Women Status in Pakistan under Customs and Values
&
The Controversial Hudood Ordinance 1979

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The inequality of women's status and rights at all levels of society and discrimination against them in several forms remain a matter of serious concern world-over, particularly in Pakistan. A majority of women in Pakistan live in a world structured around strict religious, family and tribal customs that essentially force them often to live in "C*har Divari*,"[1] submission and overall fear. They are subjected to discrimination and violence on a daily basis due to the cultural and religious norms.

The ritual of *Karo-Kari*[2], *Vani* or *Soowa*[3], *Watta Satta* (exchange marriages), marriages with Quran and the problems of dowry and divorce still haunt the mind of any woman who belongs to Pakistan especially its rural areas. In organizations and educational institutions people are still facing difficulty in accepting women as an asset towards development. A woman is expected to play her role in the house only. Working women are not looked upon with respect in society. They are not getting due credit for their contribution towards development.

Sexual violence against women is very common and irony is that mostly people do not take notice of the common things/acts. A woman is criticised due to her job, dress and physical appearance. This is the victim (woman) and not the perpetrator, who bears the brunt of the blame. A woman pay the price which may range from humiliation, loss of autonomy to the loss of 'reputation', to loss of mobility etc. for the act, regardless of the degree of violence involved.

Sexual violence against women is also carried out under the centuries old *Punchait* and *Jirga* Systems. These Punchaits or Jirga is consist of elder male members of the local area. A woman, Mukhtar Mai's case in Muzaffargarh District of Southern Punjab is an example in this regard. She was ganged raped upon the verdicts of the local Punchait. The harassment of women is not common only among poor or middle class; it also prevails even among those who have been sent in the assemblies to raise voice for women rights and issues. For instance, a Pakistani woman parliamentarian spoke that how she had been abused, threatened and intimated by the local *Sardars* of the area to "back off" and not to meddle in women related affairs.

Pakistani Islamic law dictates traditional family values and is enmeshed in the legal system. Men are the decision-makers, especially in family matters such as marriage and divorce. Pakistan's government, law and society discriminate against women and condone gender-based violence. There are instances of discrimination against women at the government and

1 Literally to mean "the four walls of the house."
[2] Honour Killing (Killing woman by accusing her adultery)
[3] A custom in which woman/girl of a murderer is given to the family of the victim

constitutional levels. The *Zina* Ordinance commonly known as the *Hudood*[4] Ordinance 1979 is one of them. The Ordinance, promulgated by the military ruler General Ziaul Haq, was a blatant attempt to buy the loyalty of clerics and is in practice since then by consecutive governments whether political or military.

The Ordinance makes adultery or sex outside marriage a crime against the state and discriminates against women who may be subject to harsher punishment than that of men. According to the Ordinance, a woman has to produce four adult male witnesses, if she is subjected to *Zina biljabbar* (rape). And if she fails to prove a rape allegation, she has to face ostracism, besides the criminal prosecution. It can also lead a woman, who has been subjected to *Zina biljabbar,* to be imprisoned and charged with *Zina* (adultery).

***Tazkiaul Shahood* : Holiness of Witness**

A female rape victim could never produce four male witnesses who qualify the following conditions of ***Tazkiaul Shahood***[5] as envisaged in the Ordinance.

- The witnesses must be Muslims - males;
- They have been saying their prayers five time regularly right from their childhood;
- They must be honest in dealings;
- They must have never told a lie; and
- Who has never eaten anything in bazaar or open place.

First of all no government can make religious law obligatory in a state where **people of diverse religions** including Islam (approximately 91%), Hindu, Sikh, Parsee[6], Christian, Buddhists, etc., and various Islamic sects, aside *Shia* and *Sunni*, are living. In religious philosophy, where there is a divine law (*Hud*), people-made laws (i.e., penal code/parliamentary laws, etc.) cannot be declared to be valid. It is highly deplorable for a government to make such laws at the cost of equality, egalitarian principles and ideals of humanism.

