

A STUDY ON THE PROTECTION OF WOMEN
AGAINST DOMESTIC VIOLENCE IN PAKISTAN:
CHALLENGES AND PROSPECTS

BY

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ABSTRACT

Family violence is an expression of control and domination, to the core limit a women's ability at homes. It halts making life choices which resulted in power imbalances. It is widely accepted that family violence often reflects the man's desire to assert power and control over his partner. Rather than being perceived as a social problem, or a crime, it is usually accepted as a personal affair of the family and community that requires no intervention by the authority. The proponents of women's rights seek to eliminate systems of inequality and injustices in all aspects of women's lives. Therefore, in addressing male violence, especially that is legitimised in the name of misconceived religious norms or so-called local traditions and culture, society must pay greater attention to these norms. Despite the overwhelming levels of intra-family violence against women, society and Pakistan's law enforcement system maintain the perception that family violence is a private matter that requires neither government intervention nor criminal sanction. Moreover, Pakistan's criminal justice system is designed primarily for violence between strangers which is not suited for the sensitivity and complexities of abusive family relationships. In this situation, the hypothesis is that there is an urgent need for a specific statute to deal with family violence, along with a specialised offence such as domestic violence as well as the modification of the current criminal justice procedures and its enforcement. To research family violence within the Pakistani context, this research has adopted the qualitative method of inquiry. Data were collected in a natural setting from lawmakers, sociologists, criminologists, family law lawyers, judges, academics, religious scholars, non-governmental organisations, police, and victims. Via direct interaction with the participants, which aids in understanding the complexities of human behaviour over an extended period, in-depth interviews were conducted. This research also analysed the data by adopting an inductive approach to thematically selected patterns to respond to the research questions. This research aims to develop a deep understanding of the central phenomenon through detailed description and thematic development, offering practical suggestions. The finding of this qualitative research is produced in this narrative report that will be proven to be rich in detail. The qualitative research findings showed that women still regarded as property in some sections of society. They are also subjected to outdated feudal and tribal customs in Pakistan since the society is patriarchal. Although the government is aware of the need for change, it has lack of courage to put it into action. This is proven by the absence of national domestic violence law and a gender-insensitive, as well as dysfunctional criminal justice system, which are significant factors in the state's failure to protect women from endemic violence. This thesis recommends the changes in the criminal justice system to make it more sensitive and hence facilitate the needs of women. For instance, a specific statute to deal with family violence, along with a specialised offence of domestic violence and modified procedures to enforce it should be proposed to solve this issue. Violence against women cannot be eliminated unless the criminal justice system is made accessible, unbiased and effective enough to punish offenders and deal with victims with empathy. However, without involving the whole society, the laws cannot be implemented. Thus, there is a needs to modify and change the entire mindset of society.

