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Pro-women Legislation in Punjab: Its Scope and Implementation

Abstract

This study deals with the legislation of the Punjab Assembly regarding women's rights. Women's status in Punjab is a complicated phenomenon due to a patriarchal society and gender inequality. Pro-women legislation in Punjab have been introduced to revamp the disintegration gender inequality and to bring an end to the violence against women. Despite the presence of legislation for protection of their rights, there are continuous and increasing reports of mis-treatment of women whether at work or at home due to non-implementation of pro-women legislation. This study provides the legal analysis of the Punjab Protection of Women against Violence Act. This study gives a critical overview of the lacunas in the legislation, prevailing violations of women's rights, parallel justice system and wrong interpretation of Islamic injunctions. Simultaneously, the present research highlights the obstructions which occur during the implementation of pro-women legislation and provide a way forward for achieving concrete results to empower women in Punjab. This study utilizes a combination of quantitative and qualitative approaches to the study.

Keywords: Pro-Women Legislation, Punjab, Domestic Violence, Women Empowerment, Gender Equality.

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Introduction:

Beijing declaration has played a vital role in mainstreaming gender as a subject of inter-governmental mandate. Beijing conference was a significant hallmark in taking an initiative to discuss women development issues and its direct link with women's Human rights. Pakistan actively took part in Economic and Social Council of the UN which resonated positively with the convention's agenda. This is deemed as a first international political platform which tremendously depicts the Convention on Elimination of Discrimination against Women (CEDAW).¹ CEDAW has laid foundation of this platform. This political platform contributed positively to incorporate women in decision-making and its effectual role is evident by integrating the governments in decision-making and articulating such frameworks based on striving for equality for women globally.²

Pakistan has promulgated several special laws with regard to women in last two decades regarding discrimination against women. Legislation and laws mainly and fundamentally provide legal umbrella to the rights of women to achieve equality and explicitly fortifies against discrimination and unequal actions. Pro-women laws are triumph with respect to institutional recognition in penalizing honor killing, women's harassment, domestic violence, acid throwing, holding jirgas and panchayats, these laws reflect a legal voice to protect the women against every form of violence, safeguards against derogatory practices which blatantly shatter the social prestige of women in society which includes 'Badl e Sulah', forced marriages, 'Watta satta' and acts of harassment at workplace.³ 18th amendment in the constitution of Pakistan has a profound legal significance. In order to foster gender equality and women empowerment, the government of Punjab has taken numerous legal initiatives:

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¹ Christine Chinkin, Gender Mainstreaming in Legal and Constitutional Affairs: A Reference Manual for Governments and Other Stakeholders, (United Kingdom: Commonwealth Secretariat Marlborough House, 2001), 33.

² Ibid., 28.

³ Sania Muneer, Pro-Women Laws in Pakistan: Challenges towards Implementation, Pakistan Vision, Pakistan Vision Vol. 18 No. 2, p. 90. 86-101.

- Punjab Protection of Women against Violence Act, 2016
- Punjab Protection of Women against Harassment at the Workplace Act, 2012
- Punjab Commission on the Status of Women, 2014
- Punjab Fair Representation of Women Act, 2014
- Punjab Protection of Women against Violence Act, 2015
- Punjab Family Courts Act, 2015

The Punjab Protection of Women Against Violence Act

The Punjab Protection of Women Against Violence Act was approved by the Punjab Assembly, and enforced in February 2016. The main objective of this bill was to provide protection to females from domestic violence and it specifically aims to protect women from domestic violence, and “to create an enabling environment to encourage and facilitate women freely to play their desired role in society.”⁴ Violence against women is ubiquitous in Pakistan. This Act is a positive measure to promote women empowerment and to alleviate gender inequality.

