



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

Federal Level



# TABLE OF CONTENTS

<b>CONTRIBUTORS</b>	<b>4</b>
<b>MESSAGE FROM WOMEN'S PARLIAMENTARY CAUCUS, FEDERAL</b>	<b>5</b>
<b>MESSAGE FROM UN WOMEN</b>	<b>6</b>
<b>ACKNOWLEDGEMENTS</b>	<b>7</b>
<b>ABBREVIATIONS</b>	<b>8</b>
<b>1. INTRODUCTION</b>	<b>10</b>
<b>2. EXECUTIVE SUMMARY</b>	<b>11</b>
<b>3. BACKGROUND</b>	<b>16</b>
<b>4. METHODOLOGY</b>	<b>18</b>
<b>5. PAKISTAN'S EVAW LAWS IN THE INTERNATIONAL CONTEXT</b>	<b>19</b>
<b>6. FEDERAL EVAW LAWS</b>	<b>25</b>
6.1 HONOUR KILLING	25
6.2 FEMALE INFANTICIDE	26
6.3 ACID AND BURN CRIMES	27
6.4 HUMAN TRAFFICKING	28
6.5 RAPE	29
6.6 SEXUAL OFFENCES	34
6.7 SEXUAL HARASSMENT	36
6.8 CHILD MARRIAGE	39
6.9 HARMFUL CUSTOMARY PRACTICES AGAINST WOMEN AND GIRLS	40
6.10 DOMESTIC VIOLENCE	41
6.11 DOWRY RELATED VIOLENCE	42
6.12 NECROPHILIA	43
6.13 CYBER CRIMES AGAINST WOMEN	43
<b>6. FEDERAL LAWS RELATED TO DISCRIMINATION AND WOMEN'S RIGHTS</b>	<b>46</b>
6.1 DISCRIMINATION IN THE LAW OF EVIDENCE	46
6.2 DISCRIMINATION IN THE LAW OF CITIZENSHIP	47
<b>7. ISLAMABAD CAPITAL TERRITORY EVAW LAWS</b>	<b>49</b>
7.1 ACID AND BURN CRIMES	49
7.2 CHILD MARRIAGE	50
7.3 DOMESTIC VIOLENCE	50

<b>8. ICT LAWS RELATED TO DISCRIMINATION AND WOMEN'S RIGHTS</b>	<b>51</b>
8.1 CHILD DOMESTIC WORKERS	51
8.2 HOME-BASED WORKERS AND DOMESTIC WORKERS	51
8.3 MUSLIM MARRIAGE LAWS	52
8.4 CHRISTIAN MARRIAGE LAWS	53
8.5 HINDU MARRIAGE LAW	54
8.6 DEPRIVING WOMEN OF INHERITANCE	56
8.7 WOMEN WITH DIFFERENT CAPABILITIES	57
8.8 MATERNITY BENEFITS	58
8.9 GENDER PAY GAP	59
<b>9. FEDERAL EVAW LAWS: MONITORING &amp; INFORMATION GAPS</b>	<b>61</b>
9.1 MONITORING GAPS	61
9.2 INFORMATION GAPS	61
<b>10. CONCLUSION</b>	<b>63</b>
<b>ANNEX 1: TECHNICAL CONSULTATIVE WORKSHOP</b>	<b>69</b>
<b>REFERENCES</b>	<b>71</b>

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## MESSAGE FROM WOMEN'S PARLIAMENTARY CAUCUS, FEDERAL

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Sustainable, prosperous and peaceful transformation of Pakistan requires greater attention towards empowerment of women and girls – socially, economically and politically. The Constitution of Pakistan ensures representation of women in the Parliament through general as well as reserved seats. As more than fifty percent of the country's population, women's role in nation building and social development is crucial. Adequate and meaningful participation of women in political life is imperative to ensure an inclusive and pluralistic democracy.

We as Parliamentarians play a key role in bridging society with the Executive. To successfully carry out our responsibilities, law-makers must engage with those we represent and ensure that all parliamentary tools are utilised for public participatory policy making. Being a cross party forum, the Women's Parliamentary Caucus continues to play a leading role in gender-sensitive legislations, gender-responsive policies and post-legislative scrutiny. The women parliamentarians have also proved their worth in recent years by proactively participating in the legislative business of the House. Their presence and meaningful contribution to parliamentary practices has set the stage for women in politics to follow, for all times to come.

Like most cross-sectoral interventions on human development, gender-sensitive legislations are a multi-dimensional and complex undertaking for which well thought-out and innovative actions need to be taken by various stakeholders, governments, the private sector, civil society and multilateral institutions to develop synergies. I am delighted to read this document as it is indeed a leap forward in this domain and has added another feather in the Women's Parliamentary Caucus' cap by examining legislative frameworks as well as exploring solutions. Endeavours like these are essential to inform, access and improve gender focused discourse in the country.

It also gives me a great sense of pride to see that the WPC is increasingly taking up relevant issues aiming towards social, political and economic empowerment of women in Pakistan. I appreciate the support extended by UN Women towards these goals in general as well as to materialise this report.

**Munaza Hassan**  
Member National Assembly  
Secretary General WPC-Federal

## MESSAGE FROM UN WOMEN

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Enactment of pro-women laws in recent years is enhancing the development and strengthening the rights landscape in Pakistan. During our journey spanning over 13 years in Pakistan, we have witnessed immense progress in the sphere of women's empowerment.



We are proud of our strong collaboration with the Women's Parliamentary Caucus (Federal), an institution with a pivotal role in legislative oversight and implementation of women empowerment initiatives in the country. Through our strategic partnership at the national level, we are striving to enhance the legislative framework and address gaps in the laws for advancing gender equality and ending violence against women and girls.

Keen to further improve the normative framework, having a direct impact on lives of women, we jointly with the WPC have analysed the existing legislation related to ending violence and discrimination against women and girls, and suggest recommendations to bridge the gaps. This 'Gap Analysis Report' is an initiative to provide valuable insights to make Pakistan's legal framework more gender-responsive and help achieve gender equality as per the aspirations of Constitution of Pakistan and its international Obligations. Our joint initiative will also lay a strong foundation for our normative work including supporting the government partners for creating policies and laws and engagement with civil society for advocacy and awareness-raising.

We stand at a historic moment in time today! It has been 25 years since the Beijing Platform for Action, 10 years since the creation of UN Women, and 5 years since the adoption of the Sustainable Development Goals all aiming for a shared blueprint to meet the needs of women and girls while building a peaceful and prosperous world. It is time for us to accelerate our efforts by ensuring that all women and girls achieve their human rights and live a life free from violence and discrimination. We hope that this report will help us intensify our collective efforts to achieve this vision for our generation and the generations to come.

**Sharmeela Rassool**  
Country Representative

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Special acknowledgement must be given to the partners especially, Thomas Schmidt and Tracy Lochbryn from INL, and technical teams from UNICEF and UNFPA who contributed their expert inputs that helped develop and refine this legislative review document.

Finally, we would like to gratefully acknowledge the generous support of the U.S. Department of State for undertaking this analysis.

## ABBREVIATIONS

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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
CSO	Civil Society Organisation
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
FOSPAH	Federal Ombudsman Secretariat for Protection Against Harassment at Workplace
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
INGO	International Non-Governmental Organisation
INL	Bureau of International Narcotics and Law Enforcement Affairs
LHW	Lady Health Worker
MIS	Management Information System
MoHR	Ministry of Human Rights



NADRA	National Database and Registration Authority
NR3C	National Response Center for Cyber Crimes
NCSW	National Commission on the Status of Women
NGO	Non-Governmental Organisation
PAHWA	Protection against Harassment of Women at the Work Place Act (2010)
PECA	Prevention of Electronic Crimes Act (2016)
PDHS	Pakistan Demographic and Health Survey
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
VAWG	Violence Against Women
VAWG	Violence Against Women and Girls
WEF	World Economic Forum

## 1. INTRODUCTION

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This document is part of a series of 5 reports on “Gap Analysis of ERAW 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 from across the country. It is important to mention that the starting point for this

This Federal Gap Analysis documents and analyses ERAW laws enacted by the federal Parliament that are applicable all over Pakistan, both pre and post devolution. The Analysis also documents and analyses federal ERAW laws applicable in Islamabad Capital Territory under specific headings of sections 7 and 8 for the sake of brevity and clarity.

analysis has been contextualising ERAW 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 largely 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 research also documented the Provincial level laws which are implemented in the provinces, following the devolution of powers. It is therefore, essential to recognise that the four provincial reports bring substantial value to this document.

