



Unheeded Cries: An insight into the condition of gender violence and human rights law in Pakistan

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Abstract: Aim of the research is to understand Gender Based violence and its existence in contemporary democratic Pakistan. Due to the limited scope of this paper, my analysis will be restricted to lack of adequate protection or support given to the women victims. My research carefully considers the differences in the interpretation of secular and Islamic laws, this helped to evaluate the manipulation by the politicians, clergymen and tribal leaders who continue to justify violence against women with erroneous Sharia interpretations or cover it up as a cultural practice. The pervasiveness of Gender based Violence is a threat to Pakistan's sustainable development and growth. This paper has established that despite being bound by the international treaties to eliminate discriminatory laws from the national legislations, Pakistan's weak political and judicial framework has failed to grant full protection and status of equality to women. Although, some initiatives have been taken to condemn violence on women but they too have not been implemented seriously.

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1. Introduction

1.1 Understanding Gender Based Violence

Gender Based Violence (GBV) is also commonly known as 'violence against women'. This is the kind of violence that is directed at the victim with keeping their gender as the primary objective in the mind. These violence's have taken many forms and for a woman, it has been witnessed in different phases of life. For example, when a baby girl is born, her 'gender' becomes the main reason or in other words social justification behind the practices of female infanticide, if lucky enough to escape this societal disempowerment, a girl then has to consider whether she is safe walking down the streets from being harassed, raped, tortured with acid or kidnapped and trafficked as a 'commodity'. In most cases women exploitation begins at her own home with let's say domestic violence, dowry violence or with the rising concept of 'honor killing'. WHO recent data confirms that almost 35% of women have faced physical or sexual violence and globally 38% of the murders against women are committed by male partners. This data reflects on the adverse impact of violence on the physical, sexual, reproductive and mental health of women and is not only a major public health concern but also human rights concern. Elizabeth Reed highlighted in her work that these violence's are caused by the excessive desire to dominate women partners and it functions on the notion of gender inequality. The fact that women had

come a long way just to address these problems and have them listed under separate international 'women rights' instruments despite of Universal Declaration of Human Rights (UDHR), unveils that no country can claim that they have protected women from gender violence's entirely. Furthermore, human rights could be seen to have an element of androcentrism that seeks to prioritize masculine interests and is a barrier to women's rights holistically. It also constantly divides public and private rights where domestic violence' or 'violence amounting from the differences' may not be seen as a violence that requires State's immediate attention. According to Jennifer, Universal Declaration of Human Rights is a document that perceives women in limited roles such as that of mothers and wives for example, Article 16 expresses men and women to marry and have a family. It selfishly views mothers and wives as the only two roles which are seen to be vulnerable enough to be protected through the Declaration and require special attention. Thence the idea of safeguarding women against all forms of violence is vague here, this takes us back to the Aristotle's definition of 'discrimination' in his Nicomachean Ethics (Book V).

For a woman to argue that she has been discriminated, she has to first be socially accepted as an 'individual' with a separate voice and in some patriarchal societies such as that of Pakistan, India,

Afghanistan, Sudan, Yemen, this status has not yet been achieved. United Nations had enacted different conventions which deals with the issues of gender discriminations: Convention on the Political Rights for Women, The Convention against discrimination of education, the Convention concerning discrimination in respect of Employment and Occupation, the Convention for the Suppression in the Traffic in persons and Exploitations of the Prostitution of the Others and the Convention on the Elimination of Discrimination against Women (CEDAW). Considerable criticism has been raised by academics, lawyers and activists with regards to CEDAW. Article 1 reads discrimination against women in conjunction with human rights, the problem with this interpretation is that it practically fails to acknowledge all kinds of experiences faced by women unless they are experienced by men too. The most recent development is the 'Declaration of the Elimination of Violence against Women' (DEVAW), while a 'declaration' may not be compulsory for the states to follow, it still requires states. to work on their national legislations, in other words, it is up to the states to safeguard and guarantee equal protection to the women from any acts that would promote violence. This could leave women with little or no protection. However, DEVAW has a significance, it defines violence in much detail and perceives it as a historical concept of unequal division of powers between men and women and a social framework that considers women naturally inferior to men. It opposes any cultural relativism theories that would justify inhumane treatment of women.

1.2 Gender based Violence in Pakistan

Pakistan is a country with the total population of 193 million out of which 48.6% forms the female population. Since 1980's the social, political and legal institutions have contributed to the rise of violence in Pakistan. Although it was the first Muslim country to have democratically elected a female Prime Minister, but in 2016 have been ranked as second worst country for gender inequality. Irrespective of these international legal instruments such as CEDAW, ratified by Pakistan, gender-based violence rooting from gender discrimination' prevails in the country through tribal customs, lack of education, religious and political manipulation of their rights guaranteed in the Constitution along with an inadequate legal scrutiny to these matters.

