



Gap Analysis of Legislation Related to Ending Violence Against Women (EVAW)

Khyber Pakhtunkhwa



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MESSAGE FROM WOMEN PARLIAMENTARY CAUCUS, KHYBER PAKHTUNKHWA



The Women Parliamentary Caucuses are a unique and important institution in terms of supporting effective representation of women in the assemblies and as a legislative oversight body. They play a significant role for women legislators to come together across party divides on issues that affect women. Understanding that a collective stance is critical for ensuring women and girl's rights, the WPC of Khyber Pakhtunkhwa has been working with unity and solidarity to ensure women's empowerment in the province.

Members of the present WPC-KP have expressed their strong resolve to end all forms of gender-based violence and harmful practices against women and girls, such as child marriages, so that the women and girls of KP can live free from discrimination and violence. To achieve this mission, they are striving to introduce pro-women legislation, review existing laws to ensure that they are aligned with Pakistan's national and international commitments, and guide the provincial legislative agenda. As a result, they have effectively raised their voice on the floor of the assembly regarding important local and national issues that affect women and girls and endeavoured to question and hold accountable authorities when laws and rules are not adhered to.

The WPC-KP has signed an MoU with UN Women Pakistan to collaborate on our common vision of promoting the gender equality and women's empowerment agenda. This Gap Analysis Report of Laws relating to Ending Violence Against Women is a joint venture that will create a better understanding of the legislative framework which will in turn support the enactment and implementation of effective and inclusive legislation in Khyber Pakhtunkhwa. The WPC has played an important role in the scrutiny and analyses of the report and is committed to build upon this significant collaboration with UN Women. Together we will continue to undertake concerted efforts to promote equal rights and empowerment of women and girls, so that they can reach their full potential and become agents of change for progress and sustainable development.

Maliha Ali Asghar Khan
Chairperson WPC-KP

MESSAGE FROM UN WOMEN PAKISTAN

Gender-sensitive law reform is the foundation for women's access to justice. In order to advance women's rights, we need concrete action such as repeal of discriminatory legislation; CEDAW-compliant, comprehensive laws to protect women from violence; and impact assessment of laws on women's lives to propose remedial measures.



In spite of impressive strides by the federal and provincial governments to enact pro-women laws, the status of women and the trends related with gender-based violence in Pakistani society, necessitated the identification of gaps within laws that need to be addressed for promoting a gender-responsive legislative framework that ensures women's rights, including access to justice, effectively and in their entirety. Given these objectives, this Gap Analysis Report on laws related to Ending Violence Against Women presents a comprehensive analysis of the existing legislation related to ending violence against women and girls in KP, identifies gaps in its effective implementation and suggests recommendations to bring it at par with the international commitments made by Pakistan, especially under CEDAW.

I would like to commend the Women Parliamentary Caucus of Khyber Pakhtunkhwa for undertaking this analysis and advocating for gender-responsive laws and amendments, under the strong leadership of Maliha Asghar Khan. UN Women is proud to be a partner in achieving this important milestone, which comes at a historic moment in time – it has been 25 years since adoption of the Beijing Platform for Action; 10 years since the United Nations General Assembly voted unanimously to create UN Women to accelerate progress in meeting the needs of women and girls worldwide; and 5 years since the world adopted the Sustainable Development Goals. It is high time for the Generation Equality to complete the unfinished agenda of the 21st century by ensuring that all women and girls achieve their human rights, and live a life free from violence and discrimination. This report underlines the challenges and opportunities for making progress through a gender-responsive legislative framework, which has to be combined with social norms change. Together with our partners, UN Women will continue to support an enabling legal and social environment for women to claim their rights.

Aisha Mukhtar
Country Representative a.i.

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Finally, we would like to gratefully acknowledge the generous support of UK Aid for undertaking this analysis.

ABBREVIATIONS

CAT	Convention against Torture & other Cruel, Inhuman, Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CPC	Code of Civil Procedure, 1908
CRC	Convention on the Rights of the Child
Cr.PC	Code of Criminal Procedure, 1898
CRPD	Convention on the Rights of Persons with Disabilities
CSOs	Civil Society Organizations
CSW	Commission on the Status of Women
EU	European Union
EVAW	Ending Violence Against Women
EVAWG	Ending Violence Against Women and Girls
FATA	Federally Administered Tribal Areas
FIA	Federal Investigation Agency
FIR	First Information Report
GBV	Gender Based Violence
GMIS	Gender Management Information System
GSP+	General Scheme of Preference Plus
HBW	Home-Based Worker
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of all form of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICT	Islamabad Capital Territory
INGOs	International Non-Governmental Organizations
KPCSW	Khyber Pakhtunkhwa Commission on the Status of Women
LHC	Lahore High Court
LHW	Lady Health Worker

MIS	Management Information System
MoHR	Ministry of Human Rights
NR3C	National Response Center for Cyber Crimes
NCSW	National Commission on the Status of Women
NGOs	Non-Governmental Organizations
PAHWA	Protection against Harassment of Women at the Workplace Act 2010
PDHS	Pakistan Demographic and Health Survey
PECA	Prevention of Electronic Crimes Act 2016
PEMRA	Pakistan Electronic Media Regulatory Authority
PPC	Pakistan Penal Code, 1860
PSDP	Public Sector Development Program
SDGs	Sustainable Development Goals
SOPs	Standing Operating Procedures
TIC	Treaty Implementation Cells
UDHR	Universal Declaration of Human Rights
UN	United Nations
VAW	Violence Against Women
VAWG	Violence Against Women and Girls
WEF	World Economic Forum

INTRODUCTION

This document is part of a series of 5 reports on “Gap Analysis of EAW Related Laws” at the Federal and Provincial levels. These reports document lacunas in the existing legal framework and implementation process over the years. The thorough analysis that underpins these critically reflective documents also subsumes the perspectives of the provinces as well as federal public functionaries and stakeholders. It premises on an in-depth legal review followed by Technical Consultative Workshops and participatory brainstorming sessions to ensure full participation of a diverse range of stakeholders, hence it reflects the ground realities.

It is important to mention that the starting point for this analysis has been contextualising EAW laws within the framework of CEDAW and Pakistan’s other international commitments. By elaborating upon the Concluding Observations of UN Committees, the Gap Analysis also provides an indication of the progress made in harmonising domestic laws with the international rights framework.

Pakistan is a Federal Republic and the Constitution of 1973 lays out the powers and functions of both Federal and Provincial governments. The Eighteenth Constitutional Amendment in 2010 has further empowered the provinces with devolution of various ministries and departments including the Women’s Development Ministry to departments in the provinces. This has increased the scope of legislative powers of provinces on one hand and responsibility of implementation on the other.

The past decade has seen the promulgation of many new laws as well as improvements in criminal laws, mainly to tackle the issues of violence against women and girls (VAWG). Some of these reforms have repealed discriminatory provisions, while others have introduced new sections to prevent VAWG. The present study has reviewed the legislation related to ending VAWG at Federal and Provincial levels which are either enacted before or after passing of the Eighteenth Constitutional amendment but enforced as law of land at provincial levels.

This Gap Analysis study also documents the Federal level laws which are extended and implemented in the provinces. It is essential, therefore, to recognise that the laws included in [Annex 1](#) of this report also applies to the province of KP.

EXECUTIVE SUMMARY

The commitment of the Government of Khyber Pakhtunkhwa to the cause of women's rights is evidenced by the initiatives undertaken by government departments to implement Pakistan's international commitments at the provincial level. In this regard, at the institutional and policy levels, the Government of Khyber Pakhtunkhwa unveiled its Women Empowerment Policy Framework in 2017 that provides concrete recommendations for the social, economic, political and legal empowerment of women in the province. Creation of the Women Parliamentary Caucus in 2018 for Khyber Pakhtunkhwa Assembly is another major initiative that seeks to enhance women's role in participating in Parliamentary processes. The Caucus also serves as a platform for women legislators to bring women issues to the floor of the Assembly highlighting women as an important constituency group for democratic processes.

The Khyber Pakhtunkhwa Directorate of Human Rights also approved the first ever Khyber Pakhtunkhwa Human Rights Policy in 2018 which stipulates recommendations for improving access to justice for women and ending violence against women and girls. The Government of Khyber Pakhtunkhwa in this regard, has played, and continues to play, an important role for implementation and realisation of women rights. Furthermore, the Khyber Pakhtunkhwa Commission on the Status of Women is mandated, as per the Khyber Pakhtunkhwa Commission on the Status of Women Act 2016, to not only monitor implementation of women-related legislation in the province but also review laws and policies to eliminate gender-based discrimination and safeguard the interests of women and girls.

The Government of Khyber Pakhtunkhwa has also enacted various laws for the protection and promotion of women's rights in the province. These laws include the Khyber Pakhtunkhwa Enforcement of Women Ownership Rights Act 2012, the Khyber Pakhtunkhwa Maternity Benefits Act 2013, the Khyber Pakhtunkhwa Elimination of the Custom of Ghag Act 2013, the Khyber Pakhtunkhwa Payment of Wages Act 2013, the Khyber Pakhtunkhwa Lissail-e-Wal Mahroom Foundation Act 2015, the Khyber Pakhtunkhwa Protection against Harassment of Women at the Work Place (Amendment) Act 2018, the Khyber Pakhtunkhwa Marriage Functions (Prohibition of Ostentatious Displays and Wasteful Expenses) Act 2018, the Khyber Pakhtunkhwa Enforcement of Women's Property Rights Act 2019 and Succession (Khyber Pakhtunkhwa) (Amendment) Act, 2019. Furthermore, the 18th Constitutional Amendment and devolution of legislative and fiscal powers to the provinces also provides strategic avenues for federal and provincial governments to legislate and institutionalise mechanisms for enhancement of women rights. In view of these legislative developments, the Gap Analysis of Legislation Related to Ending Violence Against Women (EVAW) documents gaps existing in the legal framework and implementation process of women-related laws over the years.

Contextualising EAW laws within the international law framework of CEDAW and SDG Goal 5 has been the starting point for this analysis. By elaborating upon the Concluding Observations of UN Committees, the Gap Analysis provides an indication of the progress made in harmonising domestic laws with international rights framework. Important milestones in this regard include the promulgation by the Federal Parliament of the Prevention of Trafficking in Persons Act 2018 and Hindu Marriage Act 2017; deterrence against forced disenfranchisement of women during elections in the Election Act 2017; provincial legislation for autonomous Commissions on the Status of Women; and the landmark judgement of the Supreme Court in National Commission on the Status of Women and Others Versus Government of Pakistan declaring jirgas to be unconstitutional.

For the sake of brevity and comprehensiveness, the Gap Analysis is structured into:

1. Khyber Pakhtunkhwa EAW Laws,
2. Khyber Pakhtunkhwa Laws relating to Discrimination and Women Rights,
3. Khyber Pakhtunkhwa EAW Laws: Monitoring and Information Gaps.

Relevant Federal Laws applicable to the province of KP are also given in an annexure in order to provide a complete picture.

The approach of the Gap Analysis is premised on three gaps: normative gaps, implementation gaps and monitoring and information gaps.

Normative Gaps: A normative gap refers to absence, gap or non-existence of certain forms of gender-based violence (GBV) within the legal framework of Khyber Pakhtunkhwa. Normative gaps mean the absence or inadequacy of legal definitions attributed to persistent acts and circumstances depriving women and girls of their rights.

Implementation Gaps: An implementation gap exists when the actions and circumstances constituting GBV are contained within law but are not translated into practice. This failure may be due to lack of political will; a conscious or unconscious de-prioritisation of the issue, sometimes through diversion of funds or alleged lack of resources; lack of visibility of the issue in national discourse; or a lack of technical understanding necessary to ensure implementation.

Monitoring and Information Gaps: A monitoring gap exists where no autonomous body is mandated to ensure compliance with the law, thus depriving women and girls of the State's accountability to implement the law. An information gap exists where substantive discussions on the rights of women and girls are hindered by absence of disaggregated data and statistics.

Based on the tripartite approach above, major findings of the Gap Analysis include:

Khyber Pakhtunkhwa EAW Laws:

With regard to EAW related laws in Khyber Pakhtunkhwa, lack of a comprehensive legislation to provide medical attention, rehabilitation and reintegration of acid and burn survivors in the province is a major normative gap. Furthermore, absence of laws to curb child marriage and domestic violence also requires attention from legislators to ensure that these forms of violence against women and girls are reduced in the province. There is lack of awareness regarding the Khyber Pakhtunkhwa Elimination of the Custom of Ghag Act 2013 and the Khyber Pakhtunkhwa Marriage Functions (Prohibition of Ostentatious Displays and Wasteful Expenses) Act 2018 to curb the practice of dowry. Formulation of the Rules under the Protection against Harassment of Women at the Workplace Act 2010 is needed to address the implementation gaps in this area. Absence of a law criminalising or regulating the practice of walwar in the province is another importing finding of the gap analysis.

Khyber Pakhtunkhwa Laws related to Discrimination and Women Rights:

In relation to laws that discriminate against women and girls, absence of laws to regulate the labour rights of child domestic workers, domestic workers and home-based workers is a normative gap highlighted in the Gap Analysis. The same was found to be true for women's rights in marriages. The Gap Analysis revealed lack of comprehensive laws for Christian and Sikh marriages to be applicable in the province stipulating the rights of women within marriage according to their religious beliefs. Furthermore, amendments in the Muslim Family Laws have been proposed to enhance the rights of women within Muslim marriages as well. However, the Hindu Marriage Act 2017 applicable in the province lacks implementation. Despite the law being passed in 2017, necessary steps are yet to be taken by the Khyber Pakhtunkhwa Government to implement the law in letter and spirit.

The Khyber Pakhtunkhwa Assembly has promulgated three laws to protect and promote inheritance rights of women: The Khyber Pakhtunkhwa Enforcement of Women Ownership Rights Act 2012, The Khyber Pakhtunkhwa Enforcement of Women's Property Rights Act 2019 and Succession (Khyber Pakhtunkhwa) (Amendment) Act 2019. The laws, especially the 2019 Acts, are important milestones to promote inheritance and property rights of women in the province, however, implementation of these laws require concerted efforts by government, civil society organisations and legal fraternity to ensure that the inheritance and property rights of women in the province are not violated.

Another normative gap revealed with regard to women's rights is in relation to women with different capabilities. Currently, rights of persons with disabilities in Khyber Pakhtunkhwa are governed by the Disabled Persons (Employment and Rehabilitation) Ordinance 1981 which

fails to address the multiple discrimination suffered by women with disabilities. Therefore, the need for a comprehensive legislation for women with disabilities in Khyber Pakhtunkhwa should be addressed. Furthermore, framing and notification of Rules under the Khyber Pakhtunkhwa Maternity Benefits Act 2013 is an implementation gap, among other gaps, impeding the realisation of maternity benefits in the province. The Khyber Pakhtunkhwa Payment of Wages Act 2013 also requires serious efforts by civil society, government and labour organisations to eliminate gender pay gap in the province as enshrined in the law. It is pertinent to mention here that at present Khyber Pakhtunkhwa is the only province with a legislation addressing gender pay gap. Lastly, implementation of the Khyber Pakhtunkhwa Lissail-e-Wal Mahroom Foundation Act 2015 by government functionaries is key to support vulnerable and marginalised women in Khyber Pakhtunkhwa.

