Training Manual for Gender Sensitivity
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MESSAGE FROM MR. JUSTICE (R) SHABIR AHMED HON’BLE
DIRECTOR GENERAL SINDH JUDICIAL ACADEMY

Gender bias is universally believed to be generally operating against the fair sex and it is this belief, not to unreal, that had prompted the United Nations to proclaim in 1979 what is popularly known as the CEDAW -- the convention on the elimination of all forms of discrimination against women, Pakistan signed this convention on 12 April, 1996. Gender bias is indeed a global phenomenon and everywhere in the world the judiciary has in recent years handled, and can handle further on the social menace of gender bias pervading since times immemorial. Custodians of state authority have not been oblivious to the pressing need of eliminating gender bias from the society and have taken various steps in this direction. Laws have been enacted; administrative measures have been taken for the protection of women from the social menace of gender based injustices, inequities and indignities.

There are laws outlawing anti women practices like Karo-Kari, transactions on dowry, child marriage, domestic violence, sexual abuse, etc. But in the common law tradition, what matters here is not the letter of law but its judicial understanding. The judiciary therefore has a crucial role to play in the interpretation and application of the gender justice laws in the right direction. Legal and administrative measures have been taken by the state towards the enforcement of gender justice with its massive pro-women legislation, sizable reservation for women in legislative bodies, establishment of regulatory bodies like the Women Development and National Commission on the status of women etc., an impressive record of trying to eliminate gender bias from the society.


All said and done despite all this massive legislation and judicial ventures gender bias still pervades all segments of the society and ground reality is that gender bias is still the order of the day and effective gender justice a fragile. Though the traditional view of gender injustice has been given quite a quietus and is treated as an event of bygone days, yet the malady still remains, sometimes pouncing with monstrosity giving a free hand to the popular belief in men’s superiority over women. The need of the day is to
accelerate the process of eliminating gender bias from the society, laws are not enough to combat the evil but its enforcement. Thus role of courts and civil society are of greater importance.

Court judgments going against the popular understanding of law are often seen in certain circles as undue interference in religion, but this perception is neither constitutionally tenable nor warranted by Islam’s known emphasis on adl and insaf -- equity and justice. It must not therefore hamper the march of the society on the path of gender justice.

Of course a problem as multi-faceted as women’s self-actualization is too important to be tackled by the judiciary alone and the responsibility has to be shared by the society as a whole.

We have taken the project “Gender Equity Program” (GEP) with the object of enhancing gender equity by expanding women’s access to justice and human rights, combating gender based violence and strengthening the capacity of organizations that advocate for gender equity through gender sensitization trainings of Judicial Officers, Court Staff, Public Prosecutors to make a gender responsive judicial system.
PREFACE

The Project, Gender Equity Program (GEP) is being funded by USAID in collaboration with Aurat Foundation (AF). Sindh Judicial Academy (SJA) Karachi is executing the Gender Equity Program as the Judicial Officers, Public Prosecutors and Court Staff are to be trained with regard to Gender Equity Program and Gender Sensitisation.
# ABBREVIATIONS/ACRONYMS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>BPFA</td>
<td>Beijing Platform For Action</td>
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<tr>
<td>CAT</td>
<td>Convention Against Torture</td>
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<td>CED</td>
<td>Conference on Environment and Development</td>
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<td>CEDAW</td>
<td>Convention on Elimination of all forms of Discrimination Against Women</td>
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<td>CERD</td>
<td>Committee on the Racial Discrimination</td>
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<td>CESCR</td>
<td>Committee on Economic, Social and Cultural Rights</td>
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<td>CMW</td>
<td>Committee on Might Workers</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>CrPC</td>
<td>Criminal Penal Code</td>
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<td>CRPD</td>
<td>Convention on the Rights of Persons with Disability</td>
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<td>CSW</td>
<td>Commission on the Status of Women</td>
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<td>DEVAW</td>
<td>Declaration on the Elimination of Violence Against Women</td>
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<td>DV</td>
<td>Domestic Violence</td>
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<td>GBV</td>
<td>Gender-Based Violence</td>
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<td>HR</td>
<td>Human Rights</td>
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<td>HRC</td>
<td>Human Rights Committee</td>
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<td>IASC</td>
<td>Inter-Agency Standing Committee</td>
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<td>ICC</td>
<td>International Criminal Court</td>
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<td>International Convention on Civil and Political Rights</td>
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<td>ICECR</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>ICPD</td>
<td>International Conference on Population and Development in Cairo</td>
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<td>ICW</td>
<td>Internal Council for Women</td>
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<td>IFAD</td>
<td>International Fund for Agricultural Development</td>
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<td>IHL</td>
<td>International Humanitarian Law</td>
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<td>ILO</td>
<td>Internal Labour Organization</td>
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<td>MDG</td>
<td>Millennium Development Goal</td>
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<td>NGO</td>
<td>Non-Governmental Organization</td>
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<td>OHCHR</td>
<td>Office of the UN High Commissioner for the Human Rights</td>
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<td>PCHTO</td>
<td>Prevention and Control of Human Trafficking Ordinance</td>
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<td>PFA</td>
<td>Platform For Action</td>
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<td>Abbreviation</td>
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<td>PLD</td>
<td>Pakistan Legal Decision</td>
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<td>SJA</td>
<td>Sindh Judicial Academy</td>
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<td>Sub-committee on Prevention of Torture</td>
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<td>UDFPA</td>
<td>United Nation Fund for Population Activities</td>
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<td>UHDR</td>
<td>Universal Declaration on Human Rights</td>
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<td>UNCRC</td>
<td>United Nations Conventions on Rights of the Child</td>
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<td>UNDP</td>
<td>United Nations Development Programme</td>
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<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organization</td>
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<td>UNGOAR</td>
<td>United Nation General Assembly Official Record</td>
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<td>UNICEF</td>
<td>United Nation International Children’s Emergency Fund</td>
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<td>UNO</td>
<td>United Nations Organization</td>
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<td>USAID</td>
<td>United States Agency for International Development</td>
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<td>VAW</td>
<td>Violence Against Women</td>
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<td>WHO</td>
<td>World Health Organization</td>
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GLOSSARY

**Sex:** Refers to the biological differences between males and females that is determined by reference to genetic or chromosomal and phenotypic or anatomical changes.

**Gender:** Refers to the culturally and socially constructed roles and responsibilities ascribed to the men and women by the society.

**Equity:** A system of natural justice allowing a fair judgment in a situation which is not covered by existing laws.

**Equality:** According to ordinary dictionary defines “The fact of being equal in rights, status, advantages, equal opportunity, the principle of equality before law, the law treats everyone the same”.

**Rights:** It is defined in Black’s Law Dictionary as:
- That which is proper under law, morality and ethics.
- Something that is due to a person by just claim, legal guarantee or moral principle.
- Right is correlative to duty; where there is no duty there cannot be any right.
- A legally enforceable claim that another will do or not do; a recognized act and protected interest the violation of which is a wrong, a breach of duty which infringes one’s right.

**Equitable Right:** The capacity of asserting a legally recognized claim against one with a correlative duty to act.

**Natural rights:** Black’s Law Dictionary defines natural right as, “A right which is conceived as part of natural law that is therefore thought to exist independently of rights created by Government or Society such as right to life, liberty and property”.

**Legal Right:** It is defined in Black’s Law Dictionary as, “A right created and recognized by common law courts”.

**Vested Right:** It is defined in Black’s Law Dictionary as, “A right that so completely and definitely belongs to a person that it cannot be impaired or taken away without the person’s consent”.

GENDER EQUITY PROGRAM
Civil and Political Rights: Civil rights include freedom to worship, to think and express oneself, to vote, to take part in political life and to have access to information.

Codification or Codify: The process of bringing customary international law to written form.

Collective Rights: The rights of groups to protect their interests and identities.

Treaty: A “treaty” is a formally concluded and ratified agreement between States. The term is used generically to refer to instruments binding in international law concluded between international entities (States or Organizations).

Entry into Force: A treaty does not enter into force when it is adopted. Typically, the provisions of treaty determine the date on which the treaty enters into force, often at a specified time following its ratification or accession by a fixed number of States.

Signature: Signature of a treaty is an act by which a State provides a preliminary endorsement of the instrument. Signing does not create a binding legal obligation. It does oblige the State to refrain from acts that would defeat or undermine the treaty’s objectives and purpose.

Ratification: Ratification is an act by which a State signifies an agreement to be legally bound by the terms of a particular treaty. It is only States which have signed a treaty, when it was open for signature that can proceed to ratify it.

Accession: States which have not signed a treaty during the time when it is open for signature can only accede to it. Therefore the term "accession" is used.

Acceptance and Approval: The terms "acceptance" and "approval" are of more recent origin and apply under the same conditions as those that apply to ratification. The legal effect is the same as ratification. The uses of these terms have to do with the diversity of legal systems.

Succession: It occurs when one State is replaced by another in the responsibility for the international relations of territory. Generally, a newly independent State which makes a notification of succession is considered a party to a treaty from the date of the succession of States or from the date of entry into force of the treaty whichever is the later date.

Declarations: Document stating agreed upon standards but which is not legally binding.

Convention: Binding agreement between States.
Optional Protocol: An Optional Protocol to a Treaty is an instrument that establishes additional rights and obligations to a treaty.

Monism: Under the monist approach, treaty may, without enabling legislation, becomes part of domestic law once it has been concluded in accordance with constitution and entered into force for that state, known as self-executing.

Dualism: Under the dualist approach, the Constitution of the State accords no special status to treaties. The rights and obligations created by them have no effect in domestic law unless legislation is in force to give effect to them.

Genocide: The systematic killing of people on the basis of their race or ethnicity.

State: Often synonymous with "country"; a group of people permanently occupying a fixed territory having common laws and government and capable of conducting international affairs.

States Parties: Those countries that have ratified a Covenant or a Convention and are thereby bound to conform to its provisions.

Member States: Countries that are members of the United Nations.


Vulnerable Person: Vulnerable person means a person who is at a higher risk of exploitation, abuse or discrimination, with reduced capacity to withstand their negative impacts. This may be due to old age, mental illness, physical disability or general social exclusion.

Service Provider: Any such government facility or registered voluntary organization established for the protection of aggrieved person providing legal, medical and financial or any other assistance.

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 living or having lived in a domestic situation.
HUMAN RIGHTS
1.1 **HUMAN RIGHTS**

Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion or any other social identity. They include civil, political, economic, social and cultural rights.

Human rights comprise of the rights to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education and many more. Everyone is entitled to these rights, without discrimination.

Human Rights are protected and upheld by International and National laws and treaties.

Human rights principles hold up the vision of a free, just and peaceful world and set minimum standards for how individuals and institutions everywhere in the world should treat people. Human rights also empower people with a framework for action when those minimum standards are not met.

People still have human rights even if the laws or those in power do not recognize or protect them.

1.2 **WHAT ARE THE HUMAN RIGHTS?**

- Human rights are held by all persons equally, universally and forever.
- Human rights are universal: they are always the same for all human beings everywhere in the world.
- A person does not have human rights because she/he is a citizen of any country but because she/he is a member of the human family. This means children have human rights as well as adults.
- Human rights are **inalienable**: A person cannot lose these rights any more than she/he can cease to be a human being.
- Human rights are **indivisible**: no-one can take away a right because it is ‘less important’ or ‘non-essential’.
- Human rights are **interdependent**: together human rights form a complementary framework. For example, ability to participate in local decision-making is directly affected by right to express oneself, to associate with others, to get an education and even to obtain the necessities of life.
- Human rights reflect basic human needs. They establish basic standards without which people cannot live in dignity. To violate someone’s human rights is to treat that person as though he or she were not a human being. To advocate human rights is to demand that the human dignity of all people be respected.
- In claiming these human rights, everyone also accepts responsibilities to respect the rights of others and to protect and support people whose rights are
abused or denied. Meeting these responsibilities means claiming solidarity with all other human beings.

### HUMAN RIGHTS

- Cannot be given or taken away.
- Includes civil, political, economic, social and cultural rights.
- Are interdependent and indivisible.\(^1\)

#### 1.3 HISTORY OF THE HUMAN RIGHTS

Many people regard the development of Human Rights Law as one of the greatest accomplishments of the twentieth century. However, human rights did not begin with the Law or the United Nations. Throughout human history societies have developed systems of justice and propriety that sought the welfare of society as a whole. References to justice, fairness and humanity are common to all world religions: Buddhism, Christianity, Confucianism and Islam.

In 539 BC, Cyrus the Great, after conquering the city of Babylon, freed all slaves to return home and also declared that all people had the right to choose their own religion and established racial equality. These and other decrees were recorded on a baked clay cylinder which is known as the Cyrus Cylinder. This ancient record has now been recognised as the world’s first Charter of Human Rights.

From Babylon, the idea of human rights spread quickly to India, Greece and eventually to Rome. There the concept of “Natural Law” arose, in observation of the fact that people tended to follow certain unwritten laws in the course of life and Roman law was based on rational ideas derived from the nature of things.

#### 1.4 ANCIENT HUMAN RIGHTS DOCUMENTS

Some of the documents asserting the individual rights are as follows:

**The Magna Carta (1215):**—gave people new rights and made the king subject to the law. The Magna Carta was signed in June, 1215, between the barons of Medieval England and King John. Magna Carta is a Latin word and means “Great Charter”.\(^1\)

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\(^1\) International Justice Resource Center.
Magna Carta enumerated many rights and main rights among them were the right of the church to be free from the governmental interference, the right of all free citizens to own and inherit property and to be protected from excessive taxes, the rights of widows who owned property to choose not to remarry, principles of due process and equality before the law, official conduct and it also contained provision forbidding bribery.

**The Petition of Right (1628):**—set out the rights of the people. The next recorded landmark in the development of human rights was the Petition of Right, produced in 1628, by the English Parliament and sent to Charles I as a statement of civil liberties.

The Petition of Right, initiated by Sir Edward Coke, was based upon earlier statutes and charters and asserted four principles: (1) No taxes may be levied without consent of Parliament, (2) No subject may be imprisoned without cause shown (reaffirmation of the right of habeas corpus), (3) No soldiers may be quartered upon the citizenry, and (4) Martial law may not be used in time of peace.

**The United States Declaration of Independence (1776):**—proclaimed the right to life, liberty and the pursuit of happiness. On July 4th, 1776, the United States Congress approved the Declaration of Independence. Philosophically, the Declaration stressed two themes: individual rights and the right of revolution. These ideas became widely held by Americans and spread internationally as well, influencing in particular, the French Revolution.

**The Declaration of the Rights of Man and of the Citizen (1789):**—a document of France states that all citizens are equal under the law. In 1789, the people of France brought about the abolishment of the absolute kingdom and set the stage for the establishment of the first French Republic. The Declaration of the Rights of Man and of the Citizen were adopted by the National Constituent Assembly as the first step toward writing a Constitution for the Republic of France.

The declaration proclaims that all citizens are to be guaranteed the rights of liberty, property, security and resistance to oppression.

**The First Geneva Convention (1864):**— In 1864, sixteen European countries and several American states attended a conference at Geneva. The Conference was held for adopting the convention for the treatment of the wounded soldiers in combat. The main principles laid down in the Convention provided for the obligation to extend care without discrimination to the wounded and the sick military personnel.

**The Universal Declaration of Human Rights (1948):**—the first document listing the 30 rights to which everyone is entitled. By 1948, the United Nations’ new Human Rights Commission had captured the world’s attention. The Commission set out to draft the document that became the Universal Declaration of Human Rights. It was adopted by the United Nations on 10th December, 1948.
The Member States of the United Nations pledged to work together to promote the thirty Articles of human rights that, for the first time in history, had been assembled and codified into a single document. Consequently, many of these rights, in various forms, are today part of the constitutional laws of many democratic nations.

Yet most of these influential landmarks ‘excluded’ women as well as many minorities and members of certain social, religious, economic and political groups.

Other important historical antecedents of human rights lie in nineteenth century efforts to prohibit the slave trade and to limit the horrors of war. For example, the Geneva Conventions established bases of International Humanitarian Law, which covers the way that wars should be fought and the protection of individuals during armed conflict. They specifically protect people who do not take part in the fighting and those who can no longer fight (e.g. wounded, sick, shipwrecked troops, prisoners of war etc.).

Concerns over the protection of certain vulnerable groups was raised by the League of Nations at the end of the First World War. For example, the International Labour Organisation (ILO, originally a body of the League of Nations and now a UN agency) established many important conventions setting standards to protect working people, such as, the Minimum Age Convention (1919), the Forced Labour Convention (1930) and the Forty-hour Week Convention (1935).

Although the International Human Rights framework builds on these earlier documents, which is principally based on United Nations documents.

1.5 UNIVERSAL DECLARATION ON HUMAN RIGHTS (UDHR)

Member States of the United Nations pledged to promote respect for the human rights of all. The United Nations established a Commission on Human Rights for drafting a document for the fundamental rights and freedom.

On December 10th 1948, the Universal Declaration of Human Rights was adopted. UDHR claims that all rights are interdependent and indivisible. Its principles have been incorporated into the Constitutions of more than 185 nations. Although, a declaration is not a legally binding document, the universal declaration has achieved the status of Customary International Law because it is regarded as a common standard of achievement for all people and all nations.

Article 1 of the Universal Declaration on Human Rights (UDHR) explains that, “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”.

GENDER EQUITY PROGRAM
Rather than attempting a set definition of human rights, it is useful to consider a few principles that can be applied to explain human rights or the qualities that apply to human rights as follows:

**Inherent**
Humans being free and equal in dignity and rights - this means that their rights are inherent, not given, bought, earned or inherited. By being born human, one is imbued with rights. These rights are indications of our inherent dignity and humanity. At the same time they protect our dignity and humanity.

**Universal**
Human rights are generally accepted principles that apply equally to human beings wherever they may live. This is a function of what we share in common that we are all humans. 'Universality' means that the core content of human rights are the same for all regardless of race, sex, religion, ethnicity, political or other opinion and social or national origin. They are universal because they are the same for everyone, everywhere in world.

Rights can also be described as ‘universal’ because they have been settled by overwhelming international consensus, and are protected and proclaimed internationally, including in the United Nations Charter. Those who sometimes attempt to justify violations of rights use a number of explanations but very seldom deny that these rights exist.

**Inalienable**
Human rights cannot be waived or taken away, they are inherent hence they are inalienable. Human rights cannot be renounced, lost or forfeited.

**Indivisible**
Human rights are based on the principle of respect for human dignity. In order to live in dignity, all human beings are entitled to freedom, security and decent standards of living all at the same time. Human Rights cannot be divided or made conditional upon each other. They are all interconnected, interdependent and indivisible.

**Fundamental**
Life, dignity and other human values such as needs and aspirations depend on recognition and fulfilment of rights. Human rights form the basis of every human being.

**Equal Application**
All people have the same human rights and it follows that all human beings have the right to equal protection of their rights. This entails equal treatment before the law and equal access to law itself. The principle of equality of application of the law entails that police officers may not unjustifiably discriminate against any person for example, treating someone differently only because of that persons’ race, colour, sex,
language, religion, political or other opinion, national or social origin, economic status, birth or other status.

**Absolute**

Certain core rights create obligations that are absolute and cannot be limited. Under International Law, they include the right to life (the absolute prohibition on taking life arbitrarily without any process of law), the right to be free from torture (the absolute prohibition on torture, an International Criminal Act), the right to be free from slavery (the absolute prohibition on torture), the right to recognition as a person before the law and the prohibition on retrospective criminal punishment.

However, the human rights system was not created in a vacuum and provides that most human rights protected in International Law may be limited if competing social interests are important enough, in particular circumstances, for example, to take into account the legitimate claims and entitlements of other individuals and groups. Most rights can certainly be limited temporarily and for rational purposes provided the limits are proportional to the justifiable purpose for which the limitation is imposed and only limited to the extent strictly necessary to reach that other purpose.

International Law provides that rights can only validly be limited in accordance with the general published laws in ways that are reasonable and justifiable in an open and democratic society and only to the extent necessary in order to protect the rights of others. The principles of proportionality, legality, accountability and necessity should guide police officers when limiting the rights of a person. Police officers should be able to justify their actions and also be able to indicate that they were reasonable in their actions.

### 1.5.1 Obligations defined

**Respect:** The obligation not to do anything that can result in the violation, deprivation or curtailment of someone’s human rights.

**Protect:** The obligation to hinder a third person against acts and omissions that may deprive another person of their rights.

**Fulfill:** The obligation to act purposefully and progressively to meet the rights of others in a sustainable manner.

### 1.5.2 Quotes from the preamble of UDHR (Universal Declaration of Human Rights)

People of the United Nations have:

- Reaffirmed their faith in fundamental human rights in the dignity and worth of human person
- In the equal rights of men and women member states have pledged themselves to achieve the promotion of universal respect for the observance of human rights & fundamental freedoms
1.5.3 Key Articles from UDHR

**Article 2**  Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind.

**Article 3**  Everyone has the rights to life, liberty and security of person.

**Article 4**  No one shall be held in slavery or servitude. Slavery and the slave trade are prohibited.

**Article 5**  No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

**Article 6**  Every person has the right to recognition everywhere as a person before the law.

**Article 7**  All are equal before the Law and are entitled without any discrimination to equal protection of the Law.

**Article 9**  No one shall be subjected to arbitrary arrest, detention or exile.

**Article 10**  Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his/her rights and obligations and of any criminal charge against him/her.

**Article 11**  Everyone charged with a penal offence has the right to be presumed innocent until proved guilty by law in a public trial where he/she has had all guarantees necessary for his/her defence.

**Article 14**  Everyone has the right to seek and to enjoy in other country asylum from persecution.

1.5 INTERNATIONAL HUMAN RIGHTS FRAMEWORK

The Universal Declaration was adopted and work began to codify the rights it contained into a legally binding convention. For political and procedural reasons, these rights were divided between two separate Covenants, each addressing different categories of rights.

The **International Covenant on Civil and Political Rights (ICCPR)** articulates the specific, liberty-oriented rights that a state may not take from its citizens, such as freedom of expression and freedom of movement.

The **International Covenant on Economic, Social and Cultural Rights (ICESCR)** addresses those Articles in the UDHR that define an individual’s rights to self-determinations as well as basic necessities, such as food, housing and health care, which a State should provide for its citizens, in so far as it is able.

The UN General Assembly adopted both covenants in 1966. Since its adoption in 1948, the Universal Declaration of Human Rights (UDHR) has served as the foundation for a number of major human rights conventions. Together these constitute the human rights framework, the evolving body of these international
documents that define human rights and establish mechanisms to promote and protect them.

1.6.1 United Nation Legislation on Human Rights


- Slavery Convention of 1926, Amended by Protocol, 1953.
- International Covenant on Civil and Political Rights, 1966.
- Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, 1984.

Note: Date refers to the year the UN General Assembly adopted the Convention.

Pakistan’s Ratification Status

- International Covenant on Civil and Political Rights, 1966.
- The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

1.6 UN-HUMAN RIGHTS MONITORING & IMPLEMENTING MECHANISM

The Office of the United Nation High Commissioner for Human Rights (OHCHR): has led the responsibility for the promotion and protection of the human rights and for implementing the human rights programme within the UNO.

The UN Security Council: Deals with grave human rights violation.
**The Human Rights Council**: Tasked with strengthening the promotion and protection of human rights around the globe by addressing the situations of human rights violation and making recommendations on them.

**Social Humanitarian and Cultural Affairs Committee**: Examines a range of issues including human rights and also discusses the advancement of women, the protection of children and the promotion of the right to self-determination.

**International Criminal Court (ICC)**: The United Nations has, however, set up a permanent International Criminal Court (ICC). It also consists of an independent permanently appointed judges and their task is, to call, to account and pass judgement on those who have committed the most serious crime under International Law, such as, war crimes, genocide and crimes against humanity.

**1.8 FUNDAMENTAL RIGHTS IN THE CONSTITUTION OF PAKISTAN -1973**

The Constitution of a country is meant to be the standard-setting document, reflecting the highest principles and aspirations of the nation. It must be a cohesive document, not a patchwork of conflicting ideas in which principles are enunciated on one hand, only to be rendered virtually ineffectual on the other. As a document by which all other laws, rules and decisions are to be measured, it cannot be ambiguous and unclear.

