# The Law, Patriarchy and Religious Fundamentalism: Women's Rights in Pakistan

Liliana Corrieri







"In Pakistan, it should be realised that the entire discourse about women's rights is not simply a matter of feminism, a movement which, within its expansion, has witnessed several and not always concordant arguments. The discourse on women's rights is about respect, dignity and human rights. Promoting

women's rights is a matter of justice and equality. It means promoting one group's rights without compromising cultural foundations or diminishing someone else's rights, as instead occurs in cases of patriarchy and religious fundamentalism. Violence and discrimination against women should transcend cultural features, whereby cultural practices are historically prone to evolve without necessarily abandoning the identity they express, as culture by now has largely proved not to be static but anthropologically in continuous evolvement."

The aim of this book is to document the state of women's rights in Pakistan where secularism and religious precepts, often misinterpreted, overlap or even clash whenever controversial issues related to the dominant discourse of gender mainstreaming are discussed. At the same time, this publication would like to encourage a debate and promote engagement and understanding by suggesting possible steps and measures towards empowerment and development.

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A SIAN HUMAN RIGHTS COMMISSION

Liliana Corrieri

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**Cover Photograph:** courtesy of *The Post Internazionale*, Italy, August 2013. Women police station in Lahore. Police woman's uniform - in detail. It is possible to read "KARATE DO" on her pin, indicating that the agent is trained in hand-to-hand combat.

Photographer: Mr. Cesare Baccheschi.

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#### Foreword

The women of Pakistan bear the brunt of poor governance, military strife, and the corruption of the social, political and economic systems which surround them. W omen make up 49% of the population of Pakistan, yet they are continuously marginalized and discriminated against by the middle class and feudal societies, and through political and social structures which are inherently misogynistic. Recently, eruptions of violence in cities across the region have prompted new concerns that militia are specifically targeting women in their terror campaigns.

concerns that militia are specifically targeting women in their terror campaigns.

As an explicitly Muslim state, the women of Pakistan are beholden to a number of Islamic principles. For one, the family is seen as the nucleus of society, the fundamental building block



from which the rest of society emerges and evolves. Women are seen to be responsible for maintaining the sanctity of the family, and are thus those who are most likely to disrupt this sanctity. As such, the woman becomes the lynch pin of an ordered society; it is on her back that responsibility and power lies, both for her family and by extension, for all of society. While the violence against women enacted in this society occurs for manifold reasons, it seems that this understanding of women as both the lynch pin and the one with the power to unravel society, is a contributing factor to the continual mistreatment of women in Pakistan.

Violence against women is seen to be of no importance to the judiciary of Pakistan, particularly the lower judiciary. Women face numerous types of violence perpetuated by the state and its agents, including rape, gang rape, torture, registration of false cases of adultery, honour killing, *Jirga* (an illegal, parallel judicial system for the exchange of minor girls in land disputes,) burying alive or putting before dogs, acid throwing, no free choice of marriages, restriction of freedom of movement and expression, domestic violence, sexual harassment at the workplace, snatching of children, forcing conversion to Islam, blasphemy, deprivation of property rights, disappearance after arrest and being used as sex slaves in military torture cells.

The main causes of this violence stem from a lack of proper investigative mechanisms by the police, and the presence of a strong feudal system, which contribute to the ultimate failure of the judicial system. In the urban centers of the country, the judiciary is indirectly under pressure from the landed aristocracy, as in the case of rural areas where there is no question of women getting relief (not even bail after arrest) from the lower judiciary.

In the past years, the Pakistan Desk at the Asian Human Rights Commission (AHRC) has broadly worked on the problem of violence and other forms of violation of fundamental human rights suffered by women in the country.

Several cases of gender-based violence and discrimination have become urgent appeals and have been also brought to the attention of authorities in Pakistan and relevant United Nations' Special Rapporteurs as well as the UN Human Rights Council.

The Pakistan desk of AHRC has come out with the book, *The Law, Patriarchy and Religious Fundamentalism: Women's Rights in Pakistan* which was based on the research conducted by Liliana Corrieri and cases worked by the AHRC.

Due to her interest in gender issues, Liliana was asked if a piece of work on women's rights in Pakistan could interest her. She was very happy to accept this assignment and throughout the process of researching and writing she proved solid dedication and firm commitment. It was a challenging task for her, considering the harshness of the cases under consideration and her Italian roots, which entail a profoundly different mindset in its understanding of human interactions and a diverse set of social norms and cultural practices.

Her unrelated background, though, could guarantee a very analytical approach and an objective analysis of those serious levels of inequality which affect women in Pakistan and translate into the disrespect they suffer from a legal, civil, social and economic perspective. In her work, Liliana explored the recent history of Pakistan, the several abuses beared by Pakistani women of all ages and the way such crimes continue to be perpetuated and condoned in the name of customs, tradition and religion. Her analysis also covered the prosecution and judicial systems operating in the country, as two fundamental state apparatuses whose inefficiency and gender-bias further bear upon any form of remedy women may hope for.

This book should not be seen as a throughout and comprehensive analysis of the status of women in Pakistan. It wants to offer an investigation based on the cases documented by the AHRC and a sincere interrogation of mindsets, attitudes and practices.

Baseer Naweed

# Acknowledgments

This book provides an overview of the most customary violations of human rights suffered by women in Pakistan.

Gender-based violence and discrimination are explored in their historical, religious and cultural perspectives, and this analysis is supported by relevant narratives.

All cases mentioned are real cases which the Asian Human Rights Commission documented and followed up during an arch of time of approximately five years, between 2007 and 2012.

This book is a piece of research-based work. The main source was the country database, accessible via the AHRC website, where additional information on cases, together with views, comments and articles, offered an essential reference frame. Other helpful material was found in other AHRC publications, in particular some volumes of 'Ethics in Action' and a multi-lesson series which are part of the 'Human Rights Correspondence School'.

This book was made possible thanks to the consistent help and continual support received by Mr. Baseer Naveed, *Ustad Ji*, senior-researcher and experienced human rights defender, whom I thank in a particular way for the trust he bestowed upon me and the precious guidance granted to me.

I also feel deeply obliged to Professor Akmal Wasim, former lawyer and Professor of Law at the Hamdard University in Karachi, who provided me with a significant insight into the historical, social, religious and cultural background of Pakistan, together with some congruent academic papers.

Heartfelt thanks go to Dr. Rajat Mitra, whose clarifications and sessions on trauma and survivors of abuse also contributed towards the consistency of my argument. Finally, I would like to express my sincere gratitude to the Asian Human Rights Commission for granting me a chance at the organisation.

"The history of men's opposition to women's emancipation is more interesting perhaps than the story of that emancipation itself." Virginia Woolf, A Room of One's Own

### I

#### INTRODUCTION

## "Women's rights are human rights"

"[...] We need to understand that there is no formula for how women should lead their lives. That is why we must respect the choices that each woman makes for herself and her family. Every woman deserves the chance to realize her God-given potential. We also must recognize that women will never gain full dignity until their human rights are respected and protected. [...]

It is a violation of human rights when women and girls are sold into the slavery of prostitution.

It is a violation of human rights when women are doused with gasoline, set on fire and burned to death because their marriage dowries are deemed too small.

It is a violation of human rights when individual women are raped in their own communities and when thousands of women are subjected to rape as a tactic or prize of war.

It is a violation of human rights when a leading cause of death worldwide among women ages 14 to 44 is the violence they are subjected to in their own homes.

It is a violation of human rights when young girls are brutalized by the painful and degrading practice of genital mutilation.

It is a violation of human rights when women are denied the right to plan their own families, and that includes being forced to have abortions or being sterilized against their will.

If there is one message that echoes forth from this conference, it is that human rights are women's rights - and women's rights are human rights.

Let us not forget that among those rights are the right to speak freely - and the right to be heard. Women must enjoy the right to participate fully in the social and political lives of their countries if we want freedom and democracy to thrive and endure. [...]

Freedom means the right of people to assemble, organize, and debate openly. It means respecting the views of those who may disagree with the views of their governments. It means not taking citizens away from their loved ones and jailing them, mistreating them, or denying them their freedom or dignity because of the peaceful expression of their ideas and opinions.

Now it is time to act on behalf of women everywhere. If we take bold steps to better the lives of women, we will be taking bold steps to better the lives of children and families too.

Families rely on mothers and wives for emotional support and care; families rely on women for labor in the home; and increasingly, families rely on women for income needed to raise healthy children and care for other relatives.

As long as discrimination and inequities remain so commonplace around the world - as long as girls and women are valued less, fed less, fed last, overworked, underpaid, not schooled and subjected to violence in and out of their homes - the potential of the human family to create a peaceful, prosperous world will not be realized. [...]"

These powerful statements are extracts from a famous speech delivered by Hillary Clinton at the opening of the Fourth World Conference on Women, held in Beijing in September 1995. After almost 20 years, such words perfectly describe issues which are still very relevant all over the world. There have certainly been improvements since then, but a lot still needs to be done.

All over Asia, the status of women within the family sphere, as well as their recognition in society, is profoundly compromised by patriarchal mindsets and conservative mentalities which tend to exclude women from participation and

The whole speech can be watched and read online: http://www.americanrhetoric.com/speeches/hillaryclintonbeijingspeech.htm

decision-making, and prevent their empowerment and emancipation. Misleading interpretations of religious precepts and allegedly traditional customs often worsen the already impaired condition of girls and women, for whom gender-based violence, directly connected with gender-based discrimination, represents an enormous threat to their safety and a barrier to their development. Pakistan ranks among those countries with one of the worst human rights records, not only in Asia, but also throughout the world. Women, in particular, are subjected to discrimination in all conceivable ways, and suffer some of the most heinous and atrocious forms of violence which the entire international community condemns.

In 1993, The United Nations General Assembly adopted the *Declaration on the Elimination of Violence Against Women (DEVAW)*, which was meant to strengthen and complement the *UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW*, 1979). Similar to the *Universal Declaration of Human Rights (1948)*, the DEVAW is classed as a non-treaty-law, meaning that the document is not legally binding. Nevertheless, it enjoys widespread acceptance within the international community as it defines serious violations of human rights which are considered universal, regardless of one's culture, nationality or religion.<sup>3</sup>

The DEVAW defines violence as follows:

#### Article 1

For the purposes of this Declaration, the term "violence against women" means 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 in private life.

#### Article 2

Violence against women shall be understood to encompass, but not be limited to, the following:

The complete texts of the CEDAW and DEVAW are available in the appendix of this volume, pages 154 and 166.

<sup>&</sup>lt;sup>3</sup> All the UN treaties can be accessed online: http://treaties.un.org/

- (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
  - (C) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

The forms of violence that women continue to suffer in Pakistan are all referred to in the articles above. Such harmful practices include: honour killings, acid attacks and other forms of burning, rape and sexual harassment, domestic violence (which also involves kicks and slaps) early and/or forced marriages, bullying, humiliation and abusive language offences, emotional and economic violence related to the prevention from financial autonomy, and abductions aimed at forced religious conversion, followed by either induction into prostitution or human trafficking. The cruelty of such forms of violence to the detriment of girls and women leads to consequences such as depression, a sense of loneliness and isolation, extreme insecurity, a lack of self-esteem and a low attachment to brothers, fathers, husbands and other male family members. The ultimate feeling is a sense of discrimination, neglect and viciousness, perpetuated by both family members and institutions, that are incapable of establishing a fair rule of law and unable to guarantee justice.

The Constitution of Pakistan explicitly guarantees gender equality. In particular:

#### CHAPTER 1. - FUNDAMENTAL RIGHTS

#### 25A. Equality of citizens

- 25. (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 <sup>1</sup>\*.
- (3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.

#### Right to education

<sup>2</sup>[25A. The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law.]

#### Non-discrimination in respect of access to public places

- 26. (1) In respect of access to places of public entertainment or resort, not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth.
- (2) Nothing in clause (1) shall prevent the State from making any special provision for women and children.

#### Safeguard against discrimination in services

27. (1) No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth:

#### CHAPTER 2. - PRINCIPLES OF POLICY

#### Full participation of women in national life

 Steps shall be taken to ensure full participation of women in all spheres of national life.

#### Protection of family, etc.

 The State shall protect the marriage, the family, the mother and the child.

Although the above mentioned articles of the constitution<sup>4</sup> specifically prohibit gender discrimination and guarantee the equality of men and women, Pakistan remains a country where Islamic law dictates traditional family values and justifies discriminatory social conventions. The interpretation and the practice of Islam intertwine with the legal system, rendering most of the constitutional assertions ineffectual and useless.

The full constitution can be accessed online: http://www.pakistani.org/pakistan/constitution/

# "No laws will be passed which are repugnant to the Quran and Sunnah"<sup>5</sup>

Pakistan has a dysfunctional political system. In order to understand the historical reasons behind such deterioration in the rule of law, a holistic picture should be drawn.

The Constitution of Pakistan is a positive law (lat. ius positum), based on the interpretation of statements. Such jurisprudence differs from normative law, which is the actual spirit of law and which is identifiable in most civilised societies where democracy is flourishing, a rule of law is available, and rights are guaranteed. Such societies are founded on philosophy, and are not based on ideologies. Ideology is, in fact, an abuse of philosophy. In Muslim countries, the Quran is considered the book containing the commands to be applied. However, this can only be true to some extent, since the essence of Islam is not to be applied. Islam is a philosophy, but, due to misleading conducts and agendas throughout the centuries, this original philosophy has been turned into an ideology. No analysis, questioning or evolution has occurred, instead the imposition of a system thousands of years old and prevented from development has taken place. The reasons behind the interruption in the development of reasoning lie in the nature of the authoritarian rulers who have historically governed Muslim territories, where questioning was not welcomed and people were required to follow the rules. Nowadays, Islam struggles to be considered a religion of peace and harmony and there is little communality left between real Islam and current Muslim societies. Within this general scenario, Pakistan is no exception (Wasim Akmal, 2013). Problems in Pakistan started a long time ago when India and Pakistan received their own dominions and the Muslim League of that time had no concrete idea of what had to be done to move towards good governance in their newly created state. With the increasing influence of the Jamaat-e-Islami party and other Muslim fundamentalist groups, the advocation of a socio-political Islam incremented, whilst the desecration of religion and the regimentation of society became more and more serious concerns.

Article 227 of the Constitution of Pakistan

The reluctance to accept any reinterpretation of the Muslim law in order to suit modern times, has been a dominant trend throughout the decades. In the 1950s, for instance, there was an attempt to properly codify laws pertaining to *nikah*, divorce, and remarriage, since these aspects of the social and private sphere were regulated in a chaotic manner and with a male-oriented character typical of traditional Muslim societies. When, in 1955, the Commission on Marriage and Family Laws was instituted, the report they issued on these matters was fervidly criticised and opposed by several Muslim fundamentalist groups for being against Islam. The civilian governments which followed avoided legislating on the report, until General Ayub Khan, remembered for his fairly secular inclination, introduced the Ordinance on Muslim Family Laws in 1961, which adopted some of the provisions stated in the Report of the Marriage and Family Laws Commission. According to this ordinance, unlimited polygamy had to be abolished, the marriage certificate had to be introduced, consent of the first wife for a second marriage was to be made mandatory, and the traditional practice of instant divorce for men by simply saying "I divorce you" three times had to be abolished. The ordinance never gained consensus and was judged as un-Islamic and in favour of women by many conservative groups. It was never presented in front of the parliament for proper legislation, and remained pending as an indemnified law, never legally binding.

## General Zia-ul-Haq and the 'agendaisation' of his political programme

In 1977, General Muhammad Zia-ul-Haq, a fundamentalist, came into power, becoming the emblem of the collapsing system. General Zia-ul-Haq's evil conduct penetrated all spheres of life in the country. There was an extensive worsening through a comprehensive "agendaisation" of his political programme. When he came to power, his main idea of governance was to control people through religion, as religion was an area where he could find unity within the population. Zia-ul-Haq's plan was to give women a subordinate position in society and control their sexuality according to his myopic interpretation of Islam and distorted comprehension of life that viewed women as fundamentally inferior. In 1979, the Hudood Ordinance was enacted with the intention of making the national law conform with the injunctions of Islam by enforcing, with regard to women, provisions mentioned in the Qur'an and in the Sunnah for cases of *Zina* (extramarital sex or adultery) and *Qazf* (false

<sup>&</sup>lt;sup>6</sup>Khaled Ahmed for the Muslim Women's League, 'Muslim Family Law: The Latest Assault on Society'. Online: http://www.mwlusa.org/topics/marriage&divorce/muslim family law pakistan.html

accusation of *Zina*). It is shared opinion that the Offence of *Zina* Ordinance, included in the enforcement of *Hudood*, has had a devastating impact on women in Pakistan and represented a powerful tool within the General's programme of the "Islamisation" of the country, strictly binding the relationship between gender/sexuality, nationalism and state.

Zina, in terms of the Islamic law, occurs when a man and woman "willfully have sexual intercourse without being validly married to each other". It is in effect a consenting sexual relationship outside of marriage, and is considered a criminal offence. Zina-biljabr is defined as the crime of forced non-marital sexual intercourse, in other words, the crime of rape. The Zina Ordinance, supposedly enacted to guarantee public morality and to protect women from rape, became a discriminatory law used against women, which, throughout time, not only denied survivors of rape justice, but also saw victims being charged and going to jail as offenders. In fact, under the Hudood Ordinance, in order to accuse a man of Zina-biljabr (rape), a woman required either the confession of the accused man in front of the court, or the testimony of four adult men according to the Islamic standards. Considering the type of society in question and the debatable respect held for women, it was extremely unlikely that the rapist(s) would spontaneously confess to the crime of zina. In the same way, it was unrealistic to have to gather four credible men who

In patriarchal mindsets similar to the ones deeply rooted in Pakistani's feudal society, the discrimination and the constraints women are subjected to also have a financial dimension. In cases of inheritance and distribution of land and other properties, sisters, daughters, mothers and wives are not entitled to any quota or any kind of monetary acquisition. Men tend to accumulate wealth and do not share this with their female siblings in an attempt to limit their financial independence and also prevent money leaving the family's possession through possible female lines. Attempts at Land Reforms in the past (1959, 1972 and 1977) failed, as they were declared as 'un-Islamic' and a challenge to the traditionally entrenched dependence of women on men. The economic contribution that women's work represents, both at home and in society, as well as their hard work in agriculture is still not sufficiently acknowledged, a fact which compromises their financial emancipation and therefore delays their social and personal empowerment.

<sup>&#</sup>x27;Saadia Toor, 'Moral regulation in a postcolonial nation-state, Gender and the Politics of Islamization in Pakistan'. College of Staten Island, City University of New York, 2007. Interventions Vol. 9(2) pages 256-260.

could have witnessed the actual sexual intercourse taking place. Therefore, if a woman could not prove the crime of rape, while also not having clear signs of resistance on her body (such as serious bruises and scratches), her accusation paradoxically turned into her spontaneous admission of adultery, for which, therefore, she ended up being convicted as an 'immoral culprit', thereby making fair justice impossible. Due to such a discriminatory application of the *Zina* Ordinance, for many years a great deal of women were put on trial and imprisoned for the offence of *zina*, whilst thousands of them were discouraged from reporting sexual abuse.

The threat of irreversible social stigmatisation also played a large role. In Pakistan, where a family's honour is still strictly connected with women's 'purity', and where women are widely blamed in accordance with customary attitudes, many survivors feared for their lives. An accusation of zina, in fact, would have represented a great dishonour for their family and community, implying therefore a heightened risk of honour killings or stove burning/acid attacks as alternative forms of punishment. Through the enforcement of the Hudood Ordinance, General Zia-ul-Haq succeeded in transforming Islam into a justification for 'legalising' the submission of women and for giving to this condition of subordinance a divine legitimacy. Issues of morality were emphasised in order to compromise women's rights in the name of religion and chastity, to devalue them as unequal partners and to consider them as commodities for sexual and reproductive purposes only. Islam was shamelessly exploited to serve cultural, economic and political interests, in particular the construction of an allegedly 'national culture'.

"As a nationalist ideology, the discourse of Islamisation privileged the adult Muslim male as the ideal citizen of the Pakistani nation-state while disempowering women, limiting their public visibility and mobility as well as their legal rights" (Saigol 1995, in Saadia Toor, 2007).

For almost 30 years, hundreds of women in Pakistan were incriminated and charged with the offence of *zina* as they inevitably failed to prove rape charges. Moreover, it became common for men to use the threat of a complaint of *zina* against their wives or sisters in order to force them to accept divorce or to hand over property. Because of the Offence of *Zina* Ordinance, the great majority of

<sup>&</sup>lt;sup>8</sup> It is important to point out that significant resistance to General Zia-ul-Haq's ideology was voiced by elite and higher educated urban classes, particularly in Karachi and Lahore, who refused to conform and were accused of being in-line with western mindsets.

women in jail were, in fact, women convicted of adultery, many times in some of the poorest conditions imaginable.

#### **Recent Developments**

In 2006, the National Assembly of Pakistan passed the Women's Protection Bill, with the aim of finally amending the Hudood Ordinance and allowing the crime of rape to be prosecuted under civil, not religious law. The bill was eventually ratified by the Senate and became official law when President Musharraf signed it.

"The Women Protection Act was passed in December 2006 after staunch opposition from religious parties. According to this bill, if four pious male witnesses are not found, a judge has powers to use other standards such as DNA tests or other medical ways for rape to be proven. But hard-line Islamists oppose this development." 9

The main argument for such opposition is that the bill contravenes Article 2a of the Constitution of Pakistan, which states that "Islam will be the state religion", and Article 227, under which "No laws will be passed which are repugnant to the Quran and Sunnah".

The ratification of the Women's Protection Bill, in truth, involved a low level of compromise. Some provisions have improved, such as the non-immediate incarceration on the simple basis of suspicion or unproved accusation. However, it cannot be stated that the Women's Protection Bill has benefited women to a great extent. It has moderated the Hudood Ordinance to some extent (especially by giving women more time before the arrest or the final charge) but the old law still remains largely in force, especially with its judgment on consensual sex outside the marriage bond as an offence against the state (fornification, 496B). The bill showed some political will to reform the law and improve the protection provided to women. Nevertheless, it did not entirely meet the expectations of civil society, women activists and those liberal groups who follow a modern scale of thought and would like Pakistan to be a Muslim Welfare State, rather than an Islamic State (Wasim Akmal, 2013).<sup>10</sup>

In 2009, the Domestic Violence Bill was rejected in the Senate, which refused to

N.A. Zahid, M.A. Wasim, F.Haswary, 'Crimes against Women in the name of 'Honour: Strategizing for Women's Rights and Citizenship in South Asia: Pakistan'. Hamdard School of Law (HSL). Karachi, 2012, p.38.

pass it within the 90 days allowed after its receipt from the National Assembly. The issue of domestic violence is a pressing topic in a country like Pakistan, where disputes and wrongdoings within the domiciliary walls are seen as 'private matters', and where many men believe that if wives or daughters are 'disobedient', there is nothing morally or legally wrong with beating them or even punishing them in more harmful ways. In some cases, prolonged episodes of battering and other forms of violence can also lead girls and women to believe that they deserve to be beaten if they do not conform or are too 'defiant'. It is estimated that in Pakistan, 80% of married women in rural areas fear domestic abuse, while 50% of women in urban areas, including middle and upper-classes, have been subjected to spousal abuse.<sup>11</sup>

In one of her articles, the journalist Farzana Ali Khan gave the following commentary:

"Violence against women is a major health and human rights concern in Pakistan. Women can experience sexual, physical or mental abuse throughout their life cycle: in infancy, childhood, adulthood or older age. Violence against women has severe physical and psychological consequences and as a social problem warrants an immediate coordinated response from multiple sectors.  $\lceil \ldots \rceil$  The most common form of violence against women worldwide is abuse by their husbands or other intimate partners, generally referred to as 'wife beating', 'battering' or 'domestic violence'. Intimate partner violence is often part of a pattern of abusive behaviour and control rather than isolated acts of physical aggression. [...] Violence, whether domestic or otherwise, includes physical/verbal abuse, rape and acid throwing, while killings and forced prostitution are also widespread in Pakistan. Few women complain under legal provisions relating to physical injury. In the province of Khyber Pakhtunkhwa, violence within the home is inflicted in various ways, including psychological torture by denying women food, often using the threat of divorce or of taking another wife, separating the woman from her infants, forced marriages, exchange marriages, or selling the woman into marriage, especially to a much older man. It is not only the husband who inflicts violence in the home. In extended families, wives are often violated by their in-laws, too. Girls and young women may be subjected to incest and rape in their own homes, and even forced to keep their lips sealed. Women can suffer violence from any men of the family: fathers, brothers, husbands, uncles, cousins, and, at times, even from women of the family, such as mothers-inlaw, sisters-in-law, or their own mothers and sisters. Domestic violence is the most under-

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 $<sup>^{10}</sup>$  The complete Protection of Women (Criminal Laws Amendment) Act, 2006 can be found in appendix four of this volume, p.172.

<sup>&</sup>lt;sup>11</sup> Rebecca Buckwalter-Poza, 'The troubled history of domestic violence legislation in the country'. AHRC-ART-104-2010. October 5, 2010.

reported crime because it is generally condoned by social customs and considered a private family matter."<sup>2</sup>

The ratification of the Domestic Violence Bill could have represented an important step forwards, at least in terms of the advancement of the law. The recognition that battering, threatening behaviour, verbal offences, intimidation and sexual, emotional and economic abuse cannot be condoned in the name of the 'sanctity of the home', is an essential realisation of gender equality both within the family and in society. Unfortunately, whenever discriminatory and harmful practices are the result of structural inequalities supported by entrenched religious dictates, the legal system struggles to legislate efficiently into matters concerning such traditional institutions like the family and the community, and endeavors to enforce legal solutions for the abuse that women traditionally suffer.

Every time women's rights are discussed, economic, social and cultural empowerment are automatically involved, together with safety and respect. There is still a failure at understanding these connections, even among middle and upper class people, who are concentrated in urban areas. In fact, in Pakistan an alternative urbanisation has taken place. Large numbers of people from rural areas have moved to the urban centers and have carried with them their tribal values and habits instead of adopting the life style and the mindset of the city. This was mainly because the cities they moved to had no strong values based on civic-minded behaviours and industrialisation. Industrialisation, in particular, is a major factor, as it brings progress and development and changes people's perception of life. In Pakistan, this has not happened and it is still not happening to this day. The people arriving in the cities from the rural areas are far more powerful in many ways than the ones living in the cities. As a consequence, the 'urbans' have adopted the rural culture which has slowly become the urban culture, too, especially in middle-sized cities or in sub-urban areas that are now expanding. The patriarchal mindset is very much embedded and entrenched in cities, where large roads and buildings are only the façade of city life. It is for these reasons also that honour killings, for example, are becoming more and more common even in cities such as Karachi and Islamabad. (W. Akmal, 2013)

Farzana Ali Khan, 'Domestic violence is the most under-reported crime and condoned by social customs'. AHRC-ART-060-2011. November 25, 2011.

The enforcement of the Protection against the Harassment of Women in the Workplace Act (2010) can be considered a valuable achievement in the national legal framework. See appendix four, p.172.

"Honour and shame are two parallel states, honour is masculine, shame is feminine".

Nafisa Shah

#### III

# In the name of 'honour': a clash between indefensible customs and undeniable rights

#### Honour killings and the international framework

The practice of honour killings (known as 'Karo Kari') is a deplorable but common human rights violation and one of the most atrocious forms of violence committed against women. Honour killings occur in Afghanistan, Pakistan, India, Nepal, Bangladesh, and other areas of the Asian continent. Such killings are in violation of a series of fundamental human rights, prime above all being the right to life, which is sanctioned by several international human rights treaties:

Universal Declaration of Human Rights (1948)

Article 3

Everyone has the right to life, liberty and security of person.

International Covenant on Civil and Political Rights (ICCPR, 1976)

PART III, Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Declaration on the Elimination of Violence against Women (1993)

Article 3

Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia:

- (a) The right to life;
- (b) The right to equality;
- (c) The right to liberty and security of person;
- (d) The right to equal protection under the law;
- (e) The right to be free from all forms of discrimination;
- (f) The right to the highest standard attainable of physical and mental health;
- (g) The right to just and favourable conditions of work;

(h) The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.

In late October 2004, the United Nations General Assembly adopted an important resolution that started working towards the elimination of crimes committed against women and girls in the name of honour. <sup>14</sup> Unfortunately, this relevant resolution has not been signed by any of those countries where honour killings are a common practice. However, due to the importance of the matter, the resolution has been translated into 19 languages and is also available in languages such as Urdu, Punjabi, Farsi and Bengali, in the hope of fostering the submission of this resolution by the countries where these languages are official. <sup>15</sup>

In the following, there are some relevant extracts from the above mentioned resolution:

"The General Assembly,

Reaffirming the obligation of all States to promote and protect human rights and fundamental freedoms, including the right to life, liberty and security of person, [...]

Bearing in mind that States have an obligation to exercise due diligence to prevent, investigate and punish the perpetrators of crimes committed against women and girls in the name of honour and to provide protection to the victims, and that not doing so violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms,

Stressing the need to treat all forms of violence against women and girls, including crimes committed in the name of honour, as a criminal offence, punishable by law, [...]

- 1. Welcomes: [...]
- (d) The work carried out by civil society, including non-governmental organizations, such as women's organizations, grass-roots movements and individuals, in raising awareness of such crimes and their harmful effects; [...]

Resolution A/C.3/59/L.25, October 15, 2004. Online: http://daccess-ddsny.un.org/doc/UNDOC/LTD/N04/559/12/PDF/N0455912.pdf?OpenElement

The 19 translations are available at the WUNRN website: Http://www.wunrn.com/reference/crimes\_honor.htm

- 2. Call upon all States: [...]
- (a) To investigate promptly and thoroughly, prosecute effectively and document cases of crimes against women and girls committed in the name of honour and punish the perpetrators; [...]
- (e) To intensify efforts to raise awareness about the responsibility of men to promote gender equality and bring about change in attitudes to eliminate gender stereotypes, including, specifically, their role in preventing crimes against women and girls committed in the name of honour;
- (f) To encourage the efforts of the media to engage in awareness-raising campaigns; [...]
- (j) To address effectively complaints of crimes against women and girls committed in the name of honour, inter alia, by creating, strengthening or facilitating institutional mechanisms so that victims and others can report such crimes in a safe and confidential environment [...].".

Pakistan is now party to different international conventions on human rights<sup>16</sup>, including the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW, 1979), which imparts specific provisions concerning the rights of women, and was ratified in 1996.

## In particular:

#### Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: [...]

- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute

Pakistan ratified CRC in 1990, ICSECR IN 2008, ICCPR and CAT in 2010. Source: http://treaties.un.org

discrimination against women;

#### Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to en sure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

#### Article 5

States Parties shall take all appropriate measures:

To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

In the light of the articles included in the previously mentioned international treaties, it is clear that the principle of non-discrimination, the right to life, the right to fair trial, security and protection under the law, and the right not to be subjected to extreme punishment, are all fully violated by the practice of honour killings.

## The concept of honour

Honour killings have a long history in the whole sub-continent. They are very much rooted in traditional forms of 'justice' and have no relation to the effective rule of law. *Karo Kari*, the Sindhi term commonly used to refer to the practice of honour killings, means black man (karo) and black woman (kari). It implies that both parties have blackened themselves by committing a certain sin, dishonouring themselves and their family. Therefore, by declaring a woman responsible for committing a dishonorable act, there must also be a man to blame.

However, it is clear that the responsibility always falls onto one of the two parties, and the woman is the one who is subjected to judgement and punishment.

The concept of honour itself is quite ambiguous, difficult to define and, in one way or another, a debatable issue. The conventional perception of honour is closely tied to culture, tradition and a patriarchal mindset, which, combined together, have perpetuated the subordination of women in both the private and public sphere. Honour is very much associated with the male members of the community. Traditionally, a man's honour resides in his properties, such as the land he owns or the number of cattle he possesses. However, the greatest property for a man is represented by the women of his family. Women are considered men's commodities and embody the honour of their fathers, brothers, husbands, and other family members. Women's purity and integrity guarantee the respect their family receives from the public. However, the honour they are invested with is not simply related to their virginity and modest conduct, but stretches out to include several other restrictions, such as constraints on what to wear, what to say, when to speak, when to go out, where to and with whom. Many women are essentially denied the freedom to think and behave differently, to speak freely, to decide what to do in their life and to choose who to marry, and these are only some of the restrictions imposed upon them. In the past decade in Pakistan, hundreds of murders under the pretence of honour have been reported and many more have occurred without being reported. Sometimes, double murders of men and women suspected of being in love with each other have actually taken place. Nevertheless, the majority of killings in the name of honour have affected girls who have been murdered for simply going out without permission; young women who have been punished because they rejected arranged marriages or wanted to marry somebody from another tribe; newly married brides, accused of no longer being virgin, who have been killed in cold blood; wives who have been assassinated for being suspected of having extra-marital relationships or on the pretence of other forms of disrespect towards the male members of their family. The motives behind such killings involve very disputable perceptions of seriousness and place the collective sake of the family and the community before the individual's wishes. Furthermore, it is important to underline that alleged acts of unacceptable sex, such as pre-marital and extra-marital sexual intercourse, are not the only reasons behind honour killings. Throughout the years, the range of 'justifications' has broadened and has come to include more and more matters of free choice, such as the choice of the person to marry or the decision to seek divorce, as well as financial claims over the rights to property and fair wages. It seems that the widespread violence taking place in Pakistan is not only an expression of the control held over women, but also proof that many more women are trying to oppose the system, show resistance and make decisions for

themselves. In such circumstances, a murder becomes the measure to take in order to restore that status which is traditionally considered acceptable. 17 To this regard, it should also be noted that those male family members responsible for 'restoring' honour are often young male relatives such as younger brothers, cousins or even sons or grandsons, who 'punish' older female family members, such as older sisters and cousins, aunts, and even mothers and grandmothers. A woman's attempt to make her own choice, whether it involves her body or her mobility, is perceived as a claim to social, economic and cultural space which challenges the patriarchal system. The male ego considers such claims as outrageous, and judges the woman as selfish, focused on herself, uncaring towards the other members of her family and damaging the honour of her siblings. 18 The burden which women carry is extremely pervasive and represents a very powerful tool of social control. It should be noted that women are also subjected to other forms of violence which disclose the nature of honour in all its problematic and controversial essence. Acid throwings, gang rape and naked parades are all abhorrent violations of women's dignity and integrity and, within the context of very conservative and sexist mindsets, are also intentional acts of revenge aimed at compensating the 'offence' caused to a man or to a number of the male members of a family or tribe.

#### Cases

In 2006, four women from the same family were killed and one man was also injured. The victims were Ms. Sahzadi (35), Ms. Naseema (30), Ms. Safia (22), and Miss Naseema (27 and unmarried). The wounded man was Mr. Manthar (25). All of them were siblings from the Mahar tribe, and were residents of Abdu village, Lakhi Ghulam Shah, Sindh Province. All of them were attacked by several people (relatives included). The women had been accused of having illicit relationships with men of the adjacent village, therefore bringing shame not only on their family but also on their entire community. The victims were indeed innocent and had not been involved in any sort of illicit sexual relationship. None of the culprits were ever prosecuted.<sup>19</sup>

In 2008, in a remote area of Belochistan province, five women were buried alive

<sup>&</sup>lt;sup>17</sup> Nazish Brohi and Afiya S Zia, 'With the Will to Die: Agentive Defiance to Honour Codes in Pakistan'. Part 4, Section One in "Honour and Women's Rights-South Asian Perpectives". 2012, p. 124.

Urgent Appeal Case: UAC-033-2007. February 1, 2007.

supposedly by the younger brother of Mr. Sadiq Umrani, the provincial Minister for Housing and Construction at the time and a prominent member of the Pakistan People's Party (PPP). Three of the five victims were young women who were going to marry men of their choice at the Civil Court (marriage court), despite opposition from the elders of their tribe (Umrani Tribe). As their intention became known, Mr. Abdul Sattar Umrani (brother of the abovementioned minister) with the help of other men, abducted the three going-to-be brides as well as the aunt and the mother of two of the girls. The five women were driven to another rural area, where, after being injured, they were hurled into a wide ditch and, still alive, covered with earth and stones. Due to the involvement of the Minister, the media never reported this brutal story and the local police never disclosed details of this case. The men responsible for this atrocity were never prosecuted, whereas the alleged main perpetrator, Mr. Abdul Sattar Umrani, was also known to be involved in another similar case, concerning a couple and a taxi driver who were shot dead while driving to a civil court to marry. The provincial government even denied the incident, using resources to try and identify those who had provided information of the murders, rather than trying to pursue the truth and identify the murderers. Eyewitnesses reported that the victims' bodies, having been badly buried, had started to be desecrated by wild animals. A few days later, due to the pressure from protests throughout the country and debates in the senate and provincial assembly of Sindh, the bodies were moved in the middle of the night in order to destroy the evidence. This action was the result of a joint decision taken between the regional authorities in Belochistan and the Government of Pakistan, in order to officially stop further investigation into the case.<sup>20</sup> A few weeks later, three more women were buried alive in Balochistan province as they had protested against the live burial of the five women mentioned above. The three new victims were from Teendah and Mirwah, two villages in Naseerabad. The people responsible for this reprisal, were 8 men who acted under the protection of the provincial minister, Mr. Sadiq Umrani, and were once more lead by the younger brother of the minister himself. None of these men were arrested, and instead they received provincial protection.<sup>21</sup>

Urgent Appeal Case: AHRC-UAC-182-2008. August 11, 2008. Statement: AHRC-STM-215-2008. August 15, 2008. Statement: AHRC-STM-234-2008. September 4, 2008.

<sup>&</sup>lt;sup>21</sup> Urgent Appeal Case: AHRC-UAC-215-2008. September 26, 2008.

#### Historical roots of the phenomenon

It is important to mention that the concept of honour is not only or entirely related to Islam. It is rooted in the customary understanding of the personal, social and cultural sphere of many societies in South and Southeast Asia. The first manifestations of the defense of honour occurred in the Hindi society of the past centuries. There used to exist a custom called *sati*, which derived from some sort of mis-interpretation or re-interpretation of the ancient Hindu scriptures. According to *sati*, a woman who had been left a widow by the death of her husband had to follow him as part of his honourable 'belongings'. This custom, still widely practised at the time of the British colonisation, was forbidden by Sir Charles James Napier, who, in the name of the security of life, issued a ban providing punishment in cases of sati.

This ruling represented an evolution of the good rule of law based on legal order. However, the custom continued to occur in the name of tradition. In societies based on castes, tribes, and patriarchy, certain discriminatory practices are in fact not perceived as crimes, but as customary forms of justice and as the rightful way to respect tradition. In those days, a reformer ruler in Bengal, Raja Rammohan Roy, announced another interpretation of the same Hindu scriptures: a widow could decide not to undertake sati, however, she would remain as part of the honour of her husband forever. She would wear white clothes for the rest of her life so that people could know she was a widow and therefore unable to remarry. Although spared from death, under such circumstances a decent quality of life for a widow was likely to be seriously compromised due to limited access to work and other forms of sustenance traditionally denied to women. It was a further way of stating that without a man granting them the status of married women, their existence was worthy of nothing. Sadly, this way of reasoning still exists in several retrograde societies around the world.

Sir Charles James Napier was later sent to the Province of Sindh where, until that time, Neither the practice of karo kari, nor any other similar forms of honour killings had ever been documented. There were no stories about episodes of violence implying the death of women. In fact, Sindh people were known for their mellow and mild nature, and for being uninclined to violence,

contrary to Baloch tribes, who were renowned for their fierceness. When such neighboring tribes pushed into Sindh territory, rich in water and more suitable for cultivation, they brought with them the custom of honour killings. In Sindh, honour did not use to be related to women, but was instead related to the wealth of a man, the land he possessed, his properties and his social status. As soon as these tribes from Balochistan moved in, a cultural change occurred and the practice of karo kari started to take place within the Sindh region, too. Between 1848 and 1852, there was an attempt to control the incidence of karo kari in the region through the same sort of ban which had been enacted in East-India against sati. Sir C.J. Napier even held consultations with the local *Jirgas* (historical assemblies of Muslim elders), threatening to burn down their villages and crops if killings in the name of honour continued to occur. At that point, communities made sure they could perpetuate the custom

in a less explicit manner. The number of women committing suicide increased, either because they were forced to by the circumstances or, more frequently, due to real honour killings being disguised as suicides. Sir Napier also threatened to send perpetrators to Karachi, a measure which was perceived as a harsh action since these communities were very attached to their land and properties. Nevertheless, killings continued to occur, regardless of the official legal regulations, the political transit from a colony into an independent nation, and the more global changes in society.

# The Jirgas and their judicial system

Since Pakistan came to be in 1947, the newly created State has partly agreed with the tribal elders and has allowed, by tacit agreement, the survival of theocratic forces within its territory, failing therefore in the enforcement of a secular and constitutionally established legal system, and in forming an independent judiciary

Sunnah is the way of life prescribed as normative for Muslims on the basis of the teachings and practices of Muhammad and the interpretations of the Qur'an. The word literally means a clear and well trodden path. Sunnah denotes the practices of the Prophet Muhammad that he taught and practically instituted as a teacher of the sharī'ah and the best exemplar. The Sunnah of Muhammad includes his specific words, habits, practices, and silent approvals: it is significant because it addresses the ways of life dealing with friends, family and government. The sunnah is consulted if a particular issue is not addressed in the Qua'an. Passages in the Qur'an command that the prophet be followed, such as 3:32 "Obey God and His messenger". For Muslims, the imitation of Muhammad helps one to know and be loved by God: "One lives in constant remembrance of God.

Source: Wikipedia.

and administrative machine. This combination has maintained women's subjugation and has heavily affected their emancipation and empowerment. In fact, since Pakistan became independent, violence against women has continued and no substantial decrease in murders in the name of honour has occurred. This is in part due to the survival of the previously mentioned jirgas, tribal assemblies which have always acted as parallel and informal judiciary courts and which have traditionally operated in the region corresponding to the modernday boundaries of Afghanistan and Pakistan. The jirga is a tribal council which consists of elders, tribal leaders, religious figures and other prominent people, who either meet on a regular basis or gather to discuss certain issues. All together, the tribal council leaders are called the 'Sardars'. The role of the jirga has traditionally been to mediate between conflicting parties according to the principles of tribal justice, which are allegedly well-defined and rooted in customary law, but not codified in any written form. Furthermore, the consultations and decision making processes within the *jirga* are inspired by the Sharia Law, the moral code of conduct provided by the Qur'an and Sunnah. Because of their strict and selective interpretation of the religious texts, together with the male-oriented attitude which mirrors the patriarchal system, the decisions taken by the *jirga* have quite often been against women. In fact, with regard to honour killings, the endured appeal of this illegitimate court has not only prevented the extinction of such brutality, but has actively encouraged its reiteration. The members of the jirga are always adult men who rule by consensus. Women are not allowed to participate, not even in the audience. This highly compromises any attempt at a proper gender-sensitive approach to cases where the victims are women. In rare instances, male family members are allowed to represent their female sibling, though this rarely results in a significant change in the final verdict. *Jirga* verdicts are announced and carried out to satisfy social pressure and public expectations. In 2004, the High Court of Sindh Province declared the *jirga* an illegal and unconstitutional institution, which was not allowed to function within the formal judicial authority. Nevertheless, the system of *jirga* has continued to operate and still remains a powerful establishment within the Pakistani informal justice system. It is influenced by wealthy clans, biased against women and poor people, and it is largely condoned by the police. Its influence is especially concentrated in rural areas, wherein resides the majority of the Pakistani population who actually continues consulting this body, as the jirga is often the only judicial and administrative Forum available in their area.

