



## The Implementation Challenges to Women Protection Laws in Pakistan

Vol. III, No. I (2018) | Page: 253 – 264 | DOI: 10.31703/grr.2018(III-I).18

p- ISSN: 2616-955X | e-ISSN: 2663-7030 | ISSN-L: 2616-955X

Muhammad Zubair\*

Syed Imran Haider†

Farhana Khattak‡

### Key Words:

Women Protection  
Laws, Gender  
Equality, Barriers,  
Justice System

**Abstract** *Gender equality and the elimination of violence against women has been taken a high priority on the international development agenda. Pakistan has introduced different laws from time to time for the safety and protection of women across the country including the different provinces. The paper analyzed pro-women and girl laws in the provinces of Sindh and tried to find out the barriers in the implementation of such laws. The major barriers found include the structural barriers at the level of judicial, police and the system of prosecution. In addition, the socio-cultural normative structure of society is strongly patriarchal. The political interests of different leaders, as well as political parties, also get the issue of implementation compromised.*

### Introduction

The paper is an effort to analyze the laws related to women's protection in the provinces of Sindh and Punjab to understand how effective the law is and where the challenges lie in terms of implementation. It tried to explore the barriers and hindrances, both structural and informal that stand in the way of the lawfully coming to life. For decades now, world leaders, international and local organizations and political systems have come to the realization that the success of any nation lays in ensuring that women are not left behind, economically, socially and politically. The realisation of gender equality has now come to gradually be accompanied with the fact that men and boys must be engaged to achieve this success. The 48<sup>th</sup> Commission on the Status of Women, 2004, highlighted the importance of the role of male in order to attain the gender equality(Hearn,

\* Associate Professor, Department of Law, Abdul Wali Khan University Mardan, Mardan, KP, Pakistan.

† Assistant Professor, Department of Sociology, SW & Pop. Studies, Allama Iqbal Open University, Islamabad, Pakistan. Email: [imran.haider@aiou.edu.pk](mailto:imran.haider@aiou.edu.pk)

‡ Assistant Professor, Department of Sociology, SW & Pop. Studies, Allama Iqbal Open University, Islamabad, Pakistan.

2004). Furthermore the Declaration of the 23<sup>rd</sup> special session of the UN General Assembly recommended that men must involve themselves and take responsibility for women for the promotion of gender equality (Rai, 2017).

According to the World Economic Forum, Pakistan stood 2<sup>nd</sup> to last on the Global Gender Gap Index. Pakistan was marked at 143<sup>rd</sup> (out of 144 countries) in 2015 and 2016. The focus of the report included four key areas: educational attainment, health and survival, economic opportunity and political empowerment (Leopold, Ratcheva & Zahidi, 2016). In 2014, Pakistan stood 141<sup>st</sup> out of 142 countries on the same index. Pakistan is considered the least gendered balanced country among the global community (Noland, Moran & Kotschwar, 2016). The World Economic Forum's Global Gender Gap Index in 2017 places Pakistan again in 143 out of 144 countries (Moin, Fatima & Qadir, 2018).

In education, Pakistan's social indicators, particularly for women and girls, compared to other countries at similar development stages, are very low. A very large number of children are not going to schools. The Ministry of Education's 'Education Statistics' 2015-16, provides that 49% of girls are not going to schools as compared to 40% of boys. Khalique (n.d) proposed that there is a particular problem in inter-provincial disparity, especially in terms of gross enrolment rates in rural areas. In Balochistan and FATA the statistics are worse, where girls make up 78% of out of school children in Balochistan in comparison to 63% of boys. In FATA, there are 74% of girls out of school in comparison to 43% of boys. As per Ministry of Education's 'Education Statistics' 2015-16, the literacy rate for girls and women in Pakistan (aged 15 and above) is 42% as compared to that of boys and men of similar ages at 67%. Similarly, adult literacy and education levels in Pakistan are generally lower in comparison to other South Asian countries, contributed primarily due to the fact that there is poor enrolment of women in formal educational institutions. It is further noted here that according to a 2013 UNICEF report, about 21% of girls in Pakistan are married even before reaching 18 years of age.

