



TACKLING
VIOLENCE
AGAINST
WOMEN

LEGAL PROVISIONS AND REMEDIES

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Introduction	5
PART 1: FORCED MARRIAGE	7
PART 2: DOMESTIC VIOLENCE	25
PART 3: OFFENCES OF SEXUAL ASSAULT AGAINST WOMEN	33
PART 4: HONOUR CRIMES	41
References	47

This booklet provides assistive information on laws and relevant forums dealing with different forms of Violence against Women.

Since, 2009 several forms of violence against women have been legally recognized and legislative changes introduced to combat them: some new laws have been enacted; existing provisions amended. Two provinces (Sindh and Balochistan) enacted laws to combat domestic violence; a new chapter has been added in the Pakistan Penal Code to punish perpetrators of anti-women practices including forced marriage, and depriving women of their right to inheritance.

The province of Sindh has enacted a new law to curb the detrimental and widespread practice of Child Marriage.

This booklet covers the criminal laws related to violence against women, especially those that deal with forced marriage, domestic violence, sexual assault, including rape, and honour crimes. It provides information on specific offences, their punishments, relevant forums and procedures for redress. Where relevant, in addition to information on criminal laws, remedies under the relevant Civil law are also provided.

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The three main laws relevant in to the Criminal Justice System are:

Pakistan Penal Code (PPC), 1860:

This is a compilation of all the offences which are declared crimes in Pakistan, their definitions, and punishments.

Criminal procedure Code (CrPC), 1898:

This is procedural law, which regulates the procedure followed in criminal cases, from the registration of the case with the Police, till the conclusion of its trial, appeal or revision. It describes the powers and functions of the Police with respect to prevention of crime, registration of crime, investigation and during trial of the case. It also describes the powers, functions and procedure for the Courts to follow in criminal matters, including bail, remand trial, appeal or revision. Lastly, it describes the jurisdiction of every Court established under this law and also of the High Courts in criminal matters.

For an offence under any special law, if any specific procedure is given for the trial of offences, the procedure prescribed by special law supersedes the procedure provided in the CrPC.

Qanun e Shahadat Order, 1984:

This is the law of evidence in Pakistan, and describes the mode and form of evidence which is to be produced before the Courts.

Crimes and powers of police:

The crimes/offences mentioned in the PPC are divided into two categories:

1. Cognizable offences: these are offences for which the Police have the power to investigate and arrest accused parties. These are often serious offences carrying sentences of three or more years of imprisonment.
2. Non Cognizable Offences: these are offences for which the Police does not have the power to investigate without prior permission of the Magistrate and can only arrest an accused after obtaining a warrant issued by the Magistrate or other relevant Court.

Registration of a criminal Case:

For registration of a criminal case, information is presented to the Officer in charge of the Police Station within whose jurisdiction the offence has been allegedly committed. The information can be given orally or in the form of a written Application.

If the offence is cognizable:

If the alleged offence seems cognizable on the face of it, the Officer in charge of a Police Station (SHO) shall enter it in the book kept for registration of such cases. The person giving information of the case has to sign the book. In common vocabulary and usage this is also called registration of FIR.¹ The police cannot hold any preliminary inquiry to ascertain the correctness of the information given, before registration of FIR. Under section 154 of the CrPC, the Police Officer is bound to record information for registration of a cognizable offense. If the information given to the Police is found to be false during the investigation, the person giving information can be penalized under section 182 of the PPC.

Information in non-cognizable offences:

When the Police are given information about commission of an offence and it appears to be in the category of non-cognizable offences, the Police Officer in-charge shall enter it into the book and refer the informant to the Magistrate. The entry made by the Police is called "entry into daily diary" commonly referred as rooznamcha.

In non-cognizable offences, the other alternative is to file a Complaint before the Magistrate under section 200 of the CrPC. The Complaint can be filed verbally or in writing. If the Complaint is filed verbally, the Magistrate examines the Complainant under oath before proceeding further. Upon admission of Complaint, the Respondent is summoned or a warrant is issued in warrant cases. The Magistrate can also order the police to investigate the case.

Bailable and non-bailable offences:

Offences under the PPC are also divided into two categories with respect to the right of the bail of the accused. In bailable offences, the accused can ask for bail as a matter of right and bail can only be denied in exceptional circumstances.

Compoundable and non-compoundable offences:

Offences under the PPC are also subdivided into these two categories. A compoundable offence is one for which parties (the accused, and the aggrieved) can affect a compromise and put an end to criminal proceedings. The compromise can be effected at any stage of the case even after conviction of the accused. Section 345 of the CrPC enlists offences that are compoundable. Sub-section (1) mentions offences that can be compounded without obtaining permission from the Court, while offences mentioned in sub-section (2) can only be compounded with the prior permission of the Court. The Court can refuse permission in some cases as per facts and circumstances of the case. If permission is granted by the Court and compromise is sanctioned, the offender stands acquitted.

Criminal Courts at the District Level:

The highest Court dealing with criminal cases in the District is the Sessions Court, presided over by the Sessions Judge, who coordinates and supervises all Courts subordinate to his Court. There are Additional Sessions Judges who have the same power to try criminal cases as the Sessions Judge.

Magistrates Courts:

There are Magistrates' Courts that try offences according to their jurisdiction. The Magistrates' Courts can try cases carrying sentences up to a particular limit. A Magistrate who is especially empowered under section 30 of the CrPC can try all offences other than those punishable with the death penalty.



Forced Marriage

There are many ways in which a forced marriage may happen. Forced marriage can be organized by the woman's own family members or she can face this situation at the hands of strangers after being kidnapped or abducted². Here, only those forms of forced marriage are covered which are punishable offences under the PPC or any other law enforced. This part covers:

- Laws relevant to forced marriage,
- Forums for redress and procedures involved,
- Remedies available if access to justice denied.
- Actions an individual woman can undertake to clear her personal status³ if she had been subjected to such a marriage.

Criminal laws on forced marriage:

Marriage of a female through any form of coercion or compulsion is recognized as a forced marriage under the Pakistan Penal Code (PPC).⁴

'Marriage' as Wanni or Swara:

Giving away of a female in budle e sulh (mutually agreed compensation), wanni or swara⁵ or any custom or practice under any other name to settle a civil dispute or a criminal liability, is a crime.⁶

Punishment:

Imprisonment of three to seven years and fine of five hundred thousand rupees.

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Kidnapping, abduction to compel a woman for marriage:

Kidnapping or abduction of a woman with the intention to compel her to marry any person against her will is a crime⁷.

Punishment:

Imprisonment for life and fine.

Note

This provision is often used by the woman's own family when she contracts a marriage of her own choice against their consent or involvement.

Marriage with the Holy Quran:

It is a ritual, forcing a woman not to marry at all. Forms of ritual vary in areas where this ritual is practiced or recognized. Under the law, compelling, arranging or facilitating the marriage of a woman with the Holy Quran is a crime⁸. The woman takes an oath on Holy Quran to remain unmarried for the rest of her life, and not to claim her share of inheritance.

Punishment:

Imprisonment of three to seven years and fine of five hundred thousand rupees.

Form of forced marriage	Relevant law	Punishment
Marriage of a female through any form of coercion or compulsion	Section 498-B, PPC	Imprisonment from 3 to 7 years and fine of Rs.5,00000/
Wanni or Swara, giving female in marriage to settle a civil dispute or a criminal liability	Section 310-A, PPC	Imprisonment from 3 to 7 years and fine of Rs.5,00000/
Kidnapping, abduction to compel a woman for marriage against her will	Section 365-B, PPC	Imprisonment for life and fine.
Marriage with the Holy Quran	Section 498-C, PPC	Imprisonment from 3 to 7 years and fine of Rs.5,00000/

Forced marriage through watta satta (exchange marriage) arrangement:

Another form of forced marriage takes place when, in marriage of one female, another female from the family of the groom is given in marriage or is settled to be given in marriage in future, as a form of exchange. Often such settlements or promises are recorded in writing even on the nikkahnama. If a woman is coerced or compelled into marriage through such an arrangement, it will meet the criteria of a forced marriage under section 498-B, PPC.

Marriage of a woman against her consent and will under any such arrangement is void.

Forced marriage in the form of child marriage:

Child marriage, i.e. marriage where either or both party is under the minimum legal age⁹, organized by parents or the guardian of a female child is a form of forced marriage.¹⁰ The persons responsible for such a marriage can be prosecuted¹¹ for violating the law on the minimum age of marriage.¹² However, such a marriage is not invalid per se. In addition to any prosecution under the Child Marriage Restraint Act,¹³ the female given in marriage as a child has a civil remedy available under Family laws.

Punishment:

The Sindh Child Marriage Restraint Act (CMRA), 2013 prescribes punishment of rigorous imprisonment for two to three years and fine for the following:

- A male above eighteen years of age contracting a marriage with a female who is below eighteen years of age;
- Anyone who performs, conducts, directs, brings about or in any way facilitates child marriage, unless he manages to prove that he had reasons to believe that it was not a child marriage; and
- A parent or guardian or any other person in any capacity, lawful or unlawful, who undertakes any act to promote child marriage, or permits it to be solemnized or negligently fails to prevent it from being performed.

Prevention mechanism under Sindh CMRA, 2013:

An application can be made to the Magistrate for issuance of an Injunction to prohibit a child marriage likely to be performed. Once the application is received:

- The Court shall issue a notice to the Respondent and give an opportunity to him/her to show cause against the issuance of an Injunction.

Note: The Court can dispense with the issuance of notice if deemed necessary.

- Violation of an Injunction issued by court is punishable with imprisonment up to one year or fine or with both.
- The offences under this law are cognizable, non-bailable and non-compoundable. This means that a complaint can be filed by anyone having knowledge of a violation of this law.

Provinces of Balochistan, Khyber Pakthunkhwa and Punjab:

In these three provinces, the Child Marriage Restraint Act, 1929 is in force.

- This law contains punishments for the same set of people for similar acts of violation as the Sindh law, but the punishments provided for are minimal, imprisonment which may extend to one month, or fine which may extend to one thousand rupees, or both.
- The Court can take cognizance of an offence under this law only upon a complaint made by the Union Council (except in the province of Punjab). Such a complaint has to be made within one year of the solemnization of the marriage.

The marriage, and even the promise, of a child marriage in Watta Satta arrangement has been declared “slavery” by the Court:

At the time of a marriage of two adults, a minor girl aged 3 years from the groom’s family was promised in marriage to a man in the bride’s family. It was agreed that her rukhsati¹⁴ will take place when she attains puberty. This arrangement was recorded in the nikahnama (marriage contract form) of the adults’ marriage in column no. 16, which is for recording any property given in lieu of dower.

Column no. 16 reads “*in lieu ofdaughter of:*” When the girl attained marriageable age, her father married her off to someone else. The man, to whom she was promised in the watta-satta arrangement, was already married and was also the father of two children. Nevertheless, he filed a case of zina (extra marital sex)¹⁵ against the girl and her husband. The police investigated the case on the basis of aforesaid entry in the nikahnama, and prepared challan (final investigation report of police). The husband filed a constitutional writ before the High Court for dismissal of the criminal proceedings.

Reviewing the content of column no.16, the High Court¹⁶ held that “***this entry itself is against Article 11 of the Constitution of Pakistan which forbids slavery in any form***”. The

Court further held that to specify the name of an individual human being in the column meant for money or money's worth is a violation of the basic status of an individual as a human being. Irrespective of the tradition or local custom, making such an entry in a document maintained as official record is totally detestable. It is offensive to a decent mind and also against the provisions of Child Marriage Restraint Act.

The Court quashed the criminal case, and fined both the Complainant and the police officer who registered and investigated the case.

A forced engagement is a forced marriage:

In Khyber Pakhtunkhwa, the law¹⁷ forbids the custom of Ghag which is a local custom of forcibly demanding or claiming the hand of a woman for marriage. The man doing so makes a declaration that the woman shall stand engaged to him, or another specified man, and that no other man shall make a marriage proposal to her or marry her.