Secondly, the question arises that how a poor woman who has become a victim of somebody's barbarity can arrange four witnesses to prove her innocence. Therefore, the ordinance makes it easy to falsely accuse a woman of adultery. It is estimated that one fifth (or 20%) of the total women in Pakistan's prisons are detained under the *Hudood* Ordinance. Normally, a rapist goes free while the victimized woman is booked under the *Hudood* Ordinance. Moreover, women and girls in prostitution are often charged with *Zina* or *Hudood*. The Ordinance also provides death penalty to those found guilty of sodomy with the child.

Thirdly, the **police and the legal system** further victimize women, which treat them as criminals. The Ordinance also facilitates custodial rape, as there have been instances when the women kept in police stations have been subjected to rape. Such victims find it difficult to register complaint with the police. And even if they register complaints, they may be refused investigation. Many victims and their families then prefer to remain quite. Many a times women victims are mentioned as co-accused in cases registered under the *Hudood* Ordinance.

[4] Allah's Limits for Lawful (*Halal*) and Unlawful (*Haram*)
[5] Holiness of witnesses
[6] An adherent of Zoroastrianism

Consequently, the right of evidence is denied to women, as a woman cannot be a witness in the *Hudood* cases.

It is therefore; it appears that the *Zina* Ordinance was designed to:

- Exclude non-Muslim minorities from the mainstream of the society;
- Exclude women participation from social and political arena as she was denied justice;
- Exclude ordinary Muslims participation since most of the victims of the ordinance belong to ordinary Muslims;
- Empower oppressors; and
- Dismember and mutilate women's rights.

Though a number of women have been indicted and put behind the bars under this controversial Hudood Ordinance. However, the following cases show that how this Ordinance was used to make it exemplary to suppress women in the name of adultery and religion.

> The first sentence of stoning to death and flogging under the Ordinance was passed in 1981 in the Fehmida-Allah Bukhsh case at Karachi. The case in which the couple failed to register their marriage within the prescribed period and was finally dismissed after much public uproar and NGO activists[7] met with the President.
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> In 1983, in a rape case, an unfortunate blind girl Safia Bibi was convicted 'Stoning to Death' on adultery, while the alleged rapists were acquitted for want of evidence. Safia Bibi was also eventually acquitted after much personal pain and public humiliation and having sought President's intervention in the matter to save the precious life of the innocent blind girl.
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> However, Lal Mai was not so fortunate as in 1983 she was publicly flogged for adultery, before a crowd of 5000 spectators. She is the only woman so far who was flogged under the ordinance.
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> In 1998, a woman was threatened with contempt of the Supreme Court if she did not allow her ex-husband to have sex with her. Conjugal rights were reinstated to her ex-husband, although she has since remarried. If she refuses to allow her ex-husband to have sex with her she will be punished according to the law.[8]

Customs and Quranic (Islamic) Teaching on Women

Average person either literate or illiterate has little idea what rights his/her religion has bestowed upon him/her. Often believers get only an interpretation of Islam that best suits their leaders. There are numerous examples of women being denied their legitimate rights in the name of religion.

The God, through Quran (*verses 19 of chapter 4*), admonishes those men who marry women against their will, oppress or ill-treat them and asks men to live with them on a footing of

[7] Ansar Burney Advocate Chairman 'Ansar Burney Welfare Trust International'
[8] Anwar Iqbal, "Wife faces contempt in sex case," United Press International, 9 May 1998

kindness and equity.[9] However, the culture and customs prevails in Muslim society, particularly in Pakistan is that the parents or spouse never asks a woman's consent at the time of her marriage. "*Watta satta"* (exchange marriage) is common in both rural and urban areas of Pakistan and if a woman marry according to her wishes she is either killed or declared transgressor.

Another example is that of inheritance rights, which Islam gives to women. But this does not suit the feudal and/or men mentality, as this would mean fragmentation of wealth instead of further accumulation. Consequently, girls are often symbolically wed to the Quran to keep their property within the family.