ABSTRACT IN ARABIC

العنف الأسري هو تعبير عن السيطرة وعلى الحد من قدرة أحد أفراد الأسرة ومنها الزوجات. إن توقفها عن اتخاذ خيارات بشأن حياتها قد أدى إلى اختلال توازن القوى. العنف الأسري يظهر رغبة الرجل في تأكيد سلطته والسيطرة على شريكه. وبدلاً من اعتبارها مشكلة اجتماعية، أو جريمة، فإنه يتم قبولها عادة باعتبارها شأنًا شخصيًا للعائلة والمجتمع لا يتطلب تدخل السلطة. يسعى أنصار حقوق المرأة إلى القضاء على نظم عدم المساواة والظلم في جميع جوانب حياة المرأة. لذلك، عند معالجة العنف الذكور، وخاصة ما يتم إضفاء الشرعية عليه باسم الأعراف الدينية الخاطئة أو ما يسمى بالتقاليد والثقافة المحلية، يجب على المجتمع أن يولي اهتمامًا أكبر لهذه المعايير. على الرغم من المستويات الهائلة للعنف داخل الأسرة ضد المرأة، فإن المجتمع ونظام تطبيق القانون في باكستان يؤكدان على أن العنف العائلي مسألة خاصة لا تتطلب تدخل الحكومة أو العقوبة الجنائية. زيادة على ذلك، فإن نظام العدالة الجنائية في باكستان مصمم في المقام الأول للعنف بين الغرباء الذي لا يناسب حساسية وتعقيدات العلاقات الأسرية المسيئة. في هذه الحالة، هناك فرضية مفادها أن هناك حاجة ماسة لقانون محدد للتعامل مع العنف الأسري، إلى جانب الجرائم المتخصصة مثل العنف العائلي وكذلك تعديل إجراءات العدالة الجنائية الحالية وتطبيقها. لغرض البحث في العنف الأسري ضمن السياق الباكستاني، تبنى هذا البحث الطريقة النوعية في التحقيق. تم جمع البيانات في بيئة طبيعية من المشرعين وعلماء الاجتماع وعلم الإجرام ومحاميي قانون الأسرة والقضاة والأكاديميين وعلماء الدين والمنظمات غير الحكومية والشرطة والضحايا. من خلال التفاعل المباشر مع المشاركين الذين يساعدون في فهم تعقيدات السلوك البشري على مدى فترة زمنية طويلة، أجريت مقابلات متعمقة. ثم قام هذا البحث بتمييز البيانات التي تم جمعها عن طريق تقسيم وتوسيم النص إلى أوصاف ومواضيع عامة. قام هذا البحث أيضًا بتحليل البيانات من خلال اعتماد نهج استقرائي على الأنماط المختارة موضوعيًا للرد على أسئلة البحث. يهدف هذا البحث إلى تطوير فهم عميق للظاهرة المركزية من خلال وصف تفصيلي وتطوير مواضيعي يقدم اقتراحات عملية. إن نتائج هذا البحث نوعية في هذا التقرير السردي الذي سيثبت أنه غني بالتفاصيل. أظهرت نتائج البحوث النوعية أن النساء مازلن يعتبرن ملكية في بعض قطاعات المجتمع. كما يتعرضن للعادات الإقطاعية والقبلية التي عفا عليها الزمن في باكستان لأن المجتمع بطبيعته أبوي. رغم أن الحكومة تدرك الحاجة إلى التغيير، إلا أنها تفتقر إلى الشجاعة لوضعه موضع التنفيذ. وقد ثبت ذلك من خلال عدم وجود قانون وطني للعنف العائلي وعدم مراعاة منظور الجنسانية، فضلاً عن نظام العدالة الجنائية المختل وظيفيًا، وهما عاملان مهمان في فشل الدولة في حماية النساء من العنف المستشري. توصي هذه الأطروحة بإجراء تغييرات في نظام العدالة الجنائية تحتاج إلى أن تكون أكثر حساسية وتسهيل احتياجات المرأة. على سبيل المثال، ينبغي اقتراح قانون محدد للتعامل مع العنف الأسري، إلى جانب جريمة متخصصة من العنف الأسري والإجراءات المعدلة لإنفاذه لحل هذه المشكلة. لا يمكن القضاء على العنف ضد المرأة بشكل كامل ما لم يكن نظام العدالة الجنائية متاحًا وغير متحيز وفعال بما يكفي لمعاقبة الجناة وكذلك التعامل مع الضحايا بالتعاطف. ومع ذلك، دون إشراك المجتمع بأسره، لا يمكن تنفيذ القوانين. وبالتالي، هناك حاجة إلى تعديل وتغيير عقلية المجتمع بأكملها.

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DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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LIST OF ABBREVIATIONS AND ACRONYMS

