

Violence Against Women And Response Of The Superior Courts And Institutions In Pakistan (2016-2018)

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Abstract

The application of rule of law depends on the political will of the people which lead to legislation, the executive organ which execute these laws in the form of policies and judiciary which guarantee the enforcement of fundamental rights. Violence against women is considered an ordinary issue in Pakistan. Women come across various violence which mainly include physical, psychological, and sexual. Many homogeneous and heterogeneous factors are involved and responsible for violence against women. These include cultural dogmas, misinterpretation of religion, economic conditions, and the weak role of the state and its institutions. Statics describes the prevalence of various forms of crimes in a country. The aim of the statistical analysis is to explore the relations between variables and find out how the judicial system responds to various kinds of violence against women. The aim of this study is to present the role of apex courts and institutions in a quantitative manner which would be analysed to reach the findings.

Keywords: Violence against Women; High Courts; Criminal law; Cases

Introduction

In any society, the rule of law is not only a reflection of its moral, legal, and ethical standards, but it is also a tool for enforcing its customs, traditions, and norms. It keeps a harmonious relationship between citizens-citizens and citizens-state to maintain and nourish that society. It regulates human conduct with its authoritative force by defining rights, duties, acts, and omissions. The law provides a constitutional and administrative framework for the enforcement and execution of rights and duties. For the actualization of its ideals, the legal system needs an environment where recognition, respect, and support are mandatory from the people of that society (Rahman & Farhat, 2014).

Gender discrimination, cultural issues, and violence against women are still woven through legal and social norms. Violations against women are a problem that needs a solution in almost all states, even those that have made laudable progress in other areas. As a result, 35% of women in the world have experienced either physical or sexual violence or abuse in domestic and public life (Rahman & Farhat, 2014). Statistics show that one in three women worldwide experience physical and/or sexual violence in their lifetime (WHO, 2016). According to the UN (2015), only 40% of women facing violence seek help of some kind.

"The criminal justice system is the totality of roles, institutions, organizations, norms ,and values in society that are related to defining crime and deviance; developing laws and

sanctions; devising justice and punishment" (Shahidullah, 2014). "Criminal justice is immensely potential and reflective of political choices and priorities, as well as popular fear and misconceptions" (Pake & Wacquant, 2014; Tombs & Whyte, 2015).

Collecting data on legal rules, procedures, and relevant institutions on violence against women is certainly a valuable step to learning about and discovering the role of law in books and law in action. Accurate and comparable data on violence is undeniable. It is needed at all levels to strengthen the cause. Statistical comparison is considered an easy task. However, it is a multifarious task because ideas and concepts about crime and justice travel, which affect criminal justice systems. The data available through state institutions often undermines the level of violence. This data is, although not exact, valid and reliable to a great extent (Sajid, Khan, & Farid, 2010).

Methodology

The High Courts and the Supreme Court of Pakistan decide cases of violence against women (kidnapping/abduction, forced marriage, rape, murder, hurts, and honour killing) in their original and appellate jurisdiction. The decisions in these cases show the perception of the court towards violence against women. The indicators of VAW helped in collecting data on the particular aspects of violence (rape, murder, kidnapping, domestic violence, forced marriage, and honour killing) and show its severity and frequency. In Pakistan, the conceptual framework for understanding VAW takes into account gender parochial norms, customs, and practices, economic order, and political dimension.

Response of the Courts in Pakistan/ Data Analysis

In Pakistan, the constitutional task of enforcement of fundamental rights is given to the superior courts. For this purpose, original and appellate jurisdiction is given to the superior judiciary to entertain such cases under the Constitution of Pakistan (1973, art. 199 & 184 (3)). Moreover, by exercising the constitutional power of judicial review, it can declare any law unconstitutional and illegal if it is in violation of or contravening to fundamental rights (Art. 8). These fundamental rights include the elimination of discrimination and ensuring justice and equality (Chaudhary, 2020).

The total number of cases decided by the Sindh High Court in the years 2016-2018 was 169. Among the cases, 66 were of forced marriage, 5 of rape, 1 of murder, 4 of hurt (physical violence) and 83 were of honour killing, the highest among the reported cases decided by the Court in 2016. In 2017, it decided 9 cases, of which 5 were of forced marriage, 1 rape, and 3 cases of hurt. Only one case of forced marriage was decided in the year 2018 (Table.1).

