

“Women Friendly laws in Pakistan: Challenges in implementation of these laws” By Sofia Noreen

A “Right” is an interest recognized and protected by law. It can be created and enforced either by a constitutional provision or by an ordinary enactment.

When a right is safeguarded through constitutional guarantee it is called fundamental or constitutional right.

According to Black’s Law Dictionary:

“Constitutional right is a right guaranteed by a Constitution, especially one guaranteed by the state Constitution.”

Constitutional Rights for women

According to Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter referred to as “The Constitution”) all citizens are equal in the eyes of law and there must not be any discrimination on the basis of sex. The Constitution has guaranteed twenty one fundamental rights, which are as follows:

1. Rights of life and liberty

- a. Right to life and liberty (Art.9);
- b. Safeguard as to arrest and detention(Art.10);
- c. Protection against retrospective¹ punishment (Art.12); and
- d. Protection against double punishment (Art.13);

2. Rights to Equality (irrespective of gender, race, religion, caste, residence)

- a. Equality before law (Art. 25);
- b. Equality regarding accessibility to public places (Art. 26);
- c. Equality of employment (Art. 27); and
- d. Inviolability of dignity of man (Art. 14);

3. Rights to Freedom

- a. Freedom of movement.(Art.15);
- b. Freedom of assembly (Art.16);
- c. Freedom of association.(Art. 17);

¹¹Means a person cannot be punished for any offence which has been committed before the enactment of that law.

- d. Freedom of trade, profession, etc (Art.18);
- e. Freedom of speech (Art. 19);
- f. Freedom of religion (Art.20) “freedom of religion applies to minorities as well as various sects of religion.”
- g. Protection against taxation on basis of religion (Art.21); and
- h. Protection of religious and educational institutions(Art.22).

4. Rights to Property

- a. Freedom to acquire property (Art.23); and
- b. Protection of property rights (Art.24)

5. Rights to Culture:

Preservation of language, script, and culture etc. (Art 28)

6. Social Rights

- a. Freedom from slavery (Art.11); and
- b. Freedom from forced Labor (Art.11)

7. Right to Constitutional Remedies to Protect Fundamental Rights

Under Article 199 of the Constitution, every citizen of Pakistan can invoke the writ jurisdiction of high court and seek remedy against infringement of fundamental rights guaranteed there under.

Legal Rights

Legal right has been defined in Black’s Law Dictionary² as: “A right created or recognized by law”.

Following are the different categories of legal rights for women in Pakistan.

1. Rights provided to women under Criminal Law
2. Rights provided to women under Civil Law
3. Rights provided to women under Family Law

²²Bryan A. Garrner, “Black’s Law Dictionary” (West Publishing Co.: 7thed, USA).

1.Rights Provided to Women Under Criminal Law

a. *Pakistan Penal Code (PPC) 1860:*

Changes have been made recently in Legal Framework at national and provincial level in Punjab that has taken notice of domestic violence, early child and forced marriages and forced marriages, marriage with Quran, acid throwing on women to subjugate them according to powerful sections, harassment in public place at work place, rape, trafficking of children and women along with prostitution, use of children for pornography. In rape cases, DNA testing is included as evidence and changes have been made in the procedure for taking samples from rape victim to protect the survivor. Consequently, recently laws have been amended or formulated to punish the perpetrator and protect vulnerable. Laws have also been formulated to ensure that children could attend schools and it is mandatory for private sector schools to provide 10% of total seats to children from poor families free of cost. Body search of women can only be done by women police officers and not by males. Details of those laws and amendments are given below:

- Amendment of section 166³, Act XLV of 1860.- In the Penal Code. in section 166 the existing provision shall be re-numbered as sub-section (1) of that section and after sub-section re-numbered as aforesaid, the following new sub-section shall be inserted namely. '

"(2) Whoever being a public servant, entrusted with the investigation of a case, fails to carry out the investigation properly or diligently or fails to pursue the case in any court of law/ properly and in breach of his duties, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. '
- Amendment of section '186⁴, Act XLV of 1860.- In the Penal Code, in section 186, the existing provision shall be re-numbered as sub-section (1) of that section and,- in sub-section (),-(i) for the words "three months" the words "one year" shall be substitute; and (ii) for the words "five hundred" the words "fifty thousand" shall be substituted, and after sub-section (1), as amended hereinabove, the following new subsection shall be added, namely:-

"(2) Whoever intentionally hampers, misleads, jeopardizes or defeats an investigation, inquiry or prosecution, or issues a false or defective report in a case under any law for the time being in force, shall be punished with imprisonment for a term which may extend to three years or with fine, or with both."

³Anti-Rape Law, 2016

⁴ ibid

- According to section 292 A⁵ whoever seduces a child by any means whatsoever with an intent to involve him in any sexual activity or exposes him to obscene and sexually explicit material, document, a film, video or computer generated image or attempt to do aforementioned act, shall be punished with imprisonment of either description for a term which shall not be less than one year and may extend up to seven years or with fine which shall not be less than one hundred thousand rupees and may extend up to five hundred thousand rupees or with both.
- According to section 292 B⁶ (1) whoever takes permits to be taken, with or without the consent of the child or with or without the consent of his parents or guardian any photograph, film, video, picture or representation, portrait or computer generated image or picture whether made or produced by electronic, mechanical or other means of obscene or sexually explicit conduct where—
- Section 292C⁷ deals with the punishment of child pornography which may extend to 7 years but will not be less than 2 years.
- Insertion of new section 328A⁸ deals with the punishment for cruelty to the child and punishment is up to 3 years but not less than one year or will be punished with fine up to 50 thousands but not less than 25 thousand rupees or with both.
- According to section 310⁹ and 310-A¹⁰, whoever gives a female in marriage or otherwise in *Badal-I-Sulh* shall be punished with rigorous imprisonment which may extend to 10 years and shall not be less than 3 years.
- Amendment of section 311¹¹, Act XLV of 1860.- In the Penal Code, for section 311, the following shall be substituted, namely:-
"311. Ta'zir after waiver or compounding of right of qisas in qatl-i-amd,- Where all the u/a, do not waive or compound the right of qisas, or if the principle of fasad-fil-an is attracted, the court may, having regard to the facts and circumstances of the case, punish an offender against whom the right of qisas has been waived or compounded with death or imprisonment for life or imprisonment of either description for a term of which may extend to fourteen years as ta'zir :
Provided that if the offence has been committed in the name or on the pretext of honour, the punishment shall be imprisonment for life. "
• According to section 332 whoever causes pain, harm, disease, infirmity or injury to any person or impairs disables, disfigures, defaces or dismembers any organ of the body or any part of any person without causing his/her death, is said to cause hurt¹².

