

- The police station, where a case of missing or abducted child is reported shall, immediately, within two hours, inform ZARRA. The bill also prescribes punishment for police officers who are do not comply, or hinder the process of reporting a missing child.
- The maximum sentence to a perpetrator will be life imprisonment and the minimum sentence will be 10 years.

**Analysis:**

Under these dire circumstances, it is society's obligation to raise questions concerning the promises made by the state to ensure the protection of its children through multiple laws and policies that, to this date, have yielded very little positive change.

This bill contains weaknesses in its design.

- It attempts to end the provision of 'Qisas' (retribution) through pressure, which is not acceptable.
- Punishment of life imprisonment mandated for a criminal who abducts a child for the purpose of sexual assault and murder is not enough and should be increased as per Islamic law, to publically stoning for married and 100 lashes for the unmarried person.

These incidents are only the tip of the iceberg. The distressing reality of child sexual abuse is that it persists in the country. A report called 'Cruel Numbers' shows that for 2018, an average of 12 children were abused every day between January and June. This was an increase from the prior year, when an average of 7 children were recorded as being abused per day. In the same period, a total of 2,322 children were abused, but these numbers are based on cases published in newspapers. Likewise, from January to June 2019, the total numbers of child sexual abuse seemingly decreased, falling to 1,304 cases. But despite the decrease in the number of cases, the picture was still shocking. An average of around 7 children were being abused each day, with no one to intervene and protect them. Thus the bill fails to address adequate solutions to prevailing problems that are causing under-reporting of abuse cases.

- Protection against Harassment of Women at the Workplace Act 2010

On January 21, Senate passed bill Protection against Harassment of women. The objective behind this law was to make a code of conduct as an anti-sexual harassment policy which would be the part of every registered organization. In this law the definition of sexual harassment and other concerning terms were explained comprehensively.

It is stated in this law that every organization will have to form a committee which would be comprised of three members and at least one member among the three should be a woman. This committee will gather complaints of sexual harassment. Sexual harassment is defined in the Act 2010 as

“Any unwelcome sexual advance, request for sexual favors or other verbal or

No doubt, re-offending is a serious problem in sex crimes, but addressing it with such degrading punishment is arguably a matter of policy choice and may compromise Article 14 of the Constitution of Pakistan that protects the dignity of human beings even if they are offenders of the highest order. In addition, it brings the focus to retribution rather than on addressing the causes of the issues.

The alignment of this punishment with international obligations is also questionable. Article 7 of International Covenant on Civil and Political Rights, to which Pakistan is a party, states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation." Pakistan has also ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2010, so the country is obliged to not bring any legislation against it, as it stands against the conception of dignity afforded to all people.

- The Zainab Alert, Response and Recovery Bill, 2020

This bill was passed by the Senate in 2020, named after Zainab, the seven-year-old girl, who was kidnapped in Kasur, raped and brutally killed in 2018. The bill aims to protect and raise alert when a child goes missing or is abducted.

It includes following salient features:

- Under the new law, a Zainab Alert, Response and Recovery Agency (ZARRA) will be set up. The director general of the Agency will be appointed by the prime minister. It will be tasked to maintain a database of missing and abducted children, and work closely with the helpline, 1099, which will forward all reported cases to the Agency.
- In case a child is reported missing, the ZARRA will activate alerts across the federal capital. Information, such as the child's physical characteristics, habits, clothes etc., will be sent to all relevant law enforcement agencies and the public at large.
- In coordinate with the Pakistan Telecommunication Authority, messages will be generated to all service providers regarding the child. Also the information will be sent to all electronic and print media as well as radio stations to disseminate.
- A helpline, 1099, will be set up to help the public report a missing or abducted child or any information related to a missing child.
- ZARRA will also issue monthly public reports and updates on its website about missing children.
- The Agency will set up a mobile application where the public can access all data related to missing and abducted children.
- In addition, a Child Protection Advisory Board will be established to ensure ZARRA is effectively performing its functions from the registration of a FIR to the safe recovery of a child and the referral for rehabilitation.

accused. Only judge and the accused's lawyers will be able to cross-examine the survivor.

- Includes in-camera trials, witness protection for the victim and witnesses, use of modern devices during investigation and trial, legal assistance to the victims through the Legal Aid and Justice Authority and appointment of independent support advisers for the victims.
- Special prosecutors for the special courts will also be appointed. Investigation will be conducted by joint investigation teams headed by district police officers.
- A special committee will have formed on a pro bono basis to ensure overall implementation of the law.
- Rules will be issued by the prime minister on the recommendation of the special committee for issuing medico-legal examination and investigation and prosecution guidelines based on the latest modern techniques and devices.
- Data of sex offenders registered through NADRA will be maintained. A public reporting mechanism will also be devised.
- Substitution of the existing section 375 of the PPC with a new provision so as to provide new definition of “rape”, which would extend to females of all ages and male victims under the age of 18 years.
- The offence of gang rape has also been considered to be addressed.
- In respect of first or repeated offenders, the concept of chemical castration has been introduced mainly as a form of rehabilitation and “subject to consent”.
- The bill states that Pakistan's government must establish special courts nationwide to expedite rape trials and ensure sexual abuse cases are decided "expeditiously, preferably within four months."
- Those found guilty of gang rape will be sentenced to death or life in prison.

This bill ensures speedy trial and punishment for the rapist with numerous special provisional steps.

#### **Analysis:**

Analysis of the bill with the lens of Islamic sharia laws, shows its strong contradictions with the Islamic teachings. The bill does not abide with the punishment, known as 'Hadd' of being stoned to death for the married, or receiving 100 strokes of the whip and deportation for the unmarried.

