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# Discrepancy between Ideals and Realities: A Socio-legal Study of Women's Rights in Pakistan

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## Abstract

Women's rights have always been a sensitive part of the human rights legislation in Pakistan. Moreover, pro-women laws have never been truly implemented in Pakistan because of a host of social and institutional quandaries, broadening the disparity between men and women. Comprehending the causes of the poor implementation of these laws requires a deep analysis of their social dimensions. This paper attempts to uncover several underlying social factors that hinder the implementation of pro-women laws. It is found that the fundamental reason for the improper implementation of pro-women laws is the friction between competing moral orientations of different factions of society. In the legal system, this friction manifests itself in the form of inconsistent tendencies in law-making and judicial adjudication, plaguing the workings of the legal system. The paper recommends developing an approach to address women's issues that prioritizes fundamental rights of women while paying due regard to Pakistan's socio-cultural traditions.

**Keywords:** conservatism, human rights, interpretative study, modernism, social confusion

## Introduction

The problem of women's rights is an issue of global import, but it attracts unusual controversy in societies that find themselves betwixt and between the unabating urge of modernity and the unrelenting vestiges of their traditional past. Such societies often endured colonial domination that rents asunder the very foundations of their social institutions, making these societies less capable of sustaining their distinct identity. In addition to colonial experience, the insurmountable pressures exerted by the forces of globalization tend to perturb the socio-cultural balance of these societies. Consequently, they witness the unrestrained and chaotic strife between those who tend to embrace modernity and those who struggle to cling to the

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rope of tradition. Indeed, Pakistan is a perfect example of such societies. In Pakistan, the modernists and conservatives contest to define the social and legal status of women. As a result, confusion ensues and halts the effective execution of laws that seek to advance women's rights, thereby leading to the discrepancy<sup>1</sup> between the lofty aspirations of women and the gross realities of the socio-legal domain.

The concept of human rights is one of those few ideas that are almost universally acknowledged, and appeals to human rights are repeatedly made by various individuals and groups across the globe to substantiate their claims (Sen, 2004). This paper also takes a human rights approach to women's rights—an approach that believes in the complete human personality of women and champions the provision of all fundamental human rights to them. Human rights can be described as those ethically justifiable claims (Marks, 2014) of individuals to which they are entitled by virtue of being members of humankind. These ethically justifiable claims or demands entail certain distinct obligations on actors (Renteln, 1988), both public and private, to treat human individuals in ways that are consistent with the inherent sanctity of human personhood. To treat women's rights as human rights means to treat women as complete human individuals worthy of the same treatment as men (Bunch, 1990). It has been argued that the traditional concept of human rights has been built on male experiences and does not respond to “the most pressing risks women face” (Charlesworth, 1994, pp. 58–84). Therefore, treating women's rights as human rights also enriches human rights discourse by incorporating women's experiences.

The law does not function in a vacuum: it operates within a particular social context, and people's interactions with the law are mediated by their social groups (Nadler, 2017). The studies in “sociology of law” have opened a possibility for a profound understanding of this multi-dimensional social reality of law (Gurvitch, 1947) and to better appreciate the mutual interactions between society and its laws. The dilemmas concerning the

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<sup>1</sup>According to the Global Gender Gap Report 2023 of World Economic Forum (WEF), Pakistan has been ranked 142<sup>nd</sup> out of 146 with a 57.5 % gender parity. Pakistan ranked 142<sup>nd</sup> in economic participation and opportunity, 138<sup>th</sup> in educational attainment, 132<sup>nd</sup> in health and survival, and 95<sup>th</sup> in political participation. Ahmed, Amin. (2023, June 21). Pakistan ranks 142 out of 146 countries in WEF's global gender gap report. Dawn. Retrieved from <https://www.dawn.com/news/1760949>.

social status of women lie at the heart of any society and are the subject of controversy among scholars of all social sciences. Many legal scholars have also focused on studying the interplay between women and legal institutions from a sociological perspective. Subscribing to the thesis that law reflects the intellectual, social, economic, and political conditions of a society (Vago, [2009](#)), this paper seeks to examine these conditions in order to understand the underlying causes that frustrate the adequate implementation of pro-women laws in Pakistan.

### **Methodological Concerns**

The paper seeks to investigate the causes of the ineffective implementation of pro-women laws in Pakistan by an interpretive study (Wiesner, [2022](#)) of the social conditions prevailing in the country. It employs qualitative and doctrinal methods (Pattaro, [2006](#)) to understand the interactions between women and the legal system in Pakistan. In view of this, it reviews existing literature on the issue and attempts to develop a novel approach to understanding the condition of women in Pakistan. A comprehensive understanding of the interaction between women, social forces, and the legal system requires an appreciation of the historical dimension. Therefore, the study includes a historical study of women's rights legislation. Instead of discussing each and every legislation concerning women's rights, it analyses only those legislations in detail that have consequential bearings on the condition of women's rights.

### **Historical Sketch of Women's Rights Legislation**

The earliest pieces of legislation on women's rights date back to the time of the British Raj in the Indian Subcontinent. The British rulers sought to bring changes in Indian society in general and Indian family in particular by legislating against (1) child marriages, (2) sati, (3) the restraints on the remarriage of widows, etc. (Chitnis & Wright, [2007](#)). These legislative endeavours by the colonial empire often raised hackles of almost all strata of the society because they were perceived to be foreign incursions on the perennially adored norms, which were deemed sacred by their votaries. Without addressing the concerns of the locals, the British colonists proceeded with their reformist agenda. The legislative reforms during the British Raj had a lasting impact on the structure of society and redefined traditional gender relations in many ways (Burton, [1994](#); Liddle & Joshi, [1985](#)). Many of the legislations of the colonial period are still in force and

continue to be the subject of vigorous debate. In this regard, two legislations merit special mention: *The Child Marriages Restraint Act 1929* and the *Dissolution of Muslim Marriages Act 1939*. *Child Marriages Restraint Act 1929* penalized child marriages, and the *Dissolution of Muslim Marriage Act 1939* provided the right of divorce to Muslim women. All schools of fiqh permit the marriage of minors, while the minor has a right to repudiate marriage upon attaining puberty. The issue of setting a minimum age for marriage has been a subject of controversy between conservatives and reformists. Though the Council of Islamic Ideology declared the *Child Marriages Restraint Act 1929* unIslamic in 2014, the Federal Shariat Court held in 2021 that setting a minimum age for marriage is not unIslamic and that the state has the authority to set a minimum age for marriage (Iqbal, [2021](#)), bringing the confusion to the limelight. Similarly, the judiciary's propensity to broaden the scope of women's right to divorce has been criticized by conservative scholars of religion (Abbasi, [2017](#), [2019](#)).