The Constitution of Pakistan with reference to human rights, the chapters on Fundamental Rights and Principles and Policies holds great importance. These chapters contain a number of definitions promulgating basic human rights which have a non-discriminatory nature and attempt to protect gender rights. The Pakistani citizens have been entitled to entertain following Rights:

**Rights to Life and Liberty:**
- Right to life and liberty (Article 9)
- Safeguard as to arrest and detention (Article 10).
- Right to fair trial (Article 10A)
- Protection against retrospective punishment (Article 12).
- Protection against double punishment and self-incrimination (Article 13).

**Rights to Equality:**
- Inviolability of dignity of man (Article 14).
- Right to information (Article 19A).
- Equality before Law (Article 25).
- Right to education (Article 25 A)
- Equality regarding accessibility to public places (Article 26).
- Equality of employment (Article 27).
Rights to Freedom:
- Freedom of movement (Article 15).
- Freedom of assembly (Article 16).
- Freedom of association (Article 17).
- Freedom of trade, profession, etc. (Article 18).
- Freedom of speech (Article 19).
- Freedom of religion (Article 20).
- Safeguard against taxation on religion grounds (Article 21).
- Safeguard as to religious and educational institutions (Article 22).

Rights to Property:
- Freedom to acquire property (Article 23).
- Protection of property rights (Article 24).

Rights to Culture:
- Right to preservation of language, script and culture (Article 28).

Social Rights:
- Freedom from forced labour and traffic in human being (Article 11).
- Freedom from slavery (Article 11).

1.9 ISLAMIC CONCEPT OF HUMAN RIGHTS

Islam gave mankind an ideal code of human rights fourteen centuries ago. These rights aim at conferring honour and dignity on mankind and eliminating exploitation, oppression and injustice. Due to their Divine origin, no ruler, government, assembly or authority can curtail or violate in any way the human rights conferred by God nor can they be surrendered.

"This is a declaration for mankind, a guidance and instruction to those who fear God". (Al Qur’an, Al-Imran 3:138).

Human rights in Islam are an integral part of the overall Islamic order and it is obligatory on all Muslim governments and organs of society to implement them in letter and in spirit within the framework of that order.

Some of the basic human rights under Islam are as following:

The Security of Life and Property

In the address which the Holy Prophet (Peace be upon him) delivered on the occasion of the Farewell Hajj, he (S.A.W) said:

"Your lives and properties are forbidden to one another till you meet your Lord on the Day of Resurrection." The Prophet (Peace be upon HIM) has also said about the dhimmis (the non-Muslim citizens of the Muslim state):
"One who kills a man under covenant (i.e., dhimmi) will not even smell the fragrance of Paradise."

The Protection of Honour
The Holy Quran lays down:

"O believers! Let not the men scoff at the men, perchance they may be better than those who scoff and nor the women at other women, perchance that they may be better than those women who scoff and do not taunt one another and nor call one another by nicknames. What a bad name is, to be called a disobedient after being a Muslim, and those who repent not, they are the unjust. O believers! Avoid most suspicions, verily some suspicion is a sin and do not look out for faults and do not backbite one another. Would any of you like to eat the flesh of his dead brother? You would abominate it. And fear Allah, Verily Allah is Oft Returning, Merciful." (49:11-12)

Sanctity and Security of Private Life
The Holy Quran has laid down the injunction:

"O believers! Enter not houses other than you own, until you take permission and salute the residents thereof. This is better for you, haply you may be heedful." (24:27)

The Security of Personal Freedom
Islam has laid down the principle that no citizen can be imprisoned unless his guilt has been proven in an open court. To arrest a man only on the basis of suspicion and to throw him into a prison without proper court proceedings and without providing him a reasonable opportunity to produce his defence is not permissible in Islam.

Freedom of Expression
Islam gives the right of freedom of thought and expression to all citizens of the Islamic state on the condition that it should be used for the propagation of virtue and truth and not for spreading evil and wickedness. Under no circumstances would Islam allow evil and wickedness to be propagated.

Freedom of Association
Islam has also given people the right to freedom of association and formation of parties or organizations. This right is also subject to certain general rules.

Freedom of Conscience and Conviction
Islam has laid down the injunction in the Holy Quran:

"There is no compulsion in religion; no doubt the virtuous path has become clearly distinct from the erring; then whoso does not accept
On the contrary, totalitarian societies totally deprive the individuals of their freedom. Indeed, this undue exaltation of the State authority curiously enough postulates a sort of servitude, of slavishness on the part of man. At one time slavery meant total control of man over man - now that type of slavery has been legally abolished but in its place totalitarian societies impose similar sorts of control over individuals.

Protection of Religious Sentiments
Along with the freedom of conviction and freedom of conscience, Islam has given the right to the individual that his religious sentiments will be given due respect and nothing will be said or done which may encroach upon his right.

The Right to Basic Necessities of Life
Islam has recognized the right of the needy people for help and assistance to be provided to them. The Holy Quran says:
"And in their wealth there was the right of the beggars and the unfortunate." (51:19)

Equality before Law
Islam gives its followers the right to absolute and complete equality in the eyes of the law.

Rulers Not Above the Law
A woman belonging to a high and noble family was arrested in connection with theft. The case was brought to the Holy Prophet (Peace be upon him), and it was recommended that she might be spared the punishment of theft. The Holy Prophet (Peace be upon him) replied:

"The nations that lived before you were destroyed by Allah because they punished the common man for their offenses and let their dignitaries go unpunished for their crimes; I swear by Him who holds my life in His hand that even if Fatima, the daughter of Muhammad, had committed this crime, I would have amputated her hand."

The Right to participate in the Affairs of State
It is stated in the Holy Quran that:

"And those who obeyed the command of their Lord and established prayer and their affairs are decided by mutual consultation and they spend something out of our provision in our way." (42:38)
The "Shura" or the legislative assembly has no other meaning except that the executive head of the government and the members of the assembly should be elected by free and independent choice of the people.
WOMEN RIGHTS
2.1 WOMEN’S RIGHTS

Women's rights are the rights and entitlements claimed for girls and women of many societies worldwide. In some places, these rights are institutionalized or supported by law, local custom and behaviour whereas in others they may be ignored or suppressed. They differ from broader notions of human rights through claims of an inherent historical and traditional bias against the exercise of rights by girls and women in favour of men and boys. There was a need for separate human rights treaty for women since the treaties found in the International Bill of Human Rights were gender blind. It is true that two Human Rights Treaties - the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) - preceded the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); however, they did not reflect certain concerns that were specific to women.

2.2 THE HUMAN RIGHTS OF WOMEN

Numerous International and Regional Instruments have drawn attention to gender-related dimensions of human rights issues, the most important being the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 (see the box).

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In 1993, 45 years after the Universal Declaration of Human Rights was adopted, and eight years after CEDAW entered into force, the UN World Conference on Human Rights in Vienna confirmed that “women’s rights were human rights” and that this statement was even necessary is striking that “women’s status as human beings entitled to rights, should have never been in doubt”. And yet this was a step forward in recognizing the rightful claims of one half of humanity, in identifying neglect of women’s rights as a human rights violation and in drawing attention to the relationship between women’s gender (or their social identities) and human rights violations.

In 1994, the International Conference on Population and Development in Cairo (ICPD) articulated and affirmed the relationship between advancement and fulfilment of rights and gender equality and equity. It also clarified the concepts of women’s empowerment, gender equity, reproductive health and rights.
The Programme of Action of ICPD asserted that the empowerment and autonomy of women and the improvement of their political, social, economic and health status was a highly important end in itself as well as essential for the achievement of sustainable development. In 1995, the Fourth World Conference on Women in Beijing generated global commitments to advance a wider range of women’s rights. The inclusion of gender equality and women’s empowerment as one of the eight Millennium Development Goals was a reminder that many of those promises have yet to be kept. It also represents a critical opportunity to implement those promises.

In spite of these international agreements the denial of women’s basic human rights is persistent and widespread. For instance:

- Over half a million women continue to die each year from preventable pregnancy and childbirth-related causes.
- Rates of infection among women are rapidly increasing. Among those 15-24 years of age young women now constitute the majority of those newly infected in part because of their economic and social vulnerability.
- Gender-based violence kills and disables as many women between the ages of 15 and 44 as cancer. More often than not, perpetrators go unpunished.
- Worldwide, women are twice as likely as men to be illiterate.
- As a consequence of their working conditions, a disproportionate number of women are impoverished in both developing and developed countries. Despite some progress in women’s wages in the 1990s, women still earn less than men, even for similar kinds of work.
- Many of the countries that have ratified CEDAW still have discriminatory laws governing marriage, land, property and inheritance.

While progress has been made in some areas, many of the challenges and obstacles identified in 1995 still remain. In addition, the new challenges for women’s empowerment and gender equality that have emerged over the past decade, such as, increasing of trafficking on women (also seen as a modern form of slavery) need to be more effectively addressed.³

2.3 INTERNATIONAL COUNCIL OF WOMEN (ICW)-1888

The women’s suffrage movement was the struggle for the right of women to vote and run for public office and is part of the overall women’s rights movement. In the mid-19th century, women in several countries most notably, the U.S. and Britain, formed

³ UDFFA.
organizations to fight for suffrage. In 1888, the first international women’s rights organization formed; namely, the International Council of Women (ICW).

The International Council of Women (ICW) was the first women's organization to work across national boundaries for the common cause of advocating human rights for women. In March and April 1888, women leaders came together in Washington D.C. with 80 speakers and 49 delegates representing 53 women’s organizations from 9 countries: Canada, the United States, Ireland, India, England, Finland, Denmark, France and Norway. Women from professional organizations, trade unions, arts groups and benevolent societies participated. National Councils are affiliated to the ICW and thus make themselves heard at international level. The ICW worked with the League of Nations during the 1920s and the United Nations post-World War II. Today the ICW holds Consultative Status with the United Nations Economic and Social Council, the highest accreditation an NGO can achieve at the United Nations. Currently, it is composed of 70 countries and has a headquarters in Lausanne, Switzerland. International meetings are held every three year.

2.4 COMMISSION ON THE STATUS OF WOMEN (CSW)-1946

In 1946 the Commission on the Status of Women was established to promote the advancement of women throughout the world.

Initially, the Commission focused on legal measures to protect the human rights of women and awareness-raising on the status and situation of women around the world. Debates in the Commission brought unfamiliar issues into the international political arena. From the very beginning, the work of the Commission attracted the interest, participation and support of the growing international women’s movement.

By the mid 1960s, the Commission had begun to address women’s role in economic and social development. Delegates from developing countries drew attention in particular to the situation of women in rural areas.

The Commission ensured that provisions for equality between women and men were included in the Universal Declaration of Human Rights - a milestone in the struggle for equality.

In 1979, after four years of preparatory work by the Commission, the General Assembly adopted the historic Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

The Commission continues to provide unique opportunities for exchange of ideas, experiences, good practices and lessons-learned to enhance implementation of
commitments. (Unite Nations Division for the Advancement of Women Department of Economic and Social Affairs.)

The Commission drafted the early International Conventions for Women’s Rights such as:

- Convention on the Political Rights of Women.
- Convention on the Nationality of Married Women.
- Convention on Consent to Marriage, Minimum Age for Marriage and Registration for Marriages.
- Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.
- Convention on the Elimination on All forms of Discrimination of Women.

2.5 WORLD CONFERENCES ON WOMEN

The Commission on Status of Women has organized different conferences in order to assert and improve the rights of women.

1975: The Commission on the Status of Women called for the organization of the First world conference on women to coincide with International Women’s Year. The World Conference of the International Women’s Year was subsequently held in Mexico City. The conference defined a World Plan of Action for the Implementation of the Objectives of the International Women’s Year, which offered a comprehensive set of guidelines for the advancement of women.

1980: World Conference of the United Nations Decade for Women in Copenhagen aimed to review progress in implementing the goals of the first world conference, focusing on employment, health and education, measures to ensure women’s ownership and control of property, as well as improvements in protecting women’s rights to inheritance, child custody and nationality.

1985: The World Conference to Review and Appraise the Achievements of the UN Decade for Women took place in Nairobi which outlined measures for achieving gender equality at the national level and for promoting women’s participation in peace and development efforts.

1995: The Fourth World Conference on Women in Beijing marked a significant turning point for the global agenda for gender equality. The Beijing Declaration and the Platform for Action, adopted unanimously by 189 countries, is an agenda for women’s empowerment and considered the key global policy document on gender equality. It sets strategic objectives and actions for the
advancement of women and the achievement of gender equality in 12 under mentioned critical areas of concern:

- Women and poverty
- Education and training of women
- Women and health
- Violence against women
- Women and armed conflict
- Women and the economy
- Women in power and decision-making
- Institutional mechanism for the advancement of women
- Human rights of women
- Women and the media
- Women and the environment
- The girl-child

The Beijing conference built on political agreements reached at the three previous global conferences on women, and consolidated five decades of legal advances aimed at securing the equality of women with men in law and in practice.

Conferences are held every five years to conduct a five-year review and appraisal of the implementation of the Beijing Platform for Action, and to consider future actions and initiatives hence the next conference is to be held in 2015.\(^4\)

### 2.6 UNITED NATION SECURITY COUNCIL RESOLUTIONS

At the international level, the UN Security Council has adopted seven resolutions on women’s peace and security as mentioned below:

**United Nations Security Council Resolution 1325 (2000):** Stresses the importance of women’s equal and full participation in the prevention and resolution of conflicts, peace-building and peace-keeping. It calls on member states to ensure women’s equal participation and full involvement in all efforts for the maintenance and promotion of peace security and gender perspective in all areas of peace building.


\(^4\) Extracted from: UN-Entity for Gender Equality and the Empowerment of Women


United Nations Security Council Resolution 2106 (2013): Underlines the important roles that Civil Society Organizations (CSOs), including Women's Organizations, can play in enhancing community level protection against violence in armed-conflicts and post-conflict situations and support survivors in accessing justice.

United Nations Security Council Resolution 2122 (2013): Stresses the need for continued efforts to address obstacles in women's access to justice in conflict and post–conflict settings; including gender responsive legal, judicial and security sector reforms and other mechanisms.5

2.7 POSITION OF WOMEN IN ISLAM

The religion of Islam which means “peace” has given guidelines regarding every sphere of life:

a. **Education:** The importance of “education” can be gathered from the first verse revelation on Prophet Muhammad (S.A.W) 1435 Hijri ago “Read, in the name of Allah” which stresses the importance of education. Education is not prerogative of men but also of women. Hazrat Ayesha (R.A) after the death of Holy Prophet Muhammad (S.A.W) used to impart education.

b. **Business:** Hazrat Khatija (R.A) the first wife of Holy Prophet Muhammad (S.A.W) used to do business, and was first Muslim woman doing business, which shows Islam gives freedom to women to choose their profession.

c. **Religion:** Hazrat Khatija (R.A) being a lady had the honour to be first person who embraced Islam when first “Wahi” was revealed; being a woman has the honour to be first Muslim woman who embraced Islam. In the past women doctors, nurses and teachers were the only profession acceptable but now a days women are participating in every sphere of life, women are contributing in Legislative Assemblies in enacting laws and in the fields of Architecture, Engineering, National Defence, Armed Forces and Police among others. Recently two lady SHOs have been posted in the city of Karachi, women are also holding high post of DSP. Lady Police Wardens have been posted in the city

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5 UNITED NATIONS PEACE KEEPING
of Lahore. In Government jobs ladies are serving in every field and also holding high posts, there are Lady Ambassadors, sports Women Cricket Teams and Secretaries in Federal and Provincial Governments.

d. **Participation of Muslim Ladies in War:** In war of Khandak, Hazrat Safia (A.S) in the camp of ladies had chopped off the head of a male warrior when their camp was attacked and the men retreated assuming the ladies camp was guarded by male warriors, ladies participated in wars along with men by giving medical treatment to injured warriors in the wars and giving water to warriors.

e. **Women Warriors in Islam:** Hazrat Umme Ammara fought in the battle of Uhadh with her two sons. In the battle of Hunain along with Muslim women also fought namely Hazrat Sulaim (A.S) daughter of Malhan and wife of Hazrat Ummara (A.S) and Hazrat Saleeth (A.S) also fought in battle of Hunain. During the period of Holy Prophet Muhammad (S.A.W) there were female warriors who fought along with men in wars.

f. **Qazi or Judge:** Islam regards dispensation of justice as a work of piety. Justice and piety are interrelated. Justice in Islam can be dispensed only by those who are “God fearing” and “incorruptible”. It has not been specifically stated that justice is to be done by men only, and man can act only as Qazi, and women have been debarred from holding this office. The character of a person is the test of a Judge. Islamic concept of justice is “Adl” which is one of the names of God Almighty and it means “putting a thing at its right place and restoring a thing to where it belongs.”

Judiciary was established by Holy Prophet Hazrat Muhammad (S.A.W) himself by appointing Hazrat Ali and Muadh as Judges of Yamen. The Prophet asked him, how he would adjudicate cases. "By the Book of God", he replied. "But if you find nothing in the Book of God, how?" "Then by the precedent of the Prophet". "But if there be no precedent?" "Then I will diligently try to form my own judgment." On this, the Prophet is reported to have said, "Praise be to God who hath fulfilled in the messenger sent forth by his apostle that which is well-pleasing to the apostle of Allah”. In Madina, Holy Prophet Muhammad (S.A.W) himself decided the cases. Hazrat Abu Bakar (R.A) was first to separate Judiciary from Executive and made it completely independent. After partition Surriya Bai was first lady Magistrate in Pakistan, now many ladies are holding the post of Judges as:

i. Judges of Hon’ble High Courts.
ii. District & Sessions Judges.
iii. Additional District & Sessions Judges.
iv. Assistant Sessions Judges.
v. Senior Civil Judges.

As regards the question of women being Judge or Qazi, the question has been settled by Federal Shariat Court in PLD 1983 Federal Shariat Court at page 73. Federal Shariat Court has held that there is no restriction on appointment of female Qazi, the appointment is legal according to Sharia, and further held that men and women are equal according to Holy Quran thus superiority between human beings is not determined by sex, the only criteria for superiority of man and woman is the best conduct in the eyes of Allah.


g. Muslim Lady Rulers:

I. In the reign of Hazrat Suleman (A.S), Sheba (R.A) who embraced Islam was first Woman Ruler.

II. Razia Sultana was a great warrior, and fought many wars and was preferred by her father Althemish as Ruler over his two sons.

III. South Asian countries have had the privilege to have many women rulers:

   a) Sister of Quaid-e-Azam Muhammad Ali Jinnah, Founder of Pakistan; namely, Ms. Mohtarma Fatima Jinnah was a Dental Surgeon, Biographer, States woman and a leading member of the All-India Muslim League. She also contested in the Presidential Election of 1965 against Ayub Khan. She won three seats from Karachi, Hyderabad and Dhakka.

   b) Begum Rana Liaquat Ali Khan was one of the leading and pioneering figures in the Pakistan Movement. She also served as Economic Advisor to Jinnah’s Pakistan Movement Committee, as first lady of Pakistan she launched programs for woman’s development. Begum Rana Liaquat Ali Khan was the first woman Governor of Sindh as well as first Chancellor of University of Karachi.

   c) Late Ms. Benazir Bhutto was the youngest Prime Minister elected in Pakistan and was twice elected as Prime Minister of Pakistan;

   d) In India, Ms. Indira Ghandi was lady Prime Minister;

   e) In Sri Lanka, Ms. Bandranaike was Prime Minister;

   f) In Bangladesh, Ms. Sheikh Hasina Wajid and Ms. Khalida Zia were Prime Ministers

All South Asian Countries have the privilege of having lady Prime Ministers which shows the progressiveness of South Asian Countries regarding participation of women in politics also.
h. **Rights of Women In Islam:** Holy Prophet Muhammad (S.A.W) for the first time raised status of women as mother, daughter, sister and wife and the Holy Quran mentions the rights of women:

I. Regarding “Mother”, it is mentioned in the Holy Quran that, “Paradise is under the feet of the mother” which shows the escalated position of mother. It has been enunciated that mother has been given three times precedence over father and it has also been enunciated that, “Do not use harsh language with your mother and father when they become old and maintain them in their old age”.

II. With regards to “Wife”, it is mentioned in the Holy Quran that, “Men are clothing for women and women are clothing for men”, which shows the equal rights of protection and respect given for both, men and women, being husband and wife. The man has to maintain the wife and provide food and shelter to her after marriage even if woman has her own means of earning.

i. **Right of Inheritance:** Islam for the first time gave Right of Inheritance to women as mother, sister, wife and daughter. Man has double of share in inheritance, as under Islam, man is supposed to maintain the household by providing food, shelter to his parents, grandparents, wife, sisters, etc. Woman as wife has share in inheritance left by husband, even sister and mother have share in inheritance. This right for the first time was provided by Islam. If a son has died prior to his father than his grand children from the deceased son have the right of inheritance, both boy and girl, according to the share of deceased son.

j. **Right of Justice:**

I. In Islam both man and woman are equally liable for the punishment and no distinction is made between men and women regarding punishment. Holy Prophet Muhammad (S.A.W) had stated his favourite daughter “Fatima” (R.A) if would had committed crime of theft, he would have cut her hand also for theft.

II. Islam provides strict punishment to prevent crime which has deterrent effect like cutting hand for theft in the first instance and repeated offence one feet. In murder cases the punishment is death if the aggrieved party forgives and compromises, than Qisas is provided which means “saving the neck” and the Holy Quran states it is better for you to compromise, on the one hand it saves life and on the other hand brings end to enmity which might have a ruinous effect on future generations resulting in many murders on both sides.

III. The concept of hearing both the parties to a dispute “in the interest of justice” which nowadays is famous as “Audi Alteram Partem”, i.e., “no one
should be condemned unheard” was introduced for the first time by Islam.

k. **Right of Khula**: was also postulated for the first time in Islam for ladies by Holy Prophet Muhammad (S.A.W). The basic concept of Khula is that if the husband and wife can not live within limits prescribed by God, then Khula can be granted on the condition that the wife is willing to return the benefits received out of marriage to the husband. The first khula was granted by Holy Prophet Muhammad (S.A.W) to Jamila when she came to Holy Prophet Muhammad (S.A.W) and stated “she hates her husband intensely as she saw him from window coming with other men and found him (Sabet) most ugly in the face”. She further stated if she was not scared of wrath of God she would have spat on his face”. Prophet Muhammad (S.A.W) asked her. “Is she willing to return the garden given to her”, she replied “even more”, Prophet Muhammad (S.A.W) asked Sabet to release her “only on return of garden”. However divorce and Khula are permissible in Islam but “divorce is the most hated thing” according to Holy Quran.

l. **Jactitation of Marriage**

   I. A minor girl whose marriage was solemnized by her father or guardian on attaining the age of majority becomes sui juris can exercise the option of puberty being sui juris can repudiate her marriage.

   II. And in case a false claim by any person claiming a lady to be his wife the lady can file suit for jactitation of marriage i.e. a man falsely claims a lady to be his wife.

m. **Li’an**: Under Islamic law imputation against chaste wife is called li’an, on said allegation wife is entitled to dissolution of marriage and the procedure for dissolution of marriage by way of li’an is provided in Holy Quran.

   The province of Sindh have legislated the Child Marraige Restraint Act, 2013, whereby declaring marriage below the age of eighteen years punishable under the law.

n. **The Right of Marriage**: In Islam the woman has the right to choose her life partner, Hazrat Khatija herself proposed to the Prophet Muhammad (S.A.W) who was 20 years younger than Hazrat Khatija. The Holy Quran states: “A woman is given in marriage on the word of “Allah” which shows the sanctity given to marriage in Islam.”

   So called customs now followed in across all the sections of society are not provided in the religion of Islam and they have been adopted from pre-partition days, as followed by Hindus, Sikhs. Practices such as Karol-Kari have no sanction in Islamic law, and under Section 302 (a) Section 302 (b) Pakistan Penal Code (PPC) are to be treated as murder and the penalty provided is death or imprisonment for life.
302. Punishment of Qatl-I-Amd: Whoever commits Qatl-I-Amd shall, subject to the provisions of this Chapter be:-

a) punished with death as Qisas;
b) punished with death or imprisonment for life as Ta'zir having regard to the facts and circumstances of the case, if the proof in either of the forms specified in Section 304 is not available; or
c) punished with imprisonment of either description for a term which may extend to twenty-five years, where according to the Injunctions of Islam, the punishment of Qisas is not applicable.[:]

[Provided that nothing in this clause shall apply to the offence of Qatl-I-Amd if committed in the name or on the pretext of honour and the same shall fall within the ambit of clause (a) or clause (b), as the case may be.]

o. **Right to Owe Property:** Woman is Islam is empowered to own property independently, and has right to dispose it herself. She can buy property from her own source of income but it is the duty of husband after marriage to maintain his wife even if she has her own source of income apart from the Right of Inheritance.

p. **Protection of Girl Child:** The religion of Islam in the Holy Quran has given protection to girl child. In pre-Islamic days, when a girl child was born she was buried alive as it was considered an insult and a burden. Holy Prophet (S.A.W) abolished this abhorrent custom and it is mentioned in Holy Quran “not to bury alive girl child as on the day of Judgement, the man will be answerable to that girl child buried alive”.

q. **The Concept of Equity:** Islam propounded the concept of “justice tempered with mercy”, where the person wronged has the option to pardon the offender, i.e., he can act on the principle of equity and a compromise with the offender in cases of hurt and murder is provided in Pakistan Penal Code.

