JUDICIAL TREND ANALYSIS OF WOMEN’S RIGHTS IN CONTEXT OF DISTRICT MULTAN
COMPARATIVE TREND ANALYSIS OF WOMEN’S RIGHTS
COMPiled FOR CCHD

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Dated: 10/04/2017
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This report is made possible under the Gender Equity Program (GEP) of Aurat Foundation (AF) by the support of the American People through the United States Agency of International Development (USAID). The content are the sole responsibility of CCHD and do not reflect the views of Aurat Foundation, USAID or United States Government.
# Table of Contents

ACKNOWLEDGEMENT .................................................................................................................. 7

FOREWORD ..................................................................................................................................... 8

EXECUTIVE SUMMARY ................................................................................................................ 9

REPORT STRUCTURE: ..................................................................................................................... 11

SECTION 1: STATE / LEGISLATURE’S RESPONSE ....................................................................... 12
   A. Constitutional Rights of Women: .......................................................................................... 12
   B. Legislation introduced by the National Assembly of Pakistan: ........................................... 12
   C. The Punjab Commission on the Status of Women: .............................................................. 13
   D. Legislation introduced by the Provincial Assembly of Punjab: ......................................... 13
   E. Punjab Protection of Women against Violence Act, 2016 ..................................................... 14
   F. Acid Crimes: ......................................................................................................................... 16
   G. Harassment: ......................................................................................................................... 17
   H. Rape: ...................................................................................................................................... 18
   I. Honour Killings ....................................................................................................................... 19
   J. Child Labour: ......................................................................................................................... 20
   K. Child Marriage: ..................................................................................................................... 21
   L. Rights of Inheritance & Property: ......................................................................................... 21
   M. Family Laws: ......................................................................................................................... 23

SECTION 2: THE ROLE OF JUDICIARY ..................................................................................... 26
   A. Criminal Cases ....................................................................................................................... 26
      1. Section 376 of Pakistan Penal Code: The Offence of Zina (Rape) ..................................... 26
      2. Section 365-B of Pakistan Penal Code: The Offence of Kidnapping, Abduction or Inducing Women to Compel for Marriage ................................................................. 29
      3. Section 496-B of Pakistan Penal Code: Enticing or Taking Away or Detaining with Criminal Intent a Women .............................................................................................. 30
      4. Section 336-B PPC: Hurt by Corrosive Substance .............................................................. 31
B. Civil Cases ........................................................................................................... 32
  1. Custody of Minor .......................................................................................... 32
  2. Inheritance of property ................................................................................. 33
  3. Recovery of Dower, Dowry Articles and Maintenance Allowance .......... 35
  4. Dissolution of marriage .............................................................................. 39

SECTION 3 ACCESS TO JUSTICE: THE CASE OF FEMALE LITIGANTS IN SOUTHERN PUNJAB ................................................................. 40

SECTION 4: LITERATURE REVIEW ........................................................................ 45
  A. Common Man’s Perception: ....................................................................... 45
  B. Women Protection Acts: ........................................................................... 45
  C. Prison Ill Treatment: .................................................................................. 48
  D. Land Inheritance: ....................................................................................... 48
  E. Summary: .................................................................................................... 48

SECTION 5: STATISTICAL DATA ........................................................................... 50
  A. Regional Estimates of Violence against Women ......................................... 50
     1. Honor Killing: ............................................................................................ 50
     2. Rape: .......................................................................................................... 51
     3. Kidnapping / Abduction: .......................................................................... 52
     4. Criminal Assault / Violating Modesty of Women .................................... 53
     5. Forced Prostitution: .................................................................................. 54
     6. Acid Attack: ............................................................................................... 55
  B. Regional Estimates of Crimes Committed by Women .............................. 56
     1. Murder: ...................................................................................................... 56
     2. Drug Offences: .......................................................................................... 57
     3. Kidnapping / Abduction: .......................................................................... 58
     4. Forced Prostitution: .................................................................................. 59
     5. Acid Attack: ............................................................................................... 60

SECTION 6: TREND ANALYSIS ............................................................................ 61
  A. Trends in pro-women legislation enacted in the past eight years ............ 61
  B. Trend Analysis in judicial precedents decided in the past eight years ... 61
1. Criminal Cases .................................................................................................................................................. 62
2. Civil cases ........................................................................................................................................................ 63

SECTION 7 WAY FORWARD: AUTHOR’S RECOMMENDATIONS ..................................................................... 66

BIBLIOGRAPHY .................................................................................................................................................. 69
ACKNOWLEDGEMENT

This Comparative Trend Analysis is a key milestone in understanding the trend related to judicial precedents after pro-women laws in District Multan. This study would not have been possible without the support and cooperation of many.

Thanks are due to USAID, Aurat Foundation, District bar Associations Multan and Gender Equity Program team. In particular we will like to acknowledge the contribution of Ms. MahparaShakeelGhori(Deputy Chief of Party AF), Ms. SumeraSaleem(Grant Holder AF), Mr. Tahir Iqbal (National Coordinator), Mr. YousafZubair(President DBA –Multan),Mr. Syed Anees Mehdi (General Secretary DBA-Multan),Mr. ShahbazMurtaza Ansari (Advocate High Court), Ms. Amber Naqvi (Superintendent Women Jail, Multan), Mr. MohsinRafique (Superintendent Central jail, Multan) and the Judicial team of District Courts Multan including Mr. Bahadur Ali Khan Honourable District Session Judge, Mr. Khalid Naveed Honourable Senior Civil Judge and Mr. Abid Ali Learned Magistrate Judge.

Special thanks to project team Ms. TanzeelaAltarf (Project Director CCHD), Khadija Shaheen, Nasir Rafiq, HaiderMohsin, Madiha Wahid Saddique and Fariha Bukhari and all legal team of CCHD who worked closely with us in ensuring that the project is brought to a successful completion and within the project timeframe.

But most of all we want to show our appreciation extended to the many thousands of respondents who gave their valuable time and freely shared their views on a critical issue of national significance.

Farrah Azeem Khan

Executive Director, CCHD
FOREWORD

There are two powers in the world; one is the sword and the other is the pen. There is a great competition and rivalry between the two. There is a third power stronger than both, that of the women.

MUHAMMAD ALI JINNAH

There could not have been better words to start this report with than those mentioned by the founding-father of this nation. Such were the values that our Quaid would have wanted to see fully ingrained in our society, but the last 7 decades or so have only been to the contrary. Pakistan ranked 3rd on list of most dangerous countries for women in 2011 as per a survey carried out by the Thomson Reuters Foundation¹, only after Afghanistan and Congo and our country retained its place in the top ten list even during the year 2016².

The legal apparatus of the country has remained vigilant, but largely ineffective in eradicating violence against women. Our country is signatory to a number of international conventions on this subject. A number of NGO’s and private organizations have been working to raise public awareness on the issue. Our legislature, judiciary and executive wings of the state have been pro-active in enacting socio-legal rules for curbing this vice in the community.

But has this been effective? Has it been sufficient? Has it been able to turn the tide in favour of the tender gender? Or does the empirical data or the trend suggest otherwise? This is the aim behind the writing of this report that the author wishes to explore and expound.


EXECUTIVE SUMMARY

Violence against women is internationally recognized as a violation of basic human rights. General Recommendation 19 of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW)\(^3\) refers to gender-based violence as “a form of discrimination against women that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men”.

Complementing the work of CEDAW is the Declaration on the elimination of violence against women\(^4\), as per which violence against women is defined as “any act of gender based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life”.\(^5\)

Violence against women encompasses:

a) Physical, sexual and psychological violence occurring in the family, including spousal or non-spousal domestic violence, battering, sexual abuse of female children in the household, dowry related violence, marital rape and other traditional practices harmful to women; and

b) Physical, sexual and psychological violence occurring within the general community, including sexual harassment, rape, trafficking in women and forced prostitution etc.

Echoing this, in 1995 the Beijing Platform for Action of the Fourth World Conference on women called for the elimination of all forms of gender based violence. Not only this, the Beijing Platform also required that work be carried out to:

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\(^3\) Pakistan became a signatory to CEDAW Convention on 6\(^{th}\) February, 1996

\(^4\) Adopted without vote by the United Nations General Assembly in its resolution 48/104 of 20 December 1993

Promote research, collect data and compile statistics, especially concerning domestic violence relating to the prevalence of different forms of violence against women. And encourage research into the causes, nature, seriousness and consequences of violence against women and the effectiveness of measures implemented to prevent and redress violence against women.6

It is not just the physical, sexual or psychological impact of such violence on the victim that makes it noteworthy but it is also the overall alarming cost of gender based violence suffered by the community that must be borne in mind in order to understand the significance and urgency of addressing gender based violence. Violence against women has a rippling effect that can go on for years and affect the generations to come if it is left unattended. Among the costs of such violence are health consequences, production related costs, consumption related costs, second generation costs and social and economic costs. One such untouched aspect that has become evident in southern Punjab is the escalating rate of women involvement in crime over the past eight years. Punjab, more particularly Southern Punjab, popularly known as Pakistan’s jihadist heartland that has over the past years maintained the highest number of reported violence against women is now slowly moving in an even more devastating, critical and dangerous direction where women, the actual victims of gender based violence are now being pushed into committing crimes themselves. The underlying reason behind this is the state’s inability to address the long prevalent violent practices against women in this region.

The primary purpose of this study is to analyze the key judicial trends and identify legal gaps dejure and defacto that restrict women legal rights.

6Fourth World Conference on Women Platform for Action, Strategic Objective D.2, No. 129(a), 1995.
REPORT STRUCTURE:

The report will contain five sections:

a) The first section of this report will evaluate the pro-activeness of the state and legislature’s response to curb and eliminate violence against women by analyzing the effectiveness of newly enacted legislation and amendments passed in this time period.

b) The second section of the report will deal with the practical side of such law-enactment, i.e. enforcement by judiciary through judicial precedents – both progressive and regressive.

c) The third section of the report will contain the writer’s observations on the practical impediments for women seeking justice. The findings are based on the opinion of sitting judges, practicing female lawyers and firsthand observations of the writer.

d) The fourth section of this report will give a critical evaluation of literature on the subject – trying to grasp the general perception of public and stakeholders in this area.

e) The fifth section of the report will compare on an annual basis the crime rate statistics concerning women over the past eight years and how this empirical data confirms the effectiveness of state responses.

f) Finally, the sixth section of the report will contain a detailed evaluation of the trends derived from this study in the area of legislation and judicial precedents followed by recommendations drawn by the writer.
SECTION 1: STATE / LEGISLATURE’S RESPONSE

A. Constitutional Rights of Women:

The Constitution of Islamic Republic of Pakistan, 1973 guarantees rights of women in form of the following Articles:

Article 25 – Equality of Citizens
(1) All citizens are equal before law and are entitled to equal protection of law.
(2) There shall be no discrimination on the basis of sex.
(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.

Article 34 – Full Participation of Women in National Life
Steps shall be taken to ensure full participation of women in all spheres of national life.

B. Legislation introduced by the National Assembly of Pakistan:

The Federal Government has framed the following laws on the protection of women and curbing violence against them:

2) The Acid Control and Acid Crime Prevention Act, 2011
6) Anti-HonourKillings Laws (Criminal Laws Amendment) Act, 2014

However, with passing of the 18th Constitutional Amendment, the matter of social issues devolved onto the provinces and gives them the responsibility for legislation and policy-
initiatives for women’s rights. Importantly, the 18th Amendment has increased resources to provinces to work on women’s empowerment.