## 2. EXECUTIVE SUMMARY

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The history of Pakistan has seen many shifts in promulgation of laws related to women's rights. There have been periods when women's legal rights were at the forefront of the political agenda of the country and at times these were not only put on backburner, but many discriminatory legislations were enforced which not only undermined the gains in this arena but had a negative impact on society. The last decade has seen a tremendous change with regard to law making for women's rights in Pakistan and a sturdy legal framework has been created for a 'de jure' regime for women's rights in the country. Though many robust actions are needed to convert it into a 'de facto' reality, yet a strong foundation has been laid down by the successive governments.

The Government of Pakistan has not only promulgated various laws for the protection and promotion of women's rights in the country, but has made a conscious effort to harmonise domestic legislation with international women's rights obligations that have been lauded at national and international levels as well. In this regard, the government has played, and continues to play, an important role for the implementation and realisation of women's rights in the country through key institutions that have this as their mandate.

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. The National Commission on the Status of Women facilitates and monitors implementation of women-related laws all over Pakistan and synergises efforts between key stakeholders to promote gender equality and end violence against women and girls. The federal Women's Parliamentary Caucus is a vibrant political institution that enhances women's role in the parliament. The Caucus strives to increase women's participation and engagement in parliamentary issues with a focus on legislative interventions for women and girls in Pakistan.

The Government of Pakistan has promulgated various laws for women and girls including Protection against Harassment of Women at the Work Place Act 2010, section 509 PPC, Criminal Law (Second Amendment) Act 2011 on Acid and Burn Crimes, Criminal Law (Third Amendment) Act 2011 on Harmful Customary Practices against Women and Girls, Criminal Law (Amendment) (Offences Relating to Rape) Act 2016, Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act, 2016, Prevention of Electronic Crimes Act, 2016, Hindu Marriage Act, 2017, Prevention of Trafficking in Persons Act, 2018 and the Enforcement of Women's Property Rights Act, 2020. In view of these legislative developments, this Gap Analysis of Legislation Related to Ending Violence Against Women (EVAW) documents gaps existing in the legal framework and the implementation process of women-related laws over the years.

Contextualising EAW-related 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 human rights framework. Important to note are the promulgation of the Prevention of Trafficking in Persons Act 2018; the 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 (dated January 1st, 2019) declaring jirgas to be unconstitutional.

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

1. Federal EAW Laws - Normative and Implementation Gaps
2. Federal Laws related to Discrimination and Women's Rights - Normative and Implementation Gaps
3. Islamabad Capital Territory EAW Laws - Normative and Implementation Gaps
4. Islamabad Capital Territory Laws related to Discrimination and Women's Rights - Normative and Implementation Gaps
5. Federal EAW Laws - Monitoring and Information Gaps

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

**Normative Gaps:** A normative gap refers to the absence, gap or non-existence of certain forms of gender-based violence (GBV) within the legal framework of Pakistan. Normative gaps mean the absence or inadequacy in defining, criminalising and providing redress to women and girls regarding persistent acts and circumstances depriving them of their rights.

**Implementation Gaps:** An implementation gap exists when the actions and circumstances constituting GBV are defined, criminalised and redressed 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 are given below:

### **Federal EAW Laws:**

Various laws have been promulgated at federal level to criminalise acts of gender based violence across Pakistan. In relation to the federal EAW laws, Honour Killing and the Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act 2016 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 in the 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 FIRs 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 exists with regard to the lack of sensitisation of law enforcement agencies to understand the absence of consent on part of victims of trafficking and to facilitate victims for effective prosecution of human traffickers.

Normative gaps regarding the definition of 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 on sexual violence in the law, with a 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 the PPC fail to take

into account the psychological, emotional and economic abuse faced by women who are victims of domestic abuse, and a comprehensive definition of domestic violence in PPC is required 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. Despite cases of necrophilia emerging in Pakistan, no criminal legislation exists to prosecute and punish such practices that desecrate 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 resources and low level of sensitisation on the part of FIA.

### **Federal Laws related to Discrimination and Women's Rights:**

With respect to discrimination and women's rights, at the 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.

### **Islamabad Capital Territory EAW Laws:**

A detailed analysis of federal laws applicable all over Pakistan is also followed by an analysis of laws applicable in Islamabad Capital Territory to effectively prevent and reduce gender based violence. Even though the Criminal Law (Second Amendment) Act 2011 has decreased acid and burn crimes in Pakistan, complementary special legislation for Islamabad Capital Territory is necessary to provide medical attention, rehabilitation and reintegration of acid and burn crimes survivors. Furthermore, legislation at ICT level to regulate procurement of acids and other corrosive substances is crucial to curb easy purchase of acid and corrosive substances. For ICT, Child Marriage Restraint Act 1929 also needs to be amended to harmonise legal provisions with the UN CRC protecting the best interests of the children. While Sindh, Balochistan and Punjab have comprehensive laws to provide grievance redressal mechanisms to victims of domestic violence, a special law of similar nature of also necessary for ICT to provide relief to women victims of domestic abuse.

### **ICT Laws related to Discrimination and Women's Rights:**

Regarding laws related to discrimination and women's rights for ICT, major normative gaps have been revealed. Currently no effective legislation has been promulgated by the federal Parliament for ICT to protect the rights of child domestic workers, home based workers as well as women domestic workers. Legislation to enhance and safeguard the rights of women

in marriage is also non-existent for Muslim and Christian marriages in ICT. While the Hindu Marriage Act 2017 has been enacted three years ago, implementation and awareness of the law remains bleak for the federal capital. Only recently, the federal government has sought to protect women's right of inheritance in ICT by enacting two laws: Letters of Administration and Succession Certificates Act 2020 and Enforcement of Women's Property Rights Act 2020. The laws are landmark initiatives to promote economic empowerment of women, however, sensitisation of public functionaries and awareness amongst people about the new laws can provide the needed impetus for effective implementation.

Normative gaps in law also exist for women with different capabilities who face multiple forms of discrimination and require robust legislation to protect and promote their rights in ICT. Normative gaps in laws also exist for maternity benefits and gender pay gap in ICT requiring a consultative process to draft and promulgate special laws to protect women's rights in employment.

### **Federal EAW Laws - Monitoring and Information Gaps:**

The monitoring and information gaps explore existing monitoring mechanisms for implementation of women related laws like the National Commission on the Status of Women followed by data portals that can be improved and utilised for evidence based legal and policy advocacy. The section details the role of NCSW as well as some of the existing data portals that will be used for development of indicators to track implementation of women related laws. 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 the federal and ICT 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 (EVAW) therefore provides a point for critical reflection to document the features of law that have been successful as well as the features 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.

### 3. BACKGROUND

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According to the Provisional Summary Results of 6<sup>th</sup> Population and Housing Census of 2017, Pakistan has a total population of 207,774,520 with an average annual growth rate of 2.40.<sup>1</sup> Of the total population, 101,314,780 are female and 10,418 are transgender persons.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> Against the backdrop of these statistics, it is clear that women represent a marginalised group in Pakistan. Measures taken to close existing gender gaps will not only empower Pakistani women, but will benefit the society as a whole.

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.<sup>5</sup> 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.”<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> In the absence of national level prevalence data on VAW, administrative data informs that 7678 cases of violence against women were reported in Punjab in 2017, which included 3031 cases of assault, 3378 cases of rape, 904 cases of domestic violence and 222 cases of honour killing.<sup>11</sup> 7219 cases of violence against women were decided in Punjab out of which only 315 resulted in convictions.<sup>12</sup>



In addition, the deeply entrenched perceptions regarding VAW perpetuate the existing gender disparities and discrimination within society and normalise violence. In a study using a sub-sample of the above PDHS Study (2012-2013), including 3641<sup>13</sup> 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.<sup>14</sup> 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.'<sup>15</sup>

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.<sup>16</sup> Only 11% of women owned a house either individually or jointly and only 4% owned land.<sup>17</sup>

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 20% membership of the Punjab Assembly.<sup>18</sup> Furthermore, the gap between men and women in voter registration still remained at 6.7 million in 2017.<sup>19</sup> Participation and representation of women in the justice sector remains a challenge in Punjab with 'women comprising only 2.7% of the police force, 15% of the district judiciary, 14% of prosecutors and 11% of advocates.'<sup>20</sup>

Against the backdrop of these statistics and indicators, Pakistan's legal context in the post-devolution era also needs to be outlined. Post 18<sup>th</sup> 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*.'<sup>21</sup> 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. On the other hand, the Constitution of Pakistan in article 144 provides that if two or more Provincial Assemblies pass resolutions to the effect that Parliament may by law regulate any matter not enumerated in either List in the Fourth Schedule, it shall be lawful. But any Act so passed maybe amended or repealed by the Act of the Assembly of that Province. This provides a strategic entry point to organisations to advocate for ERAW 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.

## 4. METHODOLOGY

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The formulation of the Gap Analysis of EAW Legislation has been based on a consultative and participatory approach led by UN Women Pakistan. The first draft of the Gap Analysis of EAW Legislation 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 PowerPoint presentation to be discussed with the relevant stakeholders.

