



RESEARCH PAPER

Critical Analysis and Breeches in the Legislation addressing Domestic Abuse against Women

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PAPER INFO	ABSTRACT
Received: March 01, 2022 Accepted: April 22, 2022 Online: April 25, 2022 Keywords: Amendments, Harassments Honor Killing, Qatl-E-Amad, Qisas, Victims *Corresponding Author shehlazahoor@sbbwu.edu.pk	The most important objective of this research is to make critical analysis of the laws addressing to this problem. A fraction of the horrific fines enforced by the brutal Hudood treachery commands were abolished by the 2006 Act for the Protection of Women. The purpose of the study is to highlight violence in Pakistan on women, which is generating human distress and preventing women from working. The research method for the suggested issue covers descriptive nature. For the compilation of data, all primary and secondary outlets are used which include observation, books, research papers, posts and official records. Since there are laws and ordinances present, we need to put them in action. Furthermore, even in the laws present, there are loopholes that we need to highlight so that they are implemented. Taking everything into respect, the practice of present acts is important for a safe future of women in Pakistan.

Introduction

Women's status in Pakistan is a multi-faceted, multi-cultural issue. The predicament of Pakistani women is sad, as pro-women legislation is not being enforced. This article focuses on exposing law enforcement's gaps and roadblocks. These obstacles provide a bare foundation for a culture that has made crime, injustice, gender inequality, and violence against women a vital value.

Literature Review

The Literature Survey reveals the writers' opinions and criteria for their research topic. It explains previous published papers by academia and researchers alike. Numerous journalists, attorneys, judges, and thinkers have engaged in a range of arguments and research on domestic abuse.

"Crime or Custom?" is the title of the book. "Violence Against Women in Pakistan," by Samya Burney, brilliantly analyses the reasons and situations that lead to high incidence of domestic violence among women in Pakistan, while their attackers go mostly unpunished. The court system has its own set of difficulties for women seeking remedy. The Women Commission of Pakistan has declared that violence against women is among the nation's most pervasive human rights violations, but the government has not taken any effective action to address the issue.

In an article on 'Violence against women in Pakistan: the socio-economic political and cultural system of Pakistan and the impacts of the neighboring nations as factors deciding violence against women, Maria Irma Bustamante Gavino pointed to the underlying causes within the society, the alien factors and the social-economic systems of Pakistan. The writers conclude that further analysis is needed to improve the framework; a tentative attempt in the Pakistani context to see violence against women.

Legal Void

Domestic violence laws in Pakistan have significant legal loopholes that impede their smooth execution at various levels:

Convention on Muslim Family Matters, 1961

However, in family law, various difficulties must be addressed. The khula process, for example, in which a wife files for divorce from her husband, is a time-consuming judicial process for the applicant. It goes through the same mediation process until the court grants the divorce certificate 90 days after the fresh reconciliation offer is given to him. (Carroll, 1979) It is unfathomable that the certificate can be granted by the same court that issued the judgement.

The Criminal Prosecution (Amendment) Act, 2004

The Criminal Law Act of 2004 revised the Criminal Procedure Code and the PPC, including the inclusion of honor-based killings in the qatl-i-amd group. Despite the fact that it was passed after years of legal society protest, the Act did not result in major reforms. To begin, the Criminal Law (Amendment) Act of 2004 defines "honored offences" as atrocities perpetrated for the sake of dignity or violence perpetrated in conformity with karo kari, siyah Kari, or other similar traditions. Nonetheless, notwithstanding the Criminal Law (Amendment) Act of 2004, the rectification of the case and reparation of the families of 'honor' killings have been largely ineffective. In prevalence of physical, attack that result in harmony within litigants, which is inevitable because honor crimes are often committed by family members, the regulations governing the waiver of qisas privileges were upheld. The Judge decides on the compilation or waiver of assassination or bodily harm offences.

However, this is of no help to victim because the Act does not assure that if the courts tolerate the piling of an act, it is not an honor breach. Because of the heavier penalties for respect offences under this Act, it is quite likely that a criminal will not invoke honor as a justification for their actions. Before an offence is waived or compounded, the court must consider it. In This argument exposes far too many weaknesses that were purposely left out of the 2004 Crimes Act (Amendment) Act in order to assist murderers in using the judicial system's sexual identity, social, and cultural factors through mild punishments and settling agreements between parties. Ali S. S. (2002) Two major issues with the way 'honorable' murder offenders are prosecuted remain untouched, notably the removal of the victim's heirs' entitlement to qisas or composite capability, and the call for very early provocation. This Act sought to inform women that their concerns are being resolved more efficiently, because much more has been executed than simply ensuring systemic representation. The truth, however, is quite different: this law preserves patriarchal conceptions and the perception that males defend women's sexuality, given the fact that it is not the gender equality of the law that pulls the job this time, but the pro-woman nature of the law that covers patriarchal views.