Table 1:No. of cases decided by Sindh High Court in the years 2016-2018

Type of Offence	2016	2017	2018	Total
Forced marriage	66	5	1	72

Kidnapping/ Abduction					
	Rape	5	1	-	6
Domestic violence	Murder	1	-	-	1
	Hurt	4	3	-	7
Honour Killing		83	-	-	83
Total		159	9	1	169

Table 2: Conviction percentage in the years 2016-2018 by Sindh High Court

No. Of Cases & percenta ge	Execution	Life Impri.	*Long Term Impris.	*Short Term Impris.	Fine	Acquittal
169	1	8	60	80	149	20
100%	1%	5%	35%	47%	88%	12%

For the purpose of this study, long term imprisonment means imprisonment for 3–10 years, and short term imprisonment means one month to three years. In awarded convictions, the percentage of fine as a monetary penalty is higher as it was given along with other punishments (Table 2).

Table 3: No. of cases decided by Peshawar High Court in the years 2016-2018

Type of Offence		2016	2017	2018	Total
Kidnapping / Abduction	Forced marriage	-	-	-	-

	Rape	-	-	2	2
Domestic violence	Murder	-	-	1	1
	Hurt	-	-	1	1
Honour Killing		1	-	-	1
Total		1	-	4	5

Table 4: Peshawar High Court's conviction rate from 2016 to 2018.

No. of Cases & percentage	Execution	Life Impris.	Long Term Impris.	Short term Impris.	Fine	Acquittal
5	-	1	1	-	2	3
100%	-	20%	20%	-	40%	60%

Peshawar High Court decided only five cases of violence in 2016-2018. The acquittal is higher than the execution which show the lack of evidence while the number of cases show the least interest and reluctance of the people to report such cases of violence.

Table 5: No. of cases decided by the Lahore High Court in the years 2016-2018

Type of Offence		2016	2017	2018	Total
Kidnapping/ Abduction	Forced marriage	1	5	4	10

	Rape	3	11	6	20
Domestic violence	Murder	-	-	1	1
	Hurt	1	-	-	1
Honour Killing		-	3	1	4
Total		5	19	12	36

Table 6: Conviction percentage in the years 2016-2018

No. of Cases & percentage	Execution	Life Impris.	Long Term Impris.	Short Term Impris.	Fine	Acquittal
36	-	10	1	3	13	23
100%	-	27%	2%	8%	36%	63%

A total of 36 cases of major violence against women were decided by the Lahore High Court. Among the 36 cases, 20 were of rape, which is the highest as compared to other provinces. The acquittal ratio is higher than imprisonment. According to these cases, several reasons are responsible for these acquittals. A mere rendition of an allegation, no matter how impressively articulated, cannot support a criminal charge unless it passes the probability test. Socio-ethos, morals, and norms embedded in our way of life, such happenings cannot be contemplated. In the dispensation of criminal justice, a streak of doubt entitles an accused to claim freedom (*Tanveer Ahmad v. The State and another*, 2016). The prosecution had to prove a case beyond reasonable doubt and the court should have awarded a conviction after proper appraisal of the evidence available on record (*Asghar Ali v. The State and another*, 2016).

Table 7: No. of cases decided by Supreme Court of Pakistan in the years 2016 - 2018

Type of Offence		2016	2017	2018	Total
Kidnapping / Abduction	Forced marriage	-	-	-	-
	Rape	-	-	1	1
Domestic violence	Murder	1	-	-	1
	Hurt	-	-	-	-
Honour Killing		-	-	-	-
Total		1	-	1	2

Table 8: Conviction percentage in the years 2016-2018 by SC

No. of Cases & percentage	Execution	Life Impris.	Long Term Impris.	Short Term Impris.	Fine	Acquittal
2	-	-	-	-	-	2
100%	-	-	-	-	-	100%

Only two cases were adjudicated by the Supreme Court. Both the accused were acquitted on the ground of doubt.

Administrative Institutions for the Prevention of VAW in Pakistan

Ministry of Human Rights

The Ministry of Human Rights was established to implement laws and policies on human rights and coordinate with other ministries and institutions to prevent their violations. To fulfil its constitutional and international obligations and provide a violent-free environment for the women of Pakistan, the "National Policy on Ending Violence against Women and Girls,

2016" was adopted. The purpose and framework of the policy is to prevent violence; protect and rehabilitate victims. Other objectives of the policy are the implementation of laws and policies on violence against women and accurate evaluation, monitoring, and reporting of cases (National policy on ending violence against women and girls, 2016).

A survey is also conducted by the Ministry to know and assess men's and women's perceptions of violence against women (Men's perception of violence against women in Pakistan, Result from the IMAGE Survey Pakistan, 2016).