### 2.8 POSITION OF WOMEN UNDER THE WESTERN JURISPRUDENCE

**English Law**

- Under English view common to Western Civilization marriage is a voluntary union for life of one man and one woman to the exclusion of all others. 
  Hyde v. Hyde. 1866) CLRI page 130
- The form of marriage recognized by English Law is generally described as “Christian Marriage”.
- In Britain married woman acquired right to own property by Legislative Enactments enacted in 1870 being “Married Women Property Act, 1870”, which
was amended in 1882 and then in 1887 whereby woman acquired right to enter into any contract regarding property.

**American Law**

- The Constitution of the United States of America, 1787 Article XIV (1) provides “All person born or naturalized in the United States, and subject to the jurisdiction thereof, are Citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws”.
- Under American law the rights of all citizens of United States including men and women’s life, liberty and property have been provided equal protection, and the States forming part of United States are restrained from making and enforcing any law which abridges the privilege and amenities of Citizens of United States. So men and women under American Law enjoy equal right and equal protection under the law.
- In United States by amendment in Constitution in 1920 inter alia postulates that, “Any woman who qualified may be elected to National Government or for appointment in either the Executive or Legislative Branch”.

The first woman in America to have Cabinet seat was Frances Perkins in New York in 1933, U.S. Ambassador to Italy was Clear Boothe Luce from 1953-56 and in 1962 Mrs. Katie Loucheim was appointed Deputy Assistant Secretary of States for public affairs. Since then, women have been elected to Senate and House of Representative and State Legislatives Branch.

**France**

- In France in election of 1946 women gained access to National Assembly and thirty nine (39) women were elected.

**India**

- Mrs. V.L. Pandit of India was an Indian Ambassador sent to United States of America, U.S.S.R. and also remained High Commissioner of Britain and Ambassador of Spain. She also served as President of the United Nation General Assembly.

**Myanmar**

- In Myanmar (old name Burma) in 1947, six women were elected to parliament and in 1950 Myanmar, sent a woman representative to a United National General Assembly meeting.
United National General Assembly Convention of 1952 on Political Rights of Women stated that, “Women shall be entitled to hold public office and to exercise all public functions established by National Laws, on equal terms with men, without any discrimination”.

Women throughout the world have held important positions from Prime Minister to Public Representatives in different fields and have very ably carried out the responsibilities of their respective office. In Western countries women also hold the posts of Judges and Magistrates. Australia and Canada were the first Countries which appointed Women Magistrates in 1915 and 1916. In France in 1948-49, women gained entry in all Judicial Offices.

In England Sex Disqualification (Removal) Act, 1919 opened doors for women to join different professions. The first English King Council were Rose Meilbron, Helana Normanton. In 1949 Elizbeth Lamb was appointed as Country Judge and was appointed as first Women Divorce Commissioner and was first women to be appointed as Judge of High Court of Justice in 1965.

In America by Amendment in Constitution in 1920 women become eligible for appointment in Judiciary and have been appointed in United States Court of Appeal, at United Nation Commission of Human Rights. In India by 1960, there were 30 women Judges. The first woman to qualify in England as doctor was Elizbeth Anderson in 1865. Royal College of Physician and Surgical admitted women since 1909. In United States in 1850 Female Medical College of Pennsylvania, Philadelphia was established and by 1890 there were three schools offering medical training to women only. In France first woman doctor was Madeleine Bres in 1875.
GENDER SENSITIVITY
3.1 GENDER SENSITIVITY

**Gender Sensitivity** is the ability to recognize gender issues, different perceptions and interests arising from women’s unique social locations and gender roles. It calls for an understanding and consideration of the sociocultural factors underlying discrimination based on sex (whether against women or men).

3.2 SEX

**Sex** refers to the biological difference between men and women that is determined by reference to genetic or chromosomal and phenotypic or anatomical characteristics.

3.3 GENDER

**Gender** refers to the culturally or socially constructed roles and responsibilities ascribed to males and females by the society. Gender are an acquired identity. It refers to all differences except those that are strictly biological. Generally, there are two types of genders, the masculine and feminine. Since gender is cultural and social, it can be changed.

**Gender determines**

- Power differences between males and females in any culture
- Roles
- Responsibilities
- Expectations
- Privileges
- Rights
- Limitations
- Opportunities
- Access to services
Deference between Sex and Gender:

<table>
<thead>
<tr>
<th>SEX</th>
<th>GENDER</th>
</tr>
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<tbody>
<tr>
<td>• Biological.</td>
<td>• Cultural.</td>
</tr>
<tr>
<td>• Given by birth i.e.,</td>
<td>• Learned through</td>
</tr>
<tr>
<td>genetic.</td>
<td>socialization i.e.,</td>
</tr>
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<td></td>
<td>assigned by society.</td>
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3.4 SOCIAL CONSTRUCTION OF GENDER

Refers to how society values allocate duties, roles and responsibilities to women, men, girls and boys. This differential valuing creates many imbalances such as the gender division of labour which determines differences in access to benefits and decision-making and thereby influences power relations and reinforces gender roles. This is done at various institutions of gender socialization including family, religion, education, culture, peers and the media.

3.5 GENDER AND CULTURE

Culture refers to people’s way of life, systems of beliefs, values, rituals, interaction patterns and socialization which determine attributes, roles, responsibilities, and expectations in a society. It determines what the society wants and expects from women, men, girls and boys.

It defines the status and power relations between women, men, girls and boys. Gender concerns are as a result of cultural context and socialization in society. Examples of these are:

a. Preference for a boy to a girl child
b. Heir to property
c. Naming systems
d. Initiation ceremonies
e. Marital practices
f. Gender based violence
3.6 GENDER RELATIONS

A lot of cultures tend to see gender as a natural phenomenon deriving from biological differences between women and men. However, understandings of masculine or feminine differ across culture or geographic locations. Besides cultural or geographic differences, factors such as socio-economic class and race can also greatly influence how genders are treated. Gender relations refer to how men and women relate to each other and as a result being manifestations of gender-based power.

This arises from roles men and women are expected to play. Gender analysis shows that unequal power relations between women and men, which ensure male dominance over women, is a common feature in many parts of the world. Violence against women is often a result of these unequal relations.

Imbalance in power relations always result in one party being worse off than the other and creates social imbalances and these differences in gender roles lead to sexual division of labour as well.

3.7 SEX ROLES v. GENDER ROLE

Sex Roles refer to a biological function for which a necessary qualification is to belong to one particular sex category.

Gender Roles refers to learned behaviours in a given society or community that conditions or trains us to perceive certain activities, tasks and responsibilities as male or female.

Gender roles are usually classified by sex, whereas this classification is social, and not biological. For example, if child rearing is classified as a female role, it is a female gender role, not a female sex role, since men or women can do child rearing.

The problem arises when gender roles are defined in terms of biological or sex instead of using cultural or social terms. When roles are defined in terms of sex, they are largely unchangeable, whereas when defined in terms of gender as cultural or social constructs, roles can be changed and improved. It becomes a problem particularly when these gender roles lead to gender stereotypes, which find justification in gender ideology.
3.8 GENDER STEREOTYPE and GENDER IDEOLOGY

**Gender Stereotype** is an over-generalized belief in the characteristics of a person based simply on their gender.

**Gender Ideology** is biological determinism, that is, the biological differences between men and women automatically translating into differences in their social roles.

As stated above, since women are the child-bearers, which is a biological function, they are automatically ascribed connected roles such as childrearing and housekeeping whereas men are also capable of these activities but it is not ascribed to men.

3.9 SEXUAL DIVISION OF LABOUR AND PRODUCTION - REPRODUCTION DISTINCTION

Sexual division of labour results from the social differentiation introduced in the gender relations between men and women by the society which attributes activities and roles according to the person’s sex. Sexual division of labour involves the secondary position that the women occupy in society in relation to men.

In sum, these sex-gender systems, gender ideology, and gender-stereotypes can have a detrimental affect on the lives of both men and women.

**Production:** Productive activities include all tasks which contribute to the income and economic welfare and advancement of the household and community. Both women and men perform a range of productive roles.

These roles or services usually have a corresponding fee, salary or economic value. This is usually considered as a *male’s sphere* and generally known as the public sphere (e.g., construction work, factory work or office work), despite of the fact that women’s productive roles include cash and subsistence farming (whether or not they control any income from their labour), care of livestock, foraging in forests, food processing for sale, cottage or home based industries, as well as, waged/formal sector employment or office work.

**Reproduction** refers to both biological reproduction and as well as the tasks usually associated with it such as child rearing, housekeeping, etc. that are necessary for survival but given no economic value. This is usually the *women’s sphere* and often known simply as the private sphere.
The social or sexual division of labour that attributes subordinate roles to women reduces at the same time their access to and benefits of resources. It often occurs that women have access to a specific resource, and at the same time they do not have any control over its use. The achievement of equal control to resources is one of the most important objectives in the gender approach.

Dignity, or the self-worth or inner worth of the individual, is the foundation of human rights.

Again, if gender is defined in terms of sex, such as in gender roles and ideologies, then anything that is detrimental to either women or men (gender discrimination and subordination) can be justified as natural and unchangeable, thereby affirming the status quo. Whereas if gender is viewed from the proper perspective, as a social construct, there can be hope that gender subordination and discrimination, no matter how long-standing, can still be addressed and changed. In this way the dignity of each person can still be upheld.

3.10 **EQUALITY v. EQUITY**

**Equality:** A term which reflects an equal sharing of power between women and men, in their equal access to education, health, administrative and managerial positions, equal pay for work of value and equal seats in parliament, among others.⁶

“Equal” treatment therefore does not mean “the same” treatment.

Gender equality means that women and men have equal conditions for realizing their full human rights and for contributing to, and benefiting from, economic, social, cultural and political development. Gender equality is therefore the equal valuing by society of the similarities and the differences of men and women, their needs and the roles they play. It is based on women and men being full partners in their home, their community and their society. Gender equality starts with equal valuing of girls and boys.⁷

**Equity:** Gender equity means fairness of treatment for women and men, according to their respective needs. This may include equal treatment or treatment that is different but which is considered equivalent in terms of rights, benefits, obligations and opportunities. In the development context, a gender equity goal often requires

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built-in measures to compensate for the historical and social disadvantages of women.\(^8\)

Gender equality does not require that girls and boys, or women and men, be the same, or that they be treated exactly alike, but rather implies an absence of bias or discrimination. Equality between women and men is both a human rights issue, a precondition for and an indicator of, sustainable, people-centred development.\(^9\)

### 3.11 GENDER MAINSTREAMING

Gender mainstreaming is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in any area and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension in the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and social spheres, such that inequality between men and women is not perpetuated.\(^10\)

**Gender Mainstreaming Principles**

Gender mainstreaming means:

- forging and strengthening the political will to achieve gender equality and equity, at the local, national, regional and global levels;

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\(^8\) IFAD http://www.ifad.org/gender/glossary.htm.


• incorporating a gender perspective into the planning processes of all ministries and departments of government, particularly those concerned with macroeconomic and development planning, personnel policies and management, and legal affairs;
• integrating a gender perspective into all phases of sectorial planning cycles, including the analysis development, appraisal, implementation, monitoring and evaluation policies, programs and projects;
• using sex-disaggregated data in statistical analysis to reveal how policies impact differently on women and men;
• increasing the numbers of women in decision-making positions in government and the private and public sectors;
• Providing tools and training in gender awareness, gender analysis and gender planning to decision-makers, senior managers and other key personnel; forging linkages between governments, the private sector, civil society and other stakeholders to ensure a better use of resources.\textsuperscript{11}

3.12 DISCRIMINATION

Discrimination is the difference in treatment based on age, sex, ethnicity, religion or other factors rather than on individual merit.

According to the Article 1 of CEDAW the "discrimination against women" shall mean “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.

In many societies, this involves systemic and structural discrimination against women in the distribution of income, access to resources, and participation in decision-making (hence restricted access to opportunities) caused by policies and practices that are built into the ways in which the institutions operate and have the effect of excluding women.

For example, in societies where the belief is strong that whatever happens within the household is the concern of household members, systematic discrimination against all the women who experience violence within the home is likely to occur.

GENDER BASED VIOLENCE
4.1 GENDER BASED VIOLENCE

The linkage between gender inequality and power relations is crucial in the root cause of Gender-Based Violence (GBV). “Gender has everything to do with power. Violence against women is a manifestation of historical unequal power relationships between men and women, a crucial social mechanism by which women remain in a subordinate position compared with men.” 12

4.2 VIOLENCE

The World Health Organization (WHO) defines violence as “the intentional use of physical force or power, threatened or actual against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation”.13

The term violence refers to all acts that cause direct physical, mental, or sexual harm or suffering and includes threats of such acts. It is a means of control and oppression that can include emotional, social, or economic force, coercion, or pressure, as well as physical harm. It can be overt, in the form of physical assault or threatening someone with a weapon; it can be covert, in the form of intimidation, threats, persecution, deception, or other forms of psychological or social pressure. The person targeted by this kind of violence is compelled to behave as expected or to act against her or his will out of fear.

An incident of violence is an act or a series of harmful acts by a perpetrator or a group of perpetrators against a person or a group of individuals. It may involve multiple types and repeated acts of violence over a period of time, with variable durations.

4.3 GENDER-BASED VIOLENCE (GBV)

Gender-Based Violence is used to distinguish common violence from violence that targets individuals or groups of individuals on the basis of their gender.

12 3 Beth Vann, Gender-Based Violence Emerging Issues in Programs Serving Displaced Populations, JSI Research and Training Institute, 2002, pp. 7-8. Original quote is from DEVAW 1993 and reads as follows: “….that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men….“.
Gender-Based Violence has been defined as “violence that is directed at a person on the basis of gender or sex”.¹⁴

It refers to all forms of violence that happen to girls or women and boys or men because of the unequal power relations between them and the perpetrators of such violence. Gender-Based Violence is often used to demonstrate the power of the winning side and as a tool of psychological warfare to spread terror and panic amongst the enemy. The majority of GBV cases are directed towards women and girls, but boys and men can also be victims.

While gender-based violence has a devastating impact on the lives of women and girls who are the majority of victims or survivors, it also hinders the development of men and boys. Eliminating gender-based violence and gender inequality helps to strengthen entire communities.

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Acts of GBV violate numerous principles of international human rights, including: the right to life, equality, security of person, equal protection under the law, freedom from torture and other cruel, inhuman, or degrading treatment.\(^{15}\)

Acts of gender-based violence violate a number of human rights principles enshrined in the Constitution. These include, amongst others:

- The right to life, liberty and security of person.
- The right to freedom from torture or cruel, inhuman, or degrading treatment or punishment.
- The right of freedom from forced labour and trafficking.
- The right to dignity and privacy.
- The right to freedom of opinion and expression.
- The right to freedom of movement.
- The right to education and service.

### 4.4 GENDER BASED VIOLENCE IN INTERNATIONAL LEGAL FRAMEWORK

Several international instruments specifically address sexual and gender-based violence against women and girls. These key international documents include:

- The Declaration on the Elimination of All Forms of Violence against Women (DEVAW) (UN General Assembly, 1993)
- The Beijing Declaration and Platform for Action (PFA)

### 4.5 VIOLENCE AGAINST WOMEN (VAW)

The Beijing Platform for Action (PFA) defines *violence against women* as “any gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life”.

\(^{15}\) This paragraph is an excerpt from the *UNICEF Training of Trainers on Gender-Based Violence: Focusing on Sexual Exploitation and Abuse.*
4.6 FORMS OF GENDER BASED VIOLENCE

Acts of gender-based violence against women have been grouped into five categories as follows:

- Physical violence
- Sexual violence
- Emotional and psychological violence
- Socio-economic violence
- Harmful traditional practices
- Domestic Violence

4.6.1 Physical Violence

Physical Violence is an act attempting to or resulting in pain and/or physical injury. As with all forms of violence the main aim of the perpetrator is not only to cause physical pain but also to limit self-determination of the other person. A few examples are as follows;

- Physical Assaults including battering, beating, punching, choking, slapping, shoving, kicking, maiming or killing, murder with or without weapons; often used in combination with other forms of sexual and gender based violence.

- Trafficking and slavery selling and/or trading in human beings for forced sexual activities, forced labour or services, slavery or practices similar to slavery, servitude or removal of organs.

4.6.2 Sexual Violence

Sexual Violence refers to all forms of forced sexual acts including rape (date and gang rape), defilement of girls and boys, incest, abduction etc. A few examples are as follows;

- Rape: The invasion of any part of the body of the victim or of the perpetrator with a sexual organ with any object or any other part of the body by force, threat of force, coercion, taking advantage of a coercive environment or against a person incapable of giving genuine consent.16

- Child sexual abuse, defilement, and incest: Any act where a child is used for sexual gratification. In other words it is be any sexual relations or interaction with a child.

- Sexual Exploitation: Any abuse of a position of vulnerability, differential power, or trust for sexual purposes; this includes profiting monetarily, socially

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16 Extracted from the International Criminal Court.
or politically from the sexual exploitation of another (IASC); sexual exploitation is one of the purposes of trafficking in persons. Forced or coerced sex trade in exchange for material resources, services and assistance, usually targeting highly vulnerable women or girls unable to meet basic human needs for themselves and/or their children.

**Sexual harassment:** Any unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of a sexual nature or any other behaviour of sexual nature that might reasonably be expected or be perceived to cause offence or humiliation to another. Sexual harassment may occur when it interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive environment. It can include a one-off incident or series of incidents. Sexual harassment maybe deliberate, unsolicited any coercive. Both male and female colleagues can either be the victim or offender. Sexual harassment may also occur outside the workplace and/or outside working hours.¹⁷

### 4.6.3 Emotional and Psychological Violence

All forms of violence have a psychological aspect since the main aim of being violent or abusive is to hurt the integrity and dignity of another person. There are some forms of violence which are communicated through conducts and therefore can be said to achieve psychological violence in pure forms as follows:

- **Verbal Violence:** Such as shouting, constant and prolonged criticizing, insulting a person and humiliating in front of children.

- **Abuse or Humiliation:** Such as degrading, demeaning; compelling the victim or survivor to engage in humiliating acts, whether in public or private; denying basic expenses for family survival.

- **Confinement:** Isolating a person from friends or family, restricting movements, deprivation of liberty, obstruction or restriction of the right to free movement.

### 4.6.4 Socio-Economic Violence

**Socio-economic violence:** This form of violence can be both a means to make the victim more vulnerable to other forms of violence but can also be the reason why other forms of violence are inflicted. Most typical forms of socio-economic forms of violence include taking away the earnings of the victim, not allowing them to have a

¹⁷ This definition is an illustration and explanation of the existing ST/A1/379 which provides for all UN staff, the legally binding definition of sexual harassment.
separate income or making her or him unfit for work through targeted physical abuse. A few examples include the following:

**Denial of education for girls or women:** Removing girls from school, prohibiting or obstructing access of girls and women to basic, technical, professional or scientific knowledge.

**Discrimination and/or denial of opportunities:** Exclusion, denial of access to education, health assistance or remunerated employment; denial of property rights.

**Social exclusion/ ostracism based on sexual orientation:** Denial of access to services, social benefits or exercise and enjoyment of civil, social, economic, cultural and political rights, imposition of criminal penalties, discriminatory practices or physical and psychological harm and tolerance of discriminatory practices, public or private hostility.

### 4.6.5 Harmful Traditional Violence

**Harmful Traditional or Socio-cultural Violence** includes harmful traditional and cultural practices such as wife and property inheritance, early and child marriage, dowry and bride price abuse etc. Few examples are as follows:

**Forced Early marriage:** Arranged marriage under the age of legal consent.

**Forced marriage:** Arranged marriage against the victim’s or survivor’s wishes; often dowry is paid to the family; when refused, there are violent and/or abusive consequences.

**Honour killing and maiming:** Maiming or murdering a woman or girl as punishment for acts considered inappropriate for her gender that are believed to bring shame to the family or community (e.g., pouring acid on a young woman’s face as punishment for bringing shame to the family for attempting to marry someone not chosen by the family), or to preserve the honour of the family (i.e., as a redemption for an offence committed by a male member of the family).

**Infanticide and/or neglect:** Killing, withholding food, and/or neglecting female children because they are considered to be of less value in a society than male children.

### 4.6.6 Domestic Violence

Domestic Violence (DV) refers to acts of violence that are perpetrated in the domestic sphere and includes physical violence (such as battering, beating, punching, choking, slapping, shoving, kicking, etc.), psychological violence and emotional violence.
(including verbal abuse, intimidation, servitude, eviction, destruction of personal property, threats, accusations, humiliation, isolation, control and desertion and insulting the modesty and integrity of a woman’s body).

**Domestic Violence (Behavioural Definition):** Domestic violence is a pattern of assaultive and coercive behaviours. It is any act which causes the victim to do something she does not want to do or prevents her from doing something she wants to do, or causes her to be afraid. It need not involve physical contact since acts of intimidation such as punching a wall, reckless driving, or threatening harm can have the same controlling effect.

Domestic Violence (Legal Definition): Physical harm, bodily injury, assault, or the infliction of fear of imminent harm, bodily injury or assault, between family or household members; sexual assault of one family or household member by another, or stalking of one family member or household member by another family or household member.

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Gender-based violence is violence that occurs based on gender roles, expectations, limitations, etc. GBV therefore largely affects females in most societies; males are also victims/survivors of GBV, but most gender discrimination occurs against females because they are disempowered in most societies as compared to their male counterparts.

GBV involves the abuse of power.

GBV involves some type of force, including threats and coercion. Force is not always physical force. Using the word “violence” implies physical violence, but the meaning is broader than that.

Incidents of GBV are serious and can be life threatening. Survivors can experience the effects of the violence long after the episode is over.

Acts of GBV are violations of fundamental human rights.

Domestic violence is intentional behaviour as well as learned behaviour.
4.7 PERPETRATORS OF GENDER-BASED VIOLENCE

Perpetrators of the Gender-Based Violence are as follows:

- Unequal power relations,
- Low status of women in society,
- Socialization, traditions and customs,
- Beliefs and attitudes,
- Illiteracy and limited education,
- Gender insensitive policies,
- Economic dependence,
- Poverty,
- Limited opportunities and income sources,
- Lack of control over resources,
- Lack of adequate victim support services,
- Lack of availability of health facilities,
- Social acceptability of violence to resolve conflicts,
- Low level of legal literacy,
- Notions of family being private and beyond control of the state, etc.

4.8 CONSEQUENCE OF GENDER-BASED VIOLENCE

Violence is likely to become more frequent and more serious the longer it continues. Consequences of Gender-Based Violence effects on the female gender in the following different ways:

**Health effect** includes physical health, mental health as well as behavioural problems and different medical issues.

**Psychological effects** include suicidal tendencies, depression, loss of self-esteem, feelings of shame and guilt, insecurity, self-hate, self-blame, poor performance in life as well as fear and anxiety.

**Economic effects** include loss of productivity, cost of health care, etc.

**Social effects** include loss of self and social-esteem. Due to their fear of social stigma and rejection, most survivors never report the incident and never receive proper health care and emotional support. Most incidents of GBV are never reported to anyone.

Respectful and confidential services are necessary to address the harmful consequences and after-effects of violence related to health, emotional, social and security issues.
4.9 CONTEXT AND MAGNITUDE OF GENDER BASED VIOLENCE

Understanding the magnitude and impact of the problem is therefore is one of the major challenges facing gender-based violence programmes. However, the following can be stated:

- Domestic violence often happens in the privacy of homes and families and is perpetrated by relatives or friends.
- Economic violence happens in different contexts including the family, the workplace, institutions and the global arena.
- Socio-cultural violence happens in all contexts including the family, community, institutions, work places, political and policy spheres.
- Sexual violence also occurs in both private and public domains and is perpetrated by both familiar acquaintances and strangers.

