



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

Punjab



## TABLE OF CONTENTS

CONTRIBUTORS .....	4
MESSAGE FROM MINISTER WOMEN DEVELOPMENT, GOVERNMENT OF PUNJAB .....	5
MESSAGE FROM SECRETARY WOMEN DEVELOPMENT DEPARTMENT, GOVERNMENT OF PUNJAB .....	6
MESSAGE FROM UN WOMEN PAKISTAN .....	7
ACKNOWLEDGEMENTS .....	8
ABBREVIATIONS .....	9
1. INTRODUCTION.....	11
2. EXECUTIVE SUMMARY.....	12
3. BACKGROUND.....	16
4. METHODOLOGY.....	19
5. PAKISTAN’S EVAW LAWS IN THE INTERNATIONAL CONTEXT .....	20
6. PUNJAB EVAW LAWS .....	26
6.1 ACID AND BURN CRIMES.....	26
6.2 CHILD MARRIAGE .....	27
6.3 PROTECTION OF WOMEN AGAINST VIOLENCE .....	28
6.4 WOMEN PROTECTION AUTHORITY.....	30
6.5 SEXUAL HARASSMENT AT THE WORKPLACE .....	31
6.6 DOWRY RELATED VIOLENCE.....	34
7. PUNJAB LAWS RELATED TO DISCRIMINATION & WOMEN’S RIGHTS.....	35
7.1 CHILD DOMESTIC WORKERS .....	35
7.2 HOME-BASED WORKERS .....	36
7.3 MUSLIM FAMILY LAWS.....	36
7.4 CHRISTIAN MARRIAGE LAWS .....	39
7.5 HINDU MARRIAGE LAW.....	40
7.6 SIKH MARRIAGE LAW.....	42
7.7 WOMEN WITH DIFFERENT CAPABILITIES.....	43
7.8 MATERNITY BENEFITS.....	44
7.9 GENDER PAY GAP.....	45
7.10 WOMEN’S LAND OWNERSHIP .....	45
7.11 FAIR REPRESENTATION OF WOMEN .....	46
8. PUNJAB LAWS: MONITORING & INFORMATION GAPS.....	47

8.1	MONITORING GAPS .....	47
8.2	INFORMATION GAPS .....	48
9.	CONCLUSION .....	50
	ANNEX 1: FEDERAL LEGISLATION APPLICABLE IN PUNJAB .....	54
	SYNOPSIS.....	54
	FEDERAL EVAW LAWS .....	56
	HONOUR KILLING.....	56
	FEMALE INFANTICIDE .....	57
	ACID AND BURN CRIMES .....	57
	HUMAN TRAFFICKING .....	59
	RAPE .....	60
	SEXUAL OFFENCES.....	65
	SEXUAL HARASSMENT.....	67
	CHILD MARRIAGE.....	68
	HARMFUL CUSTOMARY PRACTICES AGAINST WOMEN .....	69
	DOWRY RELATED VIOLENCE .....	70
	DOMESTIC VIOLENCE .....	71
	OBSTETRIC VIOLENCE.....	72
	NECROPHILIA .....	73
	CYBER CRIMES AGAINST WOMEN.....	73
	FEDERAL LAWS RELATED TO DISCRIMINATION & WOMEN’S RIGHTS.....	76
	DISCRIMINATION IN THE LAW OF EVIDENCE.....	76
	DISCRIMINATION IN THE LAW OF CITIZENSHIP.....	77
	CONCLUDING SUMMARY .....	78
	ANNEX 2: TECHNICAL CONSULTATIVE WORKSHOPS.....	80
	ANNEX 3: REFERENCES .....	84

## CONTRIBUTORS

---

2018-2020

This Publication was developed in 2020 through a partnership between:

Punjab Commission on the Status of Women

and

UN Women Pakistan

The document was developed through an extensive review and thorough consultative process by:

Ms. Khadija Ali

Advocate High Court, LL.B (Hons) (London), LL.M (Warwick, UK)

Disclaimer: This publication has been developed by UN Women Pakistan through the Aawaz II Joint Programme funded by UK Aid; however the views expressed do not necessarily reflect the UK government's official policies.

## MESSAGE FROM MINISTER WOMEN DEVELOPMENT, GOVERNMENT OF PUNJAB

---



The Government of Punjab is leading the movement for equal rights of women and girls in Punjab. Provincial laws and policies have been formulated to uplift the socio-economic status of women of the province, with special focus on rural areas. These laws and policies are aligned with international best practices and the Government of Pakistan's international obligations set by CEDAW, the Beijing Declaration and Platform for Action, and the Sustainable Development Goals.

The Ministry of Women Development Punjab and Women Development Department envision "an inclusive Punjab where women enjoy equal rights with respect and are free from all forms of discrimination." To achieve this vision, my Ministry is determined to introduce pro-women legislation and address gaps in the existing laws.

A review of the existing laws was conducted with the support of UN Women to ensure that they are aligned with Pakistan's national and international commitments. This review will guide the provincial legislative bodies in addressing the gaps that still exist in our legal system and help us get closer to the goals of gender equality and women empowerment.

This Gap Analysis Report of Laws relating to Ending Violence Against Women is a joint venture of Women Development Department and UN Women. The study is meant to create a better understanding of the pro women laws in Punjab and help us identify weakness and gaps in these laws that need to be addressed in order to make them more effective.

The Women Development Department and Punjab Commission on the Status of Women (PCSW) played an important role in the scrutiny and analyses of the report and are committed to build upon this significant collaboration with UN Women. Together we will continue to undertake concerted efforts for promotion of gender equality and empowerment of women and girls. Punjab will prosper when its women and girls can reach their full potential and contribute towards progress and sustainable development.

**Ashifa Riaz Fatyana**  
Minister for Women  
Development,  
Government of Punjab

## MESSAGE FROM SECRETARY WOMEN DEVELOPMENT DEPARTMENT, GOVERNMENT OF PUNJAB

---



Punjab Women Development Department (WDD) is striving to transform women and girls' lives with a mission "to foster gender equity and women empowerment through legislation, advocacy, capacity building and institutional strengthening."

The WDD aims to providing an enabling environment for women development which supports inclusive governance and development in Punjab. With this aim it is one of the key objectives of WDD to ensure that women-related constitutional, family and legal rights are respected and honoured as per our national and international commitments.

Effective laws and policies are imperative for the advancement of the rights of women and girls and their full participation in the society. It is important to identify barriers that prevent women from achieving their full potential and enjoying opportunities at par with men. This is notwithstanding the fact that the Punjab Government has introduced many pro-women laws to further gender equality and women development in the province. Still the progress is slow, and that is why we need to review these laws and identify gaps that prevent us from achieving our goals. Proper implementation of the laws is a challenge in itself but there are some gaps in the laws that need to be addressed if we are to include women in all spheres of our lives and benefit from their equal participation in the development and progress of this country.

This gap analysis report looks at the normative and structural gaps in the legislative framework to see how effective they are and what else is required for effective implementation. This report would not have been possible without the dedicated support and invaluable insight of UN Women Pakistan. UN Women is the global champion for gender equality, working to develop and uphold standards and create an environment in which every woman and girl can exercise her human rights and live up to her full potential.

WDD is committed to ensure that women and girls of Punjab feel secure and confident to explore their full potential and contribute substantially to the sustainable development of this province and this country.

**Ambreen Raza**  
Secretary, Women Development  
Department,  
Government of Punjab

## MESSAGE FROM UN WOMEN PAKISTAN

---

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 Punjab Women Development Department and Punjab Commission on the Status of Women (PCSW), institutions with pivotal roles in legislative oversight and implementation of women empowerment initiatives in the province. Through our strategic partnerships at the provincial 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 PCSW, have analysed the existing legislation related to ending violence and discrimination against women and girls, and suggested recommendations to bridge the gaps. This 'Gap Analysis Report' is an initiative to provide valuable insights for making 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

## ACKNOWLEDGEMENTS

---

This study was designed and commissioned by UN Women Pakistan in partnership with the Punjab Commission on the Status of Women, under the Women Development Department of the Government of Punjab. It was carried out by Khadija Ali under the technical supervision of Saman Ahsan, Programme Lead, Ending Violence Against Women, Governance and Human Rights, UN Women Pakistan, with support from Hafsa Mazhar and Nabila Malick from the Punjab Sub-Office and Muhammad Younas Khalid, Yasir Khan, Ali Zafar, Umer Ehsan and Habib Asgher from the Country Office.

We would like to appreciate the significant contributions of the Punjab Commission on the Status of Women, under the overall leadership of Secretary WDD Ms. Ambreen Raza, which helped ground the report in the context of the province. The report also benefitted immensely from thorough reviews by our partners at the federal level and we would like to acknowledge the contribution and support of Dr. Shireen Mazari, Rabiya Javeri Agha and Muhammad Hassan Mangi, Ministry of Human Rights; Khawar Mumtaz, former Chairperson National Commission on the Status of Women; and Munaza Hassan, Women's Parliamentary Caucus (Federal). Their invaluable feedback strengthened the report, especially the analysis of federal laws that are applicable in Punjab.

Special acknowledgement must be given to the partners especially, Mazhar Siraj and Farah Sherwan from FCDO, 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 UK Aid for undertaking this analysis.



## ABBREVIATIONS

---

CAT	Convention against Torture & other Cruel, Inhuman, Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CPC	Code of Civil Procedure, 1908
CRC	Convention on the Rights of the Child
Cr.PC	Code of Criminal Procedure, 1898
CRPD	Convention on the Rights of Persons with Disabilities
CSOs	Civil Society Organisations
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
FCDO	Foreign, Commonwealth and Development Office
FIA	Federal Investigation Agency
FIR	First Information Report
GBV	Gender Based Violence
GMIS	Gender Management Information System
GSP+	General Scheme of Preference Plus
HBW	Home-Based Worker
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of all form of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICT	Islamabad Capital Territory
INGO	International Non-Governmental Organisation
LHC	Lahore High Court
LHW	Lady Health Worker

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

## 1. INTRODUCTION

---

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.

It is important to mention that the starting point for this 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 the legislation related to ending VAWG at Federal and Provincial levels which are either enacted before or after passing of the Eighteenth Constitutional amendment but enforced as law of land at provincial levels.

This Gap Analysis study also documents the Federal level laws which are extended and implemented in the provinces. It is essential, therefore, to recognise that the laws included in Annex 1 of this report also apply to the province of Punjab.

## 2. EXECUTIVE SUMMARY

---

The commitment of the Government of Punjab to the cause of women's rights is evidenced by the initiatives undertaken by government departments to implement Pakistan's international commitments at the provincial level. In this regard, at the institutional and policy levels, the Government of Punjab unveiled the Punjab Women Development Policy in 2018 that provides concrete recommendations in areas of education, health, economic empowerment of women as well as protection of women from gender based violence. Innovative features of the Policy include recommendations regarding mitigating the impact of climate change on women and enhancing women rights through information technology. Furthermore, the Government of Punjab also approved the first ever Punjab Human Rights Policy in 2018 which stipulates recommendations for ending violence against women and girls. The Government of Punjab in this regard, has played, and continues to play, an important role for implementation and realisation of women rights. Furthermore, the Punjab Commission on the Status of Women is mandated, as per the Punjab Commission on the Status of Women Act 2014, to not only monitor implementation of women-related legislation in the province but also review laws and policies to eliminate discrimination and safeguard the interests of women and girls.

