



# RESEARCH ON PRO-WOMEN LAWS IN SINDH

AN ANALYSIS OF THE GAPS IN LAWS AND IMPLEMENTATION



**May 2018**

This publication is produced by the Strengthening Participatory Organization (SPO) with the support of Australian Government and Trocaire. The contents are the sole responsibility of the authors and do not necessarily reflect the views of Trocaire or Australian Government or SPO.

# **Research on Pro-Women Laws in Sindh**

An Analysis of the Gaps in Laws and  
Implementation

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**Cover Illustration:** Centangle Interactive (Pvt.) Ltd

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Research on Pro-Women Laws in Sindh - An Analysis of the Gaps in Laws and Implementation

Published by Strengthening Participatory Organization (SPO)

2nd Floor, Chohan Plaza

G-8 Markaz, Islamabad, Pakistan

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UAN: +9251-111-357-11 Tel: + 92 51 111 357 111, 2340445-48

URL: [www.spopk.org](http://www.spopk.org)

ISBN 978-969-8699-46-8

Printed by: Right Click Vision

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## Acronyms

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AWPA	Anti-women Practices Act, 2011
ASI	Assistant Superintendent of Police
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CPRD	Convention on the Rights of Persons with Disabilities
CRC	Convention on the Rights of the Child
Cr.PC.	Criminal Procedure Code
CSOs	Civil Society Organizations
DBALAC	District Bar Associations Legal Aid Committee
DC	Deputy Commissioner
DLECs	District Legal Empowerment Committees
DV (P&P) Act 2013	Domestic Violence (Prevention & Protection) Act, 2013
FGD	Focus Group Discussion
FIR	First Information Report
GBV	Gender-based Violence
HRCP	Human Rights Commission of Pakistan
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICSECR	International Covenant on Economic, Social and Cultural Rights
IHRL	International Human Rights law
KII	Key Informant Interview
MPA	Member of Provincial Assembly
NHRIs	National Human Rights Institutions
NGOs	Non-Government Organizations
OHCHR	Office of the High Commissioner for Human Rights (United Nations)
PPC	Pakistan Penal Code
PPP	Pakistan People's Party
RoBs	Rules of Business
SCMRA-2013	The Sindh Child Marriages Restraint Act, 213
SCSW	Sindh Commission on the Status of Women
SHRC	Sindh Human Rights Commission
SDS	Sindh Development Society
SPO	Strengthening Participatory Organization
SSP	Senior Superintendent of Police

SWD	Social Welfare Department (Sindh)
UNCRC	United Nations Convention on the Rights of the Child
VAW	Violence Against Women
WDD	Women Development Department (Sindh)



# 1. Introduction

This study is conducted to identify implementation gaps (de facto and de jure) in Sindh pro-women laws, Domestic Violence (Prevention and Protection) Act, 2013, the Sindh Child Marriages Restraint Act, 2013, the Sindh Commission on the Status of Women Act, 2015, and Criminal Law (Third Amendment) Act, 2011 also known as Anti-Women Practices Act (AWPA). With the exception of the latter federally promulgated and applicable at federal and provincial level, the other three are provincial laws passed by the Sindh Assembly over the last few years.

This research can be important to students, civil society, media personnel, politicians and other institutions working on or interested in the field of women rights, gender-based violence, and child rights. Furthermore, this research holds significant insights for policymakers to support effective implementation of pro-women laws in Sindh.

## 1.1 Objectives of Study

- Introduction of pro-women laws in Sindh
- Critically analyze socio-legal issues that impede implementation of pro-women laws in Sindh
- Give recommendations for effective implementation of pro-women laws in Sindh

## 1.2 Methodology

The research is conducted using following research tools:

- Key Informant Interviews (KIIs)
- Focus Group Discussions (FGDs)
- Desk Review of literature and laws on pro-women laws in Sindh

15 Key Informant Interviews (KIIs) and 04 Focus group discussions were conducted at Karachi, Hyderabad, Jamshoro and Matiari with representatives from departments of Police, Prosecution, Legal Fraternity, Judiciary, National Human Rights Institutions (NHRIs), Civil Society, Planning and Development, Women Development, District Administration, Social Welfare, members of Sindh Assembly, and Women Protection Cells. 04 FGDs were conducted in district; Karachi, Hyderabad, Jamshoro and Matiari, with representatives of the police, prosecution, legal fraternity, civil society, Social Welfare Department, District Administration and Women Protection Cells in Sindh.

## 1.3 Limitations of Research

- In this research, we applied a qualitative analysis tools to understand gaps in implementation (de facto and de jure) of pro-women laws in Sindh. The research did not aim at studying the overall status of implementation of the pro-women laws in Sindh, rather, its focus is centered on

investigation of the implementation issues at application and implementation level of the pro-women laws in Sindh

The research is limited to four districts of Sindh; Karachi, Hyderabad, Jamshoro and includes KIs and FGDs with few representatives from the Judiciary.

#### **1.4 Synopsis of Report**

The research report is divided into four major chapters. Chapter one is a concise introduction to four pro-women laws in Sindh; Domestic Violence (Protection and Prevention) Act 2013, Sindh Child Marriages Restraint Act 2013, Sindh Commission on Status of Women Act 2015 and Criminal Law (Third Amendment) Act 2011. Chapter two is critical analysis of socio-economic, legal and institutional issues in implementation of pro-women Laws in Sindh. Chapter three, is presentation of major findings and Chapter four, is discussion on recommendations for effective implementation of these laws.

## 2. Executive Summary

There are many pro-women laws in Sindh, however, some of these laws are more significant given the wide range of issues it addresses, the mandate and its applicability for promotion and protection of women rights. These include the Domestic Violence (Prevention and Protection) Act 2013, the Sindh Child Marriages Restraint Act 2013, the Sindh Commission on the Status of Women Act 2015, and the Prevention of Anti-Women Practices (Criminal Law Amendment) Act 2011, a federally promulgated law applicable at both federal and provincial level.

Progressive laws on women rights constitutes a landmark development to achieve social equality and prosperity within the deeply entrenched patriarchal socio- political norms, in the country and particularly in Sindh. Albeit, having an enriched legal normative framework on the rights of women in Pakistan, violence against women and gender-based discrimination is widely prevalent in the province. Few cases are filed under the Anti-Women Practices Act 2011 and Sindh Child Marriage Restraint Act 2013. Whereas, Domestic Violence (Prevention and Protection) Act 2013 has been applied so far, in only one case of domestic violence currently reportedly under trial in Sindh, despite the fact that women are frequently subjected to domestic violence in the province.