For the women in Pakistan, the exploitative experiences depend on the rural and urban division. A woman living in the city may not be deprived of the sanitation problem as compared to a woman living in a small village. There is currently no reliable government data on the exact statistics on gender-based violence but it has been reported by the Human

Rights Commission Pakistan (HRCP) that in 2004-2016 there have been 15222 cases of honor killings in the country. According to Tazeen S Ali, patriarchal customs and practices predominant in the contemporary Pakistani society are having serious effects on the life of women, she argued that women are not only coerced to obey their intimate partners but are expected to be more compromising and tolerant than men which leads to the continuation of violent behavior towards women. Obviously, this is one of the many case studies that proves gender inequality, it still voiced the consequences and the aftermath of violent mindset that sees women subservient to men and even after 6 years of her study, these issues have been widely neglected by the national authorities that have the pivotal role in modifying country's global reputation for appealing women rights condition. Moreover, Pakistan is one of the countries that is a party to several international instruments like CEDAW as mentioned above, Declaration of the General Assembly of the UN on the Elimination of violence against Women, Universal Declaration of Human Rights, further to the instruments, it also supports the UN Millennium Development Goals (MDGs) that aims to enforce gender equality as well as female empowerment, despite of the international commitments, the government seemed to take ineffective steps locally to achieve equality and just treatment for women.

2. Methodology

Law being a social sciences subject makes social research very essential. Considering the sensitivity of the topic, I preferred to use a socio-legal approach in the analysis and evaluation of the attitudes of variant mind-set to gender issues such as 'honour killings' in Pakistan. I was eager to expand my understanding on the causes that justify honour killings and for that I divided the paper in 4 chapters. First chapter deals with the understanding of Gender Based Violence, its presence in contemporary Pakistan. Second chapter provides an overview of the current judicial system of Pakistan and the existence of legal pluralism; it is subdivided to the interpretation of some rights under the Sharia Law and the 1973 Constitution. Third chapter consists of one of the prevalent patriarchal practices of 'honour killings', its historical roots and legal loopholes in denouncing the oppressive treatment of women, followed by the current Anti Honour Killing Law passed as an amendment to the existing law. The last chapter deals with the long-term solutions for the victims and the concluding remarks.

Keeping the wide scope of the topic, I decided to conduct a field research on the work of one of the NGOs with respect to Gender based violence and honour killings in the country. Purpose of the short

social research was to find out about the possible loopholes and political manipulation of these crimes, investigate the observations, customs and experiences which is interlinked to the functioning of other institutions such as criminal justice system. It also aided in evaluating the literature used in the dissertation. The sample consisted of one female participant, the ex-chairperson of the All Pakistan Women Association, UK. The participant was approached online and via phone. She was also presented with the participant information sheet prior to obtaining consent and had voluntarily consented to become part of the research. Her selection was based on her gender, ethnicity and close observation on women rights issues in Pakistan. She was also presented with the participant information sheet prior to obtaining consent and had voluntarily consented to become part of the research. The data collection method preferred for this paper was qualitative semi-structured interviews as compared to any quantitative method because interview is an opportunity to observe and incorporate feelings, views and knowledge in the research. There were 8 questions which were mainly descriptive such as ‘can you tell the possible causes of GBV in Pakistan?’ and structural ‘how influential has your association been in convincing Pakistani government for the change in legislation related to honor killings?’ or ‘would secularism help to eradicate radicalism and wrong manipulation of religions?’. Interview was recorded on phone as well as noted manually with the participant’s consent. In addition, non-verbal elements like gestures, shrugs, tears were observed as they added depth to the purpose of the topic. Data collected can be said to be reliable as it was internally consistent and had involved no deception with the participant, it also permitted the participant to terminate the interview if at any stage she felt that the questions were too intrusive. Apart from consent, another ethical issue that was taken care of was participant’s confidentiality. Since the topic required insights into the possible causes, loopholes and alternative methods to deal with GBV and human rights condition in Pakistan, it had the tendency to spark controversies or upset certain sects and institutions in Pakistan. Therefore, participant was made aware of the possible disadvantages and advantages of the research. Interview conducted was at the participant’s home, in private and without the presence of any third party which would have made the participant uncomfortable. While the interview lasted for 40 minutes, in the end the participant was asked to share her experience and was recorded satisfied.

In context of the literature review, I looked at sources like primary sources like statutes, court cases and for secondary data, reviewed range of information

such as books, academic journals/articles, book reviews accessed via library. I also considered alternatives to social research such as common beliefs, media reports and parliamentary debate. However, the only limitation is that media has the proclivity to overstate issues but with social crimes like honor killings it is important for it’s the ability to put a pressure on government for a legislative action in protecting citizens.