Khyber Pakhtunkhwa EAW Laws - Monitoring and Information Gaps:

The monitoring and information gaps explore existing monitoring mechanisms for implementation of women-related laws such as the Khyber Pakhtunkhwa Commission on the Status of Women followed by the development and improvement of data portals that can be utilised for evidence-based legal and policy advocacy. Existing data portals to fill information gaps include 2017 Census, Labour Force Survey, Pakistan Demographic and Health Survey, Pakistan Economic Survey, Election Commission of Pakistan etc.

The tripartite approach adopted for this Gap Analysis seeks to provide a holistic view when researching and analysing women-related laws at provincial level. The analysis not only builds upon existing literature but documents new findings and perspectives of stakeholders to critically reflect and review the evolution of women-related laws in the last decade. The Gap Analysis of Legislation Related to Ending Violence Against Women (EAW) therefore provides a point for critical reflection to document the features of law that have been successful as well as the features of law that require reform. The identified gaps also bring forth the interesting shift in changing demands of Pakistani society in general and women in particular in light of the emerging social challenges and juristic opinions.

BACKGROUND

According to the Provisional Summary Results of 6th Population and Housing Census of 2017, Pakistan has a total population of 207,774,520 with an average annual growth rate of 2.40.¹ Of the total population, 101,314,780 are female and 10,418 are transgender persons.² Also important to note is the urban-rural nexus of the female population of the country, with an overwhelming majority – 64,886,593 residing in rural areas and 36,428,187 residing in urban areas.³

In Khyber Pakhtunkhwa, the survey data showed that 30,523,371 people reside in the province with an annual growth rate of 2.89.⁴ The female population of Khyber Pakhtunkhwa is 15,054,813 while the population of transgender persons has been recorded at 913.⁵ The rural population of women has been recorded at 12,298,236 whereas the urban population is 2,756,577.⁶

With regard to gender equality, Pakistan ranked 148 out of 149 countries in the 'Global Gender Gap Index 2018' released by the World Economic Forum (WEF) in 2018.⁷ Against the backdrop of these statistics, it is critical that women, as a marginalised group in Pakistan, constitute a substantial percentage of the overall population in need of empowerment to close the gender gaps.

While various legislative interventions have sought to ameliorate the legal protections offered to women and girls in Pakistan, various forms of gender-based violence continue to violate their basic human rights. Child Marriage is still prevalent as according to UNICEF, 3% of girls in Pakistan are married by the age of 15 and 21% are married by the age of 18.⁸ Compounding the issue of child marriage is the impact of this violence on the health and bodies of the girls. According to the 2017-2018 Pakistan Demographic and Health Survey, "children born to very young mothers are at increased risk of sickness and death. Teenage mothers are more likely to experience adverse pregnancy outcomes and to be constrained in their ability to pursue educational opportunities than young women who delay childbearing."⁹ Furthermore, in the 2012-2013 survey, it was revealed that educated women are less likely to lose their first pregnancy as compared to uneducated women.¹⁰ The situation seems even bleaker when in a representative data of 13,558 ever-married women aged 15-49, 57% of the women had no education and 8% of adolescent girls aged 15-19 were already mothers or pregnant with their first child.¹¹ Within the same survey, only 29% of married women and girls aged 15-49 were employed compared to 98% of married men and boys aged 15 – 49.¹²

VAW continues to prevail in public and private spheres of girls and women. One third of ever married women and girls had experienced physical violence since the age of 15.¹³ In the absence of national level prevalence data on VAW, administrative data can inform the on the

prevailing situation as has been done by the commission on the status of women Punjab with the support of their GMIS. In addition, the deeply entrenched perceptions regarding VAW perpetuate the existing gender disparities and discrimination within society and normalize violence. In a study using a sub-sample of the above PDHS Study (2012-2013), including 3641¹⁴ currently married women, perceptions on spousal violence were recorded. Out of a survey questionnaire of six daily life situations, 562 (15%) of the women respondents justified spousal violence in three or less than three situations and 929 (26%) justified it in more than three situations.¹⁵ According to the Human Rights Commission of Pakistan's State of Human Rights Report 2017-2018: 'the Women, Peace and Security Index 2017-18 said 27 percent of women in Pakistan experienced intimate partner or domestic violence in their lifetime, and only 51 percent believed they were safe in their communities.'¹⁶

Economic dependency on male counterparts and lack of agency also play a major role in hampering the empowerment of women in Pakistan. For the year 2013, labour force participation of women and girls in Pakistan was recorded to be 21.5% as opposed to 68.9% labour force participation by men and boys.¹⁷ Only 11% of women owned a house either individually or jointly and only 4% owned land.¹⁸

Representation of women in politics and governance as well as political participation remains an issue. Women account for 21% membership of the National Assembly and 26% membership of the Khyber Pakhtunkhwa Assembly. Furthermore, the gap between men and women in voter registration still exists as the Khyber Pakhtunkhwa province has over 15 million voters, of which 43 per cent are female and 57 per cent male. Participation and representation of women in the justice sector remains a challenge with 'women comprising around 1% of the police force and 20% of the judiciary in Khyber Pakhtunkhwa'.

Against the backdrop of these statistics and indicators, Pakistan's legal context, post-devolution also needs to be outlined. Post 18th Constitutional Amendment of 2010, the Federal Parliament retains the legislative competence to legislate on matters enumerated in the Federal Legislative List. However, while major subjects have been devolved to the provinces, the federal still retains the legislative competence to concurrently legislate on matters related to '*criminal law, criminal procedure and evidence*.'¹⁹ Hence, federal laws promulgated before 2010, federal laws enumerated in the federal legislative lists, and federal laws amending the Pakistan Penal Code 1860, Code of Criminal Procedure 1898 and Qanun-e-Shahadat Order of 1984 are applicable all over Pakistan. This provides a strategic entry point to organisations to advocate for EAW law reforms at the federal level by proposing amendments in the Pakistan Penal Code 1860, Code of Criminal Procedure 1898 and Qanun-e-Shahadat 1984.

The Ministry of Human Rights developed the first ever National Action Plan on Human Rights in 2016 which stipulates concrete actions for improving access to justice for women and

ending violence against women and girls whereas the National Commission on the Status of Women synergises efforts between stakeholders to end violence against women.

Along with the Federal Government, Khyber Pakhtunkhwa played, and continues to play, an important role in the formulation and implementation of new laws as well as for realisation of women's rights. The Khyber Pakhtunkhwa Commission on the Status of Women is trying to become a vibrant institution that facilitates and monitors implementation of EAW laws like Punjab commission through a GMIS and synthesis data for evidence-based legal and policy advocacy to advance the rights of women and girls.

METHODOLOGY

The formulation of the Gap Analysis of EAW Legislation for Khyber Pakhtunkhwa has been based on a consultative and participatory approach led by UN Women Pakistan. The first draft of the Gap Analysis of EAW Legislation for Khyber Pakhtunkhwa was premised on an intense literature review of relevant statutes, secondary legislation, judicial precedents, research reports, statistics and data. The findings of the literature review were then condensed into a power-point presentation to be discussed with the relevant stakeholders.

In this regard, “Technical Consultative Workshop on EAW Legislation” was organised in Peshawar on 3rd April 2019 in which relevant stakeholders from government, civil society organisations, media, legal fraternity, researchers and academia (Annex 2) participated to put forward their opinions, perspectives and experiences regarding the current state of EAW legislation in the province. The workshop was facilitated with a participatory approach in order to allow space for the experiences of stakeholders to be recorded and made part of the final document. It provided a unique opportunity for documenting the practices that have been successful as well as practices that need revision. The critical inputs provided by the participating stakeholders have been essential to produce an analytical document that is reflective of the ground realities and context of Khyber Pakhtunkhwa.

The gaps and recommendations highlighted by all stakeholders have been analysed for the purposes of this gap analysis to produce a comprehensive document which not only substantiates and builds upon previous bodies of work but also adopts a holistic approach in identifying gaps and proposing recommendations for EAW related legislation. A multi-sectoral approach has been the foundation of this gap analysis to weave in diverse perspectives in a comprehensive manner.

PAKISTAN'S EVAW LAWS IN THE INTERNATIONAL CONTEXT

While Pakistan has made considerable strides in its legislative interventions for women and girls in the country, the goal to implement Pakistan's international commitments in letter and spirit requires concerted efforts from state institutions as well as all stakeholders.

Table 1: Rights Framework in CEDAW

Article 1	• Freedom from Discrimination
Article 2	• Obligation on State Parties to Eliminate Discrimination against Women
Article 3	• Women's Right to Exercise and Enjoyment of Human Rights and Fundamental Freedoms
Article 4	• Affirmative Actions for Women
Article 5	• Modifying Social and Cultural Patterns perpetuating Sex-Role Stereotyping and Prejudice
Article 6	• Suppressing all forms of Trafficking in Women and Exploitation of Prostitution
Article 7	• Elimination of Discrimination against Women in Political and Public Life
Article 8	• Elimination of Discrimination against Women in Opportunities to Represent their Governments
Article 9	• Equal Rights to Women with regards to Nationality
Article 10	• Equal Rights to Women with regards to Education
Article 11 (1)	• Elimination of Discrimination against Women in the Field of Employment including Equal Remuneration
Article 11 (2)	• Maternity Benefits and Rights
Article 12	• Elimination of Discrimination against Women in the Field of Health Care and Access to Health Care
Article 13	• Elimination of Discrimination against Women in other areas of Economic and Social Life
Article 14	• Obligation on State Parties to Ensure Application of the Convention to Rural Women
Article 15	• Elimination of Discriminatory Laws against Women
Article 16	• Elimination of Discrimination against Women in matters related to Marriage and Family

The United Nations Concluding Observations on the core Human Rights Treaties ratified by Pakistan present an overall theme of Pakistan's ERAW related laws in the international context. Some of the notable Concluding Observations put forward by the CEDAW Committee to the State of Pakistan include the following:

1. *“To include in its Constitution and/or in other relevant legislation provisions prohibiting all forms of direct and indirect discrimination against women, including sanctions, in line with article 1 of the Convention (and in line with article 25 of the Constitution), and repeal all discriminatory laws;*
2. *To adopt without delay pending bills, such as the Domestic Violence Bill and the Prevention and Control of Women Trafficking Bill; and design strategies to overcome obstacles to their adoption, including through the sensitization of parliamentarians and members of the Council of Islamic Ideology on women's rights;*
3. *To ensure the effective enforcement of existing legislation aimed at protecting women and at eliminating discrimination against them, such as the Prevention of Anti-Women Practices Act (2011);*
4. *To take measures to establish a unified judicial system, to eliminate all parallel legal systems and informal dispute resolution mechanisms which discriminate against women and to sensitize the public on the importance of addressing violations of women's rights through judicial remedies rather than parallel justice systems;*
5. *To provide systematic training to judges, prosecutors and lawyers on women's rights, including on the Convention, the Optional Protocol thereto and all relevant domestic legislation for women; ensure the provision of free legal aid services; implement legal literacy programmes; and increase the awareness of women and girls of all legal remedies available to them;*
6. *To ensure that the National Commission on the Status of Women has adequate human, technical and financial resources to fulfil its mandate, including by establishing provincial commissions on the status of women and by ensuring that its recommendations on legislation, policies and programmes are considered without delay by the relevant governmental body;*
7. *To ensure consistency in the allocation and implementation of quotas aimed at accelerating equality between women and men across the provinces, in particular the civil service employment quotas, and use other temporary special measures as part of a necessary strategy to achieve women's substantive equality in fields such as political participation, health, education and employment, with a focus on women belonging to minority communities;*

8. *To strengthen support services for victims of violence, such as counselling and rehabilitation services, both medical and psychological; increase the number of shelters to ensure the implementation of the standard operating procedures for the treatment of victims in all provinces;*
9. *To take appropriate measures to ensure the collection of disaggregated data on all forms of violence against women, including domestic violence, by the Gender Crime Cell;*
10. *To conduct research on the prevalence of internal and international trafficking, including its scope, extent, causes, consequences and purposes, as well as its potential link with bonded labour, domestic servitude and child marriage;*
11. *To strengthen mechanisms for the investigation, prosecution and punishment of trafficking offenders and support services for victims;*
12. *To adopt measures for the rehabilitation and social integration of victims of forced prostitution;*
13. *To establish a procedure for filing complaints in cases of forced disenfranchisement of women and adopt the draft bill submitted by the Election Commission of Pakistan, advocating re-polling where less than 10 per cent of women's votes were polled;*
14. *To adopt the Hindu Marriage Bill, the Christian Marriage (Amendment) Bill and the Christian Divorce Amendment Bill;*
15. *To revise the Dissolution of Muslim Marriages Act (1939) with the aim to repeal discriminatory provisions against women; and to amend the relevant legislation to raise the minimum age of marriage for girls to 18.”²⁰*

The salient United Nations Concluding Observations to the State of Pakistan put forward by the Human Rights Committee include the following:

1. *“Expedite the adoption of laws relating to violence against women that are under consideration at the federal and provincial levels and ensure they comply with international human rights standards;*
2. *Effectively enforce the anti-honour killings and anti-rape laws and other relevant laws criminalizing violence against women and domestic violence, and monitor their enforcement throughout the territory;*
3. *Enforce the prohibition of the application of Qisas and Diyat laws to so-called honour-related crimes and continue to regulate and supervise the tribal councils;*

4. *Encourage the reporting of violence against women, inter alia by informing women of their rights as well as the legal and other services that exist through which they can receive protection and compensation;*
5. *Ensure that cases of violence against women and domestic violence are promptly and thoroughly investigated and that perpetrators prosecuted and, if convicted, punished with penalties commensurate with the gravity of the offences;*
6. *Ensure that victims receive the necessary legal, medical, financial and psychological support and have access to effective remedies and means of protection;*
7. *Ensure that judges, prosecutors and law enforcement authorities continue to receive appropriate training that equips them to deal with cases of violence against women and domestic violence effectively and in a gender-sensitive manner; and increase the number of female police officers and specialized units dealing with such cases to an adequate level.”²¹*

The UN Committee on the Rights of the Child has reiterated the need to eliminate harmful practices against women and children as well as protect them from honour crimes.²²

While implementation on Pakistan’s international commitments is an ongoing process, the need to implement these rights within Pakistan’s domestic laws has been a constant recommendation. It is also important to note that many of these recommendations are either in the process of implementation or have already been implemented. For example, as per the recommendations of the CEDAW Committee, the Prevention and Control of Women Trafficking Act 2018 and Hindu Marriage Act 2017 have been promulgated. Furthermore, the Sindh Commission on the Status of Women has been established whereas the Balochistan Government is, at the time of this report, in the process of constituting the province’s Commission as per the Balochistan Commission on the Status of Women Act 2017.

With regard to women’s political participation, according to the Election Act 2017 *‘if the turnout of women voters is less than ten percent of the total votes polled in a constituency, the Commission may presume that the women voters have been restrained through an agreement from casting their votes and may declare, polling at one or more polling stations or election in the whole constituency, void,’²³* thereby implementing CEDAW Committee recommendation regarding political participation of women.

