

Short Communication

Analytical study of available legal protection to women against prevailing evil Customs in Pakistan

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ABSTRACT

Man and women, due to their physical structure and power, were differentiated with essence of life which remained present in different Eras/civilizations in different shapes. Although, divine religions played role to decrease this difference/ unbalance situation. But unfortunately, existence of this distinction could not be decreased. In ancient Eras when basic necessities of life were only limited to personal safety/searching food, up to that this distinction was bore able. But, in present modern era, life requires a lot of necessities and facilities besides personal safety and searching for food. In this era social life depends upon the equal coordination among men and women. However, difference between men and woman could not be eliminated even in this modern era. To hide this difference a number of evil customs/usages have been promoted. These evil customs/usages cause destruction in society and decrease process of collective progress. These evil customs cause hindrances in social progress of women and increase incidents of violence against them. In this research paper a critical view is made over the existing evil customs regarding women. Laws relating to these evil customs are discussed in this research paper. Loopholes, irregularities/ Lacunas in law, relating to some evil customs nothing are legislated. It is also discussed in this research paper that how hindrances in effecting laws can be removed to incline women for their active participation in national progress. Role of NGOs is also highlighted for the empowerment and awareness of women. Recommendations are also set out for the effectiveness of law and betterment of women.

Keywords: Evil customs, Rights, women progress, women empowerment, Pakistan.

INTRODUCTION

It is matter of fact that progress line could be maintained only by creating equality and collective coordination between men and women. But, unfortunately, even today in this modern era, women are kept behind due to evil customs prevailing in society just to strengthen the control of men over women. Among these customs most common are Honor killing, Marriage to Quran, Watta Satta, Forced marriage, Child marriage, Vanni/Sawara and violence against women.

Progress line of women is disturbed in the name of honor, protection and prevention from immoral activities. Generally, the word honor is misinterpreted and used in wrong sense. If women are guilty for disobedience and disordering the order of male member of the family then she has to face the consequences in shape of killing in the name of honor. (Zahra, 2005) This custom is present in different parts of Pakistan under different names like SIAH KARI, KAROKARI, and TOUR TORA. Women are murdered in the name of honor if they marry with their own choice. However, there are many other reasons of honor killing like bringing insufficient dowry articles, seeking divorce, lust of money and property and the pretext of illicit relationship. (Amnesty International, 1999).

Vanni is a Pashtoon word derived from VANNAYA means blood. It is found in Khyber Pakhtoon Khawah and Punjab. In Punjab, Mianwali is a district where this custom is frequently/continuously practiced till now. This custom is known by different names in different areas as Vanni/Swara, Dand, Badda and Valver. (Hashmi & Khokab, 2004) Vanni custom is used in the cases of murder, kidnapping, adultery and abduction to save skin from the process of law. Women are used as commodity by forcing her to marry with male person of the victim family being compensation /BADL- E-SULAH/KHOON BAH. In such situation she is not welcome with open arms and resultantly, she is to lead life according to the directions of her in laws family. Her own choice/future is ruined.

Marriage to Quran is a custom which is mostly found in Sindh and northern Punjab. This custom is also known as HAQ-E-BAKHASHASH/ HAQ-E_BAKHSWAN/ HAQ-E-BAKSHSWAIN/ HAQ-E-BAKSHSWEEN. The girl who is forced to

accept marriage with Quran is never permitted to marry with any man till to her death. She is to recite Holly Quran daily. She is called BIBI by people living around her. Rich people adopt this custom to avoid the distribution of their property. In case if they could not find perfect match for their girl then the marry girl with Quran. Motive behind this custom is to grab the woman share in the inherited property. Poor people adopt this custom because they have not much sources to gift dowry articles to their girls, (Mariso, 2007). Woman life is completely paralyzed by forcing her to accept marriage with Quran. This proves that even in this so called civilized era thinking of people is still equal to thinking of people of ancient eras (JAHLIAH era)(Mariso, 2007).

Pakistani laws permit women to marry with their own choice and free will but in fact, due to rigid customary practices/usages/norms/social behaviors/caste system this could not be possible for them. Even some educated people could not dare to marry with their own choice. However, the persons who dare to marry with their own choice are regarded ill mannered and rude. Child marriage is great hurdle in women progress. This custom is found in Pakistan as well as also in all over the world. Girls are married by their parents/guardians to shift burden as they reach in the age of fourteen to fifteen. Child marriage cause harm to girls as well as affect collective/national progress. Child marriage also cause great hurdle in getting education, good health, mental ability and upbringing.