In this regard, “Technical Consultative Workshops on EAW Legislation” were organised in Islamabad, Lahore, Karachi, Peshawar and Quetta, in which relevant stakeholders from government, civil society organisations, media, legal fraternity, researchers and academia (Annex 1) participated to put forward their opinions, perspectives and experiences regarding the current state of EAW legislation at the federal level and in provinces. The workshops were 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 Pakistan’s context.

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.

## 5. PAKISTAN'S ERAW 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**

<b>Article 1</b>	• Freedom from Discrimination
<b>Article 2</b>	• Obligation on State Parties to Eliminate Discrimination against Women
<b>Article 3</b>	• Women's Right to Exercise and Enjoyment of Human Rights and Fundamental Freedoms
<b>Article 4</b>	• Affirmative Actions for Women
<b>Article 5</b>	• Modifying Social and Cultural Patterns perpetuating Sex-Role Stereotyping and Prejudice
<b>Article 6</b>	• Suppressing all forms of Trafficking in Women and Exploitation of Prostitution
<b>Article 7</b>	• Elimination of Discrimination against Women in Political and Public Life
<b>Article 8</b>	• Elimination of Discrimination against Women in Opportunities to Represent their Governments
<b>Article 9</b>	• Equal Rights to Women with regards to Nationality
<b>Article 10</b>	• Equal Rights to Women with regards to Education
<b>Article 11 (1)</b>	• Elimination of Discrimination against Women in the Field of Employment including Equal Remuneration
<b>Article 11 (2)</b>	• Maternity Benefits and Rights
<b>Article 12</b>	• Elimination of Discrimination against Women in the Field of Health Care and Access to Health Care
<b>Article 13</b>	• Elimination of Discrimination against Women in other areas of Economic and Social Life
<b>Article 14</b>	• Obligation on State Parties to Ensure Application of the Convention to Rural Women
<b>Article 15</b>	• Elimination of Discriminatory Laws against Women
<b>Article 16</b>	• 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 contextualise Pakistan's EAW related laws in the international context. Some of the notable Concluding Observations put forward by the CEDAW Committee on the Fourth Periodic Report (dated 1 March 2013) 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;<sup>22</sup> 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<sup>23</sup> 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."<sup>24</sup>*

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.*<sup>25</sup>

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.<sup>26</sup>

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,'*<sup>27</sup> 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: January 1<sup>st</sup>, 2019 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.”<sup>28</sup>*

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.”<sup>29</sup>*

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**



## 6. FEDERAL ERAW LAWS

This section analyses the normative and implementation gaps in the current legal framework of Pakistan in relation to ERAW laws and other gender-based crimes. This analysis will allow greater clarity and enunciation in understanding the gender dynamics of GBV crimes and the gaps that still exist both in terms of definition of laws as well as the implementation status.

### 6.1 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 honour<sup>30</sup>. 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 applicable.<sup>31</sup> *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."<sup>32</sup> 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 where the provision of *fasad-fil-arz* is applicable. The 2016 amendments to the law state that if the provision of *fasad-fil-arz* are applicable 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"*<sup>33</sup>

Sr. No.	Gaps	Recommendations
<b>Implementation Gaps</b>		
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 <sup>34</sup> whereas they were formerly entertained by anti-terrorism courts <sup>35</sup>	Jurisdiction of honour crimes to be vested with anti-terrorism courts owing to the nature of the crime thereby making the offence non-bailable, cognisable and non-compoundable

## 6.2 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.<sup>36</sup> For the first four months of 2018, 72 bodies of female infants were discovered in Karachi alone.<sup>37</sup> 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.<sup>38</sup> 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*'<sup>39</sup> and '*concealment of birth by secret disposal of dead body*';<sup>40</sup> which carry sentences from two<sup>41</sup> to seven<sup>42</sup> years for the offences. However, regarding cases of female infanticide, the provisions laid out under section 302, murder, Pakistan Penal Code, 1860 also fail to ensure prosecution where the parents or carers are the ones responsible for female infanticide.<sup>43</sup>

Sr. No.	Gaps	Recommendations
<b>Normative Gaps</b>		
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 ( <i>Qatl-e-Amd</i> 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 cognisable

### 6.3 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.*<sup>44</sup> 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.'*<sup>45</sup>

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. 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.<sup>46</sup>

'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.'<sup>47</sup>

Sr. No.	Gaps	Recommendations
<b>Implementation Gap</b>		
1.	Lack of awareness and sensitisation 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 sensitisation of law enforcement agencies regarding the correct provisions of Pakistan Penal Code, 1860 for acid and burn crimes

## 6.4 HUMAN TRAFFICKING

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

- Defines child as any person below the age of eighteen years;<sup>48</sup>
- Defines ‘trafficking’ to include compelled labour as well as sex work to guarantee protection to domestic workers/ labourers supplied through trafficking;<sup>49</sup>
- Stipulates a punishment which may extend to seven years and a fine which may extend for one million rupees;<sup>50</sup>
- 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;<sup>51</sup>
- Exonerates criminal liability of victims of trafficking;<sup>52</sup>
- 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;<sup>53</sup>
- Mandates police to investigate into cases of trafficking within Pakistan and mandates the Federal Investigation Agency (FIA) to investigate into cases of trafficking where the victim is transported into and out of Pakistan;<sup>54</sup>
- Allows compensation to be paid to victims in cases where the offender is convicted.<sup>55</sup>

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
<b>Implementation Gaps</b>		
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	Sensitisation 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 sensitisation of law enforcement agencies, legal fraternity and judiciary regarding the wide definition of 'trafficking' to include child domestic servitude as well	Sensitisation of law enforcement agencies, legal fraternity and judiciary to implement the law as per legislative intention to provide relief to all victims of trafficking

## 6.5 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 rape<sup>56</sup> and its punishment<sup>57</sup> 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.<sup>58</sup>*

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:

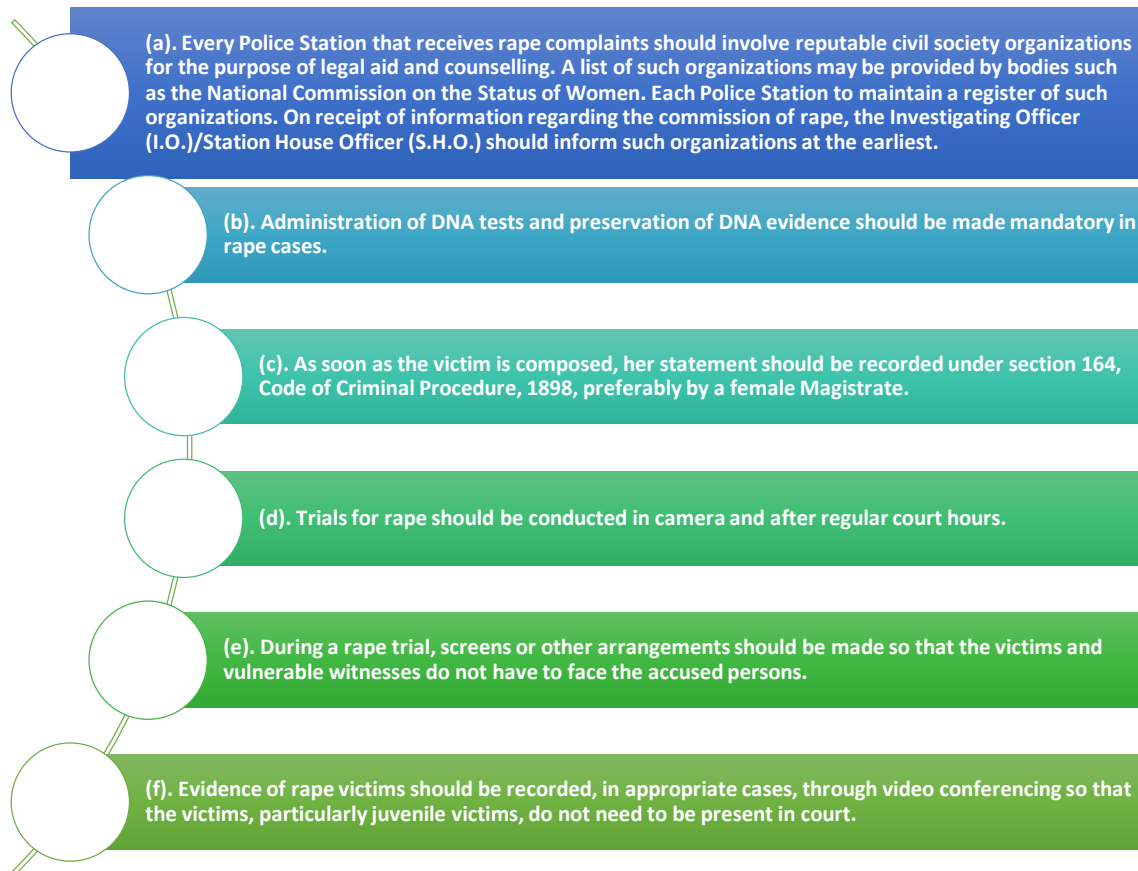
1. The definition of rape in this regard is male-centric where only a man can be accused of rape. While using the term 'sexual intercourse' in the traditional sense meaning penetration through the penis, the section currently enunciates that only men can be perpetrators of rape whereas women and transgender 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.<sup>59</sup> 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.<sup>60</sup> 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,<sup>61</sup> 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.<sup>62</sup>

