

Forced Marriages and Inheritance Deprivation

*A Research Study Exploring Substantive,
Structural Gaps in the Implementation of*

**Prevention of Anti-Women
Practices [Criminal Law
Amendment] Act, 2011**

in Six Select Districts of Pakistan

Researched and Written by
Sarah Zaman



AURAT FOUNDATION

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Forced Marriages and Inheritance Deprivation in Pakistan

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Prevention of Anti-Women Practices [Criminal Law Amendment] Act, 2011

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GLOSSARY OF TERMS/ EXPRESSIONS

Terms/ Expressions	Meaning
Watta Satta	Exchange marriage
Swara	Marriage as compensation for wrong doing by someone else
Wanni	Compensation marriage
Challan	Charge sheet submitted in court carrying list and nature of offences committed alongside supporting evidence
Moharrar	Police officer responsible for making entries in Roznamcha [see below] or the FIR
Hadd	Literally means prevention, measure or limit. In Pakistani laws, <i>Hadd</i> punishment means a punishment which is “fixed and enjoined as the right of Allah”, or God-ordained punishment.
Hudood	Set of <i>Hadd</i> punishments as prescribed under Islam for offences committed
Zina	Consensual sex, including fornication [pre-marital] or adultery [extra-marital]
Zina-bil-Jabr	Rape under <i>Hudood</i> [Offence of <i>Zina</i>] Ordinance, 1979, literally translating into “consensual sex by force”
Wali	Legal male guardian
Nikah	Islamic marriage
Nikahkhwa	One who solemnizes a Muslim marriage
Nikahnama	Marriage contract
Sullah	Peace-making or reconciliation
Razinama	Document denoting an understanding between disputing parties
Haq Bakshish	Giving up a right [to marry]
Roznamcha	A register maintained at all police stations containing record of all complaints received on a daily basis. Also called a daily diary. Entries made in the Roznamcha do not constitute cases where an FIR was lodged for legal action
Haya	Shame, propriety
Pakhtunwali	Way of the Pukhtun - an unwritten code of rules and regulations that govern the lifestyle of Pakhtun people
Purdah	Veil
Dupatta	Scarf worn by women to cover themselves
Mukmuqa	Settlement; agreement; compromise
Khula	Legal separation between husband and wife, initiated by the wife
Thana	Police station
Hungami halat	State of civil disorder, attack or chaos
Kacheri	Court
Jannat/ Jannah	Heaven
Moharrar	Scribe at police station, responsible for registering complaints and FIRs
Jirga	A tribunal of village elders and informal system of conflict resolution
Talaqnama	Divorce papers
Taveez, Dua, Istikhara, wazifa	Different forms of prayers [written and/or oral] that are used to help make decision or solve problems- part of faith-based healing

ACRONYMS

AF	Aurat Foundation
APC	Armored Personnel Carrier
AWPA	Anti-women Practices Act
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CII	Council of Islamic Ideology
CNIC	Computerized National Identity Card
CrPC	Criminal Procedure Code
DV	Domestic violence
FIR	First Information Report
FSC	Federal Shariat Court
GBV	Gender-based Violence
MLC	Medico-legal certificate
MLE	Medico-legal examination
MLO	Medico-legal officer
MMLO	Male Medico-legal Officer
MMR	Maternal Mortality Rate
NPB	National Police Bureau
OHCHR	Office of the High Commissioner of Human Rights
PLD	Pakistan Law Digest
PPC	Pakistan Penal Code
PPP	Pakistan People's Party
PS	Police Station
SAARC	South Asian Alliance for Regional Cooperation
SCP	Supreme Court of Pakistan
SJA	Sindh Judicial Academy
SoP	Standard Operating Procedure
SV	Sexual violence
U/s	Under section
UN	United Nations
VAW	Violence Against Women
WAR	War Against Rape
WDD	Women's Development Department
WPS	Women's Police Station

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PREFACE

Harmful customary practices against women and girls in Pakistan are the pillars of patriarchal architecture based on the historically misplaced notion of ‘supremacy of men’. Men use customs and traditions as convenient tools to make women subservient, bodily and mentally. Embedded mostly in tribal and feudal structures, harmful customary practices usually assume brutal form and result in a crime of heinous nature. Unfortunately, sustained by loopholes in law and weaknesses in criminal justice system, these crimes mostly go unchecked and unpunished by the State.

Legal and judicial responses to such harmful customary practices that violate women’s fundamental right to life with dignity among other basic rights have been far below than required in Pakistan. There had been a sense of jubilation when a number of pro-women laws, including the Anti-Women Practices [Criminal Law Amendment] Act, 2011, were passed between 2010 and 2012. However, naturally and rightly so, the discourse within civil society soon shifted to the understanding and implementation of these laws.

The present study, therefore, is the outcome of an endeavor to see the status of the Anti-Women Practices [Criminal Law Amendment] Act, 2011, in the backdrop of challenges that facilitate or hamper the implementation of the law in a broader context of issues related to early and forced marriages and denial of inheritance to women. The study, undertaken in six select districts of Pakistan by Ms. Sarah Zaman, who has years of experience of working on issues of violence against women, also makes a critique of the criminal justice system, while doing some comparative analysis of Pakistan’s legal and constitution framework, international commitments and situation in other Muslim countries vis-à-vis issues of early marriages.

Aurat Foundation has been partnering with the Trocaire since 2008 through a project intervention for policy and data monitoring of violence against women. Compilation of statistics of reported incidents of violence against women and policy advocacy for ending gender-based violence were important components of this partnership. While presenting this study, it is hoped that discussions that took place with various stakeholders, the analysis, findings and recommendations in the report would provide some clarity of perspective to the relevant institutions, law-makers and law-enforcers in combatting anti-women practices in the country with serious commitment and effective implementation of law.

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Chief Operating Officer

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Aurat Foundation
October 2014

INTRODUCTION

This study was conducted to assess the implementation of the Prevention of Anti-Women Practices [Criminal Law Amendment] Act, passed in December 2011, which criminalizes and prescribes punishments for forced marriages of girls, carried out in the name of custom. The law also criminalizes depriving women of their inheritance by marrying them forcibly or keeping them from marrying willfully, in order to maintain control over family assets and avoiding their division upon marriage. This law, which comprises amendments and insertions to the Pakistan Penal Code [Act No. XIV of 1860], makes practices such as *watta-satta*, *swara*, *badal-e-sulh* and marriage with Quran illegal that are done without the valid consent of parties entering into matrimony.

The study was conducted between 2013 and 2014 and included interviews with women, police, medico-legal doctors and public prosecutors involved in the dispensation of justice to survivors of forced marriages and inheritance deprivation. The study was undertaken in 6 districts of Pakistan, including Karachi, Hyderabad, Peshawar, Swat, Mardan and Islamabad Capital Territory [ICT].

This report is largely based on primary evidence gathered by different organizations working in or around selected sites including: Aurat Foundation [Karachi, Peshawar and Islamabad offices], Sindh Development Society [SDS] in Hyderabad, Noor Education Trust [NET] in Peshawar, Integrated Community Development Initiative [ICDI] in Mardan [based in Peshawar], and Pakistan Village Development Program [PVDP] in Swat [also based in Peshawar]. Data was collected from State actors through 21 Focus Group Discussions [FGDs] and 28 Key Informant Interviews [KIIs], with the participation of 121 stakeholders in the criminal and civil justice systems and 23 women.

This report documents findings of the study in light of information shared by officers and available literature on the subject. As implementation of any law is largely a determinant of the law in question, the justice systems available to address violation of law and the social values and structures with which the laws operate, this report draws on larger governance issues tied to the dispensation of justice in selected districts, with particular reference to VAW. It looks at the police and medico-legal systems and procedures that are meant to serve the interest of justice, not just for an individual but for larger social groups. It thereby attempts to shed some light on the possibility of justice in cases that fall within the ambit of gender-based crimes against women and that do not necessary fall under the purview of anti-women practices addressed by AWP Act, 2011.

RESEARCH OBJECTIVE

This study intended to examine the status of implementation of the AWP Act 2011, with respect to substantive, structural and cultural gaps in the law and structural mechanisms that impeded justice for women, and to make recommendation for improved prevention and handling of cases. Its specific objectives are stated below:

- ☞ To identify the socio-cultural, economic, legal, and political factors that underpin anti-women practices identified in AWP Act, 2011 in Pakistan;
- ☞ To analyze State response to anti-women practices through dispensation of police, medico-legal and prosecution services in selected sites;

- ⊕ To capture experiences of women suffering from abuse and violence within the home and beyond, and analyze accessibility, relevance and quality of support these services, including continuum of care;
- ⊕ To assess the AWP Act against its holistic approach towards violence prevention, protection rights fulfillment, effective implementation & monitoring mechanisms, and other national and international instruments and codes;
- ⊕ To provide specific recommendations, including positive legal precedents, for improved prevention and handling of anti-women practices' cases through State services.

STUDY METHODOLOGY

This report is largely based on a literature review and primary evidence gathered by different organizations working across 2 provinces and 6 districts of Pakistan, including the Karachi and Hyderabad in Sindh, Peshawar, Mardan and Swat in Khyber Pakhtunkhwa and the Islamabad Capital Territory.

The study's area of particular inquiry was to identify major substantive, structural and cultural impediments to the effective implementation of the Anti-women Practices Act, 2011. For that purpose, 21 Focus Group Discussions [FGDs] and 28 Key Informant Interviews [KIIs] were conducted, with the participation of 121 stakeholders in the criminal and civil justice systems, including male and female police officers, medico-legal doctors, public prosecutors and civil lawyers, and 22 women survivors of forced marriages and one¹ survivor of inheritance deprivation.

Sources of primary and secondary data included:

- ⊕ Literature review;
- ⊕ Focus group discussions and key informant interviews with male and female respondents in the criminal justice system, including police, public prosecutors and medico-legal doctors²;
- ⊕ In-depth interviews with rights-holders [women/ girls] who have pressed charges under the legal instrument being reviewed (or otherwise) and/or have suffered related violence;
- ⊕ Key informant interviews with development sector professionals, including senior human rights advocate and field workers dealing with violence against women cases hand-on;
- ⊕ Secondary data mining with published and unpublished records pertaining to selected violence against women and general gender indicators in the selected research sites, particularly prevalence, and existing/defunct/absent support systems.

SAMPLE SIZE AND SAMPLING TECHNIQUE:

The population sampling frame from which the respondent sample was drawn comprised female survivors of forced marriages and inheritance deprivation from 6 districts, and male and female state-appointed police officers, medico-legal officers & public prosecutors. Some legal experts and human right defenders involved in handling AWP cases or advocacy work related to the issue were also interviewed to better understand the challenges involved. The second-stage cluster comprised

¹ Despite many efforts my regional teams, they could not find more cases of inheritance deprivation that were willing to participate in the study.

² Where available, Medical Superintendents (MS), Chief Medical Officers (CMO) and Police Surgeons were also interviewed through KIIs.

district-based office bearers/ individuals, selected through purposive sampling, relying mainly on expert and snowball selection techniques and working with a non-probability sampling. The researcher relied on community-based experts and NGOs to identify 23 women willing to participate in the study through structured questionnaire. Experts were also requested to refer the researcher to others subject-matter experts whose involvement in AWP cases is visible and established.

Table 1: Total number of FGDs and KIIs conducted, with respective number of participants

District	Police Officers	Public Prosecutors	Medico-Legal Doctors	Women Survivors	Total
Karachi	3FGD	1 KII	1 KII	4 KII	3 FGDs, 6 KIIs
Mardan	1FGD	1 FGD	1 FGD	4 KII	3 FGDs, 4 KIIs
Swat	2 FGD	1 FGD	1 FGD	4 KII	4 FGDs, 4 KIIs
Peshawar	1 FGD	1 FGD	3 FGDs, 2 KII	1 KII	4 FGDs, 3 KIIs
Hyderabad	1FGD	1 KII	1 FGD	5 KII	2 FGDs, 2 KIIs
Islamabad	3 FGD	2 KII	3 KII	5 KII	2 FGDs, 3 KIIs 3 FGDs, 8 KIIs
Total Meetings	11 FGDs	3 FGDs, 5 KIIs	3 FGDs, 3 KIIs	23 KIIs	21 FGDs, 28 KIIs
Total Participants	71	28	22	23	144

The schedule of gender- disaggregated sample size taken for primary data collection is provided in table 2 below, whereas figures 1 and 2 provide information regarding participants' ranks and education levels:

Table 2: Interviewed police officers by gender and district

Group	Karachi		Hyderabad		Islamabad		Peshawar		Mardan		Swat		Total
	M	F	M	F	M	F	M	F	M	F	M	F	
Police Officers	22	5	2	2	16	6	2	2	4	0	10	0	71
Public Prosecutors/ Civil Lawyers	1	0	1	0	2	0	9	1	4	1	5	4	28
Medico-legal Officers	0	1	2	0	2	0	12	1	3	0	1	0	22
Women Survivors	0	4	0	5	0	5	0	1	0	4	0	4	23
Total participants													144

Police:

The study involved collection of information from Police officers deployed in over 30 police stations across 6 districts, where 56 males and 15 females, senior and junior police officers participated in group discussions.

Figure 1: Interviewed police officers by rank

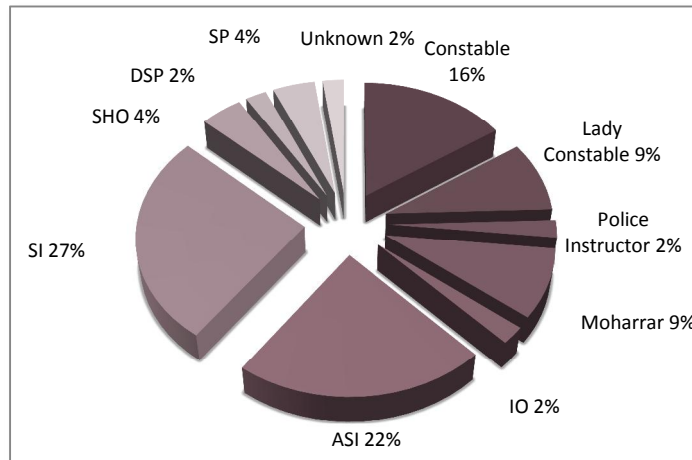
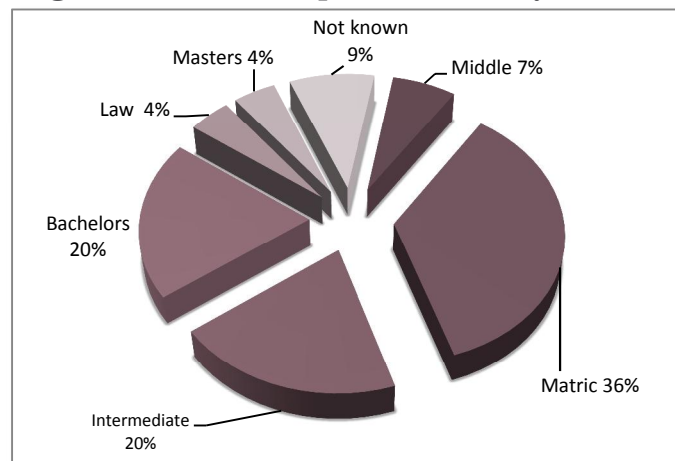


Figure 2: Interviewed police officers by education



The selection of police stations depended on their location, population catered to and respective crime rate in the area. Stations that were included in the study comprised 1 Station House Officer [SHO], 2-7 Investigation Officers [IOs], 2-6 Superintendents [SIs], 2-6 Assistant Superintendents [ASIs], 6-90 Head Constables [HCs] and anywhere between 30-100 Constables of Police [C]. In terms of departmental division, stations included in the study had 5-20 officers involved in compliant registration, 5-30 people for investigations and 2-20 officers in administration. Overall, police stations had anywhere between 14 to 150 officers posted, whereas women police stations had a staff of average 10 female officers. In Karachi, the central Women's Police station was found to have 20-25 female and male officers combined, where women were in majority and some male officers had been deputed to assist the women officers, particularly during raids and arrests. Islamabad's male police stations had at least one female officer assigned to the reception desk, for

providing guidance to female complainants. Important positions, however, were held by the male staff, including complaint registration, investigation and administration.

Medico-legal Officers & other Medical Practitioners:

Table 3 below provides details of MLOs and other medical staff interviewed for the study:

Table 3: Medico-legal officers and medical practitioners interviewed

S. No	Rank	Sex	District	Province	Experience in Years	Current Posting
1	MLO	M	Peshawar	KPK	Not known	Lady Reading Hospital
2	MLO	M	Peshawar	KPK	Not known	Lady Reading Hospital
3	Nurse	M	Peshawar	KPK	Not known	Lady Reading Hospital
4	Nurse	M	Peshawar	KPK	Not known	Lady Reading Hospital
5	MLO	M	Peshawar	KPK	Not known	Khyber Teaching Hospital
6	MLO	M	Peshawar	KPK	Not known	Khyber Teaching Hospital
7	MLO	M	Peshawar	KPK	Not known	Khyber Teaching Hospital
8	Nurse	F	Peshawar	KPK	Not known	Khyber Teaching Hospital
9	Nurse	F	Peshawar	KPK	Not known	Khyber Teaching Hospital
10	MLO	M	Peshawar	KPK	Not known	Hayatabad Medical Complex
11	MLO	M	Peshawar	KPK	Not known	Hayatabad Medical Complex
12	Nurse	M	Peshawar	KPK	Not known	Hayatabad Medical Complex
13	Nurse	M	Peshawar	KPK	Not known	Hayatabad Medical Complex
14	MLO	M	Islamabad	ICT	7	Pakistan Institute of Medical Sciences
15	Assistant Director	M	Islamabad	ICT	17	Poly Clinic Islamabad
16	WMLO	F	Karachi	Sindh	17	[Anonymous by request]
17	Assistant Police Surgeon; (Acting) Police Surgeon	M	Hyderabad	Sindh	27	Civil Hospital Hyderabad
18	MLO	M	Hyderabad	Sindh	19	Civil Hospital Hyderabad
19	CMO	M	Swat	KPK	17	Saidu Sharif Civil Hospital
20	Deputy Medical Superintendent	M	Mardan	KPK	25	THQ Hospital Takht Bai
21	Deputy Medical Superintendent	M	Mardan	KPK	25	THQ Hospital Takht Bai
22	Deputy Medical Superintendent	M	Mardan	KPK	25	THQ Hospital Takht Bai

All doctors and nurses interviewed for this study were serving on medico-legal duty either as part of their job, or as an additional duty assigned by the hospital. As can be seen from the table above, most doctors had substantial experience in medico-legal duties and general know-how of systems and structures.

Public Prosecutors and Lawyers:

Table 4 below provides details of public prosecutors interviewed during the course of the study:

Table 4: Public prosecutors and lawyers interviewed

S. No.	Title	Sex	District	Zone	Years in Service	Education
1	General Secretary, Bar	M	Swat	District Court, Saidu Sharif	20	BA, LLB
2	Advocate	F	Swat	District Court, Mingora	2	MA, LLB
3	Advocate	M	Swat	District Bar Association	3	BA, LLB
4	Advocate	M	Swat	District Court, Mingora	2	BA, LLB
5	Advocate	M	Swat	District Court, Mingora	3	BA, LLB
6	Advocate	M	Swat	District Court, Mingora	5	BA, LLB
7	Advocate	F	Swat	District Court, Mingora	5	BA, LLB
8	Advocate	F	Swat	District Court, Mingora	1	BA, LLB
9	Advocate	F	Swat	District Court, Mingora	1	BA, LLB
10	District Public Prosecutor	M	Peshawar	High Court Peshawar	23	LLM
11	Advocate	M	Peshawar	High Court, Family Courts	13	N/A
12	Advocate	M	Peshawar	High court; Ex-Civil Judge/Judicial Magistrate	13	N/A
13	Advocate	M	Peshawar	High court	7	N/A
14	Advocate	M	Peshawar	Sessions & High court	9	N/A
15	Advocate	M	Peshawar	High court, Family court Criminal and Civil	6	N/A
16	Advocate	M	Peshawar	High & Session Court	16	N/A
17	Advocate	M	Peshawar	Criminal, civil and family	9	N/A
18	Advocate	M	Peshawar	Criminal, civil and family	5	LLB
19	Advocate	F	Peshawar	Family courts	5	LLB
20	Advocate	M	Hyderabad	Sessions Court, Matari	15	LLB
21	District Deputy Public Prosecutor	M	Karachi	Anti-terrorism Court	20	MA, LLM
22	Advocate	F	Mardan	Mardan High Court	5	LLB
23	Private Advocate	M	Mardan	Mardan High Court	3	LLB
24	Private Advocate	M	Mardan	Mardan High Court	6	LLB
25	Private Advocate	M	Mardan	Mardan High Court	4	LLB
26	Advocate	M	Mardan	Mardan High Court	2	LLB
27	Public Prosecutors	M	Rawalpindi	Rawalpindi High Court	3	LLB
28	Public Prosecutors	M	Rawalpindi	Rawalpindi High Court	18	LLM/ MPhil

DATA COLLECTION, ORGANIZING AND ANALYSIS

The research consultant provided half-day trainings to district focal persons to provide an orientation on the subject matter, the law being reviewed and the stakeholder-specific tools to be used for interviews and group discussions. A detailed interview guideline was also provided to enumerators as reference in case of time lapse between training and interviews. A total of three training sessions were organized in Peshawar, Islamabad and Karachi for participants from 6 districts. AF assigned officers from its Karachi, Peshawar and Islamabad offices along with its partners in Hyderabad, Swat and Mardan, who assisted with primary and secondary data collection.

Questionnaires for primary data collection were developed in English, translated into Urdu and back translated for cross validity, while data collected was transferred onto and analyzed through excel for women respondents, due to the small sample size [23]. Three questionnaires were discarded for being incomplete or irrelevant to the topic under study.

Secondary data was provided by the Aurat Foundation district teams against a list prepared by the researcher, including statistical information and major indicators of existing support systems for women in each district. This information is provided in table 9 [Chapter 2, section 6] ahead.

Interviews and discussion with respondents in the justice system were recorded using either cell phones or digital recorders. Informed consent was taken prior to recording in every case. Where it was refused, hand-written notes were taken and the interviewees' names were not punched in. Recordings were subsequently transcribed by the consultant into English prior to analysis.

RESEARCH SITES

The sites chosen for this study were selected by Aurat Foundation where a strong network of partner organizations are placed and working. The sites included 6 districts, namely Karachi, Hyderabad, Peshawar, Islamabad, Mardan and Swat, from two provinces of Pakistan and the Islamabad Capital Territory [ICT]. Some women's cases were included from Jamshoro and Swabi.

Respondents interviewed in the study were serving either in the most densely populated areas of chosen districts or were placed in areas from where most VAW cases are reported.

CHALLENGES

The biggest challenge to this study was to draw minor areas of inquiry within the wide range of the crimes the Anti-women Practices Act addresses. While the fundamental issues were forced marriages and inheritance deprivation under the garb of various customary practices, some forms of forced marriage were unique to selected research sites. For instance, it was difficult to get any clues into the incidence and subsequent handling of marriage with the Quran in KPK districts [Peshawar, Swat and Mardan], whereas officers refused to comment on *swara* and *watta-satta* in Karachi, as it reportedly does not happen in their jurisdiction. Additionally, due to the diversity of cultures and customs practiced in the selected sites, respondents presented very different understanding of underlying causes and remedies. Additionally, inheritance deprivation cases were often not connected to forced marriage cases and vice versa. As a strategy, enumerators had to ask the same questions for different kinds of violence, which elongated discussions over already lengthy questionnaires.

Structural issues that typically contribute to lack of implementation of law operate on numerous levels and need to be discussed in order to comprehensively understand available opportunities for

redress. As the study predominantly turned towards Government officers to gain some insight, the length of the questionnaires posed a significant challenge. Some enumerators reported more challenges in completing the process. Some had to re-organize sessions for another day.

Another challenge was to manage data collection for multiple stakeholders. Law and order situation in some areas caused inadvertent delays in data collection and often resulted in desired officers not making themselves available for interviews. The researcher was disallowed from travelling to Mardan and Swat, as it posed a higher security risk for herself and the research team.

Unlike most other laws passed in Pakistan's recent history, most Government officials were completely unaware of the existence of the law under inquiry. Although this is discussed in greater detail in subsequent chapters, it presented a unique problem where respondents had to be briefed about the law before they could comment on its implementation [if any]. Even then, enumerators had to constantly remind the respondents of the crimes being discussed, some of which, according to respondents, were 'irrelevant' to their district, which made discussions difficult. A few MPAs/MNAs requested a copy of the law before they could make themselves available for comment.

LIMITATIONS

The analysis of focus group discussions presented in this report is not representative and findings can be in no way juxtaposed on the entire populations of the sites surveyed. It is aimed instead at serving as a worms' eye view of the problems present at different steps towards the attainment of justice at the grassroots level. Where possible, the author has reflected on policy and legal matters that have a direct impact on practices on the ground.

The study did not include male survivors of forced marriages and inheritance deprivation as its aim was to gain insights into women's lives who have either been forced to marry against their will and consent, have been refrained/ restrained from marrying, or have been deprived of their share in family inheritance due to the marriage choices they made/ did not make. It is nevertheless a considerable limitation to understanding the issues of forced marriages and inheritance deprivation from the male spouses' perspectives.

The study also did not cover the provinces of Punjab, Balochistan, Gilgit-Baltistan and FATA, to the exclusion of their realities and narratives. As conditions are expected to vary to great degrees between the provinces based on the way societies and institutions are structured [tribal systems prevail for most areas within Balochistan and FATA], it would be useful to replicate this study on a larger and broader population. Some references, however, have been made to larger governance issues due to the inter-sectionality of problems discussed in this report.

Members of Assemblies and Parliament could not be included in this study for their comments, due to time limitations and their persistent non-availability. Important among them was the author and mover of the AWP Bill in the National Assembly.

Due to budgetary constraints, the author of this report could not travel to most research sites in order to conduct some of the interviews. Direct perspective in terms of the environment in which the discussions were held with respondents thus could not be gained.

This study took a very small sample of women who had been married forcibly, whereas even fewer cases on inheritance deprivation were included. Although some interesting patterns did emerge, the

author is not very well-placed to say anything conclusively about the effects of such crimes on all women in Pakistan, making generalizations difficult.

Lastly, but perhaps most importantly, enumerators could not locate any case that had been prosecuted in court under the AWP Act, which limited the author's ability to discuss what happens to cases once they go to court under criminal proceedings. This of course, also speaks volumes concerning the implementation of the law under review.

REPORT'S CONTENTS

This report is divided into ten chapters. The first chapter provides an overview of anti-woman practices in Pakistan and the conditions under which they may be contracted. It also looks at adverse effects of such practices on women and how they may be rationalized, trivialized or normalized by communities and State officials.

Chapter 2 looks at the way in which the criminal justice system is structured and the roles and responsibility of major institutions, including police, medico-legal, prosecution services and courts.

Chapter 3 looks at the Anti-women Practices Act, other related laws and provides a brief history that culminated in the passage of the law. It also offers a critique of the Act, in terms of substantive and structural impediments to its effective implementation.

Chapter 4 provides a detailed account of interviews held with police officers, medico-legal doctors and public prosecutors/lawyers and discusses their response. Here, one can get a better sense of the larger structural and cultural issues that negatively impact the implementation of VAW laws in selected districts in general and AWP Act in particular.

Chapter 5 puts forth women's experiences of forced marriages and inheritance deprivation. It provides some statistical information related to women that were part of this study while glaring patterns have also been identified. In some instances, the chapter also compares problems faced by women with State response and reflects over the success of the AWP Act.

Chapter 6 looks at some important case law from Pakistan that is relevant to the offences addressed in AWP Act. The following chapter looks at the constitutional guarantees and international conventions that are relevant to anti-woman practices in Pakistan, while chapter 8 looks at forced marriage and inheritance deprivation laws from other Muslim countries.

Chapter 9 of the report reviews existing national laws that provide legal protection for other rights linked to forced marriage and inheritance deprivation, whereas Chapter 10 contains recommendations against major findings of the study. One can find annexes containing some important provincial laws related to VAW towards the end of the report.

EXECUTIVE SUMMARY

There are many customary practices found in all parts of Pakistan that result in adverse outcomes for women. These practices include honour killing of women wanting to marry of their free will or over a suspected romantic involvements, exchanging women in marriage with no consideration for their consent, compensation marriages to resolve disputes between tribes/clans/families, demanding that women do not claim their share of inheritance, child marriages, and marriages to the Holy Quran.

In 2011, the Prevention of Anti-Women Practices [Criminal Law Amendment] Act, was passed by the Federal Government in a bid to prevent and prescribe punishments for women's forced marriages and inheritance deprivation, whether they be in the form of exchange marriage [*watta-satta*], compensation marriage [*swara, wanni*, etc.], Quran marriage, or under any other compulsion. The Act amended the Pakistan Penal Code [PPC] [section 310-A], whereas three new provisions were added [sections 498A, 489B and 498C]. Upon close look, one finds that there have been no significant gains made by women under the protection of this law and it has remained largely unknown and unimplemented.

Socially, forced marriages are unlikely to be reported in Pakistan where women are considered and treated as repositories of family honour, whose defiance or disobedience is tantamount to public shame and humiliation. This felt shame and humiliation often crosses class and ethnic divisions. The tight control on women's bodies and their sexuality, besides dictating whom she can or cannot marry, also lead to pandemic proportions of domestic and sexual violence, including rape, forced abortion, denial of contraception, maternal morbidity and mortality. In addition to this, women across Pakistan are often forced to renounce their share in family inheritance due to social sanctions against such claims. Moreover, women are married forcibly, kept from marriage or subjected to severe physical and emotional abuse as strategies to prevent them from laying any rightful claims to the family estate.

Substantively, the Anti-Women Practices Act [AWPA] is a weak law for many reasons. Prominent amongst these is the lack of clarity over many terms contained in the text. For instance, the law does not define what is meant by 'deceitful' or 'illegal' in Section 498-A, when it comes to explaining the context in which certain actions [involving inheritance deprivation] would become a matter of deceit or crime. It does not explain when active persuasion and emotional blackmail may enter the ambit of deceit or become "illegal". Further, it does not apply to situations where women are expected to simply handover their share of property in favor of their male kin, and refusal is not an option socially. There may be no deceit involved here and in the event that there is no violence of any sort, no laws would have been broken either.

Bare reading of section 310-A of this law also reveals that while there may be punishment for those who "give" a woman in marriage, there is no crime committed by others who demand or "take" a woman in marriage. It prescribes punishment for parents and other relatives of the woman, but not the groom, the in-laws of the bride-to-be, other members of his or her family, the solemnizer of the marriage [or *nikahkehwa*], or other witnesses present during the ceremony.

The law also does not declare forced marriages as null and void, meaning that a woman would have to seek a *khula* or divorce [if she has the stated right in the *nikahnama*] or hope that her husband

divorces her in order to exit the so-called marriage³. Moreover, no definition for “custom” is stated in the law, where some of these crimes may vary in manifestation between regions and sub-cultures, while still others may be practiced not as custom, but as solution to a specific local problem. In that respect, the law does not address the practice of *Pait Likhi* [with *Pait* denoting ‘womb’ and *Likhi* denoting ‘betrothment’] agreed before a child is born or where minors may be “promised” into marriage after acquiring adulthood.

Compensation marriage [*swara*] has been contextualized within settlement for a criminal or civil liability and not thus applicable to cases where there may be no such liability but women are given nevertheless as a compensation of sorts (for instance, when one girl in the family declines a marriage proposal and another is offered in her place, or to improve/ cement relations with political rivals).

Moreover, the law declares all such practices to constitute non-cognizable offences, meaning that the law is not propelled into action unless an explicit complaint is made, posing a significant obstruction in timely action by the police or any other law implementing agency.

Overall, it would seem that the law ensures that the woman/girl forced into marriage or deprived of her share in inheritance continues to find herself in a lose-lose situation. She cannot exit the marriage unless she goes through the courts and files a [*khula* or divorce] case, she gets no special support in case she has had children in that marriage, and she has already implicated [and possibly alienated] her parents and other family members by pressing charges against them under this Act. Here it would be pertinent to mention that with the near-complete absence of support systems for women, those who lose the support of their parents or husbands may have nowhere to go, leading to a false resilience towards violence and oppression.

In terms of structural support such as police, the study found that in District Karachi, Islamabad, Hyderabad and Peshawar where there are dedicated women police stations, only cases where both the accused and victim[s] are women may be referred to women officers for complaint registration and investigation, whereas district Mardan and Swat do not have a separate police station for handling women’s cases. Women were found being forced to deal with male officers in Swat and Mardan [also Malakand and Swabi by extension], even though it is considered culturally inappropriate for women to converse and have dealings with men outside the family. Despite the presence of some 500 police stations in KPK, not a single station reportedly has a woman’s desk. Karachi district was found to have the largest number of women’s police stations [3] and complaint cells for women [4], even though only one of the stations is fully functional⁴. According to GIZ Pakistan, women officers across Sindh constitute about 0.82% of the entire police force for the province, whereas in KPK, women police officers’ ratio was 0.62%. In Islamabad, this ratio was 1.36% compared to male officers.

In Islamabad, according to a policy⁵ passed between 2011-12, one female police officer is posted at the reception desk in all [18] male police stations to guide women that approach with a complaint. They are, however, not part of the complaint registration or investigation sections and serving merely as female faces to women victims. The women’s police station in Peshawar is situated near the Police Head Quarters and because of high security detailing in the area, women do not have easy

³ Many women in Pakistan are not aware of their right to give divorce or are socially not allowed to avail this right at the time of marriage towards its inclusion in the *nikahnama*.

⁴ In terms of basic infrastructure, lodging of FIRs, conducting investigations and making arrests.

⁵ More information regarding this policy could not be gathered.

access to its premises. Police officers report that because this station is also situated in a congested part of town, it is difficult for women to avoid prying eyes when they come to lodge complaints. This keeps a substantial number of women from initiating any engagement with the law.

The general perception concerning violence against women amongst all district police officers was that it happens in poor and illiterate families and that women themselves are often to blame. Every police officers interviewed reported domestic violence to be the most frequently reported form of VAW which was mostly perpetuated by the women of a household, including the mothers-in-law and the sisters-in-law, whereas sometimes the husband is solely to blame. The husband was seen as a 'helpless' individual, torn between his family and the woman he has wedded.

Regarding prevalence of VAW reporting at respective stations, Karachi police reported receiving 15-30 complaints of domestic dispute and violence every month, depending on the area. Most of these cases are reported from slum areas within the city and to police stations located adjacent to such localities. Women police stations in Karachi reported that they get many cases of sexual harassment, which constitute the larger part of all crimes reported by women. Complaints are usually made by women working in offices. Women officers reported that as soon as women are informed that they might have to go to court, they tend to "reconcile with the abuser", which is a reflection of the state of justice and the painful process one has to go through towards the attainment of this elusive goal.

Officers from district Peshawar reported that approximately 100 women approach the police stations with complaints of different forms of violence on a monthly basis. Officers from Islamabad were of the opinion that VAW is not highly prevalent in Islamabad because of higher levels of education. Of the women that do approach, most are peri-urban dwellers from the peripheries of the city, who are poor and illiterate. In urban areas, because more women step out of their homes and work in offices, sexual harassment is more common [and interestingly justified] according to officers' reading of the situation.

Officers in Swat and Mardan share that women usually do not approach police stations for any reason as men of their family consider it dishonourable for women to publicize matter that should stay within the household. The culture of KPK, *Pakhtunwali*, was identified by respondents in the police as a major barrier for women seeking legal redress.

Across the districts surveyed, no police officer could cite a single case of forced marriage or inheritance deprivation [except on the basis of hearsay] on the plea that such offences either do not happen in their jurisdiction, are not reported, or they themselves have never handled such a case. None of them reported receiving any official notification of the Act's passage, while only a handful reported having only heard of the law in passing.

In terms of medico-legal assistance, it was curious to note that while in Karachi and Hyderabad, female doctors are required to conduct medico-legal examinations [MLEs] and testify in court in physical violence cases, doctors from other districts had gynecologists conducting the examinations and male medico-legal officers [MMLO] reserved for giving evidence in court. No woman MLO [WMLO], where they exist, are allowed by law to go to court to confirm their findings documented in the MLE. This exclusion has been instituted reportedly to protect WMLOs from the hassle of court duty. This claim was corroborated by doctors in other districts when they were asked why such a small number of WMLOs are posted and working in Government hospitals in general and at their hospital in particular. It is strange that MMLOs should testify as "medical experts" in court for

MLEs conducted by someone else, when courts require the author of any report to testify in person for the report to take on legal force.

Doctors' understanding of GBV was found closely tied to its physical manifestation with very little understanding of laws of the social determinants of violence. Two doctors in Hyderabad, including the [acting] Police Surgeon, noted that GBV is committed against women due to lack of education, stress in life, economic problems, lack of religious education and lack of mutual understanding between couples. They also added, however, that most women that approach them are liars and want fake reports.

Most doctors were found completely unaware of the AWP Act, 2011, except in Mardan. Doctors in Mardan knew the name of the Act, but often confused it with another law concerning the practice of *Walwar* (bride price). None of the doctors reported receiving any notification of the Act's passage or knowledge of other laws concerning VAW in the past.

In terms of the process of examining a person for evidence of violence, doctors reported being trained in medical colleges on how to conduct examinations in VAW case. Important to note here is that a course on medical jurisprudence and toxicology is taught to doctors studying for the MBBS over one semester spanning over 6 months. Doctors are not taught how to conduct practical postmortems or MLEs in government-run teaching hospitals as such courses are mostly theoretical and doctors are required to take a two-week course before they can take the job of an MLO.

Doctors were also found severely ill-equipped for collecting forensic and physical evidence that may be present on a woman's body. For bruises that do not form immediately [in cases of attempted strangulation], none of the doctors reported having shadow less or ice blue lights that could help detect evidence invisible to the naked eye. One doctor in Islamabad said that his hospital had this equipment and when asked if and why it isn't used, he commented that this question should be put to those who don't allow its usage. A doctor in Karachi reported that storing equipment at hospitals is also an issue where supplies regularly get stolen by the hospital staff itself (mainly ward boys and nurses).

Regarding privacy during examination, big city doctors said that as they get many cases in the emergency ward, which is usually right next door to the medico-legal section, it is often not possible to ensure privacy. Most doctors reported being routinely harassed by different parties involved in a case. Some reported direct death threats and threats to harm. Against these threats, MLOs were not found having any protection besides keeping a low profile. This low profile provides some clues as to why most development sector organizations have somehow missed the importance of this sector or have not been able to engage with it directly.

In terms of legal representation public prosecutors [PPs] interviewed for this study reported included only a handful of female officers. It was found that hardly any female PPs are present in Swat and Hyderabad, although 12 PPs were reportedly working in Mardan district. District Karachi had the largest share of postings for women, where 40 female public prosecutors were reported to be practicing actively in district and sessions courts⁶.

Women were found reaching prosecutors through various means. They were often brought by the police or referred through the district attorney's office. Darl-ul-Aman and other organizations such

⁶ Data acquired through prosecution offices and senior prosecutors. Some discrepancies can be expected.

as NGOs were found commonly referring cases to prosecutors while in Mardan, lawyers mentioned *jirgas* and *islahi / musalibati* committees as an important referral point as well, where cases could not be resolved through a local counsel.

Mardan prosecutors reported that most cases reaching courts are those of inheritance deprivation, domestic violence, divorce, *kbula*, honour killing and sexual violence. About 120-170 cases are referred to the district attorney's office each year in the Mardan district, involving various forms of VAW. Another prosecutor from the same district mentioned, however, that 10-12 cases of VAW come to courts every month mostly related to husband-wife violence, family disputes and other forms of interpersonal violence. Amongst these, the husband is directly involved in about 4%-5% cases, while in-laws are perpetrators in the remaining cases. Women mostly approach civil courts for *kbula* or file cases for maintenance. Prosecutors also estimated violence by husband against wife to comprise between 60%-65% of all cases brought to courts across Mardan.

In terms of GBV reporting, all prosecutors interviewed were of the opinion that only a small fraction of cases reach the courts because of cultural constraints. A prosecutor from Islamabad estimated this ratio to be around 7%, whereas in Mardan, lawyers held that 30%-50% cases are resolved within the home due to the stigma attached to women approaching courts. Another prosecutor from Hyderabad further clarified that women stay away because court procedures are difficult to understand and engage with.

Prosecutors from Islamabad and Mardan reported being aware and familiar with the AWP Act, 2011, whereas prosecutors from Swat mentioned only having heard of it. None of the other district prosecutors/lawyer had heard the name of the law or found aware of amendments to the PPC in this respect. Interestingly, even those who claimed to know of it could not identify which acts had been criminalized under the Act and respective punishment prescribed.

Even though none of the lawyers interviewed across the district had received any notification regarding the passage of the Act, they mentioned that being part of the courts, they usually find out one way or another. It was curious to know that the District Public Prosecutor for Peshawar reported acquiring a copy of the Act [and others] from the internet as routine practice as notifications were hardly ever sent to him. The same was also reported in Mardan by an officer holding the same office.

None of the lawyers interviewed had any knowledge of preventive programs undertaken by the provincial Law Departments, the district attorneys' offices or by District Bars to inform the general public about laws and legal protections available to them. Bar Associations were found not dedicating resources towards lawyers' training, as part of fulfilling their mandate. A senior public prosecutor from Karachi reported that District Bars receive funds from the Law Departments along with an annual fee from enrolled lawyers, which is never utilized to improve lawyers' understanding of law, its application or for general uplift of resources available to lawyers.

None of the lawyers interviewed reported falling back on international conventions such as CEDAW, CAT, CRC, etc., to support their cases in court. They reported that even though the government may have ratified treaties, only local laws are applied and relevant in Pakistani courts and it is the discretion of the Judge whether he takes them into consideration. This was alleged as the usual practice across Pakistan by all lawyers interviewed for this study.

In terms of case law, lawyers reported being strapped for resources. Outdated law books, journals and libraries were identified as major impediments to the collection of supporting case law as most prosecutors reported not being able to afford the fee for online journals. It is unclear what the role of the district attorney's office is in this respect though every district Bar carries its own library.

Most lawyers also refrained from commenting on Qisas and Diyat laws where complainants have the option of either inflicting the same hurt on the accused as inflicted on them, or to take blood-money as compensation. No comments were made on the duplicity of parallel systems of justice and lawyers did not wish to say whether they thought it was unfair to families who may "forgive" the accused party after being fed up with a protracted trial in the formal system of justice.

No formal systems were found for referring women to private legal counsels either through State-appointed lawyers, police, or healthcare providers. Lawyers reported that when a police report is scrutinized by a lawyer and a defect is detected in investigation then prosecutors point out that defect to the police so it can be rectified prior to forwarding the case to the court for trial. This assistance was corroborated by police interviewed in this study where police officials reported seeking help from prosecutor often to be guided regarding relevant laws. It is worth considering how well lawyers can guide police officers when their own knowledge and understanding of laws was found severely limited.