A Socio-legal Analysis

According to Section 2(h) of the Punjab Protection of Women Violence Act 2016 domestic violence is defined as “violence committed by the defendant with whom the aggrieved is living or has lived in a house when they are related to each other by consanguinity, marriage or adoption”. Other types of relationships, such as in-laws, are conspicuously absent here. Under Section 2(r) violence itself is “any offence committed against a woman including abetment of an offence, domestic violence, emotional, psychological and verbal abuse, economic abuse, stalking or a cybercrime”.⁵

Innovative and modern mechanism for the enforcement of the law makes it unprecedented; women protection committees at district officer’s level, toll-free dial number for complaint, shelter homes which provide legal, psychological, medical assistance and judicial protective orders to protect the defendant. These pragmatic and effective mechanisms can largely help to empower women and also enhance the cooperation between the agency and women along with the addition of civil society. Practically, this law demands a broad institutional infrastructure and comprehensive framework with operational rules in order to make a standard across the Punjab.⁶

An Ideological Ana

This law faced criticism from the religious parties who possess massive street power in the country. Right wing proclaims that the law negates Shariah law and transcends into the private affairs of home, and this would yield high divorce rate, and might deteriorate family values and traditions. This law was challenged in the federal Shariah court, where it would be examined and analyzed on an Islamic basis. An observation has been submitted that this law is in conflict with Islam. Furthermore, the Council of Islamic Ideology (CII) has negated and ruled out the law and declared it an “attempt to make Pakistan a western colony again”. CII is an important advisory body to ensure that any law which is repugnant to Islam shall never be enacted. Ultimately it became a hard nut to crack for the Sharif government to conspicuously promulgate the law. Further, in order to lay out an approach in alignment with the legislators, the Sharif government planned to collaborate with the religious parties for recommendations and amendments, unfortunately it has not made any progress. It seems like, keeping in view the political dynamics in Pakistan, and power and influence of religious parties, if the federal government intends to move the law it would have to face the music of opposition in the form of intense confrontational politics, consequently which might not only challenge the writ of the government, but could also make the position of federal government fragile. It’s hard for the Federal government to put political position at stake. Mumtaz Qadri’s actions are a case in point in point where 90,000 people attended his funeral with visible exodus on roads and severe rage on streets and avenues.⁷

⁴ THE PUNJAB PROTECTION OF WOMEN AGAINST VIOLENCE ACT 2016 , Act XVI of 2016.

⁵Menaal Munshey, The Punjab Women’s Protection Act: An ideological battle, May 6th, 2016, London School of Economics, <https://blogs.lse.ac.uk/southasia/2016/05/06/the-punjab-womens-protection-act-an-ideological-battle/>

⁶ Ibid.

⁷ Menaal Munshey, The Punjab Women’s Protection Act: An ideological battle, May 6th, 2016, London School of Economics, <https://blogs.lse.ac.uk/southasia/2016/05/06/the-punjab-womens-protection-act-an-ideological-battle/>

This act seems to represent a clash and vigorous battle of confronting ideologies. As a matter of fact, in order to see the pragmatic repercussions of the law, it is quite imperative to change the thinking and overall mindset. The government has to exhibit tilt towards the liberal lobby and resist the right wing for the enactment and implementation of this law in true letter and spirit. If the federal government fails to do so then this act will have no different fate like other pro-women laws--mostly ineffective and non-practical. Owing to the derogatory approach and structural factors, it mainly includes lack of self-sufficiency in women; inefficient and corrupt criminal justice system. This law requires strong political will, impartial institutions and immense support from broad vision civil society to see its useful impact. Civil society has a great role to play, a society where intolerance, inequality and lack of rule of law prevails, it is very difficult to reform or expect any positive change. Civil society should put great emphasis on educating law makers and law enforcers, and must play a role in enhancing coordination among both. Moreover, civil society must create awareness regarding compatibility with Islamic code. The government and civil society must take bold measures to promote liberal ideology in order to have fruitful impacts on the human rights in the country.⁸

A Legal Analysis

This law is inherently liberal and progressive in nature but it has numerous flaws. This law profoundly lacks in criminalizing domestic violence the way Sindh and Baluchistan have criminalized it. It's focused on civil remedies rather than strict legal action particularly criminal sanction of arrest and detention. It falls under the ambit of civil matter. The entire legal procedure is neither promptly responsive nor does it provide speedy justice.