Sr. No.	Gaps	Recommendations
<b>Normative Gaps</b>		
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

The purpose of the Criminal Law (Amendment) (Offences Relating to Rape) Act 2016 is 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 diligently<sup>63</sup> as well as punishments for jeopardizing or hampering investigations in cases of rape.<sup>64</sup> 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.<sup>65</sup>

Furthermore, there is a provision for imprisonment extending up to three years for disclosure of the identity of a victim of rape without proper authorisation<sup>66</sup> to deter media personnel

from violating the dignity and privacy of rape survivors. The amendment makes it obligatory to collect DNA samples for evidence<sup>67</sup> and also mandates examination of the accused by a medical practitioner for collecting evidence.<sup>68</sup> 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.<sup>69</sup> Furthermore, judgment of the Supreme Court in *Salman Akram Raja and another versus Government of Punjab and others*,<sup>70</sup> has also given a set of directions to the Government for better response to cases of rape (Table 3).



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

Sr. No.	Gaps	Recommendations
<b>Implementation Gaps</b>		
1.	Absence of a revised Code of Conduct for public servants (medico-legal officers,	Formulation of a revised Code of Conduct for public servants appraising them of their



	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	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 authorisation 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 sensitisation of law enforcement agencies regarding relaxations given to rape victims as per sections 154 and 161 Code of Criminal Procedure, 1898	Sensitisation 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	Sensitisation 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	Sensitisation 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

## 6.6 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,<sup>71</sup> 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.<sup>72</sup> This undermines the trauma and severity of cases of sexual violence involving anal<sup>73</sup> 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

It can be clearly seen that there is inconsistency between the punishments of different sexual offences, and in some cases the punishment is less grave even though the trauma and physical harm to the survivor could be as severe (or more severe) as 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
<b>Normative Gaps</b>		
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

## 6.7 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.”<sup>74</sup>*

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.

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 workplace. 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.<sup>75</sup> 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.<sup>76</sup>
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.<sup>77</sup>
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.<sup>78</sup>
5. The last forum for cases of sexual harassment is the President at the federal level and Governor at the provincial level.<sup>79</sup> Therefore, the legislative framework in the Act provides mechanisms to deal with complaints at forums independent of the mainstream judiciary.

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 organisations (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 18<sup>th</sup> 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.’<sup>80</sup>*

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
<b>Normative Gaps</b>		
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
2.	Absence of legal provisions to establish provincial FOSPAH offices to entertain complaints filed in the provinces against federal or trans-provincial institutions	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
3.	The title for the Secretariat and the official "Ombudsman" goes against the spirit and intention of the legislation	In line with amendments by Punjab and Khyber Pakhtunkhwa, the title should be amended in sections 7, 8 and 10 from "Ombudsman" to "Ombudsperson"
<b>Implementation Gaps</b>		
1.	Inadequate monitoring and compliance mechanism under section 11(3) of PAHWA	Amendment in section 11(3) of PAHWA to grant jurisdiction to Ombudsman to ensure compliance with the law
2.	Inefficacy of the section 509 provision to ensure criminal prosecution of sexual harassment	Amendment in Schedule II of the Code of Criminal Procedure 1898 to make the offence cognisable

## 6.8 CHILD MARRIAGE

Child Marriage Restraint Act 1929, applicable in the Islamabad Capital Territory, stipulates the marriageable age of girls as sixteen years and eighteen for boys; which is not in accordance with the Constitution and international commitments of Pakistan.<sup>81</sup> This exposes a major normative gap and requires an amendment to define child marriage that does not discriminate between girls and boys.<sup>82</sup> The law specifies minor punishments of imprisonment of one month and a fine of one thousand rupees only for the offences of marrying a child,<sup>83</sup> solemnising a child marriage<sup>84</sup> and granting permission or negligent failure on behalf of parents or guardians involved in child marriage.<sup>85</sup> Furthermore, child marriage needs to be criminalised in the Pakistan Penal Code, 1860 to be applicable all over Pakistan. It is, therefore, proposed that a comprehensive definition of child marriage should be inserted in the Pakistan Penal Code, 1860 with substantial and definitive penalties to punish the culprits.

Sr. No.	Gaps	Recommendations
<b>Normative Gaps</b>		
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 both girls and boys below the age of 18 years

## 6.9 HARMFUL CUSTOMARY PRACTICES AGAINST WOMEN AND GIRLS

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.<sup>86</sup> 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.'*<sup>87</sup>

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 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,<sup>88</sup> thereby, restricting families and law enforcement agencies from out of court settlements in cases of harmful customary practices against women and girls.



Sr. No.	Gaps	Recommendations
<b>Implementation Gaps</b>		
1.	Criminal offences defined and amended in the Criminal Law (Third Amendment) Act 2011 are non-cognisable	Amendment to stipulate harmful customary practices against women and girls as 'cognisable' 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	Sensitisation 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

## 6.10 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.<sup>89</sup> 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.'*<sup>90</sup>

While cases of domestic violence are entertained under section 332 to 337,<sup>91</sup> 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
<b>Normative Gaps</b>		
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

## 6.11 DOWRY RELATED VIOLENCE

Dowry is a social norm in most South Asian countries, and by way of custom, has become constitutive of most marriage contracts in Pakistan. Dowry in Pakistan’s context is defined as transfer of parental property, gifts or money at the time of marriage of their daughter. However, it has caused severe social and economic burdens on the bride and her family.

*‘What began as a custom to protect and provide for women has grown into being a burden on poorer families as they could not afford to give what a suitable husband or his family might demand, and now compromises the treatment of women.’<sup>92</sup>*

Whereas, dowry-related violence is defined as ‘any act of violence or harassment associated with the giving or receiving of dowry at any time before, during or after the marriage,’<sup>93</sup> dowry is a multi-faceted, deep-rooted gender issue with social, economic and health consequences.<sup>94</sup> Dowry-related violence is often neglected in the classist society of Pakistan where elite positioned as decision makers fail to comprehend the ramifications of this violence, particularly on poor and vulnerable families.

Dowry-related offences range on a spectrum from demands of dowry, which is a form of violence in its own right, to murdering of women who fail to arrange for sizeable amount of dowry for their in-laws. While the recent advocacy campaign by UN Women regarding dowry

demands has been well received by all quarters, what is also required is stringent legislation at the federal level, criminalising dowry-related violence.

The Dowry and Bridal Gifts (Restriction) Act 1976 seeks to regulate the practice of dowry and imposes penalties of six-month imprisonment and ten thousand rupees fine in case of violation.<sup>95</sup> The law, however, does not recognise the violence that may stem from the giving and taking of dowry. Furthermore, the current legal provisions in the Act fail to take into account the power disparity between the groom’s and bride’s families in Pakistani society and how this impacts dowry related decisions during marriages.

Sr. No.	Gaps	Recommendations
<b>Normative Gap</b>		
1.	Absence of a law criminalising acts of dowry-related violence. Current law is anachronistic in nature and regulates only dowry expenditure	Criminal Law Amendment in the Pakistan Penal Code, 1860 to define and criminalise acts of dowry related violence

## 6.12 NECROPHILIA

Necrophilia is defined as sexual attraction to corpses or engaging in sexual activity with corpses.<sup>96</sup> Pakistan has in recent years come across some much publicised and harrowing incidents of necrophilia involving corpses of women and girls.<sup>97</sup> While cases of necrophilia are dealt with under other provisions of the Pakistan Penal Code, for example, trespassing on burial places,<sup>98</sup> the law currently does not have any legal definition or criminalisation for such acts.<sup>99</sup>

Sr. No.	Gaps	Recommendations
<b>Normative Gap</b>		
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

## 6.13 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.<sup>100</sup> 63% of the total calls were made by women whereas 37% were made by men.<sup>101</sup> Highest number of complaints related to non-consensual usage of information (326); defamation (314); and blackmail (302).<sup>102</sup> 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.<sup>103</sup> 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.<sup>104</sup> 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.<sup>105</sup>

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

Sr. No.	Gaps	Recommendations
<b>Normative Gaps</b>		
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		
1.	Lack of gender sensitisation of FIA officials in dealing with cases of modesty of natural persons where the complainants are mostly women	Sensitisation and capacity building of FIA officials in registering and investigating cases involving modesty of women/harassment in online spaces
2.	Lack of trained and technical staff NR3C offices resulting in delayed investigation procedures	Allocation of technical human resources at NR3C offices for efficient operations
3.	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
4.	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
5.	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

## 6. FEDERAL LAWS RELATED TO DISCRIMINATION AND WOMEN'S RIGHTS

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

### 6.1 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'<sup>106</sup> 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."*<sup>107</sup>

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.”<sup>108</sup>*

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.	Gaps	Recommendations
<b>Normative Gap</b>		
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

## 6.2 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.<sup>109</sup> Pakistan is one of the 48 countries where discriminatory provisions exist in its nationality laws.<sup>110</sup> 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).”<sup>111</sup>*

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.<sup>112</sup> 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.	Gaps	Recommendations
<b>Normative Gap</b>		
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



## 7. ISLAMABAD CAPITAL TERRITORY ERAW LAWS

This section analyses the normative and implementation gaps in the current laws applicable in Islamabad Capital Territory in relation to ERAW laws and other gender-based crimes. This analysis will allow greater clarity and enunciation in understanding the gender dynamics of GBV crimes and the gaps that still exist both in terms of definition of laws as well as the implementation status.

