



# LEGISLATIVE WATCH

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## A critical appreciation of the Prevention of Anti-Women Practices (Criminal Law Amendment) Bill 2011

Donya Aziz's Private Members Bill receives unanimous support from National Assembly

By Maliha Zia Lari

The Prevention of Anti-Women Practices (Criminal Law Amendment) Act 2011 was passed by the National Assembly of Pakistan on Tuesday 15th November 2011 after much great effort and lobbying by the women's movement and the movers of the Bill, led by Dr. Donya Aziz (PML-Q).

There has been a continuous struggle by the women's movement for years to bring to the forefront the heinous crimes committed in the name of 'customary practice'. The women's movement celebrates with the members of the PML-Q who introduced the Act into the National Assembly; it commends the government to allow the promulgation and pass an opposition Bill and it acknowledges the members of the National assembly who voted to pass the Bill.

Since the passage of the Bill through the Assembly, there has been much discussion and debate about the pros and cons of the provisions of the Bill and what it has added and what has been missed. It is necessary to have a proper understanding of what the provisions actually entail in order to not just comprehend the law to critique it, but also for the purposes of lobbying with the Senators and other stakeholders, while also staving off opposition to the Bill.

**The sections of the 2011 Bill are reproduced in the boxes below, followed by a brief expansion and explanation of the section.**

### A BILL

to prohibit certain practices leading to exploitation and discrimination against womenfolk

**WHEREAS** it is expedient to provide for prohibition of certain practices leading to exploitation and discrimination against womenfolk;

**AND WHEREAS** it is necessary to clarify the ambiguities created by misinterpretation of certain legal provisions;

### Explanation:

The intention of the legislation is to outlaw practices which are crimes committed

in the name of 'customary practice'. These customary practices are used, specifically against women, in order to

exert control over them, discriminate against them, infringe upon their basic rights and to manipulate them. These 'practices' are also constantly accepted not just by the society but have also been known to be condoned by the so-called leaders who claim that such crimes, along with many others are 'customary practices' and should not be criminalised. The law has also constantly been manipulated to overlook these practices as 'crimes' and therefore allowing perpetrators to go free.

The biggest success of the passage of this legislation through the National Assembly is that there is an acceptance by the elected representatives and supposed leaders of the country that crimes committed against women under the guise of 'customary practices' are in actuality crimes. This is the first step towards a social prohibition and repulsion of these abhorrent crimes.

What is necessary is for the Senate to also pass the Bill within 90 days of having been passed by the National Assembly. It is only then that this Bill will become the law of the land and the Government and members of the Senate will show their true commitment to the women's cause and towards the elimination of discrimination against women.



MNA Dr Donya Aziz addressing a reception given in her honour by Aurat Foundation in Islamabad.

## The Bill commended as landmark achievement

AF Staff Report

ISLAMABAD: Civil society activists, senior lawyers and women parliamentarians showered praise on Dr. Donya Aziz, Member National Assembly from PML-Q for her initiative in moving and pushing her Private Members Bill to a resounding success in the National Assembly to end customary practices against women in Pakistan. They described the passage of the Bill as a landmark event and an historic achievement in the interest of women.

Aurat Foundation's Legislative Watch Programme for Women's Empowerment organized the reception ceremony to share information and the joy on the 'Passage of the Prevention of Anti-Women Practices (Criminal Law Amendment) Bill, 2011, and Way Forward' on Thursday, 17 November 2011, at Islamabad.

Dr Donya Aziz, being the prime

mover of the Bill was the Chief Guest and Ms Anis Haroon, Chairperson, National Commission on the Status of Women presided over the function. The panel of speakers included Senator Nilofar Bakhtiar, Ms Tahira Abdullah, Ms Samar Minallah, Ms Rehana Hashmi and Naeem Mirza, Chief Operating Officer, Aurat Foundation. All the speakers congratulated Dr Donya Aziz for bringing the bill and getting it passed from the National Assembly.

Dr Donya Aziz, while giving her remarks and responding to various comments and concerns raised by the speakers, said that all supporters of the Bill in the National Assembly and members of the concerned Standing Committee, as well as, her senior colleagues in PML-Q deserved appreciation for this achievement as without their support it would have not been possible.

"We faced a lot of resistance at vari-

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**2. 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:-

**"310-A. 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."

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## Explanation:

The provision extends the section to include punishment for giving a female in wanni or swara, apart from the already existing badla-e-sulh.

The provision can essentially be broken down into the different essential features required for a commission of a crime under the proposed section.

There is a pre-requisite of an existence of a civil dispute or a criminal dispute. The mens rea is quite restrictive as it requires that a female will be given in marriage for the sole purpose of settling a civil dispute or a criminal liability. If a female is not given for this purpose, it will not fall under this section.

The provision also applies primarily to those who 'give' the female in marriage i.e. usually the family of the female. It does not necessarily penalize the other parties involved i.e. the ones who facilitate the marriage, the witnesses, other family members and most importantly, the bridegroom and his family i.e. those on the receiving end of the bargain.

However, in certain situations, depending on the individual circumstances of the case, any person who may have 'compelled' the female into such a marriage will fall under the section.

The Black's Law Dictionary, Eighth Edition defines 'compel' as:

*"To cause or bring about by force, threats or overwhelming pressure"*

This force, threat of pressure may be applied by any person, not necessarily a member of the female's family. It can be both direct and indirect and can include the bridegroom or members of the bridegroom's family, village or family elders etc as the persons punishable under this section for 'compelling' the female into such a marriage.

The biggest issue with the section lies with its lack of definition. By not defining 'wani', 'swara' or even 'custom' or 'practice', therein lies a loop hole in criminal law. General definitions may be used but the courts may remain reluctant to include certain acts to fall within this section, thereby continuing to give perpetrators immunity by refusing to define their actions as a crime under this act.

Such marriages have also not been declared void or voidable. It is also necessary that women and children in such marriages must be provided mandatory maintenance and compensatory costs depending on the period of marriage.

