



# LEGISLATIVE WATCH

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## EDITORIAL

The issue of domestic violence has been an area of concern for human rights and women's rights organisations, committed activists and concerned citizens for a number of years. They have constantly been demanding a specific legislation to effectively deal with this deeply rooted and serious issue in order to provide support and protection to women, and to try to prevent violence against women in the domestic sphere. The initiative by the two women MNAs in the previous National Assembly and later by the MoWD on preparing a bill for the prevention of domestic violence is a welcome sign deserving complete endorsement and support by the civil society.

However, after evaluating the proposed official bill circulated by the MoWD several months ago, it was found that the draft bill was flawed in several respects and required improvement. The concerned organisations, legal experts and civil society activists deliberated upon the proposed draft of the MoWD and developed their alternative suggestions in areas where they thought the improvement was needed. The process of identifying gaps in the draft MoWD bill and suggesting amendments underwent a comprehensive scrutiny of the bill through participatory debate and discussion at local, provincial and national level. The participants of the consultative process also looked into different laws in vogue in other countries, particularly in South Asia, in this respect.

The prime objective of this exercise was to look into the issues of domestic violence from all possible dimensions. The participants, while discussing the draft bill, remained cognizant of the alarming increase in the incidents of vio-

lence against women and government's helplessness in most of these cases.

Specific legislation on domestic violence is one such clear remedy. According to the In-Depth Study on All Forms of Violence against Women, presented by the United Nations Secretary-General in 2006, 89 States around the world had some form of legislative prohibition on domestic violence, including 60 States with specific domestic violence laws. The Report says that a growing number of countries have also instituted national plans of action to end violence against women. This is true. Notwithstanding, Pakistan's constitutional responsibilities and international commitments, our National Policy for Development and Empowerment for Women (2002) has unequivocally called for "adopting a zero tolerance policy regarding violence against women" and "introducing positive legislation on domestic violence" among other wide-ranging measures. The National Plan of Action for Women (1998) has also set five Strategic Objectives against 12 Actions for addressing the issue of VAW.

This is tantamount to adding salt to injury to have strong policy statements on violence against women while remaining silent on increased occurrence of these cases across Pakistan. The rhetoric needs to be translated into reality. Words need to be converted into actions. Curbing gender-based crimes against women is primarily government's responsibility through enactment of positive laws and their strict enforcement. The initiative to have a specific and effective law on domestic violence provides an historic opportunity to the present Parliament to do something which its predecessor could not do.

## Critical gaps in draft bill on domestic violence

By Maliha Zia

The draft bill on domestic violence prepared by the Ministry of Women's Development (MoWD) is actually a merged form of two private members bills, separately presented in the previous National Assembly (2005-2006) by Ms. Sherry Rehman and Ms. Mehnaz Rafi. This bill is yet to be finalized by the MoWD and the Ministry of Law before it is presented to the Federal Cabinet and moved in the National Assembly.

While a number of the provisions in the draft bill prepared by the MoWD are welcomed, especially the wide definition of 'domestic violence', which includes previously unrecognized types of violence such as economic abuse and psychological abuse, a number of gaps still exist in it. These gaps, as summarized below, have been identified during a comprehensive consultative process and scrutiny of the draft bill by legal experts and concerned citizens.

**Definitions:** Some of the definitions under section 2, although wide and encompassing, remain contentious. For example, the use of the words 'aggrieved party' and 'offender' appear to be inadequate and the definition of 'victim' needs to be added. The definition of "service provider" is insufficient as a number of organisations and associations are not necessarily registered under the Societies

Registration Act 1860. Furthermore, this definition excludes entirely any role for the Government, thereby placing the entire burden on private organisations that may not have the capacity or capability to provide assistance to all victims who require it. Also, the Government should not be allowed to abdicate its role in the provision of service to its citizens. The definition of 'domestic violence' under section 4 is inclusive of major issues but it requires further clarity. The civil society draft has primarily tried to improve some of the definitions.

**Punishments:** The most contentious issue with the government bill is that it does not penalize the commission of domestic violence. Remedies such as protection and residence orders, monetary relief, compensation and custody orders are available, but except for penal punishment for the breach of a protection order under section 17, there is no punishment prescribed for committing domestic violence. It is unacceptable as domestic violence is a violent crime and therefore should be addressed with penal punishments, the civil society draft has added punishments to some of the offences.

**Complaint System:** The complaint system suggested in the government bill is inadequate. The government bill provides that only an aggrieved person or any person authorized by him in writing, or in the case of a child, his guardian, may present

an application to the court. In cases of domestic violence, it is very common that either the victim is not able to reach the court to register a complaint herself and is also not necessarily be able to authorize any other person in writing. In the case of children, very often it is the guardians who are committing domestic violence themselves. To leave this provision, as it is, would result in many problems and would exclude a large number of victims who would be unable to actually register a complaint, thereby making the bill ineffective and unable to provide a recourse to justice for those it aims to protect. The civil society draft has relaxed the complaint procedure by allowing anyone to register complaint on behalf of the victim, while giving discretion to the court to decide whether to continue with the charge in such case.