Another major achievement in implementation of CEDAW Committee’s recommendation is the judgment of the Supreme Court of Pakistan in National Commission on the Status of

Women and Others Versus Government of Pakistan and Others dated: 31.12.2018 in which it has been held:

“the operation of jirgas/ panchayats etc. violates Pakistan’s international commitments under the UDHR, ICCPR and CEDAW which place a responsibility on the State of Pakistan to ensure that everyone has access to courts or tribunals, are treated equally before the law and in all stages of procedure in courts and tribunals... the manner in which jirgas/ panchayats etc. function is violative of Articles 4, 8, 10-A, 25 and 175(3) of the Constitution.”²⁴

The current context of Pakistan’s ERAW legislation within international context is best summed by the European Union GSP Plus Report to the European Parliament and Council:

“There have been positive developments in strengthening the human rights framework and legislative actions on the rights of women, children, minorities and labour rights, with legislation on, inter alia, torture, juvenile justice and transgender rights in the pipeline. However, these areas, as well as the use of torture, application of the death penalty, high prevalence of child labour and freedom of expression pose serious concerns. The overall human rights situation is therefore mixed and Pakistan must step-up its efforts to ensure enforcement and implementation of legislation.”²⁵

In light of the above international framework and recommendations, this Gap Analysis builds upon the themes of women rights and protection against violence presented in the Convention on Elimination of All Forms of Discrimination against Women (Table 1) as well as Goal 5: ‘Achieve Gender Equality and Empower all Women and Girls’ of the Sustainable Development Goals (Table 2) and other relevant international human rights instruments.

Table 2: SDG Goal 5 – Gender Equality

5.1: End all forms of discrimination against all women and girls everywhere

5.2: Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation

5.3: Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation

5.4: Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate

5.5: Ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life

5.6: Ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences

5.a: Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws

5.b: Enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women

5.c: Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels

1. KHYBER PAKHTUNKHWA EVAW LAWS

The analysis of normative and implementation gaps in EVAW related legislation outlines the legal position of certain acts of gender-based violence in the current overall legal framework of Khyber Pakhtunkhwa as well as the implementation status of EVAW related legislation enacted in the province. In this regard, the below instances of gender-based violence require greater clarity and enunciation in the law in order to encapsulate the gender dynamics of these crimes.

1.1 ACID AND BURN CRIMES

While the criminal law legislation stipulating harsher punishments for acid and burn crimes was promulgated in 2011, a comprehensive special legislation to address medical attention, rehabilitation and reintegration of acid and burn survivors back into society is much needed. The comprehensive special legislation corresponding with relevant provisions of the Code of Criminal Procedure, 1898 and Pakistan Penal Code, 1860 is necessary to provide urgent medical care to acid and burn survivors; counsel and rehabilitate acid and burn survivors in light of their renewed reality; and reintegrate survivors back into society through counselling, skill development and empowerment.

Another caveat of a special comprehensive legislation would require regulation of the sale and distribution of acid and other corrosive substances in an effort to curb acid and burn violence.

Sr. No.	Gaps	Recommendations
Normative Gaps		
1.	Absence of a comprehensive special legislation to mandate medical attention, rehabilitation and reintegration of acid and burn survivors	Promulgation of a special comprehensive legislation to mandate medical attention, rehabilitation and reintegration of acid and burn survivors
2.	Absence of notified Rules under the Poisons Act 1919 to regulate the possession and sale of acid and other corrosive substances	Notification of Rules under the Poisons Act 1919 by the Government to regulate possession and sale of acid and other corrosive substances

Implementation Gap		
3.	Lack of strict punishment for unauthorized and illegal possession and sale of acid and corrosive substances	Amendment in section 6 of the Poisons Act 1919 to stipulate harsher punishments for possession and sale of acid and corrosive substances

1.2 CHILD MARRIAGE

The Child Marriage Restraint Act 1929 applicable in Khyber Pakhtunkhwa stipulates the minimum marriageable age for girls at sixteen years²⁶ contrary to eighteen years for boys. This contravenes the UN Convention on the Rights of the Child²⁷ and therefore an amendment is necessary in the current law to ensure that child marriage is criminalised as per international and constitutional standards.

Furthermore, exceptions can be introduced, like in other Muslim majority countries, to deter child marriages and ensure that the best interest of the child is protected by the state. For example, in United Arab Emirates (UAE), individuals can marry before the age of eighteen years with judicial consent.²⁸ An exception in the legal framework may make it easier for the law to pass, yet if it is strong enough, it could still act as a deterrent to prevent child marriage.

Sr. No.	Gaps	Recommendations
Normative Gaps		
1.	Absence of a law that would make marriage of a girl child below the age of 18 years illegal	Amendment in the Child Marriage Restraint Act, 1929 to re-define marriageable age as 18 years for both girls and boys
2.	Absence of limited exceptions to allow child marriages in order to deter and regulate the practice	Amendment in the Child Marriage Restraint Act, 1929 to introduce limited exceptions to allow child marriage with judicial consent

1.3 DOMESTIC VIOLENCE

Khyber Pakhtunkhwa does not have a comprehensive law to address domestic violence in the province. In Pakistan, Sindh is the only province that has criminalised domestic violence whereas the provinces of Punjab and Balochistan have provided a grievance redressal mechanism for domestic violence to curb the menace.

In Khyber Pakhtunkhwa a comprehensive law with grievance redressal mechanism, is necessary to provide relief to women complainants and victims of domestic violence.

Sr. No.	Gap	Recommendation
Normative Gap		
1.	Absence of a comprehensive law to criminalise domestic violence and provide relief to complainants of domestic violence	Drafting and promulgation of a law to provide relief to criminalise domestic violence like in Sindh Domestic Violence (Prevention and Protection) Act, 2013

1.4 GHAG

The Khyber Pakhtunkhwa Elimination of the Custom of Ghag Act 2013 defines the practice of ghag in the following words:

“a custom, usage, tradition or practice whereby a person forcibly demands or claims the hand of a woman, without her own or her parents’ or Wali’s will and free consent, by making an open declaration either by words spoken or written or by visible representation or by an imputation, innuendo, or insinuation, directly or indirectly, in a locality or before public in general that the woman shall stand engaged to him or any other particular man and that no other man shall make a marriage proposal to her or marry her, threatening her parents and other relatives to refrain from giving her hand in marriage to any other person, and shall also include obstructing the marriage of such woman in any other manner pursuant to such declaration...”²⁹

The law also stipulates a punishment from three to seven years and a fine up to five hundred thousand rupees for violation.³⁰ Furthermore, the law makes the offence of ghag a cognizable, non-bailable and non-compoundable³¹ eliminating any chances of out of court settlement.

Sr. No.	Gap	Recommendation
Implementation Gap		
1.	Lack of awareness of the new law amongst ordinary people in the province, especially the newly merged districts the former FATA	Sensitization and awareness amongst ordinary people and duty bearers on the law

1.5 SEXUAL HARASSMENT AT THE WORKPLACE

The Protection Against Harassment of Women at the Workplace Act 2010 (PAHWA) was promulgated as a special law to address complaints of sexual harassment at the work place. The law provides a comprehensive framework for protection from sexual harassment at the workplace with some unique features:

1. The legislation adopts a three-pronged definition of sexual harassment, which includes abuse of authority; creating a hostile environment; and retaliation. Acts of retaliation subsequent to refusal to comply with sexual favours also constitutes sexual harassment under the law.³² Therefore, all facets of the issue of sexual harassment are covered in the law.
2. Women as well as men can file complaints of sexual harassment under the law.³³
3. The legislation provides a framework for deliberating complaints of sexual harassment within the organisations. It provides a code of conduct to be visibly displayed in all places of employment and stipulates that a three-member committee should be set up to deal with complaints. These mechanisms should incentivise employers and organisations to internally respond to complaints of sexual harassment in order to protect their workplace reputation from outside scrutiny.³⁴
4. The law calls for the establishment of the Offices of the Ombudsman as the original and appellate forum for cases of sexual harassment. In workplace environments where huge power disparity exists between the complainants and the accused (for example where the accused is part of the management); complaints of sexual harassment can be directly submitted to the Office of the Ombudsman.³⁵
5. The last forum for cases of sexual harassment is the President at the federal level and Governor at the provincial level.³⁶ Therefore, the legislative framework in the Act provides mechanisms to deal with complaints at forums independent of the mainstream judiciary.

The Khyber Pakhtunkhwa Protection against Harassment of Women at the Work Place (Amendment) Act 2018 amends the 2010 Act with the following changes:

1. Its substitutes 'Ombudsman' with 'Ombudsperson' in the Khyber Pakhtunkhwa law;
2. It proscribes amended terms and conditions for the appointment of the Ombudsperson for Khyber Pakhtunkhwa;
3. It establishes the Governor of Khyber Pakhtunkhwa as the appellate authority for implementation of the law.

Civil Society has also played an active role in the implementation of this law. Mehergarh, previously Secretariat of AASHA (Alliance Against Sexual Harassment), has been leading the implementation of the anti-sexual harassment laws and has advised and facilitated in almost 4,000 cases of sexual harassment across Pakistan. It has also conducted scores of trainings and awareness sessions across Pakistan and facilitated hundreds of organizations (public, private and civil society) to effectively comply with the law.

With the efforts of committed civil society organisations, deterrence against sexual harassment has become part of the evolving jurisprudence of Pakistan as well. In a recent judgment by the Lahore High Court, the jurisdiction of the Federal Ombudsman has also been widened to accommodate the post 18th amendment context. In *Imran Maqbool versus Federal of Pakistan W.P No. 71556 of 2017 dated 28-09-2018*, the Honourable Justice Ayesha A. Malik held that:

*'Under the circumstances, we hold that if the employer or organisation and its workplace falls strictly within the territorial boundaries of the Provincial Ombudsman, then jurisdiction vests with the Provincial Ombudsman and where the employer or organisation transcends provincial boundaries such as in this case then jurisdiction vests with the Federal Ombudsman. To clarify we add that for reasons stated herein we disagree with the findings in the Salim Javed case that the Federal Ombudsman jurisdiction is limited to the federal capital area as the Federal Ombudsman is competent to hear complaints related to trans-provincial organisations, institutions, employers and workplace.'*³⁷

Therefore, the landmark judgment of the Lahore High Court has clearly stipulated the jurisdictional boundaries of the Federal Ombudsman which includes trans-provincial organisations other than organisations operating in the federal capital.

Furthermore, Justice Jawad Hassan of the Lahore High Court in *Asif Saleem versus Chairman BOG University of Lahore, Writ Petition No: 28791 of 2019*, clarified that the applicability of the law is not confined to employer/ employee relationship in the following words:

"Moreover, this Act is not confined only to the relationship of an employer and employee; but it extends to all acts of sexual harassment committed by employer or employee with any women (at the workplace) by misusing/ exploiting his/ her official position/ capacity. As in the instant case, the Petitioner/ teacher/ employee used his official position to sexually exploit his female student. The intention of the legislature for enacting the Act to protect all employees from being harassed or exploited during employment which can be at the workplace or any environment as specified in their terms and conditions of the employment.

... The preamble of the Act clearly states that it has been made for the protection against harassment of women at the workplace. It also reflects that the Constitution recognizes the fundamental right of citizens to dignity of person. It is the right of every woman in Pakistan to be recognized and has equal protection of law.”

Sr. No.	Gaps	Recommendations
Normative Gap		
1.	Complainant is defined in PAHWA to include both men and women which is restrictive as it does not include transgender or inter-sex persons	Amendment in section 2(e) of PAHWA to delete ‘man’ and ‘woman’ and replace the terms with ‘persons’ to include all genders
Implementation Gaps		
2.	Absence of Rules under the law to regulate operating procedures at the Ombudsperson’s Office	Formulation and notification of Rules under section 13 of PAHWA to regulate operating procedures at the Ombudsperson’s Office
3.	Inadequate monitoring and compliance mechanism under section 11(3) of PAHWA	Amendment in section 11(3) of PAHWA to grant jurisdiction to Ombudsperson to ensure compliance with the law

1.6 WALWAR

Walwar is a practice whereby money is given to the bride’s family for family functions. Women’s rights defenders and rights activists consider it as a bride price³⁸. Over the time walwar has degenerated into an anti-women practice that attaches a price to a bride and exacerbates not only gender disparities but also socio-economic differences which already exist between families.³⁹ The opinion was further discussed during the Technical Consultative Workshop in Peshawar where it was held that to regulate the practice a law must be promulgated.

Sr. No.	Gap	Recommendation
Normative Gap		
1.	Absence of a law to regulate the practice of walwar	Drafting, consultation and promulgation of a law to regulate the practice of walwar

1.7 DOWRY

The Khyber Pakhtunkhwa Marriage Functions (Prohibition of Ostentatious Displays and Wasteful Expenses) Act 2018 prohibits and criminalises demands of dowry. The law also imposes a penalty up to three hundred thousand rupees and two months imprisonment in case of violation.⁴⁰ The law also regulates wedding functions to prohibit the wasteful display of wealth its promotion in Khyber Pakhtunkhwa.

Sr. No.	Gap	Recommendation
Implementation Gap		
1.	Lack of awareness of the new law amongst ordinary people	Mass awareness campaigns to inform people in the province about this law and training of relevant agencies for implementation

2. KHYBER PAKHTUNKHWA LAWS RELATED TO DISCRIMINATION & WOMEN'S RIGHTS

The analysis of Khyber Pakhtunkhwa laws related to discrimination and women rights outlines the legal position of certain women rights in the current overall federal legal framework of the province. In this regard, normative and implementation legal gaps related to women's rights have been explored in detail below.

2.1 CHILD DOMESTIC WORKERS

The Khyber Pakhtunkhwa Prohibition of Employment of Children Act 2015 bars employment of children below the age of fourteen years.⁴¹ But the act allows non-hazardous work for children from the age of 14 years to 18 years.⁴² This provision allows girls and boys to be employed in domestic work between the ages of 14 and 18 years. However, it has been argued that involving children below the age of eighteen years in domestic work, even for light work, is hazardous and that domestic work should be classified as hazardous work for children. This is because when a child is employed within the private domestic sphere, it increases his or her vulnerability and susceptibility to violence. Replicating the gender norms of larger society, more girls are employed in domestic work as compared to boys.⁴³ Furthermore, based on the logistical arrangements provided to child domestic workers, their susceptibility to sexual violence, especially for girls, is also increased.⁴⁴ It is also very difficult to monitor domestic settings to establish potential exploitation, maltreatment, neglect and violence against a child domestic worker. Furthermore, while the Khyber Pakhtunkhwa Prohibition of Employment of Children Act 2015 requires occupiers of establishments to send notice to Labour Inspector with details of adolescents employed in the establishment⁴⁵ and to maintain a register logging the number of hours and nature of work of the adolescents employed;⁴⁶ the same protection and regulation is not applied to child domestic workers.

Sr. No.	Gaps	Recommendations
Normative Gap		
1.	Absence of a law that prohibits involvement of children below the age of eighteen years in domestic work	Amendment in the Khyber Pakhtunkhwa Employment of Children Act 2015 to prohibit involvement of children below the age of eighteen years in domestic work Notification under sections 3 and 4 of the Khyber Pakhtunkhwa Employment of Children

		Act 2015 to declare domestic work as 'hazardous' for children
Implementation Gaps		
2.	Absence of Rules under Khyber Pakhtunkhwa Prohibition of Employment of Children Act 2015 to carry out the purposes of the Act	Drafting and notification of Rules to carry out the purposes of the Act as per section 19 of the Act of 2015
3.	Absence of Committee on Child Labour as per the Khyber Pakhtunkhwa Prohibition of Employment of Children Act 2015	Notification and constitution of the Committee on Child Labour as per section 5 of the Khyber Pakhtunkhwa Prohibition of Employment of Children Act 2015

2.2 HOME-BASED WORKERS AND DOMESTIC WORKERS

Currently, there is no law in Khyber Pakhtunkhwa to govern the rights of home-based women workers as well as domestic workers who do not fall within the definition of labour, as they are part of the informal economy.

