

Legislation and its Effectiveness to Manage Women Domestic Abuse in Pakistan

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Abstract

The patriarchal mind set of Pakistani society originates from customary practices and cultural norms, which led to the male dominance over their women folk. This dominance has created rifts and tensions, in the overall structure of families and consequently it leads to women abuse in its various forms. Despite of various legislative measures to discourage domestic abuse/violence, the State has remained unsuccessful to minimize this menace, as these measures remained in theory and only little practical implementation could take place. The abuse against women takes its worst shape amongst the lower class where they are deprived of basic education, outward mobility and awareness of their rights. However, education, civil society organizations and print/electronic media, as the agents of modernization, has contributed by bringing consciousness among the women, regarding their rights in society. However, it is pertinent to mention that the issue of domestic abuse can only be tackled if women are provided with equal opportunities of education and jobs, so that the prevalent mindset of the society could be reformed. It is after these measures, that the women will be able to play an effective role, as an equal partner with men, in the developmental process of the Pakistani society.

Introduction

Pakistani society exhibits a patriarchal setting, with tendencies of male dominance over their women. Even today, when the requirements of the society have changed drastically due to development and change, the traditional and cultural patronage for gender disparity is continuously affecting the whole structure of society. Consequently, women's marginal role in social, economic and political spheres, have been substantially curtailed. The manifestation of this discrimination between the status of men and women is equally reflected in the domestic relationships, despite of the fact that women play a pivotal role in the uplift and bringing up of a family. According to a study by Hakim and

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Aziz, it is the male member of the family that dominates the extended family and women in particular, play a subservient role. The authors further state,

In Pakistan the extended family is the basic functional unit. Such a family might include the dominant male (usually but not always the eldest) and his wife or wives; his brothers and their wives; his married sons and nephews and their wives; his married sons, daughters, nephews and nieces and, on occasions, other more distant relative, sometimes in, the role of domestic servants.¹

This composition of a family adheres to a submissive position of woman, who is bound to perform her daily activities as per the wishes and commands of her male family members, where

...the eldest male of the family occupies a position of paramount authority. Males are considered superior. The family patriarch directs the affairs of the family, protects its interests, and exacts complete obedience from its members as religious and ethical obligation.²

As Hakim and Aziz believe it is not necessary that the eldest male dominates, rather the more dominating male takes over charge. It happens when the father grows old, and taking advantage of this handicap, the more aggressive son starts to give instructions.

In these prevailing conditions a woman cannot exercise her options of living her life according to her own wishes which it is considered as disobedience and, as a consequence, she has to bear severe consequences. In this regard, the punishment inflicted upon the woman comes in the form of physical and emotional abuses. Although there is no data on the sexual abuse of women by their husbands (forced sex) but it can be assumed that in the absence of a law, which should have considered this act as a 'marital rape', the violation goes unnoticed and considered as a granted fact of life. Contrary to the Pakistani situation, in the western countries, forced sex in marriage is considered as rape. All these mentioned facts can be described as acts of domestic violence, with variant manifestations.

According to the annual report of *Aurat Foundation* for the year 2009,8,548 incidents of violent acts against women were reported in the

¹ Abdul Hakim and Azra Aziz, 'Socio-Cultural, Religious, and Political Aspects of the Status of Women in Pakistan', Part II, *The Pakistan Development Review*, 37:4 (Winter 1998), p.727.

² R.F. Nyrop, B.L. Bendry, *et.al.*, *Area Handbook for Pakistan* (Washington, D.C: The Americal University, 1971), p.108.

four provinces along with the capital area of Islamabad.³ Another report by *Human Rights Watch* in the same year stated that up to 90% of women surveyed were subjected to verbal, sexual, emotional or physical abuse, within their own homes.⁴ The growing percentage of domestic violence is partly a result of a lack of appropriate laws and sloppy attitude of the enforcement agencies towards this sensitive issue. Moreover, such violations in Pakistani society are considered as a private affair of every individual and the family.

The Government of Pakistan acknowledges the equal status of women in Article 25 of 1973 Constitution, which clearly states that women are equal before law and there is no discrimination on the basis of race, religion, caste or sex. Similarly, Article 34 ensures equal women participation in all spheres of national life, and Article 35 highlights the state responsibility to protect marriage, family, mother and the child. Moreover, in order to streamline various domestic issues which broadly affect a woman's life in Pakistan, various legislative measures have taken place, like 1961 Muslim Family Law Ordinance, 1978 Hudood Ordinance (although a controversial law, which many women regarded as flawed and in some cases it even went against the rights and protection of women), 2006 Women Protection Bill and 2010 Sexual Harassment Bill.

In order to comprehend the effectiveness of women related legislation, there is a need to understand the socio-cultural settings of the Pakistani society and to locate the position of women, in this particular background.

Socio-cultural settings of Pakistani society and placement of women

Pakistan, like most of the developing societies possesses a distinctive social and cultural setting, which is designed by a prolonged historic process, inculcating peculiar customs and traditions. The first dominant feature of the Pakistani society is tribal system, governed by exclusive traditions and norms, predominantly inspired by the century's old

³ Staff report in *Daily Times*, http://www.dailytimes.com.pk/default.asp?page=2010\02\02\story_2-2-2010_pp.7_28.

