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PERCEPTION-REALITY-VISION-SUSTAINABLE FUTURE

PUNJAB WOMEN PROTECTION LAW 2016

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RESEARCH BRIEF



Introduction

The Punjab Protection of Women against Violence Act (PPWVA) 2016, prepared after three years' study, was drafted by the Punjab Chief Minister's Special Monitoring Unit Law and Order in collaboration with concerned authorities and civil society. The bill was approved by the provincial cabinet in May last year but was not passed by the provincial assembly due to in-house objections over the bill even by some members of the ruling PML-N. The women protection act was finally passed by the Punjab Assembly on 24th February 2016. The Act was ratified by the governor of the province on 26th February. The passing of the PPWVA makes Punjab the third province of the country to pass a bill on the domestic violence. The prime objective of the PPWVA is to provide justice and to protect women from all type of violence in the province where six women are murdered or attempted to murder, eight are raped, 11 battered and assaulted and 32 are abducted on a daily basis. For the first time in the history of the country, the PPWVA provides a comprehensive protection to women against a range of crimes. As compared to the domestic violence laws in Sindh and Balochistan, the PPWVA does not criminalize the violence but focuses on the protection after the violence is committed. Following the passage of the PPWVA, several religious parties opposed the bill and termed it as un-Islamic. The opposition by religious parties resulted in the formation of a joint committee by the provincial government to deliberate over the PPWVA. Despite some loopholes, the PPWVA provides for amendments in the next couple of years to remove difficulties.

Background

Following the passing of the 18th Amendment in 2010, there has been an increase of women legislation in the country.

In 2013, Pakistan joined the ranks of 90 countries which have some form of legislation of domestic violence, when Sindh passed the first ever legislation on domestic violence in the country. The Balochistan Assembly passed the Balochistan Domestic Violence (Prevention and Protection) Act in 2014. The Act expanded the scope of the law to cover domestic servants but also watered down some definition of violence and punishments for offenders as stated in the Sindh Domestic Violence Act.

Meanwhile, the ICT Domestic Violence (Prevention and Protection) Act, which was first approved by the Senate in 2009, failed to become law and expired when the act was not passed by the National Assembly (NA) within three months after the Senate's approval. Following the un-approval of the act by the NA, successive drafts were prepared by the Ministry of Law in consultation with the National Commission on the Status of Women. In 2012, the act was re-introduced as the private members' bill but was once again disapproved when objected from the religious parties.

In KPK, the Domestic Violence Bill was tabled in the KPK Assembly during the PML-N tenure in the late 1990s. The bill faced resistance from religious and other parties. Consequently, the bill was deferred to a committee which also ended its tenure with the assembly. During the current PTI-led government, a draft bill was sent to the Council of Islamic Ideology (CII) for review earlier this year. The CII chief rejected the bill as un-Islamic. Provisions exist to punish acts of domestic violence and other VAW crimes in the Pakistan Penal Code (PCC), however, the issue lies in the implementation of these sections.

The PPWVA was approved by the provincial cabinet in May last year and was first presented before the provincial assembly in June last year. Many reservations were raised against the bill. In order to address those reservations, the provincial law minister Rana Sanaullah formed a committee consisting of:-

- Law Minister
- Minister Population Welfare
- Minister Women Development
- Minister Social Welfare
- Jamat-i-Islami's Dr Waseem Akhtar
- Female MPAs including PTI, PPP and PML-N representatives

Following the formation of the committee, the members of the committee deliberate for more than nine months which resulted in eight amendments in the bill. JI's Dr Waseem expressed his reservation on the language used about forced entry of women protection officer (WPO) into victims house to retrieve her from abuse. Following the request of Dr Waseem, the language was re-adjusted and the amendment was made.

Objective of the PPWVA

The PPWVA was passed to protect women against violence including domestic violence (physical and mental torture), economic abuse, and harassment and cyber crimes. The main objective of the PPWVA is to provide justice and to protect women from all type of violence and give them a secure life where they can work properly and spend respectful life with their families. The PPWVA will also empower the women and bring them on equal footing with the male population of the country. The Government will also provide them special centers (shelter homes), to establish a protection system for effective service delivery to women victim to reconciliation and resolution of disputes.