Punishment:

Imprisonment of three to seven years, and fine up to five hundred thousand rupees is prescribed by the law. Any abettor of this offence is also liable to same punishment.

This offence is cognizable, non-bailable and non-compoundable.

Depriving woman from inheriting property:

It is an offence to deprive a woman from inheriting property by deceitful or illegal means upon opening of succession. For this offence, property includes both moveable and immoveable property.¹⁸

Punishment:

Imprisonment from five to ten years or fine of one million rupees or both.

Remedies against forced marriage:

These can take two forms:

1. Criminal case against the offender and prosecution under applicable criminal laws; and
2. Relief under the laws of personal status.

Remedies and Protection mechanisms against forced marriage:

Legal interventions can be deployed to prevent a forced marriage or liberate and rescue a woman facing a forced marriage or one who has been subjected to it. Interventions can be administrative or judicial, depending upon the facts and circumstances of the case in hand. These range from a phone call to the local police on an emergency number or helpline, to a Constitutional writ in the High Court for enforcement of a fundamental right.

Deciding what steps to take to ensure an efficacious and effective remedy, by any person

who apprehends forced marriage or is anyone interested in her welfare, depends upon several factors:

- The physical location of the woman concerned, and whether she is being held some where against her will;
- Her contact with anyone outside the place of her 'detention';
- The possibility of obtaining correct information of the detained woman's situation;
- Factors which can endanger security of the woman concerned;
- Resources available to the woman; these include human and financial resources and knowledge of working of the forums;
- Whether she has already been subjected to forced marriage or not;

Police intervention via phone call to police emergency number:

This can be the first line of call for the woman facing a forced marriage. The woman can make the call herself, if this is at all possible, or someone else who has accurate information of her situation can do so on her behalf. It is not necessary that the woman is being held by apparently coercive means for an intervention by the police. In response to her call, the police ought to visit the place where the woman is said to be held. The police, upon inquiry into the matter, if the situation so warrants and if the woman consents, may relocate her to a secure place, such as a shelter or the nearest crisis centre. If the allegation has substance, the police may apprehend the culprits and initiate action against them.

The woman can then be taken to the nearest Magistrate for her statement to be recorded and an appropriate Order to be issued.

If police is denied access:

If the police is prevented from conducting an inquiry into the situation or if they suspect that the woman's life is at risk or she is being subjected to torture or ill treatment, all of which may constitute cognizable offences, the police can use force to recover the detained woman, while adhering to procedures under the law.

If the situation demands it, police can obtain a search warrant from the area Magistrate to enter the premises and search for the woman confined.

In real life situations, many obstructions may present themselves:

The police may not act promptly; the woman's family or any other person holding her can change her location upon learning of police intervention; the woman may be prevented from making a proper statement before the police. In reality, especially in semi-urban and rural areas, too many people intervene and make it difficult for the police to ascertain the real situation.

Criminal case against the Perpetrators:

If a woman has been subjected to forced marriage, criminal proceedings can be launched against the perpetrators. Criminal proceedings can be initiated in two ways:

- I. By registration of a case with the police, if the offence is cognizable;¹⁹ or

- II. By filing a complaint before the Magistrate, mainly for non-cognizable offences or even in cognizable offences.²⁰

Offences of forced marriage under section 498-B, PPC or women having been given in marriage as waani and swaara are non-cognizable. Therefore, filing a complaint before the Magistrate may be a preferred option.

A complaint can be filed by the woman concerned if she gets an opportunity, or by any of her close relations.

Challenges in criminal cases:

The two key offences penalizing forced marriage are in the category of non-cognizable offences. In such cases, the police cannot investigate without prior permission of a Magistrate, nor do they have the power to arrest the accused without obtaining a warrant of arrest from the Magistrate.

Criminal proceedings for non-cognizable offences are often initiated through a complaint before the Magistrate. In such complaints, the burden of providing evidence, including witnesses and other corroborative evidence, falls on the Complainant, adding an extra burden on the Complainant. In cases of cognizable offences, the police and related agencies carry out the investigation on their own and facilitate the prosecution.

Note:

In criminal cases under any of the above provisions, if the prosecution is successful and the case results in the conviction of the offender, separate proceedings may be required to 'terminate' the forced marriage.

In a case of alleged forced marriage involving **kidnapping or abduction** of the woman, the court may give a declaration which declares the marriage "void", along with a criminal conviction for the accused.

For example, in a case involving the abduction²¹ of a girl aged approximately fourteen and a half years, the accused took the plea of having contracted marriage with the girl. The trial court rejected his plea and convicted him for kidnapping and rape. On appeal against conviction, the Federal Shariat Court upheld the conviction. Referring to the Child Marriage Restraint Act (CMRA), the court held that the girl had not yet acquired capacity to contract marriage. It further stated that the accused was 44 years of age and he was old enough to be her father. In such circumstances, the question of "**free consent and intelligent choice**" of the girl did not arise.

If a charge of forced marriage is not proven in a criminal case and the accused is/are acquitted, that does not mean that the marriage was not 'forced' and that no further remedy is available to the woman concerned. **A verdict in a criminal case between the parties has no bearing on a decision in a civil case on the same point.**²² The woman can still obtain relief under Family Laws. She can file a plaint before the Family Court to free herself from a 'coercive or forced' marriage.

Other available interventions in a case of forced marriage:

In situations where a woman is afraid that she may be subjected to a forced marriage in the future, or knows that one has taken place, her security is most crucial. Keeping in view the factors mentioned above, the following actions can be initiated:

Application to the Magistrate for recovery of woman from 'illegal' confinement:

An Application can be made to the area Magistrate for the issuance of a search warrant for the recovery of the woman facing forced marriage or one who has already been forced into marriage. The Magistrate has the power to issue a search warrant²³ if a person is confined in such circumstances that the confinement amounts to an offence.

On being satisfied that an offense has taken place, the Magistrate can issue a search warrant and the person directed in the warrant can search for the confined person.

If the person is found, he/she is to be brought before the Magistrate who will then proceed to make an Order, as deemed appropriate given the circumstances of the case.

A Magistrate can also cause a search in his presence.

In practice:

The issuance of a search warrant by Magistrates in cases of confinement or illegal detention is not strictly practiced. The Lahore High Court in 1974, issued direction to the Magistrates to act promptly and grant necessary relief. They were further instructed that human liberty is a valuable thing and any delay on their part is unpardonable.²⁴

Habeas Corpus Petition:

A Habeas Corpus Petition can be the most effective remedy as it has a wide scope for the recovery of the allegedly confined woman and to establish the true situation of her status as well as dealing with matters pertaining to her security.

Habeas Corpus means a direction to somebody to produce a person who is allegedly detained against his/her will before the Court for an action according to the law.

- A petition of habeas corpus often serves as the most efficacious remedy when the woman in question is either in danger of being forced into marriage or has already been subjected to it.
- It is the most effective means of seeking the immediate recovery of the person and ensuring that they are produced before the Court.
- It makes it possible to bring on record the basic facts of the case.
- It facilitates the recovery of the person and obtains Court Orders for the security of the person.
- If the woman was married before facing this situation, this fact can be brought on record and appropriate relief obtained. Although the courts hearing a habeas corpus do not go into any factual controversies, immediate and necessary relief can be sought.

A petition of habeas for release of a person detained, confined illegally or in an improper

manner, can be filed before the High Court under Article 199 of the Constitution, which gives the Court authority to adjudicate over matters pertaining to the fundamental rights conferred in the Constitution;²⁵

OR

Under section 491 of the Criminal Procedure Code (CrPC);²⁶

OR

Before a Sessions Judge under section 491 of the CrPC ;²⁷

Territorial Jurisdiction:

The jurisdiction of the Sessions Judge comprises the entire district; the jurisdiction of the High Court extends over the entire province. If a person is confined within the territorial jurisdiction of the High Court (entire province) and following the filing of the petition, that person is moved to another province, the Court can still pass Orders for concerned parties to produce the person.

Who can file this petition?

A petition of habeas corpus can be filed for recovery of a person illegally or improperly detained (detenu) by any person who is interested in the welfare of the allegedly detained person. Therefore, it can also be filed by a women rights' organization or an individual from such an organization.

Steps involved in a habeas petition²⁸

1. An application for an Order under section 491 of the CrPC is made on an affidavit setting forth the circumstances under which the Order is sought;
2. The place and the name/s of those who are confining the woman in an allegedly illegal or improper custody are provided in the Petition. They are made Respondent/s in the Petition, along with the State;

Note:

The Petitioner should attach any correspondence (if available) from the detenu, which will confirm her confinement or any such apprehension;

If she was already married and there is apprehension that she will be subjected to a forced marriage, then any available proof of her marriage must be attached with the Petition.

A Habeas Corpus Petition is treated as an urgent matter and can be heard on the same day if filed in time;

Otherwise it is bound to be heard on the following day.

Court's notice to the Respondent:

If the Court believes that a case for granting a Petition has been successfully made by the Petitioner, the Court will issue a show cause notice to the Respondent/s named in the Petition.

At the same time, the Respondent will be ordered to produce the alleged confined person before the Court so that she may be dealt with in accordance with the law.

If the circumstances merit it, the Court can issue a search warrant for the search of the person confined. The Court can depute a Court bailiff or any other person to execute the search warrant.

To ensure identification of the allegedly confined woman, any other person who can identify her, can be ordered to accompany and assist in the execution of the warrant.

If there appears to be a real risk to the life or liberty of the woman allegedly confined, the Court can appoint a bailiff to ensure that she is produced before the Court on the same day.

The Court can also order the local police to ensure the notice is served to the respondent or even to ensure the production of the alleged detenu before the Court on the fixed date.

In case the Respondent does not produce the detenu before the Court, the Court can adopt all coercive measures for her recovery and production.

Process followed upon production of detenu before the Court:

The Court records the statement of the detenu. This is the most crucial factor in determining the outcome of the case. The rules evolved by the Superior Courts in habeas proceedings direct that:

- If the allegedly detained woman is a major, the Court sets her free at her own liberty, whether or not she is illegally or improperly detained, in private or public custody; and
- If she is a minor, the Court may grant her custody to any person who is her guardian and who will deal with her in accordance with law,²⁹

As a general rule, any detention is illegal, unless it can be proven that it is in accordance with the law.³⁰

If an alleged adult detenu supports the contentions made in the Petition, the Court can pass an Order accordingly, and set her free at her own liberty. If, on the other hand, she states that no one has kept or detained her against her will and that she wishes to accompany her parents or husband, whoever is the Respondent, the Court shall set her free at liberty and allow her to accompany whoever she wishes. This may result in dismissal of Petition and even an Order to pay the costs in addition to any other Order passed by the Court.

In habeas proceedings, the primary question is alleged detention

In a criminal case involving choice marriage and detention of the adult woman first in police custody and later in the Dar-ul-Aman (government-run shelter for women), the High Court explained the issues to be considered and the nature of proceedings required in the Habeas Corpus Petitions. The Court said³¹ that proceedings under section 491 of the CrPC are “summary” in nature, and thus not intended to go beyond consideration of the questions essentially relevant to the alleged detention, that is whether a detenu is to be set free at liberty, and consequently permitted to go with the person of his/her choice; or to drop the proceedings when the detention is found legal.

The Court also held that an Application under section 491 of the CrPC is not required to go into the question of relationship of the parties by holding a full-fledged trial of the counter-claims, it should be more concerned with the free will of the detenu.

Expenses in a Habeas Petition:

The Petition is filed on an Affidavit and court stamp duty is paid. The number of copies of the Petition along with any documents attached should equal the number of Respondents.³² The Petitioner has to pay expenses borne by the bailiff in case a bailiff is deputed. These sums are to be deposited in advance by the Petitioner.³³ If the Writ Petition is at State expense then the bailiff's expenses are borne by the State.

Security:

The Court may order the Petitioner to deposit a security amount fixed by the Court, in case the Petition may turn out to be baseless or frivolous. If the Petition is proven to be false or frivolous, the Court may order the security deposited by the Petitioner to be paid to the detenu as compensation.