The Government of Punjab has also promulgated various laws for the protection and promotion of women's rights in the province. These laws include the Punjab Protection against Harassment of Women at the Workplace (Amendment) Act 2012, Punjab Maternity (Amendment) Act 2012, Punjab Fair Representation of Women Act 2014, Punjab Muslim Family Laws (Amendment) Act 2015, Punjab Family Courts (Amendment) Act 2015, Punjab Marriage Restraint (Amendment) Act, 2015, Punjab Land Revenue (Amendment) Act 2015, Punjab Protection of Women against Violence Act 2016, Punjab Women Protection Authority Act 2017, Hindu Marriage Act 2017 and Punjab Sikh Anand Karaj Marriage Act 2018. Furthermore, the 18th constitutional amendment and devolution of legislative and fiscal powers to the provinces also provides strategic avenues for federal and provincial governments to legislate and institutionalise mechanisms for enhancement of women rights. In view of these legislative developments, the Gap Analysis of Legislation Related to Ending Violence Against Women (EVAW) documents gaps existing in the legal framework and implementation process of women-related laws over the years.

Contextualising EVAW laws within the international law framework of CEDAW and SDG Goal 5 has been the starting point for this analysis. By elaborating upon the Concluding Observations of UN Committees, the Gap Analysis provides an indication of the progress made in harmonising domestic laws with international rights framework. Important milestones in this regard include the promulgation by the Federal Parliament of the Prevention of Trafficking in Persons Act 2018 and Hindu Marriage Act 2017; deterrence

against forced disenfranchisement of women during elections in the Election Act 2017; provincial legislation for autonomous Commissions on the Status of Women; and the landmark judgement of the Supreme Court in National Commission on the Status of Women and Others Versus Government of Pakistan declaring jirgas to be unconstitutional.

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

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

Relevant Federal Laws applicable to the province of Punjab are also given in an annexure in order to provide a complete picture. The approach of the Gap Analysis is premised on three gaps: normative gaps, implementation gaps and monitoring and information gaps.

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

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

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

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

### **Punjab EAW Laws:**

With regard to EAW related laws in Punjab, lack of a comprehensive legislation to provide medical attention, rehabilitation and reintegration of acid and burn survivors in the province is a major normative gap. Furthermore, absence of laws to curb child marriage also requires attention from legislators to ensure that such forms of violence against girls are reduced in the province. While the Punjab Violence against Women Act 2016 provides a grievance

redressal mechanism for victims of domestic violence, implementation remains weak. Furthermore, the law provides a grievance redressal mechanism but does not truly criminalise domestic violence. Relevant institutional interventions, delineated in the Punjab Protection of Women against Violence Act 2016 and Punjab Women Protection Authority Act 2017, are necessary to implement EAW related laws in the province. In light of the evolving jurisprudence in the area of sexual harassment at workplace, amendments in the Protection against Harassment of Women at the Workplace Act 2010 are needed to extend protection of the law to all genders. Absence of a law curbing and regulating the practice of dowry in the province is another important finding of the gap analysis.

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

In relation to laws that discriminate against women and girls, absence of law to protect all child domestic workers below the age of 18 years and home-based workers is a normative gap highlighted in the Gap Analysis. The same was found to be true for women's rights in marriages. The Gap Analysis revealed lack of gender sensitive laws for Christian marriages to be applicable in the province stipulating the rights of women within marriage according to their religious beliefs. Furthermore, amendments in the Muslim Family Laws for Punjab have enhanced the rights of women within Muslim marriages as well. However, the Hindu Marriage Act 2017 applicable in the province requires drafting and notification of Rules for better implementation. Furthermore, promulgation of the Punjab Sikh Anand Karaj Marriage Act 2018 provides for solemnisation and registration of Sikh marriages protecting the rights of Sikh women.

Another normative gap revealed with regard to women's rights is in relation to women with different capabilities. Currently, rights of persons with disabilities in Punjab are governed by the Disabled Persons (Employment and Rehabilitation) Ordinance 1981 which fails to address the multiple discrimination suffered by women with disabilities. Therefore, the need for a comprehensive legislation for women with disabilities in Punjab should be addressed. Furthermore, maternity benefits in the province can be improved by amending the Punjab Maternity Benefit Ordinance 1958 to stipulate harsher punishments for violation of maternity rights and addressing pregnancy-related illnesses and complications in the law. Another normative gap includes lack of legislation to address gender pay gap in the province. Concerted efforts are needed by the Government to implement the Punjab Fair Representation of Women Act 2014 to enhance women's representation in the work force and decision making bodies. Furthermore, women's inheritance rights in land can be effectively protected through awareness raising of the amendments in Punjab Land Revenue Act 1967, facilitating women's ownership of land.

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

The monitoring and information gaps explore existing monitoring mechanisms for implementation of women-related laws such as the Punjab Commission on the Status of Women followed by the development and improvement of data portals that can be utilised for evidence-based legal and policy advocacy. Existing data portals to fill information gaps in Punjab include 2017 Census, Labour Force Survey, Pakistan Demographic and Health Survey, Pakistan Economic Survey, Election Commission of Pakistan, PCSW's Gender Management Information System (GMIS) etc.

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

### 3. BACKGROUND

---

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>

In Punjab, the survey data showed that 110,012,442 people reside in the province with an annual growth rate of 2.13.<sup>4</sup> The female population of Punjab is 54,046,759 while the population of transgender persons has been recorded at 6,709.<sup>5</sup> The rural population of women has been recorded at 34,425,030 whereas the urban population is 19,621,729.<sup>6</sup>

With regard to gender equality, Pakistan ranked 151 out of 153 countries in the 'Global Gender Gap Index 2020' released by the World Economic Forum (WEF) in 2020.<sup>7</sup> Against the backdrop of these statistics, it is critical that women, as a marginalised group in Pakistan, constitute a substantial percentage of the overall population in need of empowerment to close the gender gaps.

While various legislative interventions have sought to ameliorate the legal protections offered to women and girls in Pakistan, various forms of gender-based violence continue to violate their basic human rights. Child Marriage is still prevalent and 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>8</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>9</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>10</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>11</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>12</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>13</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>14</sup> 7219 cases of violence against women were decided in Punjab out of which only 315 resulted in convictions.<sup>15</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>16</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>17</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>18</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>19</sup> Only 11% of women owned a house either individually or jointly and only 4% owned land.<sup>20</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>21</sup> Furthermore, the gap between men and women in voter registration still exists as Punjab has 61,385,511 registered voters, which are an estimated 57 per cent of the total in Pakistan. Of these registered voters in Punjab, men constitute 55 per cent, while women are 45 percent. Participation and representation of women in the justice sector remains a challenge with '*women comprising only 2.7% of the police force, 15% of the district judiciary, 14% of prosecutors and 11% of advocates in Punjab.*'<sup>22</sup>

Against the backdrop of these statistics and indicators, Pakistan's legal context, post-devolution 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>23</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.

It is also important to note the promulgation of the Prevention of Trafficking in Persons Act 2018 and Hindu Marriage Act 2017; deterrence against forced disenfranchisement of women during elections in the Election Act 2017; and provincial legislation for autonomous Commissions on the Status of Women. The landmark judgement of the Supreme Court in the case: National Commission on the Status of Women and Others Versus Government of Pakistan declaring jirgas to be unconstitutional is phenomenal. The Ministry of Human Rights developed the first ever National Action Plan on Human Rights in 2016 which stipulates concrete actions for improving access to justice for women and ending violence against women and girls whereas the National Commission on the Status of Women synergises efforts between stakeholders to end violence against women.

This provides a strategic entry point to organisations to advocate for EAW law reforms at the federal level by proposing amendments in the Pakistan Penal Code 1860, Code of Criminal Procedure 1898 and Qanun-e-Shahadat 1984.

Along with the Federal Government, Punjab has played, and continues to play, an important role in the formulation and implementation of new laws as well as for realisation of women's rights. The Punjab Commission on the Status of Women has been a vibrant institution that facilitates and monitors implementation of EAW laws in Punjab and synthesises data for evidence-based legal and policy advocacy to advance the rights of women and girls.

## 4. METHODOLOGY

---

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

In this regard, a “Technical Consultative Workshop on EAW Legislation” was organised in Lahore on 19<sup>th</sup> March 2019 in which relevant stakeholders from government, civil society organisations, media, legal fraternity, researchers and academia (Annex 2) participated to put forward their opinions, perspectives and experiences regarding the current state of EAW legislation in the province. The workshop was facilitated with a participatory approach in order to allow space for the experiences of stakeholders to be recorded and made part of the final document. It provided a unique opportunity for documenting the practices that have been successful as well as practices that need revision. The critical inputs provided by the participating stakeholders have been essential to produce an analytical document that is reflective of the ground realities and context of Punjab.

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 present an overall theme of Pakistan's EAW related laws in the international context. Some of the notable Concluding Observations put forward by the CEDAW Committee to the State of Pakistan include the following:

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

8. *To strengthen support services for victims of violence, such as counselling and rehabilitation services, both medical and psychological; increase the number of shelters to ensure the implementation of the standard operating procedures for the treatment of victims in all provinces;*
9. *To take appropriate measures to ensure the collection of disaggregated data on all forms of violence against women, including domestic violence, by the Gender Crime Cell;*
10. *To conduct research on the prevalence of internal and international trafficking, including its scope, extent, causes, consequences and purposes, as well as its potential link with bonded labour, domestic servitude and child marriage;*
11. *To strengthen mechanisms for the investigation, prosecution and punishment of trafficking offenders and support services for victims;*
12. *To adopt measures for the rehabilitation and social integration of victims of forced prostitution;*
13. *To establish a procedure for filing complaints in cases of forced disenfranchisement of women and adopt the draft bill submitted by the Election Commission of Pakistan, advocating re-polling where less than 10 per cent of women's votes were polled;*
14. *To adopt the Hindu Marriage Bill, the Christian Marriage (Amendment) Bill and the Christian Divorce Amendment Bill;*
15. *To revise the Dissolution of Muslim Marriages Act (1939) with the aim to repeal discriminatory provisions against women; and to amend the relevant legislation to raise the minimum age of marriage for girls to 18.”<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: 31.12.2018 in which it has been held:

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

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

### 6.1 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

## 6.2 CHILD MARRIAGE

The Punjab Marriage Restraint (Amendment) Act 2015 amends the Child Marriage Restraint Act 1929 to stipulate harsher punishments for solemnisation of child marriages, however, the Act does not raise the legal age of marriage for the girl to eighteen years and the marriageable age for girls is still sixteen years.<sup>30</sup> This contravenes the UN Convention on the Rights of the Child<sup>31</sup> and therefore an amendment is necessary in the current law to ensure that child marriage is criminalised as per international and constitutional standards.

Furthermore, exceptions can be introduced, like in other Muslim majority countries, to deter child marriages and ensure that the best interest of the child is protected by the state. For example, in United Arab Emirates (UAE), individuals can marry before the age of eighteen years with judicial consent.<sup>32</sup> An exception in the legal framework may make it easier for the law to pass, yet if it is strong enough, it could still act as a deterrent to prevent child marriage.

The Punjab Marriage Restraint (Amendment) Act 2015 has the following salient features:

1. An increase in punishment which includes imprisonment of up to six months and a fine up to fifty thousand rupees for any male adult above the age of eighteen years who contracts a child marriage.<sup>33</sup>
2. An increase in punishment, including imprisonment, which may extend to six-months or a fine of fifty thousand rupees for the person who solemnises a child marriage.<sup>34</sup>
3. For the concerned parent and guardian in child marriage who does any act to promote or permit child marriage or negligently fails to prevent child marriage from being solemnised can be punished with simple imprisonment, which may extend to six months or with fine of up to fifty thousand rupees.<sup>35</sup>

While the law stipulates harsher punishments for contracting child marriage, it leaves open an important caveat regarding child marriages. According to judicial precedents, the Child Marriage Restraint Act 1929 'makes marriage with girl below the age of 16 years punishable but does not render the marriage invalid.'<sup>36</sup> This caveat therefore fails to protect vulnerable children from being married off.