Result & Discussion:

1. Judicial System and Existence of Legal Pluralism in Pakistan:

The current judicial system of the country derives its roots from the medieval period and has progressed through various eras such as Hindu era, Muslim era mainly the Mughal Dynasty, British Colonization and post partition era. Throughout this development, it had been influenced from other international doctrines, norms, customs and methods of trials which subsequently led to the formation of a judicial hierarchy, this hierarchy is subdivided into higher and lower courts that were later modified to fit the local needs of the country. Pakistan enjoys the presence of common law and Sharia system, making it one of the legally diverse countries. The higher courts include Supreme Court, Federal Shariat Court, an apex court, Supreme Appellate Court of Baltistan and five high courts for each provinces. Whereas, lower courts comprise of civil or criminal district courts and specialized courts to deal with corruption, taxation etc. Furthermore, it also includes military courts as an additional court that deals with terrorism cases in support of the principle of necessity and national security. Legal pluralism academically has been defined as a situation where multiple legal systems co-exist. Griffiths identified that paralegal systems are dependent on sovereign commands that would accommodate every social, ethnic, religious group in society. However, the real difficulty lies in achieving uniformity on certain norms, customs and practices while balancing it with the differences. In context of Pakistan, judicial system has faced constant challenges in meeting the demands of the society and institutions.

Moreover, contentious relations between the political actors of the state and the judiciary have had a mixed impact on the way judiciary’s role is perceived by the civilians. Over the years, this institution has been manipulated by the military governments and have made its independence as a distinguished institution difficult. It is believed that this crisis started when the judiciary began to voice against government policies and in turn was unmasked by the government over corruption allegations. In 2007, President Musharraf had deposed

Country's Chief Justice: Iftikhar Muhammad Chaudhry on the basis of misuse of authority, misconduct and for violating the integrity of the position of chief justice. On the flipside, judiciary supporters protested fervidly against the sacking of the chief justice and argued that this event was more of a political strategy to maintain control over legal system that seeks to hold officials accountable for their blatant violation of constitutional principles such as the rule of law. Perhaps this treatment had paved a new legal era for the judiciary of Pakistan. Recent democratic governments have improved their condition by enabling them to take stronger impartial decisions. Consequently, it has also secured public's admiration and confidence over the weak political system of the country. The government's penchant to please country's right-wing members of the religious parties continues to incapacitate judiciary from giving straightforward interpretation of the laws. Therefore, connection with Sharia is deep rooted and is maneuvered to win political support in the Parliament instead of safeguarding fundamental rights and obligations written in the Constitution. The next section will explore some rights under Sharia that recognizes women as humans, worthy of equal respect and protection.

2. Sharia and Human Rights Law

Sharia is now a popular term in the West and too often have come under extensive scrutiny for its stricter application of laws governing personal and public life, penalties for criminal actions and treatment to vulnerable members of society such as women. This subsection will assess some of the basic fundamental rights Sharia offers to women and the flawed interpretations that have ultimately resulted in the foundation of the mindset that legitimizes violent crimes such as honor killings.

To begin with, Shariah laws are known as set of laws that are revealed by the God that deal with every aspect of lives for Muslims. They are a combination of rules derived from Holy Book ie Quran, Sayings and actions of the Prophet Muhammad (peace be upon him) also referred to as Sunnah and Hadith, consensus from the legal experts of the community and lastly from Qiyas which is a legal reasoning by analogy. Arguably the first two categories give the most basic set of rules which may in fact be completely followed in the same manner as listed down, whereas, the latter two do allow Muslims to think logically on the new subject matter and interpret the situation in the most compatible way to Islam. Thus, this 'analogical' aspect of Sharia allows day to day tasks to be analyzed and is open to the new developments to meet the needs of society.

3. Sharia in Pakistan

Sharia laws were incorporated in Pakistan's legal system after 1978, during the tenure of General Zia ul Haq who served as the 6th President of Pakistan. He also introduced Sharia courts in the country and made several changes to the criminal justice system. This significant change was a turning point for the entire judiciary system in a political sense as it divided them into two different approaches, one which offered a secular explanation and the other adheres to the long established interpretations of the rules approved by the country's highest religious scholars or experts.

Although Sharia can be used in favor of Muslim women, it is often seen to be manipulated against them. It was not until 2006 that rape was placed under the jurisdiction of the country's criminal code that otherwise in the past had required women to bring forward four male witnesses to prove rape in the Islamic courts. Similar difficulty is faced with honor killings which are illegal under Pakistani law but the cases reported are increasing outrageously in number and have been a major concern for the human rights activists in the country as well as abroad. Islam is considered to be the first religion that had formally granted dignified status to women in Arab and had set an example for the future generations to accept women rights as human rights. Muslim women under Sharia are granted several educational, socio-economic rights. They are encouraged to work, receive share in property, and are worthy of equal respect as that to a man. I will be discussing some examples from Islam that aims to protect women.