If the Respondent claims marriage or if the marital status is disputed:

If the Respondent claims to have been married to the woman and that consequently she was not illegally detained, the Court takes the woman's statement seriously. In a case involving claim of marriage by the Respondent man and woman's allegation of being into marriage, the Court set her at liberty stating that the status of the marriage is doubtful.³⁴ In some cases where the woman refused to go with the husband, the Court advised the husband to seek alternative remedy by filing a Suit for restitution of conjugal rights before the Family Court.³⁵

Can a wife be freed from 'confinement' by her husband through a Habeas Petition?

A husband cannot detain his wife against her will. In cases where it has been alleged that a woman has been detained by her husband and denied freedom of movement, Courts have declared that the husband cannot confine or detain his wife against her will. It is held that the custody of the wife by the husband may not be illegal, but it can be improper.³⁶

If woman needs shelter and security:

A woman can, during the proceedings on a Habeas Petition, by appearing before the Court, request the Court to ensure her security and to place her in a shelter. The Application can be verbally or in writing. Courts grant such Applications upon the request of the woman. She does not have to be sent to a government run shelter; she can request the Court to send her to a private shelter run by a women's rights or human rights' organization.

An adult woman cannot be placed in a Dar-ul-Aman or any other shelter against her will:

Superior Courts, in an overwhelmingly number of cases, have held that no women can be placed in a Darul-Aman or any other shelter against her will. A woman cannot be placed there if her marital status is disputed or for any other reason, unless she herself requests the Court to temporarily lodge her at a Dar-ul-Aman or any other shelter. She cannot be placed in a shelter on supposed fears of 'morality' or any other such ground.

Two men claiming to be husbands of the same woman:

In a case of Habeas Corpus Petition filed by the father for the recovery of his adult daughter aged 28 years, a complication arose when two men claimed to be her husband and produced nikahnamas in support. The woman acknowledged her nikah with the man whose nikahnama was of an earlier date and stated that the nikahnama of the other man was forged. She had filed a suit of jactitation of marriage before the Family Court against the claim of the second man i.e. the man against whom the woman's father had filed the Habeas Petition.

The woman stated that she was not under any confinement while living with her father and wanted to live with him. The High Court did not set her at liberty holding that, "the Court cannot allow a person to lead an immoral life" and ordered her to be lodged at a Dar-ul-Aman until a decision was made in her jactitation of marriage case. A direction was issued to the concerned Family Court to decide the suit of jactitation expeditiously.

The woman's father challenged this Order before the Supreme Court, which set aside³⁷ the High Court's Order, observing that **"the Judge of the High Court had allowed his responsibility of protecting the citizen's constitutional right to liberty to be to be overshadowed by his own subjective sense of morality"**. The Court cited many precedents on Habeas Petitions where Superior Courts had held that an adult woman cannot be confined against her will, including a case where it was clearly held³⁸ that if the woman was set at liberty and she chooses to lead an immoral life, this matter was irrelevant for the decision of the case under section 491 of the CrPC.

In another case, High Court overturned an Order of the Sessions Judge in Habeas proceedings, in which an adult woman aged about 23 years was placed in a Dar-ul-Aman despite her statement that she had contracted her marriage of her own free will. The woman's father had registered a case of kidnapping against her husband, three brothers-in-law and mother-in-law, who were all in police custody. She was recovered from police custody after a raid by the bailiff as part of Habeas proceedings before the Sessions Judge. The High Court held that **"the Sessions Judge recovered the woman from illegal confinement of the police and then himself confined her illegally in the dar-ul-aman. I would say that out of the legal rights, the right of liberty is placed on the highest pedestal, which is to be respected by all and sundry. The Courts are the guardians of the liberties of the citizens"**.

Case of disputed marital status:

A man filed a Habeas Petition for the recovery of a woman he claimed was his adult 'wife' from the custody of her father and two brothers. When the woman was produced before the Court, it transpired that a few months ago, the Petitioner had divorced her through talaq and a written talaq was couriered to her. The Petitioner contended that he did so under pressure from his family who had threatened to deprive him from his share in the family property if he did not divorce his wife, whom he had married of his own free will. In habeas proceedings, the Court does not go into factual inquiries of talaq and whether they have effect or not. During these proceedings, the woman requested the Court to place her in a Dar-ul-Aman because of the maltreatment, attitude and unreasonable conduct of her brothers.

The Court³⁹ set the woman free at her own liberty upon recording her statement that she was a mature woman who could look after her person and her own affairs, and furthermore, that she did not want to go back to the Dar-ul-Aman. At her request, the Court directed the Deputy Inspector General (DIG) of District Sukkur to provide her protection and directed her brothers not to cause any harassment to her.

Shelter and Application for Marriage:

While making an Application to the Court for shelter, the woman 'can' request the Court for her marriage to be solemnized with the person she wants to marry. This has happened in several cases and is not a recent phenomenon.

Example of a Woman placed in Dar ul Aman and allowed to marry there:

A Habeas Corpus Petition was filed by the family friends of a young woman who learnt that her father was confining her to a room in their house because of her refusal to marry an old man, with whom he had arranged her marriage.

Upon production before the Lahore High Court, she stated that she did not want to live with her father, who had also thrown her mother out of the house. She would prefer to live at any other place, but not with her father.

The Court sent her to Dar-ul-Aman for one week with her consent, until her marriage could be arranged with the man she herself wanted to marry. She was married while staying at the Dar-ul-Aman and the Petition was disposed off after recording her statement of being married.⁴⁰

Example of a woman taking refuge in a Dar-ul-Aman and petitioning the Court:

A woman took shelter at the Dar-ul-Aman in Quetta because her brothers opposed her marriage and wanted her in their custody. She and the man she wanted to marry filed a Petition under Article 199 of the Constitution before the Quetta High Court. The Petitioners wanted directions to be issued to the Superintendent of the Dar-ul-Aman to arrange for their marriage. Before Petitioning the High Court, an Application had been filed before the Judicial Magistrate of Loralai, but had been dismissed on the ground that the woman was in custody of the Dar-ul-Aman in Quetta and an Application thus had to be made to a Court of competent jurisdiction in Quetta. An Application moved before the Sessions Judge Quetta was also rejected. The Court held that the matter should be resolved between the parties first (between the woman and her brother) and only then could her custody be shifted to her parents or the Applicant (the man whom she wanted to marry) with her consent and upon the satisfaction of the concerned Court (Court of the Judicial Magistrate having jurisdiction on the Dar-ul-Aman).

The couple then filed the Petition before the High Court,⁴¹ which set aside the earlier Order of the Sessions Judge and directed the Superintendent of the Dar-ul-Aman Quetta to arrange the marriage of the two Petitioners, and that after the solemnization of marriage, the woman should be allowed to leave the Dar-ul-Aman with her husband. The Court also directed that unless the woman wants a higher amount of mahar (dower), it should be fixed as one hundred thousand rupees.

A petition for habeas corpus may not “always succeed”

In certain cases because of complexity of facts and linked litigation, appropriate relief may not be obtained in a habeas corpus petition, especially when there is no clear proof that the allegedly detained woman is an adult. The case of Muhammad Saffar v Assistant Director, Social Welfare and others⁴² elaborates this complexity of situations which may affect proceedings in a habeas corpus petition. The Petitioners claimed to be husband and wife; the wife was being detained in Dar-ul-Aman on the Orders of a Magistrate. The couple was granted bail by the Magistrate in a case under section 294-PPC⁴³ and the woman was ordered to be lodged in the Dar-ul-Aman till her statement before the same court.

In proceedings before the Magistrate upon submission of police challan for an alleged offence under section 294-PPC, the accused man claimed that the woman was his wife, while a relative of the woman alleged that she was abducted by him.

The woman stated that she was under pressure from both sides, especially from the co-accused man (claiming to be her husband) and was not in a position to give her statement voluntarily.

The Magistrate ordered her to be lodged at Dar-ul-Aman for some days and again produced in the Court for her statement. The man claiming to be her husband filed a habeas corpus petition before the High Court. There, the woman stated that she got married to the Petitioner without the consent of her mother or uncle, who were present in the Court and showed their ignorance of any such marriage. The nikahnama mentioned her age as eighteen years, which could not be established. The High Court ordered, “we would allow her to go with the mother in case she wishes to go. However, she cannot go with the alleged husband”.⁴⁴ The Petition was dismissed.

In proceedings before the Supreme Court, where the High Court’s Order was challenged, her statement was not recorded by the Court, because in the Court’s opinion, the evidence recorded in these proceedings would affect the trial of the criminal case pending against her. Upon the Court’s question, the woman replied that she would like to go with the Appellant/Petitioner and not with her mother. The mother claimed custody and stated before the Court that she would file a case for her daughter’s custody in the competent Court. The case became a custody battle of a woman (who was declared to be minor by the High Court) between her real mother and the man whose status of marriage with her was yet to be determined by a court of law. The Supreme Court continued her lodging in the Dar-ul-Aman until an Order of her custody was passed by a court of law or until she complied with the Order of the High Court to go with her mother.⁴⁵

Caution! Situations to watch out for:

The period between the filing of a Petition and recovery of the detained person can be dangerous for the detained person herself, especially if the Respondent comes to know that a Petition has been filed.

In practice:

It has been noted that if the Respondent has an opportunity, or manages to change the place of confinement of the detenu, the families who confine women in these cases use a number of tactics to prolong and frustrate Habeas Corpus proceedings.

- Instead of producing the detenu before the Court as Ordered, they may produce her signed statement or get her statement recorded before a local Magistrate under Section 164 CrPC, stating that she is not detained and/or has not made any Complaint.
- In many cases, although it was later found that while the woman/girl had been coerced into making such statements, her family gained an important advantage of time through illegitimate means to further coerce her into denying her situation, or inducing her into taking the Petition back, sometimes resulting in a negative outcome and the dismissal of the Petition.
- Sometimes the confined woman is also falsely promised that if she makes a statement in favour of the Respondent/s i.e. her family, her wishes will be respected and honoured.

While petitions under Section 491 CrPC are more frequently filed, in more complicated cases, Habeas Petitions under Article 199 of the Constitution along with other remedies may need to be filed instead. This may especially be the preferred course of action if the person confined has already contracted a marriage of their own choice. A Constitutional Petition under Article 199 also allows for a wider range of

Directions and Orders to be sought⁴⁶, including:

- quashing of any false criminal proceedings against the Petitioner;⁴⁷
- directions to prevent the police from harassing the petitioner;⁴⁸
- directions to the police and other public functionaries to provide protection to the Petitioner against harassment by private individuals;
- directions to take disciplinary action against the responsible police officer;⁴⁹ and
- directions to the police to recover any documents (such as a passport) belonging to the victim.

Complaint to Sessions Judge:

An alternative possible remedy is filing a Complaint before a Sessions Judge.⁵⁰ This remedy is available in case of abduction or unlawful detention of a woman or if a female child under the age of 16 years has been abducted for an unlawful purpose. The complaint is made on oath. The Judge can pass an Order for immediate restoration of liberty of such a woman; or of a female child, to the person who has lawful custody of such child. Compliance with the Order so passed can be made with such force as may be necessary.

Supreme Court's action against wanni, swara or giving females in any other custom to settle disputes:

A Constitutional Petition⁵¹ was filed in the Supreme Court against the custom of wanni, swara and such other practices in which females are given in appeasement to settle disputes. The Court also took suo moto actions on the basis of news items which appeared

in the newspapers and those were also heard along with this Petition.⁵²

Several female victims of these customs also approached Court and actions were initiated against the offenders.⁵³ The Chief Justice observed during a hearing in March 2012, that since 2004, after the Supreme Court took up the issue of girls given in compensation as swara, wanni, and sang chatti,⁵⁴ more than 60 girls from different parts of Pakistan were saved from paying the price of someone else's crime.⁵⁵

Prosecution in cases involving giving women as swara, wanni or sang chatti is difficult because witnesses do not come forward due to fear, and many families even leave the area where the local jirgas or panchayats pronounce verdicts of giving women in marriage to settle disputes.⁵⁶ Superior Courts have refused to grant bail to participants of jirgas or others responsible for giving women as swara and being prosecuted under section 310-A, PPC.⁵⁷

On December 4, 2014, Saidu Sharif (District Mangora) police arrested nine members of a jirga for forcing an eight-year-old girl to marry a twelve year old boy under the swara custom.