According to this legislation, the court can give the punishment of chemical castration to a sex offender, which is a process whereby a person is rendered incapable of performing sexual intercourse for any period of his life, as may be determined by the court, through administration of drugs. In the presence of Islamic rule for punishment, there is no need for this additional action.

because they see it as not worth the risks and burdens. They see a life of Zina as a better path.

On the contrary, there are a number of husbands who are unfit and oppressive. Such tyrannical men should face the consequences from the Islamic justice system (i.e., the qazi). This is already being practiced in Muslim societies. But just because such men exist does not mean we nullify the husband's God-given right. Islamic teachings clearly guide us how to settle domestic disputes with wisdom.

"If you fear a breach between the two, appoint an arbitrator from his people and an arbitrator from her people. If they both want to set things right, Allah will bring about reconciliation between them. Allah knows all, is well aware of everything." Surah An Nisa (4:35).

Whenever the relationship between a husband and a wife starts to break down, an attempt should first be made to resolve the dispute at the family level, before it is aggravated and leads to the disruption of the matrimonial tie. The procedure to be followed is that two persons, one on behalf of each family, should be nominated to look into the matter together and devise means whereby the misunderstanding between the spouses may be brought to an end. If the dispute is brought before the court, the latter also has the right to nominate mediators, representing the families of both parties, before referring the matter for judicial verdict.

This bill is a disaster and it is just a continuation of the "Gender Programs" the West is imposing on Muslim countries like Pakistan. It contradicts with our religious and moral values and is an alarming threat to family system and social integrity.

- The Anti-Rape (Investigation and Trial) Bill, 2021

Amid the rising cases of sexual violence across the country, the Parliament passed a bill in the backdrop of sexual assault cases that have shocked the nation, particularly the rape and murder of a seven-year-old girl Zainab in Kasur and more recently the gang-rape of a woman in front of her children on the Lahore motorway and the rape of a minor girl and her mother in Kashmore district.

This law provides mechanisms to curb sexual abuse crimes against women and children, including:

- Special courts would be established to conduct trial in rape cases.
- Anti-rape crisis cells headed by a commissioner or deputy commissioner will be set up to ensure prompt registration of an FIR, medical examination and forensic analysis.
- The law abolishes the inhumane and degrading two-finger virginity testing for rape victims during medico-legal examination and eliminates any attachment of probative value to it.
- The ordinance also bars the cross-examination of a rape survivor by the



- These steps may lead to increase in divorce rate in society rather than settlement of matters between husband and wife, eventually resulting in more broken families and separated children.

This solution proposed in the bill seems to be directly copied from western culture and inspired by liberal feminist thoughts.

Abu Hurairah narrated that The Messenger of Allah said:

“The most complete of the believers in faith, is the one with the best character among them. And the best of you are those who are best to your women.”

(Jami` at-Tirmidhi 1162)

Islam secures women in and outside the house. Marriage in the Islamic context is a means of tranquility, protection, peace and comfort. Abuse of any kind is in conflict to the principles of marriage. Any justification of abuse is in opposition to what Allah (SWT) has revealed and the example of Prophet Muhammad. The family system proposed by Islam acts as a protection of rights and obligation of every member. The natural hierarchy of this system makes every member dependent on each other in a respectful way. Islam opposes violence against women.

“Do not strike the female servants of God.” (Sunan Abi Dawud)

In one incident, the Prophet ﷺ invoked God's wrath upon a man who beat his wife. (Musnad Ahmad 1303)

The Qur'anic verse (An Nisa: 34), often used to justify hitting wives, cannot be understood to permit any violence. If the problem relates to the wife's behavior, her husband may exhort her and appeal for reason. In most cases, this measure is likely to be sufficient. In cases where the problem continues, the husband may express his displeasure in another peaceful manner, by sleeping in a separate bed from hers. There are cases, however, in which a wife persists in deliberate mistreatment and expresses contempt of her husband and disregard for her marital obligations. Instead of divorce, the husband may resort to another measure that may save the marriage, in some cases.

Husbands being the head of the Family Institution have the right to check wives.

The wisdom of this right is to create order in the household. The Islamic schools of fiqh are very clear that there are limits and going beyond the limits makes the husband liable for prosecution. If the husband does not have this right, the household will inevitably fall apart.

Without this practice of authority to deal with rebellious women, household discipline will eventually fail. The proof of this is the terrible state of marriage and family in the West. More than half of all marriages in the West end in divorce, often very bitterly. Children are left growing up with one parent or the other. But more than that, most young people don't even want to get married anymore

- Threats of divorce or second marriage
- Invasion of privacy
- Insults
- Threats to cause physical pain
- Character assassination
- Willful or negligent abandonment
- Stalking
- Harassment
- Forcing or compelling a wife to cohabit with anybody other than the husband.

The bill recommends punishment of six months to three years in prison and up to Rs100,000 in a fine for domestic violence.

The bill also says that a Protection Committee would be established under the Human Rights ministry. The committee would appoint Protection Officers who would help people report domestic abuse and collect data. Moreover, courts shall fix hearing for appeals within seven days of receiving one. Cases will be decided within 90 days. If a woman files a domestic violence complaint, the new bill protects her from being thrown out of her home. She as a complainant will have the right to stay in the shared house irrespective of whether she owns it or not. The person who makes the complaint can even choose to stay in a safe home or shelter, which will be arranged by the Protection Officers. The court hearing the case may ask the person accused of domestic violence to:

- Not have any communication with the person who made the complaint (complainant)
- Stay away from the complainant
- Wear a GPS tracker
- Move out of the house

#### **Analysis:**

According to The Constitution of Pakistan, Article 35: Protection of family, "The State shall protect the marriage, the family, the mother and the child."

