

Women's Access to Justice: Ending Violence against Women in Pakistan

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ABSTRACT

Intimate Partner Violence (IPV) continues to be the most pervasive form of Violence against Women (VAW) in Pakistan, manifested through abuses varying in nature from physical, sexual, or economic to psychological form of violence. While these acts of violence occur at the micro level and are often explained in terms of individual or household characteristics, the macro landscape of access to justice, rule of law and governance mechanisms also shape the degree to which such acts continue to happen. Despite positive developments in the legal arena and policy landscape related to VAW, serious violations continue to take place which question the effectiveness of the mechanisms and structures in place to curb and prevent VAW. Based on an in-depth policy and legal analysis and drawing from a high-level discussion on barriers to women's access to justice, especially related to IPV, this paper teases out the gaps and weaknesses that hinder women's access to justice. The paper also elucidates a number of policy recommendations, which if adopted, can help ease women's journey to achieve justice.

Key words: Violence against women, intimate partner violence, gender issues, justice, governance.

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INTRODUCTION

Violence against Women (VAW) is a reality in Pakistan and is deeply entrenched in the country's patriarchal system. Despite legislative developments to improve women's rights and mitigate violence against them through various national and international Conventions, the actual state of affairs remains discouraging (Qaisrani et al. 2016). VAW manifests itself in various ways and may include: i) domestic violence by family members, including Intimate Partner Violence (IPV) through physical, sexual, economic or psychological abuse; ii) sexual violence including rape, sexual harassment, prostitution, human trafficking; iii) harmful cultural practices that may include honour killings, early marriages, forced marriages, bride exchange, dowry related violence; and, iv) some new and emerging forms of violence such as cyber stalking, cyber harassment, and non-consensual/revenge pornography. In Pakistan, as in the rest of the world, the most pervasive form of violence is IPV, often perpetrated by a male partner against a female partner (Karmaliani et al. 2017).

Gender inequities and imbalanced power relations shape the prevalence of VAW. While many acts of violence may occur at the micro-level, they are often shaped by broader macro-level realms such as access to justice, rule of law, and investment in the social sector (Fu 2015). The interplay of these factors shape victims' pathways in their pursuit to justice. Unfortunately, in Pakistan, the process of access to justice is equivocal and fraught and requires immediate corrective measures to ensure that justice delivery is unbiased, speedy, and based on equality (Aurat Foundation 2016). This calls for a systematic change in social perceptions, legal frameworks, accountability in terms of implementation of existing provisions and institutional strengthening through targeted policy actions.

Based on the current literary discourse on barriers in access to justice vis-a-vis VAW and a high-profile panel discussion at the Sustainable Development Policy Institute's Twentieth Sustainable Development Conference (6 December 2017), this paper aims to:

1. address the factors causing VAW in Pakistan.
2. propose ways to improve access to justice for the protection of women's rights.
3. enhance compliance to national and international commitments related to women's rights.

1. POLICY AND INSTITUTIONAL LANDSCAPE

1.1. National

Pakistan has no dearth of legal provisions that aspire to protect women's rights and provide justice to those who experience violence. Table 1 provides an overview of all the national level initiatives taken for protecting women's rights in Pakistan since 1973. At

the national level, the Constitution of the Islamic Republic of Pakistan (1973) ensures provision of fundamental rights and equal opportunities to every citizen without any discrimination on the basis of gender, race and religion. Similarly, for ending any type of violence against its citizens, the state has devised and promulgated a number of legal instruments such as laws, acts, ordinances and required amendments in the existing legal documents. These legal instruments, apart from addressing gender neutral violence issues, also focus on women specific violations under certain clauses. For instance, the Pakistan Penal Code (1860) under its Section 375 intends to address numerous forms of VAW including assault and rape; Section 496A deals with the criminal imprisonment; Section 506 is about intimidation of women; and Section 509 takes into account issues related to invasive attitude towards a woman's modesty.

