



PAKISTAN  
NGO ALTERNATIVE  
REPORT ON  
CEDAW  
2012



 Aurat Foundation

# Pakistan NGO Alternative Report on CEDAW – 2005-2009

(With Updated Notes - 2009-2012)

## Executive Summary

**Articles 1 – 4:** Definition of Discrimination; Policy Measures to be undertaken to Eliminate Discrimination; Guarantee of Basic Human Rights and Fundamental Freedoms on an Equal Basis with Men; Temporary Special Measures to Achieve Equality

**Article 5:** Sex Roles and Stereotyping

**Article 6:** Trafficking and Prostitution

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**Article 12:** Healthcare and Family Planning

**Article 13:** Economic, Social & Cultural Benefits

**Article 14:** Rural Women

**Article 15:** Equality before the Law

**Article 16:** Marriage and Family

**General Recommendation 19:** Violence against Women

Researched and Written By

**Maliha Zia  
Riffat Butt**

Reviewed By

**Neelam Hussain  
Naeem Mirza  
Nasreen Azhar  
Younas Khalid**

Data Input by Aurat  
Foundation's Team

Mahnaz Rahman, Rubina Brohi  
(Karachi), Nasreen Zehra,  
Ume-Laila, Mumtaz Mughal,  
(Lahore), Shabina Ayaz,  
Saima Munir (Peshawar),  
Haroon Dawood, Saima Javed  
(Quetta), Wasim Wagha,  
Rabeea Hadi, Shamaila Tanvir,  
Farkhanda Aurangzeb, Myra  
Imran (Islamabad)

Chapters Contributed By

### **Implementing CEDAW in Pakistan**

By Tahira Abdullah

### **Democracy and Women's Rights: Pakistan's Progress (2007-2012)**

By Ayesha Khan

### **Decentralization, 18<sup>th</sup> Constitutional Amendment and Women's Rights**

By Rubina Saigol

### **Minority Women of Pakistan: A Case of Double Jeopardy**

By Peter Jacob and Jennifer Jag Jewan

Prepared By



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Tahira Abdullah (Development worker & rights activist), Neelam Hussain (Simorgh), Nighat Said Khan (ASR Resource Centre), Maria Rashid (Rozan), Peter Jacob (National Commission for Justice and Peace), Arifa Mazhar (Sungi Development Foundation), Ume-Laila (HomeNet Pakistan), Zubaida Noor (Noor Education Trust), Kishwar Sultana (Insan Foundation Trust), Sameena Nazir (PODA-Pakistan), Rukhshanda Naz, Naeem Mirza, Rabeea Hadi, Saima Munir and Saima Javed (Aurat Foundation)



# About Authors, Reviewers and Contributors

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**Maliha Zia**, an advocate of the High Court, is a legal expert, researcher and women's rights activist. She has done her LLM in Human Rights from School of Oriental and African Studies, University of London, London. Her legal practice includes litigation and legal research on criminal, civil, family and constitutional law. She has worked for a number of years in the development sector with a primary focus on drafting laws on women's legal rights and protection of women; and as a trainer on women and law and human rights issues. Her extensive work has included several reports, articles and training manuals on issues of international human rights treaties, including CEDAW, discrimination and violence against women in law and the judiciary. Her publications include 'Honour killings and the compliance with law', 'Gender review of labour law' and 'Sexual violence and the law in Pakistan'.

**Riffat Butt**, an advocate and a former civil judge at the District Court Lahore, has extensive experience in civil and criminal litigation as well as in women's rights laws, family laws, evidence, labour and employment laws, international conventions, international humanitarian law and international criminal prosecution. She has undertaken drafting and review of various laws for the Federal and Provincial Governments of Pakistan on women's rights issues. She has extensively worked for personal laws of the minority communities. She is a law graduate of the Punjab University and holds a Masters of Law (LLM) from the University of Minnesota, United States of America. She is a CEDAW trainer; and has also served as legal expert at National Commission on the Status of Women (2011-2012).

**Neelam Hussain** is a feminist thinker and a human rights activist. She is a founder member and Coordinator of Simorgh Women's Resource and Publication Centre, Lahore. Neelam has specialised in English Literature and has edited and written for a number of books including children's stories and English translations of two novels by women writers. Other than research undertaken for Pathways under the Changing Narratives of Sexuality Theme, she is currently involved with research on forced marriage and women's inheritance rights. Neelam is a member of Women's Action Forum.

**Nasreen Azhar** is a well-known women's rights and human rights activist and an independent development consultant. She is founder member of Women's Action Forum (WAF) and a member of the Human Rights Commission of Pakistan since its inception. She has wide-ranging work experience in journalism, adult literacy, research and rights-based social development. She was appointed member of the National Commission on the Status of Women from 2009 to 2012, and won Shaheed Benazir Bhutto Human Rights Award in 2010.

**Tahira Abdullah** is a socio-economic development practitioner, peace activist and human rights defender, based in Islamabad, Pakistan. She has been striving towards gender equality and justice for almost four decades. She is an active member of WAF, HRCP and Legislative Watch Group of Aurat Foundation. Among her numerous works, she co-authored 'Manifesto Suggestions for Political Parties' with Shahla Zia in 2002 and; the 2012 version of the similar handbook with the same title recently co-authored with Naheed Aziz.

**Ayesha Khan** is Senior Researcher at the Collective for Social Science Research, based in Karachi. Her work covers a range of issues, in particular gender and development, social policy and conflict/refugee issues in the region. She has extensive experience in qualitative research design. She has also worked as a journalist and been active in the women's movement in Pakistan. Her recent research has been a multi-country study 'Pathways to Women's Empowerment' in which she examined the effect of paid work on Lady Health Workers in Pakistan.

**Rubina Saigol** is an independent development researcher and women's rights activist. She has been involved in the field of education and social development for the last seventeen years. She has authored and edited several books on education, human rights, women's rights, terrorism, the state and nationalism. She has written extensively in Urdu and English and several of her studies and papers have been published in Pakistan and abroad. She also contributes to national dailies on issues of current concern.

**Peter Jacob** has an academic background of Law, Political Science and Rural Development, and has been part of initiatives involving social inquiry and rights-based advocacy. In his 24 years of engagement with National Commission for Justice and Peace, he has combined intellectual pursuit with sublime activism to bring out several studies that are insightful for further research in the areas of social action and human rights.

**Jennifer Jag Jewan** works in the areas of Education, Theology, Human Rights and Peace Building. She conducts workshops, gives lectures and carries out research work in the said area. She is providing her expertise to several civil society organizations in conducting evaluations and strategic planning.

**Naeem Mirza** is associated with Aurat Foundation for the last 16 years. He is a human rights activist and a former journalist, currently serving as Chief Operating Officer in AF. He is involved in planning, strategizing and implementing strategic organizational obligations to achieve objectives of women's empowerment and gender equality through research, analysis and lobbying and advocacy with political parties, legislators and government on women's rights, human rights and governance issues. He has authored a number of papers, articles and books, which include 'Performance of Women Parliamentarians in 12<sup>th</sup> National Assembly' and 'Seven pro-women laws in seven years'.

**Younas Khalid** is associated with Aurat Foundation for the last 18 years. A development expert and human rights activist, he is currently serving as Chief Strategy and Policy Officer in AF. He is a member of IWRAW Asia-Pacific's global trainers' pool on CEDAW and a member of Finance and Executive Committee of HomeNet South Asia (Trust). While working with civil society organizations, he has focused on institutional development, developing organisational systems and policies with the purpose of promoting women's leadership and gender mainstreaming. Recently he served as Team Leader for the 'Social Audit of Local Governance and Delivery of Public Services-Pakistan 2009/2010'.

# Dedication

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## **We dedicate this Report to:**

- ❖ Nigar Ahmad and Shahla Zia, the co-founders of Aurat Foundation, for their pioneering role and contribution in the field of political, social, legal and economic empowerment of women in Pakistan;
- ❖ Women in political parties and legislatures for their tireless efforts in raising women's rights issues at public forums and active participation in legislation for women; and
- ❖ Malala Yousafzai, the brave Pakistani student, for her commitment to girls' right to education and courage to speak in the face of oppression and obscurantist mindset.



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# Acronyms

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<b>BHU</b>	Basic Health Unit
<b>BISP</b>	Benazir Income Support Programme
<b>CAD</b>	(Ministry of) Capital Administration and Development
<b>CEC</b>	Central Executive Committee
<b>CEDAW</b>	Convention on the Elimination of all Forms of Discrimination against Women
<b>CII</b>	Council of Islamic Ideology
<b>CNIC</b>	Computerized National Identity Card
<b>COPs</b>	Concluding Observations Paragraphs
<b>CrCP</b>	Criminal Procedure Code 1898
<b>CR</b>	Country Report
<b>CSOs</b>	Civil Society Organizations
<b>DVB</b>	Domestic Violence Bill
<b>ECP</b>	Election Commission of Pakistan
<b>EMONC</b>	Emergency Obstetric and Newborn Care
<b>EVAW/G</b>	Elimination of Violence and Women and Girls alliance
<b>FATA</b>	Federally Administered Tribal Areas
<b>FBS</b>	Federal Bureau of Statistics
<b>FIA</b>	Federal Investigation Agency
<b>FJA</b>	Federal Judicial Academy
<b>FSC</b>	Federal Shariat Court
<b>GB</b>	Gilgit-Baltistan
<b>GCC</b>	Gender Crime Cell
<b>GDP</b>	Gross Domestic Product
<b>GDS</b>	Gender Development Sections
<b>GPI</b>	Gender Parity Index
<b>GRAP</b>	Gender Reform Action Plan
<b>HBWW</b>	Home-Based Women Workers
<b>HC</b>	High Court
<b>HO</b>	Hudood Ordinances
<b>HRC</b>	Human Rights Cell
<b>HRCP</b>	Human Rights Commission of Pakistan
<b>ICR</b>	Inquiry Commission Report
<b>ICT</b>	Islamabad Capital Territory
<b>IDPs</b>	Internally Displaced Persons
<b>ILO</b>	International Labour Organisation
<b>KP</b>	Khyber Pakhtunkhwa, one of the four provinces
<b>LHW</b>	Lady Health Workers
<b>LLW</b>	Lady Livestock Workers
<b>MA</b>	Musalihati-Anjuman
<b>MFLO</b>	Muslim Family Laws Ordinance
<b>MICS</b>	Multiple Indicator Cluster Survey
<b>MMR</b>	Maternal Mortality Rate
<b>MNA</b>	Member National Assembly

<b>MNCH</b>	Maternal and Neonatal Child Health
<b>MoHR</b>	Ministry of Human Rights
<b>MoWD</b>	Ministry of Women Development
<b>MoLJ</b>	Ministry of Law and Justice
<b>NADRA</b>	National Data Base Regulatory Authority
<b>NCJP</b>	National Commission for Justice and Peace
<b>NCSW</b>	National Commission on the Status of Women
<b>NFC</b>	National Finance Commission
<b>NGO</b>	Non-Governmental Organisation
<b>NICGAP</b>	National and International Commitments on Gender and Poverty Issues
<b>NPA</b>	National Plan of Action
<b>NPA</b>	National Police Academy
<b>OP</b>	Optional Protocol
<b>PATA</b>	Provincially Administered Tribal Areas
<b>PDHS</b>	Pakistan Demographic Health Survey
<b>PPAF</b>	Pakistan Poverty Alleviation Fund
<b>PPC</b>	Pakistan Penal Code
<b>PPO</b>	Property and Prohibition Ordinances
<b>PSDP</b>	Public Sector Development Program
<b>PSLM</b>	Pakistan Social and Living Standards Measurement survey
<b>PWA</b>	Protection of Women (Criminal Laws Amendment) Act 2006
<b>PWDs</b>	Persons with Disabilities
<b>QSO</b>	Qanoon-e-Shahdaht Order
<b>RHCs</b>	Rural Health Centres
<b>SANWED</b>	South Asian Network for Widows' Empowerment and Development
<b>SC</b>	Supreme Court
<b>SDO</b>	Service Delivery Outlets
<b>SHC</b>	Sindh High Court
<b>SOPs</b>	Standard Operating Procedures
<b>WDDs</b>	Women Development Departments
<b>WPC</b>	Women's Parliamentary Caucus
<b>VAW</b>	Violence Against Women

# Glossary

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- Bait-ul-Mal:** *Bayt al-mal* is an Arabic term that is translated as ‘House of money’ or ‘House of Wealth’, a financial institution responsible for the administration of taxes and distributions of *zakat* in Islamic states. Pakistan *Bait-ul-Mal* is an autonomous body administering the distribution of *zakat* to destitute, widow, orphan, invalid, infirm & other needy persons.
- Hadd:** It literally means the ‘limit’ and has been defined as punishment ordained by the Holy Quran or Sunnah. Its plural is Hudood.
- Haq Mehr:** Dower.
- Hazara:** A tribal group living in Balochistan province of Pakistan (migrated from Afghanistan).
- Iddat:** In Islam, *iddat* is the period a women must observe after the death of her spouse or after divorce during which she may not marry another man. The period, three months after a divorce and four months and ten days after the death of her spouse, is calculated on the number of menses that a woman has.
- Jirga or Panchayat:** An assembly/an informal body of male elders, usually tribal, formed for purposes of resolving disputes and deciding social problems. The term is from the Pashto language of Khyber Pakhtunkhwa but the *jirgas* exist throughout Pakistan. In Punjab, a *jirga* is also called *panchayat*. *Jirgas* were declared unlawful by the Sindh High Court, but they continue to function. They are dominated by influential members of the community who are usually conservative and hold patriarchal views.
- Kammi:** Services giving castes.
- Karo kari:** A Sindhi term literally meaning ‘disreputable man - disreputable woman’ (who have brought disgrace and dishonour to the clan or family by indulging in an ‘illicit’ relationship), an ‘offence’ for which, according to cultural tradition, such a man and woman must be killed in order to redeem family or clan honour. In Balochistan the term used is *siyah kari*.
- Katcha houses:** Houses made of mud.
- Khula:** Women’s right of divorce.
- Lian:** When husband and wife both swear on oath to emphasize the veracity of their statement.
- Masoom-ud-dam:** One whose life is sacred or protected.

- Nikahnama:** Marriage registration deed.
- Nikah Registrar:** The one who register marriage.
- Purdah:** Veiling.
- Qisas and Diyat Ordinance:** Promulgated by the military dictator General Zia-ul -Haq as an Islamic law, it made murder a compoundable crime. In addition to encouraging crime in general, this law has also encouraged killing of women on the pretext of 'honour' allowing the murderer to seek forgiveness from family members.
- Rajam:** Stoning to death.
- Talaq:** Divorce.
- Tazir:** Sentence of imprisonment or death under normal law.
- Vanni/Swara/Sang-chatti/Irjaai:** A custom in Pakistan whereby young girls and female children are given as compensation and forcibly married to members of the enemy clan to end tribal feuds or to compensate for a crime committed by a male member of the family. In the Punjab province, the tradition is called *vani*, in Sindh it is known as *sang-chatti*, in Balochistan it is called *Irjaai* and in Khyber Pakhtunkhwa it is called *swara*.
- Union/tehsil council:** A Union council is the lowest tier of local administration/government in Pakistan and is often known as village councils in rural areas. A *tehsil* is the second tier of local government in Pakistan; each *tehsil* is part of a larger district. Each *tehsil* is subdivided into a number of union councils. A district council is the first tier of 'local government' in Pakistan and comprises members elected through *tehsil* councils.
- Watan cards:** The cards given to the most poor by the Benazir Income Support Porgamme to draw monthly income support through bank credit machines.
- Zaat:** Caste.
- Zakat:** A charity given to the poor in the holy month of Ramadan.
- Zina:** Adultery and fornication.

# Introduction

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The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires the State party to submit a periodic report on the various measures adopted to give effect to its provisions.<sup>1</sup> The second in the series, Pakistan's Fourth Periodic Report, covers the period from January 2005 to April 2009.<sup>2</sup> The Fourth Periodic Report (herein referred to as the Government Report or the Country Report) records the various endeavours of the Government of Pakistan to promote gender equality, eliminate discrimination and curb violence against women including attempts made to legislate on women's issues.

Pakistan faced enormous challenges during this period stemming from a devastating earthquake coupled with a melting economy resulting in a sharp rise in poverty. Challenges posed by political instability, the war on terror, the issue of a large number of Internally Displaced Persons (IDPs) and rise in extremism/militancy further compounded the situation. All these problems had a negative impact on the efforts of the Government to fulfil its obligations under the Convention.

In the face of the above challenges, the various attempts made by the Government to improve the legal, socio-economic and political status of women are commendable, but they are few in number and have proven not to be very effective. The agenda for eliminating all forms of discrimination against women failed once again to make its place in the priority list of the Government. As a result, there remain numerous issues for women, resulting in *de facto* and *de jure* discrimination against them, which are either ignored by the Government, or are not sufficiently dealt with.

This NGO Alternative Report or the 'Shadow Report' on CEDAW attempts to examine the response of the Government of Pakistan to concerns expressed in the observations of the CEDAW Committee on the earlier Country Report.<sup>3</sup> An examination of these responses to the concluding observations reveals that the major impediments to gender equality and the elimination of discrimination are an ambivalent political will on the part of the State, and resultantly its institutions; the absence of a firm commitment to the inherent principles; and a reluctance to own the State's obligations under the CEDAW Convention.

The shadow report is primarily a commentary on the Fourth Periodic Report of the Government, identifying gaps and presenting an objective analysis of the situation of women in Pakistan. This analysis is conducted from a perspective held by the unambiguous position of mainstream women's rights and human rights activists and organisations on core issues of women's rights.

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<sup>1</sup> Article 18 of the CEDAW Convention  
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

<sup>2</sup> The First Report combined the Initial, Second and Third Reports covering the period from 1997 to December 30<sup>th</sup> 2004.

<sup>3</sup> (CEDAW/C/PAK/1-3) at its 783<sup>rd</sup> and 784<sup>th</sup>

This perspective began to evolve in the early eighties when Women's Action Forum, a platform for women's rights activists, began a heroic struggle against the oppressive anti-women and anti-democratic rule of military dictator General Zia-ul-Haq. The slogans of the struggle – 'Repeal the Hudood Ordinances', '*Aurat ki aadhi gawahi namanzoor*' ('we reject a woman's half testimony'), 'No to Qisas and Diyat law' and '*mazhab key naam par siyasat namanzoor*' ('we reject politics in the name of religion') – became the principles and the vision of the women's rights movement. Leaders of the movement later continued to expand its horizon to include major concerns on women's political and democratic rights into the realm of its ideology and activism.

From this movement a number of women's rights organisations and activists were born. The courage of these activists inspired contemporary political workers to withstand a dictator's onslaught and continue to fight for the restoration of democracy in Pakistan. Moreover, their unending commitment guided and motivated two subsequent generations of women's rights activists, who continue to work zealously for a society free of violence, discrimination and injustice.

The women's rights perspective, based on gender equality and non-discrimination, mirrors CEDAW's ideological framework universally. This perspective forms the framework of discussion in the shadow report and is composed of well-debated and well spelt-out positions which the reader will find frequently expressed and quoted in the report.

The shadow report also attempts to give the reader a brief overview of the situation of women in Pakistan beyond the reporting time period, till the present day. This overview is essential in light of several major developments that have taken place after the reporting period. Brief information about these developments is provided in the side margins of the main body of the report as 'Major Developments after 2009'. Realising the significance of a few landmark developments related to democracy, governance and the deteriorating situation of minority women, four addendum chapters have been included in the report to provide information and insight to readers.

**The process of developing the shadow report:** Aurat Foundation took the lead in compiling and drafting an alternative report to the Government Report on behalf of the civil society of Pakistan. The process was initiated in 2008 and concluded in 2012. The entire process consists of a number of steps based on the principle of inclusion and ownership of the report.

Upon the initiation of this process, four Provincial CEDAW Committees, as well as a National CEDAW Committee were formed. These committees comprised senior representatives of civil society organisations with experience in CEDAW follow-up and monitoring processes in Pakistan. The National CEDAW Committee comprised Tahira Abdullah (development worker and rights activist), Neelam Hussain (Simorgh), Nighat Said Khan (ASR Resource Centre), Maria Rashid (Rozan), Peter Jacob (National Commission on Justice and Peace), Arifa Mazhar (Sungi Development Foundation), Ume-Laila (HomeNet Pakistan), Zubaida Noor (Noor Education Trust), Kishwar Sultana (Insan Foundation), Sameena Nazir (PODA-Pakistan), Rukhshanda Naz, Naeem Mirza, Rabeea Hadi, Saima Munir, Saima Javed and Haroon Dawood (Aurat Foundation).

Provincial committees comprised focal persons from AF and representatives of CSOs. These committees held meetings with local representatives of civil society organisations, women parliamentarians and legal experts at the provincial level in Lahore, Karachi, Peshawar and Quetta in 2009-2010 and shared the initial structure of the NGO shadow report. They

deliberated upon the initial draft of the Government Report which was shared by the Ministry of Women's Development. These meetings discussed core issues of women's rights in relation to CEDAW articles and finalised the names of those who would provide input to the report according to their areas of expertise.

The provincial committees also had a discussion on the concluding observations of the CEDAW Committee on Pakistan's earlier report (1997-2004) which was reviewed by the Committee in February 2007. Subsequently, a questionnaire was developed and disseminated widely with the intention of gathering information related to CEDAW implementation. A series of Focus Group Discussions were conducted in each Provincial Capital and in Islamabad to discuss the draft Government Report and to share the actual status and situation, thereby building a critique of the draft. Information from different organisations and individuals was collected on the basis of this critique. A compilation was accordingly made of the NGO report.

The National CEDAW Committee of civil society organisations met in Islamabad on 20 April 2010, where this compilation was shared in conjunction with the initial draft of the Government Report. The committee criticised the draft report of the government and held deliberations on improvements in the NGO shadow report. There was also an in-depth discussion on the structure of the shadow report. Aurat Foundation was assigned the responsibility to incorporate the feedback of the committee and fill the identified gaps in its compilation.

The process of finalising the shadow report by Aurat Foundation faced major impediments due to the delay in the submission of the Government Report by two and a half years. Since, the shadow report is inherently linked to Pakistan's Government Report, it (shadow report) is supposed to monitor the process of implementation of CEDAW by the GoP and other stakeholders and highlight strengths and gaps in the process through consultation and documentation. The result was that the process of finalising the shadow report remained stalled for almost two years.

Aurat Foundation re-started the process in June 2012 when it received the final version of the Government Report through informal channels and; subsequently the same official version was accessed through the UN website. Maliha Zia and Riffat Butt, the authors of this report, then built on the earlier content of the shadow report and updated the material and critique in the backdrop of the Government Report. Upon completion of the draft NGO shadow report, it underwent a review by eminent experts, as well as senior members of Aurat Foundation. Finally, the final draft of the report was shared with the core members of the National CEDAW Committee of civil society organisations and their endorsement was obtained.

We must acknowledge here that Shirkat Gah, under the guidance of Khawar Mumtaz and with all its expertise in legal rights and insight into the core issue of concern for women, undertook a comprehensive review of the report and provided a number of valuable suggestions and inputs which were incorporated into the main body of discussion and observations, and we believe, these have enriched the content of the report.

Among others, who provided input to this report from their focussed areas of work and perspective include Rozan, Omar Asghar Khan Foundation, PODA, NCJP and Acid Survivors Foundation. We also thank all civil society organisations who endorsed the main report.

It took much longer time than expected to compile this report. However, it is a moment of solace that now this is before you. It may be that gaps still remain. We realise that further

improvements could have been made if disaggregated data scarcity and lack of willingness of relevant government departments were not an impediment.

As the main report and some articles following it will speak about past and present changes in Pakistan, we at Aurat Foundation feel that women of Pakistan have made monumental progress in some areas during the past decade. Simultaneously, the challenges faced by women have also resulted in several setbacks in others. The report discusses these in detail.

I would like to join my colleagues in Aurat Foundation in expressing appreciation and gratitude for all those who contributed in the preparation of this report.

Next, I would like to acknowledge the initiative and efforts of the provincial and national CEDAW committees, which comprised representatives of fellow civil society organisations for steering the CEDAW monitoring and reporting process for this shadow report.

Aurat Foundation's enormous appreciation also goes out to Maliha Zia and Riffat Butt, the authors of the NGO shadow report, who worked so dedicatedly to compile the data and write this report. Maliha deserves special mention as she has been working on this report since 2009. Both the authors represent a new generation of women's rights activists and legal experts in Pakistan, following in the footsteps of stalwarts such as Shahla Zia, Asma Jahangir, Hina Jilani, Justice (Retd.) Majida Razvi and Justice (Retd.) Nasira Javed Iqbal.

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The preparation and production of this report would have not been possible without the trust and support of Nigar Ahmad, the founder Executive Director of AF; and the cooperation of the Chairperson of the Board of Governors of Aurat Foundation, Dr. Masuma Hasan, and Members of the Board, in particular, Anis Haroon and Mohammed Tahseen, who are well-known human rights and peace activists.

This shadow report has been prepared with the earnest intent to strengthen our national institutions and entities working for women's rights. We hope that mainstreaming gender into national policies and laws and bringing them in conformity with the articles of CEDAW will result in *de facto* equality for women.

We dedicate this effort to those women who continue to struggle in the most difficult socio-economic, political and cultural circumstances - facing discrimination of one or the other kind, at every stage in their lives. We all must realise that Pakistan's progress lies in the progress of its women. Let us tread on this path towards gender equality with commitment and consistency.

Naeem Mirza  
Chief Operating Officer  
**Aurat Foundation**  
November 2012



# Pakistan NGO Alternative Report on CEDAW (2005-2009) (With Updated Notes)

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## **Executive Summary**

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# Executive Summary

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Pakistan acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1996 declaring that its accession to the Convention was subject to the provisions of the Constitution of the Islamic Republic of Pakistan 1973. This declaration is of a very general nature raising doubts about Pakistan's unreserved commitment to the implementation of the Convention. Pakistan has yet to translate the provisions of the CEDAW Convention into its domestic laws, without which citizens cannot fully avail its benefits and it can only be used as a guiding principle at the discretion of the judges.

The State's unwillingness to ratify the Optional Protocol to CEDAW, which compliments CEDAW and establishes effective mechanisms for enforcement of the rights specified therein, is another grey area of CEDAW implementation in Pakistan. The Protocol gives women a specific set of procedural rights by allowing them direct access to the protections of the Convention besides providing a formal and direct role for NGO participation in the advancement of women's rights. It can be used as a tool for social transformation and for providing opportunities to further develop human rights standards and mechanisms for implementation.

The Constitution of Pakistan enshrines the principles of equality and non-discrimination. According to Article 25 of the Constitution of Pakistan, all citizens are equal and are entitled to equal protection of the law, and that there shall be no discrimination on the basis of sex.

However, the Constitution of Pakistan does not define 'discrimination against women' as contemplated in Article 1 and Articles 7 and 15 of CEDAW. No legislation reflects such a definition either. The Country Report gives as evidence case law with positive judgments defining equality and pro-women outcomes. Nevertheless, there is grave concern amongst civil society at the Government's focus on using judicial judgments to provide evidence to the lack of discrimination and justify the non-inclusion of the definition of discrimination in the law. Case law is not a sustainable method of defining equality, nor does it hold the weight and definitive interpretation of legislation, especially a Constitutional provision.

The existing commissions mandated to review the implications of laws only have an advisory role without any enforcement mechanisms to implement their recommendations. As a result of this, laws discriminatory to women continue to linger. The National Commission on the Status of Women (NCSW), which is mandated to review the laws adversely affecting women, functioned as an advisory and examining body only, but there was no regulation that ensured that NCSW's recommendations were tabled in any official forum within a stipulated timeframe; nor does the NCSW have any formal, direct liaison with Parliament. Consequently, discriminatory laws continue to remain on the books and undermine the legal status of women.

The national machinery, i.e. the Ministry of Women Development<sup>4</sup> (MoWD) and the National Commission on the Status of Women<sup>5</sup>, established for the advancement of women's rights lacked sufficient human and financial resources and/or technical capacity to carry out mandated functions as effectively as could have been wished. A weak institutional link between

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<sup>4</sup> MoWD was devolved to provinces in 2011, under the 18<sup>th</sup> Constitutional Amendment and no more exists at the federal level

<sup>5</sup> NCSW gains autonomy through an act of Parliament, i.e. National Commission on the Status of Women Act, 2012

MoWD and NCSW and an impractical administrative relationship that did not allow the NCSW to function as an autonomous body, resulted in institutional tension between the two and prevented them from working as complimentary organs of the State. The working relationship between MoWD and NCSW remained strained, despite the mandated administrative and institutional linkages, and the coordinated policy work fell victim to bureaucratic delays. NCSW must now adjust to its new role as the only institution at a federal level with a sole focus on women. It is vital for the NCSW to remain a strong body and the State to be mandated to consider its recommendations.

Adequate budgets and resources were not allocated to women's issues, as is evidenced by the needs and requirements of the Ministry of Women's Development (as it then existed) and now the Ministry of Human Rights and provincial Women Development Departments. This reluctance to allocate necessary budgets and resources for addressing women's issues reinforces the absence of political will to work towards mainstreaming gender concerns and prioritising women's issues.

Two contradictory trends were visible in the country. While, on the one hand, there were more women in Parliament and in the urban workforce, on the other hand, discrimination against women and girls also increased in parts of Pakistan because of the rise in extremism and militancy. Despite all claims by the Government, women have been denied their right to access to resources, to decision-making, and to their rights as equal citizens in society.

Despite rulings of the apex courts, punishments imposed by local tribal/feudal groups of male elders, known as *jirgas* and *panchayats*, are being carried out in various parts of the country with utmost impunity, violating the State laws and fundamental rights of the citizens. The said practices contravene Articles 4, 8, 9, 10, 10(a), 14, 25, 34 and 37 of the Constitution of Pakistan, which guarantee legal protection, right to enjoy life, liberty and justice to the citizens of Pakistan, and to be treated in accordance with law.

While two of the Hudood Ordinances that were responsible for sending hundreds of women to prison on charges of sexual relationships outside marriage, have been amended by the Protection of Women (Criminal Laws Amendment) Act 2006, which is a commendable development; two Ordinances (the Offences against Property and Prohibition Ordinances), which are equally controversial, defective, discriminatory and contentious, have remained untouched.

A number of pro-women laws were passed from the year 2009 to 2012 including Protection against Harassment at the Workplace Act 2010 and three amendments in Criminal Law during 2010 and 2011 which focus on harassment against women; customary practices including deprivation of inheritance, forced marriages, exchange of women in settlement of cases, marriage of women to the Quran; and acid crimes. This has been an appreciated move by the Government. However, the State continued to avoid the passage of laws or amendments that are considered more controversial due to the fact that they might affect the traditional set up of the family and society and above all their political alliances. These include laws pertaining to domestic violence, social protection and child rights and amendments pertaining, among other topics, to citizenship rights of women and their spouses. It is pertinent to note that the majority of pro-women initiatives have been taken by Private Member Bills as opposed to Government Bills.

The Criminal Law Amendment Act 2004 has failed to check the cases of 'honour killings' as murderers continue to enjoy impunity and escape punishment mainly because of the availability of relief under the *Qisas* and *Diyat* laws, which have made murder a compoundable offence.

The Domestic Violence (Prevention and Protection) Bill 2009 passed by the National Assembly aiming to give protection and relief to women in cases of domestic violence was also thwarted because of the objections raised publically by the Council of Islamic Ideology. It was perhaps not considered politically expedient to oppose the conservative religious lobby at this stage. The issue has since been delegated as a provincial matter, requiring all Provincial Assemblies to pass the law in order for it to be applicable in their provinces. This not only makes the possible passage of the law difficult and complicated, but also reflects a lack of interest in addressing an issue concerning nearly half the population of Pakistan directly.

Trafficking of women continues with Pakistan being a country of origin, transit and destination. There is also a lack of conceptual clarity as to the different categories of trafficking, smuggled persons etc<sup>6</sup>, as well as of cases of trafficking in the guise of marriage, etc. The Prevention and Control of Human Trafficking Ordinance 2002 and Prevention and Control of Human Trafficking Rules 2004 only focus on external trafficking; therefore no law focuses on the issue of internal trafficking within Pakistan's borders. The law itself has a number of gaps such as easily available bail, low punishments etc. There is no focus on rehabilitation of victims.

The government claims that women's presence in positions of decision-making has improved substantially, but this is not the case in the judiciary and the gender bias is very obvious. Currently there is no female judge in the Supreme Court and there is only one active female judge in the Sindh High Court (SHC).

The enhanced participation of women in Parliament, the appointment of women in high positions and formation of the cross-party Women's Parliamentary Caucus in the National Assembly are tremendous steps to mainstream women in national life and have gone a long way towards challenging the stereotypical perceptions regarding them. However, there are many areas that still require attention and serious effort to raise the profile of women in the political process at the decision-making level. The level of empowerment of female public representatives within their own political parties, and the space for them to participate in national affairs at the same level with their male colleagues remains uncertain.

Regarding women's participation at the level of voters, the Election Commission of Pakistan has failed to maintain and make public gender-disaggregated data to measure the actual turnout of women voters, which continues to be low. According to an estimate, around 10 million less women are registered than men as voters. Also, the practice of stopping women from exercising their right to vote through mutual agreements between political parties still continues, as the Government is hesitant to take action for fear of alienating conservative elements in society.

In a recent encouraging move, the Election Commission of Pakistan has finalized a draft bill suggesting re-polling at polling stations where less than 10 per cent women votes would be polled. The bill has currently been sent to the Ministry of Law and Justice for referral to the Parliament. The intention of the proposed law is to attempt to block agreements restraining women in a particular area from exercising their right to vote.

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<sup>6</sup> "Baseline Study on Illegal Migration, Human Smuggling and Trafficking in Pakistan", EBDM/BEFARe/ACTIONAID, 2009

In a positive development in 2012, overall gender disparity in civil registration for CNICs has reduced significantly, though in certain parts of the country it remains extremely disproportionate. As per latest data available with NADRA, among around 92 million CNIC holders, there were 40 million (43%) women and 52 million (57%) men. The overall gender disparity in registration of CNICs is therefore 14% i.e. 12 million less women are registered than men. This reflects an improvement of 7% as compared to the statistics of 1998 census, when 21% less women were registered.

For women the significance of CNIC is enhanced by the fact that this is required for the registration of marriages, and to claim the right to inheritance and to vote. Women from the marginalized communities, such as Hindu women, are in particular facing the problem of 'proof of identity' in the absence of identity cards. Furthermore, there are no mechanisms for marriage registration among Hindus; this hinders them in matters of inheritance and also exposes them to exploitation by the majority community.

Women are discriminated against in terms of citizenship. As per the Citizenship Act 1951, foreign husbands of Pakistani wives do not get automatic citizenship, as is the case with foreign wives of Pakistani men. This is clear discrimination against women in Pakistan and in contravention of Article 2 of CEDAW and Article 25 of the Constitution of Pakistan, which cannot be justified for any reason whatsoever.

The female literacy rate remained extremely low, 45% as compared to 69% for men in 2009. There is also a persistent urban-rural divide: in urban areas the literacy rate is 74%, compared to 48 % in rural areas. Dropout rate for girls is higher than that for boys due to social and cultural constraints. Further, nearly 62% of the out of school girls are unlikely to enrol in schools as compared to 27% of the boys in the country. The quality of education also remains abysmal with poorly qualified teachers, irrelevant curriculum, non-availability of textbooks, school structures etc.

According to several studies, the quality of life in Pakistan, including education, is deteriorating. The main factors inhibiting female education are poverty, the lack of empowerment and the generally lower social status of women, particularly in the rural areas. Increasing population has also been attributed as a reason for decreased education for girls, with preference being given to boys' education. Alongside this, militancy and large-scale displacement of the population in violence-ravaged areas also contributed to deprive girls of education. Several hundred girls' schools were destroyed in attacks by extremists in some areas of the Federally Administered Tribal Areas (FATA) and Khyber Pakhtunkhwa (KP), which served to further exacerbate the situation. The deadly attack on Malala Yousafzai, a 14-old-year child from Swat who raised her voice for her basic right of education, in October 2012, was the ugliest manifestation of a discriminatory and violent mindset towards women among a small militant section of the society that continues to haunt women rights defenders in the country.

Despite these external factors, Pakistan had committed to spending 4% GDP on education, with an increase to 7% by 2015<sup>7</sup>. However, the present budget allocation remains less than 2%.<sup>8</sup> It is also pertinent to note that as per the 18<sup>th</sup> Amendment to the Constitution of Pakistan, compulsory and free education for all children age 5 to 16 is now a constitutional right.

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<sup>7</sup> National Education Policy, 2009

<sup>8</sup> Pakistan, Millennium Development Goals, Report 2010 – P 37

With the exception of the West Pakistan Maternity Benefits Ordinance, 1958, the West Pakistan Maternity Rules, 1961, and Protection against Harassment at Workplace Act 2010, there are no special laws to protect rights of women at the work place, despite specific provisions for special law making under Article 25(3). There are no laws providing for:

- 1- equal remuneration for equal work for women
- 2- protection of labour rights of domestic workers
- 3- protection of labour rights of home-based workers

Approximately 70% of the female labour force is engaged in agriculture and allied fields, such as tending and feeding farm animals, but this work is unrecognized and remains unpaid. Rural women do over 60% of the work in the agricultural sector, but they are not recognized as 'farmers' because a farmer (*kisan*) is a person who owns land, and most women do not own land. This has lowered the status of rural women in general and women farmers in particular, who despite doing more work than men remained unacknowledged when schemes for farmers are planned and in national statistics. The Government has avoided the question relating to ratification of the ILO Convention 177.

The Government recognizes that there are 8.52 million home-based workers in the country. The proportion of women workers in the home-based sector is 65% in contrast to only 4% male workers. However, working conditions of home-based workers are not regulated by any law or regulation. Labour protection, social security and provision of safety and health services and benefits are not extended to the informal sector, including the home-based sector. They are, therefore, unable to access the services, facilities, rights and benefits, including a fair remuneration, under present national laws. As noted by the Country Report, a policy was drafted for HBWW. However, since it has been forwarded to the Ministry of Labour and Manpower nothing more has been heard about it.

Widows are a largely ignored group without any rights and status. They are often among the poorest of the poor, often invisible, their voices unheard and their needs, both immediate and long term unmet. There is lack of concrete data and information on the situation and plight of single women. Women with disabilities are disadvantaged in several key areas when compared with other women, men with disabilities, and the society as a whole. These women face a triple handicap and discrimination due to their disability, gender and discriminatory development paradigms.

The transgender communities, too, are facing extreme deprivation, denial and discrimination. Recognizable by their distinctive sartorial style and body language, the *Khawaja Sarra* have a visible street presence that is countered by their complete invisibility or absence in mainstream sociality and subsequently in policy decisions, budgetary allocations etc.

Despite the claims of Government, expenses on health remained abysmally low, at around 0.56% of the GDP in the year 2008-09, indicating health as a low priority area. Majority of the Basic Health Units (BHUs) and Rural Health Centers (RHCs) are not functional<sup>9</sup>. With the exception of very few facilities, EMONC is not available on a twenty-four hour basis in tertiary

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<sup>9</sup> Poverty, Gender Inequality and Their Impact on Maternal and Newborn Health in Pakistan", RAF Pakistan 2012 report, Seema Khan, DFID/AusAid, 2012

care centres. Getting the best medical health care is expensive and inaccessible to the economically disempowered.

The Pakistan Demographic Health Survey (PDHS) 2006-07 showed the Maternal Mortality Rate (MMR) to be 276/100,000. The MMR was particularly bad in the rural areas with a ratio of 319/100000 against 175/100000 in urban areas. Approximately 23% deaths of rural women of reproductive age were caused by pregnancy and childbirth related complications, as compared to 14% among urban women. Other factors that increased the MMR were: low quality of health facilities, lack of knowledge about available facilities, and shortage or absence of female health staff in hospitals and health centres.<sup>10</sup> In spite of awareness regarding contraceptives, their use is limited because of women's limited power to make decisions, even regarding their own bodies.

The Lady Health Workers (LHW) programme, one of the most successful programmes in the health sector in terms of access to ordinary women is not given sufficient support. Some of the weaknesses of the programme include low salaries (below even the Government standardized minimum wage) and irregular payments. The contractual nature of the job poses a constant threat to job security and is a source of anxiety to the women. Political influence and nepotism in the selection of LHWs is common.

The issue of mental health as a serious medical issue is not recognised. Approximately 10-16% of the population, which is more than 14 million, suffers from mild to moderate psychiatric illness, the majority of which are women. This is increasing with the background of growing insecurity, poverty, violence, terrorism, economic problems, political uncertainty, unemployment, stressful working conditions, gender discrimination, unhealthy lifestyle, physical ill health, genetic factors, unrestricted urbanization, disruption of the social fabric and loss of protective family networks. It is necessary that the Government takes ownership of the issue and takes steps to establish a strategy to ensure that proper care is given to address this issue across the country.

The existing social security schemes such as Government Servants Pension Fund, Workers Welfare Fund, Worker's Children Education Ordinance, even maternity leave with pay etc. are only applicable to the formal sector of economy. However, social assistance schemes including Zakat and Bait-ul-Mal do include the informal sector<sup>11</sup>.

An examination of these schemes demonstrates that there is no clear articulated framework within which these protections are functioning and are more responsive to a particular problem at the time, or upon recommendations from donor agencies, as opposed to a well thought-out holistic scheme. These are the responsibility of a variety of autonomous or semi-autonomous agencies, departments and ministries. However, due to lack of integration, these schemes function on their own, resulting in duplication. Other common issues include weak institutional structures with limited and uncertain funding, insufficient targets and small coverage. There are also many complaints of corruption or embezzlement; poor or no targeting mechanism; political interference and bureaucratic malfeasance; and lack of monitoring and supervision.

<sup>10</sup> Pakistan, Millennium Development Goals, Report 2010, p 68

<sup>11</sup> "A Profile of Social Protection in Pakistan: An Appraisal of Empirical Literature", Research Report No. 81, Haroon Jamal, SPDC, 2010

Among a few positive and successful programmes, the Benazir Income Support Programme (BISP) focuses specifically on women. One positive effect of the programme is increased registration of women's CNICs in order to be eligible for cash transfer. According to BISP sources, 3.9 million families across the country are receiving cash, although a total of 7,041,014 beneficiaries have been registered with the programme, the remaining 3,136,849 families are not being provided the cash due to lack of national identity cards.

Some of the initiatives for poverty alleviation focused on women have shown improvement; however, welfare and cash payments tend to have limited impact as they fail to address the strategic interests of women which would alter their subordinate status in society. The total number of female beneficiaries under the Pakistan Poverty Alleviation Fund, Khushali Bank and Zarai Taraqqiati Bank Limited, increased from 174,000 in 2005–2006 to 318,000 in 2006–2007<sup>12</sup>. Other positive initiatives include the Sindh Government's 2008 land distribution programme which distributed land among landless women, as well as other projects such as the Lady Livestock Workers training etc<sup>13</sup>. It is however, imperative to have a holistic social and economic benefit policy with initiatives that must be identified with the involvement of women in all sectors in order to make sure these are pertinent, sustainable and high impact initiatives.

Personal laws in Pakistan are both inadequate and flawed. Personal laws of different communities are different and unequal and continue to be discriminatory in their legislative content. Under the current Muslim Laws there are a number of contradictions, which again create hurdles in the fair implementation of these laws. For example, the Dissolution of Muslim Marriages Act, 1939, speaks about various grounds on which a woman can claim divorce. Under Section 5 of the Act, the right to dower of a wife filing a divorce suit under this law is not affected. Whereas; under procedural law, Family Courts Act 1964, Section 10 clause (4) says if during the suit for dissolution of marriage, the reconciliation attempted by the judge fails, the wife has to return the *Haq Mehr* (dower) received at the time of marriage, thus creating difficulties for the woman in getting a divorce.

Apart from entitlement to maintenance for a limited period, the rights of divorced woman are not defined in any law. Although a provision pertaining to a wife's property and her personal belongings was added to the Family Courts Act 2002, which is to some extent already being used by women to secure property acquired by them during the subsistence of the marriage, there still remains no concept of 'marital property' and a division of combined assets at the time of dissolution of a marriage.

In cases of violence and discrimination, women from non-Muslim communities face double jeopardy on account of gender and religious difference. The existing personal laws of Pakistani Christians need urgent revision as they place women at a disadvantageous position during settlement of family disputes. At present, adultery is recognized as the only ground for dissolving marriages under Christian law; while except for the Hindu Women's Right to Separate Maintenance and Residence Act, 1946, personal status laws of Hindus remain uncodified. No law on inheritance exists. Forms of violence which minority women face are: abduction, forced marriages with Muslim men, and conversion of women from the Hindu and Christian communities.

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<sup>12</sup> *ibid*

<sup>13</sup> *ibid*

Among various factors contributing to the rampant violence against women, patriarchy or male dominance and the commoditisation of women as property are perhaps the most significant. There were 7571 reported cases of violence against women in 2008, which jumped to 8548, an increase of almost 13 per cent in 2009. There were a total of 65,316 cases of violence against women reported in the media from the year 2008 to 2011. Government support structures are very weak. Also, support structures for dealing with victims of violence are limited and under resourced. Apart from the enactment of a few laws, which is appreciated, little has been done to provide a concentrated indigenous focus on eliminating VAW in the country.

It is vital that the definition of discrimination be included in the Constitution, especially in light of the 18th Constitutional Amendment, which has devolved a large amount of powers to the provinces. The concept of 'discrimination' must be uniform across the country and its spirit must be mandated to be part of all legislation, whether Federal or Provincial. This can only happen if the definition is incorporated into an over-arching document such as the Constitution.

The incorporation of CEDAW into domestic law through Federal legislation is even more vital in light of the 18<sup>th</sup> Amendment. As discussed in the annexed Chapter Three of this report, the 18<sup>th</sup> Amendment has effectively devolved a large amount of powers/functions to the provinces. Therefore, implementation of any laws, whether stemming from domestic need or international conventions, will be the responsibility of the provinces. Further, the issues highlighted in CEDAW in particular, specifically fall within the purview of the provinces.

Alongside the devolution of powers and responsibilities, there has also been discussion as to the implementation mechanisms of international conventions between the Federal Government in Islamabad and the Provincial Governments, the exact protocol and level of responsibility in relation to international conventions and the status of implementation remains unclear though it has been decided, as noted in **Chapter Three** below that the Ministry of Human Rights is the main body responsible for reporting for international conventions, including CEDAW.

## Articles 1-4:

### Definition of Discrimination; Policy Measures to be undertaken to Eliminate Discrimination; Guarantee of Basic Human Rights and Fundamental Freedoms on an Equal Basis with Men; Temporary Special Measures to Achieve Equality

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#### Declaration

The Pakistan Government has made a Declaration upon accession to the Convention to the effect that accession was subject to the provisions of the Constitution of the Islamic Republic of Pakistan 1973. This in effect requires all laws and administration of justice to be in accordance with the principles of Islam. The unfortunate result of this is that the 'principles of Islam', as interpreted by the Pakistani State tends to be highly patriarchal and conservative, resulting in women suffering in the application of these narrow mindsets. Consequentially, by placing this declaration on the Convention, the State of Pakistan has given itself a safe guard by deciding when it chooses to decide whether any principle enunciated in the Convention contravenes the 1973 Constitution.