It should be noted, however, that with the recent developments in terms of gender-based violence laws, the biggest critique of the law is not necessarily its formation or content, even when it is considered flawed. It is that lawmakers, governments, and their various branches have failed to bring the law to life. The implementation is inconsistent, ineffective, and consumed with patriarchal challenges and barriers.

Furthermore, the question to consider is whether the law is a catalyst for societal change or do societal attitudes and behaviors drive the enactment of new laws? Has Pakistan's legislature created laws before society was ready to accept them or is the hindrance to access to justice institutional only? Though a globally applicable theoretical question to ponder over, it is also very relevant specifically to Pakistan and requires further thought. Under GTA, societal transformation is a

combination of various multifaceted approaches at all levels, including law-making.

In Punjab, further to having a common-law and Sharia law system, the Punjab Local Government Acts of 2013 provide for an alternative dispute resolution mechanism known as AnjumanMusalihat Committees. These committees are constituted either at the village or city council level with nine members including two women and are elected for 5 years. Recent years have seen a demand by religious organizations for the establishment of sharia courts alongside the provincial legal set up. Similarly, in Sindh, dispute resolution mechanisms exist through Governmental Local Bodies Acts or courts annexed mechanisms i.e. Small Causes and Minor Offences Ordinance 2002 (SCMOCO).

In addition to the formal justice system, there is a parallel justice system throughout the country, including in Sindh and Punjab. In Punjab, they are known as panchayats and in Sindh as Faisloos. There are many local names for such setups, including the commonly used name, jirgas. In Punjab and Sindh panchayats and faisloos are accessed mainly by the rural population in rural areas as a way of resolving disputes for all matters, ranging from small civil and family disputes to large and complex matters, including offenses of a criminal nature. Dawn News editorial (2017) shared that some form of jirgas have formulated and decisions are made in the city of Karachi as well. The composition of these informal parallel systems consists of influential, male-only local tribal elders or dominant local elite who are judge and jury either because of “a hereditary privilege or are nominated because of their social or economic status (Brohi, 2016).” There is no other procedure, mandate or mechanism for their appointment to this role.

These structures operate parallel to the formal system, without overlapping in any way. They do not apply nor have any respect for the law of the country and have often given decisions that are against the law of the land. They function outside the ambit of any national, provincial and local law and do not have legal coverage to be active. Usually, it is observed that the decisions and outcomes of these bodies have been highly detrimental to women and girls. Examples of decisions of panchayats include marriages where women legally and formally married to a man of their choice have their bond declared unlawful by jirgas. Moreover, they declared that both men and women should be killed because they violate the traditional norms and values (Brohi, 2016). They, therefore, not only contradict present laws but encourage violence and unrest. Jirgas and panchayats have known to give orders of death because “honor” of a family has been tainted or because the killing of a person will redeem the perceived “honor” of a person or family (Mogheri & Ali, 2017). Decisions range from financial compensation to the order of killing the accused and/or the accused family members, without proper trials, procedure, witnesses, evidence and its proper examination.

On 23 April 2004, a landmark judgment by the Sindh High Court [2004 PCr. LJ 1523], declared Jirga and faisloo unlawful, illegal, and against the provisions

of the Constitution and law of the land. There has been a similar judgment, in 2005, by the Supreme Court in which panchayats and Jirgas were declared illegal and unconstitutional. The judgment recommended lawmakers to pass legislation to declare these structures illegal and further to punish those that attempt to constitute such a body to decide a matter.

However, jirgas still operate, with impunity and thrive all over the country and in the process, play havoc with the lives of the poorest and most vulnerable people in society. Rural Pakistan, with limited education, access to resources and knowledge are restricted to jirgas being their first point of contact when a dispute occurs, or an issue needs resolution.