She was given in swara marriage to settle an ongoing dispute which erupted from her male cousin's choice marriage with a woman of the boy's family to whom she was given as "settlement" upon a local jirga's decision.⁵⁸

Status of forced marriage:

Free consent is the essential requisite of a valid Muslim marriage. A marriage without consent or in which consent has been obtained through force or fraud or misrepresentation is void.⁵⁹

Consent for marriage:

Consent for marriage is distinct and different from all other types of consent e.g. common consent, mutual consent and implied or express consent. Consent for marriage is eloquent and declaratory, being more specific and express. The free consent for marriage does not mean merely acceding to or saying 'yes' to the dictate of circumstances. It requires the ability and exercise of free choice, capacity and capability to use that capacity.⁶⁰

Remedies under Family Laws:

Jactitation of Marriage:

A woman subjected to a forced marriage can get her marriage declared null and void by a filling a suit for jactitation of marriage before the Family Court.

A Suit for jactitation of marriage is filed by the person affected by a false claim of marriage by another person. The Suit is filed in order to obtain a declaration that no marriage exists or ever existed between them and that the person claiming marriage should be restrained from making such a claim.⁶¹

In a 'forced marriage' situation, if a false claim of marriage is made by a man either on the basis of a forged nikahnama or in the absence of any form of marriage having taken place, then the woman concerned may file a suit for jactitation to silence such a claim. Such a

suit can be filed even if the man claiming marriage has obtained a decree of restitution of conjugal rights.⁶² If the claim of marriage by a man is on the basis of a forged nikahnama, an Order for its cancellation can be obtained in this Suit as well.⁶³

Suits by third parties:

A suit can also be filed by a third party, such as the “actual” husband, child or any parent of the woman concerned. It may also be filed by other parties whose rights are directly affected by a claim of marriage, whether true or false.⁶⁴

Suit can be filed even if ‘marriage’ is registered under the law:

There is a bar on Family Courts from questioning the validity of a marriage registered under the Muslim Family Laws Ordinance (MFLO), 1961.⁶⁵ However, this does not prevent a suit of jactitation of marriage from being filed. Superior Courts have held that this bar on questioning the validity of registered marriage is relevant where all the conditions of marriage have been complied with, and the marriage is otherwise valid under Muslim Law. Marriages solemnized through fraud, coercion or claims of marriage through forged nikahnama are not exempted from scrutiny.⁶⁶

Suit for Khula:

If the suit for jactitation of marriage is not successful, there is no bar on filing a *suit for dissolution of marriage* on the basis of khula, or any other ground for dissolution of marriage laid forth in the Dissolution of Muslim Marriages, Act (DMMA), 1939.

Remedies for Child Marriage under Muslim Family Laws

The Option of Puberty:

A woman married off by her parent/s or guardian/s when she was under 16 years of age, may repudiate the marriage before she is eighteen, provided that the marriage has not been consummated.⁶⁷

Form of repudiation:

The law does not provide for any specific mode to repudiate a marriage of a under Muslim law, such as a clear statement of the girl, or a notice to the husband. Her marriage to another person is also recognised as a form of repudiation of her marriage when she was a minor.

Declaration from the Family Court

Any female married off as a minor,⁶⁸ can repudiate her marriage by seeking a Declaration to this effect from the Family Court if she can establish that she was a minor at the time of marriage and that the marriage has not been consummated. In a suit of option of puberty, the Court does not dissolve the marriage, it only endorses the act of repudiation of the girl.⁶⁹ Courts have also found that consummation may not be sufficient to validate the marriage.⁷⁰

In cases where the age of the bride entered in the nikahnama is deliberately falsified to say she is older than she is, filing a suit of jactitation of marriage may be most appropriate remedy.⁷¹

If the option of puberty cannot be exercised for any reason:

The woman can file a suit for khula. In the suit of option of puberty she can make a prayer for khula as an alternative remedy, in case the Court finds that the Suit for option of puberty is not maintainable for any reason.

Note:

In the province of Sindh, the age of marriage for females has been raised to 18 years, however, the law on option of puberty remains unchanged. A female in Sindh can exercise her right to the option of puberty if she is given in marriage before she is 16 years old.⁷² The law has not fixed any minimum age at which the right to exercise this option begins; it only specifies the upper age limit and the condition of non-consummation of marriage.⁷³

Relief in case of “watta satta marriage”:

Much depends upon the facts of the case. In several instances, a female is promised in marriage in exchange,⁷⁴ but no nikah is solemnized. However, on the basis of the said promise, the man calls her, or claims that she is his wife. In such a situation, a Suit for jactitation of marriage can be the first option. In case she has been forced into such a marriage, she can also file for jactitation of marriage depending upon the actual facts and circumstances of the marriage.

In other cases if the woman does not want to continue such a marriage, she has the option to file for dissolution of her marriage on the ground of khula or any other ground available to her under the Dissolution of Muslim Marriages Act (DMMA) 1939.



Domestic *Violence*

The provinces of Sindh and Balochistan have enacted special laws to combat Domestic violence. Laws of both provinces contain similar provisions. This part deals with:

- I. The forms of violence that are dealt with in these laws;
- II. Mechanisms for prevention and protection against domestic violence;
- III. Remedies for a woman survivor of domestic violence; and
- IV. Facilitation mechanisms and forums for a survivor of domestic violence to seek redress.

The laws on Domestic Violence of the two provinces are similar⁷⁵ and these deal with all the individuals living or who have lived at some point together in a household when they are related by consanguinity, marriage, kinship, adoption or are family members living together.⁷⁶ The redress under these laws is not limited to women only; however, the information covered in this booklet only pertains to women.

The law gives a list of actions which are included in domestic violence, but does not limit it only to these actions. These actions are declared offences and their punishments are prescribed.

The law covers different forms of violence and prescribes punishments for related acts. The forms of violence dealt with and actions made punishable offences include:

- **Physical violence** including causing different levels of hurt, use of criminal force, criminal intimidation, assault, and wrongful confinement;
- **Emotional**, psychological abuse, which means a pattern of degrading or humiliating conduct towards the victim. A list of actions is provided but it is not limited to those. The actions made punishable include, invasion of a victim's privacy, liberty, integrity and security, insults or ridicule, threats of divorce, bringing false allegation upon the character of a female member by any member of the shared household;
- **Sexual abuse**, harassment which includes sexual harassment, stalking, and economic abuse. Sexual abuse also includes offence of compelling the wife to cohabit with a person other than her husband, and causing sexual harassment of any member of the family.

For offences under these Acts that are already in the Pakistan Penal Code, definitions and punishments have been retained; whereas new offences particular to these Acts have been given definitions and punishments as applicable.⁷⁷

What is domestic violence?

It includes but is not limited to, all acts of gender based and other physical or psychological abuse committed against women, children or other vulnerable persons, with whom the perpetrator is or has been in a domestic relationship. Acts of violence either related to the list given in the law or in addition to those are covered under this law.

Domestic relationship and **household** are the key terms which bring acts of violence with in the ambit of this law.

Domestic relationship is a relationship between persons who live, or have at any point lived together in a household when they are related by consanguinity, marriage, kinship,

adoption or are extended family members living together.⁷⁸

Household means a household where the aggrieved person lives or at any stage has lived in a domestic relationship either alone or along with the Respondent person committing domestic violence]. It includes a household;

- which is owned or tenanted jointly by the aggrieved person and the Respondent; or
- owned or tenanted by either of them; or
- any household on which both the aggrieved person and the Respondent have jointly any right, title or interest or either of them has any such right; or

Place of occurrence of domestic violence:

The law is not place-specific, rather it is based on the domestic relationship between the offender and the aggrieved person and acts of violence covered in this law constitute domestic violence whether committed within the household or outside.

Protection Mechanisms and Remedies for the Survivor:

- The law provides measures for prevention of domestic violence and protection of the vulnerable person. In case of an incident which has already taken place, the law also provides measures against recurrence, in the form of a Protection Order and Residence Order.
- It provides security of residence in the same household for the victim [survivor] and measures to restrain the offender from contacting the survivor in any way or form.
- It makes the offender liable to the survivor for any loss or injury sustained by her due to acts of domestic violence. This includes medical expenses and any loss of earnings that she may have borne.
- It provides for the facility of legal aid to the aggrieved woman.
- To avail any remedy under this law, it is not necessary that the Application/Petition⁷⁹ has to be filed by the aggrieved woman. The law specifies other persons and officials who can file the Application/Petition on behalf of the aggrieved woman.
- For implementation of its provisions and to provide necessary relief to survivors, the law provides access to certain service providers. These include any government facility or registered voluntary organization established for the protection of the aggrieved person, or one that can facilitate any legal, medical, financial or any other assistance that the victim may need.

How Proceedings begin:

An aggrieved woman can initiate proceedings⁸⁰ to protect herself and prevent incidences of domestic violence by filing a Petition with the Magistrate. The Petition can be filed by the aggrieved woman herself or any other person authorized by her or by an informer.⁸¹

The Petition can be filed before the Magistrate having jurisdiction over the area;

- where the aggrieved person resides or does business; or
- where the aggrieved person and the respondent last resided together.

Assistance in filing the Petition:

An aggrieved woman can obtain assistance in the following ways:

- She can seek assistance of the Protection Committee in filing her Petition,
- If she so desires, the Protection Committee can file an Application for a Protection Order on her behalf.
- She can contact the Protection Officer to file a Petition to the Court or an Application for the issuance of a Protection Order. The Protection Officer is duty bound to ensure that legal aid is provided to the aggrieved woman.
- In the province of Sindh, she can file the Petition directly with the Provincial Commission established under this law. The Commission also has the power to take suo moto⁸² actions upon learning of an incident of domestic violence.

Steps and Procedure after Filing a Petition [Sindh Law]:

- On receipt of a Petition, the Court can pass an Interim Protection Order⁸³ if contents of the Petition prima facie disclose commission of domestic violence.
- The Court can, with or without passing an Interim Protection Order, issue a Notice to the Respondent⁸⁴, to show cause as to why a Protection Order not be issued against him for the acts of domestic violence he has allegedly committed.
- The Respondent has to reply within seven days of the receipt of this show cause Notice.
- The Court can, at any stage of the proceedings, direct the Petitioner or the Respondent⁸⁴ to undergo mandatory counseling with an appropriate service provider.
- The Petition has to be disposed off within a period of 90 days.⁸⁵

Issuance of Orders for Protection of aggrieved woman:

On the basis of an Affidavit of the aggrieved woman or any other evidence, the Court, upon being satisfied that prima facie the Respondent has committed an act of domestic violence or there is likelihood of his doing so, can issue a Protection Order,⁸⁶ an Order for Monetary Relief or a Custody Order.

Steps and Procedure after filing a Petition [Balochistan law]:

- The Application is filed in the Court of a Sub Divisional Magistrate, who has powers of the First Class Magistrate within whose jurisdiction the offence has been committed. An Application can be filed by the aggrieved woman herself or by any other person authorized by her to do so in writing.⁸⁷
- The Court, upon receipt of an application, fixes a date for hearing within three days from the date of receipt of Application.
- The Application is to be disposed off within 30 days of its filing.
- Trial of offences under this law is regulated under the same procedure as is for the trial of offences before the Magistrate Court.⁸⁸
- The Court can issue a Protection Order or any other Order under the law upon being satisfied that domestic violence has taken place.⁸⁹

The Protection Order prohibits the Respondent from:⁹⁰

- a. Committing domestic violence;
- b. Aiding or abetting acts of domestic violence;
- c. Entering the place of employment of the aggrieved woman. If she is a child, the Respondent can be prevented from entering her educational institution or any other place frequented by her;
- d. Attempting to communicate in any form with the aggrieved woman. This includes attempting to meet her in person, contacting her through oral or written means, electronically or via telephone, and specifically through her mobile telephone;
- e. Committing violence against her dependents, other relatives or any person who gives her assistance to combat domestic violence; and
- f. From committing any other act mentioned in the Order.