In this regard, firstly, the definition of labour or worker needs to be expanded to include these workers. Secondly, institutions need to be set up to register home based workers and extend the rights provided in labour laws to include Employees Old Age Benefits, Workers Welfare Fund, Social Security to home based workers as well. In this regard, the following gaps have been highlighted:

Sr. No.	Gaps	Recommendations
Normative Gaps		
1.	Absence of a comprehensive law to recognise and govern the labour rights of home based workers	Drafting and promulgation of a labour law for home based workers
2.	Absence of a comprehensive law to recognise and govern the labour rights of domestic workers	Drafting and promulgation of a labour law for domestic workers

2.3 MUSLIM MARRIAGE LAWS

The Muslim Family Law Ordinance, 1961 and Family Courts Act, 1964 grants substantial rights to women in Khyber Pakhtunkhwa; however, the same needs to be amended in order to

further enhance, protect and promote the rights of women within family laws. In this regard, the following gaps have been highlighted:

Sr. No.	Gaps	Recommendations
Normative Gaps		
1.	Inadequate law to deter and regulate polygamy	Amendment in section 6 of the Muslim Family Law Ordinance, 1961 to stipulate harsher punishments for polygamy without due process
2.	Inadequate law to mandate registration of marriages	Amendment in section 5 of the Muslim Family Law Ordinance 1961, stipulating harsher punishments to mandate registration of marriages
3.	Lack of law protecting a woman's entitlement to dower if she seeks khula	Amendment in Family Courts Act, 1964 to grant women the right to retain full or partial dower in case of khula

2.4 CHRISTIAN MARRIAGE LAWS

Christian marriages are governed by the Christian Marriage Act 1872 and Divorce Act 1869; these laws govern the marriage rights of 1.59% of the population in the country.⁴⁷ From the perspective of women's rights, the laws reveal major loopholes and gaps with regard to equality in marriage for men and women.

The law defines minor as 'a person who has not completed the age of twenty-one years,'⁴⁸ while also outlining the process of marrying a minor under the law, which can be done with the consent of parents or guardian.⁴⁹ This proves to be problematic as any girl below the age of twenty-one considered a minor can be married off with the consent of her parents.

Furthermore, the Divorce Act 1869 provides limited grounds for dissolution of marriage between the parties. In the case of husbands, the grounds for dissolution of marriage include adultery on the part of wife.⁵⁰ Whereas in case of the wife, the grounds for dissolution of marriage include conversion of husband to another religion, incestuous adultery, bigamy, adultery, rape, sodomy, bestiality, adultery coupled with cruelty and adultery coupled with desertion.⁵¹ Furthermore, the law requires the husband seeking dissolution of marriage to make the alleged adulterer a co-respondent to the petition subject to only very limited exceptions.⁵²

The recent development in Ameen Masih versus Federation of Pakistan & Others, Writ Petition No. 623/2016 is pertinent to note, where the petitioner, a Christian citizen of Pakistan sought to divorce his wife due to irretrievable breakdown of his marriage rather, than adultery. The Petitioner argued that in the repealed section 7 of the Divorce Act 1869, additional grounds were available to him, but the section was repealed by Federal Laws (Revision & Declaration) Ordinance, 1981 during the time of General Zia-ul-Haq. The petitioner prayed that the provision of Federal Laws (Revision & Declaration) Ordinance, 1981 be declared unconstitutional as it violated his fundamental rights under the Constitution of Pakistan. In this regard, Chief Justice Syed Mansoor Ali Shah held:

“...Item 7(2) of the Second Schedule to Federal Laws (Revision & Declaration) Ordinance, 1981 (XXVII of 1981) promulgated on 08-7-1981 is declared to be unconstitutional and illegal being in violation of the minority rights guaranteed under the constitution to the petitioner and the Christians in Pakistan. As a result, section 7 of Divorce Act, 1869 is restored, in the manner it stood in the year 1981, making available to the Christians of Pakistan the relief based on the principles and rules of divorce under UK Matrimonial Causes Act, 1973.

“Restored section 7 is to be read harmoniously with Section 10 of the Act. This means that grounds of divorce on the basis of adultery are available and anyone who wishes to invoke them is free to do so, but for those who wish to seek divorce on the ground of irretrievable breakdown of marriage, they can rely on section 7 of the Act and avail of the additional grounds of divorce available under the Matrimonial Causes Act, 1973 (UK), which will be available to the Christians in Pakistan and will be enforceable in Pakistan.”

The judgment of the Lahore High Court is a landmark judgment enhancing marriage rights of the Christian community. However, there are still gaps in the marriage laws of the Christian community, as highlighted below.

Sr. No.	Gaps	Recommendations
Normative Gaps		
1.	Absence of a clear definition of minor and marriageable age in the law	Amendment in the Christian Marriage Act 1872 to properly define a minor and marriageable age
2.	Absence of a contemporary law that would simplify dissolution	Amendment in the Divorce Act 1869 to allow Christian couples, both husband and wife, to petition for dissolution of marriage in a manner that does not place on either party the requirement of a tedious

	of marriage processes for Christians	list of allegations and an arduous burden of proof against the other party
3.	Absence of a statutory provision to restore section 7 of the Divorce Act 1869	Statutory amendment to restore section 7 of the Divorce Act 1869 to give force to the Lahore High Court Judgement

2.5 SIKH MARRIAGE LAW

Unlike the global Sikh community, Pakistan's Sikh population is predominantly Pashtun, dwelling in the Khyber Pakhtunkhwa province. The Anand Marriage Act, 1909 is applicable in the province to validate Sikh marriages.⁵³ However, it has been highlighted over the time that the current law fails to encapsulate the needs of the Sikh community to address and regulate their marriage rights. Therefore, a comprehensive law to address the marriage rights of Sikh community is required to be promulgated just as the Punjab Anand Karaj Act 2018, has been enacted.

Sr. No.	Gap	Recommendation
Normative Gap		
1.	Absence of a law to comprehensively confer and regulate the marriage rights of Sikh community	Drafting, consultation and promulgation of a law to comprehensively confer and regulate the marriage rights of Sikh community

2.6 HINDU MARRIAGE LAW

The Hindu Marriage Act 2017 was promulgated under Article 144 of the Constitution of Pakistan and is applicable in Islamabad Capital Territory, Punjab, Balochistan and Khyber Pakhtunkhwa.⁵⁴ The provincial assemblies of Balochistan, Khyber Pakhtunkhwa and Punjab passed resolutions under Article 144 of the Constitution to confer power on the Federal Parliament to promulgate a law for Hindu marriages to be applicable in the said provinces.⁵⁵ The salient features of the law include the following:

1. The law puts forward the following conditions to solemnize a Hindu marriage:
 - i. At the time of marriage, the parties are of sound mind and capable of giving a valid consent;
 - ii. Both the parties are not below the age of 18 years;

- iii. The parties to the marriage are not within the degrees of prohibited relationship; and;
 - iv. Neither party has a spouse living at the time of marriage;
 - v. Provided that condition in above clause shall not apply where a living female spouse cannot conceive a child and medically declared to be so.
2. The law requires federal and provincial governments to appoint Marriage Registrars for registration of Hindu marriages.
 3. The law stipulates provisions for judicial separation, termination of Hindu marriage, void marriage and voidable marriage upon petition to the court.
 4. The law allows Hindu widows to remarry.
 5. The law also stipulates punishment for bigamy as per sections 494 and 495 of the Pakistan Penal Code 1860.

While the law has been promulgated in 2017, significant gaps exist with regard to implementation of the law.

Sr. No.	Gaps	Recommendations
Implementation Gaps		
1.	Lack of Marriage Registrars for Hindu marriages for the convenience of Hindus residing in Khyber Pakhtunkhwa	Appointment of Marriage Registrars for Hindu Marriages as per section 7 of the Act of 2017
2.	Absence of Rules to carry out the purposes of the Act	Drafting and notification of Rules to carry out the purposes of the Act as per section 25 of the Act of 2017
3.	Lack of sensitization of law enforcement agencies, legal fraternity, judiciary and local government representatives regarding the family rights of Hindu population as per the Act of 2017	Sensitization and awareness of law enforcement agencies, legal fraternity, judiciary and local government representatives regarding the family rights of Hindu population as per the Act of 2017

2.7 DEPRIVING WOMEN OF INHERITANCE

Currently, three laws promulgated by the Khyber Pakhtunkhwa Assembly are applicable in the province to promote and protect inheritance rights of women, especially with regards to property rights:

1. Khyber Pakhtunkhwa Enforcement of Women Ownership Rights Act, 2012
2. Khyber Pakhtunkhwa Enforcement of Women’s Property Rights Act, 2019
3. Succession (Khyber Pakhtunkhwa) (Amendment) Act, 2019

The implementation gaps with regards to the laws are analysed and discussed below.

The Khyber Pakhtunkhwa Enforcement of Women Ownership Rights Act, 2012 seeks to guarantee the property rights of women in the province of Khyber Pakhtunkhwa. The law highlights the following salient features:

1. The law reiterates the ‘ownership’ rights of women in the province to include rights in immovable and movable property devolved upon or vested in women ‘by way of inheritance, gift, purchase, mehr or acquired by her by way of any other legal and Shari means;’⁵⁶
2. The law stipulates that no person shall abridge, curtail, violate or obstruct the right of ownership of property of a woman;⁵⁷ and stipulates a punishment of imprisonment not exceeding five years and a fine not exceeding fifty thousand rupees in case of violation of this right;⁵⁸
3. The law stipulates a time frame of six months in deciding cases under the law and a time frame of one month to implement the law through local police under supervision of the Court;⁵⁹
4. The law also stipulates a provision for punishing abetment of this crime (maximum imprisonment of five years and maximum fine of fifty thousand rupees)⁶⁰ while also stating that officers failing to implement the Court decree in favour of women’s ownership of property would be punished as abettors to the crime as well.⁶¹

Sr. No.	Gap	Recommendation
Implementation Gaps		
1.	Lack of awareness of the new law amongst ordinary people in the	Sensitization and awareness amongst ordinary people and the duty bearers on the law

	province, especially the newly merged districts; the former FATA	
2.	Lack of a strict punishment to serve as a deterrent to the crime	Amendment in section 4 of the Act of 2012 to stipulate fine amounting to a percentage of the property in question as punishment

The Khyber Pakhtunkhwa Assembly recently promulgated the Khyber Pakhtunkhwa Enforcement of Women’s Property Rights Act 2019, with the following salient features:

1. The Act gives power to the Ombudsperson established under section 7 of the Protection against Harassment of Women at the Workplace Act 2010 to entertain complaints filed by women with regards to their property rights;⁶²
2. The Act confers powers on the Ombudsperson to initiate action on its own motion or through a complaint filed by any person or non-governmental organisation to protect the property rights of women;⁶³
3. The Ombudsperson has powers to refer the matter to the concerned Deputy Commissioner for summary enquiry into any allegations of deprivation of women’s property rights in the province;⁶⁴
4. The Act confers widespread powers to the Ombudsperson to direct the Deputy Commissioner or a state functionary or any private persons to take steps to restore or confer possession or title of the property to the complainant;⁶⁵
5. In complaints where the matter requires intricate adjudication or evidence, the Ombudsperson has powers to formulate a reference along with the reports and materials collected and submit the same to the Civil Court of competent jurisdiction;⁶⁶
6. The Act provides jurisdiction to the Ombudsperson to entertain complaints regarding women’s property ownership even if the matter is pending adjudication before another court. The Act also confers powers on the Ombudsperson to recommend termination of proceedings or putting the proceedings in abeyance unconditionally for the Ombudsperson to be permitted by the Court to conduct proceedings under this Act;⁶⁷
7. Any person aggrieved of the decision of the Ombudsperson can file an Appeal within 45 days of the Order to the Peshawar High Court.⁶⁸

While the legislation is a landmark initiative to vest powers to ensure women’s property rights with the Ombudsperson, its implementation can be strengthened keeping in mind the following gaps:

Sr. No.	Gaps	Recommendations
Implementation Gaps		
1.	Absence of Rules under Khyber Pakhtunkhwa Enforcement of Women's Property Rights Act 2019 to elaborate functions of the law	Drafting and notification of Rules under section 13 of the Khyber Pakhtunkhwa Enforcement of Women's Property Rights Act 2019
2.	Lack of awareness of the new law amongst public functionaries and judiciary	Sensitization of judiciary and legal fraternity regarding provisions of the new law
3.	Lack of awareness of the new law amongst ordinary people	Mass awareness campaigns to inform people in the province about this law

The amendment in the Succession Act 1925, promulgated by the Khyber Pakhtunkhwa Assembly grants powers to the National Database Registration Authority (NADRA) to issue letters of administration and succession certificate to the legal heirs of a deceased in accordance with the Family Registration Certificate maintained by NADRA.⁶⁹ The amendment is another landmark in the province of Khyber Pakhtunkhwa to ensure inheritance rights of women in the province.

Sr. No.	Gaps	Recommendations
Implementation Gaps		
1.	Lack of awareness of the new law amongst public functionaries	Sensitization of public functionaries and legal fraternity regarding provisions of the new law
2.	Lack of awareness of the new law amongst ordinary people	Mass awareness campaigns to inform people in the province about this law

2.8 WOMEN WITH DIFFERENT CAPABILITIES

The Disabled Persons (Employment and Rehabilitation) Ordinance, 1981 is an inadequate law to address the multitude issues faced by persons with different capabilities in general and women with different capabilities in particular. The Ordinance of 1981 stipulates an anachronistic and restrictive definition of 'disabled persons'⁷⁰ and stipulates the establishment of National and Provincial Councils for Rehabilitation of Disabled Persons tasked with registration,⁷¹ employment⁷² and policy making⁷³ for persons with different

capabilities. The law is inherently gender-blind and fails to address the issues faced by women with different capabilities.

Sr. No.	Gaps	Recommendations
Normative Gaps		
1.	Absence of a comprehensive law to translate the rights encapsulated in the Convention on the Rights of Persons with Disabilities	Drafting and promulgation of a law for mainstreaming of persons with different capabilities
2.	Absence of legal provisions to address the multiple levels of discrimination and special needs of women with different capabilities ⁷⁴	Drafting and promulgation of legal provisions or amendments to mainstream women with different capabilities

2.9 MATERNITY BENEFITS

The Khyber Pakhtunkhwa Maternity Benefits Act 2013 has been amended by the Khyber Pakhtunkhwa Maternity Benefits (Amendment) Act 2015. The law prohibits employers from engaging women in employment for six weeks following the date she delivers her child. The law also prohibits employers from asking women to carry out any work of an arduous nature six weeks before the date of delivery and six weeks after the date of delivery⁷⁵ The law therefore grants considerable rights to working women who seek maternity leave or benefits.

Sr. No.	Gaps	Recommendations
Normative Gaps		
1.	Inadequate maternity leave for expecting mothers (For example, Sindh Maternity Act 2018 stipulates 16 weeks)	Amendment in section 3 of the Khyber Pakhtunkhwa Maternity Benefits Act, 2013 to grant maternity leave of 16 weeks
2.	Absence of legal provisions to address pregnancy related illnesses and complications	Amendment in the Khyber Pakhtunkhwa Maternity Benefits Act, 2013 to address pregnancy related illnesses and complications for women workers
3.	Absence of legal provisions to address day-care and nursing breaks for women workers	Amendment in the Khyber Pakhtunkhwa Maternity Benefits Act, 2013 to address day-care and nursing breaks for women workers

Implementation Gap		
4.	Absence of Rules to facilitate implementation of the law	Framing and notification of Rules under section 15 of the Khyber Pakhtunkhwa Maternity Benefits Act, 2013 to elaborate mechanisms for implementation of the law

2.10 GENDER PAY GAP

The Khyber Pakhtunkhwa Payment of Wages Act 2013 is applicable to industrial and commercial establishments operating within the territorial jurisdiction of the province. The law protects women against discrimination through section 26 in the following terms:

“Protection against discrimination.---There shall be no discrimination on the basis of gender, religion, sect, colour, cast, creed, ethnic back ground in the wages and other benefits for work of equal value.”