With regard to our religious and traditional values, this law contains numerous loopholes:

- The spectrum of the law is very broad and open-ended, as it's open for interpretation; i.e. they say harassment but did not mention what harassment is.
- It treats everyone in the family with the yardstick. In our culture and religion, the stature of parents is above the rest and they can't be treated like other members of the family.
- When an outsider (a protection officer) is involved in the household matters, the matter is pushed to a point of no return.
- The provision of making the alleged perpetrator wear a GPS tracker will make things worse.

12,500 being a rape victim.

Rape is an offence which is difficult to prove everywhere in the world. In Pakistan, due to the constant clash of Pakistan's Islamic scholar's faction with the women rights activists, people are left with questions regarding whether or not Islam really provides justice. This has, in turn, given the impression to the international community that Islam is a barbaric and brutal religion. In an attempt to force rape under the banner of 'Hadd', we have lost our face as a proud Muslim nation, and bringing rape under 'Ta'zir' of the Pakistan Penal Code, we have brought down such a beastlike act to the same level as an ordinary crime. The legislators need to change their outlook on the crime. Instead of focusing on passing out punishments, we need to protect the girl's honor. The moment any girl is called to the court for anything, especially if it is relating to a case that is sexual in nature, her honor is destroyed. Afterwards, even if the court declares her innocent or uninvolved, it is too late for her honor has already been trampled upon. Islamic law insists over and over again that these laws are made to protect one's honor and if we make any law that plays with one's honor so easily, such law has to be removed. Pakistan is a declared Muslim country, we all believe that the laws provided to us by Allah and His Prophet (P.B.U.H) are the epitome of justice, and while countries like the United States have incorporated 'Rape Shield laws' in their system in an attempt protect the already traumatized victims from the emotional distress of being questioned about their sexual history while on the witness stand, us Muslims have not only failed to provide basic justice to victims.

**Bills passed (2018-present):**

- The Domestic Violence (Prevention and Protection) Bill, 2021  
The Domestic Violence (Prevention and Protection) Bill, 2021, was initially moved in the NA by Human Rights Minister Shireen Mazari on April 19, 2021, and was passed by the Lower House the same day. Through this act, a legal and institutional framework had been proposed for the territorial jurisdiction of Islamabad to ensure that victims of domestic violence were provided legal protection and relief and the perpetrators of this offence were punished. This new piece of legislation would decree that domestic violence is not limited to physical abuse only, a departure from the earlier definition that mostly covered beatings. The bill says now that domestic violence shall mean “all acts of physical, emotional, psychological, sexual and economic abuse committed by a respondent against women, children, vulnerable persons, or any other person with whom the respondent is or has been in a domestic relationship that causes fear, physical or psychological harm to the aggrieved person.”

And so, the law would be much broader in scope.

The bill says that these actions would be defined as domestic violence:

someone for committing this crime only when the act is performed so openly that four people see them without invading their privacy. As Cherif Bassiouni states, "The requirement of proof and its exigencies lead to the conclusion that the policy of the harsh penalty is to deter public aspects of this form of sexual practice." The Quran's call to respond to charges of sexual misconduct with "it is not for us to speak of it" echoes the hadith in which the Prophet Muhammad (SAW) was reluctant to take even a man's confession of adultery. The Quran contemplates a society in which one does not engage in publicizing other's sexual indiscretions. Quranic principles honor privacy and dignity over the violation of law, except when a violation becomes a matter of public indecency.

The offence of 'Zina-bil-jabr' or rape and the laws in Pakistan proclaiming it have been a subject of heated debates and a source of a number of controversies. With the rising popularity of the concept of Human Rights in the country, the 'Hudood Ordinances', 1979 met with much criticism. The 'Hadd' punishments are an essential part of 'Islamic Criminal law' and the 'Hudood Ordinances', 1979 had been promulgated in an attempt to bring the criminal laws in Pakistan in compliance with the rulings specified in Islam. Unfortunately, the laws relating to sexual offences against women were discriminatory and instead of protecting the victims and the accused focused more on penalizing them. The laws that were meant to protect its subjects became a tool of oppression.

The main loopholes in this law with reference to previous ordinance are:

- Islamic law treats rape under the same category of the general law of 'Zina'. It is interpreted as a sub-category and the general term used to describe it is 'Zina bil jabr'. This understanding of rape is due to the fact that the Quran does not directly deal with the offense of coercive sexual relationship and only mentions the rules and penalties for consensual sexual intercourse. Therefore, decrees relating to rape are based on analogy or other forms of legal analysis.
- A frequent casualty in rape trials is the rape victim's reputation, as the court attempts to sort out the issue of consent.
- This law was considered intrinsically misogynistic since its application resulted in women being convicted of adultery/fornication if they reported a case of rape, as their report was treated as a confession.
- In addition to other problems created by these laws, their judicial application also made it easier to get away with crimes against women such as honour killings and general degradation and humiliation of women in society.

Our history has proved to us that we have failed to protect the victims of one of the most heinous crimes in the world. According to the research conducted by the Human Rights Commission in Pakistan, a woman is raped every 2 hours and every eight hours a woman is subjected to gang rape. With one woman in every

penalty for a fornicator was public whipping of 100 lashes. However, if the evidence requirement for 'Zina' liable to 'Hadd' is not met but the crime is proven beyond a reasonable doubt then the 'Tazir' punishment of imprisonment for up to ten years can be given. Rape, now referred to as 'Zina-bil-jabr', was similarly made liable to either the 'Hadd' or the 'Tazir' penalty depending on the type of proof available.