Muhammad Ali Jinnah, the founder of Pakistan, was a moderate Muslim and strongly believed in gender equality and women's rights (Khan, [2013](#)). After independence, the new dominion of Pakistan did not pay much attention to the issue of women's rights (Khan, [2013](#)). Nevertheless, some feats may have significance. For example, Pakistan ratified the *Convention on the Political Rights of Women* (1953), and the first constitution of Pakistan granted dual voting rights to women. Women could vote in elections to the general seats and in elections to women's reserved seats elected from special territorial constituencies (Khan, [2013](#)).

A major breakthrough for women's rights came with the promulgation of the 1961 *Muslim Family Laws Ordinance* ("MFLO") by Field Marshal General Ayyub Khan. The MFLO mainly related to the procedural aspects of Muslim Personal Law (Shah, [2006](#)). The ordinance provided for (1) the registration of marriages (MFLO, Section 5), (2) penalization of second marriage if without the consent of the first wife (MFLO, Section 6), (3) a mandatory notice of Divorce (MFLO, Section 7), (4) women's right to divorce if delegated at the time of marriage (Section 8), (5) the right to maintenance (MFLO, Section 9), and (6) the presumption of dower being payable on demand in the absence of any contrary stipulation in the marriage contract (MFLO, Section 10). By providing 90 days for a divorce

to become effective, MFLO seemed to illegalize<sup>2</sup> the practice of triple talaq (Abbasi & Cheema, 2018). The issuance of this ordinance provoked the ire of conservatives and also received harsh opprobrium from religiously oriented political parties. Moreover, it ignited a debate between fundamentalists and moderates on the status of women in Islam and the role a modern Muslim state can legitimately have in the determination of the rights and duties of its citizens under Shariah (Ahmad, 1993).

After the Ayyub regime, the political climate of the country remained extremely unsettled. Any meaningful legislation was simply impossible during this time. However, expectations were high when Zulfiqar Ali Bhutto came to power. Z. A Bhutto was seen as a progressive leader with a reformist bent of mind. Bhutto's principal contribution to women's rights was the 1973 constitution. The 1973 constitution prohibited any discrimination on the basis of sex (The Constitution of Islamic Republic of Pakistan 1973, Article 25) and made each "*organ and authority of the state*" (The Constitution of Islamic Republic of Pakistan 1973, Article 29) responsible for ensuing "*full participation of women in all spheres of national life*" (The Constitution of Islamic Republic of Pakistan 1973, Article 34) and for the protection of "*the mother and the child*" (The Constitution of the Islamic Republic of Pakistan 1973, Art.35). All subsequent pro-women legislations receive their normative and legal authority from this constitution. Bhutto also passed the *Dowry and Bridal Gifts (Restriction) Act 1976*, which regulated and somewhat restricted the ignominious practice of dowry. However, Bhutto could not take any practically substantial steps for the amelioration of women's rights since he had to compromise with the clerical and feudal elites and could not let a "peripheral issue" like women's rights imperil his political capital (Khan, 2013, p.730).

On July 5, 1977, General Zia ul Haq overthrew the government of Z. A. Bhutto and imposed martial law in the wake of severe protests by the opposition under the banner of the Pakistan National Alliance (PNA). Zia's rule lasted for almost 11 years and saw the acute deterioration of human rights in the country. To provide his regime with a veneer of legitimacy, he began a process of Islamization based on an ultraconservative interpretation of Islam and presented himself as the true "*soldier of Islam*" (Daechsel,

<sup>2</sup>The law on triple talaq is far from settled due to the existence of conflicting judgements. However, courts have always interpreted this provision to favour women.

[1997](#)). To Islamise the criminal law of the country, Zia promulgated hadud ordinances, which were based on a particularly parochial interpretation of traditional Islamic criminal law. Many Muslim scholars do not agree with the interpretation on which hadud ordinances were based and have presented alternative versions (Fadl, [2017](#); Ghamidi, [2010](#)). Of these hadud ordinances, the ordinance relating to zina gained much notoriety and generated significant dissension. Critics contend that the Offence of Zina Ordinance was prejudiced against the rights of women and had the possibility of convicting rape victims instead of providing any relief to the beleaguered women (Abbasi, [2017](#), [2019](#)).

They argue that the requirement of four credible male witnesses for a conviction for *zina bil jabr* (rape) not only reduced the possibility of conviction but also put the victim at risk of conviction for Zina (fornication) for merely lodging a rape complaint that failed owing to the high threshold of proof. This apprehension seemed to be validated by the much-publicized case of Safia Bibi. Safia Bibi was a blind unmarried girl who became pregnant and gave birth to a child in July 1982. She alleged that her landlord Maqsood Ahmed was the father of the child, as he had raped her nine months earlier. Consequently, Maqsood Ahmed was charged with rape, and Safia Bibi was charged with fornication. Maqsood Ahmed escaped conviction due to the prosecution's failure to provide four credible male witnesses. On the other hand, Safia Bibi's pregnancy was taken as proof of Zina, and she was sentenced to three years in prison, fifteen lashes, and a fine of 1,000 rupees. Though the Federal Shariat Court later overturned the sentence, this incident attested to the possibility of an anti-victim use of the said ordinance (Kennedy, [1991](#)). Women's rights activists also criticized the Qanun e Shahadat Order for it attributed half value to the testimony of female witnesses as compared to male witnesses in "*matters pertaining to financial or future obligations*" (QSO 1984, Art.17). Women's testimony also became inadmissible in cases of qisas and hadud (Imran, [2005](#)). Zia also proposed the Qisas and Diyat Ordinance, which provided half of the diyat in the case of female victims compared to male victims (Kirmani, [2000](#)).

In 1988, Benazir Bhutto became the first female Prime Minister of Pakistan. Her election campaign was based on social democratic values. She failed to deliver on many of the promises she made during the election campaign, including repealing the controversial Hadud Ordinances.

However, she later led the ratification of the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* in 1996. Moreover, she also introduced many pro-women policies, which provided increased employment opportunities to women. However, her women's rights reforms were stymied by the need to compromise with conservatives who wielded significant political power (Rathore, [2015](#); Weiss, [1990](#)).