Further, none of the prosecutors interviewed reported attending any training on AWP Act, 2011, whereas only one prosecutor from Islamabad reported attending a training on VAW by an NGO. There was conflicting information received from lawyers regarding coursework on VAW in law schools and provincial judicial academies. While prosecutors from Mardan claimed that there was indeed a course taught in law schools, they could not provide any specific information on what the course included. A senior public prosecutor from Karachi, however authoritatively said that no such courses are offered anywhere in Pakistan, a topic of in upcoming book on the subject.

In terms of capturing women's experiences of forced marriage and inheritance deprivation, a total of 23 women were interviewed for this study. Only one case of inheritance deprivation could be identified, where the survivor was 14 years of age at the time of opening of succession, whereas 22 cases of forced marriage were included.

For women that had been forced to marry, there was an unintended 50-50 split between women less than age 16 and those above it. Sixteen years was used as a benchmark for adulthood according to present Pakistani laws that define age of consent to marriage [the Child Marriage Restraint Act, 1929]. As the AWP Act does not include age of consent as a critical condition for marriage [indeed half of the forced marriages in this study were those of women under age 16], forced marriages have been defined in this study in accordance with the definition provided in the CMR Act.

Almost all women who were married forcibly reported having a tumultuous and often violent relationship with the husband as well as in-laws. Most women had been married to men much older in age- some older than 35 years. As child brides usually cannot negotiate the terms of sex with husbands who are normally much older and may have had previous sexual partners⁷, a vast majority of women interviewed reported being raped by their husbands on the first night and verbal abuse starting within days or weeks into marriage. Most women reported that physical violence also commenced from the first night, while forced sex was a norm due to which they often sustained

⁷ Early Marriage and Adolescent Girls: Youth Lens on Reproductive Health and HIV/AIDS August 2005.

internal and external injuries. Three women interviewed for this study reported becoming incapable of having children due to physical injuries caused by frequent and violent rape by their husbands, often while they were menstruating. For women who did not seek medical help for physical violence, a common reason was lack of familial and social support for and understanding of their plight. The level of education did not correlate with the ability to exercise free will in marriage, ability to work, or the frequency of physical violence. Women with lower levels of education, however, reported higher intensity (and not necessarily frequency) of violence.

With a few exceptions, it was interesting to note that majority women thought the right age for a woman's consent to marriage was between ages 19 and 25. The perceived age rule was higher for boys as most women thought the right time for men to marry was after they crossed 25. Whether this can be attributed to the fact that over 55% women interviewed had acquired at least secondary education, or that they were forced into marriage or because they were tired of the abuse they suffered within marriage, cannot be said with certainty.

With a few exceptions, women largely understood inheritance to constitute family estate and not movable items, such as family heirlooms, bridal gifts, livestock, etc. They held that women usually do not request their share in inheritance out of respect for elders, because they don't know about rights granted under the law or because they are afraid of causing a family dispute, which makes implementation of the law suspect.

Knowledge of laws and rights were found woefully lacking even amongst the more educated women. Even though a vast majority knew where and how they could acquire a Computerized National Identity Card [CNIC], they had not been able to acquire one even after coming of age. It is important to note an interesting paradox here that 50% of women interviewed had been married at age less than 16, while a CNIC is mandatory to fulfill the legal obligation for marriage. Women were found completely unaware that divorce and *khula* also needed to be registered with the local Union Council office like the *nikah*, even though some have filed cases for the same.

None of the women reported being aware of the AWP Act, 2011 or the Sindh Domestic Violence Prevention Act, 2013 [applicable only in Karachi and Hyderabad in this study]. Given that most women interviewed reported being unable to influence the decision related to their marriage, all except one woman expressed that AWP Act had the power to extend any real benefits to women at large, whether as a deterrent or in terms of penalty for the perpetrator and justice for the woman.

Women from KPK reported going to *jirga* as a matter of routine for justice in domestic violence cases. They held that *jirga* often served their interest but their verdicts were commonly not accepted by their in-laws or parents. Women also felt that females in their community generally knew nothing about laws and other legal protections and could 'bet' that women knew nothing of the AWP Act either. If any legal action was taken by the woman at all, it was in the form of *khula* or divorce (meaning civil suit and not criminal trial).

Women that took legal action reported that there was no privacy when they went to lodge an FIR at the local police station, which was described as 'scary' and 'confusing'. In most cases, the FIR was lodged immediately, whereas in some cases it took 3 to 6 months. No woman reported being referred for legal or psychological counseling by the police whereas women described the court environment as 'confusing', 'intimidating' and 'unhelpful'. Some women reported not understanding the process of bringing a civil suit even when it was explained to them either by Police officers or their lawyers. None of the women reported any safety planning measures on behalf of the police,

even after they reported the extent of violence committed by their husband and/or in-laws. Of those who took legal action, however, most reported being moderately satisfied with the proceedings.

In terms of other support, women were asked which services they thought would have made things easier for them in their struggle for social and legal justice. Majority women cited shelters and good legal counsels as the most important but largely insufficient or missing form of support. These things, they claimed, kept many other victims of forced marriages from taking legal action once they had decided to seek justice or get away from abusive relationships. Other needs identified by women included: skill development, professional and moral support by service providers and comprehensive & quality healthcare.

CHAPTER 1: CRIMES COMMITTED IN THE NAME OF CUSTOM/ TRADITION IN PAKISTAN

Customs are generally accepted to denote a traditional and *widely accepted* way of behaving or doing that is specific to a particular society, place, or time. Culture denotes a system of inherited conceptions by means of which men communicate, perpetuate, and develop their knowledge about and attitudes towards life.⁸ Customary practices are not static and adapt to changing social, cultural and economic conditions prevailing in a society. They can, however, persevere over generations as social learning underpins their transmission and leads to their reinforcement. In tribal societies, where traditions and customs dictate the legal, social and moral order, cultural practices can remain more or less intact for centuries.

While some cultural practices are beneficial to all members, others can be harmful to a specific group, such as women⁹. In Pakistan, where a vast majority of the population lives in rural areas with relatively low social development indicators, including access to education, health, support services and systems of justice and restitution, women suffer many deprivations and violations of their human rights including right to life, healthcare, education, food and water. These deprivations and violations are often committed in the name of culture, tradition or custom. A high proportion of women die during childbirth across the country, whilst most will never go to school. Those getting primary education are at high risk of being married before they reach 18 years of age, as abject poverty and social acceptance for early-age marriage compel parents to wed off their daughter well before they are ready and/or willing. One rationalization for lack of investment in girls is that from the day they are born, they are temporary working guests in their parents' household and whose ultimate destination is their marital home. Paradoxically, girls who are married at very young ages find themselves in a position of constant servitude and further subjugation in their husband's home which they are not ready to face, physically, mentally or emotionally.

Black's law dictionary defines *custom* as, "a usage or practice of the people, which, by common adoption and acquiescence and by long and unvarying habit, has become compulsory, and has acquired the force of a law with respect to the place or subject-matter to which it relates"¹⁰. Customary laws, through unofficial and un-enacted usage are widely practiced in Pakistan and carry enough jurisprudential force to defeat or at least push back implementation of codified laws enacted to counter them. Due to legal pluralism in Pakistan, various strands merge upon convenience, resulting in muddled and unequal implementation of law, often to the disadvantage of women and other socially excluded groups. There are at least three broad types of laws prevailing in Pakistan: the state law, the Islamic law and the customary law.¹¹ The most prevalent law of the country is customary law¹², which differs from the official law in rationale, dispensation and outcomes.

⁸ Clifford Geertz, "Local Knowledge: Facts and Law in Comparative Perspective" in *Local Knowledge: Further Essays in Interpretative Anthropology* [New York: Basic Books, 1983], p. 89.

⁹ Fact Sheet No.23. Harmful Traditional Practices Affecting the Health of Women and Children. OHCHR

¹⁰ Black's Law Dictionary: <http://thelawdictionary.org/custom/#ixzz2mP0WCjr4>. Retrieved 03 December 2013

¹¹ See E. Adamson Hoebel. *Fundamental Cultural Postulates and Judicial Law-making in Pakistan*. In *American Anthropologist*, Special Publication Vol.67 No.6, [1965], pp 43-56; M. Azam Chaudhary, *Justice in Practice: Legal ethnography of a Pakistani Punjabi Village*. Oxford University Press. 1999, Karachi; and Bernard C. Cohen. *Law and the Colonial State in India*. In June Starr and Jane F. Collier (eds); and *History and Power in the Study of Law: New directions in Legal Anthropology* [New York: Cornell University, 1989]

¹² Rubina Saigol. *Pakistan's Long March*. p.209

Traditional laws function according to the local values/culture of the people which, is caste/kinship/tribe based¹³ and emphasizes reparation over punishment. Given that a vast majority of Pakistani live in tribal/feudal systems, it raises the relevance of para-judicial systems [*jirga*, *panchayat*, etc.] as active players in the dispensation of customary justice, despite a ban imposed by a high court decree¹⁴.

United Nations [UN] General Assembly's 1993 Declaration on the Elimination of Violence against Women, violence against women defines VAA as, "*a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and ... is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men*".

"Inequalities can also result from serious underinvestment in or policy neglect of certain geographic areas, sectors and population groups. Many inequalities result from discriminatory laws, policies and attitudes, often culturally rooted, that exclude certain groups from equitable participation in community life and from the wider benefits of development. Long-entrenched discrimination and exclusion, as well as violence, insecurity and other denials of human rights, often create or exacerbate existing inequalities. Inequalities cannot be effectively and sustainably reduced unless their underlying causes are tackled."

- TST Issues Brief: Promoting Equality, including Social Equity¹⁵

In patriarchal/feudal societies like Pakistan, women find themselves amongst socially excluded groups, unable to participate in or influence programs, laws and policies that directly or indirectly extend to them. Although women's increased political participation over the past decade has translated into advanced legal protections for women, the average [particularly rural] woman still remains largely unaware of her rights and lacks access to services and formal justice systems. If she seeks justice, she is faced by many hurdles that rationalize, minimize or trivialize wrongs committed against her. From birth till death, she is trained and socialized to be good, compromise, sacrifice and surrender to her fate, which makes seeking justice not just emotionally jarring, anxiety-laden but also socially unacceptable. Experience from the field shows that police officers largely believe that a true victim of rape would never admit what has happened to her out of shame (Khan & Zaman, 2011).

Much of this domination is rooted in men's perceived ownership of women or the commodification of women who are routinely used to settle dispute, secure unlawful advantages for the men in their family or clan, protect the honour of their community and keep the family together despite adversities. A patriarchal system's obsession with the idea of patrilineage (Khan T. S., 2006)¹⁶ i.e., ensuring protection and/or ownership of the women's womb leads to a regularization of women's

¹³ Erin Moore, Conflict and Compromise: Justice in an Indian Village [New York: University Press of America, 1985] p.6.

¹⁴ Judgment passed on April 24th, 2004 by Sindh High Court. See <http://www.dawn.com/news/393697/shc-bans-all-trials-under-jirga-system>. Last accessed December 2013.

¹⁵ The Issues Brief has been co-authored by UNICEF, UN Women, UNDP and OHCHR, with contributions from UNEP, PBSO, DESA, ESCAP, IFAD, UN-Habitat, IOM, UNESCO, ILO, World Bank, UNAIDS, UNV, WFP, UNFPA, ITU, UNV, DPA, OHRLLS, WTO and other agencies of the TST, and available at: http://sustainabledevelopment.un.org/content/documents/2406TST%20Issues%20Brief%20on%20Promoting%20Equality_FI_NAL.pdf

¹⁶ Beyond Honour, Tahira S. Khan, Oxford University Press; p 45.

sexuality and effects their options in marriage. The woman's only asset is considered to be her reproductive capability and as an object of sexual desire. Thus, these assets need to be protected and this duty falls upon the men, resulting in the perception that men hold the rights over women's sexuality, including the right to decide whom she marries. (Zia Lari & Zaman, Sexual Violence and the Law in Pakistan, 2012). Domination is also manifest not just in forced marriages but also in pressures on women to stay in dysfunctional and violent relationships.

In terms of anti-women customs, there are many practices in all parts of Pakistan that result in adverse outcomes for women. These practices include honour killing of women wanting to marry of their free will or for an alleged romantic affair, exchanging women in marriage with no consideration for their consent, compensation marriages to resolve disputes between tribes/clans/families, demanding that women do not claim their share of inheritance, girl child marriages, and marriages to the Holy Quran. Some useful definitions in the context of this study are provided below:

1. **Forced Marriages** [committed under the guise of custom such as Forced Exchange Marriages [Watta-satta, Wulvar], and Compensation Marriages [*Pait Likhi*, *Wanni*, *Sang-Chatti*, *Swara*, and *Ljai* or *Khasaniye Soor*]
2. **Inheritance Deprivation** [refusing to give rightful share in property to female heirs, imposing marriage choice to maintain control of estate, marrying women to the Holy Quran, forcing women to relinquish entitlement, or duping women out of their share of inheritance.

While marriages in Pakistan may take place under various 'arrangements', most fall into the broad categories as those discussed in Box 1 below:

Box 1: Forms of marriages that commonly take place in Pakistan

ARRANGED MARRIAGES:

Families of both spouses take a leading role in arranging the marriage but the choice whether to or not to accept the arrangement rests with the boy and girl/ man and woman. Marriages can be arranged for people who have never been married, one of whom was previously married, or both of whom have been previously married.

LOVE MARRIAGES/ COURTSHIP:

The intending spouses take a lead role in identifying the person they wish to marry, with the families taking a backseat role. This role may involve hostility, especially if the choice of spouse is not acceptable to either or both families. Families may /may not be involved in the "arrangements" for the wedding day, and may/may not give their blessings to the couple. Love marriages should not be equated with elopement necessarily as elopement involves the act of 'running away' to get married.

FORCED MARRIAGES:

One or both of spouses do not consent to the marriage and some level of duress is involved. Duress can be either physical or emotional or both. In some instances, there may be a threat of violence, adverse repercussions, or social/ familial boycott should one or both refuse to marry the other.

Forced marriages are fairly common in Pakistan. Below are some types of forced marriages, where

the spouses have either not consented or are not in a legal position to consent.

EXCHANGE MARRIAGES:

Known by different names in parts of Pakistan [*Watta-satta*, *Wulhar*, *Pait Likkhi*], exchange marriages are arranged by families and usually involve the simultaneous marriage of a brother-sister pair from two households. While *watta-satta* may involve consenting parties on both sides, there is compulsion to marry for both woman and man, simply because a sibling has been married into a particular family.

Pait Likhi involves betrothing, or promising an unborn or small child into marriage to a future spouse. Betrothment may be before birth or before puberty, but *Pait Likhi* [with *Pait* meaning ‘womb’ and *Likhi* denoting ‘betrothment’] is agreed before a child is born.

COMPENSATION MARRIAGES:

The practice of forcing girl children into arranged marriages as compensation for murder perpetrated by her family, to offset debts, or to settle other inter-tribe/clan family feuds. It is also known by different names across the provinces: Wanni in Punjab, *Sang-Chatti* in Sindh, *Swara* in Khyber Pathtoonkhwa, and *Ljai* or *Khasaniye Soor* in Baluchistan.

CHILD MARRIAGES:

Child marriage of girls usually involves the giving and taking of under-aged girls [aged less than 16 under Pakistani law] in marriage, without their valid consent. A girl may remain with her parents till she reaches puberty or a certain age, or may be taken/ sent to her husband’s house much before.

MARRIAGE TO HOLY QURAN:

This involves forcing women to take a vow of celibacy by swearing on the Holy Quran never to marry or have sexual relations and devote their lives to the worship of Allah.

There is no religious basis for this custom found in the Holy Quran itself or in the Hadith of the Holy Prophet [PBUH] that allows marriage between anything except a man and woman¹⁷. Here, women are usually cheated or duped out of their family inheritance share by forcing them to lead celibate lives, i.e., forever refraining from marriage and the chance of procreating, for which there is ample encouragement found in religious texts and history. Marriage to the Holy Quran is believed to elevate the status of women and bring honour to them and their families. Often, it is done with the intent to keep a family’s wealth from being divided further upon her marriage.

Overtime, some customary practices in Pakistan have become progressively sinister in terms of repercussions for women and impunity. For instance, the customs of *swara*, or ‘compensation marriage’ has taken on a very different form in present day from what it used to be. According to Samar Minallah¹⁸, an activist and documentary film-maker based in Islamabad, the custom of *swara* used to involve women of a household dressing up in black and visiting the family in which

¹⁷ Interview with Shazreh Hussain, an independent development researcher based in Islamabad on 30 November 2013

¹⁸ Interview with Samar Minallah on 21 November 2013

someone has been killed by someone amongst their own family. Usually, the victim's family would appreciate the gesture, accept their apology and send the women back, sometimes with gifts to the offending family. Minallah holds that the customs has been corrupted over time due to women's lowered position in society, where women are relentlessly sold or given away as compensation to the family whose member has been killed in order to settle a dispute.

On the other hand, the practice of marrying women to the Quran is reportedly declining in Sindh¹⁹, where it is still perceived to be more prevalent compared with other provinces. Cases are hard to find not only because the practice has reduced, but also because the custom is observed in secrecy and guarded from public view.

The practice of child marriage, which is another form of forced marriage as the would-be spouses are not old or mature enough to consent, is reportedly on the rise. Experts²⁰ in the field suggest that poverty and lack of education is leading people to give up their girls in marriage in order to reduce household expenses or to settle debts. Experts also suggest that it is a custom mostly practices in lower income groups or rural communities who are more poverty-stricken and not educated enough to understand its implication.

Communities in a number of countries practice exchange marriage, often to avoid dowry practices and *mehr*. For instance, in Turkey, the practice is called 'berdar', and 'badal' in Jordan and Palestine. The custom of *watta-satta/ addo baddo* [or 'exchange' marriage], is more visible in Pakistan perhaps as not all such marriages exclude the consent of intending spouses. This makes it particularly difficult to detect as women might not realize what they have given consent to being [too young] or may not have another choice [see Federal Shariat Court judgment in Chapter 6]. However, many such marriages suffer from breakups when any person amongst the four married in pairs, is not happy.

These practices have no religious basis²¹ (Zaman, Anti-women Practices- A toolkit for Community-based Organizations, 2013) but are perpetuated as part of tradition, having acceptance in large pockets of society. They continue with impunity as the official systems of justice are often inaccessible, expensive, drawn-out, heavily biased against women, or simply not interested. Informal justice systems though arguable more biased against women offer a cheaper, quicker and culturally appropriate alternate to dispute resolution at the local level. In the formal system, there is also little justice and almost no reparation for victims of forced marriages.

Implementation of law is a political matter as it tests governance standards the State commits itself to in the face of opposing interests. Reduced inequality and increased social and economic security are hallmarks of good governance, a basic tenant of which is rule of law. Three major components of every law determine how well it will be implemented: its substance, accompanying and supporting structures and systems, and the culture within which executing bodies operate, internally and externally.

¹⁹ FGDs with public officials and NGOs at different times during the course of this study.

²⁰ Dialogue with Mahnaz Rahman [Resident Director, Aurat Foundation; ex-MPA Shahnaz Wazir Ali and Dr. Masooma Hasan, [Chairperson Board of Governors, Aurat Foundation]

²¹ See also Zaman, Sarah. Anti-women Practices- A toolkit for Community-based Organizations. Islamabad: Aurat Foundation, 2013

Substance problems arise, for example, when a law does not provide adequate definitions and description for offences; fails to provide rules of business; does not prescribe fitting punishments that can act as deterrents to would-be perpetrators; is inherently discriminatory towards a segment of society; penalizes a widely accepted or practiced custom; or does not carry a monitoring/ review mechanism. Structural problems may arise when systems, structures, mechanisms etc., do not facilitate implementation and are largely based on the performance of persons and not the processes involved in the dispensation of justice. Structural problems may also arise when there is no shared vision of the law and institutions fail to do justice, whether it is for lack of resources, human capital, accountability or transparency. Further, rationalizations for the justice systems' inherent ability for social correction, while preserving the larger status quo [subservience of women to men], also serve to legitimize and perpetuate violence and social inequalities.

Cultural impediments result when executing bodies such as police, medical-legal or the judicial sector implement laws in ways that are either ostensibly discriminatory or too 'neutral' thus not accounting for unique circumstances of a litigant and her/his case. This is perhaps the biggest impediment towards implementation of VAW laws in Pakistan. Cultural impediments such as biases against women are usually the slowest to move/change and deeply normalized in patriarchal societies. They may not be prejudices held by a person or a social unit but can extend to institutions as well as the larger social order, where the larger structure serves to protect the powerful for transgressions.

Implementation gaps commonly occur throughout the world when laws are made and passed without due attention to regulatory policies that award sanctions or incentives against certain types of behaviors in society. Many laws also fail to produce results because of a lack of inquiry into problems that persist despite legal protections. Moreover, laws also fail when they do not take into account prevalent socio-cultural realities of a particularly disadvantaged group or person and consider laws to prove applicable to a singular bloc of presumably homogenous peoples. In this respect, many countries have passed legislations pertaining to specific forms of GBV, paving way for positive discrimination or affirmative action. In Pakistan, one finds that despite the passage of various laws related to VAW, women are not able to find relief in services [of lack thereof] that are extended to them, if they can indeed, find where the service itself is physically located.

While the workings of all actors in the formal justice system is subject to regulation under service rules [tort laws, for example], and reports of mishandling and partial investigations abound, regulatory action is seen missing when police officers are not charged with dereliction of duty²² [or saved from public disgrace] for denying women the fundamental right to lodge a police report; when examining doctors do not record vital evidence that could corroborate a women's story in court; when judges call to archaic laws²³ or allow the moral character of sexual assault and rape survivors to

²² Section 27 of the General Clauses Act, 1956 states that, "A thing shall be deemed to be in 'good faith' where it is in fact done honestly, *whether it is done negligently or not*" [italics by author]. Under this provision, public office holders cannot be prosecuted for tortious actions or omissions, if they can show that they acted in 'good faith'.

²³ In 2013, a District judge at the Karachi ruled in the highly publicized gang-rape case reported at the Quaid-e-Azam's [founder of Pakistan] mausoleum, that the survivor had not produced four male witnesses to the incident and hence her claim could not be independently corroborated in court. Important to note is that under an amendment to the Pakistan Penal Code in 2006 [whereby rape laws were amended], a woman no longer requires four witnesses for corroboration.

be questioned in open court; when the apex court rules that divorced women are embittered and thus more prone to making false claims of rape/ gang-rape²⁴.

Convictions in all criminal cases brought to Pakistani courts remain anywhere between 5 and 10 percent, depending on whose report is consulted. This compares starkly with some developed countries where convictions in violence against women cases may be as high as 95% for all cases tried under a court of justice²⁵. It is unfathomable that 90 percent of cases being reported in Pakistan are false or fabricated. What is more believable and established through various researches across the country is that flawed and outdated systems of investigations [say, in the case of technology-driven VAW], political interference, gender bias, literal interpretation of statutory provisions, and customary laws taking precedence over codified law are major contributory factors which keep most litigants from the attainment of [legal and social] justice. One can of course add to this list as problems exist across all areas of criminal and civil justice systems. The situation is further exacerbated where little headway has been made to collectively assess why most laws concerning gross violence against women have produced negligible results for the average woman, despite generalizations about lack of knowledge of laws, limited access to formal justice systems, lack of agency and strict social-cultural controls on women's behavior.

In this respect, very few examples can be found of demand-responsive development reforms in Pakistan's history. Recent development reforms have not been introduced through political aggregation of the social interests of different segments of society and, to borrow from development sector jargon, the Government can be seen taking a 'project approach' to social development by introducing short-term schemes for women and youth while failing to evaluate their impact on society. For instance, through land reforms introduced by the PPP government in its last term, which included awarding land to landless farmers and women, little attention was paid to improving Government extension services to farmers that could add exponential value to both the land and its produce, while protecting soil health. A social audit of public service delivery through systems of local governance reports an increase from 70 percent to 86 percent between 2009 and 2012 of households reporting no access to extension services for small farmers. The same report highlights a disconnect between demand and supply sides of public service, where larger projects are initiated at the costs of small but basic services that people need (Khalid, May 2012).

Over the past decade [2004-2014], the women's right movement in Pakistan has been increasingly successful in challenging practices against women deeply embedded in the country's social fabric. The challenge has mostly played out in the legal arena, which can be seen in the numerous gender-responsive laws that have been introduced in a relatively short span of time. Within this decade, the infamous Hudood Laws were amended after a 27 years' long campaign by women's groups and civil society while many pro-women laws were passed: legislation on honour-killing, acid throwing, sexual harassment at workplace, forced marriage, inheritance deprivation, domestic violence [Sindh only], child sexual abuse and cybercrimes [including cyber stalking], to name a few.

While the feminist agenda has focused its attention on legislation as a tool for securing women protection under the law, high levels of impunity in crimes against women and absence of effective implementation of laws, points to a rights journey only begun. While different forms of VAW have

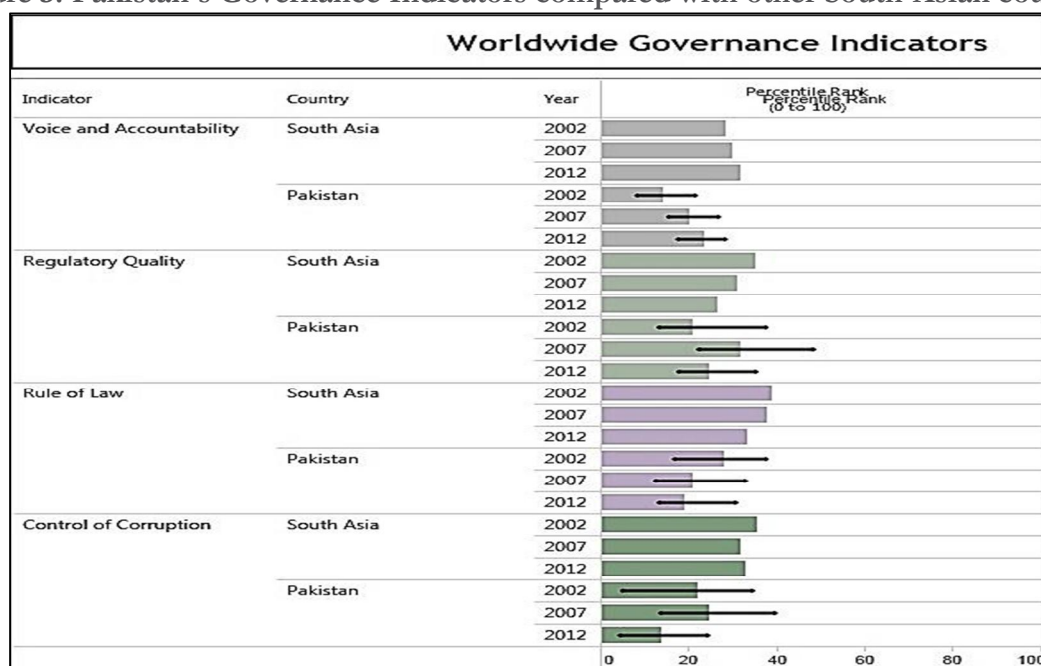
²⁴ See Supreme Court of Pakistan ruling in Mukhtaran Mai's case, available from: http://www.supremecourt.gov.pk/web/user_files/File/Crl.P.163_to_171_S.M.C.5_2005.pdf

²⁵ This does not take anything away from the fact that most women would never have their day in court due to under-reporting.

been outlawed in recent history, mishandling of cases by the criminal justice has continued to persist. Still, and perhaps as a result, most cases are not being reported to authorities.

Overall development indicators of Pakistan, from which the quality of governance can be assessed, depict a disturbing situation. Pakistan's percentile ranking on Rule of Law for 2004 in the World Bank's Governance Indicators, 1996-2004 was 26.1 as against regional average of 34.2 on 0-100 scale covering 209 countries [see figure 3 below].

Figure 3: Pakistan's Governance Indicators compared with other South-Asian countries



Economic development in the past decade has not been matched by human development, for which there are dismal indicators throughout the country. Districts with the best development indicators on the other hand, are facing burgeoning numbers due to unplanned urbanization, internal migration/ displacement and a deep-seated urban bias, putting increased pressures on public services. Faced with limited access to basic facilities such as drinking water, electricity, education and health, urban slums suffer high incidence of VAW reporting as in rural parts of the country²⁶. Additionally, conflict, rising extremism and intolerance continue to sap resources and divert attention from a sincere, dedicated and consistent move towards social uplift and protection for the common citizen.

As many facets of good governance have yet to take root in the country's governance structures, numerous examples of poor implementation of laws can be found in Pakistan. The situation becomes more precarious for women whose issues continue being sidelined or ignored for the sake of addressing more serious problems of terrorism and timely political maneuvers.

²⁶ Aurat Foundation's annual statistical reports in reported number of VAW cases has shown greater reporting from highly urbanized cities of the country, such as Lahore, Rawalpindi and Faisalabad. Caution is, however, advised not to confuse greater reporting with greater incidence necessarily.

To illustrate the point of weak implementation of law, one can refer to a pilot study by Aurat Foundation to assess the status of implementation of the honour killing law passed in 2004 for instance, points to insensitive handling of cases, biased investigations by police and weak interpretation of the law that effectively extend benefit to perpetrators (Lari, 2011). Further, a study on the implementation of Women's Protection Act, 2006 [whereby the Hudood Ordinances were amended], reports lack of acceptance for the amendments made amongst police and judiciary due to personal gender biases (NCSW, 2010, p. 12). Two studies by War Against Rape [WAR] (Khan & Zaman, 2011; Rasheed & Zaman, 2011) support these findings by highlighting various biases against survivors of rape amongst all levels of the criminal justice system, ranging from disbelief to criminal negligence during investigations by both police and medico-legal doctors. Additionally, despite the passage of a law on acid crimes in 2010, statistics reveal an 88 percent in incidence between 2011 and 2012 across Pakistan (Parveen, May 2013). The Alliance Against Sexual Harassment [AASHA] has been reported in the media to struggle with provincial Governments for the constitution of inquiry committees and appointment of provincial ombudsmen, while failing to get any response from military organizations, judiciary and media houses, among others²⁷.

Special laws on different forms of VAW in Pakistan

Beginning with 2004, the following major national legislations related to violence against women were passed in the country:

1. The Criminal Law [Amendment] Act, 2004 [pertaining to honour crimes]
2. Protection of Women [Criminal Laws Amendment] Act, 2006 [pertaining to rape]
3. Criminal Law [Amendment] Act, 2010 [pertaining to sexual harassment]
4. The Protection Against Harassment of Women at the Workplace Act, 2010
5. Prevention of Anti-Women Practices [Criminal Law Amendment] Act, 2011 [pertaining to forced marriages in the name of custom]
6. The Acid Control and Acid Crime Prevention Act, 2010
7. The Women in Distress and Detention Fund [Amendment] Act, 2011

These laws are applicable to all provinces of Pakistan except the Federally Administered Tribal Area [FATA] where political agents appointed by the Federal government act as complainants, judge and jury in disputes between tribes and individuals. Provinces have also taken to drafting and passing legislation after the devolution of power in 2010. Amongst these are the Domestic Violence [Prevention & Protection] Act, 2013, in Sindh and lesser-known bills such as the Elimination of Custom of Ghag²⁸ Bill, 2013, Child Protection and Welfare Bill, 2010, and the Preventive Health Bill, passed in 2012 in KPK.

²⁷ See <http://tribune.com.pk/story/583814/harassment-at-the-workplace-fear-inertia-keep-womens-protection-law-under-wraps/>. Accessed on 20 December 2013

²⁸ Where *ghag* has been described as :“A custom, usage, tradition or practice whereby a person *forcibly demands or claims the hand of a woman*, without her own or her parents’ or wali’s will and free consent, by making an open declaration either by words spoken or written or by visible representation or by an imputation, innuendo, or insinuation, directly or indirectly, in a locality or before public in general that the woman shall stand engaged to him or any other particular man and that no other man shall make a marriage proposal to her or marry her, threatening her parents and other relatives to refrain from giving her hand in marriage to any other person, and shall also include *obstructing the marriage* of such woman in any other manner pursuant to such declaration” [Italics by author]. Ghag is a criminal offence punishable with up to seven years imprisonment or Rs500,000 fine or both.

LITERATURE REVIEW

Global prevalence of forced marriage:

Lack of prevalence statistics for forced marriages and inheritance deprivation in Pakistan has made informed discussions and policy decisions difficult. Where prevalence statistics produced in the country comprise statistics based on informed guesses or ‘educated estimates’, data generated by various agencies including NGOs and INGO typically tabulate cases reported in the media and not necessarily those successfully or unsuccessfully prosecuted. Moreover, hardly any data is available on cases that were disposed by the police for want of evidence or due to supposed ‘exaggeration’ by women complainants.

According to Aurat Foundation GBV annual statistical report 2012, the highest reporting against all offences monitored took place in the Punjab province. Burn cases saw a sharp increase of 114%, followed by domestic violence by 62%, while sexual assault cases almost halved in 2012 compared with the previous year. Most cases were reported from Punjab province [see tables 5 and 6 below].

Table 5: Number of VAW Cases in Pakistan during Jan-Dec 2008-12²⁹

Categories Of Crime	Year 2008	Year 2009	Year 2010	Year 2011	Year 2012	Grand Total	Percentage Increase/ Decrease in VAW Cases Between 2010-2012
Abduction/ Kidnapping	1,784	1,987	2,236	2,089	1,607	9,703	-23.07
Murder	1,422	1,384	1,436	1,575	1,745	7,562	10.79
Domestic Violence	281	608	486	610	989	2,974	62.13
Suicide	599	683	633	758	575	3,248	-24.14
Honour Killing	475	604	557	705	432	2,773	-38.72
Rape/ Gang-Rape	778	928	928	827	822	4,283	-0.6
Sexual Assault	172	274	74	110	58	688	-47.27
Acid Throwing	29	53	32	44	83	241	88.64
Burning	61	50	38	29	71	249	144.83
Miscellaneous	1,970	1,977	1,580	1,792	1,134	8,453	-36.72
Total	7,571	8,548	8,000	8,539	7,516	40,174	-11.98

Table 6: Reported Cases of VAW in Pakistan, 2012³⁰

Province	No. Of Reported Incidents	Percentage of Total
Punjab	4,753	63
Sindh	1,628	22
KPK	67	49
Islamabad	28	14
Balochistan	16	72

²⁹ Ibid

³⁰ Parveen, D. R. [May 2013]. Beyond Denial: Violence against women in Pakistan- A qualitative review of reported incidents Jan-Dec 2012. Islamabad: Aurat Foundation.

AF's annual statistics, which are the most comprehensive and widely cited of all national data sources on reported VAW cases in the country, do not assign a distinct category to forced marriages, which may fall within the category of miscellaneous offences, or hiding within domestic violence. Similarly, there is no data available on child marriages, though experts suggest that more than 50% marriages in Pakistan take place between spouses less than 18 years of age³¹.

According to a Free and Fair Election Network report (FAFEN, 2012)³², 568 FIRs of forced marriages were lodged in 40 districts of Pakistan, with 198 [35%] cases in Lahore, followed by 36 [6%] cases in Islamabad and 34 [6%] in Sheikhupura between 2010 and 2012. It is not clear under what law the cases were registered.

According to FAFEN's report, while the numbers of reported cases have reportedly declined over two years, forced marriages were the highest on the list of anti-women practices reported in the country³³:

"Despite a decrease from previous year, the number of cases filed for forced marriages was the highest among all the reported anti-women crimes. As many as 341 cases were reported in 27 districts in May this year [2012]. Among regions, cases of forced marriages decreased in Punjab and Sindh. However, a significant increase of 66% was registered in ICT [Islamabad Capital Territory] where 24 cases were reported in May 2012 as compared to last year's nine. Khyber Pakhtunkhwa and Balochistan also observed an increase. Statistics show that Lahore [134] recorded the highest numbers of anti-women offences in 2012, followed by Faisalabad [110] and Multan [105]."

– FAFEN Crimes Against Women Report, 2010-2012³⁴

According to Blue Veins³⁵, more than 60 million girls around the world were married under the age of 18 last year, out of which 24% were from rural Pakistan and 18% from urban areas. If child marriages continue at this rate, an additional 100 million underage girls will be married within the next decade or 25,000 new child brides every day for the next 10 years³⁶.

Regionally, a study conducted by International Centre for Research on Women [ICRW] suggests that child marriage is widely prevalent in South Asia. "Most of these marriages are arranged by parents and local leaders with or without the consent of the girl. A variety of factors perpetuate child marriage, including a high value placed on girls' sexuality, gender discrimination, gaps in national

³¹ Discussions with a group of civil society organizations, including Aurat Foundation, Shirkatgah, religious scholar Mohsin Naqvi and ex-MPA, Shehnaz Wazir Ali.

³² Report by FAFEN, based on data collected from 84 offices of District Police Offices [DPOs] over 2 years [between May 2010 and May 2012] on FIRs registered for six categories of crimes against women in 57 districts of Pakistan. Report can be accessed from: http://www.fafen.org/site/application/pilot/fopt/assets/publications/263_crime%20against%20women%202012.pdf. Last accessed 24 December, 2013.

³³ Ibid

³⁴ Ibid

³⁵ Blue Veins is an NGO based in Peshawar, working to "improve the quality of life of women and children through Awareness, Action and Advocacy.

³⁶ See <http://tribune.com.pk/story/487659/child-marriages-42-of-underage-married-girls-from-pakistan/>. Retrieved December 11 December, 2013

laws, poor enforcement of child marriage prevention laws, illiteracy, poor access to education poverty and instability due to conflict and natural disasters.” (Khanna, Verma, & Weiss, p. 5).

According to United Nations Population Fund (Marrying Too Young- End Child Marriage, 2012), one in three girls in developing countries [excluding China] will probably be married before they are 18. One out of nine girls will be married before their 15th birthday. Over 67 million women 20-24 year old in 2010 had been married as girls. Among them, half were in Asia and one-fifth in Africa. In the next decade 14.2 million girls under the age of 18 will be married every year; this translates into 39,000 girls married each day. The number is estimated to rise to an average of 15.1 million girls a year, starting in 2021 until 2030, if present trends continue. While child marriages are declining among girls under age 15, 50 million girls could still be at risk of being married before their 15th birthday in this decade.. The same report also mentions that most of girls that are married before age 18 are poor, less-educated, and living in rural areas.

Amnesty International, in a 2007 report claims that 60 girls and women were handed over to rival's families to settle disputes and as compensation for murder in that year in districts Mardan and Swabi. This study included 2 such cases from district Swat.

Further, in 2012, the forced marriage unit of UK's Foreign and Commonwealth Office reported 1,485 cases of forced marriages in the country, with nearly 50% cases of Pakistani origin, followed by Bangladesh [11%]³⁷. According to the same report, 25% cases involved girls aged less than 18, while 55% were younger than 21 years.

Major motivating factors behind forced marriages:

Some of the major motivations behind forced marriages according to available research include:

- ⊖ Inability to provide dower;
- ⊖ Poverty and desire to rid oneself of the economic cost of child rearing and related expenses;
- ⊖ Gender inequality;
- ⊖ To control unwanted sexual behavior;
- ⊖ To control unwanted social behavior;
- ⊖ To prevent 'unsuitable' relationships, e.g. outside the ethnic, cultural, religious or caste group;
- ⊖ To protect family honour or '*izzat*';
- ⊖ To 'compensate' wrongs committed by one party by giving girls in marriage to the wronged party;
- ⊖ To honour age-old customs that demand that parents and guardians control whom a girl marries;
- ⊖ To deprive women of their inheritance;
- ⊖ To gain political leverage.

Age of marriage in other countries:

According to a summary of age of marriage laws across the globe conducted by Equality Now in

³⁷See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/141823/Stats_2012.pdf. Retrieved December 20, 2013

2010, laws of a substantial number of countries allow marriage under age 18. Pakistan is in this list, as highlighted in Table 7 below:

Table 7: Age of consent for girls in Asian countries³⁸

Age	Country
18 years or above	Bangladesh, Bhutan, Cambodia, China, Iraq, Mongolia, Oman, Singapore, Taiwan, Tajikistan, Vietnam
18 years or above with exceptions	India [18 except under Mohammedan Law], Iraq [18 but 16 with consent], Japan [20 but 16 with parental consent], Jordan [18 but 15 with civil court consent], Kazakhstan [18 but 16 with court permission], Kyrgyzstan [18 but can be lowered to 17], Laos [18 but 15 under special circumstances], Malaysia [18 but 16 with court order: non-Muslims], Maldives [18 with exceptions], Myanmar [20 but 14 with consent], Nepal [18 but 16 with consent], Philippines [21 years but 18 with consent for non-Muslims], Russia [18 but 16 with parental consent], Sri Lanka [18 but not for Muslims]
Below 18	Armenia [17], Azerbaijan [17], Bahrain [15], Brunei [14], Indonesia [16], Iran [16 but 13 with parental consent], Israel [17 but 14 with parental consent], N. Korea [17], S. Korea [16], Kuwait [15], Lebanon [depends on religion], Malaysia [16 but under 16 with court consent: Muslims], Pakistan [16], Papua New Guinea [16 but 14 under special circumstances], Qatar [16], Saudi Arabia [none], Syria [17 but 13 with judicial consent], Thailand [17 but 13 with parental consent], Turkmenistan [16], Uzbekistan [17 but 16 under special circumstances], Yemen [none]

Distinguishing forced marriages from arranged marriages:

Marriage under Pakistan laws is defined as a union between two intending spouses, contracted with the full and free consent of both parties. It is settled between Muslim jurists, that marriage is a contract and the parties to a marriage must be adult, of sound mind, having attained puberty, and be able to give free and valid consent to marriage.

Theoretically, forced marriages occur without the valid consent of either bride or groom or both. Although forced and arranged marriages are defined distinctly under certain jurisdictions³⁹ where the former have been criminalized, understanding where the law could apply has been reportedly a tricky business due to uncertainty about tactics used to get girls to give in to an undesired match. Forced marriages and arranged marriages are hard to distinguish in that sense where some arrangements could involve emotional blackmail and psychological pressures. This also results in underreporting or ‘hidden numbers’ [discussed in section below], where guestimates are provided for the real number of marriages that did not involve the consent of one or both spouses. Sigma Huda (Huda, Jan 2007, p. 10) adds that “a marriage imposed on a woman not by explicit force, but by subjecting her to relentless pressure and/or manipulation, often by telling her that her refusal of a suitor will harm her family’s standing in the community, can also be understood as forced”.

³⁸ http://www.equalitynow.org/sites/default/files/Child%20Marriage%20Fact%20Sheet_0.pdf. Retrieved 17 February 2014.