**Analysis:**

To analyze the appropriateness of this categorization, we must first analyze the Islamic law of 'Zina' itself. The preamble of the Pakistani 'Zina Ordinance' states that it is enacted "to modify the existing law relating to Zina so as to bring it in conformity with the Injunctions of the Holy Quran and Sunnah."

Indeed, the term 'Zina' itself appears in the Quran. In warning generally against the dangers of adultery, the Quran states:

"And do not go near fornication [Zina] as it is immoral and an evil way." (17:32)

The Quran also more specifically sets out actual legal prescriptions criminalizing illegal sexual relations:

"The adulteress and adulterer should be flogged a hundred lashes each, and no pity for them should deter you from the law of God if you believe in God and the Last Day; and the punishment should be witnessed by a body of believers." (24:2)

Following this definition of the offense are extremely strict evidentiary rules for the proof of such a crime:

"Those who defame chaste women and do not bring four witnesses should be punished with eighty lashes, and their testimony should not be accepted afterwards, for they are profligates." (24:2)

Thus, after criminalizing extramarital sexual relations, the Quran simultaneously attaches to the prosecution of this crime nearly insurmountable evidentiary restrictions which are four eyewitnesses are required to prove a charge of sexual misconduct.

Islamic jurisprudence further interprets the 'Quranic Zina evidentiary rule' of quadruple testimony to require the actual witnessing of penetration during sexual intercourse, and nothing less. This interpretation is based on the reported hadith (tradition) of the Prophet Muhammad (SAW) in which, after a man persisted in confessing to adultery (the Prophet having turned away to avoid hearing the information several times prior), Muhammad (SAW) asked several specific questions to confirm that the act was indeed sexual penetration. Moreover, Islamic evidence law requires the witnesses to be mature, sane, and of upright character. Furthermore, if any eyewitness testimony was obtained by violating a defendant's privacy, it is inadmissible.

Islamic scholars posit that so many evidentiary restrictions are only to prevent carrying out punishment for this offense. Thus, while the Quran condemns extramarital sex as an evil, it authorizes the Muslim legal system to prosecute



•Criminal Procedure Code (Cr.P.C) 1898

Section	Provision
497	Women can claim bail as a matter of right
52	Whenever it is necessary to search a woman she must be searched by another woman, with strict regard to decency.
167 (clauses 5, 6 and 7)	That there must be police stations for woman in every city and if no separate police station is available then a woman will be sent to judicial lockup and shall not be kept in a male police station.
203-A	The procedure of complaint in case of Zina that 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.
203-B	Procedure of complaint in case of qazaf that subject to section 6(2) of the Offence of Qazaf (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

• Offences of Qazaf (Enforcement of Hadd) Ordinance, 1979

Pakistan's Hudood Ordinances were promulgated in 1979 by the military regime of General Ziaul Haq. The 'Zina' and 'Qazf' Ordinances created six distinct categories of sexual offences and assigned punishments for each:

1. Zina liable to 'Hadd'
2. Zina liable to 'Tazir'
3. Zina-bil-jabr liable to 'Hadd'
4. Zina-bil-jabr liable to 'Tazir'
5. Qazf liable to 'Hadd'
6. Qazf liable to 'Tazir'

The introduction of these laws resulted in the offences of rape and adultery in the Pakistan Penal Code (PPC) to be repealed as they were substituted by these offences. The primary distinction between the 'Hadd' and 'Tazir' offenses is that the 'Hadd' offences require a higher standard of proof than is needed in 'Tazir' as the Islamic punishments are more severe.

'Zina' is liable to a 'Hadd' penalty if the accused confessed before the trial court or if there were four adult Muslim male witnesses who met an Islamic test of probity, i.e. 'Tazkiyah al shuhood', who testified to being eyewitnesses. The 'Hadd' punishment given to such an adulterer was stoning to death while the

366-B	Person imports any girl to outside of Pakistan with intent of illicit intercourse with another person	Imprisonment for 10 years and fine.
371-A	Sells, hire or disposes of any person with the intent that such a person shall be used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose	Imprisonment for twenty-five years and shall also be liable to fine
376	Commits rape	Death or imprisonment for 25 years or not be less than 10 years.
376(2)	Rape is committed by two or more persons in furtherance of common intention of all	Death or imprisonment for life.
496-A	Entices a woman with intent to illicit intercourse with her or conceals or detains her for that purpose	Imprisonment for a term up to 7 years and fine
496-B	A man and a woman not married to each other are said to commit fornication if they willfully have sexual intercourse with one another.	Imprisonment for 5 years and shall also be liable to fine not exceeding 10,000/-
498-A	By deceitful or illegal means deprive any woman from inheriting any movable or immovable property	Imprisonment for 10 years or not less than 5 years or with fine of Rs.100,000/-
498-B	Coerces or in any manner compels a woman to enter into marriage	Imprisonment which extend to 7 years and not less than 3 years and shall also be liable to fine of Rs.500,000/-.
498-C	Compels or arranges or facilitates the marriage of a woman with Holy Quran	Imprisonment for 7 years or not less than 3 years and liable to fine of Rs.500,000/-
509	Intends by uttering any word/making any sounds/gestures/exhibits any object to insult the modesty of any woman or otherwise intrudes upon the privacy of such woman at working places	3 years imprisonment or with fine Rs.500,000/- or with both

With respect to current situation of our societal disruption, these laws need to be scrutinized by the experts and their effects must be analyzed at ground level. This will show the real picture of their implementation and help in detection of their flaws.