## Methodology

For the purpose of this research, it was tried to do the document analysis of the situation/ issues related to the below-mentioned laws. In addition, the qualitative data related to the situation and barriers were collected from 10 supreme court lawyers with over 5 years standing at supreme court level. List of laws reviewed and discussed is as follows:

1	The Sindh Domestic Violence (Prevention and Protection) Act, 2013
2	The Punjab Protection of Women Against Violence Act, 2016
3	Sindh Child Marriage Restraint Act, 2013
4	Punjab Child Marriage Restraint Act 1929 Punjab Child Marriage Restraint (Amendment) Act, 2015 (XII of 2015)
5	Protection of Women (Criminal Laws Amendment) Act, 2006
6	Criminal Law (Third Amendment) Act, 2011 Otherwise known as Prevention of Anti-Women Practices (Criminal Law Amendment) Act, 2011
7	Criminal Law (Amendment) Offences in the Name and Pretext of Honour Act, 2016
8	Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016
9	Criminal Law (Amendment) Act, 2010 (Sexual Harassment)
10	The Protection against Harassment of Women at the Workplace Act, 2010
11	Provisions in the Pakistan Penal Code, 1860
12	The Prevention and Control of Human Trafficking Ordinance, 2002
13	Prevention and Control of Human Trafficking Rules, 2004

## **Key Implementation Challenges/ Barriers**

Breaking down these reasons into four major categories of barriers, institutional, political, legal and social, allows a better understanding of the reasons the law of the land is not implemented or implemented sporadically. Before going further into the challenges, it should be noted that the greatest challenge has been that ordinary people are unaware of the law. The gap between policymakers, government departments, other state apparatus, and ordinary people that the law is meant to benefit is wide. All the laws mentioned above require vast and continuous state-led dissemination in local languages and done so in simple laypersons' terminology.

### **Institutional Barriers and Fragmented Efforts**

Constitutionally and universally, the basic principle of access to justice is that all the citizens must be equal before the law of the land and have the same access to the legal system. In Pakistan, power, influence and social standing determine the amount and quality of access one receives. Weak institutional structures and a lack of understanding of the requirement of the state to its citizens contribute to this inconsistently and provide no systemic and universal institutional relief to those seeking redress.

Criminal justice institutions are weak, uncoordinated, have the inadequate infrastructure; lack of independent oversight; and suffer from political interference in decision-making. Actual physical structures are also not conducive to women and girl victims and/or witnesses, particularly those that are vulnerable and/or not use to sharing public spaces with men, not from their families. The same staircases and waiting rooms for witnesses and victims alike leaves many women and girls intimidated and unable to go through with the full process.

### **Judiciary**

Weak judicial institutions in Pakistan are due to the lack of proper, robust and systemic training of the judiciary, particularly the lower judiciary where they are often unaware of the law, particularly new laws related to women. Bar councils and judicial academies are not systemic and professional enough to provide this required training. Lack of oversight bodies and ill (and often no) coordinated mechanisms within and between institutions also contribute to the haphazard way in which the judiciary functions. Judicial processes are complex, expensive, cumbersome and the judiciary is male-dominated right from the bottom up. According to the Asian Legal Resource Centre, only 2.91 percent of judges in Pakistan are women. The UN Beijing Conference requires 33 percent of women as women judges (Corrieie, 2013). Patriarchy takes many forms and too often

pervades the legal system as well (Townsend et. al, 1999). The Pakistani judiciary is extremely patriarchal in nature, with too much weight on societal norms and customs at the forefront of legal decision-making. Lack of case management, judicial prudence, and a growing population has led to an under-resourced judiciary unable (and sometimes unwilling) to cope with long delays in court procedures and hearings.

## **Police**

Police and prosecutors both do not have the expertise and necessary skills to investigate the stern and serious crimes. The police are widely considered to be a part of the problem. According to prominent human rights lawyer Asma Jahangir, up to 72% of women in custody in Pakistan are physically or sexually abused (Goodwin, 2002). As mentioned above, the physical structures of courtrooms and police stations are also not women and girl-friendly. The police have a reputation for being unprofessional, indifferent and unsympathetic to victims who present problems considered private matters or those that may have cultural solutions. These include family disputes, including divorce, forced marriages, etc. Even criminal matters, such as rape or harassment are often dealt with by the police with the belief that the woman must have in some way encouraged the act or acted or dressed in a way to provoke the crime.