Besides that, after Pakistan received significant lot of media attention for having failed to restrict killings in the title of dignity, coherent equality, and the "guard dogs" of

privileges, broad public discursive, and political strife, the Parliament passed a legislative power to address these issues. The bill was passed on January 4, 2005, in accordance with the 2004 Criminal Law (Amendment) Act. The Act offered a number of conceptually significant reforms (Ali S, 2017).

Second, the Act increased the maximum sentence for Qatl-i-Amd, which is not subject to qisas, from fourteen to twenty-five years. (4th section) Again, this rule would be meaningless because judges do not use their discretion to grant tazir punishment in certain cases of interfamily murder. This clause would be more significant if the least sanction for honor killings was also defined, in addition to increasing the maximum penalty. Third, the concept of fasad-fil-arz has been broadened, and Article 311 of the PPC has been altered to include murder committed in the name or under the pretext of honor. In this connection, the highest tazir penalty that a Court can inflict after the waiver of qisas in cases of Qatl-i-Amd amenable to qisas punishable by Section 302(a) has been increased to death and life imprisonment, in addition to the confinement of up to 14 years as in prior cases. This alone would not suffice, because our judges are unlikely to levy such high fines in the aftermath of the qisas exemption. Similarly, a ten-year minimum punishment for premeditated murder has been set. Finally, and most importantly, Section 302(c) of the Act excludes murders committed by both sides of or in the pretext of integrity. In recognition of the murder cases, it was proposed that the State take over all prosecutorial rulings under state list (Amir-ud-Din, 2018).

Women's Protection Act, 2006

The 2006 Safety of Women Act is a critical step in mitigating the abuses perpetrated by General Ziaul-Islamization Haq's campaign. The Act, however, retains the overriding Zia policy. This is an unpleasant scenario, as women's rights campaigners have advocated for the ordinance's complete repeal.

As per Asma Jahangir, their backing helps Zia's Islamization process and, in particular, provides an incentive for the hardliners to act in due time. The provisions of the 2006 Protection of Women Act for improving women's conditions are grossly insufficient. The policy that has been adopted also has problems and loopholes. (Madhani, 2017) The major causes of such weak laws are the bitter conflict between the Liberals, who are clamoring for change, and the Conservatives, who are attempting to hinder it. There are numerous more groups that are related to liberal powers but are not part of major political stream in the region, such as secularists who have asked for the abolition of hudood legislation. As a result, half-hearted concession changes were proposed.

The Criminal Law Amendment Act, 2010(on sexual harassment)

The framework of criminal justice confronts the same challenges with in criminal enforcement element of sexual assault. The scheme is costly and burdened, and female plaintiffs endure a highly harsh and discriminatory system. (Bunch, 1997) In fact, within side the decrease courts, there may be no direct case dealing with the aid of using judges. Cases and experiments consequently require an excessive amount of time. Free, neutral felony advice or representation from the government seems to be no longer viable. The police are not very well on women's rules and are not well-equipped to deal with women abuse victims.

Consequently, legal professionals lack the necessary knowledge of criminal and moral principles to satisfy a high level. For these reasons, a prosecution of women has never been conducted by the use of court system then under regulations for the redress of sexual assault, and has shown to be ineffectual as a deterrent; nonetheless, there were a few

obstructions within the implementation of this Act. Implementing the Act appears difficult due to the difficulty of locating perpetrators when crimes such as abuse occur in public: How can the sufferer file a complaint or identify the culprit of the crime after he has escaped into the crowd, leaving no traces? Of course, the perpetrator is not revealed to the victims; she can only identify him based on his appearance. In such cases, perhaps a couple of women in our nation will prosecute and imprison the accused. Other sorts and techniques of taking the initiative, on the other hand, are as difficult as they can be. You can, for example, draw the cop's attention if you are close, if you seek someone else to help you, or if you take a phone photo.