The CEDAW Committee, in its **Concluding Observations Paragraphs 12 & 23** expressed its concern with regards to this. A number of States have also objected to this Declaration entered by the Government of Pakistan: "A reservation by which a State limits its responsibilities under the Convention in a general and unspecified manner by invoking internal law creates doubts as to the commitment of the Islamic Republic of Pakistan with its obligations under the Convention, essential for the fulfilment of its object and purpose.....contributes to undermining the basis of International treaty law".

The Fourth Periodic Report of Pakistan on CEDAW, for the period from January 2005 to 30 April 2009 submitted by the Government of Pakistan (hereby referred to as the Country Report) states that the Declaration entered upon accession does not place any restriction upon its obligations to adhere fully to the provisions of the Convention. However, the matter to withdraw from the Declaration had been referred to relevant Federal Ministries and Provincial Focal Government Departments for review.

The CEDAW Convention does allow making reservations by the State Parties, which they do not think to be binding on them.<sup>14</sup> But, it also disallows reservations and declarations "incompatible with the object and purpose of the Convention".<sup>15</sup> The Vienna Convention on the Law of Treaties also forbids any restriction to an international treaty that is incompatible with the object and

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<sup>14</sup> Article 28(1) CEDAW

<sup>15</sup> Article 28(2) CEDAW

purpose of the treaty. <sup>16</sup>*“When States assume membership in international human rights conventions, they agree to give effect to treaty obligations in their municipal legal systems. Treaty responsibilities arise for all States Parties, whether their law is contained in comprehensive or exclusive codes or is customary or religious in origin. State Parties that do not distinguish secular from religious laws and derive significant portions of their law from interpretation of sacred texts nevertheless obligate themselves in principle to implement human rights norms.”*<sup>17</sup>

This declaration is of an unspecific nature, raising doubts about Pakistan’s commitment to the implementation of the Convention. No plausible explanation has been given by the Government of Pakistan for not withdrawing this Declaration so far. The Government states that the Constitution of the Islamic Republic of Pakistan (hereby referred to as the Constitution) is in line with the Convention, and several amendments in the existing laws as well as new Bills/Acts have been introduced to protect women’s rights, even though this Declaration exists.

The acknowledgment that the Declaration entered upon accession does not place any restrictions upon its obligations when taken in conjunction with delays in withdrawing the Declaration indicates a lack of political will to take the necessary action.

The Declaration on the Convention is grave in nature and also damaging for Pakistan’s complete fulfilment of the Convention’s principles. The constitutional history of Pakistan has proven to be turbulent. While it is hoped that this trend does not continue, the danger continues to hover above the heads of women. Moreover, in view of a number of positive constitutional amendments and pro-women laws that were introduced recently<sup>18</sup>, this Declaration should now be re-considered.

Questions need to be asked about the reasons for this delay. What has the government done to create a favourable environment leading up to withdrawal, especially as the Declaration potentially inhibits gender equality? Given the emotional and political underpinnings of the Declaration, has any attempt been made to actually bring together the relevant Ministries to sit and discuss, among other issues, the above issues?

### **Definition of Discrimination**

The Constitution of Pakistan provides for fundamental rights and freedoms for all its citizens and includes clauses mandating there shall be no discrimination on the basis of sex<sup>19</sup>, access to public places<sup>20</sup> and in services<sup>21</sup>. However, there is no legal definition of ‘discrimination’ given in the Constitution or in any other law existing in Pakistan, as contemplated in Article 1 of CEDAW, and also emphasized in Articles 7 and 15.

This was also noted by CEDAW Committee in its **Concluding Observations Paragraphs 14 & 15**, noting that neither the Constitution of Pakistan nor any other appropriate legislation of Pakistan either defines ‘discrimination’ against women as contemplated in Article 1 of the

<sup>16</sup> 1969 Vienna Convention Article 19(C)

<sup>17</sup> Cook, R.J (1990) Reservation to the Convention on the Elimination of All Forms of Discrimination against Women’ Virginia Journal of International Law, 643-716

<sup>18</sup> During 2010-2012

<sup>19</sup> Article 25 Constitution of the Islamic Republic of Pakistan 1973

<sup>20</sup> Article 26 Constitution of the Islamic Republic of Pakistan 1973

<sup>21</sup> Article 27 Constitution of the Islamic Republic of Pakistan 1973

Convention, or embodies the principle of equality of men and women” as stipulated in Article 2 (a).

The Government of Pakistan, in its Country Report states that the principles of equality and non-discrimination are enshrined in the Constitution, particularly in Articles 25 and 27 of the Constitution. It states that the spirit of equality and non-discrimination are reflected through its policies and laws. The report also states that the superior courts in Pakistan have clearly interpreted in favour of women in their judgements.

The Government in its report has attempted to equate the equality clause of the Constitution of the Islamic Republic of Pakistan 1973 with the CEDAW principle of non-discrimination. It seems to suggest that through the existence of the equality clause and judgements with positive interpretations of the clause, it is fulfilling the non-discriminatory principles of CEDAW.

However, the Country Report does not bring to light the fact that this clause is rarely enforced. Further, this clause is rarely used in cases involving violence against women, particularly cases of violence against women in the home. Further, the equality clause does not cover the principle of indirect discrimination, which is one of the core CEDAW principles. Thus, this report concludes that the equality clause in the Constitution of the Islamic Republic of Pakistan 1973 is not strong enough to cover the concepts and ideals of CEDAW and international norms, and therefore is not sufficient to provide the Pakistan Government with an excuse not to include a definition of discrimination in its Constitution.

The Country Report advances the argument that the judgements of the superior courts of Pakistan have given clear definitions of discrimination, equality before the law, substantive equality and the principle of ‘reasonable classification’ for affirmative action. Allowing courts to interpret such important words leave them open to conservative and anti-women interpretations, as seen in some judgments. In a bid to ‘protect’ women, interpretations may lead to barricading women and placing restrictions on them rather than empowering them.

There is grave concern amongst civil society at the Government’s focus on using judgements to evidence lack of discrimination and justify not including the definition of discrimination in the law. There are many dangers in using court judgements for such justifications. Judgements of superior courts may not necessarily stand the test of time. These may be overturned if, for example, a more conservative minded judiciary came into place. A simple majority would result in an easy change of any positive definition of discrimination. There is therefore uncertainty. Further, judgments may always be distinguished with reference to the particular circumstances of the case which may lead to absurd conclusions.

To demonstrate this point, an examination of two cases of women is discussed below:

In 1990 Shirin Munir case the Supreme Court held that: “No discrimination on the ground of sex alone can be permitted except on the ground of reasonable and intelligible classification. Such classification in our society for the present permits the establishment of educational and professional institutions for females, or exclusively for males. However, where co-education is permitted and the institution is not reserved for one sex alone, the fixing of a number of seats

for women on the grounds of sex will directly be opposed to the requirement of Article 25(2), unless it is justified as a protective measure for women and children under article 25(3)."<sup>22</sup>

In the case of Shirifin Bibi, the principle of 'Equality' spelt out by the Supreme Court was differently interpreted by the Lahore High Court in the 1998, where a Pakistani woman married an Indian man, and her husband was denied application of citizenship. Her husband under the said law could not gain the nationality, nor were her children entitled to this right.<sup>23</sup> The main reasoning given for this judgment was that it was "impossible to allow every foreigner to acquire citizenship of Pakistan just by means of a marriage with a Pakistani lady. It will be difficult to control or regulate the flood and influx of foreigners becoming the citizens of this country in indiscriminate manner"<sup>24</sup>. The judgment stated that the fundamental rights of a nation trumped the fundamental rights of an individual. It takes support from the fact that Pakistani courts had also previously held that a married woman has to follow the domicile of her husband, therefore stating there is no violation of the Constitution. The judgement does note that the legislation can suitably alter the changed circumstances of the society i.e. change the law to allow automatic citizenship to foreign men marrying Pakistani wives.

Despite the fact that the judgment claims to give priority to the nation over an individual, it must be noted that it did not discriminate against a woman, but against a whole segment of society. Further, all citizenships applications are reviewed and evaluated before being accepted, including men and women. Therefore to specifically disallow alien men to automatically apply for citizenship on the basis of a marriage to a Pakistani woman, is uncalled for. This view taken by the court in the Shirifin Bibi case completely negates the principle of equality, clearly discriminates against women and demonstrates the lack of embodiment of the spirit of CEDAW. It also specifically not the spirit of Article 9 of CEDAW, which speaks for the equal right of women to acquire, change or retain her nationality.

These interpretations of equality provisions are still existing and applicable in Pakistan today. It is evident that the protective shield of the equality clause in the Constitution becomes fragile when it comes into conflict with the patriarchal mindset of its interpreters. Therefore it is necessary to ensure the inclusion of the definition of discrimination in the Constitution of Pakistan in order to imbue the interpretation of law with the spirit of CEDAW.

### **Treaty Incorporation**

The Country Report states that international treaties do not form part of the domestic laws of Pakistan unless incorporated into municipal laws. However, the principles laid down in the international convention are considered while formulating legislation, and by the courts for interpreting the law.

This gives an imprecise version of the actual situation in Pakistan. While in theory signing or ratification of an international convention or treaty should influence legislation and the courts, the reality is they rarely ever do. Without translating the international law into national law citizens cannot avail it and judges cannot apply it. This issue has also been highlighted by the CEDAW Committee in its **Concluding Observations Paragraphs 16 & 17**.

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<sup>22</sup> PLD 1990 Supreme Court 295

<sup>23</sup> PLD 1998 Lahore 59

<sup>24</sup> ibid

Furthermore, the case given as an example of how CEDAW influences case judgments<sup>25</sup> is only one of three reported cases<sup>26</sup> since 1996 that has even mentioned CEDAW by name. It must also be noted that all of these cases were High Court cases and not of the Supreme Court, which is the highest judicial body, with one being reported from Azad Jammu and Kashmir. It is therefore misleading to assert that CEDAW without being incorporated has influenced a positive change in favour of women through legislation and the judiciary.

The Vienna Convention also states, "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty".<sup>27</sup> Therefore, in order to give actual effect to the principles and obligations of CEDAW to ensure prevention of discrimination against women and to empower them in a uniform manner across the country, it is vital that CEDAW be incorporated into the law of the land as a Federal law.

### **Optional Protocol**

The CEDAW Committee in its **Concluding Observation Paragraph 48** raised the query relating to the State's unwillingness to ratify the Optional Protocol to CEDAW.

The brief response of the Government is that the Optional Protocol is under review for ratification and its implications are being studied.

The Optional Protocol came into force on 22nd December 2000. It complements CEDAW and establishes effective mechanisms for enforcement of the rights specified therein. The Optional Protocol does not identify any new rights but enables the rights guaranteed in the Convention to be enforced. It can be used as a tool for social transformation, and for providing opportunities for women to make further contributions to the development of human rights standards and their application.

For the states that have ratified it, the Optional Protocol offers two mechanisms to monitor governments' obligations under CEDAW. It provides an opportunity to individuals (women) and groups to lodge complaints to a committee, so that if women fail to get justice for their rights at the national level they can have their claims reviewed at the international level. The inquiry procedure provides an opportunity to the CEDAW committee to investigate serious and systemic abuse of women's rights within the states.

The Protocol gives women a specific set of procedural rights by allowing them direct access to the protections of the Convention. The Optional Protocol also provides a formal and direct role for NGO participation in the advancement of women's rights. It attempts to create formal means through which NGOs can contribute to the better implementation of CEDAW.

The government was unable to describe the concerns it may have on ratification of the OP, nor does the Country Report reflect any efforts made to initiate discussion and dialogue with stakeholders for its ratification. It would be appropriate if discussions could be initiated by the Government between the concerned Ministries and human rights activists and academics from civil society for an informed approach to ratification. The ratification of OP will reflect serious commitment on the part of Government to enforce the rights of women laid down in CEDAW.

<sup>25</sup> Lahore High Court Mst. Saima Vs The State 2003 PLD 747

<sup>26</sup> The other two being: Mst. Humaira Mehmood vs. The State 1999 PLD 494; Mst. Sarwar Jan vs. Abdur Rehman, 2004 CLC 17

<sup>27</sup> Vienna Convention, Art 27

The OP also provides a way to “opt-out” if any state has any reservations on adopting it. The Government can consider the course of action taken by Bangladesh, which has similar cultural sensitivities, when it ratified the OP in 2002.

### **Discriminatory Legislation**

The Government of Pakistan has taken notice of women’s legal status in recent years, whether through the passage of certain laws or through public acknowledgement etc. However, it has continued to avoid passing laws on a number of pressing issues and has delayed their process under one pretext or the other. These include laws pertaining to domestic violence, social protection and child rights and amendments pertaining, among other topics, to the citizenship rights of women and their spouses. It is pertinent to note that the majority of pro-women initiatives have been taken by Private Member Bills as opposed to Government Bills. Therefore, the Government itself has not taken the initiative on these matters.

Alongside this, there are a number of laws, or provisions of law, which do not directly discriminate against women but result in discrimination against women during implementation. This happens when law, which is meant to reflect the concepts of social justice and allows statutory interpretation to ensure no absurdity in law, creates impediments during implementation of the law. Thus law, which on paper provides equality for women, results in discrimination as a demonstrated in discussion below.

It is necessary to highlight some of the laws that continue to discriminate against women, including the Constitution. These have been specifically referred to in the CEDAW Committee’s **Concluding Observations Paragraphs 16 & 17**. Other laws including the Citizenship Act 1952, Prevention and Control of Human Trafficking Ordinance 2002, the Prevention and Control of Human Trafficking Rules 2004, the Criminal Law (Amendment) Act 2004 (Honour Killings law) and laws pertaining to Muslim family laws have been discussed in later sections alongside relevant articles of the Convention.

- **The Constitution of Pakistan**

The Constitution of a country is a norm-setting document, reflecting the highest principles and aspirations of the nation. It must be a cohesive document, not a patchwork of conflicting ideas in which principles are enunciated on the one hand, only to be rendered virtually ineffectual on the other. The Inquiry Commission on the Status of Women 1997 examined the Constitution and gave a number of recommendations, the majority of which remain relevant to date:<sup>28</sup>

#### **Article 8:**

Article 8 declares that no law, custom or usage can be inconsistent with fundamental rights, but it does not say that the provisions of the Constitution must also be interpreted in accordance with fundamental rights.

The right to petition for judicial review of any law or action of the state which violates fundamental rights is given in the Constitution. That explains that the Constitution has to be interpreted with respect to fundamental rights.

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<sup>28</sup> Report of the Inquiry Commission 1997

The issue of concern which must be highlighted is Chapter 3A of the Constitution relating to the Federal Shariat Court (FSC), which makes the Constitutional provisions come into conflict. Article 203 A states that the provisions of this chapter (3A) will override other provisions of the Constitution. This chapter allows the FSC to examine and decide whether a law or provision of law is repugnant to the injunctions of Islam and strike it down. This at several occasions has become a problem and there are instances where the higher courts interpreted fundamental rights subject to this chapter. This is a cause for great concern, as under the heading of repugnant to Islam, laws and provisions protecting women have been struck down e.g. the Protection of Women (Criminal Law Amendment) Act 2006. The overriding effect of this chapter also overrides the fundamental rights chapter, which could result in situations where fundamental rights are ignored in comparison to what is considered 'Islamic'. It is important to note that with the patriarchal and conservative mind set of society, religion is often misused as a tool to control and retain power. This is especially applicable to women, as can be seen by the power and effect of the Hudood Ordinances 1979 had on women.

Article 8 also bars fundamental rights from being applied to laws relating to the armed forces and police, and to laws listed in the First Schedule, making these agencies immune to scrutiny on the basis of gender discrimination.

#### **Article 14:**

The Article assures the dignity of man, subject to law and the privacy of home. There is danger when specifying the 'privacy of home,' although this is preceded by the clause 'subject to law.'

For the purposes of this provision i.e. 'subject to law', it is necessary for law to provide methods and mechanisms which are to be followed in cases where entry into a house is required. The CrPC has clearly provided procedures that regulate entry into a house with respect to arrest and search etc. the courts have clearly held that any provision of law which undermines article 14 can be struck down. However, the indirect effect of this article is the fact that it reinforces the notion of protection of the 'privacy' of the house. While this to a certain extent prevents illegal encroachments on property etc, it also reinforces the need to contain what is considered private matters and not allow them to be publicised. This has hazardous results when dealing with cases of domestic violence or incest – both of which are forms of violence usually committed within the confines of a home. There is difficulty bridging the public private divide i.e. that what happens in the privacy of the home should not be subject to scrutiny of the law and bringing perpetrators of violence in the homes to justice. The definition of 'dignity' and what constitutes a woman's 'dignity' is also open to interpretation.

Article 14 (2) only identifies the prohibition of use of torture for the purpose of extracting evidence. This especially needs to be re-drafted with Pakistan signing the Convention Against Torture in April 2008, including a definition of torture which does not only relate to use of torture in times of conflict, but also to torture used in peace time, including torture inflicted upon women.

#### **Article 22:**

This deals with safeguarding educational institutions. It states that no citizen shall be denied admission to any educational institution receiving public revenues on the grounds only of race, religion, caste or place of birth. This lays open the possibility of not allowing women to enter all-

male higher and specialized institutions. However, at the same time, the necessity of all-female educational institutions can also not be denied, especially under the principle of affirmative action. The Article needs to be amended to omit the word 'only' and add the word 'sex', while also specifying the need and creation of all-female institutions in order to ensure and work towards increasing female education.

### **Article 25:**

This Article is most important as it addresses discrimination against women. It is considered the 'equality clause'. This has been discussed briefly above. This clause, while stating that there will be no discrimination on the basis of sex, provides no definition of discrimination, thereby leaving its interpretation to the court. Nor does it refer to any of the international conventions signed by Pakistan that could lead to a concrete definition.

The clause remains a protective clause. 'Protective' legislation can also result in being discriminatory to women. Moreover, the word 'protection' is patronizing and does not reflect the spirit of affirmative action that was intended by this clause. The language should be re-phrased to acknowledge women's equal status and rights, and recognize the need for affirmative action that leads to the promotion of gender equality.

- **The Hudood Ordinances:**

The Hudood Ordinances 1979 are a set of laws which resulted in numerous cases of discrimination against women and minorities. Two of the Hudood Ordinances (Zina Ordinance and Qazf Ordinance) were amended by the Protection of Women (Criminal Laws Amendment) Act 2006 (WPA). This was a highly appreciated move by the Government and its attempt to neutralize the effects of the Ordinance that criminalized a sexual relationship outside marriage and led to hundreds of women being jailed.

One of the positive amendments made in the law was to place the offence of rape in the Pakistan Penal Code (PPC). This results in the evidentiary criteria of rape crimes to be those of the PPC, Cr.PC and the Qanoon e Shahdat as opposed to that of the Hudood Ordinances, which were being used to discriminate against women.

Further, the 2006 law made a specific amendment in the definition of rape. The previous definition of rape in the Zina Ordinance 1979, stated that zina bil jabr (rape) was committed if a person had intercourse with a woman or man "to whom he or she is not validly married". The 2006 law removed this statement from the definition of rape i.e. 'the exception of marriage'. This has impliedly resulted in the inclusion of marital rape in the law, even though it is not explicitly recognised. However, it is believed that by the specific exclusion of the marriage exception, there is an option to recognise rape within marriage as a punishable offence.

Further, the definition was amended to add that if a girl is below the age of sixteen is married with or without her consent, it will be considered rape and liable to punishment. This would be statutory rape. However, as the law stands, a marriage with a female of under 16 years of age, though attracts penalty under the Child Marriage Restraint Act but is not invalid in itself. With the 2006 law, if there is sexual intercourse with a girl below the age of sixteen, the husband would be guilty of rape.

However, the amendments did not go as far as one would have wished and do not cover the larger span of problems that still exist, for e.g. the Act amends only two of the five Hudood Ordinances (the Offences of Zina and the Qazf Ordinances) and does not touch the other two Ordinances, i.e. the Offences against Property and Prohibition Ordinances, which are equally controversial, defective, discriminatory and contentious. There are some major substantive issues remaining:

It must also be noted that the FSC struck down a number of provisions of the WPA in 2010 as being repugnant to Islam. The FSC declared in its judgment that sections 11, 25, 28 and 29 of the Women Protection Act 2006 are contradictory to the article 203DD of the Constitution because these provisions annul the overriding effect of the Hudood Ordinance 1979. The NCSW and civil society organisations challenged this judgment and demanded the Federal Government to submit an appeal. The Federal Government later did file an appeal against this judgment. There has been no final verdict on this as yet.

In the light of this discussion, the demand for repeal of the Hudood Ordinances stands. Furthermore, the demand for effective implementation should also be raised for the WPA, as well as other laws in Pakistan, specifically those impacting on women's rights.

- **The Qanoon-e-Shahadat Order 1984 (Law of Evidence):**

The Qanoon-e-Shahadat Order 1984 is a law which clearly violates women's rights to equality as per Article 25 of the Constitution (which is discussed later in this report). Alongside this, there is clear discrimination also in Section 151 (4) of the law. This section is re-produced below:

"151 (4) When a man is prosecuted for rape or an attempt to ravish it may be shown that the prosecutrix was of generally immoral character."

This section allows the defendants to raise the issue of a woman's character in cases of rape. Discrimination is evident by the fact that it does not refer to the generally immoral character of a male witness, thereby applying only to women. Furthermore, this provision allows for the court to debate and judge the character of the victim. This seems to indicate that if a woman is of immoral character, the man would have some defence, or even be exonerated for the crime of rape.

The character of the prosecutrix or a woman witness is damaged or injured at the moment of impeaching the credit of the witness and some safeguards have to be evolved to remedy the questions put with mala fide intention. The provision under attack offends the principles of normal justice and is in violation of Article 25 of the Constitution.

Assuming that the prosecutrix was of generally immoral character, will a man accused of rape or attempt to ravish her be exonerated of the crime or will a rape cease to be a rape if the prosecutrix happens to be a 'prostitute' or is seen as a woman of 'easy virtue'? Again will the element of rape or attempt to ravish vanish away or convert into a lesser crime or punishment on the consideration of her being so. This results in further victimisation of the victim. The character of the victim should not be relevant in a case of rape. This provision is clear discrimination against any rape victim, a large majority of which are women.

This provision was even recognised as being discriminatory by the Federal Shariat Court. In a positive judgement of 2009<sup>29</sup>, the FSC recommended the President of Pakistan to repeal the provision. However, the provision has not yet been repealed. Nevertheless, the provision was declared to have no effect by the FSC if not repealed within a certain time period. There have been no further cases relating to this law. It therefore remains unclear as to whether this law still has any effect to date.

- **Pakistan Penal Code 1860 (PPC) & Criminal Procedure Code 1898 CrPC)**

The Pakistan Penal Code deals with the majority of criminal offences. The offences contained in this legislation range from defamation, trademarks infringements to bodily hurt, murder, wrongful confinement, blackmail etc. However, the PPC does not adequately cover a number of major issues such as child abuse, incest, various forms of sexual offences, domestic violence. Problems also lie with interpretations of the provisions of the PPC, which are narrow and conservative and statutory interpretation in favour of women and girls is rarely accepted. Therefore, the natural evolution of law to encompass all violations of the person does not occur due to the social bias which does not see violations of women's rights as criminal offences. This results in indirect discrimination against women.

The CrPC deals with the procedures of the court. During process of cases, especially those related to women, a number of practices have started and continue unabated which result in discrimination against women. These include a focus on prior sexual conduct, necessity of corroboration or the requirement of proof of resistance by the victims. Pakistan has to legislate against these discriminatory practices as these three practices have historically made it difficult for victims to get legal redress<sup>30</sup>.

### **Review Mechanisms of Discriminatory Laws**

The Country Report refers to three Commissions for the purpose of reviewing discriminatory laws against women. But it is silent as to what "enforcement mechanism" these institutions possess to get their recommendations implemented.

- **National Commission on the Status of Women**

#### ***[The discussion below relates to the pre-2012 situation]***

The National Commission on the Status of Women (NCSW) is a statutory body mandated to monitor laws and policies and their impact on women. NCSW reviews and analyses the laws and policies and, through a broad-based consultative process, formulates appropriate recommendations. The core objective of the NCSW is to facilitate an enabling environment for women's empowerment leading to equity and justice in society.

The role of the NCSW has always been considered vital. However, there were also critiques as to its status and administration. The NCSW was attached to the Ministry of Women's Development; it had no autonomy; its recommendations were not mandatorily considered by the State etc.

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<sup>29</sup> P L D 2009 Federal Shariat Court 65

<sup>30</sup> "Benchmarking National Legislation for Gender Equality: Findings from Five Asian Countries", Hasna Cheema, UNDP 2010

There was great demand from civil society to allow the NCSW to be an independent commission with the ability and allowances to not just monitor the State and ensure the inclusion of the gender perspective in all of its functioning, but to ensure that this is done in a transparent and sustainable manner.

- **Law and Justice Commission of Pakistan**

The other forum for reviewing laws, the Law and Justice Commission of Pakistan (LJCP), has been in existence for a long time. However, only a few people are aware of its existence, and those who are aware are usually unaware of its role. Despite the large number of articles and reports it has published, dissemination remains poor and the majority of the population, and even government institutions, such as the Masalehati-Anjuman (local dispute resolution bodies) are unaware of any publications or schemes. It is also reported that although the reports are available on the Internet, and several others have been drafted, they have not been disseminated due to lack of funds from donors. This also reflects the lack of Government's ownership of the LJCP, as they will not disseminate the reports without funding. Furthermore, as with the NCSW, although the LJCP has reviewed a large number of laws, most of their recommendations remain unimplemented and ignored by the Government.

- **Council of Islamic Ideology**

Another body mandated to give recommendations under the Constitution is the Council of Islamic Ideology (CII), which has remained a controversial body, especially with regard to women's rights and the misuse of religion as a tool for the suppression of their rights. The Constitution of Pakistan makes a lofty declaration that no law should be made which is 'repugnant' to Islam and that all existing laws should conform to Islamic teachings. And hence CII was set up. The Council's observations are only of an advisory and recommendatory nature without powers of enforcement. Thus, the Constitution only establishes a process by which a constitutional body, the CII, may intervene in an advisory capacity on the 'Islamic' credentials of existing and proposed law. But because it bases its arguments on interpretations of religion, it has the potential to influence decision makers. This has been seen, for example, in the case of the Domestic Violence Bill, passed by the National Assembly in 2009. Upon its passage, the CII gave negative feedback, misinterpreting religion to back its objections. As a result the Government stopped supporting the Bill, and delaying tactics resulted in the Bill not having been passed to date. The main objections come from the religious parties due to its 'un-Islamic' nature. It is interesting to note how recommendations from the NCSW and the LJCP are not recognised, while one negative review from the CII effectively blocks legislation.

Members of the Council are arbitrarily nominated, not elected. They require no criteria for eligibility to the Council. Their attitude and doctrine, interpretation of right and wrong, may also be influenced by the political views of whichever nominating authority happens to be in power. Hence they are unlikely to bring consistency or enlightenment to the determination of the status of women in this country. Furthermore, due to the importance it is given, as per the Constitution, there are apprehensions about the influence it could wield when dealing with women's issues.

The rights of women should not be left in such uncertain hands. At the very least the CII should be representative in nature. It should represent all points of view, and instead of a token

membership of women, it should be adequately represented by women members who understand women's rights and international commitments.<sup>31</sup>

### **Measures Taken for Effective Implementation of Revised and New Laws**

This issue has also been highlighted by the CEDAW Committee in its **Concluding Observations in Paragraphs 18 & 19**.

While addressing this concern, the Country Report mentions efforts made by the government for raising awareness through the publication and notification via the official gazette. New laws are made part of the monthly journals for awareness of lawyers and judges. Training to judges is imparted through the Federal Judicial Academy and to the police through the National Police Academy. For formulating gender-based legislation the opinions of various stakeholders is sought through the electronic and print media.

The criminal justice system in Pakistan is belied by problems including corruption, lack of transparency and political interference. One of the biggest issues is the lack of quality training which affects the competency of actors in the system.

Police training is sorely lacking in adequate training, especially when it comes to women. The police officers are trained differently according to rank. They are given a cursory examination of the laws. It is in fact reported that the course is structured in a manner in which the work is divided amongst the officers who study different sections of the laws and report to the others without a thorough and proper analysis and understanding of the law.

A review of the curriculum of the police<sup>32</sup> reveals that if any of the gender-specific laws and police rules are mentioned in the training materials, they are "embedded in densely written texts and fail to have an impact on recruits". The review goes on to reveal that courses are formulated in gender insensitive language and in fact the material depicts women on the basis of their role in the domestic sphere. In fact, some of the texts are even described as 'un-Islamic and against the Shariah'. In discussions relating to crimes of fornication and adultery, a woman's character is singled out for discussion<sup>33</sup>.

An Aurat Foundation report evaluating the impact of the Criminal Law (Amendment) Act 2004<sup>34</sup>, notes that there is an ignorance of the law within police ranks. In interviews conducted with lower ranking police officials, they revealed that senior police officials may know about the law, but they were unaware of it. They also shared that there was no regular procedure providing regular updates on laws. The DSP Legal, Islamabad, noted that it is the obligation of every senior police officer to update himself about the laws and to share this information with his subordinate officers. However, this is clearly not happening on a consistent or large scale<sup>35</sup>.

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<sup>31</sup> Report of the Inquiry Commission 1997

<sup>32</sup> "Stabilizing Police Through Reform", Asia Society, Report by the Independent Commission on Pakistan Police Reform, 2012

<sup>33</sup> *ibid*

<sup>34</sup> "Honour Killings' in Pakistan and Compliance with Law", Maliha Zia, Aurat Foundation, 2011

<sup>35</sup> *ibid*

Two NCSW studies conducted on impact assessment of the Criminal Law (Amendment) Act 2004 and the Protection of Women (Criminal Law Amendment) Act 2006, revealed that the “legal literacy among the public, particularly women, police and judiciary was very low”. It was also observed that there was little knowledge about the Protection of Women Act 2006 amongst the police and judiciary. Judges were ignorant of any new legislation until a relevant case was brought to their courts. However, both police and judges expressed their interest to get training on the new legislation for effective justice”.<sup>36</sup>

Claims regarding training of lawyers were further found to raise concern in another study conducted on the law against honour crimes. “The lawyer specially said that he was unaware of this law, and when he came to know that such a law existed he was surprised. After the workshop he phoned his colleagues and asked them whether such a law exists and whether they know about the law. All of them (5) did not know about the existence of this amended Act”.<sup>37</sup>

Though laws are published in official gazettes these are not easily available or accessible to the general public that remains largely uninformed. The language of the law is primarily English, which the majority of the population cannot read. The intention of raising awareness of laws fails when such information is not made readily available to the public in places that are easily accessible. Further, with a largely illiterate population, efforts should be made to effectively provide this information to citizens from all walks of life, not just to the educated section of society. Currently, reports from the districts reveal a complete lack of awareness and information amongst the citizens regarding not just recent amendments and laws, but even their most basic fundamental rights.

The Federal Judicial Academy and the National Police Academy provide orientation training to new officers. They also conduct trainings with different levels of officials. However, these trainings are not mandatory for all officials, nor are they regular. Some of these trainings peripherally encompass gender issues and how the

<sup>36</sup> Impact Assessment Report, Public Private Partnership to end ‘ Honour Crimes’ in Pakistan through the implementation of Criminal Law (Amendment) Act 2004, NCSW, P 13

<sup>37</sup> ibid p 14

## **Background and Major Developments after 2009**

### **Devolution of MoWD**

The Ministry of Women’s Development (MoWD) was set up in 1979 as a Division and was upgraded to the level of a federal ministry in 1989. Its main purpose was the formulation of public policies to address women’s needs and ensure the advancement of women in the social, economic and political realms. In 1996, when Pakistan acceded to CEDAW, the MoWD was regarded as the national machinery that would ensure its implementation among other core functions. The MoWD was devolved to the provinces in June 2011 under the 18<sup>th</sup> Constitutional Amendment and ceased to exist thereafter.

### **The National Commission on the Status of Women**

The National Commission on the Status of Women (NCSW) established by a presidential ordinance in July 2000 as a statutory and autonomous body mandated to examine the policies and programmes for women development and gender equality. In 2012, the National Commission on the Status of Women, gained autonomy under the leadership of Anis Haroon through an Act of Parliament. Without the presence of the federal Ministry of Women’s Development (MoWD, which has been devolved to the provinces, the role of the NCSW becomes even more important as the only government institution at the Federal level with a prime focus on women. This makes it even more vital to strengthen its role.

### **Ministry of Human Rights**

The Ministry of Human Rights evolved through a process extending over fifteen years. Initially a Human Rights Cell was

established in 1993, in the tenure of a caretaker government. Benazir Bhutto Shaheed, the former Prime Minister of Pakistan and an ardent advocate of democracy and human rights, upgraded this Human Rights Cell to the status of an independent Ministry in November 1995. However, due to a serious financial crisis in the country, in December 1996 the Ministry was downgraded to a Human Rights Wing and attached to the Ministry of Law and Justice, renaming it the Ministry of Law, Justice and Human Rights. This wing was again upgraded to the level of a Division in November 2007 and to the level of Ministry of Human Rights in November, 2008.

According to its vision, the Ministry of Human Rights is committed to create a society free of human rights suffering and deprivation. Under its mission statement, the Ministry has to safeguard and protect the Fundamental Rights' articles 8-28 and Principles of Policy's article 29 of the Constitutional of Pakistan and the Universal Declaration of Human Rights without any distinction of creed, race or religion.

The mandate of the Ministry includes: review of the human rights situation in the country, Co-ordination of activities of Ministries, Divisions and Provincial governments in respect of human rights, harmonization of legislation, policies and practices with the international human rights covenants and agreements to which Pakistan is a party, and monitor their implementation, obtaining information, documents, and reports on complaints and allegations of human rights violations from Ministries, Division, Provincial governments and other agencies, referring and recommending

criminal justice system should deal with cases of gender based violence. However, an occasional training is not sufficient for quality training of officials of the criminal justice system. It is important to include these issues in the mainstream curriculum, while ensuring all material which is anti-women or gender insensitive is removed from the curriculum. Special attention needs to be given to women specific laws, to women's needs and legal requirements and protection mechanisms in order to ensure that women are provided security by the police.

### **Capacity of National Machinery for Advancement of Women**

CEDAW Committee in its **Concluding Observations Paragraphs 20-21** on the Pakistan's combined Initial, Second and Third Report (1997-2004) had already expressed concerns over the fact that the national machinery for the advancement of women did not have enough authority over human and financial resources to comprehensively carry out its mandate.

[As a consequence, the Country Report has also mentioned a number of projects to strengthen the national machinery and identified a whole range of trainings conducted on gender issues during 2005 to 2009. Therefore, it became essential for the present NGO Alternative Report to undertake some analysis to see to what extent the Government of Pakistan has been successful in addressing the concerns of the Committee in this regard, primarily for the sake of record. **The discussion below relates to the pre-2011 situation]**

The Ministry of Women's Development (MoWD) has an overarching role in contributing to and formulating public policies and laws; meeting and protecting special needs of women; undertaking training and research for equality of opportunity and participation; representing Pakistan at the national and international level; assisting women's organizations; and undertaking projects to provide for the special needs of women.

While discussing the different initiatives and programmes of and under the supervision of the MoWD, it is important to remember that the majority of these are initiated, overseen and funded by international agencies. This illustrates the lack of investment the Government is willing to make in women's issues and in supporting one of its own Ministries. It demonstrates a low priority by

the Government.

“Absence of leadership, weak technical capacity and non-availability of financial resources in MoWD has led to the abdication of its role in policy formulation and strengthened donor control and influence. A weak institutional structure and absence of technical support prevented it from spearheading initiatives on gender reforms.”<sup>38</sup>

An assessment was undertaken to gauge the needs and capacity of the MoWD in 2007. The report of this assessment was approved in 2008, but no concrete measures were undertaken to implement the findings of the report. This reflects lack of interest by the decision-makers towards women’s issues. The National Steering Committee in the MoWD has met only a handful of times to do something about it. Another initiative, such as the Inter-Provincial Inter-Ministerial Group for Women’s Development, is a donor-supported initiative and could only lobby with the Government to be more compliant on its commitments.

**National Initiatives and Programmes to Implement MoWD’s mandate:** The National Plan of Action (NPA) is currently under review, as stated in the Country Report. It remains to be seen what areas and measures the Government will decide to prioritise. Most important

is to ensure a methodology to implement the NPA in its true spirit. Other projects mentioned in the Country Report, such as the Gender Mainstreaming in Planning and Development Project (2005-2007), the National and International Commitments on Gender and Poverty Issues (NICGAP), and the Women’s Political School (WPS) suffer from similar defects. The NICGAP has completed its course with one of its objectives being to implement and monitor the NPA, CEDAW and GRAP. The terminology of the Government text is revealing: NICGAP ‘was intended to’ etc. leaves out the question of what it actually achieved, telling its own tale as to the effectiveness of this ‘endeavour’. There is little evidence on the ground to show that it has achieved on any or some of its goals, including the implementation and monitoring of the NPA,

investigations and inquires in respect of violation of human rights, representing Pakistan in international bodies, organizations and conferences relating to human rights, developing and conducting information programmes to foster public awareness of human rights and remedies available against the abuse of human rights, providing professional and technical trainings relating to human rights issues, and protecting human rights in collaboration with human rights NGOs.

#### **Ministry of Capital Administration and Development**

The Ministry of Capital Administration and Development (CAD), created in the wake of the 18th Constitutional Amendment, is mainly responsible to execute all such functions being previously performed by the devolved ministries/divisions within the jurisdiction of the Federal Capital Area. The Ministry’s functions are multifarious covering a range of subjects like health, social welfare, education, rehabilitation of persons with disabilities, population welfare, etc.

The Ministry is mandated to look after administrative and personnel matters of various departments and organizations of the devolved ministries placed under the administrative control of CAD, take over and continue the ICT components of the ongoing Public Sector Development Programme (PSDP) projects of devolved ministries, and look after all the matters related to the execution of development projects of attached department/sub-ordinate offices, independent entities and organizations under it.

<sup>38</sup> Fauzia Yazdani et al, Review of the Implementation of Gender Reform Action Plan (GRAP), Phase I, 2010

### Major Development after 2009

It is necessary that the provisions of CEDAW be accepted in national law, applicable to all of Pakistan without requiring each individual provincial assembly adopting it with their own particular reservations and amendments. This could result in certain provinces passing an enacting legislation, while others do not.

It must be noted that between the 2009-2012 time period, a number of pro-women laws have been passed. These are listed below:

- ❖ Criminal Law (Amendment) Act, 2010 (amendment in PPC on sexual harassment)
- ❖ The Protection against Harassment of Women at the Workplace Act, 2010
- ❖ Prevention of Anti-Women Practices (Criminal Law Amendment) Act, 2011
- ❖ The Acid Control and Acid Crime Prevention Act, 2010
- ❖ The Women in Distress and Detention Fund (Amendment) Act, 2011
- ❖ National Commission on the Status of Women Act, 2012

However, while these laws do address some of the most pertinent issues faced by women, the State still continues to avoid the passage of laws or amendments to the law that are considered more controversial due to the fact that these might affect the traditional set up of the family and society, as has been mentioned above in the case of domestic violence bill. Therefore direct and indirect discrimination of women through law continues without adequate legislative means to address them and provide these

CEDAW and GRAP.

There are no indicators that provide evidence of how successful these projects were; no transparency in order to evaluate, amongst other things, good practices and failures; and most importantly, without monitoring and evaluation from independent sources, there is no effective way to ascertain whether the allocated funds were used appropriately and with tangible outcomes. Also, the crucial question of sustainability of projects is never directly answered.

There has been no concept of transparent governance. The project reports are usually made directly to donor agencies and are not shared with the public. If they are, they provide facts and figures without any substantive material. Sustainability is never an option mainly due to lack of funds. Funds are never provided for by the Government, nor has there been any interest in continuing these projects without donor persuasion and financial resources.

It is vital that the Government effects changes within its administrative set up in order to accommodate these requirements. With running projects, such as the Gender-Based Governance Systems Programme, there is still a possibility for revolutionising the systems in order to make this project strong, more successful with sustainable and tangible results. Given that attitudinal change does not occur on order, much more work and commitment are needed for changes to take place in this area, and for the impact of various initiatives to take effect.

**Gender Reform Action Plan (GRAP)**, as one of the largest projects on gender issues, is often held up by the Government as one of its successes and proof of its pro-women agenda. However, GRAP also has its own set of challenges. The Report of the Review of the Implementation of Gender Reform Action Plan (GRAP), Phase I, 2010, reveals that:

- GRAP neither brings out the spirit of inter ministerial integration and policy reforms as contemplated in its document, nor does it integrate or institutionalize GRAP in MoWD by aligning it with its existing structure. The strategic actions laid down are beyond the mandate of MoWD<sup>39</sup>.
- There is no Annual Report or Annual Progress Report of GRAP reflecting the impact assessment of activities carried out, except the one prepared for the CEDAW forum throwing some light on its consolidated activities<sup>40</sup>.
- The GRAP document (PC-1) also does not provide for any policy monitoring mechanism; nor does it indicate any revision or inclusion of other policies that may be required as a result of its own policy input; nor recommends how these will be established and maintained. It lacks human and financial resources and capacity to implement and monitor any policies and legislation<sup>41</sup>.
- There is no linkage between Civil Society Organizations (CSOs) and GRAP activities, except that CSOs are invited to attend its seminars and workshops<sup>42</sup>.
- The original design of GRAP did not incorporate effective resource allocations. This has led to a dependence on raising donor resources to support and initiate activities with Government Ministries<sup>43</sup>.  
Projects run under GRAP have had their own problems. The Women’s Parliamentary School (WPS), while very successful when it was running, will now be in question.

Projects run under GRAP have had their own problems. The Women’s Parliamentary School (WPS), while very successful when it was running, will now be in question because of changes being made in the local government system. Even during its project life, there were some technical problems since its very inception. These included the variability of the effectiveness of the programme as it moved between provinces owing to differing degrees of political commitment; the curriculum

women legal justice.

After demands from civil society to strengthen the NCSW, the National Commission on the Status of Women Act 2012 was passed. The NCSW was given its own budget by the Government to carry its own mandates and its own independent Secretariat. It has been given an independent set-up and is not placed within a Ministry. It has also been given the right to make enquiries into complaints of violations against women’s rights.

The new NCSW law also changed the procedure of appointment of the Chairperson, allowing nominations and the formation of a Parliamentary Committee to make the final decision. However, while this amendment was made to make the process transparent and accessible, it must be noted that the Chairperson’s position has been vacant since April 2012 and NCSW has also not been functional since then.

The 2012 amendments were welcomed as a positive change. However, the main demands were still not met. The NCSW has still not been given official consultative status with reference to policy-development, planning or law-making. It has been assigned to only ‘make suitable recommendations to the concerned authorities’; ‘suggest repeal, amendment or new legislation’; ‘advise the Federal Government before accession to any such proposed international instrument, protocol or treaty’; and ‘recommend to the Federal Government the signing or ratifying of international instrument’. The role of the Commission will therefore remain consultative and the Government is not bound to consult it, take advice or take note of its recommendations.

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<sup>39</sup> ibid  
<sup>40</sup> ibid  
<sup>41</sup> ibid  
<sup>42</sup> ibid  
<sup>43</sup> ibid

### Women Development Departments

Upon the devolution of the MoWD, the Women Development Departments (WDD) in the provinces now play the focal role on women's issues. WDDs were previously under the administrative control of a different Ministry. However, to date, independent WDDs now exist in Sindh, Balochistan and Punjab. However, the WDD in Khyber Pakhtunkhwa remains attached to the Social Welfare Department<sup>1</sup>.

Much like the issues facing the MoWD at the Federal level, the WDDs have similar issues. Post devolution, it took some time for the WDDs to adjust to the change, largely due to issues of unclear budgets and terms of reference. However, the situation is settling. Nevertheless, the WDDs are plagued by a number of issues. WDDs have very limited and insufficient funds available under non-development budget. In times of crisis or budget cuts, this department is the first one affected. Limited funding is the major reason for insufficient physical facilities for the WDD staff members<sup>1</sup>.

The staff of the WDDs also lacks technical capacity, which includes limited grasp on women, and gender development. Most of the present staff has not received formal training in gender analysis, gender responsive budgeting, gender responsive project cycle management and gender institutionalization. Consequently, most of the staff members do not have understanding of concepts and skills to translate gender equality concepts into policies and programs. This lack of expertise results in the staff being unable to play a meaningful role for gender empowerment and

was developed without conducting a training needs assessment of the women councillors; the program was split into two streams out of four streams. No work was done for gender political reforms; the District Resource Centres formed under the project were unable to function for lack of coordination between Federal and Provincial Governments and resources; while 50% of the GRAP intensive grant was distributed without defining accountability mechanisms. The Women's Development Departments were bypassed and funds were transferred directly to the district *nazims* and district coordination officers without even informing WDDs; the capacity of the GRAP office at the Federal level to run these centres was also a major issue, as the staff lacked efficiency, and had no clarity on concepts and little training.

**Gender Development Sections (GDS)** have some achievements to show in terms of establishment, modification, improvement of basic office facilities for a comfortable working environment for women (specific space, day care facilities, toilets, rest rooms etc.); preparation of annual cash plan documents; preparation of information material, such as brochures; and preparation of annual progress report. But issues, like high staff turnover at GRAP-PMO (project management office) and low pay scale require attention. There is lack of ownership and weak mainstreaming within the Federal Implementing Partners (FIPs) organizational set-up, because the GDS were seen to be part of MOWD whereas GRAP/MOWD considered them to be part of the relevant Federal Ministry.<sup>44</sup>

**Trainings on Gender Issues** have been conducted but what is lacking is any actual substance coming from these trainings. Who was trained? What capacities were built? Have there been regular follow-ups and assessment of improved capacity? What are the workshop modalities? Workshops based on prepared modules have the advantage of uniformity and pre-given structures, but they lack flexibility and can be mechanical. Empirical evidence shows that their chief merit is a familiarisation of the participants with gender terminology. While this may be seen as an important first step it does not ensure commitment, or even acceptance of gender issues by the participants. Furthermore, while claiming to mainstream gender, usually only staff members of projects working primarily with women were trained. These and other

<sup>44</sup> *ibid* – p 25

trainings need to be given to all government employees on an ongoing basis in all Ministries in order to effectively mainstream women's issues. Also, more work needs to be done to improve the contents of the trainings. Given bureaucratic resistance and cultural biases, awareness of these efforts needs to be orchestrated at multiple levels through print and electronic media, content of school texts etc.

- **The National Commission on the Status of Women (NCSW)**

The NCSW was established with the specific purpose to: examine policies, programs and other measures taken by the Government for women's development and gender equality; review laws, rules and regulations affecting the status of women; monitor mechanisms and institutional procedures for redress of violations of women's rights and individual grievances; Encourage and sponsor research to generate information, analysis and studies relating to women and gender issues; develop and maintain interaction and dialogue with NGOs, experts and individuals in society at the national, regional and international level; and any other function assigned to it by the Federal Government. The role of NCSW has been discussed earlier in this section.

### **National Programmes and Policies on Women**

CEDAW Committee in its Concluding Observations Paragraphs 46-47 asked for detailed information on the scale and scope, and especially impact of all programmes carried out to promote women's rights.