Regarding the share to women in inherited property the Quran's Chapter-4 "The Women" verses 7, 11, 12 and 176 spell out this issue in detail and very distinctly. According to theses verses "from what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large, - a determinate share."

Notwithstanding, in religion (Islam) the inheritance to the male, a portion equal to that of two females is set as a limit. But, it is to be noted that a woman gets share from four sources i.e., being a daughter (1/3), as mother a third (if the deceased left brothers or sisters the mother has a sixth.), as sister ½ (but if brother leaves child then 1/6th) and as wife ¼ (but if leaves a child an eighth). Whereas a man gets share from the property as inheritance from three sources only, i.e., father (½), wife ½ (or ¼ in case wife has child) and brother (1/6). The man does not get any share in inheritance from daughter. However, the distribution in all cases is after the payment of legacies and debts.

It seems that the *Hudood* ordinance was conceived and drafted in haste. Therefore, it is not in conformity with the conjunctions of Islam. A woman under religion (Islam) gets relatively more rights than whatsoever is presented in the Hudood Ordinance and this makes it more controversial and brutal. For instance: the word *Shahadat* is not being translated rightly and needs appropriate translation. In order to support this argument *verses 15, 16 of Chapter 4 and verses 2 of Chapter 24 of* the Quran may be referred. Specifically the Quran's verses 2 of Chapter 4 is very important and asks for believers to be witnessed in such case of open lewdness not only men, as asked in the Ordinance. However, a believer can be a woman and does not necessarily mean a man. It clearly makes the Hudood Ordinance extremely controversial.

Similarly, the religion (verses 4 of Chapter 24 (Nur or Light) ask to "*punish who launch a charge against chaste women, and produce not four witnesses (to support their allegations), - flog them with eighty stripes; and reject their evidence ever after: for such men are wicked transgressors"*. But the fact of the matter is, a number of women are put behind bars due to this controversial Hudood Ordinance as the interpretation of the verses in the Quran have been distorted just to take political advantage by the then military rulers of Pakistan.

Laws Pertaining to Violence Against Women in Pakistan

The Convention 1979 (CEDAW), which is duly ratified by the Government of Pakistan, obliges the State to take effective measures for curbing sex discrimination and the abuse/exploitation of women. Also, Article 2 of the convention obliges the member Sates to

[9] Please refer Annex -1 for related Quranic Verses and Chapters

take effective measures, both legislative and administrative, to end discrimination against women in all forms. Article 11 specially calls for eliminating discrimination against women in the field of employment, thereby ensuring the right to work, free choice of joining a profession or employment, promotion, job security, equal remuneration, social security and other services benefits.

The Constitution of Pakistan 1973, Article 25 puts the responsibility on government to protect the rights of women and stop every kind of discrimination. It also guarantees several fundamental rights/freedom including dignity of human person, equality of status, opportunity, occupation/profession; an end to gender based discrimination.

In addition, certain provisions of the Pakistan Penal Code (PPC) 1860 are also helpful:

i. Section 294 criminalises obscene words, songs or acts at the public place to cause annoyance to others.
ii. Section 354 also prohibits assault use of criminal forces, with intent to outrage the modesty of a woman.
iii. Section 354-A also criminalizes assault or use of criminal force to woman and striping her of her clothes and in that condition exposing her to the public view.
iv. Similarly, Section 509 penalises the uttering of words, making any sound or gesture or exhibiting any object, with intent to insult the modesty of a woman.

Problems with the Laws

Pakistan, being signatory to the international conventions, has ensured the world that it would put an end discriminatory practices and violence against women. PPC is difficult to imply under present court system. Even men avoid going to courts why would women go. Standard of proof is very high and difficult… not only the acts but also the intentions. Police and judiciary system is corrupt which refrains the victims for any legitimate action against the perpetrators.