During this era, Mian Muhammad Nawaz Sharif also held the office of Prime Minister, but he did little for the protection of women's rights, for he remained true to the creed of his political patron, Zia-ul-Haq. Rather than working for women's rights, Nawaz seemed to reinforce many of the anti-women policies of Zia-ul-Haq. Despite repeated demands from the women's rights groups in the country, he refused to repeal any of the hadud ordinances. Furthermore, Nawaz got the Qisas and Diyat Ordinance passed by the parliament. This ordinance made certain permanent substantive changes to the Pakistan Penal Code (PPC) (the code encapsulating the general criminal law of the country). These changes were interpreted to be inimical to the rights of women. Nawaz's move of proposing the 15th amendment to the constitution also faced opposition from women's rights groups because they feared that his proposed fundamentalist Islamic regime might lead to the undermining of women's rights (Human Rights Watch, [1999](#)).

On October 8, 1999, General Pervez Musharraf took over the government in a coup d'état and held in abeyance certain provisions of the constitution of 1973. He espoused a relatively liberal ideology of "Enlightened Moderation." "Enlightened Moderation" considers "*political injustice, denial, and deprivation*" (Musharraf, [2004](#)) as the root cause of extremism and militancy, leading to "*an acute sense of deprivation, hopelessness, and powerlessness*" (Musharraf, [2004](#)). Musharraf further asserted that the Muslims descended into extremism because they had forgotten the cardinal virtues of Islam, which were none other than "*justice, compassion, tolerance, generosity of spirit, austerity with a spirit of sacrifice, and a burning desire for raising humanity to a better world*" (Musharraf, [2004](#)). Therefore, he considered it imperative for Muslims to shun militancy and extremism and adopt the path of socio-economic development (Musharraf, [2004](#)). His setting of an otherwise liberal ideology in Islamic terminology made it clear that whatever reforms he

might bring would be circumscribed by the constraints of traditional Islamic jurisprudence.

Women's rights were an essential part of Musharraf's programme for bringing enlightened moderation, and he adopted many measures for the amelioration of the condition of Pakistani women. He amended the constitution by promulgating the *Legal Framework Order ("LFO") 2002* on August 21, 2002. The LFO substantially enhanced women's political representation by reserving 60 seats for women in the 2002 elections (Hamid, 2009). Besides LFO, his most consequential contribution to the protection of women's rights was the *Protection of Women (Criminal Laws Amendment) Act 2006 ("PWA")*, which mainly amended the controversial provisions of Hadud Ordinances that had been found to be deleterious to the legitimate rights of women. The stated aim of PWA was to amend the criminal law of the country to "*provide relief and protection to women against misuse and abuse of law to prevent their exploitation*" (PWA 2006, Preamble). PWA was not limited to fixing problems associated with Hadud Ordinances but extended to the adumbration of a complete legal framework on the issue of rape (Bajwa, 2006). The most critical enhancement introduced by PWA was the reinsertion of the definition of rape into PPC, relaxing the evidentiary requirements for a conviction for the offence of rape. The had standard of proof (four credible male witnesses) was no longer necessary, and an alleged offender could be convicted if the general evidentiary requirements of the Qanoon-e-Shahadat Order, 1984, were met. Consequently, a rape offender could be convicted on the basis of direct evidence, circumstantial evidence, real evidence, testimonial evidence, scientific evidence, or even the solitary statement of the truthful victim that inspires confidence (Bajwa, 2006). Further, by omitting the phrase "*not validly married*" from the definition of rape, PWA recognized the possibility of marital rape (Lau, 2007). The distinction between Zina (fornication) and zina bil jabr(rape) was obscured by the Zina ordinance; PWA clarified this distinction by introducing a separate new offence of fornication in PPC (PPC 1860, Section 496). To dispel the fear of rape victims that an unsuccessful rape complaint might be converted into a charge of fornication against the complainant, PWA prohibited the conversion of a complaint of rape into fornication or vice versa (PWA, Section 12A). It is noteworthy that PWA was enacted after the publication of the Council of Islamic Ideology's report on Hadud ordinances that denounced many of the provisions of these ordinances as unIslamic and

recommended necessary amendments. The report helped reinforce the claim of the Musharraf regime that PWA was completely in line with the injunctions of Islam as laid down in the Holy Quran and Sunna.

After much political drama, Musharraf resigned from the presidency, and a coalition government consisting of PPPP and PML (N) came to power in 2008, but later, PML (N) left the coalition. The PPPP government lasted till 2013. Since the restoration of democracy, successive governments have legislated on many issues relating to women's rights, which include (1) violence against women in the domestic and public sphere, (2) workplace harassment, (3) cyber harassment, (4) women's property rights, (5) human smuggling, (6) child marriages, etc. Here, it is to be noted that after the 18th constitutional amendment, the legislative domain of the provinces was substantially widened (Rana, [2020](#)). As a result, many of the pro-women laws legislated during this time fall within the provincial domain. Some of the important pro-women laws passed during the 2008-2013 era are *The Protection against Harassment of Women at the Workplace Act 2010* (provides legal protection to women from harassment at the workplace), *The Acid Control and Acid Crime Prevention Act 2011* (criminalizes acid attacks by including acid attacks within the definition of hurt), *The Prevention of Anti-Women Practices Act 2011* (criminalizes discriminatory customs like giving a female in marriage or otherwise in badla-e sulh, wanni or swara, depriving women of inheriting property, forced marriages and marriage of females with the Holy Quran), *The Women Distress and Detention Fund 2011* (provides for legal and financial assistance to women in jails), the *National Commission on the Status of Women Act 2012* (provides the statutory basis to the National Commission on the Status of Women), and *The National Commission for Human Rights Act 2012* (provides the statutory basis to National Commission for Human Rights).

PML (N) ruled from 2013 to 2018. Some major laws adopted during this time were *Punjab Fair Representation of Women Act, 2014* (amended statutes of 66 public bodies to increase women representation in them to 33%), *Punjab Family Courts (Amendment) Act, 2015* (allowed women to retain up to 50% of their dower in case of Khula), *Criminal Law (Amendment)(Offense of Rape) Act 2016* (made rape a non-commutable offence and provided additional protections to the victims), *Criminal Law (Amendment) (Offenses in the name or in pretext of honour) Act 2016* (increased the penalty for honour killing and extended the scope of the

offence of honour killing), the *Punjab Protection of Women against Violence Act 2016* (provides legal protection of women victims of violence and defined their rights) and , *Punjab Women Protection Authority, 2017* (establishes Punjab Women Protection Authority which is responsible for protecting women from violence in the province of Punjab), *Prevention of Electronic Crimes Act 2016* (defines certain cybercrimes which protected women from cyber harassment), *Hindu Marriage Act 2017* (codifies marriage law for Hindus and protected the rights of Hindu women in marriage) , *Prevention of Trafficking in Person Act 2018* (criminalizes the trafficking of persons for sexual purposes), *Prevention of Smuggling of Migrants Act 2018* (criminalizes smuggling of migrant including women migrants).