### 7.1 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
<b>Normative Gaps</b>		
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
<b>Implementation Gap</b>		
1.	Lack of strict punishment for unauthorised 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

## 7.2 CHILD MARRIAGE

The Child Marriage Restraint Act 1929 applicable in ICT stipulates the marriageable age of the girl child as sixteen years whereas for boys it is eighteen years.<sup>113</sup> This discriminates between girls and boys where girls are burdened with marriage and related responsibilities at an earlier age as compared to boys and is therefore against the constitutional guarantee of non-discrimination. 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.<sup>114</sup>

Sr. No.	Gaps	Recommendations
<b>Normative Gaps</b>		
1.	Absence of a law that would make illegal, marriage of a girl child below the age of eighteen years	Amendment in the Child Marriage Restraint Act, 1929 to re-define marriageable age as eighteen 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

## 7.3 DOMESTIC VIOLENCE

ICT at the moment does not have a comprehensive law to address domestic violence. 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. A grievance redressal mechanism, at the very minimum, is necessary to provide relief to women complainants and victims of domestic violence.

Sr. No.	Gaps	Recommendations
<b>Normative Gap</b>		
1.	Absence of a comprehensive law to provide relief to complainants of domestic violence	Drafting and promulgation of a law to provide relief to complainants of domestic violence

## 8. ICT LAWS RELATED TO DISCRIMINATION AND WOMEN'S RIGHTS

The analysis of federal laws related to discrimination and women rights outlines the legal position of certain women rights in the current legal framework of Islamabad Capital Territory. In this regard, normative and implementation legal gaps related to women's rights are explored in detail below.

### 8.1 CHILD DOMESTIC WORKERS

The Employment of Children Act 1991 prohibits employment of children below the age of fourteen years in occupations set out in Part I of the Schedule<sup>115</sup> but allows light work<sup>116</sup> for adolescents between the age of 14-18 years as well as children.<sup>117</sup> 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. It is also very difficult to monitor domestic settings to establish potential exploitation, maltreatment, neglect and violence against a child worker.<sup>118</sup>

Sr. No.	Gaps	Recommendations
<b>Normative Gaps</b>		
1.	Absence of a law that prohibits involvement of children below the age of eighteen years in domestic work	Amendment in the Employment of Children Act, 1991 to prohibit involvement of children below the age of eighteen years in domestic work as well as other hazardous work  Notification under section 4 of the Employment of Children Act, 1991 to declare domestic work as 'hazardous' for children

### 8.2 HOME-BASED WORKERS AND DOMESTIC WORKERS

Currently, there is no federal law for Islamabad Capital Territory to govern the rights of home-based women workers as well as domestic workers and they are part of the informal economy. These workers do not therefore fall within the formal definition of labour. In this regard, firstly, the definition of labour or worker needs expansion to include these workers. Secondly, institutions need to be set up to register home-based workers and extend the rights

given in labour laws including: Employees Old Age Benefits, Workers Welfare Fund, Social Security etc, to home-based workers as well.

The following gaps have been highlighted with regard to HBWs:

Sr. No.	Gaps	Recommendations
<b>Normative Gaps</b>		
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

### 8.3 MUSLIM MARRIAGE LAWS

The Muslim Family Law Ordinance, 1961 and Family Courts Act, 1964 grants substantial rights to women in Islamabad Capital Territory; however, the same need to be amended in order to further enhance, protect and promote the rights of women within family law. In this regard, the following gaps have been highlighted:

Sr. No.	Gaps	Recommendations
<b>Normative Gaps</b>		
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 <i>khula</i>	Amendment in Family Courts Act, 1964 to grant women the right to retain full or partial dower in case of <i>khula</i> <sup>119</sup>

## 8.4 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.<sup>120</sup> 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,'<sup>121</sup> while also outlining the process of marrying a minor under the law, which can be done with the consent of parents or guardian.<sup>122</sup> 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.<sup>123</sup> 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.<sup>124</sup> 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.<sup>125</sup>

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, some additional grounds of divorce 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 repeal of said 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
<b>Normative Gaps</b>		
1.	Absence of a clear definition of marriageable age in the law	Amendment in the Christian Marriage Act 1872 to properly define a “minor” and “marriageable age” for Christian marriages whilst also ensuring that children below the age of eighteen years are not married off by parents or guardians
2.	Absence of a contemporary law that would simplify dissolution of marriage processes for Christians	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 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

## 8.5 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.<sup>126</sup> 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.<sup>127</sup>

The salient features of the law include the following:

1. The law puts forward the following conditions to solemnise 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
<b>Implementation Gaps</b>		
1.	Lack of Marriage Registrars for Hindu marriages for the convenience of Hindus residing in ICT	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 sensitisation of law enforcement agencies, legal fraternity, judiciary and local government representatives	Sensitisation and awareness of law enforcement agencies, legal fraternity, judiciary and local government

	regarding the family rights of Hindu population as per the Act of 2017	representatives regarding the family rights of Hindu population as per the Act of 2017
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## 8.6 DEPRIVING WOMEN OF INHERITANCE

The Federal Parliament has promulgated the Letters of Administration and Succession Certificates Act 2020 which mandates NADRA to establish Succession Facilitation Units to entertain applications regarding succession as per the Family Registration Certificate.<sup>128</sup> NADRA upon receipt of application shall publish a notice to public regarding the application, in case no objection or claim is raised within 14 days, the Authority shall grant the Letter of Administration and Succession Certificate to the legal heirs.<sup>129</sup> The Ordinance also gives exclusive jurisdiction to NADRA with respect to issuance of Succession Certificates.<sup>130</sup> The law is an effort to simplify succession processes for women and to make the process transparent and efficient through NADRA.

The Federal Parliament also promulgated the Enforcement of Women’s Property Rights Act 2020, with the following salient features:

1. The Act gives power to the Ombudsman 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;<sup>131</sup>
2. The Act confers powers on the Ombudsman 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;<sup>132</sup>
3. The Ombudsman 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 ICT;<sup>133</sup>
4. The Act confers widespread powers to the Ombudsman 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;<sup>134</sup>
5. In complaints where the matter requires intricate adjudication or evidence, the Ombudsman has powers to formulate a reference along with the reports and materials collected and submit the same to the Civil Court of competent jurisdiction;<sup>135</sup>
6. The Act provides jurisdiction to the Ombudsman 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.<sup>136</sup>

The legislation is an attempt to vest jurisdiction of cases of women’s inheritance with the Ombudsman with inquisitorial powers to facilitate access to justice for women with regards to their economic rights. While the effort has been commendable, certain lacunae are prominent. The laws are a landmark initiative for economic empowerment of women, implementation of the laws can be strengthened keeping in mind the following gaps:

Sr. No.	Gaps	Recommendations
<b>Normative Gap</b>		
1.	Absence of a provision guaranteeing right to appeal against the Ombudsman’s decision	Amendment in the Enforcement of Women’s Property Rights Act 2020 to introduce a provision for appeal process against decisions of the Ombudsman
<b>Implementation Gaps</b>		
1.	Absence of Rules under the Enforcement of Women’s Property Rights Act 2020 to elaborate functions envisaged in the law	Drafting and notification of Rules under section 12 of the Enforcement of Women’s Property Rights Act 2020
2.	Absence of Rules under the Letters of Administration and Succession Certificates Act 2020 to elaborate functions envisaged in the law	Drafting and notification of Rules under section 13 of the Letters of Administration and Succession Certificates Act 2020
3.	Lack of awareness of the new laws amongst public functionaries and judiciary	Sensitisation of judiciary, legal fraternity and public functionaries regarding provisions of the new laws
4.	Lack of awareness of the new laws amongst ordinary people	Mass awareness campaigns to inform people in ICT about the laws