Similarly, Family Laws Ordinance (1996) also takes into account disputes related to marriage registration, divorce rights of wives, and issues pertaining to polygamy without the wife's consent. Likewise, the Criminal Law Amendment Act (2004) also deals with the brutal killing of women in the name of honour. It explicitly categorises honour killing as murder that does not allow punishment exemptions under any circumstances. In addition, it also declares the acts of *Vani* (forced marriage of a girl based on a crime committed by a male relative) and *Swara* (child marriage, especially tied to blood feuds) as penal offences punishable with up to ten years imprisonment. Also with the promulgation of Criminal Laws Amendment Act (2006) as referred to in the Constitution, the violation of women's rights within existing legal instruments was countered due to prolonged advocacy by national and international groups and actors. Due to this amendment, rape cases can now be prosecuted under criminal law rather than the *Zina/Hudood* Ordinance.¹ This amendment will inhibit further victimisation of rape survivors and subjection to punishment in case of insufficient evidence to accuse the perpetrator.

The Council of Islamic Ideology (CII), a constitutional body that advises the government to ensure laws are in accordance with the Islamic principles, has played a critical role in shaping the legal landscape related to women's rights in Pakistan, although not always in favour. The Council was responsible for recommending the endorsement of *Hudood* Ordinance in 1979, which required a rape victim to produce four eye-witnesses to testify to the crime, and also denounced DNA as evidence for rape cases (Anwar 2016). More recently, the Council declared the Women's Protection Law as 'un-Islamic' (Ibid.).

¹ *Zina* or *Hudood* Ordinance was a law enacted in Pakistan in which rape was not distinguished from adultery, thereby, criminalising rape victims.

Table 1: Indicative List of National Policies and Legal Provisions that address VAW in Pakistan (1973 to date)

Categories of National Laws against Gender Violence	Efforts Undertaken to Address Gender-Based Violence
Constitutional provisions	<ul style="list-style-type: none"> ▪ The Constitution of the Islamic Republic of Pakistan, 1973
Legal provisions	<ul style="list-style-type: none"> ▪ Pakistan Penal Code, 1860: Addresses several forms of violence against women including assault, rape (section 375), the criminal detention or intimidation of women (section 496A and 506), and insulting a woman’s modesty (section 509). <ul style="list-style-type: none"> ▪ Family Laws Ordinance, 1996: Requires marriage to be registered and a woman to be aware of her rights on divorce and in situations where the husband marries a second time. ▪ Criminal Law (Amendment) Act, 2004: Recognises that killings committed in the name of honour are murders and must be booked and prosecuted as murder, and that they will not receive any exemptions. ▪ The Protection of Women (Criminal Laws Amendment) Act, 2006: This law allowed for rape to be prosecuted under criminal law, rather than <i>Sharia</i> law, and reverses many of the harsh punishments introduced by the brutal <i>Hudood</i> Ordinances relating to adultery (laws in Pakistan enacted in 1977 as part of the ‘Sharisation’ or ‘Islamisation’ process of military ruler Zia-ul-Haq). ▪ Criminal Law (Amendment) Act, 2011: Deals specifically with the offence of using acid to cause injury. ▪ Criminal Law (Amendment) Act 2016: Deals with offences on the pretext of honour. ▪ Criminal Law (Amendment) Act 2016: Deals with offence of rape. ▪ National Plan of Action on Human Rights
Special laws	<ul style="list-style-type: none"> ▪ Child Marriage Restraint Act, 1929 ▪ Dowry and Bridal Gifts (Restriction) Act, 1976: Places restrictions on the number of gifts to be given to a bride and groom, mandates all dowry items to be vested property of the bride and requires all dowry gifts to be itemised. ▪ The Protection Against Harassment of Women at the Workplace Act, 2010 ▪ Acid Control and Acid Crimes Prevention Act, 2011 ▪ Prevention of Anti-Women Practices (Criminal Law Amendment) Act, 2011: Prohibits depriving women from inheriting their property; makes forced marriages of women an offence; and marriage of a woman to the Holy Qur’an (if she is considered unholy and/or evil). ▪ Domestic Violence (Prevention and Protection) Bill, 2012 ▪ Women’s Protection Act, 2016 (passed in Punjab) ▪ Hindu Marriage Act (2017) ▪ Prevention of Electronic Crimes Act, 2016 ▪ Various Provincial Laws
Policy frameworks	<ul style="list-style-type: none"> ▪ Provincial Gender Equality Frameworks ▪ Women’s Empowerment Packages and Initiatives

Source: Karmaliani et al. (2017)

Apart from these legal provisions, special laws to address women-specific issues also exist in Pakistan. These include Child Marriage Restraint Act (1929) that functions to inhibit child marriages, and Dowry and Bridal Gifts (Restriction) Act (1976) that deals with the illegal dowry demands posed by the groom or his family members. The Protection against Harassment of Women at the Workplace Act (2010) is devised to ensure a safe and secure working environment for women. Prevention of Anti-Women Practices (Criminal Law Amendment) Act (2011) outlaws depriving women from inheriting property; makes forced marriages of women a legal offence; and outlaws marriage of a woman to the Holy Qu'ran. The Domestic Violence (Prevention and Protection) Bill was passed in 2012 by the National Assembly to counter domestic violence through monetary compensation for victims, punishment in the form of fines or jail to the perpetrators. Followed by the most recent legal instrument passed in the province of Punjab on Women's Protection Act (2016) (Karmaliani et al. 2017).

At the institutional level, the National Commission on the Status of Women (NCSW) was established in 2000 to work towards women development, empowerment and gender equality by identifying gaps and proposing recommendations to effectively implement women's development initiatives. Apart from the NCSW, Provincial Women Development Departments are responsible for making provincial policies and plans of action along with meeting national and international commitments.

1.2. International

The country is signatory to nearly all global agreements and conventions on VAW. In 1996, Pakistan ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) that stresses upon the signatories to treat domestic violence as a violation of human rights and to integrate international criteria and standards into national policies and legislations (GEP 2012).

Careful analysis of the policy and institutional environment indicates that issues pertaining to VAW are considerably complex and deep rooted in Pakistan. They are entangled with cultural practices, social norms and religious beliefs of communities due to which they face inertia when it comes to any proposed change. These complexities can be gauged through the demonstrations in response to the Punjab Women Protection Bill in 2016. The bill was quoted as 'un-Islamic', hence unacceptable by religious leaders.

Despite the existing legal instruments and structures to protect women's rights, serious violations continue to take place in Pakistan. This situation is further exacerbated by the lack of implementation of existing laws (True 2012). Moreover, prior to the 18th Amendment, Pakistan had a National Plan of Action in place to address such issues. However, after the devolution of power, each province formulated its own Plan of Action. Due to this non-uniformity, strategies face hindrance in their utility, particularly for

victims seeking justice in different provinces other than their birth origin. Moreover, poor implementation of laws is subject to lack of clarity or presence of strong accountability mechanisms to keep a check on who is responsible for enforcing these laws.

2. MAJOR FINDINGS LEADING TO FORMULATION OF POLICY OBJECTIVES

2.1. Factors leading to Violence against Women

As discussed earlier, IPV is the most prevalent form of VAW in Pakistan and is often perpetrated by a male against a female partner. Karmaliani et al. (2017) found that drivers of IPV in Pakistan vary at different levels (individual, household, and community); and hence may require a different set of strategies and instruments to address the issue. Poor socioeconomic conditions, unemployment, excessive use of drugs, lack of education, and observing violence while growing up are major drivers of IPV at the individual level. At the household level, particularly in a large extended family system, interference of in-laws and family conflicts play a vital role in IPV. Polygamy is another factor that may contribute to the prevalence of IPV among married couples in Pakistan (Ibid.).

While at the community level, social taboos, norms and standards practised for many decades contribute to the major drivers of IPV. Drivers influenced by culture define behaviour and response of both genders towards IPV. In Pakistan, VAW is often justified under the guise of misinterpreted religious teachings, beliefs and practices (Qaisrani et al. 2016). Social norms are distinctly defined for women in terms of their roles and responsibilities which, if not executed as desired, often result in violence against them with the intention of ‘keeping women in their place’. Economic dependence of females on their male partners further weakens the case for women’s liberty, movement and right to live as they desire. In a patriarchal society, where men are placed in command, the masculinity of husbands is also gauged by the level of suppression he practices on his partner. Similarly, the femininity of a wife is measured by her submissive attitude. The prevalence of early childhood marriage is also one reason to preserve the submissive attitude of young girls who are in the phase of mental and physical development (Karmaliani et al. 2017).

Wide use of Information and Communication Technology (ICT) tools and non-traditional sources of communication, such as social media and the cellphones also play a vital role in exacerbating VAW in Pakistan. Adolescent girls are becoming vulnerable to all types of violence from a very early age. Moreover, since the concept of ‘having a relationship’ between a girl and boy before marriage is taboo in Pakistani society, it has led to an increase in vulnerability as it inhibits open and informal discussion on the subject. Unfortunately, social norms justify various types of violence towards those who may have such a ‘tabooed relationship’.

2.2. Access to Justice

Domestic violence and IPV are the most common forms of violence experienced by women, and since they are considered a 'private' or 'domestic' matter, the initial response of a victim is to discuss with a family member. Family members will often support reconciliation. However, reconciliation does not ensure justice as displays of abuse may continue even after a compromise has been made (Karmaliani et al. 2017). If the abuse is perpetual and beyond the family's control, the victim may find the courage to seek justice through formal structures that are available to her. However, cultural beliefs often make women reluctant to seek formal support. Often formal responses are only taken when the life of the victim is in danger (Ibid.).

While there are many laws in Pakistan (Table 1), there is little justice (Qaisrani et al. 2016). Despite the existing legal frameworks, the ideals of a free, fair and safe life for women remains unachieved and their access to justice continues to be chequered (Aurat Foundation 2016). The same year as CEDAW was signed, Pakistan passed the infamous *Hudood* Ordinance as part of the Pakistan Penal Code with severe implications for justice to victims of rape and honour killing. As per the *Hudood* Ordinance, conviction of rape victims requires multiple eye-witnesses or evidence and honour killing was termed as a compoundable offence. Both aspects favoured the perpetrators, most often men, over women victims. These laws were later amended in 2006 to address the issue of discrimination against women.

An analytical review of the conviction rates and statistics available on VAW in Pakistan displays the lack of effectiveness of enacted laws and policies. As per the statistics available with the Human Rights Commission of Pakistan (HRCP), between 2004 and 2016, 4734 cases of sexual violence, 15,222 honour crime cases, 1535 burning cases, 1843 cases of domestic VAW, 35,935 cases of suicide and 5508 cases of kidnapping of women were reported. It should be noted that these statistics are taken from police records and only portray the situation based on reported cases. Underreporting is a major detriment to the actual scenario, and is one of the main challenges faced by institutions working towards easing access to justice for victims of violence. In addition to paucity of data, lack of disaggregation of statistics based on gender and type of violence is also an impediment in understanding the extent of different types of VAW. For instance, the Domestic Violence (Protection and Prevention) Act of 2012 clubs together all forms of domestic abuse with no distinctions for IPV and other forms of gender-based acts of violence occurring within a victim's home.

Laws provide a framework and a pathway towards justice. Ensuring access to justice relies on compliance to these laws, policies and agreements. To put the legal discourse into action, frameworks for implementation are required, which are often not in place or have loopholes that can easily be manipulated against the victims. In her pursuit of

justice, a female survivor of violence has to approach a combination of laws, systems and procedures – all engrained in the highly patriarchal moral code of Pakistan’s society and shaped by systematic misogyny (Naqvi and Syed 2015). At every step, from filing a case to the rounds of visits for the sluggish judicial process, barriers arise that not only question a victim’s credibility and repute, but also sometimes lead to withdrawal of the case. Women, who are courageous enough to seek justice from the available legal authorities, are often looked down upon in society and considered partly responsible for the abuse (Pakeeza 2015).

The victim first interacts with the police to file a First Information Report (FIR) to initiate her case and often has to face disbelief, harassment and ridicule at the hands of the male-dominated police staff, especially in smaller towns and villages. While the Punjab police have taken a commendable initiative of launching Women Helplines in Lahore, the limited publicity of this initiative has curtailed its effectiveness and it has not been able to break the social taboos associated with women seeking justice against violence. The judicial process is slow and suffers from delays creating space for the prevalence of parallel legal systems that provide speedy decisions. However, in most cases these parallel legal systems are male-dominated and are marred by orthodox and discriminatory traditions and customs that may actually lead to pervasive VAW.