National Commission on the Status of women

It is a statutory body that is mandated to review laws, policies, and practises affecting women. The Commission formulates policies to implement international commitments. It also makes recommendations to Parliament to amend, repeal or enact a law for gender equality and dignified status for women. It reviewed several laws and policies and submitted its recommendations to the government. Study to assess the implementation status of the Women Protection Act, 2004, a policy framework for women's equal rights, women's violence and Jirga's public and private partnership to end "honour crimes" in Pakistan through the implementation of the Criminal Law (Amendment) Act, 2004 are some of the examples (NCSW, 2015-16).

National Commission for Human rights Pakistan (NCHR)

It is an independent body that is answerable to Parliament only for its performance. The Commission publishes its reports annually on the status of human rights. According to its 2015-16 report, only 33 VAW complaints were received from various parts of Pakistan (National Commission for Human Rights Pakistan, 2019). The 2017 report provided statistical data on all complaints from women as well as actions taken by the institution. A total of 81 complaints were filed. The most frequently occurring crime was rape, followed by honour killing and kidnapping. The least reported offence was forced marriage, as shown in the table:

Table 9: No. of cases disposed by NCHR of Pakistan in year 2017

Offences	ICT	Punjab	Sindh	KP	Balochistan	*FATA	Total
Honour Killing	1	6	2	4	4	1	18
Rape	5	13	1	2	-	-	21
Femecide	-	5	2	3	-	-	10

Abduction	1	1	-	2	1	1	16
Forced Marriage	-	1	-	-	-	-	1
Domestic Violence	6	5	1	3	-	-	15
Total	13	31	6	14	5	2	81

(* FATA stands for Federally Administered Tribal Area, which is now part of the Khyber Pakhtunkhwa province.)

A total of 81 cases were undertaken by the Commission, where most of the cases were of rape, followed by honour killing (NCHRP, 2017).

Human Rights Commission of Pakistan

It is an independent body that provides its statistical data on violations of human rights each year. The highest rate of crime in the year 2016 was rape, followed by femicide. The highest rate of crime was recorded in Punjab, because it is the most populous province in the country. In 2016, only six cases of forced marriages were reported to the Sindh regional office. Gang rape is the least frequently occurring crime in KP and Balochistan. Cases of domestic violence often go unreported, and only 139 cases were reported. A total of 5660 cases of human rights violations were reported in the province of Punjab. Of the 5660, 4001 were major violence against women. In the provinces of Sindh, KP and Balochistan, the total number of cases reported was 2817, 1834, and 371 respectively. Among the total, 284 cases of VAW were in Sindh, 443 in KP and 185 in Balochistan. (HRCP, 2016).

Table 10: Annual report of Human Right Commission of Pakistan 2016

Offences	Punjab	Sindh	KP	Balochistan	Total
Murder	681	-	211	43	935

Rape	2840	165	163	5	3173
Gang Rape	206	13	1	1	221
Honour Killing	274	100	44	31	449
Forced Marriage	-	6	-	-	6
Domestic Violence	-	-	24	105	129
Total	4001	284	443	185	4913

According to the annual report of HRCP, 3400 cases of human rights violations were reported. There were 3285 VAW cases among these. Like in 2016, rape remained the most common crime in Punjab. According to statistics provided by the HRCP report, 5340 cases of major kinds of violence were reported (HRCP, 2017).

Table 11: Annual report of Human Right Commission of Pakistan 2017

Offences	Punjab	Sindh	KP	Balochistan	Total
Murder	337	215	97	32	681

Rape	2608	156	72	4	2840
Gang Rape	159	47	-	-	206
Kidnapping /Abduction	-	1234	-	-	1234
Honour Killing	181	57	24	24	286
Forced Marriage	-	3	-	-	3
Domestic Violence	-	-	6	84	90
Total	3285	1712	199	144	5340

According to the 2018 report, only 1877 cases of VAW were reported. (HRCP 2018).

Table 12: Annual report of Human Right Commission of Pakistan 2018

Offences	Punjab	Sindh	KP	Balochistan	Total
Rape	820	18	17	1	856
Kidnapping /Abduction	587	10	6	1	604

Honour Killing	153	71	43	16	283
Domestic Violence	117	10	6	1	134
Total	1677	109	72	19	1877

Findings

A solution is widely considered right because it works, and a response work because it is right (Nelken, 2010). According to statistics, the imprisonment and acquittal percentage is not as substantial as the fine. The Sindh High Court is of the opinion that when the prosecution proves a case beyond any doubt, then it's the legal duty of the court to impose deterrent punishment on the offenders to make the evildoers an example and a warning to the likeminded people (Muhammad Saleem v. The State, 2016). In cases of forced marriage, the court held that women have the right to contract marriage according to their choice being sui-juris (Kirshan Lal v. Pertab Rai and others, 2018). In some cases, the victims were kidnapped for the purpose of obtaining signatures on the affidavit of free will and thereafter performed nikah (marriage) forcibly. If she gets divorced later on, she still faces threats of dire consequences and harassment (Mst. Shahzeen v. Station House Officer and another, 2016), but in other circumstances, the victim left home and joined the accused by consent. He didn't want to do anything wrong but marry someone (Shafqat Hussain, also known as Viki, v. The State and another, 2016).

