was booked under PPC.

What about the Criminal Law (Amendment Offences Relating to Rape) Act, 2016?

The DNA provision has been brought in. Earlier, in cases such as those of incest accusations, doctors would call for DNA evidence. However, despite the law, and the six months since the legislation, the DNA testing is hardly carried out because we do not have adequate machinery in place. The provision can actually go against the survivors because of inadequate access to a functional DNA system for all.

Apart from the DNA condition, the cases are supposed to be sped up in three months. No quality work is possible given such a short time period. The time of the remand itself is 14 days, and the challan takes 14-17 days. How can they expect the cases to be wrapped up so fast? The time period should have been at least 6 months.

What are the typical challenges of a rape victim?

Earlier, survivors used to be very uneasy with the whole process as the trial would be conducted openly. We would have to ask the judges to have the court room vacated. Request for in camera trial (private trial) would have to be made separately. Ever since the SC's order, rape cases are now conducted in camera. However, the problem is that there is no space in the courts to conduct cases separately. There is no way you can maintain privacy if three judges are sharing the same chamber.

At the same time, despite in-camera trial, cases are set in the courts in a manner that there is no privacy for the victims. Names are openly announced in the public and the victim comes in the spotlight.

Rape cases usually take 2-2.5 years till the judgment is announced. This acts as immense amount of psychological trauma.

We don't require survivors to come to the court proceedings every time. Mostly victims' families come after the survivor has appeared for recording the statement.

What motivates families to pursue rape cases given so much social stigma attached to the subject?

Families themselves exert social pressure on the survivors by using derogatory terms about them. We had a case where a girl who was raped was constantly referred to by her mother as "phatta huwa joota, jis ko koi istimal nahi karega"

At the same time, families are very angry when one of their members is subjected to this heinous crime. It's their sense of anger and injustice that keeps them pursuing the case. We have to continuously counsel them. This is why I feel that not only lawyers should get training on psychological counseling, there should be psychologists assisting rape victims and their families in dealing with this trauma.

Why do victims backtrack?

Even though the protection of rape survivors and justice for them is the state's responsibility, we see this being violated frequently. Apart from threats and intimidation by the accused, we see judges themselves exerting a lot of pressure on the victims to "forgive" the culprit. We had a case where a 10 year old girl was raped and killed by her mother's cousin. Her body was cut into pieces and dumped at Hawksbay, Karachi. While the case was proceeding, the judge kept asking the accused to go seek forgiveness from the family, so that his life could be saved.

What are the systemic deficits that add to the rape survivors ordeal?

Our society in general is very anti rights. Those associated with the legal profession need to be more pro rights. They should not be passing moral judgments about people. Moreover, there is need to check the corruption of the lawyers. There is no system to check their lies or misconduct, adding to the woes of the rape victims.

When a severe punishment such as capital punishment is involved, the case is made weak right from the medico legal level by buying concerned officials and tampering with the reports. MLOs are also not trained. They do not even examine marks of violence. The evidence becomes extremely compromised right from the start.

It is only if there is social pressure (as in high profile cases) or when NGOs are involved that they tend to act professionally. But NGOs cannot be involved in each and every rape case.

Do you have a comment on legislation and the process of drafting of law that may result in gaps in how the cases are pursued in the court room?

There needs to be preparation, knowledge and research behind each exercise of the drafting of the law. Till these three items are in place, now functional law can be developed to benefit the society.

Moreover, it is extremely important that those associated with the legal profession are trained in laws, human rights and amendments in laws. We know that lawyers and judges are made to go through frequent trainings, but we don't see the execution of new learnings taking place at any level. There needs to be accountability with regards to the resources that go into training those associated with the legal profession and monitoring of its execution.

What are the reforms needed to address Violence Against Women

When a survivor comes to us, they are usually under a great deal of pressure as they are constantly being threatened by the accused party. We advise them to move to a shelter home. But what about

their families that are equally vulnerable. There is need to do away with the whole culture of intimidation and protection for the survivors and their families.

While fighting court battles, the survivors and their families pay an extremely high financial cost entailing frequent visits to courts etc. Many a times, they end up losing their job. There should be some fund to support them as well.

The rules of ethics emphasize the need for a psychologist for counseling of rape victims. However, no single psychologist has been appointed yet.

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Section 3

The Protection Against Harassment Of Women At The Workplace Act (2010) and Criminal Law (Amendment) Act, 2010

The Protection against Harassment of Women at the Workplace Act (2010) was passed by the Parliament in 2010 following years long struggle by rights advocates that pooled their efforts in the form of "Alliance Against Sexual Harassment" (AASHA) and lobbied relentlessly to establish a structure to counter workplace sexual harassment.

To combat sexual harassment, Parliament enacted two laws. The first made an amendment in the Pakistan Penal Code, section 509, to include the definition of Sexual Harassment making it a criminal offense at home, on streets and at workplaces.

The second law, 'Protection Against Harassment Of Women At The Workplace Act, 2010', makes it compulsory for every organization to (1) adopt a "Code of Conduct" prescribed in the law into their organization's human resource policies; (2) set up a three member Standing Inquiry Committee to address the complaints and (3) inform their employees of the new policy.[40]

Even though the title of the Act suggests that it seeks to protect women against harassment, the definition of "complainant" in the Act has no restriction regarding sex.

A broader definition of "workplace" has been employed in the law. It states: Building, factory, open area, geographical area of activities, and any situation linked to official work. Employers include contractors. Thereby the law covers establishments of varied ranges and there is no restriction on formal or informal workplace. However, the proposed mechanisms to address sexual harassment are more suited for formal organizations.

