

DOMESTIC VIOLENCE LAWS AND PRACTICES IN PAKISTAN

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ABSTRACT: *The fundamental values of a country are reflected in its legal system that is encompassing the normative and social structure. The comprehensive legal structure in Pakistan treats domestic violence by taking into consideration two most important components, i.e. the constitutional law and the legal frame work designed in the light of implementation of Shariah principles. In this Article, the legal treatment of domestic violence in Pakistan is examined to conjecture about the attitudes of variant mind-set to gender issues under the law in Muslim societies. The response to domestic violence is articulated in the values infused in constitution or law making or while devising fundamental values promulgated in the implementation of shariah. The legislation must be based on the foundations of Shariah's philosophy in Pakistan to demonstrate that implementing shariah Laws as per social change will promote awareness of women rights in the country.*

Key Words: Domestic violence, Pakistani Women, Legislation and Shariah Principles, Gender based violence

1. Introduction: Domestic violence against women is a complicated issue having different rationalizations to comprehend it. Researches all over the globe have shown that violence against women is a major social problem that demand special focus on account of severe physical, psychological, social and emotional consequences attached to it. [1] Violence against women by intimate partners has serious implications for women's physical, mental and social well-being [2] Domestic violence in Pakistani culture, recognized in the last two decades [3] is receiving the attention primarily by the sustained efforts of women rights groups [4] The present research on domestic violence examines the prevailing knowledge, attitudes and perceptions that influence this practice. Through descriptive analytical investigation, specific societal behaviors are identified that reinforce violence. The aim of the study is to address the deficiency of not receiving adequate profiling by the society and to define it in Pakistani context by studying the prevalence, types, dimensions, factors and consequences of domestic violence and its impact on women.

2. Violence against Women in Historical Context: Women are considered the property of men since ancient times she had no rights on her children, inheritance, wages or belongings at all. The authority of a man over her allows him to use violence that was considered a legal right and social acceptance. In Indo-pak Subcontinent, customs and traditions were given preference over religious laws that actually had a negative impact on Muslim society. Hindu traditions had gradually been adopted as a necessary element and inseparable tradition. Thus basic rights of women were twisted and the notion of women being sub-ordinate become so infused in societal norms that protection of religion was dominated by customary traditions denying the same [5] The *patriarchal gender system* is the root of inequalities and gender discrimination against women in Muslim societies. Different factors play their part in variable status of women in different parts of the world; like, cultural value patterns in a specific community or variance in economic patterns and strategies of nations. [6] When a culture legalizes the occurrence of violence in its direct or structural form; such acts of direct violence become part of institutional structural frameworks. Thus violence can be categorized as direct violence is an event, structural violence is a process and cultural violence is an invariant permanence [7]

3. Violence against Women in Pakistan: Being an ideological Muslim state, Pakistani laws are within the Islamic principles of Quran and Sunnah. However, Pakistani culture is influenced by other religions and cultures thus the culture of Pakistan is not pre-dominantly Islamic. On a broader scale the basic ideology stems from Islamic thought. But this does not connote that issues faced in familial affairs are due to Islam. In actual social and legal attitudes towards women manifest the pre-Islamic tribal cultural trends. For instance, honor killing is a pre-Islamic tribal custom that is not sanctioned by Islam. [8] Pakistani culture and norms support male dominance in matters relating to family, religion, law, politics and socio-cultural practices.[9] Domestic violence is usually taken as a personal affair that does not need to be measured, intervened or properly documented for policy strategy. [10] Thus such unfair treatment is being faced by women regularly due to deeply imbedded social and cultural norms in Pakistani society. There had been an immense increase in the reporting the violence against women in Pakistan, a major factor being the continued suppression of the rights of women that resulted in their degraded social status. [11]

The high frequency of this habit of women abuse takes different forms and has drastic negative effect on the positive development of communities, especially in rural parts of the country. The forms of violence against women range from social, cultural to institutional level including various forms like physical abuse, honor killing, *wani* and *watta-satta*. [12] The influences from other religions has been so significant that the ideology of Islam that was supposed to be the dominating factor in determining the relations and rights of women was overshadowed under the social and legal attitude towards women due to pre-Islamic and tribal customs and cultural influence of other religions. The function of existing law procedures, use of media, religious verses interpretations, and customary norms work collectively to promote and penetrate the male dominance on institutional and cultural levels in Pakistan