C. The Punjab Commission on the Status of Women:

Drawing on the powers devolved by the 18th Amendment, the Government of Punjab established the Punjab Commission on the Status of Women (PCSW) as a statutory, autonomous body, in February 2014. It was conceived as an oversight body to ensure policies and programs of the government with the major objectives of:

a) Empowerment of Women; and

b) Elimination of all forms of Discrimination against Women.

D. Legislation introduced by the Provincial Assembly of Punjab:

The pro-activeness of the Provincial Government of Punjab in the area of women empowerment can be seen from the fact that, in addition to the PCSW, the following pro-women legislative framework has also been enacted in recent times:

1) Punjab Protection of Women against Violence Act, 2016
2) Acid Crimes – inclusion of Sections 336A and 336B of the Pakistan Penal Code
3) Punjab Restriction on Employment of Children Ordinance, 2016
4) Family Laws:
   a. Punjab Muslim Family Laws (Amendment) Act 2015
   b. Punjab Family Courts (Amendment) Act 2015
6) Rights of Inheritance & Property:
   a. Punjab Land Revenue (Amendment) Act 2015
   b. Punjab Partition of Immovable Property Act 2015

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7 Preamble to The Punjab Commission on the Status of Women Act, 2014
c. Punjab Land Revenue (Amendment) Act 2012  
d. Punjab Partition of Immovable Property Act 2012

7) Protection against Harassment of Women at the Workplace Act 2010 and Amendment Act, 2012

8) Criminal Law (Amendment) (Offence of Rape) Act 2016

E. Punjab Protection of Women against Violence Act, 2016

The said ‘Violence Act, 2016’ was promulgated with to view to make special provision for the protection of women and to protect them against violence including domestic violence, to establish a protection system for effective service delivery to women victims and to create an enabling environment to encourage and facilitate women freely to play their desired role in the society, and to provide for ancillary matters.

A complainant may apply to the Court for any of the following Orders:

a) Protection Order: If the Court is satisfied that any violence has been committed or is likely to be committed, it may direct the Defendant:

   a. Not to have any communications with the aggrieved person;
   b. Stay away from the aggrieved person;
   c. Maintain distance from the aggrieved person;
   d. Wear ankle or wrist bracelet GPS tracker;
   e. Move out of the house;
   f. Surrender any weapon or firearm;
   g. Refrain from entering the place of employment of the aggrieved person;
   h. Refrain from causing violence to a dependant; and
   i. Refrain from committing any other such acts that the Court may order.

8 As per Preamble to the Violence Act, 2016  
9 As per Section 7 of the Violence Act, 2016
b) **Residence Order**\(^{10}\): In addition to a Protective Order, the Court may, in a case of domestic violence, direct that:
   a. The aggrieved person shall not be evicted from the house;
   b. The aggrieved person has the right to stay in the house;
   c. The aggrieved person may be relocated from the house to the shelter home;
   d. The Defendant shall deliver the possession of any property or document to the aggrieved person;
   e. The Defendant or his relative may be restrained from entering the shelter home or workplace of the aggrieved person; or
   f. Shall arrange an alternative accommodation for the aggrieved person or pay its rent.

c) **Monetary Order**\(^{11}\): The Court may at any stage of the case, direct the Defendant to pay monetary relief to the aggrieved person, which may include:
   a. Such compensation, as the Court may determine, to the aggrieved person for suffering as a consequence of economic abuse;
   b. Loss of earning;
   c. Medical expenses;
   d. Loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person;
   e. Payment of reasonable rent and meals for shelter provided to the aggrieved person; and
   f. And reasonable maintenance for the aggrieved person and her dependant children.

In addition to the above-mentioned powers of the Court, this Act also saw the coming of District Women Protection Committee\(^{12}\), Protection Center & Shelter Homes\(^{13}\) and Women Protection

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\(^{10}\) As per Section 8 of the Violence Act, 2016
\(^{11}\) As per Section 9 of the Violence Act, 2016
\(^{12}\) As per Section 11 of the Violence Act, 2016
\(^{13}\) As per Section 13 of the Violence Act, 2016
F. Acid Crimes:

To curb acid crimes, the government made amendments to sections of the Pakistan Penal Code as well as to the Punjab Poison Rules.

Anyone who causes hurt by:

- throwing any corrosive substance (such as acid) on a woman;
- compelling a woman to inhale or swallow any poisonous thing;
- means of fire or any heated material; or
- by means of explosive material

shall be punished for causing hurt (section 336 A of the Pakistan Penal Code).

Punishment for causing hurt by acid:

Any person who performs an act knowing that the act will harm the person and is dangerous, will be punished with:

- life imprisonment;
- Fine that cannot be less than five hundred thousand rupees; or
- with both

(Section 336 B of the Pakistan Penal Code)

However, the unique feature of the procedural law in this regard is that a duty was cast upon a Police or other officer to exhibit the following particular code of conduct:

- Every Police Officer must carry out his duties with:

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14 As per Section 14 of the Violence Act, 2016
15 Amendments made by Criminal Law (Second Amendment) Act, 2011 passed by the National Assembly
16 As per Section 166A of the Pakistan Penal Code, inserted by Criminal Law (Amendment) Act, 2014
Utmost honesty and integrity
Fairness and impartiality
Without any corruption
Politeness and tolerance
Minimum force, and in accordance with law
Without acts of torture or other cruel, in-human, or degrading treatment or punishment
Without regard for personal benefit
Care to ensure confidentiality of information

G. Harassment:

At the national level, the issue of harassment was dealt with by Section 509 of the Pakistan Penal Code\(^\text{17}\) that tackles any ‘word, gesture or act intended to insult the modesty of a woman’ in a public place, including a workplace. The offence is punishable with simple imprisonment for up to one year, or with fine of Rs. 500,000/-, or with both.

At the provincial level, harassment is dealt with by Protection against Harassment of Women at the Workplace Act, 2010 (‘2010 Act’) (and its amendment in the year 2012). The key features of the law include:

- The Act intends to curb harassment of women at the workplace and encourage reporting of cases of harassment, through the Ombudsperson’s office\(^\text{18}\) and Inquiry Committees.
- Under the Act, all Provincial and District Government bodies and authorities, including educational institutes and medical facilities, have to constitute Inquiry Committees for harassment at the workplace and display the Code of Conduct for Protection of Women from Harassment at the Workplace in their office premises\(^\text{19}\).

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\(^{17}\) As substituted by Criminal Law (Amendment) Act, 2010

\(^{18}\) As per Section 7 of the 2010 Act

\(^{19}\) As per Section 3 of the 2010 Act
• A Complainant has the option to submit a complaint to the Inquiry Committee, or the Ombudsperson\textsuperscript{20}.
• The Inquiry Committee will inform the accused person that he has been accused of harassment within 3 days of receiving a complaint. If the accused fails to submit his defence within 7 days, the Committee will decide the matter without the accused person\textsuperscript{21}.
• Under the Act, the Ombudsperson has the power of a Civil Court, and can summon the accused, examine him on oath, receive evidence on Affidavits, and enter office premises for the purpose of inspection or investigation\textsuperscript{22}.
• The Inquiry Committee or the Ombudsperson can decide the case and penalize the accused for harassment.

H. Rape:

Rape is a heinous crime; an act of violence that ruins the lives of victims. In Pakistan, rape cases are reported and registered, however, the conviction rates of the accused are abysmally low\textsuperscript{23}. It was for this very reason that Criminal Law (Amendment) (Offences relating to Rape) Act, 2016 was promulgated by the National Assembly.

One of the most important aspects of this Act is that it adds a proviso to the Criminal Procedure Code Section 154 as per which information from a female victim shall be recorded by an Investigating Officer in the presence of a female police officer or a female family member or any other person with the consent of the complainant, as the case may be; thus, ensuring privacy and confidentiality.

Also, medical examination of the victim can only be done by a female registered medical practitioner only after obtaining consent from the victim. DNA and other forensic evidence will be

\textsuperscript{20} As per Section 8 of the 2010 Act
\textsuperscript{21} As per Section 4 of the 2010 Act
\textsuperscript{22} As per Section 10 of the 2010 Act
\textsuperscript{23} Statement of Objects and Reasons attached to this Bill by then-Senator Farhatullah Babar
collected during examination\textsuperscript{24}.

The Court procedure was also reformed to provide safety to the victim. For instance, the trial of such offences shall be conducted in camera. Where any proceedings are held, the Government may adopt appropriate measures, including holding of the trial through video link or usage of screens, for the protection of victim and the witnesses\textsuperscript{25}.

As mentioned earlier, one of the aims behind this Act was to enhance conviction rates as a deterrent factor. Thus, the punishment to an offender was enhanced and now encompasses\textsuperscript{26}:

- Death or imprisonment of minimum ten years and maximum twenty-five years \textbf{and} a fine.
- When rape is committed by two or more persons, each of them will be punished with death or imprisonment for life.
- Of a minor or a person with mental or physical disability, will be punished with death or imprisonment for life and fine.
- By a public servant, including a police officers, medical officers, or jailors, will be punished with death or imprisonment for life and fine.

I. \textbf{Honour Killings}

“Pakistan has some of the highest rates of dowry murder, so-called honor killings and early marriage,” said DivyaBajpai, reproductive health advisor at the International HIV/AIDS Alliance.\textsuperscript{27}

Some 1000 women and girls die in honor killings annually, according to Pakistan’s Human Rights Commission.

\begin{itemize}
\item \textsuperscript{24} As per newly inserted Section 164A of the Criminal Procedure Code, 1898
\item \textsuperscript{25} As per amendment made in Section 352 of the Criminal Procedure Code, 1898
\item \textsuperscript{26} As per entry in Column No 7 for Section 376
\item \textsuperscript{27}http://news.trust.org/item/20110615000000-na1y8/?source=spotlight
\end{itemize}
The bill is designed to address the loopholes and lacunae in the existing laws in order to prevent honour crimes from being repeatedly committed.

One of the biggest loopholes in the 2004 law on honour killings was that the perpetrator through provisions of qisas and diyat could be completely acquitted for a crime he openly admitted to. Under the new law the perpetrator may still be pardoned but only if he has obtained a death sentence in which case he will still be liable to a mandatory minimum life sentence in prison.

J. Child Labour:

The issue of child labour specifically plagues the Southern Punjab region, where especially female children are used as house maids. The vice has been tried to be curbed by the coming of Punjab Restriction on Employment of Children Ordinance, 2016 (‘2016 Ordinance’) as per which children under the age of 15 years cannot be employed in any workplace or establishment in Punjab. Adolescents (between 15 and 18 years of age) cannot be employed in unsafe or hazardous working conditions.28

‘Hazardous work’ includes any work, by its nature or circumstances in which it is carried out, is likely to harm the adolescent and its examples include: underground mines, sandblasting and other such work, exposure to all toxic, explosive and carcinogenic chemicals, exposure to coal dust, sewer pipelines, pits and storage tanks etc.