ADB	Asian Development Bank
ADPP	Additional Deputy Public Prosecutor
AF	Aurat Foundation
ASHA	Alliance against Sexual Harassment
ASF	The Acid Survivor Foundation
ATA	Anti-Terrorism Act, 1997
ATC	Anti-Terrorism Court
UNCAT	United Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Committee on the Rights of the Child - Convention on the Rights of the Child
CrPC	Criminal Procedure Code
DEVAW	Declaration on Elimination of Violence against Women
DMMA	Dissolution of Muslim Marriage Act, 1939
EU	European Union
FAFEN	Free and Fair Election Network
FATA	Federally Administered Tribal Areas
FCA	Family Court Act, 1964
FIR	First Information Report
GBV	Gender Based Violence
HRC	Committee Human Rights Committee, an intergovernmental UN body that addresses human rights globally
HRCP	Human Rights Commission of Pakistan
IACHR	Inter-American Commission on Human Rights, an autonomous organ of the Organization of American States mandated to monitor and protect human rights in the 35 countries of the Americas
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice, known as the “World Court,” which resolves disputes between States
ILO	International Labour Organisation
KPK	Khyber Pakhtunkhwa, a North West Frontier Province of Pakistan neighbouring Afghanistan
MDGs	Millennium Development Goals
MLR	Medico legal reports
MFLO	Muslim Family Law Ordinance, 1961
MNA	Member of National Assembly of Pakistan
MOHR	Ministry of Human Rights
NADRA	National Database Registration Authority
NCSW	National Commission on the Status of Women.
NGO	Non-Governmental Organization

OHCHR	Office of the High Commissioner for Human Rights
PILDAT	Pakistan Institute of Legislative Development and Transparency
PILER	Pakistan Institute of Labour Education and Research
PML	Pakistan Muslim League
PPC	Pakistan Penal Code
PPP	Pakistan People's Party
PAWPA	Prevention of Anti-Women Practices Act, 2011
PPWVA	Punjab Protection of Women against violence Act, 2016
PWDVA	Protection of Women from Domestic Violence Act, 2005
Q&D	Qisas and Diyat
SDG	Sustainable Development Goals
SDVPPA	Sindh Domestic Violence (Prevention and Protection) Act, 2013
SOP	Standard Operating Procedure
UN	United Nations,
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
USAID	United States Agency for International Development
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
WAR	War against Rape
WHO	World Health Organization
WPA	Protection of Women Act, 2006

CHAPTER ONE

INTRODUCTION AND CONCEPTUAL BACKGROUND

1.0. INTRODUCTION

Violence against women¹ and domestic violence² is a living reality in present-day Pakistan. Though Pakistan is no exception to the rule, as these crimes are prevalent around the world; however, in Pakistan, violence cases are exceptionally legitimised under the guise of patriarchal culture, tradition, religion, and morality.³ Pakistan is characterised by a long-standing legacy of underdevelopment, alongside a feudal, elitist socio-political structure and a retreat to conservatism that marginalises women.⁴ According to an observation, women in Pakistan are treated so delinquently, tantamount to wild animals, hitherto resulting in gender violence as one of the most common

¹ In the context of Pakistan, “violence against women includes, but not limited to, murder, rape, family violence or domestic violence, sexual assault and sexual harassment or sexual slavery, harmful practices, including early marriage, forced marriage, watta-satta, wani, swara, honour killing, acid attacks, and crimes committed in relation to bride-price and dowry, kidnapping and abduction etc.” see, United Nations Division for the Advancement of Women, *Handbook for Legislation on Violence Against Women*, (New York: United Nations Publications, 2010), 43; See Sajid and et al, "Violence against Women in Pakistan: Constraints in Data Collection", *Pakistan Journal of Criminology*, vol. 2, no. 2 (2010): 93-110; see also, Pakeeza Shahzadi, "Domestic Violence Laws and Practices in Pakistan", *VFAST Transactions on Education and Social Sciences*, vol. 6, no. 1 (2015): 60.

² “There are many terms used for violence and abuse of a wife that occurs within a family, for example, domestic violence, spousal abuse, intimate partner violence, and wife battering. However, in this thesis, the term ‘domestic violence’ and ‘family violence’ are commonly used.” Please refer to Muhammad Amir Munir, "Family Courts in Pakistan in Search of Better Remedies for Women and Children", *Lawasia Journal*, vol. 13, no. 2, (2006): 191. Different forms of intimate partner’s violence, including “of causing or attempting to cause physical or mental harm to a wife, placing her in fear of physical or mental harm, psychological, emotional and economic violence, causing or attempting to her to engage in involuntary sexual activity by force, threat of force, or duress; and engaging her in an activity that would cause a reasonable person to feel terrorised, frightened, intimidated, threatened harassed or molested.”