The Act to Prevent Sexual Harassment of Women at Work, 2010

Every inquiry that shields male culprits has a legal loophole that would not sufficiently correct subordinates. This is particularly troubling because those in positions of leadership are expected to safeguard their male employees from the allegations. The Sexual Assault Act gives the government the authority to invest in and establish an Ombudsperson's Office as a mechanism for bringing about major change in our behavior to women in the workplace. The sexual abuse statutes have a weakness in that they do not adequately tackle the issue of peers who assist men in any probe. This is especially troubling because persons in positions of authority are expected to protect their male employees from the allegations. (Rokhmad, 2017)

Act Concerning Criminal Law (Second Revision), 2011

In 2010, the Acid Regulation and Acids Crime Reduction Bill, which may result in life imprisonment, made acid assaults illegal in Pakistan. The law, on the other hand, is never enforced in rural areas. One of several issues hindering the practical application of this regulation is a lack of appropriate training for aid personnel who do not comprehend how to create an authentic medico-legal report if analyzed by a victim. Even purchasing readily accessible acid, which is commonly used as a household cleaning solution, is not covered by the legislation. The dilemma is the need for policy, which not only prohibits and compensates victims of all such assault, but also limits the access of vitriol and other very toxic substances (Bunch, 1997).

Act Concerning Criminal Law (Third Revision), 2011

One of the most important concerns raised regarding the law is that any violations of the laws that jeopardize its effectiveness will go undetected. Furthermore, secondary persecutors who aid in the advocacy of forced marriages are not covered by the legislation. In Badla-e-Sulh, Wannu, or Swara, the penalty for forcing a lady or girl to marry against her and the other will is entirely enforced on the girl's family. It is odd because the groom's family faces no legal consequences. The term "whoever makes it more convenient" should also be included to prohibit this clause from being applied.

Because the statute has no retroactive effect, it cannot be used to cover lawsuits that were filed prior to its implementation.

Basic categories are included, but courts may refuse their use under this Clause, that allows violators to continue to thrive from prosecution by not classifying their actions as felonies under the Act. Such marriages were also not declared null and void. As a result, considering the length of the marriage, it is vital to provide the required treatment and reimbursement charges for women and children in this kind of situations.

Thus

498A. Prohibition on women being robbed of their lawful ancestors. If the case includes the loss of a woman's inheritance, anybody who strips away property by deceitful or illicit means even during succession process will be sentenced to at least 5 years in jail. This section is primarily intended to protect women from being deprived of their inheritance. The segment is constrained by the terms "deceitful" and "illegal." This assumes that all activities, such as compulsion, are immune to emotional chagrin under diverse conditions. As a result, social blackmail, familial intimidation, or other forms of exploitation that do not require "deception" or illegality may be used to force the woman to give up her share. It would have been more accurate to argue that a woman could no longer be robbed of her heritage.

While the goal of this clause is admirable, there are worries, even among lawyers, about how it will be applied satisfactorily. It should also accentuate a woman's re-establishment in addition to maintaining.

The Domestic Abuse (Deterrence and Preservation) Legislation 2012

The Domestic Abuse Act of 2012 asks for the establishment of a regional committee to supervise, manage, and amend rules, and to take suo moto action in the event of violations. It gives the Board the authority to act on its own initiative and places it on a same platform with the Un Commission On human rights and the Sindh Specialized Agencies. However, when it came to creating the Commission later on, the government is likely to have been careless. In addition, the Act creates safety committees and appoints municipal protection officers. However, neither of the two other essential protective factors have been monitored.

The Sindh Domestic Violence (Prevention and Protection) Act, 2013

Certain essential provisions of the Sindh Sexual Offences Act have also gone unenforced. The act calls for the employment of defense officers to assist victims in the filing of complaints. These officers give critical help to victims through an extremely painful procedure, yet protective commissions and security agents are not appointed quickly enough. The Sindh Sexual Offences Act was specifically enacted to address these issues, however it was never implemented.

- The statute allows a plaintiff to swiftly submit a complaint under this Act to court, but it does not specify if the appeal will have to include some or all of the additional violations and remedies contemplated by the Act.
- Because of this omission, it is unclear whether the procedures of the Act are subject to the PPC's specific offences or the CrPC's procedure. According to Chief Security Supervisor, the constitution does not specify if these offences should be recognized, simplified, or rescued, casting doubt on how they would be pursued. There are no newly enacted criminal offences under the legislation. Inconsistency in legal procedures is likely to reduce the effectiveness with which lawyers and judges apply the law (Munir, 2011).
- It is not only a matter of court rulings, as well as of police execution of legislation that come into play violations including PPC 351 (violence), PPC 511 (intent), PPC 350 (illegal coercion), PPC 503 (felonious intimidation), PPC 509 (harassment), PPC (332-337) (Hurt), and other offences as described in Clause 5 (f)(k)(l)(m)(o) Sindh Domestic Violence (Prevention and Protection) Act, 2013.
- The development of a security panel, which acts as the central district compliance mechanism, is required under the Act. However, substantive section 17(2), which refers to the formation of the Committee, indicates an inherent gap. The Ministry of Family And

community Services appoints the Deputy Commissioner in place of the Local Executive Head. In practice, the Division Leader or Deputy Minister should have convenorship authority and will simply contact all other relevant municipal bodies, including the police, to arrange meetings (Munir, 2011).