It is an offence punishable with an imprisonment term which may extend up to six months, and with a fine which may extend up to fifty thousand rupees.31

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28 As per Section 3 of the 2016 Ordinance
29 As per Section 2(i) of the 2016 Ordinance
30 As per Schedule to the 2016 Ordinance
31 As per Section 11 of the 2016 Ordinance
K. Child Marriage:

The “Child Marriage Restraint (Punjab Amendment) Ordinance, 1971” has been amended by the “Punjab Marriage Restraint (Amendment) Act 2015”

- Under the Punjab Marriage Restraint (Amendment) Act, 2015 (‘2015 Act’), any adult who marries a child, defined as a boy under 18 years and a girl less than 16 years of age, can be punished with imprisonment of up to 6 months and a fine of Rs. 50,000. The same punishment will apply to a Nikah Registrar who solemnizes or conducts a marriage between two children, or a marriage of an adult with a child.
- Additionally, parents or guardians of either party will be punished if they facilitate or organize the marriage of a minor (anyone under the age of 18) or a child. Parents and/or guardians will be punished with imprisonment of up to 6 months and fine of Rs. 50,000.
- A Complainant who wishes to report a case of child marriage will need to submit a complaint to the Union Council. The Chairman Union Council will then report the case to the Family Court, which will punish the accused person according to the penalties mentioned above.
- The Court can forbid any party from solemnizing, facilitating or organizing a child marriage through an Injunction (a Court Order preventing child marriage). This includes the groom, parents or guardians, nikah Registrars and any other person involved. Violation of an injunction is punishable with imprisonment of up to 3 months and fine of Rs. 1000.

L. Rights of Inheritance & Property:

The real cause of concern in this area is the social mindset of this region where male heirs have this pre-determined mindset that women are not entitled to any legal share of inheritance as they get the same through means of their dowry at the time of marriage. The mindset is so

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32 As per Section 5 as amended by the 2015 Act
33 As per Section 6 as amended by the 2015 Act
34 As per Section 9 as amended by the 2015 Act
entrenched in the society that even female members follow it blindly and do not approach any forum to receive their fair share of inheritance.

At the national level, we have the Prevention of Anti-Women Practices Act 2011 that criminalizes a number of customary practices, such as wrongful deprivation from inheritance. It is now an offence with five years imprisonment and/or a fine of one million rupees\(^{35}\).

As highlighted in the Punjab Women Empowerment Program, existing laws and rules governing land administration do not adequately protect women’s inheritance rights. For this purpose, Revenue Officers have been tasked with the responsibility of initiating proceedings of inheritance mutation upon the death of a landowner and completion of the proceedings in timely manner\(^{36}\). Upon sanctioning of mutation, the Revenue Officer is required to commence partition proceedings immediately. The Punjab Land Revenue Rules, 1968 have been amended to include specific provisions relating to inheritance mutation and the punishment of Revenue Officers who, due to collusion or malafide intention, deprive a legal heir of his/her right in property/inheritance (hereinafter referred to as delinquent Revenue Officers)\(^{37}\).

A number of progressive legal reforms have been implemented as well:

a) Muslim women or men cannot withdraw their right of inheritance\(^{38}\).

b) The following instruments have been exempted from payment of stamp duty and registration fees\(^{39}\):
   a. Partition Deed in respect of agricultural land in rural areas; and
   b. Tamleek (gift in favour of legal heirs) of agricultural land in rural areas.

c) In the presence of son and daughter, grandson and granddaughter are also legal heirs\(^{40}\).

\(^{35}\) Section 10.2.10 of the Punjab Gender Parity Report, 2016

\(^{36}\) Section 135-A of the Punjab Land Revenue Act, 1967

\(^{37}\) Section 9.1.1.3 of supra 34 (above)

\(^{38}\) Section 6(1) Transfer of Property Act, 1882

\(^{39}\) Section 9(a) of The Stamp Act, 1899 and Section 78 of the Registration Act, 1908

\(^{40}\) Section 6, Muslim Family Law Ordinance 1961
d) District Enforcement of Inheritance Rights Committee has been established to monitor the situation if any person has been deprived by his/her legal share\textsuperscript{41}.

e) The divorced daughter and unmarried sister of a deceased government employee will also be entitled to family pension till life after his widow, infants and unmarried daughters\textsuperscript{42}.

f) Waiver of Registration Fee on documents pertaining to Inheritance Property\textsuperscript{43}.

g) Prohibition of depriving woman from inheriting property at the time of opening of succession. It has become a criminal offence punishable with a term of 10 years imprisonment or with a fine of Rs. 1 Million or with both\textsuperscript{44}.

**M. Family Laws\textsuperscript{45}:**

By virtue of the **Punjab Muslim Family Laws (Amendment) Act, 2015**, certain amendments were made to the **Muslim Family Laws Ordinance, 1961**:

- **Registration of marriages** by licensed nikah Registrars has been made compulsory, while marriages not solemnized by a licensed nikah Registrar can be reported and the person responsible punished with imprisonment of up to 3 months and fine of up to Rs. 1000/-.  

- **Nikah** Registrars are bound to accurately fill all columns of the nikahnama. Failure to fill all columns will result in fine of Rs. 25,000 and imprisonment of 1 month.

- **Succession**: if the son/daughter of a deceased person dies before opening of succession, the children of the son/daughter (if they are living) shall receive their parent’s share as inheritance.

\textsuperscript{41} As per Punjab Revenue Rules, 1968  
\textsuperscript{42} As per Punjab Pension Rules, 2009  
\textsuperscript{43} Vide Notification No 1823-2012/1202-ST(I) dated 13-08-2012  
\textsuperscript{44} As per Section 498A Pakistan Penal Code, 1860  
\textsuperscript{45} Section taken from the official website of The Punjab Commission on Status of Women. It is available at:  
https://pcsw.punjab.gov.pk/family_laws
Polygamy: No married man can remarry if he does not have permission from the Arbitration Council (a body which is headed by the Chairman, Union Council, for the purposes of divorce). A marriage contracted without permission cannot be registered, and carries a penalty of Rs. 500,000 and imprisonment of up to 1 year, along with payment of entire dower (if it was not given at the time of nikah) to the existing wife/wives.

Upon receiving an Application for permission, the Arbitration Council will obtain permission from the existing wife/wives’ before granting the Applicant permission to remarry. If the Chairman Arbitration Council does not take permission from the existing wife, he will be liable to a fine of Rs. 100,000 and imprisonment of 3 months.

Divorce (talaq): any man who wishes to divorce his wife must write an Application to the Chairman Union Council. If the man does not do so, divorce cannot be final, and he can face imprisonment of up to 1 year, along with a fine of up to Rs. 5000.

Divorce will be effective after 90 days have passed from the day on which the notice was first presented to the Chairman. Before expiry of 90 days, divorce can be revoked by the husband. In case the wife is pregnant at the time of pronouncement of talaq, talaq will not be effective until expiry of 90 days or end of pregnancy, whichever period ends later.

If the husband has delegated the right to divorce to the wife (haq-e-tafveez), she can divorce her husband according to the procedure mentioned above. Before expiry of 90 days, divorce can be revoked by the wife.

Maintenance: if a husband does not maintain his wife, or wives, his wife/wives can make an application to the Chairman Union Council, who will determine an appropriate amount of maintenance to be given to the wife/wives, and issue a certificate specifying this amount, and a date on which it has to be given by the husband every month.

Maintenance Certificates can also be issued by the Chairman Union Council if a father fails to maintain his children.

Punjab Family Courts (Amendment) Act, 2015 has also brought widespread change in the procedural culture of family courts:

Women can now retain up to 50% of their dower in case of khula, which they were previously bound to return if they apply for khula(divorce by Judicial Order).
• Family Courts can now deal with matters of personal property, belongings of the wife and child, and other matters arising out of the Nikahnama.
• Family courts have been granted the power to pass interim orders for maintenance, and obtain evidence of income and assets from the employer of the husband.
• The Family Judge can take notice of an offence under the MFLO and the Punjab Marriage Restraint (Amendment) Act, 2015, and summon parties to Court.

N. Other Customary Practices

The Prevention of Anti-Women Practices Act, 2011 prohibits the following customary practices that are prevalent in parts of Pakistan:

• **Giving a female in marriage or otherwise in badhla-e-sulh, wani or swara.** The Act criminalises the giving of a woman in marriage or compelling her into a marriage as per any customary practices under any name in consideration of settling a civil dispute or a criminal liability. The practice is punishable by imprisonment for a period ranging from three years to seven years and a fine of Rs. 500,000.
• **Prohibition of marriage with the Holy Quran.** The Act criminalizes the practice of marriage with the Holy Quran. Oath by a woman on Holy Quran to remain unmarried for the rest of her life or not to claim her share of inheritance will be deemed to be marriage with the holy Quran. The practice is punishable by imprisonment for a period ranging from three years to seven years and a fine of Rs. 500,000.
• **Prohibition of forced marriage.** The Act prohibits the practice of coercing or compelling in any manner a woman to enter into a marriage. The practice is punishable with a term which may extend to ten years and should not be less than three years and a fine of Rs. 500,000.
• **Prohibition of depriving women from inheriting property.** (Discussed in detail above).
SECTION 2: THE ROLE OF JUDICIARY

The legislature has the prerogative of enacting the letter of the law; however, it is the role of the judiciary to implement such laws in their spirit so that they achieve their true purpose. Since 2012, Rahim Yar Khan, Multan and Vehari have, on average, witnessed the highest number of reported cases of violence against women. On the other hand there has been a steady decrease in the number of convictions in cases of violence against women\(^{46}\).

In the previous section, the author analyzed how the state has enacted certain laws for the protection of women, but in this section, we shall analyze the effectiveness of statutory enactments by looking at progressive as well as regressive judicial precedents.

### A. Criminal Cases

1. **Section 376 of Pakistan Penal Code: The Offence of Zina (Rape)**
   i. **Case FIR No 347/15 dated 10.05.2015 under Section 376 PPC Police Station B.Z., Multan:** The Complainant had filed an application for lodging of FIR that the accused had committed Zina Biljabbar with her daughter and his friends remained on watch. However, during trial, the Complainant and her daughter retracted from their statements and they were declared hostile witnesses by the prosecution. The Honourable Judge held: “The Statement of the victim is the most organic evidence to identify the author of the crime. The victim had not supported the prosecution”. The accused was, thus, Acquitted from the charge.
   
   ii. **Case FIR No. 725/2013 dated 19.12.2013 under Section 496-A/376 PPC, Police Station Saddar, JalalpurPirwala:** The Complainant was the brother of the victim’s husband and had filed FIR against accused with allegation that he had abducted the victim and raped her. From the prosecution side, the victim appeared as PW-1 and stated that she was not abducted.

\(^{46}\) Section 8.8 of supra 34 (above)
by anyone and that she herself chose to reside at Dar-ul-Aman, at Multan due to the torture and behavior of her husband and brother in law. She further stated that the instant case is false and frivolous and that no one abducted her and committed rape with her.

