YOUTH GENERAL ASSEMBLY

Domestic

Violence in Pakistan

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DOMESTIC VIOLENCE

1 Introduction

If you receive a call from your daughter or sister, and she opens up about the domestic violence (DV) she is facing from her husband or any in-laws, what would be your reaction? You would likely try to report the incident and help her escape the abusive relationship. However, if you are familiar with the societal construct and mindset in Pakistan regarding DV, you might feel sympathy but also helplessness for the victim. This chapter explains what domestic violence is in general terms, as well as in the specific context of Pakistan, and highlights how prevalent it is in the country.

1.1 What is Domestic Violence and why does it exist?

As the name implies the term domestic violence is a combination of two words-domestic and violence. The general dictionary meaning of domestic is something related to home[1] and violence means an act that hurts other people[2]. So, any act of violence or aggression inflicted on a person by someone who is sharing a house with that person can be termed domestic violence.

Professor **Leigh Goodmark** discusses that for a long-time scholars used to stress that DV is a gendered phenomenon. Then some said that no it is rather a crime where a woman is a victim. This theory was also criticized by another school of thought which contended that men and women both are violent. A consensus was developed over what sociologist Michael Johnson proposed that there is more than one form of DV. And all of them exist depending on the circumstances that are measured[3]. Several organizations and authors try to define DV and a brief overview is as follows.

Leigh Goodmark in her book 'A Troubled Marriage" draws a detailed and progressive analysis of different types of DV from the historical perspective. That is how the idea of DV changed with the change of time. What different theories and ideas developed to understand DV? T**he social science theory** [4]explains that during the 70s and 80s the idea of DV was solely physical abuse oriented, she discusses. Not that the emotional and psychological abuse was extinct then but because society was ready to redress the physical hurt only.

Moving further she quotes the work of a psychologist, Lenore Walker, who has defined a **cycle of violence**. This cycle or circle of violence primarily consists of three stages in an abusive relationship between a man and a woman. These three stages are characterized as [5]

[1] https://dictionary.cambridge.org/dictionary/english/domestic
[2] https://dictionary.cambridge.org/dictionary/english/violence
[3] Leigh Goodmark (A Troubled Marriage: Domestic Violence and the Legal System) NYU press. 2011 (p.38)
[4] Ibid, p.30
[5] Ibid, pp.31-32

- Creation of tension
- Grave beating incident
- And honeymoon phase

The first phase is of minor and small physical injuries infliction from where the tension creates in a relation. Female is the unwilling victim of such minor injuries and she tries to tolerate them to save her relationship. This tolerance leads to serious or acute incidents of assault. And the last and the third stage is the honeymoon phase which is the deadliest of all. At this stage, the man realizes that he has acted out of context. He confesses his fault, begs the victim for forgiveness, and shows his love and affection which entraps a woman and she gets ready to stay in an abusive relationship. With the evolution of the social justice system, this theory was adopted by law-making agencies. And through this, they defined why women do not get out of such relations. Is the cycle of violence more of a tool to define why DV exists? Similarly, Goodmark stresses that '**the power and control wheel'** is yet another and more effective tool to measure the DV. The wheel gives an idea **of gaining the power to take control over the** partner. The two significant forms of forces that keep this wheel intact are physical and sexual violence.

Furthermore, in her book, Goodmark does not provide her definition of DV. Rather she gave an idea of DV in the law of different American states. Some states' law encompasses only physical injury as DV, some include battery or assault, and some has extended it to vandalism, kidnapping, sexual assault, and homicide. [6]

1.2 Domestic violence in Pakistan

In Pakistan, the process of law-making after the 18th constitutional amendment (2010) has changed. The legislative power has been decentralized and a lot of authority has been bestowed on the provinces. Each province has legislated its law on DV and contains a separate definition of DV. Moreover, several human rights organizations and commissions have also defined what is domestic violence in the Pakistan context. A brief overview of these definitions is as follows.