[40] AASHA's National Implementation Framework For The Laws Against Sexual Harassment

The Bill also involves appointment of Ombudsperson (with the powers of civil court) at federal and provincial level across the country to enable the complainant to seek recourse in case of dissatisfaction with the composition or the findings of the Inquiry Committee.

The law also provides for representation to the President or the Governor in case of dissatisfaction with the decision of the Ombudsman.

Under the law, all organizations, including federal and provincial government ministries, departments, corporations, educational institutions, private commercial organizations and registered civil society associations are required to constitute inquiry committees of at least three members each - one of them a woman - to probe complaints and give their findings within 30 days to the competent authority concerned that will award recommended penalties.

Minor penalties against the accused, once the allegation is proved, include censure, withholding for specified periods of promotion or increment and stoppage at an efficiency bar in the time-scale, other than fitness to cross such bar, and recovery of compensation payable to a complainant from pay or any other source of the accused.

Major penalties are demotion to a lower post or time-scale or to a lower stage in a time-scale, compulsory retirement, removal from service, dismissal from service, and fine, a part of which can be used as compensation for the complainant.[41]

There is very limited analysis of the Protection Against Harassment of Women at the Workplace Act 2010 and related amendments in the PPC, in literature. SHRC held a consultation on the subject on August 18, 2016. Abira Ashfaq, a legal professional, made a presentation on her assessment of the legislation. Points and observations made by Ashfaq are being added here.

- A broader definition of complainant may be pursued, including student and a visitor at a workplace, as done in the Indian law. Moreover, aggrieved person could also include domestic workers, home based workers, volunteers or trainees at a workplace.
- A specification of workplace may help the implementation of the Act better. Even though the act carries fairly broad range of areas described as “workplace”. The Indian law Sexual Harassment of Women at Workplace 2013 includes hospitals, house, stadiums, places travelled to in the course of employment, unorganized sector (less than ten workers) as workplace. Moreover, it also covers patients, inmate at jails, and those who come for services to an office.
- A bill being presented by Ms Asiya Nasir in the National Assembly suggests including home based work and domestic work in the definition of workplace. The proposed bill also seeks to cover home based workers and those who live in or visit homes where domestic workers work. It is to be noted that the current law does cover contractor as an employer.
- There is no explicit mention of agriculture work in The Protection Against Harassment of Women at the Workplace (2010) Act, even though it covers open area, geographical area of

[41] Dawn (2010). Zardari signs bill: Harassment of women is now a crime. [online] Available at: https://www.dawn.com/news/846465 [Accessed 22 February. 2017].

activities in the definition of workplace. According to the Office of The Provincial Ombudsman - Sindh 'The Protection against Harassment of Women at Work Place', they have dealt with around 45 cases pertaining to sexual harassment in the agriculture sector in the province of Sindh.

- ❖ A logistical arrangement of workplace with less than ten employees (shops, stores) also needs to be specified. Such establishments do not have necessary details to put in place an Inquiry Committee. Filing an 509 FIR is not always practical or feasible as utilizing an inquiry committee process.
- ❖ It is important to add educational institutions in the definition of "workplace", as experience show that not adding it specifically provide a loophole to the accused. Citing a case Federal Ombudsman 2013 MLD 225, the accused who was a lecturer at the University asked for sexual favors from student, promising to pass her in an exam, made phone calls to the victim, insisted she meet him at his office.

  When a case was filed, the accused argued that The Protection Against Harassment of Women at the Workplace (2010) was not applicable to educational institutions and that only an employee of an institution could file a complaint against employer for harassing her. (See box)
- ❖ It has been suggested by Senator Farahatullah Babar in the Senate in July 2014 that "pursuit of studies" be added in order to cover students to the phrase "offensive work environment"

Definition of Harassment

The Protection of Women Against Harassment at Workplace defines sexual harassment as follows:

- Unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes.
- Causing interference with work performance or
- Creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment;

Observations/Suggested Reforms

- ❖ The act focuses on "Impact" and not "intention" and a harasser need not have intended to harass. A negative ruling was given in a Federal Ombudsman (2013 MLD 198) case where a person was accused of calling the aggrieved person as "*jahil*" and "*Badtameez Aurat*". Although words were sufficiently offensive to cause discomfort to a woman, they did not rise to the level of interfering with the alleged victim's work performance as it was an isolated incident, which occurred over a minor dispute. (See Box)
- ❖ Stalking should be also considered a sexual harassment offence. In the UK, stalking was added in the Protection Against Harassment Act in 2012. The act was defined as "stalking is following a person, watching or spying on them or forcing contact with the victim through any means, including social media."

Committees

The Act stipulates Inquiry Committees at workplace to address the complaint of sexual harassment. The Committee may include:

- One woman,
- One member from senior management,
- One senior representative of the employees or a senior employee where there is no CBA
- One or more members can be co-opted from outside the organization if the organization is unable to designate three members from within as described above.
- A Chairperson shall be designated from amongst them.

Observations/Suggested Reforms

It has been suggested that there needs to be a system in place for home based workers and domestic workers to make a complaint. The Ombudsman office states that they have been approached by domestic workers for redress of sexual harassment cases; yet a more accessible mechanism should be set up to ensure wider outreach.

The proposed amendments by MPA Asiya Nisar offer provision for Home Based Workers to complain to supervisor, CBA nominee, workers' representative or directly to Ombudsperson.