⁴ Pakistan: Domestic Violence Endemic, but Awareness Slowly Rising in *IRIN: Humanitarian News and Analysis: A Project of the UN Office for the Coordination of Humanitarian Affairs*, <http://www.irinnews.org/Report.aspx?ReportId=77226>.

Baradari system,⁵ deeply entrenched in the culture of this land. This tribal/*baradari* system has granted a dominant status to the eldest male member of the family, who is responsible for taking all important decision of his family and the women status in such an environment remains subservient to the will of family patriarch. An eminent scholar, Jafri has defined Pakistani society as a collectivistic⁶ society which usually has patriarchal structures in which the group identity can be referred to male designed customs, traditions and behaviors.⁷ On the contrary, the female population has been unable to form any kind of collectivism, because the level of awareness amongst them is very rudimentary. This lopsidedness of gender roles results in discrimination of women in socio-economic structures of the society. However, this gender discrimination is more evident in the rural setup, as compared to the cities. The reason is the absence of awareness amongst the rural women, due to the lack of formal education, which compels them to play a second fiddle to their male family members, despite of being actively involved in the manual labor in the fields, i.e., in addition to their full participation in the household activities. Consequently, women's participation in social, economic and political spheres has been curtailed and she remains at the mercy of men and their consciously designed norms and ethos. This gender disparity is more sharpened in the rural areas of the country, when compared to the urban centers. In the latter example, the women are even deprived of their fundamental rights, as provided by the constitution.

The second feature of the Pakistani society is the deep impact of Islam as a religion because the Muslims are about 97 per cent of the total population of the country. Unfortunately, the rigid interpretation of

⁵ *Baradari* means *Brotherhood* originating from the Persian word '*baradar*' meaning 'brother'. The influence of Hindu caste system resulted into the formation of *brotherhood* or communities that practiced social stratification among South Asian Muslims. The Hindus of different castes who converted to Islam due to *Sufi* missionaries formed their own *baradaris*. The tribal and clan affiliation are also considered as *baradaris* in Pakistan.

⁶ 'Collectivism refers to the board value tendencies of a culture to emphasize the importance of the 'we' identity over the 'I' identity, group obligations over individual rights and in group-oriented needs over individual wants and desires'. Stated in S Ting-Toomey, 'Managing Intercultural Conflicts Effectively', in L.Samovar & R. Porter (eds.), *International Communication: A Reader* (Belmont, CA: WardsWorth, Inc. 1994), pp.360-61.

⁷ Amir H. Jafri, *Honour Killing: Dilemma, Ritual, Understanding* (New York: Oxford University Press, 2008), p.89.

Islamic injunctions by the religious orthodoxy, most of the time semi-educated, has further confined the role of the women. However, Islam in its true spirit acknowledges the equal status of man and woman, as according to the 4:19 verse of the Quran:

O ye who believe! Ye are forbidden to inherit women against their will. Nor should ye treat them with harshness, that ye may take away part of the dower [money given by the husband to the wife for the marriage contract] ye have given them, except where they have been guilty of open lewdness; on the contrary live with them on a footing of kindness and equity.

In the Pakistani society, culture and religion gets mixed up in a way that it becomes difficult to make a distinction. According to Singhal and Ikramullah, the culture and traditions of the Pakistani people are a blend of continued adherence to Hindu values and customs by a majority of the converts to Islam in the region. On the other hand, the values and traditions of Islam brought by migrants and conquerors have a considerable impact on the habits and traditions of the people. The practice of seclusion of woman (*purdah*) as status symbol and her exclusion from male-oriented work (which also is a practice prominent among Hindus) has over shadowed the Islamic traditions of giving due respect and sharing with the women, in matters of inheritance, approval for marriage, right to divorce (*khula*) and freedom to own an independent business. The orthodoxy in Pakistan although gives an impression of applying religious injunctions but which in fact are the customs, originating from the centuries old non-Muslim traditions.⁸

The third feature of the Pakistani society is the existence of different social classes which can be broadly defined as upper class, middle class and lower class. There are variations within the classes, as well. The cultural values have more or less an equal impact on the lives of the people, belonging to different classes, which ultimately comprehensively determines the women status in the society. The upper class women are generally educated, with all available resources and are more empowered to guard her rights, mainly because of the awareness and strong financial position. However, in some cases, even the women of this stratum become a victim of strong prejudices, either from tribal or *baradari* base structures. For example, the twenty-seven-year-old Samia Sarwar, the daughter of a prominent businessman and head of the

⁸ Begam Shaista Ikramullah, *From Pardah to Parliament* (London: The Cresset Press, 1963), p.160; see also, P.Damodar Singhal, *Pakistan* (New Jersey: Prentice Hill, 1972), pp.11-2.

Chamber of Commerce, was gunned down in 1999 in her attorneys' office, in Lahore by a gun man, hired by her family, as she was seeking a divorce from her estranged husband.