The Honourable Court held that: ‘all the material story revolves around the alleged abductee Samiya Bibi who is the material witness in this case and conviction could be held even of the solitary statement of Samiya Bibi but in the case in hand when Samiya Bibi appearing as PW-1 has collapsed the prosecution story by stating that she has not been abducted by anyone and she was also not subjected to Zina...It is worth mentioning here that present accused Akhtar Hussain who is facing trial is not even nominated in the FIR and evidence available on record against the accused is also not sufficient for his conviction. Prosecution witnesses have also not supported the prosecution story. There is no possibility of conviction of the accused in this case, even if the remaining evidence is recorded. The accused was thus acquitted from the charge.

iii. Hadood Case No. 184/S of 2014; Hadood Trial No. 18/S of 2014. Complaint under Sections 376/511-PPC Police Station Bait Meer Hazar Tehsil Jattoi district MuzaffarGarh: The Complainant alleged that she was passing through the jungle of CheenaMalana on her way back home with her brother when four persons came on motorcycle, out of whom, two persons apprehended her brother (RehmatUllah) whereas the accused Nadir and one other unknown person dragged her into the reeds and attempted to commit illicit intercourse with her. It was further alleged that upon hue and cry her real brother GhullamShabbir and her father Ghulam Farid came to the site at which point the accused fled away.

During the proceedings the Complainant died and her learned counsel withdrew from the complaint. However, the parents of the deceased were summoned and thereafter the August Supreme Court of Pakistan took suo moto notice of this matter. By the order of the Supreme Court the mother of the deceased was transposed as complainant and the casewas
transferred to the court of Bahadar Ali Khan, Sessions Judge, Multan for disposal.

The Honourable Court acquitted the accused based on the following observations:

- The non-appearance of the real brother of the victim as eye witness speaks volumes about the truthfulness of the prosecution version. His absence from the witness box would lead the court to take an adverse presumption against the prosecution version.
- The father of the victim appeared but specifically denied to be eye witness of the occurrence. Had he been eye witness he must have deposed this fact in his statement in this case because his own daughter is the alleged victim. His absence from the list of eye witnesses also touches the roots of the credibility of the complainant’s statement who alleged that her father and brother were eye witnesses.
- The statements of witnesses were contradictory and did not support the prosecution story.
- According to the investigations carried out the location of phones of the accused persons was not found at the place of occurrence. It was submitted by the investigating officers that the occurrence did not take place and the accused were innocent.
- As per the medical examinations the hymen of the victim was not intact and that she admitted two index fingers easily. As per the court this report speaks volumes about the character of the victim.
- Semen was present on the trousers of the victim whereas as per the prosecution case the victim was not wearing trousers at the time when rape was attempted so the question of it being stained with semen does not arise. Therefore, it was held that semen present on the victims trouser may not be attributed to the accused.
- There are so many doubts and dents in the prosecution case that go to the roots of the case and the benefit of which will be given to the
The accused had alleged that the complainant was habitual to lodge false applications of zina with his daughter and used to get money from people.

The Honourable Court held that: "no father can file such a false application involving his minor daughter for such a heinous offence. If the complainant was in habit of filing such type of applications of zina, he can involve so many persons in this case but he did not involve any innocent person. The appellant has failed to point out any ill-will or malice on behalf of the complainant to falsely involve the appellant in this case. From the facts and circumstances it appears that the appellant/accused enticed a minor girl victim and thereafter he committed zina with her, therefore, the appellant committed a heinous offence."

2. Section 365-B of Pakistan Penal Code: The Offence of Kidnapping, Abduction or Inducting Women to Compel for Marriage

i. Case FIR No 239/2012 dated 27.05.2012 under Section 365-B PPC, Police Station Saddar JalalpurPirwala: It was alleged in this case that the Complainant’s daughter went to school, but on her way, the accused and his accomplice had confined her in a room. It was observed by the Court that: “the occurrence stated to be taken place on 21.04.2008 while FIR has been lodged on 27.05.2012 with unexplained delay of more than four years and no any plausible explanation has been given of this inordinate delay. It can safely be said that the FIR lodged by the complainant is the result of due consultation and deliberation which creates serious doubts about the alleged occurrence”. The accused were Acquitted.
ii. Mst Ayesha Malik v/s The S.H.O., PLJ 2015 Cr.C. (Lahore) 1065: This case involved the allegation of kidnapping, abducting or inducting woman to compel for marriage by the accused against the victim. The case was got registered by Muhammad Afzal Respondent No.2 on the complaint of father of Mst Ayesha Malik who reported that his daughter was student of 1st year she left for school and did not return.

The Honorable Court held that: “The petitioner herself appeared before this Court on 30.01.2015 and supported the contents of the petition and affidavit submitted by her stating that she had contracted marriage with her free consent and without any pressure and that she was not abducted by anybody. After her admission of having contracted marriage with Muhammad Rahib with free consent, there remains no case or charge to be tried, therefore, it is a fit case for quashment of FIR.”

3. Section 496-B of Pakistan Penal Code: Enticing or Taking Away or Detaining with Criminal Intent a Women
i. Manzoor Hussain v/s The State, PLJ 2011 Cr.C. (Lahore) 1017: The precise allegation against the petitioner in the instant case was that he while armed with Pistol along with his co-accused Abid Hussain armed with Kalashnikov and two ladies forcibly abducted Mst. Sumaira Bibi daughter of the complainant in order to subject her to illicit intercourse.

The Honorable Court held that: “The first bail petition moved by the petitioner was dismissed by this Court on 16.3.2011 but at that time the alleged abductee Mst. Sumaira Bibi had not been recovered. It is evident from the record that she was recovered by her father on 29.5.2011 and has not been produced before the I.O. till today. If the victim in an abduction case does not support the prosecution version or is not produced by the prosecution during investigation or trial then a reasonable doubt arises as to the veracity of the prosecution allegations and it becomes a case of further inquiry within the meanings of Section 497(2) C.R.P.C. It is also clear from order dated 10.4.2011 passed by the Judicial Magistrate (Central), Karachi, that the
alleged abductee negated the allegation of her abduction and stated that she had contracted marriage with Abid Hussain, co-accused of the petitioner. In these circumstances, the allegation of involvement in abduction against the petitioner clearly needs further probe and inquiry”. Bail was granted.

4. Section 336-B PPC: Hurt by Corrosive Substance

i. Mst Noor Begum v/s Muhammad Akram, PLJ 2013 Lahore 78: The victim stated that on 22.10.2015 at 11 PM she went outside to answer the call of nature when a person whose name was then not known to the victim held her hand and took her to a flour mill owned by him where he poured diesel on her and set her on fire. She was then taken to the hospital where her statement was recorded by the investigation officer in the presence of her father, brother and a doctor. The same was also thumb marked by the victim in token of its correctness. The victim died after a few days in the hospital.

The Honourable Court held that: “The Courts are supposed to see the quality of evidence and not quantity of the evidence; neither the complainant, PWs or IO have any previous enmity against the accused to falsely implicate him in the occurrence…PWs remained consistent upon their statements the ocular evidence is corroborated by the recoveries effected by the accused and medical evidence, during the investigation the accused was found involved in this case. The minor contradictions and ipsidixit of the police are not sufficient to create dent in the prosecution evidence. Therefore, I find no force in the contentions of learned defence counsel consequently; the defence version of the accused is hereby discarded…”

“That for all the reasons stated above, Muhammad Latif accused is hereby found guilty for throwing diesel upon Mst. Sonia Bibi and set her on fire punishable under section 336-B PPC, outraging her modesty punishable under Section 354 PPC; in result of receiving the injuries by burning her with petrol she dies under section 302-B PPC; creating sense of fear and insecurity in the area punishable under Section 7-ATA, 1997. Therefore, I convict him accordingly”.

31
B. Civil Cases

1. Custody of Minor
   
   i. Mst. Kaneez Fatima v/s Additional Session Judge. PLJ 2015 Lahore 246: This case involved the allegation of Custody of Minor Child. This petition has been filed by the petitioner, with the prayer that the impugned order passed by the learned Sessions Judge, may very kindly be set aside and in consequence of the same, the petition under Section 491 Cr.P.C filed by Respondent No. 4 may very kindly be dismissed to meet the ends of justice.

   The Honorable Court held that: “Mother of a child is always a natural guardian along with the father. Mother can never been ascribed or attributed the offence kidnapping of her own child. The exception posted with Section 361 P.P.C even goes to the extent of reliving a person from criminal liability even if he/she believes himself/herself to be the mother/father of an illegitimate child, or, who is in good faith believes to be entitled to the lawful custody of such child. The facts noted in the preceding para are sufficient to believe that the learned Sessions Judge did not examine the relevant material on the record. The order of the learned Sessions Judge Muzaffargarh as such is not maintainable in the eye of law and is liable to be set-aside”. Custody remained with the mother.

   ii. Mst. Rukhsana Begum v/s Additional District Judge. PLJ 2011 Lahore 874: The petitioner Rukhsana Begum is the real mother of the minor. She alleging therein that the Respondent is a man of bad character and due to the cruel behavior of the Respondent, she had to obtain divorce from him. Minor is being brought up properly. Besides reading Holy Quran he is also getting education in a school. The Respondent has no source of income and the petitioner being the real mother of the minor can look after him in a proper manner.
The Honourable Court held that: “Both the Courts below concurrently held against the petitioner and lawful decisions taken by Courts below within the ambit of their jurisdiction conferred by law and based on sound reasons could neither be interfered nor could be substituted in Constitutional jurisdiction of this Court. The Courts below have not committed any illegality in determining the question of welfare of minor. The cases referred to by the learned counsel for the petitioner are not relevant to the circumstances of the instant case, whereas, the case law produced by the learned counsel for respondent no 3 is fully applicable in the present case.” Custody was not given to the mother.

2. Inheritance of property
   i. Mst Noor Begum v/s Muhammad Akram. PLJ 2013 Lahore 78: nn The case of plaintiff is that at the time of death of his father he was entitled to inherit the whole of the property but as the plaintiff was minor at that time, therefore 1/3rd share was given to his mother, Mst. Bahisht Bibi because she was to bear the expenses upon marriage of sisters of plaintiff, one of whom was blind also. In Para 4 of the plaint, plaintiff has stated that Mst. Bahisht Bibi, his mother under the family settlement transferred land in the name of plaintiff and he became owner of land measuring 234-kanals 15-marlas. The plaintiff has also asserted the mutation of inheritance of Mst. Bahisht Bibi, which was sanctioned after her death. He has further challenged in this suit the transfer of 1/2 share in 77-kanals 01-marla, the property in the name of Mst. Mumtaz Begum, his wife at the time of her death in favour of her brother and sisters. The plaintiff has challenged the gift of suit property allegedly on the basis of fraud and stated that he has never gifted the property.

   The Honorable Court held that:”In this view of the matter, the findings recorded by both the Courts below are against the facts and evidence available on the file as well as settled law, as the Courts below misapplied the law presuming it to be a matter of inheritance. It was not a simple and clear case of matter of inheritance for the plaintiff only, whereas on the other side the defendants are the sisters of plaintiff who have acquired the rights
through inheritance of their mother. In these circumstances, suit filed by the plaintiff was not competent”. Revision was allowed in favour of the female.

ii. Civil Suit No. 575/I of 2011, decided on 03.03.2017 in the court of Musannif Ali Joyia, Civil Judge, 1st Class, Multan: Plaintiffs and defendants are real brothers and sisters. The plaintiffs are simple illiterate pardanasheen women who on the basis of trust on defendant (real brother) executed general power of attorneys in the defendants favour for the management and administration of their shares but the defendant took benefit of their illiteracy and incorporated in those general power of attorneys the authority to sale out and mortgage the suit property. The defendant on the basis of said disputed power of attorneys has further alienated the entire shares of the plaintiff in favour of his close relatives through registered sale deeds hence plaintiffs filed suit for declaration and also sought consequential relief to the effect that all the defendants may kindly be restrained from further alienating the suit property.