Definitions of domestic violence and dependent children: The definition of domestic violence excludes females who are abused by males in the same house but does not have blood relations or married to them at the time of violence. In addition, the definition of dependent children excludes the following people: -

- Girls of all ages
- Boys over the age of 12
- Young people with special needs

The elimination of girls has made it indistinct whether the daughters of the victims will be able to receive shelter with their mothers.⁹

False complaint

If a false complaint is filed, the victim bears financial penalty or imprisonment. Owing to the lack of resources or official reference, the influential individual or groups pressurizes to retract or declare that their statement was based on doubt and false claim.¹⁰

Urgent need to increase the size of female armed police officers:

There is a dire need to increase the number of female police officers. This Act provides DWPO to enter into a house and rescue the victim or seek assistance from police force.¹¹

Undefined cyber-related terms and other cyber issues

This Act includes stalking and cybercrime as different forms of violence, but lacks in vivid explanation of the terms though terms like 'economic abuse' and 'psychological violence' are described in detail. Further it fails to designate a proper organization which must identify, prosecute and convict the cyber criminals. The matter becomes further complicated if offenders have fake social media accounts.¹²

⁸ Ibid.

⁹ Fahad Nabeel, Khoula Afzal Qamar and Bushra Malik, Punjab Women Protection Law 2016, Research Brief, 2016 Center for Strategic and Contemporary Research <https://cscr.pk/pdf/rb/PPWVA2016.pdf>

¹⁰ Ates, Nihel. "The Protection of Women against Violence Act falls short of its objective." Pakistan Today, March 9, 2016. <http://www.pakistantoday.com.pk/2016/03/09/comment/the-protection-of-women-against-violence-act-falls-short-of-its-objective/>

¹¹ Jalil, Xari. "Footprints: Where the law fails." Dawn, March 11, 2016. <http://www.dawn.com/news/1244941>

¹² Mojiz, Aasma. "What's new about Punjab's 'treacherous' pro-women law?." Dawn, March 09, 2016. <https://www.dawn.com/news/1244458/whats-new-about-punjabs-treacherous-pro-women-law>

The GPS tracker issue

According to 7(d) of this law the defendant has to wear wrist bracelet GPS tracker. In practice the GPS tracker has not proved as a very effective tool for deterring defendants. The dynamics of GPS tracker are also not explained clearly. In this clause ‘dignity of reputation’ is not defined.¹³

Other issues

This law fails to define the terms ‘Sexual violence’ and ‘oppressive behavior’. Thus, the Women Protection bill does not possess that legal power on the basis of which an FIR could be registered.

PPWVA mainly intends to mitigate domestic violence, protection of women against every sort of violence. Men could also be subjected to domestic violence.

PPWVA lacks in dealing with dowry. Indian protection of women from domestic violence Act 2005 criminalizes offence of giving and receiving dowry. Only a few amendments in the act in the coming couple of years will try to eliminate the difficulties in the form of legal loopholes.¹⁴

Barriers in implementation of laws:

The core purpose of pro-women laws is to ensure the provision of adequate and equal legal rights for women in order to alleviate the prevalent gender discrimination from various segments of society, especially from the pivotal apparatuses of the state like the legal and the judicial arenas. These sectors are custodians of law and hold the responsibility for equal treatment between the various members of society irrespective of gender. The promulgation of pro-women laws is a reward of legislature and a political triumph of parliamentarians who raised the flag to eradicate gender inequality along with the tremendous role played by the social organizations. However, it requires a critical evaluation to identify the loopholes which are acting as impediments in the way of effective implementation of these laws. Moreover, efforts are being made by some stakeholders like social rights activists to synchronize and realign pro-women laws passed with those of the International Human rights laws¹⁵ and particularly with CEDAW.¹⁶

It is quite imperative to have a proper law in order to address an issue. After promulgation of a law the next important step is to have its clear interpretation and implementation in true letter and spirit in courts.¹⁷

There are some laws which deal with the elimination of derogatory practices and rituals which nourish women inequality. Other laws are enacted to mitigate violence against women and their effect is disproportionate. It is also quite difficult to discuss various form of violence in one study, but violence and discrimination against woman is used both as a means (process) and ends to perpetuate the domination of a male over a female enforced as part of a culture, tradition, custom, honor and religion, imposing grave inequalities and injustice against females.