⁵Criminal Law (Second Amendment) Act, 2016

⁶ ibid

⁷ ibid

⁸idid

⁹Qisas and Diyat Ordinance, 1997 incorporated within Pakistan Penal Code (PPC) 1860

¹⁰Criminal Law Amendment Act, 2004

¹¹ Anti-Honour Crime Law, 2016

¹²causes pain, harm, disease, infirmity or injury to any person or impairs disables, disfigures, defaces or dismembers any organ of the body"
Following words has been added in the definition of hurt by Criminal Law Amendment, 2009/Acid Control and Acid Crime Prevention Act, 2009

- Section 336 A states that whoever voluntarily causes hurt by means of fire or any heated substance, or by means of any poison or any corrosive substance or acid, or by means of any explosive or arsenic substance or by means of any substance which is deleterious to the human body to come into contact with, to inhale, to swallow, or to receive into the blood is said to cause hurt by dangerous means or substances¹³.
- 336 B provides that a person causing hurt by dangerous means or substances, shall be punished with imprisonment for a term which may extend to life, or with fine which may not be less than five hundred thousand rupees, or with both. That the Court may at any stage of the trial on an application by the aggrieved person direct the accused to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and such relief may include, but is not limited to loss of earning and medical expense¹⁴.
- According to section 354 a person may get two years imprisonment if he assaults a woman or uses criminal force against her with intent to outrage her modesty.
- According to section 354 a person may get two years imprisonment if he assaults a woman or uses criminal force against her with intent to outrage her modesty.
- Section 365-B stipulates that a person, who kidnaps or abducts a woman for the purpose of rape or forceful marriage, may be punished with life imprisonment.¹⁵
- Section 366-A provides if any person takes away any minor girl to another place or seduce her with intent of illicit intercourse with another person shall be punishable with imprisonment which may extents to 10 years and fine.
- Section 366-B provides that if any person imports any girl to outside of Pakistan with intent of illicit intercourse with another person shall be punishable with imprisonment which may extent to 10 years and fine.
- Section 367-A provides that whoever kidnaps, or abducts any person in order that such person may be subjected or may be so disposed of as to be put in danger of being subjected, to the unnatural lust of any person or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with death or rigorous imprisonment for a term which may extend to twenty-five years and shall also be liable to fine.¹⁶
- Insertion of a new section 369A¹⁷ deals with human trafficking and punishment for this action will be imprisonment upto seven years and not less than five years or with fine upto seven hundred thousand rupees but not less than five hundred thousand rupees or with both.

¹³Criminal Law Amendment, 2009/Acid Control and Acid Crime Prevention Act, 2009

¹⁴ ibid

¹⁵Criminal law Amendment, 2006 /Women Protection Act, 2006

¹⁶Criminal law Amendment, 2006 /Women Protection Act, 2006

¹⁷ Criminal Law (Second Amendment) Act, 2016

- According to section 371-A whoever sells, lets to hire or otherwise disposes of any person with the intent that such a person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose or knowing it to be likely that such person shall at any time be employed or used for any such purpose shall be punished with imprisonment which may extend to twenty-five years and shall also be liable to fine.¹⁸
- According to section 371-B whoever buys hires or otherwise obtains possession of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose, shall be punished with imprisonment which may extend to twenty-five years, and shall also be liable to fine.¹⁹
- Section 375 defines the crime of rape. Stating that man is said to commit rape who has sexual intercourse with a woman without her consent.²⁰
- According to section 376, a person who commits rape shall be punished with death or imprisonment which may extend to 25 years and shall not be less than 10 years. According to section 376(2) when rape is committed by two or more persons in furtherance of common intention of all, each of such person shall be punished with death or imprisonment for life.²¹
- Amendment of section 376²², Act XLV of 1860.- In the Penal Code, in section
 - (a) after sub-section (1), the following new sub-section (1A) shall be inserted, namely -
 - "(1A) Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of this section, section 377 or section 377B, and in the course of such commission causes any hurt punishable as an offence under section 333, section 335. Clauses (iv) (v) and (vi) of sub-section (3) of section 337, section 337C, clauses (v) and (vi) of section 337F, shall be punished with death or imprisonment for life and fine ' ; and
 - After sub-section (2), the following new sub-sections (3) and (4) shall be inserted, namely:-
 - "(3) Whoever commits rape of a minor or a person with mental or physical disability, shall be punished with death or imprisonment for life and fine

¹⁸ *ibid*

¹⁹¹¹ Criminal law Amendment, 2006 /Women Protection Act, 2006

²⁰ *ibid*. This definition eliminates the condition of marriage earlier as described in PPC, and thereby also includes any intercourse without the consent of wife.

²¹ Firstly section 376 PPC provides Rape according to that its punishment was 10 years. After enactment of HaddZina Ordinance 1979 it become section 6 (1) and according to that its punishment was up to 25 years imprisonment. This insertion was enacted by Women Protection Act (criminal law amendment), 2006.

²² Anit-Rape Law 2016

(4) Whoever being a public servant, including a police officer, medical officer, or jailor, taking advantage of his official position commits rape shall be punished with death or imprisonment for life and fine.¹.

- Insertion of new section 376A, Act XLV of 1860²³.-In the Penal Code. After section 376 the following new section shall be inserted, namely:-
"376A. Disclosure of identity of the victim of rape etc:- (I) Whoever prints or publishes the name or any matter which may make known the identity of the victim, against whom an offence under sections 354,q. 376, 376A,377 and 377B is alleged or found to have been committed, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine
(2) nothing in sub-section (1), extends to any printing or publication if it is
(a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or
(b) by or under the order of Court; or
(c) by or with the authorization in writing of the victim; or
(d) by or with the authorization in writing of natural or legal guardian of the victim. where the victim is dead or a minor or of unsound mind:
- According to section 377A²⁴ defines sexual abuse especially without the consent of a person less than 18 years of age.
- Section 377B²⁵ deals with the punishment of sexual abuse of a person less than 18 years of age with the imprisonment of upto 7 years and with a fine not less than five hundred thousand rupees.
- Section 493 provides that every man who deceitfully causes any woman, who is not lawfully married to him to believe that she is lawfully married to him and to cohabit with him in that belief, shall be punished with rigorous imprisonment for a term which may extend to twenty-five years and shall also be liable to fine²⁶.
- According to section 496-A, a person who entices a woman with intent to illicit intercourse with her or conceals or detains her for that purpose may be punished with imprisonment for a term up to 7 years and fine²⁷.
- Section 496-B provides that a man and a woman not married to each other are said to commit fornication if they willfully have sexual intercourse with one another. Whoever commits fornication shall be punished with imprisonment for a term

²³Anti Rape Law, 2016

²⁴ Criminal Law (Second Amendment) Act, 2016

²⁵ ibid

²⁶Criminal Law Amendment, 2006/Women Protection Act, 2006

²⁷Criminal Law Amendment, 2006/Women Protection Act, 2006

which may extend to five years and shall also be liable to fine not exceeding ten thousand rupees.²⁸

- Section 496-C provides that whoever brings or levels or gives evidence of false charge of fornication against any person, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine not exceeding ten thousand rupees.²⁹
- The new chapter XXA³⁰ has been inserted i.e. “**Offences Against Women**”. The new provisions are as follows:
 - Section 498-A provides that whosoever by deceitful or illegal means deprive any woman from inheriting any movable or immovable property shall be punished with imprisonment for a term which may extend to 10 years and not less than 5 years or with fine of Rs.100,000/-.
 - Section 498-B provides that whosoever coerces or in any manner compels a woman to enter into marriage, shall be punished with imprisonment which extend to 7 years and not less than 3 years and shall also be liable to fine of Rs.500,000/-.
 - Section 498-C provides that whoever compels or arranges or facilitates the marriage of a woman with Holy Quran , shall be punished with imprisonment which may extend to 7 years but not less than 3 years and shall also be liable to fine of Rs.500,000/-.
- Section 509 provides that a person who intends by uttering any word or making any sounds or gestures or exhibits any object to insult the modesty of any woman or otherwise intrudes upon the privacy of such woman at working places, shall be punished with 3 years’ imprisonment or with fine Rs.500,000/- or with both.
- A bill on **domestic violence** has been approved by National Assembly and is pending before Senate for approval. According to this enactment victim can file a case before the Court of law which would be decided as early as possible.
- Amendments have been made in several sections in Chapter XV³¹ of PPC to broaden

²⁸Ibid. Through this amendment *ZinaBilRaza* has been removed from the ambit of Hadd and a Tazir punishment has been imposed which is against the injunctions of Quran and Sunnah.