This study is conducted to examine issues in implementation of laws. Participants of this study have expressed the view, that these laws have not been very effective regarding women's rights protection in Sindh. The study shows that it is because of a number of multi-layered and multi-faceted issues facing the implementation of these laws. These issues include:

- There are legal loopholes and legislative defects in aforementioned four laws and in their Rules viz., the Domestic Violence (Prevention and Protection) Act, 2013, the Sindh Child Marriages Restraint Act, 2013, the Sindh Commission on the Status of Women Act, 2015 and the Prevention of Anti-Women Practices (Criminal Law Amendment) Act, 2011. These legal gaps have impeded the effective utilization of the laws by civil society, women and duty bearers.
- Implementation structures and mechanisms provided by the above mentioned laws need to be implemented effectively; implementation and monitoring mechanisms including Provincial and District level monitoring committees under Sindh Child Marriages Restraint Act 2013, Provincial level Commission and appointment of Protection Officers have been notified by the respective departments. Sindh Commission on the Status of Women Act 2015 and district level monitoring committees formed as result of collective efforts of Trocaire and SPO, are struggling to perform their roles effectively with limited available resources.
- Two types of budget related issues have affected the implementation of pro-women laws in Sindh laws. Firstly, sufficient financial allocations were not made to the relevant provincial departments such as Women Development Department, Social Welfare Department, and Prosecution and Police. Secondly, the participants of the study mentioned that the budget is not utilized properly by these departments.

- Social attitudes are essential for changing the socio-political status of women in Pakistan. Unfortunately, in Sindh like anywhere in Pakistan, social attitude and conduct towards women is discriminatory, patriarchal and at times offensive. In such social environment, women become victim of defined gender based roles in society that places them in a subordinate position to men. As a result, due to fear of social stigma instilled by biased gender norms, women are reluctant to benefit from pro-women laws and to approach the relevant departments and existing institutional mechanisms.
- Pakistan has a hybrid legal system based on Common law and *Shariah* Law. *Shariah* Law over-ride application and utility of the secular laws of country; one such instance is the inefficacy of Sindh Child Marriage Restraint Act 2013 due to distorted interpretation and application of *Shariah* Law by the Judiciary.
- In most of the cases of domestic or gender-based violence in Sindh, women are the victim while men and the family members, they depend on economically, are the perpetrators. Therefore, many women due to social stigma of divorce, family honor, disintegration of family and fear of losing financial security, are reluctant to raise their voice against the abuse. The severity of the issue can be judged from the fact that the Domestic Violence (Prevention and Protection) Act-2013 was passed four years ago in Sindh, only one case is reportedly under trial in the province.
- Gender desensitization and lack of awareness of government officials responsible for implementation of pro-women laws is one of the major reasons that hinders its effective implementation.
- Weak intra and interdepartmental coordination among major line departments responsible for implementation of laws on Social Welfare and Development, Health (Medico-legal services) and Police is due to lack of formal coordination mechanisms, Standard Operating Procedures or any other means as envisaged by the relevant laws.
- Police has an important role to play in prevention and protection of violence against women, which has is undermined due to political influence, lack of operational independence, low level of awareness about these laws, lack of female staff investigating Gender Based Violence (GBV) cases, lack of facilities of forensic services and the patriarchal mind-set of the police towards women.
- Prosecution is one of the major elements of the criminal justice system with a role to play in effective implementation of pro-women laws. However, persecutors are not playing their role efficiently due to lack of awareness on pro-women laws, low priority given to the prosecution of Gender Based Violence (GBV) cases, weak monitoring and consolidation of such cases, inefficient coordination between police and prosecution, and insufficient human resources in the Prosecution Department.

### 3. Introduction to Pro-Women Laws in Sindh

#### 3.1 Pro - Women Laws: From Bills to Acts of Legislature

Over the last two decades several women specific laws have been enacted regarding gender discrimination in Pakistan. Laws and legislation give legal codification to rights and obligations and give legal cover for policies on protection and empowerment of women, from human rights perspective. Pro-women laws are a success for the institutional recognition of specific issues such as, criminalizing honor killings, penalizing the holding of '*Jirga's* and '*Panchaiats*' bartering women for settling criminal and civil liability in the form of '*badleh-e-suleh*', delinking the adultery punishments from religious laws to secular/criminal code, criminalizing customary practices of exchanging women and girls into marriages as '*Watta Satta*', popularly known as '*Daiwat*' in Sindh, prohibition of forced marriages and protection of women against harassment at workplace.

After the passage of the 18th Constitutional Amendment (CA), many subjects including Children and Women were devolved to the provinces. Sindh Assembly legislated laws on domestic violence such as, Sindh Domestic Violence (Prevention & Protection) Act 2013, by recognizing, and acknowledging and criminalizing more offenses against women into legal actions to ensure protection of women and their rights. Sindh Assembly also legislated a new law on issue of child and early marriages, 'Sindh Child Marriage Restraint Act 2013' that repeals the law of Child Marriage Restraint Act 1929. New legislation was passed on formation of Sindh Commission on the Status of Women Act-2015, for the promotion of social, economic, political and legal rights of women in the province. This study analyzes gaps and lacunas in the aforementioned laws, discussed in detail, in subsequent chapters.

It is often argued that purpose of the of pro-women legislation in Pakistan is to ensure legal equality for women and girls, reducing and ultimately eliminating direct and indirect gender discrimination entrenched in the society and the state apparatus such as, legal and judicial systems. Therefore, the enactment of laws is one obvious achievement by legislature, and a political victory for parliamentarians who strived and championed the cause along with civil society organizations working on such issues. However, there is still need for critical assessment of pro-women laws to identify gaps that hinder their effective implementation. Though, some of the consultations are attempts made by respective stakeholders, e.g. civil society activists, and those in women's movement to realign the recently passed pro- women laws and amendments with international Human Rights law <sup>1</sup> and particularly the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). <sup>2</sup>

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<sup>1</sup> Common Article 2 of ICCPR (International Covenant on Civil and Political Rights) and ICESCR (International Covenant on Economic, Social and Cultural Rights) and Article 26 of ICCPR, [www.ohchr.org](http://www.ohchr.org)

<sup>2</sup> Article 4 &5 of CEDAW and General Comment No.25 of the Committee on the Elimination of Discrimination Against Women, on temporary special measures [www.ohchr.org](http://www.ohchr.org)

Having a law to address substantive or procedural issues is important, the effectiveness of which will depend on how the law is applied, understood, its provisions applied in the legal system, and more importantly the interpretation in courts<sup>3</sup> and its implementation.

As mentioned earlier, some laws focus on eradication of customary or harmful traditional practices, other laws which have indirect disproportionate effect on women, and some laws address the issues of violence and discrimination against women. It is difficult to define all the various facets of violence in this study, but violence against woman is used both as a means (process) and ends to perpetuate the power of a man over a woman imposed as tradition, custom, honor, culture and religion, imposing grave injustices and inequities against women and girls.

It is important to mention that equality encompasses numerable aspects of 'formal equality' -the right to be equal to men i.e. equal rights for employment opportunities, wages, access to health ,rights within the family, citizenship etc. and 'substantive equality' that ensures obligation of means i.e. laws, policies, institutions and mechanisms along with obligations of results, thereby going beyond the framework of equality on paper, but must be reflected by practice of institutions. Therefore, all States should ensure; equality of opportunity, equality of access to opportunity and equality of results<sup>4</sup>.