A majority of women's rights programmes have been discussed throughout the Country Report. There have been some positive outcomes, but impact has never been properly and independently evaluated. There are some over-arching issues prevalent in each of the initiatives taken by the Government that are identified and summarised below:

- **Political Will**

It is evident throughout the Country Report that the basis of the painfully slow movement on women's issues is because of the lack of political will and the tendency to compromise with political opponents when it comes to women. Women's issues are not

equity. Supplementing this is the issue that the staff often has dual charges\*. Alongside this, frequent transfers are also problematic. The transfers of secretary and director level staff affects continuity in policy matters. It is vital to raise questions as to the capacity building and organisational and administrative management of the WDDs to ensure effective planning and implementation of gender programmes, as well as reporting on CEDAW.

\* "Appraisal of the Capacities of Women Development Departments (WDDs) at Provincial Level", GEP, Aurat Foundation, USAID

considered priority issues. This attitude will have to change, because without the Government's full and unambiguous support the problems cannot be effectively addressed.

- **Budget and Resources**

Adequate budgets and resources are not allocated to women's issues, as is evidenced by the needs and requirements of even the Ministry of Women's Development (as it existed before 2011) and now the Federal Ministry of Human Rights and provincial Women Development Departments. The majority of projects and programmes currently underway are supported and initiated by international donors and not the Government of Pakistan. This reluctance to allocate necessary budgets and resources for addressing women's issues reinforces the strong suspicion of absence of political will.

- **Implementation**

The above issues are inter-linked. Without political will and resources, implementation of any pro-women policies or laws and related awareness programmes cannot be fully implemented. The attitude in the lower echelons of government functionaries, who choose not to prioritise women and their needs and issues, mirrors the prevalent attitude higher up the ladder. As a consequence, pro-women laws remain among the least implemented laws in the country.

- **Transparency**

This is generally believed that there is no transparency in the processes of Government projects. Even the reports given to donor organisations are not made public. The public is therefore completely unaware as to what has happened and what is going on. It is ignorant of where resources have been spent and what has been the impact. This has also contributed to increase in corruption, which is easily hidden without the presence of transparent mechanisms of administration and governance.

- **Sustainability**

A large number of projects and programmes are operating regularly, but none of them has been sustained beyond the project's life. In order to have continuing impact programmes have to be sustainable. However, this requires the Government's support and commitment, which at present is not there in full measure.

- **Monitoring and Evaluation**

Connected with the issues identified under transparency and sustainability, without independent monitoring and independent evaluation, it is difficult to identify how far reaching and successful the programme has been. There is no way of knowing what went wrong and what went right. Hence, effective monitoring and evaluation are vitally important to enable informed decisions regarding extending and/or replicating the projects and ensuring sustainability.

**Temporary Special Measures to Achieve Equality**

The Country Report mentions some measures in this area. However, these are steps mentioned in the previous country report (1997-2204), as the Fourth Periodic Report itself admits. These are adoption of National Policy for the Development and Empowerment of Women (2002), fixation of 10% civil service employment quota, which the report says that it has not been implemented. No specific measure has been undertaken by the GoP during the present period (2005-2009) to achieve or further promote gender equality.

## Article 5: Sex Roles and Stereotyping

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The Country Report seeks to present a positive view on the evolving perception of women and women's roles in Pakistan. While there is no doubt about women's economic productivity and they have long been entering fields hitherto reserved for men, and the passage of The Protection against Harassment of Women at the Workplace Act, 2010, gives tacit recognition to their role as breadwinners, there is little evidence of corresponding changes in the discursive field. This fact not only diffuses the impact of pro-women legislations such as the Sexual Harassment Act, and the Anti women Practices Act 2011, it impedes or even criminalises women's access to rights and facilities that do not correspond with stereotypes that reduce them to the exclusively to their childbearing nurturing role within private, domestic space. These include their right to paid work, inherited property and land ownership as well as their right to decision-making in matters regarding their own lives such as choice in marriage and reproductivity. The discursive elision of women's economic productivity translates into their absence or erasure in statistics and policy decisions as exemplified by serious omissions or gaps in government rules pertaining to paid maternity leave; working hours; child care facilities such as crèches etc in the workplace etc. Similarly, women in the agricultural sector carry the double burden of back breaking work at home and in the field such as cotton picking, sowing rice etc. and have been at the forefront of the peasant movement for land ownership, yet have still to be granted official status as '*kissans*' or farmers resulting in their exclusion from land ownership.

In this regard, the decision by the Sindh Provincial Government to grant land to landless peasant women is a positive one and the example set by the Sindh Government should be followed by all provincial governments. This process will be facilitated if concerned decision makers initiate action to break with stereotypical perceptions of women and peasant women are granted official status as *kissans*.

Operating within the parameters of 'private' space, which is the allocated domain of women and 'public' space which belongs to men, stereotypes of 'good' and 'bad' women impact negatively on issues of women's agency, paid work, access to education and skills for the job market; at the same time they enhance their vulnerability to different forms of VAW particularly those pertaining to male or family 'honour'; influence legislation as evidenced by the Zina Ordinance as well as judicial decision-making and policy and budgetary allocations for women.

There is little evidence to show that the Country Report's aspiration to present a positive view on the evolving perception of women and women's roles in Pakistan is backed by any consistent effort to change mainstream perceptions of women or even to understand the ways in which stereotypes reinforce gender biased perceptions of women and in fact serve to undermine pro-women laws and policies. Unless stereotyped sex roles are examined and interrogated, women will remain limited by their socially perceived role as child bearers and nurturers that denies their human potential and maintains their vulnerability to different forms of violence in both private and public spheres. The absence of effort is a matter of grave concern.

- **Media**

The media including the state owned Pakistan Television (PTV) and Radio has played an important role in highlighting and bringing women's issues to the forefront. However, efforts to foster a better understanding of and support for gender equality and to modify stereotypical gender roles have remained weak<sup>45</sup> resulting in the continued use of gender biased language- and reliance on stereotypes that valorize gender based roles for women and men that continue to reinforce and perpetuate women's subordinate status in society. This is a matter of serious concern as the establishment of and numerical strength of private television channels has considerably increased the mediums' outreach in the dissemination of information and ideas and enhanced its role in the making of public opinion.

Since the corporate sector began investing in the media, particularly in private TV channels, the primary objective of news bulletins and programmes has been to win the highest viewership and attract advertisers. In the fierce competition among rival channels the news is sensationalized particularly cases of VAW. While this coverage has prompted law enforcement agencies to take notice and at times arrest perpetrators, the manner in which this information is presented is often violative of survivor privacy and rights. A further reflection of both commercial interests and authoritarian political agendas/biases is evidenced in talk shows where rational debate on democracy and citizen's rights is subsumed by the sensationalist authoritarianism of religio-nationalist rhetoric and the preponderance of programmes and channels that enable the propagation of religion-based intolerance including the views of militant extremists. This undermines the rights of all citizens particularly women and non-Muslim communities and is a matter of deep concern.

The Pakistan Electronic Media Authority (PEMRA) has laid down a code of conduct, but implementation is poor. This enables non-state actors with vested interests, including extremists, to use media for their own interests. In Swat the Taliban leader Mullah Fazlullah used FM radio channels to terrorize the entire population with his violent brand of religion and to impose restrictions on women regarding their dress code, their education and paid employment. Working without official permission he set up and freely used these radio channels to establish his sovereignty over the district prior to military operation in 2009.

The print media has played a comparatively more responsible role, in particular the English press, with positive signs emerging in the traditionally conservative Urdu newspapers towards gender issues. However, gender-biased language-use and gender stereotyping remain a problem particularly in soap operas and advertisements.

### **Advertisements**

Advertisements invariably portray women in their domestic roles as wives and mothers and to sell household items such as detergents, cooking or as economically unproductive consumers to promote the fashion industry and luxurious lifestyles. In the former, their role in life is reduced to that of a housewife whose aim in life is to feed and clothe the family and please and placate

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<sup>45</sup> Paragraphs 28 – 29 of the concluding observations raised issues related to role of non-state actors in fundamentalism, as well as the role of media. These also highlighted the need to aim at modifying stereotypical attitudes and traditional norms about the responsibilities and roles of women and men in the family, the work place and in society.

the husband and or mother-in-law. In the latter, she is either the marriageable economically unproductive daughter awaiting the purchase of her dowry by a loving and over burdened father, or as a consumer and odalisque for the display of jewelry, clothes and so on. Subtle or blatant, the message of these advertisements affects viewer perceptions and sets standards regarding the expected or appropriate role of women.

### **Television Entertainment**

Soap opera and television plays have a large viewership and are among the most watched programmes in Pakistan. While a number of the more recent plays have presented women in less stereotypical roles and carried positive gender messages, in the main, soap opera and television plays thrive on gender-based stereotypes and propagate traditional patriarchal values<sup>46</sup>.

Women are constantly shown at the mercy of men through physical violence, absence of agency and/or exclusion from decision-making and resources. In the main, storylines rely heavily on gendered sex roles and stereotypes to justify and/or condone violence against women by portraying them as 'always already guilty' whether as wives who have failed to win and keep a man's love or as temptresses and home-breakers<sup>47</sup>. Women's agency is acceptable only if exercised in the interests of the family and/or husband, never if used in the pursuit of their own interests. This approach reinforces gendered sex roles including notions of male dominance and the perception of the woman's body as the terrain across which male battles are fought and male 'honour' preserved<sup>48</sup>.

Given television's outreach as a powerful medium that informs, educates, entertains and creates awareness and thereby "advocates, whether subtly or forcefully, how the audience thinks,"<sup>49</sup> it is imperative that serious thought is given to the substance and message of entertainment channels including basic ground rules regarding the ways in which women are represented on entertainment channels.

The induction of a considerable number of women in the media has been a positive development, but the majority among those hosting political talk-shows as anchor persons tend to follow the precedence set by their male colleagues. Efforts need to be made to ensure that media houses operate their business in the best interest of society and highlight issues of public concern particularly with regard to women<sup>50</sup>.

The Government needs to take a strong position with regard to the representation of women in the media including gender sensitization workshops etc for both policy makers and media practitioners.

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<sup>46</sup> "Portrayal of Women in Pakistani Dramas", Tasneem Ahmer, Newline, June 2012

<sup>47</sup> *ibid*

<sup>48</sup> *ibid*

<sup>49</sup> *ibid*

<sup>50</sup> *ibid*

## Illegal Dispute Resolution Mechanisms

*Jirgas* and *panchayats* are illegal dispute resolution mechanisms or parallel illegal systems which have been functioning in Pakistan before its independence. Alongside these, there exist a number of other informal systems which dispense justice without having any legal sanction to do so. These illegal parallel justice systems mete out vigilante justice, dispensed by influential members of the community in accordance with their archaic interpretations of customary practices. This illegal system, which is strongly patriarchal in nature, is handing out inhumane and degrading punishments. It completely undermines the state machinery of law and justice, challenges the writ of the State and deprives citizens, particularly women and other vulnerable segments of society, of a fair trial and justice.

The implementation of punishments given out by *jirgas* and *panchayats* are crucial to their credibility. Anyone who then does not abide by the decision of the *Jirga* is subjected to punitive measures. A *Jirga* can impose powerful sanctions to enforce its judgment which could include sanctions, fines or burning down the house of the so called 'guilty' party, or even murder<sup>51</sup>.

There are a number of issues with such illegal systems. Most importantly, these systems are not sanctioned by law and therefore function without the support of the system and without proper procedures etc. The adjudicators most often belong to prominent families in the community and are more concerned with preserving the status quo than with meting out justice. Any investigation of evidence taken is often inhuman, outdated, unreliable and based on non-scientific methods such as walking on burning embers to decide on guilt or innocence. These 'judges', as mentioned above, make their decisions with reference to traditional attitudes and customary practices as opposed to the law of the land, the rule of law, human rights and fundamental principles. The evidence, procedures and decisions are not based on law and often contradict the law to provide punishments which are illegal and often horrific e.g. rape, death as *karo*

<sup>51</sup> "Review of the Formal Parallel and Illegal Parallel Systems", National Commission on the Status of Women, 2010

## Major Developments after 2009

The Supreme Court accepted the petition of the National Commission on the Status of Women pertaining to declaring *jirgas* illegal in March 2012\*. The matters remain sub judice before the court. The Supreme Court remains active by demanding the presence of an MPA to explain his presiding over a *jirga*\*\* . The matter is currently on-going.

Currently the MAs are no longer functioning officially. The MAs were based in the local government systems. Since that system currently no longer functions, the MAs do not function either. Therefore the intention of this system as a support to the courts is no longer an option. If re-vitalized, the above mentioned issues must be dealt with and the above weaknesses must be removed and the terms of reference and limits of power of the Masalihati Anjuman must be clearly defined.

In 2011, the Anti-Women Practices (Criminal Law Amendment) Act, 2011 was passed. The law focuses on making illegal the customary practices of depriving a woman of her inheritance; prohibition on marrying a woman to the Quran; prohibition on forced marriages; and extends provisions related to the exchange of women for purposes of settling disputes or in *vani* or *swara*. While there may remain legal lacunae in the laws, the milestone achieved was the recognition given by the State that these practices are criminal

\* SC accepts petition against *jirga* system", 17 March 2012, The Nation

\*\* "Wani case: MPA Tariq Masuri appears in court", 10 October 2012, Dawn

and illegal. It is necessary for all branches of the State to ensure the proper implementation of these laws. In particular, the executive must ensure proper training and education of the police, medico-legal departments, all government departments as well as the public to be familiar with these provisions. No exceptions can be made. Any member of the National or Provincial Assembly or Senate or party who commits or participates in any form whatsoever in such practices, must be disqualified immediately. The judiciary must ensure all lawyers and judges be familiar with the law and implement it in its true form and spirit.

It must also be noted, the Supreme Court while accepting the NCSW petition on outlawing *jirgas* and panchayats, also merged with it a petition submitted by Samar Minallah, a rights activist and filmmaker on social and gender issues, on *vani* and *swara*. The case is still on-going.

*kari*, exchange of girls as compensation<sup>52</sup>. Decisions are also made on the basis of age old principles e.g. 'To pay in the same coin'. These decisions are also mostly not allowed to be appealed against. If appeal is allowed it is to another *jirga* constituted of some different members<sup>53</sup>.

These systems are notoriously anti-women. Women are not involved in these systems except as recipients of judgments. They are not the judges/decision-makers; they are usually not allowed to be present at proceedings, which includes if they are pleading a cause or even when they are defending themselves or family members etc. There are also clearly very anti-women sentiments and punishments. Women are also included as part of punishments of other men. Women are exchanged in cases of resolution of disputes; given as collateral in cases of murder and tribal warfare; as collateral in cases of honour and dishonour; raped and harassed as punishment to men in their family i.e. dishonouring the family etc. There is also a lack of involvement of non-Muslims and other sects of Islam<sup>54</sup>.

Illegal dispute resolution systems such as *jirgas* and panchayats contravene Articles 4, 8, 9, 10, 10(a), 14, 25, 34 and 37 of the Constitution of Pakistan, which guarantee legal protection and the right to enjoy life, liberty and justice to all citizens of the country and to be treated in accordance with law. Unlike the regular court system, *jirgas* focus on 'settlement' not 'trial' to prove anyone guilty or innocent, and have the inherent flaw of condemning the accused without a hearing<sup>55</sup>. They are therefore merely traditional practices and are in violation of the law and are unconstitutional and in fact, the Supreme Court in a 1993 case stated "...mere existence of a tribal society and a tribal culture does not by itself create a stumbling block in the way of enforcing ordinary procedures of criminal law, trial and detention which is enforceable in the entire country"<sup>56</sup>.

<sup>52</sup> Rethinking *jirgas*', Huma Yusuf, Dawn Newspaper, Sunday, 11 April, 2010; 'Marriages of minor girls in compensation for murder: SC orders arrest of MNA, 11 others', Mohammad Kamran, Daily Times, 19 August 2007

<sup>53</sup> *ibid*

<sup>54</sup> *ibid*

<sup>55</sup> Shaheed Farida et al, Shaping Women's Lives; Laws, Practices and Strategies in Pakistan, Shirkat Gah Lahore, 1998,P.227

<sup>56</sup> Government of Pakistan vs. Azizullah Memon reported in P L D 1993 Supreme Court 341

The Sindh High Court has declared these systems as illegal. However, they still continue. This issue was also raised by the CEDAW Committee in its **Concluding Observations paragraphs 24 & 25**. In response to this concern, the Country Report refers again to the Sindh High Court Judgment<sup>57</sup> which declares *jirga* (s) illegal. The Country Report states that under Article 201 of the Constitution this judgment is binding only on the courts subordinate to the Sindh High Court, not on the courts elsewhere in the country.

The Supreme Court has also played a pivotal role in taking suo moto notice of tribal justice in some cases, as noted by the Country Report. However, these cases have been pending since 2008 and have not had a resolution yet.

The Country Report addresses this issue by recognising the existence of the problem. It however does not explain if even the Sindh High Court has declared *jirgas* illegal, why they continue to exist with impunity. The Government has tried to defend itself by stating that the police is fully empowered to curb the offence of holding *jirga* and *panchayat*, but does not address the consistent failure of executive support to the police in pursuit of their duties. The Government seems to have sidestepped the issue, as it is a known fact that several Parliamentarians and Ministers actually patronize and often participate in *jirgas* themselves in the role of tribal elders. Furthermore, instead of punishing or penalising these State officials, the Government has been known to 'reward' them, for example, a tribal leader from Sindh was appointed a Minister and made a member of the Cabinet.

Nowhere in the Country Report has the role of the Government or of the Parliament been mentioned to counter the practice of *Jirga*. There is no discussion as to whether the Government plans to take legislative measures or these are in process to ban *jirgas* at least in the settled areas where the regular court system is in place to deliver justice, or a strategy to ensure their elimination, or even penalties for members of Government who preside or participate in such forums. At the moment, only the judicial arm of the Government seems to be addressing this issue, without any follow up support from the other two arms.

This flagrantly violates any principles of justice and rule of law and demonstrates the fact that *jirgas* function with impunity as they are supported by a few members of Parliament as well as by local law enforcement agencies like the police. It is a necessity to challenge these tribal systems directly and to outlaw them through national legislation, which should be strictly implemented. The legislation should not only focus on participants but also on all those who have aided, abetted, or even witnessed and had knowledge about such happenings.

The Country Report does focus on the implementation of the National Judicial Policy 2009 to work towards improving the existing judicial system in order to encourage people to approach it without the fear of never receiving justice. However, it is as important to ensure the quality of case management and judgments – a fact that is being ignored while courts are trying to implement the National Judicial Policy 2009. The Government must not just focus on processing cases without ensuring proper implementation of justice. This includes filling all the empty seats for judges across the provinces; to ensure proper training for judges and court clerks to ensure quality, as well as eliminating gender bias and discrimination; ensure education and awareness on women's legal rights and pro-women laws.

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<sup>57</sup> 2004 PCRL 1523

The Country Report also referred to the dispute resolution mechanisms called Masalihati-Anjuman (MA) under the Alternative Dispute Resolution Project, initiated in 2005. The goals of the MA were “to assist women and other vulnerable sections of society in improving their conditions through safeguarding and promoting their rights and lawful entitlement”. At the initiation of the project, the MA was beset with a number of issues. Firstly, by functioning in only 20 out of 116 districts it does not effectively reduce the workload of the court, nor provide accessible and speedy justice across the nation. In fact, it was found to be less accessible. The MA should comprise two men and one woman from a community, though this is not mandatory. While the purpose of the MA is to provide socially vulnerable individuals with the opportunity to be heard, it is not clear if this has been achieved. Other challenges facing the MAP included lack of community representation, absence and/or exclusion of women members, lack of women’s participation due to cultural barriers, unawareness and/or exclusion of gender issues, inadequate training and absence of formal protection accorded to women, etc.

Another key problem is the list of issues mentioned in the schedule of the rules of the MA. This list covers a number of civil and criminal matters, a number of which are of high concern as those relate to issues of different forms of violence against women. A further concern is the formation of conciliation committees and mushilati *jirgas* within the premises of the police stations on the directives of the police high ups. The specific concern is that they take up matters of VAW. One such directive of a police high up in Punjab province directing the formation of such committees at every police station enlists the issues to be referred to such committees which includes ‘*auraton ke khilaaf ziadti ke muqadamaat*’. The word ‘*ziaditi*’ in common usage encompasses kidnapping, sexual harassment, assault and even rape. This is a matter of serious concern.

- **Anti-Women Customary Practices**

Pakistani society places a great deal of emphasis on customs and social traditions. However a number of these have outcomes which are incredibly biased against women or actually result in their mental and/or physical harm. These are described as ‘anti-women customary practices’. Anti-women customary practices consist of a range of violations of women’s rights which include honour killings, child marriage, forced marriage, marriage to the Quran, vani, swara, depriving a woman of her right to inherit etc<sup>58</sup>.

The Country Report has discussed the breaking of stereotypes of women in Pakistan, but it has not touched upon the steps that need to be taken to eliminate harmful customary practices. It is important to note that *jirgas* and panchayats, as discussed above, also form a part of these anti-women customary practices, as their existence is based on tradition. Therefore, the Government’s role in eliminating such systems and anti-women customary practices remains limited.

There has never been any piece of law that dictates that a woman cannot inherit property or that a woman can get married to the Holy Quran. However, such incidents occur in high frequency, with the intention to keep the property unified under the power of the men of the family. These practices occur within families of the members of National and Provincial Assemblies. Therefore there is little interest among decision-makers in working towards improving this situation.

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<sup>58</sup> Interview with Danish Zuberi, Advocate, 2009

The practice of child marriage and forced marriage continues despite the existence of laws governing the age of marriage and the woman's free and full consent. Customs practices pertaining to the exchange of women and girls in negotiations, barter or for settling disputes have been specifically outlawed, but continue to occur with little constraint<sup>59</sup>. The Supreme Court has taken notice of individual cases and brought them within its jurisdiction, but no other arm of the Government takes such notice. It must also be noted that the Supreme Court's activism is also based on the interest of individual judges currently sitting in the Supreme Court. However there are no mechanisms in place for sustainability of taking note and hearing of such cases on the basis of suo moto.

Harmful customary practices also result in other forms of VAW, including trafficking. In a 2009 report, it is stated that 17 % of the trafficking victims have been forcibly married or married under false pretences for money. Another 15 percent of trafficking victims have been sold by parents or relatives. Practices of parental decisions about marriage and bride price are evident here under the guise of tradition and custom. There is evidence that these girls are actually bought for prostitution and resold for commercial sex later on<sup>60</sup>.

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<sup>59</sup> "Pakistan: Enslaved by Tradition", Equality Insaaf, July 2012

<sup>60</sup> "Baseline Study on Illegal Migration, Human Smuggling and Trafficking in Pakistan", EBDM/BEFARe/ACTIONAID, 2009

## Article 6: Trafficking and Prostitution

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Pakistan is a country of origin, destination and transit for human trafficking. It is a major destination for trafficked women and girls in South Asia. It is also a transit country for trafficking from Bangladesh to Middle East countries, where boys are exploited as camel jockeys and girls and women are trafficked for sexual exploitation. Women and children from Afghanistan, Azerbaijan, Bangladesh, Iran, Myanmar, Nepal, the Philippines, Russia, Tajikistan, Thailand, and other countries of Central Asia are trafficked to Pakistan. Pakistan is a country of transit for East Asians travelling westward to the Middle East. People of different nationalities are also smuggled to Europe and the Middle East through Pakistan's remote border regions in Balochistan. Variant forms of internal trafficking are also prevalent in different parts of the country embedded within local customs and traditional practices. Children are trafficked internally for begging and forced labour, girls and women from rural areas are trafficked within Pakistan to urban centres for commercial sex exploitation and involuntary domestic servitude (UNDP; 2007)<sup>61</sup>.

The Prevention and Control of Human Trafficking Ordinance 2002 and Prevention and Control of Human Trafficking Rules 2004 were passed in order to combat this issue. Other measures by the Government have been to include trafficking in the National Plan of Action (NPA) and to establish an Inter-Agency Task Force in 2005 to intercept traffickers and to rescue victims. The Federal ATU Monitoring and Coordination Cell have been made responsible for collecting age and gender-disaggregated data on trafficking.

The Federal Investigation Agency (FIA) is the only law enforcement agency with authority over smuggling and trafficking in Pakistan. The Anti-Trafficking Unit within the FIA is the main source of data collection on illegal immigration and smuggling. However, this data is only limited to monitoring legal check posts. The borders, from which illegal routes are taken, are monitored by other agencies such as the Frontier Constabulary, Frontier Corps and Rangers, who do not have a sole focus on anti-human smuggling or counter-trafficking, and therefore, do not collect such data, nor monitor such situations.

The FIA does not collect data on internal trafficking cases, as it falls outside its mandate. Therefore there is no cohesive data on internal trafficking. Due to lack of specific legislation on internal trafficking, any such cases are booked under other laws of Pakistan, which make it difficult for identification and thus the frequency or patterns are concealed. Furthermore, there is no significant effort by the FIA to collect data on the magnitude or trends of other forms of human trafficking in Pakistan. Further, there has been no standardization of data collection tools for gathering victim or migrant data of any type<sup>62</sup>. Nor has there been effort to coordinate with the different bodies and institutions on combating this crime. This also results in difficulty in agreeing upon a uniform definition of trafficking and categories of trafficking.

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<sup>61</sup> "Baseline Study on Illegal Migration, Human Smuggling and Trafficking in Pakistan", EBDM/BEFARe/ACTIONAID, 2009

<sup>62</sup> *ibid*

One of the biggest weaknesses of FIA and the police is the lack of capacity and training in combating human trafficking. There is also a lack of conceptual clarity as to the different categories of trafficking, smuggled persons etc<sup>63</sup>, as well as of cases of trafficking in the guise of marriage, etc. Regular training is required to deal with this lapse. Until this is successfully done, the data remains inaccurate and under-representative of actual figures.

Trafficking, as identified above, takes many forms. As discussed in the previous section, harmful traditional practices play a contributory role in trafficking where victims have been forcibly married for money or married under false pretences. “There is often consent by the parents and trafficking is embedded within local customs and tribal practice, e.g. where the girl child is sold in practice of selling young brides for a price”<sup>64</sup>. Factors such as extreme poverty, unemployment and large household sizes contribute to reasons of this practice.

Bonded labour is another category of trafficking, which is largely ignored and often not recognised as trafficking. Unconfirmed reports about bonded labour victims, including men, women and children, are in the millions. Identification of bonded labour is a difficult task because of its invisibility.

The Prevention and Control of Human Trafficking Ordinance 2002 and its corresponding Rules in 2004 are the main laws dealing with external trafficking. There is currently no explicit law on internal trafficking, although different laws such as the Women Protection Act and the Pakistan Penal Code contain provisions relevant to internal human trafficking cases. Similarly, national policy documents on women and child protection contain provisions related to internal human trafficking. As there is no law on the subject, there are no government agencies working on internal human trafficking<sup>65</sup>.

The Trafficking Ordinance was passed 10 years ago and its corresponding rules were passed two years later in 2004. However, the Ordinance and the rules have proved to be inadequate, leaving a number of issues and problems to be dealt with. This has also been identified by the CEDAW Committee in its **Concluding Observations Paragraphs 30 & 31**. For example, it does not distinguish between external and internal trafficking. Although the government continues to prosecute some traffickers, it did not demonstrate efforts to address the serious issues of bonded labour and other forms of labour trafficking, such as forced child labour and trafficking of migrant workers by fraudulent labour recruiters. Furthermore, punishments assigned to convicted traffickers were weak, and the government failed to provide protection services to victims of forced labour.<sup>66</sup> Some major gaps in the law are identified below:

- Bail is easily available to offenders. Trafficking should be made a non-bailable offence;
- The maximum period of imprisonment is seven years. This should extend to 14 years and offenders made liable to pay heavy fines;
- The Act at present does not apply to the Federally Administered Tribal Areas (FATA) and Northern Areas. It should be made applicable to these areas too.
- Revision and update of the Pakistan Penal Code (PPC) as per international standards to give due protection to victims; and/or making PPC part of PACHTO to enable concurrence to the law enforcement agencies is required.

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<sup>63</sup> ibid

<sup>64</sup> ibid

<sup>65</sup> ibid

<sup>66</sup> Trafficking in Persons Report 2008 – Pakistan, United States Department of State, 2008

- Uniform procedures to prosecute the offenders and provide treatment to victims of trafficking should be developed under all different laws that are currently being used to deal with trafficking and smuggling issues.
- The 'demand' side of trafficking is ignored; It does not address "organs trafficking"
- Attempt to be made as concrete a crime as trafficking and hold the same punishment as the commission of the crime would hold;
- The jurisdiction of the Law should be applicable to internal trafficking too.

The Government has not provided any evidence or details of any arrests, prosecutions, convictions, or punishments for bonded labour, which is often a form of internal trafficking. With respect to sex trafficking, during 2008 the government convicted fewer offenders under the 2002 Ordinance than the year before. However, the majority of sentences ranged from fines to a mere six months imprisonment and, as such, were too mild to serve as a deterrent. Given the extent of complicity by law enforcement personnel, Pakistan announced a policy of "zero tolerance" for government officials found to be complicit in trafficking offences, and applied it to two agents who were convicted and sentenced to seven years imprisonment. Nonetheless, the government did not report any systematic efforts to investigate, prosecute, and criminally punish those law enforcement persons who were complicit in trafficking offences.

In terms of protection of victims the Government's efforts were inadequate, with no concrete programmes focused on victims. With the limited capacity of government centres and limited facilities, it is difficult to provide protection to all victims of internal and external trafficking. Foreign victims reportedly are not prosecuted or deported for unlawful acts committed as a consequence of being trafficked, but some local victims may still be subject to punishment for fornication, even as victims of sex trafficking. The government does not provide foreign victims with legal alternatives to their removal to countries where they may face hardship or retribution<sup>67</sup>. There is also little assistance and effort to repatriate victims returning to Pakistan.

Weak legislation, inadequate resources, lack of political will and compartmentalisations have been a major barrier in combating human trafficking in Pakistan. It is necessary to have an integrated approach to combat human trafficking which is required to be based on prevention, prosecution of traffickers, and protection of victims. It is also necessary to ensure adequate training to all law enforcement agencies, as well as to amend the law to give recognition to all forms of trafficking, including internal trafficking. Awareness raising efforts need to be incorporated as a continuous process in the national counter-trafficking strategy, as it is important to create an understanding of the trafficking spectrum across all sections of society. These objectives can be best served through launching targeted and well-planned nationwide campaigns. Awareness-raising should be motivational, informative, realistic and target-oriented. Support must be given to victims of trafficking in order to protect them from further exploitation and a return into trafficking. The State must also ratify the United Nations Convention against Organised Transnational Crime and the Supplementary Protocol to Prevent, Suppress and Punish Trafficking of Persons, especially Women and Children.

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<sup>67</sup> ibid

## Article 7: Political and Public Life

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Enhanced participation of women in Parliament and the appointment of women in high positions is an important step taken by the Government for women in politics, as is the formation of the Women's Parliamentary Caucus. However, one should be mindful of how things operate in reality when claiming that women are fully able to exercise (without *de jure* and *de facto* restrictions) their right to participate in all spheres of life in the country. This issue was also raised by the **Concluding Observations Paragraphs 32 & 33**. The Country Report has sidestepped the question asked by the Concluding Observations about the impact of measures taken to increase the participation of women, in public and political life, especially at decision-making levels.

- **Representation of Women in the Parliament**

The Country Report mentions all the women in the present Parliament, including the female Speaker of the National Assembly, as well as other prominent women in different Government positions. It notes the formation of Women's Parliamentary Caucuses in the National and Punjab Assemblies, and the number of women in the judiciary.

The General Election 2008 heralded an era that promised to be purely civilian and democratic in governance structures. Women continued to have 17% proportion of reservation through reserved seats in the National Assembly, Provincial Assemblies and the Senate. They also made it to key parliamentary positions.

Dr. Fehmida Mirza, MNA from Badin district of Sindh, was elected as Speaker of the National Assembly. Women legislators were also inducted in the federal cabinet – Sherry Rehman was appointed Minister of Information and Broadcasting, with additional charge of key ministries i.e. Ministry of Women's Development, M/o Health and M/o Culture. Shahnaz Wazir Ali and Hina Rabbani Khar were appointed Special Assistants to Prime Minister, on Social Sector and Finance Sector, respectively. Both had the status of Ministers of State.

In the Sindh Cabinet, five women were appointed as ministers: Shazia Marri as Minister for Information, Sassui Palijo as Minister for Culture & Tourism, Tauqeer Fatima Bhutto as Minister for Women's Development, Nargis N D Khan as Minister for Social Welfare Development, and Nadya Gabol as Minister for Information Technology. Shahla Raza was elected as the Deputy Speaker of the assembly.

In the Khyber Pakhtunkhwa cabinet, out of 27 ministers, only one woman legislator was appointed as minister i.e. Sitara Ayaz as Minister for Social Welfare and Women Development. She is the first ever woman minister appointed in KP. In the Balochistan cabinet, seven women legislators were elevated to higher position.

Out of 44 ministers, six women were appointed as ministers. Rubina Irfan as Minister for Law & Parliamentary Affairs, Ghazala Gola as Minister for Social Welfare & Women's Development, Rahila Durrani as Minister for Prosecution, Ruqayya Hashmi as Minister for Inter-Provincial

### Major Developments after 2009

Women Members of the National Assembly accounted for almost half of the parliamentary agenda conducted during the third parliamentary year (2010-2011) of the 13<sup>th</sup> National Assembly, according to parliamentary records and FAFEN's direct observation of proceedings.

“Women constitute less than one-quarter (23%) of the National Assembly's current 340 members - 77 female parliamentarians, 60 elected on reserved seats and 17 elected through popular vote. Despite their significant underrepresentation, women Members actively participated in the parliamentary business and remained more assertive and effective as compared to many of their male counterparts in the National Assembly that is headed by the country's first woman Speaker”<sup>\*</sup>.

“Female parliamentarians' contribution to oversight of executive through putting questions was exemplary, as out of 3,339 questions raised in the Assembly during the third parliamentary year, more than half (1,685 or 51%) were put forward by female Members. On average, 22 questions were submitted by each female MNA, almost four times more questions than their male counterparts”<sup>\*\*</sup>.

“In legislation, which is a core business of the National Assembly, female parliamentarians were quite

\* Press Release, March 2011, Free and Fair Election Network - a network of 44 civil society organizations working to foster democratic accountabilities in Pakistan; [www.fafen.org](http://www.fafen.org)

\*\* ibid

Coordination, Nasreen Rehman Khan Khetrain (post not decided), Shama Parveen as Minister for Information Technology & Provincial Coordination on NGOs Programme (National/ International) & Universities. Women were not given a ministerial position in Punjab Assembly.

Out of 54 members of Standing Committees in the National Assembly, only seven Committees are headed by women; Out of the total 26 Parliamentary Secretaries, only five are women. In the Provinces, women head only three Standing Committees in each Province out of the 38 in Punjab, 30 in Sindh and 32 in Khyber Pakhtunkhwa. The Committee set up to review the Constitution had no female member. This signifies that although women are indeed present in Parliament, they are still not free from discrimination and are excluded from making decisions at the highest level<sup>68</sup>.

The increased number of women in the Parliament is greatly appreciated, however, other issues calling for discussion are: the role of women in political parties and more democracy in political parties with reserved places for women within the party and in senior positions.

The allocation of 17% quota for women in National and Provincial Assemblies and 33% in LG system has been an extremely important and positive development in increasing women's role in public life. However, there are still a number of flaws with the system.

<sup>68</sup> “Gender Review Framework for Women's Political Participation”, Rukhshanda Naz, National Commission on the Status of Women

The women in the Parliament have been extremely active and have gone a long way towards challenging the stereotypical perceptions regarding them being there only to fill up the reserved seats. Women on reserved seats have been some of the most active legislators in both the Provincial and National Assemblies and the Senate. Of the 69 private member bills that were introduced in 2008-09, 51 were introduced by women on reserved seats, out of which 9 directly related to women. Similarly, in 2010-11, the majority of the bills were introduced by women on reserved seats. These women challenged social and cultural norms and introduced bills against domestic violence, trafficking of women, discriminatory practices against women, and bills pertaining to women's reproductive rights. Women legislators have not restricted themselves to addressing women's issues only; they have also introduced amendments pertaining to a broad range of issues from citizenship to anti-terrorism<sup>69</sup>.

Nevertheless, despite this success, women on reserved seats continue to be looked down upon by other legislators, as they were not 'elected'. This resulted in many occurrences of discrimination against these women, which includes that the development funds for women Members National Assembly (MNAs) on reserved seats are spent at the will of party leaders, often without their consultation<sup>70</sup>.

It is important to change the framework of reserved seats as it has resulted in women on reserved seats being considered inferior to other MNAs and MPAs. Due to their indirect allocation and without their own geographical constituency, the disparity between women and men for equal status in decision-making has increased.

One of the biggest issues with reserved seats is the method employed for allocation of reserved seats. The most successful party in the election gets the greatest number of reserved seats. Thus, women's reserved seats are dependent on the overall winning candidates of the party in the general elections, and thereby also on the losing male members of the party. This method has failed to provide any benefit to independent, indigenous and

active in bringing up Private Members' Bills. Out of 34 Private Members' Bills on the Orders of the Day, half (17, or 50%) were submitted by single female Members, including the only Private Members' Bill passed by the Assembly during the third parliamentary year. More than one-fourth (28.9%) of the Members who took part in debate about the budget proposals were women, with a total of 33 female parliamentarians (44% of all female MNAs) taking an active role<sup>\*</sup>.

"The presence of women parliamentarians in both Houses of the Parliament, as well as, in the Provincial Assemblies is certainly the crucial factor behind recent legislative activism in the Federal Parliament during the last 7-8 years. Women legislators have showed their enthusiasm and eagerness to do something for women of Pakistan, since they had an opportunity to do so. This shows a genuine interest among women legislators to have some kind of positive legislation in the interest of women from their own or their parties' perspective"<sup>\*\*</sup>.

"All these new bills and laws would have not been possible if these women would have not been sitting in these legislatures. These bills and laws are result of personal commitment, energy, ability and maturity of women parliamentarians. People who have some idea of the law-making process in the Parliament know that how serious, patient and even long and complicated it is. It is also a battle simultaneously fought on several

\* *ibid*

\*\* "Seven pro-women laws in seven years", Naeem Mirza, Legislative Watch Issue No 38, December 2011, Aurat Foundation

<sup>69</sup> "Women's Rights in Pakistan- Status and Challenges", Stakeholders Joint Submission for Pakistan's Review in The Human Rights Council -14th Session, October 2012

<sup>70</sup> "Gender Review Framework for Women's Political Participation", Rukhshanda Naz, National Commission on the Status of Women

fronts. Party high command is required to be convinced; colleagues across party and across gender need to be won over; there are bureaucratic hurdles and long procedures of standing committees; arguments and counter-arguments etc. Women legislators have demonstrated and proved that they could be good politicians and parliamentarians”\*.

Nevertheless, the fact that women are indirectly nominated instead of being directly elected has not dampened their determination to bring legislation in favour of women. Reports show that women members of the assembly moved more private members’ bills, attended the assembly sessions more frequently and asked more questions of ministers than their male counterparts. “It is due to the efforts of women legislators, the Standing Committee on Women’s Rights and the Parliamentary Women’s Caucus that the law against sexual harassment in the workplace, law against anti-women practices and the act of parliament to establish the National Commission on the Status of Women were passed”\*\*. So far the record shows that in spite of the many impediments along the path, women parliamentarians have exhibited an extraordinary grit and determination to get legislation passed to promote women’s equality. The evidence points to the need to enhance women’s seats as they appear to take their legislative work more seriously than their male counterparts.

\* ibid

\*\* “Women in the lead”- I.A Rehman | DAWN. 21st October, 2010

tribal women from marginalized riverine and mountainous areas.

The granting of reserved seats has also been criticised. Political party leaders are known to award tickets to their own family members, or members of influential families who have historically been in positions of power<sup>71</sup>. This effectively results in party workers being ignored and not involved in higher decisions. Furthermore, this deprives women parliamentarians of having their own geographical constituencies and women party worker’s experience. In this context, it was observed that women on reserved seats were placed at a greater disadvantage compared to those who were directly elected, thereby ignoring all their hard work and loyalty.

The critique on allocation of reserved seats is linked with the demand to change the current system and institute direct elections. There is also a demand that woman candidates should be supported by their parties to contest on winnable general seats so that they are: a) not treated with less seriousness than male members of Parliament; and b) are given the opportunity to interact with the electorate and build a power base. This would also make the system more sustainable and democratic<sup>72</sup>.

### • Women’s Roles in Political Parties

Women play an important role within political parties. However, they are often sidelined here as well. This is also largely based on the personality-based leadership and undemocratic culture of the political parties themselves. It is difficult for women to find a niche in this scenario. In most cases, the role of women in decision-making depend more on their family background than their work. However, it must be noted that there are undoubtedly a few exceptions.

A 2009 NCSW study<sup>73</sup> highlighted some of the issues faced by women in political parties:

<sup>72</sup> ibid

<sup>73</sup> “Gender Review Framework for Women’s Political Participation”, Rukhshanda Naz, National Commission on the Status of Women

- Although women have played a major role they have always been ignored in decision-making processes. In major party affairs, only a few political parties give representation to women.
- The office-bearers of women wings are marginalized and under-resourced as compared to men office-holders although women wings play a critical role in mobilization of women's votes.
- There is variation in women representation in the Central Executive Committee (CEC) in the parties. Less than 5% women are members of CEC.
- The current system of reserved seats is not suitable for genuine women political workers as nepotism ensures their exclusion from the political process.
- A few party workers have knowledge of their own party manifestos; most parties do not take women workers into confidence while drawing election manifestos.
- Majority of women in political positions take the initiative themselves, with a complete lack of external conducive factors. Party leaders do not discuss or share important issues with workers nor do they take their opinion.
- Women parliamentarians are not treated as equal members of Parliament.
- In the present set-up women parliamentarians without constituencies have less interaction with communities. They have little rapport even with their own party workers.
- Political parties generally discourage women from taking independent initiatives, even when they are in line with the party policies.
- The female parliamentarians are sharing the burden of male parliamentarians in terms of solving problems of their constituencies, particularly for women, but their weak position reduces their utility in their parties and parliament. Furthermore, inadequate attention is given to the issues raised by them.
- The lack of capacity and knowledge of the legislative process among women is a major issue and no such training is provided by parties to the new inductees.

### **Major Development after 2009**

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, in Islamabad.

### **Final Electoral Rolls 2012**

Final electoral rolls released by Election Commission of Pakistan show a total of 84,365,051 registered voters in Pakistan as of 2012. Of these, 47,773,692 are male and 36,591,359 female, reflecting a gender difference of 13.26%. Of all the registered voters, Punjab has almost over half the voters, i.e. 48,308,644 with 27,297,361 male and 21,011,283 female, reflecting a gender difference/disparity of 13.02%, which is closer to national average. In Sindh, out of the total 18,432,877 voters, there are 10,214,460 male and 8,218,417 female, reflecting the lowest gender difference among all provinces i.e. 10.82%. Khyber Pakhtunkhwa has 12,064,597 votes, of which 6,929,105 are male and 5,135,492 female, showing 14.86% as second highest gender difference among all four provinces after Balochistan which has 15.08% gender disparity in registered voters. The total number of voters in Balochistan is 3,278,164, of which 1,886,235 are male and 1,391,929 female. But, the most shocking gender

disparity exists in FATA, where 33.74% less women are registered than men. In FATA, out of a total of 1,675,967 voters, there are 1,120,736 male voters as compared to 555,231 female. Federal Area of Islamabad, though a small city, presents a better picture with 7.74% gender disparity. It has 604,802 voters, of which 325,795 are male and 297,007 female.

The bitter reality of the 'missing women' voters in Pakistan can only be corroborated if we compare the numbers of male and female voters with the population figures. The estimated total population of Pakistan as of 1<sup>st</sup> July 2011, according to the Federal Bureau of Statistics, was 177.10 million; of which 91.59 million are men (51.72%) and 85.51 women (48.28%). This reflects a gender disparity of 3.44%. In the last census in 1998, this gender disparity was 4.08% with a total population of 132.35 million; of which 68.87 million (52.036%) were men and 63.48 million (47.964%) women. This shows a slight decrease (0.32%) in male population and proportional increase (0.32%) in female population in the current estimated projection of population. The gender disparity in population is around 3.44%, but gender disparity in voter registration, as a national average, is 13.26%. Considering that young adults between the age of 18-30 constitute nearly 60% of Pakistan's population, it is obvious that around 10 million women are missing from the Electoral Rolls or they have not been registered as voters so far. It is crucial that all stakeholders, including political parties, civil society and media contribute towards the voter registration of this huge number of female population and cooperate with the ECP and NADRA to make their efforts successful in this

- As per socio- cultural perceptions, there are higher expectations from female parliamentarians as they are not expected to deliver the same as their male counterparts nor are they given adequate support from their parties to follow through on these expectations.
- Decision-making on the utilization of development funds is at party discretion. The legislators on general seats lobby for matching funds.
- Women who come through nominations are dependent on men having control within party and they do not feel accountable to other party members.
- There is a lack of involvement of women in important functions such as drawing up manifestos and the budget making process.

#### • **Women's Parliamentary Caucuses**

Political and legislative representation of women in Pakistan witnessed another milestone in 2008, when a cross-party Women's Parliamentary Caucus was formed on 21 November 2008 under the leadership of Dr. Fehmida Mirza, Speaker of the National Assembly, who was also elected as the Patron of the Caucus. The Women's Parliamentary Caucus (WPC) aims to provide women parliamentarians with a platform to collectively contribute towards making the Parliament gender sensitive and increase its influence and interaction with organizations working on women's rights and empowerment both nationally and internationally.

The WPC consists of two tiers: the General Body, a larger forum of 93 members, which includes 76 women members of the National Assembly and 17 women Senators, and the Working Council which comprises 10 members including the two office-bearers, the Secretary and the Treasurer, one member each from seven major political parties and one member from independents. Dr. Nafisa Shah, MNA (PPPP) and Nuzhat Sadiq, MNA (PML-N) were elected as Secretary and Treasurer of the Caucus, respectively. The names of other members are: Dr. Azra Fazal Pacheco (PPPP), Ishrat Ashraf (PML-N), Dr. Doniya Aziz (PML-Q), Khushbakht Shujaat (MQM), Bushra Gohar (ANP), Aasia Nasir (MMA), Reena Kumari (PML-F) and Saima Akhtar Bharwana (Independent).

According to its stated objectives, the WPC is committed to inspire women parliamentarians to work beyond party lines so as to build a consensus on priority issues concerning women both within and outside the parliament. The Caucus will also provide capacity building opportunities for women parliamentarians.

The Caucus will enhance the role of women parliamentarians in proposing gender sensitive legislation, reviewing and amending discriminatory laws and policies; ensure effective parliamentary oversight of implementation of international and regional commitments, policies and programmes; facilitate exchange of views and information sharing on critical areas of concern at different levels both nationally and internationally; and liaise and build a working relationship with key state and civil society institutions.

The women members in the Punjab Assembly also formed a cross-party women caucus on 23 February 2009, at Lahore. The Caucus members vowed to work for legislation and policies important to women and to their empowerment.

