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to address harmful practices against women**

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**GOOD PRACTICES IN LEGISLATION TO ADDRESS
HARMFUL PRACTICES AGAINST WOMEN IN PAKISTAN**

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* *The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.*

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Violence against women is a manifestation of historical unequal power relations between men and women, leading to the crucial social mechanism by which women are forced in to a subordinate position compared with men. Violence plays a major role in keeping women resource less, suppressed and economically exploited. A psychologist describes it as "a pattern of behavior in which one intimate partner uses physical violence, coercion, threats, intimidation, isolation and emotional, sexual or economic abuse to control and change the behavior of the other partner."

“Violence against women and girls continues unabated in every continent, country and culture. It takes a devastating toll on women’s lives, on their families, and on society as a whole. Most societies prohibit such violence — yet the reality is that too often, it is covered up or tacitly condoned.” UN Secretary-General Ban Ki-Moon, 8 March 2007.

“No action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law” (Article 4 of the Constitution). “No person shall be deprived of life or liberty saves in accordance with law”, Article 9 of the constitution. [1]

“In a society where women are seen to be the embodiment of family honor they are often the first to pay the price of others suspicions, false accusations and for exercising their rights guaranteed under the constitution and international human rights law, to “freely to choose a spouse and to enter into marriage only with their free and full consent” CEDAW Article 16, clause 1 (b).

I will try to elaborate the effectiveness of Legislation enacted to address harmful practices and the analysis of legal approach and reforms undertaken over time and reasons for such reforms. In Pakistan relatively the enacted laws against the alarming issue of violence are very recent; this is the reason that the effectiveness of those particular legal frame works or provisions cannot really be determined.

At this point, we should be mindful of the fact that religion has been central to all political discourses in Pakistan, and that is why, governments focused religion for public policy formulation. Pakistani laws could be broadly grouped in to three categories or classes- (1) Constitutional law based upon the basic concept of state which has been explained in “Objective Resolution” i.e. Sharia (religion), (2) Parliamentary enactments express the will of people and parliamentary legislative process caters the concerns and aspirations of people through their duly elected representatives, (3) Subordinate rules and regulations define the provisions of enacted laws and devise procedures for their effective enforcement and implementation.

Most of the time, rules and procedures are to be developed by respective ministries and administrative division, which due to their apathy towards essence of proposed law cannot understand its true spirit and hence the real purpose of enactment is forgotten.

¹ Constitution of the Islamic republic Of Pakistan, 1973

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evidence of four adult male Muslim witnesses (truthful and abstain from major sins) a female and a non-Muslim can not become witness.

By the promulgation of Hudood laws Zina was converted from an offence against an individual to an offence against the state. By doing so, anyone could have made a complaint to the police (being cognizable offence [10] against anybody else. Its very negative impact on the accused was that before he was considered guilty he would have been sent to jail for the offence was non-bailable. On the other hand the law of Qazf (false witness) did not act as any deterrent. It was a weak law because it did not apply automatically after the failure of complainant to prove the allegations and a separate case was to be instituted for Qazf. Furthermore, the offence of Qazf was made bailable and non-cognizable. The result was shocking, with the promulgation of Hudood laws the number of women prisoners jumped hike from as few as 70 in 1980 to as many as 4,500 in 1990.[11]

This situation continued until the introduction of the 'Protection of Women (Criminal Laws Amendment) Act, 2006. This Act omits several provisions of the Hudood Ordinance and re-introduces them into PPC (Pakistan Penal Code, 1860). This Act provides 30 important Amendments in the existing Zina and Qazf Ordinance PPC', CrPC and the 'Dissolution of Muslim Marriages Act 1939. Such provisions include those dealing with Zina Bil jabber (rape) kidnapping/inducing a women to compel her for marriage, kidnapping/abduction in order to subject the victim to unnatural lust, selling/buying a person for prostitution, deceitful cohabitation, enticing , taking away or detaining a woman with criminal intent. In short, the ordinance now deals only with adultery (Section 5) while all other sexual offences is now part of PPC. At the same time a new section has been inserted in the CrPC (Criminal Procedure Code, 1898) according to which a complaint of Zina can only be lodged in the court of Session Judge,[12] at the same time 4 witnesses in collaboration to be produced who testify seeing to the occurrence.[13]

The Act removes rape as a crime under the Ordinance and makes it an offence under S.375 [14] and 376 [15] PPC punishable with death and life imprisonment.

¹⁰ Cognizable offence under section 4 (n) is an offence where the police can arrest a person or initiate investigation without a warrant from the magistrate. A non cognizable offence is one where the police can not arrest a person or start investigation without the permission of magistrate.

¹¹ Human Rights Watch report 1999

¹² Section 6 Proviso 2 of the Ordinance 1979, Provided that an offence punishable under section 7 shall be triable by a Court of Sessions and not by or before a Magistrate authorized under section 30 of the said Code and an appeal from an order of the Court of Sessions shall lie to the Federal Shariat Court."

¹³ Complaint in case of Zina Section "203 A of Criminal Procedure, 1898, " No court shall take cognizance of an offence under section 5 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 except a complaint lodged in a Court of competent jurisdiction.