1. The legal aid society conducted research and published the report in 2020. At the start of the report, it defines DV which says that "***Violence against women perpetrated by a family member (where family is established by blood or marriage or both). It includes acts of control, physical abuse, sexual violence, intimidation and isolation, verbal abuse including threats and coercion, and economic abuse."***[7]
2. The Punjab Protection of women against violence Act, 2016 defines Violence means domestic violence, sexual violence, psychological abuse, economic abuse, stalking, or cybercrime. And only a female is the aggrieved person. [8]

[6] Ibid, p.40
[7] Legal Aid Society, Covid-19 And Sexual and Gender-Based Violence Reporting (2020), p. 7
[8] The Punjab Protection of women against violence Act, 2016

3. Whereas, the Sindh law [Domestic Violence prevention and protection Act of 2013} defines DV more broadly and includes physical, sexual, psychological, emotional, economic, and verbal abuse. The said law also covers harassment, hurt, mischief, stalking, trespass, and wrongful confinement under the ambit of DV. The law considers women, children, and all other vulnerable people as aggrieved people. Moreover, the said law has also explained the term "domestic relation." That whoever is living or has lived in the relation of **consanguinity, marriage, kinship, adoption, or as a family member is termed as domestic relation.** [9]
4. The Domestic violence prevention and protection Act 2021 adopted by Khyber Pakhtunkhwa (KPK) government is a new law. It defines that "violence" means and includes but is not limited to an act, omission, commission, or conduct of the complainer which results in any physical, psychological, emotional, and economic abuse. It also includes abetment, assault, criminal force, criminal intimidation, hurt, mischief, harassment, sexual abuse, and wrongful confinement. Like the law of the Sindh government, it also protects children and vulnerable people. [10]

These are some of the definitions in the perspective of Pakistan society that what is DV here and how the definition changes with the change in demographics. These laws are dealt with in detail later in the chapter. Currently, there is no special law on DV in Islamabad however a bill has been proposed in 2020 which is still under debate in the parliament. But for the sake of understanding, it is also discussed further in the chapter.

In 2014 a report published by the Human rights Commission of Pakistan included acid attacks, amputation, shaving, torture, setting on fire, injuries, beating, and other related crimes in DV. The report also showed that the attackers in most of the cases are husbands (51.56%), fathers (13.9%), and brothers (7.97%) of the [11]victims.

1.3 Prevalence of DV in Pakistan

The human rights commission of Pakistan (HRCP) published its annual report on the 'status of human rights in 2021' in Pakistan. The report shows the stats of all the acts committed of gender-based violence. The following table shows the reported cases of DV only from the said report.

Domestic violence cases	Cases reported in 2021
Punjab	753
Sindh	236
KPK	The said report is silent on stats
Baluchistan	127
Islamabad	16

[9] The Domestic Violence prevention and protection Act, 2013 (Section 2)
[10] The Khyber Pakhtunkhwa Domestic Violence Against Women (Prevention and Protection) Act, 2021
[11] Social Enterprise Development center (Lums), Domestic Violence against women in Pakistan, (2015)

- According to **the Punjab commission on the status of women 2021** (3481 cases) recorded more incidents of DV as compared to 2020 (2287 cases). Also, the data recorded by the Digital Rights Foundation shows that deaths due to DV remained the commonly reported crime in Punjab in 2021.
- Quratul Ain Baloch, a mother of 4 was killed by her husband **in Hyderabad Sindh**. Similarly, Fouzia Buradi was allegedly murdered by her brother-in-law.
- The Report of HRCP explores that several cases of violence against women are **reported in AJK** but it is silent about the stats.
- In **Gilgit Baltistan**, a 12 years old girl from upper Ghizar faced DV from her father because of exchanging messages with a boy. Another woman from Ghizar committed suicide and her parents accused her in-laws of torturing her. In June three women from Skardu were beaten brutally over a dispute over the pasture by local men. Another depressing incident occurred in Hunza where a 22 years old girl after 7 seven months of her marriage found dead in a river. Her family accused her in-laws of murdering her which the accused denied and called it a suicide. [12]