## 8.7 WOMEN WITH DIFFERENT CAPABILITIES

The Disabled Persons (Employment and Rehabilitation) Ordinance, 1981 is an inadequate law to address the multitude of 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’<sup>137</sup> and stipulates the establishment of National and Provincial Councils for Rehabilitation of Disabled Persons

tasked with registration,<sup>138</sup> employment<sup>139</sup> and policy making<sup>140</sup> 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
<b>Normative Gaps</b>		
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 <sup>141</sup>	Drafting and promulgation of legal provisions or amendments to mainstream women with different capabilities

## 8.8 MATERNITY BENEFITS

West Pakistan Maternity Benefit Ordinance, 1958 governs maternity benefits and rights in ICT. 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 delivery.<sup>142</sup> The law further grants the right of maternity benefits to women;<sup>143</sup> payment in case of women's death;<sup>144</sup> protection from dismissal;<sup>145</sup> and penalty for working during the permitted period of absence.<sup>146</sup> There is penalty of three thousand rupees in case of non-compliance with the law<sup>147</sup> and prosecution under the ordinance requires sanction of the Inspector of Factories.<sup>148</sup> In case of refusal by the Inspector of Factories to sanction prosecution, the complainant can file an Appeal with the Director of Labour Welfare.<sup>149</sup>

The framework of rights and benefits given in the Ordinance of 1958 highlight the following gaps and recommendations to ensure maternity benefits to women workers in ICT:

Sr. No.	Gaps	Recommendations
<b>Normative Gaps</b>		
1.	Inadequate maternity leave for expecting mothers (For example, Sindh Maternity Act 2018 stipulates 16 weeks)	Amendment in section 3 of the West Pakistan Maternity Benefit Ordinance, 1958 to grant maternity leave of 16 weeks

2.	Absence of legal provisions to address pregnancy related illnesses and complications	Amendment in the West Pakistan Maternity Benefit Ordinance, 1958 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 West Pakistan Maternity Benefit Ordinance, 1958 to address day-care and nursing breaks for women workers
<b>Implementation Gap</b>		
1.	Absence of harsher punishments for contravention of the law	Amendment in the section 9 of the West Pakistan Maternity Benefit Ordinance, 1958 to increase penalty from 500 rupees

## 8.9 GENDER PAY GAP

Gender pay gap refers to ‘the difference between the amounts of money paid to women and men, often for doing the same work.’<sup>150</sup> The Constitution of Pakistan guarantees equality between men and women<sup>151</sup> and safeguards ‘against discrimination in services’<sup>152</sup>. These two provisions can safely be translated as a guarantee for equal pay for both men and women in the public sector. In addition to constitutional guarantees, Pakistan has ratified the ILO Convention, (N 100), titled Equal Remuneration of Men and Women Workers for Work of Equal Value Convention.

However, there is no monitoring mechanism for the private sector in Pakistan and the sector does not abide by this constitutional provision. Nor is there a specific legislation for the private sector with regard to equal pay for equal work. According to the Pakistan Labour Force Survey for 2013-2014 and 2014-2015, the present gender pay gap is of 26 percent throughout Pakistan’s workforce without taking into account differences in workers’ characteristics.<sup>153</sup> This discrimination in the private sector therefore adversely affects working women and fails to provide any grievance specific redressal mechanism.

Therefore, amendments in labour laws to regulate the private sector in this regard are important. Ensuring a stipulation within the labour laws to provide a grievance redressal mechanism to women workers suffering from gender pay gap is a crucial step to help curb the practice.

Sr. No.	Gaps	Recommendations
<b>Normative Gap</b>		
1.	Absence of a labour law for stricter oversight over the private sector and a grievance redressal mechanism for complainants of gender pay gap in the private sector	Amendment in the Payment of Wages Act 1936 to widen the scope of the law's application and to provide a grievance redressal mechanism for complainants of gender pay gap in the private sector

## 9. FEDERAL EVAW LAWS: MONITORING & INFORMATION GAPS

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### 9.1 MONITORING GAPS

The National Commission on the Status of Women (NCSW) was established as per the National Commission on the Status of Women Act 2012. The NCSW is the national statutory body on women's rights which acts as a bridge between civil society and the Government of Pakistan. The Commission operates as an oversight and monitoring body with core functions including to:

- Examine policies, programs and other measures taken by the Government for women's development and gender equality;
- Review laws, rules and regulations affecting the status of women;
- Monitor mechanisms and institutional procedures for redress of violations of women's rights and individual grievances;
- Encourage and sponsor research to generate information, analysis and studies relating to women and gender issues;
- Develop and maintain interaction and dialogue with NGOs, experts and individuals in society at the national, regional and international level.<sup>154</sup>

In light of the above mandate, the NCSW works vociferously to promote the rights of women and girls as enshrined in the Constitution of Pakistan and international treaties ratified by Pakistan. NCSW also regularly conducts researches and publishes reports on women and girls' rights situation in the country for evidence based advocacy and policy advice.

### 9.2 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 was not disaggregated in the census form data.<sup>155</sup> Although 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 utilised to fill information gaps:

1. Provisional Summary of 2017 Census;<sup>156</sup>
2. Labour Force Survey;<sup>157</sup>
3. Pakistan Demographic and Health Survey;<sup>158</sup>
4. Islamabad Police Crime Statistics;<sup>159</sup>
5. Pakistan Economic Survey;<sup>160</sup>

6. Election Commission of Pakistan;<sup>161</sup>
7. Human Rights Commission of Pakistan<sup>162</sup>

While the data portals listed above provide substantial data but all of them do not necessarily publish disaggregated data based on gender, age, ethnicity, religious affiliation, etc., for analysis. For example, the Islamabad Police Crime Statistics do not extrapolate the number of murders committed against men, women or children, they only give data regarding the number of murders committed. A more robust monitoring and information system is required to fill this gap which can be achieved by devising a mechanism at national level to collate data from public functionaries for research, analysis and policy development.

## 10. CONCLUSION

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The current gap analysis adopts a tripartite approach to analyse gaps at normative, implementation, monitoring and information levels. The purpose of the exercise has been to analyse the issue of gender-based violence within the legal framework of Pakistan. The first leg of the analysis includes normative gaps. 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.

In this regard, forms of gender based violence which have not been criminalised or regulated in our legal system have been discussed in detail 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 true enjoyment of their rights form 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 implementation gaps for this analysis, data has been sought from governmental and non-governmental partners working on the specific legislations to highlight the extent of implementation as well as the challenges being faced. By referencing researches and requesting information from key experts, gaps have been highlighted by experts and organisations working on the implementation of EVAW laws and facilitating government agencies through the provision of technical expertise. The aim has been to consolidate all available data to produce this analysis. The Technical Consultative Workshops on EVAW Laws organised in Islamabad, Lahore, Karachi, Peshawar and Quetta with a participatory and facilitative approach, have further enriched this document with insights into ground realities and status of implementation. Separate consultations and meetings with key stakeholders and experts also provided valuable inputs into the finalisation of this report. Subsuming the voices of experts from all over Pakistan 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 statutory body like the National Commission on the Status of Women. The statutory functions of the Commission to monitor and facilitate implementation of women-related laws 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 between censuses and the absence of collecting

disaggregated data, resulting in a gaping hole in information available. UN Women and the National Commission on the Status of Women are working on the development of a National Gender Data Portal which will address the gaps in data. Credible governmental and non-governmental data portals are being identified, and the data collected will feed into the next phases of the gap analysis: formulation of indicators for monitoring implementation of ERAW laws and formulation of a 'Law Reform Package' for women's empowerment.

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

### **Federal ERAW 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 to define the offence of infanticide and criminalise such acts of female infanticide while also ensuring that such acts of female infanticide are non-compoundable, non-bailable and cognisable;
3. Awareness and sensitisation of law enforcement agencies regarding the correct provisions of Pakistan Penal Code, 1860 for acid and burn crimes;
4. Sensitisation 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 Amendments 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 authorisation 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. Sensitisation of law enforcement agencies, in particular the Police, to assist 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 cognisable;
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 'cognisable' offences by the federal Parliament;
17. Sensitisation 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 section 377 'Unnatural Offences' of the Pakistan Penal Code, 1860 to define and criminalise acts of necrophilia all over Pakistan;
21. Sensitisation 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;
22. 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's 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;
2. Amendment in the Citizenship Act, 1951 to include provisions for a Pakistani woman to transfer her nationality to her foreign husband;

### **Islamabad Capital Territory EAW Laws:**

1. Promulgation of a special comprehensive legislation to mandate medical attention, rehabilitation and reintegration of acid and burn survivors;
2. Notification of Rules under the Poisons Act 1919 by the Government to regulate possession and sale of acid and other corrosive substances;
3. Amendment in the Child Marriage Restraint Act, 1929 to re-define marriageable age as eighteen years for both girls and boys and to introduce limited exceptions to allow child marriage with judicial consent;
4. Drafting and promulgation of a special law to provide relief to victims of domestic violence.