Similarly, the word 'Non-discrimination' cannot be limited to treatment on the basis of difference and distinction based on gender or sex, but covers the discrimination both by state and private actors such as individuals, families, communities of religious, political, social and economic elements. Discrimination is multifaceted in terms of 'Direct' discrimination; distinction made on the basis of sex and has the intention or effect of impairing the recognition, enjoyment or exercise by women of their rights known as '*de jure*' discrimination and '*de facto*' discrimination, an indirect discrimination when a policy or act is not intended to discriminate but its application and implementation has the effect of discrimination against women<sup>5</sup>.

Other dimensions of discriminations are 'past' discrimination, entrenched in the system and culture, accepted by community as a norm. 'Crosscutting' discrimination is the denial or access of rights in one field such as education, training or access to credit, and can lead to denial in other fields such as opportunities to employment, right to own property and ability to enter into contracts. 'Intersectional or contextual' discrimination is based on various identity variables apart from sex or gender, such as; race, caste, religion, social-economic, or marital status. Thus, women are subjected to many forms of discrimination in family, community, and society.

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<sup>3</sup> In recent cases of forced conversion in Ravita at Hyderabad Sindh High Court interpreted the consent and Will of intending converted girl by overriding the provisions of Sindh Child Marriage Restraint Act-2013, and in another case of child marriages in Umerkot District, Judicial magistrate interpreted the repealed section.

<sup>4</sup> The ideas of equality and Non-Discrimination: Formal and substantive equality, Women's Rights are Human Rights, OHCHR, UN (2014)

<sup>5</sup> General Comment No.18 (1989) of Human Rights Committee and General Comments No.16 (2005) and No.20 (2009) of Committee on Economic, Social, Cultural Rights.

### 3.2 From Bills (Public or Private) to Acts

After 18th Constitutional Amendment was passed in 2010, Pakistan People's Party (PPP) remained in power in provincial government of Sindh, as a coalition in its first term and without a coalition in the second term. Substantial portion of legislation is initiated by the government in the form of Public or a Government Bill. Individual members of the legislative bodies (both treasury and opposition members) may introduce private member bills, however, the trend has been that government shows less interest and ownership of private bills, with exception of few examples in Sindh Assembly<sup>6</sup>.

The Rules of Business of the Government of Sindh (1986), in Chapter Eight related to legislation, clearly obligates in Rule (45) (i); "the department administratively concerned shall determine the contents of the proposed legislation, consult the other departments including the finance department, if necessary and obtain approval of the Chief Minister (CM) in respect thereof, before moving the law department in the matter". For monetary matters, Rule (15) clearly states that, "on finance department's refusal to accord concurrence, the department may submit, after obtaining and incorporating the recommendations of finance department, such case to the Chief Minister for decision".

The study analyzes the above provisions of RoBs (Rules of Business) of the Sindh Government, to address concerns of Focus Group Discussion (FGDs) and Key Informant Interviews (KIIs) participants on ineffective implementation of pro-woman laws due to lack of consultation among responsible line departments. Aslam Shaikh - Former Additional Secretary Department of Law, says, "Lack of resources is another reason that hinders functioning of institutions and mechanisms spelt out in those laws". Some participants disagree with the notion that ineffective implementation is due to inefficient administrative management and capacity of the concerned department of law. Syed Hassan Ali Shah, Additional Secretary (Legislation), Sindh Assembly<sup>7</sup> says that, "Laws undergo constant evolving process and once tested and implemented, gaps are identified and amended with time".

Legislation can be a single law or a collection of laws, categorized as Primary Legislation or Secondary/Sub-Ordinate/Delegated Legislation. The usual practice is that primary legislation passes through hierarchy of authority in parliament by means of Acts or Statutes. The Executive plays the role of Legislature (President of Pakistan under Article 89 of the Constitution of Pakistan) and (Provincial Governors under Article 128 of the Constitution of Pakistan) issue an ordinance to make a law. However, ordinance need approval of respective legislatures within stipulated time otherwise they may expire.

In Primary Legislation, piece of legislation introduced in parliament is known as a 'Bill' and undergoes scrutiny by Standing Committees before and passed by the House or Assembly in case of provinces, it goes for assent to the President (Federal) and Governor (Provincial) Legislation, when an act deals with a specific theme or subject of law, is 'Principal legislation', such as, 'Protection of Women against Harassment at Workplace Act-2010'. Though it is not a comprehensive law that is applicable in all cases, i.e. Public, Private and the Workplace. Another type of Principal legislation can be Hybrid Law, for

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<sup>6</sup> Bill on the Provincial Commission on Minorities was tabled by Nand Kumar Goklani, Member of Provincial Assembly Functional (MPA-F) and Bill on Prohibition of Corporal Punishment was introduced by Mahtab Akbar Rashdi MPA-F.

instance, Sindh Domestic Violence (Prevention & Protection) Act 2013, is a combination of offenses against women in the current penal code and penalties for other offences against women, is part of it as well. Third type of Principal legislation is an amendment of a legislative act is, such as, Anti-Women Practices Act 2011'.

Sindh Child Marriage Restraint Act 2013 is not a Principal legislation but a consolidation that repeals previous laws on a particular issue such as, Child Marriage Restraint Act 1929, and re-enacts the provisions of repealed statutes by incorporating amendments.

Secondary or Sub-Ordinate Legislation also known as Delegated or Subsidiary Legislation, is law made by executive branch of the government with authorization of Parliament through thorough vetting by the law department. Such legislation includes regulations, rules, bye-laws, procedures, protocols, Standing orders, and notifications. It is pertinent to mention, occasionally, there are inherent provisions for Governments i.e. Administrative Department for making such Rules of Procedure, also commonly referred to as ' Rules of Business' such as Section 10 of the Sindh Child Marriage Restraint Act (SCMRA) 2013, and Section 29 of the Sindh Domestic Violence (Prevention & Protection) Act (SDV (P&P) Act 2013, and Section 23 of Sindh Commission on the Status of Women Act 2015.

During this study conducted in different districts, it is observed that RoBs or coordination mechanisms do not exist within line departments. Formal mechanisms between the Police, Women Development Department, Social Welfare Department and District Administration does not exist for implementation of pro-women laws. Although there are provisions for District Committees in SCMRA-2013 and SDV (P&P) Act 2013, and mechanisms such as a Dar-ul-Aman Management Committee, under the Sindh Standard Operating Procedures for improved functioning and management of Dar-ul -Amans 2013.