2 Legal Framework on Domestic Violence

2.1 Constitution of Pakistan 1973 ("Constitution")

This fragility in the social fabric of the society mandates special attention and protection under the law. The Constitution is the fundamental supreme law from which all the organs, departments, and agencies derive their power. Interestingly, for a society in which domestic violence has remained a prevalent social evil and countless women its unwilling victims, the Constitution only has a single provision that expressly enshrined women and the protection of their rights.[13]

However, the relevant article only talks about the framing of special laws for the protection of women and does not offer special protection against domestic violence. While the Constitution does not expressively talk about domestic violence, violence against women, and gender-based violence it enshrines certain fundamental rights and the protection of those rights by the State.

2.1.1 Evaluation of fundamental rights and principles of policy

Article 3 is titled elimination of exploitation[14], and it defines the duty of the Islamic welfare state to ensure the elimination of all types of exploitation and create a society free from discrimination. Furthermore**, Art. 4(2**)(a) directs that any action that is done to a person and may cause detriment to the life, liberty, body, reputation, or property of the person must only be by the law[15]. **Art. 9**

[12] Human Rights Commission of Pakistan, State of Human Rights in 2021
[13] Constitution of the Islamic Republic of Pakistan 1973 Art. 25 (3)
[14] Constitution of the Islamic Republic of Pakistan 1973 Art. 3

[15] Constitution of the Islamic Republic of Pakistan 1973 Art. 4 (2) (a)

further states quite clearly that the atrocities against the life and liberty of women in their homes must also be dealt with by all relevant laws by the state. The courts have held that the term 'life' must not be interpreted narrowly but must be interpreted such that the full enjoyment of life is permitted. It is quite evident that the state is failing to perform its role as the custodian of the fundamental rights of the citizens[16], a duty that is recognized under both national and international jurisprudence[17].

Art. 25 (3) states that the State is empowered to make special legislation for the protection of women and children. While it fails to acknowledge other vulnerable populations such as elderly people, trans-people, or people with special abilities, it expressively discusses "**positive discrimination**" towards the protection of women and children and it has been utilized and laws for the protection of women and children are duly legislated.

Only **Art. 34,** under the chapter on principles of policy, has the word "women' in its title. And it talks about the full participation of women in national life[18]. Similarly, Art. 35 talks about the protection of the institution of the family with an emphasis on protecting both the mother and the child. Furthermore, in a broader aspect, **Art. 37** is related to the promotion of social justice and the eradication of social evils. While multiple domains of social justice and social evils are discussed in this article, the only special attention women have received is related to their workplace conditions. Despite having the apparent space, the article has failed to acknowledge the existence of domestic abuse and other acts of gender-based violence.

In summary, only limited articles explicitly talk about the protection of women. Taking into consideration the gravity of the issue, domestic violence must be brought under the constitution and ideally be made a part of it through a constitutional amendment.

2.2 Pakistan Penal Code 1860 ("PPC")

The PPC is a complete code of offenses and their punishments in Pakistan. Similar to the Constitution, the PPC does not list domestic violence as a separate subject but has some provisions that can be dealt with under domestic abuse. The law on domestic violence of Khyber Pakhtunkhwa (discussed later in the chapter) deals with the provisions of PPC as well. The various laws described under the PPC are as follows:

[16] Watan Party v Federation of Pakistan [2011] SC PLD 997; Human Rights Case No 20107-G of 2013 [2014] SCMR 287

[17] United Nations, Charter of the United Nations, 24 October 1945

[18] Constitution of the Islamic Republic of Pakistan 1973 Ch. 2 (Principle of Policy)

The above-given provisions from PPC include domestic violence acts and other gender-based violence against women. For instance, deprivation from inheritance (498A), forced marriage (498B), marriage with the Holy Quran(498C), forced abortion and miscarriage (338), assault (354, 354A), wrong restraint and confinement (339, 340), sexual harassment (509) and other physical harm. Unless specifically described and concerned in later legislations, these offenses would be dealt with according to this code[19].