The women belonging to the middle class can hardly raise any voice for their empowerment, as there are serious handicaps in their free mobility and at times hindrances are created to get higher education of their own choice. This is because this class claims to be the custodian of existing cultural and religious values of the society. The most vulnerable is the woman of the lower class, as she neither has resources to challenge the violence against her, nor is she aware of her basic rights - what to say of her desire to have equal status with men.

It is relevant to state here that in spite of the growing trends of education, active role of media, and various awareness programs of civil society organizations, the traditional societal attitudes towards status of women has not been helpful to bring about any significant change. Consequently, the women marginalization has continued and the evil of domestic abuse against women goes on. Domestic abuse/violence generally 'includes violence perpetrated by intimate partners and other family members'.⁹ It can be divided into four main categories:

First is physical abuse,¹⁰ second is sexual abuse,¹¹ third is emotional/psychological abuse,¹² and fourth being economic abuse.¹³ In patriarchal Pakistani society, all these four types of domestic abuses continue to exist despite constitutional guarantees of equal status for women and legislation of different ordinances and acts, to combat domestic violence. In the proceeding pages, an attempt will be made to evaluate the effects of these legislative measures.

Women rights under the constitution and legislation

Women form about half of Pakistan's population, which is a significant

⁹ 'Domestic Violence Against Women and Girls', in *Innocenti Digest*, Florence, United Nations Children's Fund, No.6, June 2000, p.2.

¹⁰ Physical abuse such as slapping, beating, arm twisting, stabbing, strangling, burning, choking, kicking, threats, with an object or weapon, and murder.

¹¹ Sexual abuse such as coerced sex through threats, intimidation or physical force, forcing unwanted sexual acts or sex with others.

¹² Psychological abuse which includes behaviour that is intended to intimidate and persecute, and takes the form of threats of abandonment or abuse, have confinement, surveillance, threats to take away custody of the children, destruction of objects, isolation, verbal aggression and constant humiliation.

¹³ Economic abuse includes acts such as the denial of funds, refusal to contribute financially, denial of food and basic needs, and controlling access to health care, employment, etc.

number and therefore women rights should have been a serious matter of concern for all the democratically elected governments, and even the dictatorial regimes. But unfortunately, despite passage of a number of women related laws and ordinances, this has not been the case.

The first legislative measure came in the shape of Muslim Family Law Ordinance (MFLO), aimed to regulate the family affairs by protecting the women rights against unjust prevailing procedures of marriage, divorce, and polygamy, etc. The MFLO was promulgated in 1961 by President General Ayub Khan, and its significant points are as follows:

1. In the case of second marriage the husband is bound to ask for permission from his first wife. It is mandatory for him to inform the arbitration council (a body of representatives from each party) about his second marriage and its reasons. The final decision would be that of this council.
2. In the case of divorce, it becomes the responsibility of the local council to play a role of a mediator. It is mandatory to register the three divorces in writing, and each notice should have a gap of one month. In all, the divorce will be finalized after the lapse of 90 days. The person who has asked for a divorce is not allowed to remarry, during this waiting period.
3. The minimum age of marriage was fixed as 14-16 for the girl and 18-21 years for the boy.
4. The right of inheritance in ancestral property was granted to the orphaned grand children of their late parents.

This ordinance was warmly welcomed by the civil society, especially women, as the ordinance acknowledged the rights of the women, through proper registration of marriage, divorce, custody of children, restrictions on polygamy and the grant of inheritance rights for grand children. No Doubt, through proper registration of marriage and divorce, the women security was officially guaranteed, to a great extent. Moreover, the involvement of arbitration council¹⁴ in the divorce

¹⁴ Arbitration council means a body consisting of the chairman and a representative of each of the parties to a matter dealt with. This ordinance provides where any part fails to nominate a representative within the prescribed time, the body formed without such representative shall be an arbitration council. The ordinance further lays down that within 'thirty days of the receipt of notice under sub-section (1) the chairman shall constitute an arbitration council for the purpose of bringing about a reconciliation between parties, and the arbitration council shall take all necessary steps to bring such a reconciliation'. Cited in Asghar Ali Engineer, *The Rights of Women in Islam* (London: C.Hurst & Company, 1992), p.136.

proceedings was an effort to explore possibilities of reconciliation between the two brawling parties. The time period allocated to arbitration council was that of 90 days, so to provide an opportunity for any chances of reconciliation between the husband and the wife. Consequently, the possibility of second marriage has been made conditional to the approval of the first wife. It intends to ensure the valid reason behind the second marriage. Moreover, it was the first time in the history of Pakistan that the family laws, while remaining within the domain of Islamic principles, were elaborated in such a great detail. The MFLO became a legal document to grant respect and provide essential rights to women, particularly in their family matters.