In order to implement the Protection Order, the Court may direct the officer in-charge of the Police Station that has jurisdiction, to ensure that the Order is not violated, and to safeguard the aggrieved woman's person against violence from the Respondent.

Copies of the Protection Order issued by the Court are required to be given to the parties to the Application, the police officer in-charge of the relevant Police Station and a relevant or necessary service provider located within the jurisdiction of the Court.

Residence Order:⁹¹

In addition to the Protection Order, the Court may pass a Residence Order with the following orders for the Respondent:

- a. restraining him from dispossessing or in any manner disturbing the possessions of the aggrieved woman from the household;
- b. restraining him or any of his relatives from entering the household where the aggrieved woman resides; and
- c. securing alternative accommodation for the aggrieved woman or if the circumstances so require, paying rent for such accommodation.

Additionally, the Court may direct the Respondent to pay rent or make other payments to the aggrieved woman, while taking the financial needs and resources of the parties into account. The Court can also impose any additional conditions for the safety of the woman or her any child if necessary.

Further, actions for the safety of the woman:

For prevention of domestic violence, the Court can also require the Respondent to execute a bond with or without sureties.

The Court can also pass an Order directing the Officer in-charge of the nearest Police Station to give protection to the woman or the person who submits an Application on her behalf in the implementation of the Order.

The Residence Order remains in force until such time it is altered by the Court.

Duration of Protection Order and Residence Order:⁹²

The Order remains in force until the aggrieved woman applies to the Court for it to be discharged. Upon a change in circumstances, the Order can be altered, modified or even recalled by the Court. The aggrieved party will need to ask the Court for an alteration of the Order if she so desires. There is no prohibition on the aggrieved woman to make a fresh Application after the discharge of the previous Order.⁹³

Punishment for breach of Protection Order:

Breach of an Interim Protection Order or Protection Order, is an offence punishable with imprisonment of up to one year or fine up to twenty thousand rupees, or both.⁹⁴ Under the law in Balochistan, punishment is imprisonment from six months to one year and a fine not less than one hundred thousand rupees. The amount of fine is granted to the aggrieved woman as compensation.

Monetary Relief:

The Court may pass an Interim Order⁹⁵ directing the Respondent to pay monetary relief to the aggrieved woman at any stage of the trial, which may include but is not limited to:

- Compensation to the aggrieved woman as a consequence of economic abuse; the extent of this compensation will be determined by the Court;
- Loss of earning;
- Medical expenses;
- Loss caused to the property of the aggrieved person, through destruction or damage or removal from her control;
- Maintenance of the aggrieved woman, her child or children, if any. This can be an Order under Family Laws or in addition to that.

Forums and Officials to Facilitate Implementation of Domestic Violence Law:

Protection Committee:

Laws of both provinces contain provisions for setting up of a Protection Committee⁹⁶ and appointment of a Protection Officer⁹⁷ to ensure implementation of different provisions of laws and render assistance to survivors of domestic violence.

Composition of the Protection Committee under Sindh's Law:

- Social Welfare Officer (Convener)
- A Medical Practitioner,
- A Psychologist,
- Psycho-social worker,
- An Official appointed by the Court,
- A female Police Officer not below the rank of sub-Inspector,
- Two female members of civil society,
- Protection Officer (who acts as Secretary of the Committee)

Composition of the Protection Committee under Balochistan's Law:

This Committee is in every tehsil and comprises of:

A Tehsildaar,

A head Mistress,

Two prominent women from the concerned Tehsil,

Protection Officer (who acts as Secretary of the Committee).

In the provinces of Punjab and Khyber Pakhtunkhwa there are no special laws on Domestic Violence to-date. The offences of harm, hurt or harassment can be covered by provisions of the Pakistan Penal Code (PPC), which does not make any distinction between perpetrators of violence who are family members or strangers. Criminal proceedings can accordingly be initiated under the above-mentioned provisions. Family Courts have also jurisdiction to try certain offences mentioned in the PPC. This law applies to all the provinces.

Complaint before the Family Courts in cases of spousal violence:

A complaint can be filed in the Family Courts,⁹⁸ if one spouse commits any of the following offences mentioned in the PPC, against the other.

Nature of Offence	Punishment
337-A(1)PPC, form of bodily hurt	Imprisonment up to 2 years and compensation determined by the court
337-F(1) PPC, form of bodily hurt	Imprisonment up to 3 years and compensation determined by the court
341-PPC, wrongful restraint	Imprisonment of 1 month or fine up to Rs.1500/ or both
342-PPC, wrongful confinement	Imprisonment up to 1 month or fine up to Rs.3000/ or both
343-PPC, wrongful confinement for 3 or more days	Imprisonment up to 2 years or fine or both
344-PPC, wrongful confinement for 10 or more days	Imprisonment up to 3 years or fine or both
345-PPC, wrongful confinement of person for whose liberation, writ been issued	Imprisonment up to 2 years and punishment under any other section of PPC applicable to situation
346-PPC, wrongful confinement of person in secrecy	Imprisonment up to 2 years and punishment under any other section of PPC applicable to situation
352-PPC, assault or use of criminal force	Imprisonment up to 1 month or fine up to Rs. 1500/ or both
509-PPC, insulting modesty or causing sexual harassment	Imprisonment up to 3 years or fine up to five hundred thousand rupees or both

Burn through Acid or any corrosive substance:

In December 2011, Sections 336-A and 336-B were added to the PPC,⁹⁹ making acid crimes a serious offence.

Hurt by corrosive substance:

Corrosive substance means a substance which may destroy, cause hurt, deface or dismember any organ of the human body, and includes every kind of acid, poison, explosive or explosive substance, heating substance, noxious thing, arsenic or any other chemical, which has a corroding effect, and which is deleterious to the human body.

Hurt by corrosive substance is punishable with imprisonment which cannot be less than fourteen years and can extend to imprisonment for life, along with a fine of one million rupees. This offence is cognizable, non-bailable and non-compoundable.

Special procedure in burn cases:¹⁰⁰

To ascertain the true facts and cause effective prosecution, the CrPC was amended in 2001 and a special procedure was introduced for immediate recording of the facts and circumstances for burn cases. This procedure lays down the following duties for Medical Officers, Magistrates and the Police:

- The Medical Officer of a Government hospital attending to a person with grievous injuries caused by burns through fire, kerosene oil, acid, chemicals, or by any other means, is bound to report the crime to the nearest Magistrate immediately.
- If such a matter is reported to the Officer in charge of the Police Station, he is bound to give information about the matter to the nearest Magistrate immediately.
- The Medical Officer has to immediately record the statement of the injured person to ascertain the circumstances and the causes of the burn injury.
- The statement also has to be recorded by the Magistrate if the injured person is still in a position to make a statement.
- Before recording the statement, the Medical or Police Officer, or the Magistrate must satisfy himself that the injured person is not under any threat or duress.
- The statement recorded has to be sent to the Sessions Judge and to the District Superintendent of Police and Officer in charge of the Police Station, so that they may take necessary legal action.
- If the injured person is unable to make the statement before the Magistrate, her statement recorded by the Medical officer shall be sent to the Magistrate in a sealed cover, or to the Trial Court, and may be accepted in evidence as a dying declaration if the injured person dies.



*Offences of
Sexual Assault
Against Women*

Sections 354 and 509 of the PPC cover offences of insulting or outraging the modesty of a woman. The latter one covers sexual harassment as well.

Assault or criminal force to outrage the modesty of a woman is an offence punishable with imprisonment up to two years or fine or with both.¹⁰¹

Insulting modesty or causing sexual harassment:¹⁰²

This section covers several actions of an offender which can cause sexual harassment or are aimed at insulting the modesty of a woman. These actions are offences whether committed at a public place or at work place.

Actions falling within this section are:

- Uttering any words, making any sound intending that such word or sound shall be heard by such woman;
- Making any gesture or exhibiting any object, intending that it shall be seen by such woman or such words, sound, gesture or exhibition of any object shall intrude upon the privacy of a woman;
- Making sexual advances towards a woman, whether after working hours and outside the workplace, or during working hours at the workplace. Penal provisions put special emphasis on the access that a perpetrator has to the woman being harassed by virtue of a job, or job related functions and activities. Demanding sexual favours, using verbal or non-verbal communication, or physical conduct of a sexual nature, especially which is intended to annoy, insult, intimidate, threaten or make the other person uncomfortable, are covered within this section.
- The above mentioned actions are committed at the premises of a workplace, or they are explicitly or implicitly made a term or condition of the aggrieved person's employment.
- Denial of sexual favours or behavior is made the basis for rejection of employment of the aggrieved person.
- The aggrieved person suffers from retaliation at the workplace due to her denial to provide sexual favours. The accused conducts such behavior with the intention of unreasonably interfering with an individual's work performance or
- Creates an intimidating, hostile or offensive working environment for the aggrieved person.

Punishment:

Imprisonment of up to three years or fine up to five hundred thousand rupees or with both.

Behavior which can legally be defined as sexual harassment might occur in public places, including but not limited to markets, public transport, streets or parks, or it might occur in private places, including but not limited to workplaces, private gatherings, or homes.

Workplace means:

The place of work or the premises where an organization or employer operates. This may

be a specific building, factory, open area or a larger geographical area where the activities of the organization are carried out.

Assault, stripping a woman naked in public view:

By way of assault or use of criminal force, stripping a woman naked and in that condition, exposing her to public's view is a serious crime under the PPC.¹⁰³

Punishment:

Sentence of death or imprisonment for life and fine.

Rape: Section 375 of the PPC defines rape as:

A man is said to commit rape, when he has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:

- I. against her will;
- II. without her consent;
- III. with her consent, when the consent has been obtained by putting her in fear of death or of hurt.
- IV. with her consent, when the man knows that he is not married to her and that the consent is given because she believes that the man is a person whom she believes she is to be married to; or
- V. with or without her consent if she is under sixteen years of age.

Explanation:

Penetration is sufficient to constitute the sexual intercourse necessary for the offence of rape.

Punishment for Rape:

Sentence of death or imprisonment for ten to twenty-five years and fine.

If rape is committed by two or more persons in furtherance of common intention of all, sentence for each one is death or imprisonment for life.

The key aspect of this definition is that the law considers a female capable of giving consent for sexual intercourse when she is at least 16 years of age. If a man indulges in sexual intercourse with a female below the age of 16 years, he cannot take the plea of consensual sex. It is rape under the law.

Supreme Court has declared DNA test mandatory in rape cases:

Supreme Court has declared DNA test mandatory in rape cases and ordered for special measures to be taken in such cases.¹⁰⁴ The Court ordered for the following measures to be taken in rape complaints:

- a. Every police station that receives a rape complaint should involve reputable civil society organizations for the purpose of legal aid and counseling. A list of such organizations may be provided by bodies such as National Commission on the Status of Women. Each police station to maintain a register of such organizations. On receipt

of information regarding commission of rape, the Investigation officer/Station House Officer should inform such organizations at the earliest.

- b. Administration of DNA tests and preservation of DNA evidence should be made mandatory in rape cases.
- c. As soon as the victim is composed, her statement should be recorded under section 164 of Criminal Procedure Code preferably by a female Magistrate.
- d. Trials of rape should be conducted in camera and after regular court hours.
- e. During a rape trial, screens or other arrangements should be made so that the victim and vulnerable witnesses do not have to face the accused persons.
- f. Evidence of rape victims should be recorded, in appropriate cases, through video conferencing so that the victim (particularly juvenile victims) does not need to be present in court.

Matters to watch out for in cases of rape and sexual assault:

In cases of sexual assault or rape, timely medical examination of the survivor and collection of forensic evidence is of utmost importance for prosecution of the case. For medical examination in such cases permission of the Magistrate is required. If for any reason, the police delays medical examination on any pretext, then those individuals who are providing assistance to the survivor can take her directly to the Magistrate for the issuance of docket. The docket contains the facts of the case, request for medical examination with a report which is called Medico legal report (MLC).