The law, therefore, in effect, provides protection to women employees from discrimination in wages and seeks to curb gender pay gap in the province. Furthermore, section 20 of the Act of 2013 states ‘whoever contravenes any of the provisions of this Act, shall be punishable with a fine which may extend to ten thousand rupees or simple imprisonment for a term which may extend to one month or both’. However, awareness of the law to use it for countering gender pay gap in the province is still lacking.

Sr. No.	Gap	Recommendation
Implementation Gap		
1.	Lack of awareness of the new law amongst ordinary people in the province	Sensitization and awareness amongst ordinary people and duty bearers on the law

2.11 SOCIAL PROTECTION FOR VULNERABLE WOMEN

The Khyber Pakhtunkhwa Lissail-e-Wal Mahroom Foundation Act 2015, is a law that constitutes a foundation for the welfare of marginalised segments of society including, but not limited to, the persons with disabilities and widows who cannot meet their sustenance requirements.⁷⁶ The law specifies functions such as enhancing availability of facilities related to health, education and social welfare to specified groups through synergizing with private charities and welfare organisations; and encouraging and supporting individuals philanthropist and institutions for increased public-private partnerships.⁷⁷

Sr. No.	Gap	Recommendation
Implementation Gap		
1.	Lack of awareness of the new law amongst ordinary people in the province	Sensitization and awareness amongst ordinary people regarding the law

3. KHYBER PAKHTUNKHWA EVAW LAWS: MONITORING & INFORMATION GAPS

3.1 MONITORING GAPS

The Khyber Pakhtunkhwa Commission on the Status of Women has been re-constituted as per the Khyber Pakhtunkhwa Commission on the Status of Women Act 2016. The KPCSW is the provincial semi-governmental body in Khyber Pakhtunkhwa which acts as a bridge between civil society and the Government of Khyber Pakhtunkhwa. The Commission operates as a monitoring body with one of its core functions to ‘examine the policy, programs and other measures taken by the government to materialize gender equality, empowerment of women and their representation and political participation, assess implementation and make suitable recommendations to the concerned authorities’⁷⁸ as well as ‘monitor the mechanism and institutional procedure for redressal of violation of women’s rights.’⁷⁹

Therefore, the Khyber Pakhtunkhwa Commission on the Status of Women can work vociferously to implement the various EVAW legislation promulgated by the Government of Khyber Pakhtunkhwa in order to realise the rights of women and girls as enshrined in the constitution of Pakistan and in line with the international treaties ratified by Pakistan.

For data collection and analysis, the commission or the relevant government departments can use the GMIS established in Punjab as a model with the standardized indicators developed by the NCSW to establish a monitoring system in the province.

3.2 INFORMATION GAPS

Pakistan conducted its census after a gap of nineteen years which has also filled in wide gaps with regard to information. However, the census form was argued to be non-inclusive and various religions, genders and ethnicities could not be disaggregated in the census form data. While the provisional result has been released, objections have been raised on the veracity of the data.

However, certain governmental data portals exist which can be utilized to fill information gaps:

2. Provisional Summary of 2017 Census;⁸⁰
3. Labour Force Survey;⁸¹
4. Pakistan Demographic and Health Survey;⁸²
5. Pakistan Economic Survey;⁸³

6. Election Commission of Pakistan;⁸⁴
7. Human Rights Commission of Pakistan;⁸⁵
8. Multiple Indicator Cluster Surveys, Khyber Pakhtunkhwa;⁸⁶
9. Khyber Pakhtunkhwa Education Management Information System;⁸⁷
10. Bureau of Statistics, Government of Khyber Pakhtunkhwa⁸⁸

While the data portals listed above provide substantial data, all of them do not necessarily publish disaggregated data based on gender, age, ethnicity, religious affiliation, etc., for analysis. For example, the Khyber Pakhtunkhwa Police Crime Statistics do not extrapolate the number of murders committed against men, women or children, it only gives data regarding the number of murders committed. A more robust monitoring and information system is required to fulfil this gap which can be instituted with a mechanism like Punjab Gender Parity Report which analyses data from various governmental departments and functionaries.

CONCLUSION

The current gap analysis has presented a tripartite approach to analyse gaps at normative, implementation, monitoring and information levels. The purpose of the exercise has been to examine the issue of gender-based violence within the legal framework of Khyber Pakhtunkhwa. Furthermore, the Gap Analysis has been structured to analyse both laws related to Ending Violence against Women (EVAW) and some pertinent laws related to Discrimination and Women Rights followed by the monitoring and information gaps within these laws.

Analysis regarding normative gaps have included forms of gender-based violence which have not been criminalised or regulated in our legal system with particular attention to the definitions and interpretations apportioned by superior courts. Forms of GBV that have been inadequately defined in the law as well as discriminatory legal provisions depriving women and girls from the true enjoyment of their rights comprise a significant part of this analysis. The discussions and narratives in light of the evolving jurisprudence have been condensed into specific and concrete gaps followed by recommendations for making the legal system of Pakistan more responsive to the needs and rights of women by infusing a gender perspective in their access to justice.

For the implementation gaps regarding various EVAW related legislation, data has been sought from governmental and non-governmental partners working on the specific laws to highlight the extent of implementation as well as the challenges being faced. By referencing researches and obtaining information from key experts, gaps have been highlighted by the experts and organisations who are working on the implementation of EVAW laws and facilitating government agencies through the provision of technical and legal expertise. The aim has been to consolidate all available data to produce this comprehensive analysis. The Technical Consultative Workshop on EVAW Laws organised in Peshawar with a participatory and facilitative approach further enriched this document with insights into the ground realities and status of implementation. Separate consultations and meetings with key stakeholders and experts also provided valuable inputs into the finalization of this report. Subsuming these voices from Khyber Pakhtunkhwa in this analysis is a distinctive feature of the report, as compared to the various other analyses and researches produced on this topic.

The monitoring and information gaps highlight the mechanisms available to ensure implementation by a semi-governmental body like the Khyber Pakhtunkhwa Commission on the Status of Women. The statutory functions of the Commission to monitor and facilitate implementation have been highlighted as well as its function to harmonise Pakistan's domestic law with international commitments. The information gaps presented in the report hinge on the nineteen years lapse since the previous census and the gaping hole in

information left in this regard. Credible governmental and non-governmental data analysing portals and statistics have also been mapped to feed into the next phase of the gap analysis: formulation of indicators for monitoring implementation of EAW laws.

Based on the tripartite approach above, major recommendations of the Gap Analysis include:

Khyber Pakhtunkhwa EAW Laws:

1. Enactment of a comprehensive legislation to provide medical attention, rehabilitation and reintegration of acid and burn survivors in the province;
2. Amendment in the Child Marriage Restraint Act 1929 to either raise the marriageable age to 18 years or require judicial consent for marriages where either party to the marriage is below the age of 18 years but above the age of 16 years;
3. Enactment of a comprehensive law to provide grievance-redressal and protection mechanisms for victims of domestic violence;
4. Formulation and notification of Rules under the Protection against Harassment of Women at the Workplace Act 2010;
5. Enactment of a law to regulate the practice of walwar in the province;
6. Awareness raising regarding the Khyber Pakhtunkhwa Elimination of the Custom of Ghag Act 2013 and Khyber Pakhtunkhwa Marriage Functions (Prohibition of Ostentatious Displays and Wasteful Expenses) Act 2018 to curb practices of ghag and dowry.

Khyber Pakhtunkhwa Laws related to Discrimination and Women Rights:

1. Amendment in the Khyber Pakhtunkhwa Employment of Children Act 2015 to prohibit involvement of children below the age of 18 years in domestic work and notification under sections 3 and 4 of the Khyber Pakhtunkhwa Employment of Children Act 2015 to declare domestic work as 'hazardous' for children;
2. Enactment of laws to regulate labour rights of domestic workers and home-based workers;
3. Amendments in Muslim Family Law Ordinance 1961 and Family Courts Act 1964 to enhance women rights in family law;
4. Amendment in the Christian Marriage Act 1872 to properly define a minor and marriageable age and Divorce Act 1869 to allow Christian couples to divorce with dignity;
5. Enactment of a law to confer and regulate the marriage rights of Sikh community;

6. Drafting and notification of Rules as per the Hindu Marriage Act 2017;
7. Sensitisation and awareness regarding the Khyber Pakhtunkhwa Enforcement of Women Ownership Rights Act 2012, Khyber Pakhtunkhwa Enforcement of Women's Property Rights Act 2019 and Succession (Khyber Pakhtunkhwa) (Amendment) Act 2019;
8. Enactment of a law to promote and protect the rights of women with disabilities;
9. Drafting and notification of Rules as per Khyber Pakhtunkhwa Maternity Benefits Act, 2013 to elaborate mechanisms for implementation of the law;
10. Awareness raising regarding the Khyber Pakhtunkhwa Payment of Wages Act 2013 to curb gender pay gap;
11. Awareness raising regarding the Khyber Pakhtunkhwa Lissail-e-Wal Mahroom Foundation Act 2015 to promote social protection for vulnerable women.

Khyber Pakhtunkhwa EAW Laws - Monitoring and Information Gaps:

1. Formulation of indicators to track implementation of EAW laws by KPCSW;
2. Development of a Gender Management Information System (GMIS) to track progress made on a yearly basis with regards to protection of women from violence;
3. Capacity building of KPCSW on mechanisms to promote evidence based legal and policy advocacy.

The Gap Analysis on Laws related to Ending Violence against Women (EAW) is an analysis conducted with a holistic approach to map out gaps followed by concrete recommendations for legislators, government officials, civil society organisations and legal fraternity to not only ensure a legal framework that is responsive to issues of gender based violence but also strengthen existing institutional mechanisms to end violence against women.

ANNEX 1: FEDERAL LEGISLATION APPLICABLE IN KHYBER

PAKHTUNKHWA

The Federal level laws in this Annex are extended and implemented in the provinces, and therefore also apply to the province of Khyber Pakhtunkhwa.

SYNOPSIS

Federal EAW Laws:

The starting point for the federal EAW laws has been honour killing and the Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act 2016 which reforms the legal concept of ‘fasad-fil-arz’ to include cases of honour killing. An implementation gap has been identified in this regard regarding discretion afforded to judges who not only need to be sensitised about the manifestations of honour killing but also ensure that perpetrators of honour killings do not go unpunished under the law. Female infanticide is a grave reality in Pakistan, however, normative gaps were exposed highlighting how the current legal provisions in Pakistan Penal Code 1860 fail reporting and prosecuting cases of female infanticide. With regards to acid and burn crimes, the Criminal Law (Second Amendment) Act 2011 has resulted in a decrease in acid and burn crimes in Pakistan, however, sensitisation of law enforcement agencies is still required to ensure that the correct provisions of Pakistan Penal Code 1860 are inserted in FIR’s for effective prosecution. The Prevention of Trafficking in Persons Act 2018 is a milestone legislation that exonerates any criminal liability of victims of trafficking in Pakistan. A major implementation gap existed with regards to the lack of sensitisation of law enforcement agencies to understand absence of consent on part of victims of trafficking and to facilitate victims for effective prosecution of human traffickers.

Normative gaps regarding the definition rape in Pakistani law reveal that there is an assumption under the law that only girls and women can be victims of rape and the same provisions cannot be applied to transwomen, boys and men who are raped. The legal definition of rape in Pakistan also excludes anal, oral or object rape with the law only applying to vaginal penetration as per judicial precedents. While the Criminal Law (Amendment) (Offences Relating to Rape) Act 2016 has sought to reform procedural and evidentiary aspects of sexual offences, major implementation gaps include lack of standard operating protocols as per the 2016 amendments for Medical Legal Officers as well as law enforcement agencies to facilitate investigation and collection of forensic evidence for rape cases. Anachronistic definitions exist with regards to sexual violence in law with majority of the provisions excluding transwomen, boys and men as victims of sexual violence. These normative gaps call

for a reform of jurisprudence and criminal law in respect of rape and sexual violence in Pakistan.

Absence of legal provisions conforming to the United Nations Convention on the Rights of Child has been a major normative gap in respect of child marriages in Pakistan. Furthermore, implementation of the Criminal Law (Third Amendment) Act 2011 criminalising customary practices against women and girls has been weak due to lack of sensitisation of law enforcement agencies. Criminal provisions related to domestic violence in PPC fail to take into account the psychological, emotional and economic abuse faced by women who are victims of domestic abuse, thereby requiring a comprehensive definition of domestic violence in PPC to effectively criminalise this form of gender based violence. Dowry is a common social practice in Pakistan which may manifest into the worst kinds of violence against women, yet criminal provisions are non-existent to prosecute cases of dowry-related violence. Obstetric violence against birthing mothers is another emerging phenomenon in Pakistan which requires criminalisation in Pakistan. Despite cases of necrophilia emerging in Pakistan, no criminal legislation exists to prosecute and punish such practices desecrating graves and dead bodies. Prevention of Electronic Crimes Act (PECA) 2016 is a comprehensive law to address digital and electronic crimes against women and girls, however, implementation gaps of the law include lack of technical human resource and lack of sensitisation on the part of FIA.

Federal Laws related to Discrimination and Women Rights:

In respect of discrimination and women rights, at federal level, a discriminatory provision exists under Article 17 of the Qanun-e-Shahadat Order, 1984 which requires witnessing and attestation by two women against one man in matters related to future and financial obligations. Furthermore, the Citizenship Act 1951 also discriminates against women by not including any provisions for a female citizen of Pakistan to transfer her nationality to her foreigner husband.

FEDERAL ERAW LAWS

HONOUR KILLING

The Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act 2016 seeks to restrict the option of compoundability in cases of honour killing. Firstly, the amendment reforms the concept of '*fasad-fil-arz*' to include offences committed in the name and pretext of honour⁸⁹. The amendment gives powers to the court to punish an offender of honour killing with death or imprisonment where the concept of *fasad-fil-arz* is attracted.⁹⁰ *Fasad-fil-arz*, otherwise known as aggravated circumstances, is described in the Penal Code as "the past conduct of the offender, or whether he has any previous convictions, or the brutal or shocking manner in which the offence has been committed which is outrageous to the public conscience, or if the offender is considered a potential danger to the community of if the offence has been committed in the name or on the pretext of honour."⁹¹ Therefore, courts been given greater powers to look into the facts and circumstances of a murder when committed in the name of honour and have more discretion to attract the provision of *fasad-fil-arz*. The 2016 amendments to the law state that if the provision of *fasad-fil-arz* has been attracted then the judge will have no choice but to sentence the accused to death or imprisonment for life.