Criminal law also provides that in situ-

ations where there is even a little doubt as to whether an act falls within the definition of the crime under a certain section, the decision will be made in favour of the accused. Due to the restrictive nature of the section and the lack of definition, there is danger that few convictions will be made under this section.

**3. 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 Offences against Women

**498A. Prohibition of depriving woman from inheriting properly.-** 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 ten 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 arranges 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 un-married for the rest of her life or, not to claim her share of inheritance shall be deemed to be marriage with the Holy Quran."

## Explanation:

**Section 498A** deals with the issue of depriving a woman from inheriting property. Essentially, this section is meant to provide protection to women from having her inheritance taken away from her.

The use of the words 'deceitful' and 'illegal' make the section restrictive. This means any act done under different circumstances e.g. duress, emotional blackmail will be exempt. Therefore in situations where the woman may be compelled to give up her share due to emotional blackmail, pressure from the family or any other form of compelling her to do so, but which does not involve 'deception' or 'illegality', would not fall within the purview of this section. It would per-

haps have been more effective to simply state that a woman is not to be deprived of her inheritance by any means whatsoever.

Further the use of the term 'opening of succession' may result to some confusion. Logically, the intention of the legislation was from the moment when the female becomes entitled to her inheritance i.e. immediately upon the death of the person from who she inherits. However, certain judges and courts who may be more interested in stalling the proceedings may insist on this term meaning from the moment an application for succession and inheritance is filed.

While the intention of this section is positive, there are questions as to how to implement it effectively, even by the female's lawyers. Also, a restoration of the right of a female to inherit must be highlighted.

**Section 498B** deals with forced marriages. In essence, this section can validly include the provisions of Section 310A. Black's Law Dictionary, Eighth Edition defines 'coerce' as:

*"To compel by force or threat"*

As the section is not restrictive, any person playing a part on the compelling or coercing of the female can be held accountable under this section.

In essence, the section deals with all different forms of forced marriages for all purposes, whether it relates to child marriages, marriages for purposes of land, for settlement of disputes, for purposes of forced conversion etc. It is important to note that no pre-requisites are there for filing a case under this section apart from the 'compelling' and 'coercing'.

One issue that may arise is that the maximum sentence in this section is 10 years, while in Section 310A, the maximum sentence is 7 years. This may result in applications under Section 310A as opposed to this section as the chances for a shorter punishments increase in the aforementioned section.

Another major issue is that this section may provide a punishment for those involved, but it does not declare the marriage void or voidable, nor does it provide protection for the female, even terms of monetary compensation or maintenance of the female depending on the period of marriage. Demanding a 'khula' is not enough of an answer. By declaring the marriage void or even voidable, allows the woman the dignity to admit that this was not a 'marriage' as a 'marriage' is only valid and legal by consent of the bride.

**Section 498C** covers the very common issue of marrying a woman to the

Quran, usually for property reasons i.e. to keep the female's land inheritance within the family i.e. not to lose any 'family' property due to marriage to an outsider.

This is a serious issue and a further definition of 'marriage to the Quran' has been provided. Reporting or implementation under this section will most likely be negligent but it is hoped that the Government and Judiciary will take the initiative to implement this law in its true spirit.

**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)."

## Explanation:

This section takes away the power of the Provincial Government to interfere with sentences under this Bill. The different forms of interference have been defined in the Black's Law Dictionary, Eighth Edition as:

## Suspend

*"To interrupt; post pone; defer; To temporarily keep (a person) from performing a function, occupying an office, holding a job or exercising a right or privilege."*

## Remit

"To pardon or forgive; To abate or slacken, to mitigate; To refer (a matter for decision) to some authority, especially to send back (a case) to a lower court." Despite the devolution of powers to the Provincial Governments, this position has been maintained. It is important to realize that this means that the Federal Government recognizes that these crimes are of a national nature and deserve this recognition and importance.

Another reason for this section is that the Provincial Governments remain susceptible to influences within the Provinces to exercise their powers and let free or reduce convicted felons. This observation is based on history and experience of the judicial systems of the provinces. This section is specifically designed to meet this challenge and is much welcomed.

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5. 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-e-sulh, wanni or swara	Shall not arrest without warrant	Warrant	Not bailable	Not compoundable	Imprisonment of either description which may extend to seven years but shall not be less than three years and fine of rupees 500,000/-"	Court of session 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 ten years but not be less than five years or with a fine, of rupees 10,00,000/- or both."	Court of sessions"
498B	Prohibition of forced marriages	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description which may extend to seven years and but shall not be less than three years and fine of rupees 500,000/-"	Court of sessions or magistrate of first class.
498C	Prohibition of marriage with the Holy Quran	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description which may extend to seven years but shall not be less than three years and a fine of rupees 500,000/-"	Ditto

### Explanation:

The 2011 legislation does not provide for any special methods of reporting crimes falling within the definitions of

this legislation. Therefore, the existing general provisions and procedures of the criminal legal system of Pakistan will apply. This may be problematic given the slow, delayed and tedious

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ous stages from several quarters, but the fact that everyone supported it in the end should be considered as a sea change in the mindset of the elected representatives of people. This is a positive sign," Dr Donya Aziz said. She said though everyone had supported it, she would like to dedicate this success to the women's rights activists because they began the struggle for these objectives a long time ago, when she was in kindergarten.

She said that any amendment proposed by the Senators or concerned civil society organizations should be welcome. However, the Bill should be approved from the Senate in its present form to avoid any hindrance. "Once it becomes law, amendments could be moved in the law for making it a perfect piece of legislation," she said.

Ms Anis Haroon, Chairperson, National Commission on the Status of Women (NCSW), appreciated the passage of the bill as a landmark achievement towards women's empowerment. She said that the bill would also result in ending the violence against women. Women's rights organizations and committed activists

## The Bill commended

have been struggling for decades to have this kind of legislation. She offered her full support in getting it passed from the Senate.