In the province of Punjab, the MLC was revised in 2011.¹⁰⁵ The old MLC recorded selected biographical details of the survivor and there was an open ended section to record the sexual history and types of injuries suffered. The open ended section for recording sexual history left the chance of recording or “unwarranted” comments of the medical examiners which affected cases negatively. The new nine page MLC has specific columns to record relevant results, such as factual circumstances of the assault, medical and assault history, survivor’s demeanor, etc. However, the new MLC has its own flaws as it reveals unnecessary personal details of the survivor. It also requires a statement on oath for consent to be medically examined.

It is the duty of the investigation official to collect all scientific evidence, but it has been noted in many cases of rape and sexual assault, that the prosecution fails because of lack of required medical evidence in the form of forensic reports, serologist reports. Superior Courts have in several cases issued instructions to police officials regarding medical evidence.

In one case¹⁰⁶ the Court made an observation about police investigation and medical officers, and issued clear instructions in this regard. The Court held:

“That the police investigation in this country is not keeping pace with scientific developments. If facilities for grouping of semen be available, as indeed they are, it is not understandable why the Medical Officers examining the male for potency should not obtain the specimen of semen of the accused so that no doubt be left about the identity of the person

committing [rape]. The police officers in their reference to the medical officers should also in such cases invariably request the doctor concerned to take the specimen of semen of the male accused. They should send them for chemical examination and serology along with vaginal swabs and clothes/cloth etc. having seminal stains”.

The Court ordered for the copies of the Judgment to be sent to the Secretary Interior, Secretary Department of Law, Home Secretaries and the Inspectors-General Police of the Provinces.

Finding no progress in such cases, in another case in 1996 the instructions were repeated in these words, “that where semen of accused is not sent to Serologist for semen grouping, semen found on vaginal swabs was of no evidentiary value.”¹⁰⁷

Despite these clear instructions by the Superior Courts, serious flaws are noted as in a case involving occurrence in November 2008, the High Court while deciding an appeal¹⁰⁸ in a rape case referred to the earlier cases in which the Superior Courts issued directions for medical evidence in cases involving sexual assault and rape. The accused got the benefit of poor medical report, because the semen grouping was not done.

Procedure to launch Criminal Proceedings against the Perpetrators:

The offences of sexual assault including rape, mentioned above in the preceding pages are cognizable, except for the offence of insulting modesty or causing sexual harassment.

Registration of FIR:

Machinery of the state can be put into motion against the perpetrator by registering the case against him. The First Information Report (FIR) should be promptly registered at the police station in whose jurisdiction the offence took place.

If the Police refuse to register an FIR:

An Application can be made to higher Police officials for an order to the SHO concerned. The first office for such an Application is the office of the SDPO. If the Application is unsuccessful, an Application can be filed before the DPO. ¹⁰⁹ In almost every DPO's office there is a complaint cell used by the public for redress. An application can be filed there and an order for registration of FIR can be obtained.

Application to the Justice of Peace (JOP):

All Sessions Judges and, upon their nominations, Additional Sessions Judges are ex-officio Justices of Peace. They have powers under Section 22-A (6) of the CrPC to issue appropriate directions (executions) to Police authorities upon a Complaint regarding:

- I. Non-registration of a criminal case;
- II. Transfer of investigation from one Police Officer to another; and
- III. Neglect, failure or access committed by a Police authority in relation to its functions and duties.

If the Police refuse to register a case, neglect or fail to take action, an Application can be made to the JOP for an appropriate Order. Upon receiving an Application for the registration

of FIR, a JOP has to ascertain whether the information given on face of it constitutes a cognizable offence. If it does, direction shall be made to the Police for registration of case.

As per guidelines regarding powers and functions of JOPs, their powers are:

- Administrative in nature, and not judicial;
- They can direct the police for a remedy but can't assume the functions of police;

In a Complaint regarding non-submission of challan, the JOP can ask the concerned Police Officer for an

explanation, and if that is not satisfactory, the JOP can give direction for the submission of challan.

Writ petition in the High Court under Article 199 of the Constitution:

If all other remedies mentioned in preceding pages fail, or have been exhausted and an FIR has not been registered, a Writ can be filed in the High Court, for a direction for registration of case.

Alternate action:

In case of refusal by police to register FIR, criminal proceedings can be initiated against the perpetrator by filing a complaint before the Magistrate.

Other forums/ avenues for help:

Crisis Centres for women:

A woman facing forced marriage or any other form of violence may approach a government run women crisis centre. The Centre can provide her temporary shelter, refer her to a legal aid provider, and if required, place her in a Dar ul Aman for shelter.

Women police stations and help desks for women:

It is comparatively easier to seek assistance from a Woman Police Station; in cities where there are such police stations, help could be obtained in case of any form of violence including forced marriage or its apprehension. Women help desks are being established in several police stations across the country. In Punjab, action plan under Women Empowerment Package, 2014 envisages establishment of help desks for females in every police station¹¹⁰ of the province. Women complaint cells are also being set up in different cities.¹¹¹

Human Rights Cell (HRC) Supreme Court of Pakistan:

The Human Rights Cell processes the complaints and grievances received from the general public by post addressed to the Chief Justice of Pakistan.

It provides an expeditious and inexpensive remedy in matters relating to infringement of the Fundamental Rights enshrined in the Constitution. Matters that require **“hearing”** are fixed in Court and are decided there. Cases of violence against women have sought special attention through this cell. Cases involving complaints of rape, abduction, harassment, acid crime have been heard by the court on complaints filed in the Human Rights Cell. Action has been taken on the basis of media reports.

Examples of interventions by Human Rights Cell:

Police “negligence” in a rape case:

The Court took action on the basis of media reports of alleged rape of a deaf and dumb woman in Nankana district.¹¹² The police did not register FIR and the woman approached Magistrate directly for an order for her medical examination. Police subsequently registered FIR but neither arrested the accused nor recorded woman’s statement. Supreme Court took action and after obtaining report from the police officials, entrusted inquiry to a District and Sessions Judge. The inquiry report found police officials negligent in investigation and handling of the case right from the beginning. The Police did not get the DNA test of the woman and three accused. Supreme Court ordered Inspector General Police, Punjab to initiate proceedings against the police officials including the DPO.

Woman “detained” by her family for contracting marriage of her choice:¹¹³

A woman (lecturer in a college in Quetta) filed an application in the Human Rights cell alleging that she had contracted a marriage of her own choice with a man belonging to a different tribe. She got detained by her own family in Zhob district, because marrying a man of another tribe was not permitted. The Court ordered for her production and Advocate General, Balochistan produced her before the Court in safe police custody along with her husband. After recording the statements of both the husband and wife, the Court directed the Inspector General Police, Balochistan to provide the couple security.

Human Rights Cells in the High Courts:

High Court of Peshawar; Human Rights Cell was established in November 2009, under the supervision of the Chief Justice. Its objectives state: ¹¹⁴

- To do all the acts required to ensure expeditious and inexpensive dispensation of justice in response to all the calls of the public at large in the Khyber Pakhtunkhwa;
- no complaint should go unheard;
- everyone in the province should have the unflinching sense of ownership of the Peshawar High Court as an institution committed to serve them in furtherance of their rights and to stand up to all the eventualities having slightest bearing touching infringement of their right;
- all the available resources should be pressed into service without resorting to the conventional and protracted technicalities;
- grievances should be redressed in a manner involving zero expenditure for the aggrieved; and
- institutionalize an effective response to the communications of the people relating to infringements of their fundamental rights.

How to approach the HRC?

Communications can be made in writing, addressed to the Chief Justice, with complete details of the facts as to how the person’s rights were violated, and details of the violators.

Complaints can also be addressed to the Director Human Rights Cell. The Cell has two Directors, one for Male Section and one for Female Section. The Director can also conduct the proceedings as per approved proposals.

On receipt of a complaint, the Chief Justice has to issue appropriate direction as per facts, circumstances and requirements of the case:

- If the matter requires determination in Court, it is deemed a “writ” before Peshawar High Court,
- If it requires intervention at the district level, it is forwarded to the District & Sessions Judge concerned, for necessary action in accordance with law,
- If it relates to jurisdiction of Justice of Peace, it is forwarded to the District & Sessions Judge concerned, for necessary action under section 22-A Cr.P.C;
- If under the law the authority concerned is itself required to proceed further without intervention of the High Court, it is forwarded to the authority concerned for necessary action under intimation to the High Court.

Advice can be sought via phone:

091-9210149-58; 091-9213023.

Islamabad High Court:

Human Rights cell was reconstituted in May, 2013 and Member Inspection Team (MIT) appointed its director.

High Court of Lahore:

It has a public complaint cell under the charge of Member Inspection Team. The cell has taken action on applications of Human Rights violations, cases of violence against women and has also acted on its own volition on the basis of media reports and other information. In 2014, the Cell took notice (on administrative side¹¹⁵) of several incidents of violence against women. In a case involving the rape of a minor girl by a relative, District and sessions Judge Bahawalpur was directed to submit a detailed report on the steps taken by the police along with his own comments.¹¹⁶ In another incident of acid throwing by a husband (in Jatoi town) on his wife, who had filed a suit for divorce, direction was issued to District and Sessions Judge, Muzaffargarh to submit a detailed report of the steps taken by the police along with his own comments.¹¹⁷



Honour **Crimes**

While defining honour crimes, the Penal Code refers to the regional names given to these practices in Pakistan. It defines offences committed in the name or pretext of honour, or those committed in the name or pretext of karo kari, siyah kari, or other similar other custom or practice.¹¹⁸

Honour Killing:

A murder in the name or under the pretext of honour, is termed as an honour killing. The name accorded to such a murder may differ according to local language, and geographical location in Pakistan.

2005 Amendments in Criminal law and the current position of honour crimes:

In January 2005, criminal law was amended to deal with honour crimes and punish offenders who go scot-free, while taking advantage of the provisions of pardon and compromise or get lesser punishment for honour killings.

Law on honour killing:

Honour killings are dealt with under the same provisions of law that are applicable to an intentional murder. However, if the case does not fall in any other exception to "intentional murder,"¹¹⁹ the punishment is either death or imprisonment for life. An honour killing cannot be sentenced under section 302(c) under which the maximum sentence can be imprisonment of up to twenty five years but no minimum sentence is mentioned.¹²⁰

Fasad Fil Arz:

Honour killing is included in the principle of fasad fil arz (causing chaos on earth) as mentioned in section 311 of the PPC.¹²¹ This section is applicable when either all the heirs of a deceased have not joined in waiver or compounding the right of qisas (retribution) or if principle of fasad fil arz is attracted due to the nature and circumstances of the murder. The Court can punish an offender under fasad fil arz against whom the right of qisas has been waived or compounded.

Punishment for fasad fil arz:

The Court can award the death penalty, imprisonment for life or imprisonment which can extend up to twenty five years. If a Court sentences an offender in an honour killing when applying this principle, the sentence cannot be less than ten years.

Does law exempt some relatives who commit honour crimes from higher punishments?

There is no specific exemption or impunity for honour killing per se, but the law provides exceptions for some offenders by virtue of their relationship with the deceased. It is pertinent to mention that the law applicable to these exceptional relatives remains the same whether the murder committed was an honour killing or not.

A murder is not liable to qisas (retribution):¹²²

- When an offender causes the death of his child or grandchild how lowsoever; and
- When any wali ¹²³ of the victim is a direct descendent of the offender.

In addition to these two situations, a murder committed by a minor or an insane person is also not liable to qisas.

Qisas cannot be enforced when the right of qisas devolves upon the offender due to the demise of an heir of the victim.¹²⁴

Punishment in such cases:

The mandatory punishment in such cases is the payment of diyat¹²⁵ only. However, the Court has discretion to sentence an accused, while taking into account the facts and circumstances of the case. This sentence can extend up to a maximum of twenty five years imprisonment.¹²⁶

Is grave and sudden provocation a defense to murder in the name of honour?