4.10 THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN

Children, who witness domestic violence and/or have themselves been abused, exhibit health and behaviour problems including problems with their weight, their eating and their sleep. Children experience emotional trauma of witnessing violence in the home, and they can suffer from anxiety and depression. They may have difficulty at school and find it hard to develop close and positive friendships, they may try to run away or even display suicidal tendency. They often suffer the same effects as if they themselves had been physically abused.

Children from violent homes have higher risks of alcohol and / or drug abuse, juvenile delinquency and are more likely to become victims themselves. They may also learn that when people abuse others, they do not get in trouble.

4.11 MYTHS AND REALITIES ABOUT GENDER-BASED VIOLENCE

Efforts to respond to Gender-Based Violence can sometimes be hindered by common misconceptions or myths about GBV. Myths are commonly held beliefs or ideas that are not true. These myths develop in part because it can be difficult to understand why one person would hurt another, particularly in the context of an intimate relationship. Myths provide erroneous information about why GBV happens, and many of these myths are common throughout the world.

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Understanding these myths and realities of GBV is critical to developing effective responses to addressing GBV. The silence that surrounds violence protects it and allows it to continue. Myths about violence and victim blaming also prevent survivors of violence from coming forward for help.

The following are some myths and facts about violence against women:

<table>
<thead>
<tr>
<th>MYTHS</th>
<th>FACTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Violence is part of our culture.</td>
<td>Violence is a crime that is culturally condoned, but is punishable by law.</td>
</tr>
</tbody>
</table>
| • Some women ask for or provoke men to rape, batter or abuse them through their own behaviour. | • Nobody asks or deserves to be violated.  
  • Men must take responsibility for their violent actions. |
| • Rapists are psychopaths or crude, uncultured and uneducated men.     | • Many women and girls are raped by people who are close to them.      |
| • Violent behaviour is a mark of Masculinity.                         | • Male violence is a result of distorted and degraded humanity.        |
| • All men are naturally violent.                                      | • Most men are not violent and even those that are, can change.        |
| • Domestic violence is due to poverty or lack of education.           | • Domestic violence is common throughout all levels of society, whether rich or poor, educated or uneducated as well as rural or urban. |
| • Domestic violence is a private issue of families.                   | • Violence against women and children violates the law. This means domestic violence is behaviour that the community does not accept. It is important for abusers to receive the message from |

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the community that domestic violence will not be tolerated and that the justice system will be involved until the violence ceases.

| •Domestic Violence does not have bad effects on a child if the child is not hit. | •Child witnesses to domestic violence are more likely to have emotional and behavioural problems. They are also more likely to be abusive in adulthood. Witnessing violence teaches children that violence is normal. |
INTERNATIONAL LEGAL FRAMEWORK FOR WOMEN
5.1 INTERNATIONAL LEGAL FRAMEWORK FOR WOMEN

Gender-Based violence is a human rights issue. The rights violated by Gender-Based violence include core fundamental rights that are protected under International Law, such as, the right to life and bodily integrity and the freedom from torture and other cruel, inhumane or degrading treatment. Human rights are claims that every individual has on the society in which she or he lives and does not depend on gender, race, class or status. A woman is as much entitled to live free from harm as a man, simply by virtue of being human.

An International Legal Framework is comprised in general of the following three elements1:

‘Hard Law’ - These are ‘legally binding’ for states.

- International Human Rights Conventions,
- International Humanitarian Law,
- UN Resolutions.

‘Soft Law’ - These are non-binding but carry significant moral commitment and responsibility in the international community.

- International guidelines
- International conference documents, declarations, programmes of action

Special UN Procedures: These help to facilitate the implementation of laws, conventions, and declarations etc.

- UN monitoring committees, special envoys, special rapporteurs and other experts.

International Instruments include:

- Treaties, such as covenants, conventions, statutes, protocols, etc.; are legally binding on those States who have become States Parties by ratifying the treaty.
- “Soft law” instruments, such as, declarations, principles and guidelines have no legal binding effect. However they have been adopted by the international community and represent broad consensus on a further set of rules that provide details and guidance to States.
Governments who ratify treaties have to put into place domestic measures and legislation compatible with their treaty obligations and duties.\textsuperscript{19}

\section*{5.2 INTERNATIONAL INSTRUMENTS}

\subsection*{5.2.1 UN Universal Declaration of Human Rights (UDHR), 1948:} recognizes that all human beings are born free and equal in dignity and that everyone is entitled to all the rights and freedoms in the Declaration, without distinction with regard to race, colour, sex, religion, political or other opinion, national or social origin, property, birth or other status.

\subsection*{5.2.2 International Covenant on Civil and Political Rights (ICCPR), 1966:} provides that every human being has the inherent right to life and that no one shall be arbitrarily deprived of his or her life and further recognizes the right of men and women of marriageable age to marry and to found a family and that no marriage shall be entered into without the free and full consent of the intending spouse.

The ICCPR is a multilateral treaty adopted by the United Nations General Assembly on 16th December, 1966, and in force from 23 March, 1976. It commits the States parties to the Covenant to respect the various civil and political rights of individuals, such as, the right to life; freedom of religion, speech and assembly; and rights to due process and a fair trial. As of April 2014, the Covenant has 74 signatories and 168 parties; Pakistan is also a State party. The ICCPR prohibits distinction on the basis of sex, and specifically commits States to ensure the equal rights of women and men to the enjoyment of all rights enshrined in the Covenant including the following:

- the right to life;
- freedom from torture or cruel, inhuman or degrading treatment or punishment;
- freedom from slavery, servitude and forced or compulsory labour;
- the right to liberty and security of person and freedom from arbitrary arrest or detention;
- the right of detained individuals to be treated with humanity and dignity;
- equality before the law and equal protection of the law;
- the right to a fair trial; and
- freedom of religion, expression, assembly and association.

\textsuperscript{19} Adapted from Bossman, M., PowerPoint presentation for training on Coordination of Multi-Sectorial Response to Gender-based Violence in Humanitarian Settings (Ghent, Belgium, 2008).
Article 2 of the Convent requires that the rights are recognized without distinction of any kind. Article 3 requires that men and women have equal rights to the enjoyment of the rights set forth in the Covenant.

The ICCPR is monitored by the United Nations Human Rights Committee (a separate body to the United Nations Human Rights Council), which reviews regular reports of States parties on how the rights are being implemented. States must report initially one year after acceding to the Covenant and then whenever the Committee requests (usually every four years). The Committee normally meets in Geneva and normally holds three sessions per year.

Key Article of ICCPR:

Rights under the Covenant as mentioned in the Articles are as follows:

Article 1: The right to self-determination.
Article 6: The right to labour.
Article 7: The right to enjoyment of just and favourable conditions of work.
Article 8: The right to form and join trade unions.
Article 9: The right to social security.
Article 10: Protection of the family.
Article 11: The right to an adequate standard of living (food, housing and clothing).
Article 12: The right to enjoyment of the highest attainable standard of health (physical and mental).
Article 13: The right to education.
Article 15: Cultural rights, intellectual property rights.

The relevant Committee has monitored the practice that discrimination is not restricted to those grounds identified under the Covenant and includes discrimination based on age, health status, or disability. The non-discriminatory clause of the Covenant covers discriminatory acts of both public authorities and private individuals.

5.2.3 International Covenant on Economic, Social and Cultural Rights (ICESR), 1966: The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by UN General Assembly on December 16th, 1966 and entered into force on January 3, 1976. It commits the States parties to the Covenant to respect the various economic, social and cultural rights of individuals, including labour rights; the right to health; the right to education; and the right to an adequate standard of living. It contains the same provisions in Article 2 and 3 as the ICCPR with respect to non-discrimination based on sex and equal enjoyment of rights by men and women.
5.3 CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CAT), 1984:

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the “Torture Convention”) was adopted by the General Assembly of the United Nations on 10th December, 1984, (resolution 39/46). The Convention entered into force on 26th June, 1987, after it had been ratified by 20 States. Pakistan signed the Convention on April 17th and after ratification on June 3rd, 2010 has become State party also.

This Convention provides that States have an obligation to prevent torture committed by private actors. Torture is severe mental or physical pain or suffering that is intentionally inflicted either by a State actor or with the consent or acquiescence of a State actor for an unlawful purpose. In particular, it defines that torture requires States to take effective legal and other measures to prevent it and declares that no State of emergency, other external threats or orders from a superior officer or authority may be invoked to justify torture. It forbids countries to return a refugee to his country if there is reason to believe that he or she will be tortured and requires host countries to consider the human rights record of the person’s native country in making this decision.

The CAT requires states to make torture illegal and provide appropriate punishment for those who commit torture. It requires States to assert jurisdiction when torture is committed within their jurisdiction, either investigate and prosecute themselves, or upon proper request extradite suspects to face trial before another competent court. It also requires States to cooperate with any civil proceedings against accused torturers.

Most of the provisions of the Torture Convention deal with the obligations of the States parties. These obligations may be summarized as follows under mentioned key articles:

Key Articles of CAT:

- Each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture. The prohibition against torture shall be absolute and shall be upheld also in a state of war and in other exceptional circumstances (Article 2);
- No State party may expel or extradite a person to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture (Article 3);
Each State party shall ensure that acts of torture are serious criminal offences within its legal system (Article 4);
Each State party shall, on certain conditions, take a person suspected of the offence of torture into custody and make a preliminary inquiry into the facts (Article 6);
Each State party shall either extradite a person suspected of the offence of torture or submit the case to its own authorities for prosecution (Article 7);
Each State party shall ensure that its authorities make investigations when there is reasonable ground to believe that an act of torture has been committed (Article 12);
Each State party shall ensure that an individual who alleges that he has been subjected to torture will have his case examined by the competent authorities (Article 13);
Each State party shall ensure to victims of torture an enforceable right to fair and adequate compensation (Article 14).

5.4 **UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (ICERD), 1965:**


The Convention defines what constitutes racial discrimination and sets out a comprehensive framework for ensuring that civil, political, economic and social rights are enjoyed by all, without distinction of race, colour, descent or national or ethnic origin. By ratifying ICERD, the States parties show their commitment to make the rights contained in the Convention a reality in their country.

Under this Convention, racial discrimination is where a person or a group is treated differently because of their race, colour, descent, national origin or ethnic origin and this treatment impairs or is intended to impair their human rights and fundamental freedoms.

For example, an act is racially discriminatory if a person is denied a service or employment because of his or her race or ethnicity or when a law or policy impacts unfairly on a particular racial or ethnic group.
The Convention permits distinctions between citizens and non-citizens but not between different groups of non-citizens.

All human rights in the political, economic, social, cultural and other fields of public life are to be ensured to everyone without racial discrimination.

The Convention indicates that there is one type of act, called a “Special Measure”, which is not discriminatory, even though it involves treating particular racial, ethnic or national groups or individuals differently. Special measures are initiatives intended to ensure the adequate advancement of certain racial groups who require support to be able to enjoy their human rights and fundamental freedoms in full equality. Special measures are not only permitted by the Convention; they are also required when necessary.

Key Articles of the ICERD:

Article 1  Definition of torture: any act by which severe pain or suffering, physical or mental, is intentionally inflicted on a person for purposes such as obtaining information or a confession from him or another person, punishing, intimidating or coercing him or another person, or for any reason based on discrimination of any kind. For the purposes of this Convention, such pain and suffering must be inflicted by or at the instigation of or with the acquiescence of a public official or someone acting in an official capacity. It does not include pain and suffering arising from lawful sanctions.

Article 2  Each State Party shall take effective legislative and other measures to prevent acts of torture. No circumstances of any kind, including war, may be invoked to justify torture. An order from a superior officer may not be invoked to justify torture.

Article 3  No State Party shall expel, return ("re-fouler") or extradite a person to another State where there are substantial grounds to believe he would be subjected to torture.

Article 4  Each State Party shall ensure that all acts of torture, attempts to commit torture and complicity or participation in torture are offences punishable by law.

Article 5  Each State Party shall establish its jurisdiction over offenses relating to torture when they are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State; when the alleged offender is a national of that State; and when the victim is a national of that State, if appropriate. Each State Party shall also establish its jurisdiction in cases where the alleged offender is in territory under its jurisdiction and it does not extradite him.
Article 6  Any State Party in whose territory a person alleged to have committed, attempted or participated in torture is present shall take him into custody.

Article 7  The State Party, if it does not extradite the alleged offender, will submit the case to competent authorities for prosecution. The person shall be guaranteed fair treatment at all stages of the proceedings.

Article 8  Torture, attempted torture, or participation in torture shall be deemed extraditable offences in any extradition treaty existing between States Parties. This Convention may be considered a legal basis for extradition if no extradition treaty exists.

Article 9  States Parties shall provide each other with the greatest degree of judicial assistance possible in connection with cases of alleged torture and supply all of the evidence at their disposal.

Article 10  Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of civil and military law enforcement personnel, medical personnel, public officials and others involved in custody, interrogation, or treatment of any individual subjected to arrest, detention, or imprisonment.

Article 11  Each State Party shall review interrogation rules, instructions, methods and practices, as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment, with a view to preventing any cases of torture.

Article 12  Each State Party shall ensure that its authorities proceed with a prompt and impartial investigation wherever there is ground to believe that an act of torture has been committed in territory under its jurisdiction.

Article 13  Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly examined by, competent authorities.

Article 14  Each State Party shall ensure in its legal system that the victim of torture obtains redress and has an enforceable right to fair and adequate compensation. In the event of the death of the victim as a result of torture, his dependents shall be entitled to compensation.

Article 15  Each State Party shall ensure that any statement made as a result of torture shall not be used as evidence in any proceedings.

Article 16  Each State Party shall undertake to prevent other acts of cruel, inhuman or degrading treatment or punishments which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or someone acting in official capacity.
5.6 **CONVENTION ON THE RIGHTS OF THE CHILD (CRC), 1989:**

The Convention on the Rights of the Child (CRC), adopted by the United Nations General Assembly in 1989, is a legally binding International treaty to protect the basic human rights of children. The CRC is a universally agreed set of non-negotiable standards and obligations recognizing that children under 18 years of age require special legal protections that adults do not. The CRC contains 54 Articles and three Optional Protocols. The four core principles of the CRC are:

- Non-discrimination
- Devotion to the best interests of the child
- The right to life, survival and development
- Respect for the views and opinions of the child

By ratifying the CRC, countries are committing to protecting children’s rights and agreeing to hold themselves accountable before the international community. The CRC has become the most widely ratified human rights treaty in history with 193 countries now having ratified the document. Pakistan became state party of UN CRC on December 12th, 1990. It is used more widely to ensure the protection of the girl child, who suffers on account of customs not having sanction of Law.

5.7 **INTERNATIONAL LABOUR ORGANIZATION (ILO) 1919:**

The ILO was created in 1919 as a part of treaty of Versaillies that ended the World War 1, to reflect the belief that universal and lasting peace can be accomplished only if it is based on social justice. The International Labour Organization (ILO) is devoted to promoting social justice and internationally recognized Human and Labour Rights, pursuing its founding mission that labour peace is essential to prosperity. Today, the ILO helps advance the creation of decent work and the economic and working conditions that give working people and business people a stake in lasting peace, prosperity and progress. Its tripartite structure provides a unique platform for promoting decent work for all women and men. Its main aims are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue on work-related issues. ILO Conventions which are particularly relevant to women employment include:

- C100 Equal Remuneration Convention, 1951.
- Worst Forms of Child Labour Convention, 1999 (No.182).
- The Domestic Workers Convention (No.189).

### 5.8 INTERNATIONAL HUMANITARIAN LAW (IHL):

International Humanitarian Law (IHL) is the body of International Law that protects persons not taking part in hostilities, that is civilians, wounded, sick, shipwrecked and captured combatants and which regulates the means and methods of warfare. It is applicable in International and Non-International armed conflicts and is binding on States, armed opposition groups and troops participating in multilateral peacekeeping and peace enforcement operations, if they take part in the hostilities. Today the principal instruments of IHL are the four Geneva Conventions of 1949 and their two Additional Protocols of 1977, as well as numerous Conventions restricting or prohibiting the use of specific weapons. IHL establishes mechanisms to ensure that the rules are respected, provides for the individual criminal responsibility of persons for violations that they commit or order to be committed, and requires States to prosecute persons suspected of serious violations.

IHL provides a two-tiered protection regime for women, namely, **general protection**, which applies to women and men equally, be they combatants or civilians and **specific additional protections** that attempt to respond to the particular needs of women.

#### 5.8.1 General Protection

- **Principle of non-discrimination:** One of the basic tenets of IHL lays down that protection must be granted to all without discrimination.

- **Principle of humane treatment:** IHL requires belligerents to provide “humane treatment” to civilians, captured combatants and other persons “hors de combat.” These norms — similar to human rights provisions —lay down minimum standards of treatment, conditions of deprivation of liberty and fundamental guarantees that parties to a conflict must grant to everyone within their control.

- **Principle of distinction and protection of the civilian population against the effects of hostilities:** IHL requires parties to an armed conflict to distinguish between civilians and combatants at all times and to only direct attacks against combatants and military objectives. In addition, IHL also prohibits indiscriminate attacks that, although not targeting civilians, might strike military objectives and civilians or civilian objects without distinction. A
number of rules of IHL stem from the general principle that civilians must be spared from the effects of hostilities.

- **Restrictions and prohibitions on the use of specific weapons:** The principle of distinction set out above prohibits parties to a conflict from employing weapons incapable of distinguishing between combatants and civilians. The lasting effect of weapons on civilians is also a consideration that may lead to the restriction or prohibition of the use of certain weapons, such as antipersonnel mines. IHL also prohibits the use of weapons or methods of warfare of a nature to cause superfluous injury or unnecessary suffering.

**5.8.2 Specific Protection**

The specific protection regime for women under IHL relates primarily to women’s distinct health, hygiene and physiological needs and role as mothers. The aim of these specific provisions is to provide additional protection for women in response to their particular medical and physiological needs, and for considerations of privacy.

- **Protection against sexual violence:** IHL expressly protects women against rape through Article 27(2) of the 4th Geneva Convention, which reads: “Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.” Since the word honour did not reflect the full brutality of the act of sexual violence, which is not merely an attack on a woman’s modesty or chastity, but on her physical and psychological well-being, the Additional Protocols replaced it with the term “dignity.” In addition, it is well established that sexual violence falls within the prohibitions of cruel treatment or torture in the Geneva Conventions.

- **Women deprived of their liberty:** IHL contains specific protections for women deprived of their liberty, requiring separate quarters and sanitary conveniences for women (unless women and men are accommodated together as members of the same family) and stipulating that women must be held under the immediate supervision of female guards. Sex is also considered a relevant consideration in the determination of disciplinary punishment and in the labour of prisoners of war.

- **Expectant mothers and maternity cases:** A range of provisions deal with expectant mothers, maternity cases and mothers of children under 7 years old. Interned expectant and nursing mothers are to be given additional food in proportion to their physical and physiological needs and interned maternity cases have a right to be admitted to institutions where they can receive adequate medical treatment. In terms of physical safety, parties to armed
conflict are encouraged to adopt practices to ensure the physical safety of pregnant women by establishing safety zones for pregnant women and mothers of young children or by concluding agreements for the evacuation of maternity cases.

- **Preservation of family links:** Women bear the emotional and economic burden of missing loved ones. Such women often lack a clear legal status under national law, not being recognized by the law either as wives or widows, and may have no right to access pensions or other entitlements. In an attempt to address such issues, IHL seeks to preserve and restore family unity by preventing the separation of family members against their will, requiring the adoption of measures that facilitate family reunification and laying down measures aimed at facilitating the re-establishment of family ties through correspondence and transmission of information.

### 5.9 UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW):

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted in 1979 by the U.N General Assembly. Pakistan ratified CEDAW in 1996, with a declaration making the compliance subject to its Constitution and a reservation under Article 29 para 1.

The CEDAW Convention establishes a framework that draws on three over-arching principles:

- Substantive Equality,
- Non-discrimination,
- State Obligation.

CEDAW is the most comprehensive treaty on Women’s Human Rights. It provides for equality between women and men in Civil, Political, Economic and Cultural Rights.

The Convention contains no specific reference to domestic violence, however the CEDAW Committee highlights in its General Recommendation No. 19 that gender-based violence, including domestic violence, is a “form of discrimination which seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men”.

States are not only obliged to refrain from committing violations themselves but are also to act on the principle of due diligence.
5.9.1 Article of CEDAW

**Definition - Article 1:** Defines discrimination against women as any "distinction, exclusion or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of marital status, on the basis of equality between men and women, of human rights or fundamental freedoms in the political, economic, social, cultural, civil, or any other field."

**Policy Measures for Eradication of Discrimination - Article 2:** Mandates countries to condemn discrimination in all its forms and to ensure a legal framework, including all laws, policies and practices that provide protection against discrimination and embody the principle of equality.

**Guarantees of fundamental Human Rights and Freedom - Article 3:** Requires that countries take action in all fields e.g. Civil, political, economic, social and cultural-to guarantee women's human rights.

**Temporary special measures to achieve equality - Article 4:** Permits countries to take "temporary special measures" to accelerate equality.

**Sex roles and stereotyping - Article 5:** Declares the need to take appropriate measures to modify cultural patterns of conduct as well as the need for family education to recognize the social function of motherhood and the common responsibility for raising children.

**Trafficking and prostitution - Article 6:** Obligates countries to take measures to suppress trafficking in women and the exploitation of prostitution of women.

**Political and public life - Article 7:** Mandates countries to end discrimination against women in political and public life, and to ensure women's equal rights to vote, to be eligible for election, to participate in the formulation of policy, to hold office and to participate in associations and Non-Governmental Organizations (NGO) in these arenas.

**Participation at the international level - Article 8:** Requires action to allow women to represent their governments internationally on an equal basis with men.

**Nationality - Article 9:** Mandates that women will have equal rights with men to acquire, change or retain their nationality and that of their children.

**Equal rights in education - Article 10:** Obligates countries to end discrimination in education, including in professional and vocational training, access to curricula and other means of receiving an equal education and to eliminate stereotyped concepts of the roles of men and women.
Employment-Article 11: Mandates the end of discrimination in the field of employment including the right to work and to have access to employment opportunities, to equal remuneration, to free choice of profession and employment, to social security and to protection of health and also ends discrimination on the grounds of marriage or maternity.

Healthcare and family planning-Article 12: Requires steps to eliminate discrimination in health care including access to services such as family planning.

Economic and social benefits-Article 13: Requires that women be ensured the same rights as men in all areas of social and economic life, such as, family benefits, mortgages, bank loans and participation in recreational activities and sports.

Rural women-Article 14: Focuses on the particular problems of rural women including participation in development planning and access to adequate living conditions and health care, credit, and education.

Equality before the law-Article 15: Obligates countries to take steps to ensure equality before the law and the same legal capacity to act in such areas as contracts, administration of property and choice of residence.

Marriage and family law-Article 16: Requires steps to ensure equality in marriage, including equal rights with men to choose marriage freely; equal rights and responsibilities toward children including the right to decide freely and responsibly the number and spacing of children and to have the means to do so; and the same rights to property.

5.9.2 Domestic Application of CEDAW
The Fundamental Rights Chapter in the Constitution enshrines the human rights obligations ratified by Pakistan. The judicial approach has been to harmoniously construe the fundamental rights with the International Conventions, with the intention of promoting uniformity between the two.

Case of Saima Waheed v. The State
In the case of Saima Waheed v. The State (PLD 2003, SC page 747), the Supreme Court of Pakistan upheld the right of a woman to marry without the consent of her guardians. The Court held that according to Article 35 of the Constitution of Pakistan 1973 and Article 16 of CEDAW, it was mandated to provide protection to the institutions of marriage.

Case of Vishaka v. State of Rajasthan
The case of Vishaka v. State of Rajasthan (AIR (1997) SC 3011) in India, wherein a public interest litigation on sexual harassment at the work place was filed. It
was argued in the case that Article 51 of the Indian Constitution observes that the state shall endeavour to respect International Law and treaty obligation – and Articles 11, 24 of CEDAW and the General Recommendation 19 on violence against women were cited. The Supreme Court formulated guidelines to fill the legal vacuum until such time as a law was enacted, to regulate sexual harassment at the workplace. The Supreme Court held that any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into the Constitutional Provisions.