Furthermore, the Federal Shariat Court has reiterated the above and stated:

*"Said section [311] started with the word "notwithstanding anything contained in section 309 or 310" pertaining to waiver of Qisas in Qatl-e-amd and compounding of Qisas in qatl-e-amd and by authorising the court to award, inter alia, even death sentence to such a culprit [of honour killing] despite the waiver of or compounding the right to Qisas by adult sane Wali"*⁹²

Sr. No.	Gaps	Recommendations
Implementation Gaps		
1.	Lack of awareness amongst legal fraternity and judiciary regarding the new criminal amendment in order to implement it	Awareness-raising of legal fraternity and judiciary regarding the 2016 criminal amendment to ensure implementation of the ' <i>fasad-fil-arz</i> ' provision to be applied in cases of honour killing
2.	Jurisdiction of honour crimes vested with ordinary courts ⁹³ whereas they	Jurisdiction of honour crimes to be vested with anti-terrorism courts owing to the nature of the crime thereby making the

	were formerly entertained by anti-terrorism courts ⁹⁴	offence non-bailable, cognizable and non-compoundable
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FEMALE INFANTICIDE

Female infanticide is a reality in Pakistan which has often been highlighted through the social work of Edhi Foundation. According to estimates, in the year 2010, 1210 dead infants were found by the Edhi Foundation most of which were girls.⁹⁵ For the first four months of 2018, 72 bodies of female infants were discovered in Karachi alone.⁹⁶ The statistics paint a bleak picture regarding the state of girl infants in Pakistan. Despite these figures, there is a lack of specific legal provisions on this subject revealing a failure to take into account the reality of female infanticide.⁹⁷ Where the protectors, guardians, care-givers and parents themselves follow the practice of killing female infants, the responsibility should reside with the State to protect female infants in this regard.

Pakistan Penal Code, 1860 extrapolates the offences of *'exposure and abandonment of child under twelve years by parent or person having care of it'*⁹⁸ and *'concealment of birth by secret disposal of dead body'*;⁹⁹ which carry sentences from two¹⁰⁰ to seven¹⁰¹ years for the offences. However, regarding cases of female infanticide, the provisions laid out under Pakistan Penal Code, 1860 fail to address the issue where the parents or carers are the ones responsible for female infanticide.¹⁰²

Sr. No.	Gaps	Recommendations
Normative Gaps		
1.	Ambiguous loopholes in criminal law sections 302, 328 and 329 of the Pakistan Penal Code, 1860 which fail to define the offence of female infanticide	Criminal Law Amendment in the Pakistan Penal Code, 1860 to define the offence of infanticide and criminalise such acts of violence
2.	Section 302 (Qatl-e-Amd or Murder) of the Pakistan Penal Code, 1860 is compoundable in nature which creates legal loopholes for perpetrators	Criminal Law Amendment in the Code of Criminal Procedure, 1898 to ensure that acts of female infanticide are non-compoundable, non-bailable and cognizable

ACID AND BURN CRIMES

The Criminal Law (Second Amendment) Act 2011 was promulgated by the Federal Parliament of Pakistan in December 2011. The 2011 Act elaborated upon the definition of acid and burn

crimes and stipulated stricter punishments for the crime, which now include fourteen years to life imprisonment along with a fine of one million rupees. The Act has amended section 332 'Hurt' of the Pakistan Penal Code to insert the words "disfigures and defaces". Two new sections namely, section 336-A and 336-B have also been added and these make the acts of throwing acid or any other corrosive substance on any person's body a criminal offence.

Also interesting to note is the jurisprudential evolution of the crime of acid and burn violence. It has been cited by the Lahore High Court that *'the ingredients of the offence under section 336-A PPC, punishable under section 336-B PPC, are fully attracted in the case which is exclusively triable by the Anti-Terrorism Court' as per section 12 of the Anti-Terrorism Act 1997.*¹⁰³ Therefore, cases for acid and burn crimes are tried by the Anti-Terrorism Courts as the *'very commission of said offences creates terror, panic and sense of insecurity amongst the general public.'*¹⁰⁴

Furthermore, as per section 174-A of the Code of Criminal Procedure 1898, a Medico-Legal Officer is obligated to intimate the case to the nearest police station to record the statement of the acid or burn crime survivor. Therefore, the legal mechanism permits that cases of acid and burn crimes may directly be referred to the police when approached for medical attention.

According to Acid Survivor Foundation's database, for the year 2017, there have been a total of 71 victims of acid and burn attacks across Pakistan out of which 48 are victims of acid attacks, 14 are victims of fire burns, 1 is a victim of chemical burn, 1 is a victim of hot water or contact burn and 3 cases where the cause of burn is unknown. The profile of victims based on gender and maturity for acid attacks reveals the following:

Acid Violence: Profile of Victims based on Gender and Maturity (2017)				
Category	Total	Male	Female	Transgender Persons
Adults	37	23	13	1
Children (under 18 years)	11	4	7	0

In 2017, the European Institute of Democracy and Human Rights nominated Pakistan's ASF as a global success story, because of the 50% decrease in acid violence since 2011.¹⁰⁵

'The following major achievements have been recorded by ASF with regards to implementation of the Acid and Burn Criminal Amendment for contributing significantly towards the total number of reported cases dropping by roughly 50% in 2015 and 2016; the percentage of attack survivors reaching a hospital within 24 hours of an attack reaching 100%

in 2016; and the increase in conviction rate from 17.3% in 2013 to 30.43% in 2016 This can be seen as a major success story for acid violence in Pakistan.¹⁰⁶

Sr. No.	Gap	Recommendation
Implementation Gap		
1.	Lack of awareness and sensitization amongst law enforcement agencies who are reported to have filed cases of acid and burn crimes against incorrect provisions of the Pakistan Penal Code, 1860	Awareness and sensitization of law enforcement agencies regarding the correct provisions of Pakistan Penal Code, 1860 for acid and burn crimes

HUMAN TRAFFICKING

The Prevention of Trafficking in Persons Act 2018 has the following salient features:

1. Defines child as any person below the age of eighteen years;¹⁰⁷
2. Defines 'trafficking' to include compelled labour as well as sex work to guarantee protection to domestic workers/labourers supplied through trafficking;¹⁰⁸
3. Stipulates a punishment which may extend to seven years and a fine which may extend for one million rupees;¹⁰⁹
4. Stipulates a stricter punishment which may extend to ten years and a fine of one million rupees where the trafficking is against a woman or child;¹¹⁰
5. Exonerates criminal liability of victims of trafficking;¹¹¹
6. Vitiates any consent given by the child, the child's parents or the child's guardians in cases of trafficking where the victim is a child;¹¹²
7. Mandates police to investigate into cases of trafficking within Pakistan and mandates the Federal Investigation Authority (FIA) to investigate into cases of trafficking where the victim is transported into and out of Pakistan;¹¹³
8. Allows compensation to be paid to victims in cases where the offender is convicted.¹¹⁴

While the new legislation is an important legislative development to protect victims of human trafficking, the evolving jurisprudence of the law and future research would define the impact of the law in curbing human trafficking. However, it must be noted, that the implementation

of the law requires a major paradigm shift on part of the law enforcing agencies to view victims of human trafficking as ‘victims’ rather than ‘perpetrators’, especially where the victims have been trafficked for sex work.

Sr. No.	Gaps	Recommendations
Implementation Gaps		
1.	Extreme lack of sensitisation on the part of law enforcement agencies to understand the power differential between victims and traffickers and subsequent involvement of victims into activities which may be criminal in nature	Sensitization and awareness amongst law enforcement agencies to understand the protections afforded to victims in the law and ensure that victims of trafficking are not charged as perpetrators where they have been involved in criminal activities.
2.	Lack of clarity regarding responsible agency for trans-provincial trafficking of persons	Amendment in the Prevention of Trafficking in Persons Act 2018 to explicitly state responsible agency for trans-provincial trafficking in persons
3.	Lack of sensitization of law enforcement agencies, legal fraternity and judiciary regarding the wide definition of ‘trafficking’ to include child domestic servitude as well	Sensitization of law enforcement agencies, legal fraternity and judiciary to implement the law as per legislative intention to provide relief to all victims of trafficking

RAPE

The Protection of Women (Criminal Laws Amendment) Act 2006 was a major achievement for the legislative rights of women. The Act inserted the definition of rape¹¹⁵ and its punishment¹¹⁶ under the Pakistan Penal Code, 1860 and subjected these sections to the same evidentiary burden as given under the law of evidence. Previous to this, rape was not defined under the Pakistan Penal Code but rather under the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 as ‘zina-bil-jabr’. However, marital rape is still not recognised as an offence under the Pakistan Penal Code, 1860.

The Pakistan Penal Code defines the offence of rape as:

‘A man is said to commit rape who has sexual intercourse with a woman under circumstances falling under any of the five following descriptions,

- i. against her will.*

- ii. *without her consent*
- iii. *with her consent, when the consent has been obtained by putting her in fear of death or of hurt,*
- iv. *with her consent, when the man knows that he is not married to her and that the consent is given because she believes that the man is another person to whom she is or believes herself to be married; or*
- v. *With or without her consent when she is under sixteen years of age.*

Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.¹¹⁷

The law therefore adopts a comprehensive definition of the offence of rape and seeks to purport all facets of the offence. However, six normative gaps exist with regard to this definition:

1. The definition of rape in this regard is male-centric where only a man can be accused of rape. While using the term ‘sexual intercourse’ in the traditional sense meaning penetration through the penis, the section currently enunciates that only men can be perpetrators of rape whereas women and transgender persons cannot be rapists as per this definition;
2. The current jurisprudence reflects the position that ‘penetration’ in the offence of rape does not include anal penetration which falls within the ambit of unnatural offences defined in section 377.¹¹⁸ Therefore, the offence of rape only applies to cases of vaginal penetration of women by men.
3. The definition of rape also does not take into account ‘object rape’ or rape perpetrated through tools and object.¹¹⁹ In some cases, object rape has led to extreme internal organ damage which should be categorised and recognised as a form of rape.
4. While the legal jurisprudence of other countries like the United Kingdom, include penetration of the mouth as an offence of rape,¹²⁰ the current law in Pakistan does not include oral penetration as a constitutive element of the offence of rape. Therefore, acts of sexual violence which include oral penetration are exempted from the current ambit of the offence of rape.
5. Stipulation of harsher punishments for cases of incestuous rape is another major gap in the current rape legislation.

6. Furthermore, section 375(v) has been interpreted by the superior courts to exclude cases where a girl has attained puberty and has contracted Nikah with a man. In such cases, the performance of conjugal rights by the girl would not attract section 375(v) and would not be considered as rape.¹²¹

Sr. No.	Gaps	Recommendations
Normative Gaps		
1.	Restrictive definition of rape which excludes men and transgender women (who have not undergone surgery) from the law's protection	Reform of the current definition of rape through Criminal Law Amendment to reflect gender neutrality and provide protection to all genders against rape
2.	Restrictive definition of rape which excludes certain sexual acts of penetration	Reform of the current definition of rape through Criminal Law Amendment to include all types of sexual acts of penetration as constituting the offence of rape
3.	Restrictive definition of rape which excludes object rape as a form of rape	Reform of the current definition of rape through Criminal Law Amendment to include a definition of object rape
4.	Absence of provisions stipulating harsher punishments in cases of incestuous rape	Criminal Law Amendment in section 376 of the Pakistan Penal Code, 1860 stipulating life imprisonment in cases of incestuous rape
5.	Judicial interpretations by higher courts restricting application of the offence of rape in cases where the child has been married after attaining puberty but before turning sixteen years of age	Criminal law amendment in section 375(v) expressly protecting girls under the age of sixteen from rape and child marriage or public interest litigation widening the scope of section 375(v) to protect girls under the age of sixteen years from sexual violence

While the definitional issues in light of the evolving jurisprudence have revealed various gaps, the Criminal Law (Amendment) (Offences Relating to Rape) Act 2016 is a milestone legislation that seeks to reform procedural aspects of the law in an effort to strengthen investigations

and evidence in cases of rape. The law stipulates strict punishments for public servants entrusted with investigation of rape cases who fail to investigate the case properly or diligently¹²² as well as punishments for jeopardizing or hampering investigations in cases of rape.¹²³ Under the Act, there is punishment of death or imprisonment for life and a fine for rape of a person with a physical or mental disability. The same punishment applies if rape is committed by a public servant taking advantage of his official position.¹²⁴

Furthermore, there is a provision for imprisonment extending up to three years for disclosure of the identity of a victim of rape without proper authorization¹²⁵ to deter media personnel from violating the dignity and privacy of rape survivors. The amendment makes it obligatory to collect DNA samples for evidence¹²⁶ and also mandates examination of the accused by a medical practitioner for collecting evidence.¹²⁷ The amendments also require rape trials to be conducted in camera and for trials to conclude within three months at the trial stage. Lastly, records and statements by a victim of rape can be taken at her residence in case she is distressed, and must be made in the presence of a female police officer or female relative.¹²⁸ Furthermore, judgment of the Supreme Court in *Salman Akram Raja and another versus Government of Punjab and others*,¹²⁹ has also given a set of directions to the Government for better response to cases of rape (Table 3).

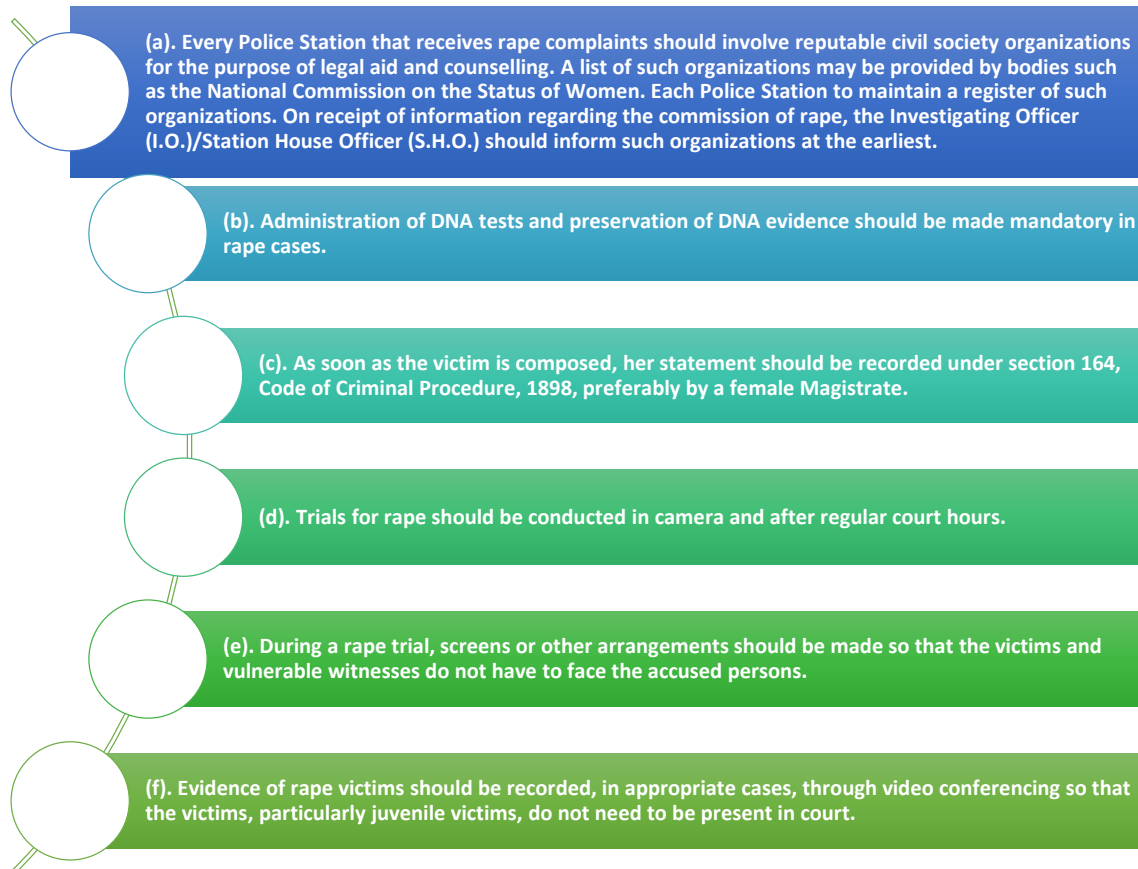
- 
- (a). Every Police Station that receives rape complaints should involve reputable civil society organizations for the purpose of legal aid and counselling. A list of such organizations may be provided by bodies such as the National Commission on the Status of Women. Each Police Station to maintain a register of such organizations. On receipt of information regarding the commission of rape, the Investigating Officer (I.O.)/Station House Officer (S.H.O.) should inform such organizations at the earliest.
 - (b). Administration of DNA tests and preservation of DNA evidence should be made mandatory in rape cases.
 - (c). As soon as the victim is composed, her statement should be recorded under section 164, Code of Criminal Procedure, 1898, preferably by a female Magistrate.
 - (d). Trials for rape should be conducted in camera and after regular court hours.
 - (e). During a rape trial, screens or other arrangements should be made so that the victims and vulnerable witnesses do not have to face the accused persons.
 - (f). Evidence of rape victims should be recorded, in appropriate cases, through video conferencing so that the victims, particularly juvenile victims, do not need to be present in court.