This provision is no longer part of the law. However there are several precedents involving “family honour” in which it has been considered a mitigating factor or circumstance, and the sentence has been reduced. Since the 2005 Amendments to Criminal Law, unless the case falls under an exception mentioned above or a compromise is affected between the offender and the heirs of the deceased, for honour crimes particularly, the sentence can only be death or imprisonment of life. This is because section 302(c) of the PPC, in which lesser sentences can be given, is no longer applicable to murder in name or pretext of honour.

Supreme Court Guidelines for Courts to examine an Application for Compromise:

The Supreme Court explained the application of the relevant provision of the PPC and the CrPC, which envisage, authorize, and regulate compounding of an offence resulting in the acquittal of an accused of murder as a result of compromise.¹²⁷ The Court elaborated that acquittal is not an automatic result of compromise even if such a compromise has been reached by all the heirs of the deceased. It is made subject to the grant of permission of the Court which could for valid reasons, withhold its permission to allow the compromise and consequently refuse to acquit the accused.

It set out guidelines explaining what is required by the Court when an application for compromise is made:

- The Court has to see whether all the heirs have jointly accepted the compromise;
- Whether any wali (legal heir) is a minor and if so, whether the minor agreed to compromise in accordance with the specific provision of the PPC. If not, such a minor will be treated as a non-compromising wali by the Court;
- In cases of compromise by all the heirs, the Court needs to ascertain whether the case was one of “fasad fil arz” and thus, not a case of acquittal despite a compromise. In such a case, the accused will be punished according to the punishment prescribed in section 311 of the PPC;
- Find out whether any facts or circumstances existed, which could persuade the Court not to allow a compromise in terms of section 345 (2) of the CrPC.

Provisions for compromise in honour crimes:

The 2005 Amendments made compounding of offences committed in name or pretext of honour, a little different than other offences of murder and bodily hurt.¹²⁸ Accordingly,

an offence committed in the name or pretext of honour can be waived or compounded subject to such conditions as the Court may deem fit to impose with the consent of the parties, while having regard to the facts and the circumstances of the case.

The Courts have held that the 2005 Amendments have not taken honour crimes out of the preview of compromise.¹²⁹ The difference made by these Amendments is that the Court has no option but to impose conditions for compromise if the parties consent. To date, however, there is no judgment of the Superior Courts which can be referred to in order to obtain clarity on the nature of conditions which a Court can impose with the consent of the parties.

The amended provision has not taken away the power of the Court to refuse permission for compromise or not to give effect to a compromise affected between the parties. The Court can, however, refuse to give effect to a compromise and instead, sentence the offender under tazir punishment.

Compromise rejected by the Court:

The Supreme Court rejected a compromise¹³⁰ in a case where the accused killed his real paternal uncle, his wife and two daughters. The only remaining legal heir of the deceased was also the father of the offender. The killings were carried out due to refusal by the deceased man to marry off one of his daughters to the offender, or transfer four acres of land to his brother, the father of the offender. The Trial Court sentenced the offender to death, and this sentence was upheld by the High Court. In appeal proceedings before the Supreme Court, it was argued that the legal heirs of the four deceased had forgiven the petitioners and a valid compromise had been affected. The Court dismissed this compromise. It explained the nature of requirement of Court's permission and function of the Court as;

- The requirement of obtaining leave (permission) of the Court cannot be construed to mean that the Court should act mechanically to accept a compromise as a matter of course and routine;
- The Court should not, sit as a silent spectator or conduct itself as a post office and affix judicial stamp on any compromise agreement that is brought to it for endorsement.

The Court went on to say that it is its duty and prerogative to determine the fitness of the case for the endorsement and sanction of the compromise and in an appropriate case where the Court is convinced that **the compromiser and the offender are directly or indirectly beneficiary of the crime; the offence is committed or is caused thereof for an obvious object of grabbing the property of the deceased by the compromiser.....** the Court may refuse to give effect to such a deal, especially when accompanied by a gruesome, brutal, cruel, appalling, odious, gross and repulsive offence which causes terror and sensation in society.

Judicial Notice of honour crimes:

Since early 2000, Superior Courts started giving verdicts that condemned honour crimes; in some cases, higher penalties were awarded to offenders. In the case of Rashul Bukhsah vs. The State,¹³¹ the Supreme Court held that murder cannot be condoned on the ground

of siyahkari (a form of honour killing). In another case,¹³² the Supreme Court held that honour killing is a violation of the fundamental right to life guaranteed by Article 9 of the Constitution.

There have been mixed trends and perpetrators succeed in taking advantage of the gaps and 'loopholes' present in the law. In several instances of honour killings, the parties compromise even before commencement of a trial and succeed in getting endorsement of the court.¹³³

In other instances, when parties compromise before recording of any evidence in case of an honour killing, and Trial Courts sentence the offender under section 311 of the PPC (according to the principle of fasad fil arz), the verdicts have been overruled in Appeal on the ground that there was no evidence to support fasad fil arz. In such a scenario, either the appeal succeeds and the offender goes free, or the case is remanded back to the Trial Court to record evidence, while also ruling that the Court cannot convict under section 311 of the PPC without establishing the facts and circumstances of the case through evidence available.¹³⁴

Examples of honor crimes where Courts have stated their role in combating such practices:

With the help of his brother, a man killed his wife and her sister on suspicion that they were indulging in "illicit relationships" ('kari'). The alleged murderer and his accomplice brother were also the first cousins of the two deceased women. During the trial, the parents of the two deceased girls filed Affidavits with the Court, stating that they had reached a compromise with the two offenders. The Trial Court pronounced its verdict on the basis of the Affidavits without recording statements of all the legal heirs. The offenders got sentenced under section 311 of the PPC. On Appeal in the High Court,¹³⁵ the Court set aside the judgment of the Trial Court due to "misapplication of law and procedure".

The Court observed that "in this tradition, false and frivolous allegations are leveled against victim girls; they are never heard, and they are declared 'kari' by their parents, husband/s and other family members, which is sufficient to treat them as "kari". To prevent such crimes, Courts of law have to take judicial notice while trying the perpetrators of such heinous crimes".

The Court accepted the Application of the mother of the deceased girls, praying for the case to be remanded to the Trial Court for a decision on merits. The mother and sisters of the deceased girls complained of being harassed. The Court further directed the Trial Court to ensure that the case is heard in an environment where witnesses of the prosecution have complete freedom of mind and are adequately protected.

In a case¹³⁶ involving the murder of a woman and a man on the pretext of 'siyahkari', the High Court of Balochistan rejected the bail application, despite an out of Court compromise and forgiveness of the offenders by the heirs of the two deceased.

The Court observed¹³⁷ that crimes of honor can be compounded under and despite the 2005 Criminal Law Amendments, but regardless of compounding of tazir punishments

and waiver of 'qisas'; the Court enjoys discretion to punish the accused persons when the offence has been committed with brutality or on pretext of 'siyakari'.

Compromise affected outside of the Court is of no value unless sanctioned by the Court and such sanction is based on sound and reasonable discretion and not accorded as a matter of routine. The Court has to decide whether it should grant permission for compounding the offence or not, given the facts of the case.

The Courts are also obliged to decide, whether the case falls within the provisions of section 311 of the PPC and despite the compromise, whether the offender deserves to be punished by way of tazir under the said provision of law.

The accused were absconding for almost six years and the Court held that because they had absconded for a sufficiently long time, the accused had lost some of the normal rights granted by procedural as well as substantive law for grant of bail. Accordingly, the Court ordered the police to submit challan within fifteen days.

- 1 First Information Report.
- 2 This booklet covers only those forms of forced marriage that are punishable under the law.
- 3 Whether considered married or unmarried under the law. What action she needs to undertake to 'terminate' such a marriage.
- 4 Section 498- B,PPC
- 5 Practices of giving away women in appeasement named differently in different parts, it is called waani in some areas of western and northern Punjab and swaara in parts of Pakhtunkhawa and Balochistan.
- 6 Section 310-A,PPC
- 7 Section 365-B,PPC covers this crime as well as kidnapping, or abduction to force or seduce a woman for illicit intercourse.
- 8 Section 498-C, PPC
- 9 Minimum legal age of marriage for a male is 18 years and for a female is 16 years, in Sindh province it is 18 years for both sexes.
- 10 Marriage of a male under the minimum legal age of marriage constitutes the same crime. Here discussion is only with respect to child marriage of a female.
- 11 In the province of Sindh, under the new law procedure for complaint and prosecution is different than the other three provinces, where old law is enforced.
- 12 Under the Child Marriage Restraint Act (CMRA), 2014 for Sindh province minimum age of marriage for both males and females is 18 years, in the other three provinces where CMRA, 1929 is still in force, minimum age of marriage for females is 16 years and males is 18 years.
- 13 In province of Sindh under Child marriage Restraint Act, 2103, In Balochistan, Khyber Pakhtunkhwa and Punjab under 14 Child Marriage Restraint Act, 1929
- 14 Rukhsati is the cultural name given to the occasion at which the married girl or woman leaves her parent's house to live with her husband. The time of rukhsati may sometimes be different from the time of contracting the marriage.
- 15 Before 2006 amendments in Zina (Enforcement of Hudood) Ordinance, 1979, there was no requirement of having four witnesses and the complainant to register a case of zina with the police. After the said amendments, complaint of zina can only be filed before the court and requires the testimony of complainant and at least four eye witnesses to the act.
- 16 Mst. Haseena and another v Senior Superintendent of police Dera Ghazi Khan, 2000 YLR 2882
- 17 The aforesaid custom is a criminal offense under the Khyber Pakhtunkhwa Elimination of Custom of Ghag Act, 2013.
- 18 Section 498-A, PPC
- 19 In non-cognizable offences the officer in charge of the police station (SHO) shall enter the information in Daily Diary and refer the informant to the Magistrate. Police cannot investigate non cognizable offence without the prior permission from the Magistrate.
- 20 Complaint before a Magistrate (under section 200 CrPC) is filed in non-cognizable offences. It can also be filed in cognizable offences, if police don't register FIR or otherwise.
- 21 Muhammad Aslam v The State 2012 PCrLJ 11, the occurrence predates the inclusion of rape in the PPC in 2006. The accused was sentenced under section 11(kidnapping now section 365-B,PPC) and section 10(3)[rape, now section 376, PPC] of Zina Ordinance, 1979

REFERENCES

- 22 Muhammad Azam v Muhammad iqbal PLD 1984 SC 95, Muhammad Hanif v Mukarram Khan PLD 1996 Lahore 58
- 23 Search warrant under section 100 of Code of Criminal Procedure (CrPC)
- 24 see Manual of Instructions and Forms, Lahore High Court, 1989, Ref. No. 10758/MIT/HC.696-74
- 25 A writ of habeas corpus can be filed under article 199(b) of the Constitution and along with that a writ for the enforcement of any of the fundamental rights under article 199(2) of the Constitution.
- 26 High Court can refuse to entertain a habeas corpus petition on the ground that it be filed first before the Sessions Judge.
- 27 For petitions before the Sessions Judges under section 491 CrPC, High Court rules framed for such petitions apply.
- 28 See Chapter IV F, Rules Framed under Section 491(2) of CrPC, 1898, to regulate procedure in Cases under Section 491.
- 29 Mohammad Rafiq v Mohammad Ghafoor PLD 1972 SC 6 atpp8
- 30 Muhammad Asif Arain v SHO Police station Abad 2012 PCrLJ 1553 at 1558
- 31 Muhammad Afzal v Sessions Judge, Multan & 3 others PLD 2008 Lahore 479
- 32 Check for the number of copies of the petition and related expenses with your counsel at filing such petition as per facts of the case
- 33 These are fixed calculated as per distance the bailiff has to go (see Rule 10 of the rules framed under section 491 (2) CrPC.. In practice the expenses incurred are higher than the officially fixed ones,
- 34 See the leading case on this , Sardara v Khushi Mohammad 1973 SCMR 189. The woman refused to go with her father or with the man who claimed to be her husband. She was set at liberty by the court. Also see Humaria Mehmood v The State PLD 1999 Lahore 495
- 35 Jahan v Ghulam Muhammad 1972 P CrLJ 610
- 36 For reference see cases, Muhammad Qasim v Haji Saleh 1997 PcrLJ 1014, Muhammad Tufail v Muhammad Hanif 1984 MLD 1489, Mst. Bibi v Hussain Baksh 1983 PCrLJ 141
- 37 Ali Muhammad v The State 2013 SCMR 1484
- 38 Mst. Sahi Bibi v Khalid Hussain and 6 others 1973 SCMR 577
- 39 Muhammad Asif Arian v SHO Police Station Abad and 2 others 2012 PCrLJ 1553
- 40 Muhammad Aslam v Ghulam Muhammad tasleem PLD 1971 Lahore 139, the case was decided on 16 December 1969
- 41 Mst. Giran Naz alias Shagufta Bibi v The State and 2 others PLD 2010 Quetta 61
- 42 1988 SCMR 2097
- 43 Charge of obscene acts in public, punishable with imprisonment up to three months or fine or both.
- 44 There are several case in which in habeas proceedings a woman below the age of eighteen years was set at liberty and on her statement of having married of her own free choice acknowledged.
- 45 This is a peculiar case of its own kind but certainly reflects the problems which can be faced in habeas proceedings. Had there not been apprehension of an adverse effect on the criminal