2.3 Special laws for the protection against domestic violence

However, there has been limited development in enacting laws specific to domestic violence. In 2009, policymakers dedicated their efforts to codifying the perils of domestic violence victims by introducing a bill titled "The Domestic Violence (Prevention and Protection) Act 2009". However, before the bill could be passed from the Senate and formally incorporated within the legal framework of Pakistan, an unexpected backlash from the religiopolitical parties said the bill was "un-Islamic." After the 18th amendment, as discussed before as well certain subjects were decentralized. This enabled the provinces to enact legislation specific to domestic violence in 2010.

[19] Pakistan Penal Code 1860

The same law was later passed in 2012 with slight modifications to its provisions and spearheaded the pronouncement of domestic violence as an offense under Pakistani law. Soon after, the Sindh Government adopted The Domestic Violence (Prevention and Protection) Act, the Baluchistan Government in 2014, and the Punjab Government in 2016, effectively becoming the first tool that victims could rely upon for obtaining justice by getting perpetrators punished.

2.3.1 The Punjab Protection of Women Against Violence Act 2016

Passed by the provincial legislative assembly of Punjab **on 24th February 2016** and signed by the Governor on 26th February 2016, The Punjab Protection of Women Against Violence Act 2016 consists of 31 sections that comprehensively deal with domestic violence.

2.3.1.1 Definitions and protection committee

The law applies to the whole region of Punjab. Section 2 of the law lays down the definitions of the terms used within the law, allowing the reader to visualize that the government shall **establish Violence Against Women Centers** (VAWCs) and will strive to protect women from domestic violence at the hands of their partners. These centers would be part of an integrated protection system that would contain a protection committee, a protection center, and shelter homes.

Such shelter homes are crucial as they protect women and provide them with a safe environment where they can be safe from domestic violence. In addition to the functions of the Court, the law also defines the formation and functions of the protection committee in Sec. 11 and 12 respectively. The subsequent sections 14 to 18 define the role, functions, powers, and duties of women protection officers and district women protection officers.

2.3.1.2 Procedure and protection center

Under Sec. 3, the law defines the procedure regarding the implementation of the law and lays down a road map that includes the introduction of a toll-free number; establishment of a **protection center**; provision of staff at the protection center for mediation and reconciliation; establishment of a database of software for the delivery of justice; and raising awareness regarding the existence of this law. **Section 5 talks** about the residence right of the victim in the house and dictates that the victim cannot be evicted from her home. Sec. 6 to 9 relate to the four kinds of orders that the court has the right to pass including interim order, protection order, residence order, and monetary order, each of which provides a different remedy based on the merits of the case.

2.3.1.3 Types of orders

- **Protection order:** the court protects the victim.
- **Residence order**: the victim cannot be removed from her residence.
- **Interim order:** a temporary relief that the court deems fit

- **Monetary order:** it includes both the maintenance and the monetary compensation.

Another commendable step is the contemporary requirement of the perpetrator to wear a GPS device that allows his location to be tracked by law enforcement agencies in cases of grave acts of violence.

2.3.1.4 Miscellaneous provisions

To ensure transparency and gauge the efficacy of the system, an annual report would be submitted by the government at the end of each financial year to the Punjab assembly regarding the performance of the protection system and will contain recommendations for improving the said performance under Sec. 28. The government shall make the rules for the proper implementation of this Act and also has the power for removing the difficulties creating hindrance to the implementation of this Act under Sec. 29 and Sec. 31 of the Act.[20]

2.3.2 Criticism of The Punjab Protection of Women Against Violence Act 2016

When this Act came into being it faced the traditional backlash from the government and non-governmental religious factions. This law provides a systematic, brief, and comprehensive roadmap for protecting women against domestic abuse but several loopholes and lacunae can be seen prima facie. Among many others, one of the contentions is that the law has failed to define 'violence' in clear terms, leaving confusion as to what constitutes violence under the law. Likewise, the definition of 'aggrieved person is also not expressly defined and simply mentions that it applies to females only. Whether there is a defined age limit or marital status under this term is not established under the law.