³⁹ See e.g., Action Plan Against Forced Marriages, Norwegian Ministry of Children and Equality 2008-2011; UK Foreign and Commonwealth Office Forced Marriage Unit [FMU]’s Guidelines [available at <https://www.gov.uk/forced-marriage#forced-marriage-unit>]. Retrieved November 29, 2013

Arranged marriages, however, have been defined by Carole Olive Moschetti as “a form of social construction that informs the girl from a young age of her expected familial duties and her understanding of what constitutes bringing ‘shame’ upon the family. If a young woman is bodily kidnapped the force is obvious but when a marriage is ‘arranged’ by her relatives’ trickery and stealth, she does not realize, often until it is too late, that an arranged and forced marriage amounts to much the same thing”.⁴⁰ This theory is supported by the fact that only a few women amongst those whose cases have been included in this study, were able to even protest to “arrangers” of their marriage.

Forced marriages and family honour:

Marriages ‘arranged’ through duress are unlikely to be reported in societies like Pakistan where women are considered and treated as repositories of family honour, whose defiance or disobedience is tantamount to public shame and humiliation. Many studies that have explored the concept of honour in Pakistan’s rural and peri-urban societies have drawn link between restrictions placed upon women and fear that those women would compromise family honour if they are allowed free mobility, or that someone would take advantage of them.

Other means to control women’s mobility and thereby their sexuality include refusing to send girl children to school after they reach puberty or go over the age of 12⁴¹, not allowing women to have a spouse of their own choosing, restricting public access to hospitals, police stations, work places, etc., unless there is a male escort, and disallowing women to take up residence in hostels⁴². Often, marriage proposals are rejected by families in a bid to control whom she marries or does not marry. Practices such as marriage with Holy Quran are often manifestations of a desire to control women’s sexuality, where the family will retain control over a woman’s share in inheritance. We have seen three such cases from South Sindh in this study, where the father or brother decreed marriage to the Quran due to non-availability of a husband suited in status.

Forced marriages and trafficking:

Trafficking of women and girls is often carried out under the garb of marriage, where unsuspecting girls and family consent to a marriage proposal by the trafficker or his agents. According to The UN⁴³, trafficking is “the illicit and clandestine movement of persons across national and international borders, largely from developing countries and some countries with economies in transition, with the end goal of forcing women and girls into sexually or economically oppressive and exploitative situations for the profit of recruiters, traffickers and crime syndicates, as well as other illegal activities related to trafficking such as forced domestic labor, false marriage, clandestine employment and false adoption”.

The South Asian Association For Regional Cooperation [SAARC] Convention on Preventing and Combating Trafficking in Women and Children for Prostitution states that “[p]ersons subjected to trafficking’ means women and children victimized or forced into prostitution by the traffickers by deception, threat,

⁴⁰ Carole Olive Moschetti, *Conjugal Wrongs Don’t Make Rights: International Feminist Activism, Child Marriage And Sexual Relativism*, Ph.D. Thesis, University of Melbourne, Political Science Dept., Faculty of Arts, 2006.

⁴¹ As was the case witnessed in one particular Tehsil in Shahdadkot, Sindh by the author of this report, where girls over 12-14 are routinely not sent to school for fear that they might get involved with boys and be killed as a result to protect family honour.

⁴² This was a major finding in KPK where police officers and lawyers reported that families do not approve of girls/ women staying in hostels, which was perceived as a form of gender-based violence by the police.

⁴³ Resolution 49/166, adopted on December 23, 1994.

coercion, kidnapping, sale, fraudulent marriage, child marriage, or any other unlawful means”. (SAARC, Jan 2002).

Pakistan is a member State of SARRC, and signed off on the convention within a year of its passage. The convention considers use of violence, [Art IV, 1[c]], victimization of children [under age 18] [Art IV, 1[e]], and perpetrator holding public office [Art IV, 1[d]], as aggravating factors, and instructs State parties to “*ensure that their courts having jurisdiction over the offences committed under this Convention, can take into account factual circumstances which make the commission of such offences particularly grave*”.

Though the SAARC convention takes cognizance that forced marriages and trafficking may be related in some situations, it unfortunately addresses trafficking in women/girls within the context of prostitution and also does not seek to address the social, economic and political incentives behind the practice. It is also difficult to ascertain if any notices or actions have been taken to addressing trafficking of girls/women between SAARC countries under this Convention due to unavailability of information. On a national level, Pakistan has a law on international trafficking of women/ girls, but there is no provision to provide legal protection to those trafficked internally.

Although we did not include a trafficking via forced marriage case in this study for it was beyond its scope, we did see one case where the girl was sold into marriage to a feuding family. She was not used for prostitution though she was taken away from her hometown by the husband after marriage against her will, a form of internal trafficking.

Forced marriage and domestic servitude/ abuse:

Historically, early marriages of children was an important means for securing critical social, economic, and political alliances for the family, clan, or lineage (Mathur, Greene, & Malhotra, 2003, p. 4). In Pakistan, marriage is usually not just an affair between intending spouses. Families of intending spouses inadvertently get involved where the woman is expected to live [at least temporarily] with her in-laws along with her husband after marriage. In cases of forced marriages, women end up being not just subservient to the husband but are also given the additional task of pleasing and serving her in-laws. In cases of *smara*, many girls have to face horrific physical, psychological and economic abuse as they are wed into an enemy family. Further, the children born of such marriage also witness routine violence and psychological abuse within the home environment. We have seen this in the behavioral problems exhibited by children of women included in this study.

According to UNICEF, one woman dies in every 20 minutes during childbirth in Pakistan, and a major cause of the high maternal mortality ratio is child marriage. Following are some health consequences of forced marriages commonly seen amongst females in Pakistan and other parts of the world:

- ⊖ Increased maternal and infant health risks and mortality/ morbidity;
- ⊖ Greater experience of domestic violence, including sexual violence;
- ⊖ Increased domestic servitude and physical burden of household work;
- ⊖ Restriction of movement to work, study or visit natal home;
- ⊖ Deprivation of childhood, stunted psychological and emotional development;
- ⊖ Increased likelihood of fatality by stove-burning, acid burning and physical torture;
- ⊖ Increased sense of helplessness due to economic dependence on spouse and in-laws;
- ⊖ Increased domestic violence, including physical harm, deprivation and psychological harm;

- ⊖ Ostracization [social exclusion or banishment] and social withdrawal as a result [especially in Swara cases];
- ⊖ Self-harm by woman/ child including attempts at suicide.

Also, according to the 2012-13 PDHS survey⁴⁴, “The most widely accepted reason for wife beating among women in Pakistan is arguing with the husband [34 percent], followed closely by neglecting the children [31 percent], refusing to have sexual intercourse [31 percent], and going out without telling the husband [30 percent]. Twenty-eight percent of women agree that a husband is justified in beating his wife if she neglects her in-laws. Similarly, 18 percent of women agree that a husband is justified in beating his wife if she burns the food” (National Institute of Population Studies, December 2013).

Sexual and Reproductive Health and sexual abuse:

Women that have been forced into marriage often report sexual abuse by their spouse⁴⁵. Having obliterated all rights when giving up the right to say no to the marriage, women often report forced sex⁴⁶ that sometimes leading to internal injuries. This study has had similar finding where many women reported being raped on the first night of marriages and frequently thereafter, as we shall see in Chapter 5.

Girls who are forced into early marriages are also at a higher risk for problematic pregnancies, pre-mature delivery, obstetric complications, maternal/natal morbidity and mortality, all comprising different form of sexual violence against women as their bodies are not ready for pregnancy. Interestingly, we have seen that half the women who had been married forcibly had not acquired puberty at the time of marriage.

Forced marriage and faith conversion:

The National Commission for Justice and Peace [NCJP] has been reported by the Movement for Solidarity and Peace Pakistan [MSP] in their paper on forced marriage amongst religious minorities in Pakistan, that monitoring 1,791 forced conversions took place between 2000 and 2012, 624 of which were those where the converted person was of Christian faith (Forced Marriages & Forced Conversions in the Christian Community of Pakistan, April 2014)⁴⁷. MSP also reports that from 100 to 700 Christian and 300 Hindu girls are married forcibly each year to have them convert to Islam. Persecution of the Hindu minority in Pakistan has also contributed to a mass exodus from Sindh, alongside other communities, some of whom have been living peacefully in Pakistan for centuries.

Affirmative action by governments against forced marriages:

United Kingdom

In UK, the Forced Marriage [Civil Protection] Act, 2007, passed by the British parliament on 26 July 2007, provides civil remedies against forced marriage. It gives the courts “*a wide discretion to deal*

⁴⁴ National Institute of Population Studies, December 2013

⁴⁵ This phenomenon was also address in a Special Bulletin of Shirkat Gah, published in August 1995 by Dr Yasmeen Hassan: *The Haven Becomes Hell: A Study of Domestic Violence in Pakistan*.

⁴⁶ See <http://www.theguardian.com/world/2009/jan/11/british-asian-forced-marriages> and <http://www.dailymail.co.uk/news/article-2534906/Beaten-abused-raped-brides-lured-wretched-lives-Britain.html>. Last retrieved 15 December 2013.

⁴⁷ Report available from: http://d3n8a8pro7vhmx.cloudfront.net/msp/pages/162/attachments/original/1396724215/MSP_Report_-_Forced_Marriages_and_Conversions_of_Christian_Women_in_Pakistan.pdf?1396724215. Last accessed 27 January 2014.

*flexibly and sensitively with the circumstances of each individual case, employing civil remedies that will offer protection to victims without criminalizing members of their family.”*⁴⁸

This law allows for civil protection for someone who is being or has been forced into marriage and prescribes punishment for any person involved in aiding, abetting or even encouraging such a marriage. Third parties can file an application under the law and obtain protection orders for a victim for which they do not need her/his permission.

Under this law, a marriage can be considered forced not merely on the grounds of threats of physical violence to the victim, but also through threats of physical violence to third parties, or even self-violence [e.g. marriage procured through threat of suicide].

Under other civil remedies and support, persons forced into marriage can avail annulment of marriage⁴⁹, get a new identity, passport and national insurance number, get housing and financing benefits, attend access courses [for those wanting to acquire higher education without the necessary qualification], acquire basic skills and also get assistance in bringing up their children.

A Forced Marriage Unit, working under the Foreign & Commonwealth Office, has been established in London, which works towards prevention and action in this regard, alongside gathering statistical and demographic information of forced marriage complaints received within UK.

Norway

In Norway, the first *Action Plan against Forced Marriage* was launched in 1998, which was amended over the years before being launched again in 2002. Almost a decade later in 2013, the Norwegian Ministries of Labor, Children, Equality & Social Inclusion, Health & Care Services, Justice & Public Security, Education & Research, Culture, and Foreign Affairs jointly made the *Action Plan Against Forced Marriage, Female Genital Mutilation & Severe Restrictions on Young People's Freedom, 2013-2016*⁵⁰.

The latest plan [2013-16], which tasks the Ministry of Children, Equality & Social Exclusion with inter-departmental coordination role, envisages joint efforts by all related authorities to end forced marriages. It links forced marriages with severe restrictions on people's freedom and as a form of “*extreme control*” by family members. It identifies three main thematic areas of intervention: prevention, public assistance [including developing expertise of public service providers and improving coordination], and research on the issue. Within these thematic areas, 22 specific measures have been outlined for different government departments with the aim to prevent and address forced marriage. These include: strengthening counseling services for and information to children and parents through school and colleges [where dropout might occur due to forced marriage]; parental guidance programs at health and family centers, child welfare services and child nurseries; improving and facilitating young people's participation in dialogue on forced marriage [including annual youth conferences and encouraging working for voluntary organization that highlight these issues]; supporting NGOs working on prevention and awareness-raising; training and improving expertise amongst police and other special units; strengthening regional networks on forced marriage; starting a helpline; and disseminating informational material to all related public offices.

⁴⁸ See www.justice.gov.uk/downloads/protecting-the-vulnerable/forced-marriage/forced-marriage.pdf. Last accessed 19 December 2013.

⁴⁹ Provided the marriage has not been consummated [as under Pakistani laws], and the victim can show lack of free and valid consent.

⁵⁰ Available online from: http://www.regjeringen.no/upload/BLD/IMA/tvangsekteskap/Handlingsplan_2013_ENG_web.pdf. Last accessed 27 November 2013.

In addition to these services, the Norwegian government also provides housing [under the auspices of the Child Welfare Service] for young people under the age of 18 who either are at risk of or have been forced into marriage or are exposed to other honour-related violence across the country. Housing includes placement in child welfare institutions, emergency or state family homes (foster homes).

Further, Norway's Penal Code (2003) punishes forced marriage as a felony against personal liberty. Section 222(2) states that “*Any person who by force, deprivation of liberty, improper pressure or any other unlawful conduct or by threats of such conduct forces anyone to enter into a marriage shall be guilty of causing a forced marriage. The penalty for causing a forced marriage is imprisonment for a term not exceeding six years. Any person who aids and abets such an offence shall be liable to the same penalty.*” Section 220 of the Norwegian PPC also imposes a punishment of up to four years' imprisonment for “*any person who enters into marriage with a child under the age of 16, or who aids and abets such a marriage.*”

Scotland

In Scotland, the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act, 2011 [passed 27 April 2011], provides extensive legal protection for persons being forced into marriage or those who have been forced into marriage.

Subsection 4 of the law describes what is meant by “forced marriage” whereas subsection clarifies that the conduct which forces a person into marriage does not have to be directed against that person and includes, for example, circumstances in which the perpetrator threatens to commit suicide if the person does not submit to the marriage⁵¹. Subsection 6 defines “*force*” to include coercion by physical, verbal or *psychological* means, *threatening* conduct, harassment or other means [italics by author]. This could include, for example, coercion by the threat of blackmail and coercion by other means which may involve the use of deception. According to the law, it is also “*force*” to “*knowingly take advantage of a person's incapacity to consent to marriage or to understand the nature of the marriage*”. Additionally, protection order can be acquired or initiated by both civil and criminal courts in order to provide protection to a victim or would-be victim of forced marriage. Under the law, anyone, including local authorities, can apply for a protective order for a possible victim of forced marriage. Urgent interim orders can be made in the event that there is a risk of significant harm to the protected person. The protective orders allow the victim to be taken to a place of safety and also restrain a person from violent or intimidating conduct against the victim or anyone else associated with the victim. A person who breaches a forced marriage protection order may be punished by imprisonment of up to two years, a fine, or both.

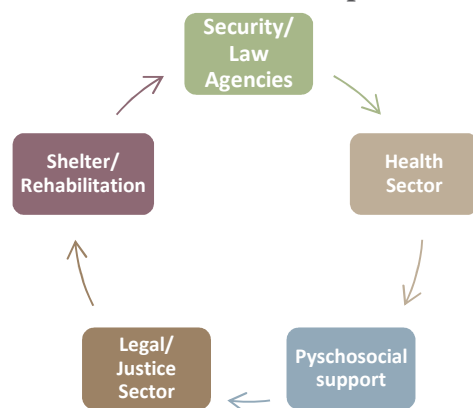
The Scottish government also provides information packages to inform people about the law, its application, the process and penalties [also available online⁵²].

⁵¹ Available online from: <http://www.legislation.gov.uk/asp/2011/15/notes/contents>

⁵² For example, visit: http://www.forhighlandschildren.org/4-icspublication/index_37_2148166059.pdf

CHAPTER 2: OVERVIEW OF PAKISTAN'S CRIMINAL JUSTICE SYSTEMS

Figure 4: Main stakeholders in the dispensation/administration of justice



2.1. POLICE/ LAW ENFORCEMENT

The Criminal Procedure Code [CrPC] lays down rules and power of actors in the criminal justice system for the dispensation of any criminal law in effect in Pakistan. Amendments are made from time to time to clarify and extend the application of law as well as providing case law to support the execution of powers and responsibilities.

The CrPC has various provisions relating to the handling of criminal offences, from registering complaints, investigations, decision-making, providing findings to court and recording evidence, etc. Some major provisions are summarized below:

Table 8: Important police procedures related to filing of cases, investigation and producing evidence in court

Clause of CrPC	Explanation
Section 154	Registration of First Information Report [FIR]- Information of any cognizable offences to the officer in charge of a police station shall be reduced to a written FIR duly signed by the informant or complainant
Section 155	Information related to non-cognizable offences shall be entered in a daily dairy [or <i>Roznamcha</i>] and investigation would be carried out in accordance with the orders of a Magistrate
Section 156	Any officer in charge of a police station may investigate an cognizable offence without order of a Magistrate
Section 160	Police have powers to summon witnesses acquainted with the circumstances surrounding a case
Section 161	Investigation Officers may examine any witness and reduce his statements into writing
Section 162	Statements under Section 161 shall not be signed with the witness giving evidence and can be used in court to challenge the witnesses
Section 164	Recording of statements in front of a magistrate during investigation relating to a case

Section 165	An Investigation Officer may search a premises or have it searched in the presence of two local witnesses during investigations
Section 167	Police may keep a suspect/accused under custody for up till 24 hours and produce him in front of Magistrate thereafter, who may grant police remand no more than 15 days
Section 168	A subordinate police officer shall report investigation findings to officer in-charge of a police station
Section 169	Powers of an Investigation Officer to release a person in custody if there is not sufficient evidence against him/her. A bond can be executed and a surety may or may not be demanded.
Section 172	In furtherance of Section 155, every Investigation Officer shall record his daily proceedings in a daily dairy
Section 173	Once an investigation is complete, and police officer in-charge of a police station shall submit his report to the Magistrate through a Public Prosecutor, including names of parties, nature of offence and other related information/ evidence, names of witnesses and whether the accused is in custody, etc. All these records are collectively called a <i>Challan</i> , which is a charge sheet against the accused. In case investigations have not completed within 14 days of a complaint, the police officer in-charge of a station may submit an interim <i>challan</i> and request more time for investigations.

In 2009, the German Agency for International Cooperation [GIZ] aided the National Police Bureau in developing the first National Operating Procedures [SoPs] for Police for dealing with women and investigating crimes of violence against women in Pakistan. Alongside the SoPs, a Gender Strategy of Police 2012-16 was launched to “cultivate gender sensitive thinking and practice within the police processes to foster inclusive participation and access to gender-just policing” [Deutsche Gesellschaft fuer Internationale Zusammenarbeit [GIZ], 2011] . A gender audit of police organizations in Pakistan was undertaken prior to the strategic plan and SoPs, to “access whether and how police organizations have the intentions and capacity to plan and implement policies that ensure fairness at workplace and in the policing services”. The audit reveals “little emphasis on institutionalized approach to gender equality reforms”. This deficiency is attributed to varying political will at different tiers of organizations due lack of awareness and gender sensitivity. The audit talks at length about the status of training programs from police and notes that “lack of orientation on gender sensitive communication, reporting, registering and investigation in the police training leads to less awareness of the police personnel in the needs of victims and insensitivity towards the women survivors of violence” .

2.2. MEDICO-LEGAL SECTION

The medico-legal section comes under the Health Department. After devolution of powers to provinces in 2010, the Federal Health Ministry was devolved and provincial governments are now responsible for the running of provincial government hospitals and their associate departments. Most often, the medico-legal section is found adjacent to the Emergency section, and in some cases, as part of emergency services. Doctors working on medico-legal duty are referred to as medico-legal doctors or MLOs, who are supervised by a district Police Surgeon. The Surgeon is usually assisted by an Additional Police Surgeon, and both report ultimately to the Provincial Health Department.

ML services are usually used in criminal cases to medically substantiate oratory evidence of assault or any other offence alleged by a party. The following cases require examination by a government-appointed MLO at designated government-run hospitals:

- Assault and battery
- Sexual offences
- Firearm injuries
- Drug overdose
- Alcohol intoxication
- Unnatural death [including murder and poisoning]
- Snake bites or other animal bites
- Accidents such as road, industrial, etc.
- Chemical injuries [including acid attacks]
- Burns and scalds
- Attempted suicide
- Custodial death
- Bomb blast and other ballistic injuries and death
- Death of a patient in the operation theatre [OT]
- Poisoning

In most parts of Pakistan, male MLOs physically examine male victims whereas female victims are examined by females, particularly in assault and sexual violence cases. Examinations for other types of injuries and for deceased victims [except rape leading to death] may be conducted by male or female doctors in most parts of the country where this service is available.

MLOs also receive physical evidence from the police who have recovered materials from the scene of crime, the person of the party[ies] involved, or any other place related to the case. MLOs make mention of these materials in their report, before handing it back to the police for forwarding them to Chemical/ Forensic Labs. Depending on the level and quality of physical evidence available that can help connect the accused with the alleged crime, simple chemical examinations or DNA tests can be conducted. MLOs also conduct physical examinations [for both the victim and the accused] and issue a Medico-legal Certificate [MLC] or Report [MLR], which is handed to the police, while another copy is given to the complainant and a third kept for hospital record. Police officers submit the MLR as part of the *challan* in court, which is essentially a charge sheet with supporting proof.

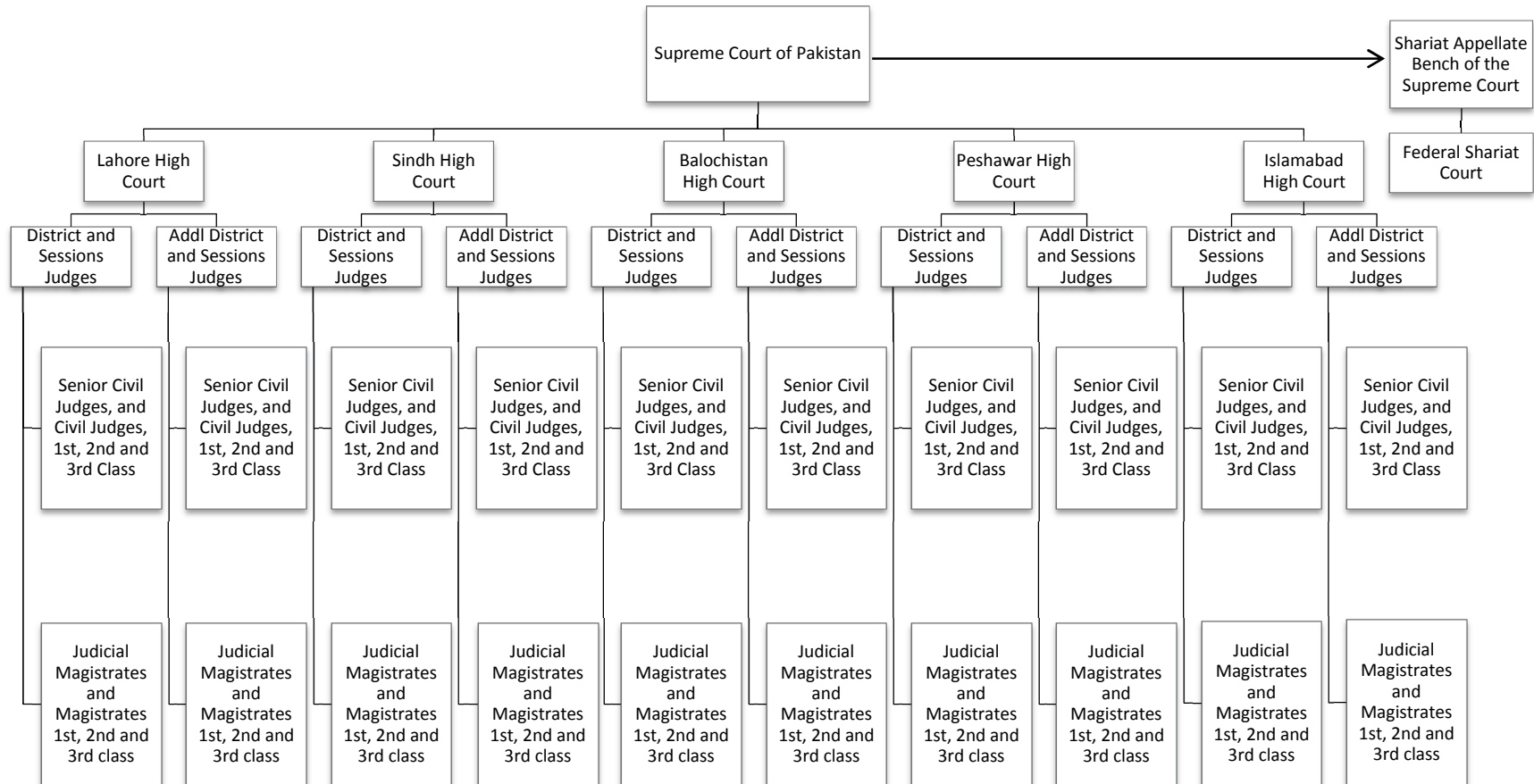
MLOs also testify in court regarding their findings in a case that has gone to trial. Their testimony is accepted by the State [which is also a party in criminal offences next to the accused and the complainant], as expert medical evidence, across Pakistan. Their reports are admitted as a piece of secondary evidence of great value and not every doctor is authorized by the State to conduct MLEs.

In some parts of Pakistan such as KPK and ICT, the doctor testifying in court may not be the same person that has conducted the examination. In these two areas and possibly more amongst those not studied, female doctors or gynecologists conduct examination for victims claiming sexual or domestic violence, whereas a male MLO goes to testify in court, taking with him the report made by the lady doctor.

In terms of qualification, MLOs have to be MBBS doctors and under-go two-weeks' training on medico-legal procedures and forensic evidence collection, as per law.

2.3. COURTS & PUBLIC PROSECUTORS

Figure 5: Basic structure of Pakistani court system



The jurisdiction of a Magistrate extends throughout a District unless restricted by order, in accordance with CrPC Section 12[3].

Prosecution Services

A Public Prosecutor is defined under the CrPC as, "... any person appointed under section 492, and includes any person acting under the directions of a Public Prosecutor and any person conducting a prosecution on behalf of the State in any High Court in the exercise of its original criminal jurisdiction". Prosecutorial services are generally governed by Sections 492 to 495 of the Code of Criminal Procedure [CrPC], 1860, with necessary amendments made from time to time. In criminal jurisdiction, the prosecution service in Sindh is also regulated by the Sindh Law Officers [Conditions of Service] Rules, 1940 and the Rules for the Conduct of the Legal Affairs of the Government. A similar law which governs the working of the prosecution service in Punjab is the Punjab Criminal Prosecution Service [Conditions of Service] Service Rules, 2007, on 27th July, 2007.

"[1] The Provincial Government may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors.

[2] The District Magistrate, or subject to the control of the District Magistrate, the Sub-Divisional Magistrate, may, in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below such rank as the Provincial Government may prescribe in his behalf to be Public Prosecutor for the purposes of any case."

- CrPC Section 492- Power to appoint Public Prosecutors

"Pleaders privately instructed to be under his direction. The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial or appeal, and if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution and the pleader so instructed shall act therein, under his directions."

- CrPC Section 493- Public Prosecutor may plead in all Courts in cases under his charge

"Any Public Prosecutor may, with the consent of the Court, before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried, and upon such withdrawal:

[a] if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

[b] if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences."

- CrPC Section 494- Effect of withdrawal from prosecution

“[1] Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police below the rank to be prescribed by the Provincial Government in this behalf but no person other than the Advocate-General, Standing Counsel, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the Provincial Government in this behalf, shall be entitled to do so without such permission.

[2] Any such officer shall have the like power of withdrawing from the prosecution as is provided by section 494 and the provisions of that section shall apply to any withdrawal by such officer.

[3] Any person conducting the prosecution may do so personally or by a pleader.

[4] An officer of police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted.”

- CrPC Section 495- Permission to conduct prosecution

Historically, the prosecution department used to fall under the Home department, and was regulated by the police. In 1985, the prosecution agency was transferred from the administrative control of the police department and placed under the law department whereby prosecutors and deputy public prosecutors became district attorneys and deputy district attorneys on the recommendation of the Sindh Civil Service Commission, and were also inducted into the Provincial Civil Service. The Sindh Civil Servants Act 1973 promulgated some 12 years before, governed prosecutors’ terms and conditions and the rules framed there under.

However, in 1994, the prosecution services vide another notification were transferred back to the administrative control of the police. With police reforms were introduced by General Musharraf, a notification by the Government, however, transferred prosecution services back under the administrative control of the provincial law departments in 2001. In 2006, exercising powers under Section 492 of the CrPC, the provincial government placed the services of all district attorneys and other law officers, such as public prosecutors and deputy public prosecutors, to work as prosecutors in accordance with the Sindh Criminal Prosecution Service [Constitution, Functions and Powers] Ordinance 2006. The Rules governing the Appointment and Conditions of Service of the Prosecutors were also notified in 2006. This ordinance has been re-promulgated and kept on the statute book.

Presently, district attorney’s offices are functioning as oversight bodies, tasked with supervising police and other divisions’ investigations into criminal cases in order to ensure the independent prosecution of cases where justice was suspect, the speedy disposal of cases that had been pending for many years and the dispensation of independent and efficient service for the prosecution of all criminal cases falling under their jurisdiction. This oversight system has also led to significant delays which are exacerbated by the National Judicial Policy which mandates the submission of police report along with other evidences within 14 days of the filing of charges with the police.

2.4. ROLE OF FEDERAL SHARIAT COURT

Federal Shariat Court [FSC] was created in 1980⁵³ with jurisdiction to determine, suo moto or on petition by a citizen or the Federal or a provincial Government, as to whether or not a certain provision of law is repugnant to the injunctions of Islam⁵⁴.

FSC also serves as an appellant court where cases may be forwarded for confirmation or rejection of judgments passed by Sessions or High courts.

FSC in the past has passed some very illuminating judgments concerning forced marriages, rape and other family matters brought before it. Some of these have been discussed in sections ahead.

2.5. ROLE OF THE COUNCIL OF ISLAMIC IDEOLOGY

The Council of Islamic Ideology is a constitutional body that advises the legislature whether or not a certain law is repugnant to Islam, namely to the Qur'an and *Sunnah*. It was established as Advisory Council of Islamic Ideology on August 1, 1962 under Article 199 of the Constitution of the Pakistan [1962], which provided for the constitution of the Council (Articles 199 - 203), its functions (Article 204), rules of procedure (Article 205), and the establishment of Islamic Research Institute (Article 207).

The Advisory Council of Islamic Ideology was re-named as Council of Islamic Ideology in Article 228 CoP [1973] with provisions for its composition (Article 228), procedure for reference to the Council (Article 229), its functions (Article 230), and rules of procedure (Article 231).

(1) The functions of the Islamic Council shall be-

[a] to make recommendations to *Majlis-e-Shoora* [Parliament] and the Provincial Assemblies as to the ways and means of enabling and encouraging the Muslims of Pakistan to order their lives individually and collectively in all respects in accordance with the principles and concepts of Islam as enunciated in the Holy Quran and *Sunnah*;

[b] to advise a House, a Provincial Assembly the President or a Governor on any question referred to the Council as to whether a proposed law is or is not repugnant to the Injunctions of Islam;

[c] to make recommendations as to the measures for bringing existing laws into conformity with the Injunctions of Islam and the stages by which such measures should be brought into effect; and

[d] to compile in a suitable form, for the guidance of [Parliament]] and the Provincial Assemblies, such injunctions of Islam as can be given legislative effect.

(2) When, under Articles 229, a question is referred by a House, a Provincial Assembly, the President or a Governor to the Islamic Council, the Council shall, within fifteen days thereof, inform the House, the Assembly, the President or a Governor, as the case may be, of the period within which the Council expects to be able to furnish that advice.

(3) Where a House, a Provincial Assembly, the President or the Governor, as the case may be, considers that, in the public interest, the making of the proposed law in relation to which the question arose should not be postponed until the advice of the Islamic Council is furnished, the law may be made before the advice is furnished;

⁵³ Article 203-C of the Constitution of Pakistan

⁵⁴ Article 203-D of the Constitution of Pakistan

Provided that, where a law is referred for advice to the Islamic Council and the Council advises that the law is repugnant to the Injunctions of Islam, the house or, as the case may be, the Provincial Assembly, the President or the Governor shall reconsider the law so made.

(4) The Islamic Council shall submit its final report within seven years of its appointment, and shall submit an annual interim report. The report, whether interim or final, shall be laid for discussion before both Houses and each provincial Assembly within six months of its receipt, and Parliament and the Assembly, after considering the report, shall enact laws in respect thereof within a period of two years of the final report.

- Constitution of Pakistan Article 230- Functions of the Islamic Council

The following Government departments have been founded on the recommendation of CII in the past:

- ⊖ Ministry of Religious Affairs and Minorities Affairs
- ⊖ Law Commission
- ⊖ Judicial service/Shariah Academy
- ⊖ Shariah Benches and Federal Shariat Court
- ⊖ Promotion of Arabic Language

Historically, the CII has maintained an anti-women stance in most of its recommendations concerning VAW laws. For instance, it has decreed in its past meetings that DNA examination for victims or rape cannot only be treated as secondary evidence by court, where DNA can only serve to establish paternity of a child and not a charge of rape. More recently, and more relevant to this study, the CII has also declared marriage of girls aged less than 16 to be permissible under Islam and that a man does not need his wife's permission to take on a second wife while still married to the first. It had declared that laws which restrict marriage after puberty till age 16 are un-Islamic, along with the Muslim marriages laws in Pakistan that require explicit permission of wives should the husband try to marry again in order to discourage polygamy.

2.6. SECONDARY DATA FROM DISTRICTS

The table below depicts secondary data regarding systems and institutions involved in responding to GBV in selected district. ‘Nil’ signifies absence of systems/institutions, ‘non information’ signifies data which could not be acquired by enumerators from their respective districts and ‘no data available’ denotes refusal of authorities to share information.

Table 9: Secondary data regarding presence of institutions and mechanisms responding to GBV in selected districts

Indicator	Karachi	Hyderabad	Peshawar	ICT	Swat	Mardan
Total number of cases registered under the APWA, 2011, in district over last year	No complaint against Marriage to Quran, Inheritance deprivation and Forced Marriage to register the criminal case under section 498-A, 498-B, or 498-C PPC has been received at any Police Station of Karachi Range	No case registered	No such cases registered under the Act, 2011.If the matter as mentioned above comes to the court, it is registered under family law.	No case registered	No information	In the year 2013, almost 130 – 150 case reported to police in District Mardan; 70% percent cases were withdrawn and later settled by the local <i>jirga</i>
Total number of cases being challenged, ending in conviction and acquittal, and out-of-court settlements over last year	No data available	No data available	No data available	No data available	No data available	No exact figure could be provided, neither by the court nor by the Public Prosecutor
Total number of women legal practitioner in the courts of selected districts, including public prosecutors	There are 2,050 female legal practitioners in Karachi, of which around 40 are female prosecutors	There are 95 registered women legal practitioner, of which 20-25 are practicing. There are 5 posted female prosecutors, whereas 4 female judges are posted in civil and family courts only	No information	1 female public prosecutor posted	There are reportedly 5 female public prosecutors posted across KPK. One female prosecutor is posted in Swabi and does not practice in Swat on a regular basis. She may travel for a few cases	12 female public prosecutors posted in the district

Indicator	Karachi			Hyderabad	Peshawar	ICT	Swat	Mardan
Total number of women police officers and women’s police stations in the selected districts-mention special task forces separately with corresponding staff number at present	Three Women Police Stations functioning in Karachi (one in each Zone).			One women police station functioning in Hyderabad. Total 40 female staff across all police stations in the district. Approximately 4 female police officials are actually present in women police station	531 Women Police Officers in KPK & 118 in district Peshawar	One women’s police station in ICT, with one lady constable posted at every men’s station at the reception desk	No women’s police station exists and lay officers are not part of investigation teams in VAW cases	No police station in District Mardan, thus no woman police officers are available; yet there are female sepoy in Katlang police station and Mardan police station.
	Designation		Total		2 Women Police stations in KPK- One in district Abbottabad & one in district Peshawar			
	DSP		3					
	Lady Inspector		6					
	Lady Sub-Inspector		25					
	Lady ASI		17					
	Lady Head Constable		23					
	Lady Constables		194					
Total number of women medico-legal officers in the selected districts and number of points (hospitals where services are available) at present	Grade BPS 18	Sanctioned 4	Working 4	One female MLO- other female positions are vacant [4]. Centers provide ML facilities in Hyderabad, including the following: 1. Civil hospital Hyderabad 2. Medico legal center, Jamshoro 3. Shah Bhattai Hospital center 4. Piratabad, center	3 Public hospitals in district Peshawar offer medico-legal services: 1. Lady Reading Hospital (LRH), 2. Khyber Teaching Hospital (KTH) & 3. Hayatabad Medical Complex (HMC)]. 2 Women doctors present in KTH. Doctors are not present at LRH but are on-call. Request is made to Para-medical staff for medico legal examinations for women in HMC.	There are two MMLO posted at PIMS and Poly Clinic hospitals, whereas there is no position for a WMLO in Swat	No Female MLOs designated At any hospital in Swat	In the entire division of Mardan, Swabi and Takht Bai, there is only 1 male MLO [MMLO]
	BPS 17	5	1					
	ML services for women are available at 3 <i>major</i> government hospital in Karachi: Abbasi Shaeed, Civil Hospital Karachi and Jinnah Post-graduate Medical Center							

Indicator	Karachi	Hyderabad	Peshawar	ICT	Swat	Mardan
			No proper medico legal officer in hospitals. Casualty Medical Officers (CMOs) usually examine medico legal cases			
Total number of functional and on-record shelter homes/ Dar-ul-amans / crisis centers in the selected districts at present	7 shelters are functioning in Karachi district: 1. Gosha-e-Afiat 2. Zehra Home 3. Bint -e- Fatima Old Home Trust 4. Edhi Home 5. Panah Shelter Home Crisis Centre	Only one Dar-ul-Aman in Hyderabad, of which very few people know	4 shelters for women exist in Peshawar: 1. Darul Atfal for Children - run by All Pakistan Women's Association [APWA] 2. Halfway house for women/girls – run by Social Welfare Department 3. Women Crisis Centre for abandoned women/girls – run by the Government 4. Mera Ghar (shelter) for GBV survivors (Women & girls) – run by Noor Education Trust, an NGO	One shelter home in Islamabad		There is only one Dar-ul -Aman in District Mardan, run by the Government.

Indicator	Karachi	Hyderabad	Peshawar	ICT	Swat	Mardan
Total number of helplines in the selected districts for women victims of abuse/ violence - how many offer 24/7 support at present	Four Women's Complaint Cells exist in Karachi 1. Madadgaar [NGO] helpline 2. Sindh human Rights Commission [not functional as yet] 3. Police helpline Madadgar-15 (open 24 hours, not particularly for women) 4. Roshni [NGO] Helpline for missing children and GBV survivors	No Information	2 Helplines functional in Peshawar: 1. 1121 – Social Welfare Helpline 2. 1098 – Madadgar National Helpline	No information	No information	Nil
Total number of hospitals offering free-of-charge counseling services through trained doctors in the selected districts at present- on average, how many cases do they see in a month that fall under the description of offences defined in the AWP, A,	Every government hospital offers free treatment to women victims but only a handful offer free-of-charge counseling services, such as Karwan-e-Hayat and Pakistan Association for Mental health	Every government hospital offers free treatment to women victims but no one offering free-of-charge counseling services	Every government hospital offers free treatment to women victims but no one offering free-of-charge counseling services	Every government hospital offers free treatment to women victims but no one offering free-of-charge counseling services	None of the hospitals in district Swat have such facilities	None of the hospitals in district Mardan have such facilities

Indicator	Karachi	Hyderabad	Peshawar	ICT	Swat	Mardan
2011- how many offer on-going support?						
Total number of Gender Crime Cells in the selected districts at present- average number of cases they see in a month that fall under the description of offences defined in the AWPA, 2011, at present- what is the resolution ratio?	One GCC in Karachi- no information regarding number of cases received or resolution ration.	Nil	Nil	One GCC in ICT - no information regarding number of cases received or resolution ratio.	Nil	Nil

CHAPTER 3: LEGAL RESPONSE TO CUSTOMARY PRACTICES IN PAKISTAN

3.1. CONTENTS AND BRIEF HISTORY OF AWP ACT, 2011

The AWP Act or Criminal Law [Third Amendment] Act, 2011, is the collective name for one major amendment and three new insertions [or a chapter consisting insertions] in the Pakistan Penal Code. The text of the main provisions of law is provided below:

Amendment:

310A. Punishment for giving a female in marriage or otherwise in badla-e-sulh, wanni or swara- Whoever gives a female in marriage or otherwise compels her to enter into marriage, as badal-e-sulh, wanni, or swara or any other custom or practice under any name, in consideration of settling a civil dispute or a criminal liability shall be punished with imprisonment of either description for a term which may extend to seven years but shall not be less than three years and shall also be liable to fine of five hundred thousand rupees.

Insertions:

498A. Prohibition of depriving woman from inheriting property- Whoever deceitfully or by illegal means deprives any woman from inheriting any movable or immovable property at the time of opening of succession shall be punished with imprisonment of either description for a term, which may extend to ten years but not be less than five years or with a fine of one million rupees or both.

498B. Prohibition of forced marriages- Whoever coerces or in any manner whatsoever compels a woman to enter into marriage shall be punished with imprisonment of either description for a term, may extend to seven years or for a term which shall not be less than three years and shall also be liable to fine of five hundred thousand rupees.

498C. Prohibition of marriage with the Holy Quran- Whoever compels or arranges or facilitates the marriage of a woman with the Holy Quran shall be punished with imprisonment of either description for a term may extend to seven years which shall not be less than three years and shall also be liable to fine of five hundred thousand rupees.

Explanation. - Oath by a woman on Holy Quran to remain un-married for the rest of her life or, not to claim her share of inheritance shall be deemed marriage with the Holy Quran.

Insertion of new section 402D, Act V of 1898.- In the Code of Criminal Procedure [Act V of 1898], hereinafter referred to as the said Code, after section 402C, after section 402C, the following new section shall be inserted, namely:-

402D. Provincial Government not to interfere in sentences of rape- notwithstanding anything contained in section 401, section 402 or section 402B the Provincial Government shall not suspend, remit or commute any sentence passed under section 376 of the Pakistan Penal Code [Act XLV of 1860].

All these offences have been declared non-bailable and non-compoundable [where a matter cannot be settled, especially a debt, by a money payment in lieu of other liability to adjust by agreement; to agree for consideration not to prosecute⁵⁵]. The police need a warrant to make arrest. Sections 310-A, 498-A, 498-B and 498-C are relevant to the discussion in this report, alongside some related sections of the PPC.

The movers and process:

The AWP Act was a culmination of a Supreme Court (SC) verdict of April 24, 2006 in which the Government was directed by the SC to amend Section 310 of the PPC or make an insertion into the Family Act, 1964 to effectively dissolve all marriages conducted under *wanni*. In the same verdict, the SC directed the Registrars of all High Courts and the Presidents and General Secretaries of district level and Tehsil Bar Associations to establish legal aid committees for the purpose of assisting victims of Wanni or Swara.

The Act itself was authored by Pakistan Muslim League-Quaid MNA, Dr. Donya Aziz. After stalling at various National Assembly committees and then the Senate for nearly three years [since 2008], the Bill was finally passed on November 15, 2011. It suffered two false starts between 2008 and 2011 when it was rejected in the National Assembly for legal weaknesses. This gave legislators a chance to incorporate amendments into the final draft before presenting it for a third time. The bill was passed by the National Assembly unanimously before being approved by the Senate. The bill has, however, also received criticism in the Assembly for providing women the right to inherit movable property.