²⁹Criminal Law Amendment, 2006/Women Protection Act, 2006

³⁰Criminal Law Amendment, 2011

³¹Anti-Honour killing Law, 2016

the legal ambit of honour crimes. Crimes committed in the name of honour, now also include hurt and determine stringent punishment for such offences as well as it includes the definition of fasaad-fil-arz for which the sentence is life imprisonment (25 years) which cannot be waived or compounded. Offence under Sections 309 and 310 will, therefore, be subjected to the provision of Section 311, where the principle of 'fasaad-fil-arz' is attracted.

- **Right to Free and Compulsory Education Act, 2012**-The Act aims to ensure the provision of free education to all children of the age 5-16 in schools established by the federal government and local government in Islamabad the capital territory.
- **The Investigation for Fair Trial Act, 2013**-The "right to fair trial" has been established as the fundamental right through Article 10A. The Investigation for Fair Trial Act, 2013 has been made to strengthen the applicability and grant of this right.
- **The Election 2017**- Section 9 of the this acts states that "Notwithstanding anything contained in this Act, if, from facts apparent on the face of the record and after such enquiry as it may deem necessary, the Commission is satisfied that by reason of grave illegalities or such violations of the provisions of this Act or the Rules as have materially affected the result of the poll at one or more polling stations or in the whole constituency including implementation of an agreement restraining women from casting their votes, it shall make a declaration accordingly and call upon the voters in the concerned"

b. *Criminal Procedure Code (Cr.P.C) 1898*

- Section 52 provides that whenever it is necessary to search a woman she must be searched by another woman, with strict regard to decency.
- Insertion of new section 53A, Act V of 1898³².-In the Code of Criminal Procedure, 1898 (V of 1898), hereinafter referred to as the Code, after section 53. The following new section shall be inserted namely:-
"53A. Examination of person accused of rape, etc. by medical practitioner.-
When a person is arrested on a charge of committing an offence of rape, unnatural offence or sexual abuse or an attempt to commit rape, unnatural offence or sexual abuse under section 376, section 377 and section 377B respectively and there are reasonable grounds for believing that an examination of this person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

³² Anti-Rape Law, 2016

(2) The registered medical practitioner conducting such examinations shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely:-

- (a) the name and address of the accused and of the person by whom he was brought
 - (b) the age of the accused
 - (c) marks of injury, if any, on the person of the accused,
 - (d) the description of material taken from the person of the accused for DNA profiling and
 - (e) other material particulars in reasonable detail.
 - (f) The report shall state precisely the reasons for each conclusion arrived at.
 - (f) The exact time of commencement and completion of the examination shall also be noted in the report. The registered medical practitioner shall without delay, forward the report to the investigating officer, who shall forward it to the Magistrate through Public Prosecutor referred to in section 173 as part of the report referred to in that section. .
- Section 497 provides that women³³ can claim bail as a matter of right, except in cases of terrorism or offences in which punishment would extend to death penalty or life imprisonment.
 - Insertion of section 161A, Act V of 1898³⁴.- In the Code, after section 161, the following new section shall be inserted, namely:- \ "161A. Legal representation of the victim of rape, etc.- (1) Where an offence under section 354A, section 376, section 377 or section 377B of the Pakistan Penal Code, 1860 (Act XLV of 1860), has been committed or attempted to be committed, the police officer, after recording the information under section 154, shall inform the victim against whom such offences have been committed or attempted to be committed, of his or her right to legal representation.".
 - (2) If the victim requires free legal aid the police officer shall provide the list of lawyers that are trained by the Provincial Bar Councils for this purpose.'.
 - Insertion of two new sections 164A and 164B³⁵, Act V of 1898.- In the Code, after section 164, the following new sections shall be inserted, namely:- "164A. Medical examination of the victim of rape, etc.- (1) Where an offence of committing rape, unnatural offence or sexual abuse or attempt to commit rape, unnatural offence or sexual abuse under section 376, section 377 or section 377B respectively of the Pakistan Penal Code, 1860 (Act XLV of 1860) is under investigation, the victim shall be examined by a registered medical practitioner, in

³³ Code of Criminal procedure Amendment, 2011

³⁴ Anti-Rape Law, 2016

³⁵ ibid

the case of female victim by a female registered medical practitioner-, immediately after the commission of such offence:

Provided that in all cases, where possible, the female victim shall be escorted by a female police officer or a family member from a place of her convenience to the place of medical examination.

(2) The registered medical practitioner to whom such victim is sent, shall without delay examine him or her and prepare a report of the examination giving the following particulars, namely -

(a) the name and address of the victim and of the person by Whom she was escorted:

(b) the age of the victim

(c) the description of material taken from the body of the victim for DNA profiling,

(d) marks of injury, if any, on the body of the victim,

(e) general mental condition of the victim, and

(f) other material particulars in reasonable detail

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the victim, or of his or her natural or legal guardian. to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report.

(6) The registered medical practitioner shall, without delay forward the report to the investigation officer who shall forward it to the Magistrate along with other requirements as specified under clause (a) of sub-section (1) of section 173.

(7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the victim or of any person authorized under sub-section (4)

Explanation. - In this section, "registered medical practitioner" means a medical practitioner who possesses any qualification recognized as such under the Pakistan Medical and Dental Council Ordinance, (XXXIII) of 1962) and whose name has accordingly been entered in a Register maintained by the said Council accordingly has authorized by the Government to conduct such examination.

- 164B. DNA test.- (1) Where an offence under section 376, section 377 or section 377B of the Pakistan Penal Code, 1860 (XLV of 1860), is committed or attempted to have been committed or is alleged to have been committed.

Deoxy-ribonucleic Acid (DNA) samples, where practicable, shall be collected from the victim, with his or her consent (with the consent of his or her natural or legal guardian, and the accused during their medical examinations conducted under

section 164A, within optimal time period of receiving information relating to the commission of such offence

(2) The DNA samples collected under sub-section (1) shall at the earliest be sent for investigation to a forensic laboratory whereat these shall be properly examined and preserved:

Provided that the confidentiality of such examination shall at all times be observed."

- Section 167 clauses 5, 6 and 7 provides that there must be police stations for woman in every city and if no separate police station is available then a woman will be sent to judicial lockup and shall not be kept in a male police station.
- Section 203-A provides the procedure of complaint in case of Zina that no court shall take cognizance of an offence under section 5 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (VII of 1919), except on a complaint lodged in a Court of competent jurisdiction³⁶.
- Section 203-B provides procedure of complaint in case of *qazaf* that subject to section 6(2) of the Offence of Qazaf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979), no Court shall take cognizance of an offence under section 7 of the said Ordinance except on a complaint lodged in a Court of competent jurisdiction³⁷.
- Section 203 C provides procedure of lodging of private complaint before competent Court in case fornication has been committed under section 496A of the Pakistan Penal Code³⁸.
- Insertion of new section 344A, ³⁹Act V of 1898.- In the Code, after section 344the following new section shall be inserted, namely:-

"344A. Conclusion of trial.- The Court shall, upon taking cognizance of a case under sections 354A, 376, 377 and 377B of the Pakistan Penal Code, 1860 (Act XLV of 1860), decide the case within three months failing which the matter shall be brought by the Court to the notice of the Chief Justice of the High Court concerned for appropriate directions."

c. Offences of Qazaf (Enforcement of Hadd) Ordinance, 1979

- Section 7 provides that a person who falsely accuses a woman of *zina* shall be awarded punishment of whipping numbering 80 stripes.
- Section 14 provides that when a husband accuses his wife before a Court who is '*muhsan*' within the meaning of section 5 of *Hadd-e-Zina* Ordinance, 1979 and the

³⁶ Criminal Law Amendment, 2006 / Women Protection Act, 2006

³⁷ *ibid*

³⁸ *ibid*

³⁹ Ant-Rape Law, 2016

wife does not accept the accusation as true, the following procedure of '*Lian*' shall apply as under :-

(a) The husband shall take oath before the Court:

"I swear by Allah the Almighty and say I am surely truthful in my accusation of '*zina*' against my wife (name of wife)" and after he has said so four times, he shall say: "Allah's curse be upon me if I am 'liar' in my accusation of '*zina*' against my wife (name of wife)";

(b) the wife shall, in reply to the husband's statement made in accordance with clause (a) says upon oath before the Courts: "I swear by Allah the Almighty that my husband is surely a 'liar' in his accusation of '*zina*' against me", and, after she has said so four times, she shall say: "Allah's wrath be upon me if he is truthful in his accusation of '*zina*' against me".