## **Prosecutors**

The prosecution services are relatively new institutions throughout Pakistan. In fact, the prosecution services seriously lack the independence, technical skills, training and knowledge around the issue. The Punjab prosecution in 2014 managed almost 668 cases each. In addition, in 2015 in Punjab, almost 29,961 cases were registered but only 10,452 were investigated which reflects the serious shortcomings in prosecution services.

It is also widely known that services that do exist are unevenly distributed among the population, where some areas in Pakistan lack the bare necessities to fulfill the State's legal obligations to those citizens. The services provided are ad-hoc, fragmented and poorly coordinated. Already traumatized survivors, therefore, are made to go from one government department to another without any collaboration or systemic mechanisms between the departments. In addition to the above, State-led institutions also lack sufficient resources and knowledge on how to properly and systemically collect data and monitor and evaluate any present progress, or for that matter, problems and how to address them.

Another major issue has been that any efforts made have been isolated from other initiatives. Cross-cutting, multi-sectorial planning is sporadic, ad-hoc and lacks proper and systemic coordination and collaboration. There is no specific and

coordinated agency, inter nor Intra agency facility for survivors of gender-based violence. One major aspect of GTA is the importance of focusing on all aspects as a collective whole. This includes working with, among and between institutions, and the interaction between the formal and informal institutions and structures in a coordinated manner.

### **Political Barriers**

Political barriers in way of women empowerment are commonly observed across time and space. The evidence indicates that Pakistan is not an exception to this fact(Naz& Chaudhry, 2012). Indeed, Political will is the most appropriate and legitimate way to bring the reforms. Unfortunately, the political leadership of Pakistan including the federal and provincial lacks the capacity, political will, and vision to change the situation; such as tackling corruption, reforming the eroding state institutions to protect and empower the common citizens. It evidently seems a lack of focused and constant political will at all levels of government with regard to women's equality and emancipation or even to address social inequality. Political will is also lacking in terms of how to rid the country of poverty and illiteracy, where change could benefit both women and men and all others in society.

In addition to the above, lack of political stability and the volatile security situation has shifted the already diluted focus from institution building to more immediate concerns of political survival (Lieven, 2012). The lack of women, minorities and a wider representation of people in representative and decision-making circles have also left institutions void of an understanding and action to help and benefit the most vulnerable.

### **Social and Cultural Barriers**

Conservative social attitudes, deeply-rooted traditions, orthodox customs, and patriarchal and extreme religiously inclined mindsets, that are often unfavorable to women, girls and minorities are the prevalent societal attitude(Muneer, 2017). Under this social order and fear of reprisal, there is a very strict restriction of movement for women and girls. In addition to this, there is a lack of awareness and understanding of ones' rights; the male-dominated police and court systems are alien and daunting. Women and girls often shy away from the system for these reasons. Other vulnerable people, those that do not have power or influence also stay away from the court system for similar reasons. Legal framework and subsequent implementation of law are observed to be influenced by the traditional patterns of culture resulting in insensitivity towards protection of women's rights (Noor, 2004). Court structures and police stations do not have the standard norms and values to treat the women and termed as not women-friendly institutions.

## Legal Barriers

Pakistan has failed to protect the most vulnerable sections of society, which include women, minorities, children and those that lack power or social or financial influence. A clear and comprehensive legal framework does not exist which gives guarantee to women for their protection. It is also against the universal human values, basic rights, and international obligations. The presence of discriminatory laws, like *Qisas* and *Diyat*-provisions in the Penal Code, which allow for the pardoning of an accused at any stage of the trial (or even before or after a trial) through the payment of blood money by the accused or forgiveness by the victim. This is many times or can be many times misused and misinterpreted especially in cases on honor killing or if the perpetrator has a strong background. Perhaps one of the technical issues in the legal framework exists in the Law of Evidence, which differentiates between the testimony of women and men. This provision existed for various testimonies but has been amended to now apply only to financial transactions. Further, only recently, the Citizenship Act 1951 has been amended to allow a Pakistani wife to pass on Pakistani citizenship to a non-Pakistani husband [section 10A]. Up until this amendment, the law stated that a woman having Pakistani citizenship if married to a foreign man did not have the right to pass on citizenship to her foreign husband, whereas a man having Pakistani citizenship if married to a foreign woman has that right. The Guardian and Wards Act of 1890 also set discriminatory legal barriers. It states that precedence will be given to the father or husband of a minor girl, or father of a minor boy, with regard to guardianship of his or her property (Shaheen & Ali, 2017). Other specific lacunas against each law have already been discussed in the previous chapter.