However, this ordinance received a vocal opposition by the *ulema*, as they denounced the ordinance as un-Islamic and considered it in contravention to the spirit and edicts of Islam. The points on which the religious orthodoxy objected were the standard *nikah nama*,¹⁵ restrictions on the number of marriages, the procedure of divorce, fixing of minimum marriageable age for women and the right of inheritance for the grand children from the property of grandfather/mother, in case the mother or father of the children was not alive. The *nikah nama* before MFLO consisted of one page with no details, thus no right of annulment of marriage for women was provided. Sayyid Abul A'la Maududi, a religious scholar asserted that men could not be prevented from second marriage, as according to his presumption, it could lead to taking up mistresses and girl friends. He further disagreed with the divorce procedure as described in the ordinance, because through the arbitration council, the role of religious personality was removed, thus curtailing its importance in the social activities of the society.

In the wake of the promulgation of that Ordinance, the *maulvi*¹⁶ was feared to have a minimal role as an exegete, which was not acceptable to the religiously orthodox, including religious parties and some pressure groups.¹⁷ 'They viewed that the ordinance interrupted the process of marriage in a way as if second marriage was a sin'.¹⁸ The religious leaders considered that the ordinance would empower woman in the annulment of marriage, *vis a vis* her husband and mistakenly they

¹⁵ Marriage contract in Muslims.

¹⁶ Presently used to denote a person attached to the mosque, and to distinguish this (usually not so leaned person) from an *alim*.

¹⁷ Khawer Mumtaz and Farida Shaheed, *Women of Pakistan: Two Step Forward One Step Back?* (Lahore: Vanguard Publishers, 1987), p.58-9.

¹⁸ Nabeela Afzal, *Women and Parliament in Pakistan 1947-1977* (Lahore: Pakistan Studies Centre: University of the Punjab), p.78.

believed that this right was not granted to women in the Islamic law. According to Islamic edict, the *iddat*¹⁹ started after divorce, where according to the ordinance, the complete procedure would take 90 days, therefore according to their perception, the period of *iddat* would start after the end of 90 days, i.e., not immediately but after the announcement of first divorce. Therefore, MFLO ‘...despite its relatively weak and moderate nature, was attacked and dismissed by the Ulema, who declared it totally unIslamic’.²⁰ Where as, the government machinery and the women organizations kept on turning a blind eye to those assertions, coming from the hard liners as it was the first time that a proper ordinance was invoked to facilitate the domestic affairs of women. Though, the ‘passing of the ordinance didn’t mean that its provisions became widely applied or even effective. In practice, its application has been limited, and entrenched customs and traditions have often let to its being ignored’.²¹

The second legislative measure was the constitutional guarantees of equal rights for women, as Article 25 of 1973 constitution, provides equality to women before law and ensures no discrimination against women on the basis of race, religion, caste or sex. Similarly, articles 32 and 34 guaranteed reservations of seats for women in local bodies, to ensure the participation of women in political affairs along with their right to take part in all spheres of national life. Likewise, Article 35 states that the state shall protect marriage, family, mother and the child. These articles have reiterated the responsibility of the state to ensure women’s equal status with men, in all spheres of life.

The third legislative measure was the *Hudood* Ordinance of 1980, which has been one of the most controversial steps taken by General Zia-ul-Haq, under the pretext of Islamisation of laws. The ordinance was promulgated through an executive order, which curtailed women’s participation in social, economic and political life. The word ‘*hudood*’ is derived from the word ‘*hadd*’ literally means the ‘limit’. Therefore, punishments prescribed by the *Hudood* Ordinance were such punishments which were applied to those who acted in contravention to the Islamic law. However, these punishments became applicable under specific circumstances, with a certain procedure of evidence. This

¹⁹ *Iddat* is a period of waiting that Islam has imposed upon a woman who has been divorced or whose husband has died, after which a new marriage is permissible.

²⁰ Khawar Mumtaz and Farida Shaheed, *op.cit.*, p.59.

²¹ *Ibid.*

ordinance dealt with many matters²² other than related to women, but here we will exclusively discuss those parts which directly affected women's lives in their domestic arrangements. First was the *Zina* ordinance of 1980, which dealt with the cases of *zina* or adultery, second was the *Qanun-e-Shahadat* Order, which was related to the unequal testimony of man and woman and third was the *Qanun-e-Qiyat* Order which addresses the question of blood money or monetary compensation for murder – again on unequal basis.

The *Zina* ordinance did not distinguish between *zina* (adultery) and rape (*zina-bil-jabar*). The ordinance declared: 'A man could be convicted of *Zina* only if he was actually observed committing the offense by other men, but a woman could be convicted simply because she became pregnant'.²³ Consequently, a large number of cases were registered, where women subjected to rape could not prove a crime against them, as according to the cumbersome procedures of the evidence. Therefore, wrongfully they were accused of *zina* and convicted. In these circumstances, it became a high risk and a deterrent for the women to report rape against them.²⁴ Such provisions prompted a widespread protest by various civil society organizations and as a result brought awareness amongst Pakistani women against the adverse implication of the *Hudood* Ordinance. The *zina-bil-raza* offense came under the *Hadd* crime and the punishment was prescribed death sentence, by stoning, for a married person and 100 lashes for unmarried person, in result of either self-confession or by the eye witnesses of four *salah* (noble, magnanimous) adult males. However, in the absence of such evidence, the court had the sole discretion of suggesting any penalization if it opted to enforce. The condition to have four *salah* witnesses, who glimpsed the act with naked eye is absolutely impossible, as such acts do not take place in open spaces. All these questions added further controversy and contentiousness towards the *Hudood* Ordinance as the 'Evidence of *Hadd* punishment did not include expert opinion, medical