(2) When the procedure specified in sub-section (1) has been completed, the Court shall pass an order dissolving the marriage between the husband and wife, which shall operate as a decree for dissolution of marriage and no appeal shall lie against it.

(3) Where the husband or the wife refuses to go through the procedure specified in subsection (1) he or as the case may be, she shall be imprisoned until:

(a) In the case of the husband he has agreed to go through the aforesaid procedure; or

(b) In the case of the wife she has either agreed to go through the aforesaid procedure or accepted the husband's accusation as true.

(4) A wife who has accepted the husband's accusation as true shall be awarded the punishment for the offence of '*zina*' liable to hadd under the imposition of Hudood for the Offence of '*zina*' Ordinance, 1979.

d. Rights of Women Prisoners

- Women prisoners enjoy same rights as are provided to men prisoners. According to Cr.PC and Jail Manual women have every sort of protection in jail. In the same way they can pursue their cases, file appeals before competent Court of law and they also have the right of remission during their imprisonment on different occasions.⁴⁰

⁴⁰For detail see Jails In Pakistan Rules and Regulations by AsmaMushtaq (Women Aid Trust: Islamabad, 2010).

2. Rights Provided to Women under Family Laws

a. *The Dissolution of Muslim Marriage Act, 1939*

- Section 2 provides that a wife can seek decree of dissolution of marriage in the following cases:
 - Whereabouts of husband have not been known for a period of four years;
 - Husband has failed to provide maintenance for a period of two years;
 - Husband consummates second marriage without permission of the first wife;
 - Husband has been sentenced to imprisonment for a period of seven years or onwards;
 - Husband is impotent;
 - Wife after attaining majority while marriage was solemnized by her father against her consent, uses her right of “option of puberty” to dissolve her marriage;
 - Husband treats wife with cruelty and habitually assaults her;
 - Husband forces the wife to lead an immoral life;
 - Husband disposes the property of wife without her consent or prevents her from exercising her legal rights over it;
 - Husband obstructs wife in the observance of her religion;
 - Unequal treatment of husband in case of more than one wife; and
 - That husband accuses wife of *zina* and she denies so and proceedings of *lian* has been held⁴¹.

⁴¹Read with section 14 of *Hadd-e-Qazaf* Ordinance 1979

- Whereas the superior Courts gives directions to the family Courts to decide the matter within six months.

b. Muslim Family Laws Ordinance, 1961

- Section 5 provides the *nikkahnama* form to be filled and to be registered with the *nikkah* registrar of concerned union council and this is the responsibility of husband. In case of husband's failure to obtain registration of his marriage, he would be punishable with imprisonment which may extent to three months and fine which may extent to one thousand rupees.
- Section 6 prohibits second marriage of husband without prior permission of first wife, if he does so he would be liable to imprisonment which may extend to one year or fine which may extend to five thousand rupees.
- Section 7 provides procedure of registration of divorce it is the responsibility of husband to send notice of divorce to wife and arbitration council as well. If he fails to do so he will be liable to imprisonment which may extend to one year or with fine which may extend to five thousand rupees or with both.
- Section 8 provides for the possible delegated rights of divorce to the wife and in case she wishes to exercise that right, then the provisions of section 7 shall be applicable in its true spirit.
- Section 9 provides that in case husband fails to maintain his wife adequately or where there is more wives and fails to maintain them or one of them equitably the wives can claim the past as well as future maintenance as a matter of right.
- Section 10 provides details about that in case of non-specification of mode of payment of the dower in the *nikkahnama* or the marriage contract, the entire amount of dower shall be payable on the demand of wife at any time.

c. The West Pakistan Family Courts Act, 1964

- Section 5, schedule 1 part 1 provides that following matters comes within the ambit of family Courts:
 - Dissolution of Marriage (including *Khula*)
 - Dower
 - Maintenance

- Custody of Children (visitation rights of parents in case of separation of parents)
- Guardianship
- Recovery of Dowry Articles
- Personal property and belongings of a wife
- Section 17-A Interim order for maintenance⁴². The Family Court-

(a) In a suit for maintenance of children, Court shall pass interim order for maintenance immediately after filing of the written statement.

(b) In any other suit for maintenance, Court may at any stage of the proceedings pass an interim order for maintenance. Whereby the father shall make payment by the fourteenth of each month in advance. Hence, in case of any default in payment the Court shall strike off the right of defense and decree the suit.⁴³

d. The Guardians and Wards Act , 1890

- In case of separation between the spouses, the mother has the legal right to keep the custody of her son till the age of 7 years while her daughter shall remain in her custody till marriage. However, in this rule the paramount consideration in respect of the custody of child is minor's welfare. While deciding such disputes the Court may deviate from the above mentioned common law and allow mother to continue the custody even after the son exceeds the age limit of 7 years. But in any case, all the day to day expenditures of the minor, whatsoever, like feeding, clothing, lodging, education and health etc, shall be borne by the father. If the father fails to fulfill this liability the minor may seek help of the Court and the Court may fix quantum of maintenance allowance keeping in view the standard of life of both the families and coercive measures may also be used to recover the allowance from father.
- Provided that where the minor has not attained the age of seven years in the case of male or the age of 16 years in the case of female, the Court shall, on the first date

⁴²Family Law Courts(Amendment) Act, 2008

⁴³ ibid

of hearing pass interim order for the custody of minor to the mother and visitation rights of the father.⁴⁴

e. Child Marriage Restraint Act, 1929

- Marriage of girls during childhood is prohibited. The parents and the *nikkahkwan* both are liable to be punished with imprisonment and fine if they are involved in arranging the marriage of a girl who is under sixteen years⁴⁵. Minimum marriage age was extended to 18 years through an amendment in family law amendment.⁴⁶

f. Dowry and Bridal Gifts(Restriction) Act, 1976

- Section 3 provides that presents given to bride by her parents or the presents given to bridegroom shall not exceed five thousand rupees.
- Section 6 provides that expenditure on marriage including *mehandi, barat and valimash* shall not exceed twenty-five hundred rupees.
- Section 9 provides that in case of violation of above the person would be punishable with imprisonment which may extent to six months.

g. Hindu Marriage Act, 2017

- The Hindu Marriage Act, 2017, the first personal law to regulate Hindu marriages, has been enacted. The Law prohibits the marriage of minors by prescribing the minimum age of eighteen years as a condition precedent for contracting marriage. It also protects customs and customary rites of Hindu community. It shall be

⁴⁴Guardian and Wards (Amendment) Act, 2008. (This law has proved ineffective and impractical, reasonable legislation and implementation has been required on this important issue).

⁴⁵That the superior Court and the Muslim jurists have established the principle that any such marriage will be considered valid.

⁴⁶Family Law Courts(Amendment) Act, 2008

applicable to the extent of ICT, province of Punjab, Balochistan, Khyber Pakhtunkhwa.