Senator Nilofar Bakhtiar, in her address, gave her commitment that she would not only fully support the passage of the bill from the Senate but would also create a support base in the Senate for its passage. Responding to the opinion form some speakers that the loopholes in the bill shall be removed in the Senate, she suggested that if the bill is further amended in the Senate then it will have to be sent to the joint sitting of the Parliament to be passed again which would further delay the passage of the bill.

Ms Tahira Abdullah, a renowned human rights activist, while analyzing the bill pointed out that although the passage of the bill was appreciable but still there were some loopholes which should be addressed when the bill would be presented in the Senate. She said that in column 8 of the schedule II, Act V of 1898 'or' should be replaced with 'and' to make it effective. She also expressed concern whether magistrate of first class

nature of Pakistani criminal law system. The issues identified under this legislation are often immediate and it would be welcomed to make any specific procedures and a timeline whilst dealing with such cases.

The changes made in the table evidence that all the crimes in this section are non-bailable and not compoundable. This means that the accused shall not be allowed out on bail. The Black's Law Dictionary, Eighth Edition defines 'compound' as:

"To settle a matter especially a debt, by a money payment in lieu of other liability to adjust by agreement; To agree for consideration not to prosecute (a crime)".

This means that the crime cannot be compromised on the payment of money. This is a highly welcomed addition to the law. Often cases involving women result in the perpetrators paying money for the non-prosecution or withdrawal of the case at hand.

### Conclusion

It is important to realize that the work with regards to this legislation is not done yet. It is necessary for these involved Parliamentarians and members of the women's movement to start lobbying with the Senate in order to ensure the passage of this Bill and not allow it to lapse as other critical Bills have been allowed to do in the past,

such as the Domestic Violence Bill 2009.

Once the law has been promulgated, it may be necessary to introduce a set of rules into the Assembly which may be able to provide amendments to the existing gaps in the legislation.

There are many opponents to the Bill, which highlight its shortcomings and talk about difficulty of implementation. However, it must be reiterated that the very recognition given to the criminality of these acts by the National Assembly is a great social victory. The passage of the law through the Senate would be a legal victory. The questions and worries related to implementation are a nationwide issue with almost any law, especially with those involving women. However, problems with implementation do not mean that the law should not be passed. In fact, it means that it is essential for the law to be passed in order to allow us to work on its proper and transparent implementation.

In the meantime, this great victory and the work and dedication of the women Parliamentarians, their male supporters involved and activists of the women's movement must be applauded but with a realization that much work remains to be done.— *The author is a practicing lawyer and legal consultant on women's legal rights and international instruments.*

defined here. Referring to Section 498A he said that the women who had been deprived from her property/succession must be given back her rights or property after determination of her legal heirship simultaneously at the time of the decision of the court under this law.

He further said that under section 498B the person who arranged, facilitated the forced marriage must be included to cover the witnesses e.g. the Nikah Registrar and the forced marriage must be declared null and void. Any victim/women or child shall be entitled to take maintenance or other rights regarding the period of marriage, he said.

Earlier Mr Naeem Mirza, Chief Operating Officer of Aurat Foundation, said that the civil society and women's rights organizations and activists are concerned that the bill was now in the Senate, where two important women's rights bills had already been stalled in the recent past. "We all hope that the Senate will pass this bill to make it an act. If the Senate blocks the bill, the civil society would have no other option except to give 'dharna' (sit-in) in front of the Parliament House.

as magistrate would have the authority to fine the culprits with ceilings given in the bill.

Ms Samar Minalah, a prominent human rights activist and a filmmaker, while giving her opinion on the passage of the bill, said that when the bill will be presented in the Senate, it would be important if 'sung-chati', a kind of marriage similar to 'swara' and 'vani', shall also be added in the bill as liable to punishment.

Ms Rehana Hashmi, Executive Director, Sisters Trust, appreciated the government for supporting the bill and giving importance to women's rights issues. She also said that the government now has responsibility to get the bill passed from the Senate as well. She said that the government and the courts also need to devise a strategy for its smooth and just implementation.

Mr Mohsin Akhtar Kayani, Advocate, said that 'wanni and Swara' have not been defined in any law (PPC & this bill), therefore, it would have been ideal if these would have been

# Parliamentarians reach consensus on 10% party tickets for women on winnable general seats



Participants from across political parties, legislatures, governments and civil society in a group photo during the the roundtable conference of (WPC) in Islamabad.

## AF Staff Report

**ISLAMABAD:** Women parliamentarians and party leaders from across political parties have agreed to build consensus among their respective political parties to provide a minimum of 10 per cent quota for women on winnable general seats before the next elections. The demand came from the women parliamentarians in the form of a declaration at the conclusion of a roundtable on "Strengthening women's representation in political and legislative process" organised by the Women Parliamentary Caucus (WPC) on 29 September 2011 here.

A declaration issued by the WPC at the end of the conference urged the party leaders and members Parliament to initiate a dialogue with political parties on the different ways to strengthening women's representation in legislative assemblies.

The parties represented were PPP, PML-N, ANP, PML-Q, MQM, PPP (Sherpao), BNP, PML-F. Senior office-bearers of parliamentary political parties and members of the national and all four provincial assemblies including MNA Yasmeen Rehman, Secretary General ANP, Ehsan Wyne, MNA Bushra Gauhar, MNA Asiya Nasir, MNA Tasneem Siddiqui, Women Wing President PML-Q Farrukh Khan, MNA Ahsan Iqbal, MNA Nushat Sadiq, MNA Ghazala Gola Women Minister Balochistan, Deputy Speaker AJK, Senator Saeeda Iqbal, Senator Farah Aqil, Shaheen Dar, Shama Mithani MPA, MPA Nargis Faiz, MPAs from Gilgit-Baltistan and AJK participated in the dialogue. Deputy Chairman Senate, Mir Jan M Jamali was the chief guest on the occasion.

In his address, Mir Jan M Jamali highlighted the meaningful role women have played in the legislative business. He strongly admitted the nexus between sustainable developments and the role of women at the political and decision-making, and strongly recommended the need to give a minimum of

33 per cent women's representation in the legislative assemblies.