- **Women and Voting**

Women’s right to participate in public life begins with their right to vote. A study of the 2008 elections showed a drastic reduction in the number of women voters, especially in the Federally Administered Tribal Areas (FATA). According to the Report, the number was reduced by approximately 45% in Khyber Pakhtunkhwa, and compared to 3.92 million women voters in 2002 there were only 2.17 million in 2008. The internal displacements in FATA due to the military operations against militants following 9/11 also showed a decline of a massive 96% in the number of women voters in that area. In other provinces, in addition to concerns about security, economic recession and disappointment with governance also possibly caused a decline in women voters - 41% in Sindh, 37% in Punjab and 19% in Islamabad Capital Territory. The report indicated that overall 39% fewer women voted in 2008 compared to 18% men. Women comprised 40% of the total number of voters in 2002; the figure came down to 30% in 2008.<sup>74</sup>

<sup>74</sup> A study on the 2008 election by the Pakistan Institute of Legislative Development and Transparency (PILDAT)

regard.

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In a significant development in 2012, NADRA has embarked upon a crash drive to reach out to the citizens of Pakistan for CNICs on war footing. As per latest data available, NADRA has issued, as of 2012, around 92 million CNICs, of which 40 million (43%) were issued to female population and 52 million (57%) to male. The total number of women included in national database, i.e. around 40 million is quite significant to enhance female voters’ list\*. However, gender disparity in CNIC registration in a number of districts in Balochistan, KP and Sindh is glaring. The overall gender disparity in registration of CNICs is 14% i.e. 12 million less women are registered than men. This reflects an improvement as compared to the statistics of 1998 census, when 21% less women were registered.

Of the total 39.77 million women CNIC holders, 5.29 million are in Khyber Pakhtunkhwa, 594,514 in FATA, 22 million in Punjab, 8.6 million in Sindh, 1.45 million in Balochistan, 356,151 in Islamabad Capital Territory, 270,132 in Gilgit-Baltistan and 1.12 million in Azad Kashmir. The registration level in Azad Jammu and Kashmir and KP has

\* NADRA press briefing: Daily The Nation, 16 November 2012, Islamabad

been observed as 99.9 per cent followed by Punjab 99 per cent, Gilgit-Baltistan 89 per cent, Sindh and FATA as 88 per cent and Balochistan 76 per cent against the projected population.

Aurat Foundation and NADRA have signed an MoU in 2011 to work in close collaboration for maximizing female registration of CNICs in 34 districts, where a sizeable number of women do not have CNICs. AF's Gender Equity Program will undertake social mobilization campaigns in these districts with the support of NADRA to increase female registration. Of these 34 districts selected by NADRA for extremely low female CNIC registration, 18 are in Balochistan, 6 in Sindh, 4 in Khyber Pakhtunkhwa and 5 in Punjab. The percentage of female population without CNICs in these districts ranges from 24 to 70. In terms of highest number of un-registered women without CNICs, district Upper Dir of Khyber Pakhtunkhwa tops the list with 70% un-registered women, followed by Rajanpur and Bahawalnagar districts of Punjab where 68% and 67% women do not have CNICs, respectively. In Thatta district from Sindh and Rahim Yar Khan district from Punjab 66% women do not have this basic civil registration document. Among Balochistan's 18 selected districts, the number of un-registered women in Dera Bugti and Kohlu districts is 24%; in Kachhi and Jhal Magsi districts, it is 31%; 40% in Killa Abdullah and Washuk districts; 41%, in Musakhel district; 45%, in Harnai; 49%, in Kalat and Sherani districts; 52% in Panjgur; 55%, in Loralai; 56%, in Nasirabad; 57% in Barkhan, Awaran and Mastung districts; 60%, in Kech and 56% in Sibbi. Among Khyber Pakhtunkhwa's 4 selected districts, the percentage in Kohistan district is 27%; 61% in Tank; 65% in Bannu and as

The Election Commission data of the 2002 and 2008 general elections fails to give disaggregated data for the female voter turnout. Although data regarding voter turnout is maintained, it is never shared and made public as an old practice by the predominantly male dominated ruling elite in order to create impediments in the way of women's political empowerment. It is vital to get sex-aggregated data in order to identify the voting potential of women.

Though several factors generally contribute to the low turnout of women, the male-dominated political culture and socio-cultural restrictions imposed by patriarchal tribal/feudal practices are perhaps the single most important factor in discouraging, even prohibiting, women from registering as voters and casting their vote. In some areas of the country politics is considered the exclusive domain of men<sup>75</sup>. Almost 95 percent of registered women voters in Musakhel were disenfranchised during the by-elections by mutual agreement between political parties for PB-15 of the Balochistan Assembly on 11 November, 2010. Female registration was already low at 40 percent. Although there are penalties and legal redress for such acts, no action has been taken against the perpetrators, despite the outcry from women activists and several national and international agencies. The lack of political will and the absence of effective affirmative action allow such disparities and injustices to flourish<sup>76</sup>.

Perhaps because of the desire not to 'upset' and provoke Islamic extremist and feudal or tribal conservative groups, neither the ECP nor any Government has been willing to come to the support of their women constituents to protect their fundamental right to participate equally in the electoral process. The Government has failed to hold accountable any persons or political parties who have been responsible for stopping women from voting. When challenged on this issue the ECP takes the plea that only affected parties can lodge a complaint, that is to say that the ECP can only take action when a woman who herself has been stopped from voting makes a complaint. This procedure needs to

<sup>75</sup> <http://www.jinnah-institute.org/programs/governance/307-electoral-reform-and-womens-political-participation>

<sup>76</sup> Ibid

be changed urgently, so that no woman is stopped from voting in the next election.

- **Women in the Higher Judiciary**

As before, the Country Report avoids the issue of women's numerical presence in the higher judiciary quoting the law relating to judges in the High and Supreme Courts. Currently there is no female judge in the Supreme Court. In fact, a number of years ago, two female judges were controversially sent on international assignments instead of being promoted to the Supreme Court or to the post of Chief Justice of a High Court, as should have been done according to their seniority.

Currently, there is only one active female judge in the Sindh High Court (SHC). Another female judge remains on the rolls in the Sindh High Court, but her case is pending post the National Reconciliation Ordinance (NRO) judgment by the Supreme Court, and she is not active at the moment. Therefore, despite claims that women's presence in positions of decision-making has improved substantially, this is not the case in the judiciary and the gender bias is very obvious.

Women may also be reluctant to enter the higher echelons of the judiciary because of constant transfers out of their local districts with insufficient and, in some cases, inappropriate housing without security or proper facilities for their families, making it very difficult for female judges to live and work in such conditions.

In order to promote women's entry in the higher judiciary, related issues, such as the ones mentioned above, must be taken into account. Affirmative action measures should be put in place, allowing female judges to remain in their districts; and providing adequate and appropriate lodgings for them if they do get transferred. Alongside security and protection issues, incentives need to be instituted to encourage qualified women to join the higher judiciary.

Along with ensuring that there is an enabling work environment for female judges, gender sensitization programs for the judiciary should extend to the judicial staff. Sensitization should be an on-going activity with regular follow-up training to ensure proper impact, and

earlier mentioned 70% in Upper Dir. The percentage for Punjab's 5 selected districts is: Vehari district 47%, Khanewal 64%, Rahim Yar Khan 66%, Bahawalnagar 67% and Rajanpur 68%. Similarly, the percentage for 6 selected districts from Sindh province is: Dadu and Umer Kot districts 61%, Khairpur and Badin districts 64%, Tharparkar 65% and Thatta 66%.

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The ECP has finalised a draft bill suggesting re-polling at polling stations where less than 10 per cent women votes would be polled. The bill has currently been sent to the Ministry of Law and Justice for referral to the parliament. The intention of the proposed law is to attempt to block agreements restraining women in a particular area from exercising their right to vote. It will also encourage political parties to work towards encouraging more women voters to vote on election day, thereby challenging the traditional mindset of ignoring women as potential voters and not allowing women to participate in public events such as elections. No decision on this ECP recommendation has been taken so far by the executive arm of the State; however, in initial response a few major parties have shown serious reservations to this suggestion.

The Supreme Court has taken suo moto notice of Hindu women attempting to get their CNICs and being recognised as married women. Owing to the absence of a proper mechanism for registering Hindu marriages, Hindu women face problems when applying for a CNIC or passport, and are excluded from obtaining their share of their husband's property. The Supreme Court mandated

NADRA to ensure special measures for Hindu women. Accordingly, NADRA now registers the marriage of Hindu women on the basis of an affidavit. It must be noted that while the Supreme Court's intervention is commendable, it is a sad reflection on the Government when the nation's top court had to step in to ensure that vulnerable groups in society are given their due rights\*.

The Prevention of Anti-Women Customary Practices Act 2011 now prohibits with penal sentences the deprivation of a woman's inheritance.

The elected Local Government system no longer exists in Pakistan. One of the biggest demands of civil society is to restore the system and to ensure women's 33% reserved seats in it.

The Election Commission of Pakistan (ECP) has asked the National Database and Registration Authority (NADRA) to update Final Electoral Rolls by adding 781,735 voters, who were issued CNICs after printing of the electoral rolls on May 31, 2012. According to the NADRA spokesperson (footnote), the authority received directions from the ECP that names of new CNIC holders will be enrolled as voters on monthly basis after verifying their physical presence through door-to-door verification. However, in the first instance all new CNICs which were issued by NADRA during the month of June, July and August 2012, will be included in Final Electoral Rolls 2012.

Clarifying the confusion generated by some media reports about the difference in number of CNICs issued, the spokesperson said that according

\* <http://news.one.com.pk/2012/04/25/a-laudable-step>

not just superficial acceptance.

- **Registration**

The Country Report states that the National Database Registration Authority (NADRA), the organization responsible for registering citizens, is also responsible for ensuring that all citizens are issued Computerized National Identity Cards (CNICs). NADRA has initiated projects to widen their outreach, including a Civil Registration Management System that registers births, marriages, divorces and deaths, and has set aside one day at the Registration Centres exclusively for women. It maintains 185 mobile vans for reaching people across the country, and has been pro-actively registering women post natural disasters and conflicts.

The report identifies five laws that make it mandatory to register the birth of a child. The responsibility for collecting this data lies with the District Government. It was noted that Provincial Governments have also been pro-active in this regard. However, it was also admitted that less than 50% children are registered at birth.

The CEDAW Committee in its **Concluding Observations Paragraphs 34 & 35** expressed its concern that only 50% women held ID cards as compared to men and urged efforts to ensure registration of births, marriages and CNICs. As per the 1998 Census, 74.41% men possessed Identity Cards compared with only 53.41% of women (a gender gap of 21 %.)<sup>77</sup>. Currently, the Country Report states, the number of female CNICs had increased to 64.7% by December 2008, as compared to 50% in 2004. But the total number of men possessing CNIC by the end of 2008 as compared to women is not reported.

The Computerized National Identity Card is a vitally important document that not only serves the purpose of identifying the individual, but is also necessary for the registration of votes, obtaining bank loans and passports, buying and selling property, etc. It is also required for the registration of marriages and to claim the right to inheritance and other benefits, and therefore is of great importance for women for attaining their legal and social rights. Getting an ID card for women, as opposed to men, is generally considered a low priority since women are not expected to travel abroad, buy and sell property, or

<sup>77</sup> Ibid at 4, p 17

engage in business. Despite the claims of the Government, there is little visible progress or systematic sustained effort to encourage women to obtain ID cards or register as voters.

Marginalized communities in Pakistan, such as Hindu women, are still facing the problem of “proof of identity”. Recently, the Supreme Court ordered NADRA to take necessary steps to enable married women of the Hindu community to obtain computerized national identity cards without any hitch.

Marriages and divorces, even of Muslim citizens are not registered in many cases, particularly in the rural areas. The Government needs to make greater effort to ensure that this is done for all citizens without discrimination on the basis of rural, urban, religious or class differences.

The registration of marriages is dealt with under the Muslim Family Laws Ordinance, 1961. The Ordinance provides a procedure for the registration of marriages, appointment of Nikah Registrars and punishment for contravention of the prescribed provisions, but there is no penal provision for the bride or for the bridegroom for non-registration of *nikah* (marriage). The lacuna in the laws and the absence of death, birth certificates and *nikahnama* (marriage registration deed) facilitates the evasion of women’s right to inheritance.<sup>78</sup>

Registration of births is generally carried out in Pakistan, except in certain areas where patriarchy has a strong foothold. The least developed mechanisms for registration were observed in Balochistan, KP, FATA and Sindh. To ensure compulsory registration of births, medical officers/doctors and midwives can play an important role at the local level.

The National Database Registration Authority should extend the scope of its services for registration of births, deaths and marriages, and establish close coordination with the relevant government functionaries. Also, regular liaison between the secretaries of Union Councils, medical officers and midwives working at Basic Health Units and Rural Health Centres must be established so that all areas of the country are covered<sup>79</sup>.

to the Economic Survey of Pakistan (derived from National Institute of Population Studies), the population of Pakistan in year 2012 is estimated as 180.71 million and the adult-minor ratio of Pakistan is 51.25, meaning hereby the adult (18 years and above) population of Pakistan is 92.61 million, excluding AJK and Gilgit-Baltistan. Since its inception in year 2000, NADRA has issued 91,379,788 CNICs to adult citizens who are also eligible as voters. While elaborating the difference of total 7 million between CNICs issued and voter list, around 3 million cards have been issued to citizens of AJK and Gilgit-Baltistan which do not reflect in Final Electoral Rolls 2012, as these citizens are not eligible to vote in general elections in Pakistan and they have a separate Election Commission.

The NADRA spokesperson said that 484,918 CNICs were forwarded to ECP for verification but were ‘not verified’ hence not registered as voters. NADRA understands that there are segments of uncovered population mainly women. Although, NADRA has extended its registration services to the door steps of citizens through its mobile registration units and has established women only Data Acquisition Centres and made issuance of CNIC a free of cost activity, the registration gender gap persists and can be linked to the social norms and motivation factors. NADRA has designed a comprehensive community to launch a mobilisation campaign in coordination with political parties, civil society and print and electronic media to increase the registration of marginalized cadres.

<sup>78</sup> “Women’s Right of Inheritance and its implications”, National Commission on the Status of Women P 65

<sup>79</sup> *ibid* – P 75

## Article 8: Participation at the International Level

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The Constitution of Pakistan 1973 expressly prohibits discrimination on the basis of sex. Equal opportunities for women and men to represent Pakistan at the international level, is thus a constitutional requirement for the Government. In accordance with CEDAW's standards, women regularly represent Pakistan in international conferences and meetings. However, there is no deliberate policy to ensure that women are part of every delegation sent abroad<sup>80</sup>.

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<sup>80</sup> "Benchmarking National Legislation for Gender Equality: Findings from Five Asian Countries", Hasna Cheema, UNDP, 2010

## Article 9: Nationality

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The Country Report states that women enjoy the same rights as men to acquire, change or retain their nationality. It makes note of the fact that marriage to a non-Pakistani citizen neither affects a woman's nationality nor requires her to adopt the citizenship of her non-Pakistani husband. The children of a Pakistani woman married to a non-Pakistani are citizens of Pakistan.

However, The Citizenship Act 1951 holds within it a major discrimination against women in Pakistan. The law automatically gives citizenship to foreign wives of Pakistani men, but does not extend this to the foreign husbands of Pakistani women. The response to this has been that if this provision was changed, Afghan refugees and Biharis could misuse it, and foreigners could marry and divorce Pakistani women, obtain nationality, and then be free to roam around the country to create problems. It would also enable Indian male citizens (who may mean to do harm to Pakistan) to obtain nationality. This response is unsatisfactory and cannot justify this very basic discrimination against the female citizens of Pakistan.

This provision is a clear violation of Article 2 of the Convention, as well as Article 25, the equality clause in the Constitution of Pakistan. A Pakistani woman is as a result not able to choose a spouse of another nationality and reside in Pakistan and exercise the right to have her husband's nationality be adjusted according to hers. This legalized discrimination must not be accepted<sup>81</sup>.

The Country Report gives as evidence of positive movement the Federal Shariat Court (FSC) judgment the result of a suo moto notice of a news report that citizenship was denied to a Pakistani woman's foreign husband with reference to Section 10 (2) of the Citizenship Act. The FSC judgment<sup>82</sup> held this provision to be discriminatory, as negating gender equality and in violation of Articles 2-A and 25 of the Constitution as well as of international commitments. The FSC asked the President to take appropriate steps within 6 months, which prompted the Ministry of Interior to raise the above concerns.

Subsequently, on 10<sup>th</sup> June 2008, a Private Member's Bill to eliminate the discriminatory clauses of the Act was laid before the National Assembly. However, Bill could not go further than this as in a separate development the Ministry of Interior, filed an appeal against the positive ruling of the FSC and obtained a stay, making the government's stance more dubious in removing the discriminatory provision from the Citizenship Act.

In effect there has been a flurry of activity creating the illusion of action while preserving the status quo. The FSC judgment came out in early 2008 and the appeal was filed within the specified time period, but there has been no progress on the case. Yet again, this shows the lack of priority on women's issues. The promulgation of a Private Member Bill has been used as evidence of Government activity without the Government actually taking ownership or initiative on the matter.

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<sup>81</sup> Niaz A. Shah, 'Women, the Koran and International Human Rights, Experience of Pakistan,' p 109

<sup>82</sup> FSC 2008 PLD 1

## Article 10: Equal Rights in Education

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The Country Report lists the different activities and programmes currently underway to educate women; for example, the National Commission on Human Development's (NCHD) Adult Literacy Programme has claimed that it has brought literacy to over 2 million women since 2002.

It notes that access to curricula, examinations, teaching staff with qualifications of the same standard, and school equipment and premises of the same quality are equally provided for both girls and boys, and the same opportunities to benefit from scholarships and other study grants are available for both genders.

It also identifies special measures taken to ensure access of girls and women to all levels of education, and for retaining girls in schools. Measures include: improving physical infrastructure, increase in number of women teachers, training programmes to improve class environment, etc. The National Education Policy 1998-2008 and the National Education Policy 2009 both focus on reforming curricula in order to address a number of issues, including gender stereotyping. Several programmes at provincial level have provided incentives to support girls' schools, such as stipends and nutritional support. The impact of the Tawana Pakistan Programme (2002-2005) is also noted as having increased girl's enrolment.

According to UNESCO's Global Monitoring Report 2009, Pakistan is one of very few countries that failed to achieve even a single education goal. The Human Rights Commission of Pakistan (HRCP) annual report for 2009 also indicates that the quality of life in Pakistan, including education, has deteriorated since 2005.

- **Budget Allocation**

Education is the most important factor for poverty alleviation and developing human resource. Despite the commitment of Pakistan to spend 4% of GDP on education, the budget allocation remains less than 2%<sup>83</sup>. In spite of the Government's promises to increase expenditures on education to 7% of the GDP by 2015<sup>84</sup>, actual expenses on education are abysmally low. Most of the budget is spent on salaries, infrastructure and other basic day-to-day requirements, leaving only a meagre amount for new initiatives and educational development<sup>85</sup>.

- **Literacy Rates**

Pakistan has an overall literacy rate of 57 %, far below neighbouring countries like Sri Lanka and India. Pakistan is lagging behind in increasing the literacy rate to 88% by 2015, as per targets set by the MDG educational goals<sup>86</sup>. Though, the literacy rate for women has increased

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<sup>83</sup> Pakistan, Millennium Development Goals, Report 2010 – P 37

<sup>84</sup> National Education Policy, 2009

<sup>85</sup> Pakistan, Millennium Development Goals (PK, MDGs) Report 2010 – P 37

<sup>86</sup> Ibid , P 40

slightly to 45%, it still remains far below the rate for male literacy, 69% in 2009<sup>87</sup>. There is also a persistent urban-rural divide: in urban areas the literacy rate is 74%, compared to 48% in rural areas. Similar inequalities between provinces also exist: the literacy rate in Punjab and Sindh is 59%, followed by 50% in Khyber Pakhtunkhwa and 45% Balochistan<sup>88</sup>. Official data sources such as PSLM and MICS reaffirm that the lowest levels of education are found among the poorest segments of society. Disparities in access and gender continue to be significant across the districts; across income; across the urban/rural divide<sup>89</sup>. This disparity has also been noted by the CEDAW Committee **Concluding Observations Paragraphs 36 & 37**.

- **Enrolment and Drop Out Rates**

Low enrolment rates are the result of a number of factors including distrust of the system, lack of value of education, high costs, acute shortage of public schools, especially within close proximity of communities and in far-flung remote areas of the country, particularly in mountainous and tribal regions such as GB and FATA<sup>90</sup>. The distance factor remains one of the crucial differences between urban and rural areas and in fact the probability of attending school is higher by 18 per cent for children living in the proximity of a primary school in rural areas<sup>91</sup>. Regression analysis conducted by a World Bank study confirms that the probability of ever attending school is higher by 18 per cent for children living in the proximity of a primary school in rural areas.

The dropout rate for girls is higher than that for boys due to social and cultural constraints. Pakistan has a Gender Parity Index (GPI) <sup>92</sup>of 0.65 %. It has been observed that nearly 62 % of the out of school girls are unlikely to enrol in schools as compared to 27% of the boys in the country.

For primary education, GPI was 0.82% in 2005-2006 for both the gross and the net enrolment rates, while at the secondary level it was 0.77%. This implies that as the girls reach adulthood, greater restrictions are placed on them, putting them at a disadvantageous position as compared to boys<sup>93</sup>.

A major cause of female illiteracy is the increase in population, which is negatively impacting female education. A family with several children and limited income will choose to educate the sons rather than daughters, who would probably have to be content with learning embroidery or sewing. Data suggests that the literacy rate varies directly with level of income, and is highest in the highest income group<sup>94</sup>. There are several reasons for dropout rates including poor conditions of the schools, unavailability of teachers, textbooks, learning materials, too many direct costs, poverty resulting in child labour and a general lack of interest on part of parents who are unaware of the value of education. For girls in particular, security concerns of sending them to schools which may be some distance from the home; cultural barriers where it may not be considered necessary to educate girls, lack of female teachers and the need for segregated schools can act as deterrents to girls' education

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<sup>87</sup> Ibid, p 37

<sup>88</sup> Ibid

<sup>89</sup> "Situation Analysis of Women and Children in Pakistan", UNICEF Report, 2012

<sup>90</sup> Ibid

<sup>91</sup> Ibid

<sup>92</sup> GPI, it is the number of females enrolled divided by the number of males

<sup>93</sup> Women's Empowerment, A Scoping Study, Aurat Foundation, 2011

<sup>94</sup> Ibid

### Major Development after 2009

The 18th Amendment to the Constitution of Pakistan 1973 added a sub-clause to Article 25: Article 25-A which mandates free and compulsory education, is to be provided by the state, which by definition includes both federal and provincial governments.

This declaration by the Government has a great impact on provincial governments in the aftermath of devolution of powers. Provincial governments will face challenges with regards to securing efficient planning, managing and implementation of education programmes and projects; capacity building at provincial level. It will also have a financial impact on the budgets to meet existing demands\*.

\* "Situation Analysis of Women and Children in Pakistan", UNICEF Report, 2012

### • Effects of Conflict

Approximately 200 girls' schools were either burnt or bombed by the Taliban in Swat and Malakand alone<sup>95</sup>. While schools across the country are potentially under threat, girls' schools are more vulnerable. Public threats by leading Taliban members of attacks on all girls' schools led to the closure of 900 government and private schools, denying educational access to 120,000 female students<sup>96</sup>. The attacks on educational institutions (facilities, teachers and even students) have resulted in schools becoming dysfunctional and dropout rates have skyrocketed. In areas of Swat district in KP, which witnessed some of the most brutal attacks on education, some schooling has resumed, although it appears there is going to be a long road to recovery and reconstruction. Lack of education and resulting illiteracy and skills deprivation remain a major concern for Pakistanis, especially as illiteracy makes people more susceptible to extremism.<sup>97</sup>

### • Quality of Education and Curriculum

The quality of education has also been a serious concern. There are issues relating to poorly qualified and untrained teachers, irrelevant curriculum, unavailability of textbooks and shortage of other learning materials and low learning levels. There are also issues relating to vacant teachers' positions, particularly female teachers; ghost schools – which only exist on paper, and teacher absenteeism. There is a lack of regular supervision and monitoring, which allows for the existence of ghost schools and regular teacher absenteeism. Teacher absenteeism is common since teachers are underpaid, unmotivated and travel long distances to school. Many teachers use corporal punishment and have a demeaning attitude towards children and parents. Poor teacher training, insufficient materials, and lack of pedagogical support, has meant that most teachers rely on teacher-centred didactical methods, emphasizing repetition and memorization over learner-centred approaches that encourage creative thinking and skills based learning. Teachers are poorly equipped to deal with some of the challenges that the system poses, such as the reality of

<sup>95</sup> *ibid* at 73, p 24

<sup>96</sup> "Situation Analysis of Women and Children in Pakistan", UNICEF Report, 2012

<sup>97</sup> *ibid*

mixed age teaching in large and multi-grade classes, not having didactical materials and dealing with challenges such as gender disparities. There are also issues of regular transfers and political appointees<sup>98</sup>.

The National Education Policy 2009 makes the religious content in the curriculum compulsory. This has implications for women, particularly those from minority communities. The curriculum taught in madrassas (religious schools) goes even further in emphasizing women's subordinate role in the family and teaching them to be submissive wives and 'good' mothers. This kind of "education" for women is disempowering and discourages them from attaining their full potential as equal human beings and citizens. The issue of stereotypes being reinforced through curriculum was also raised by the CEDAW Committee in its **Concluding Observations Paragraphs 36 & 37**.

Underlying the shortage of schools, the poorly maintained infrastructure, particularly in the rural areas, the shortage of resources and, above all, the inability or failure of the Government to provide free universal education to its citizens is the shift in policy towards private education, as opposed to State sponsored education. The privatization of basic services, such as education and health, has been disastrous not only for the vast numbers of the rural poor, the marginalized communities and public in general, but also for girls and women. Their lower status in society places them at a disadvantage where education, health, and even nutrition are concerned. As noted earlier, when resources are limited, boys and men are more likely to benefit than girls and women.

Government has launched a number of projects to increase girls' enrolment, such as Tawana Pakistan, Adopt a School and other projects. These need to be independently assessed for impact and sustainability.

Also, with reference to statistics, while data on school enrolment is accurately maintained, showing an overall increase, the data on number of students dropping out during the year is not always noted in the attendance registers. In order to arrive at a truly accurate picture statistics must reflect information about school dropouts with equal accuracy.

And, above all, the State must take full responsibility for providing free quality education to all its citizens, as repeatedly pledged in various international documents.

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<sup>98</sup> ibid

## Article 11: Employment

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The Country Report states that as per the Constitution and ILO Conventions 100 and 111, to which it is a signatory, it provides safeguards to address discrimination against women in formal sector employment. It notes that the number of women seeking employment is on the rise, but there is still discrimination due to social restrictions and the practical difficulties of holding down a job. Measures, such as the establishment of the Federal Ombudsman have been implemented, who amongst other tasks is to supervise any injustices done through maladministration. The report also notes the draft Sexual Harassment Bill, which has since been passed in the shape of the Sexual Harassment Bill 2010.

It recognises the existence of home-based women workers and discusses the formulation of a National Policy for Home-Based Women Workers, which has been forwarded to the Ministry of Labour and Manpower in 2008.

The CEDAW Committee in its **Concluding Observations 38 & 39** specifically requested detailed information about the situation of women in the field of employment, in both the formal and informal sectors, about measures taken, including legislation, programmes, monitoring mechanisms and remedies, and their impact on realising equal opportunities for women, which have not been adequately addressed by the Report.

The Country Report provides a generalised view of women working in the informal and formal sectors. It does not provide any actual substantive data on working women in both sectors. The Report does not mention areas that remain unaddressed in labour law for women. First and foremost, it is important to recognise that the gender gap in skills required for the workplace in the contemporary labour market is higher than the gap in education. Although modest gains have been made over the years, the problem still persists at all levels.

Women suffer from market discrimination and hence are pushed to separate low-paid and low-status jobs. Women are often pushed into sectors which require less productivity, less income stability and low security of employment due to their dual role at home and workplace. In fact some organisations prefer not to hire women due to their competing commitments at home. Women also form the majority of the informal sector. The rate of unemployment among women is consistently higher than that of men, both in rural and urban areas<sup>99</sup>.

The Constitution ensures equality before the law, equality of employment, maternity benefits during employment and equal access to public places, but these have not been given statutory effect. Furthermore, although a large body of laws relating to the rights and protection of 'workers' exists, it is gender blind. Application of law is very literal, without recognising the special role of women. With the exception of the West Pakistan Maternity Benefits Ordinance 1958 and Rules 1961, there are no special laws to protect the rights of women at the workplace

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<sup>99</sup> Employment Situation of Women in Pakistan", Mahpara Begum Sadaquat, Qurrat-ul-ain Ali Sheikh, International Journal of Social Economics, Vol. 38 Issue: 2, pp.98 – 113, 2011

- though there has been further interpretation through the courts regarding women workers rights. There are no laws containing provisions for:

- Equal remuneration for equal work for women
- Protection of labour rights of domestic workers
- Protection of labour rights of home-based workers

Pakistan's labour laws offer women 12 weeks of paid maternity leave at 100 percent of their wages paid for by their employer<sup>100</sup>. However, there is no other protection for expectant mothers written into law, and the current law lacks sufficient enforcement mechanisms. Further, these laws only apply to the formal sector employees. It does not cover women employed in the informal sector and in agriculture as unpaid family workers or domestic workers etc.

All of the country's labour laws exclude agricultural workers, informal sector workers, domestic workers and home-based women workers. This is a significant missing area because the majority of workers in these categories are women. Further, the amendments in labour laws through the Finance Act 2006 impact women adversely with longer workdays and introduction of late evening shifts, without consideration for their dual roles at home and at the work place. Also, specific to women, the provisions under the Factories Act 1934 putting a bar on women to work before sunrise and after sunset have been removed, permitting women to work in two shifts up to 10:00pm<sup>101</sup>. Reports from the districts state that even this curfew is violated and women are called upon to serve beyond the given hours. Other violations include the lack of washrooms for women, clean drinking water, etc – all mandated by law<sup>102</sup>.

The gender gap in the labour force is very high with over 78% of women of productive age excluded from the labour force. These statistics do not include the unpaid contributions of women as domestic workers and as home-based workers. Low education, patriarchal social and cultural norms and limited mobility are putting constraints on women's employment and opportunities in the labour market. As compared to men, women are more involved in unpaid family work and the informal sector, which urgently need legislation<sup>103</sup>.

Access to the Labour Courts is even more difficult for working women than accessing the Civil or Criminal Courts. Due to the male-dominated environment, gender bias, lack of unionization of women and the absence of laws in critical areas, women are not confident or comfortable approaching the courts with their labour disputes<sup>104</sup>.

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<sup>100</sup> The West Pakistan Maternity Benefit Ordinance, 1958

<sup>101</sup> "Labour Rights in Pakistan "Denial and Discrimination", PILER, 2007

<sup>102</sup> FGDs, Meeting with Working Women

<sup>103</sup> Annual Report on Millennium Development Goals, 2010, p 51

<sup>104</sup> "Labour Rights in Pakistan "Denial and Discrimination", PILER, 2007

### Major Development after 2009

The promulgation of The Protection against Harassment of Women at the Workplace Act, 2010 is very welcome, as sexual harassment has been one of the key reasons why women are reluctant to work in predominantly male environments, which constitute the majority of work places. It is however hoped that it does not fall prey to weak implementation as is the case with most other laws, especially pro-women laws. The Government needs to ensure close supervision that this law is followed and violators appropriately penalised.

The 18<sup>th</sup> Amendment resulted in "labour" being declared a provincial subject. Therefore the provinces must make their own amendments to the laws and policies. It also means that all four provinces have to devise their own policy and legislation with regard to home-based workers. The provinces have started work with regards to the policy. Punjab has taken the lead on the issue and drafted its policy and announced on 8<sup>th</sup> March 2012 of its intention to pass the policy\*. The other provinces are in various stages which include the notification of a committee and analysis of the Punjab draft policy.

The Labour Courts are no longer in existence due to the lapse of the Industrial Relations Act 2008. Therefore labour no longer has the privilege of a court to deal with its specific issues.

\* Women's Rights in Pakistan- Status and Challenges", Stakeholders Joint Submission for Pakistan's Review in The Human Rights Council -14th Session, October 2012

**Home-based Women Workers (HBWW):** The Government recognizes that there are 8.52 million home-based workers in the country. The proportion of women workers in the home-based sector is 65% in contrast to only 4% male workers. The Government also realizes that currently the workers in the informal economy as well as in the home-based sector are not covered by any labour rights/labour standards legislation, nor is the definition of the "home-based worker" part of any statute. This means that working conditions of home-based workers are not regulated by any law or regulation. Labour protection, social security and provision of safety and health services and benefits are not extended to the informal sector, including the home-based sector. They are therefore unable to access the services, facilities, rights and benefits, including a fair remuneration, under present national laws<sup>105</sup>.

As noted by the Country Report, a policy was drafted for HBWW. However, since it has been forwarded to the Ministry of Labour and Manpower nothing more has been heard about it. It is vital that the Government not only accept this policy but also adopt an amendment to the law re-classifying HBWW as 'workers,' and further promulgate appropriate legislation dealing with their specific needs and requirements as per the policy.

The Government has avoided the question relating to ratification of ILO Convention 177. This indicates a lack of willingness on its part. Ratification of this Convention needs to be demanded, as it is highly important and relevant for the rights of women workers in Pakistan.

<sup>105</sup> HBBW policy 2008

## Article 12: Healthcare and Family Planning

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The Country Report states that the Ministry of Population Welfare liaises with the Ministry of Health in order to improve the situation of women requiring access to quality reproductive care. It goes on to discuss the measures to ensure availability of contraceptives and family planning. It gives some information about statistics regarding awareness in women about reproductive health care, as well as about Service Delivery Outlets and the role of Lady Health Workers (LHW), who provide Emergency Contraceptive Pills on request.

Maternal mortality is also being targeted through different measures, such as the EMONC services being provided in 198 hospitals and the eventual establishment of 114 Midwifery Schools. Initiatives, such as the Maternal and Neonatal Child Health (MNCH) programme, focus on means of reducing morbidity and mortality at the district level. Awareness is also being spread targeting not only women but also men, to sensitize them regarding their role in family planning.

The **CEDAW Committee in its Concluding Observations Paragraphs 40 & 41** highlighted the need to take concrete measures to enhance women's access to health care, in particular to sexual and reproductive health services. It also raised the issue of prevention of unwanted pregnancies, including by making a comprehensive range of contraceptives and family planning methods more widely available and affordable without any restrictions, and by increasing knowledge and awareness about family planning among women and men. The Committee also calls on the State Party to reduce maternal mortality rates by identifying and addressing causes of maternal death, including ensuring that women do not seek unsafe medical procedures due to lack of appropriate services. It recommends reviewing laws related to abortion. It recommends that the Lady Health Worker Programme be expanded to areas where most needed.

While identifying the roles played by two relevant Ministries, the Report has not actually provided any concrete data on the work they do, the impact of that work and how it is being carried forward. No substantial data is given regarding the success of the Service Delivery Outlets. Where are they based? What is their outreach? What is their impact? With regard to the MNCH programme no timeline is given for the establishment of the 114 Midwifery Schools, or any details of what their functions, outreach and roles will be.

Information regarding the awareness raising mentioned in the Report remains ambiguous. Who and how many people were made 'aware'? What did they do with this information? Has it created any sort of positive change? Were there any follow-ups? How is this continued growth of information sharing going to be sustained?

- **Budget Allocation**

Despite all the claims of the Government, the expenditure on health is hopelessly low. Expenditures on health have remained around 0.56% of GDP in the year 2008-09, indicating health as a low priority area. The major chunk of this amount was spent on tertiary health

facilities, while primary health, especially in rural areas, where reproductive and child health care services remain difficult to access and of inconsistent quality, was largely ignored<sup>106</sup>.

- **Quality of Healthcare**

The allocation of resources to the healthcare sector and the management of those resources are shaped by various political and institutional factors, including centralised systems, corruption and poor accountability mechanisms.

While Pakistan has a good network of primary health facilities and hospitals, many of these facilities are in disrepair, damaged, destroyed or are too far from remote communities. Majority of the Basic Health Units (BHUs) and Rural Health Centers (RHCs) are not functional<sup>107</sup>. With the exception of very few facilities, EMONC is not available on a twenty-four hour basis in tertiary care centres. Majority of private hospitals and maternity homes are expensive and are not providing proper obstetrical care to women as per international standards. Very few private setups are providing free care to needy women. A very small number of hospitals and maternity homes are operating with international standards of care. As these facilities are extremely expensive, very few people can afford their services<sup>108</sup>.

There are also problems with over-burdening and resultantly, on the quality of facilities. There are significant problems with insufficient numbers of health workers, absenteeism and low motivation and quality. Both basic and comprehensive healthcare facilities often lack the minimum levels of drugs and equipment needed to provide effective care, specifically maternal care<sup>109</sup>.

Issues also arise with regards to training of the staff. They are not trained to respond to the patients' circumstances. Thus, even amongst poor communities, there is widespread use of the private sector for health services. Satisfaction with government health services is low<sup>110</sup>.

Quality of health facilities must be ensured and regulated. It is necessary for policies to be formed in order to benchmark the quality of both public and private care. Any facility falling below the standard must be discontinued.

- **Access to Healthcare**

One of the biggest issues regarding women's health is of access to healthcare. The problem starts with the socio-cultural structures which hamper women and girls' access. They are not encouraged to step out of the home to get outside treatment. There is also a taboo in many areas of a female patient being examined or treated by a male doctor. With lesser number of female doctors, this often results in families preferring not to allow their women access to health as opposed to allowing a male to examine them.

There are high costs associated with health care, especially private healthcare if the quality of public healthcare is not relied upon. Therefore poverty is a major barrier to access to

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<sup>106</sup> Pakistan, Millennium Development Goals, Report 2010, P 72

<sup>107</sup> Poverty, Gender Inequality and Their Impact on Maternal and Newborn Health in Pakistan", RAF Pakistan 2012 report, Seema Khan, DFID/AusAid, 2012

<sup>108</sup> Ibid

<sup>109</sup> Ibid

<sup>110</sup> Ibid

healthcare<sup>111</sup>. There is in certain cases difficulty in physical access to the facility. If the facility is a long distance away, social and familial restrictions placed on women's movement, or high costs of travel hampers their ability to even reach the facility<sup>112</sup>.

Lack of education and awareness among women limits women and girls' informed decisions about access to healthcare because they are unable to identify the symptoms. This results in a reliance on traditional beliefs and practices, many of which can be harmful<sup>113</sup>.

Women's lack of decision-making power and autonomy also results in poorer health outcomes, as women are often not in a position to make decisions regarding their health. Men or elders in a family often make such decisions. As discussed above, in many situations, the preferred choice is not to allow a woman treatment rather than allow her to be examined by a male or an outsider<sup>114</sup>.

- **Maternal Mortality**

The National Health Policy (2009) speaks of improving health facilities to meet MDG health goals by reducing the maternal mortality ratio to 140, establishing training centres for nurses and ensuring that 90% births will be attended by skilled health professionals. Despite these commitments little progress seems to have been made.

The Pakistan Demographic Health Survey (PDHS) 2006-07 has depicted Maternal Mortality Rate (MMR) of 276 per 100,000 live births. MMR is worse in rural areas, with a ratio of 319 per 100,000 against 175 per 100,000 in urban areas. Approximately 23% of deaths of rural women of reproductive age were reported to have occurred during pregnancy or during childbirth, compared to 14% among urban women. Causes for the high MMR are: poor quality of health facilities, lack of information about facilities; and lack of female health staff in hospitals and health centres<sup>115</sup>.

Women also lack the power to decide matters related to family planning. The MDG report reflects that there is increased awareness and use of contraceptives among women, from 28% to 30.8% in 2008-09, but socio-cultural norms in the country remain a formidable barrier to its wider adoption. Also, contraceptive failure and misuse remains a problem. Discernible change in the patriarchal mindset and socio-cultural norms that reflect gender biases will have to take place before women can be sufficiently empowered to take decisions regarding family size and family planning. Without these changes increase in availability of contraceptives will have limited impact<sup>116</sup>.

Civil society organizations have been working with provincial health departments and government hospitals to help improve the quality of post-abortion care, with some success. There is now a wider range of interventions available and more doctors trained to handle the complications related to unsafe abortion.

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<sup>111</sup> Poverty, Gender Inequality and Their Impact on Maternal and Newborn Health in Pakistan", RAF Pakistan 2012 report, Seema Khan, DFID/AusAid, 2012

<sup>112</sup> Ibid

<sup>113</sup> Ibid

<sup>114</sup> Ibid

<sup>115</sup> Pakistan, Millennium Development Goals, Report 2010, p 68

<sup>116</sup> ibid p 69

- **Impact of conflict**

The recent militancy and conflict has also affected women's health in many ways, including depression and post-traumatic stress disorder due to violence and the loss of relatives, increased morbidity and high rates of abortion and miscarriages. Mental and psychological health in particular has been seriously undermined because of war and displacement. Children have been placed at risk because extremists forbade the use of polio vaccination in some areas of FATA, KP and Balochistan, by issuing religious decrees that immunization was a diabolical plan to render tribal men infertile!

- **Lady Health Workers**

The Lady Health Workers (LHW) programme has been one of the most successful projects in the health sector. LHWs have become front-line primary health service providers in rural and urban parts of the country. Some of the weaknesses of the programme include: low salaries (below even the Government standardized minimum wage) and irregular payments<sup>117</sup>. The contractual nature of the job poses a constant threat to job security and is a source of anxiety<sup>118</sup> to the women, and political influence and nepotism in the selection of LHWs is common.

Added to this, the poor supply of medicines, contraceptives and other logistical support lead to loss of motivation. The absence of appreciation for good performance, lack of trained people in management, too much training material with very little emphasis on skill development, inaccurate reporting by the LHWs, too much field work and travelling, which is difficult and expensive are other weaknesses of the programme.

A number of steps should be taken to strengthen the programme. LHWs should be given the status of permanent government employees; salaries should be raised; eligible LHWs should be given incentives by providing opportunities for skill training and career development; and patient referral system by the LHW must be strengthened. Concurrently, the community should be educated about the assigned role and responsibilities of LHWs. In short, the valuable role of LHWs in Primary Health Care in the country must be acknowledged and further improvements pursued<sup>119</sup>.

- **Mental Health**

Mental health is the most neglected field in Pakistan where 10-16% of the population, more than 14 million, the majority of which are women, suffers from mild to moderate psychiatric illness, . There is little recognition of mental health as a serious medical issue. It is an increasing issue in Pakistan as the incidence and prevalence of mental disorders is increasing at an alarming rate against the background of growing insecurity, poverty, violence, terrorism, economical problems, political uncertainty, unemployment, stressful working conditions,

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<sup>117</sup> "Recommendations to strengthen the role of lady health workers in the national program for family planning and primary health care in Pakistan: the health workers perspective" - Afsar H.A., Younus M, Department of Community Health Sciences, The Aga Khan University, Karachi, 2005

<sup>118</sup> *ibid*

<sup>119</sup> Pakistan Rural Household Survey 2001

gender discrimination, unhealthy lifestyles, physical ill health, genetic factors, unrestricted urbanisation, and disruption of the social fabric and loss of protective family networks.

The Government has done little to provide recognition or care for this issue. It is necessary that the Government takes ownership of the issue and starts establishing a strategy on ensuring proper care is given across the country.

As with education, the health sector too has suffered since the State increasingly relinquished its responsibility of providing basic services to all its citizens and began to depend on the private sector to deliver healthcare to the people. Meagre budgetary allocations and consequent inability of the public sector health services to keep pace with the needs of the growing population have resulted in understaffed, cash-starved and under-resourced Government Hospitals, Rural Health Centres and Basic Health Units. Not surprisingly, the poor, particularly in the rural areas, and among them women and girls are the worst affected.

## Article 13: Economic, Social & Cultural Benefits

The Country Report identifies social security benefits specifically for women, which include maternity leave with pay, a death grant to a widow and *iddat* benefit to a pregnant woman. It goes on to identify a number of direct benefit social security schemes which apply equally to both men and women. It also identifies the schemes of Zakat, Benazir Income Support Programme (BISP), Bait-ul-Mal programmes. It also notes formal banking sector loans, as well as private sector initiatives such as micro finance and enterprise development schemes. An overview of the social security and social insurance scheme is presented below:

### A Schematic View of Social Protection Instruments in Pakistan<sup>120</sup>

Category/Instruments	Benefits	Financing
<b>Social Security</b>		
Government Servants Pension Fund [for Government Employees]	Provident Fund Old Age Pension	Employees Contribution Budgetary Expenditure
Employees Social Security Institutions [for Private Formal Sector Employees]	Health Services Cash Support	Employees Contribution
Public Sector Benevolent Funds and Group Insurance [for Public Sector Employees]	Benevolent Fund Group Insurance	Employees contribution
Workers Welfare Fund [for workers of registered establishment]	Cash Support In-kind Support Housing facilities	Employees contribution Employer's contribution
Workers' Children Education Ordinance [for workers of registered establishment]	Free education of children	Employers' contribution
Employees Old-Age Benefits Institutions [for workers of registered establishments]	Old age pension Invalidity pension Survivor's pension Old age cash grant	Employers' contribution Budgetary Expenditure
<b>Social Assistance</b>		
Zakat [for poor, needy and destitute population]	Cash support	Private Contribution
Pakistan Bait-ul-Mal [for poor, needy and destitute population]	Cash Support In-Kind Support	Federal Budget Private Contribution
Benazir Income Support Program [for the poor, needy and destitute segments of the population]	Cash Support	Federal Budget
<b>Labour Market Programs</b>		
People Works Programme [for unemployed labour]	Wages	Federal Budget
People's Rozgar Programme [for unemployed population, especially youth]	Credit with subsidized interest rate	Federal Budget
<b>Micro and area-based safeguards</b>		
Micro finance [for the poor]	Small Loans	Credit line by donors NGOs and private sector
<b>Child Protection</b>		
Food Support Programme of Bait-ul-Mal [for children in poorest households]	Conditional Cash grant	Federal Budget

<sup>120</sup> "A Profile of Social Protection in Pakistan: An Appraisal of Empirical Literature", Research Report No. 81, Haroon Jamal, SPDC, 2010

The existing social security schemes such as Government Servants Pension Fund, Workers Welfare Fund, Worker's Children Education Ordinance, even maternity leave with pay etc. are only applicable to the formal sector of economy<sup>121</sup>.

Social assistance schemes i.e. cash or in-kind transfers focus on those outside the labour market and the poor and destitute. These would also include all workers in the informal sector. Zakat and Pakistan Bait-ul-Mal are two major such schemes existing in Pakistan.

The Benazir Income Support Programme (BISP) is a mega initiative of direct cash transfer to poor women and their families. It was initiated with an outlay of Rs. 34 billion for the year 2008-2009 and almost doubled to Rs.70 billion in 2009-2010, when it met early success. It is a measure to compensate low-income families through a cash grant of Rs. 2000 every alternate month to one beneficiary per family. The female head of the family or adult female member of the family is its recipient. Apart from benefits of long term interest free returnable financial assistance, vocational & technical training, health & life insurance coverage is also provided to beneficiaries. The programme is being implemented across Pakistan including, Punjab, Sindh, Balochistan, and Khyber-Pakhtunkhwa; Federally Administered Tribal Areas, Azad Jammu and Kashmir, Gilgit Baltistan and Islamabad Capital Territory.