**Case of Sharma and Others v. Ministry of Women, Children and Social Welfare**

Similarly, in the case of *Sharma and Others v. Ministry of Women, Children and Social Welfare (Writ No. 2822)*, a public interest litigation was filed in the Supreme Court of Nepal to protect the interest of workers in dance bars and restaurants. CEDAW and ICESCR were invoked together with Constitutional Provisions, and the Supreme Court issued guidelines for protection against sexual harassment until legislation is passed. These guidelines are based on a Constitutional Interpretation, using CEDAW provisions.

**5.9.3 Pakistan: Ratification and Obligation (CEDAW)**

Pakistan became State party of CEDAW after ratifying the convention on 11th March, 1996, by accepting the Convention; States commit themselves to undertake a series of measures to end discrimination against women in all forms including:

- To incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate laws, policies and procedures prohibiting discrimination against women; to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.
- Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice.
- They are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.

**5.10 UN DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN (DEVAW) 1993**

- Recognizes that violence against women in the family and society is pervasive and cuts across lines of income, class and culture and is “a manifestation of historically unequal power relationships between men and women”.

GENDER EQUITY PROGRAM
- It provides a clear and comprehensive definition of violence against women and the rights that need to be ensured to eliminate all forms of violence against women.
- Women are entitled to the equal enjoyment and protection of all human rights, including the right to life, equality, liberty, security of persons, equal protection under the law and the right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.
- States have an obligation to condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligation with respect to its elimination.
- States must exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or private persons.
- States are obliged to develop preventive approaches that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender consideration, enforcement practices and other interventions. States must work to ensure that women subjected to violence, and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling and health and social services, facilities and programmes.
- States must take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women.

**5.11 UN CODE OF CONDUCT FOR LAW ENFORCEMENT OFFICIALS**

- Police are to serve the community by protecting all persons from illegal acts, consistent with regard of duty imposed on them and obligations required by their profession.
- In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

**5.12 UN GUIDELINES ON THE ROLE OF PROSECUTORS**

- Prosecutors are to perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus
contributing to ensuring due process and the smooth functioning of the Criminal Justice System.

- Prosecutors are to carry out their functions impartially and avoid cultural, sexual or any other kind of discrimination.
- All matters in their possession are to be kept confidential, unless the performance of duty or the needs of justice require otherwise.
- Prosecutors should consider to the views and concerns of victims.

5.13 UN BASIC PRINCIPLES ON THE INDEPENDENCE OF THE JUDICIARY

- The judiciary is to decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions influences, inducements, pressures, threats, interference, direct or indirect, from any quarter or for any other reason.
- The judiciary is required to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

5.14 TREATY BODIES

Committees of experts are known as the "treaty monitoring bodies" or "treaty bodies" oversees implementation of the core International Human Rights treaties. The treaty bodies consist of independent and impartial members who are elected by the States Parties to the treaty. There are ten 'human rights treaty bodies' that monitor implementation of the core International Human Rights treaties:

- Human Rights Committee (HRC).
- Committee on Economic, Social and Cultural Rights (CESCR).
- Committee on the Elimination of Racial Discrimination (CERD).
- Committee on the Elimination of Discrimination against Women (CEDAW).
- Committee against Torture (CAT).
- Subcommittee on Prevention of Torture (SPT).
- Committee on the Rights of the Child (CRC).
- Committee on Migrant Workers (CMW).
- Committee on the Rights of Persons with Disabilities (CRPD).
- Committee on Enforced Disappearances (CED).

5.14.1 Functions of the treaty bodies

All of the treaty bodies are empowered to consider initial and periodic reports of states parties on how they are implementing the provisions of the treaty. The reports
that states parties are obliged to submit provide information about legislative and practical measures taken to implement the treaty. The reports are considered through a public dialogue between representatives of the government concerned and members of the treaty body.

The treaty body experts ask a series of questions on issues of particular concern and on violations under the treaty to which the Government must respond. The treaty body then formulates its concluding observations to the Government as a collective assessment of the report, listing positive aspects as well as factors and difficulties impeding the application of the treaty, principal subjects of concern and recommendations.

As the consideration of reports takes place in public, a summary of the discussion is provided in UN press releases. The public sessions are also recorded and the minutes are then distributed as a summary record of the discussion. The concluding observations or recommendations of the treaty body are issued separately also as public documents.

Most treaty bodies are also able to consider individual complaints, where a state party has recognized the competence of the committee to do so. The Optional Protocol to the Covenant on Economic, Social and Cultural Rights, which provides for this, will shortly enter into force. In June 2009, the Human Rights Council established an open-ended working group to consider the possibilities for an individual communications procedure under the Convention on the Rights of the Child.

The process by which a treaty body considers an individual complaint is confidential until the treaty body has taken a decision on the admissibility and merits of a case. Decisions are then available from the Secretary to the treaty body concerned, in the annual report of the treaty body and on the website of the High Commissioner for Human Rights.

In addition, three treaty bodies currently are able to carry out confidential inquiries into allegations of widespread or systematic violations of the treaty (CAT, CEDAW and CPWD).

The Human Rights Committee has also developed a mechanism for the urgent consideration of situations of serious difficulties in the implementation of the Covenant, which it has invoked in a few rare situations. Furthermore, the treaty bodies also elaborate international human rights law through the development of general comments/recommendations.
LEGAL FRAMEWORK FOR WOMEN’S RIGHTS IN PAKISTAN
6.1 LEGAL FRAMEWORK FOR WOMEN’S RIGHTS IN PAKISTAN
CONSTITUTIONAL PROVISIONS ON HUMAN AND WOMEN’S RIGHTS

It is the duty of the Judiciary to enforce the fundamental rights effectively. Fundamental rights collectively represent the conscience of the society. However, fundamental Rights guaranteed in chapter one of part two of the Constitution are subject to reasonable restrictions. The laws framed by the Parliament as well as executive actions ostensibly taken under the cover of law are tested according to the provisions of the Constitution.

The Constitution of Pakistan 1973 guarantees to protect the following fundamental Rights of the Women and the Humans Rights.

ARTICLE 2A OF THE CONSTITUTION
Article 2A has become a substantive part of the Constitution guaranteed, inter alia, full observance of the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam and reiterates protection and safeguard of interest of minorities, equality of status, of opportunity, social, economic, political justice and freedom of thought, expression, belief, faith, worship and association subject to law and morality.

ARTICLE 3 OF THE CONSTITUTION
Article 3. Elimination of exploitation – “The State shall ensure the elimination of all forms of exploitation and the gradual fulfilment of the fundamental principle, from each according to his ability, to each according to his work”.

ARTICLE 4 OF THE CONSTITUTION
Article 4. Right of individuals to be dealt with in accordance with law, etc., – (1): “To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular-
(a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;
(b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and (c) No person shall be compelled to do that which the law does not require him to do.
6.1.1 Right to Life and Liberty

ARTICLE 9 OF THE CONSTITUTION
Article 9. Security of person- “No person shall be deprived of life or liberty save in accordance with law”.
Article 9 of the Constitution protects the right of life. The term "life" has been interpreted by the Honourable Supreme Court in the Shehla Zia and others v. WAPDA case (PLD 1994 SC 693). The Supreme Court in this case has held that a duty is cast upon the State to ensure that a person is provided with ample facilities and amenities to lead his or her life.

ARTICLE 10 OF THE CONSTITUTION
Personal liberty of an individual is undoubtedly, too precious as an asset, to be interfered with unless an order is passed strictly in conformity with the law as provided in Article 10 of the Constitution reads as follows:-
1) “No person who is arrested shall be detained in custody without being informed, as soon as may be, of grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice”; consequently, (2) “Every person who is arrested and detained in custody shall be produced before a magistrate within period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the nearest magistrate, and no person shall be detained in custody beyond the set period without the authority of the magistrate”.

However, it shall not apply to any person who is arrested or detained under any law providing for preventive detention. In cases of detention, if it is established that a person is being held in custody without lawful authority, such action would be against the protections guaranteed under the Constitution.

ARTICLE 10A OF THE CONSTITUTION
Article 10A. Right to Fair Trial- “For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process”.

ARTICLE 12 OF THE CONSTITUTION
Article 12 protects the individual's right of retrospective punishment and reads as follows:
(1) “No law shall authorize the punishment of a person;
(a) for an act or omission that was not punishable by law at the time of act or omission; or
(b) for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed”.

The protection given by this Article is against those offences which were not offences at the time when they were sought to be punished and were not offences at the time when they were done and prohibits sentences under ex-post-facto laws.

ARTICLE 13 OF THE CONSTITUTION
Article 13 provides protection against double punishment and self-incrimination.

6.1.2 Right to Equality

ARTICLE 8 OF THE CONSTITUTION
Article 8 provides that any law or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent to such inconsistency, be void.

ARTICLE 14 OF THE CONSTITUTION
Article 14 (2) lays down that, “no person shall be subjected to torture for the purpose of extracting evidence”. Therefore, all punishments which are inhuman or violates the dignity of man are void by this Article.

ARTICLE 19 OF THE CONSTITUTION
Article 19A. Right to Information— “Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restriction imposed by law”.

ARTICLE 22 OF THE CONSTITUTION
Article 22. Safeguards as to educational institutions in respect of religion, etc., – (3) (b) “no citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, cast or place of birth”.

ARTICLE 25 OF THE CONSTITUTION
Article 25. Equality of citizens – (1) “All citizens are equal before law and are entitled to equal protection of law.
(2) There shall be no discrimination on the basis of sex.
(3) Nothing in this Article shall prevent the State from making any special provision for the protection of the women and children”.

Gender equality specifically guaranteed in the Constitution of Pakistan.

The Honourable Supreme Court in Shirin Munir v. Government of Punjab (PLD 1990 SC 295) explained the scope and intent of Article 25 of the constitution as follows:-
"There being no repugnance between Article 25 and Article 22, the two have to be read harmoniously. No discrimination on the ground of sex alone can be permitted except on the ground of reasonable and intelligible classification. Such classification in our Society permits for the present, establishment of educational and professional institutions exclusively for the females or exclusively for the males. However, where co-education is permitted and the institution is not reserved for one sex alone, the fixation of number on the ground of sex will directly be opposed to the requirement of Article 25(2) unless it is justified as a protective measure for women and children under Article 25(3). In other words the number of girl students can be fixed as the minimum but not as the maximum, particularly so where on merit they are likely to get more than the fixed number of seats. The Constitution assumes that the women and children in our society need protection not the males and as long as the Constitution mentions that assumption and basis, we cannot reverse it by affording protection to males and adults at the cost of women and children. That would be opposed to the very fundamental mandate of the Constitution."

Another judgment by the Honourable Sindh High Court states in the case of Rani v. State (PLD 1996 Karachi 316) held that in such circumstances the woman would also have to be acquitted since Zina is by itself in the nature of a joint offence requiring identification of both a man and a woman distinctly. In case any one of them fails to be so identified, no offence of Zina can be made out.

**ARTICLE 25A OF THE CONSTITUTION**
Articles 25A. Rights to Education– “The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as maybe determined by Law”.

**ARTICLE 26 OF THE CONSTITUTION**
Article 26. Non-discrimination in respect of access of public places– (1) “In respect of access to places of public entertainment or resort, not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, cast, sex, residence or place of birth.

(2) Nothing in clause (1) shall prevent the State from making any special provision for women or children”.
ARTICLE 27 OF THE CONSTITUTION
Article 27 guarantees that no citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth with exception specific services can be reserved for members of either sex if such post or services entail the performance of duties and functions which cannot be adequately performed by the members of the other sex.

6.1.3 Right to Property

ARTICLE 23 OF THE CONSTITUTION
Article 23 guarantees protection of property rights that “every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by the law in the public interest”.
This broad provision would show that both men and women alike can hold, acquire and dispose of any property without discrimination; however, the public interest must ordinarily reign supreme over individual interest.

ARTICLE 24 OF THE CONSTITUTION
Article 24 provides that no person shall be deprived of his property save in accordance with law.

6.1.4 Social Rights

ARTICLE 11 OF THE CONSTITUTION
Article 11. Slavery, forced labour, etc. prohibited. (1)Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form.

(2)All forms of forced labour and traffic in human beings are prohibited.
(3)No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment.
(4)Nothing in this Article shall be deemed to affect compulsory service—
   (a) By any person undergoing punishment for an offence against any law; or
   (b) Required by any law for public purpose:
Provided that no compulsory service shall be of a cruel nature or incompatible with human dignity.
6.1.5 Principles of Policy
Part two, Chapter 2 of Constitution deals with the directive principles of State policy. They are not enforceable by any court but they are nevertheless fundamental in the governance of the country and steps to be taken;

- For Islamic way of life for Muslims (Article 31)
- Promotion of Local Government Institutions and special representation will be given to peasants, workers and women (Article 32)
- Parochial and other similar prejudices to be discouraged (Article 33)
- Full participation of women in national life (Article 34)
- Protection of the family, the marriage, the mother and the child (Article 35)
- Protection of minorities (Article 36)
- Promotion of social justice and eradication of social evils (Article 37)
- Promotion of social and economic well-being of the people (Article 38)
- It shall be the duty of the state to apply these principles in making laws (Article 29 to 40).

Article 51 and 106 provides for the reservations of the seats for the women in the legislature.

6.2 FAMILY’S LAWS

6.2.1 Child Marriage Restraint Act, 1929
The Child Marriage Restraint Act, 1929, was one of the few laws introduced by Quaid-e-Azam Muhammad Ali Jinnah, when he was member of British India Legislative Assembly. This Act was enforced in India on 1st April, 1930.

The aim of said Act was to restrain the solemnization of a child marriage. The said Act allowed the minimum age for marriage to be eighteen years for males and sixteen years for females and the violators were liable to be punished with imprisonment of one month or fine of rupees 1000 (one thousand only) or both. It stipulated that no woman shall be punishable with imprisonment.

Under the said Act a Magistrate of the first class had been empowered to take cognizance of, or try, any offence under the said Act on a complaint made by the Union Council or if there is no Union Council in the area by such authority as the Provincial Government may prescribe.

The limitation period under said Act was one year from the date on which alleged offence was committed.
6.2.2 The Sindh Child Marriage Restraint Act, 2013
Sindh Assembly has passed on 28th April, 2014, Child Marriage Restraint Bill, 2013 which became an Act after the assent by the Governor of the Province, whereby declaring marriage below the age of eighteen years punishable under law.

The said Law binds all parents and guardians of children under their guardianship, their age of marriage as eighteen years; if they are married before attaining the said age of eighteen years it would make the parents/guardian or the would-be bridegroom of over eighteen years (if only bride is under 18 years) liable for rigorous punishment which may extend to three years but shall not be less than two years and fine.

An offence punishable under this Act shall be cognizable, non-bail able and non-compoundable.

The jurisdiction to try the case has with Judicial Magistrate. The court has power to issue injunction to prevent child marriage. The Child Marriage Restraint Act, 1929, has been repealed.

6.2.3 Marriage and Divorce Act, 1936
The said Act governs marriage and divorce issues of Parsi community in Pakistan. The said Act provides that in order for the marriage ceremony to be performed both man and woman must be Parsi. The marriage is valid if the contracting parties are not related to each other in any of the degrees of consanguinity or affinity which is mentioned in schedule I of the said Act.

Parsi marriage solemnized according to the Parsi form of ceremony called “Ashirvad” by a Priest in the presence of two Parsi witnesses other than such priest. In the case of any Parsi who has not completed the age of twenty one years, the consent of his or her father or guardian is to be given to such marriage.

Divorce in the Parsi community is difficult to obtain by either spouse. Any married person may sue for divorce on one or more on the grounds namely adultery, fornication or bigamy, rape or unnatural offence, causing grievous hurt, compelling wife to lead immoral life, that the husband has deserted the wife for at least 3 years, that any of the parties has ceased to be Parsi.

The said Act also provides for registration of marriage, registration of divorce, grounds for divorce, grounds for judicial separation, restitution of conjugal rights, payment of alimony to wife or to her trustee, punishment for bigamy, custody of children, maintenance and also provides procedure for settlement of property.
6.2.4 Hindu Laws

In India, Hindus have a caste system and have four castes:

a) Brahmanas - The Priest
b) Kshatiyas - Administrator
c) Vaishyas - Tradesmen and craftsmen
d) Shudras – labourers

The Brahmanas is the highest caste and there is a lot of discrimination in India, on account of the caste system Shudras are treated as “untouchables” and in case they heard some conversation of Brahmanas, “hot metal” was poured in their ears so that they could not convey what they had heard. India, on the basis of the caste system, does not follow the Universal Declaration of Human Rights (UDHR) promulgated in 1948.

In Pakistan except for the Hindu Women’s Right to Property Act, 1937, the Hindu Married Women’s Rights to Separate Residence and Maintenance Act, 1946, Hindu Marriage Disabilities Removal Act, 1946, there is hardly any codified law in respect of marriage and divorce of Hindu community in Pakistan.

The Hindu Married Women’s Right to Separate Residence and Maintenance Act, 1946, stipulates that Hindu married women shall be entitled to separate residence and maintenance from her husband on one or more of the following grounds; namely, if he:

a) Is suffering from loathsome diseases,
b) Is guilty of cruelty towards her,
c) Is guilty of desertion,
d) Marries again,
e) Ceases to be Hindu,
f) Keeps or resides with concubine.

The said Act also stipulates that a Hindu married women shall not be entitled to separate residence or maintenance from her husband if she is unchaste or ceases to be a Hindu or fails to comply without sufficient cause with a decree of Restitution of Conjugal Rights.

In Pakistan, there is no law for registration of Hindu marriages, as a result, Hindu married women are unable to get their national identity cards that show their married status or bear their husband’s name due to which they do not get any share in their husband’s property. In Pakistan, Hindu married couples often face difficulties when travelling abroad due to lack of marriage certificate. In Pakistan, Hindus both
males and females cannot divorce under the law laid down in said Hindu law on account of no proof of marriage.

Similarly under Hindu law sisters and daughters do not inherit. Whereas in India number of amendments were made in 1956 regarding laws relating to women (daughter, widow, sister) inheritance law have been enacted in India, legislation (Hindu Marriage Act, 1955) regarding Divorce and legal separation of Hindus exists.

6.2.5 Hindu Marriage Bill, 2014
In Pakistan, the Hindu Marriage Bill, 2014, has been introduced in the National Assembly. The object of this bill is to provide a special form of marriage and divorce among Hindus. The provisions of the said Act are also applicable to irretrievable break down of Marriages in Hindus. This Act is applicable to every person who is Hindu by religion in any of its forms. This bill proposes marriage by free consent, parties to be of sound mind, grounds for dissolution of marriage, legitimacy of children of void and voidable marriage, marriage age to be eighteen years, conditions for Hindu marriage, registration of the marriages, judicial separation, nullity of marriage, grounds for divorce and divorce by mutual consent.

According to Hindu Marriage Bill, 2014, which proposes marriage can be dissolved on a petition presented by either the husband or the wife on any of the following grounds:
   a) The other party renounced the Hindu Religion,
   b) Treated the petitioner with cruelty,
   c) Has deserted the petitioner for a continuous period of not less than two years,
   d) Has been incurably of unsound mind,
   e) Has been suffering from virulent and incurable form of disease.

6.2.6 The Christian Divorce Act, 1869
The Divorce Act relating to Christians was enacted in 1869. This Act has not met any amendments except the few procedural amendments in 1949 and 1976 when the original jurisdiction of District Judges over divorce cases was conferred to Civil Judges with Appellate powers being given to the District Judge. Due to the Christian philosophy of marriage that spouses are pre-chosen in heaven and have permanent unions for eternity by the bonds of holy matrimony “cannot be broken except on the charges of infidelity arising out of an adulterous act on the part of either spouse”.

Under the said Act, Petition also has to be filed for dissolution of marriage, nullity of marriage, judicial separation, Restitution of Conjugal Rights, payment of alimony to wife, settlement of wife’s property for benefit of husband and children and custody of children.
Due to this law most of divorce cases by Christians are based on false charges of adultery. The reason being that law does not provide any other ground, other than adultery for obtaining divorce, secondly, the Christians convert to other Religion to wriggle out of their marriage. On change of religion the marriage of a Christian automatically stands dissolved.

Protection of Rights of Minorities Living in Pakistan & Implementing International Convention

The Superior Courts of Pakistan are proactive in safeguarding the legal rights of minorities and enforcing International Conventions regarding Gender Equity being United Nation Convention in Elimination of All Forms of Discrimination against Women (CEDAW). In Mst. Saima & 4 others v. The State (PLD 2003, Lahore 747) authored by Honourable Mr. Justice Tassaduq Hussain Jilani in which it has been held, inter alia;

“On the afore-referred complaint the Additional Sessions Judge Lahore summoned the parties. Petitioner No. 1 took up the plea that she is the legally wedded wife of petitioner No.2 Qaiser Youusuf, that she is sui juris and that no offence whatsoever had been committed. The case of the complainant before the Additional Sessions Judge was that the marriage was fake, that father Rev. Daniel Yunus petitioner No.3 had no licence to perform the Nikah in terms of Christian Marriage Act 1872 and that the petitioner No.1 and petitioner No.2 have committed Zina”.

It has been also held, inter alia,

“The condition precedent for the offence alleged in primafacie does not exist. The Court is also conscious of the protection given to the marriage and the institutions of family under the Constitution of the Islamic Republic of Pakistan and the UN Convention on the Elimination of all forms of Discrimination Against Women. Article 35 of the Constitution enjoins the State to protect the marriage and the family”.

6.2.7 The Dowry and Bridal Gifts (Restriction) Act, 1976

Like Bangladesh and India, Pakistan too has a law on dowry. Initially the West Pakistan Dowry (Prohibition on Display) Act, 1967 was promulgated but it was repealed by the Dowry and Bridal Gift Restriction Act, 1976. This Act provides restrictions on dowry and bridal gifts and for matters connected therewith or ancillary thereto. The said Act applies to all the citizens of Pakistan. It stipulates that the value of dowry should not exceed rupees 5000 (Rupees Five Thousands only).
Dowry means any property given before, at the time of marriage or after marriage, directly or indirectly to the bride. It does not include property given under the law of inheritance.

Section 5 of this Act states that all property given as dowry or bridal gift to a bride shall vest absolutely in her and that her interest in the said property, however, derived, shall not be restrictive, conditional or limited.

Section 6 of the said Act states that total expenditure on a marriage, excluding the value of dowry, bridal gifts and presents shall not exceed rupees two thousand and five hundred.

Section 8 of the said Act states that the father of bride groom or any person who arranges the marriage shall submit a declaration to the Registrar affirming that the total expenditure did not exceed the limits laid down in this Act.

Section 9 of the said Act states that whoever violates the provision of the said Act may suffer an imprisonment up to six months or with fine which shall not be less than the amount proved to have been spent in excess of the maximum limits laid down in the said Act or with both. The dowry, presents in excess of the amount allowed under this Act will be forfeited by the Federal Government.

**6.2.8 The Majority Act, 1875**

Majority Act provides that every person domiciled in Pakistan shall be deemed to have attained his majority when he shall complete his age of Eighteen years and except in cases where a guardian of a minor or his property is appointed by the Court of Guardian and Ward, in such cases the age of majority is twenty one years.

**6.2.9 Dissolution of Muslim Marriage Act, 1939**

The Dissolution of Muslim Marriages Act, 1939 was passed in order to consolidate and clarify the provisions of Muslim law.

Section 2 of the said Act provides that a woman married under Muslim law shall be entitled to obtain decree for dissolution of her marriage on any one or more of the following grounds if her husband:

a) Is missing for a period of four years,

b) Has failed to provide maintenance for a period of two years,

c) Is sentenced to imprisonment for seven years,

d) Has failed to perform marital obligation for a period of three years,

e) Is impotent,
f) Is insane for a period of two years, or is suffering from leprosy or a virulent venereal disease,
g) Treats his wife with cruelty,
h) Associates with women of evil repute,
i) Attempts to force her to lead an immoral life,
j) Dispossesses her property and prevent her to exercise her legal rights over property,
k) Obstructs her from practicing Religion.
l) That she, having been given in marriage by her father or other guardian before she attained the age of sixteen years, repudiated the marriage before attaining the age of eighteen years: Provided that the marriage has not been consummated.