Broader suggestions for effective implementation of the law:

There is immense need for awareness regarding sexual harassment. Acts and conversations with undertones of sexual offences that have come to become a part of the normal discourse need to be discouraged. These may include clear outlining of the following talks/remarks/conversations/acts as sexual harassment:

- Rude jokes about appearance and body
- Remarks about sex life
- Stalking
- Invading personal space
- Humiliating, reprimanding, insulting in public, having sexually explicit material on your screen, monitoring, blaming, singling out for error, giving belittling jobs not part of the job duties.
- Hostile work environment could include co-workers gossiping about you

For an effective institutional mechanism to deal with cases of sexual harassment, the following suggestions were made:

- A more proactive role of the Inquiry Committee. The Inquiry Committee comes into action only when a harassment incident is reported to it. Thus there is no provision in the law which requires it to conduct regular assessments of the workplace or take up anonymous complaints. If the Act mandates the Inquiry Committees for regular assessments of the

workplace, it can avoid possible harassment incidents and lead to a safer workplace atmosphere;[42]

- Instead of institutionalizing role of Ombudsperson, empowerment of local bodies may help, especially in the rural areas where there are serious impediments of access and awareness;
- Requisite budget allocation should be made for a more effective implementation.

Criminal Law (Amendment) Act, 2010

The law substitutes section 509 in PPC making sexual harassment at a public place punishable by three years term or fine of up to Rs 500,000:

The definition of harassment include:

> *"intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such work or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman;*
>
> *"Conducts sexual advances, or demands sexual favours or uses verbal or non-verbal communication or physical conduct of a sexual nature which intends to annoy, insult, intimidate or threaten the other person or commits such acts at the premises of workplace, or makes submission to such conduct either explicitly or implicitly a term or condition of an individual's employment, or makes submission to or rejection of such conduct by an individual a basis for employment decision affecting such individual, or retaliates because of rejection of such behavior, or conducts such behavior with the intention of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.*

There is no research on how effectively this law has been used to address sexual harassment in public places. In so far, as the presence of a law to address harassment at public places is concerned, this is a very encouraging development. However, cases of sexual harassment at public places usually involve shock, intimidation, sometimes chaos, and an urge on the part of the victim to move away from the situation as early as possible. For this law to work effectively, it is very important that trainings at the grassroots level, including to students, working women, and home maker women be imparted to encourage confidence in them to take up the matter when they face a harassment situation. Increasing the number of women police officials is also important so that victims can feel secure and comfortable to register their complaint. A 24 hour dedicated helpline may also encourage victims to register their complaint and seek help from police. A concerted media campaign to inform wider public about the law, while also focusing on discouraging the potential harasser could also assist in effective implementation of this law.

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[42] Khan, M. and Ahmed, A. (n.d.). The Protection against Harassment of Women at the Workplace Act 2010: A Legislative Review. *LUMS Law Journal*, [online] 3. Available at: https://sahsol.lums.edu.pk/law-journal/protection-against-harassment-women-workplace-act-2010-legislative-review [Accessed 15 Mar. 2017].

Box

Case 1

On the face of it, the definition of harassment is broad and seems to encompass all forms of harassment in addition to sexual harassment. However, the Federal Ombudsman has narrowed its meaning while interpreting it. In one of the cases decided by the Federal Ombudsman, while analyzing whether the words "*jahil*" (illiterate) and "*badtameez aurat*" (uncivilized woman) constitute harassment, it was clarified that in order for an action to constitute harassment, the action should be severe and persuasive enough to alter the working conditions of the victims' employment or render the workplace atmosphere intimidating, hostile or offensive. It is interesting to note that in this case, the Federal Ombudsman did not reject the notion that verbal abuse could be harassment, but by reasoning that the verbal abuse was not severe enough and was an isolated incident, decided that it did not constitute harassment. Contrarily, in another case, the Federal Ombudsman found that such verbal communication did constitute harassment because of the continuous nature of the conduct and the overall sexually demeaning attitude of the accused. It can be seen that in both cases, the Federal Ombudsman has focused upon the intensity of the conduct.

Case 2

This definition of workplace laid out in the "The Protection Against Harassment of Women at the Workplace Act (2010) and Criminal Law (Amendment) Act, 2010" indicates that the Act is applicable to organizations. In one of the cases before the Federal Ombudsman, the main issue was whether an educational institute falls under this definition of workplace. In this case, a university lecturer was accused of asking sexual favors from a student. The Federal Ombudsman found the defendant guilty of sexual harassment and in the process made two significant contributions with respect to the Act. Firstly, the judgment noted that educational institutes are also organizations and thus fall within the meaning of the workplace as defined under Section 2(n) of the Act. This made clear that the Act is as applicable to universities as it is applicable to other organizations. Secondly, the Federal Ombudsman indicated that a university student should not be barred from bringing a complaint to the Ombudsman simply for the reason that she was not an employee of the educational institute. They held:

"The fact remains that work means physical and mental effort or activity directed to the production or accomplishment of something that one is doing, making or performing especially as an occupation or undertaking a duty or a task therefore, the Act equally applies to employer, employee and students."

Cases cited in Maria Khan, Ayesha Ahmed, 2016, "The Protection against Harassment of Women at the Workplace Act 2010: A Legislative Review, LUMS Law Journal, Volume 3, https://sahsol.lums.edu.pk/law-journal/protection-against-harassment-women-workplace-act-2010-legislative-review

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Section 4

The Prevention of Anti-Women Practices (Criminal Law Amendment) Act 2011

Introduction

The Prevention of Anti-Women Practices (Criminal Law Amendment) Act 2011 (PAWPA) was passed by the National Assembly of Pakistan in November 2011. The legislation seeks to outlaw practices that are conducted ostensibly in the names of customs but in essence comprise measures to exert control over women, manipulate and discriminate against them and violate their basic rights. These pertain to compensatory exchange, forced marriage, marriage to Holy Quran and attempts to deprive women from their share in property in the name of tradition. These practices have enjoyed social acceptance while acutely marginalizing women in social, economic and cultural spheres, and also encouraging violence against them.