Sr. No.	Gaps	Recommendations
<b>Normative Gaps</b>		
1.	Absence of a law that would make marriage of a girl child below the age of 18 years illegal	Amendment in the Child Marriage Restraint Act, 1929 to re-define marriageable age as 18 years for both girls and boys
2.	Absence of limited exceptions to allow child marriages in order to deter and regulate the practice	Amendment in the Child Marriage Restraint Act, 1929 to introduce limited exceptions to allow child marriage with judicial consent
3.	Lack of a legal mechanism to institute judicial separation till the child's age of majority; or annul, dissolve or declare a child marriage null and void depending on the prayer of the aggrieved party	Amendment in the Child Marriage Restraint Act 1929 to provide a mechanism to institute judicial separation till the child's age of majority to protect the vulnerable party
<b>Implementation Gap</b>		
1.	Lack of awareness and sensitisation of the Nikah Registrars, police, legal fraternity and judiciary regarding child marriages as a manifestation of gender-based violence <sup>37</sup> and its medical impact on children being married off young and any future children arising out this wedlock <sup>38</sup>	Awareness and sensitisation of the Nikah Registrars, police, legal fraternity and judiciary regarding the issue of child marriage and its medical impact on children being married off young and any future children arising out the wedlock

### 6.3 PROTECTION OF WOMEN AGAINST VIOLENCE

The Punjab Protection of Women against Violence Act 2016 is a comprehensive civil law that provides a grievance redressal mechanism to women and sets up institutions to protect their rights in the private and public sphere. The salient features of the law include:

1. A grievance redressal mechanism for various forms of violence against women including, but not limited to, domestic violence, sexual violence, psychological abuse, economic abuse, stalking and cyber-crimes.
2. A woman aggrieved of such a violence can seek an interim order, protection order, monetary order and/or residence order against the perpetrator. A protection order

includes the potential wearing of an ankle or wrist bracelet with a GPS tracker in case of grave violence or a threat of grave violence. It can also include removing the perpetrator from the house in case of grave violence or a threat of grave violence.

3. If found guilty, punishment includes imprisonment extending to one year and a fine extending to two lakh rupees in case of breach of court order by the accused.
4. If the accused is found to have breached the court orders on more than one occasion the penalty can extend to two years and a fine of five lakh rupees.
5. Establishment of an official helpline for victims of such violence.
6. Setting up of and appointing District Protection Committees, District Protection Officers and Women Protection Officers to aid implementation of the law and to provide women survivors an institutional mechanism to help them throughout the redressal process.
7. Power of entry for the District Protection Officer and the Women Protection Officer to enter any place or house for the purpose of rescuing an aggrieved person with the consent of the aggrieved person.

In order to implement the law, the Punjab Government established one of its kind Violence Against Women Centre (VAWC) in Multan in 2016, which serves as a one stop shop for complainants of violence where medical support, police reporting, psycho-social support, legal aid and mediation as well as dispensation of justice is provided in the same premises for women complainants of violence.<sup>39</sup> The Centre is also 'responsible for collection of forensic and other evidence, besides offering mental health and counselling services, and post-trauma rehabilitation under one roof, to increase complainants' access to justice.'<sup>40</sup> According to reports, Violence against Women Centre (VAWC) Multan has recorded 1,545 cases of violence against women (VAW) from March 2017 to April 2018.<sup>41</sup> However, it was highlighted in 2018 that the necessary resources were been allocated to the Centre and appointments of public functionaries are also pending.<sup>42</sup>

Sr. No.	Gaps	Recommendations
<b>Implementation Gaps</b>		
1.	Lack of Notifications to extend the law to all districts of Punjab	Notifications under section 1(3) of the Act to extend the law's applicability to all districts of Punjab

2.	Absence of District Women Protection Committees to monitor and facilitate implementation of the 2016 Act	Constitution and notification of District Women Protection Committees as per section 11 of the 2016 Act
3.	Absence of Protection Centres all over Punjab to facilitate and provide protection to women complainants of violence	Establishment of Protection Centres, or upgradation of current centres/ shelters across Punjab as per section 13 of the 2016 Act to provide protection to women complainants
4.	Absence of Women Protection Officers in districts across Punjab to facilitate implementation of the law	Appointment of District Women Protection Officers as per section 14 of the 2016 Act
5.	Lack of awareness and sensitisation of law enforcement agencies, legal fraternity and the judiciary to implement the Act in letter and spirit	Awareness and sensitisation of law enforcement agencies, legal fraternity and the judiciary to implement the Act
6.	Absence of Rules to notify the various functions of the officials, committees and institutions of the Act	Drafting and notification of Rules under section 29 of the 2016 Act
7.	The Act does not criminalise the acts of domestic violence	The Act should be amended to criminalise domestic violence and stipulate domestic violence to be recognised as an offence against the State

## 6.4 WOMEN PROTECTION AUTHORITY

The Punjab Women Protection Authority Act, 2017 is an effort on behalf of the Punjab Government to ensure sustainability and a seamless and coordinated effort by institutions to be established under the Punjab Protection of Women against Violence Act 2016. The salient features of the law include the establishment of the Punjab Women Authority with representation from Punjab Government Departments and non-official members to be nominated by the Government. The law also stipulates stringent qualification criteria for the members. The Punjab Women Authority is entrusted with:

1. The powers and functions of establishing, maintaining, monitoring, governing, operating and constructing Protection Centres along with developing Standard Operating Procedures (SOPs) and Codes of Conducts for women protection institutions all over the province;

2. The power to institute a mechanism for periodic sensitisation and awareness of public servants and employees of the Authority; and
3. The Authority must submit to the Punjab Government annual reports on key performance indicators, operation of the Protection Centres and gaps in implementation of protection systems for women.

While the legislation has been an important milestone in strengthening the institutions required under the Punjab Protection of Women Against Violence Act, 2016, various gaps still persist in its implementation.

Sr. No.	Gaps	Recommendations
<b>Implementation Gaps</b>		
1.	Absence of Rules to elaborate upon the governance and working of the Punjab Women Protection Authority	Drafting and notification of Rules for the governance and working of the Punjab Women Protection Authority as per section 22 of the Act of 2017
2.	Absence of Regulations to carry out the purposes of the law	Drafting and notification of Regulations as per section 23 to further the purposes of the Act

## 6.5 SEXUAL HARASSMENT AT THE WORKPLACE

The Protection against Harassment of Women at the Workplace Act 2010 (PAHWA) was promulgated as a special law to address complaints of sexual harassment at the 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>43</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>44</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>45</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>46</sup>
5. The last forum for cases of sexual harassment is the President at the federal level and Governor at the provincial level.<sup>47</sup> Therefore, the legislative framework in the Act provides mechanisms to deal with complaints at forums independent of the mainstream judiciary.

The Punjab Protection against Harassment of Women at the Workplace (Amendment) Act 2012 amends the 2010 Act with the following changes:

1. Its substitutes ‘Ombudsman’ with ‘Ombudsperson’ in the Punjab law;
2. It proscribes amended terms and conditions for the appointment of the Ombudsperson for Punjab;
3. It establishes the Governor of Punjab as the appellate authority for implementation of the law;
4. It confers powers on the Ombudsperson to entertain complaints by employees where the organisation has not complied with the Protection against Harassment of Women at the Work Place Act 2010.

The Punjab Government has also notified the Protection against Harassment of Women at the Workplace Rules 2013<sup>48</sup> to elaborate upon the primary law to detail procedure of inquiry before the Inquiry Committees as well as the Ombudsperson. Furthermore, the Punjab Ombudsperson has been allocated the following budget over the years:<sup>49</sup>

Year	Pay & Allowances (PKR in Millions)	Operating Expenses (PKR in Millions)	Development Budget (PKR in Millions)
2015-2016	99.7	30.8	15.0
2014-2015	94.1	25.1	26.0
2013-2014	81.4	25.1	10.0



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>50</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.	Inclusion of ‘Sexual’ and ‘Sexist’ harassment in the definition <sup>51</sup>	Amendment in section 2(h) of PAHWA to include ‘sexist’ harassment in the definition of harassment as well
3.	Ambiguity regarding application of the law to former employees	Amendment in PAHWA to clearly stipulate application of the law to former employees seeking to file their grievances of harassment

## 6.6 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>52</sup> The law, however, is not a criminal one and therefore does not criminalise the offence nor does it 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.	Gap	Recommendation
<b>Implementation Gap</b>		
1.	Lack of strict punishments in law to curb practice of dowry	Amendment in the Dowry and Bridal Gifts (Restriction) Act 1976 to stipulate harsher punishments for excessive dowry demands and the violence resulting from it

## 7. PUNJAB LAWS RELATED TO DISCRIMINATION & WOMEN’S RIGHTS

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

### 7.1 CHILD DOMESTIC WORKERS

The Punjab Domestic Workers Act 2019 prohibits employment of children below the age of 15 years but allows ‘light work’ for children between 15-18 years.<sup>53</sup> The law conforms with the provisions of the Punjab Restriction on Employment of Children Act, 2016 allowing adolescents (children above fifteen years of age but below eighteen years of age)<sup>54</sup> to be employed in non-hazardous<sup>55</sup> work. However, it has been argued that involving children below the age of eighteen years in domestic work, even for light work, is hazardous and that domestic work should be classified as hazardous work for children. This is because when a child is employed within the private domestic sphere, it increases his or her vulnerability and susceptibility to violence. Replicating the gender norms of larger society, more girls are employed in domestic work as compared to boys.<sup>56</sup> Furthermore, based on the logistical arrangements provided to child domestic workers, their susceptibility to sexual violence, especially for girls, is also increased.<sup>57</sup> It is also very difficult to monitor domestic settings to establish potential exploitation, maltreatment, neglect and violence against a child domestic worker.

Sr. No.	Gap	Recommendation
<b>Normative Gap</b>		
1.	Absence of a law that prohibits involvement of children below the age of 18 years in domestic work	Amendment in the Punjab Domestic Workers Act 2019 to prohibit involvement of children below the age of 18 years in domestic work  Notification under section 2(i) of the Punjab Restriction on Employment of Children Act, 2016 to declare domestic work as ‘hazardous’ for children

## 7.2 HOME-BASED WORKERS

Currently, there is no law in Punjab to govern the rights of home-based women workers who do not fall within the definition of labour, as they are part of the informal economy. A Bill, namely the Punjab Home-Based Workers Bill 2013 has been drafted and is currently being vetted by the Government before being presented in the Punjab Assembly for enactment.