‘Non- discrimination’ word cannot be confined to treatment on the distinction of gender but it also encompasses the discrimination the other intrinsic and extrinsic actors of state and private like family, individual and elements of social, political and economic sphere. Discrimination has various dimensions; direct discrimination which deals on

¹³ Fahad Nabeel, Khoula Afzal Qamar and Bushra Malik, Punjab Women Protection Law 2016, Research Brief, 2016 Center for Strategic and Contemporary Research <https://cscr.pk/pdf/rb/PPWVA2016.pdf>

¹⁴ Ibid.,9

¹⁵ Common Article 2 of ICCPR (International Covenant on Civil and Political Rights) and ICESCR (International Covenant on Economic, Social and Cultural Rights) and Article 26 of ICCPR, www.ohchr.org

¹⁶ Article 4 & 5 of CEDAW and General Comment No.25 of the Committee on the Elimination of Discrimination Against Women, on temporary special measures www.ohchr.org

¹⁷ In cases of forced conversion in Ravita at Hyderabad Sindh High Court interpreted the consent and Will of intending converted girl by overriding the provisions of Sindh Child Marriage Restraint Act-2013, and in another case of child marriages in Umerkot District , Judicial magistrate interpreted the repealed section.

the basis of gender referred as *de jure* discrimination. *De facto* discrimination is a type of discrimination in which a strategy, policy or a decision is not intended to be discriminatory but its practical implications do affect women negatively.¹⁸

This study clearly sheds light on the complex dynamics of women's lives and strategies and factors which effect implementation of those laws. The impediments in legal implementation have made the condition of the women more fragile. The current socio-cultural transformation is deemed as important measure for women empowerment. Women must stand united against the burgeoning social, political and economic inequalities. Furthermore, women should convincingly and pragmatically spread their voices against misogynists and every form of violence. Women is considered as a subordinate member of the family and is likely to be subjected to violence. With the fear of being kicked out of the house and the social status of divorced women has cornered the women in the society. The element of family pressure and traditional baseless norms has exacerbated the discrimination against women. Now it is the high time that women have to strive hard to make the dominant male society realize that they are equal members of the society and are equally important and credible to decide, perform and execute every task and job in legal, political, social and economic sectors of the state.

As per 48/104 Declaration on the Elimination of Violence against Women, Article 4 (j), each of the member states should *“adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women.”*

In Pakistan socio-cultural settings are prominent impediments in implementation of pro-women legislations because promulgation of laws only is not sufficient to end the chasm between the modern concept of justice and social taboos. Undoubtedly, a small ratio of the women is enjoying the encouraging opportunities but at the same time a large number of women are the victim of attitudes which discourage them from opportunities because of misogynistic patterns deeply set in society. Metaphoric but pithy social pressure, confrontation, and objection to women is a ubiquitous exercise which fortifies the grounds of absence of encouragement for girls who have the power to do more apart from fulfilling their matrimonial responsibilities.

Education is the only panacea to transform the socio-cultural set patterns and male-dominated mindset. In order to achieve this target intrinsic challenges, need to be addressed in the upbringing of boys and girls. Children's without any discrimination need to advocate the equality, and discourage the concept of manliness to ensure the gender equality. The vision of laws implementation can be successful while the slogan will rise *“men of quality are not afraid of equality”* in all facets.

In social milieu of Pakistan cultural fences are prominent impediment in implementation of pro-women legislation. The eradication of these deep-rooted cultural fences can be possible if a committee would be established for mutual consensus on existing and prevailing violations against women. This committee should be comprised of religious clergy, representatives of jirga and panchayat, human rights activists, legal prosecutors to end the patriarchy and discrimination against women. These imperatives will help to change the social settings and will make Pakistan a safe habitation for females.

The structure of Pakistani social milieu is utterly based on patriarchy and misogyny and not ready to accept gender equality. The promulgation of pro-women legislation by the government is the half-hearted initiative to eliminate the gender inequality because the implementation part is highly neglected because of lacking in socio-political structure.

Civil society role cannot be ignored in highlighting the social evils. Disappointingly, the civil societies are only limited to main urban areas and rural areas are entirely neglected where violence against women is more prominent

¹⁸ General Comment No.18 (1989) of Human Rights Committee and General Comments No.16 (2005) and No.20 (2009) of Committee on Economic, Social, Cultural Rights.

due to legal illiteracy and advocacy of basic rights. The progressive role of civil society can alter the shape of the society and end the gender disparity if they actively play the effective role in urban and rural areas through provision of legal aids to women, vocational trainings and awareness campaigns. Civil societies can pressurize policy-makers and law enforcing institutions for the implementation of pro-women legislation for incredible results.