Table 3: Guidelines laid down by the Supreme Court of Pakistan in *Salman Akram Raja versus Government of Punjab*

Sr. No.	Gaps	Recommendations
Implementation Gaps		
1.	Absence of a revised Code of Conduct for public servants (medico-legal officers, police, forensic technicians employed by the government and otherwise), which stipulate sections 166(2) and 186 Pakistan Penal Code, 1860 attracting a punishment of up to three years for failing to diligently investigate cases	Formulation of a revised Code of Conduct for public servants appraising them of their liabilities and possible punishments under the 2016 amendments
2.	Absence of a Standard Protocol as per section 376-A Pakistan Penal Code, 1860 regarding disclosure of identity of the rape victim to be followed by police, lawyers, judiciary, media personnel etc.	Formulation of Standard Protocol delineating authorisation process when identity of a rape victim can be revealed and the punishment for disclosing identity of rape victim without proper authorization as per section 376-A Pakistan Penal Code, 1860
3.	Absence of revised Standard Operating Procedures for Medico-Legal Officers as per sections 53-A and 164-A Code of Criminal Procedure, 1898	Formulation of Standard Operating Procedures for Medico-Legal Officers to reflect the requirements and particulars enunciated in sections 53-A and 164-A Code of Criminal Procedure, 1898
4.	Lack of awareness and sensitization of law enforcement agencies regarding relaxations given to rape victims as per sections 154 and 161 Code of Criminal Procedure, 1898	Sensitization of law enforcement agencies, in particular the Police, to facilitate rape victims by invoking sections 154 and 161 Code of Criminal Procedure, 1898
5.	Lack of implementation of Supreme Court Directive requiring police stations to maintain a register of reputable civil society organisations to request facilitation in cases of rape	Development of database of credible civil society organisations for police stations to contact in cases of rape

6.	Lack of awareness and implementation of three-month time frame for rape trials	Sensitization of judiciary, legal fraternity and law enforcement agencies to conclude rape trials within the three-month time frame
7.	Lack of implementation of Supreme Court Directive requiring screens or other arrangements to be made for rape victims and witnesses so that they do not have to face the accused	Sensitization of judiciary, legal fraternity and law enforcement agencies to implement the Supreme Court Directive requiring screens or other arrangements to be made for rape victims and witnesses so that they do not have to face the accused

SEXUAL OFFENCES

The current legal framework does not provide adequate protection to boys, men and transgender persons who may suffer sexual violence. The law also fails to protect women in cases of sexual violence where the violence is meted out in manners different from the traditional interpretation of intercourse and penetration. Comprehensive definitions of various forms of sexual offences need to be provided.

While the punishment for the offence of rape ranges from ten years to life imprisonment, even death penalty,¹³⁰ for some other forms of sexual violence which fail to fulfil the criteria of the offence of rape, the penalty ranges from two years to ten years to even life imprisonment.¹³¹ This undermines the trauma and severity of cases of sexual violence involving anal¹³² or oral penetration through any other part of the perpetrator's body or any other tools.

The Pakistan Penal Code covers a certain range of sexual offences with varying punishments. These include:

Sr. No.	Sexual Offences	Punishment
1.	Section 354 of the Pakistan Penal Code 1860: Assault or criminal force to woman with intent to outrage her modesty	Imprisonment for a term which may extend to 2 years or with fine or both
2.	Section 354-A of the Pakistan Penal Code 1860: Assault or use of criminal force to woman and stripping her of her clothes	Death penalty or imprisonment for life and shall also be liable to a fine

3.	Section 375 of the Pakistan Penal Code 1860: Rape	Death penalty or imprisonment for a term not less than 10 years or more than 25 years and shall also be liable to a fine
4.	Section 376(2) of the Pakistan Penal Code 1860: Punishment for Gang Rape	Death penalty or imprisonment for life
5.	Section 376(3) of the Pakistan Penal Code 1860: Punishment for Raping a Minor or a Person with Mental or Physical Disability	Death penalty or imprisonment for life and shall also be liable to a fine
6.	Section 376(4) of the Pakistan Penal Code 1860: Punishment for Custodial Rape	Death penalty or imprisonment for life and shall also be liable to a fine
7.	Section 377 of the Pakistan Penal Code, 1860: Unnatural Offences	Imprisonment of a term not less than 2 years and may extend up to 10 years. Penalty could also include life imprisonment and a fine
8.	Section 377A of the Pakistan Penal Code 1860: Sexual Abuse	Imprisonment for a term not less than 14 years and may extend up to 20 years and with fine which shall not be less than 1,000,000 rupees
9.	Section 509 of the Pakistan Penal Code 1860: Insulting modesty or causing sexual harassment	Imprisonment for a term which may extend to 3 years or with fine up to 500,000 rupees or both

As it can be seen from the chart above, there is inconsistency between the punishments of different sexual offences, and in some cases the punishment is less grave even where the trauma and physical harm to the survivor could be as severe (or more severe) as in another offence. Further, the current legal framework requires an elaborate and comprehensive definition of sexual offences that would cater to all genders and all forms of sexual violence.

Pertinent to mention here are sections 377A and 377B of the Pakistan Penal Code 1860 inserted by the Criminal Law (Second Amendment) Act 2016 which criminalises acts of a sexual nature with any person below the age of 18 years as an offence of sexual abuse. Section 377B inserted by the Criminal Law Amendment initially stipulated a punishment of 7 years' imprisonment and 500,000 rupees. However, the Criminal Laws (Amendment) Act 2018 increased punishment for the offence of sexual abuse to imprisonment of minimum 14 years and maximum 20 years and a fine of not less than 1,000,000 rupees. Furthermore, the offence

of sexual abuse is cognisable in nature authorising the police to arrest alleged perpetrators without warrant. The provisions of sections of 377A and 377B therefore act as important provisions to protect children under the age of 18 years from sexual violence and ensure stricter punishments for offences of sexual violence where children are involved. Furthermore, despite legislative developments, adult male victims of sexual violence do not have the same protections in law against sexual violence as compared to women and children.

Sr. No.	Gaps	Recommendations
Normative Gaps		
1.	Absence of law criminalising acts of sexual penetration that fall short of 'rape'	Criminal Law Amendment in section 375 to define and criminalise acts of sexual violence by penetration (through tools, weapons, other body parts, etc.)
2.	Absence of a gender-neutral law that would protect all genders from sexual assault which falls short of rape and sexual penetration but is more grievous than sexual harassment	Criminal Law Amendment in section 345 to define and criminalise acts of sexual assault that do not result in or fall short of sexual penetration
3.	Lack of consistency and proportionality in punishments related to sexual violence	Criminal Law Amendments in the Pakistan Penal Code, 1860 to amend punishments for acts of sexual violence by taking into account the nature of the crime and impact it would have on a victim/survivor

SEXUAL HARASSMENT

The Criminal Law (Amendment) Act 2010 amended section 509 of the Pakistan Penal Code and included causing "sexual harassment" in the provision of "insulting the modesty of a woman.". The amended section reads as following:

"(2) conducts sexual advances, or demands sexual favors or uses verbal or non-verbal communication or physical conduct of a sexual nature which intends to annoy, insult, intimidate or threaten the other person or commits such acts at the premises of workplace, or makes submission to such conduct either explicitly or implicitly a term or condition of an individual's employment, or makes submission to or rejection of such conduct by an individual a basis for employment decision affecting such individual, or retaliates because of rejection of such behaviour, or conducts such behaviour with the

intention of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment;

shall be punished with imprisonment which may extend to three years or with fine up to five hundred thousand rupees or with both.

Explanation 1: Such behaviour might occur in public place, including, but not limited to, markets, public transport, streets or parks, or it might occur in private places including, but not limited to workplaces, private gatherings, or homes.

Explanation 2: Workplace means, the place of work or the premises where an organization or employer operates, this may be a specific building, factory, open area or a larger geographical area where the activities of the organization are carried out. Sexual advances may occur after working hours and outside workplace. It is the access that a perpetrator has to the person being harassed by virtue of a job situation or job related functions and activities.”¹³³

The amendment in 2010 has made the provision for sexual harassment gender neutral to include men, women, intersex and transgender persons as complainants of sexual harassment and purports to serve as a deterrent.

Sr. No.	Gap	Recommendation
Implementation Gap		
1.	Inefficacy of the provision to ensure criminal prosecution of sexual harassment	Amendment in Schedule II of the Code of Criminal Procedure 1898 to make the offence cognizable

CHILD MARRIAGE

Currently the Child Marriage Restraint Act 1929, applicable in Khyber Pakhtunkhwa, stipulates the minimum marriageable age for girls at sixteen years¹³⁴ contrary to eighteen years for boys. This contravenes the UN Convention on the Rights of the Child.¹³⁵ The law stipulates minor punishments of imprisonment of one month and fine of one thousand rupees for the offences of marrying a child,¹³⁶ solemnising a child marriage¹³⁷ and permission or negligent failure by the parents or guardians who are involved in the marriage.¹³⁸ Furthermore, criminalisation of child marriage in criminal law is needed at federal level to be applicable all over Pakistan. Therefore, it is proposed that a comprehensive definition of child marriage should be inserted into the Pakistan Penal Code, 1860 with definitive penalty.

Sr. No.	Gap	Recommendation
Normative Gap		
1.	Absence of a law that criminalises child marriage under the age of 18 as an offence for both girls and boys	Criminal Law Amendment in Chapter XX: 'Offences Related to Marriage' of the Pakistan Penal Code, 1860 to criminalise marriage of girls and boys below the age of 18 years

HARMFUL CUSTOMARY PRACTICES AGAINST WOMEN

The Criminal Law (Third Amendment) Act 2011 declares the following cultural or traditional practices as crimes in Pakistan for the first time:

- ❖ Giving a female in marriage or otherwise in *badla-e-sulha*, *vani* or *swara*;
- ❖ Depriving women from inheriting property;
- ❖ Forced marriages;
- ❖ Marriage with the Holy Quran.

Thereby, anyone who gives a woman or girl in *badla-e-sulha*, *vani* or *swara* can be punished under the law with imprisonment of three to seven years and with a fine of 500,000 rupees.¹³⁹ In a reported judgment under section 310-A, the Peshawar High Court has opined:

*'Practice of such tradition was mere disobedience and derogation of the law. Handing over a lady without consent in such humiliating manner was not only against fundamental rights and liberty of human beings enshrined in the Constitution, but also against the importance and value of human beings by Allah Almighty to the most imminent of created things.'*¹⁴⁰

If anyone deprives a woman from inheriting property, he or she is punishable with imprisonment of five to ten years and a fine of 1,000,000 rupees. Furthermore, any person guilty of forcing a woman into marriage is punishable by imprisonment of three to seven years and a fine of 500,000 rupees. Lastly, anyone who marries a woman with the Holy Quran is punishable by imprisonment of three to seven years and a fine of 500,000 rupees. Furthermore, the harmful customary practices against women and girls defined in the law are non-compoundable in nature, therefore, cannot be compromised upon between the parties. Non-compoundable offences are offences against society and not offences against individuals, therefore, the offences cannot be privately pardoned or settled,¹⁴¹ thereby,

restricting families and law enforcement agencies from out of court settlements in cases of harmful customary practices against women and girls.

Sr. No.	Gap	Recommendation
Implementation Gaps		
1.	Criminal offences defined and amended in the Criminal Law (Third Amendment) Act 2011 are non-cognizable	Amendment to stipulate harmful customary practices against women and girls as 'cognizable' offences by the Federal Parliament
2.	Law enforcement agencies and legal fraternity still treat practices such as forced marriage, depriving women from inheriting property, <i>swara/vani</i> and marriage with the Holy Quran as private matters rather than offences against women	Sensitization of law enforcement agencies and legal fraternity to report and prosecute harmful customary practices against women and girls under 2011 Amendment Act as non-compoundable offences where the parties cannot enter into a compromise

DOMESTIC VIOLENCE

At the federal level, there is no legislation that specifically penalises domestic violence. Debate around domestic violence legislation has revealed a patriarchal mind-set and the belief that violence within the home is a private matter between families and not a matter that requires legislation. According to a research by Gallup in urban Pakistan, 31% of men and 20% of women believe that a man has the right to beat his wife if she misbehaves.¹⁴² However, case law reveals that cases of domestic violence manifesting in physical abuse have been brought before the courts, and in absence of a specific law on the subject, are entertained under the Pakistan Penal code 1860 (PPC), section 332:

*'Hurt: Whoever causes pain, harm, disease, infirmity or injury to any person or impairs, disables [disfigures, defaces] or dismembers any organ of the body or part thereof of any person without causing his death, is said to cause hurt.'*¹⁴³

While cases of domestic violence are entertained under section 332 to 337,¹⁴⁴ depending on the type, severity and consequence of the physical abuse caused to women, the current regime fails to subsume the necessary gender perspective to ensure the rights of women in the private sphere and domestic context. The provisions of the Pakistan Penal Code 1860 are inherently gender blind, failing to take into account the vulnerability, dependence and power disparity between men and women in Pakistan's context of the domestic sphere. The hinging of cases of domestic violence to physical abuse does not therefore take into account verbal,

economic and psychological abuse meted out to women, which forms a substantive part of domestic violence.

It is in this regard that a normative gap exists with regard to domestic violence. The current legal framework necessitates a definition of the crime of domestic violence that not only takes into account gender disparity and power differential between men and women in the private and domestic sphere but also elaborates on the psychological, emotional, verbal and economic abuse that is constitutive of acts of domestic violence.