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 Gap</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

## 7.3 MUSLIM FAMILY LAWS

The Punjab Muslim Family Laws (Amendment) Act 2015 amends the Muslim Family Law Ordinance 1961 to enhance legal rights of women in marriage. It promotes the right to equality in marriage<sup>58</sup> for women by stipulating harsher punishments for polygamy without consent, non-registration of marriage, and maintenance of children in case of divorce. The law stipulates the following main features:

1. The law makes it mandatory that all the entries of the Nikahnama be properly filled. Failure to comply with the provision can result in a fine of twenty-five thousand rupees and one-month imprisonment.<sup>59</sup>
2. For the person who solemnises a marriage in place of the Nikah Registrar and fails to report to the Nikah Registrar, there is now a fine of one lakh rupees and three-month imprisonment.<sup>60</sup>
3. Any man who contracts a second marriage without permission from the Union Council can be liable to a fine of up to five lakh rupees and imprisonment of one year.<sup>61</sup>

- The amendment also ensures the grant of appropriate maintenance to children by fathers, by allowing the mother or the grandmother of the child to approach the Union Council of her area directly, without having to acquire the services of a lawyer.<sup>62</sup>

Sr. No.	Gaps	Recommendations
<b>Implementation Gaps</b>		
1.	Lack of sensitisation of Union Councillors regarding the provisions of the 2014 Amendment Act to safeguard the rights of women	Sensitisation trainings of Union Councillors regarding the provisions of 2015 Amendment Act to sensitise them about the law and ensure its implementation
2.	Lack of proper oversight of Union Councillors to ensure proper compliance with the law	Monitoring or Oversight Committee to be constituted with defined terms of reference to monitor Union Councillors and ensure proper compliance with the law
3.	Lack of awareness and sensitisation amongst the legal fraternity and judiciary regarding the provisions of the 2014 Amendment Act to safeguard the rights of women in marriage	Awareness and sensitisation trainings amongst legal fraternity and judiciary to implement the 2015 Amendment Act to safeguard the rights of women in marriage
	Absence of Rules under section 11 of the Muslim Family Law Ordinance 1961 in light of the 2014 Amendment Act	Drafting and notification of Rules under section 11 of the Muslim Family Law Ordinance 1961 to elaborate the amended provisions as per 2015 Amendment Act

The Punjab Family Courts (Amendment) Act 2015 amends the Family Courts Act 1964 with the following salient features:

- The Act stipulates a stringent timeline for family law cases.<sup>63</sup>
- The Act also confers powers on the court to strike off the right of defence of the defendant in case of failure to appear before Court or filing of a written statement.<sup>64</sup>
- The Act stipulates that in case of dissolution of marriage by Khula, the Court can order the wife to surrender up to fifty percent of her deferred dower or up to twenty-five percent of her admitted prompt dower to the husband.<sup>65</sup> This is a major improvement as previous to this amendment, women filing for Khula, would have to surrender all of their dower.

4. The law also states that no appeal shall lie against a decree passed by the Family Court regarding dower not exceeding one hundred thousand rupees and maintenance of rupees five thousand or less.<sup>66</sup>
5. It provides for the fixation of the interim monthly maintenance for the wife and children and stipulates a ten percent annual increase in the rate of maintenance.<sup>67</sup>
6. By inserting section 21-B: Intimation to Arbitration Council, in the Family Courts Act 1964, the 2015 Act also obligates the Family Court in cases of dissolution of marriage to send the dissolution decree to the Chairman of the Arbitration Council immediately but not later than within three days through registered post. The Chairman of the Arbitration Council shall proceed with the decree as if he had received intimation of Talaq under the Muslim Family Law Ordinance 1961.<sup>68</sup>
7. It increases jurisdiction of Family Courts in Punjab by including matters regarding 'the personal property and belongings of a wife and a child living with his mother' and 'any other matter arising out of the Nikahnama'<sup>69</sup> within the jurisdiction of the Family Courts in Punjab.

The law has been a major achievement to further enhance the marital rights of women in Punjab. Wives seeking dissolution of marriage through khula to retain their dower is an especially welcome development.

Sr. No.	Gaps	Recommendations
<b>Implementation Gaps</b>		
1.	Lack of comprehensive and updated Rules incorporating the 2015 Amendment Act	Drafting and notification of comprehensive and updated Rules incorporating the amendments made by the 2015 Act
2.	Lack of awareness amongst legal fraternity and the judiciary regarding the stricter timelines and enhanced rights of women in family cases	Awareness trainings of legal fraternity and the judiciary regarding the stricter timelines to follow in family cases as per the new law  Greater oversight of the lower judiciary to ensure the timelines as provided in the amended law are adhered to
3.	Lack of awareness of judiciary and Arbitration Council regarding the newly inserted section 21-B to intimate	Awareness trainings with judiciary and Arbitration Council for intimation of dissolution of marriages as per section 21-B

	dissolution of marriage to the Arbitration Council for further process	for further process by the Arbitration Council  Greater oversight of the Arbitration Council to ensure compliance with the law
--	--	--

## 7.4 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>70</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>71</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>72</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>73</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>74</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>75</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, additional grounds were available to him, but the section was repealed by Federal Laws (Revision & Declaration) Ordinance, 1981 during the time of General Zia-ul-Haq. The petitioner prayed that the provision of Federal Laws (Revision & Declaration) Ordinance, 1981 be declared unconstitutional as it violated his fundamental rights under the Constitution of Pakistan. In this regard, Chief Justice Syed Mansoor Ali Shah held:

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

available to the Christians of Pakistan the relief based on the principles and rules of divorce under UK Matrimonial Causes Act, 1973.

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

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

Sr. No.	Gaps	Recommendations
<b>Normative Gaps</b>		
1.	Absence of a clear definition of minor and marriageable age in the law	Amendment in the Christian Marriage Act 1872 to properly define a minor and marriageable age
2.	Absence of a contemporary law that would simplify dissolution 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 tedious 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

## 7.5 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>76</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>77</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 Punjab	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 regarding the family rights of Hindu population as per the Act of 2017	Sensitisation and awareness of law enforcement agencies, legal fraternity, judiciary and local government representatives regarding the family rights of Hindu population as per the Act of 2017

## 7.6 SIKH MARRIAGE LAW

The Punjab Sikh Anand Karaj Marriage Act 2018 was promulgated by the Punjab Assembly to provide for ‘solemnisation and registration of Sikh marriages.’<sup>78</sup> The law provides for a comprehensive system and mechanism for solemnisation, registration and dissolution of Sikh marriages.

The law features the following essential ingredients:

1. The law proposes the following conditions for solemnisation of marriage of two individuals in accordance with Sikh religion:
  - i. are of sound mind and not below the age of eighteen years;
  - ii. enter into marriage contract with their free and full consent; and
  - iii. are not related to each other in any degree of consanguinity or affinity which, according to the customary law of Sikhs, renders the marriage between them unlawful.<sup>79</sup>
2. The law stipulates that the Act shall not affect the validity of any marriage duly solemnised according to Sikh customs.
3. The law stipulates for Sikh marriages to be duly registered with the Anand Karaj Registrar within thirty days of solemnisation of marriage. The records of the Anand Karaj Registrar will be preserved by the Union Council. In case of non-compliance with the law, a fine, which may extend to ten thousand rupees may be imposed.<sup>80</sup>
4. In case any party wants to dissolve the marriage, the party shall submit to the Chairman a notice in writing and provide a copy to the other party. Within thirty days of receipt of notice, the Chairman shall constitute an Arbitration Council to bring about reconciliation between the parties. If reconciliation is not effected within ninety days, the Chairman shall declare the marriage to have been dissolved and issue the Certificate of Dissolution of Marriage.

The Punjab Sikh Anand Karaj Act 2018 is a celebrated achievement,<sup>81</sup> however the following gaps in implementation have been noted:

Sr. No.	Gaps	Recommendations
<b>Implementation Gaps</b>		
1.	Absence of Anand Karaj Registrars for granting Anand Karaj Certificates	Granting of licenses to Anand Karaj Registrars for certification and registration

		of Sikh marriages as per section 5 of the Act of 2018
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 7 of the Act of 2018
3.	Lack of sensitisation of law enforcement agencies, legal fraternity, judiciary and local government representatives regarding the matrimonial rights of Sikh population as per the Act of 2018	Sensitisation and awareness of law enforcement agencies, legal fraternity, judiciary and local government representatives regarding the matrimonial rights of Sikh population as per the Act of 2018

## 7.7 WOMEN WITH DIFFERENT CAPABILITIES

The Disabled Persons (Employment and Rehabilitation) Ordinance, 1981 is an inadequate law to address the multitude issues faced by persons with different capabilities in general and women with different capabilities in particular. The Ordinance of 1981 stipulates an anachronistic and restrictive definition of ‘disabled persons’<sup>82</sup> and stipulates the establishment of National and Provincial Councils for Rehabilitation of Disabled Persons tasked with registration,<sup>83</sup> employment<sup>84</sup> and policy making<sup>85</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>86</sup>	Drafting and promulgation of legal provisions or amendments to mainstream women with different capabilities

## 7.8 MATERNITY BENEFITS

The Punjab Maternity Benefit Ordinance 1958 has been amended with the enactment of the Punjab Maternity (Amendment) Act 2012 and Punjab Maternity (Amendment) Act 2016. 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>87</sup> The law further grants the right of maternity benefits to women;<sup>88</sup> payment in case of women's death;<sup>89</sup> protection from dismissal;<sup>90</sup> and penalty for working during the permitted period of absence.<sup>91</sup> There is penalty of three thousand rupees in case of non-compliance with the law<sup>92</sup> and prosecution under the ordinance requires sanction of the Inspector of Factories.<sup>93</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>94</sup>

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 Punjab 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 Punjab 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 Punjab 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 Punjab Maternity Benefit Ordinance, 1958 to increase penalty from 500 rupees

## 7.9 GENDER PAY GAP

Gender pay gap and discrimination against women in the private sector necessitates a legislation at the federal level to criminalise the practice. However, amendments in labour laws to regulate the private sector in this regard are also important. Therefore, ensuring a stipulation within the labour laws of Punjab 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.	Gap	Recommendation
<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	Legislative drafting and promulgation of a special legislation to provide a grievance redressal mechanism for complainants of gender pay gap in the private sector

## 7.10 WOMEN'S LAND OWNERSHIP

Punjab Land Revenue (Amendment) Act 2015 amends section 24(1)(c) of the Punjab Land Revenue Act, 1967 regarding mode of summons; and changes who a summon can be issued to from "adult male" to "adult". Subsections (4) and (5) of the same section, have allowed for electronic means of communication as an effective mode of summons. This amendment ensures that litigation is facilitated and conducted without discrimination to women. The amendment is a big step in land reforms to facilitate women in claiming their land inheritance rights from courts.

Furthermore, the Revenue Officer is now required by law to decide the question of the partition of the property himself after the Inheritance Mutation (Intiqal), instead of requiring a party to file a civil suit. This will curtail the practice of making women give up their land ownership in favour of the male heirs.

Sr. No.	Gaps	Recommendations
<b>Implementation Gap</b>		
1.	The general public lacks awareness of the amendments in the law regarding women's inheritance in land	Awareness in the general public about the new amendments to the lands laws that further facilitate women in claiming their inheritance

## 7.11 FAIR REPRESENTATION OF WOMEN

The Punjab Fair Representation of Women Act 2014 is a holistic and comprehensive legislation that amends sixty-six existing laws to institutionalise affirmative action for women to enhance women’s representation in the work force and decision making bodies. The preamble reads that the Act was enacted to “amend certain laws of the Punjab for purposes of fair representation of women in decision-making process and their empowerment.”<sup>95</sup> The law amends the following 66 laws to institutionalise representation of women in all major decision-making bodies and public functionaries.

The Punjab Commission on the Status of Women has been vociferously advocating and working to institutionalise this law to ensure that the 33% quota for women in public functionaries is fulfilled. In this regard, the Punjab Gender Parity Report 2018 reveals:

*‘181 Provincial Departments/ Institutions provided data for 69 Boards, 204 Committees and 7 Taskforces. Of the 69 Boards, 54 (78%) fulfilled the 33% quota requirement. Of the 204 Committees, 108 (53%) fulfilled the 33% quota requirement while 3 (43%) of the 7 Taskforces were in compliance with the 33% quota.’<sup>96</sup>*

In this regard, the Punjab Government and the Punjab Commission on the Status of Women are working towards the implementation of the law to ensure women’s participation and representation in decision making positions.