Many jirga leaders are parliamentarians or members of political parties who ironically advocate justice and democracy for all in their official duty, while violating basic human rights during their unofficial role. They are often influential members of the civil administration, or they have good connections with ministers and other leaders. The jirga judicial system requires spoken testimony but no concrete evidence, and, in fact, simply the rumour of a woman's alleged inappropriate behaviour is enough to issue a sentence with no need to investigate the truth of such allegations. In the great majority of cases, women who are accused of having besmirched the honour of their family are condemned to life imprisonment or sentenced to death, whereas culprits responsible for violence against women are condoned and left unpunished. In fact, the jirga sense of justice is not about the pursuit of truth, but rather social stability and maintaining control. Reconciliation is also important, guaranteed by compensation (Diyat), either monetary through generous settlements, or, alternatively, through the handing over of a woman or girl from the perpetrator's family. In such cases, another woman (sometimes even more than one) finds herself having to level an alleged offence with her own body and life, perpetuating in this way the custom of employing women and girls merely as a male commodity. Throughout their lives, Pakistani women have to bear extreme seclusion, submission

The Qisas (equal retaliation) and Divat (financial compensation) laws are two principles of the Figua (Islamic Jurisprudence), which is an expansion of the Sharia Law (see above). Qisas and Diyat cover offences relating to physical injury and murder, both intentional and unintentional. The word Divat in Arabic (دية) means in fact blood money. Under these principles, the victim or the legal heirs (wali-al amr) of the victim may claim revenge or compensation, or may pardon the accused. In the vast majority of honour killing cases, the family of the victim end up withdrawing their complaint in return for monetary compensation, therefore allowing the perpetrators to go free and to not be prosecuted. Although the principle of diyat stipulates that handing over a woman/girl is not a valid form of compensation, it does not explicitly prohibit the practice either. In reality, the practice of compensation settlements involving women is very common and largely accepted by courts, too.

to men, violence and a very disputable control over every aspect of their bodies, speech and behaviour. Many of them, having no alternatives, no access to education or possible forms of networking or support, must accept such burdens with stoicism and as part of their kismat (fate). It is rather paradoxical and hypocritical that women, who enjoy an extremely poor status in society and have no standing within their family either, are at the same time such a key focus

of the distorted and fictitious concept of honour.

## Cases

A 62-year-old man, Mr. Sher Dil Jatoi, killed his second wife for allegedly having an illicit relationship with another man. He received impunity by the local *Jirga*, who actually declared him a 'victim' of honour and therefore innocent, since in their judgment killing his wife was due and justified. The alleged lover of the deceased woman, Mr. Shahoo Jatoi, was then ordered to compensate Sher Dil by handing over three young girls plus 20 buffaloes. Since Mr. Shahoo Jatoi only had one 10-year-old daughter, it was then his brother who was expected to hand over his two daughters, aged 13 and 11. Because of these demands, the people in the area were resentful and pressured the police to arrest Sher Dil as he was known for being a 'habitual' killer of his wives (in 2001 he killed his first wife also because of matters related to honour). As a result of community pressure, the police arrested the killer, but only kept him in custody for 15 days.<sup>22</sup>

Shahid Ali (20) and Nadia (18) married in a civil court in Malir, Karachi, in November 2010. Mr. Ghulam Hussain Shahani, the father of the bride, was against the marriage but accepted the proposal on the condition that one teenage girl from Shahid's family was given to him in marriage. Ghulam was 70 at the time and with already 10 marriages behind him, eight of which had ended in divorced. As his demand was not fulfilled, he consulted a *Jirga*, which declared the couple Karo Kari (black man, black woman) and filed a case of abduction against the groom. The police of Pahalwan Goth, Karachi, where the couple were living, and male members of Ghulam's family, broke into Shaid Ali's house in the middle of the night, assaulted members of his family, took money and gold and arrested the couple. After that night, their whereabouts remained unknown. Ghulam continued to insist on receiving one girl from the groom's family as compensation for the marriage, reminding them that they had already been declared Karo Kari and therefore liable to be killed. Shahid's family were concerned that the couple could have already been killed in the name of honour.<sup>23</sup>

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<sup>&</sup>lt;sup>22</sup> Urgent Appeal Case: AHRC-UAC-233-2008. October 21, 2008.

<sup>&</sup>lt;sup>23</sup> Urgent Appeal Case: AHRC-UAC-038-2011. February 21, 2011.

Taslim Solangi (17) was made to run from a pack of dogs that bit her legs until, exhausted, she fell to the ground where they continued to maul her. She was subsequently shot in the name of honour, as required by her uncles, Karim Bux (councilour in local bodies), Zameer Solangi, and Habib Solangi, who was also her father-in-law, as Taslim had precociously married one of her cousins. The killing occurred in the presence of her father in order to intimidate him, as serious disputes regarding land were occurring within the family (Tasleem and her father had refused to hand over land to the groom/cousin). Due to the influence of Mr. Bux, the police took no



action in the killing or land dispute. Afterwards, he also convened a *jirga* in order to justify the killing and obtain impunity for all the perpetrators. In the meantime, Mr. Abdul Qayum, a wealthy person of the area, was fined Rs. 400,000 and was threatened by the killers and the elders of the tribe to confess to the crime of having had an illicit relationship with Tasleem. He was threatened with death if he had refused to do so. The victim's family left their house and village and all their properties were taken by the girl's killers.<sup>24</sup>

In 2011, Mr. Faiz handed over his 12-year-old daughter Rani to an 85-year-old man in exchange for five acres of agricultural land and the withdrawal of a murder case against him. In a confused setting it was reported that Faiz had killed the wife of the aged groom eight years earlier. The deceased, Anwar Bibi, was also a cousin of Faiz, the father of the child bride. The murderer remained on trial for eight years, during which time the elders of the area, by means of a Panchayat (another illegal parallel judicial system), decided that the charge of murder against him could only be withdrawn if he handed over his teenage daughter in marriage to the aged complainant. For the old man, it was his fourth marriage: his first wife died young, his second wife was granted a divorce and his third wife was murdered by Mr. Faiz. Mr. Zafar Bhatti, the Station House Officer (SHO) of the area, stated that with such a union no law had been broken, and that the girl, being 12, was an adult as per Islamic Law and Shariah,

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Statement: AHRC-STM-274-2008. October 26, 2008. Statement: AHRC-STM-286-2008. November 7, 2008. This case gained national and also international notoriety.

and therefore was not too young for marriage.

In this last case, it should have been taken into consideration that Pakistan is bound to specific provisions related to the protection of childhood and included in 'non-religious jurisprudence'. In particular, The Convention on the Rights of the Child (CRC) states that the age of adulthood is 18, and the Child Marriage Restraints Act of 1929, defines a "child" as a person who, if a male, is under eighteen years of age, and if a female, under sixteen years of age. Child marriage is an abuse and a form of violence against girls, who are forced into a commitment they are not ready for, since they are not physically and mentally developed yet, and lack the basic skills to accomplish their new role of being a wife. Furthermore, they lack knowledge in terms of fundamental rights, as well as education in sexual and reproductive health. Child marriage debilitates a girl's social and emotional health by forcing an early drop-out from school and hastening the passage between childhood and womanhood. It also exposes girls to a higher risk of contracting sexually transmitted infections, and inevitably leads to early pregnancies, which put both the mother and the baby's life at risk. Both the consent of the parents and the non-intervention of institutional bodies in preventing child marriage represent two serious barriers in the eradication of such a harmful practice. The manner in which young women and girls are degraded in Pakistan and are traded as commodities to settle tribal disputes and other sorts of family issues is extremely reprehensible and unacceptable in the current century. It is also deplorable that officers in charge not only prove their low literacy concerning legal issues, but also favour religious decrees to the detriment of the implementation of international and national legal provisions in support of girls. There is a diffuse attitude within the police force of hiding behind the uncontested Shariah Law in order to discharge responsibility and simplify the burden of their duties. This unwillingness to challenge religion and tradition, together with other similar indolent approaches, contributes to perpetuating inaction and inefficiency in the defense of human rights in Pakistan.<sup>25</sup>

# Flaws in the judicial process and the judicial system

The perpetuation of honour killings is exacerbated by the collapse of the rule of law throughout the country. This collapse is due to inadequate legislation which, on specific issues such as honour killings or domestic violence, can still be seen

 $<sup>\</sup>overline{^{25}}$  Statement: AHRC-STM-133-2011. October 3, 2011.

as poor and insufficient.

In December 2004, the Parliament ratified a bill through the Criminal Law (Amendment) Act, by which karo-kari, siyah kari and other similar practices were made punishable under the same penal provisions as murder.<sup>26</sup> However, such an amendment did not revise those terms whereby the perpetrator can negotiate a pardon with the victim's family under the so-called Islamic provisions. Therefore, the main purpose for which the bill was passed became seriously undermined. The law should make it clear that killing in the name of honour should be considered a premeditated murder, which must be punished as gatl-e-amd (an act with the intention of causing death) as defined in Section 300 of the Pakistan Penal Code.<sup>27</sup>

"The loopholes in the existing laws which provide the accused opportunities to get away after playing a direct or indirect role in the commission of crimes in the name of honour, need to be amended to eliminate possibilities of abuse of legal provisions. These amendments should ensure specific minimum mandatory sentences for the criminals and those involved in the concealment of the offence after the crime of murder in order to create deterrence for others" 28

It could be suggested that Pakistan is in a state of corruption and decline. The inefficiency of the justice mechanism compromises the proper enforcement of solutions which, at times, are provided by the law but are left on paper only. Infrastructure is often poor and staff members are not always fully qualified. Therefore, due to the large number of cases, it can take a very long time, often years, to process trials. The justice machinery is slow. Corruption, which is widespread throughout Pakistan and Asia in general, inevitably occurs also within courts, especially the lower ones. The level of bribery ranges from giving 'fees' to clerks to process documents, to literally "buying" the favour of judges themselves. Access to the official justice system is limited to cities and more urbanised areas. Those living in villages and other remote areas must undertake a long journey to access the courts, and once there, they must also deal with delays and long procedures. For people living far away from where the courts are, making frequent journeys back and forth means that they must take time off

<sup>&</sup>lt;sup>26</sup> The complete Criminal Law (Amendment) Act, 2004, can be found in appendix four of this volume, p. 172.

Section 300. Qatl-e-Amd: Whoever, with the intention of causing death or with the intention of causing bodily injury to a person, by doing an act which in the ordinary course of nature is likely to cause death, or with-the knowledge that his act is so imminently dangerous that it must in all probability cause death, causes the death of such person, is said to commit gatl-e-amd.

<sup>&</sup>lt;sup>28</sup> Zahid, Wasim, Haswary, 2012. Pages 29, 41.

from work, a luxury which they cannot afford. It is no surprise, therefore, that people living in rural areas tend to appeal to the local *jirgas*. The access to official and fair justice is a serious issue within the whole country, especially for the poorest sections of society and those living in rural areas. However, in this regard, it is also important to point out that in many ways, the current laws of Pakistan and the *jirga* system are similar, especially regarding matters related to women. For example, both the *jirga* and the *Figua* (Islamic Jurisprudence) apply the principles of *Qisas* and *Diyat* (see above) in cases of honour killings. Women are basically blamed, criminalised and punished in both systems. Until an effective abolishment of the jirgas system and relevant legislative reformations and structural improvements in the justice machinery occur, there are few hopes for the cessation of honour killings and other forms of vindictive violence against women, as well as for the proper punishment of such crimes. The petition filed in 2012 by the National Commission on the Status of Women (NCSW)<sup>29</sup> and accepted by the High Court of Sindh, represents an encouraging sign, although further action is required.

**PAKISTAN:** Supreme Court takes petition against Jirga system for regular hearing March 19, 2012-A press Release from the National Commission on the Status of Women (NCSW), forwarded by the Asian Human Rights Commission.

A two-judge bench comprising Chief Justice Iftikhar Mohammad Chaudhry and Justice Tariq Parvez, which had taken up the petition of the National Commission on the Status of Women (NCSW), filed by its chairperson Anis Haroon and others, decided to issue notices to Attorney General Maulvi Anwarul Haq as well as other respondents, including secretaries of law and interior and chief secretaries of the four provinces and Gilgit-Baltistan. An identical petition was filed by Samar Minallah against Swara, a custom in which girls and women are exchanged to settle disputes through *jirga*, will be clubbed with the NCSW's petition. The court office will announce a date for the hearing later. Ms Haroon informed the court that 87 jirgas had been held in Sindh in 2011 alone in which 26 girls and women had been exchanged for settling disputes. Ironically, she lamented, district administrations were not taking interest in taking action against those involved in violation of the fundamental rights of women. The NCSW petition has cited the Haripur *jirga* trial of June 7, 2011, on whose order a middle-aged woman, Shehnaz Bibi, was ruthlessly

Online: http://www.ncsw.gov.pk/

dragged out of her home by the jirga team and forced to parade naked on the street as punishment for an alleged crime of her sons. Similarly, on an ex-parte jirga decision on June 21 last year in Bari Kot village in Swat, Ms Shazia was murdered by her husband Muhammad Saeed and others on the suspicion of his wife's alleged illicit relationship with his brother. The petition requested the court to declare that the jirga system was a parallel judicial system because it assumed the powers of civil and criminal courts to implement its own orders. It also urged the court to hold null and void actions taken, proceedings conducted and orders passed by any jirga, panchayat or similar bodies and ordered appropriate actions against people who participated, aided or abetted illegal activities. The petition sought court's directives for the respondents to frame, amend and implement constitutional provisions and penal laws relating to illegal practices of *jirga*. It said: "Such illegal practices being carried out in different parts of the country with impunity violate the state laws and fundamental rights of its citizens and also jeopardise state position with regard to international treaties to which Pakistan is a signatory. "The practice of jirga also contravenes Articles 4, 8, 9, 10, 10(a), 14, 25, 34 and 37 of the Constitution which guarantees legal protection, right to enjoy life, liberty and justice to the citizens of Pakistan and to be treated in accordance with the law.<sup>30</sup>

<sup>30</sup> Courtesy: DAWN News. Forwarded Press Release: AHRC-FPR-013-2012. March 19, 2012.

# IV

# Ineffective prosecuting units and widespread impunity

It can be argued that the entire policing system in Pakistan is equally responsible for the extensive condonation of violence against women and the resulting impunity. In fact, the civilian police are often not only inefficient, but also intently and explicitly acting against the victims. In the majority of cases, an alarming lack of action is undertaken and police officers often show hostility and malevolence towards women who want to file cases of violence, as well as towards people who want to report cases of killings involving women. In some instances, after initial reluctance, if there is pressure from the local community, the case becomes known within the media or if some reputable NGO also lobbies for consideration, the police may finally register an FIR (First Information Report). Investigation and protection are normally refused by police stations, while sympathy lies with the tribal leaders and pressure by prominent political parties determines the management of the cases. Investigation, if and when a case is filed, is inaccurate, and intentionally carried out with lassitude and deliberate disregard. Evidence is often destroyed, consequently leading to the case being closed. Police bodies are largely distrusted, seen as biased against women, and extensively corrupted, to the point that even to have a complaint filed, bribes are needed. This is mainly to the detriment of poorer people who cannot sustain such costs, and at the expense of institutional honesty and integrity. Furthermore, police stations are often underequipped (they are short of even basic forensic facilities) and police officers are undertrained, which means that they lack decent investigative skills and are poorly gendersensitised, as they often do not deplore the motives behind violence against women. When police officers finally file complaints, they often modify or manipulate witness' statements, omitting important details in order to make the content of the FIR inaccurate and the entire case weak. Their professional ethics are indeed open to criticism.

## Cases

Ruby Perveen (16) was kidnapped at gunpoint and gang raped by five men, some of whom had been following and taunting her for a number of days. Three of

the men, Mr. Qiaser Shahzad, Mr. Adeel Shahzad and Mr. Irshad (known as Shada), were the sons of a powerful landlord and leader of a local political party (PML-Q). The five perpetrators entered her home and stole jewellery before abducting her, drugging her with chloroform and raping her repeatedly. She was found semi-conscious the following day at a bus stand in Shumali (North) Sargodha. Ruby's mother did not receive any help from the Saddar Police, when she first tried to file a First Investigation Report (FIR) at the station on the day her daughter was found. The family had to ask for the intercession of an assembly member, and only then could an FIR be registered. However, no arrest occurred, and the family later discovered that some of the accused men had applied for, and been granted, interim bail from a local judge, who without going into the details of the case, simply accepted the accused men's promise that an out-of-court settlement would be arranged. However, the victim's family were never consulted on the matter and they actually wanted to proceed via judiciary praxis. The family attempted to obtain a medical report and a DNA test, but the police were unwilling to have such a test carried out on the accused due to the aforementioned settlement. This case highlights the damage done to the rule of law and the complaints procedure when monetary settlements become acceptable responses to crime, thereby allowing wealthy and influential people to literally buy their impunity. No cases can legally be settled outside of court, and police should have no role in mediating them.<sup>31</sup>

Mr. Ghulam Shabbir, aged 40, a farmer and resident of the village of Bachal Leghari, Sindh, lodged a report at the local police station stating the names of several people who had entered his house and stolen valuable items. The police were reluctant to file an FIR against the accused men as they were notorious criminals who eventually threatened Shabbir and warned him to withdraw their names from the theft case or face serious consequences. A few days later, these men attacked Shabbir's house and, after beating the members of his family, abducted his 14-year-old daughter and gang-raped her a few kilometers outside the village. Eventually, with the help of some villagers, the girl was rescued. However, the local police were reluctant to authorise a medical examination for rape at the government hospital, as the rapists were henchmen of one of the tribal chiefs of the Jamali tribe, who was also the brother of a federal minister. Even though the medical examination was finally performed at the government hospital of a nearby district, none of the rapists were arrested or ever

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<sup>31</sup> Urgent Appeal Case: AHRC-UAC-142-2009. October 23, 2009.

# prosecuted.32

Six armed men, who were part of a group of land grabbers from Karachi and who were working in connection with different police stations, attacked the house of Mr. Abdul Rafiq Jagirani in Sindh, in October 2010. The gang abducted his 16-year-old girl and his 14-year old son at gunpoint, and asked for a ransom. They threatened Jagirani not to report anything to the police otherwise they would kill both children. Having been asked for Rs. 500,000 (USD 5883) as ransom for the release of his children, Jagirani was forced to sell some of his land and, after one month, he could finally collect the due amount, pay the abductors and see his children again. His daughter confessed to him that she had been raped during her captivity. After much hesitation from the local police, an FIR for gang rape was filed and a medical examination confirmed the rape. The people accused were six men from Karachi, 2 of whom remained unknown: Abdul Kareem Marfani, Abdul Hafeez Marfani, Deedar Husain Marfani and Mehboob Marfani. Despite this, the police failed to produce the accused perpetrators when the court issued non-bailable warrants for them. Furthermore, pressure started to rise from allied criminals, compelling the police to release the four accused men, who were eventually released after allegedly bribing the officers. Jagirani then contacted Mr. Nasrullah Baloch, a member of the Sindh assembly from Sukkur district, who raised the case of rape to the assembly. The minister of the interior at the time, Dr. Zulfigar Mirza, replied to the request and promised that he would do his best for the case. However, the minister never contacted the victim's father and no further action was ever taken. None of the accused were arrested, and they instead enjoyed protection from the police.<sup>33</sup>

Ms. Sonia Rani, aged 18, and resident of Miandadkot, Hafizabad, Punjab, was continuously raped for five years in the captivity of her stepfather, Mohammad Ramzan, a well-known police tout of the area and second husband of Sonia's mother. At the police station of Hafizabad, Sonia stated that she had been forced to have three abortions which had been carried out by different midwives, and that she had been threatened to remain silent by her stepfather. Furthermore, she reported the disappearance of her mother, a fact which she also attributed to her perpetrator, since her mother had come to know about the abuse she had suffered. Although she was discouraged from filing the case by

<sup>32</sup> Urgent Appeal Case: AHRC-UAC-064-2010. May 14, 2010. Urgent Appeal Case: AHRC-UAC-053-2011. March 8, 2011.

the Station Head Officer (SHO) and other police officials, an FIR was eventually registered. However, reluctance to proceed persisted because of the perpetrator's position, and Sonia was consequently 'invited' to withdraw her complaint and to accept a settlement.<sup>34</sup>

Nasima (16), from the village of Habib Labano, Sindh, was abducted by 11 men from her same village, who barged into her house when her father was not at home, took her to the residence of one of the perpetrators, Mr. Abdul Sattar Labano, a local influential figure, and raped her. This act was planned and undertaken in retaliation for a 'love marriage' which the perpetrators opposed. It was alleged, in fact, that Nasima's cousin, Bhan Labano, had secretly married a girl who was a member of a higher caste. The perpetrators had been threatening Nasima's family to nullify the marriage and produce the man before them, saying that otherwise they would face consequences. The girl was kicked out of the house where she had been raped because of the protests from other villagers outside who had been shouting and knocking loudly on the door. The doctor in charge of Nasima's medical examination was forced to deny the rape, and therefore the police filed no rape charges against the perpetrators, as by law a rape case cannot exist without a medical confirmation. Five of the eleven perpetrators were questioned by the police, however, no action was taken against them. All the perpetrators remained unpunished as they were all political campaigners for Mr. Nadir Akmal Khan Leghari, who at the time was Minister of Irrigation of Sindh Provincial Government, and who exercised pressure on the police to follow his instructions. Nasima was discharged from the civil hospital, while the perpetrators threatened to arrange a *Jirga* consultation to put the victim on trial for smearing their 'good' name. Nasima and her family were granted limited protection by the authorities for the violence suffered. In fact, a few weeks after the incident, they were stuck in Karachi, afraid of returning to their village. Impunity prevailed once more and a young, vulnerable and innocent girl ended up being the means through which overbearing men took revenge for an alleged offence suffered.<sup>35</sup>

Shahnaz Akhta, a master's degree holder and a teacher in Sahiwal District, Punjab province, secretly entered into a 'love marriage' while continuing to live with her parents.

<sup>&</sup>lt;sup>34</sup> Urgent Appeal Case: AHRC-UAC-059-2012. April 12, 2012.

 $<sup>\</sup>overset{35}{\text{Urgent Appeal Case: UAC-039-2007. February 3, 2007. See also: Urgent Appeal Update UP-043-2007 and Statement AS-145-2007.}$ 

When she found the courage to reveal everything to her parents, they reacted badly announcing that they would make her marry her cousin, the man of their choice. She escaped and found shelter at her legitimate husband's house, Mr. Ghulam Mustafa. The police, sent by her parents, raided Ghulam's house and arrested his two brothers on the fabricated accusation of abducting Shahnaz. Later on, Shahnaz and Ghulam were also arrested, and at the district police station of Jhang, Shahnaz was heavily beaten by police officers in the presence of her father and uncle who did not interfere with the brutality. Due to this violence, she suffered a miscarriage. Ghulam and his two brothers were charged with abducting Shahnaz and were detained. Shahnaz was taken back to her parents' house where the cousin she was supposed to marry sexually abused her in front of several family members. She was prevented from leaving that house for a long time. The police did not take proper action against her perpetrators and delayed the hearing for bail application of her husband and brothers-in-law.<sup>36</sup>

Babli Lashari (20) and Mr. Ali Gohar Shar, her legal husband, were married before a civil family judge in Khanpur, Sindh, in January 2009. The elders of the Lashari tribe opposed to Babli's marriage and exerted pressure on her parents for its annulment. The couple were hiding from the police who had been assigned by the elders to detain them. The local *Jirga* declared that Babli had brought shame upon her entire tribe and that she should be killed in the name of honour. The couple decided to seek help at the Women's Police Station and asked that Babli could be lodged in the Darul Aman, an official shelter house in Sukkur, 35 kilometers from Shikarpur. The Station House Officer (SHO), Miss Rukhsana Mangi, asked for money in order to proceed with a report in Babli's favour, and informed the couple that the next day Babli should be produced before the Magistrate's Court and then sent to the shelter. In the meantime, elders of the Lashari tribe, informed by the Women's Police Station itself, arrived at the station with Babli's mother and brother asking for Babli to be handed over. An amount of Rs 150,000 (USD 1875) was agreed and Babli was ceded to the elders of the tribe. The SHO had a fake document arranged which stated that Babli was never married to Ali Gohar, that she had followed her family on her own free will, and that she did not want to go to the shelter house anymore. The next day, when Ali Gohar realised what had happened, he immediately filed a case under Section 491 of the Criminal Procedure Code, a section which refers to urgent matters aimed at the saving of lives. However, the

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Graph Appeal Case: AHRC-UAC-009-2008. January 23, 2008.

divisional bench of the High Court did not take the issue seriously, even though Mr. Gohar's lawyer had previously informed the court that the SHO had taken a bribe and that the girl's tribe had already announced her impending death. Three hearings occurred in court without the testimony of the victim, whose whereabouts were unknown. The judges continued to show disinterest in these critical circumstances and they also accepted two fake marriage certificates to unknown men (one of whom was a policeman) produced by the perpetrators as evidence. Babli was killed as announced and quickly buried. The perpetrators also refused to reveal to her husband the precise location of her burial site. The High Court of the Sukkur branch never asked the police about the paper prepared by a fake oath commissioner in which it was stated that Babli wanted to rejoin her family of her own free will and that she was not married to Mr. Ali Gohar Shar. The document should have not been accepted, as it did not bear Babli's signature. It only had the signature of a so-called oath commissioner but was not attested to by a first class magistrate, which is a necessary condition for its validity. The SHO of the Women's Police Station, a woman herself, failed in protecting a person in her custody. Furthermore, her corruptibility proves that even in supposedly pro-women police stations, if professional integrity and the respect of the law are absent, justice continues to be denied.<sup>37</sup>

In April 2009, Firdous Shaheen (22), a Shiite from a wealthy and influential family in Muzaffarabad, married Mr. Zamir Lone (26), a young man from the Sunni minority in the area, without her parent's knowledge. While her angry father, Mr. Syed Hussain Shah Bukhari, failed to engage the support of Shiite neighbours in this affair, Shaheen managed to record a statement of confession before the civil court of Muzaffarabad under Section 164 of the Criminal Procedure Code to confirm that she had willingly married Mr. Zamir Lone. After that, she left her parents' residence. However, her father lodged a First Information Report against the groom and his family, falsely claiming that they had abducted his daughter. He also involved in the case the superintendent of the Muzaffarabad commissioner's office and the provincial minister of Azad Kashmir, who started to threaten Zamir's father, Mr. Bashir Lone, to proceed with the arrest of his family members. Mr. Bashir and his two sons were arrested and also denied bail, whereas his wife Rashida and daughter Rubina were granted it. However, on the day of their release, the two women were approached by officers and told to get into a nearby police van, in which Mr.

<sup>&</sup>lt;sup>37</sup>Statement: AHRC-STM-106-2009. May 14, 2009.

Bukhari, Shaheen 's father, was waiting. The van drove away and the whereabouts of the two women remained unknown. Zamir's eldest sister, Ruheena, who was living in London, was also threatened, in case she had offered shelter to the hiding couple. If Shaheen was not produced before her father, then her mother and sister-in-law would be killed, and this was the final threat. Fortunately, within two weeks the administration of Pakistani Kashmir found Rshida and Rubina, and Zamir's father and two brothers were also released. However, both the couple and the groom's family continued to face threats and were eventually forced to separate and hide. No inquiry regarding the abduction of the two women and the arrest of three men on false charges was ever raised, and all perpetrators enjoyed impunity. <sup>39</sup>

This last case shows to what extent women are constrained in their right to choose who to marry, and how dangerous the consequences of a 'love marriage' can be when an assertive father is not willing to concede and accept that his daughter's life is not under his command. Women are not to be seen as under permanent male authority, but must be considered as independent individuals, free to choose what pleases them in life. The baseness of the false accusation of abduction against the groom's family is supported by the immutable idea that a young woman is not only incapable, but also not supposed to decide. Rather, she is unacceptably taken away from her father's control, who is the only one in charge of arranging for her the placement in society that pleases him the most. When such an authority is challenged, men retaliate against women. The worst aspect of such conduct is that institutions continue to support certain behaviours and contribute to the reiteration of this kind of mindset. Police forces and official establishments must operate according to fair, nondiscriminatory and super partes rule of law, where no time, space and resources should be allocated to pursue alleged morals and other claims in the name of paternal authority. Conservatory attitudes and fanatical behaviours must encounter the opposition of the state, in the name of progress and for the betterment of society.<sup>40</sup>

In Pakistan, as well as in other conservative countries, police forces perceive themselves as being responsible for keeping 'order' in society. A high level of morality exists which strongly influences the modus operandi of the police. A change in attitude and approach needs to occur in the interest of the entire

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<sup>&</sup>lt;sup>38</sup> Urgent Appeal Case: AHRC-UAC-079-2009. July 9, 2009. Statement: AHRC-STM-156-2009. July 15, 2009.

prosecution system. Police are not responsible for moral parameters, but for justice, transparency and the rightful implementation of the law, both nationally and internationally. Police should pursue the truth based on evidence and documentation. They should aim at an objective, logical and empirical prosecution of crimes.

# The ignominy of rape and torture in police custody

Women who try to lodge a complaint of violence (or other types of complaints), especially against prominent people or officers in charge, or women who happen to be arrested due to an accusation made against them, often encounter the double humiliation of being harassed and abused by those officers who were supposed to provide them help. In these cases, rape is used as a tool to silence complaints and further disgrace and humiliate them. Rape and sexual harassment in police custody remain large problems for women in Pakistan, where torture is endemic and several forms of degrading treatment are used on internees or alleged culprits in police custody. Typical abuse which women suffer includes: beating and slapping, suspension in mid-air by hands, insertion of foreign objects such

CAT, Part I, Article 1:

"[...] Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.[...]".

as batons and chili peppers into their vagina or rectum, and repeated rape by several officers. Such reprehensible treatment can certainly be classed as cruel and inhuman, and included in the official definition of torture provided by the UN Convention Against Torture, adopted in 1984, and which Pakistan ratified in 2010.

#### Cases

Ruby Masih (32) was raped in a private detention center for more than 50 days

<sup>&</sup>lt;sup>40</sup> A similar case was documented three months later, when the illegal detention and alleged torture of six family members took place, in response to a love marriage opposed by the bride's side. See: AHRC-UAC-120-2009.

(from August 10 to September 30, 2010) by police constable Ishaque Masih of the Mehmoodabad Police Station, and other plain-clothed policemen known as informers. In April 2004, Ruby purchased a house from Mr. Iqbal Masih, paying off the amount due except for a sum of Rs. 40,000 which would have finally been paid at the reception of all papers certifying the ownership of the house. However, constable Ishaque allegedly forged papers attributing the property to another woman called Mrs. Marium Bibi. Due to a complaint lodged in the civil court, Police Constable Ishaque, Police Constable Shahid and several people broke into and occupied Ruby's house, throwing away all her personal belongings. She and her family moved to another house as the police refused them entry to their own premises. Another case for illegal occupation was lodged, but no action against the perpetrators took place. Instead, a few days later, Ruby was abducted and was asked to withdraw the case against the policemen accused of occupying her house illegally. Persistently refusing to do so, she was illegally detained in a centre used for torture, and was drugged and raped for 52 days. Her husband, Mr. Aijaz Masih, tried in vain to file a case of abduction before the district court and session magistrate as the police refused to file such a case against other police officials. Only with the intervention of the Korangi Industrial Police Station, could an FIR be lodged. On the same night, the accused police officials released Ruby, transferring her into the jurisdiction of another police station (Risala Police Station). In this way, the FIR at Korangi Police Station became ineffective. While Ruby was under medical care at the Civil Hospital, her husband was arrested by the Mehmoodabad police on the charge of theft. He was then sent to prison, where he was kept for 15 days and then released on bail. The Korangi Industrial Police arrested constable Ishaque and Shahid on the basis of Ruby's statement. Unfortunately, within four days, the two constables were released since Ruby was found to be from Risala Police Station. Therefore, a case could not be taken to court against the perpetrators, and they were never prosecuted. 41

Kulsoom Baloch (25), from a wealthy family in Islamabad, secretly married Fazal Abbas (29), from another town and a more modest background. When her family came to know about the marriage, they filed a fabricated complaint of abduction, rape and theft of jewellery and money against the groom. Kulsoom, as well as her in-laws, were harassed by her brother, an assistant sub-inspector (ASI), police officers and other relatives, who raided their houses demanding to know the precise location of Abbas. Kulsoom managed to flee, while Abbas and three of his four sisters (Nadia, Rani and Nazia, aged 12) were taken to the local police station and beaten by the Station House Officer (SHO) and his Assistant

<sup>41</sup> Urgent Appeal Case: AHRC-UAC-171-2010. November 12, 2010.

Sub- Inspector. The three sisters' clothes were torn, their hair was pulled and they were also violently hurled against the walls. Their other sister (Shazia, 16) was supposed to remain hostage of Mr. Iftekhar Ahmed Khan Baloch (brother of Kulsoom, a member of the provincial assembly [MPA] and parliamentary secretary in the government at the time) until the prisoners could lead the police to Kulsoom. After four days, Rani and Nazia were produced before Mr. Azmat Ullah, a civil judge in Rawalpindi for remand, and were charged with aiding the abduction of Kulsoom when she married their brother. Remand was granted, however, the judge ignored the girls' claims that they had been severely tortured and humiliated in police custody. To further punish these innocent women, Rani's husband, Mr. Shafiq Dogar, was also falsely charged with the accusation of theft, and severely tortured. Two weeks later, he appeared in a wheel chair before the same civil judge, who showed the same indifference towards his case and his injuries. He was released on bail for the charge of theft, but was remanded again on a new charge of aiding Kulsoom's abduction. Nadia and Nazia were released on bail, but then it was their mother's turn to be arrested and harassed in police custody. Despite an FIR regarding the illegal arrests and torture that the Abbas family members had to suffer, threats from the Baloch family and further illegal arrests continued to occur, forcing those still free into hiding. 42 In the meantime, the Punjab Provincial Government proved to be weak and unmotivated in acting against its own assembly member, Mr. Iftekhar Ahmed Khan Baloch in relation to the abduction and forced custody of Shazia, whose whereabouts remained unknown. Pakistan is a signatory country of the UN Convention on Torture (CAT) and of the UN International Covenant on Civil and Political Rights (ICCPR). In other words, it is the responsibility of the Government of Pakistan to ensure the implementation of those internationally agreed provisions aimed at protecting the right to life of citizens and punishing arbitrary arrests and any sort of degrading treatment suffered by any individual, women and minors included, in police custody. 43

In Punjab, a 17-year-old girl and daughter of a simple labourer, was abducted by officials of the Nishatabadand Police Station. She was kept in private custody for almost 16 days, during which time she was raped and tortured in order to be forced to confess her involvement in the murder of her fiancée, a crime for which she was not responsible. The torture she suffered included bites and rape.

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 <sup>42</sup> 43 42 Urgent Appeal Case: AHRC-UAC-051-2009. May 20, 2009. Statement AHRC-STM-116-2009. May 22, 2009.

Under the direction of the sub-inspector, her elder sister was also arrested and brought to the police station. Both sisters were made to sit in front of each other naked for three days, at the complete disposal of police staff who teased, touched, molested and sexually harassed them. The sister charged with murder was then sent to the district prison in judicial custody where her parents were not allowed to see her. Mr. Manzoor Ahmed, the father of the victims, facing strong opposition, decided to appeal to higher police officials and, thanks to the intervention of Mr. Nadeem Gulzar, the additional session judge, a complaint of rape in custody, illegal detention and torture was ordered. However, the Nishatabad Police Station refused to follow the orders of the session judge against their SI Investigations. None of the offenders were arrested and all the perpetrators continued their duties as usual, protected by their rank within the police force and by the feebleness of the judiciary system.<sup>44</sup>

Uzma Ayub, aged 16, daughter of Mr. Mohammad Ayub and a resident of Khyber Pakhtoon Kha province, was abducted from her house in early October 2010 by several police officers and one member of the army, while they were raiding her house in search of her brother, who was wanted in connection with a case of theft. She was kept in captivity in different locations, often drugged, and continuously raped and abused for almost one year. When she finally managed to escape in September 2009, she made her story public, providing the names of the people who had sexually abused her and also reporting her forced marriage to one of the rapists. In her statement at the Tehsil Provincial High Court, she accused police personnel SHO Mohsin Ali, Assistant-Sub Inspector Hakeem Khan, Amir Ali and Naseeb Ullah, the army officer, of sexually abusing her. In total, she named 13 people who had been involved in her abduction and rape. The girl also said she was pregnant, and after a medical examination her pregnancy was confirmed.<sup>45</sup> Mr. Irfan Khattak reported that he was beaten by ASI Hakeem Khan, one of the accused rapists and also alleged to be a Taliban informer in the area, for refusing to drop the case. Afterwards, he was arrested and taken to the Takht-e- Nusrati Police Station, where he was also tortured. The police used with him the same intimidating tactics already used on Mr. Afsar Khan, the victim's first lawyer, who eventually dropped the case after being mentally and physically tortured. All the officers involved in Uzma's case continued to appear in full uniform and to work at the police station despite the announcement of their suspension. In the meantime, the inept local

 <sup>44</sup> 45 Urgent Appeal Case: AHRC-UAC-164-2008. July 21, 2008.
 Urgent Appeal Case: AHRC-UAC-226-2011. October 28, 2011.

government, unable to provide protection to the victim, her family and her lawyers, proved to be incapable of undertaking any legal action against the perpetrators. 46 In Waziristan, a self-proclaimed state of the Taliban where Uzma lived, pressure was also put on the neighbourhood to keep their distance from the whole matter. Threats from the local police, the Taliban and local leaders of the ruling parties continued, aimed at the withdrawal of the complaints of rape and illegal detention, and the abortion of the unborn child. Uzma refused to settle the case outside court, despite the conspicuous compensation she was offered and the further threats of 'consequences'. Eventually, Alamzeb Ayub, Uzma's brother, was shot dead in December 2011 on the premises of the courthouse of Karak and in the presence of police officials, in a clear act of retaliation. In January 2012, Uzma gave birth to a baby girl. Adoption procedures began as Uzma was not in the psychological or financial position to sustain her fatherless child properly. <sup>47</sup> By granting such impunity, and by keeping silent despite the full knowledge of the perpetrators' threats, authorities proved to be indifferent and negligent towards the right to justice which every citizen is entitled to. All the perpetrators remained free with the consequential assumption that keeping a minor girl in captivity and gang-raping her for one year would not carry any legal consequences, and that such conduct could even be doubled in the future.48

Humbling abuse against women in Pakistan is also committed by military and paramilitary forces, such as the Rangers, that are present and active throughout the national territory.

## Case

In 2006, a female law student at the University of Karachi was sexually harassed in the university examination centre while she was waiting for her exam to start. A computer operator, Mansoor Riaz of the Islamic Learning Department, requested her to follow him into his office to double-check her documents. In the meantime, another two men from the same department joined them and, once they locked the door, they assaulted the girl. Her screams caught the attention of some other students who forcibly opened the door and rescued her.

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<sup>46</sup> 47 Statement: AHRC-STM-162-2011. October 31, 2011.

Article: AHRC-ART-001-2012. January 20, 2012.

<sup>&</sup>lt;sup>48</sup> More on this case: AHRC-STM-164-2011. AHRC-STM-166-2011. AHRC-ART-057-2011. AHRC-STM- 186-2011. AHRC-STM-204-2011.

Immediately after, the three men were produced before the Vice Chancellor of the university, who told the girl not to report the episode and allowed the three men to leave. After being released by the Vice Chancellor, the three perpetrators went straight to officials of the Pakistan Rangers, a paramilitary armed group, who have been stationed within the Karachi University for more than 10 years for security purposes, and who are also known for episodes of beating and for harassing students over the past decade. The Rangers advised the three men to go on strike and lodge a case of assault against the students who had beaten them, insisting on the fact that they were innocent. While the case slowly gained public attention, the university authority temporarily suspended the three perpetrators, who, supported by the Pakistan Rangers, threatened the girl's parents to retract their complaint of attempted rape. 49 Two of the accused men, in particular, had been formerly implicated in a similar case at the Shiekh Ziad Islamic University and, under the alleged influence of the Pakistan Rangers, had later been transferred to the Islamic Learning department of the Karachi University as a result of disciplinary action. In front of the inquiry committee, reluctantly constituted after public pressure, the university authorities rejected the accusation of attempted rape against their three employees, and instead, defined the case as a matter of 'misbehaviour'. They also denied any influence from the Rangers in the process, stating that "the Rangers maintain discipline and security at the campus and do not indulge in any unlawful activity". 50 In the end, all the students accused of beating them were suspended and only one of the three men was fired, whereas the other two only suffered some reduction in pay. None of them were found guilty of any criminal charge.

# The Case of Zarina Marri

Zarina Marri, a young schoolteacher from Balochistan province, was arrested in late 2005 and accused of spying for the Baluchistan Liberation Army. She was kept in an army torture cell in Karachi where military officers sexually abused her. They also used her as a sex slave in order to induce confessions from arrested nationalist male activists who had been accused of terrorism and other anti-state activities. Her story became known to the public when Mr. Munir

Urgent Appeal Case: UA-258-2006. August 2, 2006.

Urgent Appeal Update: UP-159-2006. August 10, 2006. See also: Urgent Appeal Update UP-172-2006 and Statement AS-253-2006

Mengal, the managing-director of a Balochi-language television channel, arrested in 2006 at Karachi International Airport and released after nine months of military custody, decided to tell her story. He also reported that other women from Belochistan had been arrested, both during and after demonstrations regarding enforced disappearances. They were kept in torture cells, naked and in distress, and sexually abused within military custody. Torture cells are known to exist all over Pakistan at numerous military detention centres. The national government has the responsibility of ascertaining the whereabouts of its disappeared citizens. In particular, it has the duty to search for those missing people taken by state intelligence agencies who are believed to be held in torture cells, like Zarina, and all the other women arrested in Balochistan who are considered missing.<sup>51</sup> The Inter-Services Public Relations (ISPR), a public relations department of the armed forces of Pakistan, denied the allegations of torture and forcing female prisoners to become sex slaves in army torture cells. The ISPR also threatened newspapers and electronic media with dire consequences if they continued to report the case of Zarina Marri, as they were damaging the 'good image' of the army. The Pakistani Government did not initiate any serious or comprehensive investigation into the case of Ms. Zarina Marri, and all those people, women included, who disappeared from Belochistan, despite the continuous demonstrations in several parts of the country. The central government failed in the formation of an ad hoc judicial commission, and showed weakness and inertia in any attempt at investigating military crimes against civilians.<sup>52</sup>

# Gender issues are not simply women's issues

Low gender-sensitivity continues to be a serious issue and represents a consistent problem, in police stations as well as in lower and higher courts. Victims are often required to make public statements and narrate the intimate details of the abuse suffered in front of many people. In some cases, they are even asked to simulate the actual actions. Such a lack in delicacy and respect for survivors increases their humiliation and embarrassment, and doubles their sufferance. It is as if they went through that pain again.