MNA Nafisa Shah and WPC secretary general, in her opening remarks referred to the outstanding and proactive performance of the women legisla-

tion in the legislatures making it more transparent, effective, and empowering for women in politics.

The parliamentarians across party lines committed further to protect and preserve the provision of reserved seats for

respective political parties to increase women's representation at all levels of decision making in the political forums.

Speaking on the occasion, Ahsan Iqbal Secretary General Pakistan Muslim League (Nawaz) said Political Party Act should be amended and recommended that one-third women participation should be made mandatory in each political party for general seats.

He said five major challenges that hinder women from taking part into mainstream politics include economic participation, educational attainment and achievement, feminisation of poverty and health, political empowerment and social dignity and lack of access to justice.

Member National Assembly Yasmeen Rehman representing Pakistan Peoples' Party (PPP) said first prime minister, speaker National Assembly and deputy speaker provincial assembly hails from PPP, which shows clear manifesto of the party to promote and empower women. Haider Abbas Rizvi from Muttahida Qaumi Movement (MQM) suggested that for increasing number of women in Senate, they should be considered for seats of technocrats.

Anisa Zeb Tahirkheli, representing Pakistan People's Party Sherpao (PPPP) said that women parliamentarians on reserved seats should be trained and groomed. She also urged for allotting cabinet slot to women elected on reserved seats and funds should be reserved for them.

Officials from the Election Commission of Pakistan, representatives from civil society organizations, including Mr Naeem Mirza and Dr Farzana Bari, made presentations on different aspects of the laws relating to participation in elections, quota systems around the world and best practices, as well as various election modalities available to make the present provisions on women's reserved seats more effective.

## WPC DECLARATION

We, the Women Parliamentarians Members of Provincial Assemblies of Balochistan, Khyber - Pakhtoon Khwa, Punjab, Sindh, Gilgit-Baltistan, and Azad Jammu and Kashmir, and representatives of political parties, participating in the one day Roundtable Conference on the "Strengthening Women's Representation in Political and Legislative Process", organized by the Women Parliamentary Caucus held in Islamabad on Thursday, September 29th 2011, hereby adopt the following Declaration on this day of the September 29th 2011: **Recalling that:** The Constitution of Pakistan provides women equal rights, rejects all forms of discrimination and promotes their full participation in public life under Articles 25, 34, 35 and 37.

**Further Recalling that:** The National and International Commitments of Government of Pakistan including the National Policy for the Development and Empowerment of Women (NPDEW) 2002, Convention on Elimination of All kinds of Discrimination Against Women (CEDAW), and International Covenant of Civil and Political Rights (ICCPR), underscore attainment equal opportunities for women in the public and political spheres as inextricably linked to human rights, democracy and inclusive sustainable development and human security.

**Paying tribute to:** All the women leaders of Pakistan particularly Fatima Jinnah, Rana Liaqut Ali and Shaheed Mohtarma Benazir Bhutto whose courage and exemplary contributions in public and political life have greatly inspired, built a sense of confidence and empowered the women of Pakistan.

**Recognizing:** The 17 per cent reservation for women in the assemblies and 17 seats in the Senate provided for in Articles 51 and 59 of the Constitution is a significant step in empowerment of women in politics;

**Acknowledging:** the outstanding performance of the Women Parliamentarians and members of the provincial assemblies in the legislative business in the recent years demonstrates and recognizes the meaningful role of women in legislatures and has further strengthened democracy in Pakistan,

**We, Women Parliamentarians and Political Party Representatives in this Roundtable Conference, resolve the following:**

- Commit to protect and preserve the provision of reserved seats for women in the National Assembly, Senate and the Provincial Assemblies;
- Further commit to enhancing and strengthening women's representation in legislatures by working within our respective political parties and elected representatives and examining how the systems of elections to the reserved seats could be made more democratic and transparent; And that women are represented at all levels of decision-making in political forums;
- Build consensus among the political parties to amend the Political Parties Act so as to provide mandatory quota of 10 per cent of winnable general seats to women to mainstream them in electoral processes before the next elections.

tors in legislative business in the recent years and recognised Speaker Fehmdia Mirza's role, and recommended that the political parties to review the existing special measures for women's par-

ticipation in the National Assembly, Senate and the Provincial Assemblies, and further committed to enhancing and strengthening women's representation in legislatures by working within our



## EDITORIAL

The sitting National Assembly passed four legislative bills of crucial importance to ensure women's empowerment. These were 'Domestic Violence (Prevention and Protection) Act, 2009', 'Protection Against Harassment of Women at Workplace Bill, 2010', 'Acid Control and Acid Crime Prevention (Amendment) Bill, 2010', and recently passed National Assembly 'Prevention of Anti-Women Practices (Criminal Law Amendment) Bill, 2011'. Out of the four, only one, the 'Protection Against Harassment of Women at Workplace Bill, 2010' became a law, whereas two of the remaining three were either blocked or lapsed in the Upper House of the Parliament, the Senate of Pakistan. The Domestic Violence Bill lapsed after the Senate failed to pass it within the three months period stipulated by the Constitution. It was supposed to be re-tabled in both of the Houses after getting through the Mediation Committee. But this was a pre-18th Constitutional Amendment scenario.

According to the 18th Amendment, the lapsed bills and disputed and unresolved matters need to go to the joint session of the Parliament. This feature of the amendment has created a potential hurdle in the smooth law-making process hitherto going, particularly if the prospective legislation is related to women's rights issues, because summoning and holding a joint session of the Parliament seems to be not an easy task. Another unrealistic dimension of this constitutional requirement is that if any amendment is introduced by any House of the Parliament to any bill passed by the other House, it would also have to return and sent to the joint sitting of the Parliament. It means that practically either of the Houses cannot undertake any improvement of any bill which comes across it after due passage by the other, because that would be risking for an option of the convening of joint session of the Parliament, which no one would like.