The laws in Pakistan ensure women's rights under following provisions:

1. Rights provided to women under Criminal Law
2. Rights provided to women under Civil Law
3. Rights provided to women under Family Law

### 1. Rights Provided to Women Under Criminal Law

Criminal law, the body of law that defines criminal offenses, regulates the apprehension, charging, and trial of suspected persons, and fixes penalties and modes of treatment applicable to convicted offenders.

The Protection of Women Act (PWA) 2006, is a legal instrument which is at the forefront of some positive indications regarding legislation on women's rights in Pakistan.

**This includes following acts:**

- Pakistan Penal Code (PPC) 1860
- Criminal Procedure Code (Cr.P.C) 1898
- Offences of Qazaf (Enforcement of Hadd) Ordinance, 1979
- Rights of Women Prisoners
- Pakistan Penal Code (PPC) 1860:

Pakistan Penal Code 1860 [PPC] is the main criminal code of Pakistan. It is a comprehensive code intended to cover all substantive aspects of criminal law. The Code has since been amended several times and is now supplemented by other criminal provisions. Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which such person shall be guilty within Pakistan.

Sections	Crime	Punishment
310,310-A	Giving a female in marriage or in Badal-I-Sulh	Rigorous imprisonment, for 10 years or not less than 3years.
336-B	A person causing hurt by dangerous means or substances	Imprisonment for life, or with fine not less than 5,000, or both
354	Assaults a woman or uses criminal force against her with intent to outrage her modesty.	Two years imprisonment
354-A	Assaults or uses criminal force against any women and stripes her clothes in a manner which exposes her to the public view	Death sentence or life imprisonment.
365-B	Kidnaps or abducts a woman for the purpose of rape or forceful marriage	Life imprisonment.
366-A	Person takes away any minor girl to another place or seduce her with intent of illicit intercourse with another person	Imprisonment for 10 years and fine

**Analysis:**

An estimated 22.5 million children are out of school, of which the majority are of girls. Thirty-two percent (32%) of primary school age girls are out of school, compared with 21% of boys. This gender gap differential persists into middle school, and by grade nine merely 13% of young women are still enrolled in school. The insufficient supply of middle and high schools within accessible distance is a major barrier for girls in rural areas. Similarly, the lack of adequate sanitation facilities particularly impacts girl's retention rates in middle and high schools. Girls from poor communities living in remote, rural areas are especially vulnerable. This lack of education affects their role in upbringing their family and they fail to become an influential member of the society.

**2. RIGHTS OF PROPERTY:**

Article 23- Provision as to property.

Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.

The Constitution of Islamic Republic of Pakistan, by virtue of Article 23 and 24, guarantees the citizens of Pakistan the right to hold, acquire and dispose of property. This includes share of property received in inheritance or as a gift as well.

**Analysis:**

Unfortunately, women are often deprived and forced to give up on their property rights.

National laws which provide for women's landownership rights have so far failed to translate into real change on the ground. Many female births and even marriages are often not recorded, which complicates land ownership and inheritance. Even if a woman does inherit land on paper, she will often forgo her share in favour of her brothers. Since brothers often take on the responsibility of providing dowry for their sisters, they stake a claim on her inherited land as compensation. Negatively enforcing patriarchy is also a big hurdle in practicing women's rights of inheritance.

**LEGAL RIGHTS:**

Legal right has been defined in Black's Law Dictionary as:

“A right created or recognized by law”.

Under The Constitution of Pakistan, several laws are made which determines amongst others the rights and responsibilities of individuals and authorities to whom the legislation applies.

With regard to Women's Rights, laws are made in every aspect of their concern such as protection, property, work, marriage etc. these laws are made active throughout the state, in urban and rural areas equally. They prescribe punishments and precautionary measures for criminal activities.

Women in Pakistan face much discrimination in many aspects on the basis of sex. Women, representing 48.76% of the total population remain under-represented in the labor force. Only 25% of Pakistani women participate in the labor force (i.e., working or looking to work), compared with 85% of men, and only 5% of senior and leadership roles are held by women. It is estimated that 18% of Pakistan's labor income goes to women, one of the lowest shares among South Asian countries and the bulk of women's involvement in the labor force (88.4%) is confined to traditional agriculture.

Although the Government of Pakistan has allotted an overall 10% quota for women in public sector employment and province-level quotas are 15% in Punjab, 2% in Khyber Pakhtunkhwa, 5% in Sindh, and 10% in Gilgit-Baltistan, Pakistan's civil service, the Central Superior Services, continues to be male dominated and quotas are routinely ignored in recruitment processes. Women represent less than 1% of the total police force, with a majority in the lowest tiers of the police hierarchy. The majority of women civil servants are concentrated in the lower and middle echelons of the service structure, and the number of women transitioning to the top tier of decision making are markedly low.

On the other hand, as we analyze these clauses through the discourse of Islamic teachings, a contradiction of values is observed. Along with the demand of equal representation of women, we must not neglect the actual task assigned to them, being the homemakers and managers of their homes and raising the future generation with love and under keen supervision.

Allah has clearly mentioned in Quran 4:34:

“Men are authorities over women, as men have been provisioned by Allah over women and tasked with supporting them financially.”

So the rights of men and women are not co-equalled but different according to their individual roles as decreed by the supreme wisdom of Allah. The fulfillment of rights of each man and woman by the other is important but the limits in rights are set by none other than Allah. Both gender are designed in a particular way according to their respective roles determined by Almighty Allah.

Allah (SWT) says:

“By the night as it covers. And by the day as it shines. And by His creation of the male and the female. Certainly, the ways you take differ greatly.”