- The Act is a milestone for Hindu community owing to provide a mechanism for the registration of Hindu marriages along with terms on which the marriage may be contracted or dissolved.
- The Act provides provisions for divorce allowing women the freedom to leave a marriage on different grounds
- Section 6 of the Act speaks about the registration of the marriage and every marriage must be registered within fifteen days of solemnization.
- section 10 and 11 speaks about void and voidable marriage saying, any Hindu marriage may be null and void if the conditions of section 4, clauses (c) and (d) stand true. Clause (c) indicates any prohibited relationship between the two parties, and clause d) talks about another spouse living at the time of marriage.
- Section 12 speaks how a hindu marriage can be terminated and according to section 15 marriage can be terminated by mutual consent.
- Section 13 speaks about financial security of wife and children.
- Section 16 speaks about re-marriage in a manner described in section.
- Section 21 prescribe punishment for contravening the provisions of the Act, minimum 3 max 6 or fine of 5 thousand or both

3. Rights Provided to Women under Civil Laws

a. Code of Civil Procedure, 1908

Section 56 provides that a woman cannot be sent behind bars in execution of decree and in financial matters.

b. Factories Act, 1934

- In case there would be more than 50 women working in a factory, there must be a day care center for their children.
- Females working hours would not be more than 48 hours per week.
- After every six days there would be one holiday with salary.
- There must be 14 annual leaves, 10 occasional leaves and 16 sick leaves with full salary to be provided to women workers.

- It is prohibited for the women and child workers to clean up or assemble any part of running machinery of the factory.

c. *Married Women Property Act 1874*

This enactment protects the rights of married woman with respect to her property (moveable or immovable), earnings and wages.

d. *Mines Maternity Benefit Act 1941*

- This Act prohibits the employment of women in mines for a certain period before and after childbirth and to provide for payment of maternity benefit to them.
- In case of death of women her family would be entitled to receive the maternity benefits.
- Dismissal during period of pregnancy is prohibited.

e. *The Maternity Benefit Ordinance, 1958*

- This Act prohibits the employment of women workers for a certain period before and after childbirth. It also provides for payment of maternity benefit to them.
- In case of death of women her family would be entitled to receive the maternity benefits. Dismissal during period of pregnancy is prohibited.

All above mentioned legal provisions are applicable to whole of Pakistan. After passage of 18th Amendment majority of the subjects are provincial and provinces have to develop their own policies and laws according to the specific ground realities.

Punjab:

1. Punjab Protection against Harassment of Women at the Workplace Act, 2010
2. Women University Multan Act 2010
3. Government College Women University Faisalabad Act, 2012
4. Punjab Land Revenue (Amendment) Act and Rules, and the Punjab Partition of Immovable Property (Amendment) Act, 2012
5. Punjab Protection against Harassment of Women at the Workplace Act, 2012.

6. Government College Women University Sialkot Act, 2012
7. Government Sadiq College Women University Bahawalpur Act, 2012
8. Punjab Commission on the Status of Women Act 2014
9. Punjab Free and Compulsory Education Act, 2014
10. The Punjab Fair Representation of Women Act 2014
11. Punjab Marriage Restraint (Amendment) Act of 2015
12. Fatima Jinnah Medical University Lahore Act 2015
13. Punjab Muslim Family Laws (Amendment) Act, 2015
14. Punjab Family Courts (Amendment) Act, 2015
15. The Punjab Protection of Women Against Violence Act, 2016
16. Punjab Restriction on Employment of Children Ordinance, 2016
17. Punjab Women Protection Authority Act, 2017.
18. Punjab Legal Aid Act 2018
19. PUNJAB SIKH ANAND KARAJ MARRIAGE ACT 2018
20. Rawalpindi Women University, Rawalpindi Act 2019
21. Punjab Domestic Workers Act 2019

1. **Punjab Protection against Harassment of Women at the Workplace Act, 2010**

The Punjab Protection against Harassment of Women at the Workplace Act was enacted in 2012 to reduce sexual harassment at the workplace, a common impediment for working women. Through the Act, working women across Punjab can lodge complaints of harassment at the workplace with the Sexual Harassment Ombudsperson or an Inquiry Committee within their office. Furthermore, a Code of Conduct for Protection against Women at the Workplace was devised and has been implemented in 483 provincial departments and 4302 district government offices, while 407 Inquiry Committees have been formed in districts, and 142 have been formed in provincial bodies. To monitor the working of the Ombudsperson's office and implementation of the Act, a Provincial Committee has been established by Government of Punjab.

2. **Women University Multan Act, 2010**

In pursuance of the agenda to bring equal opportunity for male a female alike, the Punjab Government established women's university in Multan through legislation.

3. **College Women University Faisalabad Act, 2012**

Government of Punjab constituted Women University in Faisalabad so that educational needs of the girls can be achieved.

4. **Punjab Land Revenue (Amendment) Act and Rules, and the Punjab Partition of Immovable Property (Amendment) Act, 2012**

Punjab Land Revenue (Amendment) Act and Rules, and the Punjab Partition of Immovable Property (Amendment) Act were passed in 2012 and further amended in 2015 to protect

women's right to inheritance, and introduce measures aimed at eliminating discriminatory practices against women in matters of property.

It was observed that rights of female heirs are not properly safeguarded due to existing lacunas in the laws and rules governing land administration. Hence, after sanctioning of inheritance mutation, commencement of proceedings for partition of joint holding without submission of application has been made mandatory upon Revenue Officers through Punjab Land Revenue (Amendment) Act 2012. Punjab Assembly passed the amendment bill on Dec 27, 2012 and the Act was notified on January 5, 2013. This is a landmark step for protection of right to property, in general, and for women's right to property, in particular.

Following amendments have been made in the Punjab Land Revenue Rules 1968 vide Board of Revenue notification No. 2052-2012/777 dated 3-9-2012 to safeguard property rights of female heirs:

- Upon the death of a land owner, the Revenue officer shall record the statements of at least two respectable persons in respect of legal heirs of the deceased.
- Reference to CNIC and B form has been made mandatory while sanctioning inheritance mutation so as to ensure that no legal heir is deprived of his/her fundamental right to property.

5. **Punjab Protection against Harassment of Women at the Workplace Act, 2010**

The Punjab Protection against Harassment of Women at the Workplace Act was enacted in 2012 to reduce sexual harassment at the workplace, a common impediment for working women. Through the Act, working women across Punjab can lodge complaints of harassment at the workplace with the Sexual Harassment Ombudsperson or an Inquiry Committee within their office. Furthermore, a Code of Conduct for Protection against Women at the Workplace was devised and has been implemented in 483 provincial departments and 4302 district government offices, while 407 Inquiry Committees have been formed in districts, and 142 have been formed in provincial bodies. To monitor the working of the Ombudsperson's office and implementation of the Act, a Provincial Committee has been established by Government of Punjab.

Section 3 provides that there will be an inquiry committee who will have the power to inquire matter related and procedure is given in section 4. Section 7 provides that the government shall appoint an ombudsperson that is or eligible to become a judge of a High court. And section 10 provides that's ombudsperson contempt of court power of High Court. Even this power has not been granted to National Commission for Human Rights. He will also possess the powers of the Code of Civil Procedure, 1908 (Act V of 1908) in respect of manners given in.

6. **Government College Women University Sialkot Act, 2012**

A dedicated university for the educational needs of the girls was constituted in Sialkot through Act of Parliament.

7. **Government Sadiq College Women University Bahawalpur Act, 2012**

Keeping the necessity of education, the government of Punjab opened another university in Bahawalpur.

8. Punjab Commission on the Status of Women Act, 2014

Punjab Commission on the Status of Women Act was passed to form the Punjab Commission on the Status of Women (“PCSW”), an independent woman-led body that is mandated to assess implementation of pro-women laws and policies; review and recommend amendments to laws, policies and programs, to eliminate discrimination; safeguard and promote the interests of women; conduct research on women-related issues; and monitor implementation of international covenants.