²² The first case was regarding manufacturing, importing, exporting, transporting, bottling, selling or serving of any intoxicating liquor, the punishment under any of this condition would be eighty lashes but the lighter punishment in case of non-availability of any evidence would be three years imprisonment or thirty stripes. The second case was of theft or robbery, in which the punishment was the amputation of the right hand.

²³ 'The Situation of Women in Pakistan', in *US Library: Congress Report*, at <http://www.islamfortoday.com/pakistanwomen.htm>.

²⁴ Shehla Zia, 'The Legal Status of Women in Pakistan', in Fareeha Zafar (ed.), *Finding Our Ways: Reading on Women in Pakistan* (Lahore: ASR Publications, 1991), p.32.

evidence or documentary proof'.²⁵ According to Amna Buttar, president of the *Asian American Network Against Abuse*, many women imprisoned under *zina* laws were either single or widowed, living alone, young brides who invoke the anger of greedy in-laws for not bringing enough dowry or even elderly women, whose husbands desired to get rid of them. In several cases, pimps also filed *zina* charges against those women who refused to work for them, after being pushed into sex slavery.²⁶

The *Qanun-e-Shahadat* Order reduces the worth of a woman's testimony equal to half as compared to a Muslim man and completely excludes female testimony in *Hudood* cases, which was seen as undermining of women in such matters. Thus, under this law, a woman's testimony was not weighed equally, to that of a man and if a woman does not have male witnesses but has female witnesses, their testimony would not satisfy the evidence requirement. Consequently, the perpetrator could be acquitted and the victim faced adultery charges. The threat of being prosecuted discouraged women victims from filing complaints. Moreover, to prove that this law of evidence is according to the principles of Islam, Zia-ul-Haq sought the support of orthodoxy. Many believed that he was presenting a new meaning to the Quranic versus by miss-interpreting, and was accused of creating confusion, about the religious interpretations. Dr. Zaheer Khalid, a professor at the Lahore University of Management and Sciences (LUMS), analyzes the validity of *Hudood* laws by stating,

'I differ with the Islamic scholars on the interpretation of the Hudood Laws. They were never intended to differentiate between men and women. In the instance of two women's testimony equaling one man's, the Quran is very clear. This law was introduced to strengthen the evidence of women, not to be flouted by men'.²⁷

Similarly, discrimination can also be observed in the law of *Qisas* and *Diyat*, which privatizes violent crimes as it allows families to settle, even murder cases, by paying blood money. While undermining state prosecution, this law encouraged the family members to murder a

²⁵ Asma Jahangir, Hina Jilani, *The Hudood Ordinance: A Divine Sanction?* (Lahore: Rohtas Publisher, 1990), p.49.

²⁶ Rafia Zakaria, 'Veils and Jails', on *Altmuslim Comment*, 1 September 2006, <http://www.altmuslim.com/a/a/a/2374>.

²⁷ Shehar Bano Khan, 'The Truth about the Law', *Dawn, The internet edition*, 8 August 2002, <http://www.dawn.com/weekly/review/archive/020808/review2.htm>.

woman in the name of ‘honour’, without any fear of criminal penalty, against the fathers, brothers, sons or husbands. In the light of such institutionalized discrimination, it is hardly surprising that women accused of *zina* choose to languish in prison rather than the risk of death.²⁸ According to the *Diyat* law, if the victim is a woman, the set amount of *diyat* is half of the man victim, which again is a clear manifestation of gender disparity. While evaluating these discriminatory *Hudood* laws against women, Rafia Zakaria, states.

In a patriarchal society rife with misogynistic feudal and tribal practices, the laws have become convenient ways to subjugate an already oppressed female population. Scores of charges have been filed and thousands of women imprisoned on concocted charges of illicit sexual relations. Their lives and reputations are destroyed by the resulting ostracism and stigma.²⁹

The overall impact of these ‘Islamisation’ reforms by Zia, had a negative impact on the process of giving equal rights and status to the Pakistani women. The male offenders could circumvent the *Hudood* law and escape the punishment as ‘*zina* ordinance exclusively helped families to punish docile daughters, mothers, and wives’.³⁰ Different cases were filed under *Hudood* Ordinance in Federal *Shariah* Court (FSC); however, in most of them the affected parties were the women. According to Asma Jahangir³¹ and Hina Jilani³² ‘the cases reported to police in the year 1983 were: 1685 of *zina*, 17 of *qazaf* and 16,718 of prohibition; in 1984 there were 1842 cases of *zina*, 17 of *qazf* and 22,996

²⁸ Rafia Zakaria, *op.cit.*

²⁹ *Ibid.*

³⁰ Shahnaz Khan, *Zina: Transnational Feminism and the Moral Regulation of Pakistani Women* (New York: Oxford University Press, 2006), p.72.