It is to be noted that prior to PAWPA 2011, the Criminal Law (Amendment) Act 2004 had already prohibited *Badl-e-Sulh*[43] by explicitly inserting section 310 A. Under this section, a girl/woman cannot be given in marriage as compensation for someone's crime. It directly deals with all forms of marriage as compensation" which is practiced all over Pakistan with different names such as *Badl-e-Sulh, Sawara, Wanni, Sung Chatti* and *Irjaee*.[44]

However, the 2004 Act hardly prevented the crime from growing. Even a Sindh High Court ban could not address the issue that carried on unabated. Feudal jirga system has been primarily blamed for the continuation of this practice.

The Prevention of Anti Women Practices (Criminal Law Amendment) Act 2011 was therefore enacted, specifically targeting the acts/actions that seek to disadvantage women in the name of customs and traditions.

The specific provisions of this law are being reproduced below:

Substitution of section 310A, Act XLV of 1860.- In the Pakistan Penal Code (Act XLV of 1860), hereinafter referred to as the Code, in Chapter XVI, for section 310A, the following shall be substituted, namely:-

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

Insertion of new Chapter XXA, Act XLV of 1860.- In the Code, after Chapter XX, the following new Chapter shall be inserted, namely:- "Chapter XXA Offences against Women"

[43] According to PLJ website, the "word, "Badl-e-Sulh" is not defined in Pakistan Penal Code, 1860, yet in the context of S. 310(A), the same be construed as giving or accepting something in compensation of right of qisas and right of qisas always arises at the time of commission of same offence [PLJ 2007 Cr.C. (Lahore) 320.]"

[44] Abbas, M. and Riaz, S. (n.d.). Legal Protections Provided Under Pakistani Law against Anti-Women Practices: Implementation Gaps between Theory and Practice. *The Dialogue*, VIII(2).

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

498B. Prohibition of forced marriage - Whoever coerces or in any manner whatsoever compels a woman to enter into marriage shall be punished with imprisonment of either description for a term, which may extend to ten years or for a term which shall not be less than three years and shall also be liable to fine of five hundred thousand rupees.

498C. Prohibition of marriage with the Holy Quran - Whoever compels or arranges or facilitates the marriage of a woman with the Holy Quran shall be punished with imprisonment of either description which may extend to seven years which shall not be less than three years and shall be liable to fine of five hundred thousand rupees.

Insertion of new section 402D, Act V of 1898 - In the Code of Criminal Procedure (Act V of 1898), hereinafter referred to as the said Code, after section 402C, the following new section shall be inserted, namely:-

"402D. Provincial Government not to interfere in sentences of rape - Notwithstanding anything contained in sections 401, 402 or 402B, the Provincial Government shall not suspend, remit or commute any sentence passed under section 376 of the Pakistan Penal Code (Act XLV of 1860)."

The 2011 law is an important milestone in drawing an explicit commitment from lawmakers to address the issue of anti-women practices, and institutionalizing the prohibition of these practices by way of a law focusing specifically on these areas.

In terms of gaps, in her review of the bill, Advocate Maliha Zia Lari, in the issue no 37 of Legislative Watch by Aurat Foundation, makes the following observations:

310-A. Punishment for giving a female in marriage or otherwise in *badla-e-sulh, wanni* or *swara*

- The section pertains to punishment for giving a female in marriage or otherwise in *Badla-e-Sulh*, *Wanni* or *Swara*. There is a pre-requisite of an existence of a civil dispute or a criminal dispute. The element is restrictive as it appears to require that those who give a female in marriage intend do so for the purpose of settling a civil dispute or avoid criminal liability. The terms civil dispute and criminal liability are not defined. If a female is given for something that cannot be classified as such, but still in violation of the female's rights, it will not fall under this section.
- The provision also applies primarily to those who 'give' the female in marriage i.e. usually the family of the female. It does not necessarily penalize the other parties involved i.e. the ones who

facilitate the marriage, the witnesses, other family members and most importantly, the bridegroom and his family i.e. those on the receiving end of the bargain.[45]

- However, in certain situations, depending on the individual circumstances of the case, any person who may have 'compelled' the female into such a marriage will fall under the section. It would require robust prosecution to include those who facilitated the marriage, served as witnesses and other family members who otherwise played a role in the marriage as those who "compelled" it.
- The biggest issue with the section lies with its lack of definition. By not defining *'wanni'*, *'swara'* or even 'custom' or practice', therein lies a loophole in criminal law. General definitions may be used but the courts may remain reluctant to include certain acts to fall within this section, thereby continuing to give perpetrators immunity by refusing to define their actions as a crime under this act. One optimistically hopes that progressive judges will interpret these terms expansively and in line with the act's purpose to clamp down on those practices that discriminate against women and girls.
- Such marriages have also not been declared void (legally invalid) or voidable (valid at the female's choice). It is also necessary that women and children in such marriages are provided mandatory maintenance and compensatory costs depending on the period of marriage.

Section 498A

Section 498A deals with the issue of depriving a woman of her share in inheritance. Essentially, this section is meant to provide protection to women from having her inheritance taken away from her.

- The use of the words 'deceitful' and 'illegal' make the section restrictive. This means any act done under different circumstances (for e.g. duress, emotional blackmail that do not rise to the level of illegality) will be exempt. It would perhaps have been more effective to simply state that a woman is not to be deprived of her inheritance by any means whatsoever.

498B. Prohibition of forced marriage

The section criminalises forced marriages. Those who compel or coerce a female into such a marriage can be subject to a five to ten year prison sentence. This section does not specify the pre-requisite circumstances for the marriage and this, in principle, should be applicable, to different forms of forced marriages for any purpose~~s~~, whether it relates to child marriage~~s~~, marriage for the purpose~~s~~ of usurping land, settle disputes, forcibly conversion etc.