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Statement: AHRC-STM-012-2009. January 12, 2009.

Statement: AHRC-STM-020-2009 and AHRC-STM-023-2009

"On March 25, 2008, additional district and sessions judge Nizar Ali Khawaja conducted the trial of four men. They had allegedly gang-raped 13-year-old Ms Kainat Soomro in 2007, over a three day period in Dadu district, Sindh. The girl, who was expecting an on-camera trial, was asked by the judge to describe and even demonstrate her rape, in detail, in front of the accused, Mr Shahban Sheikh, Mr Sheikh Ehsan, Mr Roshan Aleem and Mr Kaleemullah, all influential men who allegedly threatened and bribed Somroo's family to settle out of court. Approximately one hundred spectators were present, according to court journalists. "The room was jam-packed, people crowding at the back because everyone knew it was a rape case" noted a reporter from TheNews International. (...) According to journalists and the prosecution, the cross-examiners and the judge started to ask a string of invasive questions about the rape, which the teenager, who had had an extremely sheltered, conservative upbringing, struggled with. Sources at the trial noted that she was asked when certain items of clothing were removed, and exactly what actions were done to her. When the girl replied that she could not remember and that she had fainted, the judge berated her and spoke in harsh terms about reports made by her family to the media. Witnesses have noted that he appeared to enjoy the invasive nature of the questions and the humiliation of the girl. Objections from the special public prosecutor and assisting lawyers triggered an argument with the defense; the judge simply quelled them with a warning and adjourned the hearing to a later date, according to the Daily Dawn. [...]", 53

Extensive gender and sexuality sensitisation programmes for police and judiciary bodies at all levels would help to deal with cases related to women in a more objective and professional way, thereby making the system just and fair.

"... Since the Women's Protection Act in 2006 reformed the law surrounding rape cases, more women have been encouraged to use the legal system, but the experience continues to be harrowing, partly due to the attitudes of those within it. Pakistan is already a harsh, patriarchal environment for women and this is no different within the courts. [...] Just as police should be taught to deal professionally with sexual and gender-based violence, judges clearly need training so that they abandon old prejudices and are able to act humanely towards victims. This is an obligation, rather than a choice. States are duty bound to protect and promote the rights of women and children under international human rights law. Pakistan has ratified the UN Convention on the Rights of the Child, and the

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<sup>&</sup>lt;sup>53</sup> Statement: AHRC-STM-075-2009. March 28, 2009

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which among other things, obliges it to protect those under the age of 18 "from all forms of physical or mental violence... negligent treatment, maltreatment or exploitation" and "take appropriate and effective measures to overcome all forms of gender-based violence, give adequate protection to all women and respect their protection and dignity." When a judge cannot or does not show himself able to do this in his court for the most vulnerable of plaintiffs, one wonders what he is doing in the profession in the first place".54

There is also a problem in terms of discrimination towards female judges, a fact which makes Superior Courts in Pakistan completely monopolised and dominated by men. These circumstances further compromise the quality of the verdicts:

'It is unacceptable that the superior courts of the country have only three female judges out of a total of 103 judges. The percentage of women judges in superior courts is 2.91 percent compared with the 33 percent required by the UN Beijing Conference of 1996, to which Pakistan is a signatory. The reason defined by the activists from the legal fraternity and feminists is that there is no culture in the superior courts for accepting women as being intelligent and capable of being a good judge. [...] Looking at the list of judges on the website of the Supreme Court and High Courts of the four provinces, one will be surprised to find that women judges have never been considered for the superior courts; a clear indication of gender discrimination. Indeed, the Supreme Court of Pakistan has 16 judges according to its website and among them there is not one single woman judge. [...] It is generally felt that there is a mindset in the superior judiciary to neglect women or undermine their capabilities of doing justice. Due to the growing fundamentalism and bigotry members of the judiciary believe that keeping women away from the judiciary will make them appear pious Muslims in the eyes of Muslims at large. There is also the fact that in Islamic history there has never been a lady Oazi-Ul-Oazat (Chief Justice). Therefore, to make Pakistan a true Islamic society there is no need to have a high ranking woman judge. [...]".55

For the effective rule of law, reliable services from the police, prosecution and judiciary must be accessible to all citizens. Protection from the police must not depend on social status and class, but should be granted to all citizens regardless of their position, their income, who they are or who they know. Should ordinary

 $<sup>^{55}</sup>_{-\cdot}$  Open Letter: AHRC-CPL-001-2012. December 14, 2012. 54 Ibid.

citizens enter a police station, they must be confident that they will not be subjected to intimidation, torture, harassment or arbitrary custody. Furthermore, it is also necessary that if they are taken into police custody, they are treated as innocent until proven guilty. In particular, women need to be assured that they can trust police forces, that they will receive protection, will be treated equally before the law and will be granted the required and expected justice for the abuse suffered. A prosecution system which protects perpetrators and provides them with the legal assistance which should be granted to victims is rotten to the core. There is still arbitrary and erratic conduct within police forces and other executive authorities of the state at all levels. Police officers are still recruited and promoted regardless of their actual merit and mainly for their subservience to people with influence and power. The whole system of the administration of justice is vulnerable to political power and pressure from other elite groups.

In front of such a collapse in the rule of law, the understanding of international standards and the promotion of basic human rights become difficult goals to strive for. The establishment of democracy should take into serious account the improvement of the policing system within the country, as a functioning criminal justice system and the implementation of international norms are very much related.

"You must understand the environment in Pakistan. This has become a money-making concern.

A lot of people say if you want to go abroad and get a visa for Canada or citizenship and be a millionaire, get yourself raped."56

General Musharraff

 $<sup>^{56}</sup>$  General Musharraff, during an interview with the Washington Post, in 2005. Online:  $\label{eq:http://www.washingtonpost.com/wp-dyn/content/article/2005/09/30/AR2005093001536.html}$ 

# Structural violence, toxic masculinity and gender sensitisation

## The 'culture' of blame

When men commit sexual abuse, women are not offered a fair hearing or proper consideration. The tendency to blame rape survivors is pervasive, and women who share their experiences of sexual assault and rape are largely distrusted. In fact, they are seen as consensual to the act or as possible scorned lovers who fear family reprisals and other consequences, and hence 'fabricate' a rape case. Women who report rape are also discredited by police bodies for supposedly making false allegations. Police officers try to find possible excuses or alternative explanations, and strongly hesitate in considering an accusation as a real rape case. By ignoring complaints or refusing to register them, police officers themselves adopt a degree of responsibility in the impunity given to this crime.

Gang rape is often a 'tool', a form of revenge and humiliation in cases of rivalry among groups or families. Raping a woman from an opposition group is a way of dishonoring and insulting a rival clan, tribe or family.<sup>57</sup> Within such a context, rape becomes a strategy instead of being seen as tremendous harm inflicted upon a woman.

Women in Pakistan move within a society where laws are made by men, religious precepts have been interpreted by men, and police officers and judges are always men. Women victims of rape and other forms of violence often feel that they have no place to turn. At home, they fear that they will be killed because they brought 'dishonour' upon their family. At police stations, they are distressed and petrified, fearing that officers will either ignore them, or worse, harass them physically and verbally. In court, they are terrified, knowing that perpetrators are

Mukhtaran Mai is a Pakistani woman of the Tatla clan in the Muzaffargarh District, Punjab province. She has become known as a survivor of a gang rape which occurred in 2002 as a form of 'honour revenge' perpetrated by thirteen men of the Mastoi tribe of Meerwala, her village. Her story was covered by major international newspapers, such as BBC News and Time Magazine. She also spoke at the United Nations Headquarters in New York and published a memoir book. Her case is fully documented on Wikipedia and it is considered a turning point in the national acknowledgement, and discussion, of women's rights. Http://en.wikipedia.org/wiki/Mukhtaran\_Bibi

likely to leave unpunished, or that they themselves will be held accountable for the wrongdoings they report and will be paradoxically punished. Comments such as "she did not behave properly, she was dressing/ looking in a suggestive way, she disrespected her family, she went out on her own, she called for it, it was her fault" are ordinary comments made in response to sexual violence against women. This distorted way of evaluating sexual abuse mirrors the dominant discriminatory attitude and culture of blame used against women. It cuts across society, whereby people from different classes, castes, tribes and professions, be they parliamentarians or barbers, are very likely to share the same position on the matter. The tendency to blame the victim, still present in countries where women have achieved an appreciable emancipation, and extremely entrenched in developing countries, including in South Asia, enhances the discharge of responsibility by those responsible, those who are the real guilty parties of such a despicable action as rape.

In Pakistan, as well as in other neighbouring countries where patriarchy, sexism and gender-based discrimination pervade society, a widespread cover up and denial of the crime of rape endures. The idea of rape as an offence perpetrated by single or isolated individuals, 'sexual perverts' or 'sex starved' men who lose control and happen to harass a woman, should instead leave space for the recognition that the custom to violate women is part of a more structural problem.

"The theoretical connotations of J.Galtung's concept emphasize that violence always works in a triangular relationship but the image produced is different. Direct violence is an event, structural violence is a process, and cultural violence is an invariant permanence. That before any act actually takes place there is always a collusion of institutions and cultural sanctions through people's behaviours which allow a particular event to take place." 58

It is as if women do not have a sexual sphere, made up of its own rhythms, features, specifications and concerns; as if desire, pleasure and satisfaction are prerogatives reserved for only one of the two genders. It is as if women existed to be at the disposal of men's eagerness and purposes, for which men feel entitled to demand, command and take every time they want, regardless of consent, respect, mutuality, corresponding interest, compatibility and affection. Potential rapists are all around and are a product of the mentality which devalues

<sup>&</sup>lt;sup>58</sup> Zahid, Wasim, Haswary: p. 6.

women and allows them to be treated as a male commodity, further perpetuating male sexual aggression. This is also the reason why in the majority of the world, and South Asia is no exception, there is no recognition of 'marital rape' as a type of offence against a woman. It is as if any form of violence or force exercised by a husband on his wife's integrity and against her will is fully justified by the marriage bond, whereby a wife is not expected to express unwillingness or supposed to reject sexual intercourse. The feminist activist and writer Jaclyn Friedman, defines this as 'toxic masculinity':

"It's a masculinity that defines itself not only in opposition to female-ness, but as inherently superior, drawing its strength from dominance over women's 'weakness', and creating men who are happy to deliberately undermine women's power. It is only in opposition to female vulnerability that it can be strong [...] You can bet that any custom that requires impunity for violence against women is built on toxic masculinity". 59

Doctor Rajat Mitra, an Indian clinical psychologist, in an interview to the New York Times explained some important traits common among sex offenders. of What he shares about his findings in India can be easily extended to the whole subcontinent, Pakistan included.

Please refer to her blog: http://www.jaclynfriedman.com/

Malavika Vyawahare, 'A conversation with: Psychologist Rajat Mitra'. The New York Times-International Herald Tribune. January 3, 2013.

Online: http://india.blogs.nytimes.com/2013/01/03/psychologist-who-workswith-Sexual-offenders-inindia-explains-motives/

Q. Doctor Mitra, you have conducted a study of people involved in sex crimes, what were the main findings?

## A.

I conducted a psychological study of inmates at Tihar Jail, Delhi, who were either under trial or had been convicted of sex crimes. It was a scientific study, done with their consent between 2000 and 2005. The participants were assured that their statements would not be held against them in a court of law.

I found the offenders to be a heterogeneous group, and the crimes themselves fall within a broad range — some brutalized their victims after sexually assaulting them, others did not brutalize them, some others were cases of both assault and homicide. It would be difficult to profile the rapists in some manner.

But there were certain features that could be seen as common to all these crimes, and these were the aspects of privacy and control. Take, for example, the recent case [December 2012] where the rape happened in a bus, the group of men was in a surrounding that was familiar to them, and hence had a sense of security. Rapists also attempt to take total control of the victim, physical and psychological, through physical violations or threats or both. When I did the study initially, it was very difficult to get them to talk about the act. They would not acknowledge that they had committed the crime. There was a widespread belief among the offenders that they were going to get away; they thought they would be able to circumvent the system. It was usually their third or fourth crime, and their confidence level that they would be able to get away was very high. Any behavioral psychologist would tell you that this does not come with the first crime. There was also almost no sense of guilt or remorse. The general feeling even among the convicted was that they would still manage to get away. Many of them told me that they had appealed to the higher courts, or said they had been framed, or said they had not been careful enough.

Q. How does a sex crime committed in a group differ from one committed by an individual?

### Α.

I would say the instances of gang rape have increased in the past five to six years. When a group of men come together, say, for a celebration, their threshold would go down. A lot of these crimes were also committed under the influence of alcohol, which further reduces their discretionary powers. The sense of collective responsibility takes hold, which makes it possible for the individual to do things which he may not ever do alone. When they are in a group, they feel a sense of security. For example, if they get caught on the way, let's say by a policeman, they think they can always pay a bribe and get away. This is possible when the system is corrupt and there is no fear of the rule of law in the criminal mind.

The decision-making mechanism is also different in a group. There is always someone taking the leadership role and others following. There is usually someone in the group who resists the course of action suggested by the leader, but whose voice is suppressed. Again in the recent case, the reports suggest that the driver of the bus was the one who made the decision and the rest followed. Unfortunately, there is very little awareness among the police force in India about the functioning and control of such elements. For example, in a city like Hong Kong, if a group of men are seen driving around in an inebriated state, or are seen on the road behaving in an inappropriate manner, a police vehicle would immediately start trailing them, and they would be made to take an alcohol test and be booked if they had already committed any minor offenses, which could be a step towards preventing a bigger crime. The police are on an active lookout to prevent such situations before they occur.

Q. One of the reasons cited in the rise in the occurrence of these crimes is the Empowerment of women, which leads to a backlash from the men. Would you agree?

### Α.

I don't agree with people who say revenge against women, who are seen as more empowered, now can be seen as a valid reason. It is based on a

very patriarchal reasoning which absolves men of any responsibility. It is also a subtle way of Influencing the criminal justice system, by portraying the women to be somewhat responsible for the crime.

Q. News reports also suggest that most rape victims know their attackers.

## A.

This understanding of the relationship between the victim and the perpetrator is misleading. How would you say that the woman knows the man? For example, if a man lives in the neighborhood and the women is aware that he lives there, or if they have interacted on some occasions, would you say that they know each other? This is another way of making the crime seem to be of a social-familial nature, or to confine it to the limits of the community and not see a role for the criminal justice system in its redressal.

Q. A female police officer recently said that the personal attitudes of the officers do not affect the objectivity of the investigation. Do you agree?

#### Α

That is a ridiculous thing to say. If an investigator starts with the premise that the victim is at fault or that she is to be mistrusted, how can the investigation be objective? I haven't come across any police officer who has been trained in conducting interviews with rape victims. There is a way to do that, starting with expressing empathy with the victim and going through a scientific series of questions.

The personal beliefs and attitude of the police officials do matter. I remember at the end of the study I conducted at Tihar Jail, a senior police official came up to me and asked me: Rape main kya study karne wali cheez hai? (What is there to study about rape crimes?) The prevalent understanding is that it is a simple crime where a man grabbed a woman and raped her, when in fact rape is one of the most complex crimes, even more complex than homicide, I would say. In India, unlike in many other countries, there is no appreciation of the complex nature of the crime and the need for serious introspection about it.

Q. Do you support calls for the death penalty for rapists?

### A.

I am a bit worried about the protests and the direction they are taking right now. Though I support them, I feel that asking for more severe punishment would not help if we are not ensuring the certainty of punishment. By doing this, on the contrary, we would be loading a criminal justice system which is already falling apart. I have testified in nearly 150 such cases in Delhi. I find that there is great impunity and very little fear of rule of law. Most of these types of crimes are preventable.

# Q. Does the "naming and shaming" method work?

A. I think that maintaining a database is a good idea, but the whole "name and shame" campaign may not work. It is an antiquated medieval belief, which leads to loss of objectivity. In fact, shaming may not work as a deterrent. It may do exactly the opposite. I distinctly remember when the police superintendents attended the group meetings I conducted with the sex offenders in the jail. They would adopt a very moralizing approach to them, and pass statements which are often heard in India, like: Sharam nahi aati? Ghar pe maa behen nahi hai kya? (Aren't you ashamed of yourself? Do you not have mothers and sisters at your home?) And I remember looking at the offenders themselves, and there would be a gleam in their eyes. Which is why this demand for shaming scares me. It has not worked in any part of the world. What we really need is an overhauling of the criminal justice system.

The above interview was shared with the consent of Dr. Mitra.

## "Why does the rapist not lose his honour for committing such a crime?"

In a woman's life, rape is an overwhelming event, a cruel violation of her integrity, dignity and inner serenity. There are times when victims cannot rely on their family or community support, due to the above mentioned 'culture' of blame. Often, no help is available because of poverty and a lack of services in terms of counseling and psychological support, especially in remote areas. When rape cases become public, young women are told that a man is unlikely to marry them, since their 'purity' has been violated and their virtue polluted. Consequently, a great emphasis is given to the loss of purity and virginity through the violation of their bodies, rather than to the fact that a man, or a gang of men, has committed a crime by abusing them.

This type of approach diminishes the gravity of the criminal offence and compromises the rational evaluation of the circumstances. The concept of 'purity' should be critically questioned in order to understand the parameters which define a person as 'pure' or not. In particular, can an abuse become the measurement of a woman's value? A different attitude should be developed. Once again, by shifting the blame onto the perpetrators, the spotlight may be turned onto the honesty of their mind and heart, so that the accountability for the offence is properly directed and the entire discussion can take an alternative route.

The social activist and gender expert Fouzia Saeed, explains:

"[...] Like murder, theft and mugging, rape is a crime done by a criminal, but society is quick to stamp the victim as having lost her and her family's honour. Why does the rapist not lose his honour for committing such a crime?

What do you call a rapist in Urdu?

While we do have names for other perpetrators of crimes like qaatil, chor or daku; we don't have a definite word in Urdu for a rapist. We do not even have a proper word for the act of rape. We use words like izzat lut gai (lost her honour) and Daaghi ho gai (stained) or more lyrical phrases like kati patang (torn kite) and sheeshe me baal aa gaya (a stained glass). All these phrases refer to the woman who was raped, showing how we are conditioned to reinforce the patriarchal cruelty of blaming the victim whilst shielding the rapist from any responsibility for the crime. More recent terms like bil jabar (adultery by force) do not aptly describe the crime. By using such language we become a party to this crime. Without thinking, we place a heavy stigma on the victim so that no respectable man

will want this damaged merchandise. Our society has to understand that it is the social stigma that keeps the victim from speaking out and, thus, responsible for most rapists going scot-free  $\lceil ... \rceil$ . 61

Marriage is largely perceived as an essential part of a woman's life, particularly in developing countries where only a limited percentage of women can rely on a good education, a professional placing and financial independence. Once that integrity has been besmirched, it is commonly thought that no man will want to accept as his wife a woman who another man has 'desecrated', or several men have violated. The victim's self-esteem decreases further and the possibility to marry her rapist often becomes the only chance to elude social stigmatisation and public shame. Such a marriage becomes the possible 'adjustment' to reduce the shame and level the offence that occurred. Unfortunately, the fictitious solution provided by this kind of marriage is of no help in terms of healing the pain, and of course in terms of 'justice'. Justice is not only the compensation provided by a verdict against the perpetrators, pronounced in a courthouse. It also involves a sense of relief, which is the result of a process occurring at the bottom level, through the interaction of professional help, empathy and family and friends' support encountered in everyday life. Considering the slow and mostly inefficient judicial system operating in Pakistan and in many other Asian countries, relief for victims must also be given by promoting their right to rebuild their life and to reconstruct their dignity, and by motivating them to carry on. How, therefore, can the same man who has been able to rape and exercise violence upon a woman, be at the same time an ideal husband for her? In such circumstances, bitterness, stress, depression, frustration and a sense of helplessness will not attenuate. On the contrary, these feelings are likely to endure throughout the victim's lifetime, generating a greater sense of injustice and also contributing to a sense of further victimisation for the survivor. Interestingly, in 2012, the Pakistani magazine, The Express Tribune, reported the case of a 16-year-old girl from Morocco, Amina Filali, who committed suicide at the age of 16 Because a judge ordered her to marry her rapist. 62 Morocco shares a background similar to Pakistan, especially in terms of religious faith, genderbias mindset and Islamic inspired jurisprudence. The case of Amina Filali proves how profound the malaise generated by such an unacceptable wedlock can become, and how this affliction can lead a rape survivor to extreme acts.

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The full article can be found in appendix one of this volume, p. 111, and can be also accessed on line at the Pakistan Express Tribune website: http://tribune.com.pk/story/572286/the-words-describing-rape-blamingthevictim-Shielding-the-rapist/

Aneka Chohan, 'Killed twice: marrying the man who raped her'. The Express Tribune, April 22, 2012.

Online: http://blogs.tribune.com.pk/story/11149/killed-twice-marrying-the-man-who-raped-her/

'Killed twice' is in fact how Amina is defined, and how every woman in her position would feel.<sup>63</sup>

# Dialogue, deep scrutiny of reality and a different "enculturation"

Women must not remain passive. They must not accept their fate by assenting decisions which do not value their feelings, and do not take into account their physical and mental health, their sense of self, and their relationship with their body and their sexuality. For a woman who has been a victim of abuse, whether torture or rape, the restoration of her original psychological status is a difficult achievement to conceive. There is no going back, but only going forward. An ideal healing process can be fostered and improved through a dynamic engagement with other victims who have experienced similar abuse, possibly within the context of NGOs or other services specialised in counselling for such circumstances.

In Pakistan, the majority of rape survivors remain unheard and neglected. The importance of networking and dialogue is not yet fully understood, and sharing is considered as something which exposes the victim and her family to dishonour. The 'culture' of blame and of silence, so intrinsically connected with each other, must be eradicated. Communication must be enabled and encouraged by raising public awareness and consciousness about the seriousness of violence through various platforms, such as online forums and social networks, talk shows on the radio and on TV, press coverage, consideration by academics, seminars in schools and universities, and even songs, documentaries, films and theatre performances which can portray the problem and stimulate reflection in the audience. With the technology and the facilities available nowadays, there are few excuses that justify further silence and reticence about rape and gender-based violence. It is all a matter of the willingness to take action. Bringing the pain from the personal level to the attention of the public helps to raise awareness of the issue, and create a narrative and a background from which it is possible to create appropriate solutions. Pakistan ranks among those countries where the problem of genderbased violence is extremely concerning. However, this is an issue which is globally pervasive and borderless, therefore prone not only to engagement at a

Rape-marriage policies are very common in the criminal code of Muslim countries, as well as in other non-Muslim countries of Asia, Africa and Latin America. For more details, see the appendix one, p. 122.

local and national level, but also at an international level.

Within the national context of Pakistan, there is a compelling necessity to go beyond condemnation and explore the root of the problems. There is a prevalent cultural inheritance to be discussed. There are centuries of social and customary practices to question, and generations of male dominance to challenge. Gender roles, together with their features, attitudes and expected conduct, have been heavily constructed, extensively polarised and put into a hierarchy. Masculinity has been empowered using political hegemony together with social and economic leadership, while also being combined with decisional power at all levels, unchecked sexual appetites and physical strength, which is often exercised through violence. On the other side, femininity has been subordinated as inferior, less capable or deserving, more emotional hence weaker, and suitable only to take care of the house and of the children. All these factors together have rendered it difficult for women to disagree or make claims for space. The biggest problem with this kind of mindset lies in the heavy disparity between men and women. In modern times, the rapport between manhood and womanhood is still extensively dominated by the historical polarity and inequality between masculinity and femininity. People should start questioning socially constructed roles, by inquiring about certain attitudes and beginning to welcome 'intersections' of functions and behaviours between the two genders. In order to move towards gender equality, a new balance is required between biological attributes and personal inclinations, and social demands or expectations should be adequately reconsidered.

There is an urgent need to reshape the way men are taught and 'enculturated', and what 'being a man and behaving as such' actually means in the eyes of society. Men need to understand that a transition is taking place, and they have to become willing to open up and change their perception of womanhood and their attitudes towards girls and women. If not, no breakthrough will be accomplished and, once grown up, boys will replicate what they saw their fathers and older brothers do, and what they heard them and other men say, hence perpetuating the behaviour of confronting women based on discrimination, harassment and abuse. Men are required to take responsibility and actively engage in the discourse about gender, since the concept of gender implicates both men and women, and is not pretentious rhetoric to be discussed among women only. Education is a process commencing at an early stage in life, and gender sensitisation is no exception. However, as long as gender segregation remains in place in the national education system, it will be difficult to 'ignite the

fuse' and make boys grow up with the inclination to appraise girls and consider their peers as equally capable individuals. Children need to become aware of each other's characteristics and be approached about gender issues together, both at home and at school. They should be exposed to an equal and fair environment in order to internalise positive attitudes towards the other gender. Thanks to capacity building workshops and other similar activities, girls can be valued and encouraged to look for self-determination. Boys could take the lead in forging a new way of thinking and acting, becoming a generation which questions itself and leads other men to do the same. The best way to prevent rape, therefore, is not making women aware of the risk they are exposed to and helping them protect themselves in their daily movements or in their clothing. The best way to prevent rape is to intervene on the ground which allows toxic masculinity and structural violence to endure, and which makes rapists proliferate and operate undisturbed.

Boys and young men need to become part of the discussion and of the whole gender discourse. They need to become conscious of the damage that such violence produces, since rape does not simply harm one woman, but actually damages the fabric of the entire society. The fear of going out alone and the anxiety of being harassed even in daylight and in public places, tend to relegate women to within the domestic walls. They are discouraged from engaging in public life, and even attending classes or simply going out to accomplish other duties exposes them to serious risks. The permanent concern of being sexually assaulted creates a miserable atmosphere within society, whereby women are led to distrust men and to feel that all around there is hostility against them, whereas families live in the constant apprehension that their girls could potentially become the victims of forthcoming rape cases. In these circumstances, an overall sense of distress, mutual suspicion, collective anxiety, and general uneasiness permeates society. Women, in particular, do not feel safe to move around, they do not feel free to be sociable or talkative, or to pursue their personal inclinations in a relaxed manner. Simple pleasures in life, such as having a walk and talking with friends, become undertakings which are better to avoid. Even typical activities like biking or walking to school, and daily necessities, like visiting public toilets, become risky and dangerous. Structural violence in society affects everybody, since it compromises the quality of life for the majority of the people and generates a diffuse sense of exasperation, frustration and discomfort.

It seems that for many patriarchal countries like Pakistan it is difficult to realise

the priority that the struggle for gender equality is entitled to. Issues such as national security and economic development continue to receive the main focus and the majority of resources. Discrimination, sexual violence and other types of gender-based violence prevent women from enjoying many other rights, such as the right to life, the right to education and the right to a fair trial, hence affecting recognisable achievements in the whole human rights movement. The fear of moving around on their own safely, along with the societal attitude of blaming rape victims, inhibits women by eroding their chances of truly realising their potential, participating in public life, in politics and economics, and of contributing to the development of their country and the advancement of society.

The circle of violence must be broken from within, and it is crucial that blame and condemnation are shifted to perpetrators, whereas survivors must be ensured understanding, support and justice. The old and patriarchal order needs to be challenged in order to leave space for a new way of conceiving gender and relationships between men and women, relationships which should not be based on abuse and oppression but on mutual acceptance, equal space and coordinated cooperation. Men and women must finally be seen as individuals on the same level.

### VITRIOLAGE

Just as my scarred hands hold these rails so the tiny drops of my faith make me live, too. I, who never asked for this blindness, The scarring of my face and body that erased my existence to the real world... embarrassed...

in fear of the stigma and of prejudice that bubbles from the mouth of the community I once belonged to. I am a mother turned into a baby, desperately dependent...

I am a teenager who forgets how it was to be a teenager...

I am a lively lady that used to enjoy the company of my peers...

A victim of vitriolage, I am shunned now... and relive the vivid memories that lift me to another level of distress, of such agony, that my mind almost shut down, they called...

a psychologist for in-depth intervention, counselors...

A brilliant mind may give a hand to restore my damaged skin tissue; surgical treatment...
Yet I will never be free from the memory of such pain, such punishment nor will I be Me again...<sup>64</sup>

Airyn L. Sloan (formerly Airyn R. Lentija)

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This poem was published on the AHRC website in 2010, and was also included in 'Human Rights and Culture', an e-publication of the Asian Human Rights Commission. Please refer to the article online: AHRCART-049-2010

Also visit Mrs. Sloan's blog: http://airynspoetry.blogspot.hk/

## VI

# Acid throwing and facial disfigurement: an execution without death

Acid attacks and other forms of burning continue to be a serious problem concerning the unrestrained and unacceptable violence committed against women in Pakistan, as well as in several other Asian countries such as Afghanistan, India, Bangladesh and Indonesia. This sort of attack is ranked under the so-called harmful traditional practices which, because of their cruelty, affect the survivors' health, both physically and psychologically. In the majority of cases, women are disfigured beyond recognition because of the extremely aggressive liquids used, mainly nitric and sulphuric acids. As the Acid Survivors Trust International (ASTI) reports:

"Acid burning has a catastrophic effect on human flesh, resulting in the skin tissue melting, often exposing the bones below the flesh, and even dissolving the bone. Other effects include: permanent disfigurement, scars on the face and body, narrowing of the nostrils, eyelids and ears. In most cases, vital organs of the survivors, especially the eyes, are permanently damaged". 65

Acid burning hurts the survivors, both as women and as human beings, and lowers their already weak self-esteem and confidence. In fact, besides the atrocious physical pain and the enormous trauma in terms of shame in their appearance and depression, they also face social isolation and rejection, finding it extremely difficult to access employment and other fields of public life. Furthermore, they know that a man is highly unlikely to propose to an unmarried and disfigured woman. Consequently, they feel more lonely and concerned for their livelihood. Many of them, being mothers who have become partially or totally blinded, find it difficult to continue mothering. The reasons behind such despicable attacks are usually related to dowry demands, marital disputes for money and other types of disagreements (for instance, a possible second wife), family issues such as inheritance and property, the rejection of a marriage proposal, and other actions which are considered unacceptable affronts. All these reasons are clearly connected to the refusal to acknowledge

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ASTI is a UK-based organisation which advocates to end acid violence across the world. ASTI supports the work of six partner organisations in Bangladesh, Cambodia, Pakistan, Nepal, Uganda and India. It also works with UN agencies, NGOs and strategic partners from across the world to increase awareness of acid violence and develop effective responses at a national and international level. More information is available online: Http://www.acidviolence.org

women as free citizens, lawfully entitled to their own money and property, and to the refusal to consider them as equal, in the position to disagree with their male family members (fathers, uncles, brothers and husbands) or men in general. Perpetrators seek revenge, and throw acid against women (especially on their face) with the firm intention of severely maiming and disfiguring them, provoking pain, insulting them and teaching them a lesson. The beauty of a woman lies in the harmony of her lineaments and in her pretty facial features. The face is what we show first to the public, and intentionally throwing acid on it shows a clear desire to destruct, and make that punishment indelible and unforgettable. It is an execution without death. It is like killing a woman, leaving her alive and in profound suffering.

The dowry (Jahez) is an amount of money or remuneration, traditionally given by the bride (dulhan) as a gift to her newly married husband and his family. The dowry works like a 'tribute' which the bride's family pays to the bridegroom's family as a sign of gratitude for welcoming and accepting their daughter, who therefore has to consider herself a fortunate woman. Such an obligation is based on the customary way of conceiving daughters as the 'unproductive' part of the offspring, and, within the larger vision of womanhood, as there to take care of the house and of the children. Male children are therefore much more welcome and are also more often sent to school. Girls are considered a burden as they will eventually cost their family a conspicuous dowry in terms of money (and not only) in order to please a potential husband and make his family willing to agree to the union. In fact, this is one of the reasons behind the practice of genderbased infanticide, through which families 'select' the children who will trouble them less. Girls are unfortunately not perceived as children who, thanks to education, could develop their potential and aim at a proper profession in life, without solely being a future wife and mother. The mindset supporting the custom of dowry leads to continuous expectations and demands for larger amounts of money or more sizeable gifts, since bridegrooms and newlywedhusbands feel they can claim further resources in order to sustain such an 'unproductive' individual as a woman. Inevitably, this mindset generates a sense of 'guilt' which girls and women have concerning their family, and a more general sense of hopelessness, too. In tense circumstances, a woman is lead to commit suicide or a so-called 'stove-burning' is engineered by her husband, often with the help of her in-laws, who claim it to be an 'accident' in order to castigate her for the insufficient dowry provided. It goes without saying that the economic empowerment of women could remarkably benefit their social status by detaching them from the payment of substantial dowry.

In the past few years, AHRC has also reported cases of acid attacks in Pakistan, where, because of the latent judiciary inaction in cases of gender-based violence, and because of the high levels of corruption present in police forces, neither a fair trial nor justice could be provided to victims.

### Cases

In 2009, two sisters, Zainab and Shehla Zia, were attacked with acid and kerosene because they had tried to lodge a complaint of rape against an influential member of the Muttahida Qaumi Movement (MQM), a ruling partner of the Zardari Government. The police themselves had refused several times to proceed with an FIR in the case, due to pressure from MQM leaders. When the case finally reached court, almost three months after the rape and acid-throwing, the perpetrators were granted bail. Unhappy with the solution received, Zainab and Shehla decided to seek justice by bringing the case to the High Court and to the attention of the local media. As a result, they continued to receive threats and cautions of poor treatment in case their story was eventually investigated.<sup>66</sup>

In the same year, another story of an acid attack and impunity occurred. Mrs. Misma Bibi, aged 21, was covered in petrol by her husband and her in-laws and burnt to death, leaving behind a six-month-old child. Apparently, after the baby's birth, Misma and her husband Sadfar had been arguing about money and about Sadfar's wish to take a second wife. On the day in question, Sadfar's mother allegedly poured petrol on the girl while Safdar held her down. She was then set alight and prevented from escaping by her husband's sister and cousin. In this case, it should be noted that three women became willingly complicit in an act of violence against another woman. The perpetrators reported to Misma's parents that she had died through being electrocuted by an iron. However, when they reached the scene twenty minutes after the incident, members of the local police force were already there trying to bury the girl. Misma's parents were prevented from seeing their daughter's body by the subinspector of the local police station and other policemen. Eventually, Misma's parents managed to have their daughter's body exhumed, obtaining evidence of her death by burning. However, they also faced threats from both their son-inlaw and the local police, who were pressurising them to withdraw the complaint. The people responsible for Misma's death were never prosecuted, and police

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<sup>&</sup>lt;sup>66</sup> Urgent Appeal Case: AHRC-UAC-108-2009, August 28, 2009.

forces, as is the custom, obstructed justice in a case of violence against a woman.<sup>67</sup>

Incidents of violence and harmful attacks against women, particularly acid throwings, remain very common in Pakistan, and, unfortunately, almost always unpunished. In 2010, the AHRC shared the following photo gallery on its website in order to denounce this terrible violation of human integrity and dignity.

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 $<sup>^{67}</sup>$  Statement: AHRC-STM-036-2009. February 19, 2009



**Irum Saeed**, 30, poses for a photograph at her office at the Urdu University of Islamabad, Pakistan, on Thursday, July 24, 2008.

Irum was burned on her face, back and shoulders twelve years ago when a boy, whose marriage proposal she rejected, threw acid on her in the middle of the street.

She has had reconstructive surgery 25 times to try to minimise the disfigurement she suffered as a result of the attack.



**Shameem Akhter**, 18, poses for a photograph at her home in Jhang, Pakistan, on Wednesday, July 10, 2008.

Shameem was raped by three men who then threw acid on her. Shameem has had reconstructive surgery 10 times to try to minimise the disfigurement she suffered as a result of the attack.



**Shehnaz Usman**, 36, poses for a photograph in Lahore, Pakistan, on Sunday, October 26, 2008. Shehnaz was burned with acid by a relative due to a familial dispute.

Shehnaz has had reconstructive surgery 10 times to try to minimise the disfigurement she suffered as a result of the attack.



Najaf Sultana, 16, poses for a photograph at her home in Lahore, Pakistan on Wednesday, July 9, 2008.

At the age of five, Najaf was burned by her father while she was sleeping, apparently because he did not want to have another girl in the family.

As a result of the burning Najaf became blind and after being abandoned by both her parents she now lives with relatives. She has had reconstructive surgery around 15 times to try to minimise the disfigurement she suffered as a result of the attack.



Shahnaz Bibi, 35, poses for a photograph in Lahore, Pakistan, on Sunday, October 26, 2008. Ten years ago, Shahnaz was burned with acid by a relative due to a familial dispute. She has never undergone plastic surgery.



Kanwal Kayum, 26, adjusts her veil as she poses for a photograph in Lahore, Pakistan, on Sunday, October 26, 2008. Kanwal was burned with acid in 2007 by a man whose marriage proposal she rejected. She has never undergone plastic surgery.



Munira Asef, 23, poses for a photograph in Lahore, Pakistan, on Sunday, October 26, 2008.

Munira was burned with acid in 2003 by a man whose marriage proposal she rejected.

She has had reconstructive surgery 7 times to try to minimise the disfigurement she suffered as a result of the attack.



Memuna Khan, 21, poses for a photograph in Karachi, Pakistan, on Friday, December 19, 2008. Menuna was burned by a group of men who threw acid on her to settle a dispute between their family and Menuna's. She has had reconstructive surgery 21 times to try to minimise the disfigurement she suffered as a result of the attack.



**Zainab Bibi,** 17, adjusts her veil as she poses for a photograph in Islamabad, Pakistan, on Wednesday, December 24, 2008.

Zainab was burned on her face with acid thrown by a boy whose marriage proposal she rejected.

She has had reconstructive surgery several times to try to minimise the disfigurement she suffered as a result of the attack.



**Naila Farhat,** 19, poses for a photograph in Islamabad, Pakistan, on Wednesday, December 24, 2008.

Naila was burned on her face with acid thrown by a boy whose marriage proposal she rejected. She has had reconstructive surgery several times to try to minimise the disfigurement she suffered as a result of the attack.



Saira Liaqat, 26, poses for the camera at her home in Lahore, Pakistan, on Wednesday, July 9, 2008. When she was fifteen, Saira was married to a relative who would later attack her with acid after insistently demanding that she go and live with him, even though the families had agreed she would not join him until she had finished school.

She has had reconstructive surgery 9 times to try to minimise the disfigurement she suffered as a result of the attack.

The AHRC received permission to publish this photo gallery by Mr. Javed Kapoor and Ms. Mussarat Misbah, head of the Depilex Smileagain Foundation, in Lahore. info@depilexsmileagain.com

The case of Naila Farhat (see above) was brought before the Supreme Court of Pakistan in November 2008 and gained a large amount of publicity in the country. The girl received justice for the violence suffered, as her perpetrator was sentenced to 12 years in prison and was also ordered to pay 1.2 million Rupees in damages. However, this kind of sentencec remains isolated, since "in most cases the measures taken-if any- are still not proportionally related to the sufferings".

In Pakistan, the full Acid Control and Acid Crime Prevention Act has yet to be passed. However, two years ago, the senate finally authorised an amendment to the Criminal Law, known as Criminal Law (Second Amendment Act) 2011, thanks to which the description of the crime was extended and the punishment in cases of harm inflicted by corrosive substances was raised, from a minimum of fourteen years conviction up to imprisonment for life. <sup>69</sup>

"Explanation.—disfigure means disfigurement of face or disfigurement or dismemberment of any organ or any part of the organ of the human body which impairs or injures or corrodes or deforms the symmetry or appearance of a person."

Insertion of new sections 336A and 336B, Act XLV of 1860.—
 In the said Code, after section 336, the following new sections shall be inserted, namely:—

"336A. Hurt caused by corrosive substance.—Whoever with the intention or knowingly causes or attempts to cause hurt by means of a corrosive substance or any substance which is deleterious to human body when it is swallowed, inhaled, comes into contact or received into human body or otherwise shall be said to cause hurt by corrosive substance:

Explanation.—In this sub-section, unless the context otherwise requires, "corrosive substance" means a substance which may destroy, cause hurt. deface or dismember any organ of the human body and includes every kind of acid, poison, explosive or explosive substance, heating substance, noxious thing, arsenic or any other chemical which has a corroding effect and which is deleterious to human body.

336B. Punishment for hurt by corrosive substance.— Whoever causes hurt by corrosive substance shall be punished with imprisonment for life or imprisonment of either description which shall not be less than fourteen years and a minimum fine of one million rupees.".

<sup>69</sup> The complete Criminal Law (Second Amendment) Act, 2011, can be found in appendix four of this volume.

 $<sup>^{68}</sup>$  Statement: AHRC-STM-018-2010. January 29, 2010

Improvements to this amendment could still be possible, for instance, by replacing the generic term 'hurt' with a stronger definition of harm, as provided by other substantives such as injury or damage. In addition, further legislative regulations are necessary in order to efficiently cover the full range of issues involved, such as the selling and the easy availability of acid, and the rehabilitation of survivors<sup>70</sup>. The amendments enacted under the abovementioned act represent a good starting point and an important legal tool that can be used against the practice of acid throwing. However, laws in written form cannot suffice alone. A strong political and judiciary will is also essential in order to not only guarantee survivors adequate compensation, but also to ensure proper punishment and to discourage the perpetuation of such harmful practices. The state must play its part, together with civil society. The Acid Survivors Foundation (ASF) Pakistan, founded in 2006 in Islamabad with the support of ASTI in the UK, aims at the eradication of acid violence from Pakistan and at the empowerment of the survivors through access to medical treatment and justice. <sup>71</sup> 'Saving Face' is a documentary about six victims of acid throwing in Pakistan. It is a project developed by ASTI UK in partnership with ASF Pakistan and the NGO 'Islamic Help'. The film was directed by Ms. Sharmeen Obaid Chinoy and Mrs. Daniel Junge, who, in 2012, won an Academy Award for Best Documentary Short. The film also received positive media coverage not only in Pakistan but abroad as well, thereby underlining the urgency of the matter. It has actually become a very useful educational outreach tool.72

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In this regard, in neighbouring India the Supreme Court recently ordered a stricter regulation of the sale ofacid by requiring the buyers to show a valid identity card and explain the purpose of such a purchase. Moredetails on the new restrictions and penalties in India can be accessed on BBC News, Asia, July 18, 2013.

