
Legislative Initiative in the Area of Domestic Violence in Pakistan: Gender Approach to the core provisions of the Domestic Violence (Prevention and Protection) Act 2009

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Domestic violence has been a persistent problem throughout the recorded history and has been regarded as one of the primary public policy concerns worldwide. A significant increase in the number of countries with laws tackling the issue of domestic violence has been noted in the last few years. It is primarily because the majority of the states have ratified Convention on Elimination of All forms of Discrimination against Women (CEDAW). Under this Convention states are obliged to treat domestic violence against women as a violation of human rights and to incorporate international standards into national legislation. Pakistan had ratified CEDAW in 1996 and since then she was under an obligation to fulfil her international commitment by enacting laws in the area of domestic violence against women. This goal has recently been achieved through the enactment of Domestic Violence (Prevention and Protection) Act (DVPPA) 2009(hereinafter 'the Act' or 'DVPPA 2009') by the Parliament in 2012. The DVPPA 2009 is not a women specific law, this

article will apply gender analytical approach to examine the Act from women perspective. There are two basic purposes to look at the core provisions of the Act through a gender lens, first to explore the emancipatory potential of the said legislation and second to investigate various ways in which this can best be utilized to protect women from violence in domestic setting.

Introduction

The violence against women within Pakistani culture has been recognized in the last two decades by the civil society and the state¹ with little done to correct the problem. Only recently has this problem come under serious focus and begun to receive the attention it deserves, primarily by the sustained efforts of women rights groups.² Consequently, the Protection of Women Act 2006 was passed abolishing some of the most harmful provisions of Hudood Ordinances.³ The Protection Against Harassment of Women at the Workplace Act 2009, criminalizing the sexual harassment of women at work place, was passed in 2010.⁴ The third legislation, The Domestic Violence (Prevention and Protection) Act, whose object is to identify, address and treat the incidents of violence occurring in the home, was presented in the National Assembly and was approved by the same on August 4, 2009.⁵ As per Constitutional requirement⁶ it had to seek approval from the Senate⁷ before it attains the status of law. However, the Senate due to various political reasons, did not give its assent within mandated period of ninety days.⁸ As a result the bill remained in legislative limbo for another three years, it was finally passed by the Senate in February 2012.

Main Features of the Domestic Violence (Prevention and Protection) Act 2009: Analysis and Some Observations

The approval of law against domestic violence, by the Pakistan's Parliament, constitutes a major legal development in the country, where violence in domestic setting particularly against women is widespread.⁹ It is a well drafted Act, showing a serious commitment to protect women from domestic violence.

The Act is important firstly, it acknowledges the incidence of domestic violence, secondly, it recognizes that it can no longer be ignored or remain invisible.¹⁰Crucially, the Act is gender-neutral, unlike its counterpart legislation in India.¹¹ The Protection of Women from Domestic Violence Act (PWDVA) 2005 of India is a gender-specific law. The Indian law recognizes the fact that women are disproportionately affected by domestic violence because of their unequal status in family and society vis-à-vis men. However, since its enactment the Indian law has been subject to criticism for being discriminatory as it provides relief only to women.¹²Some petitions have also been filed in various High Courts of India challenging the very nature of the Act for being violative of the equality principle guaranteed by the Constitution.¹³

The discussion that follows will briefly highlight some of the features of the DVPPA 2009. The Act provides the definition of domestic violence as follows " Domestic Violence includes but is not limited to, all intentional acts of *gender based* or other physical or psychological abuse, committed by an *accused* against women, *children* or other *vulnerable* persons, with whom the accused is or has been in a domestic relationship including but not limited to,¹⁴(emphasis added)

- a) assault
- b) attempt
- c) criminal force
- d) criminal intimidation
- e) economic abuse
- f) entry into aggrieved person's residence {without consent}
- g) harassment

- h) hurt
- i) mischief
- j) physical abuse
- k) stalking
- l) "sexual abuse" includes any conduct of a sexual nature that abuses humiliates, degrades or otherwise violate the dignity of the aggrieved person.
- m) verbal and emotional abuse
- n) willful or negligent abandonment of the aggrieved person.
- o) wrongful confinement
- p) any other repressive or abusive behavior towards the aggrieved person where such a conduct harms or may cause imminent danger of harm to the safety, health or well being of the aggrieved person.