- One issue that may arise is that the maximum sentence in section 498B (forced marriage) is 10 years, while in Section 310A (*badl-e-sulh*), the maximum sentence is seven years. This may result in applications under Section 310A as opposed to this section as the chances for a shorter punishments increase in the aforementioned section.

[45] Human Rights and Legal Expert Abira Ashfaq observes that the law for abetting crimes exists and needs to be employed. Prosecutorial guidelines to ensure that those facilitate are prosecuted as abettors could be introduced. The amended provision should mention how those who facilitate could be treated as abettors.

- Another major issue is that this section may provide a punishment for those involved, but it does not declare the marriage void or voidable, nor does it provide protection for the female, even in terms of monetary compensation or maintenance of the female depending on the period of marriage.
- Some posit that the woman escaping such a forced marriage could claim 'khula' (unilateral divorce) in a court of law. Besides being onerous as it requires the victim of forced marriage filing a court case, it is not enough of an answer. By declaring the marriage void or even voidable, allows the woman dignity by acknowledging that this was not a "marriage" since a "marriage" is only valid and legal by consent of the bride.

498C. Prohibition of marriage with the Holy Quran

It has been opined that much depends on the reporting of such a crime, which in any case is negligible. The police and judiciary must play proactive role to positively discourage this trend.

The 2011 legislation does not provide for any special methods of reporting crimes falling within the definitions of this legislation. Therefore, the existing general provisions and procedures of the criminal legal system of Pakistan will apply. This may be problematic given the slow, delayed and tedious nature of the Pakistani law system. [46]

Another problem of the law is that PAWPA does not have retrospective effect; therefore the cases existing before passage of this provision cannot be brought under its ambit.[47]

Study: Lacunas in Pro-Women Legislation in Pakistan

Another study "Lacunas in Pro-Women Legislation in Pakistan", by Riffat Butt supported by Norwegian Church Aid, aiming to assess the impact of PAWPA and the effectiveness of the legal framework available for minority communities on issues faced by women with respect to family matters, observes the following gaps:

- The law is silent on the status of marriage in cases of *Wanni/Swara* and forced marriage. A woman has to take recourse to the family court for *khula* or dissolution of marriage.
- Another major loophole of the law is that it prescribes punishment of the offense where a woman is deprived of her right to inheritance. It is silent on passing the order of returning back her due share in the property. For obtaining her share, she is to file another civil suit. The law should have provided that woman who has been deprived from her property/succession must be given back her property after determination of her legal heir-ship currently at the time of the decision of the court under this law. The woman should not have needed to file another suit.
- It also does not define the elements of forced marriage. Common people have a different perception of what constitutes a "forced marriage". When asked how they define forced

[46] Lari, M. (2011). A critical appreciation of the Prevention of Anti-Women Practices (Criminal Law Amendment) Bill 2011. *Legislative Watch, Aurat Foundation*, (37).
[47] Butt, R. (2013). *Lacunas in Pro-Women Legislation in Pakistan*. Norwegian Church Aid.

marriage, in a survey for the purpose of this study, answers suggested "marriage without the consent of the bride" or "marriage without the consent of *wali*".

The study also assesses the impact of the law on members of religious minorities. Following are the observations made:

- The personal laws governing the minorities are limited in number and also discriminatory against the women. No codified laws of inheritance for Christian and Hindu community exist. Hindu community also does not have any law to settle marriage and divorce matters (The National Assembly, following the legislation in Sindh Assembly, passed the Hindu Marriage Bill in March 2017).
- It has been observed that due to the absence of effective personal laws, minority communities may not avail the protection provided in the Prevention of Anti-Women Practices Act. The provisions of Child Marriage Restraint Act are weak in nature and have failed to control the solemnization of child marriage. Thus laws criminalising child or forced marriage, in order to be used to protect minority females, would first require building a coherent scheme of personal laws for minorities.
- There is no separate legislation on succession and inheritance. The matters of Christian inheritance and succession are dealt under Succession Act 1925. The Succession Act dates back to the British rule in the Indian subcontinent. The law was designed to deal with succession issues of colonial subjects belonging to different religious communities. It has been observed that Christian women are kept deprived of their due share in inheritance by male family members.
- A related case *Inayat Bibi versus Nazir Inayat Ullah* has also been cited[48]. The Supreme Court has declared customary law inapplicable after the enforcement of this Act which was being invoked by males of the family to deprive the females. Supreme Court of Pakistan, in this case, allowed inheritance to a Christian female and ruled: "The Christian females, similarly as in the present case, are allowed to inherit in presence of the male heirs. It is thus a case of the application of the Succession Act, which by statutory dispensation having determined the mode of succession when Christian male dies; neither the question of custom nor any other law quoted by the learned Council would be applicable".
- Hindu Community in Pakistan too has no recourse to personal law. Personal law of Hindus remained un-codified except for inheritance laws for a specific purpose and Hindu Women Right to Separate Maintenance and Residence Act, 1946 (providing married women right of a separate residence/maintenance where the husband fails on one of seven grounds). It has been observed that due to the absence of the codified legislation, it would be difficult for the women from the Hindu community to prove their case of being deprived from inheritance, thus restraining them from the benefits of this enacted law. However, the protection of law is available in cases of *Wanni/Swara* in Hindu community also.