- **The Court**
  The law is under the ambit of criminal law as it is mentioned in the definition clause that outlines ‘Code’ as the “Code of Criminal Procedure” and the ‘Court’ as the ‘family court’ (sec.2d). A major contention in this is that before framing this law it must have been checked whether Family Courts have the jurisdiction or authority to hear violence against women matters. Unlike superior Courts, the jurisdiction of Family Courts is exhausted as provided in the schedule under Sec. 5 of the West Pakistan Family Courts Act, 1964. The Court can adjudicate upon the cases related to the Dissolution of Marriage, Dower, Maintenance, Restitution of Conjugal Rights, Custody of children, Guardianship, Jactitation of Marriage, and Dowry[21]. Hence, from the Act itself, it can be seen that the family court holds no jurisdiction to adjudicate the matters of domestic violence.
- **Gender of officers not specified**
  The sections regarding District Coordination Officers, District Women Protection Officers, and women protection officers do not specify the gender of the officers. The specification

[20] The Punjab Protection of Women Against Violence Act 2016

[21] The West Pakistan Family Courts Act 1964

of gender is important because most domestic violence victims are women. Sec. 4(4) says that the trial would be summary in nature to expedite justice but the time limit defined in it is 90 days which seems more than enough for sensitive matters of domestic torture or any other abuse against women which are summarily dealt with.

- **Role of protection center**
  Another defect is that the Act talks about the role of the protection center as well as the functions of the Court but does not establish whether these two will be linked in their performance or not. The protection center primarily deals with mediation, conciliation, and medical services but it is not expressly mentioned whether it shall be subordinate to the court or work in an independent manner. It is unclear whether the case would towards mediation and conciliation after filing the complaint by the order of the court, before filing the complaint, or without the order of the court.
- **No penalization**
  The language used in Sec. 7 is to order the defendant or perpetrator to 'stay away' or 'refrain from' but not a single subclause has penalized it by defining any form of sanctions or punishment. Instead of rendering any sort of punishment or fine in **case of a grave act of violence**, the Act has only introduced the option of wearing an ankle or wrist bracelet or GPS tracker by the defendant. The systemic mechanism of **instituting technological gadgets** in the operation of law defined in this Act is **highly commendable** but does the current legal system of Pakistan provide space for the implementation and consistent regulation of such sophisticated tools? Stemming from an apparent lack of oversight, it shows that the law for the protection of women is 'defendant-oriented" and is favoring the accused.
- **Protection center and the court**
  Under the Act, the government shall establish shelter homes to ensure the protection of victims, report crimes to the police, and registration of criminal cases against perpetrators. This implies that the protection center is not subordinate to the court and works independently. As per the language of this provision, the victim shall go to the protection center first and then to the Court for a remedy but it is not clear whether such a requirement is for the relief of the victim or to indulge her in the systematic discrepancies. Ideally, the victim should be able to either directly file a complaint to the court or go to the protection center that would not only provide her with protection and then allow for a criminal complaint to be registered.
- **Members of protection committee role**
  Furthermore, the roles of the members of the District Women Protection Committee, particularly members of the civil society, have not been defined with any clarity at all. Sec. 14 and Sec. 15 are yet again silent on the gender of the Women Protection Officer. However, the fact that Sec.15 renders the power to a Women Protection Officer to enter the house suggests that the intention of legislators must demand the officer be a woman officer. This must be laid down in the definition clause.