As is clear from the definition the scope of law is fairly wide, it extends protection to children and other vulnerable persons against domestic violence and thereby ensures a safe domestic environment. It falls in line with the constitutional provisions that empower the state to make special measures and undertake affirmative action for the protection of women and children.¹⁵ With the passage of this Act domestic violence has become a part of schedule 1 of the Family Courts Act, 1964.¹⁶ Despite the gender neutral character of the Act, the preamble recognizes that domestic violence is a gender-based violence, perpetrated predominantly by men against women. It clearly states the prevention and protection of women and children as its main objects. Also the definition section mention women and children

expressly and it does not cite men as potential victims of domestic violence. The choice of words in the enactment while it is referring to acts of domestic violence is worth noting. By stating that domestic violence includes acts “committed by an *accused* against *women, children..*” the Act creates a prima facie impression that the word *accused* here refers to male gender. (emphasis added)

Its close reading also reveals that some of its clauses refers to ‘acts’ that are predominantly associated with male gender, even in the most enlightened and egalitarian societies. For instance the Act includes ‘harassment’, and ‘stalking’ in clauses g, k respectively,¹⁷ in the continuum of domestic violence. In a society where many women are not allowed to step out of their homes without being escorted by male family members or chaperoned by older females of the family,¹⁸ ‘stalking or harassment’ by women would be a remote possibility. Thus women are significantly more likely to be harassed or stalked by men¹⁹. Similarly, clause (j) refers to physical abuse. Bearing in mind the long history of female subjugation in all possible senses and continuing existence of gender power differential in the society,²⁰ the potential victims of physical abuse would primarily be ‘women’ or children (doubly so if they are young females), weak, old and people having physical and mental disabilities. Likewise economic abuse is mentioned in clause (e) of the same section. In Pakistani society women are frequently denied their legal share in family inheritance,²¹ they have minimal control over economic resources, and they are mostly dependent on male family members for their basic economic needs. This provides grounds to argue that economic abuse is a part of the pattern of behavior used predominantly by male batterers to maintain power and control over their women.

The advocacy groups, being well aware of the plight of majority of Pakistani women—owing to their disadvantaged position in the society, arguably, the major cause of gender

oppression--had been persistently demanding, lobbying and striving for women protection legislation.²² Those working in this field have been primarily concerned with the amelioration of the status of women in the society, by minimizing unequal power relations.²³ It is therefore not surprising that the overall complexion of the Act is women friendly. Arguably the fact that the Bill was initiated by two female members of the National Assembly, and the Ministry of Women Development in collaboration with the Ministry of Human Rights was entrusted with the task of examining the initial proposed draft,²⁴ the fact that section 3(2) of the Act provides mandate to the National Commission on the Status of Women to review the provisions of the Act on regular basis and suggests amendments if needed,²⁵ provides strength to the argument that the primary object of law is to protect women, rather than men, from violence in familial and domestic context. It would be interesting to note at this juncture that despite conscious effort on the part of legislature to maintain gender-neutrality, feminine pronoun is being used in three different sections of the Act. For instance provisions of section 9 deals with the matters relating to Monetary Relief. It empowers the court to direct the accused to pay monetary relief to the aggrieved person, its subsection (d) reads that the court may order 'the maintenance for the aggrieved person as well as *her* children..' Similarly section 19 while laying down the duties of Protection Officers, appointed under this Act, provides in subsection (f) that it is, *inter alia*, duty of Protection Officer 'to get the aggrieved person medically examined if *she* has sustained bodily injury..' And finally in section 21, which pertains to Service Providers, subsection (c) states that the Service Provider has a power to 'ensure that the aggrieved person is provided shelter in a safe place of residence, if *she* so requires..' [emphasis added in all three sections].

Two possible justifications for the legislative *lapsus calami* can be advanced. Firstly because the 'protection of women' from violence was the overwhelming concern on the mind of

legislature, in the preamble, the same was revealed despite its deliberate efforts to maintain impartial and neutral character of the Act. The second explanation reinforces the argument that is presented in the beginning of this discussion, that the concepts of use of 'physical force' resulting in injuries, or 'economic abuse' or 'sexual abuse' are usually connected with male conduct, particularly in patriarchal cultures. Therefore, the tendency of a law maker, being part of the same society, to take a stereotypical perspective of the social issues is not unusual.²⁶In the present scenario the legislators would find themselves in dilemma if they are required to sever these notions from 'normal male conduct' and have to attribute them to females instead. The Act under discussion, arguably, reflects this internal psychological ambivalence of the legislators.