³¹ Asma Jahangir is one of the Pakistan’s leading advocates for human rights. She has worked both in Pakistan and abroad to prevent the exploitation of religious minorities, women, and children. Ms Jahangir the Human Rights Commission of Pakistan (HRCP). In August 1998, Asma Jahangir was appointed by the United Nations to be the special Reporteur on Extra-Judicial, Summary or Arbitrary Executions.

³² Hina Jilani is a well-known lawyer and human rights activist in Pakistan. She co-founded, with her sister, Asma Jahangir, Pakistan’s first all-female legal practice in 1980. She is also one of the founders of the Human Rights Commission of Pakistan. She is the United Nations special representative of the Secretary-General on Human Rights Defenders. In 2006, she was appointed to the UN International Fact-Finding Commission on Darfur.

of prohibition. Between 1980 and 1988, 4,831 appealed in *tazir*³³ cases were reported to have been made to the FSC.³⁴ The case of Fehmida and Allah Bux, Safia Bibi and Shahida Perveen were those on which the decision of FSC made the *Hudood* ordinance questionable in the pretext of its dictates. There was a protest from various civil society organizations, particularly from those, which dealt with women issues like Women Action Forum (WAF),³⁵ which had in the past helped to bring awareness in Pakistani women, regarding their equal status in society.

The fourth legislative step by the government of General Pervez Musharraf was the enactment of Women Protection Bill of 2006, with the main purpose to amend the laws under *Hudood* Ordinance as this ordinance victimized the women segment of the Pakistani society. The new bill dealt with the concerns of women regarding their domestic domain, including property rights, early age marriages, forced marriages, marriage with Quran, *vani*³⁶ and *watta-satta*.³⁷ In addition to this, the bill legislated against the practice of giving a divorce, instantly. This bill was also an effort to bring rape under the Pakistan Penal Code (PPC), which is based on criminal law and not *Sharia* (Islamic law), so that the complexities regarding the rape cases could be avoided. In addition, the bill also removed the preview of police to arrest people on the basis of suspicion of extramarital sex, unless formal accusation in the court of

³³ In Islamic law, *tazir* refers to punishment, usually corporal, that can be administrated at the discretion of the judge, as opposed to the *hudood*, the punishments for certain offences that are fixed by the Qur'an or Hadith. Traditionally, *tazir* punishments could be applied to offences for which no punishment is specified in the Quran. They could also be applied to *hadd* offenses in situations where the standard of proof required for *hudood* punishments could not be met.

³⁴ Asma Jahangir, Hina Jilani, *op.cit.*, p.32.

³⁵ Women's Action Forum (WAF) is a women's rights organization, which was formed in 1981. WAF does active lobbying, advocacy on behalf of women in Pakistan. The issues picked up by WAF include challenging discriminatory legislation against women, invisibility of women in government plans and policies, the exclusion of women from media, sports and cultural activities, dress codes for women, violence against women and the seclusion of women. WAF's activism has led to the birth of many women's rights groups and resource centers thereby increasing its outreach.

³⁶ *Vani* is a child marriage custom in tribal areas of Pakistan. This custom is tied to blood feuds among the different tribes and clans where the young girls are forcibly married to the members of different clans in order to resolve the feuds.

³⁷ Bartering bride for a bride.

law. No doubt, the bill declared adultery and extramarital consensual sex an offence but the judges were entitled to give verdict on such cases, under the civil law rather than the Islamic law, which automatically did away with the condition of four witnesses to prove the offence. In this way, the conviction relied more on forensic and circumstantial evidence.

According to the known legal expert, Farooq Hassan, there were serious flaws in this protection bill, as well. First it does not repeal the *zina Ordinance*, designed for rape victims. The new law has only altered the procedural formalities of handling such cases. The second is about registering a *Zina* case. The offense is no longer cognizable and only a court can decide whether the case has any merit; even if it does, the offense is bailable. Under the laws of England, which are followed by many Commonwealth countries, the police cannot embark in non-cognizable cases, without the orders of a court of law. The term *bailable* connotes that the courts have an obligation to grant a bail, in such cases. The third flaw was the provision in this bill, which makes lewdness (later changed to fornication, defined as consenting sex between unmarried couples) punishable under the PPC. In this provision, there is an opening of the door, once again to the norms and philosophy of the *Hudood Ordinance*, which incidentally remains intact, even after these amendments. It still is an overarching, law, even after the amending bill.³⁸

The fifth legislative measure came in the form of the Domestic Violence (Prevention and Protection) Bill of 2009, tabled in the National Assembly in August 2009. The bill was passed by the National Assembly unanimously, but unfortunately the bill lapsed after the Senate failed to pass it within the three months period, required under the constitution. The unpassed bill defines domestic violence as

all intentional acts of gender-based or other physical or psychological abuse committed by an accused against women, children or other vulnerable persons, with whom the accused person is or has been in a domestic relationship.³⁹

³⁸ Farooq Hassan, 'Women's Protection Bill: Perception and Realities' on *Islam Online*, http://www.islamonline.net/servlet/Satellite?c=Article_C&pagename=Zone-English-Living_Shariah%2FLSELayout&cid=1164545897953.