**Jurisdiction:** A concern rose as to the court of competent jurisdiction i.e. a Magistrate of the First Class under the Criminal Procedure Code that has been prescribed in the government bill. Placing domestic violence within the sphere of criminal procedure, even with the imposition of time limits, may result in long delays, insensitive and unsympathetic handling of the case, further unnecessary causation of stress and anxiety to the victim who has already suffered so much. The civil society draft has suggested that the jurisdiction in these

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# Call to end 'honour' killings, jirgas and panchayats

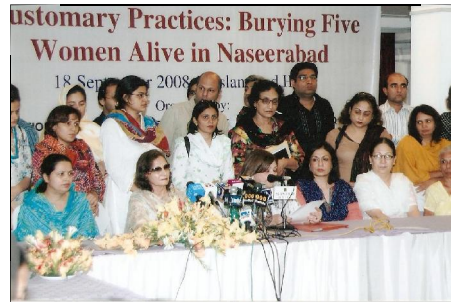
A national consultation of representatives of civil society organisations, committed and concerned activists from all over Pakistan was held in Islamabad on 18 September 2008 on the issue of 'Burying Five Women Alive in Naseerabad and the Customary Practices'. The Consultation was called together by the Joint Action Committees (JACs), Women's Action Forums (WAF chapters), Insaani Haqooq Ittehad (IHI), Legislative Watch Groups (LWGs) and Violence Against Women Watch Groups.

The participants, including civil society activists from Naseerabad and senior journalists, discussed the issue in detail and devised strategies to deal with the alarming situation of violence against women



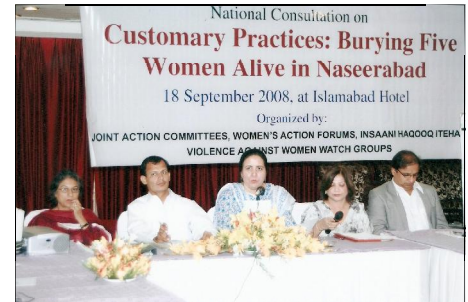
Tahira Abdullah and Nagma Imdad at the meeting

and formulated a future plan of action for a nationwide campaign against honour killing and other inhumane practices. An Islamabad Declaration released at a press conference on the occasion demanded among other



Anis Haroon is reading out the Islamabad Declaration along with representatives of CSOs.

actions, amendments in the present law on 'honour' crimes, particularly an end to waiver of Qisas and compoundability in cases of 'honour' killings; ban on jirgas and panchayats; and disqualification of 'Public Representatives' who defended 'honour' killings in the name of 'tradition' on the floor of the House. The meeting unanimously declared the victims of 'honour' crimes as 'Shaheed Aurtein' (martyred women). The meeting also decided to dedicate this year's 16 Days of Activism against Gender Violence to these 'shaheed women'. The participants staged a demonstration against 'honour' killings in the end outside the venue of the meeting.



Asma Jahangir, Sheikh Razzak, Rukhshanda Naz, Anis Haroon & Rauf Klasra at the meeting.



Shabana Arif (left) and Nageen Hayat expressing their viewpoint.



Ayesha Mukhtar, Nasreen Azher, Nacema Malik, Shabnam and Shah Taj Qizlbash (picture left); Maryam Bibi and Gulnar Tabassum (pictures in centre) during the deliberations. A scene of the demonstration (picture right).



## Crucial amendments required to eliminate 'honour' crimes

- The law must lay down minimum mandatory punishments for 'honour' killings and crimes.
- The compounding of offences or waiver of punishments in cases of 'honour' killing and crimes must not be allowed under the law.
- The State must assume full responsibility for the registration, investigation and prosecution of 'honour' crimes.

Aurat Foundation in collaboration with Citizens' Action Committee (CAC) staged a peaceful rally on 20 September, on the eve of International Day of Peace (IDP) in front of the Lahore Press Club. The partic-

### Peace rally in Lahore

ipants were holding placards inscribed with different peace messages. They also expressed their anger over the killings of innocent peoples by the US-led forces while calling it complete barbarism. They warned the United States not to create situation which could create Third World War. They also advocated establishment of peace in Iraq, Afghanistan and tribal areas of Pakistan. They urged the world countries and discourage the US imperialistic efforts to save the human beings from destruction. They also said that many people in Bajaur had to leave their residents and take refuge in the nearby areas.





## LEGISLATIVE WATCH

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