No penal clause is introduced for deterring or punishing the defendant but a penalty has been introduced against the defendant if he/she breaches any order of the court or if someone files a false complaint. Offenses including '*burning bride' or stove-deaths and 'dowry deaths' must also be identified clearly under law as 'domestic violence*. If any such case is brought before the court under this Act, the lack of clarity can result in the defendant getting acquitted easily. Hence, by failing to remain inclusive to many different situations under the ambit of domestic abuse, the law in question has numerous fundamental flaws.[22] To ensure that women remain protected by law against the horror of domestic violence, it is pivotal to address these loopholes and flaws in the existing legislation of Pakistan.

2.3.3 Law in Sindh; The domestic violence (prevention and protection Act), 2013

As compared to the law of Punjab the law passed by the Sindh Assembly is more defined, progressive, and comprehensive. This law has given the power to the Magistrate of the first class instead of the family court. Salient features of the Sindh law are briefly summarized as follows.

- It includes women, children, and other vulnerable people in a domestic relationship with the respondent.
- Domestic violence under section 5 includes all sorts of gender-based, physical, emotional, verbal, sexual, or psychological abuse against a woman, child, or any vulnerable person. And a vulnerable person means a person who is susceptible due to old age, mental illness, handicap, or physical disability.
- This law developed compliance with the code of criminal procedure and includes harassment, hurt, mischief, trespass, and wrongful confinement under domestic violence.
- Section 6 defines all the punishments and it has penalized the crime of domestic violence.
- The law defines the summary procedure to file the suit.
- The magistrate has the power to grant residence, monetary, interim, and custodial orders.
- A protection committee is constituted under this law that has a female police inspector as a member, in contrast to the Punjab law. The duties, functions, powers, and privileges are also mentioned in detail under sections 18, 19, and 20. [23]

2.3.4 Law in Khyber Pakhtunkhwa: The Khyber Pakhtunkhwa Domestic Violence Against Women (Prevention and Protection) Act, 2021

Unlike Punjab and Sindh laws, KP law has given the jurisdiction to the District and Sessions Judge or Additional sessions judge to adjudicate upon the matter. Under section 3 of this law domestic violence is criminalized and also penalized. The said law defines violence and domestic violence

[22] Morrison Bhatti vs The State [2008] MLD 866 (Sindh High Court)
[23] The domestic violence (prevention and protection Act), 2013

separately. The violence includes any omission or commission of an act that causes physical, psychological, emotional, and economic abuse. It further defines the terms economic, sexual, and psychological abuse in terms of this law.

The law also includes children and defines that domestic relations may be in the form of consanguinity, kinship, marriage, affinity, or any other family relationship.

Moreover, the said law has given more emphasis to the formation of the District Protection Committee, its meetings, power and functions, and duties of the secretary to the committee.[24] The court may pass interim order under section 13, monetary order under section 15, and other related orders under section 14. And the appeal against the conviction lies with the High Court in 30 days.

2.3.5 Law in Islamabad Capital Territory: The Domestic Violence (Prevention and Protection) Act, 2020

Disclaimer (this law is yet to be passed but for the sake of understanding it is presumed that the law is passed by the Parliament**)**

This law has come into force right after its enactment and is applicable only on the territory of Islamabad. It's a comprehensive legislative piece of work consisting of V parts and 25 sections. Under the definition clause, the law defines 'aggrieved person'' in a way that includes women, children, elders, and vulnerable persons as well, making the definition highly inclusive. The law is under the ambit of criminal law and includes provisions of both the Pakistan Penal Code and Code of Criminal Procedure while giving the Court of Magistrate the jurisdiction to adjudicate upon the matters.

Domestic violence, domestic relation, and household are also expressly defined unlike the law of Punjab. Sec. 3 defines domestic violence to include physical, emotional, psychological, sexual, and economic abuse against women, children, elders, and vulnerable people by the defendant. Using Pakistan Penal Code as a reference, the Court defines physical abuse extensively, aiming to utilize a codified definition of the term to ensure a homogenous understanding.