Main Features of the PPWVA

Components of the Protection System

The 31 clauses PPWVA provides a protection system that include the following components:

- District Women Protection Officer
- Women Protection Officers
- District Women Protection Committee
- Violence Against Women Centres (VAWC)
- Shelter Homes
- Women Volunteers and Women Volunteer Organizations (ie, NGOs)
- Toll-Free Dial-in Number for the "Aggrieved" persons
- Data-Base and Software for providing service
- Monitoring and Evaluation Mechanism

The components of the protection system that already exist include:-

- District Coordination Officer
- Family Court
- Police

The entire protection system will setup in all 36 districts of Punjab. For the first time, an in-built mechanism has been designed through the

- District Violence Against Women Centres (VAWCs)
- Court orders (residence, protection and monetary)
- Introduction of GPS tracked electronic bracelets-anklets to enforce protection orders
- Power to enter any place to rescue the women victims

List of Crimes

The act provided for the first time in the history of the country a comprehensive protection to women against a range of crimes. The list of crimes includes

1. Abatement of an offence
2. Domestic abuse
3. Emotional abuse
4. Psychological abuse
5. Economic abuse
6. Stalking
7. Cyber crime

Types of Relief Provided

Under the law, through a residence order, the victim has the right to stay in the house if she does not desire to vacate it or the defendant has to provide an alternative accommodation if the victim desires so. In the case of being harassed or stalked, the victim can claim a protection order which orders the defendant to not communicate with the victim or stay a certain distance from her. In addition, the victim can also seek monetary relief from the defendant in the form of monetary orders to meet expenses occurred and losses suffered.

Violence Against Women Centres (VAWCs)

In order to just register a case of violence, the women have to go through a snake-and-ladder game. To deal with this issue, the law provides for the establishment of 24-hour women-run VAWCs. The VAWCs will help in smooth registration of the case along with other facilities including:-

1. First aid
2. Police reporting
3. FIR lodging
4. Prosecution
5. Medical examination
6. Forensics and post-trauma rehabilitation
7. Legal assistance
8. Immediate protection to the aggrieved
9. Evidence collection within due time to facilitate investigation
10. Audio-visual record of all actions

Apart from the above-mentioned facilities, the centres will perform the following functions:-

- Initiate VAW cases
- Establish a toll-free helpline
- Mediate between the aggrieved and the defendant for non-cognizable offenses if requested by the victim
- Act as community centres to guide women in all government-related inquiries

District Women Protection Committee (DWPC)

The provincial government will constitute District Women Protection Committee (DWPC) or Women Protection Officer for each district. Each committee will be headed by the District Coordination Officer (DCO). The members of the committee will include six district officials

and four non-officials to be nominated by the provincial government (one of whom will be nominated as vice-chairperson). Following tasks will be supervised by the committee:-

- Working of the Protection Centre
- Provide shelter home and toll-free helpline
- Take necessary steps to improve the services.

The provincial government will appoint necessary staff at a Protection Centre which will perform the following functions:-

- Mediation and reconciliation between the parties (defendant and aggrieved)
- Rescue
- Medical examination
- Medical aid
- Psychological counseling
- Legal help for the aggrieved person
- Mediate between the aggrieved person and the defendant to resolve the dispute.

The centres and shelter homes will be supervised by the 'District Women Protection Committee' (DWPC). The DWPC will also ensure that all VAW cases registered in any district's police station are referred to these centres.

District Women Protection Committee (DWPO)

Meanwhile, the District Women Protection Officer (DWPO) will have the power to enter any place to rescue the aggrieved with her consent. The DWPO can also file a habeas corpus case on the basis of any credible information of wrongful confinement of an aggrieved person. In order to obtain civil remedies, the law states that the aggrieved or any authorized person or the DPWO can submit a complaint to the court.

Penalties

Several penalties (imprisonment and/or fine) have been stated in the act, including those for

- Obstructing a protection officer (six months imprisonment or Rs.500,000 fine)
- Filing a false complaint (three months imprisonment or Rs.100,000 fine)
- Breach of court orders related to interim, protection , monetary or residence (one-year imprisonment or Rs. 200,000 fine)
- Tampering with the GPS tracked system (one-year imprisonment or Rs. 200,000 fine)
- Repeat offenders will get double the imprisonment or the fine.