Will the 'Prevention of Anti-Women Practices Bill, 2011', recently passed by the National Assembly unanimously face the same fate as meted out by the DVB or prudence will prevail and the honourable Senators would listen to the unheard voices of thousands of those women, who are deprived of their lawful right of inheritance in the name of so-called customs or traditions in the families or see the sufferings of those who are condemned to 'forced marriages' and sold in the name of wanni or swara. Already protesting the blockage of two important pieces of legislation in the Upper House, the civil society organizations and human rights activists expect a different and gender-sensitive response and hope that sanity would prevail in the Senate.

## Incidents of violence against women in Pakistan show sharp increase

AF Staff Report

ISLAMABAD: Aurat Foundation's Policy Data Monitor-Violence Against Women (PDM) Programme has observed sharp increase in the reported cases of violence against women during January to June, 2011, as compared to the same time period last year. The statistics revealed by the organization with heavy heart, show that a total of 4448 cases of VAW were reported during January to June, 2011, as compared to 4061 reported during same period in year 2010.

Out of the total 4448 cases of VAW during first six months of the current year, 3035 cases were reported from Punjab, 819 from Sindh, 389 from Khyber Pakhtunkhwa and 133 from Balochistan, whereas 72 cases were reported from Islamabad Capital Territory (ICT).

Abduction and kidnapping topped the list of violence against women with 1137 cases reported in only six months of the current year. Murder of women for various reasons (including property dispute, men going for more marriages etc, but not including the 'honour' crime) was the second largest crimes with 799 number of women murdered during the reported period. Rape/gang-rape were the third largest category with 396 cases reported. Increase in committing suicide among youth, was another alarming factor which indicated the violent environment women of the country live in - During the reporting period, 402 precious lives were lost as they killed themselves.

Contrary to overall increase in reported cases of violence against women in the country, the number of reported cases in Sindh province show a decline in violence against women, compared to the figures composed last year. This might be due to fact that

print media put on its priority the coverage of law and order situation in Sindh during the reporting period. Compared to last year's figure of 940 cases, this year, during the same period, i.e. January to June 2011, 819 incidents of violence against women were reported in 23 districts of Sindh.

By sharing this data with the media and concerned institutions, Aurat Foundation also expresses its commitment to shape a society composed for 'Zero Tolerance to violence against women' in Pakistan. The data was gathered and compiled from the newspapers from all regions and languages.

As compiled, out of a total of 4448 cases of violence against women in Pakistan, there were:

- 1137 cases of abduction/kidnapping:
- 799 cases of murder:
- 396 cases of rape/gang-rape:
- 402 cases of suicide:
- 382 cases of 'honour' killing:
- 356 cases of domestic violence:
- 57 cases of sexual assault:
- 16 cases of stove burning:
- 22 cases of acid throwing:
- 881 cases of violence were of miscellaneous nature: (vanni/swara, custodial violence, torture, trafficking, child marriages, incest, threat to violence, sexual harassment, attempted murder, land Encroaching, harassment at workplace) in the four provinces and in Islamabad.

The number and percentage of the cases of abduction/kidnapping is the highest i.e. 1137 with a very high percentage of 25.7%. Murder, the second highest offence reaches about 17.56% of the total offences. However, the menace of suicide seems to have taken over the youth and reaches up to 9.04% of the total cases with 400 victims losing their lives.

## Rural women are backbone of economy

ISLAMABAD: Women's Parliamentary Caucus (WPC) paid tribute to the rural women around the world while recognizing their great role in promoting rural economy and ensuring food security, on the occasion of Pakistan's national and International Rural Women's Day on 15 the October 2011.

The WPC said in a statement that "Rural Women's Day is a very special day for all the women and men around the world, as it reminds us of the critical role rural women play in securing food for all and alleviating poverty. It is, therefore, a day that acknowledges how women remain a major factor in the sustainable development and growth of their respective villages, their country and ultimately the world at large".

Comprising more than half the women population, it is unfortunate that the rural women around the world remain severely disadvantaged themselves. Their access to financial services, agricultural extension, education, health care and human rights are generally overlooked. Despite the significant contribution they make in food production and management of natural resources, their land ownership and access to productive resources including their access to credit, technical assistance and participation remains a major impediment in their prosperity. In Pakistan, unfortunately, despite women's legal rights to own and inherit property from their families, very few women have access and control over these resources on account of the traditional mindsets.

Being essentially an agricultural country, Pakistan greatly values the critical role its rural women continue to play in its development. In recognition of their contribution, the Prime Minister of Pakistan in 2010 declared the International Women's day as the "National" Rural Women's day.

The Women's Parliamentary Caucus (WPC) is mindful of the poor socio economic status of the rural women in Pakistan. The WPC is endeavoring towards improving the state of women in the country by introducing women friendly legislation and policies that could provide conducive work environment and access to productive resources and opportunities at all levels for the women across the board. This includes improving and ensuring their land ownership rights, their health care facilities, literacy, economic well being, and their access to water and sanitation.

The devastations caused by the floods of 2010 and the 2011, have severely impacted the economic and social status of the rural women. The ultimate brunt of the unprecedented damage caused to the life, property, livestock, and crops, especially in Sindh has been on the rural women who have lost everything and remain the poorest of the poor. The WPC forum is in the process of lobbying for reviewing the Rural Development Policy that will ensure that the affected women are adequately compensated and the implementation of their land rights are ensured.

### LEGISLATIVE WATCH



Legislative Watch is produced by the Resource Service of the Legislative Watch Programme for Women's Empowerment of Aurat Publication and Information Service Foundation at Islamabad.

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Layout & design by: Kashif Gulzar

Printing funded by: MFA, Norway

# Condition of widows in Pakistan

By Dr Masuma Hasan

Being a widow is not a stigma in Pakistan either in religion or under the law. Marriage in Islam, which is the religion followed by the majority of the population, is not considered as sacrosanct. It is viewed as a civil contract between two individuals which can be dissolved. Thus the extreme sanctity attached to marriage in certain other religions does not operate to turn a widow into an outcast or be held responsible for her husband's death. Traditionally, widows have been encouraged to re-marry and marriage to a widow has always been considered as an honourable act.