In April 2018, PTI, led by Imran Khan, came to power and ruled until Imran Khan was ousted by PDM (a political coalition) in April 2022. Some of the pro-women legislation of the Imran government includes *The Punjab Domestic Workers Act 2019* (provides legal protection to domestic workers that are mostly women), *The Enforcement of Women's Property Rights Act 2020* (provides protection of the rights of ownership and possession of property by women, ensuring that such rights are not violated by means of harassment, coercion, force or fraud), *Zainab Alert, Response and Recovery Act, 2020* (provides a comprehensive system for recovery of abducted children and punishments for related offences), *The Protection of Parents Ordinance, 2021*(provided legal protection to aged parents from eviction from home), and *Anti-rape (Investigation and Trial) Act, 2021*(provides a comprehensive mechanism to expedite the redressal of sexual abuse crimes against women and children).

The history of women's rights legislation in Pakistan has been an epic drama of complex dialectical interactions between the social, political, and religious forces, each vying to exert its influence on the construction of the legal conception of womanhood. In each era, the legislative trends vis-à-vis women's rights have been determined by the compromise between the orientations of the ruling government and the political expediencies of the time. However, different ideological tendencies remained prevalent in different eras of Pakistan's history (See Annex 1). For example, conservatives gained eminence during the reign of Zia ul Haq, and modernists were quite influential under Pervez Musharraf. Changes in the attitude of certain political actors can also be observed. For instance, Nawaz

Sharif's attitude towards women's rights in 2013 was markedly different from his attitude in the 1990s. With all that said, a myriad of laws that meliorate the condition of Pakistani women have accumulated over time.

### **Sources of Discrepancy**

The aspirations of Pakistani women are nourished by the existence of many international conventions and domestic laws (See Annex 2) that seek to protect their legitimate rights and encourage them to play a more vibrant role in society. However, the realization of these aspirations is stymied by the ineffective implementation of laws. The challenges to the fuller implementation of pro-women laws in Pakistan can be broadly categorized into two classes: obstacles presented by contrasting models of legitimacy and structural and institutional inadequacies. The first class of barriers is the existence of deeply entrenched cultural norms and practices that define the existing status of women and resist any change from outside. The second class of barriers is the structural and institutional inadequacies that beset the Pakistani administrative machinery and blunt the state's capacity to enforce its will (laws) effectively. This paper focuses exclusively on the first class of barriers and seeks to describe the social phenomena that underlie these obstacles. The following discussion provides a brief overview of the social causes of the ineffective implementation of pro-women laws.

### **Public-Private Dichotomy**

On the one hand, the public-private dichotomy appears as the fundamental tenet of the liberal state, which serves to limit the powers of government by bifurcating human affairs into two discrete spheres of activities: the public and private. The public sphere is open to legitimate government interference, and the private sphere is exempted from any such intervention. The private sphere is supposed to include those affairs that are personal in nature, and the public sphere is supposed to include those affairs that concern humans as collectivities and are, therefore, fit for public regulation (Romany, [1994](#)). On the other hand, dichotomy appears as a social norm that assigns men to the competitive public realm of politics and economics and women to the emotional private realm of family. The public-private divide as a social norm is buttressed by deep-rooted cultural and religious norms. These two distinct yet interrelated conceptions of public-private dichotomy counteract the attempts at the protection and

advancement of women's rights by hindering the state's legislative actions on women's issues by relegating these issues to the private sphere. The very idea of the state's affirmative action to orient society to achieve morally justified goals is deemed to be inconsistent with the liberal idea of the state and disturbs the public-private divide.

In Pakistan, the dichotomy operates in at least two ways. First, it ensures the under-participation of women in society by inhibiting their representation in government and other public arenas. Second, it hinders the effective implementation of pro-women laws by accusing them of desecrating the sanctity of the *chador* (veil) and *char-divari* (four walls of the house). For decades, this dichotomy has reinforced gender-discriminatory laws and impeded the enactment of pro-women laws. It still hinders the state's efforts for the protection of women's rights. The situation is further exacerbated by the emergence of conflicting interpretations of the contours of this divide. These contours are determined by the social conception of womanhood that defines the demands and expectations of ordinary women in society. Different groups espouse dissimilar beliefs about affairs that are considered legitimately open to men or women, augmenting the confusion that contributes to the poor implementation of pro-women laws.

### **Conservative Interpretations of Religion**

The essential reality of religion is transcendental and sempiternal, independent of and free from any influence of the empirical world. However, its particular spatiotemporal manifestations may be vulnerable to the pressures of socio-political realities (Nasr, [1987](#)). The recognition of this reality allows for a better appreciation of the incidence of interpretive tensions between different schools of thought within Islam. The existence of tensions between different schools of thought attests to the need to distinguish between the centrality and immutability of the divine revelation and the mutability of the limited interpretations of that revelation constructed by human agency. These human interpretations develop in response to and under the influence of the social and intellectual needs of a particular time and place and can only be understood in light of their context (Iqbal, [2019](#)).

Islam plays a critical role in women's rights discourse in Pakistan. Both conservatives and modernists interpret religion to justify their ends.

Because of the religious identity of the state, Islam enters into the public domain, and its enforcement is ensured by state institutions. The conservative interpretations of Islam present a truncated vision of womanhood that is inimical to the total development of women's potential. These interpretations reinforce discriminatory laws and tend to relegate women to the four walls of the house by propagating the reduction of women's participation in public affairs. In Pakistan, religious conservatives espouse a particularly parochial conception of womanhood that sees women merely as "caring mothers" and "obedient wives" and seek to inculcate this conception in society (Shaheed & Mumtaz, 1990). By presenting their interpretation as the only possible interpretation, they spurn any progressive juristic development that tends to enhance the position of women and resist any law that is inconsistent with their conception of womanhood. In the history of Pakistan, these conservatives often prevailed upon the legislative power of the state and got passed certain laws that negatively affected the interests of women and hindered the fuller development of their potential. These conservatives were influential during the Zia regime and still hold significant sway in the public decision-making regarding women's issues.