- case against her, she might have been set at liberty by the Court on the basis of her statement, which could not be recorded.
- 46 In a Constitutional writ petition under Article 199, a prayer can be made for enforcement of any of the fundamental rights conferred in the Constitution and an order obtained against or for any state functionary for implementation. For a writ under article 199 of the Constitution seek advise from your counsel as per facts and circumstances of the case.
- 47 As example see cases. Zarjuma alias Jamna Bibi v. Station House Officer, Police Station Saddar, District Bhakkar PLD 2009 Lahore 546 (case of kidnapping against the husband quashed), Mst Ruqia bBatool & another v. The State and 2 others, PLD 2008 Lahore 66 (girl's parents claimed her to be already married and registered case of kidnapping and of forged nikahnama against her husband) .
- 48 Naziran Bibi v S.H.O and others,PLD 1996 Lahore 709
- 49 Humaira Mehmood v The State PLD 1999 Lahore 495
- 50 Under section 552 CrPC.
- 51 Samar Minallah & others v Federation of Pakistan and others, Constitutional petition No 16 of 2004. Later on National Commission on the Status of Women also joined in as a party with the petitioner.
- 52 For example see Suo Moto case 10 of 2006 (custom of sang chatty in the province of Sindh)
- 53 This petition is still pending before the Court and from time to time actions have been initiated on cases brought to court's notice by the petitioners or other sources.
- 54 Sang chatty is equivalent practice of wannai , Swara in parts of Sindh province and Southern Punjab
- 55 <http://tribune.com.pk/story/356123/>
- 56 In suo moto case no 10 of 2006 on a jirga's decision to give nine girls in Sang chatti in Kashmore district, the Supreme Court was informed on one hearing that the families have shifted from Sindh to Punjab and hiding from place to place. Recorded in Order sheet of this case dated 03-09-2007 See Order sheet of this case.
- 57 See cases Sargand and 6 others v The State 2014 MLD 1464[Peshawar] and Muhammad Sultan and another v The State 2013 PCrLJ 950,
- 58 <http://tribune.com.pk/story/801824/>
- 59 See Matloob Hussain v Mst. Shahida & 2 others PLD 2006 SC 489 at 496, Humaira Mehmood v The State PLD 1999 Lahore 495
- 60 Muhammad Aslam v The State 2012 PCrLJ 11 at p 17
- 61 Amina Begum vs. Ghulam Nabi and 2 others PLD 1974 Lahore 78 at page 80
- 62 Mohammad Rafiq v Family Court PLD 1985 Lahore 613.
- 63 Nazar Qasim v. Mst. Shaista Parveen 1979 CLC 462.
- 64 Mohammad Azam v. Mohammad Iqbal PLD 1984 SC 95.
- 65 Section 23 of Family Courts Act, 1964
- 66 Mst. Sakina and 5 others v. Mst. Zainab and 2 others 1989 MLD 3609 Karachi and Nazar Qasim v. Mst. Shaista Parveen 1979 CLC 462., Mohammad Azam v. Mohammad Iqbal PLD 1984 SC 95.

REFERENCES

- 67 Section 2(vii) of Dissolution of Muslim Marriages Act, 1939
- 68 Here, minor is with respect to law for minimum age of marriage.
- 69 Suit of option of puberty is a declaratory suit, see *Mst. Munni v. Habib Khan* PLD 1956 Lahore 403
- 70 *Behram Khan v Akhter Begum* 1952 PLD Lahore 548.
- 71 *Ghulam Qadir vs. the Judge, Family Court Murree*, 1988 CLC 113
- 72 Marriages solemnized after the enforcement of CMRA, 2013.
- 73 In Bangladesh same DMMA, 1939 is enforced, however, when the age of marriage for females was raised to 18 years, amendment was made in option of puberty provision. After the amendment, a female given in marriage by her father or guardian before the age of 18 years can repudiate her marriage before attaining the age of nineteen years, provided the marriage is not consummated. Amendment was introduced by Ordinance XXV of 1986.
- 74 Practice in watta satta marriages vary. Two marriages settled in exchange can happen simultaneously, after a gap of some time of a female can be promised to be given in marriage in exchange in future.
- 75 For details here it is being described as one law but Wherever, there is any difference that is mentioned.
- 76 Balochistan law includes people living because of employment, domestic help.
- 77 The acts included in domestic violence in addition to offences in the PPC are Economic abuse, Stalking, Sexual Abuse, Verbal and Emotional Abuse. Sindh law has prescribed punishments for these acts while Balochistan law does not provide any punishments for these acts and only provides relief in the form of protection order, monetary relief order and such other orders as described in the law.
- 78 Balochistan law includes in definition of domestic relationship, people living because of employment or domestic help in the same household.
- 79 In Balochistan law word application is used and Sindh law uses the word petition.
- 80 For Sindh's law, see section 7 and for Balochistan's law, see section 5
- 81 Informer is a person who has credible information about the commission of an act of domestic violence and does not have any adverse motive or other interest against the aggrieved woman or the accused. Balochistan's law does not have provision for the informer.
- 82 The power to act on its own volition on information of a violation without filing of a petition by any one is called "suo moto" action.
- 83 Please refer to section 11(1) of Sindh's law
- 84 The Respondent in this case will be the "person accused of committing an act of domestic violence"
- 85 Balochistan's law sets the limit of 30 days during which the trial needs to be concluded.
- 86 Under Balochistan law Protection Order is issued by the Court on being satisfied that domestic violence has taken place, see section 8 of the law
- 87 Section 5 of Balochistan law states court having jurisdiction and form of an application.
- 88 Procedure given in Chapter XX of the Criminal Procedure Code.

- 89 Section 8 of the Balochistan law, any other Order under the law includes Residence Order for the aggrieved woman, an order for Monetary Relief, Custody Order as per requirements of the situation.
- 90 Injunctions in the Protection Order are same under the laws of both provinces.
- 91 This Order can be issued by the court along with the Protection Order, see section 11(2) of Sindh Law and section 8(2) of Balochistan law. Injunctions contained in this Order are same under both laws.
- 92 Under Sindh law this includes Interim Protection Order and Interim Residence Order.
- 93 See section 14(2) of the Sindh and section 12(2) of Balochistan law.
- 94 Section 15 of Sindh law and section 13 of Balochistan law. Appeal under both laws is before Sessions Judge.
- 95 Section 12 of Sindh law and section 9 of Balochistan law.
- 96 For Sindh law see sections 17 to 20 about powers and functions of the protection committee and for Balochistan law see sections 14 to 17. Balochistan law has protection committee at the level of every Tehsil.
- 97 For Sindh a gazetted officer see sections 21&22 and for Balochistan gazetted officer not below grade 17 officer, see sections 18 & 19.
- 98 Jurisdiction given to Family Courts by ordinance LV of 2001 dated 01-10-2002. The judges of the Family Courts have powers of the Magistrate first Class and complaint is filed under section 200 CrPC.
- 99 Amendments in Criminal law by Act 25 of 2011 w.e.f 28.12.2011
- 100 Section 174-A CrPC
- 101 Section 354 of PPC
- 102 Section 509, PPC
- 103 Section 354-A of the PPC
- 104 Salman Akram Raja and another v Government of Punjab 2013 Supreme Court Monthly Review (SCMR) 203
- 105 Standard Operating procedures for Medico legal examination of women victims of violence were issued in January 2010 by the Health department of Government of Punjab.
- 106 Mst. Ehsan Begum v. The State PLD 1983 Federal Shariat Court 204
- 107 Abid Javed alias Mithu v. The State 1996 PCr.LJ (FSC) 1161
- 108 Waheed Murad alias Sheikha v The State 2012 PCrLJ 437
- 109 DPO is district police officer and SDPO is sub divisional police officer.
- 110 Mentioned at serial no 19 of the Action Plan, Women Empowerment package, 2014
- 111 A complaint cell was launched as part of set up of Citizen Police Liaison committee (CPLC) in Karachi in August 2014.
- 112 Human Rights Case No 42389-P of 2013 decided on 20-11-2013 , Court has taken action in several other cases of rape on the basis of applications filed in the Human Rights Cell, see Human Rights Case No. 8752 of 2006 decide on 09-10-2007, Human Rights Case No 4850 of 2006 decided on 12-10-2006

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- 113 Human Rights Case no 25-L of 2006 decided on 20-07-2006
- 114 Information taken from its website http://www.peshawarhighcourt.gov.pk/website/human_rights_cell-1.php, further information can be obtained from info@peshawarhighcourt.gov.pk
- 115 Matter in which direction issued under administrative powers of the court.
- 116 Direction issued on 16-06-2014 for reference see, <http://lhc.gov.pk/notifications/1279.pdf>
- 117 Direction was issued on 20-06-2014 for reference see, <http://lhc.gov.pk/notifications/1279.pdf>
- 118 Section 299-(h)(ii) of PPC, amendment introduced through Act 1 of 2005
- 119 Like exceptions mentioned in section 306 or any of the exceptions mentioned 307 become applicable.
- 120 Act 1 of 2005 made section 302-c of PPC non applicable to honour killings
- 121 Amendment via Act 1 of 2005.
- 122 Section 306-PPC
- 123 Heir of the victim under his/her personal law. Right of qisas in murder rests with every wali of deceased.
- 124 Section 307 (c) PPC
- 125 Commonly referred as blood money. Its value is determined by the court keeping in view the financial position of the convict and the heirs of the deceased but can not be less than the value of thirty thousand, six hundred and thirty grams of Silver. On July first the Federal government announces the value of the said amount of Silver for the financial year.
- 126 Section 308-PPC
- 127 Section 345(2) and 345(6) CrPC
- 128 In section 338-E-1, another proviso was added and sub-section 2-A was added in section 345 CrPC. The content of both added provisions is the same. Sub-section 2-A refers to such offences with the vernacular names given to them.
- 129 Abdul Hameed v The State 2011 MLD 1919, Iqbal Ahmed v The State 2013 SCMR 271
- 130 Naseem Akhtar v The State PLD 2010 SC 938
- 131 2000 SCMR 731
- 132 Muhammad Akram Khan vs. The State PLD 2001 SC 96.
- 133 See Manzoor Ahmed v 2nd Additional sessions Judge Ghotki PLD 2012 Sindh 35, in this case compromise with four absconding accused was also accepted.
- 134 See case Iqbal Ahmed v The State 2013 SCMR 271, a boy killed his sister and a man on pretext of honour.
- 135 Qalander Bux v The State 2010 PCr.L.J 63
- 136 Khadim Hussain v The state PLD 2012 Balochistan 179
- 137 Ibid, para 8, pp185

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