According to the latest Census (1998), in a population of 132.4 million, there were 2.7 million widows in the female population of 69 million. The largest number, 442,179, were found in the age bracket 75 years and above, followed by 416,773 in ages 60 to 64 years, and 326,176 between 50 to 54 years. However, Pakistan's population in 2010 is estimated at over 170 million so the number of widows has also increased.

## Supportive influences

The law of the land, as embodied in the Constitution of 1973, and all previous constitutions, does not discriminate between the rights of women and men. The Constitution guarantees equal rights to both and rules out discrimination on the basis of sex. It empowers the State to make special laws for the protection of women and children and take steps to ensure the full participation of women in all spheres of national life and protect the marriage, the family, the mother and the child.

A widow inherits one-fourth of her husband's property if she has no children, and one-eighth of his property if she has children. The Government has made humane provisions for the widows of its employees. After the death of a Government employee, his widow receives the family pension until her own death. Widows of lower paid employees also receive a one-time grant for rehabilitation from the official Benevolent Fund. In the private sector, which works for profit, there are no universal rules governing support for widows of deceased employees, but given the culture of philanthropy, some short-term provision is probably made.

Since 1980, an officially administered zakat system has been operating in Pakistan. Zakat is a tax levied on Muslims at the rate of 2.5 per cent on 11 categories of assets. These funds are used for the benefit of widows, orphans and other needy persons and for those rendered homeless by natural calamities. They are collected by the State and their disbursement has been

made the responsibility of the provinces through the provincial zakat committees. These committees operate down to the community level and disburse *guzara* (sustenance) allowance of which widows are also beneficiaries. Pakistan Baitul Mal (State Treasury), established in 1992, provides financial assistance to widows, orphans, destitute and sick persons, and for welfare projects including education, health care and self-employment schemes. The Government has issued special saving certificates for widows, pensioners and senior citizens. It has also set up the First Women Bank to encourage women to save and invest and Khushali Bank which operates micro-credit schemes, and many of whose clients are women.

Pakistan has one of the highest levels of private social investment (philanthropy) in the world. It has been estimated that 100-120 billion rupees are donated privately every year for welfare, which amounts to 2 per cent of Pakistan's GDP. This sum is remarkable because Pakistan is a poor country. The volunteering rate in Pakistan is twice that of the global average. Traditionally, supporting widows and orphans, who are the beneficiaries of philanthropy, has been viewed as acts of piety.

There are great regional and class disparities in the status of women in Pakistan and, therefore, also in the condition of widows. In the last two to three decades, women have made a remarkable appearance on the economic and political scene. One indication of self-reliance among them, including widows, is the growing number of women-headed households. In the urban areas, women headed households have multiplied because of the expanding informal sector in which the majority of women work and contribute.

Urbanisation and the spread of female education have given more space and opportunities to single women, including widows, to survive and find livelihoods. Urbanisation has broken down many barriers. According to the Pakistan Economic Survey 2009-10, Pakistan is the most urbanised country in South Asia, with an urban population of 36 per cent. However, based on other development indicators, experts place this figure at well over 40 per cent.

The overall female literacy rate (10 years and above) in the 1998 Census was 32 per cent and is estimated officially at 45 per cent at present. There are large differences in female literacy between the urban and rural areas. In a mega city like Karachi (now estimated at 16 million) there is not much difference between female and male (both above 70 per cent) literacy rates between the ages of 15 and 24. On the

other hand, there are immense regional disparities in female literacy and access to education opportunities. However, female enrolment at all levels of education is one of the fastest growing development indicators.

## Negative factors

In spite of the positive elements in the legal and constitutional parameters described above, widowhood is a condition of extreme distress for women in Pakistan. To use a local metaphor, when a woman becomes a widow, she feels as if the protective *chadar* from her head has been removed and the status of dependence has been thrust upon her. Most of the problems of survival which widows face are linked to poverty and two-thirds of the poor live in the rural areas. Poor women, who do not possess land and productive assets, live out the rest of their lives on the fringes of existence. Those who do possess assets can be exploited by the strong male culture, especially in the rural areas. They are also the victims of social and cultural prejudice and abuse.

Successive governments have not addressed the problems of widows specifically and no special policy initiatives have been taken to ameliorate their condition. The concern for widows falls within the context of concerns about women in general. Legislation discriminatory to women, introduced in the 1980s, had strengthened the hands of conservative forces and eroded the atmosphere of tolerance. Women's and citizens' rights activists, as well as professional organisations, have campaigned forcefully for the repeal of these laws.

The ability of widows to survive independently and seek livelihoods depends on the level of social and economic development in the region where they live, although there are always some trail blazers. Education brings confidence, but perhaps the most important element is the availability of safe and affordable transport to facilitate the widow's journey out of the protection of her home.

Single women, including widows, take charge of their families and dependents because of male migration, divorce, desertion, and the deaths of husbands caused by war, calamities and natural causes. Those who do not own land and productive assets may not have access to credit facilities or possess the skills to earn their own livelihood. Many community based organisations have long realised that women need very small amounts as loans, not tied to collateral, in order to start survival enterprises. Scores of such organisations throughout Pakistan now provide these small amounts. Poverty still prevents the poorest of the poor from accessing the facilities available in for-

mal institutions like First Women Bank and Khushali Bank.

Women, including widows, do not get fair remuneration as wages either, although women's rights organisations have lobbied for the reflection of their work in the formal workforce. In the rural areas, they spend long hours in crop and livestock production and in post harvest activities. However, their control over access to land, agricultural inputs, technology and support services such as credit, extension, training and markets is limited. In the urban areas, due to lack of mobility and access to markets, they are paid far less than counterpart male workers.

Although assessments of the scale of philanthropy in Pakistan have taken everyone by surprise, disbursement and use of the large sums generated is random and uncoordinated. Most philanthropy takes the form of private transfers between individuals. With some initiative, utilisation of part of the huge amounts donated annually can be accorded priorities and channelised formally into specific programmes for the uplift of widows.