Labour Market Programmes, such as the People's Work Programme such as the Khushal Pakistan Programme and Tameer-e-Watan Programmes include schemes which have an immediate impact on the standard of living of ordinary people in facilities such as roads, electrification, gas, telephone, education, health, water. The People's Rozgar Scheme is also seen as an instrument of social protection, giving access to credit with subsidized interest rates to enable unemployed persons to start a small business<sup>122</sup>.

Micro credit programmes such as those of Rural Support Organizations are projects conducted mostly by private institutions and NGOs apart from Community Development Centres managed by provincial and federal governments<sup>123</sup>.

### Major Development after 2009

The allocation for BISP from the federal budget for the financial year 2012-13 is Rs. 70 billion to provide cash assistance to 5.5 million families, which constitutes almost 18% of the entire population. Thus the programme aims at covering almost 40% of the population below the poverty line. Over 3.9 million families across the country are receiving cash with the majority of the beneficiaries living in the province of Punjab, where BISP has 1,377,470 beneficiaries; followed by Sindh where the number of beneficiaries is 1,342,068. According to latest data, 857,897 BISP beneficiaries are from Khyber Pakhtunkhwa, 166,068 from Balochistan and 76,471 from Azad Jammu and Kashmir. Similarly, 46,496 beneficiaries are from FATA, 30,697 belong to Gilgit Baltistan, and 6,998 are from the Federal Capital, Islamabad. There are a total of 7,041,014 beneficiaries registered with the programme, however the remaining 3,136,849 families are not being provided the cash due to lack of national identity cards.

<sup>121</sup> ibid

<sup>122</sup> ibid

<sup>123</sup> ibid

Upon examination of all the social protection schemes, it becomes clear that there is no clear articulated framework within which these protections are functioning. The schemes are more responsive to a particular problem at the time or upon recommendations from donor agencies, as opposed to a well thought out holistic scheme. This results in duplication and overlapping of programmes. Moreover, these programmes have been developed over a number of years and combine the interests of many different constituencies and incorporate several institutions. The schemes seem to have weak institutional structures, with limited and uncertain funding, insufficient targets and small coverage<sup>124</sup>. Questions must also be raised as to the sustainability and ownership of the programmes that were initiated by the MoWD.

These social protection programmes or schemes are the responsibility of a variety of autonomous and semi-autonomous agencies, departments and ministries. However, due to lack of integration and clearly articulated social protection policy, the individual programmes function in their own space. This has resulted in a number of similar flaws, gaps, deficiencies and imperfections. There are summarised below<sup>125</sup>:

- Lack of coordination among executing authorities
- Design fault in various schemes
- Corruption and embezzlement
- Inadequate cash or in-kind assistance
- Low coverage
- High administrative costs
- Programme overlap and duplication
- Poor or no targeting mechanism
- Political interference and bureaucratic malfeasance
- Lack of monitoring and supervision

All informal economy, the majority of which comprises women as home-based workers, contract labour, domestic servants and agricultural workers falls outside the purview of this category of security schemes. Further, there is no provision for the preservation or transfer of pension rights on termination of employment. These rates are also low and are adjusted with considerable time lag; hence their value has been consistently declining<sup>126</sup>.

The labour welfare and social security programmes have low coverage. Further, as mentioned above, there is a great deal of duplication. Without any coordination between different agencies working on the same thing, the result is that each organisation works with scarce financial resources with little capacity to administer them and therefore fails to provide adequate assistance or maximise impact. A number of the institutions may not be able to effectively undertake activities in fields which diverge from their own. Therefore, concentration could only be on one sector. Alongside this, corruption and embezzlement even within these schemes have been reported<sup>127</sup>.

The Zakat and Bait-ul-Mal schemes do not have transparent or accountable methods of targeting. A lack of targeting is the main concern in all social assistance programmes. *Zakat* distribution and Bait-ul-Mal schemes do not have any transparent and accountable method of

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<sup>124</sup> ibid

<sup>125</sup> ibid

<sup>126</sup> ibid

<sup>127</sup> ibid

identifying and selecting beneficiaries. Nor is there a fixed process and criteria for doing so. According to World Bank (2007), “around 27 percent of *guzara* (monthly cash allowance) beneficiaries and 37 percent of those receiving rehabilitation grants are not poor, accounting for 32 and 45 percent of the resources distributed under each modality”. In fact, it is reported that decisions regarding who receives benefits are mostly guided by local power relationships. Further due to reported corruption, when money/benefit from Zakat or Bait-ul-Mal is given to the needy, the value is much less than required.

While there have been reported delays in the distribution of funds due to the mandatory CNIC requirement as per BISP rules, this has assisted in the empowerment of women, as this gives them a sense of identity and having an CNIC increases their visibility and access and recognition as individuals. Though there are a number of irregularities observed on this scheme, on the whole it has been successful<sup>128</sup>.

Legally, women are not discriminated against in terms of equal access any of these schemes. However, the social dynamics affect the scenario. The majority of women do not belong to the formal sector; therefore they are unable to access any of these social security benefits. Further, they are not encouraged as per social norms, to take on a decision-making and controlling role in terms of accessing labour market schemes etc. Further issues arise in terms of control over finances if women do access these schemes. BISP has a special focus on women, and as mentioned above, has been seen to have some success. This needs to be evaluated in order to provide a better focus on providing social security schemes to women and their empowerment.

Some of the initiatives for poverty alleviation focused on women have shown improvement; however, welfare and cash payments tend to have limited impact as they fail to address the strategic interests of women which would alter their subordinate status in society. The total number of female beneficiaries under the Pakistan Poverty Alleviation Fund, Khushali Bank and Zarai Taraqqiati

### Major Developments after 2009

It is important to discuss the division of powers post-18<sup>th</sup> Amendment. A number of programmes are run throughout the country. Questions of funds, consistency and capacity of the Provincial Assemblies and departments must be raised. The main hurdle for both Federal and Provincial Governments are the necessary structural amendments to ensure effective performance and implementation.

The Punjab Government has taken the lead on provincial reforms for the benefit of women. On 8<sup>th</sup> March 2012, the Chief Minister announced a series of reforms that will be put in place which includes an increased quota of 15% (previously 5%) for women in government jobs in addition to a 33% quota for women's representation in all major government decision-making bodies, including seats in the Punjab Public Service Commission; a special fund of Rs. 2 billion was also announced for promoting women's economic independence through soft loans for women who want to set up their own business; the appointment of a women's development secretary and an ombudswoman were also announced to monitor harassment at the workplace and the provision of land for landless people in certain areas of Punjab was announced too that it would be the joint property of husband and wife.

<sup>128</sup> “Women's Empowerment in Pakistan: A Scoping Study”, Rubina Saigol, Gender Equality Programme, Aurat Foundation, 2011

### Major Development after 2009

“There has been an alarming increase in the number of widows across South Asia in the past few years. South Asian countries have been grave victims of natural and ‘man made’ calamities: earthquakes, tsunamis, floods, ethnic violence, the issue of missing people and internal conflict that are resulting in a numerical increase in the incidence of widowhood. These views were expressed at a SANWED Consultative Workshop held in Islamabad, Pakistan, 23-24 May 2012, under the auspices of South Asian Network for Widows’ Empowerment and Development (SANWED) and Aurat Foundation. The workshop delegates demanded from their respective Governments “to enact laws to provide and protect widows’ right to inherit and exercise control over their husbands’ property, land and assets, irrespective of customary traditions and unjustly sanctified injunctions seeking to minimize or limit widows’ share in inheritance”. They demanded that the respective Governments should provide widows, particularly in conflict-areas, access to justice through repeal of discriminatory laws; through the criminalization and prosecution of war crimes and other atrocities. It was demanded that the respective Governments must enact legislation to criminalize forced marriages of widows either within or outside their marital families\*.

\* “ISLAMABAD DECLARATION” adopted at the SANWED Consultative Workshop in Islamabad, Pakistan, 23-24 May 2012, South Asian Network for Widows’ Empowerment and Development (SANWED) and Aurat Foundation – [www.af.org.pk](http://www.af.org.pk)

Bank Limited, increased from 174,000 in 2005-2006 to 318,000 in 2006-2007<sup>129</sup>.

Other positive initiatives include the Sindh Government’s 2008 land distribution programme which distributed land amongst landless women. This is a laudable initiative which could be replicated in other provinces, as well as other projects such as the Lady Livestock Workers training etc<sup>130</sup>. However, it is important to ensure that these schemes do not fall prey to the above mentioned gaps and weaknesses. It is imperative to have a holistic social and economic benefit policy with initiatives which must be identified with the involvement of women in all sectors in order to make sure these are pertinent, sustainable and high impact initiatives.

### Rights and Status of Widows

Widows are a largely ignored group without any rights and status. They belong to all classes. Those from low income categories are more disadvantaged. They are often invisible, their voices unheard and their needs, both immediate and long term unmet. There is also lack of concrete data and information on the situation and plight of widows, as well as, those who are single women, including divorcees, separated and or abandoned women and women who have never married. “There are great regional and class disparities in the status of women in Pakistan and, therefore, also in the condition of widows”<sup>131</sup>.

According to the latest Census (1998), in a population of 132.4 million, there were 2.7 million widows in a female population of 69 million. The largest number, 442,179, were found in the age bracket 75 years and above, followed by 416,773 (60 to 64 years), and 326,176 (50 to 54 years)<sup>132</sup>. However, Pakistan’s population in 2010 was estimated to be over 170 million so the number of widows must have also been increased, particularly the number of ‘young and war widows’ who were widowed as a result of conflict, natural disasters, terrorism/extremism as Pakistan has witnessed both natural calamities, armed conflicts and a wave of extremism and terrorism taking heavy human toll.

<sup>130</sup> ibid

<sup>131</sup> “Condition of Widows in Pakistan”, Dr. Masuma Hasan, Legislative Watch Issue No. 37, Nov. 2011, Aurat Foundation

<sup>132</sup> ibid

“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”<sup>133</sup>.

“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 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”<sup>134</sup>.

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.

“One indication of self-reliance among women, 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”<sup>135</sup>.

### **Women with Disabilities**

When it comes to support systems, persons with disabilities (PWDs) have close to none in Pakistan. They suffer not only their handicaps but also remain disadvantaged on various fronts be it education or social acceptance. Although Pakistan has ratified the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol, it could not implement the convention effectively.

The proportion of disabled in Pakistan as per census of 1998 is 2.49 percent of total population. Regional classification of disabled population shows that among the total 2.49% of disabled population of Pakistan, 2.48% is from Punjab province, 3.05% from Sindh, 2.23 from Balochistan and 2.12% is from Khyber Pakhtunkhwa province. Classification of type of disability shows that 40% of them are physically disabled, 20% are visually impaired, another 20% are mentally disabled, 10% face hearing impairment whereas 10% are counted as overlapping

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<sup>133</sup> ibid

<sup>134</sup> ibid

<sup>135</sup> ibid

### Major Development after 2009

A Supreme Court Order on 25 September 2012 in a petition\* affirmed the citizen's rights of transgender individuals specifically the Khawaja Sarra. It stated that "the rights, obligations including right to life and dignity [of the Khawaja Sarra] are equally protected ... The government functionaries both at federal and provincial levels are bound to provide them protection of life and property and secure their dignity as well, as is done in the case of other citizens." In addition to ordering the National Database and Registering Authority (NADRA) to register transgender individuals as the third sex, the Supreme Court ordered their registration as voters, affirmed their right to 'due share' in moveable and immovable inherited property and criminalized the practice whereby parents abandon transgender children or hand them over to 'gurus' who force them into beggary or prostitution for personal gain and asked provincial social welfare departments to work for their support and development.

The Supreme Court judgment affirming their equal rights as citizen's is significant in that not only does it carry the promise of gender justice for the Khawaja Sarra, it tacitly acknowledges the fluid nature of sexual identity and marks a break with the male/female binary. Prior to this ruling the Khawaja Sarra had exercised their right to vote and registration for National Identity

facing different kinds of disability<sup>136</sup>.

The data tells that one in eight households in Pakistan is inhabited by a person with disabilities. Only 28 percent of persons with disabilities are literate and only 14 percent are actually working (with 5 percent looking for work). Nearly 70 percent of persons with disabilities are dependent on their families for complete financial support. The data on persons with disabilities has not been categorized by gender. The only available glimpse available is a table, reproduced by Special Talent Exchange Programme (STEP)<sup>137</sup>, Pakistan, which shows proportion of men and women with disabilities in four provinces of the country.

Women with disabilities are disadvantaged in several key areas when compared with other men with disabilities. These women face a triple handicap and discrimination due to their disability, gender and discriminatory development paradigms. Parents are generally more willing to get the disability of their boy children treated at an early stage. But this is not the case with girls who are usually neglected and later develop permanent disabilities. This is the reason why there are more disabled women than men in the country.

Disabled women are also abandoned in disasters like earthquake, floods and military operations when they have to be displaced. For example, women who suffered spinal injuries in the 2005 earthquake continue to endure hardships years after, including abandonment by spouses and families.

The MoWD was the focal point for the advancement of women, including women with disabilities. However, after the 18<sup>th</sup> Constitutional Amendment, the ministry is devolved and hence there are no commitments from the Government towards the issues faced by women with disabilities.

### Transgender Communities – *the Khawaja Sarra*

At one time powerful guardians of princely harems, the *khawaja sarra* are traditional entertainers who earn their living by performing at weddings, births and other festive

<sup>136</sup> Disability Framework in Pakistan, by Special Talent Exchange Programme (STEP), Pakistan, and Sightsavers International; <http://ebookbrowse.com/13173-disability-framework-in-pakistan-pdf-d140669937>

<sup>137</sup> Ibid.

occasions. Changing lifestyles, particularly the advent of modern forms of entertainment have eroded these spaces and driven them increasingly to beggary and street prostitution. Recognizable by their distinctive sartorial style and body language, the Khawaja Sarra have a visible street presence that is countered by their complete invisibility or absence in mainstream sociality and subsequently in policy decisions, budgetary allocations etc. Abandoned by families and with low access to education and the job market, they are among the most marginalised and sexually vulnerable communities of Pakistan with little or no access to education and health care and little or no defense against sexual and other forms of violence including their vulnerability to HIV AIDS. Denied an identity in their own right; excluded from the mainstream by social prejudice; rejected by their biological families who deny them houseroom but are not averse to living off their earnings, they align themselves with the feminine and hanker for acknowledgement in their own right.<sup>138</sup>

Cards on the basis of an arbitrary determination of gender as male or female. Now they can vote and register as transgender individuals. In response to the judgment, state institutions such as NADRA have set up processes to facilitate their access to Computerized National Identity Cards as transgender individuals. Other signs of progress include the allocation of seven job positions in their offices across Pakistan by NADRA, the employment of Khawaja Sarra individuals to administer the polio vaccine by the Sindh Health Department and the use of their services for the recovery of dues by the Clifton Cantonment Board, Karachi.\*\*

Significant as first steps, these initiatives are clearly not enough to cater to the Khawaja Sara's estimated population of around 800,000,\*\*\* nor has anything being done to facilitate their access to education and health services or to protect them from sexual exploitation and violence. At the same time social prejudice combined with poor implementation procedures are instrumental in denying Khawaja Sarra individuals their inheritance rights. As stated by one transgender individual, "the judiciary is listening and doing its bit, but we have yet to see the government come forward without the [Supreme Court] nudging it.' This is a matter of grave concern and the state needs to take systematic action to ensure the rights of transgender communities.

\*Constitutional Petition No 43, 2009 – Dr M Aslam Khaki vs. SSP Taxila and others, SC 25.9.2012

\*\*'Unequal Citizens', Sumaira Jajja; Herald, December 2011

\*\*\*'Invisible Women – the condition and status of single women in Pakistan', Simorgh Women's Resource

<sup>138</sup> 'Invisible Women – the condition and status of single women in Pakistan', Simorgh Women's Resource and Publication Centre, Lahore

## Article 14: Rural Women

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The Country Report takes note of disparities in income between urban and rural women with the former earning the equivalent of 71.7 percent of male income, and the latter 53.5 percent of male income. The disparity between urban and rural women's income is of about 52 per cent.

To bridge these disparities the Ministry of Local Government and Rural Development operates several large scale Rural Development Projects. The Report also mentions some constraints like low visibility of rural women in policy-making.

The CEDAW Committee in its **Concluding Observations Paragraphs 42 & 43** raised the issue of rural women in order to ensure their needs are met and they are being empowered. Pakistan was also asked to provide detailed information on the situation of women with disabilities and of measures taken to address their situation.

Female population in rural areas is about 48.71% as compared to the male population of 51.29%. (Pakistan Demographic Survey 2007, Federal Bureau of Statistics). Government reports state that 79 % of agricultural work is done by rural women compared to 63 by rural men but women are not recognized as farmers.

According to Time Use Survey (2007) of Statistics Division of Pakistan, 79.4 % of rural women in Pakistan have no personal income while 59.2% are unpaid family workers; 77.4% are engaged in brown collar jobs (service workers, shop & market sales workers, skilled agriculture and fishery workers, crafts and related trades workers) as compared to 61% of male population engaged in similar work.

Despite their massive contribution to the economy, the role of rural women has not been fully recognised. The triple role of women as wage earners, home caretakers, and reproducers is not given due recognition. The gender gaps in access to education, training, technology and financing have resulted in women remaining in the non-monetized sector of economy. They also remain at the lower end of the skill and knowledge base, while simultaneously shouldering a heavy work burden, increasing care responsibility and no social protection. They are faced with gender segregated labour markets and business environments that are gender biased and often in exploitative conditions. While being invisible, underpaid, unorganized workers they have limited or no entitlements in terms of access and control over income and resources.

Rural women also lack rights over land with only 2.8% owning land and independent access to credit and business services. Restrictions on movements and lack of decision-making power also hamper their productive activities<sup>139</sup>. Moreover, due to the centuries-old patriarchal mindsets of a large majority of Pakistani men, women, particularly in the rural areas have little access to health and educational facilities.

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<sup>139</sup> "Ascertaining Impact of Globalisation on Rural Women in Pakistan", SAP-Pk, CDPA

According to the Labour Survey of Pakistan (2006-07) 70% of the female labour force is engaged in agriculture and allied fields like milking, feeding and looking after livestock. Agriculture is the largest source of foreign exchange earnings and sustains the entire rural and urban population of the country. However, rural women's participation in paid agricultural work is limited. A significant portion of agricultural tasks, such as weeding, watering, harvesting, threshing and preserving seeds are carried out by women, but customary and traditional practices favour men's access to markets, while women's contribution remains unrecognized and uncounted.

The World Health Organization (WHO) estimates that 25 million agricultural workers suffer from pesticide poisoning, and women comprise a significant portion of this figure. Medical problems of women engaged in agriculture are seldom addressed because of their lower status in society and little attention is paid to their health and nutritional needs.

Rural Women do most of the agriculture work in Pakistan, but endure the worst working conditions, with low pay and little or no social protection. They are the primary users and custodians of local natural resources, but are seldom given a voice on national and local bodies that decide how these resources are managed. They are the caregivers and managers of households, but rarely share these responsibilities equally with men or have a say in major household decisions.

Another challenge, which rural women are facing, is that although they do over 60% of the agricultural work in Pakistan they are not considered "farmers" because a farmer (*kisan*) is the person who owns land and most women do not own land. This has resulted in further lowering the status of rural women in general and women farmers in particular, who despite doing more work than men are not acknowledged.

Rural women and their work are not valued and appreciated. The spirit of their work, skills and knowledge are shattered by neglect and domestic violence, illiteracy, sexual exploitation, underage marriages, lack of education and grinding poverty. Acid attacks and cutting of human body organs i.e. ears, nose, hand or limbs of mothers for giving birth to girl child have become a tradition. Women are responsible for maintaining the family honour and killing of women in

### Major Development after 2009

National Nutritional Survey, 2011, provides following facts about rural women population:

The rural population especially women have low access to health facilities, clean water and sanitation. The state has neither taken any effective measures to provide health services to women in rural areas nor made sex-segregated data available in most of the cases. Since 66 percent of the population lives in rural areas and around half of it consists of women, they are the main sufferers in this situation. According to a survey only 32 percent have access to piped water. 64% mothers were illiterate, while only 10.1% completed their school education. About 34.9% of the urban mothers were illiterate in comparison to 85.4% mothers in the rural areas. The overall literacy rate (age 10 years and above) is 57.7 percent (69.5 percent for males and 45.2 percent for females) compared to 57.4 percent (69.3 percent for males and 44.7 percent for females) for 2008-09. The data shows that literacy remains higher in urban areas (73.2 percent) than in rural areas (49.2 percent), and is more prevalent for men (80.2 percent) compared to women (65.5 percent) in rural areas.

Advocacy on the situation of rural women in Pakistan has increased since 2008 with a national conference on rural women organized annually in the capital. The prime minister of Pakistan has declared 15<sup>th</sup> October the National Day of Rural Women in Pakistan. Provincial governments have also taken some steps to address the needs of rural women such as allocating land for landless women in Sindh.

the name of honour is very common. Women are given away in dispute settlements<sup>140</sup>.

Gender inequalities result in food insecurity which creates violence in our society and the ultimate victims of this violence are women. Although rural women are major food growers and livestock managers, they face hunger and food insecurity<sup>141</sup>.

Rural women have limited mobility and limited knowledge about the marketplace which restrict them from promoting their products in markets, and consequently perpetuate their dependency on agents to sell their products, which results in huge loss of profit<sup>142</sup>.

Deprivation of land rights also deprive rural women from becoming economically empowered and food secure. Rural women are not given due representation at decision making bodies at the local, provincial, and national levels. Such exclusion from decision-making bodies does not provide them any opportunity to voice their concerns regarding lack of access to and control over resources, education, health care, credits, market-oriented skills training and remunerated employment<sup>143</sup>.

The Government allocates a very meagre amount for the health of rural women, who already suffer because of a subordinate status in the family, and have limited access to the facilities provided. Other than scarcity of potable water, which coupled with poverty, has a direct bearing on their health, the situation is further exacerbated by the fact that government services are located at a distance from village communities and are of poor quality. As women's reliance is on these services, lack of mobility due to absence of transport makes it difficult for them to access health services. The MMR rate is considerably higher among rural women as compared to urban women<sup>144</sup>.

Attention should be given to identifying specific strategies to address these priority areas, and relevant sections of the government should adopt an inter-sectoral approach so that effective and coordinated interventions based on community participation and principles of inclusion can be implemented.

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<sup>140</sup> Conference Paper, Rural Women Conference 2009, Potohar Organization for Development Advocacy (PODA)

<sup>141</sup> *ibid*

<sup>142</sup> *ibid*

<sup>143</sup> *ibid*

<sup>144</sup> - Pakistan, Millennium Development Goals, Report 2010, p 36

## Article 15: Equality before the Law

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The Constitution of Pakistan 1973 contains within it a wide range of fundamental rights and mandates the protection of these rights and citizen's freedoms. All laws in Pakistan must ascribe to the fundamental rights in the Constitution. Article 8 of the Constitution mandates that no law or custom can continue if in contravention of the Constitution.

However, there is a large gap between paper equality and in its implementation. Article 25 and Article 27 guarantee equality before the law on the ground only of race, religion, caste, sex, residence or place of birth<sup>145</sup>. There are provisions in place for citizen's to approach the court upon violation of their fundamental rights. Despite the fact that there are issues with the definition used and resulting ambiguity, there have been a number of positive judgements in all forums of the courts reinforcing women's equality under the law. However, it must be noted that this does not always guarantee a free and impartial dispensation of justice. This relates to a variety of issues with the justice system which includes restricted access for women and children, low levels of literacy, lack of awareness and knowledge about their rights, high costs of litigation and long delays and gender bias among judges etc<sup>146</sup>.

Furthermore, the laws of Pakistan do not always reflect the ideals of the Constitution of Pakistan 1973, of CEDAW, or any other ratified international human rights convention. There is in many cases, a clear violation of women's equality under the law, and in others evidence of direct and indirect discrimination. Laws resulting in discrimination against women have been discussed above, as well as highlighting cases which demonstrate the fluidity of the equality clause and implementation of law. This section discusses laws which clearly violate the equality of women under the law, and have also been noted by the **CEDAW Committees Concluding Observations 17 & 18**.

- **The Constitution of the Islamic Republic of Pakistan 1973**

Articles 25 and 27 of the Constitution of Pakistan do guarantee equality before the law and non-discrimination on the basis of sex<sup>147</sup> and on the ground only of race, religion, caste, sex, residence or place of birth<sup>148</sup>. However, these Articles are seen to be 'incomplete,' failing to provide a safeguard to any actual discrimination against women by leaving them unexplained and vague.

Both Articles have been discussed in detail in the Report of the Commission of Inquiry for Women 1997 (hereby referred to as the Inquiry Commission Report 1997). The Inquiry Commission Report also notes in Article 25, in the cultural and social context of Pakistan, the word "protection" in clause (3) has the potential for a rigid and conservative interpretation, which may even be considered to justify barricading of women.<sup>149</sup> Pakistani society focuses

<sup>145</sup> Articles 25 & 27 Constitution of the Islamic Republic of Pakistan 1973

<sup>146</sup> "Benchmarking National Legislation for Gender Equality: Findings from Five Asian Countries", Hasna Cheema, UNDP, 2012

<sup>147</sup> Article 25 Constitution of the Islamic Republic of Pakistan 1973

<sup>148</sup> Article 27 Constitution of the Islamic Republic of Pakistan 1973

<sup>149</sup> - Report of the Inquiry Commission on Status of Women 1997

more on the protection and shelter of women as opposed to empowering them and making their rights justicible. This is based on the perspective that women are the weaker sex and thereby need the protection of men. Measures are then taken for prevention.

Article 27 of the Constitution relates to discrimination in services 'only'. The use of the word 'only' has the capacity of allowing creation of grounds for discrimination when any of the factors in this provision are combined with another factor, whether enumerated in this provision or not. Also, the proviso leaves room for application of arbitrary standards in determining the fitness of sexes for the performance of functions in a given service<sup>150</sup>.

These 'equality' clauses prohibit discrimination against women (the lack of definition of discrimination is discussed earlier in this report). However, although the Constitution upholds the principle of equality before the law, it does not in actuality provide for 'substantive equality'<sup>151</sup>. Formal equality or gender-neutral laws and policies are not enough because men and women are not the same due to their individual experiences, including social experiences and biology. There are many areas of difference, disparity and disadvantage. Any initiative working towards true equality for women must allow for or cater to this difference, disparity and disadvantage. It is important to also realise that policies that justify discrimination against women on the grounds that they are different from men, deny them justice.

There are two methods that can be used in such cases – the protectionist approach and the corrective approach. The former is primarily what is used in Pakistan. Laws, implementation of laws, policies and programmes work towards protecting women. This can be limiting for women and not for empowering them sufficiently. The latter approach ensures extra measures are taken so that women will benefit from the opportunities provided. While Article 25 (2) provides for affirmative measures to be taken, it is important to realise that these measures should not just be short-term measures made as stop gaps but instead must be measures which envision creating a sustainable change for women, based on women's needs and experiences. They must ensure that women have equality of opportunity, equality of results and equality before the law.

The equality clause of the Constitution must be revised to incorporate substantive equality which must be reflected in all laws, implementation of laws, policies, programmes and projects in order to create real and actual change.

- **The Qanoon-e-Shahadat Order 1984 (Law of Evidence):**

The clear and inherent discrimination in this law has been highlighted by the CEDAW Committee in its **Concluding Observations 17 & 18**. The Qanoon-e-Shahadat considers a woman's testimony half of that of a man.

The Country Report has given several explanations in a bid to assert that the law is not in fact discriminatory towards women. Nevertheless, once again it has not taken ground realities into account, thereby giving an incomplete picture of the situation.

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<sup>150</sup> - Ibid

<sup>151</sup> "Benchmarking National Legislation for Gender Equality: Findings from Five Asian Countries", Hasna Cheema, UNDP, 2010

The law stands as it is with the justification that the number of witnesses in any legal case: (a) rests with the Court, (b) that the provision regarding two women's evidence being required in financial matters is dormant and has never been used, and (c) that the provision of four witnesses in a *zina* (adultery or fornication) case is based on the intention to 'protect women from false allegations of *zina*.'

Section 17 deals with the provisions relating to competence of the witness and while it does not directly discriminate against women, it does lead to indirect discrimination. In a society such as Pakistan, women in public spaces are discouraged as per cultural and traditional norms. This includes their participation in matters where they are required to give witness. Allowing the competence of a witness to be in the hands of the judge, may result in a judge disqualifying women as witnesses due to his own traditional mindset. Secondly, the dormant provision of two women's testimony may be revived as and when the Court decrees. This effectively leaves the decision in the hands of the presiding judge and his own specific views, resulting in uncertainty and potential for misuse.

Section 18, Financial Institutions (Recovery of Finances) Ordinances 2001 may not discriminate against women with regard to the Banking Courts, but unfortunately this overriding effect is not relevant in any other law.

- **Citizenship Act 1951**

The Citizenship Act has been discussed in greater detail earlier in this report. The law does not allow foreign husbands of Pakistani wives to automatically get Pakistani citizenship, while citizenship is automatic for foreign wives of Pakistani husbands. It is important to discuss the 1951 law within the ambit of Article 25 as it is a glaring example of the inequality of women before the law in Pakistan. This law is not just a violation of international law, but a violation of the Constitution of Pakistan as well – a principle that all laws of Pakistan must ascribe to, as per Article 8. Any law violating the Constitution must be struck down. Yet this law persists despite this legal guarantee.

As discussed earlier, the Country Report has tried to cover up this lack of will to remove this discrimination and work towards substantive equality of women by

### **Major Development after 2009**

A study carried out by the National Commission for Justice and Peace, an NGO, during 2010-11 looks into the social, political and economic conditions of the minority women in Pakistan with the help of a baseline survey conducted in 26 districts of Punjab and Sindh, the two provinces where 95 % of minorities in the country happen to live. One thousand Hindu and Christian women were interviewed, as the two communities form 92% of the entire minority population of Pakistan<sup>1</sup>. While the minority women face a threat in the form of forced conversion and assimilation into the larger culture, their families tend to control their autonomy thus the important decisions about their lives and well being are controlled by male kin and/or community, making it a case of multiple jeopardy.

Besides informing the readers on the minority population, the policy and the space available for minority women with reference to human rights standards enunciated in the international and national legal instruments, this study reviews the literature available on minority women. Issues such as legal disparity, review of personal laws concerning minorities, religious and gender biases, forced conversions, lack of policy focus and segregated data are part of this study that affect everyday life of minority women. The results of the survey point to stark realities faced by them needing a policy response:

- 43 % of minority women complained of facing religious discrimination at the workplace, educational institution and neighbourhoods, whereas 27% had faced

discrimination at the time of admissions to educational institutions. Most of the minority children are forced to take Islamic Studies as a school subject for lack of appropriate alternatives.

- 76% of the working women had faced sexual harassment.
- Only 47 % of minority women interviewed were educated. This figure is lower than the national average (57% national literacy rate) and far behind the urban literacy rate among women which is above 65% among women (70% of the respondents belonged to urban areas).
- A mere 5.5% of minority women are members of a political party with 68% answering in the negative and 26% not responding at all. Of these, only 0.4% office bearers and 1.5% representatives. From among these, 18% are not asked to take part in the decision-making process, with only 4% taking part in decision making and the larger part (69%) not responding at all.
- The data showed a higher infant mortality rate among minorities than the national ratio - 314 infant deaths among 3050 births is 10.30% of the mortality rate which is quite high as compared to national the mortality rate that is 8.7% according to World Bank reports. A majority of the infants died either at birth or within 30 days of birth - 33.12% at birth and 36.62% within 30 days making it a total of almost 70%.

\*Life on the Margins”, Jennifer Jag Jivan and Peter Jacob, National Commission for Justice and Peace, Pakistan – [www.ncjppk.org](http://www.ncjppk.org)

mentioning a great deal of action. It must also be noted that despite the Federal Shariat Court’s verdict declaring this provision to be un-Islamic in 2008, the law has still not been changed, whereas laws such as the draft domestic violence bill are blocked at the inception phase due to segments of society questioning its position within Islam. This demonstrates the Government’s double standards when it comes to women’s equality under the law.

#### • **Succession Act 1925**

Under the Succession Act 1925, the wife’s domicile follows that of husband during marriage.

Section 15 of the Act states: ‘by marriage, woman acquires the domicile of husband if she had not the same domicile before’. The 2005 Country Report to CEDAW stated that the official policy is that ‘all citizens of Pakistan, regardless of gender, have the right to choose their residence and domicile’. However, it is clear as per this section, that there are restrictions on a woman’s right to domicile. This out-dated law must be updated in order to redress this imbalance.

#### • **Child Marriage Restraint Act 1929**

The 1929 law is another piece of clear evidence of lack of equality of women under the law. This law defines a “child” as a male under the age of 18 years, and a female under the age of 16 years. This clearly violates a woman’s status before the law, recognising her as an adult two years before a male. This also violates international standards and the universally agreed age of majority.

#### • **Hudood Ordinances 1979**

This Ordinance has been discussed in greater detail earlier. It is important to mention this law within the context of Article 25. The Hudood Ordinances identify the age of majority of girls to be at 16 or at puberty. As with the Child Marriage Restraint Act 1929, this is evidence of the unequal position of women due to the difference in age of majority of girls. This law has a greater impact than the 1929 Act. Due to the considered “Islamic” nature of the law, a girl is considered an adult at puberty in many cases of ‘zina’ or fornication while appearing in the courts. This law is seen to have an overriding effect on all other laws. Therefore, the definition of a female adult is

taken from these Ordinances in other legal matters, resulting in absurd conclusions.

The discussion on the Constitution and these laws clearly evidence the fact that women are not yet equal before the law in Pakistan. More specifically, although there are provisions prohibiting discrimination in the Constitution, the equality given to women is not substantive. There needs to be more of an effort to ensure that equality is translated from the books to real and actual equality.

### **Rights and Status of Religious Minorities**

Articles 20, 21, 28, 36 of the Constitution of Pakistan guarantee protection of minority rights and interests. However a number of other articles institutionalize discrimination against religious minorities. The induction of discriminatory legal provisions in the Pakistan Penal Code and promulgation of the Hudood Ordinances became a cause of discrimination and injustice against religious minorities. This discrimination embedded in laws and policies resulted in disparity between the rights of Muslims and non-Muslims (religious minorities). The overall gender inequality coupled with the differences based on class, caste and religion have affected the minority communities, and the minority women being among more marginalised and vulnerable sections bear the brunt on several counts.

## Article 16: Marriage and Family

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Marriage and family as institutions hold a great deal of importance in Pakistan and are often thought to be more important than the concerned individuals. It is considered important for women to not shame the family and not allow a marriage to fail. There are many taboos on divorce and un-married women. Women are recognised primarily in their roles within the marriage and family as wives, mothers, daughters etc. Their identity is derived from their family.

There are a number of issues relating to the regulation of family laws in Pakistan ranging from registration, to divorce to maintenance. The CEDAW Committee in its **Concluding Observations Paragraphs 44 & 45** raised the issues of amendments to Dissolution of Muslim Marriages Act 1939, minimum legal age for marriage, and measures taken to eliminate forced marriages. There are a variety of issues pertaining to the different aspects to marriage and family laws.

The Country Report identifies a number of provisions of equality of women in marriage and the family. It also mentions a number of different draft legislations and amendments introduced in the National Assembly regarding Muslim Family Laws. These Bills deal with a variety of issues, such as providing immediate relief to children by providing maintenance allowance at the initial stage of the proceedings, speedy trials in cases relating to the share of women in inheritance, and removal of the existing gender disparity, etc. However, the majority of these Bills have not yet been passed by the Parliament.

### **Legal Age of Marriage**

The minimum legal age of marriage has not been effectively dealt with in any forum. Currently, there is a great deal of confusion about the age of adulthood for girls specifically, as it varies in different existing laws in Pakistan. Under the Child Marriage Restraint Act 1929, the age of a female child is identified below the age of 16. The Hudood Ordinances 1979 identify female adulthood at the age of 16 or puberty. This latter age is used across different legislations due to the 'Islamic' nature of the 1979 Ordinances. The age of puberty is also used as the age of adulthood for girls in numerous court cases, who declare marriages with female children valid due to the fact that they have reached puberty. This is in direct contravention of international standards and international conventions ratified by Pakistan.

Furthermore, there is little implementation of the 1929 law, punishing persons involved in child marriages, including the parents, the registrar and even the groom, if above the age of 18. Apart from the law not being implemented properly, it is also extremely outdated with fines and punishments not being enough of a deterrent to offenders and potential offenders.

The Government seems unwilling to address this issue. It also seems unwilling to confront religious political parties on controversial issues regarding women and has often compromised on the subject of women's rights. The Government has failed to bring personal laws in consonance with Article 16 of the CEDAW Convention.

It must be mentioned that the information given by the Country Report regarding draft amendments in the laws is ambiguous and does not give all the facts. Also the two Bills<sup>152</sup> passed by the National Assembly are lying with the Standing Committee and have not yet been passed by the Senate, and are thereby not part of the domestic law of Pakistan. Recommendations of the CII have been held very high but the Report fails to mention what concrete action has been taken on any of these recommendations.

- **Forced Marriages & Forced Conversions**

Forced conversions have been a major concern for non-Muslim minority communities for many years. The National Commission for Justice & Peace (NCJP) recorded 762 cases of conversion to Islam between 1999 and 2004. However, no conversion from Islam to any other religion was observed<sup>153</sup>. In a number of cases minority women, including minor females were abducted and converted to Islam and married off to Muslims. In such cases, the courts have seldom decided matters of custody of the abducted girl in favour of the family<sup>154</sup>. There are no administrative or legal measures to stop these incidents that are demoralizing for the religious minorities and are generating discontent, resentment and a sense of alienation among them.

- **Registration of Marriage and/or Divorce**

There is little emphasis in Pakistani society on the registration of marriage or divorce. Many marriages go un-registered, causing potential problems for women who, in many situations such as employment opportunities etc must produce the *Nikahnama* (marriage certificate). It also causes difficulty in divorce cases, particularly for women. In order for a woman to get a *khula* (female's right of divorce), she must approach the court to undergo the legal process. A registered *Nikahnama* is usually needed for such processes. Issues also arise if a woman has left the household, but needs another copy of the *Nikahnama*. An independent institution storing the *Nikahnama* would be able to allow such women to access the necessary documents.

- **Rights of Divorce for Women**

The Country Report mentions that in the Protection of Women (Criminal Laws Amendment) Act 2006 (WPA) *lian* (when the husband and wife both swear on oath to testify to the veracity of their statements) has been made a part of the Dissolution of Muslim Marriages Act 1939. It also refers to some recommendations of the CII concerning the seeking of divorce by the wife.

Inclusion of *lian* in the Dissolution of Muslim Marriages Act 1939 has been added as grounds for divorce. Nevertheless, it does not put women at par with men at the time of dissolution of the marriage. A closer look at the rights available to men and women for dissolving the marriage under the prevalent laws of the Pakistan reveals a number of discrepancies.

If the husband divorces his wife he has no right to take back the dower given at the time of marriage. He sends a notice of *talaq* (divorce) as per U/sec 7 of the Muslim Family Laws Ordinance 1961 to the Chairman of the Union Council (UC) and to the wife. Within thirty days of

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<sup>152</sup> Family Courts (Amendment) Bill, 2008; Guardians and Wards (Amendment) Bill 2008

<sup>153</sup> Life On The Margins' study on the minority women in Pakistan, NCJP, p 60

Available at: [www.ncjppk.org](http://www.ncjppk.org)

<sup>154</sup> Human Rights Commission of Pakistan, Annual Report 2010, p 136

receipt of the notice, the UC Chairman is bound to constitute an Arbitration Council to effect reconciliation between the spouses. In case no reconciliation is reached, the marriage stands dissolved.

Under the Muslim Marriages Dissolution Act 1939 nine specific grounds for claiming divorce are available to women. She is not bound to return the dower to the husband, but she has to prove her case through presenting evidence, and it may take years to get the case decided.

Under the Family Courts Act 1964, a woman can ask for khula on any grounds, but in this case she has to return the dower to the husband under Section 10 (4). However, in certain cases it has been accepted that only dower received at the time of the marriage must be returned and dower received subsequent to date of marriage might be retained. However, this is left to the discretion of the judge, many of whom require return of the entire dower amount paid. This provision of the law is not only in conflict with the former Act but is also discriminatory towards women. This can be discriminatory to women who are unable to access funds to return the dower amount.

A husband can give a delegated right of divorce to his wife at the time of marriage that is recognised in the *Nikahnama*. Clause 18 of the marriage contract allows the husband to delegate his right of divorce to the wife, but in practice families and elders usually cross out this clause before handing over the contract to the bride, on the pretext that it is a bad omen to talk of divorce when the marriage is being solemnized. The woman is thus deprived of her right given by religion. If the right of divorce has not been delegated to her at the time of marriage then she must seek relief under the law, applying for a dissolution of marriage, if any of the issues fall within the prescribed reasons why dissolution is allowed, or apply through khula whereupon the process must be taken through the courts.

- **Guardianship and Maintenance of Children**

Another issue in Muslim Family Law is that during the marriage the father is responsible for the maintenance of his child. If the marriage breaks up, the guardianship and custody of the child is governed by the Guardian and Wards Act, 1890. Under this Act the Court is also bound to consider the opinion of the child when deciding custody petitions. Section 17 of the said Act emphasizes the “welfare of minor”.

All personal laws, including Muslim personal law, do not recognize the mother as an equal guardian. The Guardian and Wards Act privileges the rights of the male guardian above those of the child and the mother, as Section 19 (b) asserts that no one can be appointed guardian of the property of a child if the father is alive and is not unfit. Unfortunately, the concept of “joint custody” has not been clearly defined either in the Islamic school of law or under any statutory Muslim family law.

### **Adoption and Illegitimate Children**

A child born outside wedlock cannot inherit from the father’s property but has right to the mother’s property. There is no state law on adoption as adoption is not allowed or recognised in Islam. There are also no formal adoption procedures under Hindu or Christian law. Adopted children accordingly have no rights of inheritance and succession. The matter is decided

traditionally according to the whims of the spouses, and a woman has to consider the wish of her husband as well as of her in-laws. In such cases, gifts can be made before death.<sup>155</sup>

### **Personal Laws of Religious Minority Communities**

Non-Muslim women face more or less the same disadvantages in society as Muslim women. According to the Constitution of Pakistan, all communities are entitled to follow their personal laws. The laws governing Christian family matters are governed by the Christian Marriages Act 1872 and the Christian Divorce Act 1869. The existing laws need urgent revision, as they have placed the women of the Christian community at a disadvantageous position in the settlement of family disputes. These laws need to be reviewed. Measures also need to be taken to ensure that the 'Islamic' legislation promulgated for the majority religion does not apply to religious minorities in keeping with Article 227 (3) of the Constitution that protects the personal laws of citizens of different faiths.

Adultery is the principle grounds for dissolving marriages under Christian Law. While adultery was already a crime previously, it became even more problematic when the Hudood Laws made adultery punishable with the controversial punishment of stoning to death, although it has never been implemented. Because of the 1979 Ordinance there was a general fear which discouraged Christian women from filing for divorce on the grounds of adultery. However, following the Protection of Women Act 2006, no court can take cognizance of a case of adultery unless filed as per procedure now described. An allegation of adultery, whether proven or otherwise in a case of divorce cannot be made a ground for criminalization. Nevertheless, non-Muslims can still be persecuted under the law and the evidence of non-Muslims remains unrecognized under the revised Hudood Laws, which continue to prohibit non-Muslim lawyers from representing Muslim clients. The discrimination on the basis of religion is still there in other ways too, for example, no non-Muslim can be the presiding officer of the court if the accused is a Muslim. No legislation regarding Succession and Inheritance of the majority of minority religious communities exists.

<sup>155</sup> Riffat Butt, "Implications of Ratification of Art 16 of CEDAW", Annual Report 2010-2011, NCSW

### **Major Developments after 2009**

A 2011 amendment to the Pakistan Penal Code introduced the offence of giving women in marriage; exchanging women as terms of a negotiation or settlement; and forced marriages with a corresponding punishment as per Sections 310A and 498B.

The recognition of forced marriages as a crime is a positive step. However, there still remain a number of lacunae in the law, including in the recent pro-women laws. However, until proper amendments are passed, it is vital that the law be implemented in its true spirit in order to eliminate this social evil.

In May 2012, the National Database and Registration Authority (NADRA) amended its forms in order to include the status of Hindu women. Hindu marriages are not necessarily registered. Therefore Hindu women were mandated to provide proof of marriage and registration of marriage to obtain their CNIC cards, which they were unable to do. Upon orders of the Supreme Court, NADRA has amended its forms and has inserted a new provision in the application for the national identity cards whereby a married Hindu woman is required to submit only an affidavit as proof of marriage.

No legislation on personal laws of the Hindu Community exists in Pakistan. Except for inheritance and Hindu women's right to Separate Maintenance and the Residence Act, 1946, personal status laws of Hindus remain uncodified. In India, the laws have been updated and Hindus have recourse to the Indian Marriages Act 1955, but in Pakistan marriage of Hindu citizens is dealt with under the old customary law, where there is no law pertaining to divorce and the prevailing laws and practices are inadequate to meet the needs of the time. Because of the absence of a mechanism for registration of Hindu marriages there is no evidence of marriage, and even obtaining a passport can become problematic. The non-registration of marriages also has serious implications for spouses when seeking legal recourse in cases of matrimonial and inheritance disputes.

## General Recommendation (GR) 19: Violence against Women

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Incidents of Violence against Women (VAW) in Pakistan have continued to rise in recent years. While there has been an increasing focus on this phenomenon on all fronts, which includes in particular the media, there has been little success in putting effective measures in place to put an end to it. Despite measures the Government claims to have taken, the violence continues without impediment. A realistic analysis must be undertaken by the Government to make a proper strategy to eliminate VAW.

The CEDAW Committee in its **Concluding Observations Paragraphs 22 & 23** has highlighted a number of concerns relating to VAW including the persisting forms of VAW, in particular domestic violence, rape and crimes committed in the name of honour; the negative effects of the Qisas and Diyat law; the lack of data on all forms of VAW in the Country Report (1997-2004). It recommends adoption of a Domestic Violence law; gender-sensitive training on VAW for key players and for data on VAW disaggregated by rural and urban areas.

The Government has cited the Criminal Law (Amendment) Act 2004 as evidence of compliance to this concern. The Country Report (2005-2009) also mentions some decisions of the Lahore High Court condemning the act of honour killing. It mentions the salient features of its Domestic Violence Bill, and the reasons why it was not passed in the Senate. It throws light on the breakthrough achieved by the Protection of Women Act 2006. The Report goes on to mention various sources available to the Government for collection of gender disaggregated data, such as the Gender Crimes Cell (GCC), the National Police Bureau and the National Forensic Science Agency, etc. To combat violence against women it mentions the role played by the EAW/G Alliance and the Gender Justice and Protection Project. In order to eliminate violence against women the Report says that a change of mindset is required, and the above-mentioned efforts are an attempt to bring about this change. It goes on to discuss different methods for data collection, as well as measures employed to ensure gender sensitization trainings.