It is, therefore, argued that the Act is gender-neutral only ostensibly in its choice of words, the structural and conceptual undertones of the Act clearly indicate that the central aim of the law is to protect women as also declared in its preamble. Two reasons can be cited for its gender-neutral language, firstly to secure its successful passage from the male majority Parliament.²⁷Arguably, the chances of resistance were fairly high in case the Act was gender-specific. Secondly, the initiators of the Act had in their minds the similar legislation in India, which has been facing criticism since its passing in 2006, due to its gender-specific character.²⁸ To avoid these potential problems the outlook of the enactment is designed in a gender-neutral fashion, however, the motives behind the creation of this law and its ultimate objects are, increasingly to protect women and some other weaker groups in the society from oppressive patriarchal practices.

Other features of the Act include, setting up of the protection committees²⁹ to supervise the provisions of legal protection and guarantee medical care for victims of violence.³⁰It would increase the consequences for perpetrators by making the accused liable for

the financial losses and damage inflicted on victims and their dependents.³¹The Act lays out provisions for protection order and monetary and other forms of relief for victims and punishments in the form of fine and jail terms for those who violate the protection orders.³²The Act requires regular review of domestic violence legislation by the National Commission on the Status of Women.³³While some rights groups have welcomed the passing of law from Parliament, others have expressed strong misgivings about it. Khan for instance, has pointed out that,

..it does not criminalize the offence, while its definition of domestic violence is fairly all- encompassing, it is tantamount to a 'restraint orders'.

It is important to note that an accused found guilty of committing act of domestic violence will only receive a warning not to do certain acts based on the protection orders. The accused will not be subject to penalties for committing an act of violence. However, penalties for violation of protection order include imprisonment of six months to one year and a fine of rupees 100,000 for the first breach and a prison term of one to two years and/or a fine of not less than 200,000 for the second and succeeding offenses.³⁴Khan strongly criticizes the use of word 'intentional' in the definition of domestic violence.³⁵Excuses such as mistake, ignorance and accident could be easily used to counter any complaint of domestic violence, resulting in immediate acquittal. Thus she proposes to remove the word intentional from the definition section. Another source of worry as well disappointment is its provisions of section 25 which states that in case of 'false complaint, an imprisonment up to six months and a penalty of 50,000 rupees or both, will be meted out to the complainant'.³⁶This means that if anyone files a complaint of domestic violence and is unable to prove it, for whatever reason, the complainant will be charged with false accusation and punished accordingly. Such provisions may, by evoking fear of

backlash in the mind of victim, give serious setback to the core object of the said Act, Haroon remarks that,

..it allows the legal system to punish the victim...
this could dissuade women from seeking protection
against domestic violence for fear of reprisals.³⁷

According to one view it is not possible to legislate attitudes.³⁸ Contrarily, it has been observed that legislation often bring changes in public attitudes over times.³⁹ Arguably, systematic social change is not an instantaneous phenomenon, it cannot be produced by one stroke of the pen.⁴⁰ It is rather a complex social process and legislation can act as a catalytic agent to accelerate the same. When law is enforced, it eventually becomes the part of the social fabric.⁴¹ Mumtaz believes in the transformative force of law, she considers the passing of the Bill, a crucial step in the right direction, she argues that;

if laws are not being implemented it does not mean they should be legislated in the first place. Laws are important for setting standards and defining what is acceptable in the society...once it is on the statute books, the option of invoking it becomes available, and it will ultimately bring change in the society.⁴²

Functional Analysis of the Act

This section briefly examines the functional efficacy of the DVPPA and the extent to which this law is in accordance with the current approaches on legal intervention in various jurisdictions. As noted earlier in the preceding section, DVPPA does not directly criminalize violence that is perpetrated in domestic context.⁴³ This aspect of law, though apparently disturbing and heavily criticized by some advocacy groups,⁴⁴ is quite in line with the outcome of many evaluation studies. It has been suggested by many research studies that dealing with civil justice system is far more convenient for battered women, compared to criminal

court process.⁴⁵By looking at the present conditions (socio-economic) of women objectively/dispassionately and taking into account the ground realities of the society, it can be argued that mere criminalization of domestic violence would serve little purpose. Few reasons can be cited to favourably support this approach.