Dr. Donya Aziz, the author and mover of the Bill could not be contacted for her comments in this study. However, individuals and organizations working on the issues of forced marriages, child marriages and women's inheritance deprivation were approached for their comments on the process and their view of the law. It was curious to find that important players in the social development sector were mostly excluded from the process of consultation around the Bill. Samar Minallah⁵⁶, a passionate advocate against the practice of *swara* and an independent documentary maker and researcher shared that she was not informed of any work on the Bill after she suggested the punishments be increased as a deterrent to would-be offenders, in 2008. Aurat Foundation or other organizations like it also reported being excluded from the process.

3.2. OTHER LAWS CONCERNING INHERITANCE

Matters around inheritance are tried under a set of Muslim Family Laws [as part of civil jurisprudence and not the criminal code] in Pakistan. These include:

- ⊕ Muslim Family Laws Ordinance, 1961
- ⊕ Muslim Personal Law [Shariat] Application Act, 1937
- ⊕ West Pakistan Muslim Personal Law Application Act of 1962
- ⊕ Succession Act, 1925

⁵⁵ Black's Law Dictionary, 8th edition.

⁵⁶ Interview with Samar Minallah on 21 November 2013

Pakistani courts accept that devolution occurs automatically upon a person's death. A Supreme Court ruling in 1990 has established that, "*A Muslim's estate vests immediately on his death in his or her heirs. Brother, father, husband, son or vice versa cannot intervene as intermediaries.*"

MOVABLE PROPERTY

Movable Property is generally understood to denote personal property, other than land. It could constitute livestock, goods, furnishings, bridal gifts [such as jewelry, electronic devices, 'cash', apparels, etc.].

The Khyber Pakhtunkhwa Enforcement of Women Ownership Rights Act, 2012, advances women's right to movable property. This Law states, "Ownership" means the right of ownership in the property both movable and immovable which is devolved upon and vested in women by way of inheritance, gift, purchase, *mehr* or acquired by her by way of any other legal and Shari means...".

There are presently no other provincial laws [criminal] that relate to women's exclusion from inheritance.

IMMOVABLE PROPERTY

This mainly includes land, and anything permanently affixed to the land, such as buildings, fences, and those things attached to the buildings, such as light fixtures, plumbing and heating fixtures. These would be personal property if not attached.

The Khyber Pakhtunkhwa Enforcement of Women Ownership Rights Act, 2012, advances women's right to movable property. This Law states, "Ownership" means the right of ownership in the property both movable and immovable which is devolved upon and vested in women by way of inheritance, gift, purchase, *mehr* or acquired by her by way of any other legal and Shari means...".

There are presently no other provincial laws [criminal] that relate to women's exclusion from inheritance except the law in KPK.

INHERITANCE, DOWER & MEHR

It is not uncommon practice to exclude a woman from inheritance on the pretext that her family sold or mortgaged part of their property to arrange for her dower. National laws relating to dowry explain, however, that dower and inheritance are completely different things. For instance, dower can be arranged before the estate owner's death. Dower is also given in connection with marriage and not otherwise.

The Dowry and Bridal Gifts [Restriction] Act, 1976, makes this distinction clear:

"Bridal gift means any property given as a gift before, at or after the marriage, either directly, by the bridegroom or his parents to the bride in connection with the marriage but does not include Mehr."

- Dowry and Bridal Gifts [Restriction] Act, 1976 Definition: 2A

The law further explains that dower and inheritance are two distinct rights:

“Dowry means any property given before, at or after the marriage either directly or indirectly, to the bride by her parents in connection with the marriage but it does not include property which the bride may inherit under the laws of inheritance and succession applicable to her.”

- *Dowry and Bridal Gifts [Restriction] Act, 1976 Definition: 2B*

CONSENT TO AND DISSOLUTION OF MARRIAGE UNDER PAKISTANI LAW

Although by law, a woman does not require a *wali*'s permission to get married, there is no explicit provision in the Muslim Family Laws Ordinance regarding a lack of consent for marriage. There is ample case law to address this ambiguity, where judgments have explicitly stated that women who can act in their own legal capacity [adult, sane, mature], can contract marriage without seeking permission from anyone. If a marriage never took place, a woman can approach the court to have a declaration [known as jactitation of marriage]. In the event that she wishes to dissolve the marriage but protect the legal paternity of her children, she can apply for dissolution under the Dissolution of Muslim Marriages Act, 1939 [DMMA].

Under the DMMA, however, consummation is taken to imply consent unless the woman can prove clearly that she was coerced, kidnapped, or confined, or that the *nikahnama* was forged. In the case of a forced marriage where she is unable to prove such force, the woman would have to base the suit on other grounds for dissolution, such as non-maintenance or cruelty. (Women Living Under Muslim Laws, p. 88).

A woman can seek dissolution of marriage over grounds falling under any of the following conditions:

- ⊖ Desertion by the husband for more than four years;
- ⊖ Husband's failure to pay maintenance for more than two continuous years;
- ⊖ Husband's taking of an additional wife without permission of an Arbitration Council;
- ⊖ Husband having been sentenced to imprisonment for seven years or more;
- ⊖ Husband's failure to perform marital obligations for a period of three years, without reasonable cause;
- ⊖ Husband's impotence at time of marriage [and his continuing to be so];
- ⊖ Husband's insanity for a period of two years or his suffering from leprosy or a virulent venereal disease; and/or
- ⊖ Husband's cruel treatment of wife, meaning habitual assault or cruel conduct [even if does not amount to physical ill treatment], his association with women of ill repute, or his forcing his wife to lead an immoral life; his disposal of her property or prevention of her exercising her legal rights over it; his obstruction of her in the observance of her religious profession or practice; and/or if he has more than one wife, his failure to treat a wife equitably, in accordance with the injunctions of the Quran.

The last point above is covered in some parts by the Federal Domestic Violence Bill, which has been pending passage in the national assembly since 2009, after various rejections and amendments.

Case law also permits a woman to apply for dissolution under the DMMA, 1939 in the event that she is forced into marriage, meaning that she retains all rights arising out of the marriage.⁵⁷

3.3. CRITIQUE OF PREVENTION OF ANTI-WOMEN PRACTICES ACT, 2011

Substantively, the Anti-women Practices Act is a weak law as it does not explain what it meant by many of the terms contained in its text [see highlighted words/expression in the text of the Act above]. For instance, the law does not define what is meant by ‘deceitful’ or ‘illegal’ in Section 498-A, when it comes to explaining the context in which certain actions [involving inheritance deprivation] would become a matter of deceit or crime. It does not explain when active persuasion and emotional blackmail may enter the ambit of deceit or become “illegal”. Further, it does not apply to situations where women are expected to simply handover their share of property in favor of their male kin, and refusal is not an option socially. There may be no deceit involved here and in the event that there is no violence of any sort, no laws would have been broken either.

Bare reading of section 310-A of this law reveals that while there may be punishment for those who “give” a woman in marriage, there’s no crime committed by other who demand or “take” in marriage. It prescribes punishment for parents and other relatives of the woman, who are involved in giving her in marriage, but not the groom, the in-laws of the bride-to-be and other family member, the solemnizer of the marriage [or *nikahkhwa*], or other witnesses present at the ceremony.

The same section [310-A] also contextualizes compensation marriages within civil and criminal disputes and does not cover other settings where there may be no civil or criminal liability. They can happen in a variety of way, e.g., if a girl refuses to marry a suitor and parents, etc. compel another child to marry him instead as compensation for the first daughter’s refusal [such a case was included in this study]. On such occasions, there may be no civil or criminal liability under which marriages are contracted as “compensation”. Additionally, the section does not clarify what is meant by “compelling” someone to marry and under what conditions one may feel a compulsion to act in a certain way.

Further, section 498-B, which addresses ‘forced marriages’, again does not define what is meant by “coercion” and “compelling” or address its acute and more subtle forms, for instance, lack of other options to choose from. Further, it does not address child marriage where that person would not be old enough to give consent to marriage in the first place. Although it might be expected that the Child Marriage Restraint Act, 1929, may cover provide legal protection in this regard, in reality very few police officers either know of CMRA or that law is yet to be implemented with full force.

In addition to this, the law does not declare forced marriages as null and void, meaning that a woman would have to seek a *khula* or hope that her husband divorces her in order to exit the so-called marriage⁵⁸. Moreover, no definition for “custom” is stated in the law, where some of these crimes may vary in manifestation between regions and some may be done not as custom, but as a solution to a specific local problem. In that respect, the law does not address the practice of *Pait Likhi* [with *Pait* denoting ‘womb’ and *Likhi* denoting ‘betrothment’] agreed before a child is born or where minors may be “promised” into marriage after acquiring adulthood.

⁵⁷ Ibid.

⁵⁸ Many women in Pakistan are not aware of their right to give divorce or are socially not allowed to avail this right at the time of marriage towards its inclusion in the *nikahnama*.

Structurally, a formal application has to be lodged with the relevant police station that a forced marriage is about to take place or has already taken place. The same rules apply in terms of inheritance deprivation, as both are covered under the same law. Police officers will have to acquire a search and arrest warrant from the District Magistrate in order to take legal action. Should there be no application or FIR, the police or other competent authorities cannot come into action. In effect then, forced marriages and inheritance deprivation remain non-cognizable offences, as defined under Section 4[n] of the CrPC: “*Non-cognizable offence means a case in which a police officer, may not arrest without warrant*”.

Culturally, the law demands that for the practice of forced marriage and inheritance to stop, with the law acting as a deterrent, a woman [or someone on her behalf] would have to bring charges against her parents or others involved in “giving” her in marriage. Realistically speaking, such a law cannot be implemented in Pakistan’s social context, where social, moral and religious mores keep women under the tight control of their guardians and male siblings/relatives. Indeed, thousands of women are killed by their male relatives in Pakistan every year for merely expressing their desire to marry someone of their choice whereas other women in the family often reinforce expectations and roles from birth, the cornerstone of typical patriarchal societies.

Overall, it would seem that the law ensures that the woman/girl forced into marriage or deprived of her share in inheritance is the ultimate loser. She cannot exit the marriage unless she goes through the courts and files a [*khula* or divorce] case, she gets no special support in case she has had children in that marriage, and she has already implicated [and possibly alienated] her parents and other family members by pressing charges against them under this Act. Here it would be pertinent to mention that with the complete absence of support structures and systems for women, those who lose the support of their parents or husbands, have nowhere to go. According to Qamar Naseem of Blue Veins⁵⁹: “... *we may encourage women to seek separation from abusive husbands, but in forced marriage cases she cannot go back to her parents and she certainly cannot live with her in-laws. So why would women press charges?*”

⁵⁹ Interviewed on 19 November 2013.

CHAPTER 4: STRUCTURAL AND CULTURAL GAPS IN AWPA IMPLEMENTATION

4.1. POLICE

Police authorities and prosecutors are critical stakeholders in ensuring that collection of important evidence implicating a perpetrators and its adequate and fair representation in court. According to the UN Handbook for Legislation on Violence against Women, it is critical to ensure that those mandated to implement legislation regarding violence against women, including police, prosecutors and judges, have an in-depth understanding of such legislation and are able to implement it in an appropriate and gender-sensitive manner. When public officials involved in the implementation of the law are not comprehensively trained regarding its content, there is a risk that the law will not be implemented effectively or uniformly.

Article 47 of the Spanish Organic Act on Integrated Protection Measures against Gender Violence [2004] states: “The Government, the General Council of the Judiciary and the Autonomous Communities, within the scope of their respective powers, shall ensure that training courses for judges and magistrates, prosecutors, court clerks, national law enforcement and security agents and coroners include specific training on sexual equality, non-discrimination for reasons of sex, and issues of gender violence. Such training shall in all cases focus on the vulnerability of the victims”.

Section 42 of the Philippine Anti-Violence against Women and their Children Act [2004] requires all agencies responding to violence against women and their children to undergo education and training on [a] the nature and causes of violence against women and their children; [b] legal rights and remedies of complainants/survivors; [c] services available; [d] legal duties of police officers to make arrests and offer protection and assistance; and [e] techniques for handling incidents of violence against women and their children.

The UK Forced Marriage Unit also provides comprehensive guidelines for government officers in dealing with forced marriage cases.

“All practitioners working with victims of forced marriage and honour-based violence need to be aware of the “one chance” rule. That is, they may only have one chance to speak to a potential victim and thus they may only have one chance to save a life. This means that all practitioners working within statutory agencies need to be aware of their responsibilities and obligations when they come across forced marriage cases. If the victim is allowed to walk out of the door without support being offered, that one chance might be wasted.”

*-Multi-agency practice guidelines: Handling cases of Forced Marriage
Forced Marriage Unit⁶⁰, Departments of Foreign & Commonwealth
Office and Home Office Unit, UK*

⁶⁰ Created under the UK Forced Marriage [Civil Protection] Act, 2007

POLICE RESPONSE TO GVB

A. General information about community served and VAW cases dealt

For this study, we spoke to 56 male and 15 female police officers through detailed focus group discussions. Although we would have liked to include more female respondents, there are very few women's police stations across Pakistan for which reasons, participation was negligible from some districts. Even then, enumerators had to rely on whom police authorities notified for participation. Around 5 female police officers interviewed were working in the Traffic section of the police and had negligible experience of handling VAW cases.

Amongst the districts included in this study, district Karachi, Islamabad, Hyderabad and Peshawar have women police stations dealing with cases where both the accused and victim[s] are women, whereas district Mardan and Swat do not have a separate police station for women. Karachi district has the largest number of police stations [3] and complaint cells for women [4], even though only one of the stations is fully functional. According to GIZ Pakistan, women officers across Sindh constitute about 0.82% of the entire police force for the province, whereas in KPK, women police officers' ratio was 0.62%. In Islamabad, this ratio was 1.36% compared to male officers.

In Islamabad, according to a policy⁶¹ passed between 2011 and 2012, one female police officer is posted at the reception desk in all male police stations who guide women that approach with a complaint. They are, however, not part of the compliant registration or investigation team and merely serving as a female face to women victims. In Mardan and Swat, women victims are forced to deal with male police officers as no separate women police exists. During discussion, male officers from these districts shared that in complicated cases or where the accused is a woman, they request a female Constable or Head Constable's presence during raids. The women's police station in Peshawar is situated near the Police Head Quarters and because of high security detailing, women do not have easy access to its premises. Police officers reported that because this station is also situated in a congested part of town, it is difficult for women to avoid people seeing them going in and out. This keeps a substantial number of women from coming to report.

Table 10: Number of women police officers posted in Karachi⁶²

S. No.	Designation	Total No. of Officers
1	Deputy Superintendent of Police	03
2	Lady Inspector	06
3	Lady Sub-Inspector	25
4	Lady Assistant Sub-Inspector	17
5	Lady Head Constable	23
6	Lady Constables	194
Total		268

B. Knowledge, understanding and experience of handling VAW cases

i. Causes of GBV against women: The general perception concerning violence against women amongst all district police officers was that it happens in poor and illiterate families. All police officers interviewed reported domestic violence to be the most frequently reported form of VAW which was

⁶¹ More information regarding this policy could not be gathered.

⁶² Source: Aurat Foundation Karachi Office

mostly perpetuated by the women in a household, including the mothers-in-law and the sisters-in-law, whereas sometimes the husband was solely to blame. The husband was seen as a helpless individual, torn between his family and the woman he has wedded.

“Police can only get her justice. Unless there’s a change in one’s society, domestic conditions, such cases will keep coming. A woman marries a man and goes to his house to live. In that house, there’s the mother-in-law, the sisters- in-law and the brothers-in-law. If that woman does not live with them properly, usually a woman [becomes] another woman’s enemy [sic]. You must have seen this. I have seen this in villages also, and I have saved many marriages from being ruined. In most cases the reason for violence in a household is that the man marries and brings a woman, the mother-in-law doesn’t like her, she think she should do as I say, the sisters-in-law complain that the woman does not do their work. How much can that poor woman do alone? The mother-in-law will go and tell the woman’s husband, the husband will try to make his wife understand for a day, two days, and eventually he will strike her. Than the wife will go away to her parents, and when she comes back, the same problem [happens] again. After some time, the case will come to the [police] station.”

- FGD with Police officers in Islamabad

Poverty and inflation were reported as the biggest cause of domestic violence as men could not provide adequately for their families.

“Women make demands when men come back home tired, such as outings, and if he cannot come up to her desired standards, fighting ensues.”

- FGD with Police officers in Karachi

ii. What constitutes GBV: With respect the cases of violence that fall within the ambit of gender-based violence, police officers noted that abuse by in-laws, not allowing women to live in a separate household after marriage, not allowing women to move freely and take up employment are forms of domestic violence. Police officers from Islamabad were found to have a better understanding of various forms of GBV, which included physical, mental, psychological and economic abuse. However, despite being aware of its manifestations, officers felt that in most cases the women were at fault.

“Violence happens when a women exceeds what is her right. What does a woman want? Food, love and someone to take care of her needs, right? But she thinks she deserves more, which her husband cannot provide and so violence begins.”

- FGD with Police officers in Islamabad

Officers from district Mardan and Swat were able to articulate more forms of VAW such as child marriages, *swara*, forced marriages, honour killing, *watta-satta*, inheritance deprivation and rape. They also understood keeping girls from acquiring education as a form of GBV.

iii. Prevalence of VAW in selected district: Regarding prevalence of VAW reporting at respective stations, Karachi police reported that they registered 15-30 cases of domestic dispute and violence every

month. Most of these cases are reportedly from slum areas within the city and at police stations located adjacent to such localities. Women police stations in Karachi reported that they get many cases of sexual harassment, which constitute a larger part of all crimes reported by women. Complaints are also usually made by women working in offices.

Women officers reported that as soon as women are informed that they might have to go to court, they tend to “reconcile with the abuser”. It is difficult to say what kind of reconciliation takes place between a woman and the man who is harassing her sexually, as officer did not elaborate on this point. Regarding inheritance deprivation cases, officers from Karachi reported that in such cases, women tend to approach the courts directly and do not go through police stations. Reportedly, about 5% of cases reported at women police stations in Karachi are those of inheritance deprivation, according to female officers. No further details could be acquired as they were not aware of how cases are handled [investigated] by the senior officers.

Officers from district Peshawar reported that approximately 100 women approach the police stations with complaint of different forms of violence, on a monthly basis.

Officers from Islamabad were of the opinion that VAW is not highly prevalent in Islamabad because of higher levels of education. Of the cases that do approach are of those dwelling in the peri-urban peripheries of the city, who are poor and illiterate. In urban areas, because more women step out of their homes and work in offices, sexual harassment is more common according to their reading of the situation.

“A lot of women are harassed in Islamabad because they work [have jobs] and domestic workers are also harassed. But *wanni* and murder, does not happen in Islamabad. A few cases of acid throwing happen, but they are very few. Our focus is on rural areas where most of the crime takes place.”

– FGD with Police officers in Islamabad

iv. Legal response to DV: Mediation was reported as the method of choice by Police officers to settle domestic disputes in Islamabad and Karachi, though some officers in Hyderabad, Peshawar also reported settling matters at the station. In most parts, this is being done to save women the shame and hassle of going through the courts, which is expensive and does not necessarily award justice even after many years of trial.

“A woman who has 2-3 children once approached the station complaining that husband’s friends were coming to her house when her husband was away, while her husband used to frequently one of his male friends’ houses when he was away on duty. The woman narrated, that her husband demands that since he has [sexual] relations with his friend’s wife, she should have [sexual] relations with his friend. She told me, “I am a respectable women, I don’t want [to do] this.”

I called in both the men and it was proved that what the woman said was true. So, I took the initiative of settling the matter here. If I took the legal route, I would be sending them through the court, while I would have to make expenditure [on this case], and they would have to arrange for a lawyer. Their lives would have been ruined and they were also very poor. So I sat down with both the husband and his friend and reprimanded them severely. I made them sign that they would not do this again. I told the woman she had my permission to beat up her husband’s friend the next time he comes and then inform me. We can only provide

protection, right? I told her if you break his legs, he will have nowhere to go but to me. I will handle it there onwards. That woman has come to me 2-3 times after that and she says her husband is alright now. I could have written a “*parcha*”⁶³ but that would have been more frustrating for them.

Police officers try to resolve cases, if it can be done amicably, at the station level, which is better....They say, ‘when you want to do something in a village, you have to call the Jirga’ - **this is our Musalihati committee; it is our Jirga.”**

– FGD with Police officers in Islamabad

Officers in Swat and Mardan shared that women usually do not approach police stations for any reason as men of their family consider it dishonourable for their women to publicize matter that should stay within the household. *Pakhtunwali* in KPK was identified as a major hurdle to women seeking legal redress.

v. Nature of GBV cases reported in districts and under-reporting. Police officers in Islamabad district were of the view that prostitution is a huge problem in the city where women take advantage of the Protection of Women Act, 2006, whereby *zina* [adultery or fornication] has become a bailable offence. Police officers said that many women take advantage of this as they know that even if they are caught, they can get bail. In some officers’ opinion, which was supported by others in the group, amendments in rape laws have increased prostitution amongst women in Islamabad.

Table 11 below depicts the nature of cases approaching police stations in selected districts, based on the experience of police officers interviewed, where 1 denotes most reported and 12 represents least reported cases. Figure 6 underneath the table shows this information pictorially:

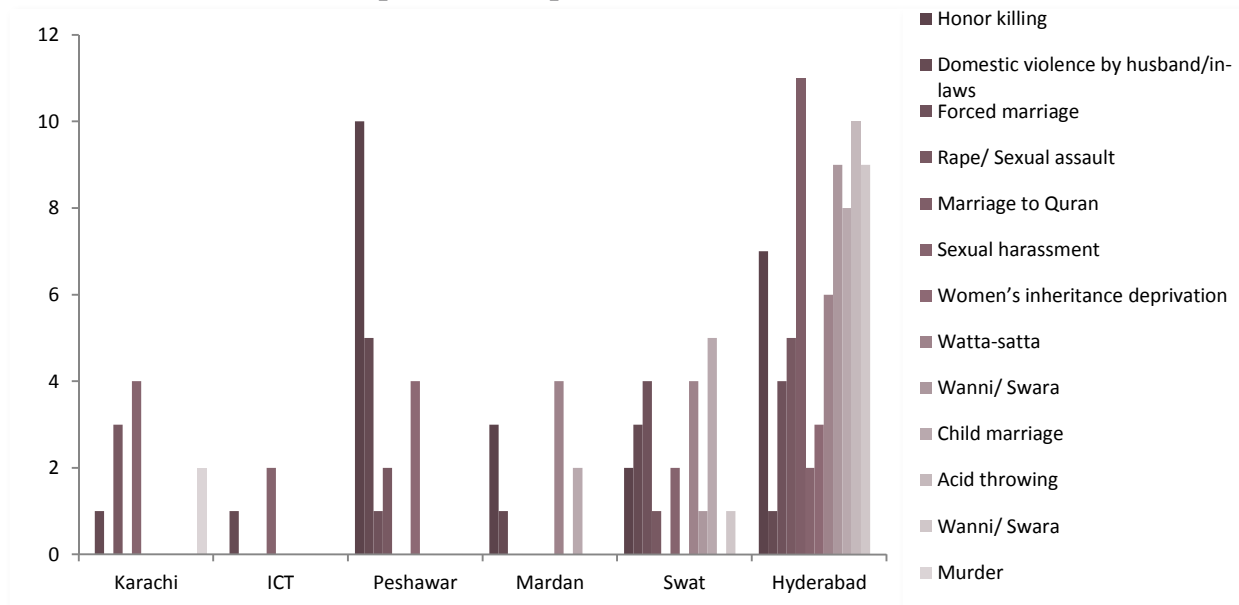
Table 11: Nature of cases approaching police stations in selected districts, based on the experiences of police officers

S. No.	Offence	Karachi	ICT	Peshawar	Mardan	Swat	Hyderabad
a.	Honour killing	-	-	10	3	2	7
b.	Domestic violence by husband/in-laws	1	1	5	1	3	1
c.	Forced marriage	-	-	1	-	4	4
d.	Rape/ Sexual assault	3	-	2	-	1	5
e.	Marriage to Quran	-	-	-	-	-	11
f.	Sexual harassment	4	2	-	-	2	2
g.	Women’s inheritance deprivation	-	-	4	-	-	3
h.	Watta-satta	-	-	-	4	4	6
i.	Wanni/ Swara	-	-	-	-	1, 2 ⁶⁴	9
j.	Child marriage	-	-	-	2	5	8
k.	Acid throwing	-	-	-	-	-	10
l.	Murder	2	-	-	-	-	-

⁶³ Complaint

⁶⁴ In Swat, two FGDs were held with police officers from different police stations and areas. Multiple and recurring figures denote lack of consensus amongst officers on the most and least reported forms of VAW in their respective district.

Figure 6: Nature of cases approaching police stations in selected districts, based on the experiences of police officers interviewed



These estimates by police officers seem removed from reality when one compares them with reported cases in 2012, a year before this study was conducted by Aurat Foundation. According to AF's annual VAW statistical report, the highest number of murders was reported from Karachi in 2012, whereas Peshawar was amongst the top 10 districts for female homicide in the same year. Further, Karachi was also the worst district in terms of VAW reporting within Sindh, with a total of 313 cases reported in 2012. Murders comprised 58% of all forms of VAW reported across Pakistan.

There are however, some similarities to be found. Mardan and Swat districts were more realistic in terms of the nature of offences identified for most frequent occurrence. Domestic violence was amongst one of the most frequently reported form of VAW in both districts in 2012.

When asked about under-reporting, most district police officers had consensus that about 5-10% of cases are reported of incidents actually happening.

Table 12: Estimated ratio of VAW reported to police in each District

District	Estimated ratio of VAW cases reported to police
Karachi	10%
Hyderabad	No answer
Swat	5% - 10%
Mardan	5% - 10%
Peshawar	10%
ICT	5% - 10%

vi. Prioritizing GBV cases over others: When asked about how women's cases are prioritized during conflict situations or in the event of a terrorist attack in the city, most stations reported that they always prioritized women's cases irrespective of the situation. However, upon probing further,

police officers shared that during *haungami halat* [civil disorder, attack, chaos], they have to attend to whichever related case comes or if they are called to duty. According to police officers in Karachi, if they do not attend to whatever is happening in the city, there “could also be murder”. Thus, they will necessarily give less priority to women’s cases in such a situation. This raises serious questions about the quality and expediency of services extended to women given persistent terror attacks and daily killings in cities like Karachi. It also calls to question how seriously offences such domestic violence, rape or sexual harassment are perceived by police officers.

Police officers across selected districts, however, reported that a duty officer is always present at the station to attend to any walk-in cases. Women police officers also reported that a woman is never turned away. The woman may, however, be given an alternate time to visit. When officers were asked how many women actually return, most officers reported that women usually return in about 30% cases.

According to police officers in Islamabad, response depends on the nature of the case:

“If there is an emergency situation in the city, then I am not going to get her hot roti [bread] from the *tandoor*⁶⁵, am I [laughter in group]? We get calls on 15⁶⁶ also, where a woman reports that she is disturbed by something and that the police should come immediately. When the police gets there, she says, “I have no one in my house to get bread, please get some for me”. Now, we are not going to give importance to such cases, right? Now, if a man has a serious problem, we are going to attend to him.”

– FGD with Police officers in Islamabad

Such responses point toward a trivialization of problems faced by women, whether it be violence or not being able to walk about freely in public spaces [whether due to domestic chores, or general restrictions on their movement]. Comparing emergency situations [supposedly only affecting males] with bread-buying problems is telling of the seriousness with which VAW is perceived and treated by the gatekeepers of justice.

Police officers from Mardan reported that equal priority is given to all cases, whereas officers stationed in Swat said that such a situation [where there’s disorder in the district and a woman walks into the station to file a complaint], usually does not arise in their district. They said, however, that they give priority to women cases because women are “helpless and weak”. On the other hand, they also said that they would give priority to terrorism cases because there is greater danger of loss of human life and the wounded are often great in numbers. The connection between VAW and loss of life and opportunity was again not made.

Hyderabad district officers reported that they would prefer to attend to emergency calls and would tell women to come back at another time because of shortage of staff.

⁶⁵ A baking kiln for bread made locally.

⁶⁶ Police rapid response service (UAN 15 also known as *Madadgar 15*)

C. Procedure of handling GBV cases- SOPs and modus operandi

i. How women approach police stations: Police officers were asked how often women come alone or with someone to lodge a complaint. All district officers reported that women come both alone or with their family members. Interestingly, in Karachi, officers admitted that if the case is of domestic violence by husband, women cannot come with their husband, though at several other points during the discussions, they reported summoning the husband to the police station to understand and resolve the issue through mediation. In Karachi, police officer reported staging what can be considered a face-off between the two parties [wife and husband] and pride themselves in determining “the real matter within 5 minutes into the dialogue between the husband and wife”. With no training in the identification of predominant aggressor in DV cases, it is curious to imagine the extent to which officers are able to unravel the complexity of such cases just minutes into these discussions. This aspect of police work becomes more interesting where most officers report [in this study] that women come to the police station as a last resort after suffering many years of abuse. The unraveling of the situation at such speed is indeed commendable, if not ill-conceived. It also enhances the risk of unequal treatment across cases where some women fit the profile of obedient wives whereas others may not, and exposes women to the danger of being sent back home with/to the abuser[s].

In Peshawar, police officers held that traditionally, men do not allow their women to travel alone. Thus, women are usually accompanied by their brothers, fathers or husband wherever they go, and the police station is no exception. In cases where the abuser is a man, women may face difficulty in convincing another man from her family to press charges and engage in the formal system of justice where culturally, most cases are resolved through *jirga*.

Higher police officials from Islamabad deflected the questions around this theme and said that both women and men approach their station with domestic complaints but often it is the wife who has beaten up the husband. Lower-ranking police officers, however, held that people [including mostly women], do not come to police stations as they are afraid of what treatment they might receive from the police. According to one ASI, the families or communities inform the potential complainant that the police might take money and they will have to run pillar to post to get justice. Some officers admitted that the general public usually hates the police, a sentiment which was found deeply internalized amongst officers from Islamabad and Karachi. A little self-reflection would perhaps help them uncover why this is so.

ii. Specialized force to handle GBV cases: Regarding availability of officers specializing in handling GBV cases, officers across districts point to women police station [where available] and female officers as GBV experts who are involved in handling complicated cases [where the woman is accused of a crime]. In Islamabad, police officers were of the view that often the treatment of female police officers towards women is much worse than that of male officers who may still retain a formal attitude.

“The definition of a woman police station is that a male *thana* can be declared a women’s police station by a competent authority. If a lady constable is deputed to a case alongside a male investigation team, that kind of an arrangement will also be considered a women’s police station.

– FGD with Police officers in Islamabad

Mardan police officers reported that there were no specifically trained personnel to handle “delicate” cases brought in by women and that such a team should be trained and deputed in each police station across the district.

Officers from Swat, however, said that the police are trained in law and legal procedures at the Hangu Police Training School before they are deputed to different districts for duty. This training material, they claimed, includes general ethics and a separate course is taught on how to handle cases involving women [as accused or victims]. These courses are however, offered to police officers having reached the rank of ASI and over, and not offered to Constables, Head Constable, *Moharrars* or other members of the Operation section of a police station where officers are responsible for registering complaints. Instead, senior officers are always present to guide lower staff on how to conduct inquiries and mention relevant section[s] of the law in the FIR. The same was asserted by officers across all districts.

Officers from Hyderabad said that they rely on their own experience and common sense to deal with GBV cases, even if it is case in which they have no prior experience or exposure. Given that the same officers also held that most women’s cases are false or concocted, common sense becomes a highly subjective commodity.

iii. Referring cases to women police stations: Addressing how cases are referred from men’s police stations to women’s station in the district, where available, it was learnt that cases of GBV are not referred by default and instead only those cases are referred directly where the accused is a woman. Police officers from Karachi and Islamabad lamented that changes to procedures have rendered male officer unable to use physical force to apprehend women offenders, which has increased the relevance of women’s police stations. Not long ago, before increased powers were awarded to women police officers in Sindh in 2009, one could only see women police deployed at market places during *Eid* shopping festivities, and to physically tackle women protestors during public demonstrations.

Officers from Swat accepted that there is no process or physical space to assign female officers to women’s cases as there is no women police station in the Swat/Mardan/Swabi division. In Mardan, however, officers reported that women are referred to female officers but it was unclear how this is done, to whom cases are referred and where women go for help.

iv. First impression about domestic violence cases: Officers from Peshawar reported that some time back, they used to think that it must be the woman’s fault if she was abused at home. However, with the passage of time and after gaining experience, they can tell immediately if a woman is lying or telling the truth. Even though this question did not pertain to the truthfulness of women claimants, Peshawar district officers gave a detailed account of how women tend to exaggerate what has actually happened and how it is the primary work of the police to make out if a false accusation is being levied.

We assess the following to tell if the woman is telling the truth: whether marital/ conjugal obligations are being fulfilled; domestic chores are being fulfilled by her; whether she is spend-thrift; if they have any children; if the husband doesn’t give time to his wife, etc.

In our experience, police do not register cases related to domestic problems between husband and wife. The reason for this is that tomorrow, something else would happen between them. We mostly try to settle the matter through

mediation/ reconciliation. Annually about 5% cases reported are of this nature in our district.

– FGD with Police officers in Peshawar

Police officers from Hyderabad said that as a first reaction, they try to determine if the woman has contracted a love marriage or where it was arranged by her family, with love marriage signifying the woman to be rebellious and most probably at fault.

v. Handling of DV cases resulting from forced marriage or inheritance deprivation:

“If we don’t address their problems and talk to them in legal terms, women wanting immediate respite tend to raise hell [*thana sar pey utha lai gi*]. Especially when we explain to them that the offense, as being reported, is ‘non-cognizable’- they think we are avoiding taking action.”

– FGD with Police officers in Karachi

When asked about first response to domestic violence cases as an extension of forced marriages, police officers in Karachi were quick to respond that the first line of action is to call the husband and hear his side of the story. Interestingly, they did not report having any training in identifying predominant aggressors or even familiarity with the term in another part of the questionnaire. All actions are geared towards getting the parties to reconcile, especially when there were children involved. If not, then as last resort an FIR may be registered.

In cases of severe violence [such as acid throwing] police officers, however, reported that they take action as per law [file an FIR and start the investigation process formally, etc.]. Officers cited using section 151 of the CrPC to arrest and detain the husband for 24 hours for separate questioning, which may be extended after approval from the District Judicial Magistrate. It was unclear what keeps them from registering cases involving minor injuries/wounds under the Hurt laws present in the Pakistan Penal Code. Further, it is worth noting that it is section 167 of the CrPC and not 151 that grant officers the authority to arrest and detain a suspect for 24-hour questioning.

District officers from Peshawar, Swat, Mardan and Hyderabad reported that they either do not get such cases or that every case is important to them and they go by the book where appropriate. It is difficult to say what constitutes *modus operandi* in DV cases, if there are no visible signs of grave physical violence against the victim.

vi. Written SOPs for handling forced marriage or inheritance deprivation cases: None of the police stations reported having any written protocol in terms of first response to cases of forced marriage and/or inheritance deprivation. All officers agreed that having such a document in whichever form, is necessary and it would add great value to their work. In subsequent questions, they reported not having any SOPs, written or otherwise, for dealing with traumatized victims. They also held that Police Rules are used to guide their work and that one strategy in women victims’ cases is that they are given more time during recording of statement so they can regain composure and recollect events calmly and in detail.

If one is to go by procedures so far discussed for handling DV cases, it would appear that a woman may be given more time but will soon be confronted with her tormentors at the station premises to get some sort of a compromise of settlement going. This does not raise happy prospects for a woman trying to escape a forced marriage.

vii. Where women want action but not an FIR:

“In cases where a woman does not want to register an FIR but wants action to be taken by the Police, the woman is asked to submit an application. The, we call the concerned person and tell him that “we” do not wish to tear apart a family. We explain things to him nicely, in a loving manner, and sometime we scare him a little so that the woman’s problem is resolved. All police stations do this. We also tell women that going to court will not solve any problem; in fact it would only aggravate them. If they understand, well and good, if they don’t and raise too much noise in the station, we tell them to go to court as it won’t serve any purpose to scream and shout here. Sometimes they nag us too much and we show them the way to the court. We tell them to go to court just so we could get rid of them. Some women are very conniving and keep bothering us knowing that we cannot [physically] touch them.”

– FGD with Police officers in Karachi

All police officers across the district said that quite often women do not wish to start a legal process and just want someone to “fix” their husbands. The notoriety of the police comes in handy in such instances where a man may be forced to lay off the woman if he sees that she can also go beyond the police station. When asked if they take action in all such complaints [such as calling the man and admonishing him for violence committed on the wife], most officers said yes, whereas Mardan district officers held that most of such cases are false. In Swat, police officers reported taking support from the Detective Foot Constables [DFCs]⁶⁷ to inquire locally about the cause of dispute between husband and wife. Interestingly, this force is not used to monitor cases where violence is a daily norm or a recurring problem.

viii. False reporting by women: Given the opportunity to talk about false cases, most district officers got the chance to “set the record straight”. Junior police officers from Karachi reported that about 95% cases reported by women are false. They reported judging by the face and mannerisms of woman to tell whether she is lying or telling the truth, making them expert human lie detectors. Women officers were quick to refute this claim [this was a mixed-gender group discussion⁶⁸] and said that women do not lie in 95% cases. They reported that sometimes “a few fabrications might creep in where other family members are involved who also try to influence the case”. They reported that another factor may be that “cases have often already been investigated by male colleagues before being transferred to women officers, so logically some cases may have been declared false in the police report already.”

⁶⁷ The DFC system of patrolling was established in 2011, to widen the information gathering network of crimes of all natures in different districts. The system was devised to monitor and curtail corruption and unrestrained powers of Station House Officers [SHOs] deputed at different police stations.

⁶⁸ Women officers in this group had much to say and their reactions to male colleagues’ comments could be witnessed in their interjections at different points. Given the difficulty in getting talk-time with police officers for discussions, the woman officers were requested to stay back for further discussions.

In Peshawar, police officers were of the view that sometimes false reports may be lodged by women. In their opinion, however, women could be lying out of fear of family or other insecurity.

Islamabad police expressed that, “*The entire judicial system is running on false cases due to misreporting or exaggeration by complainants*”. They said this in the context of cases filed by both women and men.

“Islamabad is ruled by women. Here, women commit violence, not us [men]”
[when the enumerator said this is a misconception, they said no, this perception is a hundred percent accurate].

– FGD with Police officers in Islamabad

A lengthy monologue also ensued around this question by different officers from Islamabad, where they went from discussing the concept of *purdah* [veil] in Islam to how women invited violence upon themselves. Below are some eye-opening quotes from these monologues:

“No one will do anything to you, if you keep walking straight. If a man sees a woman wearing burqa, he thinks she is a good woman.”

“Women are responsible for the violence committed against them. If they stay within the teachings of Islam [in the context of staying at home and not “wandering outside”], such [sexual harassment] incidents will stop happening.”

“The meaning of woman is *purdah*. If she stays within its limits, these [domestic violence, rape and sexual harassment] cases will finish.” When asked about what they mean *purdah* and what constitutes *purdah*, one police officer commented that “We do not mean that they wear a full *burqa*. Like for example, you are sitting here, and you have taken off your *dupatta*- what do we do?”

In the context of sexual harassment against women: “If a person leaves the house so dressed up, they want people to look at them.”

In the context of environment for women outside the home: “*Purdah* is just that if a woman observes *haya* [shame] in her mannerism, no violence can come to her. When she eliminate *haya* from inside, then the path of violence leads toward her.”

“70-80 percent cases consist of women committing violence against other women. In-laws instigate the husband and he then beats his wife. That’s why there is less violence reported between couples living independently of in-laws”.

– FGD with Police officers in Islamabad

Police in Swat reported that false cases are reported often. However, they did not endorse the idea that women often make false claims.

Hyderabad district officers shed light on how sometimes women get reports written by professional complaint writers who sit outside courts, which usually carry a lot of false information. This they claimed was because women cannot narrate details of the incident accurately and there is no one to guide them, so complaint writers put in whatever they think is suitable. Therefore, during investigations [cross questioning of the woman at the time of complaint registration at police

stations], it is usually found that the woman is lying. Officers asserted that most women do not know that they can come to police station directly to file a report. Officers also reported taking separate statements from the accused and victim to ascertain the truth prior to taking any further action.

ix. Mediation in forced marriage and inheritance deprivation cases: As most police officers had not handled or did not admit to handling forced marriage and inheritance-related GBV cases, the answer to mediation in such cases was not in the affirmative. Mediation, however, was done across the board for domestic violence cases, whether they be a result of forced marriages, inheritance deprivation of women/ girls, or any other matter involving a domestic dispute. In Swat, for example, officers said that they tried to “...settle matters through mediation, and if that didn’t work, we would lodge a complaint”. They reported not being part of mediations after a complaint had been lodged: “We do not become part of mediation thereafter. We do not do jirga”.

Peshawar’s police officers, however, also said that they normally ask the woman what she wants to do and reported that women often do not agree to mediation, in which case a complaint is lodged. This is contrary to findings from other districts where majority Police officers held that women specifically ask for medication in family cases as they do not wish to take legal action.

“Man moves like a machine- we don’t get the opportunity to commit violence in the home, even if we want to [laughter in group]. I come home, I’m tired, and I cannot hit the mother, so I will hit the wife. The day we raise hands on the mother, we will lose *jannah* [heaven]. You can explain things to the mother, but you cannot hit her. You can reason with your mothers, but some wives are beyond reasoning.”

– FGD with Police officers in Islamabad

Swat Police officer said that sometimes, they do mediation through a *jirga* in the interest of maintaining public order. When influential people are part of the *jirga*, they have no option but to oblige. Given the value attached to traditional tribal customs in most part of KPK, it is unlikely that women/girls who have been forced to marry by the same set of customs can expect to have their case resolved through the formal justice system. By extension then, it would also be unlikely that such cases would be registered with formal law implementing agencies that are sometimes forced to give up a case to *jirgas*.

“In our country, people are nervous about coming to police stations- the police station is not a one-window operation here. An Investigation Officer who collects evidence has to go through many problems in order to do his duty. If we get an application [related to a charge of offence], we have to tell the complainant to bring evidence to support his/her claim. The courts ask for evidence to support every statement. Without evidence, if we file a *challan* in court against the accused, the court will not accept it. The police station is an investigation agency; it is not a court of justice. A person can get justice from the court. Any investigation officer, irrespective of his rank, is also not an expert in every department. He cannot give his own opinion; he has to consult the doctor for that. He has to go to labs, he has to go to Lahore or get reports from PIMS [Islamabad]. If it is a *zina* case, he has to get the DNA test done, etc. Now, if he [police officer] tells the complainant that s/he has to go her/himself together to get a report, the complainant thinks s/he’s getting into a new problem. It is easy to submit an application and sit at home,

expecting that the investigation happens all by itself [sic]. Investigation agencies don't have those kinds of resources. They have to take support from the complainant, that he should bring the evidences [sic], and bring eye witnesses so that he can go to court."