(Surat Al-Layl:1-3)

A woman can be financially independent this not be at the cost of her responsibility as a daughter, wife or mother i.e a homemaker.

Promoting women in every field and encouraging them to do tough jobs is disturbing our social hierarchy and women dignity. Article 25-A: Right to education The provision of free and compulsory education is a fundamental human right. Article 25-A guarantees the provision of free and compulsory education to all children aged 5 to 16 years in such a manner as may be determined by the law.



against women. The society, police and law enforcing agencies view domestic violence as a private matter, it goes unnoticed until it takes extreme forms of murder or attempted murder.

Women's liberty is expressed by giving them right to vote. Women in Pakistan were granted voting rights in 1947, later reaffirmed in 1956 with provision of reserved seats in the Parliament. However, they face ignominy and objectification and are viewed as ineffectual.

These facts make the provision protecting women's life and liberty questionable. Due to this mistrust in law enforcement, women are on the verge of exploitation and vulnerability.

#### **1. RIGHTS OF EQUALITY (IRRESPECTIVE OF GENDER, RACE, RELIGION, CASTE, RESIDENCE)**

The chapter on fundamental rights provides a number of safeguards to ensure that women are treated equally and to eliminate discrimination on the basis of sex in all spheres of life.

(Article 25) - All citizens are equal before the law and are entitled to equal protection by the law.

This article guarantees the equality of all citizens without any discrimination on the basis of gender. This encourages the state to make special provisions for the protection of women and children.

##### **Analysis:**

The safety of women is a growing concern in Pakistan. They face discrimination in education, protection and feel insecure in their society. The practical implementation of this article is not seen. Number of incidents of harassments, rape and suppression by other means are increasing.

Article 27- Safeguard against discrimination in services.

(1) 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:

This provision ensures equal opportunities for male as well as females to provide their services in every field irrespective of any discrimination.

The constitution recognizes almost all human rights guaranteed in the 1948 Universal Declaration of Human Rights, e.g. the right to life and liberty, dignity of person and privacy of home, immunity from torture, freedom of movement and association, freedom of speech and religion and to acquire, hold and dispose of property, access to public places, freedom of assembly, etc. The constitutional provisions of significance to women's rights are equality, the right to employment, human trafficking, political participation, and access to public places.

##### **Analysis:**

This Article assures nondiscrimination practice, but the ground realities differ with this.

This clause means that every Pakistani has the right to live and that 'nobody, including the government, can try to end your life'. It also means that the government of Pakistan has a constitutional obligation to take appropriate measures to safeguard life.

**Analysis:**

In context with the protection of Women's life and liberty, facts and ground realities provide us better insights of the implementation of the article in actual practice.

Majority of people in Pakistan do not have access to health care because of inadequate health facilities. Pakistan ranks third worst country in the world if numbers of maternal deaths are taken into account, being one of the few countries where women's life expectancy is lower than men. According to UNICEF report, maternal mortality ratio (number of maternal deaths per 100,000 live births) in 2017 was 140/100,000.

More than 40 percent of the total female population is anemic. The low health status of women is the result of women's lower social, economic and cultural standing. Health policies have been fraught with urban, curative and tertiary hospital- based care biases. These policies fail to respond to women's basic health needs, particularly their reproductive health needs.

Another violation of this clause of the constitution is Violence against women. More common is rural areas; it is still used as a powerful tool to gain authority and supremacy over gender related social order. Violation against women is a fundamental violation of the human right to life. Some forms of violence, especially domestic and customary violence are so entrenched in the culture that they are hardly recognized as violence and largely condoned by the society. Unfortunately, the incidences of violence are grossly underreported. Pakistan was ranked 153rd out of 156 nations by the World Economic Forum's Global Gender Gap 2021 index; it placed 151st out of 153 in 2020. In a Thomas Reuters Foundation poll in 2018, Pakistan was ranked as the sixth-most dangerous country for women. The Human Rights Commission Pakistan (HRCP) registered a rise in complaints of domestic and online violence last year, indicating the increased vulnerability of women during the pandemic.

Cases of honor killing (2020)	430
Female victims	363

-Recorded by HRCP

According to the 'Aurat Foundation', 2,297 cases of violence against women were reported in the four provinces of Pakistan, as well as Gilgit Baltistan, last year. These violent incidents included murder, abduction/kidnapping, rape/gang rape, honor killing, and domestic abuse. Researchers agree that the reported figures are a drastic undercount of the true number of crimes committed

3. Analyze these clauses with respect to their implementation and ground realities.
  4. Identify loop holes in law making.
  5. Analyze Pakistan's International Commitments on Women Rights and Gender Equality
  6. Suggest measures for amendments and aligning these laws with Islam
- Significance of the study:

The study is valuable because it presents the rights given to women in Pakistan through the Constitution and laws. It analyses them with reference to Islamic sharia law and Islamic teachings which must be the basis of law making in Islamic republic of Pakistan.

The study also provides the nature of their implementation and its effects on the society.

It gives hints about the efforts by government for providing rights and facilities to women. On the other hand, it provides critical analysis of the flaws that hinder the security of life and dignity of women in Pakistan.

Moreover, practical recommendations are given which will be helpful in identifying required changes for policy maker which will bring excellence in the lives of women. This can be a step to give a respectful status to women in Pakistani society and upgrading their legal status by effective law making and enforcement.

### **CONSTITUTIONAL RIGHTS:**

The Constitution of Pakistan provides numerous guiding principles for the promotion and protection of women rights, aiming for effective implementation and observation of the concepts of democracy, freedom, equality, tolerance and social justice, mainly as enunciated by Islam but at some places they seem to be contradictory. As mentioned in the preamble, this legal document guarantees fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality inspired to protect our national and political unity and solidarity by creating an egalitarian society through a new order.