The province of Sindh have legislated the Child Marraige Restraint Act, 2013, whereby declaring marriage below the age of eighteen years punishable under the law.

m) Li’an: Under Islamic law imputation against chaste wife is called li’an, on said allegation wife is entitled to dissolution of marriage, and the procedure for dissolution of marriage by way of li’an is provided in Holy Quran.

6.2.10 The Muslim Family Laws Ordinance, 1961
The Muslim Family Laws Ordinance, 1961, enacted some of the provisions aiming to reform divorce law and inheritance law relating to orphaned grandchildren, introduce compulsory marriage registration, placed restrictions on the practice of polygamy and reform the law relating to dower and maintenance in marriage and divorce as well as to amend existing legislation with relation to marriage age.

Section 4 of the said Act deals with succession and stipulates that in the event of death of any son or daughter of the propositus before the opening of succession, the children of such son or daughter, if any, living at the time the succession opens, shall per stripes, receive a share equivalent to the share which such son or daughter, as the case may be, would have received if alive.

Section 5 of the said Act deals with registration of marriage and stipulates that every marriage solemnized under Muslim Law shall be registered with Nikah Registrars given licenses by the Union Council. One ward shall have only one Nikah Registrar.

Nakah Registrars shall maintain the form of ‘Nikahnama’. The record to be preserved by Union Councils and copies of Nikhanama shall be supplied to the parties, and the fees to be charged. Any person may, on payment of the prescribed fee, if any, inspect at the office of the Union Council the record or obtain copy of any entry therein.
Section 6 of the said Act deals with Polygamy and stipulates that on receipt of the application, the Chairman Arbitration Council shall ask the applicant and his existing wife or wives each to nominate a representative and the Arbitration Council may, if satisfied that the proposed marriage is necessary and just grant the permission applied for marriage.

Any man who contracts another marriage without the permission of the Arbitration Council shall pay immediately the entire amount of the dower whether prompt or deferred, due to the existing wife or wives, which amount, if not so paid shall be recoverable as arrears of land revenue and on conviction upon complaint be punishable with simple imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

Section 7 of the said Act deals with talaq/divorce and stipulates that any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of talaq in any form whatsoever, give the chairman a notice in writing of his having done so, and shall supply a copy thereof to the wife. A person fail to do so shall be punishable with simple imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

If the talaq, is not revoked expressly or otherwise, it shall not be effective until the expiration of ninety days from day on which notice is delivered to the Chairman. If the wife be pregnant at the time talaq is pronounced, talaq shall not be effective until the period of 90 days or the pregnancy, whichever later, ends.

Within thirty days of the receipt of notice, the Chairman shall constitute an Arbitration Council for the purpose of bringing about reconciliation between the parties.

Nothing shall debar a wife whose marriage has been terminated by talaq effective from remarrying the same husband, without an intervening marriage with a third person, unless such termination is for the third time so effective.

Section 9 of the said Act deals with maintenance of wife and stipulates that if any husband fails to maintain his wife adequately, or where there are more wives than one, fails to maintain them equitably, the wife, or all or any of the wives, may in addition to seeking any other legal remedy available apply to the Chairman who shall constitute an Arbitration Council to determine the matter and the Arbitration Council may issue a certificate specifying the amount which shall be paid as maintenance by the husband.
6.2.11 West Pakistan Family Court Act, 1964

The main purpose of the said Act is to establish Family Courts for the expeditious settlement and disposal of disputes relating to marriage and family affairs and for matters connected with these.

The said Act lays down a special procedure through which Family Court regulates its own proceedings in accordance with the provisions of this Act. The Family Court has special powers to discover the possibilities of amicable settlement of family disputes. The procedure of Family Courts is more flexible so that the family matters can be settled by way of administration of justice in its true sense un-hindered by technicalities.

The said Act shortened and simplified the procedure and adopted all possible means for providing speedy disposal of family matters. For the first time, the law provided for a means of reconciliation, before and after the trial, referred to as “pre-trial” (Section 10 - At the pre-trial, the Court shall ascertain the points at issue between the parties and attempt to effect a compromise or reconciliation between the parties, if this be possible) and “post-trial” (Section 12 - In the conclusion of the trial, the Family Court shall make another effort to effect a compromise or reconciliation between the parties within a period not exceeding fifteen days) reconciliation proceedings, respectively.

The Family Courts have exclusive jurisdiction of the following matters as mentioned in part 1 of the schedule under the said Act:

- Dissolution of marriage including Khula
- Dower
- Maintenance
- Restitution of conjugal rights
- Custody of children and visitation rights of parents to meet them
- Guardianship.
- Jactitation of marriage.
- Dowry
- Personal property and belongings of a wife.

Offences under Sections 337 A(i), 337 F(i), 341, 342, 343, 344, 345, 346, 352 and 509 of the Pakistan Penal Code (Act XLV of 1860) specified in Part II of the schedule, where one of the spouses is victim of an offence committed by the other can file complaint before Family Court.
The implementation of the West Pakistan Family Court Act, 1964, is facilitated through the West Pakistan Family Court Rules, 1965.

### 6.3 PAKISTAN PENAL CODE (PPC), 1860

The Pakistan Penal Code; hereinafter, is called PPC is a Penal Code for offences charged in Pakistan. Women protective laws have been enacted by making amendments in the PPC to protect rights of women. Offences against women covered in the PPC include:

<table>
<thead>
<tr>
<th>• Physical harm of any sort (illegal touching, violence and abuse).</th>
<th>• Wrongful restraint</th>
<th>• Assault and criminal force against a woman with intent to strip her of her clothes or outrage her modesty</th>
<th>• Forced abortions and miscarriages</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Mental harm</td>
<td>• Trespass of all types and criminal offences committed during trespass</td>
<td>• Unnatural Offences</td>
<td>• Exchange of women for purposes of settling a dispute</td>
</tr>
<tr>
<td>• Assault</td>
<td>• Kidnapping and Abducting children and women</td>
<td>• Human Trafficking</td>
<td>• Depriving a woman of her inheritance</td>
</tr>
<tr>
<td>• Murder</td>
<td>• Deceiving a woman in affairs relating to marriage</td>
<td>• Forced prostitution</td>
<td>• Attempted Offences (including aiding and abetting)</td>
</tr>
<tr>
<td>• Honour Killings</td>
<td>• Wrongful confinement</td>
<td>• Forced marriages</td>
<td>• Marriage to the Holy Quran</td>
</tr>
</tbody>
</table>

### 6.3.1 Women Related Provisions in Pakistan Penal Code

**Section 76-106** provides general exceptions.

**Section 314 [Execution of Qisas in Qatl-I-Amd]:** (3) if the convict is a woman who is pregnant, the Court may, in consultation with an authorised medical officer, postpone the execution of qisas up to a period of two years after the birth of the child and during this period, she may be released on bail on furnishing of security to the
satisfaction of the Court or, if she is not so released she shall be dealt with as if sentenced to simple imprisonment.

**Section 337-P [Execution of Qisas for hurt]: (3)** if the convict is a woman who is pregnant, the Court may, in consultation with an authorised medical officer, postpone the execution of qisas up to a period of two years after the birth of the child and during this period, she may be released on bail on furnishing of security to the satisfaction of the Court or, if she is not so released she shall be dealt with as if sentenced to simple imprisonment.

**Section 338. Isqat-i-Hamal:** Whoever, causes a woman, with a child whose organs have not been formed, to miscarry, if such miscarriage is not caused in good faith for the purpose of saving the life of the woman or providing necessary treatment to her, is said to cause ‘isqat-i-hamal’.

**Explanation:** A woman who causes herself to miscarry is within the meaning of this section.

**Section 338A. Punishment for Isqat-I-Haml:** Whoever, causes isqat-i-hamal shall be liable to punishment as ta'zir---

(a) with imprisonment of either description for a term which may extend to three years, if isqat-i-hamal is caused with the consent of the woman;

(b) with imprisonment of either description for a term which may extend to ten years, if isqat-i-hamal is caused without the consent of the woman:

Provided that, if as a result of isqat-i-hamal, any hurt is caused to woman or she dies, the convict shall also be liable to the punishment provided for such hurt or death, as the case may be.

**338B. Isqat-I-Janin:** Whoever, causes a woman with child some of whose limbs or organs have been formed to miscarry, if such miscarriage is not caused in good faith for the purpose of saving the life of the woman, is said to cause isqat-i-janin.

**Explanation:** A woman who causes herself to miscarry is within the meaning of this section.

**Section 354. Assault or criminal force to woman with intent to outrage her modesty:** Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both.
Section 354A. Assault or use of criminal force to woman and stripping her off her clothes. Whoever assaults or uses criminal force to any woman and strips her off her clothes, and in that condition, exposes her to the public view, shall be punished with death or with imprisonment for life and shall also be liable to fine.

Section 377. Unnatural offence: Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than two years nor more than ten years, and shall also be liable to fine.

Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

6.4 THE CRIMINAL PROCEDURE CODE (CrPC), 1898

The Criminal Procedure Code is a procedural law which deals with procedure of criminal case hearings, bails, Appeals, punishment of offences that have been defined in PPC as well as about arresting procedure, cognizable and non-cognizable offences. It is a most comprehensive statute on proceedings dealing criminal cases in courts of Pakistan. Code of Criminal Procedure contains all the procedures and provisions which are necessary to regulate the working of the Criminal Law Courts in the Country.

Women protective provisions in Code of Criminal Procedure are as mentioned below:

Section 48. Breaking open zenana: Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom, does not appear in public such person or police-officer shall, before entering such apartment give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

Section 52. Mode of searching women: Whenever it is necessary to cause a woman to be searched; the search shall be made by another woman, with strict regard to decency.

Section 102(3). Persons in charge of closed place to allow search: Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman, the directions, of section 52 shall be observed.
Section 156(4). Investigation into cognizable cases: No police officer shall investigate an offence under section 497 or section 498 of the Pakistan Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, by some person who had the care of such woman on his behalf at the time when such offence was committed.

Bail for accused women: Section 496 provides for bail in bail-able offences and Section 497(1) under its provision gives a special concession of bail for women in non-bail-able offences. The relevant sections read:

Section 496. In what cases bail to be taken: When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided:

Provided, further that nothing in this Section shall be deemed to affect the provisions of Section 107, Sub-section (4), or Section 117, Sub-section (3).

Section 497. When Bail maybe taken in case of non-bailable offence (1): When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years:

Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail.

6.4.1 Qanun-E-Shahadat Order, 1984
The Qanun-e-Shahadat Order, 1984, is very important piece of legal framework in Pakistan. It repealed the Evidence Act of 1872 and governs the law related to evidence in courts in Pakistan. It is an objective law which is a compendium of rules of procedure and proactive according to which the court is to record evidence.

The intention of Qanun-e-Shahadat Order, 1984, as stated in the Preamble is to bring all laws of evidence in conformity with the injunctions of Islam as laid down in the Holy Quran and Sunnah.
Article 17. Competence and number of witnesses: (1) The competence of a person to testify, and the number of witnesses required in any case shall be determined in accordance with the injunctions of Islam as laid down in the Holy Qur'an and Sunnah:

(2) Unless otherwise provided in any law relating to the enforcement of Hudood or any other special law: —

(a) in matters pertaining to financial or future obligations, if reduced to writing, the instrument shall be attested by two men or one man and two women, so that one may remind the other, if necessary, and evidence shall be led accordingly; and

(b) in all other matters, the Court may accept, or act on the testimony of one man or one woman or such other evidence as the circumstances of the case may warrant.

Article 128. Birth during marriage conclusive proof of legitimacy: (1) The fact that any person was born during the continuance of a valid marriage between his mother and any man and not earlier than the expiration of six lunar months from the date of the marriage, or within two years after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate child of that man, unless: —

(a) The husband had refused, or refuses, to own the child; or

(b) The child was born after the expiration of six lunar months from the date on which the man had accepted that the period of iddat had come to an end.

(2) Nothing contained in clause (1) shall apply to a non-Muslim if it is inconsistent with his faith.

6.5 CRIMINAL LAW AMENDMENTS

6.5.1 Criminal Law (Amendment) Act, 2004

This law introduced the definition of honour crimes and recognized it as an offence. It recognised that killings committed in the name of honour were murders and must be booked and prosecuted as murder and that exemptions will not be given for honour killings or crimes. It also made illegal the exchange of women in marriage or otherwise for the purposes of settling disputes.

Through this law some section had been amended and inserted into the Pakistan Penal Code, 1860 (PPC) and the Code of Criminal Procedure, 1898 (CrPC).

Amendment of Section 299, (Act XLV of 1860): In the Pakistan Penal Code (Act XLV of 1860), in Section 299, after clause (1) the following new clause is inserted;
“(ii) offence committed in the name or on the pretext of honour means an offence committed in the name or on the pretext of Karo Kari, Siyah Kari or similar other customs or practices.”

**Amendment in Section 302, (Act XLV of 1860):** In Pakistan Penal Code in Section 302 new proviso added;

**302. Punishment of qatl-i-amd:** Whoever commits qatl-e-amd shall, subject to the provisions of this Chapter be:

(a) punished with death as qisas;
(b) punished with death for imprisonment for life as ta'zir having regard to the facts and circumstances of the case, if the proof in either of the forms specified in Section 304 is not available; or
(c) punished with imprisonment of either description for a term which may extend to twenty-five years, where according to the Injunctions of Islam the punishment of qisas is not applicable.

[Provided that nothing in this clause shall apply to the offence of qatl-e-amd if committed in the name or on the pretext of honour and the same shall fall within the ambit of clause (a) or clause (b), as the case may be.]

**Amendment in Section 305, (Act XLV of 1860);** In the Pakistan Penal Code, in Section 305, in clause (a);

**305. Wali:** In case of qatl, the wali shall be--

(a) the heirs of the victim, according to his personal law; [but shall not include the accused or the convict in case of qatl-i-amd if committed in the name or on the pretext of honour] and
(b) the Government, if there is no heir.

**Amendment of Section 308, Pakistan Penal Code, (Act XLV of 1860);**

**308. Punishment in qatl-i-amd not liable to qisas, etc.** (1) Where an offender guilty of qatl-i-amd is not liable to qisas under section 306 or the qisas is not enforceable under clause (c) of section 307, he shall be liable to diyat:

Provided that, where the offender is minor or insane, diyat shall be payable either from his property or, by such person as may be determined by the Court:

Provided further that, where at the time of committing qatl-i-amd the offender being a minor, had attained sufficient maturity or being insane, had a lucid interval, so as to be able to realize the consequences of his act, he may also be punished with
imprisonment of either description for a term which may extend to [twenty-five years] as ta’zir:

Provided further that, where the qisas is not enforceable under clause (c) of section 307, the offender shall be liable to diyat only if there is any wali other than offender and if there is no wali other than the offender, he shall be punished with imprisonment of either description for a term which may extend to [twenty-five years] as ta’zir.

(2) Notwithstanding anything contained in subsection (1), the Court, having regard to the facts and circumstances of the case in addition to the punishment of diyat, may punish the offender with imprisonment of either description for a term which may extend to [twenty-five years] as ta’zir.

Amendment of Section 310, Pakistan Penal Code, (Act XLV of 1860);

310. Compounding of qisas (sulh) in qatl-i-amd. (1) In the case of qatl-i-amd, an adult sane wali may, at any time, on accepting badal-i-sulh, compound his right of qisas:
[Provided that a female shall not be given in marriage or otherwise in Badal-i-Sulh.]

(2) Where a wali is a minor or an insane, the wali of such minor or insane wali may compound the right of qisas on behalf of such minor or insane wali:

Provided that the value of badal-i-sulh shall not be less than the value of diyat.

(3) Where the Government is the wali, it may compound the right of qisas:

Provided that the value of badal-i-sulh shall not be less than the value of diyat.

(4) Where the badal-i-sulh is not determined or is a property or a right the value of which cannot be determined in terms of money under Shari’ah, the right of qisas shall be deemed to have been compounded and the offender shall be liable to diyat.

(5) Badal-i-sulh may be paid or given on demand or on a deferred date as may be agreed upon between the offender and the wali.

Explanation. In this section, Badal-i-sulh means the mutually agreed compensation according to Shari’ah to be paid or given by the offender to a wali in cash or in kind or in the form of movable or immovable property.
Insertion of new Section 310-A, Pakistan Penal Code, (Act XLV of 1860);

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

Amendment of Section 311, Pakistan Penal Code, (Act XLV of 1860);

311. Ta'zir after waiver or compounding of right of qisas in qatl-i-amd: Notwithstanding anything contained in Section 309 or Section 310, where all walis do not waive or compound the right of qisas, or if the principle of fasad-fil-arz is attracted (the Court may, having regard to the facts and circumstances of the case, punish an offender against whom the right of qisas has been waived or compounded with death or imprisonment for life or) imprisonment of either description for a term of which may extend to fourteen years as ta’zir.

[Provided that if the offence has been committed in the name or on the pretext of honour, the imprisonment shall not be less than ten years.]

Explanation: For the purpose of this section, the expression fasad-fil-arz shall include the past conduct of the offender, or whether he has any previous convictions, or the brutal or shocking manner in which the offence has been committed which is outrageous to the public conscience, or if the offender is considered a potential danger to the community [or if the offence has been committed in the name or on the pretext of honour].

Amendment of Section 316, Pakistan Penal Code, (Act XLV of 1860);

316. Punishment for qatlshibh-i-amd. Whoever commits qatlshibh-i-amd shall be liable to diyat and may also be punished with imprisonment of either description for a term which may extend to [twenty-five years] as taz’ir.

Amendment of Section 324, Pakistan Penal Code, (Act XLV of 1860);

324. Attempt to commit qatl-i-amd: Whoever does any act with such intention or knowledge, and under such circumstances, that, if he by that act caused qatl, he would be guilty of qatl-i-amd, shall be punished with imprisonment for either description for a term which may extend to ten years, [but shall not be less than five years if the offence has been committed in the name or on the pretext of honour] and shall also be
liable to fine, and, if hurt is caused to any person by such act, the offender shall, by liable to the punishment provided for the hurt caused:

Provided that where the punishment for the hurt is qisas which is not executable, the offender shall be liable to arsh and may also be punished with imprisonment of either description for a term which may extend to seven years.

**Amendment of Section 337-N, Pakistan Penal Code, (Act XLV of 1860);**

**337-N. Cases in which qisas for hurt shall not be enforced:**

(1) The qisas for a hurt shall not be enforced in the following cases, namely:-

(a) When the offender dies before execution of qisas;

(b) When the organ of the offender liable to qisas is lost before the execution of qisas:

Provided that offender shall be liable to arsh, and may also be liable to ta’zir provided for the kind of hurt caused by him;

(c) When the victim waives the qisas or compounds the offence with badl-i-sulh; or

(d) When the right of qisas devolves on the person who cannot claim qisas against the offender under this Chapter:

Provided that the offender shall be liable to arsh, if there is any wali other than the offender and if there is no wali other than the offender he shall be liable to ta’zir provided for the kind of hurt caused by him.

(2) Notwithstanding anything contained in this Chapter, in all cases of hurt, the Court may, having regard to the kind of hurt caused by him, in addition to payment of arsh, award ta’zir to an offender who is a previous convict, habitual or hardened, desperate or dangerous criminal [or the offence has been committed by him in the name or on the pretext of honour].

[Provided that the ta’zir shall not be less than one-third of the maximum imprisonment provided for the hurt caused if the offender is a previous convict, habitual, hardened, desperate or dangerous criminal of if the offence has been committed by him in the name or on the pretext of honour.]

**Amendment of Section 338-E, Pakistan Penal Code, (Act XLV of 1860);**

**338-E. Waiver or compounding of offences:** (1) Subject to the provisions of this Chapter and Section 345 of the Code of Criminal Procedure, 1898 (V of 1898), all offences under this Chapter may be waived or compounded and the provisions of Sections 309 and 310 shall, mutatis mutandis, apply to the waiver or compounding of such offences:
Provided that, where an offence has been waived or compounded, the Court may, in its discretion having regard to the facts and circumstances of the case, acquit or award ta’zir to the offender according to the nature of the offence.

[Provided further that where an offence under this Chapter has been committed in the name or on the pretext of honour, such offence may be waived or compounded subject to such conditions as the Court may deem fit to impose with the consent of the parties having regard to the facts and circumstances of the case.]

(2) All questions relating to waiver or compounding of an offence or awarding of punishment under Section 310, whether before or after the passing of any sentence, shall be determined by trial Court:

Provided that where the sentence of qisas or any other sentence is waived or compounded during the pendency of an appeal, such questions may be determined by the Appellate Court.

Amendment in Chapter XLV, in the Code of Criminal Procedure, (Act V of 1898);
The following new Sections inserted, namely:

156-A. Investigation of offence under section 295C, Pakistan Penal Code: Notwithstanding anything contained in this Code, no police officer below the rank of a Superintendent of Police shall investigate the offence against any person alleged to have been committed by him under Section 295C of the Pakistan Penal Code, 1860 (Act XLV of 1860).

156-B. Investigation against a woman accused of the offence of Zina. Notwithstanding anything contained in this Code, where a person is accused of offence of Zina under Offence of Zina (Enforcement of Hudood) Ordinance, 1879 (VII of 1979), no police officer below the rank of a Superintendent of Police shall investigate such offence nor shall such accused be arrested without permission of the Court.
Explanation- In this section “Zina” does not include Zina-bil-Jabr.

Amendment of Section 401, Code of Criminal Procedure (Act V of 1898);

401. Power to suspend or remit sentences. (1) When any person has been sentenced to punishment for an offence, the Provincial Government may at any time without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.
[Provided that the Provincial Government shall have no power to suspend or remit any sentence awarded to an offender under Chapter XVI of the Pakistan Penal Code if an offence has been committed by him in the name or on the pretext of \textit{karo kari, siyah kari} or similar other customs or practices.]

(2) Whenever an applications is made to the Provincial Government for the suspension or remission of a sentence the Provincial Government may require the Presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reason for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the Provincial Government, not fulfilled the Provincial Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police-officer without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(4-A) The provisions of the above sub-section shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law, which restricts the liberty of any person or imposes any liability upon him or his property.

(5) Nothing herein contained shall be deemed to interfere with the right of the President or of the Central Government when such right is delegated to it to grant pardons, reprieves, respites or remissions of punishment.

(5-A) Where a conditional pardon is granted by the President or, in virtue of any powers delegated to it, by the Central Government, any condition thereby imposed, of whatever nature, shall be deemed to have been imposed by a sentence of a competent Court under this Code and shall be enforceable accordingly.

(6) The Provincial Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petition should be presented and dealt with.

\textbf{6.5.2 Protection for Women (Criminal Law Amendment) Act, 2006}

This Act amends the Pakistan Penal Code, Code of Criminal Procedure, Hudood Ordinance and the Dissolution of Muslim Marriage ACT 1939. The object of this Act is
provide relief and protection to women against misuse and abuse of law and to prevent their exploitation as well as to bring, in particular, laws relating to zina and qazf in conformity with the stated objectives of the Constitution and the injunctions of Islam.

In the Pakistan Penal Code (Act XLV of 1860) the following new sections inserted namely:

365-B. Kidnapping, abducting or inducing woman to compel for marriage etc. —Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced, or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment for life, and shall also be liable to fine, and whoever by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing ,that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.

367-A. Kidnapping or abducting in order to subject person to unnatural lust.— Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with death or rigorous imprisonment for a term which may extend to twenty five years, and shall also be liable to fine.

371-A. Selling person for purposes of prostitution, etc. Whoever sells, lets to hire, or otherwise disposes of any person with intent that such a person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person shall at any time be employed or used for any such, purpose, shall be punished with imprisonment which may extend to twenty-five years, and shall also be liable to fine.

Explanations:-
(a) When a female is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

(b) For the purposes of this section and section 371B, "illicit intercourse" means sexual intercourse between persons not united by marriage.
371-B. Buying person for purposes of prostitution, etc. Whoever buys, hires or otherwise obtains possession of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose, shall be punished with imprisonment which may extend to twenty-five years, and shall also be liable to fine.

Explanation: Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

375. Rape: A man is said to commit rape who 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 another person to whom she is or believes herself to be married; or
(v) with or without her consent when she is under sixteen years of age.

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

376. Punishment for rape: (1) Whoever commits rape shall be punished with death or imprisonment of either description for a term which shall not be less than ten years or more, than twenty-five years and shall also be liable to fine.

(2) When rape is committed by two or more persons in furtherance of common intention of all, each of such persons shall be punished with death or imprisonment for life.