Another factor is the lack of consultation with relevant parties and stakeholders within government departments and beyond functional jurisdiction of government. As each administrative department or agency is mandated in RoBs and while some laws or amendments or clauses of that particular law fall within the ambit of another department, the agreement or consent of that department should be taken by the concerned authorities. Likewise, the role of parliamentary or standing committees is to seek support from experts in the field and widely circulate the draft for necessary input. This way, many procedural gaps can be addressed at an initial stage of implementation of the law, as in the case of Sindh Domestic Violence (Prevention & Protection) Act 2013, " some offences are cognizable and others non-cognizable resulting in confusion in the application of law.

Civil society and organizations working on legislative advocacy, in most cases, do not take technical advice from relevant departments to discuss the proposed laws for wider consultation and feedback. They incorporated international standards without taking into consideration the local realities of authorities that are meant to ensure implementation of laws. For example, Local government (LG) is a regulating authority for licensing of *Nikkah* Registrars but the role of LG is completely missing from the principal Act SCMRA 2013, thus the implications at implementation level will remain in the law and in its respective procedures. Thus, a multi stakeholder's dialogue, series of consultations on proposed laws, and making



the drafts public for technical reviews is essential so that the risk of lacunas in Pro-Women laws could be minimized as much as possible.

### **3.3 Analysis of Pro-Women Laws in Sindh**

There are many pro-women laws in Sindh with only few of these being more significant given their wide scope, mandate and applicability, this includes; the Domestic Violence (Prevention and Protection) Act 2013, the Sindh Child Marriages Restraint Act 2013, the Sindh Commission on the Status of Women Act 2015 and the Prevention of Anti-Women Practices (Criminal Law Amendment) Act 2011 - a federally promulgated law applicable at both federal and provincial level. Before we examine these issues in detail, an introduction to these laws is necessary.

#### **3.3.1 Domestic Violence (Prevention and Protection) Act 2013 and DV (P&P) Act 2013**

The Domestic Violence (Prevention and Protection) Act, 2013, was passed by the Provincial Assembly of Sindh in 2013. The law is a landmark development in the efforts to protect women against various forms of violence and gender-based discrimination and making violence a criminal offence.

The law defines domestic violence as “all acts of gender-based and other physical or psychological abuse committed by a respondent against women, children or other vulnerable persons, with whom the respondent is or has been in a domestic relationship including but not limited to ,assault attempt, criminal force, criminal intimidation, emotional, psychological and verbal abuse (a pattern of degrading or humiliating conduct towards the victim, harassment, hurt, mischief, physical abuse, stalking, accosting, watching or loitering outside or near the building or place where the aggrieved person resides or works or visits frequently, sexual abuse, trespass, wrongful confinement, economic abuse”. Many of the terms were referred to in the existing laws.<sup>i</sup>

The law provides for formulation of implementation structures at provincial and district level which includes; the Commission at provincial level, protection committees and appointment of protection officers at district level. Interestingly, the Domestic Violence (Prevention and Protection) Act of 2013 provides for, inter alia, formation of the most significant commission mandated with extraordinary powers of *suo-moto* on the issues of domestic violence.<sup>ii</sup>

The Rules of Business of the law were notified by the Women Development Department in 2016 under section 29 of the Act. The Rules further defines the composition, tenure and functions of the provincial and district level committees and protection officers provided by the law.

#### **Strengths of the Law**

- Domestic Violence (Prevention and Protection) is based on a gender-sensitive approach towards domestic violence, by acknowledging offences physical and psychological abuse as criminal acts in the law. The law provides a wide range of remedies to victims of domestic violence, including protection orders to restrain perpetrator of domestic violence from harassing the complainant, entering her residence or place of employment.<sup>iii</sup>

- Unlike, the Punjab Protection Violence against Women Act 2016 that prevents violence against and protects only women, the definitional scope of Sindh's law is more inclusive,<sup>8</sup> bringing women, children and other vulnerable persons into its domain. The word "aggrieved person" used in the definitional scope of the law can be interpreted to include vulnerable persons such as, senior citizens, differentially able bodied persons, mentally retarded persons, and transgendered persons within the family/domestic relationships.
- A child is according to international standards<sup>9</sup> and requirements<sup>10</sup>, also incorporated in provincial special laws dealing with child protection<sup>11</sup> and Child Marriages<sup>12</sup>.
- The constituent elements of Domestic Violence are broadly defined that includes but are not limited to, all acts of gender based and other physical or psychological abuse committed by a respondent against women, children or other vulnerable persons.
- The Act reinforces the concept of vulnerability instead of traditional perception of vulnerable women and children who are easily exploited and need protection, compared to other less vulnerable relationships of the family unit.

### 3.3.2 The Sindh Child Marriages Restraint Act, 2013 (SCMRA-2013)

Sindh Child Marriages Restraint Act, 2013 was passed by the Provincial Assembly of Sindh on 28th April, 2014 and was assented to by the Governor of Sindh on 10<sup>th</sup> June, 2014, its rules were framed by the Women Development Department of Sindh in 2016. Sindh Assembly legislated this law and repealed the Child Marriage Restraint Act 1929, in the wake of 18<sup>th</sup> Amendment in Constitution of Pakistan 2010, which, inter alia, devolved the subjects of marriage and divorce to the provinces. The law raised the legal age of marriage for women from 16 years to 18 years. It also made child marriage non-bailable, non-compoundable and cognizable offence. It is noteworthy that, under the Child Marriage Restraint Act-1929, the minimum age of marriage of boys was 18 years, whereas it was 16 years for girls. The child marriage offence was also bailable, non-cognizable and compoundable in the 1929 law. Most importantly, police could not lodge an FIR (First Information Report), arrest and investigate the cases without the permission of a magistrate. As a result, the Police would take notice of such issues, and were applying cognizable sections like PPC 365-B, 371 A, 371B and booking under the *Hudood* Ordinance alleging victim girls as offenders<sup>iv</sup>.

The Rules of Business (RoB) of the Restraints Act of 2013 legalizes the establishment of district level and provincial level monitoring committees on child marriages.

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<sup>8</sup>Sara Malkani, "Sindh's dormant law" DAWN dated 11/7/2017.

<sup>9</sup>Article 1, UN CRC 1989 [www.ohchr.org](http://www.ohchr.org)

<sup>10</sup><sup>10</sup>These legislative inconsistencies are reflected in "Concluding observations on the fifth periodic report of Pakistan: which reads that "It [Committee on UNCRC] is also concerned about legal inconsistencies concerning the definition of a child at the federal, provincial and territorial levels, and disparities in that regard between secular and Sharia Law.

<sup>11</sup>Sindh Child Protection Authority Act-2011, section 2 (g)

<sup>12</sup>Sindh Marriages Restraint Act-2013, section 2 (a)

Under section 24 (1) of the RoB a Provincial Monitoring Committee has to be constituted with the mandate to look into complaints and take *suo moto* notice of violations of law. The Committee has the capacity to play a significant role in preventing child marriages in Sindh.

The RoB of the law also provides for the formation of District Monitoring Committees under section 35 (1). These committees are required to provide information to the Court or to the local police station that a child marriage is going to take place.