Forced marriage is a custom in which element of consent does not become a part of marriage. This custom found all over the world including Pakistan. According to United Nations forced marriage is totally against the freedom and concept of natural justice as it ruins the status of individual, (United Nation, 2007). In the custom of Watta Satta women are traded like barter system. In Watta Satta marriage if a man wanted to marry with a girl then it is compulsory for him to offer a girl from his family for this marriage irrespective of age, beauty and social status of the bartered girl. However, according to World Bank report conducted in rural Sindh another view is taken that Watta Satta marriage is beneficial to reduce the incidents of domestic violence, (Hanan, Et Al, 2005). Women are the main victim of this custom and they have to face consequences. In Watta Satta marriage if a bridal is divorced then her bartered bridal will automatically be divorced. Watta Satta marriage is also become a cause of enmity between the families. It results mental/physical defected children.

Dowry is so much polluted in society that marriage is considered to be incomplete without it. Parents are presumed to be responsible for dowry articles. If a girl does not bring dowry articles with her then she is to face music. Some time women are so pressurized or taunted for dowry that they choose to die. In Pakistan, concept of dowry is derived from Hindu culture, especially Rajput Hindus considered it a necessary part of marriage. Actually the Rajputs were the head of states/landlord. So it was easy for them to bear the expenses of dowry. With the passage of time it becomes sign of honor for them. Gradually, this custom penetrated in the whole society. Now this custom is found in all classes of society, (Yusha, 2011). In Pakistan, some religious leaders /personalities justify dowry as an Islamic tradition. They Quote the example of articles gifted by Hazrat Muhammad PBUH to his daughter Hazrat Fatima R.A. Actually the situation was different. Hazrat Muhammad PBUH was the guardian of the Hazrat Ali R.A. the articles were gifted in the status of guardianship. (Yusha, 2011) Women are considered burden as compare to men. Boys/males are considered helping hand for their parents in the old age. This evil custom is so common that even educated families cannot get rid of it. This custom is equally common in rural as well as urban areas. (Pardee, 1996)

Violence against women is a social device which is used by men to keep the women in subordinate position. Violence is not only affects the mental and physical abilities of women but also effect the human dignity, self respect and morality. Worst form of violence is this that it completely destroys the mental and physical capabilities of women. Violence can be seen in the shape of humiliating, punishing, in keeping subordinate position and killing of women. There are many kinds of violence like physical, verbal, sexual, psychological, stalking, financial, social, and state violence. (Canadian Research Institute, 2002).

LAWS

Women are, constitutionally protected in Pakistan. It is mandatorily provided that women have equal rights to life and liberty. No one is authorized to deprive women from any right upon the basis of discrimination. Women are equally entitled to enjoy all the facilities provided by constitution under articles 9, 25,25-a, 32, 34, 35, 37.

To discourage Honor killing, criminal law in Pakistan was amended in 2004. It was included in section 299 of PPC that killing in the name of Honor, Karo kari, Siah kari is equal to intentional murder and punishable under section 302, 309, 310, 311, 338E. PPC.

Vanni/Swara is an inhuman custom. It is forbidden in law by giving punishment in 310-A PPC. Persons involved in the practice of this custom shall be liable to rigorous imprisonment which may extend to 10 years but shall not less than 3 years with fine.

In 2011 Marriage to Quran is declared an offence by promulgating Prevention of Anti Women Practices Act 2011. It is provided in section 498-c that offender shall be punished with imprisonment of either description which may extend to 7 years but shall not be less than 3 years and shall also be liable to fine which may extend to Rs-500000/. In 2011, forced

marriage is prohibited by formulating/promulgating Prevention of Anti Women Practices Act. According to this Act the violator is liable to imprisonment extendable to 10 years but not less than 3 years and fine extendable to 500000/.

Child marriage is also declared an offence by promulgating Child Marriage Restraint Act 1929. This law provide punishment in section-6 according to which the offender shall be liable to rigorous imprisonment which is extendable to two years and fine extendable to Rs.100, 000. To eliminate dowry custom, a special law "Dowry/Bridal Gifts Restrictions Ordinance 1976" is formulated where it is declared that offender shall be liable to imprisonment extendable to 6 months and fine extendable to rupees ten thousands along with forfeiture of dowry articles.

Unfortunately, nothing is legislated to eradicate the custom of Watta Satta. It is reality that there are many problems involved in the enforcement of laws in Pakistan. It is a settled preposition that absence of any law is equal to permit wrongdoer to commit offence without any fear. Unluckily, nothing is legislated to punish the offenders who used violence against women. A bill "Domestic Violence Bill 2009" was introduced in National Assembly but unfortunately, due to lack of interest of legislators, this bill was lapsed.

LACUNAS

- Honor killing is compoundable offence under laws.
- Procedural complications
- Lodging of FIR is not easy
- Production of evidence by complainant.
- No protection to witnesses of women.
- No easy access of women to approach police
- Age of minority and majority is not conclusively determined.
- Status of Vanni/Swara, forced marriage, child marriage is not defined?
- Procedure of registration of dowry is very complicated.
- Quantum of fine and punishment is very low.
- Police not take serious action by saying it is a personal matter
- No legislation on watta satta marriage and domestic violence.