The maximum number of cases decided by the Sindh High Court in 2016 were honour killings. The Court held that it often happened that an offender kills a person because of some dispute and later on kills his sister, wife, or daughter on the pretext of honour to make it a case of honour killing. In such cases, even if the legal heirs of both the deceased agreed to compromise the offence, in the view of the relevant law, it was for the court to decide whether the offence could be waived or compounded and what conditions were required to be imposed, having regard to the facts and circumstances of the case. People are losing their lives on the pretext of honour killing, which has become a menace and an invariable threat to society and needs to be discouraged vigorously on the rampage. The court should discourage such customs and practises (Rab Nawaz and 2 others v. The State, 2016).

The offence of honour killing was declared non-compoundable and non-bailable. It falls under the prohibitory clause of section 302 of the PPC. A plea of compromise with the legal heir of the deceased in cases of honour killing is useless (Aziz Ullah v. The State, 2016).

Disputes over matrimonial affairs, suits for dissolution of marriage and divorce are also reasons for violence against women or femicide (Malik Uddin v. The State of 2017).

The Peshawar High Court decided five cases of violence against women. Among them, 3 of the accused were acquitted. Pashtun culture and conservative society are responsible for the non-reporting of these heinous crimes. Honour killing took the form of normative commitment. The murderer feels no remorse for what he has done as it is a structurally accepted crime in Pakistani society.

In various judgments, the Lahore High Court recognized woman's right to contract marriage with free consent and of her own choice. The Court is of the opinion that the FIR can be quashed on the ground that she, being sui juris, had contracted marriage with her free consent and nobody had abducted her (Mst. Ayesha Malik v. S.H.O Police Station City Jampur, District Rajanpur and 4 others, 2016).

The main reason for honour killings in Pakistan is the marriage of own choice. A woman, in the name of honour, was murdered on the allegation that she was abducted by or eloped with someone for marriage (Muhammad Ramzan v. The State and another, 2017), or that she declined a marriage proposal (Muhammad Ashraf v. The State, 2018). The main reason for honour killings in Pakistan is the marriage of own choice. A woman, in the name of honour, was murdered on the allegation that she was abducted by or eloped with someone for marriage (Muhammad Ramzan v. The State and another, 2017), or that she declined a marriage proposal (Muhammad Ashraf v. The State, 2018).

Some of the rulings of the superior courts are: Gang-rape entails capital punishment (Tariq v. The State and another, 20-17); If a girl abducted and raped is a minor, any consent given by her has no consequences in the eyes of the law (Umar Hayat v. Station House Officer, Police Station Sadder, Multan, and 6 others, 2017). The statement, allegedly recorded by a judicial magistrate, did not appear to have been recorded by the magistrate concerned and has no legal validity (Umar Hayat v. Station House Officer, Police Station Sadder Multan, and 6 others, 2017). Circumstances in forced marriages, rape and abduction cases established that matrimonial issues were being transformed into criminal cases by the complainant to satisfy her vengeance (Sarfraz and another v. The State and another, 2017).

According to its annual report of 2016, more than 12,000 cases of VAW occurred in different parts of Pakistan (HRCP). These include murder, sexual violence, and physical violence. From 2016- 2018 the most frequently occurred crime was rape. National commission on the status of women review the pro-women laws and gave its recommendations while national commission on human rights file complaints of the victim of violence.

Conclusion

According to official statistics of administrative institutions and organizations, 12265 cases of women's violence were registered, while 212 cases were prosecuted in the Superior Courts. Most of the cases registered in the Superior Courts of Pakistan in the years 2016-2018 were of kidnapping/abduction for rape or forced marriages. The Superior Courts respond actively while awarding punishment, particularly in cases of rape and honour killing, to discourage the occurrence of these offences. Many amendments were made, and several legislative steps were

taken to discourage anti-women's practises and violence against women, but there is no special law on the subject of violence. It is the need of the day that Pakistan should legislate and implement it to prevent violence against women and for the implementation of the rule of law.

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