[48] PLD 1992 Supreme Court 385

- Issues of forced marriages after forced conversions – common in Sindh Province - cannot be brought under PAWPA because; the law does not define the elements of "forced marriage", leaving it on the court to construe the meaning at its discretion in accordance with the circumstances of the case.
- Experts opine that the cases of *Wanni* and *Swara* with regard to the minorities can be brought under PAWPA.[49]

It would be interesting to present excerpts from the findings of the said study. As described above the study had two objectives:

- Present an assessment to build an understanding of different actors involved in pro-women legislation dealing with PAWPA in the targeted districts. These districts included: Layyah, Bahawalpur, Gujrat in Punjab and Swat, Mansehra and Haripur in Khyber Pakhtunkhwa. As explained in the report, these districts were selected because the Norwegian Church Aid is working with implementing partners on Gender Justice Program "Local Action to Combat Gender Injustices", in local communities;
- This study also focuses upon assessing the effectiveness of the legal framework that is available for the minority communities on issues faced by women with respect to family matters including marriage and inheritance and impact of PAWPA therein.

For methodology, the study applied quantitative and qualitative research methodologies based on primary and secondary data to derive empirically justified results to be presented in a report.

Key findings of the study with regards to PAWPA are as follows. It is to be noted that comments on legislation concerning Hindu marriage and domestic violence Act have been omitted in view of the related legislation on these matters in recent years.

1- During field research, it appeared that the judges and lawyers contacted, had little knowledge about the PAWPA 2011 and especially their knowledge regarding Christians and Hindu laws on marriage and inheritance and the Child Marriage Restraint Act 1929 was found to be inadequate. Almost all of them had to consult the relevant literature and even their seniors for responding to the questions in the questionnaire. Knowledge of the implementing partners was also limited on the focus laws.
2- Judges, lawyers, police and NGOs from Swat are of the opinion that being part of Provincially Administered Tribal Areas, PAWPA is not applicable on their area. "When asked under which laws, they deal cases of *Wanni/Swara* and forced marriages, the answer was PPC; whereas the cases of inheritances are brought under the Civil Procedure Code (C.P.C) and Family Court Act (FCA) 1964. They were ignorant of the fact that this law has introduced changes in PPC and have not created a separate legislation to deal with these offenses other than the already existing law."

[49] Naeem Shakir, Advocate and Human Rights Activist, Interview by Riffat Butt, Islamabad, December 11, 2012 cited in Butt, R. (2013). *Lacunas in Pro-Women Legislation in Pakistan*. Norwegian Church Aid.

3- The study also notes that no interviewee from any group had ever attended any kind of training on this new enactment, particularly, in case of NGOs that were torch bearers of this law and are actively connected with pro-women support system.

4- None of the victims interviewed had any knowledge of the law passed. Even if they did know, it is assumed it would have been of little help to them due to its non-retrospective nature.

Only three of the victims interviewed indicated that they have approached the civil courts for claiming inheritance or dissolution of marriage. They did not know if there was a special legislation that was specifically meant to provide relief to them on these issues.

5 – A number of females interviewed, who were given in *Wanni/Swara* were of tender age and now had children out of their forced relationships, narrated physical violence faced by them in these coercive relationships. One victim opted to leave her area and shifted to another place as a desperate measure to escape violence and was in process of fighting her case of dissolution of marriage in a family court.

6- The new law makes the offenses therein as non-compoundable and non-bailable. An accused person cannot be pardoned legally even if a compromise takes place between both parties; but where the punishment of any offense is provided less than 10 years, criminal law considers it as bailable one. This leads to inconsistency in the law. Non-cognizable nature of the offenses has further facilitated compounding of offenses under the PAWPA. Police cannot arrest the accused without prior permission of the concerned magistrate, even in the offense of *Wanni/ Swara.*

For victims of anti-women practices, another remedy lies are in filing of direct complaint before the magistrate. The cumbersome procedure provided in complaint cases may result in slow disposal, leading to disappointment for victims. Furthermore, victim is required to produce witnesses before magistrate as required in the Criminal Procedure Code and Qanun-e-Shahadat Ordinance 1984. In view of the above, the procedural laws like CrPC and Qanun-e-Shahadat Ordinance are not supportive in terms of speedy redressal of the grievances listed under PAWPA.

7- The said law can neither deter nor prevent the happening of the offenses because F.I.R cannot be registered under the PAWPA. There is no arrangement to check the preparation or to mobilize the law on apprehension of the offense.

8- It has been determined in response to (the questionnaire for survey) that whenever the institutional response (even under old legislation) was supportive, victims were apparently satisfied about the redressal of their grievance.

9- A good practice on the part of the Government of Punjab for protection of right to property, in general, and for women's right to property, in particular has been reported. Noticing that rights of the female heirs are not properly safeguarded due to existing lacunas in the laws and rules governing land administration, inheritance mutation for partition of the property has been made mandatory through amendment in the relevant law. Now upon death of a land owner, proceedings for inheritance mutation would be started by the Revenue officer forthwith.

Study: Forced Marriage and Inheritance Deprivation[50]

This study "**Forced Marriage and Inheritance Deprivation"** by Sarah Zaman, seeks to assess the implementation of the Prevention of Anti-Women Practices [Criminal Law Amendment] Act 2011. Conducted between 2013 and 2014 the study involved literature reviews and interviews with women, police, medico-legal doctors and public prosecutors involved in the dispensation of justice to survivors of forced marriages and inheritance deprivation. The study was undertaken in six districts of Pakistan, including Karachi, Hyderabad, Peshawar, Swat, Mardan and Islamabad Capital Territory [ICT]. As explained in the report, "the study's area of particular inquiry was to identify major substantive, structural and cultural impediments to the effective implementation of the Anti-women Practices Act, 2011."