In the context of Pakistan any legislation that attempts to make domestic violence against women directly an offence would not possibly make its way through the country's Parliament, given its male- dominating membership.⁴⁶ Therefore, for the functional reasons, it is desirable to have some kind of law covering this area rather to have none. Further, keeping in view the long standing patriarchal –social-control over the lives of people in general, and over women in particular, it is quite appropriate to bring gradual changes in social attitudes. Arguably, sweeping changes, enforced from outside in the form of criminal laws will face resistance, and might not produce desired results. The ultimate targets could possibly be achieved through realistic means. The better approach, therefore, is to consider the current legislation as a forerunner of sterner criminal justice response in future. The present legislation could serve as a tool to prepare the mind of the society for next level of legal intervention. During this 'preparation phase' it can be hoped that change might come from within, which would not only be more natural/effective but also reduce the chances of resistance against the introduction and implementation of law.

A significant number of evaluation studies indicate that women's experience with criminal justice system is exhaustive at its best and bitter/unpleasant at its worst.⁴⁷It is now widely recognized that criminal justice system in many developed countries has shown poor results in alleviating the problem of VAW.⁴⁸It is noted in these studies/surveys that battered women often face range of problems in their dealing with the complicated procedures of criminal justice.⁴⁹ Given the psychological/emotional trauma they, presumably, have been undergoing,

coping with legal intricacies would even be a tougher experience.⁵⁰ If battered women find their interaction with criminal justice system taxing in the most developed countries,⁵¹ such as the UK and the USA, then criminal justice intervention is arguably not a right choice/remedy to combat VAW in Pakistan. It can be argued that in a developing country like Pakistan, with problems of diverse nature—including weak rule of law, corruption in police/lower judiciary, low literacy and high unemployment rates, strong social taboos, political instability, poor human rights record⁵²—women’s involvement with rigorous criminal court process might both be challenging as well as unrewarding. Fairly high level of moral-social support (family/friends)⁵³ and courage is required to invoke criminal justice system and to pursue the case to the very end. Such support for women is woefully deficient in the developing cultures including Pakistan.⁵⁴ Therefore, civil justice approach, such as protection orders, supplemented by criminal justice provisions,⁵⁵ such as sentences in case of violation of court orders,⁵⁶ would serve the purpose at least at the initial stages. That said, it is argued that the provision of the DVPPA that deals with false complains,⁵⁷ can have most damaging effects. The core object of legislation, i.e., to reduce violence by encouraging victims to invoke law, will become meaningless. It may render the entire spirit of legislation devoid of any force. It is, therefore, strongly suggested that this provision should be removed from the DVPPA to avoid its harmful consequences.⁵⁸ Finally it is argued that while introduction of domestic violence law is a major advance in the right direction,⁵⁹ it will only be meaningful if the government allocate funds to provide related services to women. The key challenge in this regard is to ensure that the laws and measures outlined in the Act are implemented, enforced and monitored effectively.

Points of Intervention/Recommendations

It is now well documented that gender discriminatory social attitudes and resulting inequality are the major causes of violence

against women in various societies.⁶⁰The ensuing section will argue that domestic violence against women is a complex social phenomenon, it does not fall into the exclusive domain of any particular field of study and profession.⁶¹Therefore combating domestic violence demands systematic, coordinated and sustained efforts of medical/mental health service providers, social services, law enforcement and advocacy groups. The experiences of some of the developed countries in this field have also been cited to demonstrate how they can provide useful policy guidance in taking effective holistic measures in Pakistan. The term Intervention has been originally used to describe efforts aimed at helping perpetrators and victims of domestic violence, those who already have the problem of violence in their lives.⁶² However, it has frequently been stretched to signify various preventive measures and responses for combating domestic violence. Therefore, intervention programs usually focus on two kinds of factors, risk factors and protective factors.