By virtue of section 3 the government shall constitute this Commission. Section 4 and 5 provide modes of appointment of the chairperson and members respectively. Section 6 provides that the chairperson and members shall hold the office for a term of 3 years. Section 9 provides mandate and functions of the Commission. This Commission is having quasi-judicial powers. The Commission’s power shall include: examine the policy, programs and other measures taken by the Government to materialize gender equality, empowerment of women and their representation and political participation, assess implementation and make suitable recommendations to the concerned authorities, review the Punjab laws, rules and regulations affecting the status and rights of women and suggest repeal, amendment or new legislation essential to eliminate discrimination, safeguard and promote the interest of women and achieve gender equality in accordance with the Constitution and obligations under national and international covenants and commitments.

9. Punjab Free and Compulsory Education Act, 2014

The Act is implemented in the pursuance of Article 25-A of the Constitution and aims to provide free and compulsory education.

Section 3 provides that Every child shall have a right to free and compulsory education from class one to ten, non-formal education, vocational education or a combination of all or any of the two as notified by the Government considering the needs, capability and age of the child so as to ensure completion of education or specified education in a school in the neighborhood or the school allocated for the child.

Section 7 says that The Government and local authority shall have concurrent responsibility for providing funds for carrying out the purposes of this Act. Section 10 speaks about pre-school education. Section 13 stipulate responsibility of private school for free education. Section 7 provides duties of teachers.

10. The Punjab Fair Representation of Women Act, 2014

The Punjab Fair Representation of Women Act was passed in 2014 to increase and mandate 33% representation of women in public sector companies, regulatory bodies, special task forces and committees. This law aims to ensure women’s participation in decision making and governance positions in Public sector institutions.

This Act brought amendments in 66 laws to bring fair representation of women. Details are given in attached document.

11. Punjab Child Marriage Restraint (Amendment) Act, 2015

In an attempt to reduce the incidence of early age or child marriage in Punjab, the Punjab Assembly passed the Punjab Marriage Restraint (Amendment) Act of 2015. While retaining the age of marriage as 16 years for girls and 18 years for boys, the Act increases penalties for all parties involved in conducting, performing, directing or registering a marriage of a minor, including parents, marriage registrar and government officials.

The Act amended following provision

Section 4. Punishment for male adult above eighteen years of age marrying a child. Whoever, being a male above eighteen years of age, contracts child marriage shall be punishable with simple imprisonment which may extend to six months, or with fine which may extend to fifty thousand rupees, or with both.

Section 5. Punishment for solemnizing a child marriage. Whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to six month, or with fine which may extend to fifty thousand rupees, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage. Section 6. Punishment for parent or guardian concerned in a child marriage. (1) Where a minor contracts a child marriage any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnized, or negligently fails to prevent it from being solemnized, shall be punishable with simple imprisonment which may extend to six months, or with fine which may extend to fifty thousand rupees, or with both: provided that no woman shall be punishable with imprisonment. The punishments specified in Section 4 have been changed to “six months” and “fifty thousand rupees”. In sections 5 and 6, the expressions “one month or with fine which may extend to one thousand rupees, or with both”, has been substituted with the words “six months and fine of fifty thousand rupees”.

Section 9. Mode of taking cognizance of offence. No Court shall take cognizance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed. Section 9 has been replaced with “9. Cognizance of offence and trial”, which allows the Family Court to exercise “the powers of a Judicial Magistrate of the first class” in conducting a trial after the Union Council forwards a complaint.

12. Fatima Jinnah Medical University Lahore Act, 2015

According to social setup of Pakistan many families don't send their daughters to co-education system or to institute outside their city, hence Government kept on establishing educational institutes for women and in Lahore Fatima Jinnah Medical University was opened so that women can also get this specialized education easily.

13. Punjab Muslim Family Laws (Amendment) Act, 2015

In 2015, the Provincial Assembly of Punjab enacted the Punjab Muslim Family Laws (Amendment) Act. The Act mandates filling in all provisions of the nikahnama, and penalizes persons who are not licensed to solemnize a nikah. Penalties for polygamy without permission of the existing wife have been raised. The Act prescribes maintenance as an obligation of a

father upon his children and penalizes noncompliance. It also limits the number of *nikah* Registrars for each Union Council and Ward.

Provincial Assembly of Punjab amended the Muslim Family Laws Ordinance 1961 (MFLO) in 2015, to include some important provisions for the protection of women.

- Registration of marriages by licensed *nikah* Registrars has been made compulsory, while marriages not solemnized by a licensed *nikah* Registrar can be reported and the person responsible punished with imprisonment of up to 3 months and fine of up to Rs. 1000/-.
- *Nikah* Registrars are bound to accurately fill all columns of the *nikahnama*. Failure to fill all columns will result in fine of Rs. 25,000 and imprisonment of 1 month.
- Succession: if the son/daughter of a deceased person dies before opening of succession, the children of the son/daughter (if they are living) shall receive their parent's share as inheritance.
- Polygamy: No married man can remarry if he does not have permission from the Arbitration Council (a body which is headed by the Chairman, Union Council, for the purposes of divorce). A marriage contracted without permission cannot be registered, and carries a penalty of Rs. 500,000 and imprisonment of up to 1 year, along with payment of entire dower (if it was not given at the time of *nikah*) to the existing wife/wives.
- Upon receiving an Application for permission, the Arbitration Council will obtain permission from the existing wife/wives' before granting the Applicant permission to remarry. If the Chairman Arbitration Council does not take permission from the existing wife, he will be liable to a fine of Rs. 100,000 and imprisonment of 3 months.
- Divorce (*talaq*): any man who wishes to divorce his wife must write an Application to the Chairman Union Council. If the man does not do so, divorce cannot be final, and he can face imprisonment of up to 1 year, along with a fine of up to Rs. 5000.
- Divorce will be effective after 90 days have passed from the day on which the notice was first presented to the Chairman. Before expiry of 90 days, divorce can be revoked by the husband. In case the wife is pregnant at the time of pronouncement of *talaq*, *talaq* will not be effective until expiry of 90 days or end of pregnancy, whichever period ends later.
- If the husband has delegated the right to divorce to the wife (*haq-e-tafveez*), she can divorce her husband according to the procedure mentioned above. Before expiry of 90 days, divorce can be revoked by the wife.
- Maintenance: if a husband does not maintain his wife, or wives, his wife/wives can make an application to the Chairman Union Council, who will determine an appropriate amount of maintenance to be given to the wife/wives, and issue a certificate specifying this amount, and a date on which it has to be given by the husband every month.
- Maintenance Certificates can also be issued by the Chairman Union Council if a father fails to maintain his children.

14. Punjab Family Courts (Amendment) Act, 2015

The Punjab Family Courts (Amendment) Act 2015 amended the Family Courts Act 1964, in an effort to speed up litigation; and impose stringent liability upon a defendant for failure to provide maintenance.

The **Family Courts (Amendment) Act 2015 (AA of 2015)** amends the **Family Courts Act 1964, Act XXXV**. These changes speed up the litigation, reducing the time period in which a defendant may file his reply.

Failure to file reply during this time period will result in the closing of the defendant's right of defence, and the family court will decide the case in favour of the woman according to law. A crucial change allows women to keep up to 50% of the dower in the case of Khula, where before she was bound to return/leave the dower.

The following sections have been amended:

Section 5, Jurisdiction

Subject to the provisions of the Muslim Family Laws Ordinance, 1961, and the Conciliation Courts Ordinance, 1961, the Family Courts shall have exclusive jurisdiction to entertain, hear and adjudicate upon matters specified in [Part I of the Schedule].

To "Part I of the Schedule" specified in subsection (1) have been added "9. The personal property and belongings of a wife and a child living with his mother" and "10. Any other matter arising out of the Nikahnama", extending the jurisdiction of the family courts.