The findings of the study can be summarized as follows:

- With the exception of a few, police was found to be largely unaware of the existence of the PAWPA 2011. No training or orientation sessions were reported to have been held by related government institutions to introduce the law. This restricts the ability of the police to apply the law where relevant;
- Same was the case with lawyers. Even senior lawyers were found to be unaware of the presence of this law. Bar councils were found to be deficient in fulfilling their responsibility of providing legal education to lawyers enrolled with them. This is also reflected in outdated legal books available with bars. Judicial Academies target only judges, despite the fact that police officers, lawyers, forensic and medico-legal experts are all part of the same chain of services;
- Deep seated biases were noted in the attitudes of police, medico legal and prosecution services against women. Victim-blaming, trivialization, normalization and rationalizing of violence against women have been observed to have been deeply institutionalized among the members of the criminal justice system. This was most likely to impact their handling of cases of marriage and property disputes. These are seen as domestic disputes that need to be resolved at home. The problem is compounded by the absence of training of police officers on gender-based violence or basic counseling skills needed to cater to gender-based violence cases;
- It has been noted that police officers have no means to investigate matters of domestic disputes/disturbances resulting from forced marriage or inheritance. In such cases, they mostly admonish the repeat offenders and counsel women complainant, encouraging her to go back home;

[50] Zaman, S. (2014). *Forced Marriage and Inheritance Deprivation*. Aurat Publication and Information Service Foundation.

- Citizens, on their part, are unaware of the FIR registration process, which impedes their access to remedy in cases of violation of rights. Moreover, the inadequate presence of female police officers ends up making the application of law a largely patriarchal construct. Similar lack of awareness is found with regards to the utility of medico legal services;
- Women victims of forced marriage and inheritance deprivation also struggle with access to support services such as shelter, rehabilitation, free legal counseling, medical care and other economic support. Given that such women are often found with the challenge to severe ties with their families, the importance of such support for them to seek justice becomes manifold. It was also noted that officers make minimal referrals to local support organizations as they are not familiar with their work;
- Limited number of female prosecutors is also an issue. According to the report, 60 female prosecutors practiced in six districts. Some of them based in the city were not available for duty in remote areas;
- The report also noted lack of coordination between departments working to resolve crimes. This leads to complete absence of any strategy-setting in violence against women related trials between the police, medico-legal and prosecution services;
- The report also notes limited number of medico legal doctors. In the six districts surveyed, half were posted in Karachi alone. At the time of filing of the report, no women MLOs were reported in Swat, Mardan and ICT. Ironically, all MLOs interviewed for the report stated that they had to deal with cases of domestic violence everyday;
- Apart from limited availability, the report notes that medico-legal sections do not operate separately from the casualty/emergency ward. This compromises the quality of services being provided to women. There are no independent budgets for medico-legal services and tussles for equipment are common. Moreover, women MLOs are exempted from appearing in court (for their own protection outside Sindh). This deprives them of the opportunities to improve their professional skills;
- It was noted that women and law officers both were not able to make a distinction between what constitutes movable and immovable property as inheritance is generally understood to denote land. This further worsens application of the law;
- The element of corruption among police and absence of oversight mechanisms manifested in the procedure of filing of *chalan* in court and adherence to the National Judicial Policy was noted to cause delays and partial investigations. This deters officers from carrying out their duty in the face of scarce resources.

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Section 5

The Acid Control and Acid Crime Prevention Act, 2011

The Acid Survivors Foundation recorded 1,090 incidents of acid attacks in Pakistan between 2007 and 2014.[51] The free availability of acid and impunity with which the crime is committed exhibits the most heinous and adverse type of violence directed at the vulnerable. Though men have also been victims of acid attack, such offences against females are more common all across the country.

The Acid Control and Acid Crime Prevention Act, 2011 (Criminal Law Second Amendment Act, 2011) was passed by the parliament in 2011. The Act inserted the offences of hurt caused by corrosive substance (section 336A) and punishment for hurt by corrosive substance (section 336 B) into the Pakistan Penal Code.

Criminal Procedure Code was also amended to punish the perpetrator of acid crime.

Through an amendment in Section 336-B of Pakistan Penal code, punishment of offenders under this Act can extend up to life imprisonment

The Act makes it mandatory for the offender to pay a fine which may not be less than five hundred thousand rupees.

There is also a punishment for unauthorized sellers.[52]

Other key features of the Act are:

- There is also punishment for "attempt" to cause acid burn and for the act of "abetment" in the exercise;
- All crimes under this act are cognizable, non-compoundable and non-bailable;
- The Act binds government hospitals and government run medical facilities to examine victims and provide medical care and rehabilitation free of cost. The court shall take appropriate action in case the medical facility fails to comply with the Act;
- Police officer, not below the rank of inspector, has been tasked to carry out investigation of cases of acid attacks. There is punishment for their negligence and defective investigation;
- There is also time frame attached to the course of investigation (not exceeding 60 days) and prosecution that should be held on a day to day basis and concluded within 7 days.
- The Act also provides protection to the witness;
- In terms of cognizance of the offence, the court may take note of the complaint filed by the police officer, or proceed on the basis of the complaint lodged by the aggrieved party.

[51] HRCP Report cited in Courting the Law. (2016). *Violence Against Women: Actual Situation In Pakistan And Effective Measures To Fight Against it*. [online] Available at: http://courtingthelaw.com/2016/02/03/commentary/violence-against-women-actual-situation-in-pakistan-and-effective-measures-to-fight-against-it/#_ftn29 [Accessed 8 Jan. 2017].