Sr. No.	Gap	Recommendations
<b>Implementation Gap</b>		
1.	Lack of implementation of the 2014 Act for women representation in all the 66 public functionaries	<p>Implementation of the 2014 Act for women’s representation to ensure women’s representation and participation in the 66 public functionaries stipulated in the law</p> <p>The Government of Punjab should monitor the positions in which women are being employed within public functionaries. This is to ensure that in compliance with the Act, women are being employed in managerial and decision-making roles</p>

## 8. PUNJAB LAWS: MONITORING & INFORMATION GAPS

### 8.1 MONITORING GAPS

The Punjab Commission on the Status of Women (PCSW) has been established as per the Punjab Commission on the Status of Women Act 2014. PCSW is the provincial statutory body on women's rights which acts as a bridge between civil society and the Government of Punjab. The Commission operates as a monitoring body with its core functions including to:

- Examine policies, programs and other measures taken by the Government to materialise gender equality;
- Review the Punjab laws, rules and regulations affecting the status and rights of women;
- Sponsor, steer and encourage research to generate information, analysis and studies and maintain a database 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;
- Facilitate and monitor implementation of instruments and obligations affecting women and girls to which Pakistan is a signatory and;
- Monitor mechanisms and institutional procedures for redress of violations of women's rights and individual grievances. This includes inspecting jails, sub-jails, Dar ul Amans and Women's Centres or other places of custody, where women and girls are kept.<sup>97</sup>

In light of the above mandate, the PCSW works vociferously to promote the rights of women and girls as enshrined in the national and provincial commitments as well as international treaties ratified by Pakistan. PCSW also regularly conducts researches and publishes reports on women and girls' rights situation in the province for evidence-based advocacy and policy advice. For the year 2016 to 2018, the following budget was allocated to PCSW:<sup>98</sup>

Year	Non-Development Budget (Million PKR)				Development Budget (Million PKR)			
	Allocated	Modified	Released	Expenditure	Allocated	Modified	Released	Expenditure
2016-2017	61.102	55.342	55.342	31.674	100	79.393	37.501	28.102
2017-2018	68.558	67.388	67.388	25.302	130	122.889	92.434	77.492

The Punjab Commission on the Status of Women has initiated ground-breaking interventions like the Gender Management Information System (GMIS) and the Social and Economic Wellbeing Survey to advance evidence based legal and policy advocacy. The GMIS is the first of such initiative in Asia that seeks to gather data against certain thematic areas to produce the Punjab Gender Parity Report each year.

## 8.2 INFORMATION GAPS

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

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

1. 2017 Census Results;<sup>99</sup>
2. Labour Force Survey;<sup>100</sup>
3. Pakistan Demographic and Health Survey;<sup>101</sup>
4. Pakistan Economic Survey;<sup>102</sup>
5. Election Commission of Pakistan;<sup>103</sup>
6. Gender Management Information System, PCSW;<sup>104</sup>
7. Social and Economic Wellbeing Survey, PCSW;<sup>105</sup>
8. Iris, Planning and Development Department, Government of Punjab;<sup>106</sup>
9. Punjab Land Records Authority;<sup>107</sup>
10. Punjab Police Crime Statistics;<sup>108</sup>
11. Bureau of Statistics, Government of Punjab;<sup>109</sup>
12. Punjab Healthcare Commission;<sup>110</sup>
13. Human Rights Commission of Pakistan<sup>111</sup>

While the data portals listed above provide substantial data, all of them do not necessarily publish disaggregated data based on gender, age, ethnicity, religious affiliation, etc., for analysis. For example, the Punjab Police Crime Statistics do not extrapolate the number of murders committed against men, women or children, it only gives data regarding the number of murders committed.



However, the Punjab Gender Parity Report which analyses data from various governmental departments and functionaries has proven to be an international best practice which could strengthen evidence based policy making and advocacy in other provinces as well as Punjab.

Gaps have also been filled by PCSW's initiative of the Gender Management Information System (GMIS)<sup>112</sup> and Social and Economic Wellbeing Survey.<sup>113</sup>

The Punjab GMIS is divided into the following thematic areas:

1. Demographics
2. Health
3. Education
4. Economic Participation and Opportunities
5. Justice Sector
6. Governance
7. Special Initiatives

The Punjab GMIS collects and collates data from different departments and organisations of the Government of Punjab to furnish comprehensive information across the aforementioned themes related to women's rights. The GMIS is the first and only management information system based on gender indicators to facilitate evidence-based policy and advocacy.

## 9. CONCLUSION

---

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

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

For the implementation gaps regarding various EVAW related legislation, data has been sought from governmental and non-governmental partners working on the specific laws to highlight the extent of implementation as well as the challenges being faced. By referencing researches and obtaining information from key experts, gaps have been highlighted by the experts and organisations who are working on the implementation of EVAW laws and facilitating government agencies through the provision of technical and legal expertise. The aim has been to consolidate all available data to produce this comprehensive analysis. The Technical Consultative Workshop on EVAW Laws organised in Lahore with a participatory and facilitative approach further enriched this document with insights into the ground realities and status of implementation. Separate consultations and meetings with key stakeholders and experts also provided valuable inputs into the finalisation of this report. Subsuming these voices from Punjab 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 Punjab Commission on the Status of Women. The functions of the Commission to monitor and facilitate implementation have been highlighted as well as its mandate to harmonise Pakistan's domestic law with international commitments. The information gaps presented in the report hinge on the nineteen years lapse since the previous census and the gaping hole in information left in this regard. Furthermore, the Punjab Commission on the Status of Women's Gender Management

Information System (GMIS) has been lauded as an international best practice to promote evidence based policy and legal advocacy. Other credible governmental and non-governmental data analysing portals and statistics have also been mapped to feed into the next phase of the gap analysis: formulation of indicators for monitoring implementation of EAW laws. Based on the tripartite approach above, major recommendations of the Gap Analysis include:

### **Punjab EAW Laws:**

1. Enactment of a comprehensive legislation to provide medical attention, rehabilitation and reintegration of acid and burn survivors in the province;
2. Amendment in the Punjab Child Marriage Restraint Act 1929 to either raise the marriageable age to 18 years or require judicial consent for marriages where either party to the marriage is below the age of 18 years but above the age of 16 years;
3. Amendment in the Punjab Protection of Women against Violence Act 2016 to criminalise domestic violence;
4. Drafting and notification of Rules for the governance and working of the Punjab Women Protection Authority as per section 22 of the Punjab Women Protection Authority Act 2017;
5. Amendment in section 2(e) of PAHWA to delete 'man' and 'woman' and replace the terms with 'persons' to extend the protection of the law to all genders;
6. Amendment in the Dowry and Bridal Gifts (Restriction) Act 1976 to stipulate harsher punishments for excessive dowry demands and the violence resulting from it.

### **Punjab Laws related to Discrimination and Women Rights:**

1. Amendment in the Punjab Domestic Workers Act 2019 to prohibit involvement of children below the age of eighteen years in domestic work and notification under section 2(i) of the Punjab Restriction on Employment of Children Act, 2016 to declare domestic work as 'hazardous' for children;
2. Drafting and promulgation of a labour law for home-based workers;
3. Awareness and sensitisation trainings amongst legal fraternity and judiciary to implement the Punjab Muslim Family Laws (Amendment) Act 2015 to safeguard the rights of women in marriage;

4. Drafting and notification of Rules under section 11 of the Muslim Family Law Ordinance 1961 to elaborate the amended provisions as per Punjab Muslim Family Laws (Amendment) Act 2015;
5. Drafting and notification of comprehensive and updated Rules incorporating the amendments made by the Punjab Family Courts (Amendment) Act 2015;
6. Awareness trainings of legal fraternity and the judiciary regarding the stricter timelines to follow in family cases as per the Punjab Family Courts (Amendment) Act 2015;
7. Greater oversight of the lower judiciary to ensure the timelines as provided in the Punjab Family Courts (Amendment) Act 2015 are adhered to;
8. Amendment in the Christian Marriage Act 1872 to properly define a minor and marriageable age;
9. Amendment in the Divorce Act 1869 to allow Christian couples, both husband and wife, to petition for dissolution of marriage in a manner that does not place on either party the requirement of a tedious list of allegations and an arduous burden of proof against the other party;
10. Appointment of Marriage Registrars for Hindu Marriages as per section 7 of the Hindu Marriage Act 2017;
11. Drafting and notification of Rules to carry out the purposes of the Act as per section 25 of the Hindu Marriage Act 2017;
12. Granting of licenses to Anand Karaj Registrars for certification and registration of Sikh marriages as per section 5 of the Punjab Sikh Anand Karaj Marriage Act 2018;
13. Drafting and notification of Rules to carry out the purposes of the Act as per section 7 of the Punjab Sikh Anand Karaj Marriage Act 2018;
14. Drafting and promulgation of legal provisions or amendments to mainstream women with different capabilities;
15. Amendment in section 3 of the Punjab Maternity Benefit Ordinance, 1958 to grant maternity leave of 16 weeks and to address pregnancy related illnesses and complications for women workers;
16. Legislative drafting and promulgation of a special legislation to provide a grievance redressal mechanism for complainants of gender pay gap in the private sector;

17. Awareness in the general public about the new amendments to the land laws that further facilitate women in claiming their inheritance in land;
18. Implementation of the Punjab Fair Representation of Women Act 2014 for women's representation to ensure women's representation and participation in the 66 public functionaries stipulated in the law.

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

1. Reviving Punjab's Gender Management Information System (GMIS) to track progress made on a yearly basis with regards to protection of women from violence;
2. Reiving publication of Punjab Gender Parity Report based on the tracking of indicators and progress from GMIS;
3. Capacity building of PCSW staff on mechanisms to promote evidence based legal and policy advocacy.

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

## ANNEX 1: FEDERAL LEGISLATION APPLICABLE IN PUNJAB

---

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

### SYNOPSIS

---

#### Federal ERAW Laws:

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

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

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

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

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

## FEDERAL ERAW LAWS

### HONOUR KILLING

The Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act 2016 seeks to restrict the option of compoundability in cases of honour killing. Firstly, the amendment reforms the concept of '*fasad-fil-arz*' to include offences committed in the name and pretext of honour<sup>114</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 attracted.<sup>115</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>116</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 to attract the provision of *fasad-fil-arz*. The 2016 amendments to the law state that if the provision of *fasad-fil-arz* has been attracted then the judge will have no choice but to sentence the accused to death or imprisonment for life.

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

*"Said section [311] started with the word "notwithstanding anything contained in section 309 or 310" pertaining to waiver of Qisas in Qatl-e-amd and compounding of Qisas in qatl-e-amd and by authorising the court to award, inter alia, even death sentence to such a culprit [of honour killing] despite the waiver of or compounding the right to Qisas by adult sane Wali"*<sup>117</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>118</sup> whereas they were	Jurisdiction of honour crimes to be vested with anti-terrorism courts owing to the nature of the crime thereby making the



	formerly entertained by anti-terrorism courts <sup>119</sup>	offence non-bailable, cognisable and non-compoundable
--	--	---

## 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>120</sup> For the first four months of 2018, 72 bodies of female infants were discovered in Karachi alone.<sup>121</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>122</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>123</sup> and ‘*concealment of birth by secret disposal of dead body*’;<sup>124</sup> which carry sentences from two<sup>125</sup> to seven<sup>126</sup> years for the offences. However, regarding cases of female infanticide, the provisions laid out under Pakistan Penal Code, 1860 fail to address the issue where the parents or carers are the ones responsible for female infanticide.<sup>127</sup>

Sr. No.	Gaps	Recommendations
<b>Normative Gap</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 (Qatl-e-Amd or Murder) of the Pakistan Penal Code, 1860 is compoundable in nature which creates legal loopholes for perpetrators	Criminal Law Amendment in the Code of Criminal Procedure, 1898 to ensure that acts of female infanticide are non-compoundable, non-bailable and cognisable

## 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>128</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>129</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. The profile of victims based on gender and maturity for acid attacks reveals the following:

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

In 2017, the European Institute of Democracy and Human Rights nominated Pakistan's ASF as a global success story, because of the 50% decrease in acid violence since 2011.<sup>130</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>131</sup>

Sr. No.	Gap	Recommendation
<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

## HUMAN TRAFFICKING

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

1. Defines child as any person below the age of eighteen years;<sup>132</sup>
2. Defines 'trafficking' to include compelled labour as well as sex work to guarantee protection to domestic workers/labourers supplied through trafficking;<sup>133</sup>
3. Stipulates a punishment which may extend to seven years and a fine which may extend for one million rupees;<sup>134</sup>
4. Stipulates a stricter punishment which may extend to ten years and a fine of one million rupees where the trafficking is against a woman or child;<sup>135</sup>
5. Exonerates criminal liability of victims of trafficking;<sup>136</sup>
6. Vitiates any consent given by the child, the child's parents or the child's guardians in cases of trafficking where the victim is a child;<sup>137</sup>
7. 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>138</sup>
8. Allows compensation to be paid to victims in cases where the offender is convicted.<sup>139</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.	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

## 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>140</sup> and its punishment<sup>141</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>142</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>143</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>144</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>145</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.