It has often been observed that even after law reforms, the acts addressed by those laws continue to be committed as a matter of habit, and laws on the statute books fail to eradicate the persisting social problems.⁶³Since domestic violence against women has deep cultural and historical roots⁶⁴, legal response in isolation arguably is bound to fail. The need to revamp the social system is therefore, inevitable.⁶⁵It is asserted that broad scale social overhauling is required.⁶⁶It is argued that the achievement of political and economic equality between men and women is relatively easier, however to achieve the actual equality of man and woman within the family is an infinitely more arduous problem. Yet women empowerment approach is strongly advocated in the context of Pakistan.⁶⁷The outcome of various evaluation studies, conducted to find the correlation between economic/political empowerment and domestic violence against women, indicates gradual decreases of violence in the life of women who have attained economic independence.⁶⁸The egalitarian character of social institutions can ultimately be

attained by removing inequalities from laws. Legal reforms, therefore, should be introduced to eliminate gender oppression and as a practical expression of such reforms domestic violence 'prevention and treatment programs must be created, funded and put into operation'.⁶⁹ However, law making without the support of comprehensive policy framework would be ineffective. Further, in order to be fully effective, the adoption of new legislation on Domestic Violence should be accompanied by a review and amendment where necessary, of all other relevant laws in force in the country.⁷⁰

It is well established that the most effective strategic point at which discriminatory attitudes regarding gender equality and violence against women can be addressed, is the education system of a country.⁷¹ The role played by school textbooks in socialization is very important. A study conducted by Law and Chan regarding Chinese primary school textbooks in Hong Kong is applicable to Pakistan also.⁷² They found that most textbooks transmit strong stereotypical messages about gender difference and inequality. Women's role is highlighted in domestic settings and in low status occupations, while men are represented dominating public sphere and holding high status jobs.⁷³ It is suggested that carefully designed courses should be introduced or integrated into existing curricula to challenge sex role stereotyping and male violence, at primary, secondary and tertiary levels of education.⁷⁴ The need for getting domestic violence issue onto the elementary school curricula is strongly felt in England as well.⁷⁵ Therefore, according to new government policy, commenced in 2011, every school child from age five be taught that domestic violence against females is intolerable. As a part of the comprehensive government plan, lessons in gender equality and preventing violence in relationships will be compulsory in the personal, social, health and economic education curriculum.⁷⁶ A number of domestic violence perpetrator programs are already being run by various organizations in UK.⁷⁷ In USA numerous domestic violence programs at all levels of education have been in operation.⁷⁸ The

target audience for such programs ranges from elementary school (preventive methods) pupils to adult age group, including batterer and victims.⁷⁹ The curricula of these programs has been structured to increase gender awareness,⁸⁰ to develop healthy conflict resolution and anger management skills,⁸¹ to eliminate violence by re-educating men and to help them build healthier relationships,⁸² to empower victims by increasing the understanding of the dynamics of abuse and teaching them ways to avoid toxic relationships.⁸³ Several longitudinal evaluation studies of batterer's programs have been conducted in the USA. Most of these findings reveal that such programs have been helpful in changing batterers' attitudes towards domestic violence or women in general. Batterer intervention studies found that these programs have also been instrumental in reducing recidivism.⁸⁴

Necessity for Integration of courses on domestic violence in law schools' curricula has also been recognized in USA. The requirement for such courses in the legal education, initially identified/expressed by American Bar Association, has been fervently supported by legal academicians. A specialized education and training in domestic violence law will enable the students to better understand and tackle the related issues in their practicing career.⁸⁵ Similarly, noting that doctors are in a unique position to screen and detect violence in their patients' life and can effectively prevent any chance of serious injury, domestic violence education programs are incorporated in the curricula of some American Medical schools.⁸⁶ In this author's view consciousness-raising through education is acutely needed in the context of Pakistan. Thus interventions along similar lines are strongly suggested at all levels of Pakistan's system of education. However, funding for new projects probably be a major challenge, therefore, initially integrating lessons in existing curricula at school level and compulsory credit hour courses at University level, particularly in law schools, will be a better option. Arguably such strategies being preventive in nature may not be able to bring about immediate outcomes, however, they will be beneficial both in

terms of their impact on public funds and in terms of producing lasting social changes.

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