The Honourable Court held that: “As the authority to sale out the suit property is denied by the plaintiff hence, under the law the defendant no. 1 has to prove the factum of authority to sale out the suit property. If for the sake of arguments, it is assumed that defendant no. 1 was authorized by the plaintiffs to sale out their suit property then it has created relationship of agency between the plaintiffs and the defendant. The defendant no.1 being the agent was duty bound to get consent of plaintiffs before selling out his property in favour of his close relatives. It is settled law that in case of lacking evidence as to prior consent further alienation and transaction by agent on behalf of principal is not binding on the principal. Hence, the suit of the plaintiff is decreed in favour of plaintiffs. Defendants are also permanently restrained from further alienating suit property. The general power of attorneys and all subsequent transactions are declared null and void.
3. Recovery of Dower, Dowry Articles and Maintenance Allowance

i. W.P. No. 9730-2015 Muhammad Nawaz v. Mst. Shamim Mai etc, in the Lahore High Court, Multan Bench: Mst. Shamim Mai, respondent no. 1 instituted a suit for recovery of articles, dower amount and for recovery of maintenance allowance and through her suit, averred that respondents nos. 3 and 4 were born out of the wedlock of petitioner with her and after framing of issues, parties were required to produce their respective evidence in response to which, evidence has been led and during proceedings petitioner moved two separate applications i.e. one for seeking for summoning of Doctor/Pathologist of Noor Clinical Laboratory and the other to conduct DNA test. Both the applications have been controverted by parties and learned Judge Family Court after hearing the parties dismissed both the applications, hence this writ petition.

The Honourable Court held that: “As far as DNA test is concerned...It has also been held in the case reported as “Khizer Hayat vs. Additional District Judge, Kabirwala and 2 others” (PLD 2010 Lahore 422) that direction could not be issued for conducting the DNA Test as a matter of routine in cases where father refuses to acknowledge this child born during lawful wedlock because under Article 128 of the Qanun-e-Shahadat Order, 1984, a child born during continuance of a valid marriage or within two years of its dissolution, if mother remained unmarried during that period, was conclusive proof that he was legitimate child of that man, unless the man denied the same. For the foregoing discussion, petition in hand merits dismissal, hence the same is dismissed in limine.”

ii. Family Suit No. 464-F/2013 decided on 19.01.2017: The plaintiff instituted this suit for recovery of dowry articles, recovery of dower and recovery of past and future maintenance allowance of her own and of her minor daughter/plaintiff No. 2 against the defendant. It was contended that between plaintiff and defendant was solemnized on 02.03.2012 and in result of marriage one daughter, the plaintiff no. 2 was born. Disputes started arising
between the parties from the first day of marriage and the plaintiff was expelled from the defendant’s house on a number of occasions after physical beatings however, on family intervention the plaintiff again returned to that house. After the birth of the minor daughter the plaintiff was again shunted out from the house. It was further contended by the plaintiff that at the time of Nikkah two tola gold ornaments were stipulated as Haq-ul-Mehr, dowry articles valuing 4,00,000 were given to the plaintiff by the plaintiffs parents and a five marla plot was also gifted to the plaintiff by her father in law through registered sale deed no. 2719 dated 22.02.2012 the possession of which was not delivered to the plaintiff. The defendant no 1 was time and again asked to return dowry articles including gold ornaments, pay dower money and maintenance allowance but he flatly refused to do so hence this suit.

The Honourable Court held that: “In view of the findings of the above issue the claim of plaintiff no. 1 for recovery of dowry articles is hereby partially decreed. The defendant will pay price of the articles after excluding 25% value mentioned in the list of dowry articles. The maintenance allowance of plaintiff no. 1 is fixed at Rs. 3000/- per month till completion of iddat in case of divorce. The plaintiff no. 1 is entitled to recover the possession of the disputed property given to her through deed and is also entitled to recover dower of one tola gold ornaments.

iii. Family Suit No. 474/F. Decided on 23.02.2017: The registered Nikkah of the plaintiff was solemnized with the defendant on 26.09.2001 in lieu of Rs. 20,000/-, 41/2 tolas gold ornaments and a plot measuring 02-Marlas vide registry No. 6596/1 dated 19.09.2001 as dower. The plaintiff at the time of marriage was given dowry articles by her parents valuing at Rs. 1,86,900/- and 14 tolas gold ornaments. Three issues were born out of these wedlock. Initially the relations between them remained cordial however after some time disputes started to arise and the defendant expelled the plaintiff and her minor children out of the house after which he also contracted second marriage without informing the plaintiff. As of now one minor is in the custody of the plaintiff the other two are in the custody of the defendant. The
defendant was repeatedly asked to pay maintenance allowance, dower, Rs. 200,000 as compensation for contracting second marriage and dowry articles along with 14 tola gold ornaments but he refused hence this suit.

The Honourable Court held that:

“It is well settled law that the wife is entitled for maintenance allowance subject to performance of her matrimonial obligations. Admittedly, the marriage is still intact and plaintiff no. 1 has failed to perform her matrimonial obligations since 2009 by reason of second marriage of her husband although this is not sufficient reason for non-performance of matrimonial obligations. Hence, plaintiff no. 1 is not entitled for maintenance allowance. The parentage and minority of plaintiff no. 2 has not been denied by the defendant. Therefore, minor is entitled to maintenance allowance”.

“Defendant asserted that the said dowry articles were returned back in presence of witnesses. During cross examination, DW’s stated that the dowry articles were returned back to the plaintiff no. 1 through Panchayat decision but the defendant failed to produce even a single document of said decision. I am of the view that the assertion should be proved by cogent and independent evidence. The plaintiff failed to prove 14 tolas gold ornaments through cogent and independent evidence but I hereby consider the fact admitted by defendant that plaintiff was in possession of 13 tolas jewellery including 4 tolas gold ornaments given by defendant i.e. (13-4=9). Hence, the plaintiff is entitled to recover 9 tolas gold ornaments as dowry articles or its alternate price”.

“Admittedly, the defendant has contracted a second marriage. I am of the view that this condition is against the natural justices law as well as religion of Islam and same is void ab-initio. Therefore, plaintiff no.1 is not entitled to recover the said amount of Rs. 200,000/-.

“After considering the admitted statement of both the parties the plaintiff no. 1 is entitled to recover dower plot measuring two marlas but is not entitled to
recover 4 ¼ tolas gold ornaments”.

iv. Family Case No. 33-F of 2013, date of decision 11.02.2017: Marriage of the plaintiff was contracted with the defendant on 19.4.1998 against dower cash amount Rs. 300/- and 4 canals agricultural land. At the time of marriage, plaintiff was given dowry articles valuing at Rs. 3,33,000/- and 10 tolas gold ornaments. It was also contended by the plaintiff that at the time of marriage the defendant gave her gold ornaments weighing 5 tolas as bridal gift. From this wedlock two children were born. Four years before institution of present suit the defendant ousted the plaintiff and the minor children out of the house and has failed to maintain the plaintiffs ever since hence the present suit for recovery of dower, dowry articles and maintenance allowance was filed by the plaintiff.

The Honourable Court held that: “In view of the findings on the above mentioned issues, the suit of the plaintiff for the recovery of maintenance allowance is decreed in favour of the plaintiffs and against the defendant to the effect that plaintiff no. 1 is entitled to recover her maintenance allowance at the rate of Rs. 3000/- since January 2009 till her iddat period i.e. 08.5.2013. Plaintiffs No. 2 and 3 are entitled to monthly maintenance of Rs. 2000/- per month each with 10 percent annual increase since January 2009 till their attaining majority. Suit of plaintiff no. 1 for recovery of dower of 04 kanals land is decreed in her favour. The suit of the plaintiff for recovery of dowry articles is decreed to the effect that in lieu of her dowry articles plaintiff no. 1 is entitled to recover Rs. 100,000/- only. The suit of the plaintiff no. 1 for recovery of gold ornaments weighing 5 tolas as her bridal gift is dismissed”.

“Lastly, said list of dowry articles contains some gold ornaments. Regarding gold ornaments, it is observed that it is settled view of higher courts that in our society gold ornaments are kept by females in their custody. It is not possible for plaintiff no. 1 to have lived for eleven years with defendant but had not kept her gold ornaments in her custody. Thus it is held that said gold ornaments were with the plaintiff no. 1. Hence, to the extent of gold ornaments claim of plaintiff no. 1 is turned down”.
4. Dissolution of marriage

i. Family Suit No. 10-F. date of decision 07.03.2017: The registered Nikkah of plaintiff was solemnized with the defendant on 25.05.2012 and no issue was born out of the wedlock. The conduct of defendant was cordial in the beginning but subsequently it became harsh. About three years ago the defendant started to torture the plaintiff and expelled her from his house. Therefore, the plaintiff has got extreme hatred against the defendant and she cannot live with him at any cost. The defendant was repeatedly summoned but the defendant did not bother to appear in court. Hence, ex-parte proceedings were initiated against him on 28.01.2017.

The Honourable Court held that: “It is a fact that a wife can’t be compelled to live with her husband without her free will and consent. The instant suit is hereby decreed on the basis of khula.”
SECTION 3 ACCESS TO JUSTICE: THE CASE OF FEMALE LITIGANTS IN SOUTHERN PUNJAB

Issues relating to violence against women are intimately bound up with legal aid and the justice system. The 1973 Constitution of the Islamic Republic of Pakistan provides that “The State shall ensure inexpensive and expeditious justice”. Obstacles in women’s access to justice go far beyond legislative frameworks and encompass a wide range of factors. Women’s access to justice means a just, fair and non-discriminatory justice system that ensures women equal rights and interests. This section sheds light on the obstacles that prevent women from accessing justice. Three focus group discussions were held with people from diverse backgrounds including judges, (civil and criminal), senior practicing lawyers both male and female, women litigants and representatives of NGOs in order to get an insight into the practical dilemmas faced by women while seeking justice.

The following were interviewed by the author and were a part of the discussions held (certain names withheld):

1. The Honourable District Session Judge, Multan;
2. The Honourable Senior Civil Judge, Multan;
3. The Honourable Additional Session Judge, Multan;
4. Learned Magistrate Judge;
5. Mr. ShahbazMurtaza Ansari, Advocate High Court;
6. Mr. SafdarSarsana, Advocate High Court;
7. Mr. Khalid Iqbal Cheema, Advocate High Court;
8. Mr. Hafiz Muhammad Tahir, Advocate High Court;
9. Ms. Madiha Wahid Siddiqui, Advocate High Court;
10. Ms. Farihabokhari, Advocate High Court;
11. Ms. TanzeelaAltat (Project Director CCHD);
12. Ms. Khadija Shaheen, Project Team CCHD;
13. Ms. FerozaFaiz, Advocate High Court;
14. Ms. Sidra Shamim, Advocate High Court; and
15. Two female litigants
The observations have been grouped together and are summarized as under for purposes of clarity and coherence.