SUGGESTIONS

- Law enforcing agencies should improve their method of investigation.
- Punishment (imprisonment + Fine) must be strictly observed for enforcement of laws.
- Special laws for registration of case regarding child marriage/ Forced marriage be formulated rather than PPC.
- Summary trail should be observed in cases relating to evil customs.
- Evidence of victim should be presumed to be a conclusive proof.
- Judicial training workshop should be organized to aware the judges about cases of evil customs.
- Honor killing should be declared as Non compoundable offence.
- Status of marriage occurred by forced/Vanni marriage should be determined.
- Dowry/bridal gift restriction Act 1976 should be enforced to eradicate dowry custom.
- Age of puberty must be defined/ determined.
- Legislation must be formulated to eliminate Watta Satta custom.
- Special legislation should be formulated to eradicate domestic violence.
- Law enforcing agencies should not be abstained from declaring domestic violence as family matter.
- All international laws/Declarations (being signatory) must be enforced.
- Media should play an important role to aware the society about evil customs.
- Religious leaders must play their role for eradication of these evil customs.
- In any emergency women must have easy access to protection centers.
- In cases relating to women high/experienced police officials should be deputed for investigation.
- Adequate protection should be made available to women in all fields of life.
- Role of NGOs should be encouraged by the Government for women protection, empowerment and awareness

CONCLUSION

Mutual coordination between men and women is necessary for social progress. One can safely say that link of coordination between men and women as important as a link between body and soul. It is admitted fact that mutual coordination is the basic need for national progress so this issue needs no comments. In this research those factors are

addressed which create hurdle in the way of national progress. This research concludes that evil customs are the major causes which restrict progress of women. Although it is the duty of the state to remove these evil customs however, this research transpires that social behaviors must be changed to overcome these evil customs. These evil customs and usages are so common in society even the educated families cannot get rid of it. Pakistani laws provide protection to women and also award punishment to wrongdoers but the evil custom/usages are continuously practiced in society and because of this even the wrongdoers considered themselves to be superior to law. Study indicates the causes of the evil customs are lack of access to resources, poverty, illiteracy, unemployment, gender differences, social behaviors, male dominated culture, desire of male baby, jirga system, caste system, rigid customary system, low political representation of women, personal interest of politicians, rotten governance, non implementation of laws, role of police and judiciary, misrepresentation of Islam and Narrow minded religious leaders. In Pakistan laws are formulated/ promulgated for the eradication of evil customs but in reality there are a number of lacunas because of which these laws are not effectively enforced. It is concluded through this research that for the elimination of these customs lacunas must be fulfilled and more effective laws should be introduced.

References

1. Amnesty international. (1999). Pakistan: Honor Killings of Girls and Women. Retrieved on December 11,2012 from http://web.org/library/index/eng_Asa330181999.
2. Canadian Research Institute for the Advancement of Women. (2002). Violence against Women and Girls. Retrieved on December16, 2012 from <http://www.criaw.iciaw.ca/>.
3. Chaudry, W, A. (2009). Muslim Family Laws. Lahore: National Law Book House .
4. Child Marriage Restraint Act, 1929.
5. Dowry and Bridal Gifts (Restriction) Act, 1976Ellis, MM. 1919. The branchiobdellid worms in the collections of the United States National Museum
6. Hanan, G, et al.,(2007). Watta Satta: Bride Exchange and Women's Welfare in Rural Pakistan. Washington: Development Research Group, World Bank. Retrieved on December 11, 2012 from <http://openknowledge.worldbank.org/handle/10986/7130/>.
7. Hashmi and Koukab (2004). Vanni is a Social Evil. Retrieved on December 16, 2012 from fact.com.Pk/archives/July/feng/vani.html
8. Khan, H.(2001). Constitutional and Political History of Pakistan. Karachi: Oxford Press.
9. Malik, A, W. (2010).The Constitution of the Republic of Pakistan 1973. Lahore. Al Noor Law House.
10. Mariso (2007). Pakistani Women Married To Quran To Keep The Property In The Family To Protect Bloodlines. Retrieved on December 11, 2012fromwww.jihadwatch.org.../Pakistani_women_married_to_Quran to keep the property.
11. Mumtaz, M. (2012). Criminal Law. Lahore. Manzoor Book Law House.
12. Pardee, L, R. (1996). The Delima of Dowry Death, Domestic Disgrace or International Human Rights Catastrophe. London: Aris.j.int'l & comp.
13. Prevention of Anti-Women Practices (Criminal Law Amendment) Act 2011.
14. United Nations. (2007). Forced Marriage. Retrieved on December 16, 2012 from <http://www.bbc.co.uk/ethics/forcedmarriage/introduction-1.shtml>.
15. Yusha, M. (2011). Jehaz-the Pakistani Specter. Retrieved on 25-1-2013 from www.pkhope.com/jahez/