### **Conflating of Religion and Conservative Social Practices**

A perplexing phenomenon that belies simple explanation is the conflating of religion and conservative social practices. One may notice the occurrence of certain highly discriminatory social practices that do not have even the remotest connection with religious orthodoxy but are still practiced in the name of religion and demand reverence. For instance, *Karo Kari* and *Haque Bakhish* have no permissibility and are even prohibited by the traditional Islamic jurisprudence, yet they are considered Islamic by the people who practice them. Furthermore, there may also be certain less distinct cultural norms and practices that have been wrongly conflated with Islamic values but, in reality, are entirely the construct of a conservative society (Weiss, 2012). In conservative society, social norms are confused with religious imperatives to clothe these norms with sanctity and to perpetuate their unquestioned compliance. Therefore, when a law is enacted to eradicate a certain discriminatory social practice, it faces severe resistance because it is believed to profane the alleged integrity of sacred social norms.

## **Intra-Societal Fragmentation of Norms and Interests**

In Pakistan, women do not exist as a cohesive group with similar norms and interests but are rather divided into heterogeneous factions differing from each other in terms of economic class, religious belief, cultural background, education standards, etc (Jalal, [1991](#)). The diversity of experience gives rise to women's singularly distinct conceptions of their needs and interests and of the norms that delineate the appropriate ways to satisfy these needs and protect these interests. Moreover, these norms also adumbrate the precincts of activities that are considered legitimately open to women. Lately, Pakistan has been experiencing gendered modernity (Weiss, [2012](#)), a social phenomenon in which a country witnesses the progressive rise of more educated women who are no longer willing to countenance discrimination. Even this process is not uniform across various sections of society. The interests of women who belong to an affluent neighbourhood in a metropolitan city differ markedly from those of women living in rural areas. The women living in urban areas, who are more likely to have a college education and easy access to employment opportunities, may focus on issues like equal pay, workplace harassment, transportation problems, maternity leaves, etc. On the other hand, issues of prime concern for a rural woman may be maternal mortality, inadequate health facilities, poor female hygiene, restricted access to education, and other issues of a similar nature. In addition to dissimilar interests, women of different factions embrace differing value systems, and these value systems play a material role in the construction of their self-identities and must be kept into consideration while framing laws that affect their lives.

In Pakistan, the laws that concern women are most often negotiated by a small group of upper-class women and, consequently, largely reflect their interests and concerns. The NGOs that are often seen at the forefront of the struggle for women's rights are run by women who come from a narrow group of educated upper-class urban women who have no direct experience of the problems that are a lived reality for many women of the lower classes (Kirmani, [2000](#)). The concerns of lower-class or rural women are not properly reflected in laws, and these laws often present an inaccurate picture of their condition. The situation is further muddled by the constant pressures exerted by religious conservatives who tend to impose their own models of ideal womanhood on society by influencing women's rights legislation. Another significant yet elusive influence on women's rights

legislation in Pakistan is the influence of international forces. Certain pro-women laws are enacted to satisfy obligations incurred by the ratification of international women's rights conventions and to enhance general human rights records that may also fetch benefits in trading relations. It may be noted that conceptions of womanhood encapsulated in these international conventions may not be shared by any significant portion of the domestic population and present a novel element in gender discourse in the country. Thus, the intra-societal fragmentation of norms and interests is translated into laws, and almost all laws legislated in Pakistan are often the result of a compromise between conflicting conceptions of womanhood, presenting internally inconsistent and disarranged images of women.

### **Law's Befuddled Image of Women**

Gustav Radbruch argues that each era of the legal system relies upon a particular conception of the individual and that this conception of the individual defines the character of that legal system. The legal system's conception of the individual can be gauged from a careful study of the "subjective rights and the legal duties a particular legal order has fashioned" (Radbruch, [2020](#)). The legal system collapses when the gap between the law's image of the human and the empirically existing average human being widens beyond a certain limit (Radbruch, [2020](#)). Gustav's insights provide a valuable method that takes human being as the focus of legal analysis and seeks to maintain an intimate connection between law and human. It is contended that not only is introducing the dimension of gender to this method of legal analysis tenable, but it also allows the possibility of a deeper analysis of legal reality. It also allows the legal analysis to be more egalitarian and to be conscious of gender biases that may otherwise creep in (Moran, [2003](#)). Each legal system has a certain conception of women, and the rights and duties of women in that legal system are tailored in accordance with that conception. If the legal conception of women in a particular legal system does not coincide with the empirically existing average women, the part of the legal system dealing with women may face disorder.

As argued in the previous sub-section, the legal conception of women in Pakistan is the result of a compromise between contrasting conceptions of womanhood. The legal system has not been able to respond consistently to the question of whether the law is to cater to the needs of a strong, ambitious woman who is self-aware of her interests and merely needs the

elimination of structural impediments in order to reach her full potential, of a feeble woman who needs active protection and affirmative action to come out of her sorry situation, or of a traditional woman who is firmly connected to her social context by means of religion, family and other social bonds and finds happiness in them. Being a compromise between these contrasting conceptions, the Pakistani legal system's conception of women does not coincide with the empirical reality of average women in Pakistani society, and this gap between the legal conception of women and the empirical reality causes the legal provisions dealing with women to become ineffective.

### **Alienation from State Institutions**

As previously discussed, the first laws relating to women's rights were enacted during the British rule. The colonial state sought to regulate gender relations in order to reform society to achieve their perceived moral goals. These attempts at reform were often received with hostility, for they were considered sacrilegious and were deemed illegitimate interventions in the traditional social structures. The colonial experience cemented the image of the state as an alien agent and engendered a psychological gap between state institutions and the people, thereby augmenting the difficulties in implementing laws. This feeling of alienation from state institutions still lingers in modern-day Pakistan (Lodhi, [2022](#)) and is more apparent when it comes to laws that are based on norms that are believed to be alien to the native society. Religious or social groups are often seen working independently or rather in conflict with the state and cultivate norms that may challenge the legitimacy of state legislation.

Women's rights legislation is often seen as intrusive and is accused by the conservative groups in the country of being an unholy offspring of "Western culture," which is frowned upon by the popular sentiment as debauchery and turpitude (Weiss, [2012](#)). These laws are seen by the conservative Pakistani society as attempts to desecrate the pristine sanctity of traditional family structure. The negative perception of Western culture, coupled with the psychological distance people feel from the state, is instrumental in the delegitimization of pro-women laws and hinders their sufficient implementation.

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## Attitude of Public Officials

One of the most crucial factors in the implementation of a law is the attitude the officials of the state take towards that law. Their attitude is shaped by the social context that defines their norms and values. It is possible that different public officials might have different attitudes toward a law because of the diversity of their backgrounds. Despite some progressive developments, the general character of Pakistani society still remains conservative and is not amenable to changes in the social status of women. As the majority of the officials come from conservative backgrounds, their attitude towards pro-women laws is essentially negative and serves to inhibit the proper implementation of these laws.