– FGD with Police officers in Karachi

An interesting logic was brought in by police officers in Hyderabad for not registering women's cases. While saying that they try whole heartedly for a "patch-up" of sort between opposed parties in domestic violence cases, they claimed that their main interest is to protect the woman. The argument as put forth by them is that a woman would not be able to support herself [and her children, if she has any] if her abuser goes to jail. This concern was also echoed by Qamar Naseem of Blue Veins in Peshawar, where he commented: *"Men often accept that domestic violence for whatever reason is not a good thing, but they sometimes ask us confounding questions. They ask us to tell them if we live in a welfare state. They say, 'If a man is convicted for domestic violence and men are sent to jail, who will support his dependents, which includes the woman, their children and his family? Are we going to invite forced prostitution for women who have sent their husbands to jail? Can a woman survive for six months with her in-laws, whose brother or son the woman has sent to jail for beating her? Sometimes we do not have very convincing answers to such questions.'"*

x. SOPs for investigating child marriage cases: While most district officer denied the existence of forced marriage in their district in response to this question, despite reporting earlier that child marriages are amongst offences most frequently reported, some noted the following sources of information on a child marriage case:

Parents; the *nikahkhwa* and registrar; *jirga* advisors; witnesses/ aiders/ abettors; Computerized National Identity Card [CNIC] of bride and groom; birth certificates; and school certificates. In one instance, officers from Swat also said that they will look for the cook at the wedding feast to find out who attended the wedding.

As most police officers reporting talking to the parents first, it is unlikely that parents would own up to their actions involving the marriage, especially if they are told that they may have committed a crime. In most rural parts where women much older than 18 years do not possess a CNIC and many births are unregistered, it is unlikely that anything except dental X-rays could help determine her age conclusively. As these services are not readily available in most parts of Swat, Swabi, Malakand and Mardan divisions, particular for age determination in child marriage cases, most police officers will have to rely on the girl's appearance to make a guess.

xi. Investigating compensation marriages: While police officers from 5 districts said that they have never handled a *badal-e-sulh* case, an SP from Islamabad had the following case and thoughts to share:

"In my area, a person killed his paternal cousin. The murderer's sister was a teacher. The people of the community, one year later after the man was awarded the death sentence, arranged for *musalihat* with a lot of difficulty. It was decided that the accused would give 3 acres of land and the teacher would marry the deceased's younger brother. The girl ran away from home a night before the wedding. She went to her relatives' house who called her family and told them to come and get her. She was forcibly married the next day. Now that couple has 3-4 children and they are spending their lives happily together. This was the result of that forced marriage. This is because they belonged to the

same family. They [eventually] started liking each other. In our society, women have raised their voices [against such practices] that [we men] do *wanni*, and we do this and that to women [sic]. To keep a society alive, one has to make sacrifices. Because every man has to marry his daughter off and the girl cannot stay with her parents, the parents think that we have to marry her to someone so why not the younger brother [as in the case narrated], especially since it will help remove the conflict between two families. If parents can do it, taking care of right and wrong [sic], then there is no big crime being committed against the woman... the girl has to be sent from her natal home: give her to this one or that one. What is the difference? If giving her to one [party] removes animosity, then it is not big deal. NGOs have made a big issue of this matter in our country. If a man does not want his son to marry the girl, like the girl doesn't wish to marry his son, then he is also sacrificing his boy....It is possible that couples having been forced into marriage are living better lives than us people whose marriages were arranged. No man asks his wife for even water four days after the marriage. If the woman runs from his house after four days, that means they did not get along, and she is making excuses not to go back [to him]. What can they [his husband and/or in-laws] do to her in four days? She is just making excuses" [another police officer added in that yes, she is making lame excuses].

– *Swara case from Sargodha, narrated by a police officer from Islamabad*

Rationality dictates that it is not necessary that all forced marriages end badly. Undoubtedly, there must be examples for successful marriages that were contracted with the express consent of the bride and groom, whether the child is under 16 or otherwise. Treating women like commodities to be bartered or traded, however, is another ball game altogether. It would appear from the story-telling of the SP in Islamabad that women can expect their individual rights to be quashed for the greater good of society, which is the rationale for those practicing *swara* in Pakistan in the first place.

xii. SOPs for investigating inheritance deprivation cases: Police officers in Islamabad were able to draw a connection between domestic violence and inheritance deprivation cases where they gave the example of a case in which a woman gave up her share of the family estate to her brother, but her husband kicked her out of their home when he found out what she had done. They reported that in that case, the woman was abused by both brother and husband.

Other district officers reported that such matters are family cases and are presented in front of a Civil judge. Due to limited, if any knowledge of the AWP Act 2011, as we shall see ahead, districts like Swat reported that inheritance deprivation are cases of civil nature. Officers from other districts were rather dumbfounded and said that there is hardly any evidence in such cases and they do not know how they would go about investigating it.

xiii. SOPs for investigating marriages with Holy Quran: All district police officers held that marriages with Holy Quran are not reported in their areas. Places like Karachi, Islamabad, Peshawar Mardan and Swat allegedly do not have wide prevalence of such customs, which are confined to rural Sindh. Ironically, police officers from Hyderabad also reported that marriages with Quran do not take place in Sindh. This compares starkly with a Sindh High Court Judge⁶⁹ who asserted that not only do such

⁶⁹ Asma Bibi of the Sindh Development Society met said judge during a visit to the Sindh High Court. He could not be contacted for more comments.

practices exist, they also come to court quite frequently, having presided over a few himself. The judge could not be contacted for further clarification and details.

Regarding investigations, police officers from Karachi shared a detailed account of investigation processes and where bottlenecks occur:

“Let’s suppose we take a case and submit our findings: our file starts to move then. From us, it goes to the SHO, then the DSP and then the SSP. When the SSP says yes, the file comes back to us and we prepare the *challan* for court. Then the file moves again. It goes to the district attorney, who will mark it for his assistant. If the assistant has time, he will send the file back to our officers. And during this whole time, we have to be present physically almost every step of the way. If I have 4 to 5 cases, and I have to run for every case like this- reason is our record of corruption [all participants agreed] - I will say: “To hell with the rest of the cases; I’m going to investigate than sitting on my desk”. If you were to ask me honestly I would say I am not doing justice.”

– FGD with Police officers in Karachi

D. Safety planning, referrals & other measures

i. Training in Lethality Assessment: Lethality assessment is gauging how dangerous a person or situation is or is likely to become in the future. Researches show that domestic violence is a continuum of abuse and increases in intensity and/or severity with time unless it is checked.

None of the police officers interviewed during this study reported knowing how to conduct a lethality assessment in VAW cases. Most had never heard of the expression [or its equivalent in local jargon]. Some officers said that they can foresee future violence just by observing husband and wife engage in a dialogue at the police station. Still some officers suggested that such trainings need to be provided as often there has been severe violence committed against a wife at the hands of her husband, which is not the first time he was violent with her. In some cases, there is a fatality after repeated abuse over many years. Officers from Swat held that in cases where the husband appears dangerous, they “...adopt the policy of quieting and getting the husband under control”, while conceding that they have no way of knowing if the situation gets flared up again after the couple returns home. Further, ASIs and SPs from Islamabad thought that the kind of trainings given to every officer is sufficient and no training is needed in assessing how potentially lethal an abuser may turn: “*Women are no special group that officers should need special trainings*”. They asserted that they treat men and woman equally under the law.

Additionally, while officers were found unaware the expression ‘predominant aggressor’ they reported using their common sense to judge whether a man could harm his wife if action is not taken against him. Putting “parties face-to-face”, was the best strategy available to law enforcement officers in this regard.

ii. Repeat complaint of domestic abuse from the same house and recordkeeping: Police officers reported that while records of all complaints made at their station is maintained and information can be retrieved, most said that they have never checked if a case from the same household has been reported anywhere before [even at their own station under another officer’s watch]. They conceded that

information filing systems are usually manual⁷⁰, and finding history on a repeat offender is not easy and very time consuming. All officers said that they have never monitored houses from where they have received one or more reports of domestic violence.

iii. Ensuring protection for children born of forced marriage or about to be forced into marriage: In cases of child marriage, police officers from Karachi said that their hands are tied unless the child makes a complaint that she/he is about to be forced into marriage. Court orders are another common instrument to pull children out of their homes where relatives are trying to set up a wedding. While most police stations confirmed the existence of child protection units run by the government in their districts, police officer from Swat reported that they would first talk to the guardian to ascertain what the problem is. For children about to be married against their will by their parents, a strange paradox arises where the guardian may be the only individual authorized to lodge a police report on behalf of the child, if s/he is a minor.

“Parents are the well-wishers of their children. We try to convince the parents that if you would do the same thing to your son [force him to marry], he may run away from home and be used for other criminal activities [sic]. So please do not commit violence against your girls.”

– FGD with Police officers in Hyderabad

When police officers were asked if they can actually prevent a forced marriage from taking place, officers from Karachi said that if they are tipped-off, they can conduct an inquiry. Refreshingly, officers from Hyderabad reported that action is sanctioned to the police under section 498-B of the PPC [one of the amendments made in the PPC under the AWP Act, 2011] - “forced marriage”.

E. Information about APW Act and its implementation

Police officers from only 2 districts, namely Hyderabad and Mardan, reported knowing about the law and its provisions. Other district officers were found to have absolutely no knowledge of the law. Interestingly, ASIs and SPs from Islamabad said that it might still be an ‘Act’ of law and they will implement it once it becomes an ‘Ordinance’ and after passes through the National Assembly. This lack of clarity on the difference between an Ordinance and an Act of law is curious if not slightly disturbing.

Most officers requested a copy of the AWP Act from the enumerators and saw at it for the first time during discussions with enumerators.

When asked if and when they were notified of the law coming into effect, most police officers said that they had not received any notification or orientation regarding the law. Officers from Karachi, after looking at a copy of the law, immediately saw that the offences addressed were ‘non-cognizable’, meaning they cannot take any action [such as arresting the guilty parties] without a warrant from a Magistrate. In this sense, the AWP Act was found to be a toothless law where the law does not come into motion unless a complaint is made by the affected party[ies] and a subsequent warrant is acquired by the police, which may take anywhere between 2-5 days.

⁷⁰ Although in some part of Punjab, the police have electronic FIR and complaints registration systems made at the station level. The National Bureau of Police has not been able to extend required support so far in their regard either.

Those who were familiar with the law said that the law is not fully implemented. For instance, in Hyderabad where offices knew of the Act through NGOs' trainings, the general opinion was that the law is not implemented in Hyderabad at the level it should be. The biggest reason for this was presumably lack of knowledge of its passage and its contents. In Mardan, however, officers reported that the law is proving very useful across the district where cases are being registered. Earlier when Mardan officers were asked regarding reported cases of forced marriage, they had reported never having handled any such case. In Swat, police officers held that because the law does not afford any concessions to culprits [though it is not clear who these culprits are- parents or those demanding a girl in marriage], NGO and media pressure & interest have caused police officers "*not to take the middle path in such cases*".

In terms of registration of cases, none of the police officers interviewed in totality reported having registered a case under the Act. It was also difficult to find any government statistics on the number of cases registered and their outcome in court, as mentioned in the introductory section of this report.

Yes, arrests are made [in child marriage cases], but *sullah* happens. Parents are the masters of their children. If I want to marry my child say aged 12 years, who is going to stop me?

– Women Police Officer in Karachi FGD

Officers also reported that implementation of such laws cannot be achieved unless other social problems are addressed. Officers in Mardan said the more amendments need to be made to the law to help the implementation of the AWP Act, but more specific information could not be acquired on what these amendments would constitute and why specifically they are needed.

In terms of equal culpability for parents for marrying their children against their will, all police agreed that parents share equal blame with those who are demanding a person in marriage against their will, even if they were not liable under the law.

Officers also seemed clear on the difference between forced and arranged marriages. One officer in Karachi, however, was of the opinion that forced marriages are also 'arranged' by families though not all arranged marriages may be forced. Most officers agreed with this point of view. Poverty, lack of education and "*white-collar egos*" were the biggest reasons identified by police officers for forced marriages whereas in Peshawar, police officers were of the opinion that these are practiced as part of ancient tradition. They also expressed that property division was also one of the major reasons of disallowing girls to marry of their own volition.

Taken at face value, if a major determinant of forced marriages is poverty, then the law is truly not equipped to address issues that it seeks to correct unless other socio-economic inequities are corrected first.

Some contradictions were also found in responses to different questions related to this section. Where officers from Swat had reported earlier that they cannot do anything in any criminal offence unless the victim files a report, in the case of AWP they said they can take action even without a formal report and even if it is a non-cognizable offence.

In terms of need for stronger criminal and civil protection for women, police officers in Karachi lamented that despite constituting non-bailable offences, bails are granted in murder and narcotics cases as well. Bail is especially not allowed if over a set limit of drugs have been recovered from the accused's possession.

The Islamabad police was of the view that most laws passed as affirmative action for women subjected to GBV, have only benefitted city-dwelling and educated women. They postulated that over 70% women do not know of laws that exist for their protection against violence. Ironically, the Mardan police reported that laws are implemented well but cases do not come forward. One fails to see how it can be considered good implementation then when litigants are deterred, for whatever reason, from coming forward.

None of the police station reported any knowledge of preventive work being carried out by provincial police departments or Home Departments to educate women on new laws or to build awareness of legal procedures. Additionally, none of them reported having been offered any training on the AWP Act themselves despite its passage more than two years prior to this study as mentioned earlier.

F. Knowledge of supportive/ hindering legislation and procedural codes

No police officer interviewed from Sindh reported being aware or even having heard of the Domestic Violence [Prevention & Protection] Act, passed on March 8, 2013, by the Sindh Assembly. Officers seemed flabbergasted when after detailing how mediation is normal practice in DV cases, they were informed that there was a law that had criminalized DV, almost a year ago.

None of the officers interviewed from district Karachi, had knowledge of the Child Marriage Restraint Act, 1929. Most had never even heard that such a law existed [albeit not widely implemented]. It is not hard to put together why it is not.

"There is nothing lacking in the PPC. If you implement it, you don't need any more laws. We keep making laws and then make some more, to fool the world."

– FGD with Police officers in Karachi

Most officers reported resorting to Hurt laws in the PPC very seldom and mostly applied them to cases in which grievous hurt had been caused. Peshawar's officer requested that if trainings on these could be arranged, it would be greatly beneficial. Most officers complained that no refresher courses are held for mid- to lower-ranking police officers so often relevant clauses of the PPC do not come to mind when they have to register an FIR [discussed in next section- Capacity-building and Resource Allocation].

While some police officers refrained from commenting, a majority police officers interviewed said that they felt bad and disappointed when courts allowed murders to walk free under the Qisas and Diyat Ordinance, 1991. Police officers were asked how acquittals for confirmed culprits under Qisas and Diyat made them *feel*. Police officers in Karachi, despite resorting to Shariat often to support their arguments, admitted that their "*hearts skipped a beat*" every time they learnt that a murderer had been acquitted under the Ordinance. This is a possible entry point to start the discussions anew on how such laws serve justice and public good, specifically when families resort to the law upon getting fed-up with Pakistan's formal justice systems.

With respect to rape laws and their applicability to forced marriage cases, police officers from Hyderabad said that forced marriages could involve rape and there was indeed a law for it which they could not recall. All other districts respondents replied with a categorical ‘no’ when it was asked if a man could rape his wife and if they would register a case of rape against a man that has married a woman against her will. Even though rape laws do not carry a marriage exemption, it was beyond a majority officers’ comprehension as to how rape laws may be relevant to forced marriage cases. We find [later on in this report] that a large number of women respondents in the study responded positively to forced sexual intercourse by their husbands on a regular basis, often leading to internal and external injuries and resulting inability to bear children.

“No wife has sexual intercourse with her husband willingly. Beating them is necessary. This question should not have been asked. Women should not be given so much freedom otherwise they will try to dominate us. This is not permissible.”

– FGD with Police officers in Swat

G. Inter-departmental coordination

For injured women, there was consensus amongst police officers that she will be sent to a medical practitioner promptly for confirmation of injuries and wounds and to find out whether they were self-inflicted or otherwise. Officers reported that most FIRs are usually lodged after an entry has been made in the police daily dairy and the woman has returned from the hospital with a positive report for violence committed against her, unless injuries are visible of the matter is visibly grave. Medical reports also help establish facts and provide the necessary evidence the account to be considered genuine.

Police officers reported that women return to the relevant police station in fewer numbers than are referred for medico-legal examinations. This makes the medico-legal department an important point of “one chance only” intervention as women who go there may never return to pursue their case legally. According to officers posted in Hyderabad, women only return in 10% of the cases. In other districts, the ratio was higher [30%] but still less than one-third.

Such claims are substantiated by police and medico-legal statistics collected annually by NGO War Against Rape [WAR] in Karachi. Their annual fact sheets⁷¹ containing statistical data on rape since 2004, serve to confirm that FIRs registered for rape in Karachi constitute about a third or quarter of cases being referred to medico-legal doctors by the police.

Where most police stations reported referring women for legal counseling, officer acknowledged not having a fair idea of where to send a victim of forced marriage or domestic violence for legal assistance. Peshawar-based officers were the only ones that reported having a list of organizations [public and private] available with them, which they use to refer for free legal aid and counseling services.

Likewise, women are hardly ever referred for psychological counseling. Even though according to the Police Surgeon in Karachi, a psychologist is supposed to be posted at the Police Surgeon’s office in Karachi, no such doctor can be found there any time of day or night. Instead, according to one

⁷¹ See http://war.org.pk/?page_id=142. Last accessed January 21, 2014

woman MLO in Karachi, MLOs counsel women themselves, if they have any empathy for the woman [discussed in more detail in the section of medico-legal services]. Additionally, referring women for psychological counseling reportedly reflects badly on their case where their sanity may come under scrutiny, leading to reduced chances of being treated as credible witnesses to violence committed against them.

Madadgar 15, a toll-free call service of the police is often very helpful in sending wireless messages to police stations and mobiles patrolling an area, for providing rapid response to distress calls. However, this service is only available for urban settlements and not rural areas across Pakistan, where it exists. Police in Islamabad grudgingly note that the Madadgar police are equipped with better mobiles for patrolling than the ordinary police.

Working with prosecutors was reportedly an uneasy alliance for some police officers. Most police officers did not report any problems working with the public prosecutor except one group in Karachi, which had the following to say in this regard:

“When the advocate [defence] cross-questions us, our prosecution advocate just sits there and watch. The police are famous for being corrupt, but the prosecutors are the worst. While we are being cross-questioned, that *curse* will be standing outside and smoking, even though he should be present to raise objections. Sometimes, they just ask yes and no questions, and I am not allowed to explain. The accused thus, gets the benefit.”

– FGD with Police officers in Karachi

In some cases, police and lawyers help each other out in understanding cases and recording the right sections of the law in relevant documents. In most cases, however, police and lawyers do not have active coordination regarding case strategy and management.

Peshawar and Mardan police officers suggested that shelter services for women need to be improved. In an attempt to find shelter for women who have been subjected to violence, shelter services were considered highly insufficient and unreliable in these two districts.

H. Capacity-building & resource allocation

Till the completion of this study, none of the police officers interviewed had received any training on AWP Act or VAW generally, except those in Hyderabad. Hyderabad police reported having received training in VAW, GBV, types of violence, etc., of varying durations, all of which had been provided by NGOs working in or around the district. Even though a handful of police training schools in Pakistan offer coursework on VAW, they are not part of the foundation courses taught to officers, much less having access to trainings related to prosecutions' work or the subtleties of forensic evidence. Police officers who reported studying a course on VAW at these schools were mid- and higher-ranking officers who had taken additional courses in the interest of getting promoted within the ranks. Moharrars, Constables, Head Constable and ASIs were not amongst those having received training related GBV or VAW, or how to counsel victim of trauma, etc. By this account, officers who are involved in dealing directly with women upon first contact have had no training that provides them necessary skills to deal with cases with patience and sensitivity. At this point it is important to recall what police officers said about getting rid of nagging women in

response to an earlier question. The need for such training is supported by the fact that many police officers interviewed for this study described women's cases as headaches that just don't go away.

All police stations included in the study claimed having a copy of the CrPC, PPC and Police Rules at the station. However, officers clarified that the copies are not replaced every year with the latest edition. Instead, small booklets are acquired from the market when a new law is passed. Except Mardan and Swat, none of the police officers interviewed reported having a copy of the AWP Act at their station, despite their lack of understanding vis a vis its provisions.

Regarding the quality of training modules offered at police training schools, most officers agreed that content and length of the trainings should be extended, whereas some felt trainings were sufficient as knowledge of the application of law comes through "*practice and experience*". Senior officers were an invaluable source at any station, who guided junior officers on which section of the law to apply in an offense and how to go about investigating it. Most officers suggested improvements should be made to police curriculum whereas all agreed that refresher courses must be institutionalized.

Regarding budget, some interesting disclosures were made during discussions with police officers in Karachi:

"In attempt-to-murder cases, we are given Rs 7,000 to carry out investigations. We get this money if we present the challan in court. Nothing is given if we are not able to submit the challan for any reason, say when the accused has not been arrested, etc. When Rs 7,000 are sanctioned, and we go to collect the money, we will find that Rs 3,500 have been deducted from this amount, though we are asked to sign off on a paper that says we have received Rs 7000, as requested. Some of this amount is pocketed by the accountant [reimbursing us], some of it by his assistants and the remaining by the rest by his office staff.

Under the Police Ordinance 2002, we used to be given Rs 20,000 for investigations in such cases. The UN or the USA said that we should be given Rs 20,000. Now, you tell me, how are we supposed to run around and collect evidence, visit places, and interview witnesses who may be living in far flung areas in just Rs 7,000?

– FGD with Police officers in Karachi

Some police officers testified to spending one lac to one-and-a-half lac rupees to foot the bills for investigations in a few cases. A couple reported having taken personal loans because no one would allot them the money required for investigations. They also reported being reimbursed for cases brought to court successfully and not otherwise.

None of the officers had any knowledge about budgetary allocations for their stations as a whole or for its units such as operations, administration and investigations and instead referred enumerators to senior officers such as Station House Officers [SHOs] or Deputy Inspector Generals [DIGs] of the police.

In addition to this, it was found that though the police stations included in the study could house up to 15-30 suspects and accused at a time, there were no facilities for food, water, bedding, medical treatment [if needed], heating, toilets or other things related to hygiene in any of the stations. Islamabad police reported having to keep detainees awake at night as there was no place for them to

sleep inside the lock-up and many districts reported having to keep constant guard as those in lockups tended to scuffle with each other often because of lack of space. All stations reported having to pay for detainees' food, water, and medical treatment out of their own pockets.

Regarding investments to be made in police officers' trainings, all officers interviewed agreed that training programs and informative seminars need to be conducted for police on laws and their application, alongside increasing their strength. Some officers suggested that the police should be involved in law-making so they can better understand them and give their input based on their experience of handling cases. Most officers demanded that 15-day to a month-long training should be provided every year, alongside various refresher courses pertaining to new laws being passed, such as the AWP Act [and Domestic Violence Act in Sindh]. Officers also recommended that at least one lady police officer should be posted at every police station as part of the investigation team. In Swat, where there are only 2 Lady Constables [LC] throughout the district, male police officers suggested that their strength should be increased so that VAW cases can be handled in a better and more sensitive manner.

Most police stations have 1-2 police vehicles [mobiles], except in Peshawar where 4 mobile were available for one station] and 1-2 civilian motorcycles. Police officers in Karachi reported that their daily allowance for fuel is a mere Rs 65, whereas the police in Swat reported having an annual allowance of 300 liters of diesel, less than 10 liters a day. If one is familiar with the terrain of Swat district, one would know that this is nowhere near sufficient for the amount of fuel required to make round trips to many remote areas. Should the allowance be exceeded, officers reported having to purchase fuel out of their own pockets. Islamabad police reported not having any car or reimbursements for travel should they need to capture felons who have run off to another city or province.

"Sometimes when our seniors ask us why we didn't go somewhere [for a case], we tell them we didn't have any diesel. This reason is acceptable to them. Madam, we have a lot of problems [when it comes to investigations]!"

– FGD with Police officers in Karachi

Other list of demands included CCTV cameras at strategic location in the cities to monitor crime, access to NADRA's database to nab proclaimed felons, more mobile cars, modern investigation and forensic tools, working landline telephones and better facilities to house felons and suspects at the stations.

"Every day, the media report that police officers have been provided bulletproof jackets to fight terrorism. But these jackets only have plates in the front and nothing in the back. The whole area is exposed. Also, can you tell me how bullets manage to pierce through bulletproof cars? Why are bullets going through APCs [Armoured Personnel Carriers]? China says you have to buy this phone from us; how much should I make it for? Rs. 5,000 or Rs. 15,000? Things like these determine if a bullet would go through or not. Our officers are dying, Madam, and this is what they do!"

– FGD with Police officers in Karachi

When police officers were asked if they had ever made demands for better resources, and the response they received, most officers expressed displeasure over lack of action. Officers noted that

their senior officers know what the problems are, yet nothing gets done. The police in Hyderabad reported that they can only “*think about making demands*”, whereas police from Islamabad said that they cannot say anything to their seniors. In Swat, although requests have been made through a proper channel and forwarded to senior officers for approval, they have been told that whatever can be done, will be done. Most officers did not express any hope for improvements that could facilitate their work.

4.2. MEDICO-LEGAL

When the both of us reached the medico-legal [department], the place was swarming with people. A policeman was sleeping on a nearby bench. The rest of the people were busy talking. When we started talking, the police officer suddenly sat up and said, “Bibi, first tell me, are you married to be asking us such questions and do you know what you’re asking us”? When he said this, I got very angry and went red in the face. I said to him, “Can’t unmarried women come here for an interview”?

During the question-answer session, they kept giggling and giving mischievous looks and making strange gestures to each other. It was a very difficult situation for me and I felt like I was losing my confidence. They were giving very short answers to [our] questions and wanted to get rid of us quickly. As answer to many questions, he kept repeating: “women dramatize”; “they exaggerate”; “nowadays women are not abused- they are the abusers”; “women come for fake rape reports”; and “they like to torment innocent men for no reason”.

I was surprised when he said that he didn’t know that there was a Darl-ul-Aman in Hyderabad and that women could be sent there [for shelter]. He didn’t seem to have any information and the Office Superintendent and the policeman kept telling him what to say. The strange thing was that he didn’t even seem interested in changing the atmosphere [of the medico-legal section]: “what is, as is, is alright”, he said.

- Asma Bibi, Sindh Development Society
sharing her experience of interviewing the [acting] Police Surgeon, Hyderabad
[Author’s inserts in brackets]

MEDICO-LEGAL RESPONSE TO GBV

A. General information about community served and VAW cases dealt

The study included responses from 22 MLOs [where available], senior officers serving in the administration department or in-charge of the emergency wards and nurses at 8 different Government hospitals in all 6 districts. It was difficult to find lady doctors and WMLOs in most districts as there were either none posted or they were not allowed to talk to enumerators.

In Karachi, which perhaps had the most systematic medico-legal service available at different points in the city, 7 WMLOs are working at 3 government-run hospitals, catering to a population of over 10 million female in the city: Civil Hospital Karachi [CHK], Jinnah Postgraduate Medical Centre [JPMC] and Abbasi Shaheed Hospital [ASH]. Two more hospitals, i.e., Korangi Government Hospital and Qatar Hospital in Karachi have recently been made functional for ML examinations of women subjected to violence, however, no female doctor has yet taken office there. According to

sources in the department, no woman doctor is willing to go to these areas to provide their services because it poses a logistical inconvenience as they are quite removed from the city center.

In Peshawar, the Khyber Teaching Hospital [KTH] extends its services to approximately 50% of the population of the city, whereas the Lady Reading Hospital [LRH] provides its services to approximately 75% of the population. There is 1 WMLO in KTH, who is also the Chief Medical Officer [CMO] for the facility and only available during morning hours. In LRH, there is no WMLO in the emergency department to handle VAW cases.

In Mardan, the Mardan Teaching Hospital [MTH], the Civil Hospital Mardan [CHM] and Rural Health Centers offer medico-legal examinations [MLE] for victims of VAW. In the entire division of Mardan, Swabi and Takht Bai, there is only 1 male MLO [MMLO]. According to one senior government doctor in Mardan, the position of one MLO for the Swat/Swabi/Mardan division is a ceremonious post, and the most “useless” doctors are usually hired under it. He commented that the MLO is like any other doctor, with a simple MBBS and no training in ML work.

In Islamabad, there are two MMLO posted at PIMS and Poly Clinic hospitals, whereas there is no position for a WMLO in Swat. In Hyderabad, ML services are available at 4 government hospitals: the Hyderabad Civil Hospital [CHH], the Medico-legal Centre in Jamshoro, the Shah Bhattai Hospital, and Paretabad Government Hospital [PGH]. There are 6 WMLO positions sanctioned for Hyderabad district, 5 of which were vacant up till March 2014.

It was curious to note that while in Karachi and Hyderabad, female doctors are required to conduct MLEs and testify in court, doctors from other districts only reserved MMLOs for giving evidence in court. No WMLO [where they are available], are allowed by law to go to court to confirm their findings from the MLE. This exclusion has been instituted reportedly to protect female doctors from the hassle of court duty. This claim was corroborated by doctors in other district when they were asked why such a small number of WMLOs are posted across Government hospitals: it is difficult and unpleasant work and WMLOs have been given relief from at least court duty. It is strange that MMLOs should testify as “medical experts” in court for MLEs conducted by someone else, when the laws demand that any piece of documentary evidence must be corroborated by the author of the report by appearing in court in person.

Table 13: Sanctioned strength of WMLOs in selected districts in Jan 2013

District	Female Population [1998 census]	Sanctioned strength of WMLOs
Karachi	9,000,000	7
Peshawar	2,325,000	1
Hyderabad	1,750,000	6
Swat	628,800	0
ICT	402,618	0
Mardan	123,000	0
Total	15,229,418	14

Most cases of VAW reported to hospitals involve domestic violence, according to doctors interviewed. These cases mostly include severe assault by spouses and in-laws, attacks with knives and other weapons and poisoning [including attempted suicide]. Other cases include rape, murder and acid throwing.

“The MLOs here are always fishing for such [attempted suicide] cases. They are like pimps, looking for baits. People give money to save their honour. Conservative families are willing to give anything to prevent the news of their girls’ attempted suicide from spreading. The MLOs here judge how much money a family/ victim can give by their dresses, the cell phones they carry, the way they talk, etc. I see this happening every day because we get 2-3 cases of poisoning at our hospital every day! Doctors are able to make Rs. 10,000 –Rs. 12,000 daily through poisoning cases by sheer blackmail!”

– A senior WMLO in Karachi

In terms of frequency, a senior WMLO from Karachi reported that her hospital get 1-2 cases of severe domestic violence on a daily basis. She also said that 2-3 cases of attempted suicide by girls and women come to her hospital daily. Most of these girls/women have ingested pesticide due to family problems [parents or husbands]. Interestingly, she pointed to incest as a form of sexual violence reported at her hospital on a daily basis. She shared that 1-2 cases of incest come to her daily for MLE.

In Mardan, doctors informed that they received about 70-75 cases in a year, a vast majority of which involved violence by husbands. Swat district reported that violence by husband constitutes about 5% of all cases, whereas rape and suicide constituted 15% and 10% of all cases, respectively.

There was consensus among doctors across districts that most cases approach hospitals for emergency or ML services where severe family violence has taken places, sometime resulting in dead bodies being brought in for postmortems. There was also consensus, however, that cases reported to the police constitute only a small fraction of those actually coming into hospitals. Doctors in Mardan and Karachi, e.g., reported that 50% cases never approach the hospitals in VAW cases. Doctors also reported often being stopped from inquiring cause of injury by the person bringing the woman in by declaring it a private family matter, which they allow.

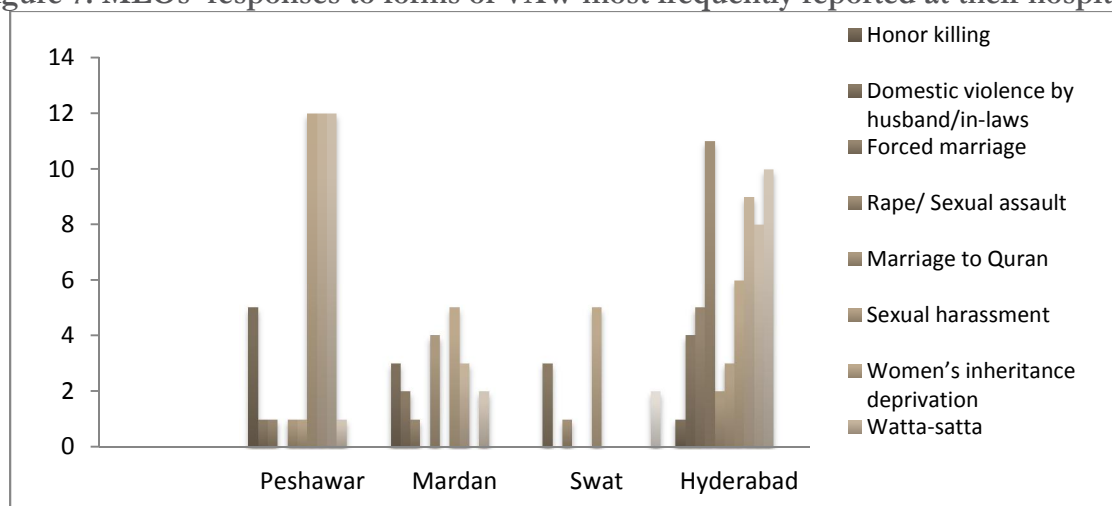
B. Knowledge, understanding and experience of handling VAW cases

Doctors’ understanding of GBV was closely tied to its physical manifestation. Two doctors in Hyderabad, including the [acting] Police Surgeon, noted that GBV is committed against women due to lack of education, stress in life, economic problems, lack of religious education and lack of mutual understanding between couples. They also added, however, that most women that approach them are liars and want fake reports.

In Swat, doctors were found baffled by the word “*sinf*” [gender in Urdu]. They could not comprehend how a person could be targeted on the basis of their gender and social position in society. Doctors in Mardan were able to isolate *swara*, inheritance deprivation and marriage to much older men as forms of GBV.

Although many doctors refused to provide their estimates on more frequently reported cases, figure 7 depicts some responses in this context:

Figure 7: MLOs' responses to forms of VAW most frequently reported at their hospitals⁷²



C. Information about APW Act and its implementation

Most doctors were found completely unaware of the AWP Act, 2011, except in Mardan. Doctors in Mardan knew the name of the Act, but often confused it with another law concerning selling of girls. Their awareness of the AWP law jells in well with their experience of conducting examinations in forced marriage- related assault cases, as depicted in the figure 7 above.

None of the doctors reported receiving any notification of the Act's passage, just like most police officers, as discussed in the preceding section.

Doctors from Islamabad were of the view that there is no implementation of any law in Pakistan, whereas doctors from Mardan reported as follows:

"We only know that *swara* is now an illegal offence and that a law has been passed in this regard. We learnt this at a training given by a local NGO."

– A MMLO from Mardan

D. Victim counseling and informed consent

Doctors reported that usually women come to them in a nervous and frightened state. Some doctors reported taking extra measures to calm the woman down and gain her trust. Some resorted to simple measure such as providing them with a glass of water or fresh fruit and offering some basic informal counseling. According to one lady doctor in Karachi, women are often pleased to have someone without a vested interest counsels them with regard to their [domestic] problem. The same doctor also reported that she has called the husbands in some instances to "*give them a dose* [admonish them]" and many small problems leading to recurring assault have thus, been amicably resolved between couples.

⁷² No response from Islamabad and Karachi

It was noted that no victims of GBV is ever referred for psychological counseling, except in Karachi where a few doctors have been working with NGOs over many years and are aware of their services. This assistance is, however, provided unofficially, without creating a paper trail.

“Basically, we do provide them some basic preventive knowledge related to health. Where we suspect that there’s been severe violence in a case, which can later become a police case, we ask the police to come over. But in most cases, which are of domestic violence by husband or in laws, we try for a patch-up between the parties without involving the police.”

– A male government doctor from Swat

In Hyderabad, male doctors reported that they do not discuss anything with women as it is understood that they have come for a medico-legal certificate, not an examination. They further added that often women want fake reports where they can see that the injuries are not that serious either.

It was observed that in some cases, doctors tended to ask the woman what she wants to do after the examination. Most doctors reported advising women not to get involved in police matters, if there is a possibility of solving the [domestic] problem without police intervention. While this was true for most parts, some doctors asserted that they stick to their work and almost always involve the police, even if without conferring with the woman. In this respect, it is also important to note that according to Pakistani laws, MLOs must make third-party disclosures [to police or a Magistrate] for any case that comes to them for examination. The report that they make must be entered in their record and a copy has to be handed over to the police and another to the victim or her family in case she is a minor. Doctors in Mardan reported informing the police of a walk-in case if they suspect more harm to befall the victim once she leaves the hospital. In Swat, the enumerator mentioned in his note that counseling is done only in cases where women appear exceptionally scared and nervous, and sometimes, families stage a boycott of the woman who has approached the ML facility with the intent to press charges.

“We usually do not have time for counselling of clients. Mostly females hide their actual issues and it is their personal problem and we have no right to interfere in it. Being doctors, we focus onto giving medical facilities. Women come for just medical examination with willingness.”

– A male government doctor from Peshawar

In terms of the legally prescribed age for consent for MLE, and documentation of this consent in selected districts, no set practice standards were found.

Table 14: Age and documentation of consent in MLE

District	Legally prescribed age for consent to MLE	Actual age consideration in practice for acquiring consent	Documentation of Consent
Karachi	14	14	Yes, on MLC
Hyderabad	16	13	Yes, on MLC
Peshawar	18	18	Yes, on plain paper
Swat	don't know	don't know	No method available
Mardan	18	18	Yes, on plain paper
Islamabad	18	18	Yes, on MLC

Here, it is important to note that in cases where the woman is considered a minor, according to whatever age limit is observed [14, 13, 18, etc.], doctors need the guardian's or husband's consent prior to examining the victim. This has serious implications for women facing violence in a forced marriage or related to inheritance, and whose parents/ husband are very likely the persons responsible for her situation. In some countries such close as India, examination by a doctor without a woman's consent amounts to assault in itself in rape cases, due to the invasive nature of the procedure. Most doctors interviewed confused "informed consent" with acquiring consent from the woman's guardians, irrespective of her age.

"We take an undertaking that she doesn't want to go to the police. If she is less than 18, the parents give the undertaking. Family has to be involved, even if the girl is over 18, so that no one can say tomorrow that we made her do something she didn't want to, etc. Even it is a domestic violence, we must involve her [marital] family."

– A male government doctor from Islamabad

It is also important to flag that there is no singular age for a child across laws in Pakistan. A woman must be at least 18 years old to vote and drive etc., but may be 16 or over to give consent to marriage [for girls]. Further, parallel religious jurisprudence widely accepts puberty as a sign of adulthood, even if it comes at 11 years, whereas consensus can be found in Mohammedan Law that a woman can marry [and inadvertently, give consent to sex] at the age of 14-15. The relevant section of law which prescribes an age for consenting to MLEs could not be located for this study.

E. Examination procedures

While doctors from Swat reported that domestic violence by husbands is very common in their district and that they get many such cases on a daily basis, they explained that head-to-toes examinations are conducted for victims in the emergency ward but no such procedure[s] exists for VAW cases. Similarly, doctors from Islamabad stated that they only examine women where she reports she has been hit/hurt/wounded. In some cases, where the woman has been brutally battered, her body may ache all over. As we will see later in this report, most survivors of forced marriages and inheritance deprivation interviewed for this study [albeit, a small sample] reported extensive physical abuse at the hands of both husbands and in-laws. Not having a thorough head-to-toe examination can severely compromise collection of evidence which may be available from different parts of her body. In some districts, such as Karachi and Islamabad, doctors reported that

women just wish to be examined where it hurts or where they think they should be examined. Lack of counseling in terms of explaining the significance of a thorough examination, may enhance the scope of medical findings in such cases, which would support prosecution's case in court. One wonders how doctors in this field perceive contributing to justice for a battered survivors of forced marriage, inheritance deprivation, or any other form of physical and psychological violence [such as honour killing or rape, for instance], or giving them a shot anyway, and then ignore instituting systemic improvements in evidence collection. The author of this report has been involved in many cases where incrementing evidence was never recorded by WMLOs, neglecting a very important link towards corroboration and ultimately conviction in court.

In terms of the process of examining a person, doctors reported being trained in medical colleges. Important to note here is that a course on medical jurisprudence and toxicology is taught to doctors studying for the MBBS over one semester of 6 months. Doctors are not taught how to conduct practical postmortems or MLEs for rape victims say, in most medical colleges and doctors are required to take a two-week course before they can take the office of an MLO. Given the sheer scope of cases that require examination by such a doctor [see list of cases in Chapter 2], and considering the level of knowledge they bring to cases where a person's life may hang in balance in court, one is not surprised how most officers [both police and ML] reported not having training but learning on the job. This is also perhaps connected somehow with the fact the most MLOs serving in Karachi, for instance, have been there for years, younger doctors are few and far in between while more doctors do not get appointed [or assigned]. The more time they serve in the profession, the bigger a human asset they become, both to the profession and the hospital. It is also probably a strong reason why doctors from Swat reported what a loss the retirement of a 19 Grade MLO was for them and their hospital in 2012, and that he is yet to be replaced.

Doctors often do not have adequate equipment for collecting forensic evidence that may be present on a woman's body. For bruises that do not form immediately, none of the doctors reported having shadow less lights or ice blue lights that could help detect evidence invisible to the naked eye. One doctor in Islamabad said that his hospital had this equipment and when asked if and why it isn't used, he commented that we should ask this question of those who don't allow its usage. A doctor in Karachi reported that storing equipment at hospitals is also an issue where supplies get stolen by hospital staff itself, including ward boys and nurses.

Regarding privacy for women's examination, big city doctors said that as they get many cases in the emergency ward, which is usually right next door to the medico-legal section, it is often not possible to ensure privacy. When the author of this report went to visit one major government hospital in Karachi for this study, she was greeted by and had to explain the purpose of her visit in detail to two male doctors' assistants who stood guard outside the MLOs office. The same practice was observed for victims coming in for examinations. Additionally, upon inquiring from the WMLO where she conducts the examinations, it was learnt that the examination table was none other than the three-seat sofa on which the enumerator and her colleague were sitting. She explained that in most hospitals, there is no sofa even or a door, to keep prying eyes outside. In Civil Hospital Karachi, for instance, the medico-legal examination room is veiled by a tattered cloth used as a curtain. The WMLO also explained that because there's hardly any light in the room in the evening hours, she often has to pull out her cell phone and use its torch to examine a woman. This practice often make rape victims jump as they think the doctor may be taking pictures for malicious purposes.