Online: http://www.bbc.co.uk/news/world-asia-india-23358264

More information can be found online: http://acidsurvivorspakistan.org

More information about the documentary can be found online: http://savingfacefilm.com/

## VII

# The double burden of being a woman from a minority group

# The Blasphemy Law

The Blasphemy Law in Pakistan is not rooted or supported in any of the original teachings of Islam as The Holy Book never mentions it as such, or refers to it. What is called 'Blasphemy Law' is actually the sum of several sections of Pakistan's Penal Code, in particular:

# CHAPTER XV OF OFFENCES RELATING TO RELIGION

295. Injuring or defiling place of worship, with intent to insult the religion of any class. Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any calls of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both.

296. Disturbing religious assembly. Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

297. Trespassing on burial places, etc. Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sculpture, or any place set apart for the performance of funeral rites or as a, depository for the remains of the dead, or offers any indignity to any human corpse or causes disturbance to any persons

assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

298. Uttering words, etc. with deliberate intent to wound religious feelings. Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both.

The history of these specific provisions began a long time ago, when, during the British colonisation of India (a vast territory which corresponds to modern-day Pakistan, India, Bangladesh) such penal clauses were added to the Indian Penal Code (1860) in order to guarantee harmony among different religious groups. The idea was to cover different aspects of disrespectfulness and to regulate the cohabitation of Muslim and Indus communities.

Some areas were in fact Indus dominated with Muslim minorities, while other areas were the opposite, with the existence of Christian groups, too. These religious communities were all particularly sensitive regarding religious issues and were largely distributed throughout the subcontinent at the time of British India. In the Penal Code 1860, the section on offences relating to religion represented an instrument of security and legal order during colonial times. It merged into the Pakistan Penal Code after the partition of India in 1947.

In the 1980s, under the leadership of General Zia ul-Haq, section 295a, b, c and 298a, b, c were added, introducing into the Penal Code what many considered as regressive and discriminatory provisions:

295-a. Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religion beliefs. Whoever, with deliberate and malicious intention of outraging the religious feelings, of any class of the citizens of Pakistan, by words, either spoken or written, or by visible representations insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

295-b. Defiling etc. of copy of Copy of Holy Qur'an. Whoever willfully defiles, damages or desecrates a copy of the Holy Qur'an or of an extract therefrom or

uses it in any derogatory manner or for any unlawful purpose shall be punishable with imprisonment for life.

295-c. *Use of derogatory remarks, etc., in respect of the Holy Prophet.* Whoever by words, either spoken or written, or by visible representations, or by any imputation, innuendo or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (Peace be upon Him) shall be punished with death, or imprisonment for life, and shall also be liable to fine.

298-a. *Use of derogatory remarks, etc., in respect of holy personages.* Whoever by words, either spoken or written, or by visible representations, or by any imputation, innuendo or insinuation, directly or indirectly, defiles the sacred name of any wife (Ummul Mumineen) or members of the family (Ahle-bait) or of the Holy Prophet Muhammad (Peace be upon Him) shall be punished with imprisonment of either description for a term which may extend for three years, or with fine, or with both.

298-b. Misuse of epithets, descriptions and titles, etc., reserved for certain holy personages or places.

- (1) Any person of the Quadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name) who, by words, either spoken or written, or by visible representations;
- (a) refers to, or addresses, any person, other than a Caliph or companion of the Holy Prophet Muhammad (Peace be upon Him), as "Ameer-ul-Mumineen", "Khalifa-tul-Mumineen", "Saha-abi" 71 or "Razi Allah Anho"; (b) refers to, or addresses to, any person, other than a wife of the Holy Prophet Muhammad (Peace be upon Him) as "Ummul-Mumineen"; (c) refers to, or addresses to, any person, other than a member of the family (Ahle-bait) of the Holy Prophet Muhammad (Peace be upon Him) as "Ahle-bait"; or (d) refers to, or names, or calls his place of worship as "Masjid"; shall be punished with imprisonment of either description for a term which may extend for three years, or shall also be liable to fine.
- (2) Any person of the Quadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name) who, by words, either spoken or written, or by visible representations, recities to the mode or form of call to prayers followed by his faith as "Azan", or refers Azan, as used by the Muslims, shall be punished with imprisonment of either description for a term which may extend for three years, or shall also be liable to fine.

298-c. Person of the Quadiani group, etc., calling himself a Muslim or preaching or propagating his faith. Any person of the Quadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name) who, directly or indirectly, poses himself as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words, either written or spoken, or by visible representations, or in any manner whatsoever, outrages the religious feelings of Muslims, shall be punished with imprisonment of either description for a term which may extend for three years, or shall also be liable to fine.

It is an opinion shared by many that these sections were added on the basis of assumption and conjecture. The so-called Blasphemy Law has been a manmade law since its initial introduction and it has been expanded on the grounds of further, perhaps erroneous deductions by man, which may not represent the true intent and meaning of the writings in the Quran, as it is often a matter of interpretation. The question that many keep asking is: "How can a man-made law deal with blasphemy and decide what is blasphemy and what is not?". The truth is that it has represented an advantageous tool of oppression and persecution by Zia ul-Haq towards the Pakistani people. In fact, the provisions of the section added appear quite vague and ambiguous and open to interpretation of when an offence of blasphemy actually occurs. The concept of blasphemy has been grossly abused and misused. It is well known that General Zia ul-Haq expanded section 295 and 298 of the Penal Code with the sole purpose of silencing possible protests, and, of course, of moving ahead with his personal agenda of the Islamisation of the country. He used God and religion for personal and political purposes. Ironically, such a misuse of religion was itself the greatest sin that could have been committed against God. Mr. Nafees Muhammad, a writer and research fellow at the Center for Research and Security Studies (CRSS) in Islamabad, explains:

'From 1851 to 1947, when the British ruled this region and the hatred between the Muslims and Hindus was at its pinnacle, there were only seven blasphemy-related incidents, but during Zia's rule (1977-1988) alone, as many as 80 blasphemy cases were reported to the courts. As a whole, between 1987 and Aug. 2012 we have seen almost 247 blasphemy cases registered or raised, directly affecting the lives of approximately 435 persons. [...] General Zia-ul-Haq is remembered by his opponents and supporters alike. His opponents accuse him of destroying whatever little liberalism and tolerance this country had while his supporters eulogise him for reinventing the very 'Islamic foundation' of the country they believed was lost after the

death of Quaid-i-Azam Mohammad Ali Jinnah. One of the greatest sins of Zia in the eyes of the liberals is the introduction of blasphemy laws 295B, 295C, 298A, 298B, and 298C to the Pakistan Penal Code (PPC) inherited from undivided India. No law in the country has ever been the cause of so many controversies as this one. The basic objective of the law, say its supporters, was to discourage people from taking the law into their hands but the opponents say it only served the interests of radicals and it was massively abused to target religious minorities by whipping up the religious sentiments of the people"."

After General Zia ul-Haq died, his name was removed but all the amendments he had introduced in the Penal Code were kept. Consequently, many also tend to blame the Pakistani Parliament which, under different governments since 1988, has found it advantageous to keep those laws in force. Because democracy has always been lacking, the political system has continued to remain authoritarian, with politicians mainly concerning themselves with their own interests and becoming, in this way, complicit parts in the rejection of the good rule of law. Over the years, the politicisation of Islam has led to an exarcebation of religious intolerance and to a general worsening of fundamentalism, with religious fanatics taking the law into their own hands and many times acting independently and applying personal justice, for instance, by burning houses and churches or even publically executing people, sometimes even while they are in police custody. This situation is devouring society from within. It has established a state of fear and a scary dualism between the fear of God vs the fear of law and the judgement of bigoted religious communities. The Blasphemy Law has been used, and is still being used against religious minorities, although Muslims are also targeted and accused of acts of blasphemy.

The AHRC often reports cases of Christian and Hindu communities, whose members are charged with blasphemy on the grounds of often inconsistent accusations and malicious allegations. These minority groups face harassment, attacks, persecution, incarceration, physical violence and other serious violations of their human rights. They do not enjoy social and cultural recognition, or state protection, and in this way become one of the most vulnerable sectors of society.

<sup>&</sup>lt;sup>73</sup> Statement: AHRC-STM-090-2013. May 11, 2013

#### Cases

In 2010, Aasia Bibi, a 45-year-old Christian woman and mother of five children, was sentenced to death by the Lahore High Court on the charge of blasphemy. In 2009, she had been falsely accused by some Muslim women of making derogatory remarks against the Prophet Mohammed, as she had been asked to go and collect water from a different location. She was an illiterate farm worker (which is the condition shared by many people from minority groups) and some Muslim women labourers refused to share the same water bowl with a non-Muslim person. Consequently, the women started to argue, apparently also insulting each other because of their different religious beliefs. A few days later, the accusation of blasphemy was brought against Aasia through an official announcement from the loudspeakers of the

local mosque and through the involvement of the Muslim community, who caught her and beat her. She was then arrested and prosecuted under Section 295 C of the Pakistan Penal Code, by which she was then sentenced to hanging while her family were forced into hiding. Aasia Bibi was the first woman in Pakistan's history to receive the death sentence in a blasphemy case. According to reports, the court had only relied on the witnesses provided by the Muslim leader of the mosque and no Christian witnesses were allowed to be produced in defence of Aasia, presumably as a matter of public order and to obtain popularity with a verdict which would satisfy the majority. In fact, the mullahs and other members of the Muslim community were threatening to kill her themselves if she had been released. In 2011, the Governor of Punjab at the time, Mr. Salman Taseer, was shot dead because he had visited Asia Bibi in jail and had tried to bring her case before the president of Pakistan, Asif Ali Zardari, advocating mercy for her. Pakistan's Minister for

In urban areas, women from religious minorities are most often employed as manual scavengers or sanitary workers for insignificant wages. In rural areas, they sometimes handle small agricultural tasks such as the picking of cotton and chillies for marginal wages, when their families are not trapped into the system of bonded labour. However, most of the time, they are employed in informal sectors (e.g. working in the klinks) earning less than 1 US\$ a day. Normally, when women manage to generate resources through those activities, their incomes end up being managed by the head of their family. Such practices further marginalise women from economic empowerment and leads to a paradoxical situation, whereby women benefit very little or nothing from the income they generate through their hard work.

Minorities at the time, Mr. Shahbaz Bhatti, was also killed since he had raised concerns about the case. 74 Aasia Bibi's story obtained international attention and Even the Pope at the time, Benedict XVI, called for clemency.

In 2012, Ramsha Masih, a mentally retarded 11-year-old girl, was arrested on the charge of blasphemy. 75 She was falsely accused by a Muslim neighbour of burning pages of the Holy Quran, when in reality she was simply collecting used papers from the garbage for cooking and heating (the living conditions of the Christian community in the slums of Islamabad are very poor). Ramsha was taken to a security prison and separated from her mother and sister, while some fanatical Muslims were already starting to attack other Christians living in her slum. In the meantime, a strong social mobilisation emerged against the rigorousness of the Blasphemy Law in Pakistan. Not only the national Christian community but also the international civil society became deeply concerned that Ramsha could face the death sentence. Many international newspapers and TV channels, such as The Guardian and The Huffington Post, dealt with her case. Finally, after she spent a few weeks in a high security prison, she was freed on bail and cleared of all charges by the Islamabad High Court. After being forced into hiding because of death threats, Rimsha and her family managed to relocate in Canada. <sup>76</sup> Her story is mentioned as a case of blasphemy on Wikipedia. <sup>77</sup>

# Growing religious intolerance<sup>78</sup> at the expense of minor girls

Cases of lynching, arbitrary arrests, harassments and killings are examples of the intolerance against religious minorities which continues to occur in Pakistan on a daily basis. This violence is perpetrated by fundamentalist groups, militant organisations and conservative political parties in the name of Islam and the Blasphemy Law. By not providing protection to these minorities through appropriate legal measures that can be used against those responsible (arrest, imprisonment, amendment to the blasphemy law, etc.) the state tacitly supports these forms of religious persecution and oppression. At the same time, many of the religious fundamentalists are, by now, such highly militarised groups that even institutions do not challenge their power. It is a failure of the rule of law and of justice.

<sup>74</sup> Urgent Appeal Case: AHRC-UAC-177-2010. December 8, 2010

<sup>75
76</sup> Urgent Appeal Case: AHRC-UAC-146-2012. August 19, 2012.
77 Source: BBC News, Asia. 29 June, 2013. Online: http://www.bbc.co.uk/news/world-asia-23112180
78 Online: http://en.wikipedia.org/wiki/Rimsha\_Masih\_blasphemy\_case

For an in-depth overview, please refer to: Basser Naveed, 'Pakistan: barbarity in the name of religion is at its height'. AHRC-ART-078-2012. August 29, 2012.

Among the several violations of human rights which religious minorities suffer, the numerous cases of abduction and forced conversions to Islam of very young Christian and Hindu girls, deserve particular attention. Many Madrasas (Muslim seminars) have been systematically kidnapping girls from non-Muslim families, abusing them and keeping them prisoners, while at the same time denying them any contact with their families. In cases where families manage to have their daughters' abductions filed as cases of kidnapping, the Madrasas issue marriage certificates by which the girls (often minors) result in being legally married to Muslim men and converted to Islam, with no chance of being returned to their original families. The situation appears to be particularly alarming in the provinces of Punjab and Sindh.

"As many as 20 to 25 girls from the Hindu community are abducted every month and converted forcibly. There is no official record to support this statement, but according to estimates, in Karachi alone, a large number of Hindu girls are being kidnapped on a routine basis".

This record was reported by Amarnath Motumal, an advocate and council member of the Human Rights Commission of Pakistan, in 2010.<sup>79</sup> These actions are expertly planned operations, a way of imposing the Muslim faith upon non-Muslim young women and of asserting that Islam is the only admissible and respectable religion (Hindus, especially, are perceived as 'heretics' since they believe in many Gods). It is a violation of the fundamental right to freely profess and practise a faith of personal choice. Such abuse entails the denial of freedom and the annihilation of cultural diversity. Most importantly, these offences represent further forms of discrimination and violence against young women. In Pakistan, Christian and Hindu girls suffer the double burden of being members of a religious minority within a Muslim country, and hapless young women within a male-dominated society.

### Cases

In early 2007, Deepa, a 17-year-old Hindu girl living in Sindh province, was abducted by a Muslim seminary teacher and taken to the Madrasa Khanqah Gulzar-e-Khalil where he taught. She was then forcibly converted to Islam and

<sup>&</sup>lt;sup>79</sup> For the complete article, please refer to: http://www.realcourage.org/2010/03/pakistan-25-hindu-girlsabducted-every-month/

married to him. When contacted by the AHRC staff, the owner of the seminary, who had provided shelter to the couple, stated that the girl had been willing to convert and marry, but the parents and neighbours were unable to confirm the interest of the girl, either in Islam or in that man. The local police refused to file the case and some politicians even interfered in the case in order to discourage Deepa's family from lodging a complaint, as influential local figures were behind this incident.<sup>80</sup>

Gajri, a 15-year-old Hindu girl, was abducted in December 2009 from her home in Katchi Mandi, Liaquatpur, in Punjab's Rahim Yar Khan district. A few days later, the local police district received a letter and an affidavit from the Darul-Uloom Madressa in Khan Pur, saying that Gajri had embraced Islam and had married a neighbour, who was the same man that the family had indicated was responsible for her abduction. The girl's family, who had already tried in vain to have the case filed, were only notified by the police station several days after the reception of that letter. Gajri's parents then appealed to the vice president of the National Peace Committee for Interfaith Harmony in Punjab, and thanks to his help, a meeting with Gajri was arranged with the alleged permission of the local police and in the presence of many Madrassa members. The parents reported that Gajri had appeared very upset, and when she was questioned about her conversion, she did not confirm it. The majority of the questions directed at her had actually been answered by Madrassa staff. Her parents tried once more to file a case of abduction against their neighbour and the Madrassa, but this was refused by the District Police Officer in charge. He claimed that he had no power to intervene in matters of religious conversion, and that their daughter was, from that point on, the 'property' of the Madrassa. He also pointed out that Islam is a religion that could be entered into, but not withdrawn from. The family kept being denied support from institutions as well as any contact with their daughter.81

In February 2012, Rinkle Kumari (17), a Hindu girl living in Sindh, was abducted in the middle of the night by notorious gangsters from the area that were supported by local Muslim fundamentalist groups and even a member of the

Urgent Appeal Case: UA-008-2007.

Urgent Appeal Case: AHRC-UAC-051-2010

Mian Abdul Haq, alias Mian Mittho, is involved in many criminal activities and enjoys the support of the local administration and notorious Muslim fundamentalist groups. His father, Mian Abdul Rahim, was also implicated in criminal activities. In 1939, he was involved in the murder of a Hindu freedom fighter, Mr. Kanwar Ram, and for his sectarian killings he was rewarded with some land by the colonial power. Source: AHRC.

National Assembly from the Pakistan Peoples' Party<sup>82</sup>, who accommodated the girl after her abduction. She was then taken to a famous Madressa at Dargah Aalia Qadria Bharchoondi Sharif where she was forced to sign a certificate (Nikkah Nama) which married her to one of the gangsters. The Madressa where she was taken to is notorious in the province for converting large numbers of Hindu girls, around 2000 every year. After great reluctance due to the influential people involved, the local police filed a First Information Report (FIR) thanks to the immense pressure from the Hindu community and the local media. Although Kumari cried and pleaded that she wanted to return to her parents in front of the civil court, the final decision of the judge was in favour of the perpetrators, since the home of the husband was the proper home for a newly married girl. Such a decision did not take into account that the consent of one of the two parties was totally missing and that the girl had been forcibly removed from the custody of her parents. After the court's announcement, Kumari's family lost all trace of her and were pressurised into accepting the decision of the court without further complaint.<sup>83</sup>

The AHRC continues to be notified of cases of abductions and forced conversions. The police wilfully ignore the gravity of the violations involved, or excuse themselves from investigating Madrasas and other perpetrators. Furthermore:

"[...] In most of those cases, once the girls have been abducted, forcibly converted and married, the parents are not allowed to meet with their daughters and unable to learn about their whereabouts. After the marriage, the husband goes back to his normal life and to his village, but what happens to the bride remains a mystery. There are strong suspicions that after being converted, those girls may be trafficked and sold. Indeed, once the girl has been converted, married and theoretically integrated into the Muslim society, why is the husband unable to give details about his bride's whereabouts and why is the bride unable to appear in public? Investigation into what has happened to those young girls is urgently required, but this would require a strong involvement of the state authorities which has yet to be seen. [...] Through this denial of justice, the state fails to fulfill its duty of protection and safety towards all citizens in cases which clearly constitute violations of children's rights and freedom of religion as entrenched in international conventions such as Article 18 of the International Covenant on Civil and

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 $<sup>^{83}</sup>$  Urgent Appeal Case: AHRC-UAC-042-2012

Political Rights and Article 30 of the Convention on the Rights to Child, both of which Pakistan is a party".84

In fact, although the Pakistani legislation guarantees limited legal protection to religious minorities, the country is bound to very relevant international treaties. In 2010, Pakistan finally ratified the *International Covenant on Civil and Political Rights (ICCPR)*. In particular, Article 18 of the Covenant states:

- 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
- 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
- 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
- 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.<sup>85</sup>

Pakistan was among those countries which, in 1989 signed the *UN Convention on the Rights of the Child* and ratified it immediately. Article 30 of the Convention covers the protection of children of religious minorities:

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in a community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language. <sup>86</sup>

The great majority of the girls kidnapped and forcibly converted are below the age of 18, therefore the violations of human rights they suffer clearly break both of the above mentioned UN Treaties, and show how Pakistan is failing in its fulfillment of international obligations, as well as the implementation of its

<sup>84</sup> Article: AHRC-ART-041-2010, May 3, 2010.

political, social and cultural obligations towards its citizens. There is a constant stream of Hindu families, in particular, that decide to leave the country and move to India and to other Southeast Asian countries. They are afraid for their daughters and for their lives in general. They leave Pakistan because they feel persecuted in their homeland. The Hindu community throughout the country senses resentfulness, bitterness and exasperation because of all the cases of abduction and forced conversion to Islam of Hindu girls performed by powerful and untouchable fundamentalist Islamic groups. Providing adequate protection measures to girls who want to resist forced conversions and marriages, or want to report abuse in the name of religion, is a matter of extreme importance. Perpetrators must be prosecuted and severely punished, without giving preference to social status or political affiliation. Courts must also become more sensitive to gender-based abuses and violations of minorities' rights. Judges and other officers are expected to change negative traditional attitudes towards women, regardless of their religious faith, in order to discourage gender-based discrimination and promote universal justice.

It should also be noted that cases of abduction and forced conversion never involve teenage boys. Girls are much easier targets because they are more defenseless. By abducting young girls, the expansion of minority groups by new births is compromised, and, for Muslim men, it is easy to dismiss them and take a second wife.

"The dark side of forced conversion to Islam is not only restricted to religious Muslim groups but also involves criminal elements who are engaged in rape and abduction and then justify their heinous crimes by forcing the victims to convert to Islam. The Muslim fundamentalists are happy to offer these criminals shelter and use the excuse that they are providing a great service to their sacred cause of increasing the population of Muslims. ... It is thought that the purpose behind these actions by Islamic fundamentalists is to make Pakistan pure. The religious minorities reside in fear because legal institutions, and other institutions, are either hiased or live in fear of the militant religious groups themselves. [...] All of this is a direct result of the government's appeasement policy towards fundamentalist Muslim groups. Whether out of fear of a religious uprising that might dethrone the existing government or genuine feelings of the righteousness of what they are doing, it is not known. What is known is that if the government does not take a firm stand against religious extremism they can hardly expect the judiciary and the police to do so either. Article

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 $<sup>^{85}</sup>$  The full text of ICCPR is available online at the Office of the High Commissioner for Human Rights website. www.ohchr.org

 $<sup>^{86}</sup>$  The full text of CRC is available online at the OHCHR website, ibid.

20 of the Constitution of Pakistan clearly states that protection must be provided to all citizens regardless of their religion. [...] The perpetrators must be brought to trial, prosecuted and made to answer for the heinous crime of rape, especially against under aged girls. The police officers who turn a blind eye and refuse to take action against the perpetrators must face the most severe disciplinary action, especially where under aged girls are the victims. Those marriages which were forcefully or illegally conducted must be annulled forthwith and the girls and women given the choice of returning to their families and communities". \*\*

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 $<sup>^{87}</sup>$  Complete Statement: AHRC-STM-159-2011. October 25, 2011.

# VIII

# "A symbol of hope, a daughter of the United Nations" 88

The name Malala Yousafzai is now so renowned, that it needs little introduction. The courage of this brave 15-year-old Pakistani activist touched the world when, on October 9 2012, she was shot in the head and neck in an assassination attempt by Taliban militants while returning home from school on a bus full of other young students. Born in the town of Mingora in 1997, at the time of the attack she was already well-known in Pakistan for her activism on girls' right to education in the Swat District, a region in the north of Pakistan where Taliban extremists have been trying to take control and rule. In fact, the agenda of these extremist groups includes the attempt to prevent girls from attending school, as well as the prohibition of music, television and other forms of amusement considered to be against morality.

At the beginning of 2009, the AHRC had actually expressed concern about female students targeted by Islamic fundamentalists in the border region between Afghanistan and Pakistan. An Urgent Appeal, addressed to President Asif Ali Zardari, Prime Minister Syed Yousaf Raza Gillani and other people in charge at the time, was launched in order to obtain



the intervention of the government. The situation was already worrying, as many girls' schools had already been demolished and other attacks had been announced. The right to education was under threat for thousands of girls, and many female teachers were also risking becoming jobless and targets themselves.<sup>89</sup>

Ziauddin Yousafzai, a poet, school owner and educational activist himself, has always encouraged his daughter Malala to study and pursue education. At the age of 12, Malala started a blog for BBC Urdu denouncing the offences committed by the Taliban, including the edict in January 2009 that banned girls from school and the destruction of many schools in her region. Her name

<sup>88</sup> Ban Ki-moon, Secretary General of the United Nations. 2013.

 $<sup>^{89}</sup>$  Urgent Appeal Case: AHRC-UAC-005-2009. January 20, 2009

increasingly gained popularity due to her appointment as chairperson of District Child Assembly Swat and the growing media attention, including a New York Times documentary film. In 2011, her nomination for the International Children's Peace Prize was announced and in the same year, she was also awarded Pakistan's first National Youth Peace Prize. At that point Malala's fame and activism had become problematic for the Taliban, who considered her a "pro-West" girl, promoting Western culture and criticising them. They increased the frequency and intensity of the threats against her, until they finally decided it was time to physically eliminate the source of the problem, and they shot her. Source of the problem, and they

"If the scarecrow army cannot protect a young girl how can it safeguard the nuclear assets of the country?" With this statement the AHRC reported and strongly condemned the attack against Malala, being one of the first human rights organisations to do so.

"[...] After the shooting, there was a strong reaction from the civil society of the country and the Taliban changed their statement, declaring that they intended to kill her, not simply because she was promoting education for girls but because she was promoting secularism in an attempt to gain popularity from fundamentalists and religious groups. They went on to say that they will not spare her if she survives this attempt but will continue to hunt her. [...] Following the shooting there was strong criticism against the role of Pakistan's armed forces who take 30 percent of the annual budget and, in total, indirectly eat up more than 70 percent through defence budgets and the purchase of arms and ammunition as well as a long list of perks and privileges. Perhaps this is the time for the parliamentarians and judiciary to approach the issue of defence expenditures and revise the figure to a more realistic one. It is also time to purge the army of its colonial attitude and make it one that the country can be proud of.

An open debate has been started, not only in print and electronic media but also among the masses, questioning the viability of keeping such a large army which has never successfully provided protection to the

The full report can be watched online:

http://www.nytimes.com/video/2012/10/09/world/asia/100000001835296/class-dismissed.html

See: Farzana Ali Khan, 'A teenage Nobel Prize Nominee leads the struggle for the education of girls'. AHRC-ART-059-2011. November 23, 2011.

 $<sup>^{92}</sup> More \ detailed \ information \ on \ Malala's \ biography \ before \ the \ attack \ can \ be \ found \ online \ at \ Wikipedia.$ 

country in the past, and to this day, it does nothing to prevent religious terrorism. Instead, it is blatantly obvious that it covertly supports religious extremism and the killings of the masses in an effort to keep the country in a state of national insecurity for their benefit. [...]

The Chief of the Army Staff (COAS) initially came out with a statement condemning the incident. However, this did not stop an open debate regarding the armed forces' covert support of extremists or its negligence in providing protection to the people from aggression, internal or external. The army generals waited until Malala was moved to Islamabad and it was only then that the COAS and other officers went to enquire about her health. Going to Peshawar, the capital of KPK province where she was initially under treatment, would have annoyed their 'allies' in arms. The ISPR released a statement after the visit from the COAS, General Kiyani, reporting that the General strongly criticised the attack on Malala, defining it 'a heinous act of violence'. It was noted, however, that the statement and the COAS conspicuously avoided any mention of the Taliban, which raised the eye-brows of different circles and questions why the Taliban are so dear to the army. It became evident that even pronouncing their name was a type of sin, although the Taliban themselves were repeating that not only did they try to assassinate her but will continue their attempts until she is dead. The appearement policy of the state towards the militants is putting the country at tremendous risk. If they have proved themselves incapable of providing protection to a prominent student who works for the promotion of girls education in an area under military control, how can they guarantee safety with nuclear arsenals? This is a question which is commonly asked in open debates concerning Malala's shooting. If the military continues to be merely a scarecrow against the Taliban and Muslim militants who hire children as suicide bombers to kill indiscriminately, how can one expect or even hope that the country's nuclear assets are out of the militants' reach. [...]

The AHRC believes that the continual interference of the armed forces in civilian affairs, as well as their incapability in protecting the citizens, is causing great harm to the rule of law in the country and is usurping the rights of the common people. The AHRC calls upon General Kiyani and the government of Pakistan to ensure protection to Malala

Yousufzai, in substance and not just word. Providing lip service in order to appease the militants will cost Pakistan the life of a courageous young girl. <sup>93</sup>

The attack that Malala suffered not only represented a brutal and cowardly attack against a defenseless minor, but also raised serious concerns about the infiltration of the Taliban in Pakistani territory. At the same time, the national authorities do not seem to be responding properly to this threat. The government's inaction is putting the country's democracy at stake together with the enjoyment of basic human rights, primarily the right to life, by its population.

The news of Malala's attack received worldwide media coverage. Google lists a high number of articles and videos about her, by the BBC, CNN, Aljazeera, Le Monde, El Pais, Der Spiegel, The Voice of Russia, Repubblica, and many other newspapers and TV stations from all over the world. After being promptly operated upon at the intensive care unit of the military hospital in Peshawar, she was flown to the Queen Elisabeth Hospital, Birmingham, which offered to treat her. She spent a few months there, supported and encouraged by the hundreds of messages coming from all over the world. As part of the treatment she received in Birmingham, surgery was performed to help reconstruct her skull. Her story has beensimply but effectively illustrated by the graphic designer Gavin Aung Than, who adapts famous and inspirational quotes into cartoons. 94





© zen pencils.com

A few days after she was shot, the world celebrated the first International Day of the Girl Child. <sup>95</sup> It was October 11, and in the light of the recent events, Malala

 $<sup>^{93}</sup>$  For the full statement: AHRC-STM-200-2012. October 12, 2012

For more information about the artist, and for the full comic strip, please refer to his cartoon blog online: Http://zenpencils.com

 $<sup>^{95}</sup>$  Adopted by UN General Assembly resolution A/RES/66/170

received global attention and celebration by the entire international community, reminding everyone how much still needs to be done for the protection and empowerment of the girls of today, who will be the women of tomorrow. Gender inequalities between girls and boys are still very profound in several regions of the world, and are the main cause of various forms of discrimination and abuse suffered by girls. Education is a basic human right, essential for the personal development and social advancement of young generations. Nevertheless, hundreds of thousands of girls around the globe face economic, political, religious, social and cultural barriers that prevent them from enjoying this fundamental right. Malala has become an inspiration, a symbol of the right to education for girls in the world. On November 10, 2012, Mr. Gordon Brown, UN Special Envoy for Global Education, met the Pakistani President Asif Ali Zandari and launched the global day of action in support of Malala and the right for girls to access education, declaring November 10 Malala Day. He also presented the President with a list of more than a million signatures supporting the UN petition "I am Malala", demanding government improvements in policy to guarantee girls in Pakistan the opportunity to

attend school.<sup>96</sup> In the same period, the UN Secretary-General Ban Ki-moon launched the online initiative #GIRLWITHABOOK, inviting everyone to send pictures of girls, boys, young women, and families reading books, as a way of standing up for the right to education and for Malala.<sup>97</sup> A girls' college was also named after her in the Swat Valley, her native region in Pakistan.<sup>98</sup>





©#GIRLWITHABOOK

Humaira Munir, a social sciences researcher, stated that according to the available data, "The overall literacy rate in Pakistan is 58%; with male literacy standing at 69%, and females at 45%. Around 7 million children aged 5 to 9 are not enrolled in schools, whereas more than 30 million children aged 4 to 16 have no access to education." She added that according to a report by the UN Educational, Scientific and Cultural Organizatio (UNESCO) in 2010, around 30% of the population of Pakistan lives in "extreme educational poverty" with less than two years of education. It should not need to be said that girls form a major portion of this group.

<sup>97</sup> Article: AHRC-ART-113-2012. November 9, 2012

Official Tublr of the initiative: http://girlsscaringthetaliban.tumblr.com/

Statement: AHRC-STM-213-2012. October 26, 2012



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Malala could finally return to school on March 19, 2013. She joined the Edgbaston High School for girls in Birmingham and the British newspaper The Guardian was there to document this important moment. The news was also covered by many other international TV stations and papers. In March 2013, Malala was also nominated, with a further 259 people, for the 2013 Nobel Peace Prize, becoming, in this way the youngest nominee for the Nobel Peace Prize in history.

A few weeks later, she enjoyed the pleasure of a Skype conversation with the

 $<sup>^{99}</sup> Please \, refer \, on line: \, http://www.guardian.co.uk/world/video/2013/mar/19/malala-yousafzai-back-schoolvideo/2013/mar/19/mala-yousafzai-back-schoolvideo/2013/mar/19/$ 

UN Secretary General. It was April 5, 2013 and Ban Ki-moon decided to speak to her for the 1,000 day countdown to the Millennium Development Goals (MDGs) deadline. The UN Secretary General defined Malala as "a symbol of hope, a daughter of the United Nations."

In the same week, the Malala Yousafzai Foundation was able to make its first grant with the support of Hollywood actor Angelina Jolie. The Guardian reported:

"The grant of US\$45,000 (f.29,500) will be given to an unnamed organisation in the Swat Valley in Pakistan to support the education of 40 girls aged 5 to 12 who would otherwise be forced into domestic labour. The organisation, which was not named for security reasons, will offer a safe place for the girls to study as well as financial support for their families. In a video played to an audience of thousands Malala said: "Announcing the first grant of the Malala Fund is the happiest moment in my life. I invite all of you to support the Malala Fund and let us turn the education of 40 girls into 40 million girls." Jolie, a UN special envoy, introduced the video and pledged to give \$200,000 to the fund. She praised the girl's courage. "Here's what they accomplished," Jolie said of Malala's attackers. "They shot her point-blank range in the head—and made her stronger. The brutal attempt to silence her voice made it stronger." The Malala Fund supports the education and empowerment of girls in Pakistan and around the world and provides grants to civil society organisations and individuals focused on education. The fund is run by a board of trustees, including Malala and her family, with the support of the Vital Voices Global Partnership, founded by Hilary Clinton". 101

After naming her second Person of the Year 2012, Time Magazine honored Malala again, including her in the 2013 list of the 100 Most Influential People in the world. Chelsea Clinton wrote a short note about her:

"Malala is now where she wants to be: back in school. The Taliban almost made Malala a martyr; they succeeded in making her a symbol. The memoir she is writing to raise awareness about the 61 million children around the world who are not in school indicates she accepts that unasked-for responsibility as a synonym for courage and a champion for girls everywhere. However Malala concludes her book, her story so far is only just beginning".

Full interview available here: http://www.guardian.co.uk/world/2013/apr/05/malala-yousafzai-girlsschooling-Fund

The whole Skype conversation is available online. More details about the 1,000 day countdown to 2015 for universal education at http://educationenvoy.org/

# Malala Day

On July 12, 2013, the day she turned 16, Malala delivered a passionate speech at the United Nations Headquarters in New York. 102 In support of the UN Secretary-General's Global Education First Initiative, the President of the UN General Assembly, Mr. Vuk Jeremic, and the UN Special Envoy for Global Education, Mr. Gordon Brown, promoting A World at School Initiative, organised the UN Youth Assembly. More than 500 young activists from around the world convened to discuss the importance of having all children, girls especially, in school as part of the UN Millennium Development Goals. The United Nations announced that from now on July 16 is to be the new Malala Day (similar to Mandela's Day on July 18 for Madiba's birthday). It was Malala's first high-level public appearance since the shooting and her speech touched the entire international community:

"In the name of God, The Most Beneficent, The Most Merciful. Honourable UN Secretary General Mr Ban Ki-moon, Respected President General Assembly Vuk Jeremic Honourable UN envoy for Global education Mr Gordon Brown, Respected elders and my dear brothers and sisters;

Today, it is an honour for me to be speaking again after a long time. Being here with such honourable people is a great moment in my life.

I don't know where to begin my speech. I don't know what people would be expecting me to say. But first of all, thank you to God for whom we all are equal and thank you to every person who has prayed for my fast recovery and a new life. I cannot believe how much love people have shown me. I have received thousands of good wish cards and gifts from all over the world. Thank you to all of them. Thank you to the children whose innocent words encouraged me. Thank you to my elders whose prayers strengthened me.

I would like to thank my nurses, doctors and all of the staff of the hospitals in Pakistan and the UK and the UAE government who have helped me get better and recover my strength. I fully support Mr Ban Ki-moon the Secretary-General in his Global Education First Initiative and the work of the UN Special Envoy Mr Gordon Brown. And I thank them both for the leadership they continue to give. They continue to inspire all of us to action.

Please see: AHRC-ART-077-2013. July 12, 2013.

Dear brothers and sisters, do remember one thing. Malala day is not my day. Today is the day of every woman, every boy and every girl who have raised their voice for their rights. There are hundreds of Human rights activists and social workers who are not only speaking for human rights, but who are struggling to achieve their goals of education, peace and equality. Thousands of people have been killed by the terrorists and millions have been injured. I am just one of them.

So here I stand... one girl among many. I speak – not for myself, but for all girls and boys. I raise up my voice – not so that I can shout, but so that those without a voice can be heard.

Those who have fought for their rights: Their right to live in peace.
Their right to be treated with dignity.
Their right to equality of opportunity.
Their right to be educated.

Dear Friends, on the 9th of October 2012, the Taliban shot me on the left side of my forehead. They shot my friends too. They thought that the bullets would silence us. But they failed. And then, out of that silence came, thousands of voices. The terrorists thought that they would change our aims and stop our ambitions but nothing changed in my life except this: Weakness, fear and hopelessness died. Strength, power and courage was 88 born. I am the same Malala. My ambitions are the same. My hopes are the same. My dreams are the same.

Dear sisters and brothers, I am not against anyone. Neither am I here to speak in terms of personal revenge against the Taliban or any other terrorists group. I am here to speak up for the right of education of every child. I want education for the sons and the daughters of all the extremists especially the Taliban.

I do not even hate the Talib who shot me. Even if there is a gun in my hand and he stands in front of me. I would not shoot him. This is the compassion that I have learnt from Muhammad-the prophet of mercy, Jesus christ and Lord Buddha. This is the legacy of change that I have inherited from Martin Luther King, Nelson Mandela and Muhammad Ali Jinnah. This is the philosophy of non-violence that I have learnt

from Gandhi Jee, Bacha Khan and Mother Teresa. And this is the forgiveness that I have learnt from my mother and father. This is what my soul is telling me, be peaceful and love everyone.

Dear sisters and brothers, we realise the importance of light when we see darkness. We realise the importance of our voice when we are silenced. In the same way, when we were in Swat, the north of Pakistan, we realised the importance of pens and books when we saw the guns.

The wise saying, "The pen is mightier than sword" was true. The extremists are afraid of books and pens. The power of education frightens them. They are afraid of women. The power of the voice of women frightens them. And that is why they killed 14 innocent medical students in the recent attack in Quetta. And that is why they killed many female teachers and polio workers in Khyber Pukhtoon Khwa and FATA. That is why they are blasting schools every day. Because they were and they are afraid of change, afraid of the equality that we will bring into our society.

I remember that there was a boy in our school who was asked by a journalist, "Why are the Taliban against education?" He answered very simply. By pointing to his book he said, "A Talib doesn't know what is written inside this book." They think that God is a tiny, little conservative being who would send girls to the hell just because of going to school. The terrorists are misusing the name of Islam and Pashtun society for their own personal benefits. Pakistan is peace-loving democratic country. Pashtuns want education for their daughters and sons. And Islam is a religion of peace, humanity and brotherhood. Islam says that it is not only each child's right to get education, rather it is their duty and responsibility.

Honourable Secretary General, peace is necessary for education. In many parts of the world especially Pakistan and Afghanistan; terrorism, wars and conflicts stop children to go to their schools. We are really tired of these wars. Women and children are suffering in many parts of the world in many ways. In India, innocent and poor children are victims of child labour. Many schools have been destroyed in Nigeria. People in Afghanistan have been affected by the hurdles of extremism for decades. Young girls have to do domestic child labour and are forced to get married at early age. Poverty, ignorance, injustice, racism and the

deprivation of basic rights are the main problems faced by both men and women.

Dear fellows, today I am focusing on women's rights and girls' education because they are suffering the most. There was a time when women social activists asked men to stand up for their rights. But, this time, we will do it by ourselves. I am not telling men to step 89 away from speaking for women's rights rather I am focusing on women to be independent to fight for themselves.

Dear sisters and brothers, now it's time to speak up. So today, we call upon the world leaders to change their strategic policies in favour of peace and prosperity.

We call upon the world leaders that all the peace deals must protect women and children's rights. A deal that goes against the dignity of women and their rights is unacceptable.

We call upon all governments to ensure free compulsory education for every child all over the world.

We call upon all governments to fight against terrorism and violence, to protect children from brutality and harm.

We call upon the developed nations to support the expansion of educational opportunities for girls in the developing world.

We call upon all communities to be tolerant – to reject prejudice based on cast, creed, sect, religion or gender. To ensure freedom and equality for women so that they can flourish. We cannot all succeed when half of us are held back.

We call upon our sisters around the world to be brave – to embrace the strength within themselves and realise their full potential.

Dear brothers and sisters, we want schools and education for every child's bright future.

We will continue our journey to our destination of peace and education for everyone. No one can stop us. We will speak for our rights and we will bring change through our voice.

We must believe in the power and the strength of our words. Our words can change the world.

Because we are all together, united for the cause of education. And if we want to achieve our goal, then let us empower ourselves with the weapon of knowledge and let us shield ourselves with unity and togetherness.

Dear brothers and sisters, we must not forget that millions of people are suffering from poverty, injustice and ignorance. We must not forget that millions of children are out of schools. We must not forget that our sisters and brothers are waiting for a bright peaceful future. So let us wage a global struggle against illiteracy, poverty and terrorism and let us pickup our books and pens. They are our most powerful weapons.

One child, one teacher, one pen and one book can change the world.

Education is the only solution. Education First."103

Malala has become a symbol of courage, the demand for justice and the desire for empowerment, not only for girls and young women in Pakistan but for the entire world. At such a young age she is an inspiration for millions of girls who share similar stories of deprivation within the most conservative and rigid societies on earth.

Her claim to access education can potentially play an important role in raising awareness among institutions. The smallest establishments, represented by families, should learn to value their daughters as equally deserving and worthy children. Governments and other official institutions should engage in a decisive manner by launching campaigns and advocating for commitment and responsibility in support of education for all. Girls deserve to be educated in the name of fairness and universal equality. In particular, in patriarchal types of societies like Pakistan, there is a compelling need to educate girls and young women, not only to grant them the chance of becoming financially independent

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<sup>&</sup>lt;sup>103</sup> Source: A World at School, online: https://secure.aworldatschool.org/page/content/the-text-of-malalayousafzais-speech-at-the-united-nations/. The integral video of Malala's speech is available on the UN Web TV: http://webtv.un.org/watch/malala-yousafzai-addresses-united-nations-youthassembly/ 2542094251001/#full-text

and socially self-confident but also to provide society with more female professional figures. There is an urgent need for an increase in the number of women employed in schools, universities, companies, public offices, hospitals and police stations as well as an increase the number of women actively involved in political parties and in the government. More funding should be allocated to programmes targeting girls, not only to guarantee basic education but also, in a more ambitious way, to aim at a more advanced type of education, encouraging girls to enter specific fields, especially law and medical science. A forwardthinking policy works on the awareness that women lawyers and women doctors can actively work for other women and provide them trustworthy and proper gender-sensitised support. A higher rate of education among the female population of a country benefits not only single women, their children, and their family in terms of confidence and income but also benefits society as a whole, in terms of a reduction in poverty, an increase in the quality of services available and a better distribution of tasks and responsibilities. Unfortunately, many patriarchal societies find it difficult to conceive the benefits of a nondiscriminatory attitude towards girls and women. On the contrary, they feel that their traditions are at stake, as if the international community is trying to intrude upon their culture and customs. In the Pakistani scenario, the urgency and the importance of education for girls struggle to earn the required consideration, as religious fundamentalism is one of the power centers of the country. Fundamentalist groups, rising in influence, dictate a society where women are de facto not entitled to equal rights. Their extremist, fanatical and intransigent model of society does not allow women's participation, recognition and appreciation. However, the more they oppose liberalism, the more they hold back democracy and hinder development.