³⁹ 'Pakistan: Expedite Domestic Violence Legislation: New Law Criminalizing Sexual Harassment Welcome but Needs Enforcement Tools' in *Human Rights Watch*, 11 January 2010, <http://www.hrw.org/en/news/2010/01/11/pakistan-expedite-domestic-violence-legislation>.

According to the senior researcher of South Asian affairs in Human Rights Watch, Ali Dayan Hasan, ‘Victims of domestic violence have long faced a double injustice – abuse at home and then no protection from the government’.⁴⁰ While analyzing the domestic violence bill, Hassan expresses his views that the bill intends to combat violence against women and children, with the help of a strong network of protection committees and quick criminal trials against suspected abusers. According to the bill, the courts are bound to hear such case within three days of receiving such a complaint and the decision should be announced, within 30 days. Moreover, the law prescribes the punishment procedures with all necessary details in case of any breach of protection order.⁴¹

The sixth legislative effort is related to the sexual harassment of the Pakistani women, especially when they come out of their homes for market places, traveling by local transport and when they are performing their duties at workplace, along with the male colleagues. On 10th March 2010, the Sexual Harassment Bill became a law. Although it does not deal with the domestic life of women, but it focuses on changing the lives of women at workplace, by providing them security against sexual harassment, so that they could perform their professional duties without fear and embarrassment. ‘The bill enhances the punishment already prescribed under the law for sexual harassment and facilitates effective prosecution by defining ‘harassment’ unequivocally’.⁴² The bill has empowered Pakistani women, to a certain extent as they could attain equal status with men, at least while performing work related duties.

The bill amends both the PPC and the Criminal Procedure Code (CrPC), proposing an increase in punishment for the crime to a maximum of three years in prison and a fine of up to Rs500,000 from up to one year jail and an unspecified fine provided in the PPC for a vague ‘insult (to) the modesty of a woman’.⁴³

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² ‘Sexual Harassment Law’, *Dawn*, Editorial, 06 Nov 2009. <http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/14-sexual-harassment-law-zj-02>.

⁴³ Ahmad Hassan, ‘Senate approves amendment in Sexual Harassment Law’, *Dawn*, 21 January 2010, <http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/18-senate-approves-amendment-in-sexual-harassment-law-am-02>.

After evaluating the legislative measures of government over women related issues, it is relevant to acknowledge the role of those modernizing forces which have played a significant role in the awareness of the Pakistani women, regarding their rights. Such agents of change are the civil society organizations, which exclusively work for women rights (APWA, WAF, Shirkar Gah and Aurat Foundation), press and electronic media, and last but not the least, a growing leaning towards female education. However, despite these efforts, there are some serious hindrances for women to curtail their role in society and consequently their position remains vulnerable on all fronts of life.

Societal prejudices and problems of implementation

Unfortunately, the legislative measures by the government and all efforts of civil society organizations could not bring any significant change in the magnitude of domestic abuse in Pakistani women, as many hindrances exist in the fair and quick implementation of women related policies. The first hindrance is obvious and widely discussed, as reflected in an editorial of a Pakistani national newspaper which writes,

Deeply entrenched social prejudice in society relegates women to a subordinate status in public and family life. In the absence of general awareness of women's rights and the ingrained perception of male superiority, legislation enacted to protect women has not found practical implementation.⁴⁴

Consequently, most of the women are in no position to wrestle against the patriarchal structures of society, despite availability of all legal facilities. However, the most improvised women are those who belong to middle/lower class status, as they neither have the awareness of their rights nor are equipped with education to seek help from governmental authorities, against domestic abuse.

The second hindrance that makes these laws ineffective is the biased and uncooperative attitude of the government authorities. The victims of domestic violence face a high level of unresponsiveness from the criminal system of justice, which considers domestic violence as a private matter. It is also believed by a large segment of the Pakistani society that it does not belong to the courts of the land. Moreover, the police instead of filing a report and arresting the perpetrator, for their own convenience, try to arrange a settlement between the concerned parties. In some cases of domestic violence, where women are referred for medical examination, the medico-legal doctors sometimes fail to

⁴⁴ Dawn, editorial, *op.cit.*

prepare a reliable report, due to the lack of training in this particular field.⁴⁵

The third obstruction, which denies justice to the victims of domestic violence, is related to the procedures. Initially, it is not a simple matter for every woman to file a report, as only these women who belong to influential families can manage to go through the discriminatory legal process. Secondly, even if the complaint has been filed, it takes years for the decisions to be finalized due to the slow and non-serious judicial process.