Unlike the law in Punjab, the said law under section 4 has penalized the offense of domestic abuse. The procedure of filing a complaint to the court of Magistrate is similar to that of Punjab but women's protection officer has nothing to do with complaint registration. At the same time, the case is required to be resolved within 90 days after the filing of a complaint. The court has the power to grant interim, protection, residence, and monetary order, and the law also discusses the utilization of GPS to track the location of perpetrators in cases of the grave act of violence The Court is also empowered to grant custody order for the protection of children, a crucial aspect as children are often the psychological victims of witnessing domestic violence.

[24] **The Khyber Pakhtunkhwa Domestic Violence Against Women (Prevention and Protection) Act, 2021**

3 Scarcity of claims and court decisions analysis

3.1 Under-reporting of domestic violence case

Owing to relentless political and social constraints, the situation of law and order has remained turbulent in Pakistan. The latest years that involved massive quarantines and lockdowns due to the COVID-19 situation have only debilitated the already vulnerable justice system and delayed justice for thousands.

There are several external and internal factors hanging like the sword of Damocles over the head of the victim of domestic violence. These factors are the fundamental causes of underreporting that ultimately weakens the justice system. Such factors are

- Family and peer pressure restrain you to report the case.
- Societal culture restricts you to go to the police stations.
- If someone tries to report the case, they face inaccessibility.
- The insensitive, non-cooperative, and unprofessional behavior of the police towards the victim.
- The family pressure to reconcile.
- Influence culture threatens the victim to defame or extort,
- The lack of infrastructure like medical facilities, custodial centers, etc.
- The adverse party is well-connected and resourceful.

3.2 Court decisions analysis

In the instances of DV cases, Courts relied upon a welcoming feminine approach while rendering judgments.

The Court observed the drastic consequences of domestic violence and its increasing tendencies in the **Morrison Bhatti vs the State (2008**) as:

"Violence committed by the accused was the worst type of domestic violence and there was an increasing tendency of such violence in the society…most of the witnesses including the victim had already been examined and the trial was near completion…bail was refused to the accused in circumstances.[25]*"*

In **Ms. Rehmat Bibi vs SHO Karan Sharif** (2016) the Court recorded that:

"A woman would be free in choosing her life partner and protecting her property and honor…no one could give a lady as a compensation for a sin…no custom could conflict with law of the land… police officer failing to stop Jirga should be prosecuted in the list of accused…constitutional petition disposed of accordingly[26]*."*

[25] Morrison Bhatti vs The State [2008] MLD 866 (Sindh High Court)

[26] Ms. Rehmat Bibi vs SHO Karan Sharif [2016] PLD 268 (Sindh High Court)

In 2012, a murder case was reported in Karachi where the husband killed his 24-year-old wife and ran away. However, the Sindh High Court dismissed the appeal in **Asad Khan vs the State** by rendering that:

"It is important to note here that it's our 3rd judgment within one month wherein the husband has committed the murder of his wife on petty matters. In all such cases, as in the instant one, the parents despite complaints of torture/maltreatment by husband or in-laws forced their daughters to live/stay with the same persons. Such daughters, undeniably, are victims of domestic violence who, otherwise, are entitled to help and support because no just law on earth allows continuity of a forced tie but typical cultural thoughts compel the parents to send back their daughters to such like hell. [27]

Another case was reported of domestic violence before the Peshawar High Court in 2020 where the husband killed his wife and was convicted by the Session court. The accused filed an appeal against the conviction but the Peshawar High Court (**Wahid khan vs Mohabat khan** 2020 PCrLJ 135) dismissed it by arguing that;

"Appellant being the husband of the deceased was legally, morally, and ethically under an obligation to take notice of the murder of his wife, or at least, if his hands were not sullied with her blood, he should have shifted her body to the hospital…contrary the accused was hiding and did not bother to participate in her funeral as well…petition against conviction was dismissed accordingly.[28]"

Courts while granting the order consider all the circumstances along with the facts and evidence produced. The objective of granting justice does not already mean ***"conviction" but it also includes deterrence, punishment, compensation, and paying fine as well***. The justice system does not operate in a homogenous or linear manner, the same order cannot be granted in similar cases of domestic violence by refusing the bail or by upholding the conviction.