### **3.3.3 The Sindh Commission on the Status of Women Act, 2015**

The Provincial Assembly of Sindh passed the Sindh Commission on the Status of Women Act in 2015, which was assented by the Governor on 12<sup>th</sup> May, 2015. The Act aims to "promote social, economic, political and legal rights of women, as provided in the Constitution of the Islamic Republic of Pakistan 1973, and in accordance with international declarations, conventions, treaties, covenants and agreements on o women rights, including the 'Convention on the Elimination of All forms of Discrimination against Women' (CEDAW).<sup>13</sup>

Most importantly, the Act provides for the constitution of a Commission to be known as Sindh Commission on the Status of Women (SPCSW). The Commission is mandated with various promotional and protection functions including to "examine the policy, programs and other measures taken or to be taken by Government for gender equality, women's empowerment, political participation, representation, assess, implementation and make suitable recommendations to the concerned authorities; and to review all Provincial laws, rules and regulations prejudicial to the legitimate interest and rights of women and suggest accordingly in term of replacement, amendment, addition or legislation afresh essentially needed to eliminate discrimination, safeguard and promote the interest of women and achieve gender equality before law in accordance with the Constitution and obligations under international covenants and commitments".

### **3.3.4 The Criminal Law (Third Amendment) Act 2011**

The Criminal Law (Third Amendment) Act 2011 was passed by the Parliament in 2011 and assented by the President on 16th December 2011. The Act amended relevant sections in the Pakistan Penal Code and Code of Criminal Procedures. The Amendment criminalized a number of customary practices such as giving women or girls in marriage or otherwise in *badleh-e-suleh* (settling a dispute), *wani swara*, forced marriage, marriage with the Holy Quran and depriving women of inheriting property. All these offences are made non-compoundable and non-bailable under this Act.

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<sup>13</sup> <http://www.un.org/womenwatch/daw/cedaw/>

## 4. Challenges and Issues in Implementation of Pro-Women Laws in Sindh

Pro-women laws in Sindh like elsewhere in Pakistan, promulgated by the Sindh Assembly after the 18<sup>th</sup> Amendment, has some legislative actions, like the Sindh Child Marriage Restraints Act of 2013, which penalizes marriage of minor boys and girls below the age of 18, even challenges the ideological framework of the Council of Islamic Ideology — a constitutional body mandated to provide legal advice [recommendatory] to the government on conformity level of the country's laws with the spirit of the Holy Quran and Sunnah<sup>v</sup>. It is a landmark development in the deeply patriarchal socio- political traditions of the province.

Some of the most significant pro-women laws initiated about by the Sindh Assembly include the Domestic Violence (Protection and Prevention) Act, 2013, the Sindh Child Marriages Restraint Act, 2013, and the Sindh Commission on the Status of Women Act, 2015. In addition to Criminal Law (Third Amendment) Act 2011, also known as Anti- Women Practices Act (AWPA) enacted by the Parliament. It is also one of the most significant pro-women laws applicable both a federal and provincial level.

Despite progressive pro-women laws as part of legislation, there hasn't been significant change in lives of women like *Mehfoozawho is a women's rights activist, and a participant of the FGD conducted in Jamshoro*, Rabia is a "Coordinator on Gender Empowerment with Sindh Development Society (SDS), Hyderabad and a participant of FGDs held in Jamshoro and Hyderabad" she says widespread violence against women, child marriages, and all other discriminatory practices against women are widely prevalent in the province. Munir Ahmed, Deputy Director of Social Welfare in Hyderabad" expresses that laws made to bring an end to violence against women are only confined to books, without effectively practical implementation".

The matter of greater concern, is that amidst widespread violation of women's rights, women do not have access to justice. According to the Zar Bano Kohyar Manager of Panah Shelter Home, Karachi, and a participant of FGD held in Karachi, "Many women victim of violence and abuse in Sindh choose to remain silent against the offences and continue to suffer violent treatment without reporting. Others insistent on getting justice are courageous enough to report to nearby police stations but rarely are their cases given priority or their persecutors punished".<sup>vi</sup>

Maliha Zia Lari, legal expert on gender and law expressed concern on low percentage of reporting of cases by women in Pakistan, "Only few cases have been found to be filed under the Anti-Women Practices Act 2011 and Sindh Child Marriages Restraint Act 2013 although cases of domestic violence are widely prevalent in Sindh; to this day, only one case of domestic violence is reportedly under trial in Sindh".

Thus, the question arises, what are the reasons for weak implementation of pro-women Laws? It is believed that, three elements determine the success of a law in terms of tangible results: substance of law, structure provided by the law and the culture where it will operate<sup>vii</sup> . Unfortunately, all three elements involve many issues which result in the weak implementation of these laws. It is important to critically analyze these issues at all three levels.

## 4.1 Legal Lacunae

Domestic Violence (Prevention and Protection) Act 2013, Sindh Child Marriages Restraint Act 2013, Sindh Commission on the Status of Women Act 2015, and Criminal Law (Third Amendment) Act 2011, have multiple legal loopholes that hinders their effective implementation at various levels.

### 4.1.1 The Sindh Child Marriages Restraint Act 2013

- It is ironic that the SCMRA-2013 does not provide any definition of child marriages. Such gaps can potentially create legal complexities for duty bearers in terms of the explanation of child marriage cases and can hinder the process of dispensation of justice;
- According to the respondents of the Focus Group Discussions (FGDs) and Key Informant Interviews KII's, the most critical gap in the law is that *nikkah* is valid even after action is taken by the police and the case is brought to trial. A child marriage once contracted, remains intact and *nikkah* is not considered null and void by the law. This was recently observed in one of the forced conversion cases of the Ravita. <sup>14</sup>Ravita, who belongs to a village in Nangarparkar, Tharparkar district, reportedly Umerkot district on June 6 and renamed Gulnaz after the conversion. The court issued directive on an application filed by Ravita's father, Satram Das Meghwar, through Advocate Bhagwandas, against her conversion and marriage. Hyderabad Bench of the Sindh High Court made a preliminary order during the ongoing trial that she has the right to live with her husband. Amidst non-operationalized preventive mechanisms envisaged by the law and an overall frail criminal justice system in the country, such a serious gap in the law negates its very essence. Unless it is addressed, child marriages will continue to occur in Sindh and women and girls will continue to suffer.
- "Even though a child marriage is a cognizable offence under SCMRA 2013 that allows police to take action without prior order of the court unfortunately in reality, the role of the police is not clearly defined in the definition section of the law", says Faizullah Korejo, Senior Superintendent of Sindh Police, also a member of Key Informant Interviews (KIIs). Given the fact that the police are the major agency of the criminal justice system, the role of police should be clearly delineated by the law so they can play their part in preventing child marriages.
- It is a paradox that on one hand under the Protection of Women (Criminal Laws Amendment) Act 2006, consensual sexual intercourse with a child is considered a rape offence and penalties set for such offence is death, or imprisonment for life and monetary fine under the Criminal Law (Amendment) (Offences Relating to Rape) Act 2016 (Act XLIV of 2016) but on other hand, penalty for the offence of child marriages given in the law i.e., three years imprisonment is a minor

"Another gap in the SCMRA-2013 is that marriage undertaken for girls under such [marriageable] age and marriage consummated or otherwise is held legal and *nikkah* remains intact"

-Retired Justice Majida Rizvi, Chairperson, Sindh Human Rights Commission.