³ Semahegn and et al, "Are Interventions Focused on Gender-norms Effective in Preventing domestic violence against women in low and lower-middle income countries? A systematic review and Meta-analysis", *Reproductive health*, vol. 16, no. 1 (2019): 1-31; see, Rakhshinda Parveen, *Gender-Based Violence in Pakistan—A Scoping Study*, (Islamabad: Aurat Foundation, January 2011), 87.

⁴ Critelli Filomena M. "Women's Rights are Human Rights: Pakistani Women against Gender Violence", *J. Soc. & Soc. Welfare*, vol. 37 no. 4 (2010): 135-160.

reasons for suicide, along with helplessness, poverty, depression and loss of control over one's own life.⁵

In 2011, Thomas Reuters Foundation conducted a survey to examine the most errant places for women in the world. According to the survey, the Foundation's poll of experts declared Pakistan the world's third most dangerous country for women after Afghanistan and the Democratic Republic of Congo, signalling that 90 percent of women still suffer some form of gender violence yet. The survey informed six risk factors to determine a country's ranks, including cultural and religious practices, lack of access to resources, health, gender discrimination, sexual violence, human trafficking and conflict-related violence. Pakistan is ranked third in the list, considering the harmful cultural, tribal, and religious practices which affect women. It includes acid attacks, forced and child marriages, other physical abuses, dowry murders, and honour killing. According to this survey, as many as 1,000 women and girls die in honour killings annually.⁶ The top women's rights group in Pakistan, Aurat Foundation, also confirmed that hundreds of women killed every year for different reasons, including notorious honour killing.⁷

⁵ Ashraf and et al, "Domestic Violence against Women: Empirical Evidence from Pakistan", *Pertanika Journal of Social Sciences & Humanities*, vol. 25, no. 3 (2017): 1401-1418; see, *Human Rights Commission of Pakistan*, "State of human rights 2019", <<http://hrqp-web.org/hrqpweb/>> (accessed 23 April, 2019).

⁶ Holden L., "Women Judges and Women's Rights in Pakistan", *Oñati Socio-legal Series*, vol. 7 no. 4 (2017): 752-769; see, *Law and Justice Commission of Pakistan*, "International Judicial Conference 2013", Islamabad, <<http://www.ljcp.gov.pk/Menu%20Items/Publications/2013/IJC%202013.pdf>> (accessed 13 December, 2019); see also, Unicef, *Situation Analysis of Children and Women in Pakistan*, (Islamabad: UNICEF, June 2012), 95; Saeed Shah, "The Worst places in the world for women: Pakistan", *The Guardian*, 14 June 2011. <<http://www.guardian.co.uk/world/2011/jun/14/worst-places-in-the-world-for-women-pakistan>> (accessed 23 April, 2019); *Human Rights Watch*, "World Report, 2018", <<https://www.hrw.org/world-report/2018/country-chapters/pakistan>> (accessed 23 April, 2019).

⁷ Muhammad Sadaqat, "6 Convicted for Carrying out Jirga Orders," *The Tribune*, January 31, 2014 <<http://tribune.com.pk/story/665707/6-convicted-for-carrying-out-jirga-orders/>> (accessed 23 April, 2019).

Domestic violence remains a pervasive phenomenon in Pakistan, where women suffer from one of the world's highest rates of domestic violence. Several studies agreed on the prevalence of violence. However, as evidenced, there are disagreements on the exact figure due to the non-viability of standardised data. Several studies have provided different accounts of the volume of violence experienced by women.⁸ Yefet confirmed that seventy to ninety percent of Pakistani women regularly experience bodily integrity violations.⁹ Human Rights Watch agreed with Yefet and estimates that the proportion of women experience domestic violence, ranging from 70 to an upward trend of 90 per cent.¹⁰ Whereas the Demographic and Health Survey conducted during 2012/13 cut down the figures on spousal violence by more than half while its findings suggested that only 40 per cent of women experiencing spousal abuse at some point in their life, whether physical or emotional or both.¹¹ Lastly, as per a very recent survey conducted by the Pakistan Institute of Population Studies, in the year 2017-2018, some 28% of women age 15-49 have experienced physical violence since age 15. It includes 34% of ever-married women have experienced spousal physical, sexual, or emotional violence.¹²

⁸ Critelli, 4 (Filomena and Willett have referred Coomaraswamy, 2005; Hassan, 1995; Jilani and Ahmed, 2004, who all have been reported that domestic violence takes place in approximately 80 percent of the households in the country); Tabassum Nishat, "Under the Veil of Silence: Violence against Women", *i-Manager's Journal on Nursing*, vol. 3, no. 2 (2013): 29. ("A UN study has revealed that in Pakistan, 50 percent of spouses are physically battered and 90 percent are emotionally and verbally abused by their husband's, and estimating domestic violence takes place in approximately 80% of households."); Duncan Green, "The raising her voice Pakistan programme," OXFAM, < file:///C:/Users/HP/Downloads/cs-raising-her-voice-pakistan-160115-en%20(1).pdf> (accessed January 01, 2019). ("An OXFAM study also has found that as many as 90 percent of women in Pakistan have experienced domestic violence at least once.") see also, Maliha Zia, *Understanding Domestic Violence Within the Legal Framework Of Pakistan*, (Karachi, Legal Aid Society: 2018), 48.

⁹ Karin Carmit Yefet, "Female initiate divorce in Pakistan", *Harv. J.L. & Gender*, vol. 34, no. 1 (2011): 553.

¹⁰ Samya Burney, *Crime or Custom? Violence against Women in Pakistan*. (Karachi: Human Rights Watch, 1999), 9.

¹¹ NIPS, *Pakistan Demographic and Health Survey 2012-13: Standardized Indicators on Violence against Women in Pakistan*, (Islamabad: NCSW, 2015), 78.

¹² Ibid.

Pakistan has a feudalist's tribal society, where conservatism and fanatics have captured the voices of the masses, with customary and harmful traditional practices and a culturally mixed interpretation of the Shari'ah considering women as a property of men and only place for women is four walls of a home. The religious and feudal political representatives have argued that any domestic violence law could cause breaking up a family if husbands sentenced to jail for beating up wives. Those arguments are presented to justify domestic violence by giving different cultural and religious perspectives, as in the case of Pakistan, where its administrative system is governed under the influence of feudal mindset, which is a hurdle of passing legislation to protect women. Most parliamentary members have their roots and affiliations in the feudal class. They want to maintain the status quo and are careless regarding human rights violations. This mindset tends to be backed up by a patriarchal interpretation of religion.¹³

According to former chief justice Mr. Nasir Aslam Zahid, state affairs will remain the same unless we stop treating women as chattel. They are not to be used as articles or commodities of our personal use.¹⁴ In *Shazia v Station House Officer of Police*, while taking notice of Jirga,¹⁵ the High Court observed that girls are being treated like cattle, just like buffaloes and goats in some parts of Pakistan. Women have no rights in such tribes, and here is a pattern that allows them to use like animals and

¹³ Abdul Hadi, "Patriarchy and gender-based violence in Pakistan." *European Journal of Social Science Education and Research*, vol. 4, no. 4 (2017): 297-304.

¹⁴ Faiza Mirza, "Without action, it's Just a Piece of Paper," *The Dawn*, December 28, 2011. <<http://dawn.com/2011/12/28/without-action-its-just-a-piece-of-paper/>> (accessed 23 April, 2019).

¹⁵ "Jirga is an institution of informal justice system consists of tribal elders' gatherings to settle disputes in rural and far areas and traditional communities in different parts of Pakistan. In Jirga the mode of execution of the decisions is settled by them and is executed through their own men. Jirga as an essential part of patriarchal culture often order men and women to be tortured, mutilated, raped or killed. There is no appeal to the decisions made by these all-male gatherings."

that both women and animals have no rights in Pakistan. In Jirga, girls are given to another side as compensation or instead of a fine.¹⁶

There indeed happen to be several sets of laws for protecting women from any violence; even so, implementing these laws is nowhere. Due to the lack of law rule, a criminal guilty of serious crimes keeps roaming freely.¹⁷ The crime rate is extremely high in Pakistani society and no improvement has been seen in this regard. The lives and property of the citizens are not safe. So, it is a complete state failure due to which honour killings and other heinous crimes against women are widespread. The lack of implementation of laws often translates into impunity on the part of the state.¹⁸ Despite the existence of a legal system, a constitution that guarantees the existence and protection of fundamental rights and a wide range of laws dealing with the rights of citizens, the actual access and securing of these rights within Pakistan are extremely difficult.¹⁹

The attitude of the state institutions has not seen any significant change in their policies protecting women.²⁰ Furthermore, due to despotic feudalism and the war on terror, lawlessness has spread across several areas in the country, implicating bad repercussions for women. Lawless anarchy is detrimental for women, as it gives rise to male chauvinism. Equality only works within a legal framework that possesses legal redress, albeit limited.²¹ However, the presence of law is of paramount significance in

¹⁶ Please refer to the case of *Mst. Shazia v SHO & Others* (2004) PCrLJ 1523.

¹⁷ Maliha Zia, 8.

¹⁸ Rangita and et al, "Domestic Violence Law-Making in Asia: Some Innovative Feminist Law-making" *UCLA Pac. Basin L.J.* vol. 29, no. 176 (2011-2012): 176-233.

¹⁹ Majida Rizvi, *A Study of Formal and Parallel Legal Systems in Pakistan*, (NCSW: Islamabad, 2011), 111.

²⁰ Sohail Akbar Warraich, "Access to Justice for Survivors of Sexual Assault: a Pilot Study," National Commission of Status of women, <https://ncsw.gov.pk/SiteImage/Downloads/Access%20to%20Justice%20for%20Survivors%20of%20Sexual%20Assault-%20A%20Pilot%20Study-min-Compressed.pdf> (accessed 14 July, 2020).

²¹ Prof. Dr. Lesley M. Holly, "Interview / personal communication by thesis writer," via E mail on 11 Nov 2017.

Pakistan. Law is the optimum force that may ensure women empowerment and gives the subjugated gender the courage to approach a legal jurisdiction. If laws are practised in their true spirit and women have their say, issues can be dealt with in the courts in an even cordial and conducive atmosphere.

In Pakistan, domestic violence has been frequently played down as something that did not require the intervention of authority. Hence, domestic violence is not explicitly prohibited in Pakistani domestic laws and most acts of domestic violence leave the punishment to be determined according to the Penal Code. At the same time, the crux of the problem may be identified due to the non-promulgation of women protection laws either in the Constitution. The prerequisites of the Penal Code require a “high standard of proofs beyond a reasonable doubt,” traditionally, it could be difficult to prove a criminal offence beyond a reasonable doubt where the only witnesses to the occurrence are the complainant and the accused.²² Furthermore, in 1990, Pakistan has revolutionised its criminal justice system by introducing Criminal Law Amendment 1990, commonly known as the Qisas and Diyat Ordinance, and amended some sections of the Pakistan Penal Code (related to all hurt and murder provisions of the Code, i.e. Sections 299 to 338) and the Code of Criminal Procedure. Hence, now most domestic violence provisions become compoundable encompassed by the Qisas and Diyat Ordinance.

It has also been argued that Qisas and Diyat Ordinance allows the accused of family violence and honour killing to be exonerated if the victim’s family accepts monetary compensation or pardons the perpetrators without obtaining any monetary

²² Stanley Yeo and et al, *Criminal Law in Malaysia and Singapore*, (Malaysia: LexisNexis, 2007), 309; Douglas Heather, “The Criminal Law's Response to Domestic Violence: What's Going On?” *Sydney L. Rev.* vol. 30, no. 3 (2008): 439.