Sindh and Punjab may have only passed a couple of pro-women laws each but federal criminal law applies to both provinces, should a province not have its own specific law. At the moment in Pakistan, it is not the legal framework that we are lacking, even if some laws require urgent amendments to address loopholes and lacunas. The ‘honor’ crimes act with amendments in 2016, for example, still allows perpetrators to be forgiven. This is an obvious issue in the law. Forgiveness can sometimes negate justice and an amendment is imminent if this law is to be effective. Another example is the lack of a universal definition of a child, differing from province to province. In 1990s, Pakistan ratified the Convention on the Rights of the Child, which states that a child is below 18 years of age. Presently, only Sindh stands in accordance with the Convention.

Yet, the real immediate problem in Pakistan is not the lack of a framework but the use of the framework, the tool is not being used to fix the problem, consequently, justice is not being done nor seen to be done. Since the law was passed in Sindh, there have been many child marriages not brought to the notice of the court. Even with the flawed ‘honor’ killing amendment 2016 law, if the judge uses his/her discretion, applies critical thinking and refers to established

principles of jurisprudence, the law could be effective and hold the perpetrator accountable. Since the 2016 Act, however, at least in the province of Khyber Pakhtunkhwa, a presiding judge has acquitted a male accused, charged with (and who openly and unequivocally admitted) to an ‘honor’ killing.

There are now too many precedents set that have left ordinary citizens losing confidence in the system. They feel it exposes them and the result is not compensation, protection nor redress. The reoccurrence of these precedents does not inspire confidence among ordinary citizens in the justice system. The above factors contribute to the legal system being ineffective and unable to bring to life legislation the lawmakers have passed. But too often it is also due to the dangerously deliberate malpractice and negligence of officials, ranging from law enforcement to the judiciary that hinders well-intentioned law from realizing itself. Conservative mindsets, tribal customs, norms, and patriarchal thinking have allowed officials to discard women’s issues as personal, family matters or not important enough to be taken forward or dealt with in accordance with the law. In a similar way, officials favor more powerful parties in a dispute without looking at the facts and applying the law. Officials with personal biases are not questioned and challenged through internal capacity building or accountability mechanisms. Nor are they fully informed that their biases have no role to play when applying the law of the land.

It is also believed that such issues, even grave violence against women and girls, are not understood for what is actually presents – a degradation of society in general, a socially and economically divided country, a national health epidemic and a threat to the future stability of societal cohesion. The same can be said about not providing the same protection or addressing the grievances of minorities and others but for minorities, too often, this applies regardless of economic standing and influence.

Pakistan stands with an effective legal framework that if actually implemented could be a catalyst for change in other areas as well. However, presently it is ineffective and hence significant only on paper. Not challenging institutional or structural hindrances as professed under GTA is one of the main reasons why Pakistan stands where it does today in terms of incidents of gender-based violence.

Case law is varied, with more robust judges able to go further as to how to use the law to serve its ultimate purpose, justice for those seeking it. Good decisions from higher courts set good precedents for similar cases in lower courts. At the same time, a more conservative, judge, with a patriarchal viewpoint is often found to maintain the societal status quo even when the law permits him to do otherwise.