### Critical Remarks

The currents of modernism (and now also post-modernism) pose tremendous challenges to the integrity of traditional societies, which are afraid of losing their long-cherished ways of life and are striving to preserve them. Unsettled by the incursion of modern values, these societies exhibit an incessant clash of sentiments between the conservative and modernist elements that constantly vie to define the moral structure of their society. This conflict is most severe in societies that have experienced colonial rule at some point in their history. The colonial experience often breeds moral dilemmas by fracturing and unsettling traditional indigenous communities and brings society to a point where it finds itself in a constant struggle to define its cultural or national identity. For instance, Pakistan is struck between the push and pull of modernity and conservatism (Weiss, 1985). The conception of womanhood, which is an integral part of the moral structure of any society, is at the centre of this conflict. This conflict manifests itself in all facets of society. In Pakistan, the legal discourse concerning women's rights is marked by the confusion generated by the discord between oppugnant notions of womanhood, which unfavourably affect the pro-women laws at stages of both law-making and implementation. The whole history of women's rights legislation in Pakistan is a story of this conflict. Therefore, it may be contended that the discrepancy between the aspirations of women and the grim realities of women's rights in the country is a function of the confusion resulting from the breakdown of traditional social structures and the clash between different factions of society, each striving to partake dominantly in the construction of the new normative edifice for the society. This confusion is

the underlying cause of the sources of discrepancy discussed in the previous section.

To preserve its identity, the society reacts to the forays of foreign values by building bastions of thought around its norms and values, thus solidifying and indurating something that was essentially alive and evolving. This tendency to rigidify norms and values may be called conservatism<sup>3</sup>. For instance, it is true that there has always been some kind of division between the activities that are considered appropriate for male or female genders, but this division has always been fluid (Kirmani, [2000](#)). Heedless of the changing socio-economic realities, the conservative reaction attempts to rigidify this division, all to the detriment of the women. The religious domain has also been conservatized, thereby leading to the flourishing of fundamentalism, which is dismissive of granting any right to women. The discriminatory social norms and practices that are clothed with false religiosity may be tackled easily from within the traditional Islamic jurisprudence but are also protected by this conservative confusion. This confusion between normative systems has also affected the state and its legal system, in which we notice the existence of conflicting tendencies in law-making and judicial adjudication. It is interesting to note that the superior judiciary in Pakistan has been instrumental in the development of gender-sensitive jurisprudence (Abbasi & Cheema, [2018](#)), but this task has never been without its difficulties. Judges have to balance between the two conflicting tendencies of modern liberally interpreted rights of women and the dictates of traditional Islamic jurisprudence that may not always be compatible with modern trends. Almost all judicial decisions involving women's rights are the result of this balancing act. However, because of certain inherent contrarities of traditional Islamic jurisprudence with modern trends in women's rights, the decisions may not always be grounded in accurate legal reasoning. To react progressively to the needs of women, courts have exercised independent legal reasoning (ijtihad) instead of following the opinions of classical jurists. However, the courts' attitude in this regard has been inconsistent (Carroll, [1981](#)). Courts have considerably extended the scope of women's right to divorce (Abbasi, [2017](#), [2019](#)). In *Khalida Shamim Akhtar v Ghulam Jaffar (PLD 2016 Lahore 865)*, the court

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<sup>3</sup> Conservatism defines the subject of its conservation in reaction to and keeping in view the purported danger. Hence, its conception of its subject is always inaccurate and exaggerated for it is constructed by something other than the subject.

changed the traditional rule (Mulla,[1912](#)) concerning the inheritance rights of issueless Shia widows by progressively interpreting qur'anic verses. Interestingly, the amicus curiae in the case also cited many contemporary Shia juristic authorities in favor of the decision. In *Abdul Rashid v Shahida Parveen* (YLR 2616 (Pesh)), the court rejected the husband's petition for recovery of Dover in the case of Khula by employing a novel argument that the life spent by the wife with husband could be considered as consideration for Khula.

Many of the aforementioned factors seem to be involved in the controversy surrounding the enactment of *The Punjab Protection of Women against Violence Act 2016* ("PPWVA"). The controversy was a perfect example of the confusion besetting Pakistani society and manifested the views of the reformist, conservative (both religious and social), and moderate elements. The act aims "to protect women against violence" (PPWVA, The Preamble) and to "establish a protection system for effective service delivery to women victims and to create an enabling environment to encourage and facilitate women freely to play their desired role in the society (PPWVA, The Preamble)." To achieve its aim, the act provided for certain controversial penalties, such as the mandatory wearing of ankle or wrist bracelet GPS trackers and the expelling of the offender (mostly husbands) from the house. Despite the morally commendable objective of the act, the religious conservatives voraciously opposed the act, basing their argument on a particular interpretation of Verse 4:34 of the Holy Quran. The same verse is interpreted differently by the reformists (Siddiqi, [2019](#)). The conservative reaction led to the Council of Islamic Ideology's declaration that the act was unislamic and against the ideology of Pakistan ("Women's protection act", [2016](#)). Some emphasized the need for a law protecting women from domestic violence, though criticized the culturally insensitive provisions of the act. The public debate initiated by this act attests to the existence of mutually incompatible conceptions of the "Islamic Tradition" and how women are viewed in that tradition. The act represents, as one commentator puts it, "a battle of competing ideologies (Munshay, [2016](#))." Since the enactment of this act, an ensemble of social and institutional conditions has impeded its effective working, and there are still many bottlenecks in its proper implementation (Ahmad, [2023](#)).

### **Brief Policy Recommendations**

To meaningfully reform the condition of women, Pakistan needs a total recalibration of its women's rights policy. In this connection, the following points should be kept into consideration:

1. The government should augment its understanding of women's condition by thoroughly comprehending their social context, which is the source of their norms and values, and weaves their self-identities.
2. The focus of the government should be on facilitating the genesis and growth of indigenous perspectives on women's issues and developing policy options that are perceptive of both the needs and interests of women and the traditional norms and values of Pakistani society.
3. State legislation on women's rights must be guided by the considerations of human rights. However, it must be borne in mind that the interpretation and realization of the ideals of human rights in the context of particular societies should be sensitive to the ethos of local communities (An-Na'im, [1994](#)).
4. Attempts should be made to bridge the gap between people and state institutions by indigenizing the state apparatus in accordance with the norms and needs of society.
5. The government also needs to appreciate the diversity of experience among women and should endeavour to make law-making more inclusive.