However, the Hudood Ordinance and Blasphemy Law have come into direct conflict both with Pakistan's Constitution 1973 (such as of Article 25) and its international commitments (as made at the World Conference at Beijing and under the UN Convention on the Elimination of All Forms of Discrimination Against Women). In practical terms too, these laws have demonstrably failed to serve their purpose. They have not been any deterrents against crimes. And they have only led to proliferation of complaints in the courts, which, as it happens, have mostly been false or unjustified and have caused undue hardship.

Fruit and Futility

The women rights groups, lawyers' organisations and human-rights activists have been voicing their protests against the 'exploitation' of women, under several social practices and customs including "*Karo-Kari*" and "*Soowa or Vani*". But they can't get the object in question until and unless the society, as a whole, changes its behavioural attitude towards women. It is the responsibility of the government to create awareness about the laws and obligations in order to review the social approach towards the role of women in this society and the government could use all its channels, including the electronic media, for this cause. However, ironically, a former female minister for women of the present General Musharraf

government had supported the Hudood Ordinance as member of the then *Majlis-e-Shoora* in 1980s.

In October 1994, a Commission was set up by the federal government in compliance with a unanimous resolution passed by the Senate of Pakistan. The Senate resolution recommended in September 1994 that: '*a commission be appointed to review the existing laws promulgated through an ordinance or otherwise, which affect the rights, living conditions and social and legal status of Pakistani women for bringing them in conformity of Islam as enshrined in Holy Quran and Sunnah'*.

The Commission was made duty-bound to review all rules and regulations affecting the status and rights of women and suggest repeal, amendment or new legislation essential to eliminate discrimination, safeguard and promote the interests of women and achieve gender equality in accordance with the Constitution and obligations under international covenants.

When General Pervez Musharraf took power in October 1999 he hinted to review all the discriminatory laws that prevent women from playing their due role in their professions. Eventually, **National Commission on the Status of Women (NCSW)** was setup, which also knows the flaws in the Hudood Ordinance. According to a report, the NCSW's Law Committee has already requested NGOs, legal experts and *Ulema* for their views and opinions on the *Hudood Ordinance* and Muslim Family Laws. And, to identify, prioritise issues and recommend that how to address key women's issues relating to legal frameworks and amendments to the *Hudood Ordinance*, *Nikah Nama* (marriage contract) and strategies for creating mass awareness through the media about the importance of correctly filling out all sections of the *Nikah Nama*.

Some of the women's organisations have expressed their satisfaction over the role of the Musharraf government. They claim that by appointing various female ministers and inducting women leaders in National Security Council and other ministries, the present government had taken a bold initiative for the improvement of conditions. Yet they are of the opinion that without the revision of laws the issue of empowerment would remain a distant dream.

But there is a nexus between mullahs and the government particularly during military regimes. In February 2004 in a Dialogue on "First Year of Increased Women Participation in the Parliament, Lessons, Reflections and the Way Forward" women legislators complained that they are not being given the opportunities to play their role in national politics and in parliament particularly on women issues. They pointed out that the MMA legislators while having good understanding with the government do not allow presentation of a bill on the *controversial Hudood Ordinance*. In October 2004, the bill to amend or repealed was presented in the parliament by the treasury benches, however, did not get through due to the reason cited above. This shows a non-serious behaviour of the rulers due to own vested interest rather to realise the plight of women of the country.

Recommendations

The above revelation proves that in Pakistan the customs and practices under the centuries old systems are discriminatory and against women. These customs, values and practices are subject to government support for various reasons. Hence, these hamper efforts to women development and are obstacles in their empowerment. The courts and police are under

constant pressure from influential and serves only vested interests of the powerful. Therefore it is recommended:

⇒ The Offence of the Hudood Ordinance does not provide an adequate legal avenue for victims of rape to obtain justice and should be repealed immediately.
⇒ If the Parliament considers it necessary to make any further laws in this area, it should do so after serious debate and by reaching a consensus that the proposed laws are in accordance with the injunctions of Islam and also fulfill the international obligations of which the country is a signatory.
⇒ The repealed provisions of the PPC are re-enacted with an amendment to make marital rape a penal offence and to impose a severer punishment for rape on a minor wife.
⇒ There is a need to launch a countrywide campaign in collaboration with the government, civil society organisations, trade unions, employers, media and other stakeholders to:
  - improve the existing Hudood law in the definition, character of the proves and character of the punishment;
  - Give women rights to witness along with producing modern and scientific ways of proves like DNA[10] test etc;
  - Enact proper legislative/policy framework and improve the enforcement mechanism to curb sexual harassment;
  - Correct the procedures of the execution of the laws and experienced judges be appointed in the courts dealing with sensitive cases like violence against women and the Hudood.
⇒ Aside civil society organisations, the lawyers can play a significant role in this regard and can deny to pursuit such cases, which are discriminatory against women.
⇒ Following may give more effective and rapid result:
  - Individual Awareness raising and sensitization campaigns at public level by involving youth and by organizing Seminars and colloquiums at the secondary school level and distributing related literature among them.
  - Engage religious scholars under clerics and civil society dialogues on the issues to raise voice against the practice that women in Muslim culture particularly in Pakistan do not get their due share even on this formula, which is ordered by the Holy Quran.

⇒ The civil society organisations should also convene a national conference in which the government should be advised to repeal the *Hudood* ordinance and suggest appropriate and viable changes in the persisting inhuman laws pertaining to violence against women and get commitment from the government and the legislature to make it as early as possible.

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[10] Deoxyribonucleic acid, the self-replicating material present in nearly all living organisms, esp. as a constituent of chromosomes, which is the carrier of genetic information.

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Annex-1

Quranic verses

- *O you who believe! You are forbidden to inherit women against their will. Nor should you treat them with harshness, that you may take away part of the dowry you have given them - except when they have become guilty of open lewdness. On the contrary live with them on a footing of kindness and equity. (Chapter 4: verses 19)*

- *If any of your women are guilty of lewdness, Take the evidence of four (pious/reliable) witnesses from amongst you against them; and if they testify, confine them to houses until death do claim them, or Allah ordain for them some (other) way. (Chapter 4: verses 15)*[11]

- *If two men among you are guilty of lewdness, punish them both. If they repent and amend, Leave them alone; for Allah is Oft-returning, Most Merciful. (Chapter 4: verses 16)*

- *The woman and the man guilty of adultery or fornication, - flog each of them with a hundred stripes: Let not compassion move you in their case, in a matter prescribed by Allah, if ye believe in Allah and the Last Day: and let a party of the Believers witness their punishment. (Chapter 24: verses 2)*

  Let no man guilty of adultery or fornication marry and but a woman similarly guilty, or an Unbeliever: nor let any but such a man or an Unbeliever marry such a woman: to the Believers such a thing is forbidden. (Chapter 24: verses 3)

- *And those who launch a charge against chaste women, and produce not four witnesses (to support their allegations),- flog them with eighty stripes; and reject their evidence ever after: for such men are wicked transgressors;- (Chapter 24: verses 4)*

- *O ye who believe! When ye deal with each other, in transactions involving future obligations in a fixed period of time, reduce them to writing Let a scribe write down faithfully as between the parties: let not the scribe refuse to write: as Allah Has taught him, so let him write. Let him who incurs the liability dictate, but let him fear His Lord Allah, and not diminish aught of what he owes. If they party liable is mentally deficient, or weak, or unable Himself to dictate, Let his guardian dictate faithfully, and get two witnesses, out of your own men, and if there are not two men, then a man and two women, such as ye choose, for witnesses, so that if one of them errs, the other can remind her. The witnesses should not refuse when they are called on (For evidence). (Chapter 2: verses 282)*

[11] According to various scholars the Chapter 4 first came and revealed this order which later clarified further in Chapter 24