### **Islamabad Capital Territory Laws related to Discrimination and Women's Rights:**

1. Amendment in the Employment of Children Act, 1991 to prohibit involvement of children below the age of eighteen years in domestic work or other hazardous work;
2. Drafting and promulgation of a labour law for home-based workers;
3. Drafting and promulgation of a labour law for domestic workers;

4. Amendment in section 6 of the Muslim Family Law Ordinance, 1961 to stipulate harsher punishments for polygamy;
5. Amendment in section 5 of the Muslim Family Law Ordinance, 1961, stipulating harsher punishments to mandate registration of marriages;
6. Amendment in the Christian Marriage Act 1872 to properly define a “minor” and “marriageable age” for Christian marriages whilst also ensuring that children below the age of eighteen years are not married off by parents or guardians;
7. 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 list of allegations and an arduous burden of proof against the other party;
8. Appointment of Marriage Registrars for Hindu Marriages as per section 7 of the Hindu Marriage Act 2017;
9. Drafting and notification of Rules to carry out the purposes of the Act as per section 25 of the Hindu Marriage Act 2017
10. Sensitisation of judiciary, legal fraternity and public functionaries regarding provisions of the Letters of Administration and Succession Certificates Act 2020 and Enforcement of Women’s Property Rights Act 2020;
11. Mass awareness campaigns to inform people in ICT about the Letters of Administration and Succession Certificates Act 2020 and Enforcement of Women’s Property Rights Act 2020;
12. Drafting and promulgation of a law for mainstreaming of persons with different capabilities including special legal provisions to mainstream women with different capabilities who suffer from multiple discrimination;
13. Amendment in section 3 of the West Pakistan Maternity Benefit Ordinance, 1958 to grant maternity leave of 16 weeks and to address pregnancy related illnesses and complications for women workers;
14. Amendment in the Payment of Wages Act 1936 to widen the scope of the law’s application and to provide a grievance redressal mechanism for complainants of gender pay gap in the private sector.

## Federal EAW Laws - Monitoring and Information Gaps:

1. Formulation of indicators to track implementation of laws by oversight bodies like the NCSW and other stakeholders including parliamentarians and duty-bearers;
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 NCSW staff 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: TECHNICAL CONSULTATIVE WORKSHOP

LIST OF PARTICIPANTS – ISLAMABAD CONSULTATION			
#	Name	Designation	Organisation
1.	Valerie Khan	President	Acid Survivors Foundation
2.	Zunaira Fayyaz	Lawyer	Aitzaz Ahsan & Associates Law Firm
3.	Natasha Rathore	Manager Programs	Aurat Foundation
4.	Farrah Taufeeq	Consultant	Center of Gender & Policy Studies
5.	Imran Haider	Dep. Director Cyber Crime	Federal Investigation Agency
6.	Khadija Ali	Lawyer	Legal Expert
7.	Benazir Jatoi	Lawyer	Legal Expert
8.	Maliha Hussain	Executive Director	Mehergarh
9.	Khurram Shakair	DIG	National Police Bureau
10.	Farkhanda Aurangzeb	Senior Social Activist	National Commission on Human Rights
11.	Khawar Mumtaz	Chairperson	National Commission on the Status of Women
12.	Khalid Imran	Project Officer	National Commission on the Status of Women
13.	Hifza Bokhari	Asst. Attorney General	Office of the Attorney General of Pakistan
14.	Farah Naaz Awan	Asst. Attorney General	Office of the Attorney General of Pakistan
15.	Hadia Nusrat	Manager Gender	Oxfam
16.	Sameena Nazir	Founding President	Potohar Organization for Development Advocacy
17.	Khawaja Zahid	Legal Advisor	Potohar Organization for Development Advocacy
18.	Muhammad Zubair	Senior Manager	Potohar Organization for Development Advocacy
19.	Sana Mahmud	Project Officer	Right to Play
20.	Arifa Mazhar	Director	ROZAN
21.	Sidra Humayun	Senior Program Officer	SAAHIL

22.	Rubab Syed	Project Assistant	SDPI
23.	Tauseef Malik	Program Manager	UNODC
24.	Sadia Iqbal	Focal Person	WHO
25.	Munaza Hassan	Secretary	Women's Parliamentary Caucus
26.	Zeeshan Hussain	Legal Advisor	Women's Parliamentary Caucus
27.	Haneen Khalid	Associate	Women's Parliamentary Caucus
28.	Jamshed Kazi	Country Representative	UN Women
29.	Saman Ahsan	Program Specialist	UN Women
30.	Yasir Khan	Program Officer	UN Women
31.	Umer Ehsan	Program Associate	UN Women

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- <sup>25</sup> UN Concluding Observations to the State of Pakistan by the Human Rights Committee, 23<sup>rd</sup> August, 2017
- <sup>26</sup> UN Concluding Observations to the State of Pakistan by the Committee on the Rights of the Child, 11<sup>th</sup> July 2016
- <sup>27</sup> Section 9, Election Act 2017
- <sup>28</sup> National Commission on the Status of Women & Others Versus Government of Pakistan & Others [Supreme Court of Pakistan, 16.01.2019]
- <sup>29</sup> European Commission, Report to the European Parliament and the Commission, Dated: 19.01.2018, page 8
- <sup>30</sup> Section 299, Pakistan Penal Code, 1860
- <sup>31</sup> Section 311, Ibid
- <sup>32</sup> Ibid
- <sup>33</sup> 2017 PLD 8 Federal Shariat Court

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- <sup>34</sup> 2016 PLD 195 Supreme Court
- <sup>35</sup> 2012 MLD 158 Balochistan High Court
- <sup>36</sup> Express Tribune, 'Infanticide on the rise: 1,210 babies found dead in 2010, says Edhi' (Tribune.com.pk, 18th January 2011)
- <sup>37</sup> Express Tribune, 'Karachi female infanticide' (Tribune.com.pk, 6th May 2018)
- <sup>38</sup> Office of the High Commissioner for Human Rights (UN Human Rights), 'Legislation and its Implementation to Protect Girl Children under 18 from Harmful Traditional Practices: Importance of the Holistic Approach'
- <sup>39</sup> Section 328, Pakistan Penal Code, 1860
- <sup>40</sup> Section 329 Ibid
- <sup>41</sup> Ibid
- <sup>42</sup> Section 328 Ibid
- <sup>43</sup> Section 302, Pakistan Penal Code, 1860 is a compoundable offence subject to Qisas and Diyat
- <sup>44</sup> 2015 P.Cr.LJ 456 Lahore High Court
- <sup>45</sup> 2016 PLD 89 Lahore High Court
- <sup>46</sup> Khadija Ali, Good Practices to Counter VAWG [2019] Published by Acid Survivors Foundation
- <sup>47</sup> Ibid
- <sup>48</sup> Ibid
- <sup>49</sup> Section 3 (1), Ibid
- <sup>50</sup> Ibid
- <sup>51</sup> Section 3(2), Ibid
- <sup>52</sup> Section 6, Ibid
- <sup>53</sup> Section 7, Ibid
- <sup>54</sup> Section 8, Ibid
- <sup>55</sup> Section 13, Ibid
- <sup>56</sup> Section 375, Pakistan Penal Code, 1860
- <sup>57</sup> Section 376, Ibid
- <sup>58</sup> Section 375, Ibid
- <sup>59</sup> 2007 SCMR 698
- <sup>60</sup> According to the United States Department of Justice, "object rape" is defined as: "The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim."
- <sup>61</sup> Section 1, Sexual Offences Act 2004 (United Kingdom)
- <sup>62</sup> 2013 PLD 243 Lahore High Court
- <sup>63</sup> Section 166, Pakistan Penal Code, 1860
- <sup>64</sup> Section 186, Ibid
- <sup>65</sup> Section 376, Ibid
- <sup>66</sup> Section 376-A, Ibid
- <sup>67</sup> Section 164-B, Code of Criminal Procedure 1898
- <sup>68</sup> Section 53-A, Ibid
- <sup>69</sup> Section 154 and 161, Ibid
- <sup>70</sup> 2013 SCMR 203 (Supreme Court)
- <sup>71</sup> Section 376, Pakistan Penal Code, 1860



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<sup>72</sup> Section 377, Ibid

<sup>73</sup> 2012 PCrLJ 816 Federal Shariat Court: A case of sodomy involving a 13-year-old boy registered under section 377 Pakistan Penal Code, 1860. The Accused was given a punishment of 7 years' imprisonment and a fine of 20,000 rupees.