### **Conclusion**

Socio-legal analysis of women's rights legislation and judicial adjudication in Pakistan reveals inconsistent tendencies that are reflective of the dissensions between conflicting moral systems existing in society. Sentiments against laws that seek to reform the condition of women are emboldened by conservative forces, which represents society's reaction against the infiltration of norms and values that are adjudged alien and, hence, disruptive. On the other end of the social spectrum, there are those who espouse modern notions of women's rights and aspire to reform society to achieve their goals. These groups are not ideologically compact; rather, they display variegated hues of opinions on the issues of women. In Pakistan, there exists a constant struggle between these groups to influence the processes of law-making, execution, and adjudication. Both of these

groups attained dominance in different stages in Pakistan's history. This clash between conservative and modernist elements of society stimulates confusion that prevails over the whole legal (in terms of conflicting legislation and judicial decisions) and social domains and checks the satisfactory implementation of women's rights laws. The solution lies in approaching the issue of women's rights as human rights and in initiating legal and social reforms, keeping in view the culture and traditions of Pakistan's indigenous society.

### Conflict of Interest

The author of the manuscript has no financial or non-financial conflict of interest in the subject matter or materials discussed in this manuscript.

### Data Availability Statement

Data availability is not applicable as no new data was created.

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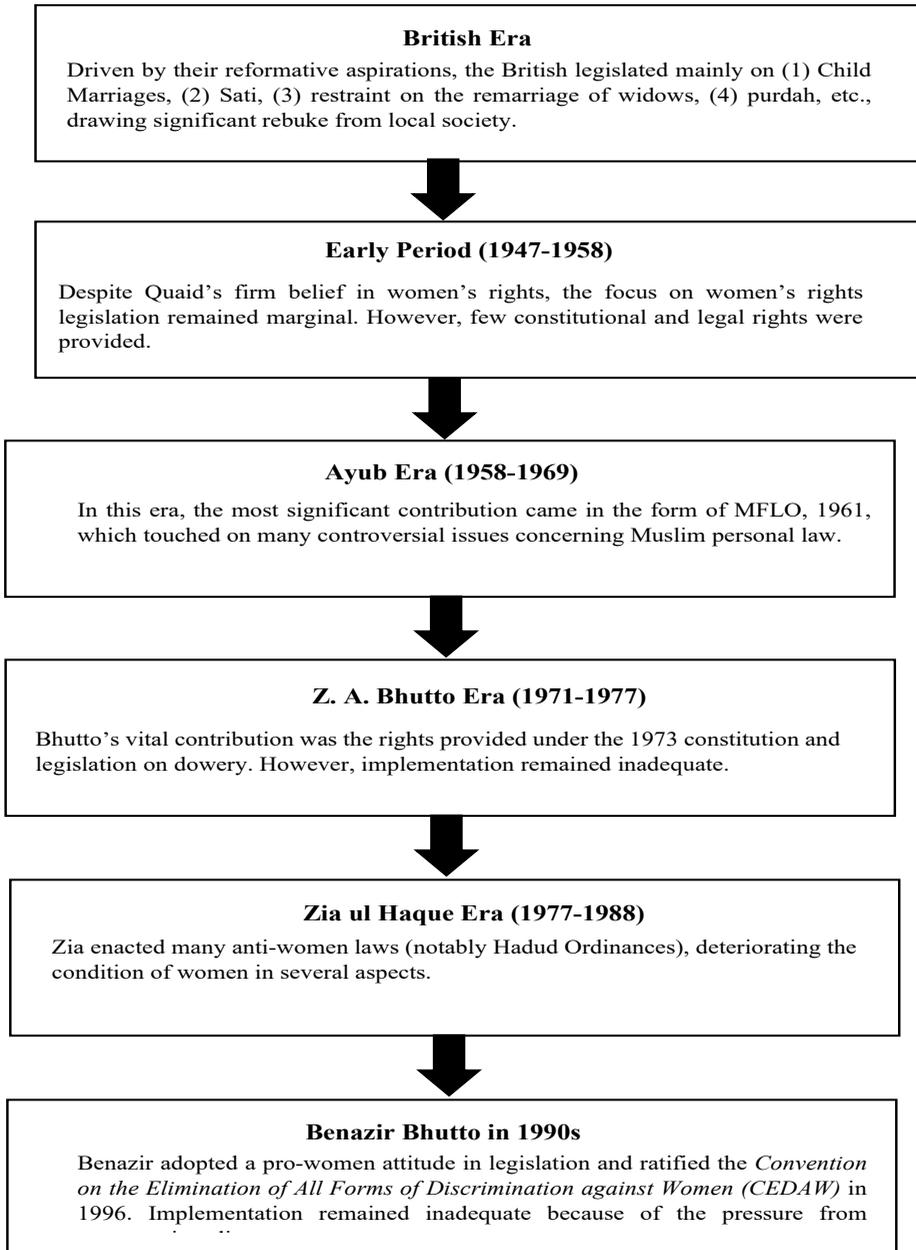
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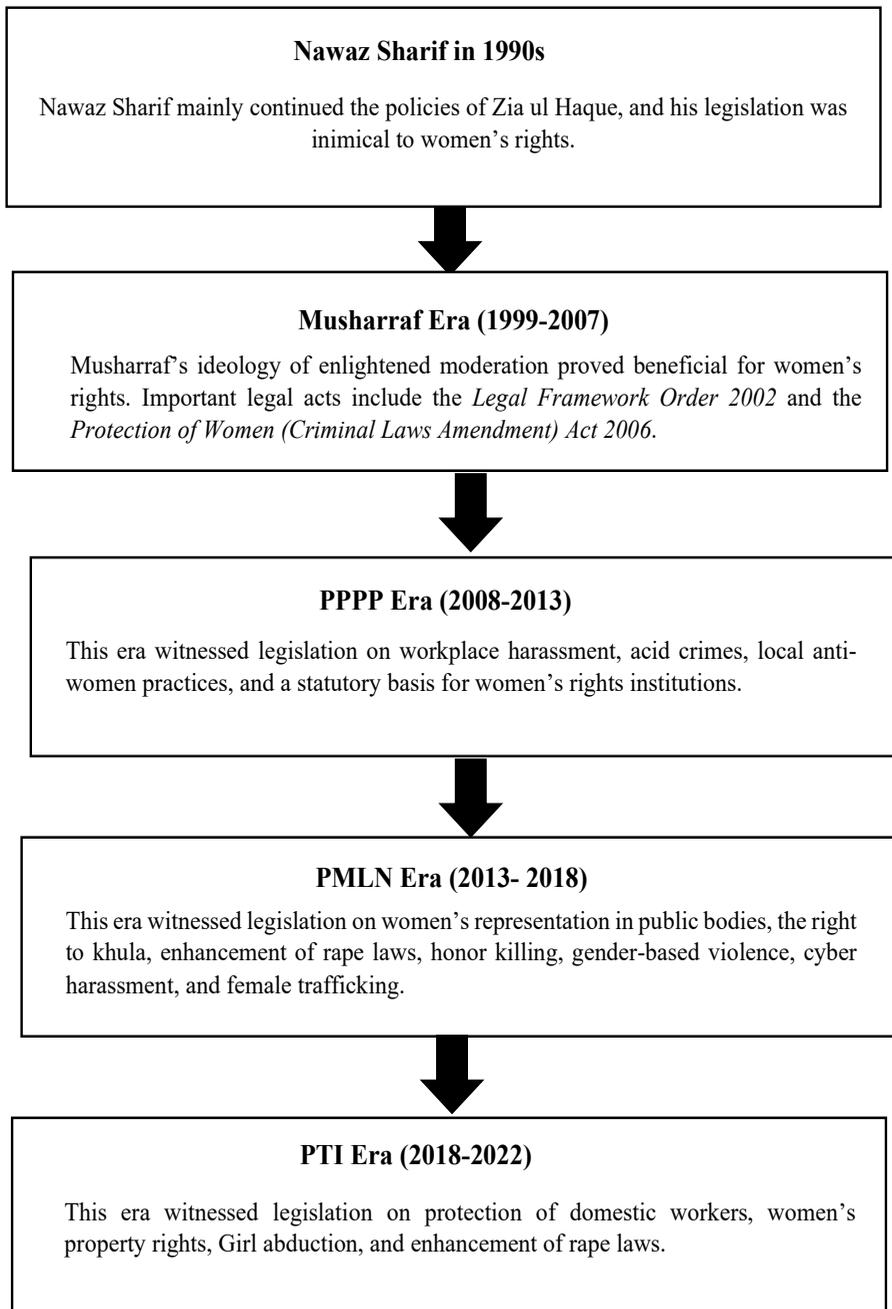
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## Annex 1