- Order 19 of the Deed made the task of appointing regional committees more difficult by making sessions for the Female's Support dept contingent on the Ministry for Women Development's approval. Furthermore, the Punjab Code has a far broader committee structure than the Sindh legislation.

The Punjab Prevention of Women against Sexual Offences act 2016 (PPWVA)

In terms of marriage, the majority of the PPWVA's criticism is directed at contemporary ideals of safety and equality for women, which are alleged to be in contravention of Islamic norms. According to the Board of ideology of Islam, the PPWVA may be un-Islamic because it does not correspond to Islamic norms. Shariah had been eroded, and the state of Islam had, in its opinion, become secular (Munir, 2011).

On the PPWVA passage, a number of eminent religious professors and leaders of major political religious groups have expressed similar displeasure. According to Quran, verse 4:34, Men are in charge over women because Allah picked men over women, and they invest their money on the belief that men are in charge of women. Concerning the women you are scared of, or abandon them in the bed and/or wah-drihunna (hit them). If they serve you, do not seek a way to oppose them; God is the purest and finest. The purpose of the PPWVA is to protect women from violence; it is evident that it is within the scope of this chapter. The principle of man's equality was frequently utilized to oppose the PPWVA. Perhaps the best advantage of this form of issue is Dr. Mohammad Aslam Khaki's position, in which he challenged the Act in Federal Court as "opposed to inherent dignity and thus against Islam and the Sharia

Numerous individuals claim that the PPWVA's stance is anti-Pakistani. The official condemnation of the Act by the Council of Islamic Ideology because it "does not actually connect with Pakistan's agenda" hence the "law as written" is a perfect example of this. Yet, the claim taken by firms like the Center of Islamic Ideology is questionable in at least three ways (Rokhmad, 2017).

To begin, the Justices Ruled that the real settlement, which itself is based on Islamic values and Pakistani culture is not institutions of self and does not rule the fundamental article of the constitution. "Nothing else in the Section shall prevent the State from enacting a particular provision in Article 25(3) of the Term that encompasses the safety of women and children in conjunction with citizenship equality." Because the purpose of the PPWVA is to protect women from violence, it is evident that it is within the scope of this chapter. The principle of man's equality was frequently utilized to oppose the PPWVA. Perhaps the best advantage of this form of issue is Dr. Mohammad Aslam Khaki's position, in which he challenged the Ordinance in Federal District court as "antithetical to natural dignity and thus antithetical to Islam and Sharia" (Rokhmad, 2017).

Many individuals are concerned that the PPWVA may damage Pakistan's intimate family structure, which is said to be lacking with in Europe. The Council of Islamic Ideology even claimed that the Act's passage was an attempt to limit spouses' authority as well as a tool to control them. These remarks are offensive because they insinuate that men are in charge and head of women in Islamic family administration, and that the existing system must be maintained by keeping women docile, even if it means giving up their autonomy. As per a thorough interpretation of Qur'an Verse 2:228, males are one degree greater to women in family money considerations since they have an obligation to preserve their spouses. In

all other elements of family life, men and women are equal since they material time duties and tasks. As a consequence, this fairness cannot be construed as supporting women's subjection, and the claim that the Act has an impact on Pakistan's kinship system is untrue. As a corollary, limiting virtue to men and leveraging it to counter PPWVA is illogical.

Critical Analysis of Provisions of the PPWVA

Domestic violence is described as "violence done either by suspected against the sufferer in the context of kinship, matrimony, or custody even by accused with whom victim lives or resides in a house". This is an ambiguous definition since only kinship ties, matrimony, or consent limit spousal abuse to present ties. Thus, if a husband's relative engages in domestic abuse against the woman, one may wonder what alternative is accessible. Another troubling aspect is that the PPWVA does not criminalize the perpetration of domestic abuse. It only specifies sanctions for obstructing a Protection Officer, filing a bogus case, or violating a Court order (Section 19). (See Section 20.) In essence, the statute tries to sanction the offender following a domestic violence incident (Sharma, 2020).