In our family system, a woman takes support from her brothers, father, or some family friends, before she comes forward [for an MLE]. Otherwise, it is difficult for a woman to tell [others] about minor injuries inflicted by their husbands. These are our problems- our domestic problems.

Police forge *mukmuqa* or they make such a report that victims default [sic] and cases finish. Doctors also take money from police, while the police take bribes and changes swabs [containing evidence in cases].

Once, the police had apprehended a man and woman for drinking and having 'illicit relations' and brought them for an MLE. I expelled everyone from my room and asked the woman to tell me the truth, as there is no punishment for telling the truth. I told her even if her report is positive, I'll change it to negative, but she has to tell me the truth. She told me, "Yes, we sat down together; we did not drink, but we did sit together [had sex]". I gave a negative report. I did it to protect her. I felt sorry for her. She was not doing this [selling her body] willfully but out of helplessness. People have a thousand problems. Who are we to make raids and arrest people on anyone's behest? Police officers have their own agendas. If someone doesn't give you any attention [sic], you go and catch them [implicate them]."

– A senior male government doctor from Islamabad

It was interesting to note that some doctors are willing to change reports themselves to 'protect' women. Mediations are also done with the same intent apparently.

The remaining districts claimed perfect privacy for women, even if the examinations were conducted in dingy little corner rooms where there was no light or equipment.

Further, none of the doctors interviewed reported ever visiting a crime scene to get possible clues into what had transpired between the victim and the perpetrator. A WMLO in Karachi explained that sometimes this can provide vital clues in women's domestic violence cases to see if she could have accidentally fallen or was pushed by someone, and also to make an informed judgment about her injuries so that it can be recorded in the MLC. She lamented that the police never bother to check for such things, which puts more responsibility on MLOs.

F. Documentation of evidence

Interestingly, where other doctors had developed varying formats themselves or were provided one by the hospital to record ML findings, doctors from Swat noted that they do not have a section for assault history in their standard MLC format. Doctors from Swat and Hyderabad felt that the spaces provided in MLCs were grossly insufficient to record all vital evidence and that many improvements need to be made, despite the shortcomings of the examination itself. They did not provide any specific information concerning improvements that could be made; however, they did say that improvements would provide further clarity as to the nature of the case.

Doctors from Swat noted that their lack of knowledge about laws keeps them from making choices about what should be mentioned in the report and how it is critical in a court of law. They reported that in some instances where there has been a "compromise" between parties, they are not sure whether they should mention it in their report.

Concerning explaining what is in an MLC to woman, doctors were split 50-50. While other districts said they do educate women on what they have recorded in the report [which being in English cannot be understood by most women], district Hyderabad, Swat and Mardan noted that they never

discussed the report with the woman. Reasons cited for not informing women was that it creates problems for doctors and that it is not part of their job to do anything besides conducting the examination and making a report. It is not clear then in what capacity and under what authority they can counsel women prior to the examination, especially in order to achieve a “patch-up”.

“Most cases brought by women are not false. Females don’t lie. Men do. They come with false cases more than women. Expert medical opinion provided regarding the truthfulness or baselessness of a claim in the MLR depends on the doctor- how greedy he is. If he understands and ‘feels’, he’ll give an honest report [sic]. We do, however, mention in the MLR if we think injuries are self-inflicted.”

– A senior male government doctor from Islamabad

In some districts, MLCs are issued to the woman and the police within minutes of the examination. In Islamabad and Hyderabad, doctors reported that it can take from 24 to 48 hours to issue a MLC, depending on patient traffic at the time a woman arrives and thereafter. In Swat, doctors said that it can 1-2 weeks, after which the report is handed over to the police and not the woman herself.

It is curious to note how much detail a doctor may remember when eventually sitting down to make the report after a delay of a couple of days or weeks.

G. Testifying and providing evidence in court

A few MLOs reported testifying on court to be the most problematic and painful part of their work. Reasons shared ranged from police failure to bring custody to court, cancellation of hearings and lack of support from the police. MLOs are also not provided any transport allowance to travel to court in most selected districts, which may be as frequent as every day or every third day, depending on the number of ML cases reported at their hospitals in which they personally conducted the examination. Mardan district doctors, however, reported that they get 18 km’s worth of travel reimbursements from the hospital, beyond which they have to pay out of their own pocket.

Despite the lack of uniformity and non-availability of SOPs and equipment, all doctors interviewed agreed that medical evidence is the most conclusive piece of evidence in court in violence cases. Doctors in Peshawar asserted that a court’s decision almost solely rests in medico-legal proof.⁷³

Further inquiry is also required to understand how MLOs are able to remember particulars of a case when they finally have their days in court. Due to protracted trials in almost all criminal and some civil cases in Pakistan, the question of how well memory serves doctors providing their “expert opinion” in court, when they also find current MLC formats to be restrictive.

Testifying raises another important question: if MLOs are required to testify in court and provide primary oratory evidence, how can two different people be part of this process? If courts require the author of a report to present her/himself to verify the MLC presented as evidence, how can the testimony of a different [male] doctor constitute primary evidence for which he was not even present?

⁷³ This may not necessarily be true as courts also take oratory and circumstantial evidence into consideration before deciding on a case. Many rape cases have resulted in acquittal in Pakistan even where DNA and MLC reports confirmed the accused’s involvement.

H. Workplace security

Medico-legal work usually involves security concerns as, based on a doctor's report, a person can be sentenced to life imprisonment and possibly a death penalty. This makes ML component of violence cases susceptible to bribery and corruption as well.

"Yes, there is a lot of pressure in our work. We faced a lot of harassment from public officials in the previous Government that made all efforts to prove every case baseless or false. But we have no such complaints against the present Government. There's no interference from them to change or alter reports. Previously, MPAs and MNAs used to interfere and demand alterations to [our] reports all the time"

– A male government doctor from Mardan

Most doctors also reported being continually harassed by different parties involved in a case. Some reported direct death and threats to harm. Despite these threats, MLOs are not provided any special safety arrangements and usually cope with threats by keeping a low profile. This low profile is also one of the reasons why most rights organizations have somehow overlooked the importance of this sector or have not been able to engage with it directly. Doctors in Hyderabad recounted the politically motivated murder of colleague, Dr Ghulam Ali Shaikh, a Chief Medical Officer from Hyderabad, in 2001. Similarly, an MMLO of the Qatar Hospital in Karachi was gunned down by unidentified attackers near in Orangi Town on October 7, 2013, while Dr Manzoor Memon, an MMLO at JPMC, Karachi, was shot and killed along with his driver in a drive-by shooting on May 12, 2014. Media reports noted that Dr Memon was being followed for many days and despite informing the police, no action was taken to provide him security.

"Yes, political interference is there in our work. It happens a lot, especially in the past. We have been pressurized in many ways. For one, our own seniors put requests to us. Then political people like MNAs make requests. Our own friends pressurize us. People also offer money [to change reports]. I can't speak for anyone else, but I do what is on merit [sic]. But I satisfy those pressurizing me also in some way. The way to do this is to reserve your judgment and have the people bothering us leave in peace. That's also why we tend to keep to ourselves and our work."

– A male government doctor from Mardan

Doctors in Swat suggested that those putting pressure to alter MLCs also have access to senior doctors, so they did not wish to comment on this question much. This comment in itself does not leave too much for the imagination.

Most doctors also did not report having any medical or life insurance in the wake of threats meted out regularly to them. A doctor from Islamabad noted that Rs. 1500 are paid to the MLOs for expenses and other small allowances including travel, but he has himself taken the initiative to take out a life insurance policy in his name from 3 different insurance companies.

I. Inter-departmental coordination and referrals

With the exception of Peshawar, where an Information Desk has been set up at the Khyber Teaching Hospital by an unnamed Trust, no formal systems of referral could be found for doctors

to refer women for legal assistance, shelter or psychological counseling. At KTH, doctors reported that women are referred for more services on a regular basis. Doctors in Hyderabad, however, said that this was beyond their ambit of work, even if a woman was in clear need. They also reported now having any knowledge of service-based organizations that women could be referred to.

J. Capacity-building & resource allocation

i. Trainings on VAW: Under Article 3 of the Albanian Law on Measures against Violence in Family Relations [2006] the Ministry of the Justice is in-charge to “train the medico-legal experts in recognizing, diagnosing, evaluating and reporting on domestic violence and child abuse injuries”⁷⁴.

Through this study, it was found that doctors across the board were unsatisfied with the quantity and quality of trainings provided to them. A doctor from Karachi reported that WMLOs are neither sent anywhere for trainings, nor are any courses provided by experts in medico-legal work, unlike many other countries.

“No trainings are provided by the Government or NGOs. I think doctors that are working in the emergency section, need to have thorough trainings in ML work. More importantly, WMLOs should be appointed at our hospitals as a first step so they can provide services to VAW cases. Trainings on ML would be beneficial from every respect. At least 5-10- day trainings is necessary, which should cover both medical and legal aspect. It does not matter who provides these trainings. When doctors know about basic legal points, then obviously laws will be followed by them more closely.”

– A male government doctor from Swat

Doctors from Islamabad shared that even though doctors are trained in colleges on ML jurisprudence, they know nothing of new laws, especially those that address a specific form of VAW such as domestic violence. He agreed that trainings must be provided in an on-going fashion which could benefit doctors and victims of violence alike.

Mardan district doctors, however, believed that no one cares about their work and whatever little work has been done, is due to the efforts of NGOs:

“We have received many trainings but none provided by the Government. Government is not interested in imparting trainings in the Pashtun area, as they are not interested in its betterment. No doctors have been given any training by the government.”

– A male government doctor from Swat

These views may be the stuff of perceived discrimination, if other officers [both police and ML] had not also shared tales of corruption in KPK during the previous government. Many MLOs have already been quoted in this report in terms of identifying corruption in KPK’s last government as

⁷⁴[http://www.mpcs.gov.al/dpshb/images/stories/files/ligjet/3.4.2.1.Law on Measures Against Violence in Family Relations.pdf](http://www.mpcs.gov.al/dpshb/images/stories/files/ligjet/3.4.2.1.Law%20on%20Measures%20Against%20Violence%20in%20Family%20Relations.pdf)

the cause of many problems. One has seen that the same political party was not voted into power in the General Elections last year.

ii. Counseling skill: It has been established in many other parts of this report that arranging settlements between opposing parties in violence cases is common to both police and MLOs. Some doctors also reported making efforts to counsel the victim themselves. Mediation and counseling skills in this respect would be a useful addition to MLOs' work, in an environment where referrals are just not made except in a very small number of cases. None of the MLOs interviewed for this study reported having received any training on how to offer basic counseling to VAW case, or even otherwise, whether they be rape, domestic violence, or bomb blast survivors. Trauma counseling skills are essential for those working around emergency units or in the ML section, at least on a basic level. Most MLOs interviewed welcomed such a training if provided.

iii. ML coursework in colleges: Most doctors expressed their satisfaction over courses taught on forensics, toxicology, and medico-legal examination, but did not express dissatisfaction over lack of practical training in colleges and universities. One doctor from Swat mentioned that at the time he graduated from medical college, practical work was part of coursework. Some doctors in Mardan said that they had studied it so long ago that they did not remember much of it.

From the analysis the author has done for some of the forensic and medico-legal jurisprudence books used presently across Pakistan to guide medico-legal examination, it can be said that most of these course books contain extremely anti-women elements and assertions/assumptions which are often disconnected from women's realities⁷⁵. If the workings of the sector is to improve, one cannot neglect fundamental changes that need to be made in medical textbooks on the subject.

iv. Standardized examination kits: MLOs across the districts answered in the affirmative when asked about the existence of examination kits for victims. They are also shared doctors use sterilized equipment as part of the kit. The very nature of some examination kits used for survivors of sexual violence for example, is such that the material contained therein comes in a sealed box [in most countries], where complete and disposable supplies are included. It is misleading for doctors to say that such kits exist where they also report purchasing equipment individually and then sterilizing them for reuse.

v. Supplies for MLE: Uneven and irregular supplies of ML equipment were found in all the hospitals under study.

"Instruments are available only in the morning shift and not for night shifts. In emergency cases, we can offer few medical tests because of absence of staff. We, instead request their attendants [family/friends] to take the victim for important medical tests from a private laboratory."

– A male government doctor from Peshawar

WMLO from Karachi shared that towards the end of 2013, there was bomb blast in a bus carrying police officers from a training school. The hospital where a substantial number of injured or

⁷⁵ Khan A., Zaman S.; *The Criminal Justice System & Rape: An Attitudinal Study of the Public Sector's Response to Rape in Karachi. War Against Rape. Karachi. 2011.*

casualties were brought, did not release surgical gauze to ML staff so that the wounds of the dead and alive could be covered. She showed the author a few pictures of the dead taken from her cell phone to substantiate her claim.

Although no doctor reported ever running out of supplies prior to an examination, most doctors admitted that because the budget for ML work is so minuscule, it is often difficult procuring supplies. Further still, Peshawar doctors reported sending women to other facilities where more detailed examinations are required. In Karachi, a WMLO reported theft as a reason the supplies are not stocked.

vi. Lack of WMLOs: There were many reasons cited for this, mostly stemming from workplace security and comfort. Doctors from Peshawar noted that women do not join because it is “risky work”. They postulated that more women can be encouraged to join if benefits related to workplace security are provided. Doctors from Islamabad noted that women do not want to do court work. They mentioned that ML work by nature is very unpleasant [blood and dead bodies]. Women therefore, do not like to get into such occupations.

Doctors in Swat said that besides WMLOs, Swat district does not even have experienced MMLOs. They compared their hospital’s services with Saidu Sharif Medical College and said that despite SSMC being a larger hospital, there was hardly any ML staff there.

“There should definitely be an investment made toward the uplift of the ML profession. There should also be incentives for doctors. In England, for instance, when a doctor conducts a post-mortem, he gets £80; for writing an MLR, he gets £40. We don’t have any system like that here. As long as there are no incentives, people will not come [into this profession]. No incentives, no protection, and then court duties; that is why people don’t come. If [professional] people don’t come, violence will not be detected properly. That’s why violence keeps increasing in our country. There’s not punishment; culprits are not caught [or convicted].”

– A senior male government doctor from Peshawar

vii. Budgetary allocation: In Karachi, a very senior WMLO with over 17 years’ experience mentioned that ML departments in Karachi get anywhere from Rs.25,000 to Rs. 30,000 a year. The remaining hospitals [except Hyderabad] reported that the ML section does not get a budget; it gets supplies from the hospital it is based in. In Hyderabad interestingly, where the [acting] Police Surgeon was interviewed along with another doctor, the respondents mentioned that it is not their concern how much budget is allocated to them. This compares starkly with their view that they do not have many medical supplies and would require some equipment to be channelized towards their work.

viii. Demanding higher resource allocation & response to requests: It was alarming to find that doctors, just like police officers, are often ignored for the requests they make for resources and equipment. Districts such as Karachi reported that the Sindh Health Department does not entertain any requests made very often by the Police Surgeon [PS] himself. As MLOs cannot bypass the PS to make demands, they cannot do anything unless the Health Department listens to someone, anyone.

District Islamabad’s doctors reported that despite many [failed] attempts, “...no one in senior management pays any attention or listens”. In Mardan, doctors reported writing applications after applications to the Bacha Khan Medical College for trainings for MLOs in forensic science and law,

but they were refused for want of resources while government officials conveniently excused themselves.

4.3. PUBLIC PROSECUTORS

PUBLIC PROSECUTORS' RESPONSE TO GBV

A. General information about community served and cases dealt

Public prosecutors interviewed for this study included only a handful of female officers. A total 28 lawyers were interviewed including both civil lawyers and criminal prosecutors.

In most districts it was found that very few female public prosecutors were posted. Only 1 woman Public Prosecutor [WPP] was posted in Swat and Islamabad each, while 5 WPPs were posted in Hyderabad. District Karachi had the largest share of postings for WPPs, where 40 public prosecutors were reported to be practicing actively in courts⁷⁶. A break-up is provided in table 15 below:

Table 15: No. of female public prosecutors posted in selected districts

District	Female Population [1998 census]	Female Public Prosecutors working in the district
Karachi	9,000,000	40
Peshawar	2,325,000	No information
Hyderabad	1,750,000	5
Swat	628,800	1 ⁷⁷
ICT	402,618	1
Mardan	123,000	12
Total	15,229,418	58

Women were reaching prosecutors through various means. They were often brought by the police or referred through the district attorney's office. Dar-ul-Aman and other organizations such as NGOs were often referring cases to prosecutors while in Mardan, lawyers mentioned *jirgas* and *islahi / musalibati* committees as an important referral point as well, where cases could not be resolved through local counsel.

According to the available data from Ministry of Interior provided by a senior public prosecutor in Islamabad, a total of 11,789 cases of violence against women have been registered in the country since January 2009. Out of which 8,433 cases have been registered in Punjab, 680 cases in Sindh, 1,656 cases in Khyber Pakhtunkhwa, 333 cases in Balochistan, 272 cases in Islamabad Capital Territory, 362 cases in Azad Jammu & Kashmir and 62 cases in Gilgit & Baltistan.

Mardan prosecutors reported that most cases reaching courts are those of inheritance deprivation, domestic violence, divorce, *kehula*, honour killing and sexual violence. About 120-170 cases are referred to the district attorney's office each year in Mardan, including other forms of VAW as well. Another prosecutor from the same district mentioned that 10-12 cases of VAW come to courts every month mostly related to husband-wife violence, family disputes and other forms of domestic abuse. Amongst

⁷⁶ Data acquired through prosecution offices and senior prosecutors. Some discrepancies can be expected.

⁷⁷ There are reportedly 5 female public prosecutors posted across KPK. One female prosecutor is posted in Swabi and does not practice in Swat on a regular basis. She may travel for a few cases.

these, the husband is directly involved in about 4%-5% cases, while in-laws are perpetrators in the remaining cases. Women mostly approach civil courts for *khula* or file cases for maintenance. Prosecutors also estimated violence by husband against wife to comprise between 60%-65% of all cases brought to court.

In District Swat, VAW cases are rarely reported according to prosecutors interviewed. Based on their experiences, women litigants are involved in about 1%-2% of all cases. Most cases involve domestic violence, including domestic disputes between husband and wife, while others concern divorce, *khula*, inheritance deprivation, murder, *swara*, forced marriage and under-aged marriage, etc. The only female lawyer in the group from Swat said that in her 3-year practice, she only saw one case reported where the abuser was the husband.

A public prosecutor from Hyderabad reported that 10 to 12 cases are registered at the Human Rights Department every month which involve domestic violence by husband.

B. Knowledge, understanding and experience of handling violence against women cases

Mardan-based prosecutors understood GBV to comprise the following: every action that humiliates a woman, or causes pain and sorrow/ agony to a woman; keeping sisters from marrying even once; depriving women of their inheritance share; restricting women's mobility; not allowing women to stay in hostels [while they are studying] & other restrictions on education; and physical violence against women. They emphasized that GBV is a criminal act and its perpetrators should get the maximum punishment.

A young male lawyer from the Swat group said that the direction in which our society is headed, and the extent to which NGOs and other institutions are “*beating on about women's right, we can expect that in the next 5-6 years, the women of our houses will be seen sitting in markets and other public places*”. He further clarified that, “*...these organizations are working under a thought-out plan that are damaging our culture and customs*”. The President of the District Bar, Swat, who was also present at the discussion, commented that, “*Women and children are the cause of all crimes, because many professional criminals carry out their activities with their help. There are many other problems also afflicting our society, but no one is paying attention to them. These organizations [NGOs, etc.] can see only women and children*”. The belittling and trivialization of VAW in this case was particularly astonishing given the position of authority from which these words were spoken.

“Customs are laws in themselves, and to declare such customs as violence would be cruelty towards those practicing these customs. It would itself be a form of abuse, if we declare the actions of a husband who stops his wife from going somewhere, as violence.”

- A female government lawyer from Swat

In terms of GBV reporting, all prosecutors interviewed were of the opinion that only a small fraction of cases reach the courts because of cultural constraints. A Prosecutor from Islamabad estimated this ratio to be around 7%, whereas in Mardan, lawyers held that 30%-50% cases are resolved within the home due to the stigma attached to women approaching courts. A prosecutor from Hyderabad further clarified that women stay away because court procedures are difficult to understand and engage with.

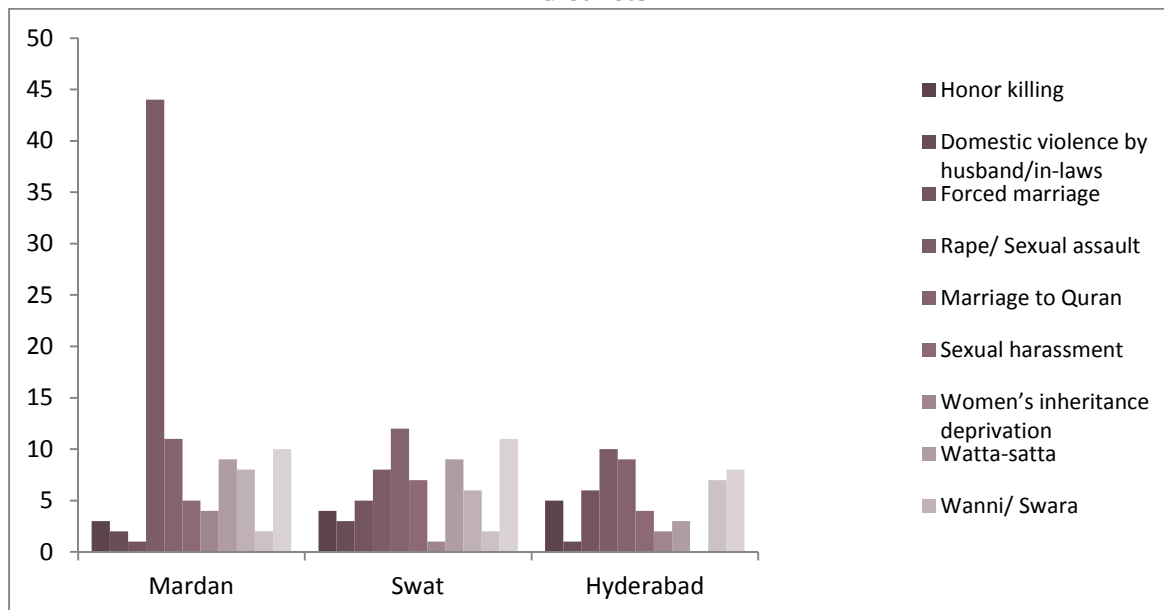
“Around 30% cases are reported, because families patch-up, or they emotionally blackmail women that your family, father, brothers, etc., would be disgraced. Access [to justice] thus, also becomes restricted and cases are not reported.”

-FGD with lawyers from Swat

Table 16: Data received from Interior Ministry on reported cases of VAW in Pakistan, 2013

Nature of Violence	No. of cases reported to Prosecution Services
Abduction/Kidnapping	1,137
Murder	799
Rape/Gang-rape	396
Suicide	402
Honour Killing	382
Domestic Violence	356
Sexual Assault	57
Stove burning	16
Acid throwing	22
Miscellaneous [<i>wanni/swara</i> , custodial violence, torture, trafficking, child marriage, incest, threat to violence, sexual harassment, attempted murder]	881
Total	4,448

Figure 8: Public Prosecutors’ responses to forms of VAW most frequently reported in their districts



C. Information about implementation of AWP, 2011 in particular

i. General questions: Prosecutors from Islamabad and Mardan reported being familiar with the AWP Act, 2011, whereas prosecutors from Swat mentioned only having heard of it in passing. None of the other district prosecutors/lawyer interviewed had heard the name of the law or were aware of amendments to the PPC in this respect.

Interestingly, even those who claimed to know of the law could not identify which acts had been criminalized under it. Even though none of the lawyers interviewed had received any notification regarding the passage of the Act, they mentioned that being part of the courts, they usually find out one way or another. It is interesting to note that the District Public Prosecutor for Peshawar reported acquiring a copy of the Act [and others] from the internet as routine practice as notifications were hardly ever sent. The same was also reported by lawyers in Mardan.

No trainings or orientation regarding the Act and its applicability were reported anywhere in the selected districts by prosecution officers.

Regarding contents of the law, most lawyers were in no position to respond as they had never seen a copy of the Act. In Mardan, a few prosecutors being familiar with the law asserted that amendments needed to be made to further improve the law but there was no clarity on what these could be. They also added that implementation is weak and lawyers do not know that the law exists. It is therefore essential to tell people about it and implement it strictly, they said.

However, to a subsequent question on whether the law is being adequately enforced, prosecutors from Mardan reported that it is “proving useful in 70% cases”, and that 20-25 cases have been registered under the Act, some of which have been “resolved”. No specific information could be acquired about the nature of cases being reported and how they are being “resolved”.

A senior prosecutor from Islamabad responded as under:

“The passage of these bills is hailed as a victory by female legislators and rights groups that have long pushed for increased legal rights and remedies for women. The victory, however, is only a small one. The proponents of these bills admit that laws decrease in value without proper enforcement and in Pakistan enforcement is a problem. Protecting women against the practices made unlawful by this legislation will be difficult and irregular, especially in regions where these practices are more commonplace. It may eventually be the case that relatively few convictions are sustained after appeal. This wave of pro-women legislation is all fairly new and it is premature to evaluate its numerical impact on Pakistan's civil and criminal dockets [sic]. This does not mean that the value of these bills cannot be assessed independently from how many cases are adjudicated under them.”

– Senior public prosecutor from Islamabad

He also mentioned that regardless of whether or not these laws can ultimately be enforced, their existence alone is indicative of positive social progress. “*Such steps should not be undervalued. The need of time is to start fully implementation these laws*”, he said.

A senior public prosecutor from Karachi shared that there “... *can be no information amongst lawyers, police officers and sometimes even judges because such information [about passage of new laws] is often not shared*”

with them through a proper channel'. He shared that the Law Ministry, in the event of the passage of a law, usually sends a notification and a copy to the Advocate General's office, the Prosecutor General's office and the Registrar of High Courts [in case it is Federal law]. He regretted that Bar Councils, the Departments of Law and the Judicial Academies are not fulfilling their responsibility when they fail to notify **all** stakeholders in the criminal justice system. He suggested that such notices should be published as adverts in newspapers while public debates should be held [through television or otherwise] on the laws in question so that more people get to know about it and get involved in the process of debate.

Lawyers interviewed did not know of any awareness-raising programs undertaken by the provincial Law Departments, the district attorneys' offices or by District Bars to inform the general public about laws and legal protections available to them. Bar Councils were found not dedicating resources towards lawyers' trainings, as part of fulfilling their mandate. A senior public prosecutor from Karachi reported that District Bars receive funds from the Law Departments along with an annual fee from enrolled lawyers. He shared that instead of Bars arranging for lawyers' trainings from this fund, NGOs come sporadically to have sessions with lawyers as part of their own projects. He perceived this to be, "...a failing of the State to educate those who are in the business of justice".

ii. Witness counselling & case preparation: Most lawyers reported counseling women with regard to the statements they make in court and talking to women in detail on the first meeting. Subsequent sessions were reported to be few and far in between. Some lawyers said that they ask women to learn their statements by heart so there's no mistake, but also reported that often, women get confused during cross-questioning. Still others in Mardan said that, "*private lawyers do counseling; we do not*".

It is important that not all litigants can afford private lawyers. If counseling is to be left to someone else, there is little possibility that the prosecutor would even connect with her/his client and mutual confidence could be gained. Worse still, the litigant would be completely unprepared to handle the barrage of questions that come with the cross-examination process.

Lawyers from Swat, however reported they kept an "... *unusual level of contact with their female clients because in a domestic violence case, the husband might be threatening our client and we have to address women's safety and security concerns*".

In women's cases according to my experience, most women are illiterate, they don't know about court language and procedures so first of all, I guide her on court languages and terms how to begin giving her statement in court. Mostly, women forget their statements and sometimes they miss very important points. That's why I meet with them a day before and we discuss all statements again and again."

- Public prosecutor from Hyderabad

The manner in which women are counseled and their subsequent 'performance' in court leads one to believe that court systems become more difficult to navigate than they should be, which women seldom have prior exposure to and about which they generally lack knowledge. There is a certain disorientation and intimidation commonly reported by women when they go to criminal courts, as sessions courts are usually swarming with male lawyers, police officers, prisoners and other male

staff. It is little wonder that women should forget their statements or get nervous in this environment [as reported by some lawyers and police officers in this study]. When asked about being familiar with methods of psycho-social counseling, most lawyers said they did not know what is was or how it could be done, but would like to receive trainings if the opportunity arises.

Most lawyers also reported not calling women to court unnecessarily, whereas a few suggested that they encourage women to come at every stage of the trial. In all instances, however, women were provided relief from coming due to court environments, slow processes and lack of appropriate waiting spaces. This has resonance with laws that allow WMLOs to not appear in courts to testify in most of the selected districts, except Karachi and Hyderabad:

“Yes, absolutely, we need to encourage women to come to courts. If we don’t encourage them, they never come back to us. If it is not needed, we don’t ask them to come to court. In the initial stage, it is not so important for women to come to court, although collectively looking at the customs and the court cultures of Swat, women spend the whole day inside the court, confined to a room. Men can still come and go; the women cannot.”

– FGD with lawyers in Swat

Mardan prosecutors also noted that they do not inform women regarding bail or early release of a perpetrator and only contact women after a judgment has been passed in court. What an unpleasant surprise it must be for women to find their abusive husband showing up at their door step one day, without any prior notice!

iii. Case law application & international commitments: None of the lawyers interviewed reported falling back on international conventions such as CEDAW, CAT, etc., to support their cases in court. They shared that though the government may have ratified treaties, only local laws are applicable and relevant in Pakistani courts, and it is the discretion of the judge whether he/she takes them into consideration.

A senior public prosecutor from Karachi, however, said that it does not matter if the judge considers it or not. “*It falls as the prosecution’s obligation to bring up such conventions, if it satisfies a right* [sic].” He added that judges in courts are like “statues”. They are meant to listen to both sides and then make a decision. He suggested that it would be better for prosecutors to bring in these conventions so that they can help judges make a more “informed” decision.

“A lawyer tries to build his own library depending on his financial situation. We also have a library for the Bar room. But they are far less in number compared to the number of lawyer that need them, because of which we often cannot access relevant books. In Zila Swat, there is an online digital library established with the support of UNDP, the yearly fees for which is Rs. 25,000. We pass on this fee to our clients. For online reading, lawyers usually don’t have to time to read and we often do not have access to computers up to great distances. If some donor agency can link up with the District Bar and make a library for us, then perhaps the situation can improve.”

– FGD with lawyers in Swat

In terms of access to case law, lawyers were found strapped for resources. Outdated law books, journals and libraries were identified as major impediments to assembling supporting case law as most prosecutors could not afford to pay the fee for online journals. It is unclear what the role of the district attorney's office is in this respect or how greater access could be linked to greater performance.

Interdisciplinary case law and studies are reportedly being used in some districts, where literature reviewed pertains mostly to medical aspects of physical violence. Statutory interpretation of legal provision to expand the scope of their applicability was viewed as the job of the Supreme Court to which all lawyers turned. The general perception was that public prosecutors do not enjoy prerogative to interpret any legal provision in any way.

iv. Shielding minors:

"There is no doubt that counselling of minors requires more patience and time. However, this trend is not there in our District Courts. Further, it also depends on the nature of a case."

– FGD with lawyers in Swat

Minors' cases were seen to receive more attention by lawyers on humanitarian grounds. It was shared that often children do not understand the intention of the defence counselor who may try to confuse them during cross-examination. It was not clear what concrete measures were in place or taken by prosecutors to protect children from the trauma of testifying in court. Reportedly, none of the Bar Councils in selected districts provided guidelines for lawyers on how to prepare children evidence in court. Interestingly, lawyers from Mardan reported that in cases where a child is too nervous to testify in court, it was common practice to have her/his guardian(s) record evidence on her/his behalf!

v. Quality of evidence:

"Most often, medico-legal reports are of sub-standard quality, even though such reports have great importance in [domestic] violence cases. Practically, we have seen the doctors do not give any importance to these reports. If doctors were to fulfill their responsibility honestly, with Government or NGOs' help, serious trainings are provided to them [sic], the number of MLOs is increased, and competent MLOs are appointed to give evidence in court, a lot of improvements can be made."

– FGD with lawyers in Swat

Most lawyers agreed that if the quality of evidence collection in DV cases improves, conviction rates will go up automatically. This is supported by claims made by MLOs interviewed in this study where they opined that courts rely heavily on medico-legal reports and that there is a direct link between the MLR and convictions in court.

As far as oratory evidence is concerned in forced marriages and inheritance deprivation cases, lawyers report that often the woman stands alone and no other witnesses come forward to second

her claim. This, they said, was the reason why cases were weakened and punishments were not prescribed to the accused by courts.

vi. Protection orders/ witness protection: Protection orders are among the most effective legal remedies available to complainants/ survivors of violence against women. They were first introduced in the United States in the mid-1970s, offering an immediate remedy to complainants/survivors of domestic violence by authorizing courts to order an offender out of the home. All states now provide for protection orders. Such orders vary greatly in their specificity regarding the length of the order, its enforceability, who may apply for it or issue it, and whether financial support or other relief may be ordered for the victim. Experience has shown that complainants/survivors of different forms of violence other than domestic violence may also seek protection orders and a number of recent legislative developments have extended the application of such orders accordingly.

For example, chapter 6 of the Mexican Law on Access of Women to a Life Free of Violence [2007] makes protection orders available to survivors of any form of violence defined in the Act, including violence in the family, violence in the workplace or educational settings, violence in the community, institutional violence, and femicide.

The Forced Marriage [Civil Protection] Act 2007 in the United Kingdom allows courts to issue an order for the purposes of protecting [a] a person from being forced into a marriage or from any attempt to be forced into a marriage; or [b] a person who has been forced into a marriage. [Department of Economic and Social Affairs Division for the Advancement of Women, 2010].

Where perpetrators make overtures to settle matters out of courts, lawyers reported that if there is reconciliation between opposing parties, the State or courts cannot do anything. This is a strange claim as laws under the APW Act have been declared non-compoundable offenses where ‘reconciliation’ and ‘settlement’ cannot take place. It is assumed that this misleading sense of State/court helplessness stems from a lack of knowledge about the AWP Act and other non-compoundable laws. However, it is also important to highlight here that even in cases of rape and gang-rape, categorized as heinous crimes under Pakistan law, it is not unusual for State parties to try and broker some sort of a compromise or out of court settlement⁷⁸ (Zaman & Lari, 2013).

Lawyers reported that when deliberating on whether to grant an accused bail, the courts do not give value to the proximity of the victim and accused upon his release. Instead, court looks at previous enmity between the opposing parties. Courts also grant bail on the condition that the accused will not try to tamper with any evidence or harass the victim. In the event that he/she does, his bail bond shall be forfeited and he may be sent to jail.

It is important to note there that in criminal cases, a person may be acquitted under section 256k of the CrPC, where courts may recall their right to acquit an accused at any time during the trial where the probability of his conviction are very slim or non-existent.

Protection orders may be issued in rare cases where the accused has a prior criminal record or is considered particularly dangerous, after a woman gives an application in court that her safety is compromised. This is however, not common practice for most VAW cases. As another measure of protection, the woman may be dislocated to take up residence at the shelter and leave her house. It

⁷⁸ E.g., see <http://www.dawn.com/news/720552/rape-case-settled-out-of-court>. Last accessed: 31 January 2014

is difficult to say how woman with children can exercise this choice [of dislocation] when most government-run shelters do not accommodate male children over ages 12-14.

vii. Trials and convictions:

“I have seen that mostly parties compromise amongst each other [sic] in property related cases. I try to compromise in property cases too. We negotiated with party about all matters because courts procedures are also very difficult so I talk to the women for compromise [sic]. If they agree on some points, I will close case according to law”

- A senior public prosecutor from Hyderabad

Discussions with respondents in this section revolved around how woman are requested by prosecutors to compromise, in a bid to protect them from the hassles of court. A senior lawyer in Islamabad commented that in *wanni, swara, watta-satta*, child marriage and forced marriage cases, the defense counselor submits that opposing parties are close relatives, and with the consent of their guardians, they “want to bury the hatchet”. Further ahead, he negated his claim about being aware of the AWP Act by saying that cases of forced marriage or inheritance do not usually come to him as they come under the domain of family and civil court, respectively.

Additionally, all lawyers interviewed held that having a female prosecutor or judge has no bearing on the outcome of a case in court. Why forced marriage, inheritance and child marriage cases do not result in conviction was explained by a senior public prosecutor in Islamabad as follow:

“Cases of VAW usually happen within families. Witness often also belongs to [the] same family in DV, inheritance, forced and child marriage cases. Firstly, family members don’t like to become witnesses and if they are placed as witnesses, they feel hesitation to come to court and record their statements [sic]. Due to this reason, cases remain pending for years and finally end up in a compromise.

While is true that matters relating to *wanni, swara, watta satta*, forced marriage, child marriage, etc., are private and cultural matters and very few cases are reported under these charges, these offences must be eradicated by rule of law and court of justice. We cannot simply rely upon out-of- court settlements as by this way we cannot eradicate these social evils [sic].”

- A senior public prosecutor from Islamabad

Most lawyers opined that such cases should conclude in court with a 6-8 month period. However, realistically, this problematic nature of this task can be gauged in part through table 17, which depicts traffic and the speed of case disposal by Pakistan’s judiciary:

Table 17: Disposal of Cases by Courts (The Judicial System of Pakistan, 2011)⁷⁹

Courts	1 Jan to 31 Dec 2007	1 Jan to 31 Dec 2008	1 Jun 2009 to 31 Dec 2010	Percentage increase in disposal of cases as compared to	
				2007	2008
Supreme Court of Pakistan	10,018	9,639	17,348	73	80
Federal Shariah Court	2,066	1,850	1,257	-39	-32
High Courts:					
Lahore High Court	53,877	74,542	109,422	103	47
High Court of Sindh	12,493	16,524	18,124	45	10
Peshawar High Court	11,627	11,556	13,792	19	19
High Court of Balochistan	3,297	3,627	3,078	-07	15
All High Courts	81,294	106,249	144,416	78	36
Subordinate Judiciary:					
Punjab	1,246,665	1,503,904	2,281,062	83	52
Sindh	140,688	146,458	265,101	88	81
Khyber Pakhtunkhwa	336,552	364,882	340,106	01	-07
Balochistan	23,330	25,429	44,368	90	71
All District Courts	1,747,235	2,040,673	2,930,637	68	44
All Courts Consolidated	1,840,613	2,158,411	3,093,658	68	43

One can see that the burden of cases have shifted from lower and High court to the apex court between 2008 and 2010. An astonishing number of suo moto cases [demanded and/or taken] over the past 5 years by the Supreme Court, may have contributed to the near doubling of case traffic.

One might recall that in 2009 June, a National Judicial Policy⁸⁰ was issued by the Supreme Court of Pakistan to all sub-ordinate courts whereby special attention was given to delays and backlogs resulting in increased pendency of cases at all tiers of the judiciary. Two of this Policy's aims were to decrease pendency of cases and expedite the disposal of cases.

According to a press report⁸¹, a total of 5.7 million cases were decided against the institution/filing of about **5.5 million cases** between January 1, 2011 and December 31, 2012, restoring the balance to its original state.

D. Knowledge of supportive/ hindering legalisation and procedural codes

Prosecutors and lawyers from 2 out of 6 districts were found aware of the Child Marriage Restraint Act, 1929. It was interesting to note that while some lawyers knew of the law and recognized its applicability to child marriage cases, they defined age of majority as "puberty" and not 16 and 18 for girls and boys respectively. A lawyer from Islamabad reported that no case has been registered under the CMR Act in the district in the past year. One is stupefied to see that the same lawyer made efforts to acquire official statistics on the number of VAW cases, including child marriage, and shared them with the enumerators, and yet did not make any reference to the only law [CMR Act] under which they could have been registered, unless they were registered under the AWP Act, which is not the case.

⁷⁹ D. F. [2011]. The Judicial System of Pakistan. Islamabad

⁸⁰ Can be accessed from: http://www.supremecourt.gov.pk/web/user_files/File/NJP2009.pdf. Last retrieved 3 March, 2014.

⁸¹ Visit: <http://www.thenews.com.pk/Todays-News-13-27236-Judiciary-and-prosecution-in-India-and-Pakistan>. Last accessed 3 March, 2014.

Most lawyers refrained from commenting on Qisas and Diyat laws where complainants have the option of either inflicting the same hurt on the accused as inflicted on them, or to take blood-money. No mention was made on the duplicity of parallel systems of justice and lawyers did not wish to say whether they thought it was unfair to families who may “forgive” the accused party after being fed up with a protracted trial.

“No, in my opinion if any person has married a minor [girl], cannot be charged under section 375 PPC [rape] because this act does not come under the definition of rape. As a matter of fact, they have been solemnized as valid *nikah* as per Muhammadan Law. According to Shariah, a minor can do *nikah* with permission of his/her guardian [sic]. But subsequent English laws prohibit this practice. So, this practice may be illegal under Child Marriage Restraint Act, 1929 but it does not come under the definition of rape.”

- A senior public prosecutor from Islamabad

Regarding the applicability of rape laws on child marriage cases, where the marriage has been forcibly consummated or consummated under a forced marriage, lawyers responded in the negative. It was found that lawyers kept referring the *nikah* as “valid”, even for forced/child marriages, which then excludes the possibility of a rape charge. It is important to note here that a few judgments of the appellant and Shariat Court have reiterated that marriage under duress and force is no marriage and that a *nikah* under such conditions would be void. In one particular judgment of the Federal Shariat Court [discussed ahead in the report], consummation in a forced marriage is tantamount to rape.

On the other hand, a senior public prosecutor from Karachi was quick to agree that a rape charge will apply in a forced marriage case. He argued that sex within marriage is rape if the very consent to such a marriage has been achieved through force or duress. He further clarified that Pakistan’s laws declare anything achieved under force, duress, coercion or even blackmail as a crime and illegal. “Rape”, he said, “*is a logical extension of forced marriages*”.

It was also noted that lawyers did not believe a husband could rape his wife, despite the absence of marriage exemption in Pakistani rape laws. He may, however, be tried for forcing anal sex on his wife [under carnal intercourse or sodomy laws]. Interestingly still, lawyers from Mardan said that rape laws should be applied to forced marriage cases, though it is not done.

E. Inter-departmental coordination

No formal systems were found for referring women to private legal counsel. Lawyers reported that if at the time of scrutinizing police report there is any defect detected in investigation, the prosecutors point out that defect to the police so it can be removed prior to forwarding the case to the court for trial. This assistance was corroborated by police interviews in this study where police officials reported seeking help from prosecutors often to be guided regarding relevant laws. It is worth considering how well lawyers can guide police officers when their own knowledge and understanding of laws appears severely limited.