"It needs to be noted that when societies create a positive cultural environment for women and enhance their access to critical resources such as land, housing, sustainable livelihoods and other entitlements, the risk of violence is significantly reduced and the society as a whole flourishes economically and otherwise".

Yakin Ertürk.

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Yakin Ertürk, Special Rapporteur on violence against women, its causes and its consequences. 2003-2009 'Intersections between culture and violence against women', p. 21. Report A/HRC/4/34 to the U.N. Human Rights Council.

<sup>17</sup> January, 2007, by. Online references:

http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=461e2c602

Http://www.ohchr.org/en/Issues/Women/SRWomen/Pages/YakinErturk.aspx

### IX

## **CONCLUSIONS**

## Cultural relativism and universal human rights

With the exponential increase in religious extremism in the past decades, improvements in women's rights have been challenged in Pakistan, and while the dichotomy between cultural relativism and universal human rights continues with no end in sight, many Pakistani women continue to suffer in the name of tradition, religion and customs.

Murders in the name of honour, acid attacks, marital and gang rape, son preference, and early and forced marriages represent rooted harmful practices that justify a set of violations of girls' and women's rights and explain the persistence of many forms of abuse as a matter of religious precepts and tradition. Instead, their real nature is of created, reproduced and instrumentalised cultural discourses. Within the framework of the human rights movement, girls' and women's rights have developed their own foundation and gained their own significance, evolving as recognised concerns in the United Nations agenda. States have been increasingly required to condemn genderbased violence and discrimination, and denounce any sort of custom, tradition or religious discourse that could justify any violation of fundamental rights. Basic human rights are considered universal, regardless of local contexts and cultural differences. Universalism has been continuously contested by relativist perspectives, which brand such claims as external and based on imperialistic impositions that do not take the identity of local cultures into account. However, traditional practices that discriminate and harm women and girls cannot be included in those forms of otherness or in the specificity of the societies in which they occur. Considering harmful practices as cultural practices leads to the implicit acceptance of discrimination and violence as customary, to the isolation of girls and women from any political, social or economic development, and to the denial of hope for empowerment and equality. The persistent economic, political, social and cultural polarisations between the 'North-South', and the 'West-East' of the world, have provided fertile ground for extreme forms of cultural relativism and a simplistic emphasis on cultural differences. A systematic engagement in a 'cultural negotiation' is required,

"whereby the positive cultural elements are emphasised, while the oppressive elements

in culture-based discourses are demystified. Contrary to what some may claim or fear, such an engagement with culture does not erode or deform local culture but rather challenges its discriminatory and oppressive aspects. This of course may provoke resistance from those who have a vested interest in preserving the status quo. Negotiating culture with human rights concerns inherently questions, delegitimises, destabilizes, ruptures and, in the long run, destroys oppressive hierarchies. It also contributes to harnessing the positive elements of local culture to advance human rights and gender equality, a process that also revalidates the culture itself"." <sup>105</sup>

In Pakistan, it should be realised that the entire discourse about women's rights is not simply a matter of feminism, a movement which, within its expansion, has witnessed several and not always concordant arguments. The discourse on women's rights is about respect, dignity and human rights. Promoting women's rights is a matter of justice and equality. It means promoting one group's rights without compromising cultural foundations or diminishing someone else's rights, as instead occurs in cases of patriarchy and religious fundamentalism. Violence and discrimination against women should transcend cultural features, whereby cultural practices are historically prone to evolve without necessarily abandoning the identity they express, as culture by now has largely proved not to be static but anthropologically in continuous evolvement. Conservative groups who feel that human rights are a 'western invention', an imposition of guidelines on how to deal with family, children, health, worker's rights, women's status and so on, should instead understand that the entire discourse about human rights is strictly bound to the establishment of a functioning democracy in their country. Both human rights and democracy are indeed 'western concepts', conceived out of normative laws and in contexts where the separation of the law from religion and morality was a decisive factor in the enactment of the good rule of law. Such a modern way of thinking is based on philosophy, logic, reason, and causeeffect, and has slowly reconstructed society leaving behind the contradictions and the oppression typical of the middle ages and the early modern age. Within this conceptualisation, human rights should not therefore be seen as a 'western invention', but rather as the answer provided by human reason, universally speaking, in its struggle against the despotism which has ruled the world throughout the past centuries, and which nowadays still leads to corruption and coercion in those countries where power is concentrated in the hands of the few, and society is based on religion and other ideologies.

Yakin Ertürk, ibid, pages 1, 2.

The impression is that people in Pakistan are in a state of confusion. Because of this, the distinction between what is good or bad and the independence of reasoning has become arduous. Politics and religion mixed together have created a great deal of rhetoric which has disoriented the country. The people of Pakistan have become hostage to religious extremism. The country seems close to imploding, and also exploding. In such dire circumstances, hate also turns into a system, and if you cannot take hate out on your enemy, then you take it out on yourself. This is a human phenomenon which, once transferred to society, becomes what Pakistan has been experiencing for several decades. Wherever society has built a state, the nation has always evolved and developed and the state has become strong. Where instead the state has decided to establish a society, neither of the two has flourished, they have collided. Today in Pakistan, we see that the society which was planned by the state and designed by its dictators seems to be at war with itself, with many people in a condition of denial and an overwhelming breakdown in the rule of law. Pakistan is torn apart by forces in contrast with each other: the state on one side, and the non-state actors on the other side. The non-state actors, mainly militant and fundamentalist groups, are taking over from both the state, filling the vacuum it has left, and society. Law cannot be simply imposed, and democracy is not a condition which can be tailored according to circumstances or personal needs. Law and society work together, in harmony (see the Social Contract theory) and a denial of good and fair governance inevitably disconnects the rule of law from society (A. Wasim, 2013).

#### **Further Considerations**

In Pakistan, the establishment of an efficient and objective legal order appears to be a priority. In the past decades, a general institutional failing has taken place. Political instability, endemic corruption, a disproportionate distribution of wealth, religious extremism, a deficiency in investigations and prosecutions, conservative mindsets, widespread impunity, a weak enforcement of existing laws, and a bad implementation of international conventions have collectively worsened the already pervasive gender-based discrimination and consequent violence within the country. Women have been disproportionally affected by poverty, insecurity and the poor rule of law. The floods which hit Pakistan in 2010 and 2011 proved that even in emergency situations due to natural (yet partly man-provoked) disasters, women (together with children) are the section of the population which is affected the most, in terms of access to clean water and food, sanitation and basic health care, and protection from abuse and the risk of human trafficking.

For in-depth analysis, please refer to: AHRC-FAT-043-2010. AHRC-FAT-049-2010. AHRC-FST-063-2010. AHRC-FST-066-2010. AHRC-ART-046-2011. AHRC-ART-053-2011.

The Government of Pakistan will need to provide a framework for public accountability and the de-politicisation of the institutions of justice. Justice cannot be left as a privilege solely for powerful groups, and impunity must not remain so largely condoned. With regard to women, courts must adopt objective and neutral approaches when dealing with cases involving violence and other violations of women's rights. Bias and discrimination in the evaluation of facts are simply unacceptable in the judgments of both the lower and higher courts. In a largely Muslim country like Pakistan, it would be useful to start looking at some customs in a more critical way, and question how, for instance, courtship and flirting are seen with suspect and considered lascivious behaviours, but then raping a woman is not considered an offence against God. There is obviously a discrepancy in the evaluation of what is morally acceptable and what is despicable, and such an evaluation is clearly sexist. Topics like gender, sex, masculinity and womanhood continue to be avoided and seen as provocative topics because of the religious morality which permeates society. With no public sharing of the problems related to violence against women, any possible discussion is simply silenced. There can be no improvements, no achievements, no political and social empowerment if the mentality of blame continues, whether it applies to raping, harassing or killing a woman.

In addition, the government should be responsible for guaranteeing an accommodating and helpful policing system in the country. Women need to be assured that they can find support and remedy, that they can go to the nearest police station and report threats of death or cases of violence, without either being discouraged from filing a complaint or being subjected to further violence at the hands of police officers. An independent and effective police order is required, and more investment must be allocated, not only to ensure better compensation to single officers, and therefore limiting their corruptibility, but also to ensure a more professional handling of investigations as a result of having better equipment and resources. More intelligence and forensic services should be made available for the collection of evidence, and it would be appropriate if the FIR were not filled in manually but in a computerised and centralised database for national records to monitor the trends. 24hr helplines, or women desks, would also represent a valid service in support of women in difficulty, as well as the reassurance that women police officers are also available within police stations. However, the improvements which could bring the biggest benefits would be training sessions and workshops aimed at educating police officers (still, mainly men) in legal procedures, international standards in law and praxis, human rights, and especially gender issues. A higher gender sensitisation among police staff, and also court members, is very much required.

An advancement must also occur in terms of the reconsideration of priorities. The government should reconsider the way funding is distributed, and sectors such as education, justice and employment need to be prioritised over, for instance, armaments. Violence against women cannot be defined as a minor crime, less important, less serious and something that can wait because robbery cases or threats of terrorist attacks come first. Furthermore, the whole dualism between the private and the public sphere must also be better explored and open to discussion. The traditional social structure in Pakistan is intrinsically misogynistic and embedded within a state of denial. There is a refusal to be introspective. Such a lack in introspection goes from society to the state and from the state back to society. There are many issues that are not even touched or explored (torture or bound labour, for instance) but the only way to overcome these taboos is to discuss them and explicitly state their implications. Complaints of domestic abuse, harassment in the street and other types of malcontent cannot continue to be classed as unspeakable social taboos. Public discussions regarding issues like honour, chastity, masculinity, the commodification of women and gender-based violence must be encouraged in the public realm in order to raise awareness and break the silence. Silence and indifference furnish fertile ground for oppression, acceptance and perpetuation, whereas public reflection can provide some form of relief to private affliction by leading people to share their grief, emerge from marginalisation and together try to find reasons and solutions. In this regard, the potential contribution of the media could be decisive: reports, documentaries, articles, journalistic inquiries, interviews, talk shows and other forms of coverage could deal with all the different forms of gender-based violence and discrimination against girls and women. Unfortunately, at the moment, journalists and the media are mainly politicised and do not work with objectivity. They often distort facts, rather than report them. The predominance of disinformation and bad journalism has brought dangerous consequences with regard to public opinion. Stories are often sensationalised without going into the substance of the issue, whilst the great deal of violence taking place in the country, especially against women and minorities, struggles to catch the media's attention.

Pakistan is similar to a system which replicates itself, where the poor remain poor, the ostracised remain alienated and the powerful groups continue to dictate the praxis. The idea of investing in social services (schools, hospitals, shelter houses, family counseling, vocational training for young people, etc.) and development programmes (for instance, micro credit schemes) aimed at supporting women, minorities, residents in rural areas and the other 'weak'

sectors of society, is unfortunately almost absent and highly affected by corruption which dissipates the already limited resources. Innovation, advancement and improvement will be very difficult to achieve and will continue to be hard goals to meet, unless girls and women, together with children and young people, the poor, and minorities, are valued and considered as people deserving to be empowered and as potential contributors to the betterment of society. The development of a country is measured by the status of its people, and not by the extension or the size of its heavy artillery. Likewise, countries with greater gender equality have stronger economies, as proven by those more developed societies where women are equal to men. An economic model which excludes women and does not recognise their contribution and importance in society reveals a myopic and unsuccessful approach.

Growth is inclusive and not exclusive. Whenever women are excluded from wealth creation or its enjoyment, the financial vulnerability which they suffer makes them also physically and mentally more vulnerable. Modernity requires looking at women not simply as mothers, sisters, wives or daughters, but as independent individuals with potential to develop and talents to nurture.

Achievements concerning women's rights require a holistic approach and a collective commitment. Dialogue, cooperation, preventive action, investment, supportive intervention and engagement are required by several actors, such as ministers, members of the parliament, judges, police officers, lawyers and doctors, academics, journalists, TV moderators, radio speakers, film directors, social workers, religious and community leaders, NGOs and other representatives of civil society and above all, the dominant group in Pakistan: men.

"The demand for equal rights in every vocation of life is just and fair, but, after all, the most vital right is the right to love and be loved".

Emma Goldman

## APPENDIX ONE: A selection of relevant articles

From *The Express Tribune*, online: http://tribune.com.pk/story/556392/rape-cases-dna-testsnot- admissible-as-main-evidence-cii-front-page/?print=true

## Rape cases: DNA tests not admissible as main evidence says CII

By Umer Nangiana Published: May 30, 2013

#### **ISLAMABAD:**

Until now, police have relied heavily on DNA tests to determine cases of rape. The Council of Islamic Ideology (CII), however, has declared that DNA tests are not admissible as the main evidence in rape cases.

In a meeting of the council on Wednesday, religious scholars observed that while the tool could aid investigation into rape complaints, it could not be taken as evidence. It could, at best, serve as supplementary evidence but could not supersede the Islamic laws laid out for determining rape complaints.

"It cannot be treated as main evidence but it certainly is a great help in investigations," said Allama Tahir Mehmood Ashrafi, a member of CII present at the meeting chaired by Senator Maulana Muhammad Khan Sherani. The Quranic provisions calling for four witnesses would still be required as evidence in such cases, the scholars maintained.

The observation was made in response to queries sent to the council by different courts regarding the status of DNA tests as evidence in rape case. The standard police practice has been to register rape cases only after obtaining DNA test results and presenting the report before the court as the main evidence.

## 99 We agree the blasphemy law should stay, but its wrong use by Muslims or non-Muslims, must not be allowed

Council of Islamic Ideology member Allama Tahir Ashrafi

In any legal proceedings, decisions are made on the basis of the main evidence produced. Supplementary evidence, meanwhile, is considered to be circumstantial.

CII has also opposed any amendments to blasphemy law. The scholars observed, however, that the law's wrong usage must be prevented.

"We agree that the blasphemy law should stay, but its wrong use by anyone, Muslim or Non- Muslim, must not be allowed," said Ashrafi said. "Islam is a religion of peace and harmony which does not approve of use of force against innocent," he added.

## Eid moon-sighting

Taking notice of differences between the Markazi Ruet-e-Hilal Committee (Central Moon- Sighting Committee) and the public and private moon-sighting committees of Khyber- Pakhtunkhwa, CII decided to call a 'consultative meeting'.

All stakeholders, including the central and the K-P provincial committees, religious scholars and officials of the ministry for religious affairs would be invited to participate in the meeting that would discuss and debate the origins of the differences over the matter.

"It is certainly not a problem related to religion... rather it is a personal matter. So the \meeting would try to sort out problems and create harmony among all moon-sighting committees," said Ashrafi.

The council also expressed concern at the alleged removal of Islamic content and content pertaining to the ideology of Pakistan from school textbooks in Punjab.

The CII directed that the old syllabus, which includes chapters on the 'glorious past of Muslims', ideology of Pakistan, the two-nation theory and the life of Hazrat Muhammad (pbuh), be restored. The council directed its research wing to write to all provinces and demand copies of textbooks for review.

The CII meeting also decided to further study whether cloning humans is Islamic or not. A decision or recommendation is likely to be given at its next meeting in July.

Published in The Express Tribune, May 30th, 2013. From Daily Times, online: Http://www.dailytimes.com.pk/default.asp?page=2013%5C07%5C04%5Cst ory\_4-7-2013\_pg3\_5

### VIEW: Rape laws in Pakistan: travesty of justice — Sara Ali

The Federal Shariat Court has reaffirmed that nowhere do the Quran and Sunnah prohibit the use of DNA tests and instead strongly encourage recourse to such scientific methods

It is not Islam, it is the self-proclaimed custodians of Islam who are insensitive to women. The controversial recommendation by the Council of Islamic Ideology (CII) declaring DNA as an insubstantial proof for conviction in rape cases has triggered an intense debate among lawyers, politicians and civil society representatives.

Rape is not addressed in the Ouran, it only mentions. in the Ouran is generally equated with fornication and adultery and it is believed that it entails within its meaning nonconsensual sex in the Quran and figh as well. When interpreting the status of rape in Islam, Pakistan closely aligned rape with fornication and adultery, with the result that rape victims are frequently punished for while the rapists get away scot-free. The Offence of committing (Enforcement of Hudood) Ordinance, VII of 1979, also called the Ordinance, criminalised and included adultery, fornication, rape and prostitution in it. It proposed similar Islamic conditions for evidence needed to prove rape as in, which further endorsed the belief that the ordinance is a dangerous play of misogyny. The juxtaposition of rape with fornication and adultery is widely criticised as it undermines the uniqueness of 'rape' as a heinous crime distinct from. Rape victims have been exposed to brutal injustices primarily due to the requirement of producing four male witnesses. In Islam, the wisdom behind four male witnesses was to protect chaste women from false accusations of, certainly not to exploit victims of sexual assault. But its custodians have used the verses of the book in a way to circumvent rape convictions, therefore further aggravating the plight of the sufferer.

A woman in Pakistan from birth till her marriage is expected to be a symbol of pride and honour for her family. This entails maintaining her virginity till the time she is given to a man in nikah (marriage) and during these years if she is raped she is left to suffer in silence. A victim who stands up for her rights or

registers an FIR in a police station is censured, and in some cases even disowned by her family and society. The attitude of many in Pakistan towards a rape victim is not only atrocious but in certain instances quite agonising. We must inculcate empathy and understanding for those who have been through such a traumatising event in their lives as no one chooses to get raped.

The circumstances for a rape victim are exacerbated with the CII's recent statement declaring DNA evidence as supporting evidence and not the primary proof in a rape case. The alternative offered by the CII of producing four male witnesses against the rapist has generated a ruckus in civil society. The CII recommendation has also challenged a recent ruling of the Supreme Court (2013 SCMR 203). Mr Salman Akram Raja in the Supreme Court (2013 SCMR 203) has submitted that the administration of a DNA test should be made mandatory in rape cases. Mr Raja in his submission has placed reliance on the case of Muhammad Shahid Sahil v The State (PLD 2010 FSC 215) where the DNA test's admissibility was accepted to determine the paternity of the child born to a rape victim in the Federal Shariat Court. The Federal Shariat Court in that case has reaffirmed that nowhere do the Quran and Sunnah prohibit the use of DNA tests and instead strongly encourage recourse to such scientific methods. Moreover, it is believed that allowing the DNA test and making it mandatory does not violate Article 13 of the Constitution, which guarantees protection against self-incrimination.

From the Supreme Court case it can be maintained that DNA is the only authentic source that can assist in deciding a rape case. A widely acknowledged belief is that when rape is committed, the offender's DNA is left on the survivor's body, and it can be easily obtained from the victim's saliva, hair, semen, sweat or blood. Hence, DNA in all circumstances is critical to bringing rapists to justice. DNA administration is only feasible and viable if the victim has not showered, combed her hair or cleaned up the crime scene. It is an important tool in deciding rape cases as it can be stored for years and has the capacity to last long without degradation at room temperature.

An immense friction exists between the laws of Pakistan and the CII resolution on rape. Even under the Women's Protection Act, it has been stated that rape cases should be tried under the Pakistan Penal Code and not under the Hudood Ordinance. At this point it is vital to note that resolutions of the CII are not binding in nature; the Council has more of an advisory role to play. The Constitution of Pakistan while explaining the role of the CII said that it will guide the government in respect of Islamic teachings, their implementation and

### propagation.

Its chairman and members are appointed by the president. The constitution reiterates its role, saying that although its advice is not binding, yet it is not easy for any government to ignore or overrule its recommendation regarding any idea. With regards to the rape laws, Pakistan is now at a crossroads. Rape is indeed a harrowing phenomenon that continues to haunt Pakistan and is likely to generations to come. If we are really concerned about giving redress to rape victims, it is imperative to resolve the rift between the CII and other segments of society. The need is to bridge the gap between the CII and civil society organisations, and for once sit down and see where both the CII and civil society are coming from. A serious effort is required to remove any misunderstanding of Islam. The focus should be on engaging erudite and serious Islamic scholars. At the end of the day it is not about the CII, or a lawyer, or a civil society representative, it's about Pakistan and its people. It is about justice and the rule of law. It's about a society where tranquillity should prevail and where Islam is followed in its true sense.

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From *The Express Tribune*, online: http://tribune.com.pk/story/573103/honour-killingajokas- play-highlights-violence-against-women/

## Honour killing: Ajoka's play highlights violence against women

By Maryam Usman Published: July 6, 2013

### **ISLAMABAD:**

There's something welcomingly different about "Kari", a play staged at the Pakistan National Council of the Arts on Thursday. Its gripping plot entertains audiences as well as raises awareness, without sounding overly preachy, about a pressing human rights issue.

The play is part of a commitment between Ajoka Theatre and Community Appraisal and Motivation Programme (CAMP) to fight social injustice and violence against women and other vulnerable groups of society. Meant for rural communities where the banned practice of honour killing is still prevalent, the play has been performed in parts of Interior Sindh and Southern Punjab to sensitise local women about their rights and to raise awareness on the issue.

## The play has been performed in parts of Interior Sindh and Southern Punjab to sensitise local women about their rights

Set in a village, the play revolves around a panchayat of tribal men, sitting in judgment of their village women who have been accused of violating the tribal code of honour. When one of the sardars (M Qaiser) murders a rival over personal enmity, he accuses the victim of having illicit relations with a woman of his own tribe. On his behest, the other sardars start looking for the accused woman to avoid legal proceedings.

Meanwhile, a cobbler (Zubair Sajid) spots another couple in an open field and reports to the sardars, who then order the tribal men to look for this couple as well. To protect her lover, the girl, Mahnoor (Sana Sehar) tells the sardars that she is the woman they had been looking for. Upon her confession, the panchayat declares her kari and orders her killed. However, a group of local women assist her in eloping with her lover, Fareed (Sohail Tariq).

Interwoven in the main plot are the stories of women who have fallen victim to the honour crimes of "Swara", "Vani" or "Zhag" at different time periods. The play ends on a positive note as the women approach the panchayat and dub themselves kari in defiance.

# 77 Thanks to the media, the awareness on such issues is increasing now more than ever Madeeha Gauhar

"I really like how so many issues have been highlighted in just one play, which is the beauty of it," commented Myra, an audience member. Meanwhile, another audience member, Haroon, enjoyed the music throughout the performance. The folk musicians (Kamran and Thomas Khokhar) blended soft notes of tabla and harmonium with poignant lyrics.

The performance was an activity of CAMP's advocacy campaign on honour crimes and unjust practices against women which will highlight the unfair treatment of women under the Rule of Law Programming in Pakistan project.

Elaborating on the success of the play in various affected communities, the play's director, Madeeha Gauhar said it has given local women an opportunity to air issues. "Thanks to the media, the awareness on such issues is increasing now more than ever," she said. She further underlined the need to revisit the legal system of the country to dismantle the structures that have led to patriarchy. Moreover, she cited confusion over the Pakistan Penal Code, jirgas and punchayat and Shariah in the country with regard to the unfair treatment towards women.

Published in The Express Tribune, July 6th, 2013.

From The Independent, online: http://www.independent.co.uk/ News/world/asia/teenage-girlsshot- in-pakistan-were-murdered-for-making-video-of-themselves-dancing-8680394.html

## Teenage girls shot in Pakistan were murdered for 'making video of themselves dancing'

Rob Williams, June 30, 2013

The initial police investigation has suggested the attack was carried out against the girls by their step-brother, who is now believed to be on the run Two teenage sisters and their mother were murdered in a so-called "honour" killing in Pakistan after a video emerged of them dancing in the rain.

According to reports the two girls, aged just 15 and 16, were shot dead last Sunday alongside their mother after the girls' step-brother and accomplices carried out the attack to "restore the family's honour".

The alleged killer, named as Khutore, reportedly carried out the attack after local men had seen the grainy video footage of the girls, named as Noor Basra and Noor Sheza, dancing during a downpour outside their home in Chilas, in the northern region of Gilgit.

According to the Sunday Times the initial police investigation has suggested the attack was carried out against the girls by their step-brother, who is now believed to be on the run.

He is thought to have escaped when contacted by police running the investigation. His alleged accomplices have since been arrested.

Local media reports claim the video, which is thought to have been shot six months ago, was circulated in the area after a relative sent it to friends.

According to the Human Rights Commission of Pakistan at least 943 women and girls were murdered in 2011 in "honour" killings. Around 1,000 such killings take place every year, according to women's rights group the Aurat Foundation.

From FrontPage Magazine, online: http://frontpagemag.com/2011/frank-crimi/the-price-forrefusing-To-kill-your-gang-raped-child/

## The Price for Refusing to Kill Your Gang-Raped Child

By Frank Crimi. October 10, 2011.

A Pakistani family is under brutal assault for refusing to murder their daughter for being a victim of rape. The case serves to underscore Pakistan's malevolent role as the world epicenter of "honor killings."

Kainat Soomro was 13-years old when she was kidnapped in 2007 near the Pakistan town of Dadu and viciously gang raped for three days by four Muslim men. While fortunate enough to finally escape her captors, Kainat's ordeal was tragically just beginning.

Despite being the victim of rape, Kainat was instead declared to be a kari, or "black female," by tribal elders in her town for having the temerity to have sex outside of marriage. As a consequence of that decree, Kainat's family was expected to subject her to an honor killing.

However, despite the pressure to murder Kainat, her family refused. As Kainat later pointed out, "It is the tradition, but if the family doesn't permit it, then it won't happen.

My father, my brothers, my mom didn't allow it."

Instead, her family opted for a saner and less barbaric route by seeking to have Kainat's\ rapists prosecuted for their heinous acts. Unhappily for the Soomro family, that decision would subject the family to years of sustained attacks and beatings by fanatical fellow

Muslims, assaults that eventually drove the Soomros into a grim state of poverty. Unfortunately, despite the Soomro family's heroic efforts to spare their daughter's life, Kainat's rapists were acquitted in May 2010 after a local judge declared her sole testimony as an "alleged rape survivor" to be insufficient. Regrettably, the anguish of that court decision\ only deepened a month later when Kainat's brother was murdered by unknown assailants, ostensibly for the sin of having the audacity to defend his sister during her trial.

Now, 17-years-old, Kainat and her family remain undeterred. To that end, they are petitioning higher Pakistani courts to appeal the ruling in her case. However, beset by severe pressure to withdraw her appeal, the Soomros remain under attack by men affiliated with her rapists, men who recently vandalized their apartment, beat the father and brother with iron rods and threatened to kill Kainat.

Sadly, the decision by the Soomros to resist community efforts and not kill their daughter remains the exception to the rule in Pakistan. The sad reality is that more often than not, Pakistani families stand eagerly ready to murder their wives and daughters for any "damage" they may have done to the perceived "honor" of the family.

That "damage" can occur when a woman has the misfortune of being raped; marries a man of her own choosing; has any contact with an unrelated male; dates a Christian; openly flirts; or adopts Western ways of dress and behavior. While in most cases husbands, fathers or brothers of the offending women in question commit the murders, in some cases, tribal councils decide that the woman should be killed and, as such, send men to execute her.

According to the United Nations, about 5,000 honor killings take place each year, most of which take place in Muslim countries in the Middle East and South Asia. For its part, Pakistan accounts for nearly 20 percent of those killings, nearly 1,000 a year, the most of any nation. Honor killing incidents in Pakistan reported in 2011 have included one girl burned alive, five girls dying from acid attacks, and four girls tortured to death.

Recent Pakistani honor killings have also included a 15-year old girl strangled to death by her uncle for suspicion of having sex with a Christian; a 21-year-old woman electrocuted to death by her family for secretly marrying a man they disapproved; and a Pakistani man shooting down six of his teenaged daughters on suspicion they were involved in relationships with older boys in the neighborhood.

In fact, according to the Human Rights Commission of Pakistan (HRCP), 46% of all female murders in Pakistan are considered to be honor killings. As a spokeswoman for the Pakistani Women's Rights organization, Aurat Foundation, said, "Incidents involving murder of women for honor have increased to alarming proportions."

Of course, it should be noted that the number of honor killings are probably much higher than the numbers actually reported. Either most murders go unreported or family members of the victims simply report the girls as having committed suicide.

Part of the reason for Pakistan's increase in honor killings, according to an HRCP spokesman, stems from the simple fact that "people are getting away with it," noting that "only 20 percent of cases are brought to justice."

That deplorable result may arise from Pakistan's penal code which treats honor killings as murder, but also allows the family of the victim to pardon the murderer, who is usually a relative who committed the murder on the family's behalf.

Yet, it's certainly not too surprising that Pakistan's judicial system has been slow to react to the horrific abuses being hurled at Pakistani women. The Executive Director of the Centre for Peace and Civil Society notes that domestic violence is not explicitly prohibited in Pakistani domestic law. In fact, Pakistan is the only South Asian country that has yet to pass a law on domestic violence.

So, given a lack of support from Pakistan's judiciary and fearful of reprisals launched at them by family and community members, most Pakistani women do not report instances of abuse. 110

The result has been, according to a 2011 report on Pakistan by Amnesty International, an explosion of rampant "gender-based violence, including rape, forced marriages, honor killings, acid attacks and other forms of domestic violence."

Not surprisingly, such high levels of violence have led to an estimated 90 percent of all Pakistani women having experienced some form of domestic abuse in their lives. As Gulnar Tabussum, spokeswoman for Women's Action Forum said, "The status of women is low and also brutality is growing by the day."

That sad fact was perhaps best expressed recently by a young Muslim man from Pakistan's Kurdistan region, an area in which it has been reported that in September of 2011, 25 women alone were murdered under the guise of honor killings. According to the man, "Here is man's world. If you are man, Kurdistan is a nice place, but if you are a woman, it is a tragedy."

Sadly, for Kainat Soomro and millions of other Pakistani women and girls, life in all of Pakistan is one never-ending tragedy.

From: *The Express Tribune, online:* 

Http://tribune.com.pk/story/572286/the-words-

describing-rapeblaming-

Thevictim-shielding-the-rapist/

## The words describing 'rape': Blaming the victim, shielding the rapist

By Fouzia Saeed Published: July 4, 2013



#### **WASHINGTON DC:**

Pakistani society is still a bit confused about who ought to be punished for a crime of rape. Although everyone agrees that the culprit should be punished, in reality quite the contrary happens. Unknowingly, our society punishes the victim and not the rapist.

Like murder, theft and mugging, rape is a crime done by a criminal, but society is quick to stamp the victim as having lost her and her family's honour. Why does the rapist not lose his honour for committing such a crime?

## What do you call a rapist in Urdu?

While we do have names for other perpetrators of crimes like qaatil, chor or daku; we don't have a definite word in Urdu for a rapist. We do not even have a proper word for the act of rape. We use words like izzat lut gai (lost her honour) and Daaghi ho gai (stained) or more lyrical phrases like kati patang (torn kite) and sheeshe me baal aa gaya (a stained glass).

All these phrases refer to the woman who was raped, showing how we are conditioned to reinforce the patriarchal cruelty of blaming the victim whilst shielding the rapist from any responsibility for the crime. More recent terms like bil jabar (adultery by force) do not aptly describe the crime.

## Without thinking, we place a heavy stigma on the victim so that no respectable man will want this damaged merchandise

By using such language we become a party to this crime. Without thinking, we place a heavy stigma on the victim so that no respectable man will want this damaged merchandise. Our society has to understand that it is the social stigma that keeps the victim from speaking out and, thus, responsible for most rapists going scot-free. In most of the reported rape cases, the victim and her family have been harassed and intimidated to the extent that they have had to leave their neighbourhood or village. In many of these cases where a rape becomes public knowledge, children are told not to play with the children of that family, resulting in a social boycott of the victim.

## She must've done something...

The belief that the woman must have provoked the crime is deeply ingrained in our culture. We immediately ask: Why did she wear fashionable clothes? Why was she out at that time? Why was she alone? Why did she not scream loud enough? We can quickly conjure up twenty reasons how SHE could have prevented the crime if she really wanted to.

## The belief that the woman must have provoked the crime is deeply ingrained in our culture

the reality is that victims range from the age of 2 to 70 years old and the venues of the crime range from universities, offices, markets and, most tragic of all, their own homes.

## Rape on the silver screen

Just looking at our films and plays, it is clear that our script writers do not know how to handle this 'dishonoured' woman. They either have her jump out of a window or become an accidental victim of a stray bullet just to get her quickly out of the story because no other character can possibly interact with her normally. But if they have to take her character forward, perhaps because she is a star, they make sure it was only an attempted rape and the hero saved her in the nick of time. Thus, it is rare to see any female character continuing in a play or movie after she has been raped.

## Life after rape

The news for the conscious mind of our society is that there IS life after rape. Almost 30% of women in Pakistan go through a rape or attempted rape at least once in their lives. They do survive. The pain stays, but they go on with their lives. Social boycott of a rapist might not be a bad idea for a change. Let there be a clear statement that it is time for us to say 'enough'!

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From FRONTLINE, online: http://www.pbs.org/wgbh/pages/ Frontline/afghanistanpakistan/outlawed-in-pakistan/the-stigma-of-reporting-a-rape-in-pakistan/

## The Stigma of Reporting a Rape in Pakistan

May 28, 2013, 9:31 pm ET

Sarah Zaman is a board member at War Against Rape (WAR), a nonprofit advocacy group in Pakistan that helped Kainat Soomro with her case. Founded in 1989, the group investigates more than 100 rape allegations every year. But because many rape victims are fearful of retribution and the stigma that pursuing such a case can bring, WAR takes only a handful of cases to court. Zaman, formerly WAR's director, discussed the problem\ of sexual violence in the Pakistan with FRONTLINE in several interviews over a period of four years. Below are edited excerpts from those conversations.

"Two Policemen Told Us, "This Woman is Lying"

## How common is rape in Pakistan?

It's fairly common. You have to understand that you can't really go by statistics. Statistics will tell you a couple of hundred cases in a year that were reported. But then, that's not even the tip of the iceberg. It's just a little dot, really, because a lot of cases, even if they do get reported, even if the police are approached ... they have powers to dispose of cases. ...

[Recently] we visited a couple of police stations in Karachi in order to get a case lodged. Two policemen, at different points in time, told us that this woman is lying, she's trying to be like Mai.

[Editor's Note: Mukhtar Mai is a well-known Pakistani woman who was gang raped on the order of a local tribal council to settle a family dispute. Mai was expected to kill herself, according to tradition. Instead she took her case to court. Five of the six accused men were ultimately acquitted.]

After Mai's case, the police told us that our victim] has no chance, because we know that she's lying. It's almost like Mai has become this figure where a woman has been lying throughout and it has been shown in court, because the accused were released.

All the problems and all the omissions that remained within the criminal system that actually led to that eventuality, nobody talks about that. They just see, OK, so it went on for so many years and then it resulted in acquittals, so she must have been lying. These judgments set a very bad precedent, and they discourage women from coming forward even more.

The Marriage Option. Basically, in Pakistan rape is a crime against the state, as it is in most countries. However, we have seen time and again the state absolving itself of that responsibility. We have had judges sitting in their own chambers, calling in the accused and the survivor and try to strike some kind of reconciliation through monetary compensation or otherwise, or even just asking the survivor or the guardian of the survivor to forgive the accused. It's a very warped system.

There have been marriage options given to survivors very often. Of course, we tend to contend that if it's a gang rape, is she going to marry all of them? It's just not a viable solution at all. And most cases it is actually against the wishes of the survivor. But society imposes that on you, that it's a fast and quick way to dissolve "differences," as they call it, between the survivor and the accused. ...

## Talk about why marriage seems to be a common defense in rape cases.

We don't have a law on marital rape. Some would suggest, and we do contend, that there is a law, but it's often missed. Rape laws, as they are right now in Pakistan penal code, they say that an offense basically constitutes rape if it was done against the will of the person and against her consent. These are two different clauses.

You would think, what is the different between against her will and without her consent? We do contend that there is this little space if judges were to supply statutory interpretation to the law, they would see that there is this little gap or little provision there where you can possibly try marital rape cases.

But in my seven, eight years, I have never seen a single case of marital rape reported or taken up by police or anybody else.

The fact that a woman might be married to her accused becomes a question of consent, in the sense that if he is her husband, then she has to consent to his sexual advances or his sexual needs. She has to cater to them.

.A woman, essentially, cannot be raped within marriage. If a victim is shown to

be married, then the whole case goes out of the window, because you were married to him, you can't claim that he raped you. A husband cannot rape his wife.

### Is this a common defense?

Marriage is not really a common defense, but consent definitely is. The defense always tries to establish that there was some level of consent involved. Thanks to the 2006 changes in laws, rape is no longer a compoundable offense, in the sense that if you cannot prove rape, then you cannot [now] be tried for fornication or adultery. Luckily that has gone out of our law books.

Reporting Rape: 'It's Equated with Defiance"

When anybody comes to WAR we have to work with the assumption that the survivor is telling the truth — just the fact that she's actually come this way to tell somebody about it.

I've had policemen in Pakistan here in Karachi tell me that any woman who actually comes forth to report rape is shameless. Just the fact that she's admitting to having been raped, that is an act of shamelessness in itself. Her name is almost equated with shamelessness.

It's equated with defiance, which is not really acceptable for Pakistani women. We have to toe the line that men set for us. So there's a lot of things that women actually have to struggle with.

## So once a rape has occurred, what happens next?

The police are generally the gatekeepers to the criminal justice system. The criminal code of procedure specifically says that it is the fundamental right of any citizen of Pakistan to get an report or a complaint registered with the police. And only thereafter can the police launch an inquiry or an investigation.

What usually happens with sexual violence cases in Pakistan is just like how you have profiling in airports. You look at the condition of the woman that has come in. If she seems nervous, jittery, distraught, things like that, you, the police officers, would believe her more than a woman who's calm and composed.

And that is one thing that we struggle with the most at WAR, is to actually get policemen to recognize that a violation has taken place, and give that person their fundamental right of lodging a complaint. That is not done. When we

compare the number of cases that are reported to the police to the number of cases that are reported to the Medical Legal Center [which gathers medical evidence for investigations], there is a huge disparity between numbers.

The number of complaints registered with the police formally are half of one third of the number of cases that are approaching Medical Legal Centers for medical, legal examinations in rape cases.

## So you're saying the rape cases are reaching the police but they're not being investigated?

They're not being registered, period.

## And if they are registered, they're not being investigated?

They're not being investigated properly. Forensics is a relatively new science to Pakistan.

You've got contamination of evidence all the time.

In a country like ours, freedom can be bought with money, and usually in rape cases the offenders are in some position of influence or power. It is very hard for survivors belonging to lower-income groups to even get the police to believe that they have been raped. Especially if she's levying charges against somebody who is more well-off than she is. Whether it's actually in terms of money, or it's in terms of social position in society.

So these are the kind of problems that we have in the police especially, which is the first point of contact for survivors generally. There they are discouraged. If they belong to a 116 certain ethnicity, they might be told: "You guys are liars anyway. Why are you doing this?

This is only going to cause you more humiliation. Don't do this."

And you can imagine what's going to happen in incest cases: "He's your own father. He's your own brother. Why are you doing this?"

So those are the kind of issues survivors have to deal with. And we try and assist them in dealing with those things. It is a mess from the police to the medical, legal, to the judiciary to the laws themselves. We've got no law on marital rape. We've got no law on digital rape. We've got nothing on incest. We've got nothing on necrophilia. ... So you know, you don't even have laws that cater to various forms of sexual violence. Everything in Pakistan is working against survivors.

### Tell us a little bit about DNA testing.

We don't really have a culture of DNA testing. In rape cases, it usually is not done. There has been a lot of talk about having DNA testing to use for rape cases and gang rape cases free of cost for the victim and her family, but it hasn't really materialized.

DNA testing, as you will find in case law, is not really required to prove an account of rape. Medical, legal examinations where vaginal swabs are taken and sent for chemical testing, that's really sufficient. If done properly, evidence might be found on the person, on the victim's body or on her person anywhere, on her clothes, which can be tested even in the chemical labs here.

But again, it's not really any one thing that is not working. You have bad collection of samples. There's contamination, of course.

And the fact that when we go and speak to people in the chemical examiner's offices, they say: "You've got to help us upgrade our computers, our machines. These don't work.

Where there's a good chance of conviction, which we can assure by turning out a good, solid report, we can't do it because we don't have the resources. We don't have the infrastructure. We don't have the trained people, personnel who would actually do these kinds of tests and come up with a comprehensive report."

"The Woman's Position in Society Is Always Important"

## I think you mentioned that there's often political influence on the police. How does that play out?

The police in Pakistan generally are not free from political interference. It doesn't matter whether it's a rape case or a gang rape case or a murder case, a hit-and-run case.

The person lodging the complaint makes you sit there for many hours because he has to confer with his senior before he lodges your complaint. Then, even if a person is apprehended, it just takes a phone call from somebody that the accused knows for his release.

Ultimately, a woman who belongs to a poor family with limited influence and limited resources is automatically, almost by default, not going to be believed when she goes against people who are more influential, more political, well-

connected people.

We did some work on medico-legal certificates and what kind of services are given across Pakistan. I learned that the medico-legal certificate in Lahore actually has a section, has a distinct line, where it asks for the woman's caste—name, age, whatever—and then suddenly you see, "caste."

I was baffled by that, because I didn't understand what that had to do with anything. Then I spoke to one of the medico-legal officers, and he told me that usually a lot of women from lower-income groups tend to implicate men who are more [powerful]. ... Basically, it's a money-making business, and we want that information documented. What kind of caste does she belong to, and what caste does he belong to?

There is an automatic bias. Rape is not just something that happens in isolation. You get a lot of people, the landed feudals, or landed gentry, actually just picking up girls and taking them to their homes, raping them. Nobody ever hears about it. It's not reported.

You cannot rule out the economic factor and the social factor. The accused's position in society and the woman's position in society is always important.

## Are marks of violence considered an important indicator of rape in Pakistan when it comes to believing a woman?

Definitely. If you don't have marks of violence on your body, then your story is suspect — especially in gang rape cases because it is assumed that if a woman is gang raped, she will be badly bruised, beaten up, black and blue. And in the absence of marks of violence, then it's really not possible that she could have been raped because, again, it is assumed that a woman would resist whenever she is attacked.

Not every woman reacts the same way. One woman might resist to her utmost. Another may just not do anything for fear of inviting more violence — and usually that is what happens.

[But] marks of violence are an important criteria for our courts. They need that in order to believe that a woman is telling the truth. Although in most cases, you do not find marks of violence [even if there were any]. By the time she actually reports, the bruises have subsided and there is little trace available.