- **Increasing incidents of VAW**

Discrimination against women and girls in Pakistan has seen a sharp rise as a result of the low rate of conviction of perpetrators gender based crime and poor governance in a male dominated patriarchal society. Despite all the measures that the Government says it has taken to end discrimination, women have been denied access to resources and to decision-making as equal citizens of the country. Women are still looked upon as property in sections of society and subjected to out-dated feudal and tribal customs. Violence against women starts at home and can end in killing in the name of honour. Other typical forms of physical and overt violence include abduction, murder and rape.

A report by Aurat Foundation reported a total of 8548 incidents of violence against women in the four provinces and in the Islamabad Capital Territory during the year 2009. Of these, 5722 cases of violence were recorded in Punjab; 1762 in Sindh; 655 in Khyber Pakhtunkhwa, 237 in Balochistan; and 172 in Islamabad. Almost all these cases were reported in the media or were

recorded in police documents. The report found that cases of violence against women had increased in 2009 as compared to the previous year 2008. There were 7571 cases of violence against women in 2008, which jumped to 8548 in 2009, an increase of almost 13 per cent. This was despite the fact that fewer statistics were available from several districts of KP and Balochistan because of the uncertain security situation<sup>156</sup>.

- **Laws relating to VAW**

### **Honour Killings in Pakistan: Criminal Law (Amendment) Act 2004 & Provisions of Qisas and Diyat in PPC**

The Government contends that the Criminal Law (Amendment) Act 2004 that makes honour killings punishable is one of its greatest successes. While the recognition accorded in the law to the crime of murdering women on the pretext of family honour is appreciated it has to be pointed out that not only is the law flawed, it is rarely implemented. The cases mentioned in the Country Report are only a few in number, and it is interesting to note that all the judgments cited are by the Lahore High Court and not any other provincial court. Along with these there are a large number of cases recorded in the last year alone that continue to be biased in favour of the perpetrators of 'honour' crimes. In one case, no compensation was given to the legal heirs of the deceased, as the victims who were murdered in the middle of the night were not '*masoom-ud-dam*,' i.e. without guilt, because they were found in a 'compromising position'<sup>157</sup>. In other cases, 'honour' was considered a mitigating factor and the sentences were reduced<sup>158</sup>.

Though there were a few cases where there were convictions at the High Court level, media and police records show that honour crimes are committed regularly across the country. There have been highly controversial and blatant incidents of honour killings and honour crimes across the country in the last 3 years alone<sup>159</sup>. These crimes and murders were not only instigated by illegal *jirgas*<sup>160</sup> but also, murderers and criminals were subsequently granted impunity. What is even more shocking, a Senator who, on the floor of the House, defended the horrific crime of killing women on pretext of family honour, on the grounds that it was a local time honoured tradition, was not asked to issue an apology, or penalized in any way, but was later made a Minister in the Cabinet<sup>161</sup> and member of a Constitutional Committee. The Government's readiness to overlook, even condone, such crimes and reward, rather than penalize a person who supports honour crimes demonstrates that it does not take the issue seriously, and is willing to sacrifice the rights of women for political expediency.

The 2004 Act made a number of changes in the Pakistan Penal Code 1860 and the Criminal Procedure Code 1898, as mentioned in the Country Report. However, there remain large loopholes in the law<sup>162</sup> that are not mentioned in the Country Report as enumerated below:

<sup>156</sup> Aurat Foundation, Press Statement, 1 February 2010, Islamabad Statistics of violence against women in Pakistan in 2009 <http://www.af.org.pk>

<sup>157</sup> Amanullah vs. The State, 2006 YLR 209

<sup>158</sup> Sarfaraz vs. The State, 2008 YLR 969; Fazal Khan vs. The State, 2008 YLR 201

<sup>159</sup> Five Women Buried Alive in Balochistan, 2008 - Legislative Watch Newsletter Issue No. 25, September 2008, Aurat Foundation; and Tasleem Solangi Case, 2008

<sup>160</sup> A Sindh High Court case declared *Jirgas* to be illegal

<sup>161</sup> "Anti-women' Cabinet riles Pakistan Activists", Saeed Shah, The Guardian, 12-11-2008

<sup>162</sup> We Demand Strong and Effective Legislation to Elimination 'Honour' Crimes', Publication of the Legislative Watch, Aurat Foundation, 2004

- Punishment for 'honour' crimes is not mandatory, which makes the legislation ineffective.
- The family of the victim can forgive the murderer in the name of God without receiving any compensation or *diyat* (Section 309), or can compromise after receiving *diyat* (Section 310).
- While 'honour' killing has been included in the crimes defined as *fasad-fil-arz* (causing chaos or disorder) and a minimum penalty of 10 years *ta'zir* (imprisonment) with a maximum of 14 years is laid down, the awarding of a penalty in cases where the right of *qisas* (retribution or revenge) has been waived or compounded has been left completely at the discretion of the court. Section 311 of the PPC which deals with this issue has been interpreted by the high courts that irrespective of the waiver and compounding of the *qisas*, if the murder is on the pretext of honour it will attract penalty under this provision. As in the past, this provides a loophole for murderers to get away with minimal or no penalty. [Amendment to Section 311 PPC]. A key concern is a proviso added in Section 338E of the PPC in the 2004 amendments. This proviso has weakened the discretion of the courts to pronounce punishment in cases where the parties have compromised.
- Where the penalty of imprisonment is waived or compounded in murder cases, the only stipulation made is that the permission of the court is required which will decide subject to such conditions as it may deem fit. Apart from giving the court complete discretion in terms of awarding a *ta'zir* penalty, there is no minimal penalty laid down for such cases. This applies to all other offences under 'hurt.' [Amendment to Section 338E PPC]. The 2004 amendments clearly bars sentencing in a murder on the pretext of honour under 302C which did not have a minimum punishment.
- The definition may be fairly comprehensive but it does not include the words 'whether due to grave or sudden provocation or not' to exclude the possibility of judgments being swayed by any such consideration. This provision was removed from the statute previously. Thus, it leaves space for courts to distinguish between, and make concessions in cases where they think there was 'grave or sudden provocation'. Leniency has been shown in sentencing for mitigating circumstances which includes grave and sudden provocation. [Amendment to Section 229 PPC]
- The definition also combines 'honour killing' with other 'honour crimes' (e.g. acid throwing, burning, cutting off the nose, etc.), which are usually women-specific and are committed for other reasons too. By being so general, the law could become counter-productive. For example, if a person caused 'hurt' to a man for obscene or obnoxious behaviour towards a woman, that person would also become liable to harsher penalties. [Amendments to Sections 299 and 337N PPC]
- With regard to penalties, the only penalties for 'honour' killings (if there is no compromise) are death or life imprisonment (i.e. 25 years) as *ta'zir*. While the intention of providing a higher penalty may be good, this has proved to be counter-productive. Where courts are already reluctant to give harsh punishments in cases of 'honour' crimes, laying down a minimum of 25 years or death may discourage them from convicting the perpetrator in these cases, just as the mandatory death penalty in gang rape cases makes conviction near impossible. [Amendment to Section 302 PPC]
- There are also concerns as to the difference in penalties for the same crime: death or life imprisonment (if there is no compromise) as mandatory punishments; no penalty or 10-14 years (if *qisas* is waived or compounded) at the discretion of the court; see above

acquittal or any amount of *ta'zir* (if *ta'zir* is waived or compounded) at the discretion of the court. [Amendments to Sections 302, 311, 338E PPC]

- There is no liability to ensure that others who may have been involved, or had encouraged or validated such killings, e.g. *jirgas*, *panchayats*, family members, elders), and are thus primarily responsible for perpetuating such practices, become equally liable to punishment under the law. There are provisions of criminal conspiracy, aiding and abetting, incitement that carry punishments under the law.
- While it is positive that the practice in some parts of the country of giving a woman in marriage or otherwise as *badl-e-sulhas* peace offering or compensation for crimes committed by family members or tribes, has been specifically forbidden, the Law needs to be strengthened by laying down a penalty for all offenders. While it is possible to hold all concerned parties liable under the law, this must be explicitly included here as due to societal condonation of the crime, the police and courts have avoided actually punishing other concerned parties. [Amendment to Section 310A PPC]
- There is no provision in the Law to ensure that when courts allow the compounding of offences, they must first satisfy themselves that the offence is not an 'honour' crime, or that the victim's family was not coerced into accepting compensation. It must be remembered that if stronger penalties for such crimes are incorporated in the law, the offenders might well choose not to mention 'honour' as a motive for the crime. A prerequisite for the courts to accepting compromise is to determine if it was voluntary, without coercion and that is why the statements of the parties entering into a compromise are recorded. Therefore, it becomes important for courts to properly determine the issue before allowing offences to be compounded.

The above gaps have resulted in misinterpretations in the Pakistani legal system. Despite the promulgation of this Act, legal experts agree that the existing laws leave ample space for judicial gender biases to creep in, thus resulting in lenient sentences to murderers, protecting perpetrators from maximum penalties and facilitating compromises that allow perpetrators to get away with minimal or no penalty<sup>163</sup>.

More importantly, the changes in the laws are undermined by the refusal to repeal the provisions of *Qisas* and *Diyat* in the PPC which in effect convert murder into a crime against an individual rather than against the State by granting the right to family members to either 'forgive' the murderer or accept monetary compensation for the life lost. Human rights groups strongly feel that intentional murder of any kind must be treated as a crime against the State, and not be considered a compoundable offence. The *Qisas* and *Diyat* provisions have been responsible for further lowering the already low rate of conviction, as no matter what the crime, perpetrators know they can escape punishment by paying off families of victims or 'seeking forgiveness, often coercively. The long delays in court proceedings and preference of the police for out-of-court settlements also force the aggrieved party to agree to a compromise.

It is evident that there continues to be a contradictory regime of case law regarding 'honour' crimes. It is necessary to have a law that is clear and explicit and denies discretion to judges to look upon circumstances as mitigating factors<sup>164</sup>.

<sup>163</sup> 'Beyond Honour', Tahira S. Khan, Oxford University Press, P 251

<sup>164</sup> Interview with Justice (Retd.) Shaiq Usmani conducted in Karachi on 30-06-2009

### **Protection of Women (Criminal Laws Amendment) Act 2006**

The changes effected by the Protection of Women Act 2006 have been referred to in the discussion on the Hudood Ordinances 1979 earlier in this Report. An impact assessment conducted by NCSW<sup>165</sup> on this law showed positive changes included:

- Reduction in charges of *zina* against women
- Decrease in female population in prisons
- Increase in reporting of rape cases
- Fall in custodial violence

Problems identified in this report related to general issues which belie the entire legal and justice system in Pakistan which include:

- Plural legal systems
- Patriarchal bias in law enforcement agencies
- Lack of legal literacy
- Lack of capacity in criminal justice system

These issues demonstrate that although positive laws may come forward, the implementation and mindset remains one of the biggest hurdles in Pakistan.

### **The Domestic Violence (Prevention and Protection) Bill 2009**

This law was passed unanimously in the National Assembly with much support from the Government in 2009. The support, however, waned by the time it reached the Senate and the Bill was allowed to lapse. While it is acknowledged that the Bill had a number of flaws, especially Section 25 that criminalizes false accusations of domestic violence while not criminalizing domestic violence itself, it is noted that the Government showed a great deal of apathy and disinterest when it came to actually pushing through such an important piece of legislation. The Council of Islamic Ideology (CII) also criticized the domestic violence bill passed by the National Assembly in August 2009. It expressed its reservations on the bill, saying it was “ambiguous,” “containing few reforms” and reflected “gender discrimination.” Terming the law discriminatory towards men, the Council said the bill presumed that only women and children could be victims of domestic violence, ignoring the possibility that old, weak and indisposed men could become victims too. “This is also against the cardinal principle that everyone is equal before the law and must be treated on a par.” The Council was worried that under this law the police would “trample the sanctity of home.” It criticized the role of NCSW while asserting that review of laws in the light of Quranic injunctions was the jurisdiction of the Council under Article 230 of the Constitution.

While it is true that no piece of legislation is perfect, yet, the grounds on which CII based its reservations represent the regressive and patriarchal thinking and interpretations of religion that this country has had to contend with, particularly since the dark days of the military dictator, Zia ul Haq<sup>166</sup>.

<sup>165</sup> “Assessment of the Women Protection Act 2006”, Farzana Bari, National Commission on the Status of Women

<sup>166</sup> 24<sup>th</sup> August 2009 Dawn news <http://archives.dawn.com/archives/41327>

- **Gender Sensitization Training**

In a positive move the government launched gender sensitization training to curtail VAW. Police training curriculum on gender and violence against women (produced by Rozan and the National Police Bureau) was passed by the Police Training and Management Board in 2006 to be institutionalized as part of the core curriculum being taught in police colleges and schools across Pakistan. Currently it is being taught in three provinces Sindh, Balochistan and Punjab. But, overall the problems that plagued the gender sensitisation training have already been mentioned in reference to the MoWD trainings. Who conducted the trainings? Who was trained? What level of participants was involved? Are gender sensitisation trainings mandatory? What is the follow-up to ensure that training methods meet agreed quality benchmarks? Are these trainings being monitored and evaluated? How can the trainings and learning be made sustainable?

- **Gender Disaggregated Data**

Gender-disaggregated data is a huge problem in Pakistan, as admitted in the Country Report itself. There has been no concept of this kind in most of the research done in the past. Reportedly, the population census that was to take place in 2009 was prepared to collect gender-disaggregated data, but it was postponed because of political opposition from some quarters. In the meanwhile, despite training of the Federal Bureau of Statistics, no gender-disaggregated data is collected. The Election Commission of Pakistan, even in the recent 2008 election, had no data regarding the turnout of female voters.

A numerical surge in Internally Displaced Person (IDPs) was witnessed in the spring of 2009 as a consequence of military operations against militants in the Malakand region of Khyber Pakhtunkhwa, resulting in the displacement of about 2.3 million people. This number further increased to 2.7 million, the largest internal displacement of population in the country's history, when the military operation was extended against Taliban militants in the Federally Administered Tribal Areas (FATA). However, owing to the absence of authentic disaggregated data, rehabilitation and relief work was negatively impacted.

According to a Human Rights Commission of Pakistan report, "..... statistics need to be disaggregated on the basis of age and gender to better assess needs....Disaggregated data by gender and age is vital to assess specific needs of all segments of the affected population during all phases of displacement, and would have an impact on prioritization in areas such as education, school reconstruction, recruitment of male and female teachers and training requirements, healthcare facilities and number of male and female health service providers, social protection and welfare needs, psychological needs, food security and livelihood rehabilitation, and access to water, sanitation and hygiene"<sup>167</sup>. Lack of gender disaggregated data hampers effective planning and monitoring, whether humanitarian or in the National Plan of Action.

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<sup>167</sup> Internal Displacement in Pakistan: Contemporary Challenges, Human Rights Commission of Pakistan, Oct 2010

- **Data on VAW**

### **Gender Crimes Cell (GCC)**

The GCC gathers, collates and analyses data on VAW. However, apart from flaws in the formation of the GCC, this data also has its own gaps. The data collected by the GCC is gathered from First Information Reports filed across the nation. In a country where the majority of crimes go un-reported, especially those committed against women, the data thus obtained is extremely unreliable and deficient. If the statistics are to provide support to women victims of violence more effectively, it is necessary that there should be an integrated and reliable database in the GCC.

Some of the challenges <sup>168</sup>faced by the GCC as an institution are summarised below:

- The GCC has succeeded in raising awareness within the police force about gender-specific crimes, but the major preoccupation of the force is catching terrorists and criminals. Since law and order is a provincial subject, more detailed information gathering and awareness raising needs to be conducted and owned at the provincial level<sup>169</sup>.
- At the moment there is only one GCC that is based in Islamabad. Here too, there is a lack of interest in supporting the GCC and making it more effective. As of 2009, there are 20 positions that remain to be filled.
- The GCC does not have autonomy to actually investigate cases. It can only supervise cases on the basis of the information provided by the relevant police team.
- The data collected is shared with the provincial Inspector General of Police, who is supposed to act upon it and to fill the gaps in procedure. However, the priority in district police stations is law and order and terrorism, not gender cases.
- There is no mandatory gender sensitization training of the GCC staff.

### **National Forensic Science Agency**

This agency has been identified in the Country Report as another institution for collection of data. As reported, it was set up in 2006 but in a span of four years has only dealt with 200 cases. This institution can indeed help to reduce cases of sexual abuse against women in police custody; but it will be pertinent to mention that their laboratory was not operational in Islamabad until end 2009, though it started work about a year before that. The Government has shared a number of cases examined by it, but the figures shown do not reflect the nature of the cases that the laboratory examined. Furthermore, apart from the obvious tardiness in effectively using this resource, there have been many accusations of corruption and falsification of evidence at the agency. Also, no corresponding trainings have been conducted for the Medico-Legal Centres and the police. A prominent NGO in Karachi and a senior police official have reported that half the forensic evidence is lost in the initial stages due to lack of proper care during collection and storage of evidence, which renders the reliability of data from this source questionable.

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<sup>168</sup> "Situational Analysis and Mapping of Women's Human Rights in Pakistan", Rabia Khan, CIDA Pakistan Programme, 2009

<sup>169</sup> Interview with Syed Irshad Hussain Shah, Director General, and Asif Piracha, Director, Gender Crimes Cell, 31st March, 2009, Islamabad

### Major Developments after 2009

A review of the Criminal Law Amendment Act 2004 identified a number of factors impeding its effective implementation. These issues ranged from lack of information among the police as to the changes made by the law; lack of effective training on investigation of honour killings; inherent bias of the police; misreporting of cases to hide cases of honour killings in FIRs; the bias within judiciary against women and obvious demonstration of approval in cases of honour killings and providing justifications for mitigation of sentences; contradictory judgments within the law etc. This demonstrates the urgency and need for prioritization on part of the Government to focus on successful implementation through addressing some of the prime concerns of the legal system and the law enforcement system which includes improving trainings, studies, awareness and sensitization with sustainable indigenous projects, using their own resources to show commitment and local ownership of the issue.

There have been a number of pro-women laws promulgated on VAW, as identified in earlier sections of this Report. These include the following:

The Protection Against Harassment at the Workplace Act 2010: This was actually promulgated in 2010; not in 2009 as portrayed in the Country Report. The law has been applauded, particularly by women working in offices in urban areas and women activists. However, it is hoped that this law too is not plagued by the same laxity and discrepancies in implementation shown in the case of other laws. A large number of women are employed

### • Other Methods of Data Collection on VAW

The other measures for collecting data are ad hoc activities conducted on an individual basis, such as maintaining different registers in Khyber Pakhtunkhwa, and donor supported initiatives, such as by the EVAW Alliance and data collection by local organisations such as Aurat Foundation and HRCP. However, the Government has typically refused to accept data collected by civil society to represent a real picture of VAW in the country.

The section dealing with this issue in the Country Report is extremely ambiguous, indicating that not much thought or effort have gone into finding a solution to this priority issue. There must be an initiation of a discussion on the issue of data collection on VAW to identify methods to be employed in order to gather proper data to provide an accurate picture of VAW on behalf of the Government.

### • Government Initiatives to End VAW

#### The Gender Justice and Protection Project<sup>170</sup>

This project is mentioned by the Country Report as an on-going measure to work towards elimination of VAW. The project has a lot of potential. In the Report the language used indicates that the projects mentioned have either recently been started, or are on the verge of starting, which then leads to the question of monitoring what happened since 2007-2009 (when the Country Report was drafted). Government projects, whether related to social welfare, human rights or administration, should all be reviewed by independent bodies, and data and reports should be made available to the public to ensure transparency. However, questions must be raised to the level of its impact and most importantly its sustainability. The Government is working with international funds on a project basis. It must be seen whether such initiatives will take place with the Government's own funds and budgets even after the project life.

<sup>170</sup> 2007-2011; extended to 2012

**Standard Operating Procedures (SOPs)** adopted by the Police on how to treat women in cases of gender-based violence are appreciated. But in order to be effective, sustained gender sensitization training of the police while dealing with violence cases will have to be ensured. The SOPs have been accepted by all the IGs across Pakistan and are included in many training initiatives of the police. It is necessary to have an impact assessment to see the whether this has created any change and how to make this sustainable and to have a more positive effect at the ground level.

- **Support Structures on VAW**

**MoWD’s Crisis Centres**

Twenty-three Shaheed Benazir Bhutto Crisis Centres, each with a 13-member Committee for operational guidance, have been established to provide support services to women victims of violence and abuse. The centres provide medical and legal aid, and psychological counselling for the women as well as for their husbands and other family members. Training in vocational skills and computer literacy is available to those interested, along with formal education and recreation for clients’ children.

However, the centres can only provide shelter to women for a period of 24-72 hours. For longer-term accommodation, they are either sent to the Islamabad Women’s Crisis Centre, or to the provincial governments-operated Dar ul Aman shelter homes, or encouraged to negotiate an agreement. They may also be transferred to other shelters depending upon the nature of the case.

The Islamabad shelter, opened in 2005, is the only one that is supported by a crisis centre on the same premises. While the centres do not have shelter facilities beyond 72 hours, this one offers free protection and temporary shelter to survivors of violence, legal aid, psychological and job counselling, vocational training and education to children of survivors.

As with all other institutions, the centres have their set of challenges:

- Finalization and implementation of Standard Operating Procedures (SOPs) is necessary in order to coordinate Government and CSO-run shelters.

in the public sector and the Government should set an example by stringently applying this law in urban as well as rural areas. Information should be disseminated to the grass roots level and around the country, and violators should promptly be held accountable without regard to social status.

Corresponding to identifying harassment in the workplace as a crime, an amendment was made to Section 509 of the PPC, introducing ‘harassment’, including sexual harassment as a criminal offence. This allows for prosecution of harassment of any form in any public place as well.

The Criminal Law (Second Amendment) Act 2011 deals with acid crimes and makes key amendments to the PPC which thereby criminalizes acid crimes or any other hurt caused by a corrosive substance.

The Criminal Law (Second Amendment) Act 2011 deals with acid crimes and makes key amendments in the PPC which thereby criminalizes acid crimes or any other hurt caused by a corrosive substance. While the government has achieved a milestone in passing the law on 12th December 2011 to address acid violence, it has ignored all recommendations from the highest judiciary (Supreme court of Pakistan) and civil society to further enhance the domestic legal framework and develop a more holistic comprehensive acid and burn legislation at provincial level to address other aspects of acid violence: investigation, trial, rehabilitation process along with funding and monitoring mechanism, distribution and sale of acid.

The Domestic Violence Bill, despite the support and backing of the Government in its initial stages, has fallen by the wayside. After its passage in the National

Assembly in 2009, it was sent to a joint committee for consideration. However, upon promulgation of the 18<sup>th</sup> Amendment, the law was declared to be a provincial subject. The Bill created amendments and included a definition in the PPC, which remains a Federal subject. This decision seems to reflect the patriarchal and traditional bias which works against women's empowerment and fear or upsetting the traditional household balance in which men hold all the power.

Since the 18<sup>th</sup> Amendment, the bill is present in all the provincial assemblies at various stages; for example, in Sindh it is currently being vetted by the Ministry of Law on the directives of the Chief Minister while in KP it is at the Committee stage. However, with elections due early next year, it is vital that this law be passed before it lapses with the dissolution of the Government.

The devolution of the MoWD as a provincial matter has evidenced the lack of prioritisation of women's issues by the Government. Therefore there remains no body, apart from the quasi government NCSW, which provides a specific focus on women's issues. The Ministry of Human Rights is now responsible for some of the function previously held with MoWD including monitoring and reporting on CEDAW.

There are some pertinent issues that have arisen with regards to support structures for VAW in recent years. Following devolution under the 18<sup>th</sup> Constitutional Amendment the Crisis Centres for Women established by the Federal Government to the Provincial Governments, the Punjab Government has refused to adopt twelve such functional centres, replacing them instead with

- While a number of issues are similar in all such women's centres across the country, there are some issues that are specific to different provinces, which make it difficult to have one set of SOPs. The Dastak Women's Shelter Home established by the legal aid firm AGHS, has put together their own SOPs based on many years of experience in the field. Rozan, an NGO based in Islamabad, has set up a network by the name of Humrat to help standardize the care and support for women victims of violence, including both Government and private centres and shelters. These SOPs for the women centers (produced by Rozan and Ministry of Women Development) were notified in 2009 but after devolution of the MoWD, the status of the SOPs and the fate of the women centers is uncertain.
- There is a shortage of staff, particularly of properly trained staff. Those who invest effort and time in acquiring training often get transferred soon after.
- At present the procedures for running the various support services are lengthy and cumbersome.
- There has been an increase in the demand for services but not enough resources are available.
- A number of the shelter premises are rented and not owned by the MoWD.
- The centres have not been institutionalized in Government with any dedicated funding.
- Some facilities can only be provided by linking up with outside CSOs and professionals, such as doctors, psychologists or counsellors.
- The centres are open only for certain hours of the day, which means that they are not available for emergency situations, or for women seeking shelter after closing hours.

There are currently only 3 recognized Government Burn Units in civil hospitals in Pakistan and three Burn Units in military hospitals. While some District Hospitals provide burn treatment, they are poorly equipped to handle serious cases, especially those arising from acid violence. Many patients are denied treatment because of lack of burn units in major public hospitals.

### • **Women and Conflict**

An issue that merits attention is the short-term and long-term effects on populations in disaster and conflict situations, especially women and children. Women's traditional gender role and lack of empowerment creates special vulnerabilities in the face of natural disasters,

man-made conflict and displacement. This issue has not been given due attention by the Government in view of the fact that areas of the country are experiencing displacement of populations due to military action against extremists and armed insurgency. In times of conflict women are directly affected, not just as victims but also as refugees and internally displaced persons (IDPs).

The magnitude of gender-based violence is difficult to determine even in normal situations, and all the more difficult in disaster and conflict situations where barriers to reporting, such as fear of retribution, powerlessness, lack of support, breakdown of public services, and the dispersion of families and communities are magnified. Available evidence, mostly anecdotal, suggests that the stress and disruption at times of natural disasters has led to a rise in gender-based violence, particularly sexual violence, which can result in sexual trauma, undesired pregnancy, mental health disorders, sexually transmitted infections, like HIV resulting in stigma, and other social consequences, especially in the case of unmarried women.

Issues that have emerged specifically concerning IDPs at this point include: the requirements for physical security; psycho-social support, Mother and Child Health facilities; shortage of essential provisions; malnutrition; damaged school infrastructure and absence of alternate facilities for education; the destruction of livestock, which negatively affects women because most of them in the rural areas are dependent on livestock and poultry; absence of washrooms; absence of clean water, which has to be brought from long distances for daily use. In most cases the water available does not meet the required standards and is harmful for health.

- **Accountability for perpetrators of VAW within the criminal justice system**

The CEDAW Committee in its **Concluding Observations Paragraphs 26 & 27** specifically raised the issue about the lack of accountability of VAW and imposition of sanctions upon agents who fail to meet their obligations in cases of crimes of VAW.

The given response of the Government to this concern is perturbing. While discussing amendments and measures already taken over a period of years, it moves to the

crisis support desks that only serve as a referral mechanism. Other Provinces have adopted Women's Crisis Centres but have failed to provide adequate and timely budgetary allocations to them, thereby sending a message that women's issues occupy low priority in Government budgets.

future tense to say that these measures will contribute towards ensuring those who are directly or indirectly engaged in acts of physical violence against women are charged with appropriate offences and punished accordingly. Would amendments in law coupled with training of police and judiciary and collection of data be enough to end the element of VAW within the criminal justice system, which is quite obsolete and needs to be revamped?

There is nothing in the reply that suggests that the Government has taken any positive action to address the gender-based violence that exists within the criminal justice system. As observed, violators and those who support violence are sitting in the police force while incidents of VAW and crimes against women continue to increase. In real terms, the Government has done little to prevent, or effectively protect women from violence within the criminal justice system.

## Chapter One

# Implementing CEDAW in Pakistan

By Tahira Abdullah

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### **Introduction**

It bears repetition that roads need to be paved with substances other than just good, *bona fide* intentions if they are to lead to heaven...

An immediate “other substance” following upon publicly stated intentions, signature and ratification of legally binding international Conventions is Political Commitment, followed by a feasible Plan of Implementation (PoI), complete with Timelines, Staffing and Budget, as well as an analysis of its strengths, weaknesses, gaps, risks and recognition of the tenuous issues vs. concrete requirements.

The need for Pakistan to implement the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in both letter and spirit – in a holistic, systematic and structured manner – is long overdue, as is the need to carry out a critical analysis of the constraints.

Since Pakistan ratified CEDAW in 1996, after the Fourth World Conference on Women (FWCW, Beijing, 1995), implied that post-Beijing steps were already underway, with action for the preparation of a National Plan of Action (NPA) in pursuance of the Beijing Declaration and Platform for Action (BPfA)<sup>171</sup>. However, five successive Governments later, the official endorsement of a National Plan of Implementation of CEDAW remains a distant dream.

In fact, as regards *bona fide* intent, the 2002 National Policy on women significantly omitted the terms “Equality” and “Justice, confirming civil society’s misgivings about successive governments’ commitment to the implementation of CEDAW and the BPfA<sup>172</sup>.

Thus, no matter which Political Party was in power, and whether or not the Government was democratic or dictatorial, we continue to see a blatant disregard and politicization of legally binding international commitments, which ought to be considered above partisan politics, and ought to have been of immediate import – 16 years ago.

It is just the civil society (particularly the rights-based NGOs and activists) continuing to provide successive drafts, recommendations and advocacy for the CEDAW PoI, as well as for addressing the CEDAW UN Committee’s Concluding Comments/Observations on Pakistan’s Periodic Reports on CEDAW implementation.

The international debate on the substantive meanings of EQUALITY and DISCRIMINATION – and the implications for addressing them – has not yet become a priority concern of successive Governments in Pakistan since 1996. However, the Pakistani women’s movement has, since 1981, consistently been highlighting the differences between *de jure* and *de facto* equality vis-à-vis equity, affirmative action, empowerment, advancement and development of women, and

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<sup>171</sup> e.g. post-Beijing Core Committees and National Plan of Action

<sup>172</sup> Full title: “National Policy for Development and Empowerment of Women”, GoP/MoWD, 2002

remains engaged in advocacy with the GoP on these concepts, despite continued resistance, reluctance and obstruction from successive administrations and different dispensations of the GoP.

The searching queries and critique in the UN CEDAW Committee of Experts' formal Questions and subsequent Concluding Comments/Observations<sup>173</sup> during successive Reviews of Pakistan's CEDAW Reports, leave no room for doubt that successive GoP administrations have a long way to go to demonstrate their good faith in carrying out signed, ratified commitments to achieving gender equality and justice for Pakistani women, in both letter and spirit, within a foreseeable and reasonable timeframe.

There is an urgent need for the incoming new Government, following the 2013 General Elections, to begin the preparation of National Plan and provincial Plans of Implementation of CEDAW, with the participation of civil society, women's rights activist and national NGOs (which have played a vanguard role re: CEDAW over the past 25 years), and also women's empowerment practitioners, academics and researchers, in cooperation with the UN Women and others.

There is a need to bring together the GoP and the above-cited Civil Society stakeholders, to evolve a common platform for implementing CEDAW in a cooperative manner; to address the concerns raised by the CEDAW UN Expert Committee on the GoP's Periodic Reports, as well as those concerns raised in the Pakistani NGOs' Alternative/Shadow Reports tabled at the UN. These are Shadow Reports on CEDAW as well as for the UN Human Rights Council's Universal Periodic Review.

The fact that the NGOs have felt the need to formally (and in writing) rebut each of the GoP's official State Party Reports, shows the wide divergence of views on important issues, especially those pertaining to women, between successive Governments and the people of Pakistan they claim to represent. It also shows an absence of Civil Society participation in the preparation of such reports.

Finally, successive democratically-elected or military-led governments since 1976 have seen fit to set up numerous Commissions, Committees and Sub-Committees to review and re-review *ad nauseum* the status of women, as well as the laws, policies and programmes pertaining to them, and to provide recommendations. These are now widely perceived as being merely delaying tactics – which only serve to further complicate and re-open matters already settled.

The issues have been exhaustively studied and empirically analyzed, the resulting findings and recommendations are unambiguous and strongly stated,<sup>174</sup> and all that now remains is a clear enunciation of political will and commitment, at the highest levels, to start taking concerted action, as a national imperative for implementation.

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<sup>173</sup> "Concluding Comments" have since been renamed "Concluding Observations" in the UN System.

<sup>174</sup> e.g. (1) "Report of the Commission of Inquiry on Women, 1997" (commonly referred to as "Justice Nasir Aslam Zahid Report" - his co-authors being the renowned activist-lawyers: the late Ms. Shahla Zia & Ms. Asma Jahangir); (2) Report on the Hudood Ordinances by the National Commission on the Status of Women (led by Justice Majida Razvi, 2003).

## **Background**

On 29<sup>th</sup> February 1996, during PPP Prime Minister Benazir Bhutto Shaheed's second tenure, Pakistan ratified the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), shortly after the PM's ringing speech at the FWCW Opening Plenary session (Beijing, September 1995) and also after her speech at the opening plenary of the ICPD (Cairo, 1994).

However, as a State Party, Pakistan entered **(i) a reservation on Article 29(1),<sup>175</sup> and (ii) an umbrella General Declaration stating that: “The accession by the Government of the Islamic Republic of Pakistan to the [said Convention] is subject to the provisions of the Constitution of the Islamic Republic of Pakistan.”**

It was not so much the reservation on Article 29(1) as it was the words of the General Declaration that immediately set the alarm bells ringing for women's rights activists, CSOs and rights-based NGOs, as the original 1973 Constitution had since been amended to include and indemnify all the discriminatory laws promulgated, as also the anti-women and anti-minorities steps taken under the so-called “Islamization” programme of the military dictator, President General Zia-ul-Haq, during and even after his eleven-year illegitimate military rule (1977-88), including *inter alia*, the Hudood Ordinances, Evidence (Shahadat) Act, *Qisas* and *Diyat* Laws, blasphemy law, the overarching Shariat Act, and the establishment of the Federal Shariat Court.

None of these laws has been repealed, in contravention of the specific election manifesto pledges stated publicly by the “progressive” political parties which came to power, as well as by the self-proclaimed “enlightened moderate” military dictator.

This caused women's rights activists to experience a high level of disillusionment and plummeting hope for gender equality and justice, including the future of CEDAW implementation in Pakistan.

The record and evidence shows that Pakistan's General Declaration on CEDAW did exercise an implicit and explicit obstruction to the implementation of many substantive parts of the CEDAW – and, more importantly, on the spirit of the accession itself. That it still continues to do so is borne out by the facts: (i) more than 16 years on, the GoP still does not have an officially approved CEDAW Action Plan of Implementation; (ii) the discriminatory laws are still on the statute books; and, (iii) to date, there is no law enacted to address domestic violence against women.<sup>176</sup>

## **Government and CSO Mechanisms and Actions**

1. Country Report for Beijing FWCW: The chapter in Pakistan's National/Country Report for the Beijing Conference (1995) on Institutional Mechanisms for its implementation, are equally applicable to the CEDAW obligations too.
2. Ministry of Women's Development (MoWD): The then-MoWD set up a Focal Point and a National Core Committee for Beijing and CEDAW follow-up actions, as well as Focal Points

<sup>175</sup> GoP's reservation: “The Government of the Islamic Republic of Pakistan declares that it does not consider itself bound by paragraph 1 of Article 29 of the Convention.”

<sup>176</sup> Many NNGOs/activists participated in drafting/revising and advocacy on several versions of the shelved Domestic Violence Bill.

and Core Committees in each of the provincial Women's Development Departments (WDDs). However, during the subsequent Government's tenure, they became so heavily politicized and retrogressive that the civil society members resigned from them and they became and remain *de facto* dysfunctional. Under the 18<sup>th</sup> Constitutional Amendment (2010) the MoWD itself became defunct, and some of its functionaries and functions were transferred to the Ministry of Human Rights (MoHR).

3. National Commission on the Status of Women (NCSW): In fulfilment of civil society's longstanding demands and advocacy, the NCSW was established as a Permanent Statutory Body in 2000. However, compared to other national Commissions, it lacked the requisite stature, mandate, autonomy, powers, funding and staffing until very recently, when the NCSW law was enacted by Parliament (2012), upon sustained advocacy and pressure by civil society.
4. Gender Focal Points (GFPs) in all line Ministries and provincial Departments: this was a positive step, but until each ministry/department hires and FUNDS its own GFP from its own annual operational/recurrent budget, and with its own sectoral technical expertise (e.g. agriculture, trade, industry, sports, youth, infrastructure, health, education, labour, employment, finance & economic affairs, amongst others), there will be neither government ownership, nor mainstreaming of women's sectoral issues. Women will continue to be narrowly viewed as a "sector", ghettoized and relegated to the sole responsibility of the provincial WDDs, as at present. This is in direct contradiction to the CEDAW's letter and spirit of mainstreaming women.
5. National Plan of Action (NPA): due to frequent political upheavals and dismissals, the NPA, which was initiated in 1996, was completed only in 1998. It contained 184 action items, proposed to be addressed in 15 years (i.e. spread over 3 Five-Year Plans). Its format was geared to both CEDAW and BPfA's Critical Areas of Concern (CAoC), citing the relevant CEDAW Article and/or BPfA provision alongside each CAoC.
6. Two other important documents followed the NPA: (i) the National Policy for Development and Empowerment of Women (March 2002) and (ii) the Implementation Matrix of Pakistan's National Policy for Development and Empowerment of Women – Based on the National Plan of Action (September 2002). The Policy Implementation Matrix is just a rehash and restatement of parts of the NPA, albeit very selectively. It is comparatively retrogressive – even to the extent of going back on explicit and binding commitments under the FWCW National Country Report as well as the obligations under CEDAW and BPfA.
7. CEDAW reporting requirements vs. GoP actions: Again due to frequent government dismissals and policy changes, the first progress report, due in 1997, was finally submitted in late 1998. It was so badly written, so non-compliant, so inadequate to the requirement, so lacking in qualitative and quantitative veracity, and so non-inclusive (i.e. without the participation of CSOs), that the UN Commission on the Status of Women's CEDAW Committee did not accept it and it was returned to the GoP/MoWD for re-writing. Meanwhile, the women's rights movement and women's rights-based development organizations managed to get hold of a copy of the classified confidential report, and, seeing the above shortcomings, decided to prepare the first Pakistan NGOs' Shadow Report – despite the fact that the GoP's report was just a draft – and was rejected too.
8. Years later, eventually, Pakistan submitted its Combined Initial, Second and Third Periodic Reports together, in one document, to the UN in 2005. Although the MoWD invited a few

NGOs/CSOs/activists to a one-day consultation to review the draft CEDAW and Beijing+10 Country Reports in 2005, women's rights activists realized that it was too little and too late a consultation to warrant endorsement or becoming party to an inadequate and inaccurate report on the status of the GoP's CEDAW implementation, or on the status of Pakistani women. Hence, the NGOs decided that there was a real need to prepare another Shadow Report.

9. In 2007 the GoP/MoWD published the UN CEDAW Committee's interactive queries to the GoP, as well as the more formal Concluding Comments (re-named Concluding Observations) as a 67-page booklet, in order to pre-empt the expected strong critique from CSOs/NGOs/activists, by printing the GoP delegation's responses to the Committee's queries/comments/observations, and by putting on the usual spin for the media.
10. NGO Shadow Reports: Various groups of NGOs have submitted a number of Shadow or Alternate Reports to the UNCSW/CEDAW Committee:
  1. 1998 <sup>177</sup>: This report came about because (a) the GoP did not involve CSOs, women's rights and development practitioners, academicians or the established women's NGOs in consultations or preparation of its Initial Report on CEDAW; (b) there was a need to rectify the erroneous data and information it contained, as well as to point out the acts of commission and omission of the GoP since Pakistan's accession in 1996.
  2. 2007: For the GoP's Combined Initial, Second and Third Periodic Report on CEDAW, there was again a felt need to rectify the claims, hence the NGOs prepared a separate NGO Report on Beijing+10, as well as two Shadow Reports on the GoP's CEDAW report, titled:
    - (i) "Discrimination Lingers On – A Shadow Report on the Compliance of CEDAW in Pakistan", submitted in February 2007 by two NGOs – the National Commission for Justice and Peace (NCJP) and the Democratic Commission for Human Development (DCHD), and endorsed by a number of NGOs, CBOs/CSO groups.
    - (ii) "Talibanization and Poor Governance – Undermining CEDAW in Pakistan", submitted in April 2007, collaboratively written by a group of women's rights activists and practitioners, led by Shirkat Gah, and also endorsed by a number of rights-based NGOs/CSOs/activists.
  3. 2012: The present report is the latest NGO effort, while the NGOs' Shadow Reports to the UN Human Rights Council re: Pakistan's two Universal Periodic Review (UPR) Reports also cite CEDAW issues.

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<sup>177</sup> The first CSO Shadow Report 1998, was a cooperative effort by several women's groups and rights activists, under the leadership of Shahla Zia (Aurat Foundation) & Farida Shaheed (Shirkat Gah)- [the present author was also one of several contributors to its conceptualization, content, consultations, and editing].

### **Recommendations for the CEDAW Plan of Implementation**

In the light of the foregoing discussion on the salient aspects of the GoP vis-a-vis CEDAW implementation, the following suggestions and recommendations for a doable Plan of Implementation (PoI) for CEDAW are consequently provided without explanation or justification.

1. There is a need for the Political Parties (currently drafting or revising their election manifestos) to include a section stating their Party's stand on implementing CEDAW, and on how the Government envisions its implementation.
2. The post-elections (2013) incoming parties or coalitions forming the federal and provincial Governments need to set up CEDAW Working Committees at both federal and provincial levels, comprising both Government and civil society CEDAW-relevant practitioners, to go through the large number of written reports, suggestions and recommendations for the CEDAW PoI, which were available at the now-defunct MoWD and are available at the provincial WDDs, relevant NGOs and UN Women.
3. They need to dust off the National Plan of Action (NPA), urgently undertake a review to list the actions taken or not taken thus far; and prioritize future actions for preparing the CEDAW Plan of Implementation (PoI) – in close consultation with the federal Ministries, provincial line Departments and civil society activists and organizations.
4. There is a demonstrated need to (a) form a strong National Commission on the Status of Women (NCSW), with the requisite powers, mandate and watchdog/monitoring functions re: CEDAW amongst others; and (b) work with the national machinery dealing with women's concerns, as action on the PoI will also require administrative executive functions and functionaries; in addition to maintaining close liaison with the provincial Women's Development Departments (WDDs), as well as with other federal entities.
5. The Chairpersons of the NCSW/PCSWs, along with the incoming provincial Ministers for Women's Development (WDDs), need to liaise closely together, to start their work on the CEDAW PoI by working along with CSOs/activists in reviewing the following important documents:
  - i. Pakistan's combined first, second, third periodic report to the UN CSW/CEDAW (2005);
  - ii. the interactive dialogue and Concluding Comments/ Observations (CCs/Cos, 2007) of the UN CEDAW Expert Committee on the GoP's report;
  - iii. the NGOs/CSOs' Shadow Reports to the UN, regarding the GoP's CEDAW and UPR/UNHRC reports.
6. The UN CEDAW Expert Committee's concerns and recommendations need to form the starting point – and remain the central reference point – for the subsequent preparation of a detailed sectoral and thematic PoI for CEDAW.
7. The national machinery for women needs to liaise very closely with the Ministry of Human Rights (MoHR), in order to link the CEDAW Committee's CCs/COs on Pakistan's CEDAW reports with the comments the GoP received from the peer review of its Human Rights NatReps at the UN/HRC's Universal Periodic Reviews (UPRs). The NGOs' various

Shadow Reports to the UN/HRC also need to be read in conjunction with the GoP reports and the UN CCs/COs, some of which also pertain to the CEDAW.

8. Future GoP reports to the UN/CSW need to be prepared in consultation with, and through the participation of, diverse CSOs, including rights-based NGOs, activists, academicians and practitioners, in order to (a) be compliant with CEDAW requirements, and (b) prevent the need for CSOs to subsequently submit their own views to the UN through Shadow Reports, which only serve to increase the confrontation and hostile attitudes between the GoP and CSOs.
9. Since the GoP has simply not played its quadripartite coordination role for CEDAW implementation, it needs to avail the resources and services of the UNW, in order to bring together the federal and provincial Government entities, the national CSOs/activists working on gender justice and equality, and members of the UNCSCW/CEDAW Expert Committee, in a quadripartite consultation.
10. To prepare and operationalize an actionable PoI for CEDAW, there is a need to remove all the duplication of effort, in order for the PoI to be practicable and doable. A huge amount of sifting and reviewing is required, by person/s with an institutional memory and a working knowledge of the UN/CEDAW substantive requirements, processes and mechanisms.
11. The responsibility for action on the PoI cannot be left solely to the WDDs and women-specific Government entities. That would be self-defeating, as it would amount to ghettoization of women's issues once again. The NCSW needs to be made:
  - (i) the primary government counterpart for the international partners (including the UN system, donors, and INGOs);
  - (ii) the Government counterpart for the NGOs working on gender equality and justice.
12. At the same time, this ought not to preclude contacts and collaborative activities with any other federal or provincial Government entity by the international agencies, or INGOs, or NGOs. The NCSW needs to appreciate this fact, and needs to learn to be comfortable with direct contacts between any branch of the GoP and the donors or NGOs or other CSOs, including the media. In fact, this was the original intention and objective of establishing Gender Focal Points in all the sectoral line Ministries and provincial Departments.
13. Each federal line Ministry/provincial Department needs to hire and fund its own Gender Focal Point (GFP) from within its own annual operational/recurrent budget, and preferably from within its own sectoral/technical expertise (e.g. women agriculture experts), to promote Government ownership and mainstreaming of women's sectoral issues. The GFPs need to include the relevant sections of the NPA, CEDAW Articles and the PoI into their mandates and ToRs.
14. The reactivated MoWD needs to strengthen its macro-level policy, advocacy, monitoring, evaluation, reporting and catalytic functions. It must move away from wasting staff time and resources in formulating, developing, funding, executing and reporting on small sectoral service delivery projects, which were not in the MoWD's purview as it was envisioned. There is a need to enhance the capacity of the MoWD with a small but

dedicated, well-resourced CEDAW Implementation Unit, to carry out its advocacy, monitoring, evaluation and reporting functions on the CEDAW PoI.