## Natural calamities

No single event threw up the problems of widowhood in Pakistan quite as dramatically as the earthquake of 8 October 2005. The earthquake measured 7.6 on the Richter scale and caused catastrophic damage. Official estimates placed the number of dead at 79,000 but unofficial mortality figures were as high as 300,000. Most of the casualties were women and children. Half a million children are said to have been orphaned and thousands disabled. It was estimated by the media that 66,000 women became widows and four million people became shelterless. Some women lost not only their husbands but also their children, land, homes and livelihoods. Perhaps the greatest upheaval caused by natural calamities is the breakdown of established social support systems and relationships. Widows who are absorbed by extended families are generally protected but those living alone face new and unknown challenges. Security becomes the major problem in their lives.

## Internally displaced persons and the battle against extremism

Pakistan has been at the centre of the battle against extremism and violence which has led to death and injury to thousands of its citizens. Women have become widows because of the violence perpetrated by extremists in suicide attacks and other forms of militancy. In Swat Valley, Army action against extremists was preceded by the evacuation of the whole population and the internally displaced persons

Continued on next Page





AF delegation from Karachi office offering Fateha Khawani at Garhi Khuda Bakhsh. (R) A view of the candle light vigil for Begum Nusrat Bhutto at Lahore.

## Life and struggle of Begum Nusrat Bhutto remembered

**ISLAMABAD:** Aurat Foundation organized a condolence reference on Thursday October 27, 2011 to pay tribute to Begum Nusrat Bhutto for her struggle for democracy and women's empowerment. At the occasion, Ms Tahira Abdullah reminded the participants Nusrat Bhutto also served as the Chairperson of Red Crescent. Her contribution as the chairperson of the Red Crescent had gone a long way in improving the country's image. Naeem Mirza, COO, Aurat Foundation, in his opening remarks, said that Begum Nusrat Bhutto stood like a huge wall of resistance before the Zia-ul-Haq

tyranny and defeated its nefarious designs. She failed the dictator's plan to eliminate Zulfikar Ali Bhutto, ideologically and politically. "There is a dire need to inform our new generation about all those heroes and legends who made sacrifices and big contributions for Pakistan like Begum Nusrat Bhutto", said Rakhshinda Parveen. Kishwar Naheed read her poem 'teri jasi maa...' to pay tribute to Begum Nusrat Bhutto. Other speakers also included Rehana Hashmi, Senator Babar Awan, Zamurrad Khan (Chairperson Bait-ul-Maal), Senator Saedam Iqbal (PPP), Senator Farhat

Abas Syed (wife of Late Syed Qamar Abas), Nargis Faiz Malik (member National Assembly and President Women Wing of Islamabad District, Nasreen Azhar (member NCSW), Senator Begum Surya Amir-ud-Din, Advocate Shah Khawar (farmer Deputy Attorney General of Pakistan) and Marvi Sarmad (human rights activist).

**KARACHI:** Aurat Foundation's Karachi sent a staff delegation on 25th October, 2011, to Naudero to offer Fatiha Khawani on the death of Begum Nusrat Bhutto. The delegation includ-

ed Mahnaz Rahman, Resident Director, Shireen Aijaz, Regional Coordinator PDM-VAW, Rubina Brohi, Regional Coordinator LWP-WE and Muneezeh Khan Program Officer, M&E GEP. The staff first offered Fatiha Khawani at the tomb of late Nusrat Bhutto at Garhi Khuda Bakhsh. Later they went to Naudero where they met the President of Pakistan Asif Ali Zardari and his three children Bilawal, Asifa and Bakhtawar.

**LAHORE:** Aurat Foundation, Lahore office organized a candle light vigil on 26th October, 2011, at Charring Cross near Punjab Assembly building, Lahore to remember the Begum Nusrat Bhutto and her struggle for democracy and women's empowerment. The vigil was also attended by Ms Faiza Malik, MPA-PPP, Abdullah Malik, Advisor to the Governor Punjab, Tasneem Chaudhry, General Secretary PPPP and the members of civil society organizations, women parliamentarians, workers of political parties and media..



Kishwar Naheed, Tahira Abdullah, Nasreen Azhar, Senator Babar Awan, Zamurrad Khan and Senator Begum Surya Amir-ud-Din speaking at the condolence reference in Islamabad.

### From Page 6

(IDPs) were housed, where possible, in makeshift tent villages. Women, especially widows, and children who could not fend for themselves, suffered the most as it was difficult for them to move around for food, daily necessities and health care. The IDPs of Swat Valley eventually returned to their homes but this pattern of suffering will follow wherever military action is taken against terrorists.

### Supportive legal measures

The growing number of women in parliament, including the Speaker of the National Assembly, has been a great morale booster for women in Pakistan. Women occupy about 25 per cent (or more) of the seats in both houses of parliament, either through reservation of seats or direct elections.

Over the last few years, the Government has enacted affirmative legislation to promote gender equality and provide protection to women from

## Condition of widows in Pakistan

which widows also benefit.

- The Criminal Law (Amendment) Act 2004 against honour killings, which also target widows, was the result of a long struggle by women activists and women parliamentarians. It equates honour killing with murder and institutes penal punishments but has been criticised by women's groups because it provides for exemptions, waivers and compounding.

- Protection of Women (Criminal Law Amendment) Act 2006 was promulgated to amend the Hudood ordinances and thereby provide some relief to women from their arbitrary and unjust provisions. Relief has been given to victims of rape and other offences but many discriminatory aspects have been retained.

- The Criminal Law (Amendment) Act 2009 has criminalized sexual harassment and provides protection to women against different forms of harassment including written, verbal

and physical harassment, obscene gestures and intrusion of privacy. The law makes all these acts of harassment in public and private spaces punishable by various terms of imprisonment and fines.

- The Protection Against Harassment at the Work Place Act 2010, provides protection to women from harassment at their places of employment. It includes a wide definition of employees on regular or contractual, daily, weekly, monthly or hourly basis, including interns and apprentices and will protect women in sectors such as brick kilns, agriculture, industry, markets and homes. Also, it gives a broad definition of employers in the public and private sectors and clear definitions of harassment and the workplace. It lists major and minor penalties.

The bill on acid throwing against women, the Acid Control and Acid Crime Prevention Bill 2009, was

tabled by four women legislators from different political parties. It is waiting to become law.

### Livelihood support

A recent major initiative by the Government was launching the Benazir Income Support Programme which aims at reducing poverty and empowering women by making them financially self-sufficient. In 2009-10, it provided Rupees 70 billion or Rupees 1000/- per month to 5 million families, including widows, to meet basic necessities or invest in setting up basic businesses. This programme is now multi-dimensional and provides assistance for health insurance and vocational training. It also targets those affected by natural calamities, internally displaced persons, war-affected families in conflict areas and victims of bomb blasts and suicide attacks. Widows are beneficiaries of all aspects of this scheme.—*The author is a former Cabinet Secretary and Treasurer of Aurat Foundation.*





Nisar Ahmed Khuhro addressing the consultation in Karachi. (L-R) Tauqeer Fatima Bhutto, Sharmeela Farooqi and Shireen Aijaz.

## DVB draft discussed at provincial consultation meetings

**KARACHI:** The Policy and Data Monitoring Program on Violence Against Women (PDM-VAW) programme of Aurat Foundation Karachi office held a provincial consultation to discuss the future modalities of the domestic violence bill after the introduction of the 18th Amendment. The consultation was held on 13th October, 2011, at Hotel Marriott. The consultation was chaired by the Speaker of Sindh Assembly Mr Nisar Ahmed Khuhro. Other prominent legislators included Ms Tauqeer Fatima

Bhutto, provincial Minister for Women Development, and Ms Sharmeela Farooqi, Advisor to Chief Minister, Sindh. Ms Anis Haroon, Chairperson National Commission on the Status of Women (NCSW) was also present. The consultation was organized in collaboration with National Commission on Status of Women. Ms Shireen Aijaz, Regional Coordinator PDM-VAW, moderate the dialogue.

**PESHAWAR:** A provincial dialogue



(L-R) Shabina Ayaz, Sitara Ayaz, Karamatullah Chagarmati, Anis Haroon and Zubeida Khatoon at the Peshawar consultation.

on Domestic Violence Bill was arranged by Aurat Foundation, in collaboration with National Commission on the Status of Women (NCSW), on 21st September, 2011, at PC Hotel, Peshawar. Mr Karamatullah Chagarmati, Speaker, Khyber Pakhtunkhwa Assembly, presided the meeting and Ms Sitara Ayaz, Provincial Minister for Social Welfare and Women development was the Chief Guest. Legal experts Ms Maliha Zia (consultant) and Ms Riffat Butt (from NCSW) gave

detailed presentations on the domestic violence bill (DVB). Speaking on the occasion Ms Anis Haroon, Chairperson NCSW, said that after the 18th Amendment, the DVB has become a provincial subject and civil society hoped that the provincial government will take this bill up in the assemblies and get it passed. Ms Sitara Ayaz Provincial Minister for Social Welfare and Women Development said that men MPAs will also be mobilized to support the bill.



Syeda Fiza Batool Gilani at the Aurat Foundation's office in Islamabad.

## Fiza Gilani visits Aurat Foundation

Syeda Fiza Batool Gilani, Pakistan's Goodwill Ambassador for Women's Empowerment, visited Aurat Foundation office, Islamabad, on 21st October, 2011. She was accompanied by Ms Shahnaz Wazir Ali, Advisor to the Prime Minister on Social Sector, Ms Fauzia Sana, Additional Secretary, Ministry of Foreign Affairs at the Prime Minister's Secretariat, Ms Bushra Ali Zulqarnain, member NCSW, and Ms Gulfreeen Sajid and Ms Tania Khawaja from Afreen NGO. From Aurat Foundation, Mr Naeem Mirza, COO- AF, Mr Younas Khalid, Director SP/FME, Ms Simi Kamal, CoP-GEP, Ms Ibtisam Hassan Qaisrani, Coordinator, NAF-GEP, and four National Coordinators namely Ms Nayyar Shabana, Ms Rabeea Shah, Mr Asim Malik and Mr Wasim Wagha. and Ms Bushra Jafar, DCoP-GEP, briefed Syeda Fiza Batool Gilani on various AF programmes, including Gender Equity Programme, and core issues concerning women in Pakistan.

## 'Stop killings in Karachi' rally

A group of citizens of Islamabad and Rawalpindi, joined by Insani Haqooq Itihad (IHI) and senior citizens, workers of various political parties, gathered outside the National Press Club, Islamabad, on August 19, to condemn the brutal and incessant target killings in Karachi. The participants said that the situation of Karachi need all the nation to stand up and say 'ENOUGH IS ENOUGH' - 'WE CAN NOT BEAR IT ANY MORE'; 'IF WE LET IT GO ON, THEN WE ARE NO MORE'. The feared that if the violence in Karachi was not stopped, it will spread to other areas of Pakistan - which means that tomorrow the whole Pakistan will become what Karachi is today, if didn't stand up and unite to bring peace.



(L-R) Qaiser Bengali, Mahnaz Rahman and Rubina Brohi at the consultation

## Women and issues of food security

Legislative Watch Program for Women Empowerment organized a Provincial Consultation on 'Women and Issues of Food Security and Livelihood' on 14th August, 2011, at Marriott Hotel, Karachi. Mr Qaiser Bengali, Economist, & Executive Advisor to Chief Minister, Sindh, said that issues of health, transport and education are equally important and must be paid attention to along with the issues of food security and these issues are basically producing poverty. Mahnaz Rahman, Resident Director Aurat Foundation, Karachi office, shared with the participants that Aurat Foundation was the first to take up the issue of women farmers which included a conference with hari women.