Section 8, Intimation to defendant

(1) When a plaint is presented to a Family Court, it—

- (a) [shall] fix a date [* *] of not more than thirty days for the appearance of the defendant;
- (b) shall issue summons to the defendant to appear on a date specified therein;
- (c) shall, within three days of the presentation of the plaint, send to each defendant, by registered post, acknowledgment due, [or by courier service or by both] a notice of the suit, together with a copy of the plaint, a copy of the Schedule referred to in sub-section (2) of section 7 and copies of the documents and a list of documents referred to in sub-section (3) of the said section.

In clause (a) of subsection (1), "thirty days" has been changed to "fifteen days". In (c), "three days" has been changed to "two days" and allowance for email communication has been added.

Section 9, Written Statement

(1) On the date fixed-under clause (a) of sub-section (1) of section 8, the plaintiff and the defendant shall appear before the Family Court and the defendant shall file his written statement, and attach therewith a list of his witnesses alongwith a precis of the evidence that each witness is expected to give.

Subsection (1) has been changed, and now specifies that "in case the written statement is not filed on that date, the Family Court may, for any sufficient reasons which prevented the defendant from submitting the written statement, allow the defendant to submit the written statement and other documents on the next date which shall not exceed fifteen days from that date."

Moreover, (5A) has been added after subsection (5):

If the defendant fails to submit the written statement on or before the date under subsection (1), the defence of the defendant shall stand struck off and the Family Court shall decide the case under the law.

Section 10, Pre-trial proceedings.

(3) At the pre-trial, the Court shall ascertain the points at issue between the parties and attempt to effect a compromise or reconciliation between the parties, if this be possible."

(4) If no compromise or reconciliation is possible the Court shall frame the issues in the case and fix a date for recording of evidence:

Provided that notwithstanding any decision or judgment of any Court or tribunal, the Family Court in a suit for dissolution of marriage, if reconciliation fails, shall pass decree for dissolution of marriage forthwith and shall also restore to the husband the HaqMehr received by the wife in consideration of marriage at the time of marriage.

"Reconciliation" has been removed in subsections (3) and (4), leaving only "compromise" in the description of pre-trial proceedings.

(5) and (6) have been added to specify the proceedings after the Court decrees for the end of marriage, mentioning that in case of khula, the Court “may direct 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”, and that the Court shall “direct the husband to pay whole or part of the outstanding deferred dower to the wife.”

Section 11, Recording of evidence.

(1) On the date fixed for [39][recording of the evidence] the Family Court shall examine the witnesses produced by the parties in such order as it deems fit.

(1A) has been added after subsection (1), allowing for the use of audio-video recordings as evidence: The Family Court shall record or cause to be recorded, the substance of the statement of a witness or may record or cause to be recorded, the statement of a witness through audio or video recording.

Section 14, Appeals

(2) No appeal shall lie from a decree passed by Family Court–

(a) for dissolution of marriage, except in the case of dissolution for reasons specified in clause (a) of item (viii) of section 2 of the Dissolution of Muslim Marriages Act, 1939;

(b) for dower [or dowry] not exceeding rupees thirty thousand;

(c) for maintenance of rupees one thousand or less per month.

The fines of “thirty thousand” and “one thousand” rupees mentioned in clauses (b) and (c) of subsection (2) have been replaced by fines of “one hundred thousand” and “five thousand” rupees respectively. Accordingly, in **Section 15, Power of Family Court to summon witnesses**, the words “not exceeding one thousand” have been replaced with “five thousand”.

Section 17-A, Interim order for maintenance.

At any stage of proceedings in a suit for maintenance, the Family Court may pass an interim order for maintenance, whereunder the payment shall be made by the fourteenth of each month, failing which the Court may strike off the defence of the defendant and decree the suit.”

This has been replaced with “**17A. Suit for maintenance**”, in which the word “may” has been replaced with “shall”, and specifies that the interim maintenance will be fixed on the date of the first appearance of the defendant. It further states that the Court may “may summon the relevant documentary evidence from any organization, body or authority to determine the estate and resources of the defendant”.

In case of failure to pay the maintenance by the fourteen of each month, “the defence of the defendant shall stand struck off and the Family Court shall decree the suit for maintenance on the basis of averments in the plaint and other supporting documents on record of the case.”

Furthermore, the Family Court may “fix an amount of maintenance higher than the amount prayed for in the plaint” and “prescribe the annual increase in the maintenance”. If the Court does not specify such an annual increase, the maintenance “shall automatically stand increased at the rate of ten percent each year.”

Section 20, Investment of powers of Magistrates on Judges.

Government may invest any Judge of a Family Court with powers of Magistrate First Class to make order for maintenance under section 488 of the Code of Criminal Procedure, 1898.”

Section 20 has been replaced with “**20 - Family Court to exercise the powers of the Judicial Magistrate**”, which states that a family court “shall be deemed as the Judicial Magistrate of the first class under the Code of Criminal Procedure, 1898 (V of 1898) for taking cognizance and trial of any offence under this Act; the Muslim Family Laws Ordinance, 1961 (VIII of 1961); and, the Child Marriage Restraint Act, 1929 (XIX of 1929)”.

Section 21, Provisions of Muslim Family Laws Ordinance, 1961 not affected. Nothing in this Act shall be deemed to affect any of the provisions of Muslims Family Laws Ordinance, 1961, or the rules made

thereunder.

Section 21 is now followed by “**21A. Intimation to Arbitration Council**”, which states that in case of dissolution of marriage by the Family Court , it is required to “immediately but not later than three days from the decree send by registered post or other means a certified copy of the decree to the concerned Chairman of the Arbitration Council”, and that “upon receipt of the decree, the Chairman shall proceed as if he had received intimation of Talaq under the Muslim Family Laws Ordinance, 1961 (VIII of 1961).”

15. The Punjab Protection of Women Against Violence Act, 2016

Punjab Protection of Women against Violence Act was enacted in February 2016 to protect women from instances of domestic, sexual, psychological and economic abuse, stalking and cyber-crimes, perpetrated by their husband(s), sibling(s), adopted children, and/or relatives, by approaching a Court to obtain Interim, Protection, Residence or Monetary Orders and by creating a district level infrastructure to support women suffering domestic and gender based abuse.

The Punjab Protection of Women against Violence Act aims to protect women from domestic, sexual, psychological and economic abuse, stalking and cyber crimes, perpetrated by their husband(s), sibling(s), adopted children, relatives and domestic employers.

- Victims of domestic violence can approach a Court themselves, or through the Women Protection Officers, to obtain Interim, Protection, Residence or Monetary Orders to prevent further violence, retain the right to reside in the marital home, and obtain maintenance from the accused. The period of validity of an Order will be defined by the Court.
- Interim Orders can be passed by the Court at any stage of proceedings under this Act. Terms of an Interim Order can include protection, right of residence and monetary benefits for the victim, while trial is pending or ongoing.
- Protection Orders order the accused not to have any communication and stay a specific distance away from the victim, surrender any firearms, and refrain from attempting to cause harm to her.
- Residence Orders can be passed by the Court to ensure that the accused or members of his family do not evict the victim from her marital home. If the victim wishes, she can be relocated to the *dar-ul-aman* or other location of her preference, if she fears violence from the accused person or his family.
- Monetary Orders direct the accused person to pay monetary relief to the victim to meet expenses incurred by her due to, e.g. loss of earning, medical expenses and any other harm suffered. Monetary Orders can also include maintenance for a specified period of time.
- Violation of the terms of any Order mentioned above can result in imprisonment of up to 1 year, or fine ranging from Rs. 50,000 to Rs. 200,000.
- The Act provides for setting up Violence against Women Centres, which will provide all essential services to ensure speedy reporting of crimes, registration of cases, timely medical examinations, and collection of forensic and other evidence. Services provided for survivors of violence include counselling, medical care, legal aid, coordination with local law enforcement agencies, and temporary shelter at *dar-ul-aman*.
- Women Protection Officers, the District Women Protection Officer, and District Women Protection Committees are authorized to take notice of cases of violence, collaborate with police to investigate allegations, rescue victims from their residence, make arrangements to protect victims, supervise the working of the Protection Centre and shelter home, and implement and monitor the protection system in the district.