493-A. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage: Every man who deceitfully causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit with him in that belief, shall be punished with rigorous imprisonment for a term which may extend to twenty-five years and shall also be liable to fine.
496-A. Enticing or taking away or detaining with criminal intent a woman:
Whoever takes or entices away any woman with intent that she may have illicit
intercourse with any person, or conceals or detains with that intent any woman, shall
be punished with imprisonment of either description for a term which may extend to
seven years, and shall also be liable to fine.

496-B. Fornication (1) A man and a woman not married to each other are said to
commit fornication if they wilfully have sexual intercourse with one another.

(2) Whoever commits fornication shall be punished with imprisonment for a term
which may extend to five years and shall also be liable to fine not exceeding ten
thousand rupees.

496-C. Punishment for false accusation of fornication whoever brings or levels or
gives evidence of false charge of fornication against any person, shall be punished
with imprisonment for a term which may extend to five years and shall also be liable
to fine not exceeding ten thousand rupees:

Provided that a Presiding Officer of a Court dismissing a complaint under Section
203C of the Code of Criminal Procedure, 1898, and after providing the accused an
opportunity to show cause if satisfied that an offence under this section has been
committed shall not require any further proof and shall forthwith proceed to pass the
sentence.

In the Code of Criminal Procedure, 1898 (Act V of 1898) following new Sections
inserted:

203-A. Complaint in case of Zina: (1) No court shall take cognizance of an offence
under section 5 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (VII
of 1919), except on a complaint lodged in a Court of competent jurisdiction.

(2) The Presiding Officer of a Court taking cognizance of an offence on a complaint
shall at once examine, on oath, the complainant and at least four Muslim, adult male
eye-witnesses, about whom the Court is satisfied having regard to the requirement of
tazkiyah-al-shahood, that, they are truthful persons and abstain from major sins
(kabair), of the act of penetration necessary to the offence.

Provided that, if the accused is a non-muslim, the eye-witnesses may be non-
muslims.

Explanation: In this section "tazkiyah-al-shahood" means the mode of inquiry
adopted by a Court to satisfy itself as to the credibility of a witness.
(3) The substance of the examination of the complainant and the eye-witnesses shall be reduced to writing and shall be signed by the complainant and the eye-witnesses, as the case may be, and also by the Presiding Officer of the Court.

(4) If in the opinion of the Presiding Officer of a Court, there is sufficient ground for proceeding, the Court shall issue summons for the personal attendance of the accused.

(5) The Presiding Officer of a Court before whom a complaint is made or to whom it has been transferred may dismiss the complaint, if, after considering the statements on oath of the complainant and the four or more eye-witnesses there is, in his judgment, no sufficient ground for proceeding and in such case he shall record his reasons for so doing.

203-B. Complaint in case of Qazf: (1) Subject to sub-section (2) of section 6 of the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979), no Court shall take cognizance of an offence under section 7 of the said Ordinance, except on a complaint lodged in a Court of competent jurisdiction.

(2) The Presiding Officer of a Court taking cognizance of an offence on a complaint shall at once examine on oath the complainant and the witnesses as mentioned in section 6 of the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979) of the act of Qazf necessary to the offence.

(3) The substance of the examination of the complainant and the witnesses shall be reduced to writing and shall be signed by the complainant and the witnesses, as the case may be, and also by the Presiding Officer of the Court.

(4) If in the opinion of the Presiding Officer of a Court, there is sufficient ground for proceeding the Court shall issue summons for the personal attendance of the accused.

(5) The Presiding Officer of a Court before whom a complaint is made or to whom it has been transferred may dismiss the complaint, if, after considering the statements on oath of the complainant and the witnesses there is, in his judgment, no sufficient ground for proceeding and in such case he shall record his reasons for so doing.

203-C. Complaint in case of fornication: (1) No court shall take cognizance of an offence under section 496A of the Pakistan Penal Code, except on a complaint lodged in a Court of competent Jurisdiction.

(2) The Presiding Officer of a Court taking cognizance of an offence shall at once examine on oath the complainant and at least two eyewitnesses to the act of fornication.
(3) The substance of the examination of the complainant and the eye-witnesses shall be reduced to writing and shall be signed by the complainant and the witnesses, as the case may be, and also by the Presiding Officer of the Court.

(4) If in the opinion of the Presiding Officer of a Court, there is sufficient ground for proceeding the Court shall issue a summons for the personal attendance of the accused:

Provided that the Presiding Officer of a Court shall not require the accused to furnish any security except a personal bond, without sureties, to ensure attendance before the Court in further proceedings.

(5) The Presiding Officer of a Court before whom a complaint is made or to whom it has been transferred may dismiss the complaint, if, after considering the statements on oath of the complainant and the witnesses there is, in his judgment, no sufficient ground for proceeding and in such case he shall record his reasons for so doing.

(6) Notwithstanding the foregoing provisions, or anything contained in any other law for the time being in force no complaint under this section shall be entertained against any person who is accused of zina under section 5 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979) and against whom a complaint under section 203A of this Code is pending or has been dismissed or who has been acquitted or against any person who is a complainant or a victim in a case of rape, under any circumstances whatsoever.

6.5.3 Enforcement of Hudood Ordinance 1979 Amendment of Section 2, Ordinance, VII of 1979

In the offence of Zina (Enforcement of Hudood Ordinance, (VII of 1979), in Section 2 the following new clause (aa) inserted:

[(aa) “Confession” means, notwithstanding any judgment of any court to the contrary, an oral statement, explicitly admitting the commission of the offence of zina, voluntarily made by the accused before a court of sessions having jurisdiction in the matter or on receipt of a summons under Section 203A of the Code of Criminal Procedure, 1898 (Act V of 1898)]

In the offence of Zina (Enforcement of Hudood Ordinance, (VII of 1979), new Section 5A inserted:

5A. No case to be converted, lodged or registered under certain provisions: No complaint of zina under section 5 read with section 203A of the Code of Criminal Procedure, 1898 and no case where an allegation of rape is made shall at any stage be converted into a complaint of fornication under section 496A of the Pakistan Penal Code (Act XLV of 1860) and no complaint of lewdness shall at any stage be converted
into a complaint of zina under section 5 of the Offence of Zina (Enforcement of Hudood) Ordinance 1979 (Ordinance No. VII of 1979) or an offence of similar nature under any other law for the time being in force.

Amendment of Section 6, Ordinance VIII of 1979

In the offence of Qazf (Enforcement of Hudood Ordinance (VIII of 1979), the new subsection (2) added.

[(2). The Presiding Officer of a court dismissing a complaint under section 203A of the Code of Criminal Procedure, 1898 or acquitting an accused under Section 5 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance VII of 1979), if satisfied that the offence of qazf liable to hadd has been committed, shall not require any proof of qazf and shall proceed to pass sentence under section 7.]

Amendment of Section 9, Ordinance VIII of 1979

[(2). In a case in which, before the execution of hadd, the complainant withdraws his allegation of qazf, or states that the accused had made a false confession or that any of the witnesses had deposed falsely, hadd shall not be enforced.]

Amendment of Section 17, Ordinance VIII of 1979

[Provided that an offence punishable under section 7 shall be triable by a Court Of Sessions and not by or before a Magistrate authorized under section 30 of the said code and an appeal from an order of the Court Of Sessions shall lie to the Federal Shariat Court.]

Provided further that a trial by, or proceeding before, the court of sessions under this Ordinance shall ordinarily be held at the headquarters of the Tehsil in which the offence is alleged to have been committed or as the case may be, the husband who has made the accusation ordinarily resides.

6.5.4 Criminal Law (Amendment) Act, 2010

The Act creates an amendment to Section 509 of the PPC. It replaces the original section with the offence of sexual harassment. As a result, a wide definition of sexual harassment has been included in the law, effectively criminalizing it. It also provides a corresponding punishment. This law talks more specifically about the harassment at public places.

The Criminal Law (Amendment) Act defines sexual harassment and insult to modesty by replacing Section 509 of the Pakistan Penal Code, 1860 and provide for enhanced punishment.
509. Insulting modesty or causing sexual harassment – (1) whoever:

(i) Intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman;

(ii) conducts sexual advances, or demands sexual favours or uses written or verbal communication or physical conduct of a sexual nature which intends to annoy, insult, intimidate or threaten the other person or commits such acts at the premises of work place, or makes submission to such conduct either explicitly or implicitly a term or condition of an individual’s employment, or makes submission to or rejection of such conduct by an individual a basis for employment decision affecting such individual, or retaliates because of rejection of such behaviour, or conducts such behaviour with the intention of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment;

shall be punished with imprisonment which may extend to three years or fine up to five hundred thousand rupees or with both.

**Explanation-1**

Such behaviour might occur in public place, including, but not limited to, markets, public transport, streets or parks, or it might occur in private places including, but not limited to, work places, private gatherings or homes.

**Explanation-2**

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. Sexual advances may occur after working hours and outside workplace. It is the access that a perpetrator has to the person being harassed by virtue of a job situation or job related functions and activities.

6.5.5 Criminal Law (2\(^{nd}\) Amendment) Act, 2011

This Act includes amendment within the PPC to specifically deal with the offence of hurt being caused by acid, a crime which women are the most common victim of. It amends in the section of hurt to include the effects of acid i.e. disfiguring or defacing. It also makes a specific insertion of new sections relating to hurt by corrosive substance and a corresponding punishment.
Amendment of Section 332 Pakistan Penal Code, (Act XLV of 1860);

332. Hurt: (1) whoever causes pain, harm, disease, infirmity or injury to any person or impairs, disables [disfigures, defaces] or dismembers any organ of the body or part thereof of any person without causing his death, is said to cause hurt.

[Explanation. Disfigure means disfigurement of face or disfigurement or dismemberment of any organ or any part of the organ of the human body which impairs or injures or corrodes or deforms the symmetry or appearance of a person.]

(2) The following are the kinds of hurt:
   (a) Itlaf-i-udw
   (b) itlaf-i-salahiyyat-i-udw
   (c) shajjah
   (d) jurh and
   (e) All kinds of other hurts.

Insertion of new Sections 336-A and 336-B Pakistan Penal Code, (Act XLV of 1860);

336-A. Hurt caused by corrosive substance: Whoever with the intention or knowingly causes or attempts to cause hurt by means of a corrosive substance or any substance which is deleterious to human body when it is swallowed, inhaled, comes into contact or received into human body or otherwise shall be said to cause hurt by corrosive substance:

Explanation. In this sub-section, unless the context otherwise requires, “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 human body.

336-B. Punishment for hurt by corrosive substance: Whoever causes hurt by corrosive substance shall be punished with imprisonment for life or imprisonment of either description which shall not be less than fourteen years and a minimum fine of one million rupees.

6.5.6 The Prevention Of Anti Women Practices-Criminal Law (3rd Amendment) ACT, 2011
This law makes amendments to the PPC, including within the PPC a number of offences considered to be customary practices. It expands the existing clause on prohibition on exchange of women for purposes of resolution of a dispute to include prohibition of customs such as Wanni, Swara or any other such custom. New sections added include prohibition of depriving women from inheriting their property;
creating an offence for forced marriages of women; and marriage of a woman to the Holy Quran. These amendments target those who force women into such situations, depriving them or their rights or coercing them against their will.

**Insertion of new Chapter XXA, in the Pakistan Penal Code (Act XLV of 1860):**

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

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

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

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

**Insertion of new section 402D in the Code of Criminal Procedure, (Act V of 1898):**

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

### 6.6 SPECIAL LEGISLATION

**6.6.1 Prevention and Control of Human Trafficking Ordinance, 2002**

The offence relating to traffic in human being is incompatible with the dignity and worth of human being and endangers the welfare of the individual, family and the community. It is expedient and necessary to provide effective measures to prevent offences relating to human trafficking and to protect and assist victims of such trafficking. By observing the Constitutional provision against Trafficking in persons (Article 11) and supplementing UN Convention against Transnational Organized Crime, Pakistan has taken very positive steps in the field of legislation for prevention
of Human Trafficking and protection of Victims, introduced *Prevention & Control of Human Trafficking Ordinance (PCHTO)*, 2002.

This Ordinance defines *the crimes of human trafficking*. It also provides punishments for such trafficking and identifies those responsible for it. It also stipulates in section 6(iii) Government to make arrangements for the shelter, food and medical treatment of victim being an unaccompanied child or destitute woman. All offences under the ordinance shall be cognizable, non-bailable and non-compoundable. However, this law only relates to external trafficking i.e. requiring a crossing of International borders.

**6.6.2 The Protection Against Harassment of Women at the Workplace Act, 2010**

The objective of this Act is to create a safe working environment for women, which is free of harassment, abuse and intimidation with a view toward fulfilment of their right to work with dignity. It also enables higher productivity and a better equality of life at work. The harassment is one of the biggest hurdles faced by the working women preventing many who want to work to get themselves and their families out of poverty. This Act will open the path for women to participate more fully in the development of this country at all levels.

This Act builds on the principles of the equal opportunity for men and women and their right to earn livelihood without fear of discrimination as stipulated in the Constitution. It also adheres to the Human Rights Declaration, the United Nations Convention for Elimination of all forms of Discrimination Against Women and ILO’s Convention on worker’s rights. It adheres to the principles of Islam and all other religions in our country which assure women dignity.

This Act was given assent by President of Pakistan on 9th March, 2010 and published in Gazette on 11th March, 2010.

The provisions made in the Protection Against Harassment of Women at the Workplace Act, 2010, states the following:

- a. Provides protection against harassment to women at workplace.
- b. It also lays down the code of conduct at the workplace.
- c. It also requires all public and private organizations to adopt an internal code of conduct and complain /appeals mechanism aimed at establishing a safe working environment, free of intimidation and abuse for all working women.
- d. The management shall display the copies of the code of conduct in their workplace.
- e. It shall be the responsibility of the employer to ensure the implementation of this Act including but not limited to incorporate the code of conduct as a part of
their management policy (on the failure of the employer to comply with these provisions the employer shall be liable to fine which may extend to one hundred thousand rupees but should not be less than twenty five thousand rupees).

f. Constitution of a committee on complaint consisting of three members, one of whom shall be a lady.

g. Establish an Ombudsman at Federal and provincial levels.

In Islamabad, Federal Ombudsman Justice Yasmeen Abassi has been appointed. In Sindh province, Ombudsman has been appointed as enumerated in Section 7 of the said Act. A number of penalties are identified for those found guilty of harassment.

6.6.3 The Sindh Protection of Human Rights Act, 2011

The Sindh Protection of Human Rights Bill, 2011, assented by the Governor of Sindh on 9th June, 2011 and published as an Act of the Legislatures of Sindh. It is an Act for providing protection to human rights relating to life, liberty, equality and dignity of individual guaranteed by the Constitution of the Pakistan and enforceable by law. This Act also provided for the establishment of a Commission.

Under the said Act no court shall have jurisdiction to entertain any proceedings or make any order in relation to anything done or purported to be done.

Sindh Human Rights Commission

Sindh Government has established the Human Rights Commission, a Government run body to protect people’s fundamental Rights . Under this Act, the Commission would be able to:

a. Inquire, take sou moto action or on a Petition by victims or any person on his/her behalf in complaint of a violation of fundamental rights abetment, negligence in the prevention of such violation, by a public servant.

b. Recommend the Government to initiate remedial measures including action against anyone involved in violation of basic rights.

c. Formulate, implement and regularly update polices with a view to protect Human Rights.

d. Visit any jail or institution under the control of the Government to see the living conditions of the inmates and make recommendations.

e. Study treaties and other international instruments on human rights and make recommendation for their effective implementation.

f. Promote awareness for the protection of human rights.

This Act was passed on 8th March, 2012. This Act has been passed by the Parliament to promote the social, economic, political and legal rights of women as enshrined in the Constitution of Pakistan and in accordance with international declarations, conventions, treatise relating to women including the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). This Act is to protect women’s rights against any kind of discrimination Section 3 of this Act provides for the establishment of a Commission and Section 11 of the Act discusses the powers and function of the Commission.

National Commission on the Status of Women (NCSW)

National Commission on Status of Women is a statutory body to combat discrimination against women, established in July 2000. It is an outcome of the national and international commitments of the Government of Pakistan like, the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), Beijing Declaration and Platform for Action (1995) and National Plan for Action for Women (1998). The Commission can take notice of the following:

a. Violation of the women rights and it can hold inquiry in the matter. It has powers of civil court for enforcing the attendance of any person and production of the any documents.
b. Examine polices, programs and other measures taken by the Federal Government for gender equality, women’s empowerment, political participation and make recommendations.
c. Recommend the signing or ratifying of the international instruments.
d. Review laws, rules and regulation affecting the status and rights of women and suggests new legislation to eliminate discrimination and achieve gender equality in accordance with the Constitution.
e. Monitor mechanisms and institutional procedures for redressal of violation of women’s rights.
f. Maintain data relating to women and gender issues for providing awareness for national policy and women empowerment.
g. With the permission of the Provincial Government, may inspect any jail or sub-jail where women are kept.

6.6.5 The Sindh Domestic Violence (Prevention and Protection) Act, 2013

This Act was given assent by the Governor of Sindh on 12th March, 2013 and published as an Act of the Legislature of Sindh.

The said Act makes violence against women, children and vulnerable person, in domestic relationship, an offence. The Act also stipulates that the cases regarding
domestic violence be dealt with expeditiously, time lines in this connection have also been given. Besides children and women, the Act also provides protection to the adopted and domestic associates in a household.

The law classifies domestic violence as acts of physical, sexual or mental assault, force, criminal intimidation, harassment, hurt, confinement and deprivation of economic or financial resources.

The aim of the Act is to provide measures which prevent and protect women, children and any vulnerable person from domestic violence. This Act defines domestic violence as inclusive of but not limited to, all acts of gender based and other physical and physiological abuse committed by respondent against women, children or other vulnerable persons with respondent is or has been in a domestic relationship.

Section 4 of the said Act provides that government shall constitute a Commission which shall review from time to time the existing provisions of the law on domestic violence, suggest amendments, investigate incidence of domestic violence and take suo moto notice of matters relating the domestic violence.

The said Act provides that aggrieved person will present a petition to the court having jurisdiction and the court may order the following at any stage of the proceeding:

a. Aggrieved person to undergo mandatory counselling.

b. Right to reside in a house whether or not he or she has any right, title or beneficial interest in the same.

c. May grant interim order.

d. Passing of protection and residence orders.

e. May pass interim, directing the respondent to pay monitory relief.

f. May grant a temporary custody of an aggrieved person –if a child then to a person under Guardian and Ward Act 1890 and if an adult then to a service provider.
SOUTH ASIAN COUNTRIES: CASE LAWS CONCERNING GENDER BIAS
7.1 SOUTH ASIAN COUNTRIES: CASE LAWS CONCERNING GENDER BIAS

Gender bias is indeed a global phenomenon and everywhere in the world the legal systems have in recent years tried to tackle the problem.

Judges are not supposed to make law, but the pressing need for enforcing gender justice has prompted the judiciary to take suo moto notices of violation of women’s modesty incidents, have issued guidelines on several women-related matters.

Gender sensitization of the subordinate courts through judicial education is a pressing need of time; and so is public awareness of the gender justice laws.

In order to accelerate the process of eliminating gender bias from the society, laws alone are not enough to combat the evil. The role of courts is of greater importance in implementation of the said laws. To combat crimes against women, a socially sensitive judge can be far more protective than the texts of complicated Penal laws.

That said, cases should be dealt on the principles of “justice and equity” by judiciary, Commission on status of women should also play its role to give suggestions and to sensitize the nation by mass media.

7.2 CASE LAWS FROM PAKISTAN

7.2.1 Dissolution Of Marriage By Khula:
Case of Mst. Bilqis Fatima v. Najam-ul-Ikram (PLD 1959 West Pakistan Lahore page 566): The first case decided by Superior Court in Pakistan regarding right of Khula is in PLD 1959 West Pakistan Lahore page 566 Mst. Bilqis Fatima - Plaintiff - Appellant v. Najam-ul-Ikram Qureshi - Defendant - Respondent, decided by Hon'ble Justice Shabbir Ahmed, B. Z. Kaikaus and Masud Ahmed. A new point purely of law had been raised before the Appellate Court in Second Appeal that whether Khula is right of wife.

Held by the Full Bench in the cited case that:

“The wife is entitled to dissolution of marriage on restoration of what she received in consideration of marriage if the Judge apprehends that parties will not observe the limits prescribed by God.”

In the said judgment the Quranic verses has been quoted which form the basis for right of khula being versed 229 Surah Baqr. This verse permits the termination of a marriage by the wife passing consideration to the husband. The question for consideration is whether this termination can be effected only by agreement between
the husband and the wife or whether the wife can claim such termination even if the husband be not agreeable.

The Islamic concept has been discussed that Islam does not force the spouses to live together if the life is devoid of happiness and it has been stressed “if you fear the limit of God”.

The reference has been given of the book; namely, “Haquq-uz-Zaujain” written by Maulana Abul Ala Maudoodi and specifically given emphatic opinion that khula is the right of the wife, and has mentioned the verse of Holy Quran which says, “And if you fear that they (spouses) cannot be kept within the limits of Allah there is no blame on them or what she may give up to become free thereby”, and has referred to famous case of Sabet Bin Kias (R.A) wherein Holy Prophet had ordered Sabet Bin Kias(R.A) to divorce his wives on their restoration of what they had received from him, and Hazrat Umar (RA) had said the following that the principles of Sabet (R.A.) allowed khula to a woman on payment of some small amount because the woman had absolutely refused to live with her husband.

The Holy Quran has given the said privilege, which had been denied to the women by man-made customs which have no force of law of the country.

Divorce is permissible by Holy Quran but it has been described as the most abhorrent act in the eyes of God. Women, however, have been given the right of khula if “husband and wife cannot live within the limits prescribed by God.”

**Case of Mst. Khursheed Bibi v. Baboo Muhammad Amin (PLD 1967 SC 97):**
Hon’ble Superior Court in Mst. Khursheed Bibi v. Baboo Muhammad Amin case (PLD 1967 SC 97) held, inter alia;

“Firstly, the words "if you fear" involve by necessary implication a reference to the Qazi and adjudication by him. The occasion for a reference to him arises only where the husband refuses to release his wife, when she demands a divorce, for if the matter is mutually agreed upon between the parties, the husband will divorce her, and there will be no reference to the Qazi; and no occasion for him to arrive at the conclusion that the parties will not keep within the limits of Allah. In consequence, the verse is a rule of decision in cases, where the husband refuses to release his wife, and is not in express terms applicable to cases of khula by mutual agreement where there is no reference to the Qazi. In khula, under the verse, the husband is permitted to accept what the wife may give him to be free and this is an exception to the general rule stated in cases of divorce by the husband in verse 2:229 and verses 19 and 20 of Sura Al-Nisa that it is not lawful for him to take back any part of what he
has given to the wife, but it is lawful "if the Qazi entertains the fear". Therefore, the verse contemplates an adjudication by the Qazi as justification for the husband's accepting what his wife gives him for being free. The provision of adjudication in the verse is evidence of Divine Wisdom, for it ensures on the one hand that there are not too many, too frequent and unrestricted dissolution of marriages (and thus there need be no fear of frequent breaking of family ties)"

"Secondly, it confers a right and a privilege on the wife to seek dissolution of marriage. Khula is thus a right conferred on the wife. In the prior verse 2:228 the Holy Qur'an itself mentions "women have rights against men similar to those that men have against them, according, to the well-known rules of equity."

Under Muslim Law, the wife is entitled to Khula, as of right, if she satisfied the conscience of the Court that it will otherwise mean forcing her into a hateful union. The basic principle of Khula is “the parties cannot live within limits prescribed by God and return of benefits by wife and the wife will have to forego the dower amount”.

7.2.2 Women Being Qazi & Judge:
Ansar Burney v. Federation of Pakistan (PLD 1983 FSC 73): The Hon’ble Federal Shariat Court in PLD 1983 FSC 73 (Ansar Burney v. Federation of Pakistan) authored by Hon’ble Mr. Justice Aftab Hussain it has been held, inter alia;

"It is not a good ground for excluding women from appointment as Qazi’s that the Holy Prophet or his four successive Caliphs did not appoint any woman as such since the rule is that what is not prohibited by Holy Qur’an and Sunnah is permitted and the burden of proof about anything being prohibited is on the person who claims it to be so".