The Constitution has guaranteed 'twenty-one' fundamental rights for women protection which encompasses major aspects of their sustenance.

#### **1. RIGHTS OF LIFE AND LIBERTY:**

Women being the most vulnerable member of the society, deserve their basic right of having sustainable access to reasonable life necessities such as health facilities, pure water, food etc. and avail their liberty within the boundaries of law and religion.

According to Article 9 - "No person shall be deprived of life or liberty save in accordance with law."

argued and participated in serious discussions with the Prophet (SAW) himself as well as with other Muslim leaders.

Islam also grants women equal rights to contract, to enterprise, to earn and possess independently. A woman's life, her property and her honor are as sacred as those of a man.

Islam has given women a share of inheritance. Before Islam, women were not only deprived of that share, but were themselves considered as property to be inherited by men. Out of that transferable property Islam made an heir, acknowledging the inherent individuality of women.

Women are exempt from all financial liabilities. As a wife, a woman is entitled to complete provision and total maintenance by the husband. She does not have to work or share with her husband the family expenses. As a daughter or sister she is entitled to security and provision by the father and brother respectively. That is her privilege. If she wishes to work or be self-supporting and participate in handling the family responsibilities, she is quite free to do so, provided her integrity and honor are safeguarded.

Acknowledging these rights granted to women, the current situation on the contrary is subject to several questions, inquiring off for the deprived women of the Pakistani society. This calls for a critical analysis of the clauses claiming for women's rights. Two main problems are detected; first, lack of implementation of existing laws, and second, their non-alignment with the Islamic laws, which are divinely created by Almighty Allah.

Constitutional provisions are profound in nature, but they remain as a document only. Check and balance for their enforcement is not focused as a result of which they remain inactive. The World Justice Project's Rule of Law Index 2021 report shows that Pakistan is among the lowest ranked countries in its adherence to the rule of law, ranking 130th out of 139 nations. Scores range from 0 to 1, with 1 indicating the strongest adherence to the rule of law. Pakistan managed a poor 0.39 score.

The laws prescribed by Islamic Sharia ensure protection and providence of their due rights in accordance to their natural inclinations and design. They are flawless and based on equity. They are strong enough to create rightful deterrence in order to prevent further occurrence of crimes.

Hence, women must be privileged in our society by giving them their due rights, not according to personal inclinations or western inspirations, but as given by Quran and Sunnah which is the only way through which our society can be saved.

#### **Objectives of the study:**

This study aims to:

1. Extract the provisions from the Constitution and legal framework of Pakistan which secure women rights.
2. Analyze these clauses with respect to Islamic laws and teachings.

**Introduction:**

Women of Pakistan are at a vulnerable situation. Despite being a significant part of the population, they remain deprived of their basic rights and social status. Their right for dignified life, education, property, expression of ideas and security remains neglected. This restlessness ignited feelings of mistrust, inferiority complex and rebellion among the women which pulled out in the name of feminist movements demanding their rights, which raises a question that are there no rights present for them in our religion or the state's legislation?

Pakistan has adopted a number of key international commitments to gender equality and women's human rights the Universal Declaration of Human Rights, Beijing Platform for Action, the Convention on the Elimination of all forms of Discrimination against Women and the Sustainable Development Goals which ensure making of suitable legislations for women rights and security.

Pakistan is an ideological state, which was founded in the name of Islam. Since its independence, Pakistan has experienced overall four constitutions, the interim constitution of 1947, the 1956, the 1962 and the 1973 constitution. The 1973 constitution of Pakistan was ratified by the Zulfikar Ali Bhutto on 14th august 1973 which is still active along with twenty-five amendments till September 2018. The Constitution of Pakistan clearly declares the sovereignty of Almighty Allah alone in its preamble. Hence, making it clear that the lawmaking process must be under dominance of Islamic laws.

With regard to women rights, Islam gives us a holistic, comprehensive system for correctly and justly distributing both rights and responsibilities to both men and women.

Allah (SWT) says:

“Never will I waste the work of a worker among you, whether male or female, the one of you being from the other.” [Al-Qur'an 3:195]

Islam as a religion has provided dignified status and ample opportunities to women for establishing themselves as an important part of the society. Women have as much right to education as men do. Islam elevated the position of women in society and treated them on an equal footing with men, and in some cases, as a mother for instance, clearly gave them precedence over men. As daughters, women have a right to just and equitable treatment from their parents. A woman has the right to accept or reject marriage proposals, and her consent is a prerequisite to the validity of the marriage contract.

Inside the system of a family, the husband is responsible for the maintenance, protection and overall leadership of the family within the framework of consultation and kindness. The mutuality and complementarity of husband and wife does not mean subservience by either party to the other.

Women are entitled to freedom of expression just as men are. It is reported in the Qur'an and in history that women not only expressed their opinion freely but also



# PROTECTION OF WOMEN'S RIGHTS IN THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN AN ANALYSIS

Haniya Zahidi

## Abstract:

Women are the pioneers of a nation. They nurture the society and have pivotal role in shaping its dynamics. In Pakistan, 48.54% of the population comprises of women. But today, the status of women in our society has become vulnerable with the upraise of unpleasant incidents regarding their safety and exploitation of rights. Amidst the voices being raised for women rights, it seems necessary to approach the constitution and lawmaking institutions as well as Islamic laws to gain awareness of previously prescribed rights for women, which will also help in future lawmaking.