15. The NCSW also needs to be resourced with a special Unit to handle matters pertaining to NGOs, CSOs, academics and the public at large; and to respond urgently to reported incidents of VAW/GBV and cases of injustice or gender-based discrimination. These matters are currently handled in an ad hoc manner by the MoHR, and many issues remain unaddressed or inadequately handled by the Government. It thus falls to the NGOs, human rights activists and lawyers to respond in emergency situations, e.g. by consistently supporting and attending all court hearings and appeals by women survivors of violent crimes.
16. The newly-autonomous NCSW, and the provincial PCSWs, need to play a strong role in operationalizing the CEDAW PoI, including an independent review and assessment of the periodic National Country Reports to the UNCSW on CEDAW, to the UNHRC for the UPR, and to other international entities, on Treaties and Conventions to which Pakistan is a State Party, BEFORE they are finalized and submitted. In line with the NCSW's/PCSWs' watchdog and monitoring mandate, they need to ensure the reports' adherence to and compliance with UN requirements; the veracity of their quantitative and qualitative data; and the inclusion of women activists, NGOs and CSOs in the process.
17. Once the CEDAW PoI is approved, the NCSW and the CEDAW Unit staff will need to deal with specific action items, along with the quantification of the goals and objectives emanating from the CEDAW Articles/provisions, in multi-sectoral consultations. Each of the stakeholders will need to fill in a user-friendly matrix on sectorally assessed needs, actions, actors, realistic timelines and practical budgets, i.e. the issues of WHAT? WHO? WHEN? WHERE? HOW?
18. Such an exercise ought not to be delegated to a private consultant. If it is undertaken without broader wide-ranging consultations between the NCSW, federal line Ministries, provincial Departments, civil society stakeholders, NGOs, activists, the private (for-profit) sector, the media, INGOs and the international donor community, and their full-time participation, it would lack credibility as well as ownership of all the stakeholders.
19. A few illustrative PoI actions and actors are suggested below, together with the overarching recommendation to the NCSW to carry out a comprehensive review of the NPA along with the CEDAW Committee's CC/COs, and then come up with additional specific sectoral actions, complete with timelines and budgets – all this is to be done in consultation with the public and private sectors, and the civil society stakeholders.
20. There is a need for the GoP and CSOs to work together to overcome the chronic problems of lack of accurate, standardized, credible, sex- and age-disaggregated data and monitoring systems, particularly in terms of demographic and poverty data.
21. The federal and provincial Governments urgently need to address the alarming increase in the feminization of poverty through, *inter alia*, strong measures aimed at women and the rural landless peasants, including education, training, credit, asset ownership, and job creation.

22. The CEDAW PoI needs to focus on Gender-Responsive Budgeting (GRB), together with gendered human resource deployment in ALL the sectoral line Ministries and Departments; particularly in the Ministries of Finance, Economic Affairs, Statistics, Planning and Development and in the Planning Commission. The MoWD/WDDs need to be capacitated to see women's concerns, especially the increasing feminisation of poverty, not as their sole responsibility, but as the combined responsibility of the Ministry of Finance, Planning Commission and all the sectoral line Ministries/ Departments too.
23. There is a need, under the CEDAW PoI actions, to move to repeal those existing laws and prevent their misuse, which are discriminatory against women and non-Muslim minorities, e.g., *inter alia*, Hudood, Shahadat/Evidence, *Qisas* and *Diyat*, Shariat Act, FSC, blasphemy, Shariah Nizam-e-Adl Regulation, and to enact or strengthen laws and law enforcement on domestic and public violence against women, e.g. physical and mental domestic violence, dowry-related stove burnings, "honour" killings, giving away girls and women in compensation, forced marriage, rape and gangrape, child sexual abuse, acid-burning, bonded labour, prostitution and trafficking.
24. There is a need to act under the CEDAW PoI to remove the existing conflicts between parallel legal systems and laws – i.e., on the one hand there are the *de jure* Constitutional guarantees of equality and justice; civil and criminal penal codes, the judiciary; and State binding commitments under international conventions; while on the other, women face *de facto* discrimination and injustice under "religious" or customary laws; and anti-women illegal *jirgas* and *punchayats*.
25. There is a need under the CEDAW PoI for affirmative actions to redress the imbalance of male/female disparities in assets, incomes, opportunities and attainments, e.g. in health, education, skills training, employment, information, mobility, access and security. The increasing incidence of violence against women (VAW/GBV) and the need for stronger laws bears repetition.
26. The federal and provincial Governments need to work through the CEDAW PoI, in consultation with women politicians and Political Parties, to improve, strengthen and increase women's political participation through further affirmative action at all levels of local, provincial and federal governments, especially through electoral reform.<sup>178</sup>
27. The federal and provincial Governments need to focus actions under the CEDAW PoI on women's reproductive and sexual health rights, and on gendering responses to the HIV/AIDS pandemic, through a multi-sectoral approach.
28. The federal and provincial Governments need to focus actions under the CEDAW PoI on the critical need for a systemic overhaul of the current education system and its delivery mechanism, particularly the public school curriculum and teachers' training. The CEDAW PoI needs affirmative action for rural girls' access, enrolment, retention, and mobility issues.

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<sup>178</sup> *vide* Shahla Zia's recommendations on double votes for women to directly vote for women candidates on general seats in special constituencies, Aurat Foundation Legislative Watch Programme newsletter, 1998.

29. With regard to cooperation with NGOs/CSOs/activists on the CEDAW PoI, the federal and provincial Governments need to clearly understand and recognize that it is not simply the CSOs/NGOs/activists whose “desire” is to participate in the national CEDAW process (e.g. implementation, reporting, monitoring). It is also an important objective and process of the UN system itself: “The CEDAW Expert Committee expects that local NGOs and Civil Society members also be part of the ... process.”<sup>179</sup> To this end, UNW and other UN agencies need to strive for quadripartite consultations and activities, with the participation of the federal and provincial Government entities, CSOs/activists, together with the UN and the international donor partners. This mechanism has worked in many parts of the world, and it needs to be further expanded, formalized and institutionalized in Pakistan too.
30. There is simultaneously a need for both the Government and CSOs/activists to acknowledge and address the chronic problem of a wide gap in their respective perceptions on how/what constitutes the “participation of Civil Society” and whom the government defines as “representatives of Civil Society” in claiming “participatory policy-making, planning, monitoring and reporting processes” – as was claimed by successive federal Governments and the ex-MoWD in the case of CEDAW over the past 16 years.
31. For the CSOs/NGOs/activists, there is a need (i) to recognize and acknowledge the fine line between “cooperation” and “co-option” of Civil Society actors by the Government; and (ii) for CSOs to resist becoming “rubber stamps” of approval, credibility or legitimacy in Government processes, such as CEDAW, CRC or UPR reporting. Such GoP moves in the past have backfired, and have resulted in many Shadow/Alternate Reports from NGOs on, *inter alia*, CEDAW and UPR.
32. Thus, Governments themselves have to be committed to cooperate and respond to the CSOs/NGOs/activists’ advocacy efforts, otherwise the spectre of dissenting Civil Society views being tabled at the UN in the form of Shadow/Alternate Reports will continue to haunt us.
33. Pakistani CSOs/activists need to engage the federal and provincial Governments, through the CEDAW PoI mechanism, in a broader, more holistic dialogue on steps for gender justice and poverty eradication through multi- and inter-sectoral cooperation; mainstreaming and integration programmes; as well as by addressing structural and systemic challenges.
34. There is a critically urgent need to revive the Local Government system, and under the CEDAW PoI, the locally-based CSOs/NGOs/activists need to work alongside the Local Government elected Councillors for gendered social mobilization, especially in the remote and more conservative rural areas, and increase the gender training of LG Councillors and Nazims.
35. There is an ongoing need for the CSOs/NGOs/activists to continue to be vigilant, and not allow the State – through successive Governments – to abdicate its fundamental responsibility to ensure that all citizens receive their basic minimum needs; nor permit the co-option of the CSOs/NGOs/activists into moving away from their agenda.

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<sup>179</sup> Presentation by a former CEDAW Experts Committee member, Ms. Ferdous Ara Begum, UN, Islamabad, 2007.

36. Through several means, including the CEDAW PoI mechanism, the CSOs/NGOs/activists need to continue to provide expertise, technical support and participate in federal and provincial Government law-formulation, policy-making and planning; and to pressurise the GoP to improve and increase its gender responsive budgeting, its social sector allocations and spending, and its poverty reduction mechanisms – by, *inter alia*, reducing its unsustainable debt servicing and military expenditures.
37. Under the CEDAW PoI actions, there is also the need to review the opportunities for Pakistan to ratify the CEDAW Optional Protocol (OP). The fact that the OP enables **individuals or groups of individuals** (or anyone acting on their behalf), claiming to be victims/survivors of the violation of any of the rights and provisions set forth in the CEDAW, to submit their grievances directly to the UN Committee on the Elimination of Discrimination Against Women, ought not to be permitted to remain the determining factor in the GoP's consistent rejection of the OP – successive democratic and military dictatorship Governments have refused to sign it.
38. There is a need to link the CEDAW PoI with the MoHR's actions too. The proposed National Commission on Human Rights (NCHR) needs to be notified and operationalized urgently, addressing and removing any perception of bias, politicization and lack of transparency in its leadership, membership, autonomy, mandate, powers and terms of reference. It is meant to be a means to an end, not an end in itself; it needs to be result- and outcome-oriented; and, most importantly, the NCHR needs to embody "national" vs. "government" aspirations.

## **Conclusion**

The critically important need is for the federal and provincial Governments to stop perceiving women through the narrow prism of a "development sector", or as a "vulnerable/deprived or marginalized group". Further, women's issues are not to be relegated to the NCSW/PCSWs and the WDDs' sole responsibility and ownership. Women are, and thus need to be perceived as, half the world and half of the entire country's population, deserving of equal respect, rights, opportunities and outcomes, access to law and justice, freedom from hunger, want, discrimination, violence and coercion, and equality in the eyes of the law.

All the stakeholders must recognise and count women as equal participants in, and equal beneficiaries of, the national development process – and not just as passive recipients. This would be in line with the fundamental rights, equality provisions, safeguards and guarantees in the 1973 Constitution, as well as with Pakistan's legally binding international obligations as a State Party to instruments such as CEDAW.



## Chapter Two

# Democracy and Women's Rights: Pakistan's Progress (2007-12)

By Ayesha Khan

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There have been unprecedented gains as well as profound losses for women's rights in Pakistan over the last decade. Some of them are man-made, and others have fallen upon the people of this country without any warning at all. This Chapter will contextualize women's rights and development within the framework of an emerging democracy for the purpose of assessing Pakistan's progress towards attaining the goals of CEDAW over the last five years.

Pakistan is a fledgling democracy, but it would be unreasonable to expect it to be more than that after decades of military rule and subjugation of political culture. Democracy "is a constantly perfected and always perfectible state or condition whose progress will depend upon a variety of political, social, economic, and cultural factors"<sup>180</sup>. At the time of writing, the elected civilian government looks likely to be the first of its kind ever to complete a five-year tenure in power, as mandated under the Constitution. This will be a landmark in the progress of democracy in Pakistan, particularly if the transition under new elections proceeds smoothly.

Women are heavily invested in seeing this process succeed. As human rights leader Asma Jahangir said in an interview, "Democracy is survival for women"<sup>181</sup>. Some of the worst excesses curtailing women's equality in public life and basic human rights took place under the military regime (1977-1988) and they have not been regained in full even now despite some successes in reversing discriminatory legislation and increasing political participation.

The achievement of democracy itself "presupposes a genuine partnership between men and women in the conduct of the affairs of society in which they work in equality and complementarity"<sup>182</sup>. But in order to create that genuine partnership, the state has to take a proactive role, "... human rights, democracy and the rule of law are strengthened when states work to eliminate discrimination ... and when they strive to ensure equality between men and women in decision-making"<sup>183</sup>. Democracy, then, needs to be underway even before the fundamentals are in place, because without it those same fundamentals cannot be secured.

### Uneven structure of the state

The structure of the Pakistani state problematizes its ability to treat all men and women as equal before the law, and equally entitled to the exercise of their human rights. For example, citizens in the four main provinces are permitted to exercise their right to vote to representative provincial assemblies and local bodies, whose representatives in turn sit in the National

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<sup>180</sup> Inter-Parliamentary Union, Universal Declaration on Democracy, Cairo, 16 September 1997, paragraph 2.

<sup>181</sup> An Interview with AsmaJehangir, Human Rights Commission of Pakistan, nd, [www.nancho.net/fdlap/jehangir.html](http://www.nancho.net/fdlap/jehangir.html).p.8.

<sup>182</sup> Op cit. paragraph 4.

<sup>183</sup> Human Rights Council.Resolution 19/36 Human rights, democracy and the rule of law. 19 April 2012.

Assembly and Senate and legislate for the whole country. But people who live in the Federally Administered Tribal Areas (known commonly as FATA) of the province of Khyber Pakhtoonkhwa do not enjoy the same constitutional rights as citizens of the four provinces. FATA has a population of 3 million and is the poorest area of the country. Administratively FATA is subdivided into protected and non-protected areas, the latter administered by local tribes and the former being subject to collective punishment by government for breaking the law<sup>184</sup>. FATA does not have its own legislative assembly. In 1997 universal suffrage was granted and as a result twelve elected representatives sit in the National Assembly, yet its legislation does not apply unless the President so directs. Despite being granted the right to vote women have been actively prevented from doing so by men in their communities<sup>185</sup>.

The population of the Provincially Administered Tribal Areas (PATA) in KP is less than one million, and it includes six districts. No act of the KP provincial assembly is applicable to PATA. For example, if the assembly goes ahead to pass the Domestic Violence Bill which is currently under debate, then the women of PATA would not stand to benefit. Other areas of the country that do not enjoy equal status with the rest of the state, include Gilgit-Baltistan, which has recently been given some legislative powers, but these fall short of provincial autonomy enjoyed by other provinces.

Civil society and political representatives alike have a role to play to create the conditions in which a genuine democracy can take root and all citizens are equal before the law. The Human Rights Commission of Pakistan has strongly recommended that FATA and PATA be brought into the mainstream of national administration and legal system<sup>186</sup>. The goal should be to create a state structure that is cohesive and does not differentiate among its citizens. The Universal Declaration on Democracy states: "Individual participation in democratic processes and public life at all levels must be regulated fairly and impartially and must avoid any discrimination, as well as the risk of intimidation by State and non-State actors"<sup>187</sup>. In those territories mentioned above which fall outside the four main provinces of the state, there has been political disruption and enormous intimidation of the people, women in particular, by non-State actors.

### **Social marginalization and exclusion**

Social hierarchy is a powerful organizing principle of society in Pakistan, and it predetermines to a large extent the opportunities and resources available to the people. While it is not broadly accepted in public discourse, privately Pakistanis understand that there are whole groups of people belonging to inferior "zaats" (or castes) that comprise the poorest and most marginalized in the country. These include Hindus of scheduled castes, Christians, Muslim Sheikhs in Punjab and Khyber Pakhtoonkhwa, "kammis" or service castes and many more<sup>188</sup>. Those who belong to more influential communities and networks of patronage enjoy greater access to power and privilege within the state.

The UNICEF report notes, "Despite the great promise of demographic change and women's empowerment, however, children, youth, and women still bear the brunt of social

<sup>184</sup> Muhammad Hamid Hussain, "Frontier Crimes Regulation: A Case Study of Reforms Process", in TIGAH, vol.1, July 2012, pp 98-99.

<sup>185</sup> September 2010. Post-Crisis Needs Assessment Khyber Pakhtunkhwa and Federally Administered Tribal Areas.

Pp 27-29. [http://fata.gov.pk/pcna/PCNA/PCNA\\_Final\\_Report\\_sep\\_2011.pdf](http://fata.gov.pk/pcna/PCNA/PCNA_Final_Report_sep_2011.pdf)

<sup>186</sup> <http://www.hrcp-web.org/consultations2.html>

<sup>187</sup> Inter-Parliamentary Union, Universal Declaration on Democracy, Cairo, 16 September 1997, paragraph 16.

<sup>188</sup> Haris Gazdar, "Class, Caste or Race: Veils over Social Oppression in Pakistan," *Economic and Political Weekly*, January 13, 2007.

marginalization, inequities in access to public services and social economic discrimination”<sup>189</sup>. Women are restricted in their access to resources, particularly financial ones, and lack decision-making power within the family. If they have assets, they lack adequate control over how they are used. The limited freedom of mobility they have in turn inhibits their access to others resources and rights, such as seeking health care, voting, going to school and working. Where some gender gaps have been narrowed in recent years, women’s social status remains the same<sup>190</sup>.

Democracy aims, “essentially to preserve and promote the dignity and fundamental rights of the individuals, to achieve social justice, [and] foster the economic and social development of the community”<sup>191</sup>. For citizens to enjoy equal rights they must also have equal access to opportunity and the ability to exercise their rights. This is a no less than a roadmap for social and political change, and it is no wonder that it is met with resistance by those forces who wish to maintain a status quo of inequality among the people of Pakistan.

The result is a weakened state and an increasingly ungovernable “citizenry”. The political strife within the province of Balochistan, for example, has created an atmosphere of fear and intimidation such that people feel threatened by nationalist forces and government alike. In the city of Karachi, there is an ethnic-based political culture that periodically erupts in violence, particularly when there is voting to be done. Islamic political extremism in the form of the Taliban movement is regularly expressed through suicide bombings and assassinations in KP and Punjab, as well as adjacent areas.

Society is growing more fragmented and polarized; within this process girls and women are targeted in particular. Recently the Taliban claimed responsibility for the attempted murder of Malala Yousafzai, a 14 year old girl from Swat who advocated for the rights of girls to an education. In 2007, when the Taliban ruled over Swat, there were documented cases of women being beheaded or flogged for allegedly illicit sexual behavior. The effect of Talibanization was documented in the Second Shadow Report to CEDAW<sup>192</sup>. While the earlier cases did not raise uniform attention among political figures and civil society, outside of human rights advocacy circles, the recent attempted murder has aroused unprecedented condemnation. It is too early to predict, but this may be the tipping point for a change in public sentiment towards a unified position on Islamic political extremism.

Some religion-political and social organizations are also intent on persecuting minorities. For example, faith-based victimization appears to be on the increase. In the past year alone, there have been a series of allegations against Christians for allegedly blaspheming against Islam. The Governor of Punjab, who spoke out against the law, was assassinated in January, 2011, and two months later, a federal minister for religious minorities, a Christian, was killed as well. Children, too, have been arrested for committing blasphemy, and the practice continues despite outcry from human rights groups in Pakistan and internationally. The judiciary itself is reluctant to

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<sup>189</sup> UNICEF, *Situation Analysis of Children and Women in Pakistan 2011*. UNICEF, Islamabad, p. 12.

<sup>190</sup> *ibid.*

<sup>191</sup> Inter-Parliamentary Union, *Universal Declaration on Democracy*, Cairo, 16 September 1997, paragraph 13.

<sup>192</sup> ShirkatGah, April 15, 2007, *Talibanization and Poor Governance. Undermining CEDAW in Pakistan. Second Shadow Report*, Lahore.

prosecute the offenders and cases are lingering in the courts. Women and girls have been named in blasphemy charges. In 2010 at least 63 people were charged under the law<sup>193</sup>.

Forced marriages of girls are already a widespread problem, mainly in rural parts of Pakistan, and now media and activists are reporting that girls from Hindu families in rural Sindh are being forced to convert to Islam and marry Muslim boys against their will. While some allegations may be unsubstantiated, the fact remains that communities divided by religion continue to live in an atmosphere of distrust. Families who have come under attack or persecution have gone into hiding or moved away from their communities out of fear for their lives.

Probably the most publicly vilified minority is that of Ahmedis, whose beliefs diverge somewhat from mainstream Islam. They have been declared non-Muslims by the state, are regularly denounced by religious political leaders, and continue to be killed in targeted shootings<sup>194</sup>. The Human Rights Commission of Pakistan reported that 99 Ahmedis were killed during 2010 alone<sup>195</sup>. Although the victims are almost always men, all members of their community feel the growing insecurity and the public at large feels little empathy for their plight.

Ethnic-based and sectarian killings are not limited to a few minorities only. In the province of Balochistan, up to one thousand Hazara men, women, and children have been subject to targeted killings<sup>196</sup>. This is both a religious and ethnically-based persecution, rooted in the traditionally marginalized status of the Hazara ethnic group in Afghanistan and the anti-Shia stance of the Taliban, who are implicated in these crimes. An environment of insecurity also prevails in Karachi, where ethnic, religious, and politically motivated targeted killings take place regularly, disrupting the lives of ordinary citizens and causing great losses to the local economy<sup>197</sup>.

Women's participation in democratic practices, the exercise of their right to vote freely and without fear to their safety, is still not guaranteed. One reason is that they are already behind men in terms of experience and visibility in the public sphere, which includes their participation in education at all levels. A second reason is that there exist political parties that believe women should not vote and in some areas women are physically barred from visiting polling stations. This is not the norm across the country, however, but nonetheless it serves as a means of intimidation affecting women all over. The gender gap in voter registration is 11 million (the total number of women registered is 36.6 million, as compared to 47.7 million men)<sup>198</sup>.

## Development context

The exercise of rights becomes difficult, if not meaningless, when basic necessities of life are not fulfilled. Pakistan went through a brief increase in its human development indicator ranking between 2005 to 2011, but is now at an all time low of 145 among nations. Half of its citizens live in multi-dimensional poverty, and in total just over half are witnessing intense

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<sup>193</sup> Human Rights Commission of Pakistan, 2011, *The State of Human Rights in Pakistan 2010*, Lahore, p.124.

<sup>194</sup> <http://ahmadiyyatimes.blogspot.com/2012/09/pakistan-target-killing-of-ahmadis.html>

<sup>195</sup> op.cit.

<sup>196</sup> <http://www.hazara.net/persecution/pak-persecution.html>

<sup>197</sup> op.cit

<sup>198</sup> [www.ecp.gov.pk/ER/Voter StatsFER2012.aspx](http://www.ecp.gov.pk/ER/Voter StatsFER2012.aspx)

deprivation<sup>199</sup>. Rural areas fare worse than urban ones, and Sindh and Balochistan lag most behind other provinces.

Among the poor and marginalized, women are the most severely hit by growing poverty. This feminization of poverty is linked with the unequal allocation of limited resources within the home to women, based in part on cultural practices, which in turn perpetuates the cycle of poverty. Among the factors involved are the belief that it is of greater value to invest in boys than girls, boys have greater opportunities for employment than girls, boys will contribute more to the prosperity of the family, boy preference in allocation of resources within the family, and girls are a drain on the family budget due to the high cost of getting them married<sup>200</sup>.

Human indicators for both men and women have been improving more slowly than in the rest of South Asia. The gender gap in development between the sexes has hardly narrowed either, which in turn weakens the ability of women to play their part in the conduct of public affairs and participation in democracy. As the recent UNICEF *Situation Analysis on Women and Children in Pakistan* points out, “The ‘gender gap’ exists across most well-being indicators in terms of capacities, access to resources and opportunities; inequality exists within the family, in the workforce, in the political sphere, and in education and health care”<sup>201</sup>.

### Literacy Rate (10 Years and Above) [percent]

Province/Area	2010-11		
	Male	Female	Total
<b>Pakistan</b>	69	46	<b>58</b>
<b>Rural</b>	63	35	<b>49</b>
<b>Urban</b>	81	67	<b>74</b>
<b>Punjab</b>	70	51	<b>60</b>
<b>Rural</b>	64	42	<b>53</b>
<b>Urban</b>	80	71	<b>76</b>
<b>Sindh</b>	71	46	<b>59</b>
<b>Rural</b>	60	22	<b>42</b>
<b>Urban</b>	82	68	<b>75</b>
<b>KPK</b>	68	33	<b>50</b>
<b>Rural</b>	67	29	<b>48</b>
<b>Urban</b>	77	50	<b>63</b>
<b>Balochistan</b>	60	19	<b>41</b>
<b>Rural</b>	54	13	<b>35</b>
<b>Urban</b>	79	40	<b>61</b>

Source: Pakistan Living Standards Measurement Survey 2010-2011<sup>202</sup>

The figures in the above Table tell us that the overall literacy rate (58%) in Pakistan is extremely low, with an almost twenty percent advantage of males over females. Urban centres enjoy higher literacy rates, yet the gender gap remains. In rural areas, particularly in Balochistan, where only 13% of females are literate, there is a rural gender gap of 41 percent.

<sup>199</sup> UNDP, *Human Development Report 2011*, 2012.

<sup>200</sup> United Nations, *Common Country Assessment Pakistan*, 2011, Islamabad, September 2011.

<sup>201</sup> UNICEF, *Situation Analysis of Children and Women in Pakistan 2011*. UNICEF, Islamabad, p.12.

<sup>202</sup> Statistics Division, Federal Bureau of Statistics, 2011, *Pakistan Social and Living Standards Measurement Survey 2010-2011*, Government of Pakistan, Islamabad.

The projected literacy rate in 2015 is 59 per cent (71% for men and 47% for women)<sup>203</sup>, indicating that the gap will remain high for the foreseeable future.

As education levels increase, the presence of girls in schools and colleges decreases and the gender gap grows. For example, in primary education out of children enrolled, 56 per cent are male and 44 per cent are female. At the high school level only 42 per cent are girls, and at universities, just 33 per cent<sup>204</sup>. Even at the primary school level, the drop-out rate has been increasing over the past five years, at 63 per cent among boys and 77 per cent among girls. Reasons for drop-out are many, and include the practice of corporal punishment by teachers, insufficient female teachers, and cultural barriers to girls' education<sup>205</sup>.

The recent National Nutrition Survey notes that the purchasing power of people in Pakistan is decreasing, such that an estimated 40 per cent of families' income is spent on food. Yet 58 per cent of Pakistani families are food insecure; and in Sindh a full 72 per cent of families are food insecure. Worse, 52 per cent of families in Sindh are also living in a state of moderate or severe hunger. Balochistan comes a close second in low nutritional status among the provinces<sup>206</sup>.

There have been some improvements in important health indicators, particularly infant mortality rates, under-5 mortality rates, and maternal mortality rates. However, the leading cause of death, (20.3% of total) to women (ages 12-49) is pregnancy and related complications.<sup>207</sup> Pakistan's maternal mortality ratio is 276 deaths per 100,000 live births the highest in South Asia after Afghanistan.

Piped drinking water is available to only half of Pakistan's households, mainly in the urban areas<sup>208</sup>. The absence of proper sanitation facilities for millions of girls in schools is responsible in part for the high dropout rate. Meanwhile, "Every day, millions of women and girls either wait for nightfall to defecate in the open, or do so in unsanitary non-flush toilets. This exposes them to the risk of sexual harassment (or attack) and impinges on their sense of dignity. Improved water and sanitation services can reduce such risks and help boost the positive contribution of women and children in society"<sup>209</sup>.

The positive link between women's empowerment and paid work in Pakistan has been demonstrated through existing research studies<sup>210</sup>. Women's participation in the labour force is slowly increasing; today it is almost 23 per cent, and for men it is 77.5 per cent<sup>211</sup>. Most of women's work is in agriculture and the informal sector, including home-based work. These areas of work are not regulated, which leaves women out of the benefits granted by law to members of the formal labor sector, such as the right to strike or to paid maternity leave. When

<sup>203</sup> UNESCO, *EFA Global Monitoring Report 2011*. 2012.

<sup>204</sup> National Education Information Management System, Academy of Educational Planning and Management, Ministry of Professional and Technical Training, *Pakistan Education Statistics 2010-11*, Islamabad, pp 13-19.

<sup>205</sup> UNICEF, *Pakistan One UN Programme II*, p. 10.  
[[http://www.unicef.org/about/execboarboard/files/PAK\\_One\\_UN\\_Programme\\_II\\_\(2013\\_-\\_2017\)](http://www.unicef.org/about/execboarboard/files/PAK_One_UN_Programme_II_(2013_-_2017))].

<sup>206</sup> Aga Khan University, Dept of Pediatrics and Child Health. 2011. *National Nutrition Survey 2011*, p.27.

<sup>207</sup> Other causes of death include stroke and cardiovascular diseases (4.9%), diseases of the gastrointestinal tract (8.7%), accidents (4.4%). Violence accounted for 0.9% of deaths. [NIPS and Macro International, 2008, *Pakistan Demographic and Health Survey 2006-7*, Islamabad, p. 176.

<sup>208</sup> Op.cit., p.25.

<sup>209</sup> UNICEF, *Situation Analysis of Children and Women in Pakistan 2011*, Islamabad, p.16.

<sup>210</sup> For a review of the research, see author, 2007, *Women and Paid Work in Pakistan*, mimeo, Collective for Social Science Research, at [http://researchcollective.org/Documents/Women\\_Paid\\_Work](http://researchcollective.org/Documents/Women_Paid_Work).

<sup>211</sup> Statistics Division, Federal Bureau of Statistics, 2011, *Pakistan Labour Force Survey 2010-11*, Islamabad.

women workers are indeed organized in the formal sector, they have actively been making their voices felt. One such example is that of the Lady Health Workers (LHWs), employed by the government to serve as community-based health workers across the country. They have been actively protesting their part-time status as government employees, and in almost all the provinces have intermittently gone on strike to protest against the non-payment of their salaries on time<sup>212</sup>.

## Talibanization

No discussion of women's progress in Pakistan can avoid taking up the issue of Talibanization, and the extent to which it undermines efforts to bring women into the mainstream of society as equal players. The Second Shadow Report, *Talibanization and Poor Governance: Undermining CEDAW in Pakistan*, documented in some detail how this relatively small group of violent extremists attempted to exert their political and social control over areas in mainly the north of the country, and questioned the inaction on the part of the state to counter their influence. Unfortunately, although the state has now made some effort to defeat them militarily, their influence has not dissipated yet. In the past five years, due to Taliban propaganda and violence that has continued, family planning and health workers are still finding it difficult and dangerous to perform their roles in parts of the country such as FATA, PATA and Khyber Pakhtunkhwa, and some have been murdered as a result. According to research conducted on the influence of Taliban on Lady Health Workers in Swat 2006-9, LHWs were directly targeted and threatened not to continue their work as it was un-Islamic, indecent for them to be in public, and morally illegal to work for wages. Family planning services were targeted, as being part of a western plot to reduce the number of Muslims, and a number of women stopped using contraception as a result<sup>213</sup>.

Non-government organizations in Khyber Pakhtunkhwa working for women remain under threat of attack for representing western interests, and they continue their efforts despite conditions of extreme stress. A leading NGO, Khwendo Kor, described conditions of "scare tactics, actual kidnappings and kidnapping threats by the extremists not only impeded KK's work but undermined the confidence of the staff and their families"<sup>214</sup>. Families of women workers tried to stop them from working, although many women resisted this pressure and continued despite the threats.

The Taliban launched a campaign to stop the immunization of children against polio in June 2012, alleging that this was in protest against the US drone strikes in FATA. This put 300,000 children at risk, in a country which already has the highest number of cases in the world even though the virus has been eradicated in all but three countries. Worse, their influence extends to other parts of the country as well. In July 2012 a doctor working with a United Nations team in Karachi was shot while administering drops in an ethnically Pashtun part of the city<sup>215</sup>. As a

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<sup>212</sup> Author, July 23, 2011, "Lady Health Workers and Social Change in Pakistan," *Economic and Political Weekly*, vol. XLV, no.30, pp. 28-31.

<sup>213</sup> Iftikharud Din, ZubiaMumtaz and AnushkaAtaullahjan. How the Taliban undermined community healthcare in Swat, Pakistan. *BMJ* 2012; 344:e2093.

<sup>214</sup> KhwendoKor Progress Report July 2009-December 2010.

[<http://www.khwendokor.org.pk/downloads/Annual%20report%20July%2009-10.pdf>]

<sup>215</sup> <http://www.guardian.co.uk/world/2012/jul/17/shooting-un-doctor-pakistan-polio>

result of the Taliban campaign, the number of cases in Pakistan has increased from 144 in 2010 to 199<sup>216</sup>.

Taliban have also continued their drive to stop girls' education. In 2010 there were 163 attacks on educational institutions in the tribal areas, KP (Peshawar area) and Balochistan. In the district of Swat, the Taliban's destruction of schools resulted in a dramatic drop in girls' education. From 120,000 girls in schools and colleges, the figure dropped to 40,000 and the damage has not yet been fully reversed although the military has occupied the area<sup>217</sup>. The Taliban attack on MalalaYusufzai in Swat indicated that their presence in the area remains despite the military's occupation of that district.

### **Empowerment of women**

In a context of such extreme polarization – with a strong human rights and women's rights movement that has supported Pakistan's accession to CEDAW on the one hand, and another movement that is opposed to development and women's entry into the public sphere on the other, it becomes difficult to maintain focus on the larger objective of women's empowerment. Nonetheless, clarity must be sought as empowerment is integral to the enjoyment of human rights.

Women's enhanced access to *resources* and their increased *agency*, or ability to exercise these choices, are at the heart of processes leading to their empowerment<sup>218</sup>. For women to become empowered in Pakistan, for example, they first have to have the access to education, livelihood, and other resources that they are otherwise deprived of due to poverty and social status. Then, when faced with strategic life choices, such as education, or marriage, contraception, and childbearing, they must also have the agency to exercise these choice themselves.

In Pakistan we struggle with a lack of resources and limited agency among all the vulnerable and marginalized populations. In the case of women this struggle cuts across class and social hierarchy formations to limit their opportunities to make strategic life choices for themselves. Yet without agency to exercise choice, it is not possible for women to exercise their human rights either. For example, paid work for women is an important means for women to enhance their resources, e.g skills and remuneration, and through that improve their status in their homes and communities. Ultimately this can enable them to have more agency in their own lives. It is this increased agency, for example that will become evident when women take part in collective action to achieve their goals, as have the Lady Health Workers.

### **Social protection**

Programmes that specifically benefit the poor are an important way to undercut deprivation and improve access to basic resources, such as food and education. Social cohesion and solidarity are important elements of democracy and one important element in this is to improve

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<sup>216</sup> <http://dawn.com/2012/07/14/taliban-polio-ban-puts-240000-pakistan-children-at-risk/>

<sup>217</sup> Human Rights Commission of Pakistan, 2011, *State of Human Rights in 2010*. Lahore.

<sup>218</sup> NailaKabeer, 2001, 'Resources, Agency, Achievements: Reflections On The Measurement Of Women's Empowerment', *Discussing Women's Empowerment: Theory and Practice*. Sidastudies no. 3, SIDA, Stockholm.

social protection systems<sup>219</sup>. Social protection is thereby part of the ongoing effort to promote and protect all human rights.

Due to the catastrophic impact of disasters in recent years, high inflation and a stagnating economy, the stress on the poor in Pakistan has worsened<sup>220</sup>. Jobs are fewer, and food insecurity, as discussed earlier, has deepened. Families that were just managing to get by on their earnings, have now slipped into poverty. In response, the government has improved its social protection programmes as a means to arrest some of this decline. In 2007 the government adopted a National Social Protection Strategy (NSPS) with the objectives of supporting chronically poor households, protecting against adverse shocks and promoting investment in human and physical assets. Allocations for social protection increased as did the emphasis on targeted subsidies<sup>221</sup>.

A large part of this increased financial outlay is due to the Benazir Income Support Programme, begun in 2008, as a targeted cash transfer to women identified as the poorest in their communities. A similar method was adopted with respect to internally displaced persons and flood victims (Watan Card Scheme), and a land distribution programme is also in place for women peasants in Sindh. Women are also beneficiaries of the Bait ul Mal fund, and Zakat Fund. All of these are social protection schemes that are imperfect, but an essential first step towards targeting of the most vulnerable and marginalized women in the country.

There are now a total of twelve social protection programmes in place, three of which directly target women<sup>222</sup>. Total expenditure on non-pension social protection was almost one per cent of GDP in 2009-10. Experts have suggested it be increased to three per cent of GDP to bring it line with benefits provided in other countries in the region<sup>223</sup>.

### **Emergencies and natural disasters**

One of the main reasons for Pakistan lagging behind in achieving its Millennium Development Goals (MDGs) is the emergency context created by the floods in 2010 and 2011. In 2010 a massive 20 million people were affected by the worst disaster in Pakistan's history, in the form of floods caused by heavy rainfall throughout the country<sup>224</sup>. The flooding caused USD 10 billion of direct and indirect damages<sup>225</sup>. In 2011 the rains occurred again and an estimated 5.4 million people were affected<sup>226</sup>. In 2012, due to heavy, but less prolonged rainfall, the estimated number of affected is five million again<sup>227</sup>.

Children and women affected by floods and other natural disasters need specific protection measures as they are disproportionately affected by their impact. In the first flood alone, an

<sup>219</sup> Human Rights Council. Resolution 19/36 Human rights, democracy and the rule of law. 19 April 2012, para 17(b).

<sup>220</sup> This paragraph based on *A Compilation of PBC Position Papers on Macroeconomic Stabilization, Energy, Social Protection, Education and Regional Trade*. (Karachi 2011, pp 9-12)

<sup>221</sup> Ibid p.8

<sup>222</sup> Finance Division, 2012, *Pakistan Economic Survey 2011-12*, Government of Pakistan, Islamabad, p. 226.

<sup>223</sup> Op cit p. 13.

<sup>224</sup> *Pakistan Economic Survey*, p. 247.

<sup>225</sup> Pakistan Floods 2010: Learning from Experience. National Disaster Management Authority. [[http://ndma.gov.pk/Documents/flood\\_2010/lesson\\_learned/Lessons%20Learned%20-%20Flood%202010.pdf](http://ndma.gov.pk/Documents/flood_2010/lesson_learned/Lessons%20Learned%20-%20Flood%202010.pdf)]

<sup>226</sup> UNOCHA 19 September, 2011. UN launches Pakistan floods 2011 rapid response plan for US\$357 million.

[[http://pakresponse.info/LinkClick.aspx?fileticket=vzg0xp\\_9gmc%3d&tabid=41&mid=597](http://pakresponse.info/LinkClick.aspx?fileticket=vzg0xp_9gmc%3d&tabid=41&mid=597)]

<sup>227</sup> UNICEF Pakistan Update, *2012 Floods: Needs and Response*, 11 October, 2012.

[<http://reliefweb.int/sites/reliefweb.int/files/resources/UNICEF%202012%20Floods%20Update%2011%20October%202012.pdf>]

estimated 589,402 children had to be moved into camps for internally displaced.<sup>228</sup> In the following year an estimated 2.4 million children were affected by floods, and until today many families are still unable to return to their homes. It can be expected that floods will become a recurrent, if not annual, problem for the people of Sindh in particular.

“The biggest single determinant of risk to the vulnerable population and groups is their socio-economic status. Poverty and social exclusion, in most of these crises, directly correspond to the extent of damages”<sup>229</sup>. For example, 2.6 million *katcha* households (i.e. illegal settlements) in Sindh were affected by the floods. Since families had no rights to reclaim their lost homes many were forced to wander. They were denied eligibility for government provided support in the form of Watan cards since they also lacked national identity cards. Also excluded from emergency and reconstruction efforts were minorities (ethnic and religious), Afghan refugees, and internally displaced persons from conflict areas. Hindus avoided camps, in part due to the fact that they lacked identity cards. Deepening poverty increases children’s vulnerability to early and forced marriages, trafficking, exclusion from schools and entry into the labour force.

Pockets of the country are battling terrorism; their populations have at various times been displaced due to the violence. In July 2010, the number of conflict-related internally displaced persons in northwest Pakistan was estimated at a minimum of 1.4 million, and in Balochistan the figure was 40,000-140,000<sup>230</sup>. As of September, 2012 Khyber Pakhtunkhwa still had 742,000 conflict-related displaced persons<sup>231</sup>. Since the conflict is still ongoing, there may be further displacement of families creating the same vulnerabilities for women and children. Some groups of people have actually been displaced twice, owing to both the conflict and the floods.

### **Access to resources**

There have been two major developments since 2009 that have transformed the availability of resources for social development in the provinces. In December 2009 the 7<sup>th</sup> National Financial Commission Award reduced the federal share of revenues by ten per cent and dramatically increased the divisible share of the provinces, particularly the smaller ones, in the distribution of resources. As a result, in the year before the NFC Award the federal transfers to the provinces were Rs. 635 billion, and in 2011-12 they have risen to Rs. 1,313.7 billion. In April 2010 the 18<sup>th</sup> Constitutional Amendment devolved almost all of the social sector development responsibilities to the provincial governments, who have now an unprecedented amount of resources to put into the areas of health, education, population, women’s development, and more. Women and girls stand to be the major beneficiaries of investments in social sector development, yet the provinces have yet to demonstrate their commitment by allocating sufficient funds to these areas.

A process is underway in each of the provinces to develop policies for the empowerment of women. These will contain objectives for a broad range of areas, such as poverty reduction, legislative change, improved health care, increased educational attainment, economic empowerment, access to justice, and political empowerment. There is also support among women’s rights advocates within and outside government for the establishment of Provincial

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<sup>228</sup> UNHCR. 2010. *Statistical analysis of camp profiling monitoring survey in Sindh province, 2010*: 4.

<sup>229</sup> *Pakistan One UN Programme II*, p. 8.

<sup>230</sup> Internal Displacement Monitoring Centre. <http://www.internal-displacement.org/idmc/website/>

<sup>231</sup> OCHA, 17 September, 2012, *Pakistan: Humanitarian Snapshot – IDPs and Floods 2012*, Islamabad.

Commissions on the Status Women to provide monitoring and technical assistance to implement each provincial policy, which would be modelled on the National Commission already in place at the federal level.

### **Conclusion**

Women have gained from living in a relatively stable democracy since 2008, and directly benefited from pro-women legislation, social protection programmes, and representation in elected bodies, since then. Women activists breathe a sigh of relief that the government and mainstream political parties are not targeting women in order to enhance their religious credentials, as has also taken place in the past. However problems in the delivery of basic services to the people, corruption at all levels of society, grave security problems and Taliban encroachment have undercut these gains.

The governance challenge before Pakistan is monumental. To achieve the goals of democracy, the weak state will have to nurture it in the face of powerful disruptive forces that are instilling fear in the people and turning them against one another. The provinces will have to increase expenditures on social sectors and extend more social protection to the poor and marginalized, even when social power structures directly oppose equal access to opportunities and resources for women and men. The state will need to fiercely uphold the rule of law and protect the equal rights of women, and where they are in contradiction it must decide in favour of women's human rights.



## Chapter Three

# Decentralization, 18<sup>th</sup> Constitutional Amendment and Women's Rights

By Rubina Saigol

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The issue of decentralization in Pakistan cannot be understood without first grasping the historical process of the construction of a highly centralized state. The impact and importance of the 18<sup>th</sup> Constitutional Amendment can only be understood by examining the forces that led to the alienation of the constituent units of the federation thereby undermining democracy and federalism. The factors that resulted in the disaffection of the provinces, giving rise to ethno-nationalist sentiments, were both military and civilian in nature. It is necessary, therefore, to briefly explore the historical evolution of a centralized state before specifically focusing on the 18<sup>th</sup> constitutional amendment which was an attempt to rectify the wrongs and make amends for past inequities and injustices.

### **Historical Background: A Centralized State**

State formation in Pakistan, as envisaged in the Lahore Resolution of 1940, was premised on the creation of a new territorial and political entity carved out from the parts of India where Muslims constituted a numerical majority. The level of autonomy and independence envisioned for the constituent units of the new state can be judged from the following paragraph of the Resolution:

It is the considered view of this session of the All India Muslim League that no Constitutional Plan would be workable in this country or acceptable to the Muslims, unless it is designed on the following basic principle, namely that geographically contiguous units are demarcated into regions which should be so constituted, with such territorial readjustments as may be necessary, that the areas in which the Muslims are numerically in majority as in the North Western and Eastern Zones of India would be grouped to constitute 'Independent States' in which the constituent units shall be autonomous and sovereign.<sup>232</sup>

The language of 'Independent States', which would be autonomous and sovereign, suggests a confederation and goes way beyond the more limited notion of provincial autonomy. The Pakistan Resolution was based on the idea that the federating units would have jurisdiction over a range of subjects which is evident from the following passage of the Resolution:

The session further authorizes the Working Committee to frame a scheme of constitution in accordance with these basic principles, providing for the assumption finally by the respective regions of all powers such as defense,

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<sup>232</sup> The Lahore Resolution. Later termed the Pakistan Resolution which was tabled on March 3, 1940 and adopted on March 24, 1940 at the 27<sup>th</sup> annual session of the All-India Muslim League, Minto Park, Lahore.

external affairs, communications, customs, and such other matters as may be necessary.<sup>233</sup>

Soon after Pakistan's emergence on the world map in 1947, ideological conflicts erupted over the kind of state to be constructed. Religious nationalism, on the basis of which the Muslim League had led the struggle for the creation of Pakistan, was no longer relevant as the new state was overwhelmingly numerically Muslim, and the idea of Hindu-Muslim differences became peripheral<sup>234</sup>. The main leader of the Muslim League, M.A Jinnah now proceeded to outline the contours of a secular state wherein the members of each religious community would be free to go to their respective places of worship and religion would have nothing to do with the business of the state<sup>235</sup>. However, M.A Jinnah died in 1948 and subsequently the advocates of religious nationalism asserted their position in the Constituent Assembly. In 1949, the Objectives Resolution, which privileges one religion over all others, was passed overriding the serious concerns of the minority members of the Constituent Assembly and the seeds of a state based on religion were sown<sup>236</sup>.

The Objectives Resolution came to be included in every subsequent constitution of Pakistan. Initially, it formed the preamble of the constitution, however, in 1985 it was made a substantive part of the constitution through the insertion of Article 2-A, and thereby rendered justiciable. The defining of the state in primarily religious terms had a direct bearing on the rights and status of the constituent units (called provinces instead of states) as well as the rights of women and religious minorities.

State centralization, the seeds of which were sown in the 1950s, became deeply entrenched during periods of dictatorship as military rule attempted to concentrate power at the centre at the expense of the provinces. In the name of national unity, cohesion and integration, military rulers devised highly centralized constitutions thereby systematically diminishing the powers of the federating units. Religious nationalism was used as an instrument to weld together diverse nations, each with its own language, history and culture.

### **Military Rule and Facile Decentralization**

It is a paradox of Pakistan's history that military dictators on the one hand centralized the state and concentrated powers in their own hands, and on the other they engaged in decentralization exercises to create a façade of democracy. Military rule, generally regarded as illegal across the globe, tends to cloak itself in some version of democracy.

During Pakistan's first military dictatorship, a concept called 'Basic Democracies' was introduced in 1959. The Basic Democracies were concerned merely with local government and rural development. While the Constitution of 1962 promulgated indirect elections with almost total power concentrated in the hands of the president, the Basic Democracies were in reality meant to strengthen the hands of the president by allowing his reach at the lowest tiers of administration. Ayub Khan's Basic Democracy system, ostensibly designed to usher in democracy and decentralization, was in reality a means of the further concentration of power at the Centre.

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<sup>233</sup> *ibid.*

<sup>234</sup> Hamza Alavi, 'Politics of Ethnicity in Pakistan', in S. Akbar Zaidi (ed). 1992. *Regional Imbalances and the National Question in Pakistan*. Lahore: Vanguard. p. 270.

<sup>235</sup> M.A Jinnah's speech to constituent assembly, August 11, 1947.

<sup>236</sup> Objectives Resolution passed by the Constituent Assembly in 1947 and later became a part of the Constitution.

An equally facile, attempt at decentralization was carried out during the regime of General Zia-ul-Haq, another military dictator. General Zia issued a three-tier Local Government Ordinance in 1979 according to which elections would be held on a non-party basis. Party-less local elections were held in 1979, 1983 and 1987; however, elections to the provincial and national assembly were repeatedly postponed. The idea of elections on non-party basis was designed to weaken the political system as the Local Government system was meant to create support for military rule at the local levels through the elected councilors. On the one hand, this was an attempt at de-politicization and on the other a watering down of the notion of provincial autonomy, which had been a central plank of the Pakistan idea. Disguised as decentralization, General Zia's system was yet another form of reinforcing centralized rule.

Following in the footsteps of his predecessors, another military dictator, General Pervez Musharraf introduced a three-level (Union, Tehsil and District Councils) local government system in 2001. Once again political parties were officially kept out of elections; nonetheless they fielded their candidates to preserve their powers at the local levels. The District Nazim was particularly greatly empowered and given a number of the powers formerly belonging to colonial era bureaucrats and administrators. General Musharraf boasted that his system was based on 'real' or 'true' democracy. While this was another exercise in de-politicization and disempowerment of the provinces, the local government system of 2001 was significant from the point of view of women who were given 33 per cent representation at the local levels and 17.5 per cent in the provincial and national assemblies through Legal Framework Order 2002. As expected, this system produced a great deal of friction between the provincial and district governments leading to turf wars and occasional paralysis of government. Upon the return of democracy in the elections of February 2008, and the exit of General Musharraf in August of the same year, his much touted devolution came to an end.