1. **Financial and economic barriers.**

Access to justice is directly linked with poverty. Formal legal systems can be discriminatory and expensive for the poor. Lack of resources is one of the main limiting factors faced by women litigants in Southern Punjab, most of whom avoid seeking justice because of lack of affordable legal representation. The average cost of filing and pursuing a suit that has to be borne by the woman litigant as stated by one of the female practicing lawyers comes to about Rs. 50,000. The problem here is twofold. Firstly, women litigants are dependent upon their fathers, brothers or husbands for financial support and find it difficult to arrange for money. Secondly, in majority of cases the defendant is actually one of the family members of the woman on whom she is financially dependent like for e.g. in family cases of recovery of dower, dowry articles and maintenance and similarly in child custody matters, matters of dissolution or inheritance matters the defendant is actually either the husband of the woman or the brother or some other family member.

2. **Lack of awareness**

Education plays a central role in raising awareness in women about their rights and the protection provided to them by law. In Southern Punjab most of the women are not aware of their rights recognized under sharia and/or state law. Arguably, this lack of awareness generates feelings of powerlessness among female litigants and affects their access to justice. Lack of awareness stretches beyond female litigants and also encompasses practicing lawyers in Southern Punjab. This became evident during the Gender Sensitization and Pro-Women Laws Training recently held at the District Bar Association, Multan. Training was provided to one hundred and fifty five lawyers including about fifty five female lawyers. It transpired during the training sessions that only two of the lawyers under training were aware of the pro-women laws recently passed in Punjab.

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47Identified as a key obstacle by practicing lawyers and female litigants interviewed for the purposes of this study.
3. **Shortcomings of the justice system**

Another key factor that discourages women from seeking justice is the lack of facilities for women litigants in court. The author observed that in terms of infrastructure, there are no seating spaces, secure and comfortable waiting areas, separate washrooms and nursing rooms for women litigants. The lack of such facilities is a serious practical impediment that hinders women’s access to justice and has consistently been ignored. The Honourable District Session Judge, Multan identified this as the most important practical impediment to women’s access to justice.

4. **Inordinate delays**

Justice delayed is justice denied. The concept of access to justice does not only implicate the right to litigate or defend a claim but instead refers to the right to effective access to justice. Undue delay in the disposal of cases in courts or in investigations carried out by police play a pivotal role in hindering women’s access to justice and acts as a restraining factor. Another important factor pointed out by Mr. SafdarSarsana, learned advocate High Court is that women in these areas have no backing support of their family and they only come to courts for justice as a last resort after being wronged for years. By this time the woman is already mentally and physically exhausted and such practical impediments easily shatter her confidence and discourage her to pursue her case till the end. An interesting recommendation shared by Mr. Abid Ali, learned Magistrate Judge and Mr. ShahbazMurtaza Ansari, advocate High Court was regarding reform of law aimed towards taking away discretionary powers of the courts in terms of granting adjournments. For e.g. in the evidence stage the law should fix the number of opportunities to be provided to the parties or the number of days in which the evidence has to be closed failing which the evidence will not be considered. Once this law is passed and the discretionary power taken away from the judge, automatically inordinate delays will be taken care of.
5. **Parallel justice systems**

It is often easier for women, especially for indigenous and rural women, to have access to traditional and informal systems of justice. Yet most of these systems are highly discriminatory and have a negative impact on women’s rights and such informal systems of justice also known as the traditional justice or panchayat systems must be taken into account to ensure that customary principles do not contradict and override the principle of equality.

6. **Lack of family support**

One of the litigants interviewed raised this as the biggest practical impediment for women seeking justice. The said litigant’s husband was abducted by his own step brothers due to disputes relating to money matters. The litigant stated that she had been seeking the help of the police officials since the past six months just to find out the whereabouts of her husband. She also stated that she has been homeless and has been suffering harassment at the hands of the husband’s family eventually leading her into attempting suicide. As a mother of three she is fighting singlehandedly just to protect the lives of her children. As per her story the biggest hurdles being faced by her are lack of finances and lack of support from her family who view her as a source of shame just because she had a marriage of choice.

Mr. Safdarsarsana, advocate High Court linked the same point to obtaining police support. He stated that when women go before the police in the initial stages of the case the police also view them from a certain lens which is not too favourable for the victim. In order to get police support unfortunately in this society the female needs some backing of her family for e.g. he pointed out that if a man from her family could accompany her and do the talking before the police her case would be taken much more seriously. In the absence of this support system the victims give in to the illegal and unreasonable attitude of the police particularly in investigation stages of the cases.

7. **Misuse of Power**

Another aspect raised by one of the female lawyers interviewed was the misuse of power. She pointed out that mostly defendants in cases of gender based violence are strong people in terms of position and influence. On the other hand side the victims are not only weak in terms of power and say but are also weak financially. The result of this is that the lawyers engaged by
the women who are not paid lucrative fees by women litigants are then in turn approached by the defendants who either offer to pay them a lucrative amount of money for misleading the plaintiff or threaten them for the same purpose. Either way it is misuse of power by the 'powerful' that compromises the situation of women litigants.

8. Coordination within Court Premises

Mr. Khalid Iqbal Cheema, advocate High Court stated lack of coordination within court premises is one of the main flaws in the system that need to be improved to facilitate women. He stated that process of prosecution should be made easy. The front desk should have more well trained and knowledgeable women lawyers. There should be better coordination between front desk and courts. He further stated that awareness should be increased particularly in women. Easily understandable handouts should be provided on the role of departments and steps involved in the process of prosecution. He also contended that special courts should be set up for arbitration so that litigation could be avoided by as many women as possible.
SECTION 4: LITERATURE REVIEW

As is clearly from the date of promulgation, most of the legislative reforms were crafted just a few years back. The response by the judiciary will definitely take its time and most of the laws have not even been invoked in the Courts of law at the time of writing of this report. The only key indicator that remains at the moment is the concept of ‘Public Perception’. How warmly have these laws been welcomed by the Society, moreso by which particular sect? Who are in opposition and are they raising any meaningful and/or constructive suggestions or are they just arguing for the sake of arguments only.

A. Common Man’s Perception:
A common person interprets protection of women as protection against domestic violence. In reality, the protection required is multi-fold. It does not comprise of protection against domestic violence only; women also face issues in succession, in prisons and in the workplace.

Women have been, since the last decade or so, constantly struggling to raise a voice against different violence issues against their gender. Different NGOs have emerged who have their slogan to make Pakistan a better place for women; a place where they are treated with respect and dignity. Through the beacon of literacy that is not so common within our society, there is an emerging trend whereby men have started to strengthen this movement by standing along the women. They are equally concerned with the protection of women and fighting for them.

B. Women Protection Acts:
The Women rights’ champions have generally welcomed the coming of Protection Against Harassment of Women at Workplace Act 2010 (the “PAHWWA”) and The Punjab Protection of Women Against Violence Act 2016 (the “PPWAVA”).

Both the Acts, prima facie, were of great value; they seem to solve the problem of the women in Pakistan. The long struggle of the NGOs had finally paid off, and Women Rights’ Activists celebrated the victory. However, before the Acts were promulgated and laid effects, they were
met with backlash. The Ullema of the country declared it ultra vires to Islamic Ideology and principles; the Ideology and principles they bear now.

The view of the public has been mixed. People started discussing the Acts on a daily basis. They are more and more interested in these issues now and concerned with making a change. However, the Acts do not magically create a safe haven for the women; there are worries attached to them, worries which the women of Pakistan as well as the men are trying to contemplate.

The 2010 Act was appreciated by many as it was the first of its kind. Women were delighted to enjoy the protection of a piece of legislation that allows them to fulfill their dreams of equal standing within the society; to feel fear-free when working under or along men. The Act framed harassment, particularly, as a legal issue and under its definitions, did purport it as a crime. The Pakistani government has, through the Act, fulfilled various International Treaty Obligations bestowed upon itself.

The Act was seen as a stepping stone for women to raise their voices against sexual harassment at the workplace. The previously oppressed women, who dealt with daily shots of harassment with their mouths zipped just to firm their place at the office and not ruin any chances of pay raises, now had a platform to complain against such ill treatment. The fear-ending legislation has somewhat provided women with an equal opportunity within the society, a chance to make their mark in the same and be independent.

The Ombudsmen have a huge responsibility in cases related to workplace harassment. Since harassment is a subjective issue and thus cannot be easily assessed or measured, the context in which such acts take place and their intensity are important determining factors. This places a huge responsibility on the Ombudsmen to ensure that the application of the law is consistent with the objectives of the law and in consonance with the principles of justice, equity and fairness. Furthermore, it should be compulsory for organizations to conduct regular assessments with respect to incidents of harassment. Lastly, awareness-raising campaigns
need to be conducted with the help of media and non-profit organizations so that more women are aware of their rights under the legislation and can therefore take advantage of it.48

The 2016 Act, however has trended since before its birth. It has met with various voices of disapproval within the country, criticizing and opposing it due to various reasons.

The first and foremost group, who started opposing the very theme of the Act, were the Religious Clergy of the country, for whom the legislation is un-Islamic. There has always been difficulty in challenging the religious rhetoric when the government produces a legislation or rule to protect the women of Pakistan. Under the clout of religion, right wing and other religiously inclined lobbies and groups have hijacked the debate to portray a picture that protecting women against violence or other adversities is un-Islamic.

The realistic approach towards the 2016 Act bears the view amongst women that domestic violence has been toned down within the Act and brought into the ambit of civil law rather than criminal. The essence of the Act is such that it does provide relief against the domestic violence actions, but in a manner that repetition of the same is highly unlikely. When criminalized, the attackers will tend to avoid future repetition; the element of deterrence however, lacks within the ambits of civil law. There is no sentencing; just execution. The women who have taken an interest in the law to seek protection or to spread knowhow through NGOs, activist groups and general education, have expressed distress over the presence of various ambiguities within the Act itself. Things as minute as the definitions and the preambles include irregularities and make the understanding and implication of the Act difficult. An Act which is for the women of the country needs to properly define what is meant by the word “Female”, however, the same fails to do so.

The Act is further seen as a piece of legislation that gives rise to a prolonged establishment of procedures. Setting up complaint centers, protection centers and shelter homes throughout Punjab is not a day’s play; it involves various approvals, budgets and departments of the government before progression is seen. As compared to the 2016 Act, the Sindh Domestic Violence (Prevention and Protection) Act 2013 is seen more suitable and understandable to the

48The Protection against Harassment of Women at the Workplace Act 2010: A Legislative Review by Maria Khan and Ayesha Ahmed
women as it is without the use of complex language that causes ambiguity. Constructive criticism of the main clauses of the Act has also been voiced and put to pen on various instances with the Act laying down an overall effect of being something that is glorified as a headline but in reality bears more problems on women rather than it provides.

C. Prison Ill Treatment:
Although the number of women imprisoned throughout Pakistan had been well under 1,000 before 1980s, it has significantly increased since. The women in our prisons are a majority from a rural background, with surveys indicating extremely low incomes of their households. There have been reports of ill treatment within the prisons. The major issue is of the right to fair trial; majority of the women imprisoned do not know about what crime they have committed. This point towards a trend of influence over the police systems whereby women are often imprisoned due to personal vendettas rather than actual crimes.