Court Hearings

A family court would fix hearing for the VAW case within seven days of receipt of the complaint. The defendant will have to show cause in court in the same week. If the defendant fails to file a reply within the specified time, the Court, subject to service of the notice on the defendant, shall assume that the defendant has no plausible defense and proceed to pass any order under this Act. All VAW complaints would be decided within 90 days from the day of the receipt of the complaint.

The law provides that the victims of domestic violence cannot be evicted from their homes without their consent. If the victims are evicted from homes, the court can intervene. The law also provides power to DWPO to direct the defendant to move out of the house for 48 hours in order to protect the victim. The aggrieved person has the right to stay in the house or provide shelter till the case ends and the defendant shall not sell or transfer the house other than the aggrieved person.

The Opposition to PPWVA and Governmental Response

Following the passage of the PPWVA, the religious political parties have called the act as a conspiracy to destroy the family unit. Some prominent scholars from different schools of thoughts have opposed the act. Jamiat Ulema-i-Islam (F) chief Maulana Fazlur Rahman has said that the act is in conflict with Shariah and the constitution of the country. He also claimed that the law is an attempt to make Pakistan a Western colony. According to him, this bill will cause divisions within families and will increase the divorce rate. He further said when home matters will go in the police stations it will have a negative impact on society.

Muhammad Khan Sherani, the head of the Council of Islamic Ideology (CII), has described the law as entirely wrong. Chief of Jamia Binoria International Mufti Muhammad Naeem said that the bill is in contradiction to the Shariah and called it a tragedy. He termed the law as a bid to suppress men at the hands of women.

On 25th February, Punjab government's spokesman Zaeem Qadri also opposed the women protection bill. He said that such laws would affect the domestic lives. Jamat-e-Islami (JI) chief Siraj-ul-Haq said that the women protection law will undermine our family system and would affect the relationship of respect between mothers, sisters and husbands. The Western countries wanted to destroy our families and social culture, Siraj-ul-Haq added.

JUI-F Khyber Pakhtunkhwa (KPK) chief Maulana Gul Naseeb Khan said that by passing the women protection bill, the Punjab government has shown that it is serving the interests of NGOs. He also said that the law is contrary to Shariah and is also against the spirit of the 1973 constitution.

Initially, Pakistan Ulema Council (PUC) chairperson Hafiz Mohammad Tahir Ashrafi said that the bill will assist in ending violence against women. Two days later, Tahir Ashrafi asked the Punjab government to remove 'controversial clauses from the PPWVA, contradicting what he said just two days before. He clarified that the PPWVA should not be abolished altogether but reservations of religious scholars regarding the act should be addressed. He also termed some clauses of the PPWVA as contradictory to social norms, Shariah and Constitution.

Wafaq-ul-Madaris Al-Arabia rejected the proposed committee announced by the Punjab CM and demanded to immediately amend the PPWVA. Liaquat Baloch, the general secretary of Milli YekJehti Council, termed the PPWVA against Islamic injunctions. JI members have also openly rejected the PPWVA on several TV talk shows.

Following the opposition from several scholars and religious political parties, a senior member of Punjab Chief Minister's Special Monitoring Unit Law and Order Salman Sufi said that the bill has the power to greatly reduce the high rates of VAW crimes in the province and provide a fair and equal chance of succeeding for women. He also said that the bill is not against men but against violence. He also said that has said that law will be further strengthened. He also said that the law was not made in the darkness of night but after two years with the assistance of elected representatives of the province. The law is made as per the Islamic teachings, Salman Sufi added.

The Chief Minister (CM) of Punjab Shahbaz Sharif constituted a committee to ascertain the stance of scholars on the PPWVA. The committee, headed by the provincial law minister Rana Sanaullah, remained dysfunctional due to the non-cooperation of religious parties.

On 3rd March, the CII, a religious body that advises the government on the compatibility of laws with Islam, declared the law to be 'un-Islamic'. The CII also said that Article 6 of the

Constitution, which deals with treason, could be applied to the provincial assembly for approving the PPWVA without the CII's consent. On 5th March, mainstream religious parties belonging to all schools of thought rejected the women protection bill.

On 13th March, the provincial government gives detailed briefing about the PPWVA to Ulema belong to different schools of thoughts. Following the briefing, the Ulema extend support to the government for the PPWVA. They also said that the Act is not against Islam and offered to present their suggestions regarding the Act. On 14th March, JUI-F head Maulana Fazlur Rehman called on Prime Minister Nawaz Sharif and called for the abolishment of the women protection act. The same day, Salman Sufi said that the provincial government is not considering any move to amend the act.