It is against this backdrop that we examine the 18<sup>th</sup> Constitutional Amendment that seeks to correct historic wrongs, recognize maximum provincial autonomy and further the process of democratization wounded by extended periods of martial rule. Before assessing the relation between the 18<sup>th</sup> Constitutional Amendment and women's rights and equality, as laid out in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), it is useful to identify and critically explore some of the salient features of the amendment and its contribution to the advancement of democracy.

### **Overview of the 18<sup>th</sup> Constitutional Amendment**

The Eighteenth Constitutional Amendment represents a significant step forward in the creation of a democratic, parliamentary and federal state. The changes in about a hundred articles of the 1973 Constitution have rendered it more compatible with the ideals of democracy, federalism, provincial autonomy and fundamental rights. While a great deal of work remains to be done, especially with regard to the implementation of the principles contained in the constitution, the 18<sup>th</sup> amendment is a remarkable achievement given the diversity of political interests within the parliament.

The amendment removes some of the undemocratic insertions by military dictators which had distorted the shape of the state from its parliamentary character. The repeal of the Legal Framework Order of 2002 and the 17<sup>th</sup> Constitutional Amendment of 2003, inserted during the period of martial rule (1999-2008), purges the constitution of changes imposed by General Musharraf who sought to tilt power in favour of an indirectly elected president. The removal of

the Seventh Schedule which referred to 'Laws not to be Altered, Repealed or Amended without the Previous Sanction of the President' is a further step toward the democratization of the constitution. While these are welcome steps and a requisite of parliamentary democracy, the failure to remove the 8<sup>th</sup> Constitutional Amendment, which protects the orders, decisions, martial law regulations and ordinances passed by General Zia during the previous martial law, is noteworthy. Although the name of General Zia-ul-Haq, along with his notorious referendum of 1984, has been removed through the 18<sup>th</sup> amendment, a number of the changes brought about by him have been left untouched due to expediency and political consideration.

Nevertheless, the idea and practice of democracy was further strengthened by adding to Article 6 which refers to treason and the abrogation of the constitution. Through the 18<sup>th</sup> amendment the lawmakers have ensured that in the future military dictators do not find collaborators to provide legitimacy to illegal rule as collaboration is now part of treason. Furthermore, an act of high treason can no longer be validated by any court including the High Court and/or the Supreme Court. This assertion by the parliament dovetails with the Supreme Court ruling of July 2009 which acknowledges the historical role of the Supreme Court in validating martial law and strictly prohibits any such validation in the future. Dictatorial rule has been further weakened by repealing Article 58 (2) (b) which had been inserted by military rulers to empower an indirectly elected president to dissolve a directly elected assembly and democratic government.

In the pursuit of democracy and social justice, new fundamental rights have been added to the existing ones. These include the right to a fair trial and due process (Article 10A), the right to information (Article 19A) and the right to education (Article 25A). All three are important and internationally recognized rights, necessary for the construction of a democratic state and government accountability. However, the proof of the pudding is in the eating and it remains to be seen how these fundamental rights are made operational on the ground. The controversy that has already erupted over the proposed Fair Trial law demonstrates the difficulty of agreement over what constitutes fairness and justice. The right to information has been made 'subject to regulation and reasonable restrictions imposed by law'. The inclusion of such exceptions invariably leads to debates over what constitutes 'reasonable restrictions' and who decides what these might be. It is not far-fetched in Pakistan's context to imagine a scenario where the government imposes restrictions for vested interests.

In any case, Article 19, which is concerned with the freedom of speech and expression, says that this right is 'subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, [commission of] or incitement to an offence.' With so many exceptions it appears that the freedom of speech and expression is completely circumscribed: how will it be decided that some utterance or image violated the glory of Islam or the security and defense of Pakistan? The current public debates on the contempt of court versus reasonable critique of verdicts, and the challenge posed to the national security paradigm provide evidence that there is a need to create space for contestation to move public discourse forward. The 18<sup>th</sup> amendment has left these exceptions intact in the name of national security and religion neither of which should be above the law.

The same problem bedevils Articles 62 and 63 which deal with the qualifications and disqualifications of members of parliament. For example, Article 62 lays down the following

qualifications to become a member of parliament: he is of good character and is not commonly known as one who violates Islamic injunctions; he has adequate knowledge of Islamic teachings and practices obligatory duties prescribed by Islam as well as abstains from major sins; he is sagacious, righteous and non-profligate, honest and *ameen*, there being no declaration to the contrary by a court of law, and he has not, after the establishment of Pakistan worked against the integrity of the country, or opposed the ideology of Pakistan. The obvious questions that arise are, how will it be determined that a person has a 'good character', 'adequate knowledge of Islamic teachings' 'practices obligatory duties prescribed by Islam' or 'abstains from major sins'? (Are minor sins allowed and how will the difference be calculated?) Even more importantly, who will determine that a candidate has all these qualifications? Once again one fears that such provisions will be used by those in power, particularly religious lobbies, to exclude political opponents and rivals.

Article 63, which pertains to the disqualification of members of parliament, says in sub-clause g: he has been convicted by a court of competent jurisdiction for propagating any opinion, or acting in any manner, prejudicial to the ideology of Pakistan, or the sovereignty, integrity or security of Pakistan, or morality, or the maintenance of public order, or the integrity or independence of the judiciary of Pakistan, or which defames or brings into ridicule the judiciary or the Armed Forces of Pakistan, unless a period of five years has elapsed since his release. In effect, these articles can potentially be used to stifle any informed critique, analysis or intellectual debate on issues of national import. Any utterance or expression can be deemed 'prejudicial to the ideology of Pakistan' or against the security or morality as defined by political opponents. While the 18<sup>th</sup> amendment has inserted the right to information as a part of the freedom of speech and expression, its failure to remove clauses that carry the danger of political misuse, leaves serious problems that are detrimental for democracy.

The declaration of education as a fundamental right is a long standing demand of the people of Pakistan. While the subject of education has been devolved to the provinces, the state needs to ensure that enough resources are provided to make this right a reality in the light of international conventions and declarations to which Pakistan is a signatory.

The 18<sup>th</sup> Constitutional Amendment restores the right of the religious minorities to practice their religions *freely*; nonetheless, it fails to go beyond this and does not allow a non-Muslim to seek the office of the President or Prime Minister. It seems that an accommodation has been made to both the religious lobby and religious minorities. Initially, the Objectives Resolution of 1949 contained the word 'freely' however, during the era of General Zia, it was removed. Minority rights would have been served well if the Second Amendment of 1974 had also been repealed as it discriminates against the Ahmaddiya community. However, given the diversity within the parliament, and the need to keep coalition partners on board, the amendment could only go so far. While granting minorities the right to practice their religions freely, it might have been more prudent to add that followers of every religion (including Islam) would have the right to practice their religion freely in so far as that practice does not violate the rights of women and less powerful members of the religious group. Such an approach would have the effect of allowing all religious practices to be carried out while also preventing the violation of women's rights in the name of religion. However, even reinserting the word 'freely' is a major achievement given the power of religious organizations that exert pressure on the parliament through the media and various organs of the state.

By far the most far-reaching changes in the constitution address the long standing issue of provincial autonomy and rights. The abolition of the Concurrent Legislative List was necessary to entrench the principle of federalism. This was the list of subjects on which both the Centre and the provinces could legislate. A Federal Legislative List was created in the 1973 Constitution to identify the subjects on which only the Centre could legislate. No provincial list was delineated as it was assumed that any subjects that did not fall in the Federal or Concurrent List would constitute the domain of the provinces. However, the Concurrent List was vast and covered virtually every area of governance with the result that very little was left as the exclusive domain of the provinces. When the Constitution of 1973 was promulgated it was agreed that the Concurrent List would be abolished in ten years. This did not happen with the result that centralization remained the salient feature of the constitution.

With the abolition of the Concurrent List and the omission of all the 47 entries within it, the provincial domains were extended in relation to the federal sphere. The abolished List included matters such as civil and criminal law, preventive detention, marriage and divorce, explosives and arms, drugs, adoption, arbitration, trusts, property transfer and registration, electricity, tourism, trade unions, population planning and so on. Thus a large number of people's issues of daily existence were, in the past, the joint responsibility of the Centre and provinces. However, based on the federalist principle that governments work best when they have geographical and political proximity to the people, the 18<sup>th</sup> amendment promises to bring governance to the doorstep of the people by empowering the second and third tiers of government.

Provincial rights were also reinforced through other measures. The name of the North Western Frontier Province (NWFP) was changed to Khyber-Pakhtunkhwa to recognize the ethnic-political identity of the people instead of retaining the colonial administrative concept of a frontier region. The spellings of Balochistan and Sindh were changed to make them conform to the people's own characterization of their provinces. Additionally, according to Article 38 (g), 'the shares of the Provinces in all federal services, including autonomous bodies and corporations established by, or under the control of, the Federal Government, shall be secured and any omission in the allocation of the shares of the Provinces in the past shall be rectified.' Thus provincial shares in the Federal Government service were not only secured but past inequities were rectified through the 18<sup>th</sup> amendment.

A significant step toward greater provincial autonomy and rights is the National Finance Commission Award. Through an amendment in Article 160, and insertion of 160 (3A), it has been ensured that 'the share of the Provinces in each Award of the National Finance Commission shall not be less than the share given to the Provinces in the previous Award.' In the 7<sup>th</sup> NFC Award agreed upon in Gwadar in 2009, the provinces have been given an enhanced share in national resources. In the past the Award was based entirely on the population of the province and this method generated a great deal of resentment as Punjab is the most populous province. The basis of the Award would now be multiple including the development needs of a province, revenue generation and collection. It has been constitutionally ensured that the Award is equitable and based on considerations of justice instead of only on the size of the population.

While the concept of provincial autonomy decentralizes the government at the top levels, it is local government that ultimately is closest to the people and, therefore, the most accessible. The 18<sup>th</sup> constitutional amendment upholds the principle of devolution to the local level by inserting Article 140A in the constitution. According to Article 140A (1), 'Each Province shall, by law,

establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments, and Article 140A (2) states that 'Elections to the local governments shall be held by the Election Commission of Pakistan.' It is important to note that unlike the local government systems introduced by dictators, the third tier in this case does not bypass the provinces, rather it is the responsibility of the provinces to install a local government system. The aim of dictators was to centralize, empower themselves and weaken the political process; on the other hand, the aim of the elected lawmakers is to devolve power and resources in a manner that does not violate the rights of the federating units.

### **Women's Rights and the 18<sup>th</sup> Constitutional Amendment**

The main purpose of this section is to examine the extent to which the 18<sup>th</sup> amendment furthers, or fails to further, the rights of women, and the degree to which it addresses the issue of gender discrimination as outlined in the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW).

Pakistan acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 12 April 1996, making a declaration on the Convention and entering a reservation on Article 29 (1):

- i. Declaration: "The accession by [the] Government of the Islamic Republic of Pakistan to the [said Convention] is subject to the provisions of the Constitution of the Islamic Republic of Pakistan."
- ii. Reservation: "The Government of the Islamic Republic of Pakistan declares that it does not consider itself bound by paragraph 1 of article 29 of the Convention."

The Declaration was a compromise to enable Pakistan to accede to the Convention without delaying the matter inordinately. The reservation to Article 29, paragraph 1 was political in nature and connected with Pakistan's official position on the jurisdiction of the International Court of Justice. The objective of the Declaration was not to go against the aims and purpose of the Convention, rather it was meant to assuage the concerns of those who had misgivings about the Convention. Subjecting the implementation of the Convention to the Constitution of Pakistan was considered a strategic course of action to ensure Pakistan's accession to CEDAW.

Such reservations by countries are a reflection of the global human rights debate centered on universality versus cultural/national specificity. Advocates of universality believe the rights granted in UN human rights instruments to be universal, inalienable and indivisible – they focus on the essential *sameness* of all human beings. On the other hand, the adherents of cultural specificity focus on *difference* arguing that human beings are located within social, economic and political structures that are culturally unique, and sensitivity to culture is necessary in the articulation of any right of any group. However, it appears that arguments based on cultural uniqueness, cultural sensitivity and difference are almost always used to deny women's rights. Reservations by states create exclusions and exceptions that in the end uphold cultural determinism and the idea that women are symbols of culture, religion and tradition. The tension between *difference* and *equality*, akin to the contradiction between the *universal* and the *particular*, underlies some of the debates that ensued with the far-reaching amendments in the constitution in 2010.

Article 1 of CEDAW upholds the principle of equality of women by regarding as discrimination '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.' The Constitution of Pakistan recognizes women's legal equality in Article 25 (2) of the fundamental rights chapter which states that there shall be no discrimination on the basis of sex. Previously, the article stated that there would be no discrimination on the basis of sex alone. The 18<sup>th</sup> amendment removed the word 'alone' to include all kinds of possible discrimination against women.

One of the most contentious debates revolved around the devolution of the Ministry of Women Development (MoWD) which had been set up in 1979 as a Division and was upgraded to the level of a ministry in 1989. Its main purpose was the formulation of public policies to address women's needs and ensure the advancement of women in the social, economic and political realms. In 1996, when Pakistan acceded to CEDAW, the MoWD was regarded as the body that would ensure its implementation. When the devolution of this ministry was announced by June 2011, feminists and women's rights activists were concerned that there would be no federal level mechanism left to ensure the implementation of CEDAW. Furthermore, there was a fear that since international conventions and declarations had been signed by the state, the provinces could potentially renege on some of the commitments implied in the accession to CEDAW. While the provincial Departments of Women Development were entrusted with the tasks of women's empowerment and mainstreaming, it was at the federal level that the state was accountable in terms of the implementation of CEDAW.

The functioning of the Ministry of Women Development was generally perceived as unsatisfactory by most women's rights activists. It was argued that the ministry suffered from 'structural weaknesses and being distanced from women at the grass-roots it functions more like an arm of the bureaucracy'<sup>237</sup>. The ministry was seen as lacking in dynamism and initiative in the performance of its role in the implementation of CEDAW as it failed to submit periodic reports regarding the progress on the provisions of the convention. Only one integrated report was submitted in 2005 whereas the report due in 2009 has still not seen the light of day. As implementation of laws and policies is usually done at the lower tiers of government, it seemed to make sense that the provincial departments of women development should be responsible to ensure women's empowerment in education, labour, health, and other areas which were also now in the provincial domain.

On the other hand, the absence of a body at the federal level to ensure adherence to CEDAW principles and guidelines was perceived as potentially detrimental for the protection and promotion of women's rights. This fear stemmed from the tendency of the federating units to emphasize parochial and ethnic sentiments that tend to become rooted in a form of cultural determinism. In the past, sitting senators have justified 'honour killing' as a cultural tradition; federal ministers belonging to specific ethnic groups have justified the burying alive of women in the name of tradition and culture, and one federal minister presided over a *Jirga* (tribal council, Alternate Dispute Resolution system) in which six girl children were awarded as peace offering to settle a feud between two parties. Given this history, there was consternation and

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<sup>237</sup> Zubeida Mustafa, 'Women and Devolution', DAWN, April 13, 2011; 'Equal Rights: rights activists support women ministry devolution', *Express Tribune*, April 12, 2011.

concern that the provinces might resort to legislation, policies or practices that violate the norms embedded in CEDAW, thereby curbing and curtailing women's rights.

There were arguments that a minimum universal standard regarding human rights and women's rights should be framed and it should form the overriding norm in the face of negative cultural practices and customs. Such a standard in fact already existed in the constitution in the form of Article 8 of Fundamental Rights. This provision was designed to prevent precisely such an eventuality as it states that 'any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.' It was on the basis of this article that the Hasba Act, passed by the NWFP (now Khyber Pakhtunkhwa) provincial assembly in July 2005 to establish Shariah law, was declared null and void by the Supreme Court of Pakistan. Article 8 of the constitution is to a large extent in conformity with the CEDAW requirement that States Parties will take 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'. Irrespective of the presence of individual lawmakers who articulate and advocate cultural and customary practices, there is a safeguard in the constitution against legislation that conforms to such practices.

Nevertheless, the issue of international reporting requirements and overseeing the implementation of CEDAW at the federal level remained. For some, the answer lay in the form of the National Commission on the Status of Women (NCSW) established by a presidential ordinance in July 2000 as a statutory and autonomous body mandated to examine the policies and programs for women development and gender equality. In 2012, the National Commission on the Status of Women was established through an act of parliament. The Commission reviews laws, rules and regulations affecting the status and rights of women and suggests repeal, amendment or new legislation essential to promote the interests of women.<sup>238</sup> It was contended that the Commission should play its role as a watchdog to scrutinize government policies and practices that relate to women's rights and must be independent instead of acting like an arm of the government<sup>239</sup>. The implementation of CEDAW could best be carried by a financially and administratively autonomous and independent body as such a mechanism would be free of fear or favour.

On the other hand, there were concerns that CEDAW implementation requires ministry level commitment by the government. While the Commission can act as a watchdog and report on the violations of women's equality and rights, policies for the promotion and advancement of women can only be made and carried out by ministries. The main work on such policies would now be done by the provincial departments however a federal structure was required to ensure that the state of Pakistan did not renege on CEDAW commitments. The compromise solution was to entrust the task of ensuring implementation and formulating progress reports to the Federal Ministry for Human Rights which is already mandated to report on international human rights commitments.

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<sup>238</sup> Ibid

<sup>239</sup> Ibid

The tensions arising from the universality of norms and principles contained in CEDAW, and the particularity and specificity of cultural agendas arising from narrow and sub-national levels, were thus resolved through ensuring that federal mechanisms assume the responsibility for CEDAW implementation which would be done at the provincial and sub-provincial levels. With this compromise the devolution of the Ministry of Women Development ceased to be a cause for worry among feminists and women's rights activists.

A great deal needs more to be done although the amendment is a good start. The women of Pakistan have a long way to go before they can achieve the dream of gender equality. Pakistan's rankings on various global gender equality measures are abysmally low. For example, Pakistan ranks 115 out of over 180 countries on the Gender Inequality Index. According to the Global Gender Gap Report, 2011 Pakistan ranks 133 out of 135 countries. Much leaves to be desired because despite the Herculean effort by lawmakers, the amendment falls short of achieving the goal of women's equality. It is important to remember, however, that constitutions merely show the way and outline broad principles. It is ordinary legislation, translated into implementable policy at the local levels that finally leads to social transformation.

## Chapter Four

# Minority Women of Pakistan: A Case of Double Jeopardy

By Peter Jacob and Jennifer Jag Jewan

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The assertion and recommendations in this chapter are based on a study titled 'Life on the margins' by Peter Jacob and Jennifer Jag Jewan for National Commission for Justice and Peace<sup>240</sup> in collaboration with UN Women - Pakistan. The study used both primary and secondary data as well as qualitative and quantitative input, it sketches the national context with regard to minorities and reviews issues of health; water, hygiene and sanitation; socio-economic conditions; education; autonomy; political participation; discriminations such as forced and mediated conversions; law related loopholes and law enforcement concerns and redress options.

The scope of data collection for survey was two provinces out of four, Punjab and Sindh Provinces where 96.29% of minorities live. It also confined itself to Hindu and Christian women, the two communities that comprise 92% of the entire minority population according to official statistics. 1000 Hindu and Christian women in 8 districts of Punjab and 18 in Sindh were interviewed by 25 women enumerators. Sample survey was spread geographically keeping North and South divisions of the provinces as well as districts having a larger concentration of Minority population.

50% respondents were from Punjab and 50% from Sindh with 53% being Christian women and 46% Hindu. 47% speak Punjabi as their mother tongue, 11% Sindhi and 11% Marwari, 8% speak Urdu and 23% speak other languages. The age range of the majority 56% of respondent women was from 25-45 years with only 1% less than 18 years and 6% were aged 60 years or more. 74% of women interviewed were married with single women at 21%, only 3 women were divorced and 3 separated. About professions 'housewives' topped the list (24%) – other professions were; teacher 10.10%, nurse 9.10%, domestic worker 7.80% and sweeper 7.20%.

### Population of Religious Minorities

The 1998 census depicted the Muslim population at 132.3 million i.e., 96.28 percent of the population; 1.60 percent or 2.11 million Hindu, 1.59 percent or 2.1 million Christian; Ahmadis 0.22 or 291,175, Scheduled caste 0.25 or 330,880 while Bahais, Sikhs, Parsis, Buddhists counted as others were .07percent of the total population. The Census data does not provide gender segregated statistics but it has province-wise population of the minority communities. In the table below, the female population of each minority community is estimated using 48% criteria<sup>241</sup>, which is the ratio of female population in Pakistan, while estimated female minority population in 2011 is calculated according to Census Organization's estimated population (177,211,561) on September 13, 2011 using ratio of increase since 1998 that is 25%.

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<sup>240</sup> [www.ncjppk.org](http://www.ncjppk.org)

<sup>241</sup> <http://www.fao.org/sd/WPdirect/WPre0111.htm>

## Religious Minorities and female population based on 1998 census

Minority Communities	Punjab	Sindh	Khyber Pakhtunkhwa	Balochistan	Total, as of 1998 & ratio of minority communities	Est. minority Female Population 1998	Est. minority Female Population 2011
Christians	1,699,843	294,885	36,668	26,462	2,057,858 42%	987,771.84	1,237,678.11
Hindus/Schedule Caste	116,410	2,280,842	5,090	39,146	2,441,488 50%	1,171,914.24	1,468,408.54
Others	48,779	23,828	14,726	6,471	93,804 2%	450,25.92	56,417.47
<b>Total</b>	<b>2,046,460</b>	<b>2,643,079</b>	<b>98,643</b>	<b>81,879</b>	<b>4,870,052</b>		<b>2,929,044.08</b>
<b>Minorities ratio at location</b>	<b>42.02%</b>	<b>54.27%</b>	<b>2.03 %</b>	<b>1.68%</b>			

## Minority women in the National Context

### Governance and policy

Women belonging to religious minorities are roughly estimated at 3 million<sup>242</sup> in Pakistan. Yet there is no minority women's representation in apex and higher judiciary, or civil and foreign services of Pakistan in 2011. There are three minority women each in the Senate, National Assembly and Provincial Assembly of Punjab.

The Ministry for Minorities Affairs was devolved to provinces under the 18th Constitutional Amendment in 2010, and Advisor to Prime Minister on Minorities, with the status of a Federal Minister and another State Minister with new portfolio of National Harmony was appointed. The Government of Pakistan portrayed an ad-hoc and non-statutory body as a National Commission for Minorities during UPR 2012 supposedly headed by the Minister for National Harmony. Therefore, there is a vacuum of unconventional remedial system for redressing human rights violations.

Committees on Minorities were set up by various governments at national and provincial levels. However, as advisory bodies, these committees were neither statutory, nor any of these competent bodies have ever looked into, for instance, the issue of reviewing Personal laws<sup>243</sup> for religious minorities.

### Socio-economic status

In Sindh and Punjab provinces, where over 90% Christians and Hindus are located<sup>244</sup>, they form a large part of labour in informal sectors, agriculture, brick kilns, domestic servitude. There are frequent reports of abuses against minority women including illegal detentions, violence, rape, low and non-payment of wages, in addition to illegal occupations and grabbing of land. Frequent reportage in media and demands by minority communities for legal and judicial safeguards against forced conversions of particularly women and minor girls has been ignored by successive governments.

80% of the minority community is poor while 40% population in Pakistan is below poverty line<sup>245</sup>. The precise number of domestic workers is unknown but the report states domestic

<sup>242</sup> Estimate based on national census 1998

<sup>243</sup> Laws governing marriage, divorce, custody of children and inheritance

<sup>244</sup> Refer to statistics table on chapter 4 of the study

<sup>245</sup> HRCP 2009 Report

workers at 6.7% of the then estimated 8 million child workers in Pakistan<sup>246</sup>. Working on public holidays, lack of sick leave, working long hours, subject to harassment, violence, sexual assault are some of the major issues of domestic workers. A sizeable portion of domestic workers belong to the minority community. An estimated 1.7 million people are working as bonded labour in the agriculture sector of the country and 1 million labourers including women and children in the 13,000 brick kilns in the country<sup>247</sup>. An HRCP report<sup>248</sup> states;

*A majority of bonded labourers in Pakistan belong to religious or low-caste minorities – Hindus in Sindh and Christians in Punjab – who are both physically and emotionally abused by the employers. Human trafficking is also part of the bonded labour system which allowed buying and selling of labourers between employers. Under this system the new employer agrees to take on the labourer's debt by paying the previous employer the amount of debt owned by the worker.*

### **Security and protection**

Social safety nets have been long ruptured by lawlessness and community structures of minorities have weakened. Socio-cultural assimilation symbolized through changing dress codes, choosing of names at birth and the diminishing presence in country's cultural life, ranging from sports to political participation, all are indicative of social pressure and enhanced vulnerability.

### **Concrete examples of threats to their security and protection abound.**

In 2006 minority women along with families were forced to migrate from Dera Bugti, Kolhu and adjoining areas due to military operation in parts of Balochistan. Since 2007, in Khyber Pakhtunkhwa Province and Federally Administered Tribal Areas, minorities have faced internal displacement largely on account of kidnapping for ransom and *Jizia*<sup>249</sup> imposed by non-state actors affiliated to Tehrik Taliban Pakistan.

There are stark examples where minority women have suffered on account of belonging to a religious minority community. The media, Human Rights Commission of Pakistan reports, Human Rights Monitor<sup>250</sup> reports and others time and again have reported of forced conversions to Islam particularly of Hindu girls/women, who are being abducted, married off to Muslim men and converted; discrimination at work places and educational institutions; rape and instances of murder are also reported. Social pressures and 'invitation' to change one's religion has almost become the norm of social interaction by the majority community with the minority community.

### **Minorities in international law**

Several international human rights instrument provide a consistent human right framework whereas CEDAW Convention provides for the protection of all women and girls including women and girls belonging to minorities against all forms of discrimination in all fields of life including the area of education.

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<sup>246</sup> HRCP 2004 p. 216

<sup>247</sup> HRCP Report 2009. p. 230

<sup>248</sup> Report 2009 p.230

<sup>249</sup> Tax on Non-Muslims in an Islamic State

<sup>250</sup> Publication of the National Commission for Justice and Peace

The UN Sub Commission offered a definition<sup>251</sup> of ‘minority’ in 1977, while the UN General Assembly’ adopted a Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The declaration in its article 1 refers to minorities as based on national or ethnic, cultural, religious and linguistic identity.

The Declaration has emphasis on four important areas of human rights of minorities namely; non-discrimination, preservation of identity, protection of minorities through measures including economic empowerment and development, and meaningful participation in decision-making bodies and processes in a State (Articles 1, 2 and 3).<sup>252</sup>

The International Convention on Elimination of all forms of Racial Discrimination or ICERD had already contributed in this normative – legal progress by defining discrimination. It stated ‘discrimination means; any distinction, exclusion, restriction or preference (given to over the others) Article 1.1.

Pakistan government has not responded to several requests for visit by Special Procedures including the Special Rapporteur on Freedom of Religion and Belief. The “Recommendations by the Special Rapporteur on Freedom of Religion or Belief”<sup>253</sup> after his visit in 1995 to Pakistan explain the problems faced by religious minorities.

### **Key findings of the survey**

The report finds the case of a multiple-jeopardy – where minority women face discrimination and exploitation on grounds of being members of religious minorities, and on account of being women, who are marginalized citizens in Pakistan. There is no official statistical data available on Christian and Hindu minority women regarding their literacy rate, employment/unemployment rate, health conditions among minority women. However, the results of the survey conducted with the above-mentioned sample size are as follows:

#### **Discrimination – at workplace, educational institutions and localities**

1. 43% of the minority women interviewed had either faced religious discrimination themselves or was experienced by a member of their family. An equal percentage did not respond to the question, indicating fears and reservations about openly discussing religious discrimination. Discrimination ranged from refusing to dine together (19%) (something that promotes relationships, binds people together, and refusals being in contrast to cultural assertions of being hospitable and friendly), to a discouraging attitude (16%). Hate speech and derogatory remarks followed next. Only 14% of respondents said that they have never experienced religious discrimination.
2. Most of the discrimination seems to be in the workplace (40%) with educational institutions coming in second (24%) and in ones’ own locality (18%). At least over a

<sup>251</sup> 1/ E/CN.4/Sub.2/384/Rev.1, para. 568, OHCHR archives -Francesco Capotorti, Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities

<sup>252</sup> Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

<sup>253</sup> E/CN.4/1996/95/Add. (Here quoted from Annex A on the *NGOs report on Human Rights situation in Pakistan. For discussion in UN Human Rights Council Under the Universal Periodic Review* (session May 2008. Referred as UPR)

quarter of the women (27%) faced problems in getting admission either at school, colleges or universities on account of their religious identity.

3. A little over half (51%) of the women either themselves or their children have/are studying *Islamiyat*. 53% respondents were uneducated themselves whereas 46% offspring being either illiterate or not responding.

The response indicates that due to limited choice the vast majority of non-Muslim students are obliged to take Islamic Studies, as the only other choice available is the subject of Ethics. It is generally understood that this option carried a disadvantage including the risk of discrimination in marking, will jeopardize student's interest.

4. Only 19% ever dare discuss such attitudes of their classmates with their teachers with more opting not to (23%) and 58% remaining silent on the question. The reason given was that they will face discrimination from teachers (9%) and are fearful of the whole matter (3%) so better ignore it. However, again the major chunk of 72% remained silent on the issue.
5. 53% respondents were uneducated (the overall literacy rate of women in Pakistan is 45%), 9% respondents held a Bachelor's Degree and 5% a Masters Degree. Only four women interviewed were doctors. 32% were matriculate and above.
6. Nearly 50% of women record a positive attitude and showing of interest by the majority community related to the wearing of religious icons by the minority women, their particular names of a religious identity, world view, rites and rituals, way of worship or of not wearing a veil.

### **Gender discrimination**

7. Within their own family structures, 66% of minority women responded that they have been brought up in an environment where they have been treated as equal to their male siblings. Other aspects where the percentage crosses 50% is in terms of encouragement to receive education (58%), holding a job/working (73%) and participation in the decision making process (66%).
8. A significant number of respondents (66%) said they are not allowed to exercise free choice in marrying, neither will they have a say/had a say in the person they married/will marry – In arranged marriages also 62% parents may/do not ask their children of their opinion/choice.

### **Overall social environment**

9. For 55% of the women, the environment is conducive as they are treated in an unbiased manner, but around 38% have felt the pinch of bias.
10. The ones who do enjoy a better environment describe the attitude of the majority community towards them as 'friendly' (42%), with 34% as 'helpful' and 15% as 'cooperative'. 70 % of the respondents felt that in times of religious disturbance they will not be supported by the majority community with 27% answering that they will stand up for them.

11. 14% of the respondents interviewed reported to have first hand knowledge of cases where minority women had been abducted with 8% knowing of forced conversion and 3% of cases of trafficking.

### **Mobility and gender crimes**

12. 56% respondent women do travel alone. Of those not travelling alone the biggest reason is due to family restrictions (15%) with 9% feeling insecure, 1% on account of sexual harassment, 1% ignorance (perhaps of the routes) and 5% never having travelled alone. However, those who do travel alone 50% do feel safe but a fair percentage of 46% do not, stating 'fear' and 'insecurity' (11% & 10%) as the main reasons. 65% did not respond, perhaps fearful of even stating a reason.
13. The women respondents who form the larger percentage of working women 76% (24% were house wives) state that they (30%) have been sexually harassed at the workplace with 27% saying they had not experienced it and 43% deciding not to respond.

### **Health care**

14. Though 41% of the women received pre-natal care, 34% did not, with 25% not responding to the question at all, whereas 22% were unmarried. The women who did not receive pre-natal care (29%) said it was not on account of family constraints which amounted to only 4% but due to economic reasons with 7% on account of lack of medical facilities available.
15. 314 infant deaths among 3050 births is 10% mortality rate which is comparatively higher than national mortality rate, which is 9% <sup>254</sup> according to World Bank reports. A majority of the deceased offspring died either at birth or within 30 days of birth - 33% at birth and 37 % within 30 days making it a total of almost 70%.
16. Average family size of the respondents is 4.02 persons whereas 60% of the respondents have 5-10 family members. Each respondent family had roughly one dependent.
17. Female children are 44% whereas the country has a higher percentage of females at over 48%.

### **Living Conditions**

As majority of the respondents belong to cities, 65% live in brick houses with 12% in semi-brick houses and 15% in mud houses. 65% of the respondents have their own houses with 27% living in rented accommodation. However, majority i.e., 62% live either in one or two bedroom houses whereas 60% of the respondents have from 5-10 family members residing in the house with a further 10% where family members are between 10 to below 13 members. Only 16% live in a three-bedroom house with 1% in a 7 bedroom house. 67% use pour flush latrines but 11% have no toilet facilities at all, 21% have either covered pit latrines, open pit latrines or use pots.

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<sup>254</sup><http://data.worldbank.org/indicator/SH.DYN.MORT/countries/PK-8S-XN>

### **Economic conditions**

29% of the respondents have a monthly family income from Rs.12,000 to below Rs.25,000 with only 14% having an income of Rs.25,000 or more. Around 20% are earning less than the stipulated government wages of Rs.7000 per month. Three quarters of the respondents are not in a position to save with only 25% being able to save. Out of these 15% are able to save on a monthly basis ranging from less than Rs.2,000 to more than Rs.20,000 (only 1%). 38% - 41% respondents or their families are under debt/loan burden. 5% of the people are unable to save anything at all.

### **Civic and political participation**

79% of the respondents hold a computerized national identity card with 74% being registered voters and 65% having exercised their voting rights. The percentage drops to a low 5% of minority women being members of a political party with a 69% answering in the negative and 26% not responding at all. Of these only 1% of respondents were office bearers, 2% representatives with 3% as members. From among these 18% are not asked to take part in the decision making process, with only 4% taking part in decision making and the larger part (69%) not responding at all. These percentages reflect that other than casting the vote, minority women from the two largest minorities in Pakistan (Hindus and Christians) lag behind when it comes to being members of political parties.

The findings reflect that while in some aspects, minority women have fared better than majority of female population in terms of gender-based development indicators, in terms of personal autonomy, they are subject to the same constraints as majority women. 66% of minority women were treated as equal to their male siblings. 58% were encouraged to seek education, 73% had families who were supportive of their jobs and 66% responded that they participated in decision making processes. Yet, a significant number of respondents (66%) said they are not allowed to exercise free choice in marrying, neither will they have a say/had a say in the person they married/will marry. More than half of the respondents had to face restrictions on their mobility. 79% of the respondents hold a computerized national identity card with 65% having exercised their voting rights. A low 5% of minority women are members of a political party and of these only 2% representatives.

### **Minority Women and Laws**

Apart from the gender insensitivity that is intrinsic to laws in Pakistan; the specific problems minority women face vis-à-vis laws in the country can be categorized as following:

- a) Pervasive religious discrimination in the law that effects minority women as well
- b) Lack of legislation on issues of matrimony, custody, inheritance and lack safeguards against forced conversion and abduction
- c) Overriding effect of legislation based on Sharia laws, especially with regard to Personal Laws

### Constitution of Pakistan – 1973

Article 36 dealing with 'Protection of Minorities' states that; the State shall safeguard the *legitimate* rights and interests of minorities including their due representation in the Federal and Provincial services. Article 20 protects freedom to profess any religion and manage religious institutions. Article 27 provides safeguards against discrimination in the services. Then there are more general provisions for equality before law (Article 25) and forbidding discrimination on any ground.

At the same time the Article 2 of the constitution states, 'Islam shall be the state religion of Pakistan'. Thus as far as religious minorities, the constitution gives rights with one hand and takes them away with the other. Besides drawing religion into overall functioning of the state, against the democratic norms and promise of the founders of Pakistan <sup>255</sup> the Constitution also treats citizens separately as Muslims and non-Muslims, then Hindus, Christians, Parsis, Sikhs and Buddhists.

The most blatant example of religious discrimination in the Constitution of Pakistan is the reservations of top offices in the State for the majority faith group. The Constitution bars non-Muslims, which includes minority women, from assuming offices of President and Prime Minister under Article 41 (2) and Article 91, respectively.

The Constitution guarantees non-discrimination and protection of minorities in Articles 18, 20, 25, 27 and 36, though it becomes meaningless due to this explicit religious discrimination by the constitution itself.

Through an extraordinary move<sup>256</sup> Article 260 – (3) (b), was added to the constitution which defines religion of the citizens or minority religious group as Christian, Hindu, Ahmadi, Parsi or Buddhist, Bahai and Scheduled Caste. The article restricts religious choice and freedom generally for all citizens but particularly enhances the scope religious discrimination in matters of the state.

Under Article 203-E (4) the persons belonging to minority faith groups cannot be a lawyer or Judge (Article 203-C) in Federal Shariat Court. While the said court has a jurisdiction to adjudicate on matters that effect their life and well being, religious minorities including women cannot appear as a witness in this parallel and discriminatory judicial system. The non-Muslim members of the Senate, National and Provincial Assemblies are also obliged to preserve Islamic Ideology accordingly to the oath in the 3<sup>rd</sup> Schedule of the Constitution. The Constitutional review culminating into 18<sup>th</sup> and 19<sup>th</sup> amendment to the Constitution in 2010-11 overlooked the issue of religious discrimination in the constitution. The 27 members Committee had neither the representation of women nor minorities.

In conclusion, the Constitution of Pakistan maintains a religious preference among citizens and mandatory religious discrimination.

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<sup>255</sup> 'Religion has nothing to do with the business of the state' Mohammad Ali Jinnah's 1st speech to the Constituent Assembly August 11, 1947

<sup>256</sup> 2<sup>nd</sup> amendment to the constitution in 1974

## **Discriminations in Criminal Justice system**

### **The Hudood Laws**

Military dictator Zia-ul-Haq promulgated five Presidential ordinances in 1979 called Hudood Ordinances. These laws dealing with offences like adultery, theft, drinking liquor were introduced in the criminal law. Hudood laws barred non-Muslim judges<sup>257</sup> from presiding over a case if a matter related to these laws was on trial, whereas these laws are applicable to all citizens. Moreover non-Muslims were made ineligible to testify as witnesses in Hudood matters. Ironically these discriminatory provisos were overlooked when amendments to Hudood laws were introduced in 2006<sup>258</sup>. This is another example where religious minorities continue to face insensitivity and neglect even when new legislation is introduced supposedly to address lacunae and gender injustices.

### **Blasphemy laws**

Pakistan appears as a country with highest number of the use and abuse of blasphemy laws in past twenty years. The reason for abuse of blasphemy laws was not only the social context or the faulty application of but rather the very drafting and the approach used in the induction of Sections 295 B, 295 C, and 298 A, B and C of the Pakistan Penal Code, during 1980-1986, supposedly to protect the respect for religion of Islam. Therefore poor and marginalized minority women like Aasia Bibi and Rimsha Masih became victim of these arbitrary and vague laws.

### **Personal Laws and Minority Women**

The civil matters related to marriages, divorce, etc. of the religious minorities are governed by the following enactments, known as Personal Laws;

*The Christian Marriage Act 1872; The Divorce Act 1869; Indian (Non-Domiciled Parties) Divorce Rules 1927; The Parsi Marriage and Divorce Act 1936; The Hindu Widow's Marriage Act 1856; The Hindu Marriage Disabilities Removal Act 1946; The Hindu Married Woman's Rights to separate Residence and Maintenance Act 1946; The Anand Marriage Act 1909; Buddhist Law 1909; and The Arya Marriage Validation Act 1937.*

### **Problems with these laws**

1. First and foremost issue with personal laws concerning Christians dealing with matrimony, inheritance and custody of children, is that they have not been reviewed in the entire history of Pakistan, despite demands. These laws are redundant and a source of human rights violations. For instance the Christian divorce Act 1869 does not provide equal footing to Christian women when it comes to dissolution of marriage as compared to Christian men. She cannot invoke law on the mere ground of adultery whereas men can. The Personal Laws of other minority communities also lack people's choice to separate or dissolve marriage.

<sup>257</sup> Offenses Against property (section 25), Offense of Zina (Adultery) (section 21), Offense of Qazf {false implication (section 18)}, Execution of the Punishment of whipping, Prohibition Order section 4 possessing a reasonable quantity of intoxicating liquor.

<sup>258</sup> Women's Protection Act, 2006

2. The overriding effect of the subsequent Islamic legislation changed the entire concept and application of the Personal Laws of the religious minorities. For instance, adultery is one of the main grounds for dissolution of a Christian marriage. The Hudood laws made it an offense punishable by stoning to death and later imprisonment for 25 years (Protection of Women Act 2006).
3. The third issue is manipulability of the personal laws of religious minorities on pretext of conversion to Islam. Numerous Christian and Hindu girls, mostly minors, have been taken away from their families after their reported abduction and conversion to Islam.
4. The legislation on Personal Laws for Hindus and Sikhs and other communities was ignored. In the absence of proper Personal Laws, marriage certification for the Hindus, their rights concerning acquiring a national identity card, and passport or change thereto were violated. A law was introduced in 2008 for Sikh community that facilitates their marriages and a mention of change in the marital status can be entered now. However there are host of issues still unaddressed due to lack of legislation.

The onus is often placed on representative of religious minorities in the Parliament, who are too small in number to introduce any legislation or build necessary consensus. The Laws and Justice Commission, the body assigned to review and modernize laws took no initiative.

## **De Facto Discrimination**

### **Conversions**

Theoretically speaking, there is no restriction on changing ones religion in Pakistan. However, right to conversion in Pakistani context means conversion to Islam. Converting to another religion from Islam is treated as apostasy, punishable by death, according to common interpretation of Islamic Sharia.

Lys Anzia focused on the threat that Talibanization presents for Christian women<sup>259</sup>. Looking at Christian communities, 80% of whom live in Punjab<sup>260</sup>, she wrote “both educated and uneducated Christian women had been asked numerous times by others if they would convert to Islam” and cites numerous instances of rape, forced marriages/abduction, low levels of literacy and little help from law enforcement agencies in cases of human rights violations.”

The National Commission for Justice & Peace (NCJP) recorded 762 non-Muslim conversions to Islam between 1999 and 2004 by monitoring the four daily newspapers printed from Lahore. However there was no conversion reported from Islam to any other religion. Nevertheless the members of minority community also convert to Islam in case of illegal marriages and marriages without the consent of family.

### **Conversion after blasphemy allegations**

- In 1994 Ms. Carol, a seven grade Christian girl was alleged of committing blasphemy in Sukkur. She converted to Islam in order to save herself from litigation and other possible sufferings.

<sup>259</sup> Lys Anzia in an article “Talibanised Pakistan poses difficulties for women” 24 May 2009, , published <http://southasia.oneworld.net/peoplespeak/talibanised-pakistan-poses-difficulties-for-women#.ULro-eTQo0E>

<sup>260</sup> Refer to Chapter 4 of the study for source

- A similar case of Ms. Lakshami from district Swabi, Khyber Pakhtoonkhwa, was reported to have converted to Islam in jail when the Chief Justice of the Peshawar High Court was visiting the jail and praised her for converting to Islam.

### **Conversions after abduction and marriage**

In a number of cases, minority women (Christian, Hindu and Sikh), including minors were abducted and converted to Islam through a Muslim marriage. Their contact with families becomes impossible on account of their conversion. Scared by the abductors, they make statement before the judge that they changed their religion out of free will. The police and the administrative machinery usually side with the culprits who happen to be from the majority community and socially and economically influential. The lower courts have generally ignored the circumstances i.e. detachment from family, crime involved, age of the so called converted therefore there is need for enabling conditions for a free consent. Following are few examples:

- Hervinder Kor, a six years old Sikh girl was kidnapped by persons belonging to Afridi Tribe from Khyber Agency in 2003. The tribe reported that the minor had converted to Islam thus she could not be returned to her parents. The government failed to do anything to recover the girl.
- A 13-years old Hindu girl Mashu was converted to Islam in Mirpurkhas, Sindh. She was renamed Mariam by her abductor cum husband. The court validated the marriage on a statement of consent, ignoring the circumstances and the motive. Police refused a meeting between the girl and parents on the pretext of conversion.
- Three Hindu sisters Reena (21), Usha (19) and Rima (17) were kidnapped in 2005 from their house in Karachi. A case was registered against the neighboring boys as principle suspect with abduction charges by the parents. Police arrested the boys but later set them free. A few days later, parents came to know that their daughters were staying in a religious seminary. The parents believed that their daughters were kidnapped and forced to convert. The Supreme Court ordered police to provide security to the girls and shift them to Edhi orphanage from the seminary. *[The issue of conversions and marriage forcibly was part of the CSO shadow report submitted to CEDAW Committee in 2007 by National Commission for Justice and Peace]*

### **Inheritance laws**

The matters related to inheritance are dealt with mainly under The Succession Act 1925, where section 3 empowers the Provincial government to exempt any race, sect or tribe from operation of the Act. The Ahmadi community in Pakistan has been exempted, but the implementation of Succession Act is by and large a personal choice. There is a court injunction which establishes equal share of Christian women to the male heirs. However there is need of an enactment that brings a balance between customary practices and equality for not just Christian but all minority women, through separate legislation.

### **Mandatory Declaration of Religion**

All citizens are required to disclose their faith in the application forms for a National Identity Card and Passport. The Pakistani passport holders have a column to show the religion of the passport holder. The practice is a source of religious discrimination in the country. In 1992 the

government tried to include a column for religion in the National Identity Card, however was forced to take back the decision after a countrywide agitation. However Musharraf government reintroduced a column for religion in Passport in 2002 on pressure from religio-political parties.

## **Aurat Foundation**

Aurat Publication and Information Service Foundation is a civil society organisation committed to work for women's empowerment and citizens' participation in governance for creating a socially just, democratic and humane society in Pakistan. Over the last 26 years, the Foundation has emerged as a major support organisation for civil society organisations working for social change at all three levels of community, intermediary and macro-decision-making. The Foundation has an outreach extending to all of Pakistan's districts. It has a network of information and advocacy focal points for community level women in rural and urban communities; and it is catalysing critical groups in society to influence policy, legislation and programmes for women's greater social, economic and political empowerment in society.



### **AURAT PUBLICATION AND INFORMATION SERVICE FOUNDATION**

ISLAMABAD (Head Office): House-12, Street-12, F-7/2, Kohsar Road Islamabad, Pakistan. Tel: 051-2608956-8, Fax: 051-2608955

LAHORE: House-35, G Block, Gullberg III, Near Firdous Market, Lahore 54000, Pakistan. Tel: 042-35858654, Fax: 042-35858653

KARACHI: D-3/1, Block-7, KDA Scheme 5, Clifton Karachi 75600, Pakistan. Tel: 021-35874718 - 35824694 - 35830195, Fax: 021-35864885

PESHAWAR: House-42 B, Sahibzada Abdul Qayyum Road, University Town, Peshawar 25000, Pakistan. Tel: 091-5704581-2, Fax: 091-5704576

QUETTA: House-17/A, Kashana Ayub, Chaman Housing Scheme, Airport Road Quetta, Pakistan. Tel: 081-2821282, Fax: 081-2820957

INFORMATION: <http://www.af.org.pk> - Mail: PO Box No. 1105, Islamabad, Pakistan