Sr. No.	Gaps	Recommendations
Normative Gaps		
1.	Absence of a law that criminalises domestic violence and punishes perpetrators who commit acts of domestic violence	Criminal Law Amendment in the Pakistan Penal Code 1860, with a clear definition of domestic violence and a penalty for domestic violence
2.	Lack of a comprehensive definition of domestic violence	Criminal Law Amendment in the Pakistan Penal Code 1860 must include psychological, verbal and economic abuse as acts of domestic violence

OBSTETRIC VIOLENCE

Obstetric violence is defined as *“the appropriation of the body and reproductive processes of women by health personnel, which is expressed as dehumanized treatment, an abuse of medication, and to convert the natural processes into pathological ones, bringing with it loss of autonomy ... negatively impacting the quality of life of women.”*¹⁴⁵ Obstetric violence is the neglect, abuse or forced surgery faced by women during childbirth which adversely impacts their physical health in the long term. The most common manifestation of obstetric violence in Pakistan is forced surgery to convert natural childbirths into caesarean operations. According to a research data by Pakistan Institute of Development Economics, high rates of Caesarean Sections or C-Sections are being conducted on women going through child birth.¹⁴⁶ The alarming rate for C-Sections has been alluded to the high costs associated with the procedure and the ability for health practitioners to be able to control the process, in terms of time and date.¹⁴⁷

While discussions surrounding obstetric violence are still at an evolutionary phase, Pakistan has no legal provision available to criminalise or reprimand health care practitioners who commit abuse against women during childbirth.

Sr. No.	Gap	Recommendation
Normative Gap		
1.	Absence of law to criminalise acts of obstetric violence against women during childbirth by health practitioners	Criminal Law Amendment in the Pakistan Penal Code 1860 to define the offence of obstetric violence and criminalise such acts

NECROPHILIA

Necrophilia is defined as sexual attraction to corpses or engaging in sexual activity with corpses.¹⁴⁸ Pakistan has in recent years come across some much publicised and harrowing incidents of necrophilia involving corpses of women and girls.¹⁴⁹ While cases of necrophilia are dealt with under other provisions of the Pakistan Penal Code, for example, trespassing on burial places,¹⁵⁰ the law currently does not have any legal definition or criminalisation for such acts.¹⁵¹ While some advocate for strict criminalisation of the act, others argue that criminalisation should be compounded with proper treatment to give people suffering from necrophilia a chance to recover.¹⁵²

Sr. No.	Gap	Recommendation
Normative Gap		
1.	Absence of a law criminalising acts of necrophilia	Criminal Law Amendment in section 377 'Unnatural Offences' of the Pakistan Penal Code, 1860 to define and criminalise acts of necrophilia all over Pakistan

CYBER CRIMES AGAINST WOMEN

The Prevention of Electronic Crimes Act (PECA) 2016 is a comprehensive law addressing digital and electronic crimes. It includes the services of Federal Investigation Agency to investigate crimes and also involves the Pakistan Telecommunication Authority in providing relief to complainants. Any person guilty of offence against dignity of a natural person as per section 20 can be punished with imprisonment for up to 3 years and a fine extending to 1 million rupees. Punishment for offences against the modesty of a natural person as per section 21 includes imprisonment, which may extend to 5 years and a fine, which may extend to five million rupees. However, if the offence under section 21 is perpetrated against a minor, the imprisonment can extend to 7 years instead of 5 years. For a person found guilty under section

22, child pornography, the punishment can include imprisonment, which may extend to 7 years or a fine, which may extend to 5 million rupees.

According to Digital Rights Foundation’s Cyber Harassment Helpline Bi-Annual Report December 2016 – May 2018, 1908 calls were received on DRF’s Toll Free Number which included 420 follow-up calls. On an average 83 calls related to matters of cyber-crimes were received on the Toll Free Number each month.¹⁵³ 63% of the total calls were made by women whereas 37% were made by men.¹⁵⁴ Highest number of complaints related to non-consensual usage of information (326); defamation (314); and blackmail (302).¹⁵⁵ The National Response Center for Cyber Crimes (NR3C) of the Federal Investigating Agency deals with complaints of cyber-crimes. As of December 2017, the cybercrime wing of FIA has received 12,339 complaints of which 26% have been filed by women.¹⁵⁶ Out of the total number of complaints, 1,626 were converted into inquiries and 232 cases were under investigation before the Cyber Crime Wing of FIA.¹⁵⁷ Issues highlighted regarding the implementation of Prevention of Electronic Crimes Act 2016 have included lack of resources; lack of technical expertise especially on digital forensics; low recruitment of women in FIA’s Cyber Crime Wing; regressive attitude of FIA officials and prosecutors in dealing with complaints of cyber-crimes linked to ordinary citizens; lack of training and capacity building of judges ‘on matters such as computer science, cyber forensics, electronic transactions and data protection’ etc.¹⁵⁸

In light of the available researches and consultative workshops, the following gaps and recommendations have been highlighted:

Sr. No.	Gaps	Recommendations
Normative Gaps		
1.	Complex legalities involving cases of digital crimes	Abolishment of Telegraph Act 1885 and incorporation of all facets of digital crimes within PECA
2.	Lack of a data protection legislation to safeguard consumer rights with increasing digital based entrepreneurship	Legislative drafting and promulgation of a data protection legislation to protect online and consumer data in Pakistan
Implementation Gaps		
3.	Lack of gender sensitization of FIA officials in dealing with cases of modesty of natural persons where the complainants are mostly women	Sensitization and capacity building of FIA officials in registering and investigating cases involving modesty of women in online spaces

4.	Lack of trained and technical staff NR3C offices resulting in delayed investigation procedures	Allocation of technical human resources at NR3C offices for efficient operations
5.	Lack of implementation in cases where the defendants are not in Pakistan	Signing Mutual Legal Assistance Treaties (MLATs) with countries basing social media companies to effectively deal with digital crimes, especially online abuse
6.	Lack of technical capacity of law enforcement agencies, legal fraternity and judiciary in dealing with digital crimes	Technical capacity building of law enforcement agencies, legal fraternity and judiciary regarding digital crimes
7.	Lack of women prosecutors and investigators in the Federal Investigation Agency	Affirmative action for employment of women prosecutors and investigators in the Federal Investigation Agency

FEDERAL LAWS RELATED TO DISCRIMINATION & WOMEN'S RIGHTS

DISCRIMINATION IN THE LAW OF EVIDENCE

The Qanun-e-Shahadat Order, 1984 repealed the Evidence Act, 1872 during the time of General Zia-ul-Haq. The Order is a 'compendium of rules, procedures and practices'¹⁵⁹ according to which the court is to record evidence of the parties. However, the discrimination entrenched in the Qanun-e-Shahadat Order 1984 has been highlighted as a violation of Pakistan's international commitments. The UN Committee on Economic, Social and Cultural Rights in its Concluding Observations to the State of Pakistan recommended: *"Review its legislation, including the Qanun-e-Shahadat Order (Law of Evidence) 1984, with a view to removing all provisions that discriminate on the basis of gender."*¹⁶⁰

In this regard, Article 17 of the Qanun-e-Shahadat Order, 1984 states:

"17. Competence and number of witnesses: (1) The competence of a person to testify, and the number of witnesses required in any case shall be determined in accordance with the injunctions of Islam as laid down in the Holy Qur'an and Sunnah:"

(2) Unless otherwise provided in any law relating to the enforcement of Hudood or any other special law:

(a) in matters pertaining to financial or future obligations, if reduced to writing, the instrument shall be attested by two men or one man and two women, so that one may remind the other, if necessary, and evidence shall be led accordingly; and

(b) in all other matters, the Court may accept, or act on the testimony of one man or one woman or such other evidence as the circumstances of the case may warrant."

In legal matters pertaining to financial or future obligations, preference has been given to men whereby two women are required to replace one man in attestation of documents. The Federal Shariat Court has held in this regard: *"Choosing women to be witnesses, would not only be least desirable for women themselves, but also in all probability be disadvantageous for the person who had to make a choice for her to be her witness, as his case would suffer because of her oft non-availability, and even for longer period."*¹⁶¹

Therefore, a normative gap exists within the Qanun-e-Shahadat Order 1984 which discriminates against women in attestation of legal matters pertaining to financial and future obligations.

Sr. No.	Gap	Recommendation
Normative Gap		
1.	Discrimination on the basis of gender in Qanun-e-Shahadat Order 1984	Amendment in Article 17 of the Qanun-e-Shahadat Order, 1984 to provide equal evidentiary value to men and women in attestation of financial and future obligations

DISCRIMINATION IN THE LAW OF CITIZENSHIP

Discrimination on the basis of gender in nationality laws has been widely documented by international organisations and stakeholders. According to Equality Now, there are 48 countries in the world where a married woman cannot pass nationality to a foreign spouse on an equal basis with a married man.¹⁶² Pakistan is one of the 48 countries where discriminatory provisions exist in its nationality laws.¹⁶³ The CEDAW Committee in its Concluding Observations recommended: *“To include in its Constitution and/or in other relevant legislation provisions prohibiting all forms of direct and indirect discrimination against women, including sanctions, in line with Article 1 of the Convention (and in line with article 25 of the Constitution), and repeal all discriminatory laws, including the Hudood Ordinances, the Law of Evidence and the Citizenship Act (1951).”*¹⁶⁴

While section 10 of the Citizenship Act 1951 provides for a married man to obtain citizenship for his foreigner wife, no parallel provision exists for a female citizen of Pakistan to transfer her nationality to her foreigner husband.¹⁶⁵ Therefore, a major normative gap is revealed within the nationality laws of Pakistan where women citizens are denied the right to transfer their citizenship to foreign husbands.

Sr. No.	Gap	Recommendation
Normative Gap		
1.	Discrimination on the basis of gender in the Citizenship Act, 1951	Amendment in the Citizenship Act, 1951 to include provisions for a Pakistani woman to transfer her nationality to her foreign husband

CONCLUDING SUMMARY

Based on the research above, major recommendations of the Federal Gap Analysis include:

Federal EVAW Laws:

1. Awareness-raising of legal fraternity and judiciary regarding the 2016 criminal amendment to ensure implementation of the 'fasad-fil-arz' provision to be applied in cases of honour killing and amendment in the law to reflect that in 'honour' related crimes there should be no compromise or blood money compensation permitted between the parties;
2. Criminal Law Amendment in the Pakistan Penal Code, 1860 to define the offence of infanticide and criminalise such acts of female infanticide in Pakistan and Criminal Law Amendment in the Code of Criminal Procedure, 1898 to ensure that acts of female infanticide are non-compoundable, non-bailable and cognizable;
3. Awareness and sensitization of law enforcement agencies regarding the correct provisions of Pakistan Penal Code, 1860 for acid and burn crimes;
4. Sensitization and awareness amongst law enforcement agencies to understand the protections afforded to victims of trafficking in the Prevention of Trafficking in Persons Act 2018 and ensure that victims of trafficking are not charged as perpetrators where they have been involved in criminal activities;
5. Reform of the current definition of rape through Criminal Law Amendment to reflect gender neutrality and provide protection to all genders against rape and to include all types of sexual acts of penetration as constituting the offence of rape;
6. Formulation of a revised Code of Conduct for public servants appraising them of their liabilities and possible punishments under the 2016 amendments
7. Formulation of Standard Protocol delineating authorisation process when identity of a rape victim can be revealed and the punishment for disclosing identity of rape victim without proper authorization as per section 376-A Pakistan Penal Code, 1860 inserted by Criminal Law (Amendment) (Offences Relating to Rape) Act 2016;
8. Formulation of Standard Operating Procedures for Medico-Legal Officers to reflect the requirements and particulars enunciated in sections 53-A and 164-A Code of Criminal Procedure, 1898 inserted by Criminal Law (Amendment) (Offences Relating to Rape) Act 2016;
9. Sensitization of law enforcement agencies, in particular the Police, to facilitate rape victims by invoking sections 154 and 161 Code of Criminal Procedure, 1898 amended by inserted by Criminal Law (Amendment) (Offences Relating to Rape) Act 2016;
10. Criminal Law Amendment in section 375 to define and criminalise acts of sexual violence by penetration (through tools, weapons, other body parts, etc.);

11. Criminal Law Amendment in section 345 to define and criminalise acts of sexual assault that do not result in or fall short of sexual penetration;
12. Amendment in Schedule II of the Code of Criminal Procedure 1898 to make the section 509 offence of sexual harassment cognizable;
13. Amendment in section 2(e) of PAHWA to delete 'man' and 'woman' and replace the terms with 'persons' to include all genders;
14. Amendments in PAHWA to confer powers to set up provincial FOSPAH offices to entertain complaints against federal or trans-provincial institutions in other cities of Pakistan in implementation of Amna Tahir versus Saqib Javed Lahore High Court Judgement;
15. Criminal Law Amendment in Chapter XX: 'Offences Related to Marriage' of the Pakistan Penal Code, 1860 to criminalise marriage of both girls and boys below the age of 18 years;
16. Amendment in the Code of Criminal Procedure 1898 to stipulate harmful customary practices against women and girls as 'cognizable' offences by the federal Parliament;
17. Sensitization of law enforcement agencies and legal fraternity to report and prosecute harmful customary practices against women and girls under 2011 Amendment Act as non-compoundable offences where the parties cannot enter into a compromise;
18. Criminal Law Amendment in the Pakistan Penal Code 1860, with a clear definition of domestic violence and a penalty for domestic violence, the Amendment in the Pakistan Penal Code 1860 must include psychological, verbal and economic abuse as acts of domestic violence;
19. Criminal Law Amendment in the Pakistan Penal Code, 1860 to define and criminalise acts of dowry related violence;
20. Criminal Law Amendment in the Pakistan Penal Code 1860 to define the offence of obstetric violence and criminalise such acts;
21. Criminal Law Amendment in section 377 'Unnatural Offences' of the Pakistan Penal Code, 1860 to define and criminalise acts of necrophilia all over Pakistan;
22. Sensitization and capacity building of FIA officials in registering and investigating cases involving modesty of women in online spaces under Prevention of Electronic Crimes Act 2016;
23. Allocation of technical human resources at NR3C offices for efficient operations to investigate and prosecute cases under Prevention of Electronic Crimes Act 2016.

Federal Laws related to Discrimination and Women Rights:

1. Amendment in Article 17 of the Qanun-e-Shahadat Order, 1984 to provide equal evidentiary value to men and women in attestation of financial and future obligations;

Amendment in the Citizenship Act, 1951 to include provisions for a Pakistani woman to transfer her nationality to her foreign husband.

ANNEX 2: TECHNICAL CONSULTATIVE WORKSHOPS

LIST OF PARTICIPANTS – PESHAWAR CONSULTATION			
#	Name	Designation	Organisation
1.	Muhammad Nasir Ghilzai	Lawyer/ Social Activist	Advocate
2.	Iftikhar Hussain Samandar	Lawyer/ Women Rights Activist	All Khyber Pakhtunkhwa Parents Association
3.	Shabina Ayaz	Resident Director	Aurat Foundation
4.	Qamar Naseem	Coordinator	Blue Veins
5.	Sana Ahmed	Project Officer	Blue Veins
6.	Khurshid Bano	CEO	Da Hawwa Lur
7.	Fida Jan	Co-Chairman	EVAW/G Alliance KP
8.	Imran Takkar	Project Coordinator	GDP
9.	Mariam Bibi	CEO	Khwendokor
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11.	Rehana Ismail	MPA	KP Assembly
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ANNEX 3: REFERENCES

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 2. Itlaf-i-Salahiyat-udw: Hurt which impairs the functioning, power or capacity of any organ of the body
 3. Shajjah: Hurt on the face or hand of any person which does not amount to Itlaf-i-udw or Itlaf-i-Salahiyat-i-udw
 4. Jurh: Hurt to any person to an any place of the body, except face and head, which leaves a permanent or temporary mark
 5. All kinds of other hurts: A hurt, which is not covered by any of the four clauses given above, and which endangers life or which causes the sufferer to remain in severe bodily pain for twenty days or more is covered by the other hurt
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