<sup>14</sup> <https://tribune.com.pk/story/1439620/forced-conversion-case-shc-orders-police-bring-ravita-court/>

penalty for a crime of this nature. In principle, penalization of consummation under 16 should have been in line with Section 375 PPC.

- Under Section 10 (2) (5) of Rules of the SCMRA, 2013, the child may be allowed to meet her or his parents, guardians, husband, intended bridegroom or in-laws only upon her or his informed voluntary written consent in the best interests of the child. The provision of written consent is not genuine in the cases of forced conversions which have already been made possible by the use of threats, force or coercion used during the process of conversion.
- In Section 24 of the Rules there is a provision for the establishment of a Provincial Monitoring Committee on Child Marriages that is actually an administrative body. However, Under the Rule 31 (C) and 32 (6) it is granted the power of *suo moto*, and is given powers which are otherwise vested with civil courts under the Code of Civil Procedures 1908 and are beyond the mandate of such an administrative committee. If substantive provisions of the Act calls for the establishment of such a Committee, then such powers should be further elaborated in the Rules.

**“Anti-Women Practices (AWP) Act 2011, Police cites its inability [to take action] until a court warrant is issued because those are non-cognizable offenses [under the law]”**

**-Maliha Zia Lari**

#### **4.1.2 Domestic Violence (Prevention and Protection) Act 2013**

- The law allows a victim to approach a court directly with a complaint under this Act, but it does not specify whether the complaint will address all the criminal offences and relief provided for in the Act.
- Due to this silence, it is unclear whether even those offences under the Penal Code are subject to the procedures set forth in the Act, or whether they fall under the procedures specified in the Criminal Procedure Code<sup>viii</sup>. Senior Superintendent of Sindh Police, Faizullah Korejo shares, “With respect to the newly legislated criminal offences, the law does not specify whether they are cognizable, non-compoundable or bailable, thereby creating confusion as to how these offences are to be tried. The procedural confusion in the law is likely to deter lawyers and judges from applying the law”.<sup>ix</sup>
- In the Sindh Domestic Violence (Prevention and Protection) Act 2013, sexual abuse is defined within offences of domestic relationships. The courts have not interpreted whether there is a conflict between this provincial law and Section 377 of the PPC. The courts may decide that the provincial laws have a special qualification, therefore holding them to be applicable law. On the other hand, they may also decide that Section 377 of the PPC came later in time, and therefore superseded these provisions in the provincial laws<sup>15</sup>. This potential conflict can be resolved only by the courts.
- It is not only the issue of interpretation by the courts but the very application of the provisions of law by police that takes cognizance of offenses such as, PPC 351 (assault), PPC 511 (attempt), PPC

<sup>15</sup> Maliha Zia Lari, Legal Framework on Sexual Violence against Women (2017), Unpublished.

350 (criminal force), PPC 503 (criminal intimidation), PPC 509 (harassment), PPC (332-337) (Hurt) and other offenses as defined in Section 5 (f)(k)(l)(m)(o) of DV(P&P) Act, 2013.

- The law provides for the establishment of the Protection Committee which can be considered the main implementation mechanism at district level. However, it is observed that there is an inherent lacuna in the substantive provision of 17 (2) regarding the composition of the committee. The Social Welfare Department rather than the District Administrative Head, Deputy Commissioner is given the role of convenorship. In principle, District Administrative Head or Deputy Commissioner should be given the powers of convenorship who can easily organized the meetings by engaging all other relevant line agencies including the police at district level. This is considered a very practical gap which has the potential to affect the overall work of the Committee.
- Rule 19 of the law complicated the process for appointment of district level committees' by conditioning the nominations to be sent to the Women Development Department and approval accorded by the Minister for Women Development. On the other hand, section 11(3) of the Punjab Protection Violence Against Women Act 2016 grants office of the Chairperson to authorize Deputy Commissioner to send nominations to the administrative department for approval. Furthermore, composition of the committee is more comprehensive in Punjab law, unlike the Sindh law, and includes the Head of Prosecution in addition to the representatives of other line departments working at district level. In a telephonic interview with a non-official member<sup>16</sup> of a committee in Multan, it appeared that the committee is functioning effectively under the office of the Deputy Commissioner.

#### **4.1.3 The Sindh Commission on the Status of Women of Act 2015**

- The Sindh Commission on the Status of Women Act 2015, calls for the establishment of a Commission that has some similar functions of the Commission provided by Rule 3 of the Domestic Violence (Prevention and Protection) Act 2013. Both Commissions have separate legal standings; SCSW is a statutory body, whereas the Commission provided by DV (P&A) Act is an administrative body. However, since both bodies are to be administered, regulated and funded by the same Women Development Department this can create confusion and duplication at both District Level (Horizontally) and Provincial Level (Vertically). It can also confuse communities including women and police to decide where and who to refer to for the redressal mechanism.

#### **4.1.4 The Criminal Law (Third Amendment) Act 2011**

- One of the major critiques of the law is that all such offences are non-cognizable under this law which undermines its efficiency.<sup>x</sup> Thus, the police are constrained from taking preventive measures for the occurrences of offenses in time, like forced marriages, deprivation of property etc. In addition, the scope of the law does not cover secondary persecutors involved in facilitating forced marriages; its scope extends only to penalize family of the girl. The punishment for forcing a woman or girl in marriage without her consent or otherwise in *Badla-e-Sulh*, *Wanni* or *Swara* is set only for the family of the girl<sup>xi</sup>. It is ironic that the family of the groom does not include penalty

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<sup>16</sup> Mr. Hyacinth Peter, Executive Secretary of Justice and Peace Commission of Pakistan.

by the law. For emphatic enforcement of this provision, it should have included the word 'whoever facilitate' to deter it from happening<sup>xii</sup>.

- The law does not have retrospective effect; therefore the cases filed prior to legalization of this provision cannot be brought within its ambit.<sup>xiii</sup>
- The prevailing customary practices in Sindh like *Sang Chatti*, *Peth Kikhani*, *Dewath (exchange)*, are rarely combined with customary practices provided in the 310 (A) of PPC.

## 4.2 Support Structures for Pro-Women Laws Implementation in Sindh

One the major reasons for weak implementation of pro-women laws in Sindh is the state of incomplete implementation and monitoring structures to be established under the pro-women laws.<sup>xiv</sup> According to a respondent Anis Haroon, a women's rights activist and member of the National Commission for Human Rights from Sindh, "it is the failure of government that laws have been not implemented at the District and Provincial level".