The fourth impediment is non-serious government attitude regarding issues of domestic abuse. There is a glaring example in the case of Samia Sarwar. She became a victim of a murder by her own family, and even though it was well advertised in the media, the murderers could not be arrested. Another example, related in a survey of Human Rights Watch in 1997, is that of Lahore where 215 cases of women being suspiciously burned to death in their homes were reported but only six suspects were taken into custody.

The fifth significant obstacle is the economic dependence of women, over the male members of their family. Because of this dependency, she could not dare to raise her voice against the domestic abuse, of any kind, which she has to compromise with at home. Therefore, women are forced to live with domestic abuse and have little or no option to resist this gross injustice. Mostly, the victims of domestic abuse are those women who belong to middle/lower class with minimum education, few chances of employment and unawareness of the judicial system. However, even educated and working women, at times become docile, due to the cultural constraints and an aggressive mindset of their male family members. The most unfortunate part is that of the mothers, who themselves are not properly educated and due to their insensitiveness and complexes, fail to guard the rights and family status of their daughters.

Conclusion

From the above discussion we can conclude that the patriarchal structures of the Pakistani society has drastically curtailed the role of the women, in all spheres of life and consequently women's status remains subservient to the male members of their family. Although, the impact of modernization (education, media, civil society etc) has contributed in the

⁴⁵ Samya Burney, 'Crime or customs?: Violence Against Women in Pakistan', *A Report of Human Rights Watch* (New York: Library of Congress, 1999), pp.1-2.

transformation of the Pakistani society but the conservative mindset and practices are deeply entrenched in the socio-cultural system. Therefore, only those women belonging to a particular class with all required resources can afford to challenge the patriarchal values of the society. In such an environment violence against women is a commonly observed phenomenon. The history of this violence starts from home in the shape of *karo kari*,⁴⁶ *watta satta*⁴⁷ and *vani/sawara*.⁴⁸ Pointing at the role of the family in promoting patriarchal attitude in Pakistan society, the Report on World Conference of the United Nations Decade for Women: Equality, Development and Peace, aptly states:

Domestic violence is a structural rather than causal problem. It is the structure of the family that leads to or legitimizes the acts, emotions or phenomenon that are identified as the causes of domestic violence under the causal analysis. This family structure is a structure that is mirrored and confirmed in the structure of society, which condones the oppression of women and tolerates male violence as one of the instruments in the perpetuation of this power balance.⁴⁹

It is relevant to state here that the Government of Pakistan has been acknowledging the equal status of women through various legislative measures, but no significant change has been observed regarding domestic abuse. To minimize the discriminatory attitude of the society towards women, it is important to bring drastic changes in the mind set of the people (both men and women), making them realize that women are equal to men and should be treated at par with men. Moreover, education and equal opportunities of employment will empower women, which will ultimately help to reduce domestic violence against them.

In this regard the role of civil society organizations on women issues and media can not be ignored as legislation on women issues was strongly supported by these women NGOs as well as by independent press/electronic media. They not only discuss women related issues but also make efforts to bring them into limelight, as it happened in the case

⁴⁶ Honour Killing (killing woman by accusing her of adultery).

⁴⁷ Exchange marriages.

⁴⁸ A custom in which woman / girl of a murderer is given to the family of the victim.

⁴⁹ *Report of the World Conference of the United Nations Decade for Women: Equality, Development and Peace*, 14-30 July 1980 Copenhagen, UN Publication, p.30; also cited in Yasmin Hassan, *The Haven Becomes Hell* (Lahore: Shirkat Gah, 1995), p.6.

of Mukhtaran Mai.⁵⁰ But it is still to be seen whether Mukhtaran Mai will become a source of inspiration for other victimized struggling women of domestic abuse or she will fade away in history, as an exceptional case.

While concluding our argument, we can say that the Pakistani women can achieve their equal status in domestic affairs by equipping themselves with proper education so that they could attain better chances of jobs of their choice, irrespective of their social status and economic backgrounds. Secondly, the state needs to play a significant role by repealing all discriminatory laws against women and by implementing these laws to avoid violence against them. Thirdly, the chauvinistic attitude of the authorities towards the victims of domestic abuse needs to be completely reformed as domestic abuse is the most sensitive matter in a woman's life and it should be dealt with proper care and all seriousness. Fourth, Pakistani society needs to understand the basic principles of Islam which provides equal status to women, so that the miss-interpretation of Islamic law and continuous re-enforcement of negative culture and social norms should be discouraged. Moreover, for due status in society Pakistani woman needs to have full awareness of her proper rights.

⁵⁰ Mukhtaran Bibi known as Mukhtaran Mai is a Pakistani woman from a village in Punjab. She was victim of gang rape as a form of honour revenge, on the orders of tribesmen, or by some accounts, on the orders of a *panchayat* (tribal council) of a local Mastoi Baloch clan that was richer and more powerful than Mukhtaran's clan, the Gujjar. By custom, rural women are expected to commit suicide after such an event. Instead, she spoke up, and pursued the case, which was picked up by the international media, creating pressure on the Pakistani government and the police to address the rape. The case eventually went to trial, and her rapists were arrested, charged and convicted. The case is still pending in the Supreme Court of Pakistan.