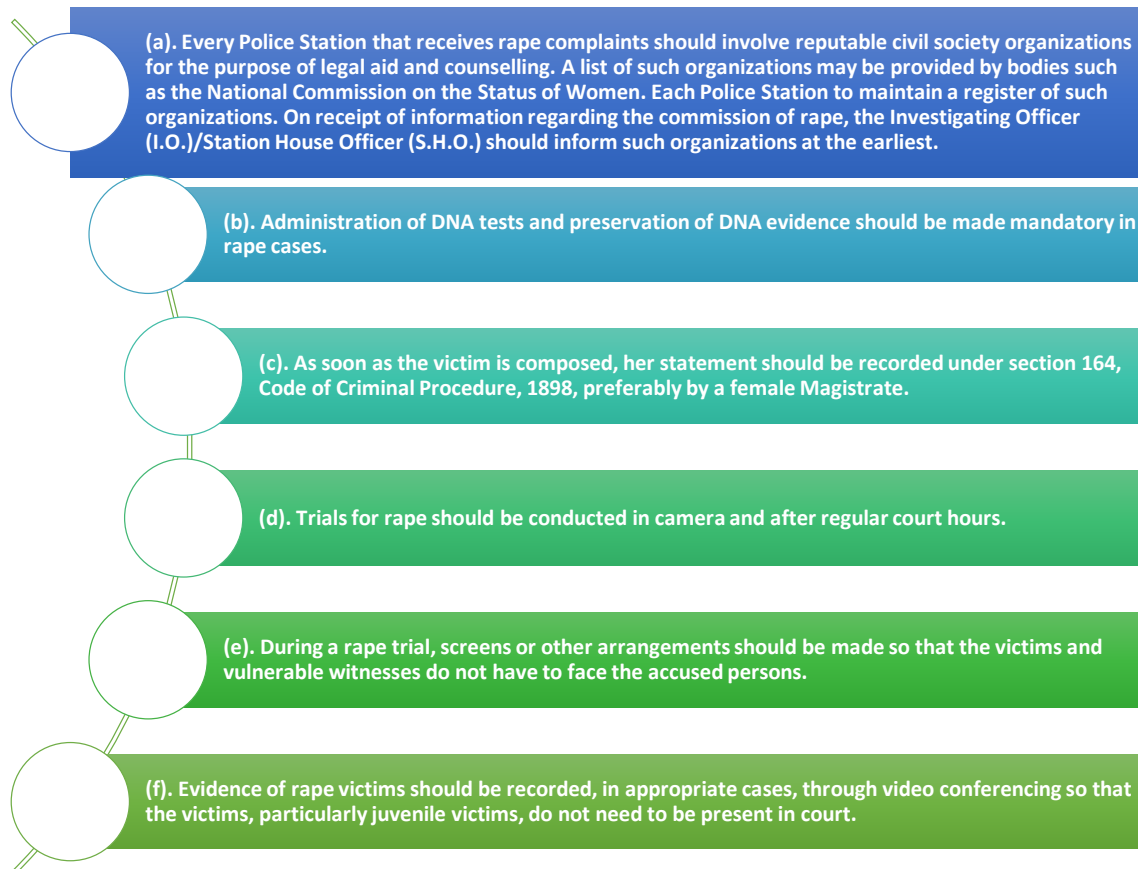
6. Furthermore, section 375(v) has been interpreted by the superior courts to exclude cases where a girl has attained puberty and has contracted Nikah with a man. In such cases, the performance of conjugal rights by the girl would not attract section 375(v) and would not be considered as rape.<sup>146</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

While the definitional issues in light of the evolving jurisprudence have revealed various gaps, the Criminal Law (Amendment) (Offences Relating to Rape) Act 2016 is a milestone legislation that seeks to reform procedural aspects of the law in an effort to strengthen investigations and evidence in cases of rape. The law stipulates strict punishments for public servants entrusted with investigation of rape cases who fail to investigate the case properly or diligently<sup>147</sup> as well as punishments for jeopardizing or hampering investigations in cases of

rape.<sup>148</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>149</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>150</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>151</sup> and also mandates examination of the accused by a medical practitioner for collecting evidence.<sup>152</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>153</sup> Furthermore, judgment of the Supreme Court in *Salman Akram Raja and another versus Government of Punjab and others*,<sup>154</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, police, forensic technicians employed by the government and otherwise), which stipulate sections 166(2) and 186 Pakistan Penal Code, 1860 attracting a punishment of up to three years for failing to diligently investigate cases	Formulation of a revised Code of Conduct for public servants appraising them of their liabilities and possible punishments under the 2016 amendments
2.	Absence of a Standard Protocol as per section 376-A Pakistan Penal Code, 1860 regarding disclosure of identity of the rape victim to be followed by police, lawyers, judiciary, media personnel etc.	Formulation of Standard Protocol delineating authorisation process when identity of a rape victim can be revealed and the punishment for disclosing identity of rape victim without proper 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
----	--	---

## 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>155</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>156</sup> This undermines the trauma and severity of cases of sexual violence involving anal<sup>157</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

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

Pertinent to mention here are sections 377A and 377B of the Pakistan Penal Code 1860 inserted by the Criminal Law (Second Amendment) Act 2016 which criminalises acts of a sexual nature with any person below the age of 18 years as an offence of sexual abuse. Section 377B inserted by the Criminal Law Amendment initially stipulated a punishment of 7 years' imprisonment and 500,000 rupees. However, the Criminal Laws (Amendment) Act 2018 increased punishment for the offence of sexual abuse to imprisonment of minimum 14 years and maximum 20 years and a fine of not less than 1,000,000 rupees. Furthermore, the offence of sexual abuse is cognisable in nature authorising the police to arrest alleged perpetrators without warrant. The provisions of sections of 377A and 377B therefore act as important provisions to protect children under the age of 18 years from sexual violence and ensure stricter punishments for offences of sexual violence where children are involved.

Furthermore, despite legislative developments, adult male victims of sexual violence do not have the same protections in law against sexual violence as compared to women and children.

Sr. No.	Gaps	Recommendations
<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

## 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>158</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.

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

## **CHILD MARRIAGE**

Currently the Child Marriage Restraint Act 1929, applicable in Punjab, stipulates the minimum marriageable age for girls at sixteen years<sup>159</sup> contrary to eighteen years for boys. This contravenes the UN Convention on the Rights of the Child.<sup>160</sup> The law stipulates minor punishments of imprisonment of one month and fine of one thousand rupees for the offences of marrying a child,<sup>161</sup> solemnising a child marriage<sup>162</sup> and permission or negligent failure by the parents or guardians who are involved in the marriage.<sup>163</sup> Furthermore, criminalisation of child marriage in criminal law is needed at federal level to be applicable all over Pakistan. Therefore, it is proposed that a comprehensive definition of child marriage should be inserted into the Pakistan Penal Code, 1860 with definitive penalty.

Sr. No.	Gap	Recommendation
<b>Normative Gap</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 girls and boys below the age of 18 years

## HARMFUL CUSTOMARY PRACTICES AGAINST WOMEN

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

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

Thereby, anyone who gives a woman or girl in *badla-e-sulha, vani* or *swara* can be punished under the law with imprisonment of three to seven years and with a fine of 500,000 rupees.<sup>164</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>165</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 and girls defined in the law are non-compoundable in nature, therefore, cannot be compromised upon between the parties. Non-compoundable offences are offences against society and not offences against individuals, therefore, the offences cannot be privately pardoned or settled,<sup>166</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

## 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>167</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>168</sup> dowry is a multi-faceted, deep-rooted gender issue with social, economic and health consequences.<sup>169</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.

Sr. No.	Gap	Recommendation
<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

## 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>170</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>171</sup>

While cases of domestic violence are entertained under section 332 to 337,<sup>172</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

## OBSTETRIC VIOLENCE

Obstetric violence is defined as *“the appropriation of the body and reproductive processes of women by health personnel, which is expressed as dehumanized treatment, an abuse of medication, and to convert the natural processes into pathological ones, bringing with it loss of autonomy ... negatively impacting the quality of life of women.”*<sup>173</sup> Obstetric violence is the neglect, abuse or forced surgery faced by women during childbirth which adversely impacts their physical health in the long term. The most common manifestation of obstetric violence in Pakistan is forced surgery to convert natural childbirths into caesarean operations. According to a research data by Pakistan Institute of Development Economics, high rates of Caesarean Sections or C-Sections are being conducted on women going through child birth.<sup>174</sup> The alarming rate for C-Sections has been alluded to the high costs associated with the procedure and the ability for health practitioners to be able to control the process, in terms of time and date.<sup>175</sup>

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



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

## NECROPHILIA

Necrophilia is defined as sexual attraction to corpses or engaging in sexual activity with corpses.<sup>176</sup> Pakistan has in recent years come across some much publicised and harrowing incidents of necrophilia involving corpses of women and girls.<sup>177</sup> While cases of necrophilia are dealt with under other provisions of the Pakistan Penal Code, for example, trespassing on burial places,<sup>178</sup> the law currently does not have any legal definition or criminalisation for such acts.<sup>179</sup> While some advocate for strict criminalisation of the act, others argue that criminalisation should be compounded with proper treatment to give people suffering from necrophilia a chance to recover.<sup>180</sup>

Sr. No.	Gap	Recommendation
<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

## 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>181</sup> 63% of the total calls were made by women whereas 37% were made by men.<sup>182</sup> Highest number of complaints related to non-consensual usage of information (326); defamation (314); and blackmail (302).<sup>183</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>184</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>185</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>186</sup>

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

Sr. No.	Gaps	Recommendations
<b>Implementation Gaps</b>		
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 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.	Complex legalities involving cases of digital crimes	Abolishment of Telegraph Act 1885 and incorporation of all facets of digital crimes within PECA
5.	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
6.	Lack of technical capacity of law enforcement agencies, legal fraternity and judiciary in dealing with digital crimes	Technical capacity building of law enforcement agencies, legal fraternity and judiciary regarding digital crimes
7.	Lack of women prosecutors and investigators in the Federal Investigation Agency	Affirmative action for employment of women prosecutors and investigators in the Federal Investigation Agency

## FEDERAL LAWS RELATED TO DISCRIMINATION & WOMEN'S RIGHTS

---

### DISCRIMINATION IN THE LAW OF EVIDENCE

The Qanun-e-Shahadat Order, 1984 repealed the Evidence Act, 1872 during the time of General Zia-ul-Haq. The Order is a 'compendium of rules, procedures and practices'<sup>187</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>188</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>189</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.	Gap	Recommendation
<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