D. Land Inheritance:
Pakistan is amongst the worst performing countries in South Asia with regards to asset ownership by women. This has been seen as an effect of marginalizing women which has been a forefront trait of this country flowing from the highly patriarchal nature of the society. The patriarchal nature of the society also suppresses the Islamic notion of succession for women and the result being improper distribution of land whereby the women’s shares are often kept by men. There exist laws that should ensure the proper succession and inheritance by women but the practices, implementation and enforcement flow from inefficient mechanisms.

E. Summary:
There has been an uproar within the society recognized by various groups of people through different pieces of literature scrutinized herein and a change in trend has somehow made way within Pakistan; the literate women are not only fighting to make a mark within the society, they, along with literate men, are overall fighting to make Pakistan a better place for women. They
want to change this country into one whereby a woman is protected at home, is fearless at work and prospers in society without a single blow of oppression.

The path, however, seems long and there is a lot of struggle on the way. The Acts which were initially seen as a stepping stone, have, with time, proven to be slaves of the lack of procedure within the country. While there is a positive boost of morale that makes women stand up daily for themselves and their fellow beings, there is a sense of insecurity and negativity in the air as constant oppression, opposition and hatred is being thrown against their betterment. The sad truth that remains a part of Pakistan is that the religious clergy somehow finds a way to present their arguments, coated in a blanket of Islamic Ideology and oppress the waves of voices and reforms for women of Pakistan.
SECTION 5: STATISTICAL DATA

A. Regional Estimates of Violence against Women

1. Honor Killing:

Table 1.1

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Registered Cases</th>
<th>Percentage Increase/Decrease From Previous Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>75</td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td>86</td>
<td>+14.67%</td>
</tr>
<tr>
<td>2012</td>
<td>90</td>
<td>+4.65%</td>
</tr>
<tr>
<td>2013</td>
<td>83</td>
<td>-7.78%</td>
</tr>
<tr>
<td>2014</td>
<td>103</td>
<td>+24.09%</td>
</tr>
<tr>
<td>2015</td>
<td>98</td>
<td>-4.85%</td>
</tr>
<tr>
<td>2016</td>
<td>88</td>
<td>-10.20%</td>
</tr>
</tbody>
</table>

Source: Statistics collected from Central Jail Multan and District Jail Multan

Total percentage increase from 2010 till 2016 = 17.33%

Table 1.2

<table>
<thead>
<tr>
<th>Year</th>
<th>Honour Killing</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016</td>
<td></td>
</tr>
<tr>
<td>2015</td>
<td></td>
</tr>
<tr>
<td>2014</td>
<td></td>
</tr>
<tr>
<td>2013</td>
<td></td>
</tr>
<tr>
<td>2012</td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td></td>
</tr>
<tr>
<td>2010</td>
<td></td>
</tr>
</tbody>
</table>
2. Rape:

Table 2.1

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Registered Cases</th>
<th>Percentage Increase/Decrease From Previous Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>117</td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td>130</td>
<td>+11.11 %</td>
</tr>
<tr>
<td>2012</td>
<td>129</td>
<td>-0.77 %</td>
</tr>
<tr>
<td>2013</td>
<td>133</td>
<td>+3.10 %</td>
</tr>
<tr>
<td>2014</td>
<td>119</td>
<td>-10.53 %</td>
</tr>
<tr>
<td>2015</td>
<td>121</td>
<td>+1.68 %</td>
</tr>
<tr>
<td>2016</td>
<td>108</td>
<td>-10.74 %</td>
</tr>
</tbody>
</table>

Source: Statistics collected from Central Jail Multan and District Jail Multan

Total Percentage Increase from 2010 till 2016 = 0%
3. Kidnapping / Abduction:

Table 3.1

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Registered Cases</th>
<th>Percentage Increase/Decrease From Previous Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>103</td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td>122</td>
<td>+18.44%</td>
</tr>
<tr>
<td>2012</td>
<td>113</td>
<td>-7.37%</td>
</tr>
<tr>
<td>2013</td>
<td>122</td>
<td>+7.96%</td>
</tr>
<tr>
<td>2014</td>
<td>106</td>
<td>-13.11%</td>
</tr>
<tr>
<td>2015</td>
<td>106</td>
<td>0.00%</td>
</tr>
<tr>
<td>2016</td>
<td>92</td>
<td>-13.21%</td>
</tr>
</tbody>
</table>

Source: Statistics collected from Central Jail Multan and District Jail Multan

Total Percentage Decrease from 2010 till 2016 = 10.68%

Table 3.2

![Kidnapping Graph]
4. **Criminal Assault / Violating Modesty of Women**

Table 4.1

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Registered Cases</th>
<th>Percentage Increase/Decrease From Previous Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td>6</td>
<td>-25%</td>
</tr>
<tr>
<td>2012</td>
<td>8</td>
<td>+33.33%</td>
</tr>
<tr>
<td>2013</td>
<td>9</td>
<td>+12.5%</td>
</tr>
<tr>
<td>2014</td>
<td>5</td>
<td>-44.44%</td>
</tr>
<tr>
<td>2015</td>
<td>7</td>
<td>+40%</td>
</tr>
<tr>
<td>2016</td>
<td>8</td>
<td>+14.29%</td>
</tr>
</tbody>
</table>

*Source: Statistics collected from Central Jail Multan*

Total Percentage Increase from 2010 till 2016 = 0%

Table 4.2
5. **Forced Prostitution:**

Table 5.1

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Registered Cases</th>
<th>Percentage Increase/Decrease From Previous Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>42</td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td>47</td>
<td>+11.90%</td>
</tr>
<tr>
<td>2012</td>
<td>48</td>
<td>+2.13%</td>
</tr>
<tr>
<td>2013</td>
<td>49</td>
<td>+2.08%</td>
</tr>
<tr>
<td>2014</td>
<td>51</td>
<td>+4.08%</td>
</tr>
<tr>
<td>2015</td>
<td>50</td>
<td>-1.20%</td>
</tr>
<tr>
<td>2016</td>
<td>57</td>
<td>+14%</td>
</tr>
</tbody>
</table>

*Source: Statistics collected from Central Jail Multan*

Total Percentage Increase from 2010 till 2016 = 35.71%

Table 5.2

![Forced Prostitution Graph](chart.png)
6. Acid Attack:

Table 6.1

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Registered Cases</th>
<th>Percentage Increase/Decrease From Previous Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td>10</td>
<td>+42.86%</td>
</tr>
<tr>
<td>2012</td>
<td>7</td>
<td>-30%</td>
</tr>
<tr>
<td>2013</td>
<td>11</td>
<td>+57.14%</td>
</tr>
<tr>
<td>2014</td>
<td>10</td>
<td>-9.09%</td>
</tr>
<tr>
<td>2015</td>
<td>8</td>
<td>-20%</td>
</tr>
<tr>
<td>2016</td>
<td>7</td>
<td>-12.5%</td>
</tr>
</tbody>
</table>

Source: Statistics collected from Central Jail Multan and District Jail Multan

Total Percentage Increase from 2010 till 2016 = 0%

Table 6.2

Acid Attack

Acid Attack

Acid Attack
B. Regional Estimates of Crimes Committed by Women

1. Murder:

Table 7.1

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Registered Cases</th>
<th>Percentage Increase/Decrease From Previous Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>36</td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td>44</td>
<td>+22.22</td>
</tr>
<tr>
<td>2012</td>
<td>45</td>
<td>+2.27</td>
</tr>
<tr>
<td>2013</td>
<td>47</td>
<td>+4.44</td>
</tr>
<tr>
<td>2014</td>
<td>48</td>
<td>+2.13</td>
</tr>
<tr>
<td>2015</td>
<td>53</td>
<td>+10.42</td>
</tr>
<tr>
<td>2016</td>
<td>57</td>
<td>+7.55</td>
</tr>
<tr>
<td>2017</td>
<td>56</td>
<td>-1.75</td>
</tr>
<tr>
<td>Total</td>
<td>386</td>
<td></td>
</tr>
</tbody>
</table>

Source: Statistics collected from Women Jail Multan

Total percentage increase from 2010 till 2017 = 58.33 %

Table 7.2

![Murder Chart]
2. **Drug Offences:**

**Table 8.1**

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Registered Cases</th>
<th>Percentage Increase/Decrease From Previous Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td>17</td>
<td>+13.33</td>
</tr>
<tr>
<td>2012</td>
<td>18</td>
<td>+5.88</td>
</tr>
<tr>
<td>2013</td>
<td>23</td>
<td>+27.78</td>
</tr>
<tr>
<td>2014</td>
<td>24</td>
<td>+4.35</td>
</tr>
<tr>
<td>2015</td>
<td>24</td>
<td>0.00</td>
</tr>
<tr>
<td>2016</td>
<td>33</td>
<td>+37.50</td>
</tr>
<tr>
<td>2017</td>
<td>32</td>
<td>-3.03</td>
</tr>
<tr>
<td>Total</td>
<td>186</td>
<td></td>
</tr>
</tbody>
</table>

*Source: Statistics collected from Women Jail Multan*

Total percentage increase from 2010 till 2017 = 120%
3. Kidnapping / Abduction:

Table 9.1

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Registered Cases</th>
<th>Percentage Increase/Decrease From Previous Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td>14</td>
<td>+100.00</td>
</tr>
<tr>
<td>2012</td>
<td>14</td>
<td>0.00</td>
</tr>
<tr>
<td>2013</td>
<td>17</td>
<td>+21.43</td>
</tr>
<tr>
<td>2014</td>
<td>13</td>
<td>-23.53</td>
</tr>
<tr>
<td>2015</td>
<td>13</td>
<td>0.00</td>
</tr>
<tr>
<td>2016</td>
<td>13</td>
<td>0.00</td>
</tr>
<tr>
<td>2017</td>
<td>13</td>
<td>0.00</td>
</tr>
<tr>
<td>Total</td>
<td>104</td>
<td></td>
</tr>
</tbody>
</table>

Source: Statistics collected from Women Jail Multan

Total percentage increase from 2010 till 2017 = 85.71 %

Table 9.2
4. Forced Prostitution:

Table 10.1

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Registered Cases</th>
<th>Percentage Increase/Decrease From Previous Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td>5</td>
<td>+150.00</td>
</tr>
<tr>
<td>2012</td>
<td>4</td>
<td>-20.00</td>
</tr>
<tr>
<td>2013</td>
<td>4</td>
<td>0.00</td>
</tr>
<tr>
<td>2014</td>
<td>0</td>
<td>-100.00</td>
</tr>
<tr>
<td>2015</td>
<td>0</td>
<td>0.00</td>
</tr>
<tr>
<td>2016</td>
<td>0</td>
<td>0.00</td>
</tr>
<tr>
<td>2017</td>
<td>0</td>
<td>0.00</td>
</tr>
<tr>
<td>Total</td>
<td>15</td>
<td></td>
</tr>
</tbody>
</table>

Statistics collected from Women Jail Multan

Total percentage increase from 2010 till 2017 = -100%

Table 10.2

Forced Prostitution
5. Acid Attack:

Table 11.1

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Registered Cases</th>
<th>Percentage Increase/Decrease From Previous Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>2012</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>2013</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>2014</td>
<td>1</td>
<td>-50.00%</td>
</tr>
<tr>
<td>2015</td>
<td>1</td>
<td>0.00%</td>
</tr>
<tr>
<td>2016</td>
<td>2</td>
<td>+100%</td>
</tr>
<tr>
<td>2017</td>
<td>2</td>
<td>0.00%</td>
</tr>
<tr>
<td>Total</td>
<td>8</td>
<td></td>
</tr>
</tbody>
</table>

Statistics collected from Women Jail Multan

Total percentage increase from 2013 till 2017 = 0%

Table 11.2

Acid Attacks


Acid Attacks

Acid Attacks
SECTION 6: TREND ANALYSIS

A. Trends in pro-women legislation enacted in the past eight years

The legislative history on women’s rights issues have seen its dark and bright patches over the past with the period following Zia’s regime being the period of legislative drought for women. Things started getting better in 2004 with the passing of the law on honour killings followed by the breakthrough law: Protection of Women Act, passed in 2006 that separated the offence of rape from that of zina and addressed the unjust and long prevalent issue of automatic conversions of rape complaints into that of zina. The past eight years (2009-2016) however have been in the history of Pakistan the most active years when it comes to pro-women legislation and has seen breakthrough developments in this area one after the other.