<sup>74</sup> Section 509, Pakistan Penal Code 1860

<sup>75</sup> Section 2(h), Protection against Harassment of Women at the Workplace Act, 2010

<sup>76</sup> Section 2(e), Ibid

<sup>77</sup> Section 3 and 4, Ibid

<sup>78</sup> Section 7, Ibid

<sup>79</sup> Section 9, Ibid

<sup>80</sup> PLD 2019 Lahore 17

<sup>81</sup> Article 1, UN Convention on the Rights of the Child

<sup>82</sup> Section 2(a), Child Marriage Restraint Act 1929

<sup>83</sup> Section 4, Ibid

<sup>84</sup> Section 5, Ibid

<sup>85</sup> Section 6, Ibid

<sup>86</sup> Section 310-A, Pakistan Penal Code, 1860

<sup>87</sup> 2014 MLD 1464 Peshawar High Court

<sup>88</sup> 2016 MLD 580 Karachi High Court

<sup>89</sup> Gallup Pakistan, 'Domestic Violence: 1 in 3 urban Pakistani men (31%) believe that a man has the right to hit his wife if she misbehaves'

<sup>90</sup> Section 332, Pakistan Penal Code 1860

<sup>91</sup> Note: There are five kinds of hurt in the Pakistan Penal Code 1860 delineated in sections 332 to 337:

1. Itlaf-i-udw: Hurt where any organ or limb of the body or any person is amputated, dismembered or severed
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

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

<sup>92</sup> Rakhshinda Perveen, 'Forgotten - Dowry: A socially endorsed form of violence in Pakistan' (Sachetorg.pk, 2016)

<sup>93</sup> Mahek Singh, 'Dowry as a factor of violence in Marriage: A study of Women seeking help in Family Counselling Centers in Chandigarh' (Ijoart.org, June 2013)

<sup>94</sup> Rakhshinda Perveen, 'Forgotten - Dowry: A socially endorsed form of violence in Pakistan' (Sachetorg.pk, 2016)

<sup>95</sup> Section 9, Dowry and Bridal Gifts (Restriction) Act 1976

<sup>96</sup> Carla Valentine, 'Dead Inside: Female Necrophilia, UK Law and the Penetration Paradox' (Academia.edu, 2014)

<sup>97</sup> Express Tribune, 'Girl's body removed from grave with intent to rape: Police' (Tribune.com.pk, 3rd July, 2013)

<sup>98</sup> Section 297, Pakistan Penal Code, 1860

<sup>99</sup> Sarah Zaman and Maliha Zia, 'Women's Access to Justice in Pakistan' (www.ohchr.org, 2013)

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- <sup>100</sup> Digital Rights Foundation, Cyber Harassment Helpline (Bi-Annual Report) December 2016 – May 2018
- <sup>101</sup> Ibid
- <sup>102</sup> Ibid
- <sup>103</sup> Salwa Rana, Bottlenecks, Incompetence and Abuse of Power: An analysis of PECA’s implementation. Media Matters for Democracy (2018)
- <sup>104</sup> Ibid
- <sup>105</sup> Ibid
- <sup>106</sup> Zafar Iqbal, 'Law of Evidence in Pakistan' (Zklawassociates.com, 2012)
- <sup>107</sup> UN Concluding Observations to the State of Pakistan by the Committee on Economic, Social and Cultural Rights, Dated: 20<sup>th</sup> July 2017
- <sup>108</sup> 2013 PLD 7 Federal Shariat Court
- <sup>109</sup> Equality Now, 'The State We're In: Ending Sexism in Nationality Laws' (www.equalitynow.org, 2016) Page 14
- <sup>110</sup> Ibid, Page 16
- <sup>111</sup> UN Concluding Observations to the State of Pakistan by the Committee on the Convention on the Elimination of all forms of Discrimination against Women, Dated: 27<sup>th</sup> March, 2013
- <sup>112</sup> Ayesha Mumtaz, 'Discrimination in Nationality Laws: A case study of Pakistan' (liste.org, 2017)
- <sup>113</sup> Section 2(a), Child Marriage Restraint Act 1929
- <sup>114</sup> Article 30, Federal Law on Personal Status 2005
- <sup>115</sup> Section 3, Employment of Children Act 1991
- <sup>116</sup> 7. Hours and Period of Work.
- (1) No child or adolescent shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishments.
- (2) The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has an interval of at least one hour for rest.
- (3) The period of work of a child shall be so arranged that inclusive of the interval for rest, under subsection (2), it shall not exceed seven hours, including the time spent in waiting for work on any day.
- (4) No child shall be permitted or required to work between 7.00 p.m. to 8.00 a.m.
- (5) No child shall be required or permitted to work overtime.
- (6) No child shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.
- <sup>117</sup> Section 7, Ibid
- <sup>118</sup> UN Concluding Observations to the State of Pakistan by the Committee on the Rights of the Child, 11<sup>th</sup> July 2016
- <sup>119</sup> 1988 PLD 602: “Khula in Shariah means that a husband after accepting compensation from his wife renounces over her, his rights under the marriage contract”
- <sup>120</sup> Pakistan Bureau of Statistics, 'Population by Religion' (<http://www.pbs.gov.pk>, 2018)
- <sup>121</sup> Section 3, Christian Marriage Act 1872
- <sup>122</sup> Section 19, Ibid
- <sup>123</sup> Section 10, Divorce Act 1869
- <sup>124</sup> Ibid
- <sup>125</sup> Section 11, Ibid
- <sup>126</sup><sup>126</sup> Section 1, Hindu Marriage Act, 2017
- <sup>127</sup> Preamble, Ibid

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- <sup>128</sup> Section 4, Letters of Administration and Succession Certificates Act, 2020
- <sup>129</sup> Section 6, *ibid*
- <sup>130</sup> Section 10, *ibid*
- <sup>131</sup> Section 3, Enforcement of Women's Property Rights Act 2020
- <sup>132</sup> Section 4(1), *ibid*
- <sup>133</sup> Section 4(2), *ibid*
- <sup>134</sup> Section 5, *ibid*
- <sup>135</sup> Section 6, *ibid*
- <sup>136</sup> Section 7, *ibid*
- <sup>137</sup> Section 2(a)(c), Disabled Persons (Employment and Rehabilitation) Ordinance, 1981: *"disabled person" means a person who, on account of injury, disease or congenital deformity, is handicapped for undertaking any gainful profession or employment in order to earn his livelihood, and includes a person who is blind, deaf, physically handicapped or mentally retarded*
- <sup>138</sup> Section 12, Disabled Persons (Employment and Rehabilitation) Ordinance, 1981
- <sup>139</sup> Section 10, *Ibid*
- <sup>140</sup> Section 4, *Ibid*
- <sup>141</sup> Article 6, Convention on the Rights of Persons with Disabilities
- <sup>142</sup> Section 3, Punjab Maternity Benefit Ordinance, 1958
- <sup>143</sup> Section 4, *Ibid*
- <sup>144</sup> Section 6, *Ibid*
- <sup>145</sup> Section 7, *Ibid*
- <sup>146</sup> Section 8, *Ibid*
- <sup>147</sup> Section 9, *Ibid*
- <sup>148</sup> Section 10, *Ibid*
- <sup>149</sup> *Ibid*
- <sup>150</sup> Cambridge Dictionary, 'Definition of Gender Pay Gap' (Cambridge.org, 2019)
- <sup>151</sup> Article 25, Constitution of Pakistan 1973
- <sup>152</sup> Article 27, *Ibid*
- <sup>153</sup> Murtaza Talpur, 'Women and wages in Pakistan' (Daily Times, 7th November, 2017)
- <sup>154</sup> NCSW Web-site: [www.ncsw.gov.pk](http://www.ncsw.gov.pk)
- <sup>155</sup> Hafeez Tunio, 'Census 2017: Two years on, govt mum on official minority count' (Express Tribune, 27 August 2019)<<https://tribune.com.pk/story/2042906/1-census-2017two-years-government-mum-official-minority-count>>
- <sup>156</sup> Provisional Summary Results of 6th Population and Housing Census 2017. [www.pbs.gov.pk](http://www.pbs.gov.pk). (2019).
- <sup>157</sup> Pakistan Bureau of Statistics, 'Labour Force Survey ' (www.pbs.gov.pk, 2017 - 2018)
- <sup>158</sup> National Institute of Population Studies, 'Pakistan Demographic and Health Survey 2017-18' (Nipsorg.pk, August 2018)
- <sup>159</sup> Islamabad Police, 'Crime Statement' (Islamabadpolice.gov.pk, 2017)
- <sup>160</sup> Ministry of Finance, 'Pakistan Economic Survey' (Finance.gov.pk, 2016 - 2017)
- <sup>161</sup> Election Commission of Pakistan, 'Area Wise Statistics of Voters' (www.ecp.gov.pk, 2018)
- <sup>162</sup> Human Rights Commission of Pakistan, 'State of Human Rights in 2018'