## 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>190</sup> Pakistan is one of the 48 countries where discriminatory provisions exist in its nationality laws.<sup>191</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>192</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>193</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.	Gap	Recommendation
<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

## CONCLUDING SUMMARY

---

Based on the research above, major recommendations of the Federal 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 in the Pakistan Penal Code, 1860 to define the offence of infanticide and criminalise such acts of female infanticide in Pakistan and Criminal Law Amendment in the Code of Criminal Procedure, 1898 to ensure that acts of female infanticide are non-compoundable, non-bailable and 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 Amendment to reflect gender neutrality and provide protection to all genders against rape and to include all types of sexual acts of penetration as constituting the offence of rape;
6. Formulation of a revised Code of Conduct for public servants appraising them of their liabilities and possible punishments under the 2016 amendments
7. Formulation of Standard Protocol delineating authorisation process when identity of a rape victim can be revealed and the punishment for disclosing identity of rape victim without proper 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 facilitate rape victims by invoking sections 154 and 161 Code of Criminal Procedure, 1898 amended by inserted by Criminal Law (Amendment) (Offences Relating to Rape) Act 2016;
10. Criminal Law Amendment in section 375 to define and criminalise acts of sexual violence by penetration (through tools, weapons, other body parts, etc.);

11. Criminal Law Amendment in section 345 to define and criminalise acts of sexual assault that do not result in or fall short of sexual penetration;
12. Amendment in Schedule II of the Code of Criminal Procedure 1898 to make the section 509 offence of sexual harassment 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 the Pakistan Penal Code 1860 to define the offence of obstetric violence and criminalise such acts;
21. Criminal Law Amendment in section 377 'Unnatural Offences' of the Pakistan Penal Code, 1860 to define and criminalise acts of necrophilia all over Pakistan;
22. Sensitisation and capacity building of FIA officials in registering and investigating cases involving "modesty of women" in online spaces under PECA 2016;
23. Allocation of technical human resources at NR3C offices for efficient operations to investigate and prosecute cases under Prevention of Electronic Crimes Act 2016.

### **Federal Laws related to Discrimination and Women'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.

## ANNEX 2: TECHNICAL CONSULTATIVE WORKSHOPS

LIST OF PARTICIPANTS – LAHORE CONSULTATION			
#	Name	Designation	Organisation
1.	Noreen Nazir	Advocate	AGHS
2.	Beenish Zia	Advocate	AGHS
3.	Hina Shahid	Paralegal Coordinator	AGHS Legal Aid Cell
4.	Dur-e-Shawar	COO	APWA
5.	Nabeela Shaheen	Provincial Manager	Aurat Foundation
6.	Shaiq Ali	Client Executive	Design Media Adv
7.	Majid Liaquat	Research Officer	Directorate General Social Welfare and Bait-ul-Maal
8.	Ali Ayan	Legal Officer	DRF
9.	Nighat Dad	ED	DRF
10.	Namra Gilani	Legal Officer	DRF
11.	Jannat Fazal	Project Manger	DRF
12.	Summiya Yousaf	Provincial Coordinator	DRI
13.	Ume Laila Azhar	Executive Director	Home Net Pakistan
14.	Salman Abid	Executive Director	IDEA
15.	Mary Gill	Managing Partner	James and Sharif
16.	Justice Nasira Iqbal	Member Bar	Jurist, Professor
17.	Javaria A. Kashif	Lawyer	Kashif Law Chamber
18.	Tehmina Asad	Labour Economist	Labour Department
19.	Nida Usman Chaudhry	Consultant	LEARN/ Women in Law
20.	Syeda Uzma Gillani	Advocate, Chairperson Legal Education and Training Committee	LHCBA
21.	M. Khalid	Coordinator	National Commission for Human Rights
22.	Sohail Akbar Warraich	Member	NCSW
23.	Sardar Humza Ali	Consultant	Ombudsperson Punjab
24.	Madeeha Munawar	Legal Advisor	PCSW
25.	Faisal Awais	Field Officer	PODA



26.	Anwar Majeed	Advocate	Right Defenders Lawyers & Consultants
27.	Irfan Mufti	Deputy Director	SAP-PK
28.	Shamim-ur-Rehman	Advocate Supreme Court	SCBA
29.	Neelam Hussain	Executive Coordinator	Simorgh
30.	Ayesha Taslim	Director	Smile Again Foundation
31.	Mariam Aamir		Special Monitoring Unit
32.	Fatima Khan	Associate	Strategic Reform Unit
33.	Sidra F. Minhas	Consultant	UN Women
34.	Ambreen Fatima	Program Coordinator	WAR
35.	Muhammad Shahid Saleem	Deputy Secretary (Planning)	Women Development Department
36.	Hafsa Mazhar	Head of Sub Office	UN Women Punjab

## 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 Tafteeq	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.	Munazza 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

## ANNEX 3: REFERENCES

---

- <sup>1</sup> Provisional Summary Results of 6th Population and Housing Census 2017. [www.pbs.gov.pk](http://www.pbs.gov.pk). (2019).
- <sup>2</sup> Ibid
- <sup>3</sup> Ibid
- <sup>4</sup> Ibid
- <sup>5</sup> Ibid
- <sup>6</sup> Ibid
- <sup>7</sup> World Economic Forum, 'The Global Gender Gap Report 2020' (Weforum.org, 2020)
- <sup>8</sup> UNICEF, 'Child Marriage' (UNICEF DATA, March 2018)
- <sup>9</sup> National Institute of Population Studies, 'Pakistan Demographic and Health Survey 2017-18' (Nipsorg.pk, August 2018) page 16
- <sup>10</sup> Shifa Fatimah and Zafar Zahir, 'Is Child Marriage Associated with the Survival Status of First Pregnancy' (Nipsorg.pk, July 2016) page 54 (In-depth Analysis of PDHS Data 2012 – 2013)
- <sup>11</sup> Rabia Zafar and Sadaf Zafar, 'Women's Mindset against Spousal Violence with reference to their Socio-Economic, Demographic and Empowerment Attributes' (Nipsorg.pk, July 2016) page 117 (In-depth Analysis of PDHS Data 2012 – 2013)
- <sup>12</sup> Ibid
- <sup>13</sup> Ibid
- <sup>14</sup> Punjab Commission on the Status of Women, 'Punjab Gender Parity Report' (<https://pcswpunjabgovpk>, 2018) page viii
- <sup>15</sup> Punjab Commission on the Status of Women, 'Punjab Gender Parity Report' (<https://pcswpunjabgovpk>, 2018)
- <sup>16</sup> Ibid, page 105
- <sup>17</sup> Ibid, page 107
- <sup>18</sup> Human Rights Commission of Pakistan, 'State of Human Rights in 2018' (Hrcp-web.org, March 2019) page 179
- <sup>19</sup> Pakistan Bureau of Statistics, 'Labour Force Survey Section III' ([Http://www.pbs.gov.pk](http://www.pbs.gov.pk), 2013) page 19
- <sup>20</sup> Rabia Zafar and Sadaf Zafar, 'Women's Mindset against Spousal Violence with reference to their Socio-Economic, Demographic and Empowerment Attributes' (Nipsorg.pk, July 2016) page 117 (In-depth Analysis of PDHS Data 2012 – 2013)
- <sup>21</sup> Punjab Commission on the Status of Women, 'Punjab Gender Parity Report' (<https://pcswpunjabgovpk>, 2018) page iv
- <sup>22</sup> Punjab Commission on the Status of Women, 'Punjab Gender Parity Report' (<https://pcswpunjabgovpk>, 2018)
- <sup>23</sup> Article 141 – 144 of the Constitution of Pakistan, 1973
- <sup>24</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, 27<sup>th</sup> March, 2013
- <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 2(a), Punjab Child Marriage Restraint Act, 1929

<sup>31</sup> Article 1, UN Convention on the Rights of the Child

<sup>32</sup> Article 30, Federal Law on Personal Status 2005

<sup>33</sup> Section 4, Punjab Marriage Restraint (Amendment) Act, 2015

<sup>34</sup> Section 5, Ibid

<sup>35</sup> Section 6, Ibid

<sup>36</sup> 1975 PLD Lahore High Court 234; 2006 YLR 2936 Lahore High Court; 2018 PCrLJN 175 Lahore High Court

<sup>37</sup> Note: Child marriage is a major factor leading to adverse statistics of maternal mortality rate in Pakistan and therefore should be discouraged to ensure high number of survival rates of infants and healthy children in the country. Pakistan has one of the worst maternal mortality rate in South Asian region. By the age of 18, 1 in 12 women have given at least one birth. Source: [https://data.unicef.org/wp-content/uploads/country\\_profiles/Pakistan/country%20profile\\_PAK.pdf](https://data.unicef.org/wp-content/uploads/country_profiles/Pakistan/country%20profile_PAK.pdf)

<sup>38</sup> Note: Child marriages and stunting have been researched to be closely connected. According to the Global Nutrition Survey 2018 Report India, Pakistan and Nigeria have the largest number of children who are stunted. Pakistan Demographic Health Survey (PDHS) 2017-2018 indicated, 38 percent children under five are stunted and out of 38 % slightly more than half (17%) are severely stunted in Pakistan. Source: <https://dailylimes.com.pk/356145/one-third-of-worlds-stunted-children-live-in-pakistan/>

<sup>39</sup> Social Welfare Department, Government of Punjab, 'Inauguration of VAWC Multan' (*Swd.punjab.gov.pk*, 25.03.2017)

<sup>40</sup> Ibid

<sup>41</sup> Xari Jalil, '1,545 cases of violence against women recorded in Multan' (*DAWNCOM*, 06.05.2018)

<sup>42</sup> Owais Qarni, 'Multan's VAWC on brink of closure' (*Tribune.com.pk*, 09.01.2018)  
<<https://tribune.com.pk/story/1603684/1-multans-vawc-brink-closure/>>

<sup>43</sup> Section 2(h), Protection against Harassment of Women at the Workplace Act, 2010

<sup>44</sup> Section 2(e), Ibid

<sup>45</sup> Section 3 and 4, Ibid

<sup>46</sup> Section 7, Ibid

<sup>47</sup> Section 9, Ibid

<sup>48</sup> Punjab Government, 'The Protection against Harassment of Women at the Workplace Rules 2013' (*Punjab.gov.pk*, 2013)

<sup>49</sup> Punjab Ombudsperson, 'Ombudsperson Budget' (*Ombudsperson.punjab.gov.pk*, 2016)

<sup>50</sup> PLD 2019 Lahore 17

<sup>51</sup> According to a submission by a Working Group during the 'Technical Consultative Workshop on EAW Laws': '...clear distinction must be drawn between 'sexual' and 'sexist' harassment. Sexual entails violation of the body whereas sexist harassment does not violate the body but rather promotes gender stereotypes through remarks, actions or expectations that is either dismissive of women (or other sexual minorities) and their

---

competence or is exclusionary of them leading towards creation of an unequal environment and unequal opportunities for growth. The nature of both these types of harassment differs and hence, the evidentiary, response and redressal mechanism should likewise cater to these differences. In short, they recommended that the definition of harassment should be inclusive as opposed to conclusive.'

<sup>52</sup> Section 9, Dowry and Bridal Gifts (Restriction) Act 1976

<sup>53</sup> Section 3 Punjab Domestic Workers Act, 2019 where "light work" means a domestic work which is part-time in nature and is not likely to harm health, safety and education of a domestic worker.