Upon keenly studying, it is found that the Constitution of Pakistan, 1973 has a myriad of laws and acts which speak for the protection of women. They include rights for life, equality, protection, property and representation in society. Laws are also made with reference to issues which have a direct effect on women integrity such as victims of rape cases, prohibition and punishment for domestic violence, child marriage etc.

Despite of the presence of these concrete provisions, the state has failed to protect our women. The current legislations are made under the guidance of international conferences held for women rights. They are a bundle of western influenced agenda, aiming to impose their cultural values in Pakistani society at the cost of our moral ethics and religious boundaries.

In depth study presented two reasons behind this social disorder:

1. Poor implementation of these provisions
2. Contradictions with Islamic laws

This research paper will elucidate the reforms and laws present in the Constitution of Pakistan, while analyzing their process of implementation with references to fact and figures, ground realities and if they contain any disregard with Islamic laws. Recommendations for their improvement and implementation in the light of sharia (Islamic principles) are also given in order to insure the security of fragile members of our society which is no doubt, essential for building a healthy community.

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- Research Scholar, Department of International Relations, University of Karachi

## **SUSPICIOUS ELEMENT AND INGREDIENTS AND SHARIAH STANDARDS**

Sehreen

### **Abstract**

Islam is an ultimate source and key to succeed in all sphere of life. Its commandments comprise of Hikmah tends to be eternal. It reminds us to live in accordance to the real propensity of nature. Humanity was addressed through the special divine call to inculcate its message rather than threat and dreadful means. Indeed to follow Islamic limits and boundaries the beneficiary is man alone. Sometimes human logic and wisdom unable to make out the secrets of Hikmah and considers divine laws as autocratic while it is not so. Almighty Allah has confined us with limits and boundaries concerning our livelihood. All are towards the clear direction of Halaal and Haram in its course.

The following Research Paper "Illegal edible elements and Shariah Standards" is based on the arguments and answers from Quran and Ahadith, the verdicts of eminent Islamic scholars and Sharia experts. Besides there is a definitive solution to the problems of Halaal and Haraam as well as various concerned questions.

In the last century, Where many problems have arisen due to the rapid development at the global level, there is also a problem regarding the Shariah status of new ingredients added to food and beverages. With this new development many new branches of science have also come into existence and in a very short time, the related fields have become very important in human life. Overall, all the research that has been done in this field, the orders of the Shariah were not taken into duly consideration.

Therefore, the principles and rules of manufacturing, composition, and the compositional substance that have also come into existence have not taken into consideration as per Islamic terms and conditions. This paper will help to fill this gap by prescribed Islamic law Insha Allah.

## JUDICIAL KHULA IN ISLAMIC SHARIAH AN ANALYTICAL STUDY

Shahnaz Kausar

### **Abstract**

Islam is a complete code of conduct and a life style. Its teachings have harmony with human nature. Main feature of Islamic life style is its law and adoration. Not even a single field of life is left without being enlightened with guidance, whether these are related with practical worship orders, dealings, Social and financial laws, collective or punitive orders. Islam will keep on guiding till day of Judgment to the entire world. There are certain rules and principles, in Quran and Hadees, which may be religiously after pondering over the accidents, incidents and orders of revelation.

Some religion is universal Resources of Scientific, industrial and social progress of present era has created various Issues related to Islamic jurisprudence. It could never be imagined in past so it is required that solutions of these problems might be presented from Spiritual view, fulfilling the needs and demands of modern era in the light of great Islamic Jurisprudential heritage, understanding the circumstances, needs and issues. This is an effort of the same chain. Topics from the modern Jurisprudential issues have been selected in order to present their comprehensive Solutions in the light of Quran and Hadees.

These are all general daily routine matters which anybody may face. It will be convenient for the people to consult the journal. They may know the solutions of their problems in the light of Islam. Researchers may seek help from it too.

# **OWNERSHIP RIGHT.... A COMPARATIVE STUDY OF ISLAM AND WESTREN CONCEPTS**

Amna Mustafa

## **Abstract**

The summary of this article is describes a comparative study of the Islamic and western concepts of ownership rights. Western thought has presented a very wrong concept of ownership, while Islam does not usurp anyone, s rights, rather it emphasizes individual ownership in the matter of ownership especially in the case of land ownership. This article consists of one chapter, in this chapter the meaning of the right of ownership and all current problems regarding ownership have been written in the right of Islamic and western ideas.

**I pray to Allah Almighty to make this article useful for the readers.**

# TRANSGENDER PROTECTION OF RIGHTS ACT 2018 FACTS AND IMPLICATIONS

Hajrah. Aziz

## Abstract

Islam is the complete code of life. It covers social, economical and matrimonial laws. at least one third of the shariah laws are related to personal and matrimonial issues. Such laws defines and interpret family importance in a social system.

In a civilization the main unit is male and female which built the family and cause to create a complete social system. The cultural invasion from the west is not stopped till unlawful relations between man and woman but now its crossing the new limits. They are busy now in promoting the unnatural relation in human by new agenda LGBTQ. This so called organization demands their rights in all over the world in the shelter of intersex persons.

By natural laws all world either they are Muslims and non-Muslims they rejected LGBT and punished them by their activities in history. America, Europe, UK, Zimbabwe, Malaysia, Indonesia are examples. Now Pakistan passed the law in human rights act (Transgender Protection of rights Act 2018) to protect them by using the shelter of Intersex people of Pakistan.

This paper criticising (Transgender Protection of rights Act 2018) bill with its two terminologies 'Transgender' and 'Self perceived'. And demands to change Intersex instead of Transgender and omit the self perceived clauses.

### Keywords:

**Transgender, Self Perceived, Islamic Law, LGBTQ.**



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