Access to justice for women in Pakistan is also shaped by the state of rule of law in the country, the absence of which often contributes to the lack of governance leading to non-compliance, and thus, ineffectiveness of policies, laws and conventions (Zaman and Khan 2012). Female judges are limited in number and judiciary, and for the larger part, lack deep insight in cases of Gender-Based Violence (GBV). Institutional weaknesses are visible at all tiers in the process of access to justice and proceedings of cases are often shaped by political interference.

All these factors lead to inconsistent and unequal access to justice for women who have experienced violence. This creates lack of trust in the system and its processes, and undermines all the positive developments in improving the status of women in Pakistan.

3. RECOMMENDATIONS

Through this paper, the government’s commitment is evoked to fulfill its policy obligations and social contract to the victims of VAW and the state is urged to ease the process of access to justice by taking action regarding the initiatives mentioned below:

1. Access to justice is much more than just prosecuting crimes, it requires holistically addressing gender inequalities present in society. Curbing VAW requires an effort to combat the deep-rooted problems that form the basis of such violations of human rights. Institutional responses are important, however, the most important change required is enlightenment of the mind set by the shackles of orthodox customs.

Reforms should be introduced into the curriculum of the education sector by including topics on human rights, gender equality and the importance of respecting both women and men.

2. Easing access to formal justice services requires elimination of the barriers that lead to underreporting. Women may be more confident in coming forth with their cases if they can approach females, instead of males, at the service institutions. This calls for **recruiting more female staff in formal service institutions such as police forces and courts of justice** and ensuring their sensitivity in understanding issues of VAW. Furthermore, the CII should increase the number of its female members to improve sensitivity to women-related issues.
3. Delayed justice processes owing to workload on limited number of judges and lack of importance given to VAW issues, which are otherwise considered ‘domestic’ or ‘personal’, need to be addressed by readjusting the system to address women’s concerns. The Punjab government’s initiative of **establishing special courts for addressing VAW** in Lahore is commendable. Depending upon the success, other provincial and district governments should replicate this initiative, which in principle aims at addressing issues faced by victims of violence. Furthermore, the judicial system should be made affordable for women in terms of time and money so that its access is based on equality.
4. Policies and laws are only as effective as their implementation. There is an immediate need to **ensure compliance to national and international commitments** made by the government to protect the rights of women and provide them justice in case of violation of these rights. Strengthening institutions is vital to catalyse their progress towards achieving this objective. **Accountability mechanisms need to be made more rigorous and responses of relevant institutions should be made more effective.**
5. There is also a need **to garner political will and commitment** to comply with the agreements, policies and laws and ensure speedy service delivery that would help in regaining the trust and confidence in the formal structures established to provide justice to women.
6. **Addressing IPV would require culturally-resonant definitions for Pakistan is a prerequisite.** These definitions should be drafted in consultation with all major stakeholders such as anthropologists, analysts, researchers, civil society, media, and academia to cover the regional as well societal dimension and drivers of violence.
7. In Pakistan, customary/cultural laws are misinterpreted as Islamic laws which are subject to male supremacy over females. In order to address this confusion, there is a need to launch **advocacy campaigns to re-orient communities in relation to evolutionary mutations in religious beliefs.** This advocacy campaign should be

launched in **collaboration with religious scholars and experts** to address issues pertaining to VAW.

8. In order to bring social change, civil society, media and think tanks/research institutes can play an important role. **As pressure groups and watchdogs of human rights violations, they have to take a proactive role in highlighting real time and well-researched issues related to VAW through the lens of ethical standards.** Media and civil society should work in collaboration with think tanks/research institutions which can provide empirical evidence for wider dissemination. Cooperative and collaborative ventures (Memorandum of Understanding for technical inputs) between these actors can play a beneficial role in addressing VAW. **Media should allocate free time for public service messages related to VAW at prime times** to reach maximum number of men and women.
9. There is a dire need to **expand focus of gender empowerment and VAW interventions from female to male segments of society. Tailored interventions for young boys and girls should be implemented through regular religious and modern school systems.** Motivation to be an agent of change for a better and just society should be generated.

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