In the Supreme Court case titled *Salman Akram Raja v Government of Punjab*, through Chief Secretary and others(2013 SCMR 203 [SCP]), a rape-related case, in which it was held by the Court that *“the Quran and Sunnah nowhere forbid the use of DNA tests rather strongly recommend recourse to such scientific methods; the DNA test is the best possible evidence in rape cases and therefore should be*

*adopted by prosecution agencies.* "It is believed that the rape law amended in 2016 included DNA testing as evidence in light of this judgment.

However, in the Mukhtaran Mai case in 2011 the same Court (the Supreme Court of Pakistan) gave a judgment, which acquitted five of the six men accused of gang rape and parading the rape survivor naked through the streets. There is a difference of opinion whether the evidence was clearly against the accused with the prosecution or not. However, the prosecution also stated that "*In the cross-examination, the accused admitted to the [award of the punishment by the] panchayat, they admitted to taking her into a room, they admitted to her coming out of the room without any clothes on, and they admitted to her walking in public without any clothes on.*" It should be noted that the accused men were influential and such decisions sometimes can be taken negatively. The judgment found contradictions in the prosecution witnesses yet even the dissenting judge commented that "*The contradictions of the prosecution case mentioned in the impugned judgment and also highlighted by the learned defense counsel are not so significant as to render the entire prosecution case false.*"

These two examples are significant in their differences and their impact. One set a precedent that was progressive and allowed for a new law to recognize and allow DNA testing as evidence. The other judgment was taken by some segments of society in a way that influences and power reign and is above the law.

## References

- Brohi, N. (2016). Women, violence and jirgas.
- Corrieie, L. (2013). The law, Patriarchy and Religious Fundamentalism: Women's Rights in Pakistan.
- Goodwin, J. (2002). *Price of honor: Muslim women lift the veil of silence on the Islamic world*. Penguin.
- Hearn, J. (2004). Gendering men and masculinities in research and scientific evaluations. *Gender and Excellence in the Making*, 57.
- Hillenbrand, E., Karim, N., Mohanraj, P., & Wu, D. (2015). Measuring gender-transformative change: A review of literature and promising practices. <https://www.dawn.com/news/1373443>.  
<https://www.dawn.com/news/1373193>.[http://www.senate.gov.pk/uploads/documents/1489403368\\_183.pdf](http://www.senate.gov.pk/uploads/documents/1489403368_183.pdf)
- Lieven, A. (2012). *Pakistan: A hard country*. PublicAffairs.
- Leopold, T. A., Ratcheva, V., & Zahidi, S. (2016). The global gender gap report 2016. In *World Economic Forum*.
- Moin, A., Fatima, H., & Qadir, T. F. (2018). Pakistan's slow progress towards gender parity. *The Lancet Global Health*, 6(2), e144.
- Muneer, S. (2017). Pro-women Laws in Pakistan: Challenges towards Implementation. *Pakistan Vision*, 18(2), 86-101.
- Naz, A., & Chaudhry, H. U. R. (2012). Developing Gender Equality: An analytical study of socio-political and economic constraints in women's empowerment in Pakhtun society of Khyber Pakhtunkhwa province of Pakistan. Available at SSRN 2083014.
- Noor, M. J. (2004). *Daughters of Eve: Violence against women in Pakistan* (Doctoral dissertation, Massachusetts Institute of Technology).
- Pakistan Education Statistics 2015-2016, Academy of Educational Planning and Management, Ministry of Education. At

<http://library.aepam.edu.pk/Books/Pakistan%20Education%20Statistics%202015-16.pdf>

- Rai, S. (2017). *Mainstreaming gender, democratizing the state: Institutional mechanisms for the advancement of women*. Routledge.
- Razzaq, S., Chaudhry, K., Tabassum, R., & Kanwal, N. (2017). Policy research institutions and the health SDGs: building momentum in South Asia-Pakistan country study.
- Shaheen, S., and Ali, K. (2017). The Justice Prelude: A Socio-legal Perspective on Women's Access to Justice. SCMR 203 [SCP] (2013)
- Townsend, J. G., Zapata, E., Rowlands, J., Alberti, P., & Mercado, M. (1999). Empowerment matters: Understanding power. *Women and power: Fighting patriarchies and poverty*, 19-45.