<sup>54</sup> Section 2(a), Punjab Restriction on Employment of Children Act, 2016

<sup>55</sup> Section 2(i), Ibid. Note: "hazardous work" is defined in the Act as work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of adolescents

<sup>56</sup> ILO, 'Giving rights to millions of domestic workers in Pakistan' (International Labour Organisation, 26 February 2015) <[https://www.ilo.org/islamabad/info/public/fs/WCMS\\_347029/lang--en/index.htm](https://www.ilo.org/islamabad/info/public/fs/WCMS_347029/lang--en/index.htm)>

<sup>57</sup> Sajjad Akhter and Saadia Razzaq, 'Child Domestic Labour in Pakistan: Overview, Issues and Testable Hypothesis' [2005] Centre for Research on Poverty Reduction and Income Distribution 1-24

<sup>58</sup> Article 16, Universal Declaration of Human Rights

<sup>59</sup> Section 4, Punjab Muslim Family Law (Amendment) Act, 2015

<sup>60</sup> Ibid

<sup>61</sup> Section 5, Ibid

<sup>62</sup> Section 6, Ibid

<sup>63</sup> Ibid

<sup>64</sup> Section 7, Punjab Family Courts (Amendment) Act, 2015

<sup>65</sup> Section 8, Ibid

<sup>66</sup> Section 10, Ibid

<sup>67</sup> Section 12, Ibid

<sup>68</sup> Section 14, Ibid

<sup>69</sup> Section 15, Ibid

<sup>70</sup> Pakistan Bureau of Statistics, 'Population by Religion' ([Http://www.pbsgovpk](http://www.pbsgovpk), 2018)

<sup>71</sup> Section 3, Christian Marriage Act 1872

<sup>72</sup> Section 19, Ibid

<sup>73</sup> Section 10, Divorce Act 1869

<sup>74</sup> Ibid

<sup>75</sup> Section 11, Ibid

<sup>76</sup> Section 1, Hindu Marriage Act, 2017

<sup>77</sup> Preamble, Ibid

<sup>78</sup> Preamble, Punjab Sikh Anand Karaj Marriage Act, 2018

<sup>79</sup> Section 3, Ibid

<sup>80</sup> Section 5, Ibid

<sup>81</sup> Rana Yasif, 'Punjab Sikh family law to make history' (*Tribune.com.pk*, 14.03.2018)

- 
- <sup>82</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>83</sup> Section 12, Disabled Persons (Employment and Rehabilitation) Ordinance, 1981
- <sup>84</sup> Section 10, Ibid
- <sup>85</sup> Section 4, Ibid
- <sup>86</sup> Article 6, Convention on the Rights of Persons with Disabilities
- <sup>87</sup> Section 3, Punjab Maternity Benefit Ordinance, 1958
- <sup>88</sup> Section 4, Ibid
- <sup>89</sup> Section 6, Ibid
- <sup>90</sup> Section 7, Ibid
- <sup>91</sup> Section 8, Ibid
- <sup>92</sup> Section 9, Ibid
- <sup>93</sup> Section 10, Ibid
- <sup>94</sup> Ibid
- <sup>95</sup> Punjab Fair Representation of Women Act 2014, Preamble
- <sup>96</sup> Punjab Commission on the Status of Women, 'Punjab Gender Parity Report 2018' (*Pcsw.punjab.gov.pk*, 2018)
- <sup>97</sup> Punjab Commission on the Status of Women, 'Functions of the Commission' (*Pcswpunjabgovpk*, 2017)
- <sup>98</sup> Punjab Commission on the Status of Women, 'Budget' (*Pcswpunjabgovpk*, 2017)
- <sup>99</sup> Provisional Summary Results of 6th Population and Housing Census 2017. [www.pbs.gov.pk](http://www.pbs.gov.pk). (2019).
- <sup>100</sup> Pakistan Bureau of Statistics, 'Labour Force Survey' ([Http://www.pbs.gov.pk](http://www.pbs.gov.pk), 2013)
- <sup>101</sup> National Institute of Population Studies, 'Pakistan Demographic and Health Survey 2017-18'
- <sup>102</sup> Ministry of Finance, 'Pakistan Economic Survey' ([Finance.gov.pk](http://Finance.gov.pk), 2016 - 2017)
- <sup>103</sup> Election Commission of Pakistan, 'Area Wise Statistics of Voters' ([www.ecp.gov.pk](http://www.ecp.gov.pk), 2018)
- <sup>104</sup> Punjab Commission on the Status of Women, 'Gender Management Information System (GMIS)' (*Gmis.gop.pk*, 2017)
- <sup>105</sup> Punjab Commission on the Status of Women, 'Economic and Social Wellbeing of Women' (*Interactive.pcsw-punjab.pk*, 2017)
- <sup>106</sup> Planning and Development Department, Government of Punjab, 'IRIS Punjab' (*Iris.punjab.gov.pk*, 2017)
- <sup>107</sup> Government of Punjab, 'Punjab Land Records Authority' (*Punjab-zameen.gov.pk*, 2019)
- <sup>108</sup> Punjab Police, 'Crime Statistics' (*Punjabpolice.gov.pk*, 2019)
- <sup>109</sup> Government of Punjab, 'Bureau of Statistics' (*Bos.gop.pk*, 2018)
- <sup>110</sup> Punjab Healthcare Commission, 'Publications' (*Phc.org.pk*, 2019)
- <sup>111</sup> Human Rights Commission of Pakistan, 'State of Human Rights in 2018' ([Http://hrcp-web.org](http://hrcp-web.org), 2019)
- <sup>112</sup> Punjab Commission on the Status of Women, 'Gender Management Information System (GMIS)' (*Gmis.gop.pk*, 2017)

- 
- <sup>113</sup> Punjab Commission on the Status of Women, 'Economic and Social Wellbeing of Women' (*Interactive.pcsw-punjab.pk*, 2017)
- <sup>114</sup> Section 299, Pakistan Penal Code, 1860
- <sup>115</sup> Section 311, Ibid
- <sup>116</sup> Ibid
- <sup>117</sup> 2017 PLD 8 Federal Shariat Court
- <sup>118</sup> 2016 PLD 195 Supreme Court
- <sup>119</sup> 2012 MLD 158 Balochistan High Court
- <sup>120</sup> Express Tribune, 'Infanticide on the rise: 1,210 babies found dead in 2010, says Edhi' (Tribune.com.pk, 18th January 2011)
- <sup>121</sup> Express Tribune, 'Karachi female infanticide' (Tribune.com.pk, 6th May 2018) 9
- <sup>122</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' (Ohchr.org, 2011)
- <sup>123</sup> Section 328, Pakistan Penal Code, 1860
- <sup>124</sup> Section 329 Ibid
- <sup>125</sup> Ibid
- <sup>126</sup> Section 328 Ibid
- <sup>127</sup> Section 302, Pakistan Penal Code, 1860 is a compoundable offence subject to Qisas and Diyat
- <sup>128</sup> 2015 P.Cr.LJ 456 Lahore High Court
- <sup>129</sup> 2016 PLD 89 Lahore High Court
- <sup>130</sup> Khadija Ali, Good Practices to Counter VAWG [2019] Published by Acid Survivors Foundation
- <sup>131</sup> Ibid
- <sup>132</sup> Ibid
- <sup>133</sup> Section 3 (1), Ibid
- <sup>134</sup> Ibid
- <sup>135</sup> Section 3(2), Ibid
- <sup>136</sup> Section 6, Ibid
- <sup>137</sup> Section 7, Ibid
- <sup>138</sup> Section 8, Ibid
- <sup>139</sup> Section 13, Ibid
- <sup>140</sup> Section 375, Pakistan Penal Code, 1860
- <sup>141</sup> Section 376, Ibid
- <sup>142</sup> Section 375, Ibid
- <sup>143</sup> 2007 SCMR 698
- <sup>144</sup> Note: 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>145</sup> Section 1, Sexual Offences Act 2004 (United Kingdom)
- <sup>146</sup> 2013 PLD 243 Lahore High Court
- <sup>147</sup> Section 166, Pakistan Penal Code, 1860
- <sup>148</sup> Section 186, Ibid
- <sup>149</sup> Section 376, Ibid
- <sup>150</sup> Section 376-A, Ibid
- <sup>151</sup> Section 164-B, Code of Criminal Procedure 1898
- <sup>152</sup> Section 53-A, Ibid
- <sup>153</sup> Section 154 and 161, Ibid
- <sup>154</sup> 2013 SCMR 203 (Supreme Court)
- <sup>155</sup> Section 376, Pakistan Penal Code, 1860
- <sup>156</sup> Section 377, Ibid
- <sup>157</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>158</sup> Section 509, Pakistan Penal Code 1860
- <sup>159</sup> Section 2(a), Child Marriage Restraint Act, 1929
- <sup>160</sup> Article 1, UN Convention on the Rights of the Child
- <sup>161</sup> Section 4, Ibid
- <sup>162</sup> Section 5, Ibid
- <sup>163</sup> Section 6, Ibid
- <sup>164</sup> Section 310-A, Pakistan Penal Code, 1860
- <sup>165</sup> 2014 MLD 1464 Peshawar High Court
- <sup>166</sup> 2016 MLD 580 Karachi High Court
- <sup>167</sup> Rakhshinda Perveen, 'Forgotten - Dowry: A socially endorsed form of violence in Pakistan' (Sachetorg.pk, 2016)
- <sup>168</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>169</sup> Rakhshinda Perveen, 'Forgotten - Dowry: A socially endorsed form of violence in Pakistan' (Sachetorg.pk, 2016)
- <sup>170</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' ([Http://gallupcompk](http://gallupcompk))
- <sup>171</sup> Section 332, Pakistan Penal Code 1860
- <sup>172</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
  5. All kinds of other hurts: A hurt, which is not covered by any of the four clauses given above, and which endangers life or which causes the sufferer to remain in severe bodily pain for twenty days or more is covered by the other hurt

<sup>173</sup> Elizabeth Kukura, 'Obstetric Violence' (Georgetownlawjournal.org, 2018)

<sup>174</sup> Saman Nazir, 'Determinants of Caesarian Deliveries in Pakistan' (Pide.org.pk, 2012)

<sup>175</sup> Taneez Z, 'Why are C-sections becoming more common than natural birth?' (Tribune.com.pk, 29th April 2016)

<sup>176</sup> Carla Valentine, 'Dead Inside: Female Necrophilia, UK Law and the Penetration Paradox' (Academia.edu, 2014)

<sup>177</sup> Express Tribune, 'Girl's body removed from grave with intent to rape: Police' (Tribune.com.pk, 3rd July, 2013)

<sup>178</sup> Section 297, Pakistan Penal Code, 1860

<sup>179</sup> Sarah Zaman and Maliha Zia, 'Women's Access to Justice in Pakistan' (www.ohchr.org, 2013)

<sup>180</sup> Sumaira Jajja, 'Give Necrophiles a chance to recover: doctors' (DAWN.COM, 2011)

<sup>181</sup> Digital Rights Foundation, Cyber Harassment Helpline (Bi-Annual Report) December 2016 – May 2018

<sup>182</sup> Ibid

<sup>183</sup> Ibid

<sup>184</sup> Salwa Rana, Bottlenecks, Incompetence and Abuse of Power: An analysis of PECA's implementation. Media Matters for Democracy (2018)

<sup>185</sup> Ibid

<sup>186</sup> Ibid

<sup>187</sup> Zafar Iqbal, 'Law of Evidence in Pakistan' (Zklawassociates.com, 2012)

<sup>188</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>189</sup> 2013 PLD 7 Federal Shariat Court

<sup>190</sup> Equality Now, 'The State We're In: Ending Sexism in Nationality Laws' (Www.equalitynow.org, 2016) Page 14

<sup>191</sup> Ibid, Page 16

<sup>192</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>193</sup> Ayesha Mumtaz, 'Discrimination in Nationality Laws: A case study of Pakistan' (liste.org, 2017)