The Domestic Violence (Prevention and Protection) Act 2013 provides for formation of Commission at provincial level to monitor and implement laws, review the laws and take *suo moto* action in case of non-compliance. The powers of taking *suo moto* action are extraordinary in their nature, as it places the Commission at par with the National Commission on Human Rights and the Sindh Human Rights Commission. However, there remains subsequent negligence from government to form the Commission. In addition, the Act provides for formation of protection committees and appointment of protection officers at district level. Yet these two very important protection mechanisms have also not been regulated.<sup>xv</sup>

The Rules of Business of the Sindh Child Marriage Restraints Act 2013 provides for the establishment of district and provincial level monitoring committees on child marriages. Under Section 24(1) of RoB of the law, a Provincial Monitoring Committee is formed and was notified in August 2017, with the mandate to look into complaints and take *suo moto* notice of violations of the law. The Committee has the authority to play a significant role in preventing child marriages in Sindh. The RoBs of the law also provides for the formation of District Monitoring Committees under Section 35 (1). These committees are required to provide information to the Court or to the local police station on child marriage offense in their areas in order to take action prior to its occurrence. District Monitoring Committees are formed in all districts of Sindh, however, majority of the public are unaware of establishment of committees, and only a few cases of child marriages have been reported and prevented by the law-enforcing agencies in Sindh<sup>xvi</sup>. Given the ineffectiveness of this law on lack of provision on the dissolution of occurrences of child marriage, the formation and effective operationalization of the committees constitute a necessity and a matter of high priority to prevent child marriages.<sup>xvii</sup>

## 4.3 Resource Allocation and Budget Issues

Despite the fact that women and girls constitute half the population of Sindh, they are neglected in many ways including resource allocations. Shireen Aijaz from Human Resource Commission of Pakistan Sindh



(HRCP) says, “Women Development Department in Sindh does not have adequate budget reflecting the fact that women’s development is not prioritized in budget allocations”

“It is quite unfortunate that orders are passed, and instructions are given, however, resources are not allocated for justified and effective implementation of laws”. Nadeem Ahmed Shaikh, Additional Director - Social Welfare Department, Matiari cites an example; "The orders is passed by the Sindh High Court Hyderabad circuit to construct safe houses at district level in Sindh, but the Social Welfare Department does not have women staff, infrastructure, office space, band financial resources for its establishment and operation. They also received similar orders to establish safe houses for transgender persons, but, the Social Welfare Department at district level does not have funds to honour these orders".

Mehwish Maria Shah from UN WOMEN believes that financial resources are not an issue as widely argued; there are funds [for Women Development and Social Welfare Departments] that are utilized inappropriately. Retired Justice, Majida Rizvi, Chairperson Sindh Human Rights Commission (SHRC) believes that "Government officials always cite funds as an issue but it is also matter of utilization capacity of departments with allotted fund."

#### 4.4 Socio-Cultural Issues

Social attitudes are essential to bring positive shift in social status of women in society.<sup>xviii</sup> In Sindh like elsewhere in Pakistan, social conduct towards women emanates from patriarchal mindset that is discriminatory and offensive towards women. “Women are victim of defined gender based roles in society, which places women in a subordinate position. As a result, due to fear of social stigmatization as result of gender norms, women are reluctant to benefit these laws”, says Areeba Wajid - Project Manager at Women Development Foundation. “Violence against women, is justified in our society on social and cultural pretexts”, says, Majida Rizvi. Thus, social and cultural issues are the main reasons that perpetuates feudal society and such practices in the name of honour, family, and community.

Deep rooted patriarchy in social, administrative and political structures of society is the main cause for persecution of women in Sindh. It is also the major cause of child marriages in Sindh. Patriarchy is a gradual process that evolves and perpetuates into social practices over a long period and thus, can take long term and consistent efforts to reverse the process and bring about positive shift in attitudes.<sup>xix</sup> One of the ways to do this is through gender equality by promoting progressive laws on women rights<sup>xx</sup>. These laws can be more effective and influence pro-women social behavior once they are internalized and socialized.<sup>xxi</sup>

"WDD has written to Deputy Commissioners of all districts in Sindh regarding formation of [District Monitoring] Committees to prevent child marriages and nominations have been received including for four project districts of SPO"  
-Musarrat Jabeen, WDD. Karachi

#### 4.5 Dual Legal System

The dual legal system of Pakistan is also one the major reasons for ineffective implementation of pro-women laws in Sindh, and in Pakistan. Pakistan has a hybrid legal system based on Common law and

Shariah Laws, enforced concurrently in the country”, says, Raheema Panhwar – SPO Regional Coordinator Karachi. Ambreen Mastoi - incharge of the Child Protection Unit (CPU) formed by SWD, Hyderabad has a view that Shariah Laws have an overriding effect on secular common laws that can be observed in the case of Ravita Meghwar and Sindh Child Marriages Restraint Act 2013 (SCMRA) law, that was superseded by Sharia Law. Ravita was only 16 years old when she converted to Islam and married a Muslim. Although, SCMRA 2013 has set 18 years as the minimum marriageable age, during the on-going trial the Sindh High Court allowed her to stay with her husband justifying it under the rule of Shariah Law that states puberty as marriageable age assumed to be attained at the age of 16 years.

**“The main reason for the Domestic Violence Act not being asserted by women is due to multiple reasons, the most important one is economic dependence and fear of breakup of a family”.**

**-Maliha Zia Lari**

#### **4.6 Economic Dependency**

The perpetrators of domestic violence in Sindh, like in other provinces of Pakistan are men member of the family that women depend on financially and so women are reluctant to report against their perpetrators from the fear of losing economic security and societal allegations of disintegrating the family. This can be clearly seen from the fact that DV (P&P) Act 2013 passed four years ago, has only one case to date that is reportedly under trial in Sindh.

#### **4.7 Awareness of the Laws**

Officials of departments and institutions responsible for implementation of pro-women laws are not knowledgeable on subject of laws for protection of women rights. Ghulam Nabi Simyar, District Prosecutor Karachi is of the opinion that “New laws, policies and rules are not disseminated at district level so even Judges, and lawyers do not have a through and flawless understanding, of these laws and the Police is unable to take action accordingly Therefore, it is not only officials but also the community and women who are unaware of these laws. Asghar Khumber, Assistant Superintend of Police (ASI) from Police Station Kotri says that, “Gender-based violence, domestic violence and discrimination against women are problems arising and exacerbating as result of patriarchal mindset, that needs to be addressed by increasing society’s awareness about these issues”.

#### **4.8 Coordination and Sharing**

During the FDGs and KIIs, weak coordination at intra and inter-departmental level is observed, between responsible government departments which affects implementation of these laws. In this regard, Maliha Zia Lari made a remark on one of the main factors for lack of implementation “is weak coordination among the departments of SWD, WDD, Police and Human Rights Department”. The respective district level government offices responsible for implementation of pro-women laws, are unaware of these laws, procedures to proceed with the laws, Deputy Director SWD, Hyderabad Muneer Bhatti. “Police is another an important department that does not have coordination with the SWD and WDD”, says a civil society activist from Matiari - Noor Muhammad. “Orders are passed at the provincial level but without any execution plans and notification to responsible authorities at district and provincial level”, says, Nadeem Ahmed Shaikh - Additional Director SWD, Matiari.