4. Distinguishing between Violence and Disciplinary Act: The violence against women is mostly misquoted as a permission given in the Holy Quran in verse 34 of Surah Nisa. The verse must not be read out of context and it has to be bear in mind that the fine-line between beating and admonishment for disciplining the action of wife. The Quranic verse states certain steps to be followed if the wife is found disloyal and misconduct shown on her part. The verse under discussion cannot be given as an example to support masculine domination or authority it would be complete misinterpretation of the Holy Quran [13] The word specifically used for beating “*daraba*” in Arabic is used in the meaning of departing and separating in 9 places out of 16 times as it comes in the Holy Quran. [14] Apart from the word’s proposed meaning, several verses in the Holy Quran [15] oblige believers to show love and respect to their spouses and treat them equally without showing violence. [16] Despite asserting on treating nicely to women, the husband has to recognize his authority, it is recommended that the husband must try to resolve the situation and in extreme cases, if any disciplinary action has to be taken, it is allowed, but only in extreme cases, to correct the moral infractions. [17] The Holy Quran has given a very clear standing on this topic. Men are given the charge to protect and provide maintenance to their wives. In lieu of that, a righteous wife is under obligation to protect her chastity, and be obedient to her husband in his absence. In non-compliance of the said duties, the husband may resort to beat them lightly as a last measure. The Holy Prophet (S.A.W) has expressed his extreme repulsion to the exercise of the option of beating women and always discouraged such behavior. [18] An important thing to note here is the steps mentioned in the verse are to be followed only in case of serious misconduct or immoral behavior. If admonishment does the work, one must not resort to beating, as this permission must not be taken out of given context. [19]

5. The Shariah’s Philosophy as the Basis for Future Legislation: Since shariah has limited the maximum measure to be exercised against women and even extreme refraction of husband’s requests are to be addressed firstly by *nushuz*. This has been ratified by Hadith as well where husband is permitted to strike but with the conditions, not to strike on face, or anything that may leave mark on her body. Thus such symbolic expression does not imply its desirability. There are many traditions of the Holy Prophet (S.A.W) emphasizing and focusing the face that women are not to be beaten, and how can anyone beat her and then sleep with her. Thus there is no example in Sunnah that the Holy Prophet (S.A.W) opted for this measure regardless of circumstances. [20] Islamic teachings are never limited as per geographical locations or people; they are universally applicable, pragmatic and flexible to be apt in variant circumstances effectively. In case of an act being permissible, it is never implied that it is totally unqualified without any restrictions; rather determining the extent of permissibility is to be spelled out, else it may lead to excessive use or abuse. Any act of violence or abuse cannot be attributed as part of religion as they are based on misinterpretation of Quranic words. Thus a person is himself responsible for his acts of abuse and violence ignoring the real essence of the teachings of Islam.

6. Legislation for Domestic Violence in Pakistan: Numerous proposals and theories are presented for resolving the occurrence of domestic violence against women; though none have sufficed to put in plain words and explicate the issue due to multifaceted factors involved in it. [21] There are clear provisions in the constitution of Pakistan regarding provision of equal rights to all the citizens and providing them equal opportunities before the law. But this ideal is yet to be achieved due to many hindering factors like to reach for justice or raising voice for their rights including lack of awareness, costly law procedures and gender insensitive attitude towards women. [22] A significant increase in the issue of domestic violence has been noted in the last few years. Majority of the states have ratified Convention on Elimination of All forms of Discrimination against Women (CEDAW) that oblige them to treat domestic violence against women as a violation of human rights and to incorporate international standards into national legislation. Pakistan had ratified CEDAW in 1996 and trying to fulfill the international commitment by in the area of domestic violence against women. [23] Domestic violence issues are not specifically covered in Pakistan Penal Code, however there are several sections covering issues regarding miscarriage, abandonment of under-12 child, causing hurt, wrongful confinement and restraint [24]. Laws on sexual violence come under the umbrella of the Hudood Ordinances 1979. In spite of this, women are more victimized than been provided relief due to these laws. In December 2006, the Protection of Women (Criminal Laws Amendment) Act was passed containing several clauses in the Pakistan Penal Code (PPC) and Criminal Procedure Code (CrPC) in connection with sexual assaults on women and some modifications were made to Zina Offense as well. Section 174-A was added to the CrPC in 2001 in an attempt to curb dowry related violence. Nevertheless, even though many laws were formulated to protect women and the amendments made to present laws, serious violations continue in Pakistan. Furthermore, a lack of implementation of existing laws further exacerbates their plight. In August 2009, the National Assembly passed the Domestic Violence Bill that lays down provisions for the protection of and monetary compensation for victims, punishment in the form of fines or jail time for those who violate protection orders. Establishment of National Commission on the Status of Women (NCSW) in 2000 was a chain to the policy of establishing framework of women development and gender equality and reviews the proposed recommendations to be effectively put into implementation. [25]

7. Conclusion and Recommendations: Combating domestic violence demands systematic, coordinated and sustained efforts. With the given law situation, there is a dire need to take steps that protect and promote human rights and women in Pakistan. A strict implementation of International protocols and treaties; along with allocating a substantive amount for helping out the victimized women is an urgent need. The constitution of Pakistan states that each person has the right to liberty and safety in accordance to law; and taking legal aid is a fundamental right for the protection of life. This clause must be properly implemented in the perspective of women victims of violence. A free legal aid should also be provided at the district level. Women Protection centers should be established and awareness campaigns for the rights of women much be launched. Since domestic violence against women has deep cultural and historical roots, it is asserted that broad scale social overhauling is required and appropriate interventions may be initiated.

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