- Obstructing the work of a Woman Protection Officer is punishable with imprisonment of up to 6 months and fine of up to Rs. 500,000 or both.

16. Punjab Restriction on Employment of Children Ordinance, 2016

It prohibits the employment of children and to restrict the employment of adolescents in certain occupations.

The ordinance regulates the employment of adolescents for work that is not hazardous by different means, also fixing their working hours. It says an occupier (employer) shall not require or permit an adolescent to work in the establishment in excess of such number of hours as may be prescribed. The occupier shall fix the period of work of an adolescent on each day which shall not exceed three hours. And if he is required to work for more than three hours in a day, the occupier shall provide a mandatory interval of at least one hour for rest to him immediately after three hours of work. The total period of work of an adolescent in a day, including mandatory interval for rest, shall not exceed seven hours. The ordinance disallows work of an adolescent between 7pm and 8am, or overtime and says the working hours should not clash with the school or educational institution timings of the adolescent, allowing him a weekly holiday. Employing or permitting to work a child in an establishment is punishable with up to six-month imprisonment which shall not be less than seven days, and with up to Rs50,000 fine which shall not be less than Rs10,000.

There is up to six-month imprisonment, up to Rs75,000 fine or both for employing or permitting any adolescent to indulge in any hazardous work. The second conviction means up to five-year imprisonment which shall not be less than three months. Enslaving children and adolescents or using them for immoral activities, prostitution, drug production or trafficking shall be punished with up to Rs1 million fine which is not less than Rs200,000 or up to five-year imprisonment, or with both. The guardians or parents in whose immediate presence the children and adolescents are found working in contravention of this ordinance shall be equally punished along with the employer. Presence of a child or an adolescent within the working premises of an establishment shall be presumed as his employment.

17. Punjab Women Protection Authority Act, 2017.

This Act constituted Punjab Women Protection Authority. It is necessary to provide a comprehensive, efficient, effective and gender equitable system for the protection. Relief and rehabilitation of women against all forms of violence in the Punjab and to control, monitor and oversee that system. Women Protection Authority Act 2017 was enacted in 2017 to aid

formation of District Women Protection Authorities and govern recourse mechanisms, including functions and responsibilities of District Women Protection Officers and Women Protection Officers, for implementation of the Punjab Protection of Women from Violence Act 2016.

The Punjab Women Protection Authority Act provides for a comprehensive system of protection, relief & rehabilitation of female victims of violence. The core objective of setting up this Authority is to facilitate, ensure and oversee the implementation institutional measures stipulated under the Punjab Protection of Women against Violence Act 2016, including, establishment of District Women Protection Committees, Violence against Women Centers and Women Protection Officers. Furthermore, the Act institutionalizes periodic sensitization of public servants on women-related issues. Section 3 constitutes the Authority. Section 6 provides Powers and functions of the Authority. Section 13 provides that the Authority may seek assistance of the police in the discharge of its duties and performance of functions under the Act or under referred Act.

18. Punjab Legal Aid Act 2018

Judicial system of Pakistan is not only complex but also expensive. The Government of Punjab took a vital step by creating legal aid system in Punjab.

Section 3 constitutes the Agency which will be consist of Director General and other employees appointed by the Government. **Section 9** of the Act provides that the agency will provide legal aid to poor and needy persons in Punjab. Section 10 speaks about the penal of the advocate for provision of legal aid.

19. PUNJAB SIKH ANAND KARAJ MARRIAGE ACT 2018

A law, exclusively regulating the marriages of the 'Sikh Community', was enacted in history of Pakistan as it is the first time that family matters of the community, such as marriage, will be separately regulated. However, this law is applicable only in the Province of Punjab and other Provinces need separate legislations on this subject.

Section 3 provides basic elements for the valid marriage i.e. parties should be of sound mind, free will and do not belong to any degree of consanguinity or affinity which, according to the customary law of Sikhs. Section 5 provides the manners of registration. Section 6 speaks about dissolution of marriage.

20. Rawalpindi Women University, Rawalpindi Act 2019

Another women university was constituted through legislation in District Rawalpindi. This university will accommodate hundreds of females and provide them education.

21. Punjab Domestic Workers Act 2019

An Act to regulate the employment of domestic workers in the Province of the Punjab. It is necessary to protect the rights of the domestic workers, to regulate their terms of employment and working conditions of service, to provide them social protection and ensure their welfare

and to provide for matters ancillary thereto. Section 4 of the Act provides Rights and Entitlements of domestic workers. These rights will be available to men and women both.

Section 3 expressly prohibits employing a child under age of 15. Section 4 provides rights and entitlements of domestic workers. Section 4 elucidates employment in work. Section 6 provides leave and holiday for workers. Section age speaks about minimum wage. Section 9 speaks about maternity benefits for a female worker. Section 11 says that every employer, on yearly basis, shall ensure medical examination of a domestic worker in a household by a registered medical practitioner and such domestic worker shall also be vaccinated and inoculated against such diseases at such intervals as may be prescribed, and the expenses, if any, of such medical examination, vaccination and inoculation shall be borne by the employer.

Section 13 provides mode of termination of services. Section 19 prohibits to pay below the minimum rate of wages. Section 21 provides registration of employers with the Governing body which will act under section 23 of the Act.

Gaps Identified in the Implementation of Existing Progressive Laws

1. Lack of proper structures and sensitisation, poor resources and deficiency of serious efforts were contributing factors vis-à-vis poor progress of the act (Child Marriage Restraint Act 2013) at grass-roots level.⁴⁷
2. Despite a number of women-focused laws, Pakistan continued to rank low in the gender index on account of weak institutional mechanisms. If an improvement is desired, the relevant institutions need to be strengthened and empowered.⁴⁸
3. Lack of gender sensitivity within law enforcement agencies (police, prosecution, judiciary and prisons) in terms of their own policies structures and cultures and also the complaint mechanisms to register the cases of violence against women within the departments as well as of the beneficiaries.
4. Laws passed by the government are not implemented because a) people are not familiar with the laws and their rights, b) feudal mind set that exist within society c) lack of training of the officers who are supposed to implement and last but not the least is lack of political will.
5. There is dire need to strength the provincial Commissions working for the protection and promotion of human rights especially for women and children. It has been observed human rights commission of Sindh and Sindh commission on the status of women have been granted vast mandate but the Commissions and Women Development Departments are unable to work properly because they don't have proper mechanism to exercise mande, lack technical and legal support to address human rights violation and necessary expertise to draft their rules and regulations.

⁴⁷<https://www.dawn.com/news/1376664>

⁴⁸<https://www.dawn.com/news/1313865>

Recommendations for better implementation of exiting progressive laws:

1. Strengthening of Women and Child Protection Mechanisms(PCWS, Women Development Department, Women and Child Protection; Centres, Formation of district level Women and Child Protection Committees) especially in terms of their structures, enhancing the capacities of their staff and establishing responsive systems within these institutions.
2. Zero tolerance for harassment of women, women-friendly environments, and awareness of the policy and Code of Conduct were key drivers to end harassment at the workplace.⁴⁹
3. Building the Capacity of law enforcement agencies (police, prosecution, judiciary, prison and probation) regarding gender sensitization, changes in their own policies, structures and culture along with updating their knowledge about new women and child friendly laws, skills to handle sensitive cases of violence against women and children within public and private spheres.

⁴⁹<https://www.pakistantoday.com.pk/2016/12/05/legal-protection-to-end-violence-against-women-increasing-in-sindh/>