Then there have been cases we have handled where a victim has been burned inside the mouth with a cigarette when she became unconscious, and the assailants just wanted to check if she was faking it or if she was actually passed out. They burned her and the medico-legal officer who was conducting the medical examination did not see, did not check, did not ask her.

They do not officially have to do a head-to-toe examination. They don't check under the nails. Often they don't even have swabs. They don't have weighing machines. They don't have X-ray machines to actually make an age determination.

So in cases where there's omission like that, then you have to request that a medical board be constituted and that a whole group of doctors actually sit together and re-conduct the examination, but by that time, more evidence has been lost.

Why Capital Punishment "Reduces Conviction Rates"

# In gang rape cases, the maximum penalty is the death penalty. I think that, probably, for a lot of judges, puts the burden of proof fairly high. Can you talk about that?

In gang rape cases, we do have the death penalty if it is proved beyond reasonable doubt.

That, of course, puts a lot of pressure on the prosecutor, the defense, as well as the judge. It's not really an easy trial for anybody when a man's life may hang in the balance.

We do take a stand against the capital punishment, and we believe that in gang rape cases, where it might actually lead to a person being hanged, it reduces conviction rates even more, because there will always be a chance that the man is innocent. ... Then, of course, they lay more burden on the woman to really show that she was raped.

"There's Definitely Hope"

## What steps does Pakistan need to take to support victims who have been raped?

To support victims or to actually change systems? Because they are two different things.

### Explain.

Basically as far as rape is concerned there are different things that a state can do to support victims and to provide good services. When we say "support survivors" we actually mean supporting them throughout the criminal justice process as well as ensuring their rehabilitation and their reintegration into society. As of this moment, the government of Pakistan is doing neither.

### Is there any hope in the system in Pakistan?

Oh, there's definitely hope. Recently, the government of Pakistan has taken a lot of steps, pro-women steps in the sense that there has been a lot of legislation on different forms of violence against women. And the government of Pakistan is legislating on the matter. ... We've got a whole [lot] of [things] we need to do to actually even start making a change in the way that these cases are treated, perceived.

## When this gang rape case happened in India that drew a lot of international attention, what were some of the effects in Pakistan?

Well, I don't really foresee any effects as such, because cases have been happening all around the world and they haven't really helped Pakistan's government change any of the laws, necessarily, or any of the systems, necessarily, that have been indicated to be flawed. ... 119

But I do feel that a lot has changed over the past, say, 20 years or 30 years, in the sense that now a woman can actually stand in court and say, "I was raped, and this and this happened to me, and this and this guy, such and such a person did this to me." It was unimaginable for a woman, say, about 15 years ago to stand in a court and admit that she was raped.

From The Express Tribune, online: http://blogs.tribune.com.pk/story/11149/killed-twicemarrying-the-man-who-raped-her/

Killed twice: Marrying the man who raped her Aneka Chohan April 22, 2012

A young girl lay dead across the bedroom floor, and a small open bottle lay just mere inches from her hand with the words 'rat poison' printed across the label. She had just committed suicide - an act forbidden by the laws of God and nature.

Her reason? She was ordered by a judge to marry the very man who had raped her. Amina Filali was just 16 when she ended her life.

Only last year, Amina's parents filed charges against their daughter's rapist who was 10 years older than the teenager. The judge, in the Moroccan city of Tangier, concluded that rather than punishing him, the two must marry.

The decision was taken in order to 'resolve' the damage of sexual violation against Amina, to force the boy to do the honourable thing and marry the girl he violated. However, this decision just led to more suffering for her family – the family that despised the rapist, now her husband.

The Moroccan penal code was updated in 2004 in order to give women greater rights. However, with rape cases, the victim is burdened with providing evidence that she was attacked or she risks getting prosecuted for debauchery. According to Moroccan law,rapists are sentenced from five to ten years in prison which can also rise to between 10 and 20 years if the victim is a minor.

Article 475 of the penal code allows the rapist to marry an under-age victim to preserve the honour of the woman's life. This type of forced marriage stems from local rural traditions to 'protect' the honour of girls who have been raped. According to the Moroccan penal code, upon agreeing to marry the victim, the rapist becomes exempt from punishment.

In most cases, like Amina's, the decision to marry one's rapist in order to safeguard their own honour leaves the innocent victim at the mercy of the cruel rapist and his family.

Similarly, these young girls are often mistreated by the rapist's family, and they suffer from domestic abuse as well as starvation. The Moroccan law of ordering the victim to marry her rapist is yet another form of violence and abuse committed against women. The law is utter cruelty disguised in the form of a solution. Rather than safeguarding the honour of women, this law safeguards the honour of men. 121

Surely, if the decision was taken in Amina's favour, wouldn't the judge have sent the rapist to prison or sentenced him to another punishment rather than telling the young girl to tie knot with the man who traumatised her in the worst possible way?

Unfortunately, the justice system is based on such ideologies, which is why perhaps many Moroccan feminists protest that the law should be changed to avoid women marrying their rapists.

One thing is for sure – rapists can never make good husbands. Just think about it; can a man who treats a woman in such a despicable and dishonourable way ever make a good husband?

Moreover, can the woman who was brutally raped ever make a good wife to the very man who sodomised her? She will surely hate an resent him for the rest of her life. How on earth could a judge think that marriage could be an apt solution?

The story of Amina is not the first horror story we have heard. It is an all too common phenomenon in Muslim countries to protect one's honour. My question is, is the honour of a patriarchal society so sacred that the life of a human being becomes insignificant in comparison?

If justice – and I mean, real justice – was to be served to Amina, her rapist would've be stoned to death or hanged till his neck broke. The marriage ordered by the judge just goes to prove how strong male dominance is in this world and how weak the female position is.

Even though we go about living in the 21st century, the law,traditions and society values do not differ from the ones in the middle ages. It is high time that women demand their rights; it is high time we speak up for abolishing the law that orders victims to marry their rapists.

From Women's Media Centre, online:

http://www.womenundersiegeproject.org/blog/entry/from-morocco-to-denmark-rapesurvivors-

Around-the-world-are-forced-to-marry

# From Morocco to Denmark: Rape survivors around the world are forced to marry attackers

By Morgan McDaniel/Guest Blogger — May 2, 2013

In March 2012, a 16-year-old girl named Amina Filali killed herself by drinking rat poison.

She had been raped and forced—by Moroccan law—to marry the man who had raped her.

Nearly 10 months later, after a wave of demonstrations and sit-ins across the country protesting Filali's death, the Moroccan legislature made plans in January to amend Article 475 of the penal code—the section that allows rapists to marry their victims in order to escape punishment.

There is no question that this is a huge step forward for women's rights in Morocco. But it's just the beginning of the reform that needs to happen for all rape victims in Morocco to be treated as equal citizens. The crime of rape is still legally tied to the victim's marital status and perceived sexual activity. On the one hand, the law does not recognize rape within a marriage as a punishable crime, as sex is seen as "owed" to a husband; on the other, it adheres to sexist notions of "purity" by meting out a double punishment if the rapist has "taken" the victim's virginity.

And the sort of legal practice that forces victims to marry their rapists is not unique to Morocco. As recently as 1997,15 Latin American countries allowed rapists to avoid prison time by marrying their victims. A March 1997 New York Times story explained that, as of its writing, Costa Rica required even less: Its laws exonerated any rapist who expressed an "intention" to marry the woman he had raped, even if that woman did not accept his offer.

Karen Asare, a spokeswoman at Equality Now, told WMC's Women Under Siege that Costa Rica, as well as Guatemala, Peru, Uruguay, and Argentina haveamended these laws over the past few years. Panama repealed its law in 2008, with a new code of criminal procedures that, according to a report by the U.S. State Department removed the provision "that a perpetrator can marry a victim who is at least age 14 and reduce the charge." A similar report states that Ecuador had such a law as of 2008. And according to a report submitted to the United Nations' Convention for the Elimination of All Forms of Discrimination Against Women in 2007, Brazil repealed its law a few years earlier, in 2005.

But many nations still have rape-marriage policies that force the survivor to marry her perpetrator in effect. These include Venezuela in Latin America, Indonesia in Asia, Cameroon and Chad in Africa, and Denmark and Russia in Europe. Despite a common 123 perception of Scandinavian countries being progressive in their human rights policies, a 2011 Amnesty International report indicates that Denmark's legislation "provides that if the perpetrator enters into or continues a marriage or registered partnership with the victim after the rape, it gives grounds for reducing or remitting the punishment."

In the Arab world, at least Algeria, Iraq, Syria, Tunisia, Lebanon, Bahrain, Kuwait, Jordan, and the Occupied Palestinian Territories, to which Jordanian law applies, have similar laws as well.

"I suspect every Arab country has such an article in its criminal code," Lama Abu-Odeh, professor of comparative and foreign law at Georgetown Law, told WMC's Women Under Siege. "Most criminal codes in the Arab world have been copied from each other with minor variations," she explained.

Egypt repealed a law in 1999 that allowed rapists to walk free if they married their victim, and Ethiopia repealed a similar law as recently as 2005. According to Samer Muscati, a women's rights researcher at Human Rights Watch, Libya also gives its judges the discretion to facilitate marriage between rapists and victims. When asked whether the Libyan revolution has changed this ability, Muscati said he believes that judges can still exercise it, though he is not aware of a case since the revolution in which this particular judicial discretion was used.

Indeed, in Libya and elsewhere, judicial and customary practices may allow rapists to marry their victims even when the letter of the law does not. Legal codes alone do not indicate how prevalent the practice truly is. Law enforcement agencies may pressure women to marry their attackers rather than press charges. For example, in Eritrea, according to a 2011 State Department human rights report, authorities often respond to rape reports by encouraging the rapist to

marry the victim. And pressure from authorities can go a long way.

In India, a terrible parallel to Filali's story played out in December 2012: A 17-year-old girl committed suicide after being gang-raped. Prior to her death, police had refused to register her complaint and had pressured her to marry one of her attackers. Although the officers in that case were later punished, their actions betray the dangerous bias that governments and their agencies have against rape survivors—regardless of what policies are in place.

And in Afghanistan, custom plays a large role. This was apparent in the case of a woman named Gulnaz who became pregnant after a man raped her—and who was then herself imprisoned for adultery. Her case, and the fact that a victim can be jailed for the crime she had to endure, gained international attention in December 2011, when President Hamid Karzai agreed to release Gulnaz. Although the BBC reported that her release was not on the condition that she marry her attacker, she told reporters that she may end up marrying him anyway, pressured by tradition. 124

While that tradition may be tied to religion, said Judith Tucker, a professor of Arab studies at Georgetown University and the author of Women, Family, and Gender in Islamic Law, it "doesn't really have a root in the schools of Islamic law."

Still, back in Morocco, where the young Filali was forced to marry her rapist, religion may have played a role. According to Nada Rifki, a Moroccan women's rights activist and writer for GlobalGirl Media, a nonprofit that trains teenage girls around the world in journalism, "Most of the men in our very patriarchal Muslim society will never marry a woman who was touched by another man."

"Since I was a child," Rifki said, "I was taught that, along with all the other girls in my society."

Because of the shame associated with rape, she explained, many Moroccans consider marriage to one's rapist the only viable solution for a victim. And until that notion changes, young girls like Filali may continue to opt for suicide over a lifetime of living with the men who violated them.

From Frauen Ohne Grenzen- Women Without Borders, online: http://www.women-withoutborders.org/news/193

### Burning Injustice: The Face of Violent Extremism

Acid attacks are on the rise in Pakistan May 04, 2010.

Last week, three Pakistani sisters, age 20, 16, and 14, had their lives irrevocably changed. As they walked from Kalat city to Pandarani village in the Baluchistan province, two motorcyclists threw acid on them, causing severe burns over their faces and bodies. Two weeks earlier, two sisters in the same province suffered the same attack—and they are only 11 and 13 years old. Their crimes? Not wearing hijabs and traveling unaccompanied by men.

The Baloch Ghaeratmand Group, which was until recently unknown in the province, circulated a pamphlet in April that warned, "Acid will be thrown on the faces of women and girls who step out of their houses without covering their faces... People who fail to comply with these orders will themselves be responsible for the consequences."

Five victims in three weeks in one province of Pakistan: you could consider these attacks commonplace. Their attackers will probably not face punishment for their actions. And what can the victims' families do? What steps can the townspeople in this region take to prevent further attacks? The police claim not to know who is in the Baloch Ghaeratmand Group, and they do not know if the attackers were affiliated with the group. These five young women and girls will suffer from the physical and psychological effects of these attacks for the rest of their lives, and the towns and villages in this area will be subdued by the threat of violence, knowing that there is no way to prevent or deter these attacks from happening again.

This is violent extremism at its most insidious: controlling communities and individuals in the name of a radical ideology through the threat of violence. And as with all extremist groups, ideology is just an excuse to seize power through inhuman actions—to commit acts that defy even the most basic urges towards fellow feeling, and to do so in the name of an abstract principle that cannot be held accountable.

If the victim survives, the effects of acid attacks are life-changing. Acid burns

through eyes, skin tissue, and bone. Usually, the victims are left blind and with permanent scar tissue. Their bones are often fused together—jawbones sealed tight, chins locked to chests, hands left permanently contorted in the position they held as they tried to deflect the splash.

The psychological scars are even worse. Depression, anxiety, shame—these would be part of the emotional aftermath of any scarring injury, but victims of acid attacks are also often ostracized by their communities and even held responsible for incurring the attack they suffered. When the victims are married, their children are forced to assume their mother's caretaker roles, and if the husband leaves, they have to shoulder the heavy burden of caring for the family as well. If the victims are not married, they face a lifetime of dependency on the charity of their parents and community and continued vulnerability to further attacks. 126

Women who are lucky enough to have money may be able to afford a series of operations that would incrementally replace skin on their face, restore partial sight in an eye, or realign bones fused together. Women without money can hope to make the most of what the acid does not burn. With or without surgery, the victim of an acid attack will never look the way she did the day before the attack—that woman is gone forever.

The five women attacked in Baluchistan are only a small sample of a problem that is widespread throughout South Asia and growing. Pakistan's acid attacks are mirrored by similar attacks in Afghanistan, Bangladesh, Cambodia, and India, and in recent years even in areas where acid attacks have not been seen before, including Hong Kong, China, and the United Kingdom. The attackers often cite political or religious grounds for their actions— defying sharia or tribal law, attending school, not wearing a headscarf, leaving the house\unaccompanied by a man, suspicion of adultery or immorality—but the attacks are just as often grounded in petty vengeance. 22 year old Manzoor Attiqa, also from Pakistan, was attacked by her in-laws when she did not wash the dishes. 13 year old Naila Farhat had acid thrown in her face by a rejected suitor and his friend, her science teacher at school. Haseena Husain, from India, had two liters of acid dumped over her body by her boss when she refused his marriage proposal.

Acid attacks are devastating for individuals, but their effects on communities and societies are crippling for all women. How can women start businesses when walking unaccompanied down a road can warrant a random attack by a

stranger? How can they advocate for suffrage, equal rights, or protection from domestic violence when any dissenter can silence them through violence? How can women care for their families when access to education or medical care is limited by fear of reprisal? What will happen to the next generation, when all they see is lawlessness, violence, fear? What kind of adults will they grow up to be?

The prevalence of acid attacks is a danger to the whole world. In societies where violence rules, violence will increase and spread beyond those boundaries. If countries cannot offer the next generation any hope for a future in which education or industry can lead to a job, a home, and a family, even the best minds will be transformed by frustration and anger. Only extremist groups will be able to offer security or upward mobility, and women will continue to suffer the consequences.

From CNN, online: http://edition.cnn.com/2013/03/28/opinion/gordon-brown-girls-education

Gordon Brown: 32 million girls not at school, we must push for change By Gordon Brown, special for CNN March 29, 2013

Editor's note: Gordon Brown is a United Nations Special Envoy on Global Education. He was formerly the UK's prime minister.

**(CNN)** -- Can the world agree that 2013 will be the year when a girl's right to education will finally be won -- even in the most remote and once lawless corners of the globe?

Last October, shocked by the attempted murder of the 15-year-oldPakistani girl Malala Yousufzai, three million people around the world rushed to sign a petition demanding universal girls' education.

The Pakistani government then agreed for the first time to legislate compulsory free education and provided stipends for three million children.

Only this week Shahnaz Nazli, a brave 41-year-old teacher on her way with her child to work at an all girls' school, was shot dead and joined an ever-lengthening list of teachers and students murdered because of their support for the basic right of girls to go to school.

The murder demonstrates yet again that in parts of the Indian subcontinent, Afghanistan, and Africa, intimidation and violence are the daily reality of life for many girls who want to go to school and the many educators who want to teach them.

Even today, five months after Malala's shooting in the Swat Valley, her school friends remain in fear of violence simply for attempting to return to school.

A new petition, launched this week on www.educationenvoy.org -- with its first signatories, Malala Yousafzai and her father Ziauddin -- calls for an immediate tightening of security protection for pupils and teachers when going to school in Pakistan.Brown: Girl's education iinspires film.

It is because of the tragedies that befell Malala and her school friends -- and now

Shahnaz – that in Washington in three weeks' time the U.N. and World Bank will bring together the countries that are off-track in securing universal primary education to devise a plan to move further and faster to universal education by the end of 2015, the date by which the Millennium Development Goals are to be met. The atrocity against Shahnaz -- murdered only 200 meters from the all-girls school where she taught in Khyber tribal district -- is a stark reminder of the continuation of the threats, intimidation, shootings, arson attacks and sometimes even murder that are the Taliban's weapons of a war against girls' opportunity.

They also remind us that the silent majority who once stood in the face of these threats will be silent no more and that public revulsion against the violence has strengthened the resolve of girls to go to school. Over the past several years, Pakistani Taliban militants havedestroyed hundreds of schools in Khyber Pakhtunkhwa Province. Last year Al Jazeera showed how Shabeena, the headmistress of a state-run girls' primary school in the 128 troubled province, was battling to keep girls in school in spite of the threats. The film features Afshan, one of six daughters of a night security guard, determined to secure an education. It also tells the story of Zarina, whose fight to stay in school required her to resist her family's plan to marry her off at the age of 14.

What's happening in Pakistan is also occurring in Afghanistan where, despite the removal of the Taliban from the control of the national government, local teachers and pupils are under pressure to stay away from school. Last year an investigation was carried out into allegations that Taliban extremists were poisoning school girls through infecting their school water. Still women run schools, sometimes going underground, claiming they are offering only sewing lessons.

There are many reasons why 32 million girls are not at school today. For some there are no schools to go to and no teachers. Seven million are laboring in fields, mines, factories and in domestic service or they have been trafficked. Others still are child brides, forced out of school and into loveless marriages, often undergoing early pregnancies that put their lives at risk. But most of them are victims of unfair discrimination against girls, an assumption that girls do not need to be educated to play their part in the world.

This week's tragic killing near the Afghan border -- just five months after the shooting of Malala and her friends on a bus -- also reminds us that the discrimination against girls that provoked Malala's shooting has not gone away,

and that the struggle of families in Malala's own community in the Swat Valley is far from over.

Injured with Malala were her friends Shazia Ramazan, who has had to relearn how to use her left arm and hand, and Kainat Riaz. I have spoken to them twice on the phone about their desire to continue their education and their ambition to become doctors. These sentiments were also expressed to the physician Seema Jilani in herNew York Times piece.

According to recent reports that have been sent to me, armed policemen have had to be deployed to the homes of Shazia and Kainat as well as other girls to shield them from harm.

While Kainat says that things are better than four years ago, it is nonetheless the case that the girls still need police escorts to go to school.

You can sign the petition supporting the girls and teachers who are demanding they go to school free of intimidation and violence atwww.educationenvoy.org. On that site you can also see the details of our plans to meet Malala's ambition, for every girl should go to school.

The opinions expressed in this commentary are solely those of Gordon Brown.

## Why Moral Manipulation of Women?

By Bushra Khaliq, for AHRC 7 July 2013

It is not easy to be a woman and yet to be able to exercise her fundamental rights in Pakistani society. The roots of this problem lie in the patriarchal system that is embedded in our social values and class characteristics. The patriarchal system supports and guides the prevailing ideology, presenting woman as weak creature, best suited for conventional roles.

Women occupy the lowest rung on social strata. A careful deconstruction of the societal constructions suggests Pakistan remains a rigidly patriarchal society in which women's only identity reference is a variable relation to another individual; a daughter, a sister, a wife and a mother. Her independent identity as an individual does not exist. Treated as a commodity she spends her life with such identity in the service of a male dominated social system. This chronic gender discrimination has griped our society, varies with certain degree from rural to urban areas, lower to elite class.

In a patriarchal society, cultural beliefs determine the social attitude of an individual, constructing general discrimination towards women in every sphere of life. The proofs of such cruel cultural beliefs are not difficult to find. We often come across women whose lives have been shattered by men-who are programmed into believing that they are entitled to control the women in their lives, even by violent means.

Thanks to modernization, some women, particularly in urban parts of Pakistan came forward to participate in public and private sphere but situation in sprawling rural Pakistan remains worst. Where women are denied access to education or health facilities and even become victim of violence in extreme cases such as honor killing, abduction, rape and domestic violence.

The prevailing notion about women in our society is nothing but a virtual textbook of morals.

A woman is born- to obey, not question, to listen, not to say. She is subservient to male dominated values, tradition, and honor, encouraged to pursue domestic roles. Procreation and docility are considered the basic traits of any "good woman." It is the family who determines the course of her life, ultimately her

destiny. Therefore matters of education, marriage and even reproductive rights are often determined on her part by those around her—parents, husband, etc. Those women who object to these edicts and try to assert their rights are considered rebellious, unruly and often morally wrong.

It is not wrong to assume that we have become such a morally plagued society, which prefers to talk about fake nationalism rather than doing something for changing the lives of females 130 victimized of different kinds of violence. Majority of the people are more willing to discuss the morals of women instead of questioning the violence against women. They express unmatchable national rage on issues of nudity and obscenity but keep mum over incidents of violence against women.

This duality is the hallmark of Pakistani society. It has become the national trait. People feel no shame when they boast ultimate freedom for women in Pakistan, so much so some claim it is the men who are oppressed. "Women in Pakistan have all the rights, only NGO walas, making hue and cry to please the West", they burst. They feel proud of being part of this self proclaimed civilized society in which every year thousands of women become victim of heinous crimes against humanity, hundreds fall to so-called honor and other crimes including rape and murder, dozens sprinkled with acid.

Since decades the state institutions have vigorously promoted the idea that the subordinate position of woman is willed in heaven and advantageous on earth. As a result majority of women in Pakistan have been unable to play the role of advantaged members of society because their particular role has always been affixed to self-defined morals by ideological state apparatuses. Women are taught to accept sufferings as natural heritage. The more a woman will endure the more she will get reward and appreciation from the people around.

These kind of ideological manipulations prevent women from questioning the wrong moral constructions, norms of society and from raising their voice.

It is shameful being member of a society where people are supposed to entertain the notion of relegating women to the status of commodity and celebrate the supremacy of patriarchal culture. There is strong need to smash taboos, break anti-women traditions and more important the sophisticated surgery of the societal mind-set, which is programmed to suppress the women. Though it is difficult task but not impossible. State and society both have to pool in best of their energies to rid Pakistani society of decadent culture and

antiwomen tradition. A clear vision coupled with political will can make this task much easier.

If Pakistan has to tread on the road to social justice then it needs to utilize half of its population as productive resource by bringing them into mainstream social, political and economic activity, abandoning sub human treatment and ending moral manipulation of women.

About the author: Bushra Khaliq is a writer and a women rights' activist from Pakistan. She has been partnering with the Women's International Shared Experience' project and coordinates as Executive Director the NGO Women in Struggle for Empowerment' (WISE) in Pakistan. She can be reached at: bushra.khaliq@yahoo.com.



From the blog Mystified Justice, online: http://sanasaleem.com/2011/03/10/more-men-toend-abuse/

### More Men To End Abuse Against Women

Sana Saleem, March 10, 2011

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"Do you think celebrating one day as Women's Day can really help us solve our problems?" This was one of the questions I was recently asked in an interview regarding International Women's Day. It is a realistic question, but one doesn't need to be an optimist to believe that we can make one day matter. However, if used as a day to introspect, identify, analyse and set goals that need to be met, one day can really make a difference. So what are our most pressing issues related to women, which need to be addressed and should be looked into immediately?

Forget crime, most of the abuse pertaining to women stems from our perception of a woman's role in society. It is the rampant stereotyping of 'what a woman can or cannot do' that makes it easier to discriminate, and this category is extremely diverse. Ranging from what a woman can wear to whether she can work, and what age she should get married to whether women can smoke. Some of these things may seem trivial and not as important when looked at the more pressing issues at hand, but these 'insignificant' issues are still important. Not only do these set of self-proclaimed morals encourage discrimination, they also justify crime against women. The culture of silence and shame is part of it. A woman is expected to never raise her voice against abuse. In fact, the very definition of abuse is distorted. For many, marital rape is a myth and domestic violence should be tolerated.

"Mard hai, ghussa agaya" (He is a man, it is okay for him to get angry)

But a woman can't, even if she's beaten black and blue. Because of course she is the upholder of dignity of the entire generation. Amid all the news of war, politics and economic despair stories of abuse, rape and resistance pertaining to women are often marginalised. From the way cases are reported to the investigation process, everything is in shambles. Not only is it extremely difficult for a woman to report a crime, the legal process also gives little hope of justice being served. Our courts are still seen, by many, as largely male-dominated territories.

Women are then discouraged to report cases or pursue legal action. I have

written about rape, harassment, honour killings and crimes against women extensively as a way to counter the mindset. The initiation point for me is to at least get people talking about such issues and break the taboo. It might seem very little in the face of heinous crimes but I do feel that all of us need to start voicing our concern about such issues.

By us, I don't just mean the activists or women; until men realise their responsibility and take ownership, our issues will never really be addressed. Years of struggle against crimes has made many women bitter. Feminism is then seen as female chauvinism, which has caused even more damage to the women's rights struggle.

Men and women are counterparts, therefore for the women rights struggle to really make an 132 impact, the men in our society will have to join ranks and put an end to the emotional and psychological abuse. How do we make that happen? By engaging people in discourse and, encouraging and involving young men to help define the various forms of abuse and suggest ways in which they can be countered.

Laws do not exist in a vacuum, they are upheld and implemented by people from within the society. Unless the mindset is tackled at the grassroots level, there is very little hope that these laws will be used in their full capacity to eradicate violence — whether psychological or physical — against women. If we start by putting an end to reinforcing gender roles onto our children, in other words put an end to 'what you can or can not do' we can redefine the way issues pertaining to women are perceived and tackled.

Sana Saleem is Co-founder, Director Gawaahi.com and blogs at Global Voices, Asian Correspondent, The Guardian and her personal blog Mystified Justice. She recently won the Best Activist Blogger award by CIO & Google at the Pakistan Blogger Awards. She can be found on Facebook and tweets at twitter.com/sanasaleem.

# PAKISTAN: One year after the floods-women continue their struggle to rebuild their lives & livelihoods

By Bushra Khaliq, AHRC-ART-046-2011 August 24, 2011

One year ago during the months of July and August the floodwaters that ravaged the southern parts of Pakistan have long receded. Though gone are the makeshift tent camps on roadsides but revival of normal life and livelihood still remain a challenge. Thousands continue a daily struggle to support their families and re-establish livelihoods. As a new monsoon season is in full swing, last year's trauma and economic pain still linger. While last year's victims struggle to recover, others now worry that changing world weather patterns will cause renewed flooding.

The devastation caused by the 2010 floods was the worst in Pakistan's history; almost 2,000 deaths, nearly 20 million displaced or affected and one-fifth of the country went under water. The deluge inflicted unprecedented catastrophic damage on a country already reeling from the effects of US-led war on terrorism. A year later, the picture is dismal.



Although many flood refugees have returned homes little is known to the world about their miserable conditions and stories of struggle, to combat the horrific effects on lives and livelihoods. Particularly the women who are the worst-hit still face multiple challenges after one year. Their work burden is multiplied. While husbands and male members in poor families, being daily wagers, are struggling to find sources of livelihood, women remain busy in rebuilding their damaged shelters and dwellings. In small villages and hamlets, one can find these women doing brick work and plastering their mud and half cemented houses. The brave ones who have done the reconstruction work are out in the fields to assist their husbands. Rest or respite seems rare thing to them.

Their lost possessions have been replaced at higher costs or not at all. Many marriageable girls who lost their dowries and valuables are making a fresh start to make it again to get marry. To address the issue a new culture of collective marriages is gaining ground, which was earlier unknown to these areas. Unfortunately, the phenomenon is giving rise to another social trend of early girl marriages. Though the custom of girls' early marriages is already present in Pakistan however, the post flood conditions have given new impetus to this trend. It must be stopped and the only way to tackle it is to initiate women focused anti-poverty programs in the area. For instance, any scheme to allocate state land and distribution of livestock among poor women in area will be helpful in addressing the issue.



Another particular problem is women's health, which is generally ignored. Although during the floods, pregnant women had the opportunity to avail themselves facilities of ante-natal and post natal care, provided through emergency medical camps, but the moment the relief phase was over, these women were left in conditions, much vulnerable to reproductive related diseases. Moreover, women and children are also facing nutritional problems on account of non-availability of proper healthy diet. Those who lost their livestock are in fact deprived of milk and a permanent source of livelihood.



The compensation money from the government has been unevenly distributed. Widows and female-headed families faced discrimination in distribution of Watan cards (relief money) and rehabilitation programs. Despite tall claims the Government has failed to decrease the rising vulnerability level of poverty among women after one year. While donors promises of some \$600 million in aid have not arrived. As a result squeezing livelihood options coupled with price hikes are impacting the poor families and women in worst manner.

Last month when I revisited Dera Shahwala, a small village of district Muzaffargarh, one of the worst-hit areas in southern Punjab, things were not much changed since my first visit soon after floods. Though work on roads, embankments and water courses/channels is evident, but the issues of provision and restoration of livelihood resources are yet to be resolved. One of the main sources of livelihood for poor landless women in this area is cotton

picking. With loss of the crop they could not find an alternative. In some cases where land is permanently overtaken by the rough sand there will be no crop at all, making peasants resource less on one-hand and depriving women cotton pickers of their livelihood on the other hand.

A flood affectee, here, Myriam Bibi recalled that flood water washed away everything in the house and she lost most of what was inside and now lives in a newly erected small room while her children were sent away to stay with relatives. She is rebuilding her house brick by brick with the help of her husband who contributed his free time after his day's labor. The work is progressing slowly and for the most part the house remains a roofless ruin. "Relatives and friends help us, but not everyone is so lucky. It is very difficult to rebuild our life," she said. "I don't see in the coming two/three years that I will have my house completely rebuilt."



Aysha Bibi, a young mother of five and wife of a farm worker, said floods, however 'natural', were profoundly discriminatory, where they hit, they impact different people with different degrees of misery. Some people were more affected than others. We lost our dwelling and 136 the only cow; now we cannot purchase a new one. I cannot provide milk to my children. Whatever money we had, is spent on reconstruction of our home.



Another resident, Zohra Begum said her 7-member family moved in the immediate aftermath. "We have a small piece of land where me and my 16-year daughter have to work longer hours to assist my tilling husband. We owe debt to our relatives and we have to repay it. My two children who used to go school are now supposed to be at home to look after the siblings. When we first got here there were facilities for us. But they have since been taken away. Now people just come and talk and talk but they do not give us any help."

False rumors of massive floods are also leaving residents on edge. People have sleepless nights in some areas near Indus. "It is a mental torture when we are hearing that there might be another monsoon flood," said 36-year-old Parveen, who is still struggling to rebuild her damaged home. -----

About the author: Bushra Khaliq is a writer and a women rights' activist from Pakistan. She has been partnering with the 'Women's International Shared Experience' project and coordinates as Executive Director the NGO 'Women in Struggle for Empowerment' (WISE) in Pakistan. She can be reached at bushra.khaliq@yahoo.com.

# Women of Pakistan remain as part of the patriarchic society under discrimination and injustice

By Baseer Naweed, senior researcher, Asian Human Rights Commission, Hong Kong, at regional conference of Women Human Rights Defenders in Dhaka from 8-9 August 2009, by Odhikar.

There are 72 women in the current National Assembly and more prominent positions are being held now by women than ever before, including the Speaker of the National Assembly, the Federal Ministers and a number of deputy and provincial positions. None of these women wear hijab, suggesting progressiveness in the parties who have elected them.

Certain pro-women policies are also being implemented, for example, in the case of land distribution in the Lower Sindh, plots will be registered in the name of the woman in each family unit. The current government has spoken of creating more employment opportunities and of loan programs for women, but has not yet acted in this respect, and in terms of what still needs to be done the proposals are minor.

As a legacy of the last president, Pervez Musharraf, there is a 33% quota in all electorate forums for women at local body level, but too few are being permitted to fill this as a result of social pressure. The number stands at 17.5% in the National Assembly. However these women are not directly elected, they are merely placed into the positions by their party, which limits their value as political figures. Critics complain of nepotism.

Middle-class women generally have more social and economic freedom in Pakistan, but in rural and tribal areas an estimated 12.5 million women are still denied the right to vote. Many have little or no independence on any level. The advances at the top need to be taken into the villages and onto the street and practically enforced. Businesses and local authorities such as the police and judiciary remain profoundly male-oriented.

Incidences of violence against women remain very high, and not enough is done to discourage them. According to the one recent report of the Aurat Foundation, a local NGO, a total of 7733 cases of violence against women were reported in the print media all over Pakistan during the year 2008. Out of the total of 7733 cases of violence against women: 1762 cases of abduction: 1516 cases of murder: 844 cases of hurt and body injury: 579 cases

of suicide: 472 cases of .honour. killings: 439 cases of rape: 307 cases of gangrape: 320 cases of domestic violence: 300 cases of torture: 198 cases of attempted suicide: 187 cases of sexual assault: 123 cases of attempt to murder: 117 cases of custodial violence: 70 cases of threat to violence: 56 cases of burning: 25 case of Vanni/customary practices: 24 cases of acid throwing: 394 cases of violence were of miscellaneous nature in the four provinces and Islamabad.

An investigative report of the Human Rights Commission of Pakistan (HRCP) claims that one woman is raped every hour, while another is killed on the pretext of karokari. Pakistan's Additional Police Surgeon (APS) Dr Zulfiqar Siyal recently announced that on average 100 women are raped every 24 hours in Karachi city alone. Rape and sexual harassment in police 138 custody remains a big problem, and few cases result in prosecution.

In one case in April 2007 it was reported that female opposition council members of the Karachi city government were attacked and threatened with rape by council members of the Muttehda Qoumi Movement (MQM), a member of the ruling alliance in General Musharraf's government and the ruling party of the City District Government Karachi (CDGK). Sindh police refused to register case against the ruling party council members and instead registered cases of hooliganism against the opposition members.

On March 14, 2008, a 17 year-old girl was abducted by police officials and kept for almost 16 days in private custody where she was raped and tortured to make her confess to involvement in the murder of her fiancée. Her elder sister was also brought in and held naked for three days to increase the pressure. The perpetrator was a Sub Inspector, who detained the girl outside of the police station until March 29 before she was produced before the first class magistrate for judicial remand. In January 2007 a 15-year-old girl, Ms. Asma Shah of Layyah, Punjab province, was gang-raped by more than a dozen attackers in Punjab province, yet after she filed a complaint, politicians and police continually coerced her to withdraw it.

Cases of domestic violence are so commonplace that most go unreported – there are still no laws to protect women from it. However in the last quarter of 2008 a domestic violence bill was given to legislators, in the expectation that it will be passed. In August 2007 a pregnant woman was severely beaten by the police and later raped repeatedly in public by her cousin in Punjab province, Pakistan, for secretly marrying and living with a man other than the one her

parents had chosen for her. The husband was charged with her abduction, and the woman was punished publicly by being raped by the man she had been instructed to marry.

In the workplace women must still contend with lower salaries, and sexual misconduct is common. They are generally not paid according to the law and receive few benefits. The majority are not officially registered so are vulnerable to occupational abuse. It is mostly women that work in government factories and other informal sectors (unregistered under government laws), and here they have no labour law benefits, such as medical allowances, pregnancy allowances, transport or childcare services from the factory management. Through a finance bill passed during the Musharraf government, most are now expected to work 12 hours rather than the original eight. In rural areas women are often required by employers or landlords to work all day alongside their husbands for little extra remuneration, often as bonded labour, to pay off loans.

**Discrimination is still strong in education.** The majority of schools cater to either boys or girls, and in remote areas where several hundred schools were recently burned by tribalists to protest against the education of girls in the northern province, bordering Afghanistan, under the control of Taliban and militant Muslim organizations. In such areas girls are not allowed to pass above grade five (primary school level); grade ten is required for many jobs. The authorities mostly fail to intervene in these areas, where they are seen to pander to the more powerful of the religious fundamentalists.

**Abductions remain common.** There is a trend that involves abducting young Christian and Hindu girls and forcing them into marriage Courts often rule in favour of the abductors.

Women of Pakistan bear the brunt of increasing poverty. The Women of Pakistan bear the brunt of increasing poverty, colossal human deprivation, poor governance; discrimination based on custom, tradition, and civil and military strife. Women comprise 49% of the population of Pakistan. This huge percentage is ignored or discriminated against by the political, social and economical structures of the country. The vast numbers of poor people in the region are starved of sustainable livelihoods and deprived of basic needs. While both sexes suffer from poverty, the women pay the price in a much more obvious way. Women comprise of 30% of the total labor force, but 65.7% of this female labour force is officially accounted for in the informal sector. For many informal sector workers, perhaps the majority, working conditions and

terms of labour are exploitative, characterized by low wages and long working hours with no protective laws. The informal sector has grown 8 to 9 times since 1978-79. One example of this problem is that of the brick kiln workers in Pakistan. An estimated 100,000 women work in brick kilns, but they are not "officially" employed because whole families work in a form of bonded labour, in which only the male head of the family is registered.

Some 66.4% of the female labour force works for a living in the rural economy. The rural women are said to work between 12 to 16 hours a day. The female labour force has grown at an average annual rate of 16.7% over the last 15 years, although their position is becoming less secure day by day. On the other hand, women's participation in the formal industrial labour force is 34.3%, whether self-employed or contracted. The slavery of women is worse today than in any other time in history. Every year some 500,000 women die from complications arising from pregnancy and perhaps a further 200,000 die from unprofessional and clandestine abortions.

Women are the main victims of the "war on terror". According to the Human Rights Commission of Pakistan it is estimated that a woman is raped every two hours and a gang rape occurs every eight hours and about 1,000 women die annually in honor killings.

The Women Rights bill passed in Pakistan by the National Assembly in 2006, has not changed the state or conditions of the women in the country, particularly in the areas where the feudal and tribal systems are prevalent and even in Muslim fundamentalists dominated areas. Since the "war on terror" started at the end of 2001 discrimination and violence against women has increased. According to reports acts of violence against women in 2005 immediately following the war on terror increased 300 hundred times as compared to previous years. The main victims of the "war on terror" are the women of Pakistan.

According to the press reports and reports collected from different women's organizations, since 9/11 and the war on terror 72,162 cases of violence against women were reported. The newly made Women's Protection Act has failed to deter acts of violence against women who continue to fall victim to honour killings. State violence also continued against women and at least 181 women were arrested under different minor allegations and 115 women were physically tortured by the police in the provinces. This clearly indicates that the mere making of laws does not make any difference relating to violations of human

rights including domestic violence. The actual problem lies in the collapse of the law and the serious defects of the law enforcement system. According to a report by Human Rights Watch, "more than 70 percent of women in police custody experience physical or sexual abuse at the hands of 140 their jailers.

Reported abuses include beating and slapping; suspension in mid-air by hands tied behind the victim's back; the insertion of foreign objects, including police batons and chilli peppers, into the vagina and rectum; and gang rape. Yet despite these alarming reports not a single officer has suffered criminal penalties for such abuse, even in cases in which incontrovertible evidence of custodial rape exists" According to the same report, a senior police officer claimed that "in 95 percent of the cases the women themselves are at fault."

**Jirga System, a typical feudal judicial system.** Several months ago eight women, three of them minors, were buried alive in Balochistan, reportedly by the same men. Those responsible were found to have close ties with the provincial government and to the police; and investigations into the case have gone through a Kafkan array of delays and setbacks.

In March this year, a 17-year-old girl in Sindh province was pressurized by her uncle to convince her parents to hand over acres of farm land to him. When she refused, the uncle and his accomplices brought in her father and made him watch as his daughter was mauled by a pack of dogs and then shot to death. Two months later, a *Jirga* was arranged in which the dead girl was posthumously declared 'Kari?that is, involved in an illicit relationship. The murderers were vindicated and a local man was forced to confess to being the illicit lover of the girl, and to pay Rs 400,000 as compensation. These brutal cases and the bungled follow up is a good example of how murder cases are dealt with in Pakistan's feudal north— especially those involving women. In fact, the majority of the more barbaric human rights violations making their way out of Pakistan can be traced to the *Jirga*, court-like gatherings of tribal men which have been declared illegal by the superior courts in Pakistan. This is in fact an illustration of the government's ineptitude in combating two illegal practices, the Honour killings and Jirgas, the tribal courts that order them.

More than 4,000 people have died in *Jirga* sanctified murders over the last six years and two thirds of them have been women. Their deaths have often been caused under the most barbaric of circumstances. Many are charged with having a relationship out of marriage, an often fabricated claim, while others are suspected of planning love marriages (in opposition to the marriages planned

by their families). In the feudal, fiercely patriarchal north, women's lives are worth little. It is a matter of prestige to have more than one wife, and young girls are often sold into marriage to settle disputes. In one case, under the orders of a *Jirga* and with the knowledge and apparent acquiescence of the police, three young girls aged 10, 12, 13, were handed over as compensation to a man who claimed that their father had slept with his wife. The complainant had openly killed the wife, as he had his previous wife. Those that commit such 'honour crimes or karo-kiri are supposed to be punished with a life sentence, but the true culprits are rarely punished. Supported by tribal chiefs and traditional *Jirga* law, the practice is increasing. More people are being extrajudicially murdered than ever before.

In June 2006 a five member bench of Supreme Court judges ordered police in Kashmore, Sindh province to arrest a PPP leader and national assembly member, Mir Hazar Khan Bijarani, for involvement in "Sangchatti" offering young girls as blood money. He was accused, along with others, of offering a total of five young girls as blood money in two separate cases. Most of the girls were under seven years old. Police neglected to follow up on 141 the order and, after some time keeping his head low, Mir Hazar Khan Bijarani has become federal minister of Education. This August, Balochistan Senator Sardar Isarullah Zehri, along with Senator Jan Mohammad Jamail—deputy chairman of the Senate—chose to defend as custom, Jirga-ordered 'honour killings' in his province; the burying of three teenage girls and two of their aunts alive. And despite the fact that the case is yet to be properly investigated,

Mr. Zehri was inducted as a minister of state. For the average Pakistani the message is clear: Power is impunity. For the world, it appears that the tribal and feudal hierarchy is seeping back into power once again.

**The Jirga method.** In a tribal court, witnesses and hearsay are the main forms of evidence and a verdict often rests on the reputation or power of a witness. Women are considered sexually corrupt, and their testimonies are never given any weight. In fact, in *Jirga* proceedings women are not allowed to participate.

During a session spectators tend to gather, pick a side and heckle, putting pressure on the decision makers. Some spectators head to Jirgas for entertainment and needless to say, the most popular verdict may not always be a just one; it is difficult to reconcile justice with the will of an over-excited mob. In many instances, superstition also comes into play. In certain cases defendants have been told to walk on hot coals; if they feel and show no pain then they are

deemed to be innocent. The power of the *Jirga* has increased over the years due to the failings in Pakistan's existing legal system. Judgments can take years, even generations, and Pakistanis with small civil complaints often prefer to take the swifter route through local Jirgas because they have little faith in the system. It is from here that the Jirga's advent into life and death judgments has grown.

One of the main problems in combating Jirgas is its defence under the umbrella of custom. When the case of the eight women who were buried alive came to light, two Pakistani senators defended the act as an example of Baloch tradition. This word 'tradition conjures up wholesome, age-old, culturally rich practices that are under threat from secular or western values. One obvious question is whether the terms 'tradition or 'culture should apply to arbitrary, extrajudicial killings. Another would be to note that upon Islam's birth in 7AD the faith was a force against the live burial of female babies—common at that time. The Quran does not support such murders. However, these murders are committed in its name. The justification of such murders in the name of the Quran needs to be questioned and exposed.

Actual development of such practices of murder have more to do with property disputes and the very distortion of the tribal practices themselves in order to support injustices and discrimination against women.

What takes place as Jirgas today are mob trials, manipulated by the rich, powerful and male elements. At one time Jirgas may have had some very legitimate aspects of tribal dispute settlement. However, what is found today is an aberration of such systems to justify cruelties that would not have been acceptable to tribal people in the earlier stages of history.

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### Pakistan, land, gold, women

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There is much about life in rural Pakistan that has not changed for hundreds of years. In the countryside, you can still find tribes of nomads, the families of shepherds who range back and forth over the Pakistan-Afghanistan border. The children don't go to school; most are illiterate.

In the rural areas, the predicament of women is especially precarious. Young girls are routinely sold off into virtual slavery by their families. They are sometimes offered up to settle a dispute over land or insults to family honor. Women are often raped to settle a score.

That is what happened to Mukhtar Mai, now one of the leading crusaders for women's rights in Pakistan. She was living a poor but happy life in the small town of Meerwala in Southern Punjab. The trouble began four years ago when her younger brother, Shakur, was accused of making improper advances towards the daughter of one of the feudal landlords in the area, the Mastoi family. Mukthar Mai was ordered to apologize for her brother in front of a panchayat, a local tribal council set up to mediate disputes. These panchayats are usually dominated by powerful feudal families and mete out justice according to their own rules. Mukthar felt that she had to go. "People who don't listen to them and don't obey them will be beaten up...or sometimes even killed," she says.

The imam in Meerwala, Maulvi Abdul Razak was a witness to what happened when Mukhtar Mai was summoned before the tribal council. He came over to the Mastoi family house when he heard there was trouble. He says that when Mukhtar arrived at the Mastois to apologize for her brother...they attacked her. "The girl was dragged to a room in that house. One Mastoi brother named Halik was holding a pistol. First she was beaten and then she was raped several times

by them. She was kept in that house for four days." In Pakistan, tradition dictates that a woman who has been raped is forever shamed. Mukhtar Mai says that her first instinct after being gang raped was to commit suicide. "There was pesticide spray. I was going to drink it, but my mother stopped me." Mukhtar says. "At that point I said either you have to let me die or you have to help me seek justice. My mother said, 'Whatever you want to do I will be with you."

#### Police reluctant



Muk.thar Mai

At first the local police in Meerwala were reluctant to investigate the rape of Mukhtar Mai. Mukhtar was warned that if she could not prove the rape allegation by providing four male witnesses, she herself could be put in jail for adultery. She was baffled. But this is the key problem in Pakistani law: both rape and adultery fall under the crime of , meaning illicit sexual relations. "This has to stop. Rape is rape and adultery is adultery. They're not the same thing," Mai says. The Pakistani religious laws regarding rape and adultery are called the Hudood Ordinances. Supposedly based on the Qur'an, they were proclaimed in 1979 by military dictator, General Zia-ul-Haq to appease the country's religious extremists.



Benazir Bhutto

After the death of General Zia, Benazir Bhutto came to power. She campaigned against the Hudood Ordinances, but because she only had a minority

government, she was never able to change them. Now Bhutto lives in exile, charged with corruption, but is Pakistan's most powerful opposition leader.

### Four eyewitnesses

"According to General Zia's law, if a woman is raped she needs four eyewitnesses to prove that she was raped," Bhutto says. "But if she files a complaint of rape and fails to produce four eye witnesses then she has confessed to adultery and must be punished for the crime of adultery. Now this is a highly iniquitous law. Islam says men and women are equal. Islam speaks about justice, Islam does not speak about doubly penalizing a woman who has been subjected to a horrendous rape crime."

Since 1999, Pakistan has lived under another military dictatorship, that of General Pervez Musharraf. He has portrayed himself as a religious moderate, and has repeatedly promised to repeal the Hudood Ordinances. 144

"I am supportive of all women, of all actions to emancipate women, end violence against women, and gender equality," Musharraf told reporters.



Lawyer Asma Jahangir is the head of Pakistan's Human Rights Commission.

She says, "Well, President Musharraf, what he says and what he does are two different things. President Musharraf can do what he wants in Pakistan. He can get rid of the constitution, he has. He can bring elections and bring in parliament. What is the repeal of one single law? I mean surely he can do it, there is no justification for him to say that there is going to be any opposition in any case."

The Haqqania Madrassa is the largest religious school in Pakistan. Young men

come to be trained as Muslim leaders. It was the conservative religious establishment in Pakistan that initially pressed for stringent Islamic laws and is now fighting to retain them. Anwar al-Haq is the vice principal of this Madrassa. "The Hudood Ordinance is defined by God and his Prophet. It has been outlined in the Qur'an and no parliament, no intellectual and no man has the right to amend it, add to it, or remove anything from it," al-Haq says.

Religious conservatives wield a lot of political power in Pakistan. Many women wear veils or cover themselves completely with a Burka because conservatives insist on a strict interpretation of the Qur'an. Seventy per cent of Pakistani women live in the rural areas, where the conservative view is dominant.

### Women jailed

There are an estimated 3,000 women in Pakistani jails because of the Hudood Ordinances.



Nilofar Bakhtiar

Pakistan's Minister of Women's Affairs, Nilofar Bakhtiar, says that changing the society here will take time. "We are an Islamic country and these are Islamic laws," Bakhtiar says. "So to 145 change something which has been brought about in the name of religion you can imagine is not easy in Pakistan." In the case of Mukhtar Mai, the government of Pakistan has a mixed record. It was only when international aid organizations protested that the local police finally conducted an investigation and arrested the accused rapists. The accused were initially convicted, then released on appeal. The Musharraf government insisted they be re-arrested and re-tried. Mukhtar Mai became a celebrity in Pakistan and was invited to travel to the United States to speak to a women's rights organization.

That's when General Musharraf personally intervened to stop her from going. He said that he did not want Pakistan's "dirty linen" to be washed in public in the

glare of international attention.

Pakistan's Women's Affairs Minister supports her President.

"It is washing dirty linen," Bakhtiar says. "Why should Mukhtar Mai go and protest about her case in the U.S. Have you ever received a U.S. rape victim in Pakistan protesting about the cases, no."

"Is it the difference between freedom of speech and dictatorship?" reporter Terence McKenna asks.

"I don't see this as an act of dictatorship because I've been in this story all along, and I know to what extent the President and the Prime Minister have gone to help her out," Bakhtiar says. "And then at the end of the day we hear that we are not supporting these rape victims and they are asked to go out of the country and protest, it is very sad, it is very discouraging for us." Mukhtar Mai thinks that General Musharraf is fighting a losing battle.

"Whenever there is humiliation, you can't hide it. Dirt is dirt; you can't hide it. At one stage, the truth will come out," she says. Not only did the Musharraf government prevent Mukhtar Mai from traveling. It placed her under virtual house arrest, so that she would not talk to the press. Mukhtar contacted lawyer Asma Jahangir.

"She called me up and she said that there is police all around my house and I am not allowed to move," Jahangir says. "That means that you are under detention. So it's not that you are not allowed to move Mukhtar, this is illegal you're under detention and nobody has a right to detain you." Mukhtar Mai was released from house arrest but tension was building between the Musharraf government and women's rights organizations in Pakistan.

## Mixed-gender marathon

Those tensions boiled over in May 2005, when Jahangir announced that she would hold a mixed-gender marathon in the city of Lahore to raise awareness about violence against women. 146

Local police showed up to disrupt the controversial event. Religious conservatives believed the race was a provocation, and wanted it shut down. The organizers were arrested and thrown into police vans.



Asma Jahangir is arrested.

Asma Jahangir received especially rough treatment from local police and intelligence agents. They began to strip off her clothes in public.

"A lot of people tried to cover my back because I could only feel it I could not see my back," Jahangir says. "When they were putting me on the police van, they assured that my photograph was taken while my back was bare. This was just to humiliate, this was simply just to humiliate me."

Bhutto says, "Now Asma Jahangir makes Musharraf angry, women make Musharraf angry. As I said it's not just Musharraf, it's that whole military establishment which believes in a patriarchal society, that believes in the subjugation of women....that if a woman speaks out or criticizes them, she needs to be punished. And punished in the most barbaric way in medieval times, women used to be stripped naked and pushed through the streets of their town to be humiliated and degraded so that they never raise their head again. What happened to Asma Jahangir is, in my view, the manifestation of Musharraf's rule."

General Musharraf's defenders point out that he is faced with an enormous challenge in trying to change Pakistani society. The ancient feudal culture and traditions are very strong and there are numerous instances of the government passing laws that are simply ignored by much of the population especially in the rural and tribal areas.

"If you bring about a law and then nobody is there to implement it, what is the use of bringing about a law? So we have to be more realistic, we want to do it, we just need a little more time," Bakhtiar says.

The city of Faisalabad is one of Pakistan's major commercial centres. Recently it has also been the focus of serious corruption allegations, involving the Faisalabad City police. Senior police officers have been accused of extorting kickbacks from businesspeople and from government employees. They have been accused of intimidating anyone who stands up to them.

### Demanding bribes



Sonia Naz

Sonia Naz is a 24-year businesswoman and mother of two. A year ago, she registered a complaint against the Faisalabad police. She said they demanded a bribe from her husband and kidnapped him when he refused to pay. Months later, she claims that she, too, was kidnapped by the superintendent of the Faisalabad police, Abdullah Khalid. "I told him that I was going to take back the complaint and I begged him for forgiveness. I said 'Please let me go,'" Naz says. "But he didn't listen and he raped me. Even when he was beating me on my face, he urinated on my face. And all the other people kept watching this happen. And I was begging each one of them, for God's sake let me go, for God's sake let me go. I have small children and they said yes, yes, we'll let you go." When Sonia Naz was released, she reported the rape to other police and government officials but they did nothing.

Then she brought her story to Asma Jahangir and to the media in Pakistan which caused a public uproar. Under pressure from the international community, the Pakistani government finally arrested the accused police officers.

"We thought these things happened in medieval times," Bhutto says. "This is happening under General Musharraf and when you know it pains me that when men are urinating in the mouths of women, General Musharraf can say that he has done more for women than any other government in the history of Pakistan. This did not happen under other governments in Pakistan. But nothing happened to that Superintendent of Police until the international community got involved. But can the international community govern Pakistan? No, it can't."

Another reason Pakistani women are reluctant to report rapes is that there are cases of women being raped again at the police station. Apparently some police officers feel free to abuse a woman already considered shamed.

"It's not a very common occurrence but it did happen," says Nilofar Bakhtiar. "I don't know if you have interviewed Sonia Naz or not but if you do you will see the sort of support she got from my office and the support she got from the president's office. It was not an easy thing, because it was very high-level involvement of senior police officers. But we fought and supported Sonia Naz."

Bakhtiar feels that Pakistan is being unfairly singled out on the rape issue.

"If you compare the number of rape cases in Pakistan to any other country, any neighbouring country for example..., as a matter of fact if you compare it with a developed world also, it's the same, you know that. Then why should we only take the blame?" Bakhtiar says.

"In other countries if a woman is raped she can get justice, she can go to a police station," says Bhutto. "She doesn't need a political dictator to come to her aid, she doesn't need the international community to come to her aid. She goes to the police station and she files a case and the rapist is arrested. This doesn't happen in Pakistan."

#### Woman's shelter

1Dastak is a woman's shelter and rape crisis center in Lahore. Many women are divorced by their husbands and expelled or even killed by their own families after being raped because they are considered a dishonour to the family. Here they find safe haven, and learn a new trade to support themselves and their children. Only a small proportion of rapes are actually reported in Pakistan, and an even smaller number are prosecuted.

"Everyday, every single day women are being raped and it is being reported in the press. Many are not even reported, and many women don't even report it. I can tell you as a lawyer that women come to me asking advise as to whether they should report or not. What chances do they have of winning this case. As a lawyer I have to tell them very few, very few," Jahangir says.

#### Part 2: The case of Shazia Khalid

Perhaps the most serious recent rape case in Pakistan is that of Shazia Khalid, a 32-year old medical doctor from Karachi. After graduating from medical school, Shazia married her husband, Khalid, an engineer who works in the oil

industry. Shazia was offered a job by the government-run Pakistan Petroleum Limited at a large gas facility in Sui, a remote town in the province of Baluchistan. She began working in the hospital in Sui, while her husband, Khalid Khwaja was working in Libya. Shazia was living in a supposedly secure housing complex inside the Sui Gas facility. Security was provided by a branch on the Pakistan Military called the DSG, the Defence Security Guards. In January 2005, Shazia was alone, sleeping in her apartment, when she was attacked.

"I tried using all my stamina to protect myself and save myself. He used my scarf to blindfold me and he tied up my wrists with the telephone wire. I was helpless, I was completely helpless. Then, he raped me," says Shazia. "The room was completely dark, I couldn't see anything, I couldn't understand what was going on. I tried to move, he would hit me whenever I tried to move. He said, 'I have a pistol, if you scream, if you try and call someone for help, I will kill you."

"What was I suppose to do? I was helpless. He said I am not just any common person. Don't do anything, you stay quiet, you don't say anything to anybody. And he raped me again."

Shazia Khalid's ordeal went on all night. At sunrise, after she was bound and gagged, her attacker departed.

#### Cover-up

Shazia was able to free herself and get to the hospital at the Pakistan Petroleum Facility.

That's when the cover-up began. She was told by company officials to remain silent.

"They said there is no need to tell anybody anything. If you do, it's your reputation that you will lose. If you report it to the police, then they'll push you around. You'll have to go to court, and you won't achieve anything. So keep quiet. I was alone. I didn't know what to do."

Shazia phoned her husband in Libya. He came home immediately.

"I found Shazia running a high temperature, bruises on her legs, her hands were swollen, her nose was swollen, her ears were bruised, very bad situation," says Khalid.

He says Shazia couldn't face him. "I said it's not your fault. Why are you feeling guilty? It's not your fault."

The Pakistan Defence Security Guards, the DSG, took control of the scene of the crime. They would not allow the police to investigate. Other staff members at the Sui gas facility became concerned about a military cover-up. They informed local politicians that the chief suspect in the rape was a member of the Pakistan Military. Shahid Bugti of the opposition Jahoori Wattan Party was told the rapist's name was Captain Hamad.

"Now, he being a captain in the DSG guard, it was part of his duty to take care of the installations as well as all the people living inside the fenced area," Bugti says. "But this was very unfortunate that the person who was supposed to protect the people living in the inside area, happened to be the rapist." In the middle of the investigation, there was a very unusual development. General Musharraf, the President of Pakistan, announced that the chief suspect,

Captain Hamad, was 100 per cent innocent. "If the President of the country comes out on television without the investigation being carried out and says that the accused he can assure people is innocent. I believe as a citizen he has no right to say it and if he does, then he is involved in a cover-up," Asma Jahangir says.

Shahid Bugti says that once the dictator had spoken, there would be no further investigation of the accused rapist.

"Who would come up with evidence against Hamad and say, 'Yes, Hamad is guilty whereas General Musharraf has given him a clean sheet.' So it's unthinkable over here," Bugti says.

The province of Baluchistan, where the Shazia Khalid rape took place, is a fiercely independent tribal society. Many local tribes have their own system of justice and their own honour code. There is also widespread resentment of the Pakistan army here. So when it appeared that the military was covering up the rape of a young doctor by an army captain, the Bugti clan took the law into their own hands. They went off to attack the military contingent at the Sui Gas facility.

"Yes they did fire rockets, they did fire guns, they showed their resentment in the strongest possible way. This is part of their culture," Sahid Bugti says. "They were trying to attack the DSG people who had committed this rape, who were

supporting Captain Hamad, and Captain Hamad was in their protection."

After the attack on the Sui Gas Facility, Pakistani military officials held a press briefing, which portrayed the damage as the result of an unprovoked attack from the Bugti tribesmen.

#### Attacking the victim



The story of Shazia Khalid's rape was becoming an embarrassment to members of the Musharraf regime, and so they developed a new strategy. They began attacking the victim. Stories began appearing in the newspapers claiming that Dr Shazia Khalid was a loose woman, that she wore suggestive clothes and had many male friends. It was even suggested that she was a prostitute.

"What was very disgusting was that they tried to tarnish her character. So the victim of rape has to take that risk as well apart from the other risk that her character is going to be tarnished all the time and the president himself said to one of the editors of the newspaper that if he were to speak of Dr. Shazia, he didn't want to but he could say a few things too. I mean what kind of an insinuation is that?" Jahangir says.

Shazia was staying in Karachi with her husband Khalid and her adopted son Adnan when the stories appeared suggesting she was engaged in prostitution. "I went to the washroom and filled the tub with water. I wanted to commit suicide. Khalid and my son started knocking on the door to find out why I was taking so long. I didn't answer," she says. "Then Adnan knocked really hard and he said, 'Mom if you kill yourself then I will kill myself. Please open the door.' I opened the door."

Every year, hundreds of Pakistani women who have been raped commit suicide. The Pakistani government's next move was to get rid of Dr Shazia Khalid. She says she was ordered to leave the country for her own safety. "Safety from whom?" Jahangir asks. "What

safety were they concerned about for Dr. Shazia. Safety from whom? From the Bugtis? But they were on her side. From the military? Well then, this is a strange one, that victims should be whisked out of their country because their safety is in danger and the perpetrators are protected by the government."

The couple were asked where they would like to go. Because they have relatives in Toronto, they chose Canada. "My family is there," Shazia says, "My friends are there. We wanted to go somewhere where we had moral support, that's why we chose Canada. We are highly qualified people, we didn't want to leave Pakistan."

Shazia and Khalid were told it would be faster to go to London, England, and that, from there, the Pakistani government would help them reach Canada. But once in London, they were abandoned by their government. Now they are in a legal limbo. They cannot be accepted to Canada as refugees because they are in a safe country, the U.K. They are living on welfare in London and waiting to be admitted to Canada as regular immigrants, which could take a long time. Back in Pakistan, the government has a new version of events concerning the rape.

According to the Governor of Baluchistan, Owais Ahmed Ghani, there was no rape. "There was violence, there was no rape," says Ghani. "We will be placing some evidence for the world, because the world keeps on criticizing us, and Pakistan and the government about this."

Last September, Pakistan President Pervez Musharraf came to visit the United States on a charm offensive. He wanted to portray himself as a progressive enlightened leader, a voice for moderation in the Muslim World.

#### President quoted

In an interview with the Washington Post, however, when he was asked about the rape issue, he was quoted as saying, "This has become a money making concern. A lot of people say if you want to go abroad and get a visa for Canada or citizenship and be a millionaire, get yourself raped." Pakistani women immediately hit the streets to protest Musharraf's remarks.

"Well it was very sad when President Musharraf said that. We all reacted very strongly in Pakistan. I think he made a joker out of himself, which he truly is. If that is the impression that he has of the women in Pakistan, which are 50 per

cent of the citizens of that country, you can easily see how much respect he has for his own citizens," Jahangir says.

President Musharraf went into immediate damage control. Before a women's group in New York, he denied having made the comments to the Washington Post. "Let me say with total sincerity that I never said that, and it has been misquoted. I happened to be where this was 152 being quoted but these are not my words, and I would go to the extent of saying that I am not so silly and stupid to make comments of this sort."

Unfortunately for the president, the Washington Post recorded his remarks and posted the recording on their website. General Musharraf's remarks clearly referred to the case of Shazia Khalid, but she does not wish to debate him. She just wants to get her family into Canada, and begin a new life. She does want to find some way of helping Pakistani women who have undergone experiences similar to her own.

"I didn't get justice and I'll regret that for the rest of my life. But I want to be a voice for women who've been through similar situations. I think that if I help these women, then I'll get justice. Then, when they'll be happy, I will be happy. I will think of them, I will think of them as a reward for me, as a victory for me. Even if one woman gets justice through my voice, I will have won," she says.

The case of Mukhtar Mai is still working its way through the Pakistani courts but most observers believe she will win and her rapists will be punished. "I believe that Mukhtar Mai may find justice at the end of her case because it has been picked up by the media, by people within the country that are very much looking forward to seeing that this case does receive some kind of justice. But it doesn't change the legal system unfortunately. I am happy for Mukhtar Mai, but I don't think that it changes the legal system for the rest of the victims."

Jahangir says. Mukhtar Mai has already received a financial compensation package from the Pakistani government which she is putting to good use. She believes that illiteracy and the lack of formal education is the key to the subjugation of women in Pakistan. Young girls are much less likely to be sent to school by their parents and there are almost twice as many illiterate women as men.

And so, with the help of a grant from the Canadian International Development Agency, Mukhtar Mai has opened a school for girls. Every morning school begins with a religious song. In class they are studying to read and write and learning English.

Women like Mukhtar Mai and Shazia Khalid see this as the best hope for Pakistan. They are determined that the lives of these young girls will be much better than their own and that their country can open a new chapter after so many years of women's oppression.

#### APPENDIX TWO

# CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist, Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women,

on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs, Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice,

equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

#### PART I

#### Article I

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

#### Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle.
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligations;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute

discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

#### Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to en sure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

#### Article 4

- 1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.
- 2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

#### Article 5

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
- (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the 156 upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

#### Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

#### PART II

#### Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

#### Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

#### Article 9

- 1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
- 2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

#### **PARTIII**

#### Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in preschool, general, technical, professional and higher technical education, as well as in all types of vocational training;

- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particulary those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- (g) The same Opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

- 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.
- 2. In order to prevent discrimination against women on the grounds of

marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities; 158
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.
- 3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

#### Article 12

- 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
- 2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

#### Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;
- (b) The right to bank loans, mortgages and other forms of financial credit;
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.

#### Article14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of

the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such

women the right:

- (a) To participate in the elaboration and implementation of development planning at all levels;
- (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
- (c) To benefit directly from social security programmes;
- (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency; 159
- (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
- (f) To participate in all community activities;
- (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
- (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

#### **PART IV**

#### Article15

- 1. States Parties shall accord to women equality with men before the law.
- 2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
- 3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
- 4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their

residence and domicile.

#### Article 16

- 1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
- 2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

#### PART V

#### Article17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected

by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

- 2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
- 3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary- General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
- 4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
- 5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.
- 6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.
- 7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

- 8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.
- 9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

- 1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:
- (a) Within one year after the entry into force for the State concerned;
- (b) Thereafter at least every four years and further whenever the Committee so requests.
- 2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

#### Article 19

- 1. The Committee shall adopt its own rules of procedure.
- 2. The Committee shall elect its officers for a term of two years.

#### Article 20

- 1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.
- 2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. (amendment, status of ratification)

#### Article 21

- 1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.
- 2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

#### **PART VI**

#### Article23

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

- (a) In the legislation of a State Party; or
- (b) In any other international convention, treaty or agreement in force for that State.

#### Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

#### Article 25

- 1. The present Convention shall be open for signature by all States.
- 2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
- 3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
- 4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

#### Article 26

- 1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
- 2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

- 1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
- 2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

#### Article 28

- 1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession, 163
- 2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
- 3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

#### Article 29

- 1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
- 2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.
- 3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

#### Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the

Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

#### APPENDIX THREE

Distr. GENERAL A/RES/48/104 23 February 1994

#### Declaration on the Elimination of Violence against Women

General Assembly resolution 48/104 of 20 December 1993

The General Assembly,

Recognizing the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings,

Noting that those rights and principles are enshrined in international instruments, including the Universal Declaration of Human Rights, 1/ the International Covenant on Civil and Political Rights, 2/ the International Covenant on Economic, Social and Cultural Rights, 2/ the Convention on the Elimination of All Forms of Discrimination against Women 3/ and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 4/

Recognizing that effective implementation of the Convention on the Elimination of All Forms of Discrimination against Women would contribute to the elimination of violence against women and that the Declaration on the Elimination of Violence against Women, set forth in the present resolution, will strengthen and complement that process,

<u>Concerned</u> that violence against women is an obstacle to the achievement of equality, development and peace, as recognized in the Nairobi Forward-looking Strategies for the Advancement of Women, 5/ in which a set of measures to combat violence against women Was recommended, and to the full

<sup>1/</sup>Resolution 217 A (III).

<sup>2/</sup> See resolution 2200 A (XXI), annex.

<sup>3/</sup> Resolution 34/180, annex.

<sup>4/</sup> Resolution 39/46, annex.

implementation of the Convention on the Elimination of All Forms of Discrimination against Women,

Affirming that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms, and concerned about the long-standing failure to protect and promote those rights and freedoms in the case of violence against women,

Recognizing that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men,

Concerned that some groups of women, such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women and women in situations of armed conflict, are especially vulnerable to violence, Recalling the conclusion in paragraph 23 of the annex to Economic and Social Council resolution 1990/15 of 24 May 1990 that the recognition that violence against women in the family and society was pervasive and cut across lines of income, class and culture had to be matched by urgent and effective steps to eliminate its incidence,

Recalling also Economic and Social Council resolution 1991/18 of 30 May 1991, in which the Council recommended the development of a framework for an international instrument that would address explicitly the issue of violence against women,

Welcoming the role that women's movements are playing in drawing increasing attention to the nature, severity and magnitude of the problem of violence against women,

<u>Alarmed</u> that opportunities for women to achieve legal, social, political and economic equality in society are limited, inter alia, by continuing and endemic violence,

5/ Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, Nairobi, 15-26 July 1985 (United Nations publication, Sales No. E.85.IV.10), chap. I, sect. A.

<u>Convinced</u> that in the light of the above there is a need for a clear and comprehensive definition of violence against women, a clear statement of the rights to be applied to ensure the elimination of violence against women in all its forms, a commitment by States in respect of their responsibilities, and a commitment by the international community at large to the elimination of violence against women,

<u>Solemnly proclaims</u> the following Declaration on the Elimination of Violence against Women and urges that every effort be made so that it becomes generally known and respected:

#### Article 1

For the purposes of this Declaration, the term "violence against women" means 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 in private life.

#### Article 2

Violence against women shall be understood to encompass, but not be limited to, the following:

- (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia:

- (a) The right to life; 6/
- (b) The right to equality; 7/
- 6/ Universal Declaration of Human Rights, article 3; and International Covenant on Civil and

Political Rights, article 6.

- 7/ International Covenant on Civil and Political Rights, article 26.
- (c) The right to liberty and security of person; 8/
- (d) The right to equal protection under the law; 7/
- (e) The right to be free from all forms of discrimination; 7/
- (f) The right to the highest standard attainable of physical and mental health; 9/
- (g) The right to just and favourable conditions of work; 10/
- (h) The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment. 11/

#### Article 4

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

- (a) Consider, where they have not yet done so, ratifying or acceding to the Convention on the Elimination of All Forms of Discrimination against Women or withdrawing reservations to that Convention;
- (b) Refrain from engaging in violence against women;
- (c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;

<sup>8/</sup> Universal Declaration of Human Rights, article 3; and International Covenant on Civil and Political Rights, article 9.

- 9/ International Covenant on Economic, Social and Cultural Rights, article 12.
- 10/ Universal Declaration of Human Rights, article 23; and International Covenant on Economic, Social and Cultural Rights, articles 6 and 7.
- 11/ Universal Declaration of Human Rights, article 5; International Covenant on Civil and Political Rights, article 7; and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- (d) Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms;
- (e) Consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing, taking into account, as appropriate, such cooperation as can be provided by non-governmental organizations, particularly those concerned with the issue of violence against women;
- (f) Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the revictimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;
- (g) Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health 168 and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;
- (h) Include in government budgets adequate resources for their activities related to the elimination of violence against women;
- (i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;
- (j) Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate

prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women;

- (k) 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 on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public;
- (l) Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;
- (m) Include, in submitting reports as required under relevant human rights instruments of the United Nations, information pertaining to violence against women and measures taken to implement the present Declaration;
- (n) Encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration;
- (o) Recognize the important role of the women's movement and non-governmental organizations worldwide in raising awareness and alleviating the problem of violence against women;
- (p) Facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national and regional levels;
- (q) Encourage intergovernmental regional organizations of which they are members to include the elimination of violence against women in their programmes, as appropriate.

#### Article 5

The organs and specialized agencies of the United Nations system should, within their respective fields of competence, contribute to the recognition and realization of the rights and the principles set forth in the present Declaration and, to this end, should, inter alia:

- (a) Foster international and regional cooperation with a view to defining regional strategies for combating violence, exchanging experiences and financing programmes relating to the
- elimination of violence against women;
- (b) Promote meetings and seminars with the aim of creating and raising awareness among all persons of the issue of the elimination of violence against women;
- (c) Foster coordination and exchange within the United Nations system

between human rights treaty bodies to address the issue of violence against women effectively;

- (d) Include in analyses prepared by organizations and bodies of the United Nations system of 169 social trends and problems, such as the periodic reports on the world social situation, examination of trends in violence against women;
- (e) Encourage coordination between organizations and bodies of the United Nations system to incorporate the issue of violence against women into ongoing programmes, especially with reference to groups of women particularly vulnerable to violence;
- (f) Promote the formulation of guidelines or manuals relating to violence against women, taking into account the measures referred to in the present Declaration:
- (g) Consider the issue of the elimination of violence against women, as appropriate, in fulfilling their mandates with respect to the implementation of human rights instruments;
- (h) Cooperate with non-governmental organizations in addressing the issue of violence against women.

#### Article 6

Nothing in the present Declaration shall affect any provision that is more conducive to the elimination of violence against women that may be contained in the legislation of a State or in any international convention, treaty or other instrument in force in a State.

## The Sazette



### of Pakistan

### EXTRAORDINARY PUBLISHED BY AUTHORITY

#### ISLAMABAD, TUESDAY, JANUARY 11, 2005

#### PART I

#### Acts, Ordinances, President's Orders and Regulations

#### SENATE SECRETARIAT

Islamabad, the 10th January, 2005

The following Acts of Majkis-e-Shoora (Parliament) received the assent of the President on 4th January, 2005, are hereby published for general information:

ACT No. I of 2005 .

An Act further to amend the Pakistan Penal Code, 1860, and the Code of Criminal procedure, 1898

WHEREAS it is expedient further to amend the Pakistan Penal Code, 1860 (Act XLV of 1860), and the Code of Criminal Procedure, 1898 (Act V of 1898), for the purposes hereinafter appearing;

It is hereby enacted as follows :-

- Short title and commencement.—(1) This Act may be called the Criminal Law (Amendment) Act, 2004.
  - (2) It shall come into force at once,

(01)

[24(02) Ex Gaz.]

Price: Rs. 10.50

- 2. Amendment of section 299, Act XLV of 1860.—In the Pakistan Penal Code, 1860 (Act XLV of 1860), hereinafter referred to as the Penal Code, in section 299, after clause (i), the following new clause shall be inserted, namely:—
  - "(ii) "offence committed in the name or on the pretext of honour" means an offence committed in the name or on the pretext of karo kari, sivah kari or similar other customs or practices;"
- 3. Amendment of section 302, Act XLV of 1860.—In the Penal Code, in section 302, in clause (c), for the full stop at the end, a colon shall be substituted and thereafter the following proviso shall be added, namely:—
  - "Provided that nothing in this clause shall apply to the offence of *qatl-i-and* if committed in the name or on the pretext of honour and the same shall fall within the ambit of clause (a) or clause (b), as the case may be.".
- 4. Amendment of section 305, Act XLV of 1860.—In the Penal Code, in section 305, in clause (a), after the word "law" the words "but shall not include the accused or the convict in case of *gail-i-and* if committed in the name or on the pretext of honour" shall be added.
- 5. Amendment of section 308, Act XLV of 1860.—In the Penal Code, in section 308,—
  - (a) in sub-section (1), for the words "fourteen years" occurring twice the words "twenty-five years" shall be substituted; and
  - (b) in sub-section (2), for the words "fourteen years" the words "twenty-five years" shall be substituted.
- 6. Amendment of section 310, Act XLV of 1860.—In the Penal Code, in section 310, in sub-section (1), for the proviso the following shall be substituted, namely:—
  - "Provided that a female shall not be given in marriage or otherwise in <u>badal-i-sulh</u>."
- 7. Insertion of new section, Act XLV of 1860.—In the Penal Code, after section 310, the following new section shall be inserted, namely:—
  - "310A. Punishment for giving a female in marriage or otherwise in <u>badal-i-sulh</u>.— Whoever gives a female in marriage or otherwise in <u>badal-i-sulh</u> shall be punished with rigorous imprisonment which

may extend to ten years but shall not be less than three years.".

- Amendment of section 311, Act XLV of 1860.—In the Penal Code, in section 311,—
  - (i) for the words "keeping in view" the word "if" shall be substituted and after the brackets and words "( فسادفي الارض )", the words "is attracted" shall be inserted;
  - (ii) the words "in its discretion", shall be omitted;
  - (iii) after the word "with" the words "death or imprisonment for life or" shall be inserted;
  - (iv) for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be inserted, namely:

"Provided that if the offence has been committed in the name or on the pretext of honour, the imprisonment shall not be less than ten years"; and

- (v) in the Explanation, after the word "community" occurring at the end the comma and words "or if the offence has been committed in the name or on the pretext of honour" shall be added.
- Amendment of section 316, Act XLV of 1860.—In the Penal Code, in section 316, for the words "fourteen years" the words "twenty-five years" shall be substituted.
- 10. Amendment of section 324, Act XLV of 1860.—In the Penal Code, in section 324, after the words "ten years" the words "but shall not be less than five years if the offence has been committed in the name or on the pretext of honour" shall be inserted.
- 11. Amendment of section 337N, Act XLV of 1860.—In the Penal Code, in section 337N, in sub-section (2),—
  - (a) after the word "criminal" occurring at the end, the words "or the
    offence has been committed by him in the name or on the pretext of
    honour" shall be added; and
    - (b) for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be inserted, namely:-

"Provided that the ta'zir shall not be less than one-third of the maximum imprisonment provided for the hurt caused if the offender is a previous convict, habitual, hardened, desperate or dangerous criminal or if the offence has been committed by him in the name or on the pretext of honour."

12. Amendment of section 338E, Act XLV of 1860.—In the Penal Code, in section 338E, in sub-section (1), in the proviso, for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be inserted, namely:—

"Provided further that where an offence under this Chapter has been committed in the name or on the pretext of honour, such offence may be waived or compounded subject to such conditions as the Court may deem fit to impose with the consent of the parties having regard to the facts and circumstances of the case."

- 13. Amendment in Chapter XIV, Act V of 1898.—In the Code, of Criminal Procedure, 1898 (Act V of 1898), hereinafter referred to as the Code, after section 156, the following new sections shall be inserted, namely:—
  - "156A. Investigation of offence under section 295C, Pakistan Penal Code.— Notwithstanding anything contained in this Code, no police officer below the rank of a Superintendent of Police shall investigate the offence against any person alleged to have been committed by him under section 295C of the Pakistan Penal Code, 1860 (Act XLV of 1860).
  - 156B. Investigation against a woman accused of the offence of zina.— Notwithstanding anything contained in this Code, where a person is accused of offence of zina under the Offence of Zina (Enforcement of Huddood) Ordinance, 1979 (VII of 1979), no police officer below the rank of a Superintendent of Police shall investigate such offence nor shall such accused be arrested without permission of the court.

Explanation. - In this section 'zina' does not include 'zina-bil-jabr'.".

- 14. Amendment of section 345, Act V of 1898.—In the Code, in section 345,-
  - (a) in sub-section (2), in the table,-

- against the entry relating to Oatl-i-and in the first column, in the third column, after the word "victim" at the end, the comma and words ",other than the accussed or the convict if the offence has been committed by him in the name or on the prefext of karo kari, siyah kari or similar other customs or practices" shall be added; and
- against the entry relating to Qatl-i-shibh-i-amd in the first column, in the third column, for the word "ditto" the words "By the heirs of the victim" shall be substituted; and
- after sub-section (2), the following new sub-section shall be inserted, namely:-
  - "(2a) Where an offence under Chapter XVI of the Pakistan Penal Code, 1860 (Act XLV of 1860), has been committed in the name or on the pretext of karo kari, sivah kari or similar other customs or practices, such offence may be waived or compounded subject to such conditions as the Court may deem fit to impose with the consent of the parties having regard to the facts and circumstances of the case.".
- 15. Amendment of section 401, Act V of 1898.-In the Code, in section 401, in sub-section (1), for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be inserted, namely:-

"Provided that the Provincial Government shall have no power to suspend or remit any sentence awarded to an offender under Chapter XVI of the Pakistan Penal Code if an offence has been committed by him in the name or on the pretext of karo kari, sivah kari or similar other customs or practices.".

- 16. Amendment of Schedule II, Act V of 1898.—In the Code, in schedule II,
  - against the entry in column 1 relating to section 308, in column 7, for the words "fourteen years" the words "twenty-five years" shall be substituted;

(b) after section 308, in column 1 and the entries relating thereto in columns 2 to 8, the following new section and the entries relating thereto shall be inserted, namely:-

"31ÒA	Giving a female in marriage	-do-	-do-	-do-	Not compoundable	Rigorous imprisonment	Court of Session
	or otherwise	Photo:	F 40 3	w 3	# # # # # # # # # # # # # # # # # # #	upto ten years, but shall not be	9
	in badl-i-sulh					less than three years.	

- (c) against the entry in column 1 relating to section 311, in column 6, for the existing entry the words "Compoundable" shall be substituted;
- (d) against the entry in column 1 relating to section 311, in column 7, for the words "imprisonment of either description for ten to fourteen years" the words and comma "death or imprisonment for life or imprisonment of either description upto fourteen years but shall not be less than ten years if the offence has been committed in the name or on the pretext of <u>karo kari, siyah Kari</u> or similar other customs or practices" shall be substituted;
- (e) against the entry in column 1 relating to section 324, in column 7, after the words "ten years" the words "but shall not be less than five years if the offence has been committed in the name or on the pretext of <u>karo kari, siyah kari</u> or similar other customs or practices" shall be inserted; and
- (f) against the entry in column 1 relating to section 337N, in column 7, after the word "caused" at the end, the words and commas "but <u>ta'zir</u> shall not be less than one-third of the maximum imprisonment provided for the offence where the offender is a previous convict, habitual or hardened, desperate or dangerous criminal or if the offence has been committed by him in the name or on the pretext of <u>karo kari, siyah kari</u> or similar other customs or practices" shall be added.



## EXTRAORDINARY PUBLISHED BY AUTHORITY

#### ISLAMABAD, SATURDAY, DECEMBER 2, 2006

#### PART I

## Acts, Ordinances, President's Orders and Regulations

#### SENATE SECRETARIAT

Islamabad, the 2nd December, 2006

The following Act of Majlis-e-Shoora (Parliament) received the assent of the President on 1st December, 2006, is hereby published for general information:—

ACT No. VI of 2006

an Act further to amend the Pakistan Penal Code, the Code of Criminal
Procedure and other laws

WHEREAS it is necessary to provide relief and protection to women against misuse and abuse of law and to prevent their exploitation;

AND WHEREAS Article 14 of the Constitution ensures that dignity of man and, subject to law, the privacy of home, shall be inviolable;

AND WHEREAS Article 25 of the Constitution guarantees that there shall be no discrimination on the basis of sex alone and that the State shall make provisions for the protection of women;

AND WHEREAS Article 37 of the Constitution encourages promotion of social justice and eradication of social evils;

(845)

[3578(2006)/Ex. Gaz.]

Price : Rs. 10.50

## AND WHEREAS the objective of this Bill is to bring in particular the laws

relating to zina and qazf in conformity with the stated objectives of the Constitution and the Injunctions of Islam;

AND WHEREAS it is expedient for the aforesaid objectives further to amend the Pakistan Penal Code (Act XLV of 1860), the Code of Criminal Procedure, 1898 (Act V of 1898), the Dissolution of Muslim Marriages Act, 1939 (VIII of 1939), the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (VIII of, 1979), and the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979) and for the purposes hereinafter appearing;

It is hereby enacted as follows:

- Short title and commencement.—(1) This Act may be called the Protection of Women (Criminal Laws Amendment) Act, 2006.
  - (2) It shall come into force at once.
- 2. Insertion of new section, Act XLV of 1860.—In the Pakistan Penal Code (Act XLV of 1860), hereinafter referred to as the said Code, after section 365A, the following new section shall be inserted, namely:—
  - "365B. Kidnapping, abducting or inducing woman to compel for marriage etc.—Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced, or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment for life, and shall also be liable to fine; and whoever by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.".
- Insertion of new section, Act XLV of 1860.—In the said, Code, after section 367, the following new section shall be inserted, namely:—
  - "367A. Kidnapping or abducting in order to subject person to unnatural lust.—Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in

danger of being subjected, to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with death or rigorous imprisonment for a term which may extend to twenty-five years, and shall also be liable to fine."

- 4. Insertion of new sections, Act XLV of 1860.—In the said Code, after section 371, the following new sections shall be inserted, namely:—
  - "371A. Selling person for purposes of prostitution, etc.—Whoever sells, lets to hire, or otherwise disposes of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose, shall be punished with imprisonment which may extend to twenty-five years, and shall also be liable to fine.

Explanations.—(a) When a female is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

- (b) For the purposes of this section and section 371B, "illicit intercourse" means sexual intercourse between persons not united by marriage.
- 371B. Buying person for purposes of prostitution, etc., —Whoever buys, hires or otherwise obtains possession of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose, shall be punished with imprisonment which may extend to twenty-five years, and shall also be liable to fine.

Explanation.—Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution."

5. Insertion of new sections, Act XLV of



after section 374, the following new sections 375 and 376 under sub-heading "Of Rape", shall be inserted, namely:—

- "375. Rape.—A man is said to commit rape who has sexual intercourse with a woman under circumstances falling under any of the five following descriptions,—
  - (i) against her will;
  - (ii) without her consent;
  - (iii) with her consent, when the consent has been obtained by putting her in fear of death or of hurt;
  - (iv) with her consent, when the man knows that he is not married to her and that the consent is given because she believes that the man is another person to whom she is or believes herself to be married; or
  - (v) with or without her consent when she is under sixteen years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

- 376. Punishment for rape.—(1) Whoever commits rape shall be punished with death or imprisonment of either description for a term which shall not be less than ten years or more than twenty-five years and shall also be liable to fine.
- (2) When rape is committed by two or more persons in furtherance of common intention of all, each of such persons shall be punished with death or imprisonment for life.".
- Insertion of new section, Act XLV of 1860.—In the said Code, in Chapter XX, the following new section shall be inserted, namely:—
  - "493A. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.—Every man who deceitfully causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit with him in that belief, shall be punished with rigorous imprisonment for a term which may extend to twenty-five years and shall also be liable to fine."

- Insertion of new sections, Act XLV of 1860.—In the said Code, after section 496, the following new sections shall be inserted, namely:—
  - "496A. Enticing or taking away or detaining with criminal intent a woman.—Whoever takes or entices away any woman with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any woman, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
  - 496B. Fornication.—(1) A man, and a woman not married to each other are said to commit fornication if they willfully have sexual intercourse with one another.
    - (2) Whoever commits fornication-shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine not exceeding ten thousand rupees.
  - 496C. Punishment for false accusation of fornication.—Whoever brings or levels or gives evidence of false charge of fornication against any person, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine not-exceeding ten thousand rupees:

Provided that a Presiding Officer of a Court dismissing a complaint under section 203C of the Code of Criminal Procedure, 1898 and after providing the accused an opportunity to show cause if satisfied that an offence under this section has been committed shall not require any further proof and shall forthwith proceed to pass the sentence."

- 8. Insertion of new sections, Act V of 1898.—In the Code of Criminal Procedure, 1898 (Act V of 1898), after section 203, the following new sections shall be inserted, namely:—
  - "203A. Complaint in case of Zina.—(1) No court shall take cognizance of an offence under section 5 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (VII of 1979), except on a complaint lodged in a Court of competent jurisdiction.
    - (2) The Presiding Officer of a Court taking cognizance of an offence on a complaint shall at once examine, on oath, the complainant and at least four Muslim, adult male eye-witnesses, about whom the Court is

# they are truthful persons and abstain from major sins (kabair), of the

act of penetration necessary to the offence:

Provided that, if the accused is a non-Muslim, the eye-witnesses may be non-Muslims.

Explanation.—In this section "tazkiyah-al-shahood" means the mode of inquiry adopted by a Court to satisfy itself as to the credibility of a witness.

- (3) The substance of the examination of the complainant and the eyewitnesses shall be reduced to writing and shall be signed by the complainant and the eye-witnesses, as the case may be, and also by the Presiding Officer of the Court.
- (4) If in the opinion of the Presiding Officer of a Court, there is sufficient ground for proceeding, the Court shall issue summons for the personal attendance of the accused.
- (5) The Presiding Officer of a Court before whom a complaint is made or to whom it has been transferred may dismiss the complaint, if, after considering the statements on oath of the complainant and the four or more eye-witnesses there is, in his judgment, no sufficient ground for proceeding and in such case he shall record his reasons for so doing.
- 203B. Complaint in case of Qazf.—(1) Subject to sub-section (2) off section 6 of the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979), no Court shall take cognizance of an offence under section 7 of the said Ordinance, except on a complaint lodged in a Court of competent jurisdiction.
  - (2) The Presiding Officer of a Court taking cognizance of an offence on a complaint shall at once examine on oath the complainant and the witnesses as mentioned in section 6 of the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979) of the act of Qazf necessary to the offence.
  - (3) The substance of the, examination of the complainant and the witnesses shall be reduced to writing and shall be signed by the complainant, and the witnesses, as the case may be, and also by the Presiding Officer of the Court.

- (4) If in the opinion of the Presiding Officer of a Court, there is sufficient ground for proceeding the Court shall issue summons for the personal attendance of the accused.
- (5) The Presiding Officer of a Court before whom a complaint is made or to whom it has been transferred may dismiss the complaint, if, after considering the statements on oath of the complainant and the witnesses there is, in his judgment, no sufficient ground for proceeding and in such case he shall record his reasons for so doing.
- 203C. Complaint in case of fornication.—(1) No court shall take cognizance of an offence under section 496B of the Pakistan Penal Code, except on a complaint lodged in a Court of competent jurisdiction.
  - (2) The Presiding Officer of a Court taking cognizance of an offence shall at once examine on oath the complainant and at least two eyewitnesses to the act of fornication.
  - (3) The substance of the examination of the complainant and the eye-witnesses shall be reduced to writing and shall be signed by the complainant and the witnesses, as the case may be, and also by the Presiding Officer of the Court.
  - (4) If in the opinion of the Presiding Officer of a Court, there is sufficient ground for proceeding the Court shall issue a summons for the personal attendance of the accused:

Provided that the Presiding Officer of a Court shall not require the accused to furnish any security except a personal bond, without sureties, to ensure attendance before the Court in further proceedings.

- (5) The Presiding Officer of a Court before whom a complaint is made or to whom it has been transferred may dismiss the complaint, if, after considering the statements on oath of the complainant and the witnesses there is, in his judgment, no sufficient ground for proceeding and in such case he shall record his reasons for so doing.
- (6) Notwithstanding the foregoing provisions or anything contained in any other law for the time being in force no complaint under this section shall be entertained against any person who is accused of zina under section 5 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979) and against whom a complaint

- (4) If in the opinion of the Presiding Officer of a Court, there is sufficient ground for proceeding the Court shall issue summons for the personal attendance of the accused.
- (5) The Presiding Officer of a Court before whom a complaint is made or to whom it has been transferred may dismiss the complaint, if, after considering the statements on oath of the complainant and the witnesses there is, in his judgment, no sufficient ground for proceeding and in such case he shall record his reasons for so doing.
- 203C. Complaint in case of fornication.—(1) No court shall take cognizance of an offence under section 496B of the Pakistan Penal Code, except on a complaint lodged in a Court of competent jurisdiction.
  - (2) The Presiding Officer of a Court taking cognizance of an offence shall at once examine on oath the complainant and at least two eyewitnesses to the act of fornication.
  - (3) The substance of the examination of the complainant and the eye-witnesses shall be reduced to writing and shall be signed by the complainant and the witnesses, as the case may be, and also by the Presiding Officer of the Court.
  - (4) If in the opinion of the Presiding Officer of a Court, there is sufficient ground for proceeding the Court shall issue a summons for the personal attendance of the accused:

Provided that the Presiding Officer of a Court shall not require the accused to furnish any security except a personal bond, without sureties, to ensure attendance before the Court in further proceedings.

- (5) The Presiding Officer of a Court before whom a complaint is made or to whom it has been transferred may dismiss the complaint, if, after considering the statements on oath of the complainant and the witnesses there is, in his judgment, no sufficient ground for proceeding and in such case he shall record his reasons for so doing.
- (6) Notwithstanding the foregoing provisions or anything contained in any other law for the time being in force no complaint under this section shall be entertained against any person who is accused of zina under section 5 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979) and against whom a complaint

under section 203A of this Code is pending or has been dismissed or who has been acquitted or against any person who is a complainant or a victim in a case of rape, under any circumstances whatsoever."

- 9. Amendment of Schedule II, Act V of 1898.—In the Code of Criminal Procedure, 1898 (Act V of 1898), in Schedule II,—
  - after section 365A in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely:—

1	2 .	3	4	5	6	. 7	8
365B	Kidnapping, abducting or inducing	Ditto	Ditto'	- Ditto	Ditto	Imprisonment for life and fine.	Ditto;
	woman to		12	§		***	* *
	marriage etc.					3	**

(ii) after section 367 in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely:—

1	2	. 3	4	5	6	7	8
367A	Kidnapping or	Ditto	Ditto	Ditto	Ditto	Death or	Ditto;
	abducting in		19	• •		rigorous	
	order to subject person to	64		20	2	imprisonment which may	3.60
	unnatural lust.	84	•	. 4	85	extend to	V2 (8
	20 10			**		twenty-five	
		*	8	- 1	75	years and fine.	

(iii) after section 371 in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely:—

1	2	3	4	5	6	7.	.8
37 i A.	Selling person for purposes of prostitution,	Ditto	Ditto	Ditto	Ditto	Imprisonment which may extend to	Ditto
8	etc.	*		EI .	3.5	twenty-five years and fine.	28 81 50 20
371B	Buying person for purposes of prostitution,	Ditto	Ditto	Ditto	Ditto	Imprisonment which may extend to	Ditto
	etc.	1			8 8	twenty-five years and fine.	

- (iv) after section 374 the sub-heading "Of Rape" shall be inserted;
- ' (v) for the existing entries relating to section 376 in columns 1 to 8, the following shall be substituted, namely:—

1	2	, 3	4	5	6	. 7	8
						**	-10-00-
376	Rape	May	Warrant	Not	Not	Death or	Court of
		arrest		bailable.	compoundable.		Sessions;
	19	without	T21	. اعاد	8 9	not less than	
19	\$.	warrant.	W S	25 8		ten years or	
	9 2			95	∰.	more than	M 8
				•30	52	twenty-five	
			<b>5</b> 01			years and fine.	
						90	
		20				Death or	9
						imprisonment	
89						for life, if the	~
		18		12		offence	
			*8	× 2:		committed by	9
				60		two or more	
						persons in	
		45				furtherance of	
	20807			32		common	1
		100	78			intention.	

(vi) after section 493 in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely:—

1	2	3	4	5	6	7	8
493A	Cohabitation caused by a	May .	Warrant	Not bailable.	Not compoundable	Rigorous imprisonment	Ditto;
	man deceitfully inducing a	without warrant.	8	e B	10 20	which may extend to twenty-five	
9	belief of lawful	15	10	B	© ##	years and fine.	33
	marriage.		9		20		70

(vii) in section 494 in column 1, in column 3, for the word "Ditto" the words "Shall not arrest without warrant" shall be substituted; (viii) after section 496 in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely:—

1	2 .	3 .	4	. 5	6,	7	8
496A	Enticing or taking away or detaining with criminal intent a woman.	May arrest without warrant.	Ditto	Not bailable.	Ditto	Imprisonment of either description which may extend to seven years and fine.	Court of Sessions or Magistrate of the first class;
496B	Fornication	Shall not arrest without warrant.	Summons	Bailable	Not compoundable	Imprisonment which may extend to five years and fine not exceeding ten thousand rupees.	Magistrate of the first class:
496C	False accusation of Fornication	Shall not arrest without warrant.	Summons	Bailable	Not compoundable	Imprisonment which may extend to five years and fine not exceeding ten thousand rupees.	Magistrate of the first class; and

(ix) under the heading, "OFFENCES AGAINST OTHER LAWS" after the last entry in column 1 and entries relating thereto in columns 2 to 8, the following shall be added, namely:—

1	2	3	4	5	6	7	8
Section 5 of Ordinance VII of 1979	Zina.	Shall not arrest without warrant.	Summons	Bailable	Not compoundable.	Stoning to death in case of Muhsan and if not Muhsan	Court of Sessions
95	8	ra.			or a	whipping not exceeding	
			1	100	. 0	one hundred stripes.	*
Section 7 of Ordinance	Qazf	Shall not arrest	Summons	Bailable	Not compoundable.	Whipping numbering	Court of Sessions.
VIII of 1979	*	without warrant.			2 9	eighty stripes.	

- 10. Amendment of section 2, Ordinance VII of 1979.—(1) In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), in section 2,—
  - (i) after clause (a), the following new clause (aa) shall be inserted, namely:—
    - "(aa) "confession" means, notwithstanding any judgement of any court to the contrary, an oral statement, explicitly admitting the commission of the offence of zina, voluntarily made by the accused before a court of sessions having jurisdiction in the matter or on receipt of a summons under section 203A of the Code of Criminal Procedure, 1898 (Act V of 1898)"; and
  - (ii) clauses (c) and (e) shall be omitted.
- 11. Omission of section 3, Ordinance VII of 1979.—In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), section 3 shall be omitted.
- 12. Amendment of section 4, Ordinance VII of 1979.—In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), in section 4, the word "validly" and the explanation at the end of that section shall be omitted.
- 12A. Insertion of new section, Ordinance VII of 1979.—In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979); after section 5, the following new section shall be inserted, namely:—
  - "5A. No case to be converted, lodged or registered under certain provisions.—No complaint of zina under section 5 read with section 203A of the Code of Criminal Procedure, 1898 and no case where an allegation of rape is made shall at any stage be converted into a complaint of fornication under section 496B of the Pakistan Panal Code (Act XLV of 1860) and no complaint of fornication shall at any stage be converted into a complaint of zina under section 5 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979) or an offence of similar nature under any other law for the time being in force."
- Omission of sections 6 and 7, Ordinance VII of 1979.—In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), sections 6 and 7 shall be omitted.

- 14. Amendment of section 8, Ordinance VII of 1979.—In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), in section 8,—
  - (i) the words and comma "or zina-bil-jabr," shall be omitted; and
  - (ii) in the marginal note, the words "or zina-bil-jabr" shall be omitted.
- 15. Amendment of section 9, Ordinance VII of 1979.—(1) In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979); in section 9,—
  - (i) the words "or zina-bil-jabr" shall be omitted;
  - (ii) in sub-section (2) the words, "or zina-bil-jabr" shall be omitted; and
  - (iii) sub-sections (3) and (4) shall be omitted.
- 16. Omission of sections 10 to 16, 18 and 19, Ordinance VII of 1979.—In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), sections 10 to 16 and 18 and 19 shall be omitted.
- 17. Amendment of section 17, Ordinance VII of 1979.—In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), in section 17, the words and figure "or section 6" shall be omitted.
- 18. Amendment of section 20, Ordinance VII of 1979.—In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), in section 20,—
  - in sub-section (1), the first proviso shall be omitted and in the second proviso, the word "further" shall be omitted;
  - (ii) sub-section (3) shall be omitted; and
  - (iii) sub-section (5) shall be omitted.
- 19. Amendment of section 2, Ordinance VIII of 1979.—In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), for clause (a) the following shall be substituted, namely:—
  - "(a) "adult", "hadd" and "zina" have the same meaning as in the Offence of Zina (Enforcement of Hudood) Ordinance, 1979; and".

- 20. Amendment of section 4, Ordinance VIII of 1979.—In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), section 4 shall be omitted.
- 21. Amendment of section 6, Ordinance VIII of 1979.—In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979), section 6, shall be renumbered as sub-section (1) thereof and after sub-section (1) renumbered as aforesaid, the following new sub-section (2) shall be added, namely:—
  - "(2) The Presiding Officer of a Court dismissing a complaint under section 203A of the Code of Criminal Procedure, 1898 or acquitting an accused under section 5 of the Offence of Zina (Enforcement of Hadood) Ordinance, 1979 (Ordinance VII of 1979); if satisfied that the offence of qazf liable to hadd has been committed, shall not require any proof of qazf and shall proceed to pass sentence under section 7.".
- 22. Amendment of section 8, Ordinance VIII of 1979.—In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), in section 8, the words, "a report made to the police or" shall be omitted.
- 23. Amendment of section 9, Ordinance VIII of 1979.—In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), in section 9, for sub-section (2), the following shall be substituted, namely:—
  - "(2) In a case in which, before the execution of hadd, the complainant withdraws his allegation of qazf, or states that the accused had made a false confession or that any of the witnesses had deposed falsely, hadd shall not be enforced."
- 24. Omission of sections 10 to 13 and 15, Ordinance VIII of 1979.— In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), sections 10 to 13 and 15 shall be omitted.
- 25. Amendment of section 14, Ordinance VIII of 1979.—In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), in section 14, sub-sections (3) and (4) shall be omitted.
- 26. Omission of section 16, Ordinance VIII of 1979.—In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), section 16 shall be omitted.

- 27. Amendment of section 17, Ordinance VIII of 1979.—In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), in section 17,—
  - (i) the first proviso shall be omitted; and
  - (ii) for the second proviso, the following shall be substituted, namely:-

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

- 28. Omission of section 19, Ordinance VIII of 1979.—In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), section 19 shall be omitted.
- 29. Insertion of new section, Dissolution of Muslim Marriages Act, 1939 (VIII of 1939).—In the Dissolution of Muslim Marriages Act, 1939 (VIII of 1939), in section 2, after clause (vii), the following new clause shall be inserted, namely:—

"(viia) lian:

Explanation.—Lian means where the husband has accused his wife of zina and the wife does not accept the accusation as true.".

RAJA MUHAMMAD AMIN, Secretary.



## EXTRAORDINARY PUBLISHED BY AUTHORITY

#### ISLAMABAD, TUESDAY, FEBRUARY 2, 2010

#### PART I

#### Acts, Ordinances, President's Orders and Regulations

#### SENATE SECRETARIAT

Islamabad, the 2nd February, 2010

No. F. 9(13)/2009-Legis.—The following Act of Majlis-e-Shoora (Parliament) received the assent of the President on 30th January, 2010, is hereby published for general information:—

ACT No. I of 2010

An Act further to amend the Pakistan Penal Code, 1860 and the Code of Criminal Procedure, 1898

WHEREAS it is expedient further to amend the Pakistan Penal Code, 1860 (Act XLV of 1860) and the Code of Criminal Procedure, 1898 (Act V of 1898) for the purposes hereinafter appearing;

It is hereby enacted as follows:

- 1. Short title and commencement.—(1) This Act may be called the Criminal Law (Amendment) Act, 2010.
  - (2) It shall come into force at once.

(13)

[2085(2010) Ex Gaz.]

Price: Rs. 3.00

2. Substitution of section 509, Act XLV of 1860.—In the Pakistan Penal Code, 1860 (Act XLV of 1860), for section 509, the following shall be substituted, namely:—

#### "509. Insulting modesty or causing sexual harassment.—Whoever,—

- intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman;
- (ii) conducts sexual advances, or demands sexual favours or uses verbal or non-verbal communication or physical conduct of a sexual nature which intends to annoy, insult, intimidate or threaten the other person or commits such acts at the premises of workplace, or makes submission to such conduct either explicitly or implicitly a term or condition of an individual's employment, or makes submission to or rejection of such conduct by an individual a basis for employment decision affecting such individual, or retaliates because of rejection of such behavior, or conducts such behavior with the intention of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment;

shall be punished with imprisonment which may extend to three years or with fine up to five hundred thousand rupees or with both.

#### Explanation-1

Such behavior might occur in public place, including, but not limited to, markets, public transport, streets or parks, or it might occur in private places including, but not limited to workplaces, private gatherings, or homes.

#### Explanation-2

Workplace means, the place of work or the premises where an organization or employer operates, this may be a specific building, factory, open area or a larger geographical area where the activities of the organization are carried out. Sexual advances may occur after working hours and outside workplace. It is the access that a perpetrator has to the person being harassed by virtue of a job situation or job related functions and activities.".

- 3. Amendment of Schedule II, Act V of 1898.—In the Code of Criminal Procedure 1898, (V of 1898) in Schedule II,—
  - (a) for the entries relating to section 509, in column 2 to 8 the following shall be substituted, namely:—

2	3	4	5	6	7	8
Insulting modesty or causing sexual harassment	Shall not arrest without warrant.	Warrant	Bailable	Compoundable with permission of the Court	Imprisonment upto 3 years, or fine, or both	Magistrate of the first class

RAJA MUHAMMAD AMIN, Secretary.



## EXTRAORDINARY PUBLISHED BY AUTHORITY

#### ISLAMABAD, THURSDAY, MARCH 11, 2010

#### PART I

#### Acts. Ordinances, President's Orders and Regulations

#### SENATE SECRETARIAT

Islamabad, the 11th March, 2010

No. F. 9 (5)/2009-Legis.—The following Acts of Majlis-e-Shoora' (Parliament) received the assent of the President on 9th March, 2010, are hereby published for general information:—

ACT No. IV of 2010

An Act to make provisions for the protection against harassment of women at the workplace

Whereas the Constitution of the Islamic Republic of Pakistan recognizes the fundamental right of citizens to dignity of person;

AND WHEREAS it is expedient to make this provision for the protection of women from harassment at the workplace;

(63)

Price: Rs. 20.50

[2222(2010)/Ex. Gaz.]

It is hereby enacted as follows:

- Short title, extent and commencement.—(1) This Act may be called the Protection against Harassment of women at the Workplace Act, 2010.
  - (2) It extends to the whole of Pakistan.
  - (3) It shall come into force at once.
- 2. **Definitions.**—In this Act, unless there is anything repugnant in the subject or context -
  - (a) "accused" means an employee or employer of an organization against whom complaint has been made under this Act;
  - (b) "CBA" means Collective Bargaining Agent as provided in the Industrial Relations Act, 2008 (IV of 2008), or any other law for the time being in force.
  - (c) "Code" means the Code of Conduct as mentioned in the Schedule to this Act;
  - (d) "Competent Authority" means the authority as may be designated by the management for the purposes of this Act;
  - (e) "complainant" means a woman or man who has made a complaint to the Ombudsman or to the Inquiry Committee on being aggrieved by an act of harassment;
  - (f) "employee" means a regular or contractual employee whether employed on daily, weekly, monthly or hourly basis, and includes an intern or an apprentice;
  - (g) "employer" in relation to an organization, means any person or body of persons whether incorporated or not, who or which employs workers in an organization under a contract of employment or in any other manner whosoever and includes—
    - an heir, successor or assign, as the case may be, of such person or, body as aforesaid;
    - (ii) any person responsible for the direction, administration, management and control of the management;

- (iii) the authority, in relation of an organization or a group of organizations run by or under the authority of any Ministry or department of the Federal Government or a Provincial government, appointed in this behalf or, where no authority is appointed, the head of the Ministry or department as the case may be;
- (iv) the office bearer, in relation to an organization run by or on behalf of the local authority, appointed in this behalf, or where no officer is so appointed, the chief executive officer bearer of that authority;
- (v) the proprietor, in relation to any other organization, of such organization and every director, manager, secretary, agent or office bearer or person concerned with the management of the affairs thereof;
- (vi) a contractor or an organization of a contractor who or which undertakes to procure the labour or services of employees for use by another person or in another organization for any purpose whatsoever and for payment in any form and on any basis whatsoever; and
- (vii) office bearers of a department or a Division of a Federal or a Provincial or local authority who belong to the managerial, secretarial or directional cadre or categories of supervisors or agents and those who have been notified for this purpose in the official Gazette:
- (h) "harassment" means any unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment;
- "Inquiry Committee" means the Inquiry Committee established under sub-section (1) of section 3;
- (j) "management" means a person or body of persons responsible for the management of the affairs of an organization and includes an employer;

- (k) "Ombudsman" means the Ombudsman appointed under section 7:
- (1) "organization" means a Federal or Provincial Government Ministry. Division or department, a corporation or any autonomous or semi autonomous body, Educational Institutes, Medical facilities established or controlled by the Federal or Provincial Government or District Government or registered civil society associations or privately managed a commercial or an industrial establishment or institution, a company as defined in the Companies Ordinance, 1984 (XLVII of 1984) and includes any other registered private sector organization or institution;
- (m) "Schedule" means Schedule annexed to this Act; and
- (n) "workplace" means the place of work or the premises where an organization or employer operates and includes building, factory, open area or a larger geographical area where the activities of the organization or of employer are carried out and including any situation that is linked to official work or official activity outside the office.
- Inquiry Committee.—(1) Each organization shall constitute an Inquiry Committee within thirty days of the enactment of this Act to enquire into complaints under this Act.
- (2) The Committee shall consist of three members of whom at least one member shall be a woman. One member shall be from senior management and one shall be a senior representative of the employees or a senior employee where there is no CBA. One or more members can be co-opted from outside the organization if the organization is unable to designate three members from within as described above. A Chairperson shall be designated from amongst them.
- (3) In case a complaint is made against one of the members of the Inquiry Committee that member should be replaced by another for that particular case. Such member may be from within or outside the organization.
- (4) In case where no competent authority is designated the organization shall within thirty days of the enactment of this Act designate a competent authority.
- 4. **Procedure for holding inquiry.**—(1) The Inquiry Committee, within three days of receipt of a written complaint, shall
  - (a) communicate to the accused the charges and statement of allegations leveled against him, the formal written receipt of which will be given;

- (b) require the accused within seven days from the day the charge is communicated to him to submit a written defense and on his failure to do so without reasonable cause, the Committee shall proceed exparte; and
- (c) enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defense of the accused as the Committee may consider necessary and each party shall be entitled to cross-examine the witnesses against him.
- (2) Subject to the provisions of this Act and any rules made thereunder the Inquiry Committee shall have power to regulate its own procedure for conducting inquiry and for the fixing place and time of its sitting.
- (3) The following provisions *inter alia* shall be followed by the Committee in relation to inquiry:
  - (a) The statements and other evidence acquired in the inquiry process shall be considered as confidential;
  - (b) An officer in an organization, if considered necessary, may be nominated to provide advice and assistance to each party;
  - (c) Both parties, the complainant and the accused, shall have the right to be represented or accompanied by a Collective Bargaining Agent representative, a friend or a colleague;
  - (d) Adverse action shall not be taken against the complainant or the witnesses:
  - (e) The Inquiry Committee shall ensure that the employer or accused shall in no case create any hostile environment for the complainant so as to pressurize her from freely pursuing her complaint; and
  - (f) The Inquiry Committee shall give its findings in writing by recording reasons thereof.
- (4) The Inquiry Committee shall submit its findings and recommendations to the Competent Authority within thirty days of the initiation of inquiry. If the Inquiry Committee finds the accused to be guilty it shall recommend to the Competent Authority for imposing one or more of the following penalties:

#### (i) Minor penalties:

- (a) censure;
- (b) withholding, for a specific period, promotion or increment;
- stoppage, for a specific period, at an efficiency bar in the timescale, otherwise than for unfitness to cross such bar; and
- (d) recovery of the compensation payable to the complainant from pay or any other source of the accused;

#### (ii) Major penalties:

- (a) reduction to a lower post or time-scale, or to a lower stage in a time-scale;
- (b) compulsory retirement;
- (c) removal from service;
- (d) dismissal from service; and
- (e) Fine. A part of the fine can be used as compensation for the complainant. In case of the owner, the fine shall be payable to the complainant.
- (5) The Competent Authority shall impose the penalty recommended by the Inquiry Committee under sub-section (4) within one week of the receipt of the recommendations of the Inquiry Committee.
- (6) The Inquiry Committee shall meet on regular basis and monitor the situation regularly until they are satisfied that their recommendations subject to decision, if any of Competent Authority and Appellate Authority have been implemented.
- (7) In case the complainant is in trauma the organization will arrange for psycho-social counseling or medical treatment and for additional medical leave.
- (8) The organization may also offer compensation to the complainant in case of loss of salary or other damages.
- 5. Powers of the Inquiry Committee.—(1) The Inquiry Committee shall have power--

- (a) to summon and enforce attendance of any person and examine him on oath;
- (b) to require the discovery and production of any document;
- (c) to receive evidence on affidavits; and
- (d) to record evidence.
- (2) The Inquiry Committee shall have the power to inquire into the matters of harassment under this Act, to get the complainant or the accused medically examined by an authorized doctor, if necessary, and may recommend appropriate penalty against the accused within the meaning of sub-section (4) of section 4.
- (3) The Inquiry Committee may recommend to Ombudsman for appropriate action against the complainant if allegations leveled against the accused found to be false and made with *mula fide* intentions.
- (4) The Inquiry Committee can instruct to treat the proceedings confidential.
- 6. Appeal against minor and major penalties.—(1) Any party aggrieved by decision of the Competent Authority on whom minor or major penalty is imposed may within thirty days of written communication of decision prefer an appeal to an Ombudsman established under section 7.
- (2) A complainant aggrieved by the decision of the Competent Authority may also prefer appeal within thirty days of the decision to the Ombudsman.
- (3) The Appellate Authority may, on consideration of the appeal and any other relevant material, confirm, set aside, vary or modify the decision within thirty days in respect of which such appeal is made. It shall communicate the decision to both the parties and the employer.
- (4) Until such a time that the Ombudsman is appointed the District Court shall have the jurisdiction to hear appeals against the decisions of Competent Authority and the provisions of sub-sections (1) to (3) shall mutatis mutandis apply.
- (5) On the appointment of Ombudsman all appeals pending before the District Court shall stand transferred to Ombudsman who may proceed with the case from the stage at which it was pending immediately before such transfer.

- Ombudsman.—(1) The respective Governments shall appoint an Ombudsman at the Federal and Provincial levels.
- (2) A person shall be qualified to be appointed as an Ombudsman who has been a judge of High Court or qualified to be appointed as a judge of High Court. The Ombudsman may recruit such staff as required to achieve the purposes of this Act and the finances will be provided by the respective Governments.
- Ombudsman to enquire into complaint.—(1) Any employee shall have the option to prefer a complaint either to the Ombudsman or the Inquiry Committee.
- (2) The Ombudsman shall within 3 days of receiving a complaint issue a written show cause notice to the accused. The accused, after the receipt of written notice, shall submit written defense to the Ombudsman within five days and his failure to do so without reasonable cause the Ombudsman may proceed *ex-parte*. Both the parties can represent themselves before the Ombudsman.
- (3) The Ombudsman shall conduct an inquiry into the matter according to the rules made under this Act and conduct proceedings as the Ombudsman deems proper.
- (4) For the purposes of an investigation under this Act, the Ombudsman may require any office or member of an organization concerned to furnish any information or to produce any document which in the opinion of the Ombudsman is relevant and helpful in the conduct of the investigation.
- (5) The Ombudsman shall record his decision and inform both parties and the management of the concerned organization for implementation of the orders.
- 9. Representation to President or Governor.—Any person aggrieved by a decision of Ombudsman under sub-section (5) of section 8, may, within thirty days of decision, make a representation to the President or Governor, as the case may be, who may pass such order thereon as he may deem fit.
- 10. **Powers of the Ombudsman.** The Ombudsman shall for the purpose of this Act have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely:

- summoning and enforcing the attendance of any person and examining him on oath;
- (ii) compelling the production of evidence;
- (iii) receiving evidence on affidavits;
- (iv) issuing commission for the examination of witnesses;
- entering any premises for the purpose of making any inspection or investigation, enter any premises where the Ombudsman has a reason to believe that any information relevant to the case may be found; and
- (vi) the Ombudsman shall have the same powers as the High Court has to punish any person for its contempt.
- (2) Ombudsman shall while making the decision on the complaint may impose any of the minor or major penalties specified in sub-section (4) of section 4.
- 11. Responsibility of employer.—(1) It shall be the responsibility of the employer to ensure implementation of this Act, including but not limited to incorporate the Code of Conduct for protection against harassment at the workplace as a part of their management policy and to form Inquiry Committee referred to in section 3 and designate a Competent Authority referred to in section 4.
- (2) The management shall display copies of the Code in English as well as in language understood by the majority of employees at conspicuous place in the organization and the workplace within six months of the commencement of this Act.
- (3) On failure of an employer to comply with the provisions of this section any employee of an organization may file a petition before the District Court and on having been found guilty the employer shall be liable to fine which may extend to one hundred thousand rupees but shall not be less than twenty-five thousand rupees.
- 12. Provisions of the Act in addition to and not in derogation of any other law.—The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force.
- 13. Power to make rules.—The Federal Government may make rules to carryout the purposes of this Act.

#### Schedule

[See sections 2(c) and 11]

## CODE OF CONDUCT FOR PROTECTION AGAINST HARASSMENT OF WOMEN AT THE WORKPLACE

Whereas it is expedient to make the Code of Conduct at the workplace etc. to provide protection and safety to women against harassment it is hereby provided as under:

- The Code provides a guideline for behavior of all employees, including management, and the owners of an organization to ensure a work environment free of harassment and intimidation;
- (ii) "Harassment" means any unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature, or sexually demeaning attitudes, causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment;

The above is unacceptable behavior in the organization and at the workplace, including in any interaction or situation that is linked to official work or official activity outside the office.

Explanation.—There are three significant manifestations of harassment in the work environment:—

#### (a) Abuse of authority

A demand by a person in authority, such as a supervisor, for sexual favors in order for the complainant to keep or obtain certain job benefits, be it a wage increase, a promotion, training opportunity, a transfer or the job itself.

#### (b) Creating a hostile environment

Any unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature, which interferes with an individual's work performance or creates an intimidating, hostile, abusive or offensive work environment.

The typical "hostile environment" claim, in general, requires finding of a pattern of offensive conduct, however, in cases where the harassment is particularly severe, such as in cases involving physical contact, a single offensive incident will constitute a violation.

#### (c) Retaliation

The refusal to grant a sexual favor can result in retaliation, which may include limiting the employee's options for future promotions or training, distorting the evaluation reports, generating gossip against the employee or other ways of limiting access to his/her rights. Such behavior is also a part of the harassment.

- (iii) An informal approach to resolve a complaint of harassment may be through mediation between the parties involved and by providing advice and counseling on a strictly confidential basis;
- (iv) A complainant or a staff member designated by the complainant for the purpose may report an incident of harassment informally to her supervisor, or a member of the Inquiry Committee, in which case the supervisor or the Committee member may address the issue at her discretion in the spirit of this Code. The request may be made orally or in writing;
- (v) If the case is taken up for investigation at an informal level, a senior manager from the office or the head office will conduct the investigation in a confidential manner. The alleged accused will be approached with the intention of resolving the matter in a confidential manner:
- (vi) If the incident or the case reported does constitute harassment of a higher degree and the officer or a member reviewing the case feels that it needs to be pursued formally for a disciplinary action, with the consent of the complainant, the case can be taken as a formal complaint;
- (vii) A complainant does not necessarily have to take a complaint of harassment through the informal channel. She can launch a formal complaint at any time;

- (viii) The complainant may make formal complaint through her incharge, supervisor, CBA nominee or worker's representative, as the case may be, or directly to any member of the Inquiry Committee. The Committee member approached is obligated to initiate the process of investigation. The supervisor shall facilitate the process and is obligated not to cover up or obstruct the inquiry;
- (ix) Assistance in the inquiry procedure can be sought from any member of the organization who should be contacted to assist in such a case;
- (x) The employer shall do its best to temporarily make adjustments so that the accused and the complainant do not have to interact for official purposes during the investigation period. This would include temporarily changing the office, in case both sit in one office, or taking away any extra charge over and above their contract which may give one party excessive powers over the other's job conditions. The employer can also decide to send the accused on leave, or suspend the accused in accordance with the applicable procedures for dealing with the cases of misconduct, if required;
- (xi) Retaliation from either party should be strictly monitored. During the process of the investigation work, evaluation, daily duties, reporting structure and any parallel inquiries initiated should be strictly monitored to avoid any retaliation from either side;
- (xii) The harassment usually occurs between colleagues when they are alone, therefore usually it is difficult to produce evidence. It is strongly recommended that staff should report an offensive behavior immediately to someone they trust, even if they do not wish to make a formal complaint at the time. Although not reporting immediately shall not affect the merits of the case; and
- (xiii) The Code lays down the minimum standards of behavior regarding protection of women from harassment at workplace etc. but will not affect any better arrangement that an organization may have developed nor will it bar the grant of protection that employees working in an institute may secure from their employers through negotiation.

# The Gazette



# of Pakistan

## EXTRAORDINARY PUBLISHED BY AUTHORITY

#### ISLAMABAD, WEDNESDAY, DECEMBER 28, 2011

#### PART I

#### Acts, Ordinances, President's Orders and Regulations

#### SENATE SECRETARIAT

Islamabad, the 28th December, 2011

No. F. 24(9)/2011-Legis.—The following Act of Majlis-e-Shoora (Parliament) received the assent of the President on 26th December, 2011, is hereby published for general information:—

#### ACT No. XXV of 2011

An Act further to amend the Pakistan Penal Code, 1860 and the Code of Criminal Procedure, 1898

WHEREAS it is expedient further to amend the Pakistan Penal Code, 1860 (Act XLV of 1860) and the Code of Criminal Procedure, 1898 (Act V of 1898) for the purposes hereinafter appearing;

It is hereby enacted as under:-

- Short title and commencement.—(1) This Act may be called the Criminal Law (Second Amendment) Act, 2011.
  - (2) It shall come into force at once.

(479)

Prise Rs. 3.00

[1097(11)Ex. Gaz.]

- 2. Amendment of section 332, Act XLV of 1860.-In the Pakistan Penal Code, 1860 (Act XLV of 1860), hereinafter referred to as the said Code, in section 332, in sub-section (1),-
  - (i) after the word "disables" the commas and words, ".disfigures, defaces" shall be inserted; and
  - the following explanation shall be added, namely:-

"Explanation.-disfigure means disfigurement of face or disfigurement or dismemberment of any organ or any part of the organ of the human body which impairs or injures or corrodes or deforms the symmetry or appearance of a person.".

3. Insertion of new sections 336A and 336B, Act XLV of 1860.-In the said Code, after section 336, the following new sections shall be inserted, namely:-

> "336A. Hurt caused by corrosive substance.-Whoever with the intention or knowingly causes or attempts to cause hurt by means of a corrosive substance or any substance which is deleterious to human body when it is swallowed, inhaled, comes into contact or received into human body or otherwise shall be said to cause hurt by corrosive substance:

> Explanation.-In this sub-section, unless the context otherwise requires, "corrosive substance" means a substance which may destroy, cause hurt. deface or dismember any organ of the human body and includes every kind of acid, poison, explosive or explosive substance, heating substance, noxious thing, arsenic or any other chemical which has a corroding effect and which is deleterious to human body.

> 336B. Punishment for hurt by corrosive substance.-Whoever causes hurt by corrosive substance shall be punished with imprisonment for life or imprisonment of either description which shall not be less than fourteen years and a minimum fine of one million rupees.".

4. Amendment of Schedule II, Act V of 1898.—In the Code of Criminal Procedure, 1898 (Act V of 1898) in the Schedule II, after section 336, in Column (1) and the corresponding entries relating thereto in columns (2) to (8) the following shall be inserted, namely:—

"1	2	3	4	5	6	7	8
336B	Hurt caused by Corrosive Substances	Ditto	Ditto	Ditto	Not Compoundable	Life Imprisonment or imprisonment of either description for not less than 14 years and a mini- mum fine of one million rupees	Ditto.".

RAJA MUHAMMAD AMIN, Secretary.





# of Pakistan

#### EXTRAORDINARY PUBLISHED BY AUTHORITY

#### ISLAMABAD, WEDNESDAY, DECEMBER 28, 2011

#### PART I

### Acts, Ordinances, President's Orders and Regulations SENATE SECRETARIAT

Islamabad, the 28th December, 2011

No. F. 24(12)/2011-Legis.—The following Act of Majlis-e-Shoora (Parliament) received the assent of the President on 26th December, 2011, is hereby published for general information:—

#### ACT No. XXVI of 2011

An Act further to amend the Pakistan Penal Code, 1860 and the Code of Criminal Procedure, 1898

WHEREAS it is expedient further to amend the Pakistan Penal Code 1860 (Act XLV of 1860) and the Code of Criminal Procedure, 1898 (Act V of 1898) for the purposes hereinafter appearing;

It is hereby enacted as follows:-

- Short title and commencement.—(1) This Act may be called the Criminal Law (Third Amendment) Act, 2011.
  - (2) It shall come into force at once.

(483)

Price: Rs. 3.00

[1098(11)Ex. Gaz.]

- Substitution of section 310A, Act XLV of 1860.—In the Pakistan Penal Code (Act XLV of 1860), hereinafter referred to as the Code, in Chapter XVI, for section 310A, the following shall be substituted, namely:—
  - "310A. Punishment for giving a female in marriage or otherwise in badla-e-sulh, wanni or swara.—Whoever gives a female in marriage or otherwise compels her to enter into marriage, as badal-e-sulh, wanni, or swara or any other custom or practice under any name, in consideration of settling a civil dispute or a criminal liability, shall be punished with imprisonment of either description for a term which may extend to seven years but shall not be less than three years and shall also be liable to fine of five hundred thousand rupees."
- Insertion of new Chapter XXA, Act XLV of 1860.—In the Code, after Chapter XX, the following new Chapter shall be inserted, namely:—

#### "CHAPTER XXA

#### OF OFFENCES AGAINST WOMEN

- 498A. Prohibition of depriving woman from inheriting property.—Whoever by deceitful or illegal means deprives any woman from inheriting any movable or immovable property at the time of opening of succession shall be punished with imprisonment for either description for a term which may extend to ten years but not be less than five years or with a fine of one million rupees or both.
- 498B. Prohibition of forced marriage.—Whoever coerces or in any manner whatsoever compels a woman to enter into marriage shall be punished with imprisonment of either description for a term, which may extend to seven years or for a term which shall not be less than three years and shall also be liable to fine of five hundred thousand rupees.
- 498C. Prohibition of marriage with the Holy Quran.—
  Whoever compels or ₄rranges or facilitates the marriage of a woman with the Holy Quran shall be punished with imprisonment of either description which may extend to seven years which shall not be less than three years and shall be liable to fine of five hundred thousand rupees.

Explanation.—Oath by a woman on Holy Quran to remain unmarried for the rest of her life or, not to claim her share of inheritance shall be deemed to be marriage with the Holy Quran.".

- 4. Insertion of new section 402D, Act V of 1898.—In the Code of Criminal Procedure (Act V of 1898), hereinafter referred to as the said Code, after section 402C, the following new section shall be inserted, namely:—
  - "402D. Provincial Government not to interfere in sentences of rape.—Notwithstanding anything contained in sections 401, 402 or 402B, the Provincial Government shall not suspend, remit or commute any sentence passed under section 376 of the Pakistan Penal Code (Act XLV of 1860)."
- Amendment of Schedule II, Act V of 1898.—In the said Code, in Schedule II,—
  - (i) for section 310A, in column 1 and the entries relating thereto in columns (2) to (8), the following shall be substituted, namely:—

"1	2	3	4	5	6	7	8
"310A	Giving a female forcefully in Marriage or otherwise in badal-c- sulh, wanni or swara	Shall not arrest without warrant	Warrant	Not bailable	Not Compoundable	Imprisonment of either description which may extend to 7 years but shall not be less than 3 years and fine of rupees 500,000/-	Court of Sessions or Magistrate of first class.";

(ii) after section 498, in column 1 and the entries relating thereto in column (2) to (8), the following shall be inserted, namely:—

"1	2	3	4	5	6	7	8
"498A	Prohibition of depriving woman from inheriting property	Shall not arrest without warrant	Warrant	Not bailable	Not Compoundable	Imprisonment of either description for a term which may extend to 10 years but shall not be less than 5 years or with a fine of rupces 10,00,000/- or both.	
498B	Prohibition of forced marriage	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description which may Extend to 7 years but shall not be less than three years and a fine of runees 500.000/-"	Sessions or Magistrate
498C	Prohibition of marriage with the Holy Quran	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description which may extend to 7 years but shall not be less than 3 years and a fine of rupees 500,000/-	Ditto.".

RAJA MUHAMMAD AMIN.

Secretary.

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