[52] The Acid Control and Acid Crime Prevention Act, 2011 at http://pcsw.pitb.gov.pk/acid_crime_prevention

The Bill was a response to the long standing demand of rights advocates over a comprehensive law to address acid crimes. However, it is to be noted that even prior to this law, "the case for criminal liability against someone who inflicted grievous bodily harm on an innocent woman did exist under the Pakistan Penal Code 1860. If they intentionally inflicted harm causing death then the charge of murder is (and was) punishable, subject to the appropriate standard of proof (beyond a reasonable doubt) by death."[53]

Lacunas/Gaps in Law

Acid burn cases have continued despite legislation. One of the key criticisms against the law is that it fails to address the availability of acid. Acid and other corrosive substances are as easily available from the market as tissue papers.

Another criticism on the law pertains to poor legal enforcement that hardly acts as deterrence to addressing the problem.[54] Key challenges with regards to legal enforcement also include lack of knowledge among the police and the judiciary on the details of the law.

One important point relates to the provisions set up by the act itself with regards to implementation.

The Act stipulates establishment of Acid Burn and Crime Monitoring Board. The Board may be headed by the Secretary Ministry of Interior, and include members as representatives of Bait-ul-Maal (Department), two parliamentarians, two medical doctors, two lawyers, one retired judge, one representative of ministry of Industries and Production (relating to acid control), Inspector General Police, one member from NCSW and two representatives of civil society. The role of the board includes: monitoring effective implementation of the Act, formulate policies of treatment, rehabilitation and provide legal aid to acid and burn victims, take necessary steps to implement and monitor policies, organize educational campaigns, undertake research to curb acid crimes, and formulate rules detailing operations of the board. The Act also lays down details of the meetings of the Board and funds for the board, in addition to accounts and audits of these funds.

It is to be noted that there is no time period given on the establishment of the board. There is also no mention of the authorities that the board would be answerable to. No publicly available information indicates that the government has established such a board.

Moreover, no Rules of Business concerning the Act have been prepared yet (at the time of filing of this report). The Act also does not mention any time frame for the development of the Rules of Business.

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[53] Where's Pakistani Justice for Victims of Acid Violence?. (2012). [Blog] *Pakistan Horizon*. Available at: https://pakistanhorizon.wordpress.com/2012/03/26/wheres-pakistani-justice-for-victims-of-acid-violence/ [Accessed 20 Feb. 2017].

[54] Courting the Law. (2016). *Violence Against Women: Actual Situation In Pakistan And Effective Measures To Fight Against it*. [online] Available at: http://courtingthelaw.com/2016/02/03/commentary/violence-against-women-actual-situation-in-pakistan-and-effective-measures-to-fight-against-it/#_ftn29 [Accessed 8 Jan. 2017].

Recommendations for Effective Implementation of Pro Women Laws

- There is a strong need to remove the provision of compoundability from all murder crimes, be they centered around a murder or a murder in the name of honour. Privatisation of justice for victims of violence has severely compromised the fundamental rights of women, in addition to causing damage to the institution of justice. SHRC strongly recommends that the *Qisas* and *Diyat* provisions be done away with.
- During SHRC's regular interaction with police, it has always been highlighted by the latter that the systems regarding sharing of information and training of police on new laws or amendments is severely deficient. Many a times, there is no systematic sharing of information of new laws with the police. Police in smaller towns have frequently complained that they are not properly trained on matters related to the implementation of new laws nor are their skills upgraded in terms of their understanding of the law;
- Medico/legal procedures are not handled professionally in rape cases. There is much room for tampering with the evidence at an early stage. Because of their poor training and lack of accountability, medico-legal officers tend to compromise the case. This damages the cause of justice and sets a very negative precedent for all those who want to get away with committing the heinous crime of rape;
- It is also important to review the provision of capital punishment for rape crimes if it is harming the cause of justice by compelling the judges to take longer in disposing off cases, and the practice of appellate courts overturning the judgment on the basis of minute inadequacies in evidence.
- The DNA tests for rape victims have been specified in the Criminal Law (Amendment Offences Relating to Rape) Act, 2016. However, no systems have been established in local hospitals for it to become accessible to rape victims. There is also a need for training of medical officers for conducting the tests urgently so the proof is not wasted.
- The reviews of all laws have singlehandedly pointed to the need for training of legal professionals including lawyers, prosecutors, and judges, in the laws, and their application. Cases like the Mazar-e-Quaid rape case where the said judge had still applied the Hudood provisions on the rape crime or statements from judges asking families to "forgive the perpetrator" are tantamount to grave injustice. Similarly, lawyers, by use of their language and questionable conduct in handling violence against women cases add to the distress of the survivors. It is really important that a system of institutional accountability be set up to check malpractices, anti-rights and anti-justice conduct of legal professionals.
- In the Prevention of Anti-Women Practices (Criminal Law Amendment) Act, 2011, in the section "498A. Prohibition of depriving woman from inheriting property", SHRC does agree that a provision for return of the property of the aggrieved woman - after determination of her legal heir-ship - be included in the law;
- In the Prevention of Anti-Women Practices (Criminal Law Amendment) Act, 2011, in the section "498B. Prohibition of forced marriage", the law is silent on the status of marriage in cases of Wanni/Swara and Forced Marriages. The aggrieved woman has to take recourse to the

family court for dissolution of marriage. SHRC proposes that the marriage be declared as dissolved by the court upon presentation of satisfactory evidence of the case of forced marriage.

- Rules of Business and formation of commissions stipulated in laws should immediately follow the enactment of the laws. There has been noted a gap of several months, and sometimes years (as was the case with the Domestic Violence (Prevention and Protection) Bill, 2013 in Sindh), between the enactment of law and establishment of a formal procedure for implementation. This defeats the purpose of any pro rights law. The Commission hopes that the future law-enactment exercises will be accompanied with all institutional details necessary for their effective implementation.

===Ends====