¹⁴ Section 375 PPC added through Protection of Women (Criminal Law Amendment) Act 2006 " Rape: A man is said to commit rape who has sexual intercourse with a woman under circumstances falling under any of the following descriptions: (1) against her will; (2) without her consent (3) with her consent, when the consent has been obtained by putting her in fear of death or of heart; (4) with her consent, wh5(er a)ngconsinninngcof2a (1.4()6()-4is 4..9(ngct -4.85.8(f)1-2.riTw{p9

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The main causes are lack of education and feudalism, low rate of conviction and nominal punishment of 5 years. Keeping in view the concession of law, the killer always committed the crime as 'his right and a matter of pride and honour'. In penal code the exception clause of 'sudden and grave provocation' gravely benefited the culprit. This exception says that in certain cases (scenes) a man loses the power of self-control and thus he commits murder of a person.

Another very important factor is the strong bias and corruption of the investigation agency, which is the sole pedal to collect evidence and investigate the true factors behind the crime. This concession was extensively and lavishly used by husband, brother, father and other relatives-both by in-laws and own blood.

This biased favor tremendously harmed the social fiber of the society and restrained the women and girls from social, political and economic empowerment, the Criminal Law Amendment Act, 2004 is the amendment of the Pakistan Penal Code (PPC), 1860 which enhances punishment for the offence of murders carried out in the name of honour. However, the word 'honour killing' has been replaced with 'honour crime' to make it mild and acceptable to various sections of the society.

Vide Amendment to Sections 299 and 302 PPC the offence is added in the category of **Qatal-i-Amad** (willful and intentional killing). The punishment for the honor killing has been enhanced from 14 years to 25 years.

The Criminal Law (Amendment) Bill 2004 against 'honour killings', however, did not address the real issue of waiver or compounding in which the perpetrators were given the advantage of seeking forgiveness from the heir of the victim. The major flaw in the Qisas and Diyat law, which covers all offences against the human body, is that it makes such offenses compoundable (open to compromise as a private matter between two parties) by providing for qisas (retribution) or diyat (blood-money). The heirs of the victim can forgive the murderer in the name of God without receiving any compensation or diyat (Section 309), or compromise after receiving diyat (Section 310).

Exchange marriages: Criminal Law (Amendment) Act, 2004 [19]

The harmful practice of exchange and early marriages in Pakistan throughout remained concern for the human rights activists. Exchange marriage is known

Practice of Vani/Swara (*Badl-i-Sulh*) ... (exchange of female for settlement of dispute)

The practice of Swara and Vani is a common feature of tribal areas. During the reconciliation between two tribes in blood feud enmity settlement, girls are chosen to settle the scores. In such marriages, no dower, maintenance is considered. She may be a second or third wife to an Th2EP.14

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but unfortunately there are no burn centers which are meant for the poor. The pattern of the data collected so far shows this issue is basically of white collar and low economic strata. This section introduced has many lacunas and many drawbacks to it and does not address this issue.

Acid Throwing:

Acid throwing is a horrible form of gender violence which causes deaths and disfigurements in Pakistan. This tactic is used mostly against the women and girls on large scale in Pakistan. The purpose behind the act is to permanently disfigure the victim for reasons like the prevention of the girl to marry somebody else than the culprit, personal vengeance, enmity to permanently punish the women or girl. The impacts of acid throwing are long lasting and in case the victim survives death, she has to bear a disfigured body for the rest of her life. Unfortunately like fire burning this beastly crime has no preventive law to counter the crime furthermore the sale of acid is still not checked in the open market.

Marriage to Quran (*Haq Bakshish*)

Marriage to Quran also known as (*Haq Bakshish*) is another inhuman and anti-women practice widespread in the Sindh province of Pakistan. This type of marriage is held in a ceremony formally marrying the girl to the holy book. These young girls are compelled to dedicate themselves to memorizing the Holy Quran. A girl places her hand on the Quran and takes an oath that she is married to it until death. The girls married to the Quran throughout their life remains virgin and are restrained from having relationship with a man or to marry. This phenomenon has caused much controversy throughout Pakistan as the government and human rights activists are seeking a complete ban on this practice. On the contrary some religious and influential families are encouraging the practice of 'marriage to Quran' as virtue.

Women Prisoners:

According to information issued by the ministry of interior that more than 1587 women and girls charged under different laws (murder, smuggling, Hudood Ordinance) are languishing in jails all over the country. Out of the total 1364 female alone are in the Punjab, Sindh 102, NWFP 84 and Balochistan 37. The number of women in death cell is 42 out of them 24 alone are in Multan jail while the remaining are languishing in other jails. Out of the total 267 are under age or minors. The situation of women due to the unhygienic food, environment, mental stress, sexual harassment and low diet is deploring to the alarming degree.

Domestic Violence Bill, 2009

Domestic Violence has been left to be legitimized by terming it as private and personal matter in Pakistan. It involves physical, sexual, emotional, social, economic and physiological abuses. On

shall satisfy himself that the injured person is not under any threat or duress. The statement so recorded shall be forwarded to session judge and to the district superintendent of police, the officer incharge of the police station, for such action as may be necessary under this code.. (3) if the injured person is unable, for any reason, to make statement before the magistrate, his statement recorded by the medical officer on duty under subsection 1 shall be sent in a sealed cover to the magistrate or trial court if it is other than the magistrate and may be accepted in evidence as a dying declaration if the injured person expires.

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The Bill is ambiguous in the sense that it provides a more civil and ineffective look to the offence. ^[24]

Family Courts Amendment Act, 2009

The Law and the Constitution of Pakistan (Article 23) allow the citizens of Pakistan equal rights to acquire, hold, own and dispose of property but at th

Trial process: delayed trials and prolonged litigations is another factor seriously harming the justice system. A female victim seeking speedy justice and fair trial faces delays, the unchecked perjury, illegal compounding of offences outside the cour