7.2.3 Protection To The Rights Of Pardanashin Lady As Well An Illiterate Woman:
Mian Allah Ditta through LRs v. Mst. Sakina Bibi & others (2013 SCMR 868): The courts in Pakistan have been protecting the legal rights of women where majority of women are illiterate. In India in AIR 1930 Calcutta 591 it has been held:

“The rule of law so far as pardanashin women is concerned is well known and has been clearly laid down in many decisions of the Privy Council. It is true that most of these decisions relate to the case of pardanashin ladies. We have not been referred to any case in which the principle has been extended to the case of other women who do not come within that class; but that does not seem to be any reason why a rule which is applicable to pardanashin ladies on the ground of their ignorance and illiteracy should be restricted to that class only and should not apply to the case of a poor woman who is equally ignorant and illiterate."
This has been discussed in Mian Allah Ditta through LRs v. Mst. Sakina Bibi & others (2013 SCMR 868) wherein, it has been held inter alia:

“The protection provided to them in law is on the account of the fact that they invariably are helpless, weak and vulnerable. The said consideration would equally be attracted to an illiterate lady particularly when she was placed in the circumstances which made her vulnerable to deceit mis-representation”.

In the said case law, the son-in-law was petitioner and he had transferred the property of respondent by preparing forged General Power of Attorney and transfer the property in his name, and in order to protect the right of pardanashin lady, the Hon’ble Supreme Court has laid down the said criteria keeping in view the legal protection provided to a pardanashin lady equally available to an illiterate and ignorant lady. The protection has been provided keeping in view the illiteracy rate of women in country on account of illiteracy the pardanashin ladies are vulnerable, weak and helpless.

In India the Judicial Committee of the Privy Council in the case of Hodges v. Delhi and London Bank Ltd. (1901) 23 All. 137 it has been held:

“So even in the case of woman who is outside the regular pardanashin class it is for those who lived with her to establish that she had the capacity of understanding the transaction that was entered into and that she entered into the transaction voluntarily and with full knowledge and import of what the transaction meant.”

7.2.4 Protection Given To Women By Federal Shariat Court:


In this case, the Hon’ble Federal Shariat Court exercised of the Revisional Jurisdiction in considering the case in which a blind girl namely Safia Bibi was convicted by Trial Court under Section 10(2) of the Offence of Zina (Enforcement of Hudood.) Ordinance, 1979 and sentenced to three years rigorous imprisonment, whipping numbering fifteen stripes and a fine of rupees 1000, in default of payment of which she was directed to undergo further rigorous imprisonment for a period six months. Her co-accused Maqsood Ahmed, was, however, acquitted for want of evidence.

It was held, inter alia, in para 11 of the judgment at page 122 that:

“There is also no evidence against Mst. Safia Bibi. It is unfortunate that though a victim of Zina-bil-Jabr, the natural phenomena of her pregnancy and motherhood betrayed her and she had to suffer the humiliation of a trial, conviction and sentence in addition to the disgrace and dishonour suffered by her at the hands of her fellow human beings in the society.”
In para 31 at page 126 it was held that:

“This being a case of no evidence, the appeal is accepted and the appellant is acquitted. Her bail bond is discharged. The notice for exercise of revisional jurisdiction has been rendered infructuous by the filing of appeal and is discharged.”

7.2.5 Suo Moto Case Of Gender Equity:
The Hon’ble Federal Shariat Court held in PLD 2008 FSC 1 [Suo Motu Case No.1/K of 2006 (Gender Equality)] that the Hon’ble Federal Shariat Court, in exercise of its powers under Art. 203-D of the Constitution, took suo motu notice of a news item that under Pakistan Citizenship Act, 1951, a married Pakistani woman was denied the right to get Pakistan's citizenship for her foreign husband; while a married man was entitled under S.10 of Pakistan Citizenship Act, 1951, to obtain Pakistan citizenship for his foreign wife---Section 10 of Pakistan Citizenship Act, 1951 was discriminatory, which negated gender equality and was in violation of Articles.2-A & 25 of the Constitution and also against international commitments of Pakistan and most importantly was repugnant to Holy Qur’an and Sunnah.

In para 16 it has been held, inter alia, that:

“The principles and provisions set out in Objectives Resolution were made substantive part of the Constitution by the Constitution (First Amendment) Act, 1974, by introducing Article 2A which inter alia speaks of the principles of democracy, freedom, equality, tolerance and social justice while Article 25 expressly guarantees equality of citizens as under:

"Article 25. (1) All citizens are equal before law and are entitled to equal protection of law.
(2) There shall be no discrimination on the basis of sex alone.
(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children”.

Hon’ble Federal Shariat Court in para 29 page 16 of the judgment give the following directions:

“We, therefore, in exercise of our powers under clause (3) (a) of Article 203-D of the Constitution of Islamic Republic of Pakistan require the President of Pakistan to take suitable steps for amendment of section 10(2) and other provisions of the Citizenship Act, 1951 within a period of six months hereof ensuring appropriate procedure for grant of Pakistani Nationality to a foreign husband married to a Pakistani woman.”
7.2.6 Equal Rights of Education:

Ummara Danish v. Chairman BISE Swat {2012 YLR 80 (Peshawar)}: The petitioner passed SSC examination in one sitting and got 946 marks out of 1050. She stood 12th in 15 topmost students and 6th amongst female students. Board authorities ignored her for granting National Talent Scholarship. Two boys who passed the same examination had respectively secure 945/1050 marks and 940/1050, and had been accorded the said scholarship but petitioner was not considered for the scholarship being female. Boys have been given preference by the board on the ground that the Board Rules have limited the scholarship for 5 girls only. Boys had been given preference over girls without rhyme or reason. The court held that this discrimination is against the law of country. Girl students should have been protected and encouraged so that their generation becomes literate. Article 25(2) of the constitution declares that there should be no discrimination on the basis of sex.

7.3 CASE LAWS FROM INDIA

7.3.1 Women Harassment:

Delhi Domestic Working Women’s Forum v. Union of India (UOI) and Others (1995 SCC (1) 14, JT 1994 (7) 183): The case was decided by Supreme Court of India. Facts are: four women were raped by seven Indian Army Officers while travelling in train from Ranchi in Bihar to Delhi. The Supreme Court of India laid down following guidelines:

- The police should be under a duty to inform the victim of her right to representation before any questions were asked of her, and that the police report should state that the victim was so informed;
- A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable;
- The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorised to act at the police station before leave of the court was sought or obtained;
- In rape trials, the anonymity of the victim must be maintained, as far as necessary;
- It is necessary, having regard to the Directive Principles contained under 38 (1) of the Constitution of India to set up Criminal Injuries Compensation Board, as rape victims frequently incur substantial financial losses. Some are for example too traumatised to continue in their employment.
Compensation to victims shall be awarded by the court upon the conviction of the offender, and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account the pain, suffering, and shock, the loss of earnings due to pregnancy, as well as the expenses of child birth if this occurred as a result of the rape.

The Supreme Court also gave direction to the National Commission for Women to draft a scheme for the compensation of victims of rape.

**The State of Punjab v. Gurmit Singh and Others (1996 (2) SCC 384):** The Supreme Court of India set aside acquittal of accused in rape case, convicted the accused and gave following guidelines:

- Established that in camera trials are mandatory in rape cases.
- Recognized that a delay in filing the FIR is not fatal to the case of the prosecution, given the social context.

### 7.3.2 Women Protection Of Rights On Divorce:

**Mohammad Ahmed Khan v. Shah Bano Begum (1985 SCR (3) 844):** It was a controversial maintenance lawsuit in India. Shah Bano, a 62-year-old Muslim mother of five from Indore, Madhya Pradesh, was divorced by her husband in 1978. She filed a criminal suit going up to Supreme Court of India, in which she won the right to alimony from her husband. However, she was subsequently denied the alimony when the Indian Parliament reversed the judgment under pressure from Islamic orthodoxy. The judgment in favour of the woman in this case evoked criticisms among Muslims some of whom cited Qur'an to show that the judgment was in conflict with Islamic law. It triggered controversy about the extent of having different civil codes for different religions, especially for Muslims in India. This case caused the Congress government, with its absolute majority, to pass the Muslim Women (Protection of Rights on Divorce) Act, 1986 which diluted the judgment of the Supreme Court and, in reality, denied even utterly destitute Muslim divorcées the right to alimony from their former husbands. However, in the later Daniel Latificase, the Supreme Court interpreted the act in a manner reassuring the validity of the case.

**Shabana Bano v. Imran Khan (In Criminal Appeal No.2309 of 2009):** In this judgment Supreme Court of India held that a divorce Muslim woman would be able to claim maintenance under Section 125 of the CrPC, 1973, as long as she does not remarry.
7.4 CASE LAWS FROM SRILANKA

7.4.1 Domestic Violence:
Chandrasena vs. Attorney-General (1998 Sri Lanka.R415): An appeal was filed before the High Court of Sir Lanka in the case of Chandrasena v. Attorney General. In this case the victim – wife had married the Appellant and they had three children. As the victim and the Appellant had some differences, the victim had gone to work in the Middle East and she was regularly sending money to Appellant as the Appellant was not keeping proper accounts of the same, she stopped sending the money after some time. The Appellant threatened her and had also sent letters to her stating that he would deal with her when she returns. After her employment contract expired, she came back to Sri Lanka but started living with her parents without informing the Appellant. She also initiated proceedings seeking maintenance from him. On her way to the Court one day Appellant attacked her with a razor blade. The victim’s mother fell on her daughter (victim) in order to protect but Appellant also attacked her, however victim’s mother expired.

In this case, the learned trial judge had invited the jury to consider the plea of provocation as the accused/Appellant had raised it in his evidence that the Jury had properly considered and rejected that plea. The Court held that this was not a case of sudden provocation as the provocation was sought by the Appellant and he initiated the attack and was also armed.

7.4.2 Nationality For Foreign Spouses:
A Sri Lankan woman and her foreign husband filed an application in the Supreme Court in 1999 that challenged the non-issuance of a residence visa to the husband. The Court gave its verdict in favour of the couple and observed that there was no ‘rational basis’ for the discriminatory treatment. It issued a directive to the Controller of Immigration and Emigration to make and publish guidelines and procedures conforming to Article 12 of the Constitution of Sri Lanka, which recognizes the right to equality.

The Supreme Court has set aside the discriminatory guidelines in respect of non-national spouses of Sri Lankan women and formulated recommendations in line with the Fundamental Rights as espoused in the Constitution. Previously, married women were not allowed to pass on their citizenship to their children but through an amendment to the 1948 Citizenship Act, in 2003 mothers were accorded the right to determine the nationality of their children. The Supreme Court of Sri Lanka 1999 ruling set aside discriminatory guidelines on the acquisition of nationality for foreign spouses married to Sri Lankan women.
7.5 CASE LAW FROM BANGLADESH

7.5.1 Women Trafficking

Mr. Abdul Gafur Vs. Secretary of Foreign Affair, Govt. of Bangladesh and another; 17(BLD) 1997:

A writ petition (No.4301 of 1997) was filed in the High Court of Bangladesh by Mr. Abdul Gafur father of Hasina Begum under the Article 102 of Constitution of Bangladesh, 1972.

In this case a girl child Hasina Begum aged about 15 years was missing since March, 1992 from Bangladesh. In November, 1996 family discovered that she was kidnapped from Bangladesh and was lodged in a Women’s Home at Lilua, West Bangal, in India. She was a victim of atrocities and violence perpetrated by women traffickers. Her father approached the Government of Bangladesh bringing her but no avail.

Honorable Justice Mozammel Hoque decided the case on the bases of Right to Protection entitled under the Articles 27, 31 and 32 of the Constitution of Bangladesh being a citizen. Article 31 makes an obligation on the part of the government to give protection to its citizen in any part of the world. Article 27 provides that:

“All citizens are equal before law, and entitled to equal protection of law”

Article 31 of the Constitution of Bangladesh reads as follows:

“To enjoy the protection of law, and to be treated in accordance with law and only in accordance with law, is the inalienable right of every citizen, wherever he may be and of every other person for the time being within Bangladesh and in particular no action detrimental to life. Body, reputation or property of any person shall be taken except in accordance with law.”

It has been held that Article 27 provides to Hasina “equal treatment of law” and Respondent did not act according to the principal of fairness in relation to Government action- a principal which requires that Government functionaries must act according to the law and perform their duties.

Further under Article 31 entitles (the abductee) Hasina, as a citizen, to protection and assistance from the Government, despite the fact she is in other Country as she was taken out of Bangladesh against her will.

The Judgment comprised on following directives:

- Respondent be directed to initiate action in the matter through state level for repatriation of the victim Hasina Begum and inform the result to the petitioner from time to time.
- Respondent No.1 be directed to take step to repatriate the victim, Hasina Begum, after taking upon the matter with their counter part in India within 60 days from
receipt of copy of this judgment with compliance to the Registrar of the Supreme Court of Bangladesh. High Court Division who will report the matter to this Bench in due course.

7.6 CASE LAW FROM NEPAL


The Supreme Court of Nepal declared two penal statutory provision ultra vires and unconstitutional because they provide unequal treatment to men and women in the same offences.

Under Article 11 of the Constitution of the Kingdom of Nepal had guaranteed a right to equality according to which all citizens are equal in the eye of law and no one was to be denied equal protection of law. The State was not allowed to discriminate citizens on the basis of religion, race, sex and caste.

The Special Bench OF Supreme Court issued directive order to His Majesty’s Government calling it to introduce appropriate legislation in Parliament within two years of the receipt of this order.

7.7 LEGISLATION ON GENDER BASED VIOLENCE IN SOUTH ASIAN COUNTRIES

<table>
<thead>
<tr>
<th>Country</th>
<th>Law</th>
<th>Details</th>
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</thead>
<tbody>
<tr>
<td>India</td>
<td>The Protection of Women from Domestic Violence Act 2005(PWDVA) (enforced as of 26th of October, 2006).</td>
<td>**1.**Section 3 of this Act provides with the definition of domestic violence as all acts of omission and commission that result in injury or harm or threats to cause injury or harm as well as harassment to meet unlawful demands (such as dowry). Injury may be physical or mental in nature. Conduct includes physical abuse, verbal and emotional abuse, sexual abuse and economic abuse.</td>
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</tbody>
</table>
2. Definition of domestic relationship - The term “domestic relationship” has been broadly defined to include all women who live or have lived together in a shared household with the respondent and are related to the respondent by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

The said Act states that an aggrieved wife or female living in a relationship in the nature of marriage, may also file a complaint against a relative of the husband or the male partner.

3. Rights recognized under the PWDVA - The PWDVA recognizes a woman’s right to live in a violence free home. The right to reside has been given statutory recognition under the law. This guards against the illegal dispossession of women from the shared household. A woman who has faced domestic violence from the respondent is entitled to reliefs under this law.

4. Remedies provided for in the law are:
   a. Protection Order (Section 18)
   b. Residence order (Section 19)
   c. Monetary relief (Section 20)
   d. Custody order (Section 21)
   e. Compensation order (Section 22)
   f. Ex parte and interim orders (Section 23)

5. Infrastructure made available under the law:
   Protection officer to facilitate access
Service providers providing services to women registered under the Act **Medical facilities and shelter homes** notified that they cannot refuse to provide services to aggrieved women.

Police are bound to provide information on this law to women approaching them with complaints of domestic violence. This is in addition to their duties to register complaints under criminal law. The court may also order the police to assist Protection Officers in discharging their functions.

**6. Courts empowered to deal with applications.**

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<tr>
<td></td>
<td>Domestic Violence Act (2012).</td>
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</tbody>
</table>

This Act makes provisions with regards to marriage, divorce, payment of maintenance, custody, guardianship and certain other matters of family life in Maldives. Under the said Act the wife can apply for divorce on the grounds of domestic violence.

This Act shall determine provisions for the prohibition and prevention of domestic violence; measures taken against persons who commit acts of domestic violence; protection of and support for victims of domestic violence; role of relevant state authorities and collaboration between such state authorities. The said Act states that Domestic Violence means physical abuse, sexual abuse, verbal and psychological abuse as well as economic and financial abuse.
<table>
<thead>
<tr>
<th>Country</th>
<th>Act/Charter</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pakistan</td>
<td>The Domestic Violence Prevention and Protection) Act 2013</td>
<td>This Act provides definition of domestic violence including physical, sexual and psychological abuse of women by their husband or family members within the home. Enable Magistrates to hear cases on domestic violence and set up protection committees to be set up to check on domestic violence against women, children and vulnerable persons.</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>Women’s Charter (1993)</td>
<td>Prevention of Domestic Violence Act – PDVA October 3rd, 2005. Plan of Action Supporting the Prevention of Domestic Violence Act (2005)</td>
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<tr>
<td>Country</td>
<td>Law</td>
<td>Description</td>
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<tr>
<td>Bangladesh</td>
<td>Domestic Violence (Prevention and Protection) Act (2010).</td>
<td>This Act provides prevention of domestic violence, protection of women and children from domestic violence. The said Act states domestic violence means physical abuse, psychological abuse, sexual abuse or economic abuse against a woman or a child of a family by any other person of that family with whom victim is or has been in family relationship.</td>
</tr>
<tr>
<td>Bhutan</td>
<td>The Domestic Violence Prevention Act DVPA, 2013.</td>
<td>This Act stipulates to prevent domestic violence and to promote harmony and respect within families and domestic relationship. This Act ensures legal remedy for the victims of domestic violence, facilitates access to remedies, shelter homes and protection to the victim of domestic violence.</td>
</tr>
</tbody>
</table>
| Nepal | Domestic Violence(Crime and Prevention)Act 2009 | The overall purpose of this Act are:  
- to assure a dignified life for a women within the household by ending domestic violence  
- to provide justice to victims of domestic violence by making domestic violence criminally punishable |

Rape and Sexual Offence Laws
<table>
<thead>
<tr>
<th>Country</th>
<th>Act/Reform</th>
<th>Description</th>
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<tbody>
<tr>
<td>Bangladesh</td>
<td>Women and Child Repression Prevention Act (2000)</td>
<td>This Act makes necessary provisions for the prevention of crime against women and children. The said Act states the protective measures against domestic violence, rape, acid attacks, forced prostitution, trafficking, sexual harassment, death resulting from rape and dower. Punishment for trafficking in women and children and death of any woman or child by corrosive poisonous substance includes the death penalty, life imprisonment and fines.</td>
</tr>
<tr>
<td>Bhutan</td>
<td>Penal Code of Bhutan, 2004 (Amended Act 2011)</td>
<td>Legal provision on rape, marital rape, sexual assault, trafficking of children and women, incest, molestation, sexual abuse, prostitution, assault and battery.</td>
</tr>
<tr>
<td>Pakistan</td>
<td>Protection of Women (Criminal Laws Amendment) Act December 1, 2006. Protection Against Harassment Of Women At The Workplace Act, 2010.</td>
<td>Amendment to Penal Code, Code of Criminal Procedure, Dissolution of Muslim Marriages Act, Offence of Zina (Enforcement of Hudood) Ordinance, the Offence of Qazf (Enforcement of Hadd) Ordinance. This Act provides protection to women against harassment in workplace.</td>
</tr>
</tbody>
</table>
**India**

**Criminal Law (Amendment) Act 2013.**

This new Act has expressively recognized certain acts as offences like acid attacks (includes fine to meet victims medical expenses), sexual harassment, stalking, voyeurism, assault. These offences are no longer gender neutral, only men can commit offence on women.

A new section 370A IPC deals with trafficking.

A new section 376A has been inserted that if a person committing the offence of sexual assaulted inflicts injuries which causes death of a person or a persisting vegetative state shall be punished with imprisonment not less than twenty years but which may extend to imprisonment for life which means remainder of that person’s natural life or with death.

Certain changes also introduced in CrPC and Evidence Act like process of recording the statement of the victim has been made victim-friendly but with two changes:

1. The character of the victim has now been rendered totally irrelevant.

2. There is now presumption of no consent in a case where a sexual abuse is proved and the victim states in the court that she did not consent.

**Anti-Trafficking Laws**

<p>| South Asia | SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution | The SAARC Convention on preventing and combating trafficking in women and children for prostitution was adopted by the member states in 2002. |</p>
<table>
<thead>
<tr>
<th>Country</th>
<th>Law/Publication</th>
<th>Description</th>
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<tbody>
<tr>
<td>Bangladesh</td>
<td>Trafficking in Women and Children Act 1993</td>
<td>Includes sections on trafficking and forced prostitution.</td>
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<tr>
<td></td>
<td>Women and Child Repression Prevention Act (2000)</td>
<td>The NPA describes the main problems in the areas of child sexual abuse, exploitation and trafficking. The major areas of intervention within the range of the NPA are: Prevention, Protection, Recovery and Reintegration, Perpetrators, Child Participation, HIV/AIDS, STIs and Substance Abuse, Co-ordination and Monitoring A National Monitoring and Implementation Committee on National Plan of Action against Sexual Exploitation and Abuse of Children including Trafficking (SEACT) has been formed to implement the National Plan of Action Allows for detention of women under 18 years of age if found in a place where prostitution is being carried out.</td>
</tr>
<tr>
<td></td>
<td>National Plan of Action against the Sexual Abuse and Exploitation of Children including Trafficking (December 2001)</td>
<td></td>
</tr>
<tr>
<td>India</td>
<td>Prevention of Immoral Traffic Act of 1986 (PITA)</td>
<td>This Act provides for the prevention of immoral life.</td>
</tr>
<tr>
<td>Nepal</td>
<td>Human Trafficking (Control) Act</td>
<td>- Prohibition against engaging in human trafficking and operating a brothel - Outlines punishment for traffickers</td>
</tr>
<tr>
<td>Country</td>
<td>Legislation</td>
<td>Description</td>
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<tr>
<td>Pakistan</td>
<td>Prevention and Control of Human Trafficking Ordinance, 2002.</td>
<td>Human trafficking is punishable with imprisonment, which may extend to ten years and shall also be liable to fine. The Ordinance also provides for punishment for imprisonment, which may extend to seven years and shall also be liable to fine for the planning of human trafficking.</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>Acid Crime Prevention Act 2002 and Acid Control Act (2002)</td>
<td>These Acts address punishment for those involved in the acid attack and restrict the import and sale of acid in open market.</td>
</tr>
<tr>
<td>India</td>
<td>Dowry Prohibition Act (1961)</td>
<td>The Dowry Prohibition Act criminalizes giving, taking, demanding and helping the giving, taking or demanding of dowry.</td>
</tr>
<tr>
<td>Country</td>
<td>Legislation</td>
<td>Description</td>
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<tr>
<td>Nepal</td>
<td>Social Customs and Practices Act 2009</td>
<td>Prohibiting the dowry system.</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>Dowry Prohibition Act (1980)</td>
<td>This Act prohibits the taking or giving of dowry in marriages. Penalties are postulated for giving, taking and demanding dowry.</td>
</tr>
<tr>
<td>Pakistan</td>
<td>The Dowry and Bridal Gifts (Restriction) Act, 1976.</td>
<td>This Act provides restriction on dowry and bridal gifts.</td>
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</table>

**Female Infanticide**

<table>
<thead>
<tr>
<th>Country</th>
<th>Legislation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>India</td>
<td>The Preconception And Pre-natal Diagnostic Techniques (Prohibition of</td>
<td>An Act to provide for the regulation of the use of pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex linked disorders and</td>
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</tbody>
</table>

Indian Penal Code Section 498A (Cruelty) 1983

Indian Penal Code Section 304B (Dowry Death) – 1986

Section 498A IPC - Stipulates punishment for the cruelty and harassment by the husband or family which includes demanding of dowry.

Section 304B IPC - If the death of a woman can be attributed to cruelty or harassment by the husband or his family relating to a demand for dowry, then the death of a woman is considered to be a dowry death and the person committing the death is punishable by seven (7) years to life imprisonment.
<table>
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<tr>
<th>Act</th>
<th>Description</th>
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<tbody>
<tr>
<td>Sex Selection) Act, 1994.</td>
<td>for the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide; and for matters connected there with or incidental thereto.</td>
</tr>
<tr>
<td>Medical Termination of Pregnancy Act 1971 Amended in 2002</td>
<td>The former Act prohibits abortion except in certain qualified situation by a registered medical practitioner while the latter prohibits the sex selection of the foetus with the view of aborting it.</td>
</tr>
</tbody>
</table>
| Prenatal Diagnostic Technique (Regulation and Prevention of Misuse )Act 1994 Amended in 2002 | }
Notes: