

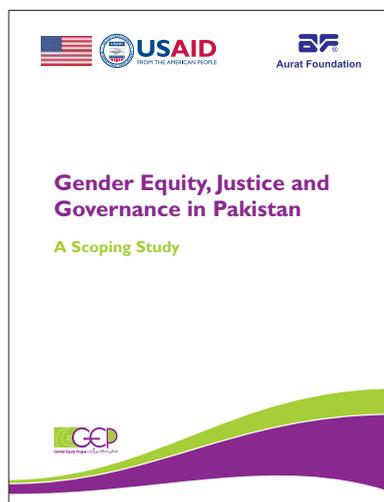


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# Gender Equity, Justice and Governance in Pakistan

## Executive Summary



**GEP**  
Gender Equity Program / صنفی مساوات پروگرام

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## **Executive Summary**



# Preface

The Gender Equity Program (GEP) is a fundamental part of Aurat Foundation's long-term commitment and action to serving the cause of women's empowerment and advancement in Pakistan. GEP is a six-year USAID-supported grant-making program which aims to close the gender gap in Pakistan. Implemented with the collaboration of the Asia Foundation, GEP serves to facilitate behavioral change, enable women to access information, resources and institutions, acquire control over their lives and improve societal attitudes towards women and their empowerment.

The objectives of GEP are:

- Enhancing gender equity by expanding women's access to justice and women's human rights.
- Increasing women's empowerment by expanding knowledge of their rights and opportunities to exercise their rights in the workplace, community and home.
- Combating gender-based violence.
- Strengthening the capacity of Pakistani organizations that advocate for gender equity, women's empowerment and the elimination of gender-based violence.

In the first year of GEP, research commenced on five studies on gender-based violence. These consisted of:

1. Research Study on Domestic Violence
2. Knowledge, Attitudes and Practices on Sexual Harassment
3. Customary Practices Leading to Gender Based Violence
4. Social and Legal Responses to Rape: A Knowledge, Attitudes and Practices Study
5. Study on Internal Trafficking of Women and Girls in Pakistan

In the second year of GEP, research was conducted on Gender Equity, Justice and Governance in Pakistan. This study focuses on the experience of Pakistani women with the government and justice sectors, in particular, on the rights of women in light of the commitments Pakistan has made with the international community. It also examines the national and domestic legal framework and women's political participation. Since this study was conducted in 2011, it has been updated to include a GEP report on women's political participation in the May 2013 General Elections and an article on the introduction of 7 Pro-Women Laws.

This booklet has been produced to render a succinct overview of the findings and recommendations from the study which have been instrumental in informing GEP grant cycle 8 on Enhancing Gender Equity by Expanding Women's Access to Justice and Women's Human Rights.

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# Acronyms and Abbreviations

AJP	Access to Justice Program
CEDAW	Committee on the Elimination of Discrimination Against Women
CII	Council of Islamic Ideology
GEP	Gender Equity Program
ICCPR	International Covenant on Civil and Political Rights
ICESPR	International Covenant on Economical Social and Cultural Rights
NCSW	National Commission on the Status of Women
UN	United Nations
USAID	United States Agency for International Development

# Gender Equity, Justice and Governance in Pakistan

## 1.1 Background

The position of women in Pakistan's society is complex and multi-faceted. The country is conservative and feudal with the coexistence of tribal structures. Women are considered central to this religious, social and cultural bias and are often the victims of patriarchal norms and structures.

This short scoping study examines women's place and experience within the governance and justice sectors. It looks in particular at the constitutional position of women and Pakistan's international commitments in terms of rights. It also examines the national law framework and domestic legal reform efforts. The issue of formal legal equality is also examined and discussed in this study.

The study then examines women's political participation, both in terms of women as voters and women as holders of political office. Female representation within the judiciary and other parts of justice sector services is also covered within the scope of this study. It also highlights issues of

access to justice, from levels of legal literacy to women's experience of encounters with the justice sector services provided by the state, much of which reveals low levels of available data and reliance on anecdotal records of experience.

Finally, the study makes recommendations in relation to areas of advocacy, research and data collection that would support progress and the capture of more accurate and effective pictures of the position and progress of women.

## 1.2 Governance

Pakistan performs poorly against a range of internationally accepted governance measures leaving groups such as women and minorities particularly vulnerable. Female members of minorities experience multiple disadvantages. Despite women making up almost half of Pakistan's population, they remain under-represented and marginalized in many spheres. Recent instability, both in terms of conflict and the devastating 2010 flooding, has increased female vulnerability.

Pakistan's Constitution, on its face, provides for formal legal equality between men and women. However, the Constitution also builds in areas of instability within that formal equality. The position of Islam as the religion of the state, the establishment of the Council of Islamic Ideology (CII) and the creation of a parallel legal system through the establishment of the Federal Shariat Court, create variables, which have been used to undermine the equality of women and their rights. Furthermore, the lack of female representation on the CII highlights how women in Pakistan have little say in Pakistan's legislative mechanism.

Pakistan's international legal obligations belie a similar position of uncertainty and shifting commitment to female equity and equality. Pakistan has ratified a number of major instruments, including the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), which contain general commitments to equal enjoyment of rights, as well as the more specific framework set out in Committee on the Elimination of Discrimination Against Women (CEDAW). However, little of this commitment to equality has been incorporated into national law and Pakistan's legal system still contains no definition or specific prohibition of discrimination. Steps towards implementation of rights are minimal at best. Similarly, Pakistan's engagement with its obligations to report to the various treaty bodies reveals a lack of coordination, ability and will to supply information on equality issues or to genuinely engage with the implementation of rights. Pakistan's obligations to provide a functioning state system, in which to guarantee rights, remain unmet. It is important to note that none of these conventions can be

directly enforced. A number of them contain enforcement mechanisms, through inter-state complaint or individual complaint via the appropriate United Nations (UN) committee. However, since Pakistan has not acceded to these specific provisions, its international commitments cannot be enforced.

In terms of national law, the study instead demonstrates large remaining areas of formal inequality and disproportionate impact. Large areas of, particularly personal, laws disadvantage women at each stage of their lives. In terms of marriage, family and divorce rights, disadvantage is particularly prevalent and again, women from minorities suffer multiple impacts. Violence is a pervasive issue, and the protections received by women are unequal both in terms of formal law and implementation. The persistence and prevalence of "honor" crime is particularly concerning. These factors combined to see Pakistan named as the third most dangerous country in earth for women in 2011.

Efforts to highlight and redress the situation of formal inequality have been repeated. Several commissions and committees have reported, most significantly the 1997 Commission of Inquiry on the Status of Women. It outlined far-reaching criticism of the status of laws and practices impacting women, making radical recommendations for reform. Sadly, fifteen years after the report was published, only a few of its recommendations have been implemented. Data is lacking and little research on real legal inequalities and impacts has been carried out.

Much of this lack of progress appears to be due to tensions within Pakistan's state structures as to

whether the real will for change exists or not. Whilst ministerial structures have been established, they have coincided with the introduction of regressive legislation, plans of action have been adopted and then under-funded or neglected. Firm recommendations for change have remained unimplemented and the impetus for change has frequently been lost. The most disappointing governmental efforts have perhaps been those to institutionalize gender within the public sector, through the Gender Reform Action Plans, which appear to have had little long term impact.

Recent efforts at formalizing legal protections for women remain fragile. However, steps forward can be seen. The Protection of Women (Criminal Law Amendment) Act 2006 provided a major advance towards the plight of women under the law. Whilst not repealing the Zina Ordinance, which had seen many women accused and detained for lengthy periods in what were, in reality, family disputes, the Act sought to address one very serious injustice in relation to rape. Whereas the Ordinance has classified rape as a form of zina, requiring women to produce four male Muslim witnesses of good standing to prove rape in the absence of a confession by the accused (an exercise almost certainly doomed to failure and which placed victims at risk of being punished for adultery), the Act returned rape to the Pakistan Penal Code and applied normal rules of evidence to rape allegations. This step forward has, however, been significantly undermined by a decision of the Federal Shariat Court, which has struck down various sections of the Act as being contrary to Islam. However, December 2011 saw two important legislative advances which may

signal a shift towards a legislative reform agenda.

### 1.3 Political Participation

The study indicates evidence of considerable disadvantage within the electoral system. Women are under-represented in terms of voter registration and in terms of electoral participation. An accurate picture is difficult to determine as the state does not collect gender-disaggregated data in terms of polling. Absence of data and a lack of gender-disaggregation are recurrent themes throughout the study. However, documented agreements to exclude women from voting in some areas, coupled with overt threats of violence and more general security concerns clearly limit women's wish and ability to participate in elections. The National Commission on the Status of Women (NCSW) has noted that despite women making up half of the population, they are under-represented in terms of voter registration, with a large disparity between the number of men and women registered to vote.

Equally troubling is the low level of participation by women within political and governmental structures. Levels of representation are somewhat deceptive, as levels of reserved seating have been adopted. However, the levels of reservation at federal and provincial level, at 17%, fall well below the 33% recommended by the National Plan. These levels and the adoption of indirect election to reserved seats have created a culture of political lip service to women. Parties have made little effort to field women as candidates for general seats, and women have made little progress at establishing themselves as a power-base at ministerial level. By contrast, the adoption

of 33% reserved seating for women at local government level did appear to create a real catalyst for female participation within local councils and local politics. This progress has currently been lost, with the abolition of the elected local government system across Pakistan.

## 1.4 The Judiciary and Courts

Female representation amongst the judiciary is also troublingly low. Whilst little data exists in relation to the subordinate judiciary, who make up the vast majority of judges, representation at senior level is pitiful. Equally low levels of female participation within the legal profession reveal a significant disconnect between women and the services for justice provided by the state.

The rights of women are certain to be impacted upon by the general performance of the courts, which have over the years been beset by delay and dysfunction. In 2009, it was estimated that, even if no new cases commenced, it would take 15 years to clear the existing backlog. Recent steps to improve court function, set out in the National Judicial Policy, appear to have begun to have some impact on the time in which cases are processed, but do not contain any measure and assessment of the quality of justice delivered.

## 1.5 Access to Justice

Disappointingly, despite being the site of the world's largest justice sector intervention, the Asian Development Bank's Access to Justice Program, little measurable progress is apparent in terms of female access to justice in Pakistan. The study demonstrates a very concerning level of

official data and no analysis of trends. Much available data is anecdotal or is provided by Pakistan's non-governmental organizations, based upon sampling or collation of media reporting. This unofficial information paints a very concerning position. Women in Pakistan face high levels of crime, often of a particularly violent nature; they suffer violence in a range of forms, from domestic violence to forced marriage, from rape to acid attacks. Women are vulnerable both in public space and the home. The lack of any gender disaggregation in crime reporting, and the general lack of official crime data, are disappointing and hamper the adoption of any clear governmental approach.

Levels of legal literacy are impossible to gauge. Despite legal literacy being one of the key objectives of the Access of Justice Program (AJP), impacts cannot be measured and institutional efforts around legal empowerments do not appear to have led to any significant change. Genuine efforts at increasing legal literacy and access to affordable legal services have fallen on the non-governmental sector. Interventions are, therefore, by definition fragmented and limited by the availability of resources.

The levels of protection and provision for women by the police appear to be minimal. Here the data is once again sparse. However, anecdotally, levels of women within the police force are low. The provision of female-friendly spaces for the reporting and investigation of crime are scant and counter-productive. The model of all-female police stations has been unsuccessful, marginalizing female police officers and providing ineffectual services to women victims. The alternative model,

of mainstreamed women's units within the overall police structure, has been little used to date. Efforts to raise the profile of gender within policing, through the Gender Crime Cell, particularly in relation to data collection, appear to have had minimal impact.

Other protection mechanisms, such as crisis centres and shelters, are useful, but provide assistance on a very small scale. Their services tend to be aimed at reconciliation rather than protection and they offer little by way of relocation or rehabilitation opportunities. The system of Dar-ul-Aman, effectively remand homes for women accused but not convicted of crime or in need of state protection, is troubling. Little real evidence is available as to the experience of women within the Dar-ul-Aman systems but service provision appears to be very limited and protections minimal. Recent reports of women escaping the poor conditions provided by the Dar-ul-Aman perhaps provide an insight into the treatment afforded to women by them.

Finally, the performance of the police and court systems as a whole, in terms of the delivery of justice to women within Pakistan, appears poor. Again little reliable data is available, almost none from official sources. The anecdotal evidence collected by the non-governmental sector, reveals a woeful picture. Each stage of the justice sector process appears to exclude or disadvantage women. In the absence of any reliable statistics a short case study, that of Mukhtar Mai, is given. Whilst her experience is far from typical, in terms of her own willingness to speak publicly and the national and international media attention it has received, it demonstrates the shortcomings of the

existing system, from the adoption of informal justice at community level, to inadequacy of police investigation and from the confusion within the court system itself to the scope for political interference and pressure.

## 1.6 The Recommendations

The study makes a number of recommendations, aimed towards the Gender Equity Program (GEP), in terms of advocacy for reform, research and data collection.

The main findings of the study repeatedly identify a lack of data and research in all areas relating to women within the governance and justice sectors. Without accurate, gender-disaggregated data it is unlikely that any clear steps forward can be taken or success measured. In the absence of clear and accurate data and research it is likely that reform efforts will continue to be scattergun and ineffective.

The study also identifies areas in which further advocacy is required. Considerable work that has been undertaken, particularly around the analysis of legal equality, by the 1997 Commission of Inquiry, and many of its recommendations remain both valid and unimplemented. Efforts should be focused on securing the commitment of federal and provincial governments to move towards reform in these and other areas. The current shift to provincial responsibility for women's development provides a real challenge to the non-governmental sector in terms of advocacy but may also prevent a real opportunity.



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