An All-Parties Conference (APC) convened by Jamaat-i-Islami on 15th March and attended by 35 religious parties and groups asked the government to retract the women protection law. The APC attendees termed the law as un-Islamic. JI chief Siraj ul Haq threatened to launch a nationwide protest movement against the PML-N government if the act is not withdrawn. The religious parties warned the provincial government to withdraw the PPWVA by 27 March otherwise the parties will launch protests. The joint declaration of the APC stated that the law was promulgated to accomplish West's agenda of destroying the family system in Pakistan. On 21st March, Information Minister Pervaiz Rashid said that the government will implement the women protection act at every cost.

On 2nd April, religious parties resolved to launch an anti-government movement on the PPWVA issue. The parties also decide to propose a new women protection bill in the Parliament in place of PPWVA. The proposed bill was authored by 24-member steering committee headed by JI's Liaquat Baloch. The conference declared that there would be no compromise on the PPWVA. The joint declaration of the conference termed the PPWVA as an attack on the Muslim family system. Following the meeting of the leaders of the religio-political parties with the Punjab CM on April 4, the parties agreed to shun the plan of anti-government movement and join an official committee to review the PPWVA.

The CII declared PPWVA as contradictory to the constitution and Islamic teachings on 5th April. The CII directed the provincial assembly to table another table which ensures the protection of the rights of the entire family. CII chairman Maulana Muhammad Khan Sherani said that the council will prepare the draft of the PWAV if the government fails to prepare such a draft. The same day, Punjab CM Shahbaz Sharif formed a committee to recommend amendments in the PPWVA after JUI-F chief expressed his reservation to the Punjab CM. The committee, headed by PML-N senator Sajid Mir, consists of Ulema and government representatives. The committee held its first meetings with representatives of religious parties on April 18. The religious parties' representatives rejected the terms of reference (TORs) of the committee presented by the provincial law ministry. The next meeting of the committee has been postponed for an indefinite period.

Overview of women violence in Punjab

According to Aurat Foundation, the years 2009 and 2010 saw an increase of 8-13% of VAW cases in the province as compared to 2008. The year 2011 saw an increase of 42% in VAW cases.

According to women's rights advocacy group Aurat Foundation, 5,800 cases of women violence were reported in Punjab in 2013, which represented 74% of the national total. According to the 2014 statistics on VAW incidents by Aurat Foundation, 7548 incidents were reported in Punjab. 1866 kidnapping cases, 964 murder cases, 1408 rape/gang-rape cases, 642 suicide

cases, 362 honour killings cases, 191 domestic violence cases and 31 sexual assault cases, 53 women burning cases. 54 acid throwing cases and 1977 miscellaneous cases were reported in the province. The province topped the list in all categories except domestic violence and sexual assault. According to 2014 statistics of Ministry of Interior, 2734 rape and 263 gang-rape cases were reported in Punjab.

According to the Punjab Gender Parity Report 2016 (PGPR) and Gender Management Information System (MIS), 6,505 reported cases of violence against women in 2015 were registered in Punjab, but unfortunately, only 1 percent or 81 perpetrators were punished.

Province/ Territory	Rape Cases	Gang-Rape Cases
Punjab	2734	263
Sindh	191	35
Islamabad	162	17
KPK	133	11
Balochistan	19	0
GB	4	0
Total	3243	326

Source: Ministry of Interior

In addition, the report stated that 2720 rape incidents, 666 murder incidents, 588 beatings incidents, 173 honour killings incidents and 22 incidents of acid attacks were reported in the province.

According to a report published by Punjab CM's Special Monitoring Unit Law and Order, six women are murdered or attempted to murder, eight are raped, 11 battered and assaulted and 32 are abducted on a daily basis in the province. The exact number of incidents of domestic violence is estimated to be three to four times higher than reported.