Prosecutors from Hyderabad reported that police systems are weak and they often register a case in a very “non-serious manner”, without much knowledge of the law. A senior prosecutor from Karachi suggests that in many countries, there are usually two types of prosecutors involved in bringing justice to a case: one that assists the police during investigations, and one to try the case in

court and work with complainants. He regretted that such a system does not exist in Pakistan where there is not one to guide the police on what constitutes vital evidence and how it should be secured.

One may conclude that if police officers' knowledge of laws is this weak [as they themselves admitted during interviews], how can they detect whether an act constitutes an offence or that there may be other offences latent within a particular charge.

None of the prosecutors interviewed reported having any coordination with medico-legal doctors and reportedly only concerned themselves with doctors' reports.

Similarly, no formal system was found to refer women in need of specialized health services. Prosecutor mainly concerned themselves with the business of courts and denied that referrals of any kind were part of their job. None of the prosecutors reported referring women to private shelters either, mostly because they claimed no knowledge of such entities.

F. Capacity-building and resource allocation

None of the prosecutors interviewed had attended any training on AWP Act, 2011, whereas only one prosecutor from Islamabad reported attending training on VAW by an NGO. There was conflicting information regarding courses on VAW in law schools and provincial judicial academies.

While prosecutors from Mardan claimed that there was indeed a course taught in law schools, they could not provide any specific information. A senior public prosecutor from Karachi, however said that no such courses are offered to Government lawyers anywhere in Pakistan. He shared that judges are given trainings through the judicial academies when they take office, for a duration of one month. The police training schools provide 9-months' initial training to police officers. He opined that this is nowhere near enough time to "groom" someone to make life and death choices.

Regarding need for trainings, all interviewees agreed that extensive trainings must be provided with refresher courses. They emphasized that such trainings should be provided by the government in collaboration with social sector organizations, on a quarterly basis.

A senior public prosecutor from Karachi suggested that Bars should take this responsibility and use the funds they accumulate through lawyers' annual fee and Law Departments' funding to hold training for lawyers, even if they have to charge a nominal fee for it. He assured that given the dearth of trainings, lawyers would be happy to pay a small price for getting trained in how to do their work in a better way.

Prosecutors also said that on many occasions, they had requested infrastructure, internet facilities, access to law sites, law journals, furniture, official residence etc., to improve the performance of prosecutors, but not much had moved in this regard.

CHAPTER 5: WOMEN’S EXPERIENCE OF FORCED MARRIAGES AND INHERITANCE DEPRIVATION

A total 23 women were interviewed from 6 districts of Pakistan, including Swat, Islamabad, Mardan, Peshawar, Karachi and Hyderabad. Three questionnaires had to be discarded as they were either inappropriate [not related to the issue under study] or were incomplete. Only one case of inheritance deprivation could be identified, where the survivor was 14 years of age at the time of opening of succession. Presently, she is 37 years old and yet to receive her share in family inheritance.

Interestingly, but unintentionally, there was a near 50-50 split between women under the age of 16 years and those above it. Sixteen years was used as a benchmark for adulthood according to present Pakistani laws that define age of consent to marriage [the Child Marriage Restraint Act, 1929]. As the AWP Act does not include age of consent as a critical condition for marriage [indeed half of the forced marriages in this study were those of conducted for girls under age 16], forced marriages have been defined in accordance with the definition provided in the CMR Act. Below are some tables and figures that provide general information regarding the women interviewed for this study. Although a lot more identifying information was collected for cross-checking, much information has been omitted in this report to maintain confidentiality. Caution is advised when looking at the table below as some categorization may not be hard and fast. For example, an under-age marriage could overlap with compensation marriage, and forced marriages could be child marriages as well. Table 18 ahead offers some clarity in this respect.

Table 18: General information on women respondents

S. No.	Present District	Age [Present]	Age [at marriage]	Province	Home District	Ethnicity	Nature of Case
1	Swat	26	8	KPK	Swat	Pakhtun	Compensation marriage
2	Swat	26	19	KPK	Swat	Pakhtun	Forced marriage
3	Swat	15	13	KPK	Swat	Pakhtun	Forced marriage
4	Swat	37	15	KPK	Swat	Pakhtun	Watta Satta
5	ICT	45	14	Punjab	Rawalpindi	Punjabi	Forced marriage
6	ICT	37	14	Punjab	Lahore	Punjabi	Inheritance deprivation
7	ICT	48	16	Punjab	Rawalpindi	Punjabi	Forced marriage
8	ICT	28	18	Punjab	Rawalpindi	Punjabi	Forced marriage
9	ICT	28	18	Punjab	Rawalpindi	-	Forced marriage
10	Mardan	22	17	KPK	Swabi	Pakhtun	Under-age marriage
11	Mardan	16	15	KPK	Mardan	Pakhtun	Under-age marriage
12	Mardan	16	16	KPK	Mardan	Pathan	Forced marriage
13	Mardan	35	13	KPK	Mardan	Pakhtun	Under-age marriage
14	Peshawar	20	12	KPK	Swat	Pakhtun	Compensation marriage
15	Karachi	20	13	Sindh	Gotki	Sindhi	Forced marriage
16	Karachi	23	14	KPK	Swabi	Pathan	Under-age marriage/ Sold in marriage as swara
17	Karachi	23	25	Sindh	Sukkur	Sindhi	Forced marriage
18	Karachi	18	17	Sindh	Naval Area	-	Forced marriage

19	Hyderabad	40	32	Sindh	Jamshoro	Pathan	Forced marriage
20	Hyderabad	35	20	Sindh	Jamshoro	Sindhi	Forced marriage in lieu of sister's refusal
21	Hyderabad	40	21	Sindh	Shikarpur	Sindhi	Quran marriage
22	Hyderabad	50	20	Sindh	Jamshoro	Sindh	Quran marriage
23	Hyderabad	48	18	Sindh	Jamshoro	Sindhi	Quran marriage

Figure 9: Demographic distribution of women respondents from 6 districts

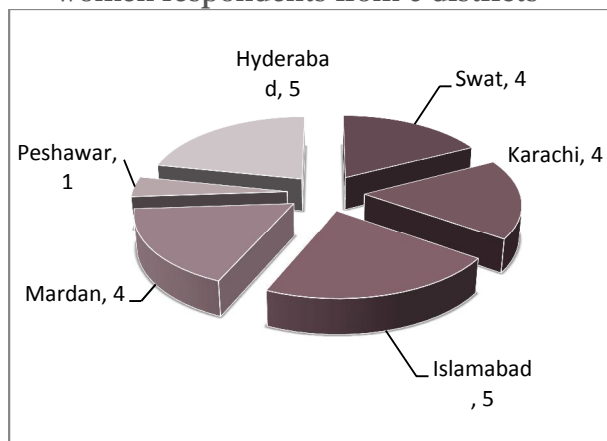


Table 19: Nature of women's cases investigated

Nature of Case	No. of Women	Under age 16	Over age 16
Compensation Marriage	02	02	0
Forced Marriage	12	03	09
Inheritance Deprivation	01	01	0
Child-marriage	04	03	01
Watta-satta	01	01	0
Quran Marriage	03	0	03
Total	23	10	13

Table 20: Difference in women's ages since forced marriage

Present Age	Age at marriage	Years since marriage
25	25	0
16	16	0
16	15	01
18	17	01
15	13	02
22	17	05
26	19	07
20	13	07
20	12	08
40	32	08
23	14	09
28	18	10
28	18	10
35	20	15
26	08	18
37	15	22
35	13	22
37	14	23
45	14	31
48	16	32
40	21	19
50	20	30
48	18	30

Women respondents were asked questions related to different themes: Basic information, Education, Employment, Health, Decision-making in Marriage, Martial Relations and Domestic Environment, Pregnancy and Children, Legal Rights Awareness and Information, Support Services and Rehabilitation, and Exposure to Media and Social Networking. The discussion below looks at these facets of women's lives, draws connections between major categories and highlights implications for State response within each. Some Basic Information has already been provided above, so we look at the remaining categories here onward.

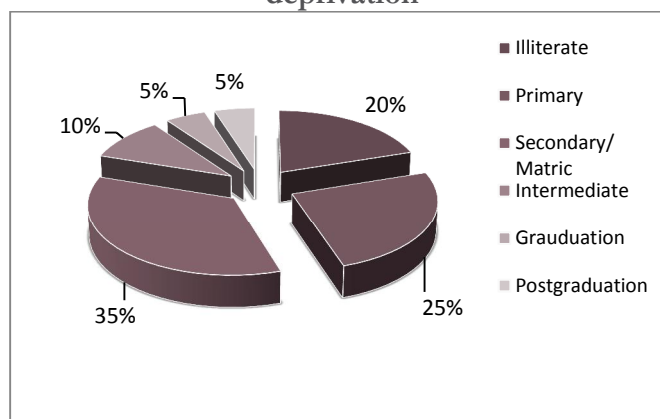
5.1. FORCED MARRIAGES

EDUCATION

As can be seen from figure 10 below, a substantial number of women interviewed had acquired some level of education. In one instance, a woman had to leave her studies during the third year of MBBS to be forced by her parents into marriage. About 70% women reported facing opposition to their education from their families before marriage. Most women who had been enrolled in school were forced to drop out by their families so that they could be married off where other reported that their parents said they could not afford their education, even when they had money.

Women with higher levels of education were found to resist marriage more actively by expressing their refusal to get married. Most women told their mothers about their decision, but none were able to alter their parent's plans. Women with higher education were found more aware of basic rights. Nevertheless, many educated women did not see their *nikahnama* at the time of marriage nor had a copy of it. As a matter of fact, women who knew of where they could acquire the Computerized National Identity Card [CNIC] had not made an effort to do so.

Figure 10: Education amongst women survivors of forced marriages and inheritance deprivation



Educated women, who had engaged with civil justice systems [for *khula*], had a better idea of processes and were found more aware about the problems within formal justice systems.

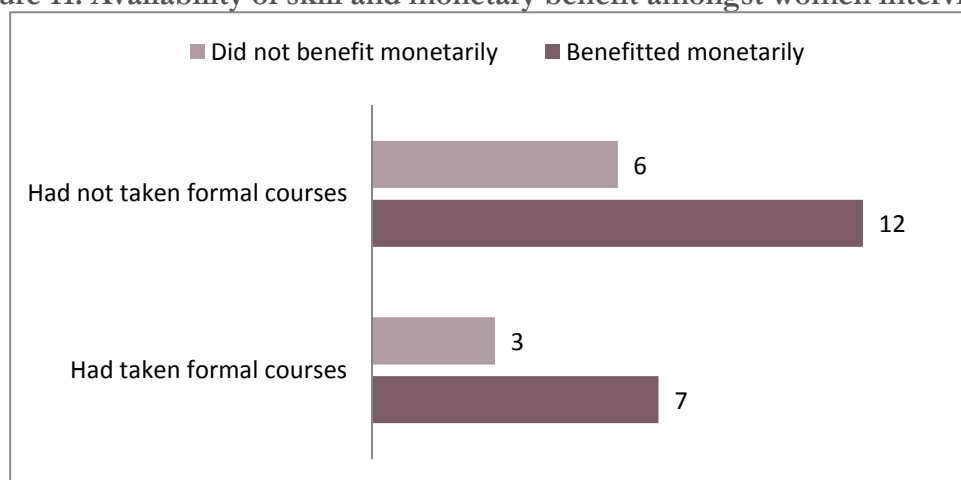
None of the women, no matter how well-informed they were, knew of the medico-legal section despite severe battering by their husbands and in-laws. They were also not allowed to work for variety of reasons. Prominent amongst these were that it is socially not acceptable for women to work [like it is not acceptable to go to the police with your domestic problem] and or that they would resort to immoral conduct if allowed to leave the house.

There was no difference in the frequency of battering women received, in relation to their education; however, younger and less educated women seem to have received more intense battering. In terms of education and health, more educated women were conversely more aware of health problems and where to go for help. Women with lower levels of education resorted toward health care and said that they “*did not think* [their] *health was important*”.

EMPLOYMENT

Very few women were found to have any access to technical and/or vocational trainings or having had the chance to learn professional skills to earn a living. While many women had learnt stitching and sewing informally from their mothers, some women did benefit monetarily from their skill-set. A skilled woman here denotes one who had taken a formal TVET course. One can see from figure 11 below that on average, about 50% of less women were able to gain monetarily from their skill-set. More women seemed to have benefited from their informally- learnt skills, never having the opportunity to undertake a formal course.

Figure 11: Availability of skill and monetary benefit amongst women interviewed



Women who were more qualified to earn a living, were found not being able to do so because of restriction imposed on their movement. As most women reported being dependent on their spouse and in-laws for survival and because of which they could not walk out of the marriage. Despite many odds, most women were able to do little work from home [such as stitching and sewing] to have some income of their own.

Two women shared that their money was often taken away by their husbands and in-laws [sometimes stolen from their cabinets] for “*not deserving to have money*”. The women in all instances had earned that money through home-based work.

HEALTH

Amongst some of the most pressing health issue reported by women included severe depression, suicidal thoughts, attempts at suicide, feelings of isolation and eating disorders. While most women sought treatment, there was no difference in terms of approaching public or private sources of health care services. None of the women reported ever having sought help for mental and psychological problems or going to a health facility when they were physically ill. In most cases, only severe illness warranted a trip to the doctor.

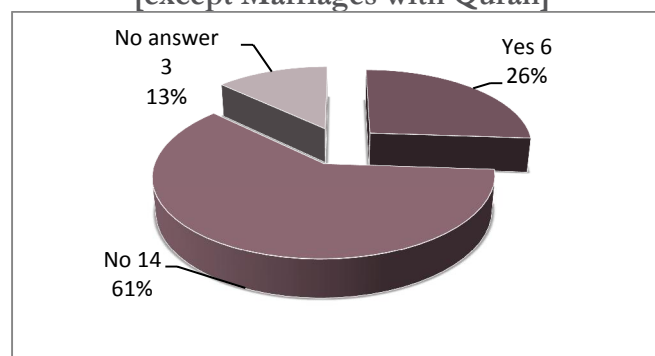
DECISION-MAKING IN MARRIAGE

Mixed answers were received to the question, “Whose decision was it for you to get married and did they consult you?” Most women reported that their fathers or both the parents had made the decision for their marriage. In some cases [such as inheritance deprivation], siblings had been involved whereas uncles and grandfathers also played a prominent role in making the decision. It is critical to note that no woman respondent reported the marriage decision to be solely the mothers’ or any other female member of the household.

Husbands were usually much older: over 15, 20, 30 or 40 years in some cases.

Most women said that they did not wish to marry because at that time, they were “too young to marry”. We have already seen that nearly half the women interviewed were aged less than 16. One woman from Karachi in particular was already married and in order to have her marry her paternal cousin, her father lodged a trumped up charge against her husband [whom she had married of her free will, less than a month ago], putting the husband behind bars. A fake *talaqnama* [divorce deed] was presented and the woman was married a second time. Only 8 out of 20 respondents had acquired puberty before marriage, while 3 were never allowed to marry.

**Figure 12: Number of women that had acquired puberty at the time of marriage
[except Marriages with Quran]**



MARITAL RELATIONS AND DOMESTIC ENVIRONMENT

“Women forced to marry may find it very difficult to initiate any action to end the marriage and may be subjected to repeated rape [sometimes until they become pregnant] and ongoing domestic abuse within the marriage.”

*-Multi-agency practice guidelines: Handling cases of Forced Marriage
Forced Marriage Unit, Departments of Foreign & Commonwealth
Office and Home Office Unit, UK*

Almost all women who were married forcibly reported having a tumultuous and often violent relationship with the husband. Child brides usually cannot negotiate the terms of sex with husbands

who are normally much older and may have had previous sexual partners⁸². Most women reported verbal abuse starting within days or weeks of marriage and a majority reported that physical violence commenced from the first night.

Table 21: Experience of rape and forced sex by women respondents

Response	Rape on the first night by husband [n]	Subsequent forced sex by husband [n]				Total
		Everyday	Often	Seldom	Never	
Yes	9	04	03	02	02	11
No	4					
No answer	8					

Nearly than half the women who had been married forcibly [not to Quran] reported being raped by their husbands on the first night. Only two women reported never being forced into sex by their husbands after they were raped the first night, whereas 4 reported that it was a daily occurrence.

Three women reported having to submit to forced sex when they were menstruating, whereas two of these 3 women reported being “*damaged from inside due to forced sex during menstruation*”. Two women that the author met in Karachi reported that they could not have children as the doctor had informed them that their uterus had been damaged. One of these girls was married at age 14. She had acquired puberty at the time of marriage.

A majority of women reported receiving injuries during sex for which very few sought medical help as they were too ashamed to tell anyone, or they believed no one would have helped them.

Table 22: Injuries during sex with husband by women respondents

	Yes [n]	No [n]	No answer
Injuries during sex with husband	11	02	08

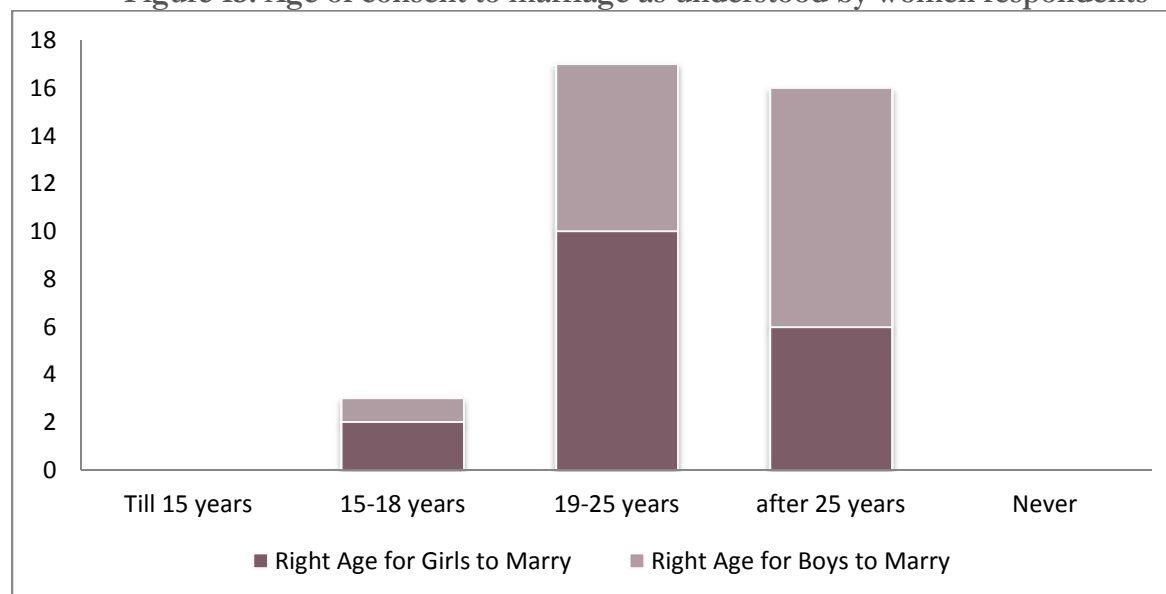
Predictably, husbands were not the only tormentors in the household. In most cases where there was physical violence by one person, others were also beating women black and blue. Most women reported a variety of tactics used to abuse them physically, including kicking, beating with sticks, throwing them against walls, and having things hurled at them. For most, physical abuse was a daily or at most a weekly occurrence. A majority of women blamed “*instigation by in-laws*” as a trigger for violence while others reported financial stress, going out without permission or arguments over children. For most women, violence either increased or stayed the same during pregnancy, with 3 reporting that it increased.

Women usually bore the entire responsibility for housework and in some cases, they were helped by their sisters-in-law. Almost all women were abused verbally over negligence towards housework, whereas a majority was abused physically for shirking work. Most women never told anyone about the violence committed against them, including their parents and siblings.

⁸² Early Marriage and Adolescent Girls: Youth Lens on Reproductive Health and HIV/AIDS August 2005.

Even though they could not communicate or visit very often, women were not cut off from their natal home entirely. It is curious that despite frequent conversations over the phone, only 2 women reported telling their parents about the violence they were suffering as most believed their parents or siblings could not help them and were, after all, responsible for their predicament.

Figure 13: Age of consent to marriage as understood by women respondents



With a few exceptions, it was interesting to note that majority women thought the right age for a woman's consent to marriage was between ages 19 and 25. The perceived age rule was higher for boys as most women thought the right time for men to marry was after they crossed 25. Whether this can be attributed to the fact that over 55% women had acquired at least secondary education, were forced into marriage or were suffering abuse within marriage, or any other factor, cannot be said with certainty. One can safely assume, however, that it was a combination of these factors. None of the women reported being familiar with the Child Marriage Restraint Act, 1929, or any other law which sets the minimum age for consent to marriage.

PREGNANCY AND CHILDREN

Three women were pressurized into aborting at least one pregnancy by their husbands. Children often witnessed violence in the family and in some cases, children were reported to have behavioral problem. The most usual complaint was excessively defiant behavior and violence towards other siblings.

For most women, violence either increased or stayed the same during pregnancy. Only a couple of women reported an actual decline in routine beatings during pregnancy.

Women were found aware that the sex of a child is driven from the father, while different methods of contraception were used for family planning in a few cases. Women agreed that in their community, man do take equal responsibility for family planning, mainly due to poverty.

LEGAL RIGHTS AWARENESS AND INFORMATION

Knowledge of laws and right were found woefully lacking in the most educated of women. For one, none of the women reported being aware of the AWP Act, 2011. Given that most women could not

influence the decision related to their marriage, very few women reported that this law could provide women with any benefit or protection when briefed by enumerators regarding the law.

Women from KPK were found going to *jirga* for justice, which was delivered in most cases, but not accepted by their in-laws. Women also felt that females in their community knew nothing about laws and could bet that women knew nothing of the AWP Act as well. If any legal action was taken, it was in the form of *khula* or divorce. Below are responses of some women those filed for a separation:

Box 2: Women's reasons for taking legal action [civil suit]

My husband and his family left me at my parent's house. They wouldn't return my dower or accept the <i>Jirga's</i> decision, so I decided to take a <i>khula</i> .
Because he used to like another girl and used to beat me, I requested a <i>jirga</i> and now he is not letting me stay at my parent's home.
My husband wouldn't take me to his home because I have filed case for a <i>khula</i> .
I was tired of the physical violence by my husband, so I decided to take legal action. My relationship with my husband was complicated and near-breaking anyway.
No one else would help me so I sought legal support.
Firstly, I was very young, I wanted to study, and I was married [forcefully] to a stranger 10 years older to me. That's why I decided to take legal action.
No one was looking after my interests or taking care of me so I decided to do something about it.
I was fed up with constant abuse and violence.
My husband was the kind of person one could not live with. I tried to save the marriage many times but people said he will never change. My parents-in-law didn't want me and my step parents didn't want me either. Both my parents were dead anyway, so I decided to go on my own.
Husband was always suspicious about my character, even though I have many children with him. His parents also made my life hell, so I decide to file a case [for <i>khula</i>].
I did not take any action. When my first husband was implicated in a false case by my father so that I would marry the man of his choosing, my husband took action and filed a counter case.
I was under-aged and not willing to get married. I wanted to study and was giving my intermediate exams. Everyone was opposed to this marriage and my husband was much older to me. My <i>nikah</i> was done under duress.
When he married for a second time, I took legal action. He has taken the kids so I filed a custody case in court.
Brother did not support me in coming back to my parent's home. He got violent and told me to get lost, so I lodged a case and I intend to live independently.

Women reported that there was no privacy when they went to lodge their FIR at a police station, which was a very scary process for them to begin with. In most cases, the FIR was lodged immediately, whereas in some cases it took 3 or 6 months. No woman was referred for legal or psychological counseling whereas most women found the court environment confusing, intimidating and unhelpful. Some women did not understand the process of bringing a civil suit when it was explained to them either by police officers or their lawyers. None of the women reporting any safety planning measures on behalf of the police, even after they reported the extent of violence at home. Of those who took legal action, however, most reported being moderately satisfied with the legal proceedings.

SUPPORT SERVICES AND REHABILITATION

Women were asked which services they thought would have made things easier for them in their struggle for social and legal justice. Majority women demanded good shelters and proper legal counsels. These things, they claimed, kept many other victims of forced marriages from taking legal action once they had decided to seek justice or escape from abusive relationships. Other identified needs included: skill development, professional & moral support by service providers and comprehensive & quality health care.

EXPOSURE TO MEDIA AND SOCIAL NETWORKING

Women did not have easy access to television, newspapers, radios or computers. Many women said that they needed to take permission from their in-laws to watch television, whereas others only read the newspaper occasionally (once weekly or fortnightly). In terms of social mobility, women's freedom to move was found severely restricted, subversion of which was sometimes repaid by violence at home. No woman reported being part of any social network or group.

5.2. INHERITANCE DEPRIVATION

One case of inheritance deprivation was included in the study, although some cases of forced marriage also had an element of property related dispute, although unconnected to the marriage.

Twelve women responded to some inheritance related questions which were relevant to their situation. Their responses are discussed below:

Box 3: Women's responses when asked when they realized they were being deprived of their share in inheritance

When I didn't have anything left over after paying rent of my house, I realized that I should have gotten my share in the family estate. And the landlord used to humiliate me.
When my child's education was being effected. There was illness in family even though my father's property is valued in crores [over 10 million], which is with step-brothers and sisters.
When other relatives pointed it out.
When I was divorced and had nothing in hand to take care of my two children.
Father used to tell me that he's marrying me off to a man because he wanted to keep property in the family.
When my brother kicked me out of my parents' home and I didn't have any other place to go.

With a few exceptions, women largely understood inheritance to constitute family estate and not movable items, such as family heirlooms, bridal gifts, livestock, etc. They opined that women usually do not request their share in inheritance out of respect for elders, because they either don't know about rights granted under the law or because they are afraid of causing a family dispute.

Of these twelve women, three were not hopeful of ever getting their rightful share in inheritance, irrespective of whether they had filed a case or not.

5.3 MARRIAGES WITH HOLY QURAN

AF's partners in Sindh were able to identify 3 women who had been married to the Quran. Due to the taboo attached to the practice and the secrecy that surrounds it, it was difficult to meet the

women directly. Instead SDS contacted their focal persons in Shikarpur and Jamshoro to talk to the women. Thus, their stories have reached us third-hand. Further, because the women were not comfortable narrating their stories, given that they were living with their relatives, very few and short questions were asked of them. Still less information was received. The scribe has not used any identifying information below to illustrate any major findings that could have emerged from dialogues with these women.

Case 1: Two Sisters' Marriage to the Quran by Brother

In this case, two of the three women married to the Quran are sisters and live together at their nephew's house in Jamshoro, Sindh. After their father's death when they were quite small, the older brother took it upon himself to support them and became their legal guardian. When they were close to 18-20 years of age and their brother could not arrange dower for their marriage into a suitable family, he announced that they will be married to the Holy Quran instead. There were no objections raised from anywhere.

The women are now living in virtual slavery, looking after their nephew's family and doing the entire house work⁸³. Women come to them for *taveez*, *istikhara*, *dua*, *nazifa*, etc. and prayers, and often give money, clothes, etc., in return. They are presently 50 and 48 years old.

Case 2: Daughter's Marriage to the Quran by Father

The second case is from Jamshoro as well. Here, a 40-year old woman was married to the Quran by her father when she was around 21 years old. According to the details provided by the woman, the father could not find a husband for her who was equal in family status [or shared the required family name]. In a bid to protect his estate, he decided it would be better not to marry her at all, so she can serve people with her knowledge of the Quran. She has two brothers, both of whom are married with children. This woman is scoring fairly well economically as many people flock from afar to get *taveez*, etc., over which she is considered a local authority.

From what has been reported in addition to the details of the cases provided above is that the family of one of these women was affluent and part of the landed elite. They also had a strong family name [more religious sect⁸⁴]. The two sisters, however, did not hail from a very rich family but they also had a prominent family name.

The brother's or father's refusal to marry the women in both cases and the families' silence and absence of help of any sort, points to a cultural immunity for those demanding marriage to the Quran, at least in the area wherein these cases have emerged. According to the focal person, many women are married to the Holy Quran in Southern parts of Sindh and it is an accepted custom. The focal person also reported that such marriages are prevalent in both affluent and middle class families, where the family name of religious sect is a prime motivation behind the practice, e.g., a

⁸³ The person who recorded this case lives in the same vicinity as the women and knows the families.

⁸⁴ At the stage when enumerators were trying to locate women that had been married to the Quran, three women were identified on the condition that their family names would be protected from publicity. Their family names have thus been omitted from this report.

Syed⁸⁵ can only marry amongst Syeds. They are also largely feudal societies where landlords yield power and everything else is subordinate to their will.

Information related to marriages to the Quran is notoriously hard to find, almost as notorious as the practice itself. During the course of the study, in provinces other than Sindh as well, respondents reported that the practice has finished in Pakistan as one does not hear of any [new] case. It is noteworthy that the informant who provided us with the details of the cases discussed above is neighbor to the two sisters [Case 1] and knows of many families in his own neighborhood that practice such customs till this day. As the custom is not publicized and women are married off almost unceremoniously, it becomes difficult to find women who would be willing to talk. Additionally, as marriage to the Quran is believed to elevate the spiritual status of a woman so married [men are not married to the Quran], women are not inclined to comment on the matter to others who may probe.

⁸⁵ A Muslim claiming descent from Prophet Muhammad [PBUH], especially through the Prophet's younger grandson, Hussain [RA].

CHAPTER 6: LEGAL OPINIONS RELATING TO FORCED MARRIAGES & INHERITANCE CASES

6.1. FORCED MARRIAGE:

There is plenty of positive case law relating to forced marriages in Pakistan. One in particular extends the meaning of consent, as understood in legal parlance. An excerpt from the ruling is reproduced below:

“Marriage involves a consent which is quite distinct in definition and in differentiation from all types of other consent, e.g., common consent, mutual consent, or implied or express consent. Consent for marriage is eloquent and declaratory, being more specific and expressive. Consent for marriage has deeper and wider implications for criminal, civil, and family laws, e.g., inheritance, etc. Therefore, free consent, for marriage, does not mean just acceding to or saying 'yes' to the circumstantial or situational dictate. While analyzing quality, value or worth and features of such a free consent, following need to be considered:

- *ability of exercising free choice:*
- *capacity [legal capacity: not only sane, but mature mind, i.e., not only puberty, mere majority but age of responsive and conscious consent],*
- *capability to use that capacity,*
- *depending upon capacity, impediments to or assistance available for application of mind e.g., availability of assistance of wali and wakil [guardian-counsel and supporter-protector],*
- *in one's own interest or benefit,*
- *extent of free availability of possible options to choose from,*
- *environ of freedom.*

Because of such an importance, its registration as formal 'Nikahnama', not mere notarization, is essential, in the interest of concerned individuals, family and society, which leaves no room for admission of mere oral assertion or averment, particularly by one party when the other party vehemently denies it.”

- 2012 P Cr. L J 11,
Federal Shariat Court,
Criminal Appeal No. 112/I of 2009

The ruling refers to “maturity of mind” needed alongside the legal ‘age’ of marriage. It could be extended that maturity may not come with age, and this ‘age’ could be more than 16 [in keeping with the present laws in marriage, for legal age to consent to marriage].

The judgment also refers to age of ‘consciousness consent’. This may come much later in life and would require one to have full knowledge of what the contract for marriage entails and perhaps what would become⁸⁶ of them after marriage.

“Extent of free availability of possible options to choose from” could be taken to include unavailability of a suitable spouse, or even the the option to say ‘no’ [or anything besides]. We will see that this was true for women that were interviewed for this study: the unavailability of the option to exercise one’s free will.

The definition of *wali* is extended to mean supporter or protectors, which could include friends, other supporters, foster parents, parents of adopted children, NGOs, welfare organizations, etc.

The last part is perhaps the most critical to consent: the presence of an environment of freedom. In Pakistan, where a large number of women are marginalized in terms of education, health, access to land and other assets, technological advancements, political participation and their fundamental human rights [both by Constitution and law], the voice of consent or dissent is largely dimmed or reduced while resistance is minimized. With the exclusion of women from public life, it then becomes logical that policy reforms in their interest would play into the hands of prevalent patriarchal practices and assumptions about womanhood. Ideally then, consent can never be fully realized by women who find themselves in a forced marriage where their dissent is annihilated, abrogated, or when they simply do not have the ‘capacity’ to give consent in a male-dominated societies.

The same ruling expands further by declaring conjugal relations in a forced marriage to amount to rape:

“... if alleged consent of victim was obtained by putting her in fear, it was not a free consent and freely considered choice for the Nikah but it [the Nikah itself] would be under duress and coercion and any sex offence committed against the victim Mst. XXX⁸⁷ would be that of zina-bil-jabr [rape] and not a validly permissible performance of conjugal right. The accused was a man of advanced years, and the victim was quite a young girl under 16 years of age, at the time of occurrence. She could neither avail of the opportunity of well-considered assistance and advice of parents or wali, nor was she herself so well-educated and enlightened to safeguard against the decoy and exercise her free-will to give a valid consent.”

- 2012 P Cr. L J 11, Federal Shariat Court

In a judgment passed by the Lahore High Court in 2000, the judge opines that any marriage solemnized under coercion is void both under Islamic law and codified law of Pakistan:

⁸⁶ Reference to Simone de Beauvoir’s theory on the ‘becoming’ of women, and Judith Butler’s extension that this gender is performative.

⁸⁷ Survivor’s identity kept confidential to protect her right to privacy.

“It is a settled proposition of law that in Islam, a sui juris woman [a woman capable of managing her own affairs, and acting within her own right] can contract Nikah of her own free will and a Nikah performed under coercion is no Nikah in law. Instances are not lacking from Hadith and Islamic history that consent of a sui juris woman was held to be sine qua non [without which, it could not be] for a valid marriage in absence of which, the marriage was declared void.”

- *NLR 2000 Criminal Lah. 152*

If one is to take into consideration the laws on rape, one provision states:

“A man is said to commit rape if he has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:

...

[4] 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;

...

- *PPC Section 375- Rape- sub-section 4*

Through interpretation, it can be argued that a woman who so consents to a [forced] marriage, her consent becomes irrelevant and thereby sexual intercourse in such marriage is tantamount to rape. We have, however, seen through earlier discussion with police officers and public prosecutors, that once a marriage has been consummated with a *nikah* [valid or not], a charge of rape cannot be brought against the husband.

There is case law available from the Supreme Court of Pakistan which establishes that an adult woman can contract *nikah* of her free will and that absence of consent or permission of her guardian does not invalidate her marriage. This is critical from the view point of women who are forced to marry men of their parents/ legal guardian’s choosing, not of their own choosing, or otherwise.

“Consent of Wali is not required and a sui juris [a woman capable of managing her own affairs, and acting within her own right] Muslim female can enter into valid Nikah/marriage of her own free will. Marriage is not invalid on account of the alleged absence of consent of Wali.”

- *PLD 2004 Supreme Court 219*

6.2. INHERITANCE DEPRIVATION:

A ruling by the Multan High Court clearly states that legally, kin and other male heirs of a woman cannot deprive a woman of her share in inheritance by taking “adverse” possession of her property. Adverse possession here may denote any means that do not involve willful giving away of property by a woman.

"A male heir could not claim title under adverse possession to deny title to a female heir."

1998 MLD 1857[g], 1993 CLC 228 [a]

Another judgment states that the court would be willing to reinstate a woman's property if someone has transferred it in their name [mutation] in a willful act of trying to deprive the woman of her share.

"The Courts would be willing to change the mutation of property and revert this back to a female legal heir if she had been deprived."

- 2000 CLC 733[d]; 2000 YLR 3053[a]

Another judgment by the Lahore High Court states that any person taking possession of or using a women's dower in the shape of property would be in her debt, and that courts must see if the women's consent was involved in giving up or allowing others the use of her dowered property. We could infer the meaning of consent here from the FSC judgment shared above.

"Where dower was settled and incorporated into a registered Nikahnama, it would become property of wife and be enforceable as debt. It was the legal duty of court to determine whether the woman had exercised her free consent in relinquishing the dower property"

- PLD 1997 Lah. 417[b]

CHAPTER 7: CONSTITUTIONAL GUARANTEES & INTERNATIONAL COMMITMENTS

7.1. CONSTITUTIONAL GUARANTEES

The Preamble of the Constitution of Pakistan guarantees some fundamental rights for citizens:

“... shall be guaranteed fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality.”

The Constitution holds that all citizens are equal before law and are entitled to equal protection of the law. It offers a basic Charter of Rights where rights are conferred onto citizens through the enacted laws and regulations.

Within itself, the Constitution is not law. It is however, a blueprint of what a country's laws will serve to promote, protect and fulfill. The 1973 Constitution of Pakistan offers protection to all citizens against discrimination based on their sex [Article 25- Fundamental Rights].

With regard to marriage, the State assumes responsibility to protect the marriage, the family, the mother and the child [Article 35- Fundamental Rights].

MARRIAGE AND FAMILY

[1] All citizens are equal before law and are entitled to equal protection of law.

[2] There shall be no discrimination on the basis of sex.

[3] Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.

- Article 25, CoP: Equality of citizens

The State shall protect the marriage, the family, the mother and the child.

- Article 35, CoP: Protection of family, etc.

OWNERSHIP AND INHERITING LAND

Articles 23 and 24 of the Constitution confer certain rights on individuals with regard to the possession and disposal of property in any part of Pakistan, and stress that no person can be deprived of property which is rightfully hers/ his. It is important to note that the Constitution does not differentiate between immovable and movable property in this respect.

“Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.”

- *Article 23, CoP: Provision as to property*

[1] No person shall be compulsorily deprived of his property save in accordance with law.

[2] No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefore and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given.

[3] Nothing in this Article shall affect the validity of:

[a] any law permitting the compulsory acquisition or taking possession of any property for preventing danger to life, property or public health; or

[b] any law permitting the taking over of any property which has been acquired by, or come into the possession of, any person by any unfair means, or in any manner, contrary to law; or

[c] any law relating to the acquisition, administration or disposal of any property which is or is deemed to be enemy property or evacuee property under any law [not being property which has ceased to be evacuee property under any law]; or

[d] any law providing for the taking over of the management of any interest or in order to secure the proper management of the property, or for the benefit of its owner; or

[e] any law providing for the acquisition of any class of property for the purpose of-

[i] providing education and medical aid to all or any specified class of citizens; or

[ii] providing housing and public facilities and services such as roads, water supply, sewerage, gas and electric power to all or any specified class of citizens; or

[iii] providing maintenance to those who, on account of unemployment, sickness, infirmity or old age, are unable to maintain themselves; or

[f] any existing law or any law made in pursuance of Article 253.

[4] The adequacy or otherwise of any compensation provided for by any such law as is referred to in this Article, or determined in pursuance thereof, shall not be called in question in any court.

- *Article 24, CoP: Protection of property rights*

7.2. INTERNATIONAL HUMAN RIGHTS INSTRUMENTS/ CONVENTIONS/ TREATIES

Under international law, when a State ratifies or signs a treaty, it becomes bound to observe its provisions. It takes on social accountability and moral responsibility for compliance against all the obligations stipulated in the treaty, unless it communicates its reservations against any part thereof.⁸⁸

⁸⁸ Article 2.1[d] of the Vienna Convention on the Law of Treaties defines ‘reservation’ as, “a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to the State”.

PAKISTAN'S OBLIGATIONS UNDER SIGNED TREATIES

Pakistan is signatory to most major international human rights instruments or conventions. A list of conventions/ treaties ratified is provided below:

- ⊖ The Universal Declaration of Human Rights [1948];
- ⊖ International Labor Standards and ILO Basic Human Rights Conventions, e.g.
 - ⊖ Freedom of Association and Protection of the Rights to Organize [1948];
 - ⊖ Discrimination in Employment and Occupation [1958];
- ⊖ The Forward-Looking Strategies for the Advancement of Women [1985];
- ⊖ World Declaration on Education for All, Jomtien, Thailand [1990];
- ⊖ Convention on the Rights of the Child, [CRC] [ratified in 1990]
- ⊖ Agenda 21, United Nations Conference on Environment and Development, Rio [1992]
- ⊖ Vienna Declaration and Program of Action, Vienna Conference on Human Rights [1993];
- ⊖ The Program of Action, International Conference on Population and Development [ICPD], Cairo [1994];
- ⊖ Platform for Social Development, World Summit on Social Development, Copenhagen, [1995];
- ⊖ Beijing Platform for Action, Fourth World Conference on Women, Beijing [1995];
- ⊖ Convention on the Elimination of All Forms of Discrimination Against Women, [CEDAW] [accessed to in 1996]
- ⊖ International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [ratified 2008];
- ⊖ International Convention on Economic and Social Rights [ratified 2008]
- ⊖ International Convention on Civil and Political Rights [ratified 2008]
- ⊖ UN Security Council Resolution 1325 [2000]
- ⊖ United Nations Security Council Resolutions 1820 [2008]

A. The Universal Declaration of Human Rights:

The UDHR is not a treaty. It is a preliminary instrument upon which other international human rights treaties are based and it articulates fundamental human rights for all people and adopted by the UN General Assembly on December 10, 1948. The preamble to this treaty emphasizes that if people are to be kept from pursuing their own method of recourse through rebellion against tyranny and oppression, human rights should be protected through 'rule of law'.

Marriage and Family:-

"Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage, and at its dissolution."

- Article 16[1] of the UDHR

Article 16[2] of the same instrument propounds that:

“Marriage shall be entered into only with full consent of the intending spouses.”

- Article 16[2] of the UDHR

Article 16[3] affirms that family is a “natural and fundamental group unit of society”, which must be protected by society and the State. Pakistan’s Constitution of 1973 also affirms these values and proclaims State responsibility to protect the marriage, family, mother and child.⁸⁹

Article 4 of UDHR also prohibits slavery and servitude, in all its forms, while Article 5 purports that no one shall be subjected to torture or to cruel, inhuman and degrading treatment. This is also a fundamental right in Pakistan’s Constitution.⁹⁰ In the context of marriage or any other part of the Declaration, none of the provisions should be considered in isolation but against other connected undertakings. While forced marriages have been prohibited under the Declaration, servility in marriage and cruel behavior towards one spouse by another can be considered aggravating circumstance, along with age [in case of under-aged brides and grooms].

In addition to this and by extension, Article 16[1] awards women equal rights within marriage, which includes making decisions relating to children. This Article thus has implications for mothers who resist or do not approve of their daughters being given in *swara* and that are deemed fit as compensation for ‘wrongs’ committed by the men of the household.

Right to Property:-

“Everyone has the right to own property alone...” and that “No one shall be arbitrarily deprived of his property”.