A similar situation can be seen in the case of Ali Muhammad vs The State (2009) where the Court held that

"The petitioner was ready to deposit the requisite amount of Arsh and Daman with the trial court to secure his ultimate sentence if any---keeping the petitioner behind the bars at such a stage would amount to nothing.[29]"

Lastly, from the decisions by the Courts of Pakistan, it is evident that there is a general increase in cases of domestic violence. But the criminal justice system is not adapting at an equal pace, often letting itself be exploited by the perpetrators unless struck down by competent members of the higher judiciary. Such a trend suggests that there are pre-existing lacunae that must be addressed by an integrative approach that involves all stakeholders at various levels of the legislature, executive, and judiciary.

[27] Asad Khan vs the State [2020] YLR 843 (Sindh High Court)

[28] Wahid Khan vs Mohabat Khan [2020[PCRLJ 135 (Peshawar High Court)

[29] Ali Muhammad vs The State [2009] PLD 312 (Lahore High Court)

4 Conclusion and Policy Recommendations

The World Justice Project report indicates that Pakistan is suffering far more because of a pre-existing patriarchal society. The World Justice Project gauges the performance of countries in terms of establishing a rule of law for its citizens. It has revealed that more countries have declined than improved in overall performance. Using eight different factors that allow them to gauge the performance of conferring justice, Pakistan has been ranked 130th place among 139 countries around the world; 30 out of 35 countries in the lower-middle-income category for countries, and among the 95 countries where the situation of rule of law has considerably declined.[30]. As the situation unfurls into further chaos with an alarming increase in domestic violence, there is no doubt that far more women will be suffering from domestic violence unless the effects are mitigated through rigid means by the state.

The members of the parliament must be concerned about the impact, effectiveness, and the regulation laws not just the mere creation of legislation This intention must flow through the executive as they enforce them and the judiciary as it stands as the custodian of fundamental rights of citizens. Together, the three organs of the state determine the outcome of law and its eventual success in protecting citizens from crime. In the process of law-making, it is important to address the gaps between theory and practice, carrying out all necessary steps to assess the regulatory impact of laws and their effectiveness. Lawmaking is indeed the first step in curtailing issues but if that law is redundant and not properly implemented, it's just a piece of paper.

4.1 Recommendations

Societies like Pakistan are currently failing in protecting their citizens because our priorities are set in reverse motion, we have prioritized ‘theory’ over ‘reality’. Meaning thereby, we have legislated several laws for the protection of women that prohibits anti-women practices but when it comes to implementation the overall turnout is negligent.

Power has a trickle-down effect, moving from the powerful to the meek. The concentration of power in Pakistan in enforcing laws is vested in the government, judiciary, and the executive but citizens are rarely highlighted as active participators in establishing a rule of law. Thus, to mitigate the loopholes in our laws, it is important to take a holistic approach. To bring this proximity, some of the policy recommendations proposed by the author are:

I. Before the enactment of a law, the public must be involved and the recommendations of the civil society must be sought.

II. Involve subject experts who understand the theoretical gaps and adopt a mixed approach with both practitioners and academics on board to gauge the impact of any law.

III. All provisions of laws must be subjected to rigorous analysis and discussion to ensure that they conform with each and with relevant law. At the same time, it is important to adopt a gender-neutral approach.

[30] World Justice Project, 'WJP Rule of Law Index®' (*World Justice Project*, 2021) <https://worldjusticeproject.org/rule-of-law-index/> accessed 20 May 2022

IV. There must be a permanent national-level body/commission that is focused on the implementation of the laws related to women, children, the trans community, elders, and other vulnerable people. It may also possess an advisory purpose that can provide recommendations to the legislature regarding the enactment of better laws

V. Laws need to have a feminine interpretation.

VI. Law-enforcement agencies all over Pakistan must be trained regarding gender-related concepts and sensitization programs to provide smoother access to the criminal justice system to vulnerable individuals.

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