Numerous laws and amendments have been passed during this time frame ranging from laws on sexual harassment to laws on acid crimes, honour killings, inheritance, anti women practices, child marriages and even on the controversial, ‘personal’ and socially accepted matter of domestic violence (and the list continues). All these laws have been discussed in detail above. No doubt most of these laws have shortcomings some more than the other but these can and hopefully will be addressed in the future. However, what has been consistent in these years in a positive and unprecedented legislative upsurge on crucial women rights issues.

B. Trend Analysis in judicial precedents decided in the past eight years

In order to analyze the effectiveness of the pro-women legislation enacted in this time frame it is important to analyze trends in the cases of gender based violence reported and decided during the span of these eight years. The findings of this research study reveal that implementation of pro-women laws varies greatly in different areas of law. While some matters particularly family matters are being dealt with pro-actively by the judiciary with most of the judgments favouring women litigants other areas including inter-alia criminal offences of rape, abduction and honour killings are not being decided in their favour. Therefore, it is important to discuss the trends in judicial precedents on a case to case rather offence to offence basis in order to secure a better understanding of the emerging trends in these areas.
1. Criminal Cases

   a) Rape and Abduction Cases

   In rape and abduction cases the most obvious trend observed while conducting this research study is that more than 95% of cases that come before the court are decided against the woman litigant on the basis of lack of evidence primarily a contradicting statement by the victim herself denying any such occurrence and alleging that the case is false and frivolous. In rape cases such a contradicting statement is given despite the fact that the victim was the one reporting the crime occurrence in the first place. However, in abduction cases it is mostly the family members of the girls who report the incident and then later the victim herself comes into court and gives a contradicting statement denying the occurrence. Such statements have a very obvious impact on the decision of these cases. The net result of this trend on the judges is that whenever a case for rape or abduction comes into the court for hearing the first impression that comes in their mind is that it would be a fake case made up to settle some personal vendetta. A common view shared by the judges interviewed by the author during the course of this study is that in matters of rape and abduction most of their time goes into sifting genuine cases from the abundant sham litigation pending in courts.

   However, despite this trend there have been a couple of really progressive judgments passed by the lower courts in Multan on the offence of rape that have been mentioned in Section 2 above where the court has convicted the accused even in the absence of a positive medical examination report. The said conviction was based on coherence in the prosecution story, witness statements and primarily the undented statement of the victim.

   b) Honour Killings and Acid Crimes

   Regarding honour killings it was observed that although the number of honour killings is high in southern Punjab, convictions are hard to find. The author observed that such cases are being dealt with as ordinary murder cases and knowledge and application of the 2004 law is completely absent. As far as the Anti-Honour Killings Laws (Criminal Laws Amendment) Act, 2014 is concerned the author based on her interaction with lawyers and judges can safely say that almost all the practicing lawyers and sitting judges with an exception of few are unaware of this law. On the basis of the research conducted it has transpired that no case so far has been decided in the Session Court or the High Court Multan Bench under the 2014 Act. Another noteworthy factor here is the overpowering presence of the panchayat system. Such
cases are nipped at a very initial stage through the much prevalent panchayat justice system hence the lack of convictions in this area. With respect to acid crimes it appears that convictions are being pronounced by courts where all due evidence is provided. This was also the view shared by practicing lawyers and judges interviewed by the author. No major regressive trends were observed in this regard.

c) Harassment and Domestic Violence Cases
The unanimous and uncontroverted apparent trend observed by the author in the area of harassment and domestic violence cases in southern Punjab is that although the number of incidents are sky high not a single decided case (either regressive or progressive) could be traced by the author. When questioned regarding this, the one and only response given by the practicing lawyers and most of the judges is that cases of domestic violence are treated as family matters and are therefore not brought before the courts as separate claims. Furthermore, for such laws to be effective the most important thing that needs to be achieved is awareness in the masses of the existence of such laws. The author observed that the common woman in southern Punjab is completely unaware of the new laws passed in this area. Another reason behind the lack of case laws in this area as pointed out by the learned Magistrate interviewed by the author is that special courts have to be formed for hearing such cases and the same have not been formed yet hence the absence of case laws in this area. With respect to the mindset of the judges regarding the 2016 law passed on domestic violence, the author observed that all the judges interviewed had reservations about the Act. The common perspective was that the Act will do more damage than good in the domestic affairs of women and will disturb the fabric of the family unit.

2. Civil cases

a) Recovery of Dower, Dowry Articles and Maintenance Allowance
In the area of family law the author observed the most progressive trends in favour of women litigants. In almost all the cases studied recovery of dower and dowry articles is being decreed in the womansfavour. The courts do take into account the depreciation in the value of dowry articles over time but have still almost always made a fair provision for the woman. The only area in which the author observed a regressive trend in the recovery of dowry articles is in the claim for recovery of gold ornaments. The general view adopted by the judges in this area is
that it is a customary practice that women keep their jewelry with themselves and hence even in cases where the plaintiff was expelled from her husband’s premises even there the judges have not decreed the claim for recovery of gold ornaments on the basis of this general view. The author has observed that this general view is being applied like a blanket provision without having regard to the facts and circumstances of an individual case. Other than one progressive judgment (see section 2) decreeing recovery of gold ornaments all other judgments studied by the author and decided by different judges including female judges are disposing off claims of women for recovery of gold ornaments that were either kept by the defendant or her in laws or are still lying at the husband’s premises. Other than this, all other matters of maintenance allowance for the woman or her minor children are being proactively decided in the favour of women.

**b) Custody of Minors and Suit for Dissolution**

Just like cases for the recovery of dower, dowry articles and maintenance allowance, the cases for minor’s custody and dissolution of marriage are also being decided in a very progressive way. In the past few years suits for dissolution of marriage are being decreed in favour of women within weeks despite opposition or non-appearance of the defendant. Similarly, the general trend in custody cases is that hizanat (guardianship of the person of the minor/custodianship) is being handed over to the mother unless exceptional detrimental factors are present. The most important and positive change in the area of family laws observed by the author is the speedy disposal of such cases. The process of the court is actively now being expedited in the favour of women litigants.

**c) Inheritance Cases**

After a perusal of case laws in this area and discussions with senior lawyers and judges the author has observed that women are still shy of claiming their inheritance rights as it is considered morally wrong for a woman to ask for her share in the property. It is normal practice that women living in tribal areas pass on their share to male members of the household. Mostly, the cases in this area are brought forth by the succeeding generations of such woman. However, in cases where women particularly pardanasheen women have claimed their inheritance share or have alleged that their property was illegally usurped the courts have
decreed in their favour and have cancelled out subsequent transactions carried out by the defendants to the detriment of the plaintiffs.
SECTION 7 WAY FORWARD: AUTHOR’S RECOMMENDATIONS

1) Though the number of female judges and law officers in the region has increased in the past few years, it is still inadequate given the sheer number of women-related cases and the gender-based sensitivity involved in such matters. Not only does the number of female judges need to be increased; rather, special trainings have to be held on a regular basis to apprise the judiciary behind the more recent legislative reforms in this area. The Punjab Judicial Academy can play a pivotal role in holding specific judicial trainings for this region.

2) Though the rate of convictions can be increased, which can then be viewed as a ‘deterrent factor’ in violence against women, by means of a strong judicial system, but the real problem lies in the thought-process and psychological-social element of this region where women are generally viewed as ‘commodities’ rather than actual human beings. Promoting gender equality and gender awareness may bring with it the real usefulness of the judicial regime in this area.

3) Awareness of laws relating to sexual harassment and domestic violence needs to be created. Although the first violence against women center (VAWC) is established in Multan, Southern Punjab also has the lowest levels of awareness of the new legislation on domestic violence.

4) Further practical steps need to be taken to eliminate ‘sexual harassment’ at workplace. If a person / co-worker is indeed found guilty of such harassment, it should reflect on his ACR and he may be barred from promotion / further emoluments for a specific number of years.

5) A National / Provincial Action Plan should be developed that should harmonize all laws on the subject of violence against women and it should have an effective monitoring and vigilance set-up so that any complaints / offences arising out of such laws be efficiently tackled. All key stake-holders, such as Government agencies, private-sector NGO’s and...
donor agencies should be consulted on forming such an Action Plan and Monitoring & Vigilance set-up.

6) The executive arm of the State must also be strengthened. As many legislative reforms place emphasis on female police officers / medical practitioners, they should be given continuing professional development (CPD) sessions to equip themselves with the ever-changing trend of the society.

7) Female Police Officers must also be made aware of their territorial and functional jurisdiction and be empowered to take swift action and cognizance once a complaint / FIR is received.

8) Backlog of pending cases should be reduced and the timelines mentioned in various court procedure reforms should be vigorously enforced.

9) At the level of District & Sessions Judge, a monitoring mechanism should be adopted that should periodically review performance of presiding officers in disposing of female-centric cases.

10) Facilities for female prisoners must be improved. They should be provided skills training and education during the time they spend in jail so that the risk of abandonment and stigmatization by the society upon their release is minimized.

11) The Office of Ombudsman should be given more enforcement powers of their orders. A special High Court Bench must be designated that should directly hear appeals from the Orders passed by the Office of Ombudsman, instead of any other quasi-judicial forum, and in case of non-interference by the Judiciary, their Orders should be implemented in letter and spirit by the executive and enforcement agencies.

12) Laws should be introduced requiring a list of dowry articles with corresponding monetary value to be attached with the Nikah-Nama and the same to be duly signed by both parties.
13) The process of the prosecution should be simplified and awareness should be increased particularly in women litigants of the process to be followed in courts and role of departments.

14) Steps should be taken to increase coordination within court premises. The coordination between front desk and police station should be improved.

15) More well trained and knowledgeable women should be at the front desk to assist women litigants.

16) A separate court for reconciliation between the parties should be set up so that maximum number of female litigants especially in family cases can avoid litigation.

17) Accountability measures should be introduced for lawyers who misguide litigants for their own personal gains.

18) Infrastructure of the courts should be improved. Facilities such as separate seating arrangements, separate washrooms, waiting areas and nursing rooms should be made available for women litigants.
BIBLIOGRAPHY