- Article 17 of the UDHR

B. Convention on the Elimination of all Forms of Discrimination Against Women [CEDAW]

Pakistan ratified CEDAW on 12 April 1996. It remains the most comprehensive and detailed charter on women’s rights in terms of describing discrimination and stereotyping against women, calling for prohibition of customary laws and practices harmful to women, trafficking and sexual exploitation, discrimination in access to education, health, family planning services and employment, and for equal participation of women in political, economic, cultural and public life. It also deals with right

⁸⁹ Article 35 [Chapter 1: Fundamental Rights], Constitution of Pakistan, 1973

⁹⁰ Article 11 [Chapter 1: Fundamental Rights], Constitution of Pakistan, 1973:

Slavery, forced labour, etc., prohibited.-

[1] Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form.

[2] All forms of forced labour and trafficking in human beings are prohibited.

[3] No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment.

[4] Nothing in this Article shall be deemed to affect compulsory service-

[a] by any person undergoing punishment for an offence against any law; or

[b] required by any law for public purpose:

Provided that no compulsory service shall be of a cruel nature or incompatible with human dignity.

to marry and family, equality before law, and lays special emphasis on the rights and needs to rural women. CEDAW calls on member States to prevent and address discrimination and violence against women through all means necessary, including but not limited to imposing legal sanctions and providing civil and criminal remedies. A substantial part of the Convention details the role of the UN Committee on Violence against Women and its administrative functions.

Beside the 30 Articles contained in the Convention relating to issues mentioned above, CEDAW also provide State parties with a number of General Recommendations which are statements providing details of how the articles can be interpreted and extended to cover issues that Convention does not specifically deal with. These Recommendations also clarify roles of Governments and explicate broad steps to be taken to ensure effective implementation (Zia Lari & Zaman, 54th Session of the CEDAW Committee, 2013).⁹¹

CEDAW also has an Optional Protocol which came into force in 1999. This Protocol establishes a complaints mechanism for individuals whose rights have been violated and that fall under the ambit of CEDAW. The Protocol also establishes an inquiry procedure to examine a State Party's actions where it appears that a violation of the Convention has been made. Upon receiving a complaint, the CEDAW Committee will undertake both an inquiry into the alleged complaint while it would also call upon State Parties to explain subsequent action[s] or lack thereof. This has resulted in jurisprudence based on individual cases. All State Parties must accede to the Optional Protocol independently, but they are as the name suggests: optional. Pakistan has not ratified the Optional Protocol thus far.⁹²

Pakistan has made a general Declaration towards CEDAW, stating that accession is subject to the provisions of the Constitution of the Islamic Republic of Pakistan 1973, meaning thereby that Pakistan may not accede to provisions if their implications are repugnant to the Constitution of the country.

Forced Marriages:-

With regard to marriage and right to found a family, the following provisions of CEDAW are relevant:

16 [1]: The state shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure on a basis of equality of men and women:

- a. The same right to enter into marriage;
- b. The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

...

16 [2]: The betrothal and marriage of a child shall have no legal effect and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

2: States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

⁹¹ 54th Session of the CEDAW Committee. Aurat Foundation, Islamabad. 2013

⁹² Ibid

...
[f] To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.
...

- *Convention to Eliminate All Forms of Discrimination Against Women [CEDAW]*

General Recommendation No. 19 of the CEDAW Committee notes that traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles, perpetuate widespread practices involving violence or coercion, including forced marriage, dowry deaths and acid attacks, among others. In its General Recommendation No. 24, the Committee also recommends that States parties enact and effectively enforce laws that prohibit marriage of girl children.

Right to Property:-

15[1]: States Parties shall accord to women equality with men before the law.
15[2]: States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

- *Convention to Eliminate All Forms of Discrimination Against Women [CEDAW]*

C. UN Convention on the Rights of the Child, Article 19

The Convention on the Rights of the Child [CRC] reads:

“State parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent[s], legal guardian[s] or any other person who has the care of the child.”.

Some other related provisions are provided below:

Article 3: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration.”

Article 34: “Children should be protected from all forms of sexual exploitation including unlawful sexual activity.”

Article 35: “State parties shall take all appropriate measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”

- *Convention on the Rights of the Child [CRC]*

CRC does not contain the specific principles related to marital consent and registration. It does define a child in one aged less than age 18 years.

In 2008, the Special Court for Sierra Leone recognized forced marriage as a crime against humanity under international criminal law for the first time. In the case of *The Prosecutor vs. Alex Tamba Brima, Ibrahim Bazy Kamara and Santigie Borbor Kanu* [The AFRC-case] the Appeals Chamber found that forced marriage is an independent crime not to be conflated with sexual slavery, and defined forced marriage in the context of the Sierra Leone conflict as follows:

“Forced marriage describes a situation in which the perpetrator through his words or conduct, or those of someone for whose actions he is responsible, compels a person by force, threat of force, or coercion to serve as a conjugal partner resulting in severe suffering, or physical, mental or psychological injury to the victim.”

In doing so, the Chamber found that forced marriage constitutes an “Other Inhumane Act” capable of incurring individual criminal responsibility in international law.

Subsequently, in the case of *The Prosecutor vs. Foday Saybana Sankoh, Sam Bockarie, Issa Hassan Sesay, Morris Kallon and Augustine Gbao* [The RUF-case] 29 the Trial Chamber of the Court applied the Appeals Chamber’s findings with regard to forced marriage. Accordingly, it issued an historical judgment convicting three senior leaders of the Revolutionary United Front [RUF] of participating in a joint criminal enterprise to force young girls and women to marry rebel soldiers or command responsibility for forced marriages.

Excerpted from Un Handbook on Good Practices in Legislation to Address Harmful Practices Against Women

CHAPTER 8: FORCED MARRIAGE LAWS IN OTHER MUSLIM COUNTRIES

Indonesia

The Indonesian Marriage Law, 1974, sets the minimum legal age for marriage at 19 years for males and 16 for females. Marriage at younger ages is legal with parental consent and judicial approval. For Indonesian women aged 16 to 21 and Indonesian men aged 18 to 21 there must be letters from both sets of parents or guardians stating there is no objection to the marriage. Indonesian rape laws also carry a marriage exemption for rapists.

Malaysia

Malaysian marriage laws decree that a marriage “*shall be void if at the date of the marriage either party is under the age of eighteen years unless, for a female who has completed her sixteenth year, the solemnization of such marriage was authorized by a license granted by the Chief Minister under subsection 21[2]*”. However under Shariah law, girls below the age of 16 and boys below 18 must get the consent of the Shariah Court before they can marry.

Failure to comply with an order made under this section is punishable as a contempt of court. Abuse, neglect, abandonment or exposing a child to physical and/or emotional injuries is punishable under the Malaysia Child Act, 2001. Marital rape is not criminalized in Malaysia. However, under Malaysian law, a husband can be charged with causing hurt or fear of death, to his wife or any other person in order to have sexual intercourse with her [Penal Code, Section 375A].

Afghanistan

In Afghanistan, marriage laws are based both on the Afghan civil code and on Shariah law [Islamic law], which applies to issues not covered by the civil code. Marriage laws dictate a minimum age of 16 for girls and 18 for boys, though a girl of 15 may be married with the permission of her father or guardian. Consent to marry is explicitly required for individuals who are 18 or older. Under Shariah law, marriage is not valid without the consent of parties between ages 15-18, and the consent of both individuals is required and not just the guardians.

Afghanistan’s Law on the Elimination of Violence Against Women bans forced marriages. The law is meant to criminalize acts of violence against women including rape, domestic violence, child marriage, forced marriage, the exchange of women in blood feuds and other disputes [known as ‘*badal*’, the Afghan equivalent of *swara*], among other forms of violent acts against women. In total, the law identifies 22 specific forms of violence against women [VAW].

Albania

The Civil Code of the Republic of Albania states that a person attains full juridical capacity when he or she reaches 18 years of age. The law specifies, however, that if a girl marries before the age of 18, she attains juridical capacity. Juridical capacity gives a person the legal right to enter into legally binding contracts, receive medical treatment without parents’ consent, and to register the birth of children.

Albania does not criminalize child marriage. There is a provision, however, for “Forcing [. . .] to commence or continue cohabitation [. . .] which is punishable by a fine or up to three months of imprisonment”.

Sexual intercourse with a minor below the age of 14 is a criminal offence, with a punishment of seven to 15 years in prison, while forced sexual intercourse with a minor aged 14-18 years is punished by five to 15 years of imprisonment. The minimum age for marriage in Albania is 18 for both men and women, however, legislation does not stipulate any measure to prevent child marriages.

Algeria

The legal age of marriage in Algeria is 21 for men and 18 for women; although judges may in special cases allow earlier marriage. Marriage requires the consent of both parties and a gift by the groom of a dowry to the bride, as well as the presence of the bride's father or guardian [*wali*] and of two witnesses. Men must also inform their first wives if they marry subsequently, as polygamy constrained by requiring consent of the first or second wife and validation by a local court. Marriage is forbidden on the basis of defined relationships of consanguinity and affinity.

In 2005, position of divorced women with children was strengthened by giving them the right to stay in their former conjugal homes while forced arranged marriages were declared illegal.

Bahrain

No minimum age of marriage has been defined in Bahrain when the Minister of Justice fixed the legal ages at 18 for males and 15 for females. Muslim women are not allowed to marry outside the faith, but Muslim men are permitted to do so. Only marriages concluded under Sharia law are legally recognized in Bahrain. There is no culpability for marital rape. With the consent of their father, either sex can marry from the age of fifteen. The age for the girls who want to marry without their fathers' consent is 21.

Yemen

An estimated 14% of Yemeni girls are married by force before their 15th birthdays and 52% of girls here are married before they turn 18. In practice, Yemeni law allows girls of any age to wed, but it forbids sex with them until the indefinite time they are 'suitable for sexual intercourse'. Following the widely publicized divorce of a 10 year-old girl in 2008⁹³, and a 6 year old married, there have been public and parliamentary efforts to raise the age to 17 or 18. In 2009, Yemen's parliament passed legislation raising the minimum age of marriage to 17. But after the resistance by conservative parliamentarians the bill was never signed.

Bangladesh

Civil laws decree that the legal age of consent and minimum age for marriage is 18 for women and 21 for men. Bangladesh does not have a specific law banning forced marriage. However, legally, the consent of both parties to a marriage is required for marriage. A forced marriage may therefore be challenged and declared invalid if there is evidence to indicate that either party did not consent to the union at the time of *nikah*. Where the parties are minors, consent to the marriage may be given

⁹³ See: <http://www.theguardian.com/world/2013/mar/12/child-bride-father-cash-spend>

by their legal guardians. However, marrying minors is a criminal offence, and persons who marry off minors may be prosecuted under the Child Marriage Restraint Act, 1929, which are also applicable in Pakistan but seldom enforced. However, upon being found forced, a marriage is not automatically annulled.

Domestic violence is covered under the Woman & Child Repression Prevention Act, 2000, which remains largely unimplemented.

Turkey

The legal minimum age to marry for both sexes is 18, 17 with parental consent, and 16 in special circumstances with court approval. The official legal age for marriage is accepted to be 18 and over. Marriages which occur under that age are not officially recorded. However A third of marriages in Turkey's eastern and southeastern provinces involve brides of minor age, with a significant proportion under the age of fifteen, according to a report⁹⁴.

The consent of both the woman and the man is a precondition for marriage according to Turkish Law. Turkey's Parliament [the General Assembly] passed a law on March 8, 2012, for the prevention of VAW. The laws also allow spouses to apply for dissolution in the event of forced consent.

Under the Law for Protection of the Family⁹⁵, honour killing, marital rape sexual harassment and sexual assaults have been criminalized.

Iran

The minimum age according to the law is 18 for boys and 16 for girls. A new law in Iran allows men to marry their adopted daughters at the age of 13. The law was approved by the Iranian members of parliament and maintains that girls can marry with the permission of their father at the age of 13 and young boys at the age of 15. Under the civil code a woman has the duty to submit to her husband and this is called 'tamkin' and that includes submitting to his sexual demands so effectively that marital rape sees criminal exemption under the law. Spousal Abuse is not recognized, unless it results in murder.

Iraq

By law, a woman has to be 18 years or older to get married. The Iraqi Law of Personal Status No. 188 of 1988, along with other international laws, forbids marriage under the age of 18. According to this law, Iraqi girls should not get married under the age of 15. It stipulates that girls between 15 and 18 can be married with their parents' consent and at the discretion of a judge in the court of personal status. However, clerics still have the power to conclude legal written agreements, thus encouraging parents who want to marry their daughters under the legal age. Without these agreements, the contracts concluded in Iraqi courts of personal status are not deemed legal or valid. At issue is Iraq's penal code, written in 1969, that excuses crimes "if the act is committed while exercising a legal right." Husbands punishing their wives, and parents and teachers punishing children are considered permissible "within certain limits prescribed by law or by custom."

⁹⁴ See <http://www.hurriyetdailynews.com/third-of-marriages-in-eastern-turkey-involve-child-brides-ngo.aspx?PageID=238&NID=61055&NewsCatID=339>. Last accessed 5 November, 2013.

⁹⁵ See: http://www.justice.gov.tr/basiclaws/family_%20protection.pdf

Egypt

The minimum age for marriage set by the Personal Status Code in 2008 was 18, which is not the case under the new constitution. Egypt's draft constitution does not shield minors from early marriage. Where the victim is less than 16 or the offender is the victim's ascendant, guardian or supervisor or works in the victim's home, the penalty is maximum punishment of life imprisonment. Where both of these conditions are met, the penalty is life imprisonment with hard labor [art. 269 on penalties]. In order to combat the phenomenon of intimidation and the threat of use of force of violence against a wife, offspring or ascendants, the Egyptian legislature promulgated Law No. 6 of 1998, which criminalizes such acts, and stipulates a penalty of at least two years' imprisonment, rising to five if the threat was made against a female or a minor of under 18 years of age.

Brunei

There is no minimum marriageable age in Brunei. The legal age of consent for sexual activity is fourteen years. Sexual intercourse without consent by a man with his wife, the wife not being under thirteen years of age, is not rape.

Jordan

The minimum age to legally marry is eighteen for both boys and girls. The Penal Code provides penalties for all those involved in carrying out underage marriages. An underage marriage can nevertheless be recognized as valid if the wife has become pregnant or given birth by the time of a suit to dissolve their marriage coming to court, or if both spouses have by that time reached the minimum age. In the event of a contract between a woman aged under 18 and a man 20 years or more her senior, the *Qazi* is required to ascertain that the bride has freely given her consent to the marriage and that it is in her interest. The consent of the guardian is required for a female aged under 18 to marry. The law does not recognize the consent of a girl between the age of 15-18 as she is still a minor.

Criminal sanctions are provided for those violating the mandatory registration requirements for marriage and divorce. Article 308 in the Jordanian Law states that to avoid punishment for rape, the rapist must marry its victim, while the punishment for spousal rape does not exist.

CHAPTER 9: NATIONAL LAWS SUPPORTING ACTS INVOLVING FORCED MARRIAGES & INHERITANCE DEPRIVATION

In march 2004, the law and justice commission came out with a draft amendment to the Pakistan Penal Code [PPC] seeking to penalize the act of offering or accepting a woman against her free will, or any child in marriage by way of compensation.

As per Section 4 of the amendment, the punishment for a male adult above eighteen years of age marrying a child, has been provided which states “*whoever, being a male above eighteen years of age, contracts child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both*”.

Likewise, Section 5 provides the punishment for solemnizing child marriage and lays down that “whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage”.

While section 6 deals with punishment for parent or guardian concerned in a child marriage: “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 one month, or with fine which may extend to one thousand rupees, or with both”.

There are several other laws in the PPC, which tie in closely with the action of the perpetrators of women’s/ girl’s forced marriages and inheritance deprivation. Multiple charges can be levied depending on the circumstances of a case. This serves to accurately reflect the variety of offences committed and can help nab the offender[s] even if one charge can be proved without reasonable doubt.

Depending on the situation, some relevant laws have been reproduced below:

PPC Section 34: Acts done by several persons in furtherance of common intention

“When a criminal act is done by several persons, in furtherance of the common intention of all, each of such person is liable for that act in the same manner as if it were done by him alone.”

PPC Section 38: Persons concerned in criminal act may be guilty of different offences

“Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.”

PPC Section 90: Consent known to be given under fear or misconception

“A consent is not such a consent as is intended by any action of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act

knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person: If the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of child: Unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.”

PPC Section 97: Right of private defense of the body and of property

“Every person has a right, subject to the restrictions contained in section 90, to defend:

First. His own body and the body of any other person, against any offence affecting the human body....”

PPC Section 100: When the right of private defense of the body extends to causing death

“The right of private defense of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:--

Thirdly: An assault with the intention of committing rape.

Fourthly: An assault with the intention of gratifying un-natural lust.

Fifthly: An assault with the intention of kidnapping or abduction.”

PPC Section 101: When such right extends to causing any harm other than death

“If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defense of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.”

PPC Section 102: Commencement and continuance of the right of private defense of the body

“The right of private defense of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.”

PPC Section 107: Abetment of a thing

“A person abets the doing of a thing, who:-

First. Instigates any person to do that thing; or

Secondly. Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or,

Thirdly. Intentionally aids, by any act or illegal omission, the doing of that thing.”

PPC Section 108: Abettor

“A person abets an offence, who abets either the commission of an offence, or the Commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of abettor.”

PPC Section 120-A: Definition of criminal conspiracy

“When two or more persons agree to do, or cause to be done,

[1] an illegal act, or

[2] an act which is not illegal by illegal means such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation: It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.”

PPC Section 141: Unlawful assembly

“An assembly of five or more persons is designated an "unlawful assembly" if the common object of the persons composing that assembly is:

First: To overawe by criminal force, or show of criminal force, the Central or any Provincial Government or Legislature, or any public servant in the exercise of the lawful power of such public servant; or

Second: To resist the execution of any law, or of any legal process; or

Third: To commit any mischief or criminal trespass, or other offence, or

Fourth: By means of criminal force, or show of criminal force to any person to take or obtain possession of any property or to deprive any person of the enjoyment of a right of way, of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth: By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do or to omit to do what he is legally entitled to do.

Explanation: An assembly which was not unlawful when it assembled may subsequently become an unlawful assembly.”

PPC Section 375: Rape

“A man is said to commit rape if he has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:

- against her will;
- without her consent;
- with her consent, when the consent has been obtained by putting her in fear of death or of hurt;
- 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
- with or without her consent when she is under sixteen years of age.”

Author's Explanation: Up till 2006, rape laws in Pakistan carried an exemption for marriage where a husband could not be prosecuted for raping his wife. With the passage of Women's Protection Act in December 2006, marital rape could legally be tried as a crime based on the distinction was made between sex “against her will” or “without her consent”, and marital rape was brought within the ambit of the law. In this respect, Zaman and Lari [2012] argue that, “the law previously stated: “A man is said to commit rape who has sexual intercourse with a woman, who is not his wife....” The removal of the words ‘who is not his wife’ in 2006 evidences that there was a concerted move to include marital rape within the law. However, there has been no case of marital rape having been reported, most likely due to the ambiguity of the law and socio-cultural lack of acceptance of marital rape as an offence” [Zaman & Lari, 2013] . However, due to weak interpretation of laws by both Police officers and the judiciary at large, and cases not being reported, this provision is not part of public knowledge. Marital rape remains largely hidden from the public eye and absent from literary discourse due to a reluctance of women to disclose. It is invariably reported as one of the many forms of marital abuse such as beatings being suffered by women at the hands of their husbands while sexual deviance does not bear mention unless probed carefully.

PPC Section 493-A: Cohabitation caused by a man deceitfully inducing a belief of lawful marriage

“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 fine.”

PPC Section 496: Marriage ceremony fraudulently gone through without lawful marriage

“Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall be liable to fine.”

CHAPTER 10: MAIN FINDINGS AND RECOMMENDATIONS

On the basis of the preceding discussion, the following main findings and recommendations are made with respect to different sectors and areas of intervention:

10.1. STUDY FINDINGS

Law:

- ⊖ The Prevention of Anti-Women Practices [Criminal Law Amendment] Act, 2011, is too ambiguous and does not carry force as offences addressed are non-cognizable, meaning that there can be no action by the police unless it is supported by a court order;
- ⊖ There is no awareness regarding the law, or even clarity regarding its applicability amongst officers of the law and other state representatives tasked with its implementation, including public prosecutors;
- ⊖ There is unequal culpability for parties involved in a forced marriage [those who ‘give’ a woman forcibly in marriage and those who ‘take’];
- ⊖ The law does not automatically declare *nikah* under duress or coercion as null and void. A woman would be required to file a case for *khula* or divorce if she wants to end the marriage, or file for a court order for police intervention;
- ⊖ Forced marriages and inheritance deprivation of women are cultural realities that have mass acceptance amongst most cultures within Pakistan. This can be seen from the different names and manifestations of the same nature of offences across the country. This confounds implementation of law as it stands;

Police, medico-legal and prosecution services and other support mechanisms:

- ⊖ Expect one police officer in Hyderabad and 3 in Mardan, police officers are completely unaware of the existence of the AWP Act, 2011. No trainings, orientations or briefing sessions have been held for law enforcement agencies by any government institution regarding the law, which severely limits their ability to apply it in relevant situations;
- ⊖ Most lawyers are also unaware of the law, some of whom occupy senior positions within district prosecution services;
- ⊖ VAW is not a State priority which is reflected in the neglect towards critical support services for women, including counseling support and appropriate first response by law enforcement agents;
- ⊖ State response through policing, medico-legal and prosecution services carry a deep-seated bias against women whose agency is not considered important to marriage and property-related decisions;
- ⊖ Justice has been sub-let or out-sourced to *jirgas* and police stations where compounding and compromising are happening even before an application has been lodged or an FIR registered;
- ⊖ Police officers have no means, resources or inclination to investigate matters involving domestic disturbance which may be caused by forced marriage or inheritance related

violence. Repeat offenders are mostly admonished and counseled before the woman complainant is sent back home to/ with him;

- ⊖ The general lack of awareness on the part of the citizens regarding FIR registration is also absolving police officers from taking action;
- ⊖ Services and support are lacking for women generally and victims of forced marriage and inheritance deprivation specifically, whether it be support for shelter, rehabilitation, free legal counseling, medical care or other economic support. Given that women may need additional support as they may be driven to severe ties with their families in the event of forced marriage, application of law takes on economic dimensions for which budgetary allocations are not forthcoming. Additionally, civil and criminal remedies needed to address forced marriage or inheritance deprivation are either not in place, or are in a state of collapse;
- ⊖ There are nowhere near enough female police officers whereas application of law is largely a patriarchal construct. Where they are prominently placed inside male police stations, their positions are ceremonial and without authority;
- ⊖ Only 14 medico-legal doctors are posted across 6 districts surveyed, with half [7] posted in Karachi alone. There are presently no WMLOs in Swat, Mardan and ICT. This is a travesty given that all MLOs interviewed for this study reported dealing with domestic violence cases on an almost daily basis;
- ⊖ There are around 60 female public prosecutors posted across the 6 districts surveyed who are practicing actively in courts. Some of them are based in city centers and not available for duty in the more remote areas despite rotational posting;
- ⊖ Disputes within marriage are largely seen as private matters by the police that are better resolved within the home. The protectionist approach used by police officers who dissuade women from engaging with the justice system, gives rise to a serious paradox, given the state of justice systems and their ability to deliver;
- ⊖ The trainings provided to police officers involved in public interaction during case registration is not at par with what is required in careful handling of cases involving family disputes;
- ⊖ Bar councils are not fulfilling their mandate to provide legal education to lawyers enrolled with them, while Judicial Academies are targeting only judges and not police officers, lawyers, forensic and medico-legal experts who are all part of the same chain of services;
- ⊖ Legal books available with Bars are outdated and not equipped to impart latest information regarding application of law. While libraries of the High Courts are significantly better stocked, lawyers practicing at the Sessions courts do not access them freely despite getting membership automatically after completing two years of practice;
- ⊖ State officers are also not well versed with other laws and procedures, and with the absence of trainings and Standardized Operating Procedures [SOPs], officers are unable to make critical determinations regarding the nature of cases reported to them. This is evidenced by the fact that not a single officer of the police, medico-legal or prosecution sector reported ever having handled a forced marriage or inheritance deprivation case, despite known prevalence in their respective areas;
- ⊖ Due to lack of coordination between State department working to solve crimes, there is complete absence of any strategy-setting in VAW related trials between the police, medico-legal and prosecution services;
- ⊖ Police officers have no training on gender-based violence or basic counseling skills needed to cater to GBV cases;

- ⊖ Distinction is not made clearly amongst women and law officers between what constitute movable and immovable property, where inheritance is generally understood to denote land, worsening little application of the law;
- ⊖ Myths regarding women's sexuality and their needs within marriage abound amongst State-appointed officers which is limiting women's access to restitution and justice. Similarly, victim-blaming, trivialization, normalization and rationalizing of VAW is deeply institutionalized where women seeking justice are perceived to make frivolous complaints without just cause by members of the criminal justice system;
- ⊖ Many cases of VAW are hidden from the public eye as they are 'settled' informally by police officers, doctors and lawyers, making available prevalence statistics unrealistic and misleading policy makers on the extent of the problem;
- ⊖ There is minimal referral made for women seeking services as officers within the justice system are not familiar with local support organizations and their respective work. Matters are made worse with a severe trust-deficit towards NGOs. Most government officers interviewed did not know of any support organization working in their area except the government-run Darl-ul-Amans, despite having dealt with many complex cases of VAW;
- ⊖ Oversight mechanisms against corruption in the police force [including but not limited to the procedure of filing of *chalan* in court and adherence to the National Judicial Policy] are causing delays and partial investigations which also act as a deterrent for officers to carry out their duty in the face of scarce resources;
- ⊖ Medico-legal sections neither exist in designated public hospitals as full-fledged departments, nor do they not operate separately from the casualty / emergency ward. This is posing accessibility problems, while also compromising the quality of services being provided to women. Similarly, the medico-legal sections do not have independent budgets as part of a larger healthcare setup, making tussle for equipment commonplace;
- ⊖ Women are generally not aware of medico-legal services and how they can serve to support their case if it moves to court, especially since such examinations are time-sensitive;
- ⊖ Very few women return to the police for taking their case forward after they have been exposed to maltreatment from medico-legal departments and police officers [an estimated 10%-30%]. While this poses a problems, it also places hospitals in a unique position to screen and provide basic counseling in VAW cases, for which knowledge of the law and availability of support systems in crucial;
- ⊖ Basic Health Units [BHUs] and Tehsil Health Units [THU], etc., are not imparting medico-legal services which women can still access with relative ease in rural and semi-urban parts of the country;
- ⊖ WMLOs are exempted from appearing in court and providing expert opinion for their own protection outside Sindh. This constitutes and further exacerbates a gender bias against women within the criminal justice system, where women are deprived of opportunities to improve their professional skills;

Impact on Women

- ⊖ Forced marriages take place across all ages, classes, ethnicities, race and education levels of women. Women commonly face severe violence and domestic servitude in forced marriages, where violence most often commences from the outset;

- ⊖ In rural or more conservative setups, women are commonly not given their share in inheritance as it is socially accepted that they will not demand it. A major cause for marriages with Quran, a practice which continues under shrouds till this day, is the protection of family estate and name;
- ⊖ Women themselves are largely unaware of their rights and obligations under the law and are weary of the justice system due to the additional trauma it inflicts on them. Social sanctions against seeking justice also restrict women's access to justice as it involves private affairs of the home becoming public;
- ⊖ Women who are forced into marriage experience severe health risks [including domestic and sexual violence- including rape and forced abortions], for which little care and treatment is provided or culturally solicited;
- ⊖ Even if they wanted to take legal action, women are not familiar with systems of justice [how to lodge an FIR, the importance of MLE in the event of physical violence, etc.] and where to go for help;
- ⊖ Women's bargaining powers are greatly reduced in forced marriages and inheritance deprivation due to their inability to challenge or at least subvert social authority exercised by parents, husband and in-laws who are often in cohorts with each other. It is also because an alternative is not in sight and/or much costlier than subordination, which is also why their rights were obliterated in the first place.
- ⊖ Women tend to suffer many years of abuse in forced marriages as they often don't see a way out [going back to the natal home is mostly not an option]
- ⊖ Women usually do not realize the need for or demand to receive their share in family inheritance as a matter of right unless that they are forced by circumstance [such as children's marriage, schooling, eviction from home by landlord, etc.]
- ⊖ Younger brides and those married forcibly have no control over or cannot bargain on the terms of sexual intercourse within marriage, which is typified by forced sex and related injuries.

10.2. RECOMMENDATIONS

LAWs

- ⊖ Define ambiguous terms such as “compel”, “deceitfully”, “coerces”, etc., in the text of the AWP Act, 2011. Where the law is to be read with other provisions in the PPC or other sets of laws, it should be mentioned in the text of the law.
- ⊖ Enhance the scope of AWP Act's applicability by making it a cognizable offence thereby empowering police officers to take decisive action.
- ⊖ Criminal liability should also be equally instituted for those “taking” women in marriage and not merely restricted to those “giving” women in marriage.
- ⊖ The law should clearly state what is meant by movable property and it should be explained in connection with other laws, where applicable.
- ⊖ Amend the Child Marriage Restraint [Amendment] Act, 1929 to legislate equal minimum age of marriage for males and females at 18 years and harmonize laws relating to age of majority so that they are applicable all over Pakistan. Alternately, provincial legislation should be enacted along with defined institutional roles and mechanisms.

- ⊞ Make appropriate amendments in the Dissolution of Muslim Marriages Act 1939 to reflect the amendment in CMRA, raise the age of option of puberty to 18 years and the maximum age for exercising the option to 19 years.
- ⊞ Section 27 of the General Clauses Act, 1956, should be amended which gives government officers the legal cover for arranging negotiation between opposing parties on the basis of 'good faith'. Under this provision, public office holders cannot be prosecuted for tortious actions or omissions, if they can show that they acted in 'good faith'.

POLICE

- ⊞ The duration of initial training for police officer must be increased from 9 months to at least a year. Police foundation courses must include training modules related to gender-based violence, hate-crimes, human rights, medico-legal and forensic evidence collection [particularly in domestic violence and sexual violence cases, irrespective of the woman's marital status], and counseling victims of trauma [particularly women suffering from battered wife syndrome, rape, etc.], with the aim to enhance their capacity to handle cases sensitively and more efficiently. Case laws and case studies should be part of training modules for better conceptual clarity on the application of law;
- ⊞ Police must be provided detailed orientation regarding any law passed which is relevant in their jurisdiction [national or provincial]. Latest versions of the PPC, CrPC and Police Rules must be provided to each police station on an annual basis, preferably translated in regional languages which they can understand and refer to;
- ⊞ Officers should be encouraged to pursue higher studies after they join the police force. Raising matric-qualified police officers to the rank of Superintendent of Police or Assistant Superintendent must be avoided so that the most qualified persons can be placed at positions requiring higher responsibility and skill, whereas qualified and trained female officers should be inducted/ promoted;
- ⊞ The budget for investigating individual offences must be raised across the board, to discourage desk-based investigations in criminal offences. Better equipment and tools must be provided to officers working in the field. Safety measures should be taken with appropriate security gear that actually serves to protect an officer's life.
- ⊞ The system of complaint and FIR registration should be computerized, with appropriate machines provided to each police station within a jurisdiction. These computers must be connected to a centralized system of information on past offenders so that retrieval of criminal history is made easy;
- ⊞ Other infrastructure such as toilets, telephones, etc., must be improved to facilitate keeping custody of accused/ suspects at police stations so as not to violate their rights;
- ⊞ The number of women police officers must be increased, and every station must have at least one women officer in charge of investigations, irrespective of whether the accused is man or woman. Women police officers must be mainstreamed and their marginalization within the system must be address [setting up of more women police stations or relegating them to PR work, for instance]. Male police officers, however, must be sensitized to avoid cases of sexual harassment and sex-based discrimination that may arise in a joint setup;
- ⊞ Coordination between police, medico-legal departments and district attorney's office should be improved with a view to solving a crime and dispensing justice as a team effort. Combined trainings can be held in this regard to clarify and strengthen the role played by each in the process of solving crimes;

- ⊕ Police stations should be provided information concerning organizations that offer services to victims of GBV, including legal aid, psychological counseling, shelter and rehabilitation support;
- ⊕ SOPs must be introduced or adopted which serve to guide officers on how to deal VAW cases. Given the variety of offences, concentration should on crime committed specifically against women on the basis of their gender, such as sexual violence [all its forms], acid throwing, forced marriages, inheritance deprivation, honour killing, domestic violence, etc.;
- ⊕ The National Police Academy and police trainings should play an active role in arranging training, lectures, practical demonstrations, etc., for police officers of all cadres on a regular basis and annual refresher courses should be organized to educate officer regarding new laws, their intent and potential for application. Trainings should focus on imparting causal understanding between investigation and judgment in court;
- ⊕ Women's police station in Peshawar should be relocated, away from the Police Head Quarters, as high security detailing around the area keeps women from accessing its premises. Similarly, at least one women's police station must be established in Swat and Mardan, while women officers should be placed at ever station as part of the operation and investigation units.

MEDICO-LEGAL CARE AND EXAMINATIONS

- ⊕ The blanket exemption for WMLOs which exempts them from testifying in court in most parts of Pakistan should be removed. This practice deprives WMLOs of opportunities to develop skills essential to providing “expert medical opinion” in court, reduces women's participation and perpetuates gender-based discrimination in a system where women are already few in number and deeply marginalized. Hospitals and court environments must instead be improved to discourage avoidant / negligent behavior amongst officers;
- ⊕ Doctors must have a degree in forensic sciences or its equivalent to qualify for medico-legal work. Alternately, at least a year-long training must be provided, along with refresher courses on the latest methods of physical and forensic evidence collection;
- ⊕ Doctors must be trained in counseling and detecting battered wife syndrome, given the high number of DV cases that approach them;
- ⊕ Budget for medico-legal sections must be separated from hospitals' overall budgets so that they can undertake measures for self-improvement, such as organizing trainings and lectures by forensic experts and acquiring/maintaining necessary equipment;
- ⊕ Medico-legal certificates and consent forms should be standardized. More space for detailing findings and clear instructions should be provided to doctors filling out these reports;
- ⊕ The number of WMLOs must be increased for women's ease of access to these services. Every designated government hospital must have at least 3 WMLOs working in shifts, so that they can be approached any time of day or night;
- ⊕ MLO should be provided initial training for at least two months instead of 2 weeks to enhance their understanding of medico-legal and forensic evidence collection along with legal and policing aspects of criminal offences;
- ⊕ Coordination needs to be improved between MLOs and police officers who are charged with bringing appropriate physical evidences to court. In particular, MLOs should also be allowed to work with police officers in investigating crime scenes where interpersonal violence has reportedly occurred;
- ⊕ Proper examination rooms, equipment with appropriate examination instruments and sufficient lighting must be ensured during MLEs. Curtains should be replaced with proper doors to make already traumatized women and children feel comfortable during the process of examination;

- ⊕ Corruption needs to be checked in cases where doctors give unlawful advice to victims and where they take bribes to ‘protect’ a family from lodging a police case [as in suicide and domestic violence and rape cases];
- ⊕ SOPs need to be introduced that provide guidelines to MLOs in accordance with the minimum standard set by the World Health Organization in its Guidelines for Conducting Medico-legal Examination [2003];
- ⊕ One age should be set for giving consent to medico-legal examinations. Power to give consent must be allowed to rest with the victim and not her family, unless she is a minor. Even then, the girl should have a say in who can give consent on her behalf as opposed to parents being the default people.

PROSECUTION & OTHER LEGAL SERVICES

- ⊕ Judicial Academies and Bars need to play active roles in terms of organizing regular trainings programs for prosecution officers. Judicial academies, whose role is limited to the training of judges, must move towards other actors who are more involved in preparing cases for litigation;
- ⊕ Bar councils need to operationalize their legal education program as part of their given mandate. Regular and not one-off training sessions, lectures, etc. need to be held, alongside creating awareness regarding the passages of new laws such as AWP Act, 2011 [and the Domestic Violence law in Sindh]. In this regard, the Prosecutor General’s office also needs to play a key role in ensure that dissemination is timely and mechanisms exist for acquiring further clarifications;
- ⊕ Provincial Law Departments also need to streamline the process of information dissemination concerning passage of new law amongst all actors in the justice systems and must coordinate with Home Departments, Provincial Bar Councils, District Bar Associations and the Health Department, Child Protection Authorities, amongst others;
- ⊕ Serious investments need to be made in terms of making learning resources available to lawyers. Whether it is regular subscription of law journals at Bar libraries or online learning systems, there is a need to extend information to lawyers which will help advance the interest of justice;
- ⊕ Coordination needs to be improved between lawyers, police officers and medico-legal doctors also through mandating joint police-prosecution-medical investigation committees to oversee investigations where appropriate, and assigning two prosecutors to each case so that both evidence collection and presentation in court can be done more efficiently;
- ⊕ Extensive and mandatory training programs must be introduced by Provincial Law Departments for training lawyers on VAW, and gender-sensitive handling of cases. Lawyers should also be trained in victim counseling and ethical consideration in VAW trials.

OTHER SUPPORT/ REFORMS

- ⊕ Operationalize the Women in Distress and Detention Fund for free legal aid to women and allocate from within it funds, support for rehabilitation to women that have been forcibly married or subjected to any other form of gender-based violence;
- ⊕ Conduct mass awareness campaigns to highlight the negative implications of early and forced marriages;
- ⊕ Demystify inheritance rights by undertaking culturally appropriate awareness programs amongst rural communities;

- ⊕ Increase the number of women in the criminal justice system across the board and ensure adequate trainings and sharing of responsibilities;
- ⊕ Enhance the role of gender crime cells and operationalize government helplines where they are non-functional;
- ⊕ Establish family shelters for women with children and create awareness regarding their existence, services and contact information;
- ⊕ Increase technical and vocational training opportunities for survivors of domestic violence so that they are able to support themselves and their children once they move out of abusive homes;
- ⊕ Undertake regular reviews of laws passed and ensure adequate funding for reviews within the text of the law itself or as part of its rules of business;
- ⊕ Streamline data collection to include not just the number of FIRs registered against offences but also the number of cases going on trial and ratio of acquittals and convictions;
- ⊕ Outreach programs need to be undertaken to engage communities in dialogue around the harmful effects of customary practices and systems/procedures of justice and reparation. Prevention programs should also be undertaken with adolescents such as life-skills based education;
- ⊕ Provincial Government Directorates and Commissions working on human rights issues need to undertake regular situational analyses around the human rights conditions and delivery of justice and make appropriate recommendations to relevant bodies, rather than leaving this task to NGOs for lack of fiscal allocations.

BIBLIOGRAPHY

- Abbas, H. (2012). *Stablizing Pakistan through Police Reforms*. NYC: Asia Society Independent Commission on Pakistan Police Reforms.
- Department of Economic and Social Affairs Division for the Advancement of Women. (2010). *Handbook for Legislation on Violence against Women*. New York: United Nations.
- Deutsche Gesellschaft fuer Internationale Zusammenarbeit (GIZ). (2011). *Gender Strategy of Police 2012-2016*. Islamabad.
- Division for the Advancement of Women Department of Economic and Social Affairs, United Nations. (June 2009). Good Practices in Legislation to Address Harmful Practices Against Women. *Expert Group Meeting* (pp. 6-7). New York: United Nations.
- FAFEN. (2012). *Crimes Against Women: A report based on FIRs registered by police in 57 districts monitored by FAFEN in May 2010, 2011 and 2012*. Islamabad: Free and Fair Election Network.
- (April 2014). *Forced Marriages & Forced Conversions in the Christian Community of Pakistan*. Movement for Solidarity and Peace.
- Ghaus-Pasha, A., Pasha, H. A., & Nasar, A. (1999). *Gender Inequality in Developing Countries: A Case Study of Pakistan*. Karachi: Social Policy and Development Center.
- Huda, S. (Jan 2007). *Human Rights Council, Report of the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children*. NYC: Human Rights Council.
- Hussain, D. F. (2011). *The Judicial System of Pakistan*. Islamabad.
- Khalid, M. Y. (May 2012). *Social Audit of Local Governance and Delivery of Public Services*. Islamabad: United Nations Development Programme Pakistan.
- Khalique, H. e. (2011). *Evaluation Report Rabta Programme 1999-2010*. Islamabad: Rozan.
- Khan, A., & Zaman, S. (2011). *The Criminal Justice and Rape in Pakistan: An Attitudinal Study of the Public Sector's Response to Rape in Karachi*. Karachi: War Against Rape.
- Khan, T. S. (2006). *Beyond Honour*. Islamabad: Oxford University Press, Incorporated.
- Khanna, T., Verma, R., & Weiss, E. (2013). *Child Marriage in South Asia: Realities, Response and the Way Forward*. Bangkok: International Center for Research on Women.
- Lari, M. Z. (2011). *'Honour Killings' in Pakistan and Compliance of Law*. Islamabad: Aurat Foundation.
- Mathur, S., Greene, M., & Malhotra, A. (2003). *Too Young to Wed: The Lives, Rights and Health of Young Married Girls*. Washington DC: International Center for Research on Women (ICRW).
- National Institute of Population Studies. (December 2013). *Pakistan Demographic and Health Survey*. Islamabad.

- NCHD, NCJP. (2007). *CEDAW Shadow Report*. Democratic Commission for Human Development and National Commission for Justice and Peace.
- NCSW. (2010). *Study to Assess Implementation Status of Women Protection Act 2006*. Islamabad: National Commission on the Status of Women.
- Parveen, D. R. (May 2013). *Beyond Denial: Violence against women in Pakistan- A qualitative review of reported incidents Jan-Dec 2012*. Islamabad: Aurat Foundation.
- Rasheed, S., & Zaman, S. (2011). *Incest in Pakistan: A Socio-cultural and Legal Analysis*. Karachi: War Against Rape.
- Rittenhouse, R. H. (Dec 2011). *The Due Diligence Obligation to Prevent Violence Against Women: A Case of Pakistan*. NYC: Human Rights Foundation.
- SAARC. (Jan 2002). *SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution*. Kathmandu: SAARC.
- Scupin, R. (2012). *Cultural Anthropology: A Global Perspective (8th Edition)* (8th Edition ed.). New Jersey: Pearson Education Inc.
- UNFPA. (2012). *Marrying Too Young- End Child Marriage*. New York: UNFPA.
- UNFPA. (2012). *Marrying too young, End Child Marriage*. New York: UNFPA.
- Women Living Under Muslim Laws. (2006). *Knowing Our Rights: Women, Family, Laws and Customs in the Muslim World*. London, UK.
- Zaman, S. (2013). *Anti-women Practices- A toolkit for Community-based Organizations*. Islamabad: Aurat Foundation.
- Zaman, S., & Lari, M. Z. (2013). *Women's Access to Justice in Pakistan*. NYC: Office of the High Commissioner for Human Rights.
- Zia Lari, M., & Zaman, S. (2012). *Sexual Violence and the Law in Pakistan*. Karachi: War Against Rape.
- Zia Lari, M., & Zaman, S. (2013). *54th Session of the CEDAW Committee*. Islamabad: Aurat Foundation.



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