### Chronology of Trends in Women's Rights Legislation





## Annex 2

### Thematic Classification of Women's Rights Legislation

Sr.	Themes	Legislation
1	Rape and Sexual Abuse	Criminal Law (Amendment) Ordinance 1984, Protection of Women (Criminal Laws Amendment) Act 2006, Criminal Law (Second Amendment) Act 2016, Criminal Law (Amendment) Offence relating to Rape Act 2016, Criminal Law (Amendment) Act 2018, Criminal Law (Amendment) Act 2021, Anti-Rape (Trial and Investigation) Act 2021.
2	Women's Property Rights	Hindu Women Rights to Property Act 1937, Hindu Married Women's Rights to Separate Residence and Maintenance Act, 1946, Khyber Pakhtunkhwa Enforcement of Women Ownership Act, 2012, Punjab Partition of Immovable Property (Amendment) Act 2015, The Letter of Administration and Succession Certificate Act, 2020, The Enforcement of Women's Property Rights Act, 2020, The Enforcement of Women Property Rights (Amendment) Act, 2021.
3	Harassment	Protection Against Harassment of Women At Workplace Act 2010, Punjab Protection against Harassment of Women at the Workplace Act 2012, Balochistan Harassment of Women at Workplace Act 2014, Prevention of Electronic Crimes Act 2016.
4	Child Marriage	Child Marriage Restraint Act 1929 and successive amendments, Sindh Child Marriage Restraint Act 2013.
5	Reproductive Health	The Punjab Maternity Benefits Ordinance 1958, The Protection of Breastfeeding and Young Child Nutrition Ordinance 2002, The Punjab Reproductive, Maternal, Neonatal and Child Health Authority Act 2014, the Sindh Reproductive Healthcare Rights Act 2019, The Khyber Pakhtunkhwa Reproductive Health Care Rights Act 2020.
6	Female Trafficking	Prevention of Trafficking in Persons Act 2018, Prevention of Smuggling of Migrants Act 2018.
7	Gender-Based Violence	Criminal Law (Amendment) Act 2004 (Badal-i-sulh, Honor Killing), Criminal Law (Second Amendment) Act 2011 (Offences of Acid throwing), Criminal Law (Third Amendment) Act 2011 (Of offenses against women), The Acid Control and Acid Prevention Act 2011, Sindh Domestic Violence (Prevention and Protection) Act 2013, Khyber Pakhtunkhwa Elimination of Custom of Ghag Act,

Sr.	Themes	Legislation
8	Rights in Trial	2013, The Balochistan Domestic Violence (Prevention and Protection) Act 2014, Criminal Law (Second Amendment) Act, 2016 (Criminalizing CSA), Criminal Law (Amendment) (Offence in the name or on the Pretext of Honor) Act 2016, The Punjab Protection of Women Against Violence Act 2016, Zaniab Alert, Response, and Recovery Act 2020, Khyber Pakhtunkhwa Domestic Violence Against Women Act, 2021.  Probation of Offenders Ordinance 1960, West Pakistan Family Court Act 1964, West Pakistan Family Court Rules 1965, The Investigation for Fair Trial Act 2013, Juvenile Justice System Act 2018.
9	Legal Aid	Women in Distress and Detention Fund Act 1996, the Women Distress and Detention Fund 2011, The Legal Aid and Justice Authority Act 2020.
10	Statutory Bodies	National Commission for Human Rights Act 2012, National Commission on the Status of Women Act 2012, Sindh Protection of Human Rights Act 2013, Punjab Commission on the Status of Women Act 2014, Sind Commission on the Status of Women Act 2016, Khyber Pakhtunkhwa Provincial Commission on the Status of Women Act 2016.
11	Labour Rights	Bonded Labour System Abolition Act 1992, Khyber Pakhtunkhwa Bonded Labour System Abolition Act 2015, Sindh Bonded Labour System (Abolition) Act 2015, The Sindh Women Agricultural Workers Act 2019, The Punjab Domestic Workers Act 2019.
12	Rights concerning Marriage	Hindu Widows Re-Marriage Act 1856, Divorce Act 1869, Christian Marriage Act 1872, Dissolution of Muslim Marriage Act 1939, MFLO 1961 and successive amendments, West Pakistan Family Court Act 1964, West Pakistan Family Court Rules 1965, Dowry and Bridal Gifts (Restriction) Act 1976, Punjab Family Courts (Amendment) Act 2015, Sindh Hindu Marriage Act 2016,
13	Public Representation	Punjab Fair Representation of Women Act 2014.