Religion of Islam is the sole representative of basic human rights without any discrimination. Almost 97 percent population of Pakistan is follower of Islam which demonstrates the gender equality and elimination of discrimination in Quran and Sunnah. Unfortunately, the 'wrong interpretation of Islamic injunctions' by the orthodox religious clergy limited the status of women in socio-cultural sphere of life. Largely, the semi-educated Ulemas considered that pro-women legislations are in contradiction of the Islamic injunction and violence against women in certain circumstances is legal. Religious clerics should encourage the real Islamic principles to eliminate the gender discrimination and anti-women practices such as honor-killing, child marriage, domestic violence, dowry and so on.

Simultaneously, the requisition is the eradication of ignorance and advocacy of legal literacy of basic and legal human and women's rights granted by the constitution of Pakistan and international human rights bodies. To guarantee in fortifying the results media can play an important role in bringing awareness across the country but regrettably media exaggerates and exploit the image of women Media's voice against the discrimination of women and gender inequality, legal literacy and highlighting charges against the law violators can not only enhance the security for women but also serve as a warning to violators and criminals of the hard penalties under the laws.

Dysfunctional criminal justice system is also a prominent impediment in implementation of pro-women legislation that put the women at serious risk. No doubt, legislation provides protection to the basic rights but picture is different in Pakistan because pro-women legislation is only piece of papers due to social structure and taboos that considered female as a second sex. Along with uncooperative police behavior and poor investigation towards the victims of violence, the proverb 'justice delayed is justice denied' fits the present system in Pakistan because it leads to the failure of timely justice to female victim survivor of the violence. Due to dysfunctional criminal justice system very few victims of gender-based violence approach police in their cases so a large number of cases go unreported on the other hand if survivors report it to the police, then many cases remained unregistered and, in many cases, female complainants face being assaulted by some police officers. Untrained police staff and insufficient number of women police officers to deal with gender-based violence cases are other barriers in implementation of pro-women legislation.

Nonetheless, the promulgation of pro-women legislation by national and provincial governments for the defense of women rights and elimination of gender discrimination is a landmark in accomplishing the Sustainable Development Goals. Albeit, onus rests on elected government representatives to guarantee the implementation of existing laws as security of women empowerment and assuring gender equality should not fall a victim to political expediency.

Women rights are human rights. Women rights can only be secured if social milieu of Pakistan will free from discrimination against women, gender-based violence and understand the role of women because, women are not only mothers, wives, daughters, and sisters but also, they are human beings. Pro-women legislation implemented in a true sense can be a milestone in elimination of gender inequality and bridge the gap between myth and reality of social change in Pakistan.

Conclusion

The women empowerment in Pakistan is taking into account in different settings but safeguard of female rights is only possible when legislation and strategies supported and enforced through proper mechanisms are put in place. After analyzing the legal framework in Pakistan on women empowerment, gender equality and measures for elimination of discrimination against women one concludes that the most serious lacunas are the chasm between various laws and their true implementation. In Pakistan the historical backdrop on pro-women legislation provides an insight on the women's rights and empowerment which highlights a complex model of developments and setbacks. 'Definition of women rights in Pakistan is articulated with the state efforts is complicated according to requirement to balance the contradictory views on women's status in Pakistan.' part from all these exciting advancements still new legislation is required to mitigate all the challenges. Pakistan needs to develop the mechanism that will not only enhance the women status but also be the sole representative of the women rights according to Islamic injunctions.

Metaphoric but pithy, the social settings of Pakistan misogynistic society represent deprivation of females from their basic and legal rights. Prevailing cultural mores and bigoted practices are entirely opposed to the Islamic injunctions and denied the gender equality that is granted by the Islam.

Injustice and insufficient legal provision of basic rights create weak and insecure environment for the social status of women. In Pakistan statutory laws have failed to eliminate the gender inequality. Existing and prevailing violence against females in Pakistan indicates that the legal framework regarding women empowerment is just a piece of paper rather than something taking place in real practice. In Pakistan, legal and protected status of women can be judged from the implementation of pro-women laws because implementation is a sure sign eradication of discriminatory connotations turn the women empowerment into reality. Despite the fact, there are multiple factors which have a strong impact in determining the women's status in society after implementation of the pro-women legislation but impediments in implementation of laws need to be addressed.