While it might be claimed that the Act affords the courts extensive authority to prohibit domestic abuse through the approval of the Interim Order and the Security Ordinance in Sections 6 and 7, this is insufficient to prevent such violence from occurring actively. Imposing specific harsh penalties, such as varying fines and prison terms based on the severity of domestic violence, might be a deterrent technique for those who desired to perpetrate such abuse. Furthermore, given the pervasiveness of domestic abuse in our society, such a method is critical.

While this may appear to be a straightforward approach to recover money from the abuser, issues may arise when carrying out this section. So if the firm or debtors need to reimburse the individual who has been wronged right away? Can they be forced to do anything? Furthermore, even if they intend to do so, what measures can they use to protect themselves from future criminal action by utilizing the wrongdoer?

Beneficial elements appear to have already been purposefully kept ambiguous in the PPWVA's diction and phrasing in order to allow for comparable explanation, even though this may lead to additional erroneous perceptions and manipulation of the Law. 'A term or phrase presently not identified on this Act and shall have the same meaning as assigned to it within the CrPC 1898 or perhaps the PPC 1860, as stated below Section 2(2) of PPWVA.' The phrases "cybercrime" and "stalking," as defined within side the Act, are acts of abuse, even though neither the Act nor the PPC make clear what they mean. As a corollary, judges will seek to expand on how to approach this Section in order to avoid malicious litigation, or develop a checklist to assess whether such acts of violence happened. Otherwise, the directive to dispense justice in instances containing such wording may be arbitrary. Furthermore, Section 13(2) PPWVA requires a Protection Center to "maintain a prominent media facts set over all actions performed under Neath the Act," which is various services. It no more stipulates how someone's debts for positive events should be archived. The fourth alternative is especially perplexing because Security Centers will serve as a hub for a myriad of core Act actions, many of which will almost definitely be difficult to track Section 27 requires the general public to give direction to the military plot's workers at "frequent basis." It could be argued but under one major article, that states that the Government would provide instructions on "[the] regulation of concerns of the Security Centers and safe houses" in under 120 days of the Act's enactment, the Government will want to characterize what "ordinary" means.

Irrespective of how Section 27 is written, it promotes the state office to avoid carrying out its responsibilities, reducing the section's enforceability. Clearly, purposely

unclear language and phrasing may imply that there is more leeway for courts to interpret the constitution in their very own special manner, but this will not be feasible if no litigation addressing this subject is filed. In any case, highlighting down problems in the previously identified PPWVA regulations does not imply that it is an unanticipated piece of legislation. The Act also includes several general and much-needed arrangements, demonstrating that it is a favorable turn of events. (Khan, 2008) Existing law, for instance, requires the person supported by the harassed person to pursue legal action for her benefit, recognizing that the irritated persons is unlikely to have the option of filing a complaint oneself. Sections 4(3), which permits the defendant seven days to familiarize himself with the cases, and 4(4), which mandates the jury to lead whittling away at it within ninety days of its meeting, are both massive.

Conclusion

State need rules that make it illegal to commit such horrific crimes and that safeguard individuals from becoming victims. Furthermore, monitoring and investigation systems may be created to make it easier for victims and their rightful successors to report the crime and seek redress. When faced with horrendous crimes, our justice system must act quickly. We need a strategy for treating and rehabilitating acidic victims. When a religious issue is at stake, the masses grow agitated and assume control of the rules. Friday sermons will help spread the word about religious concerns and educate the public on religious ideals. We must arm them in order for them to avoid horrible acts of brutality against women. The most effective way to prevent cruelty is through education.

Recommendation

It's upsetting to witness philosophical and Qur'anic ideals being neglected and perverted, especially with regard to women's roles, in a country formed on the premise of Islam. Surprisingly, the societal ills which Prophet Muhammad (Peace be upon him) faced during his lifetime are profoundly rooted in Pakistani culture. Furthermore, so-called religious advocates consider it usual to chastise and persecute women. It is imperative that the present practice of supporting abuse in the guise of Religion be abolished.

As a result, I decided that in such a circumstance, ongoing training and awareness campaigns to educate women regarding their privileges are required. As previously recommended, various cottage businesses, both formal and informal, should really be established to just provide employment options for rural women in order for them to raise money and support their heads with home expenses. Moreover, current strategies should all be rethought. All the more especially, in Pakistan's narrow-minded society, capable law enforcement framework is imperative in establishing a serene and practical climate for ladies to flourish.

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