- **Social Rights:**

In the Holy Quran it has been emphasized that God has made all species in pairs and that men and women are of the same species. Moreover, there has been no discrimination in the eyes of God as He has promised a reward in the hereafter that would solely be judged not on genders but only good deeds. Religion has never looked down upon the role of men and women, it is the society that has generalized their views into inferior versus superior functions based on their one-sided shallow understanding of religion. Arguably some functions that men and women perform are different, for example women has the role of child bearing while men are naturally incapable of this function. The fact that 'motherhood' may impose certain temporary physical constraints on the woman from which the man is free, does not in any way stop her from participating in the routine chores or make her completely unfit to work.

Another right that is misconceived is the right to admire, right to choose her life partner. Islam does not place prohibition on expressing one's liking for someone. It encourages one to marry person of his/her choice and does not bar a woman from sending

proposal to the man she admires although this concept is stereotyped in the society which leaves this decision and planning for men. This can be witnessed from the example of Holy Prophet Muhammad's (peace be upon him) wife Khadija who took the initiative to express her admiration for the Prophet and was the first to send her proposal for marriage. However, adultery or fornication is loathed and prohibited in Islam. Similarly, with marriage, divorce rights are safeguarded in Islam too. If hostilities intensify and reconciliation fails between husband and wife then Islam permits divorce. This clarifies that both men and women have equal rights to contract or dissolve a marriage, it in no way commands woman to tolerate ill treatment or any sort of violence from her intimate partner. The oppression or violence does not come with the faith but the interpretation of this faith by tribal authorities that with their low understanding of religion allow the harassment of women.

In addition to that, Islam also makes education compulsory for men and women. There has been no evidence in Quran or the Sunnah of the Prophet Muhammad (Peace be upon him) that debars women from educating themselves. This fundamental right is guaranteed by the religion without any discrimination.

- **Economic Rights:**

In the present time, economic independence and female empowerment are an inseparable concepts but the problem lies in the 'sexist' interpretations and lack of awareness that deprives women of their economic rights such as claiming property inheritances. Liva Holden and Azam Chaudhary have expressed in their case-study that Muslim women due to lack of awareness and corrupt social structures are stopped from understanding and exercising their inheritance rights in courts. They are always forced to waive these rights to their brothers to end any sort of family dispute. This mindset of economic dependency forms one of the foundational causes of gender-based violence, where daughters are treated as a 'financial burden' over sons and are quickly or sometimes forcedly married off to men twice their age with inadequate living standards. Another example of economic right is of '*haqmehr*'. This is the financial settlement that husband is obliged to make to his wife during his life. It is similar to a debt which must be discharged even after husband's death. Extending on to that, widow is also entitled to husband's estate a part from the share that she has inherited from her father's property.

Hence, Sharia principles continue to influence Pakistani legal system as well as the tribal customs, this is evident from the fact that the Pakistani constitution have a separate section that allows for all

laws to be in accordance with Islamic provisions (Art 227).

4. Constitutional Protection Offered to Women

Constitution is a written or unwritten set of principles that serves as a guide for governing the state. Andrew Heywood stated that the purpose of constitution is to divide the political power and functions to each organ of the state. Mainly, judiciary is conceived to be the primary custodian of the Constitution and has the responsibility for ensuring that it is followed and respected by government and an individual. Pakistan has a written constitution which was ratified in the 1973 and is the country's most supreme law. The 1973 Constitution is first constitution that has been drafted by the democratically elected representatives compared to the previous 1956 and 1962 constitutions that had vested extensive power in the military. The 1973 constitution has been created in compliance with Islamic principles of Quran and Sunnah which ultimately led to the creation of Shariat Courts and Council of Islamic Ideology.

The legal stability of the country can be determined from its compliance with its Constitution and this is only possible if the constitution is flexible and adaptive to the needs of the society. Pakistan's constitution cannot be changed but amended. There are several rights granted by the constitution to the women of Pakistan. However not all women have been able to exercise these rights. In urban areas, women have more freedom to participate in the progress of the country with men but in the rural areas' women are subjected to violent treatments and cultural practices such as forced marriages, honor crimes, genital mutilations etc. According to Black Law's dictionary, constitutional right is a preserved interest that is guaranteed by the state and cannot be violated by any laws or the state. This 1973 Constitution guarantees rights not only for men but also for women, children and senior citizens. It is clearly stated in the Article 25 that all citizens of the country are equal and their rights should not be discriminated on the basis of their sex. Further to that, it preserves equality with right to education, accessibility to public places, and employment. The Constitution also disapproves the deprivation of property rights of anyone and encourages to purchase, dispose or distribute property in any part of Pakistan.

Another fundamental rights that Constitution permits includes freedom of movement, assembly, association, trade, and speech for everyone. Arguably, these rights are restricted for the women when it comes to their practical application.

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