2014 Statistics of violence against women incidents

Province/ Territory	VAM Incidents	Kidnapping Cases	Murder Cases	Rape/Gang- Rape Cases	Suicide Cases	Honour Killings Cases	Domestic Violence Cases	Sexual Assault Case	Women Assault Case	Acid Throwing Case	Misc. Case
Punjab	7548	1866	964	1408	642	362	191	31	53	54	31
Sindh	1447	161	249	85	155	212	202	36	0	3	344
KPK	736	75	324	5	106	60	N/A	N/A	2	2	94
Balochistan	140	6	46	4	21	77	N/A	N/A	N/A	5	1
ICT	140	62	18	13	7	2	N/A	N/A	N/A	1	27
FATA	9	0	9	0	0	0	0	0	0	0	0

Source: Aurat Foundation

Loopholes in the PPWVA

Definitions of domestic violence and dependent children

The definition of the domestic violence excludes women who are abused by men in the same house but does not have blood relations or married to them at the time of the violence. In addition, the definition of dependent children excludes the following people:-

- Girls of all ages
- Boys over the age of 12
- Young people with special needs

The exclusion of girls has made it unclear whether the daughters of the victims will be able to receive shelter with their mothers.

False complaint

In the case of filing a false complaint, the victim can face punishment in the form of imprisonment or a significant financial penalty. Most of the time the victims, due to threats from the defendant, harassment from family or due to insufficient external social support or financial dependence on the perpetrator, are forced to retract their complaints or claim that their original statements were false. Consequently, the legitimate victims can be criminalized or re-victimized because of retraction of the complaints.

Urgent need to increase the size of female armed police officers

The Act also provides that the DWPO has the authority to enter the house in order to rescue the victim. The DWPO will be assisted by the armed police officers in such efforts. Moreover, in order to rescue the victims, there will be urgent to increase the size of female armed police officers in the police forces.

Undefined cyber-related terms and other cyber issues

The law includes stalking and cybercrime as various forms of violence but fails to provide explanations of what these terms meant. In contrast, terms like “economic abuse” and “psychological violence” are explained in greater detail.

Similarly, the law also fails to mention that which organization will be looking into the cybercrime. In addition, it is not clear that the staff at the protection centers will be trained to deal with cybercrime complaints.

The issue can be become further complicated if the cybercrime offenders create numerous fake social media profiles. In other words, it will be important to quickly identify the person behind the profile.

The GPS tracker issue

Furthermore, the law also states in 7(d) that the defendant should wear ankle or wrist bracelet GPS tracker in case he commits a grave violence or likely grave violence which may endanger the aggrieved person. In this clause, the ‘dignity or reputation’ is not defined. Moreover, the ankle or wrist GPS tracker does not prove to be an effective tool to deter the defendant. In addition, the provisions do not explain that who will be monitoring the GPS trackers. In what ways the abuse of this clause will be avoided is also not explained.

Other issues

Meanwhile, the terms “oppressive behavior” and “sexual violence” have remained undefined in the act. In addition, the women protection law does not have the power to get an FIR registered under it.

The PPWVA is intended to protect women from domestic violence. Although men can also be victims of domestic violence. In addition, the PPWVA does not cover dowry and the culpability of giving or receiving it. For example, India’s Protection of Women from Domestic Violence Act, 2005 criminalized the offence of giving and receiving dowry.

Despite the loopholes, the act provides for amendments in the next couple of years to remove difficulties.

Comparative analysis between laws already prevailing and PPWVA

As compared to previously passed bills, the PPWVA provide civil remedies in the form of protection, residence or monetary order for all the offences the law covers. The law will serve as an addition to existing laws on protection of women from different crimes.

The PPWVA is intended to protect the women only. However, the 2013 Domestic Violence Law in Sindh not only provides protection to women only but vulnerable men, elderly people and children. Both Sindh and Balochistan Acts criminalize violence whereas the PPWVA focuses on the protection after the violence is committed. Violators, under the Punjab women protection law, can be imprisoned only in case of a violation of a court order, not for abuse.

Recommendations

In order to deal with the loopholes existing in the PPWVA, following recommendations are given to further improve and strength the Act:-

- The definition of domestic violence should include those women who are abused by non-blood relations like relatives-in-law.
- The definition of dependent children should improve so that it can atleast cover girls and young people with special needs
- The size of female armed police officers in the police forces should be increased in order to assist the DWPO in rescuing victims.
- The undefined terms like stalking, cybercrime, oppressive behavior and sexual violence should be defined properly. The term of cybercrime should include cyber-stalking, harassment through social media, sharing of inappropriate and stolen material, unauthorized access of computer systems, distribution of personal information of individuals.
- The PPWVA should be improved so that it can be able to criminalize violence.
- The PPWVA should criminalize the offence of giving and receiving dowry

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