## 4.9 Institutional Barriers

### 4.9.1 Police and Law Enforcement

“Police is an important pillar of the criminal justice system that has a crucial role in prevention and protection of violence against women. However, it has not effectively played its role, due to issues such as, political influence, lack of operational independence, lack of legal knowledge of laws, lack of women staff investigating GBV cases, and lack of facilities for forensic services”, says Anis Haroon.

Women in Sindh, experience violence and abuse attitude at their homes, workplace and in public, however, many suffers silently, and few that raise their voice for justice report to nearby police stations but rarely are their cases given any serious consideration for action. <sup>xxii</sup>This is also due to the fact that police consider women's complaints to be personal issues of families rather than legal offenses punishable by law”, says Sindhu Bag - Assistant Superintendent of Police Hyderabad. Therefore, many cases of offense against women do not reach court for trial and women victims continue to face oppression, and discrimination.

Besides the patriarchal mindset of the police, the police are not trained on purpose and content of Pro-Women Laws. In this context, Sindhu Bag ASI Sindh Police, mentions that majority of the Police at the duty station level, is unaware of laws for women rights and protection laws. Given this, the police do not invoke the correct laws, while lodging complaints of women.

Lack of women staff at the police station is another factor that discourages women victim of violence from reporting their case in police. Faizullah Korejo, SSP stated that “It is fact that even police stations are dominated by men who are not gender sensitized to deal appropriately with and women victims. In a recent case of domestic violence, an FIR was filed but evidence against the accused husband was not shared with the Investigation officer”. Despite these societal challenges and legal loopholes, there is hope, “Women are encouraged more by their families now to join forces like the police. Recently, nineteen women police officers have joined the police in Jamshoro District, and we hope the same for other districts of Sindh”, says Asghar Ali.

### 4.9.2 The Prosecution

The Prosecution is also one of the major department of the criminal justice system in Sindh with an extremely valuable role in the effective implementation of pro-women laws. However, it has been constrained to play its expected role, because of the following issues.

- “Prosecutors are not fully aware of pro-women laws seem to be less interested in pursuing cases of women’s rights violations”, says, Majida Rizvi. This is also one of the reasons that cases of women rights are given less due attention and priority by prosecutors, in the monitoring and consolidation of the cases. Ghulam Nabi Simyar, District Prosecutor says, “we are monitoring the cases but more attention needs to be paid to such laws”.

- "The role of the Prosecution begins with the submission of the report called a *challan* under Cr.PC 173 and examination of the defence counsel by the police. A prosecutor may not be able to strongly defend the case if proper provisions of law are not invoked, or if evidence is not collected by the police. This is also one of the major reasons behind weak coordination between the police and prosecution. Many efforts have been made to institutionalize the cooperation between the police and prosecution, but unless Cr.PC is amended to formalize the role of prosecutors in pre-trial phase, the prosecutors may not be able to help the women victims in seeking remedy and justice", says, Ghulam Nabi Simyar.
- Lack of human resource in the prosecution department, is another challenge that limits prosecutors' effective role in implementation of pro-women laws. Ghulam Nabi Simyar, emphasizes that the existing number of prosecutors at district level is insufficient and needs to be increased to focus on cases lodged under pro-women laws.

#### 4.9.3 Legal Practitioners

In principle, lawyers are the best bridge between justice providers (judges) and victims of human rights violations, including women. It depends largely on lawyers to provide justice to grieving women complainants but access to competent lawyers is expensive. Women complainants' dependent on men of the family for financial support and have fewer opportunities to seek the services of lawyers; the few professional lawyers available charge enormous fee.

There are, however, pro-bono legal aid services to support complainants. District Bar Associations, Legal Aid Committee (DBALAC) are envisaged under Section 13(1-a) of the Legal Practitioners and Bar Council Act, 1973 and Free Legal Aid Committees Rules, 1999; but such committees are either not formed or are inactive in Sindh. Additionally, District Legal Empowerment Committees (DLECs) envisaged under 2011 Rules of Law and Justice Commission of Pakistan are also a neglected resource. In this regard Maliha Zia Lari mentioned that "Legal aid is a challenging issue; NGOs and civil society cannot sustain it and existing mechanisms as mentioned [above] need to be re-invigorated." She also suggests that licensing with the High court should be linked with pro-bono cases, and law firms should also be connected with such provision. The concept of legal clinics where legal advice and aid by interns and other academic faculties are available, should be encouraged".

## 5. Key Findings

- This study shows that there are legal loopholes in all four laws and Rules of; Domestic Violence (Prevention and Protection) Act 2013, Sindh Child Marriages Restraint Act 2013, the Sindh Commission on the Status of Women Act, 2015, and the Prevention of Anti-Women Practices (Criminal Law Amendment) Act, 2011. These legal gaps have prevented the effective utilization of the laws among the general public, and duty bearers.
- Provincial and District level monitoring committees under the Sindh Child Marriages Restraint Act 2013; the formation of a Provincial Level Commission, and appointment of Protection Officers have been notified by the respective departments, therefore, the Implementation structures and mechanisms provided by the above mentioned laws need to be implemented effectively. Their true role envisaged under the Domestic Violence (Prevention & Protection) Act, 2013 is yet to be implemented. Sindh Commission on the Status of Women Act 2015 has also been notified according to the law including its chairperson and members, though it is struggling to be effective with its limited resources.
- Two types of budget related issues have also affected the implementation of these laws. Sufficient budgets have not been allocated to the relevant provincial departments such as Women Development Department, Social Welfare Department, Prosecution and Police, which is reinstated by statements from participants of FGDs and KIs showing dissatisfaction against ineffective budgets utilization effectively by the departments.
- Women's social status in Pakistan, their absence in decision making at all levels from domestic tiers to the political arena, and their deprivation from financial resources makes them extremely vulnerable to financial deprivation and gender based violence. Deeply entrenched patriarchal customary practices in Pakistan have marginalized and isolated women. As a result, due to fear of social stigmatization from gender stereotypes, women are reluctant to use these laws to their benefit and to approach the relevant departments and protection mechanisms.
- Officials responsible for implementation of pro-women laws lack the knowledge of their application and thus cannot implement it effectively.
- The intra and interdepartmental coordination among the major line departments responsible for implementation of pro-women laws in Sindh viz., Social Welfare Department, Women Development Department and Police, is very weak. Formal coordination mechanisms have not been formed through developing Standard Operating Procedures or Protocols or by others means as envisaged by the relevant laws.
- Role of police is confided and limited due to a number of issues such as political influence, lack of operational independence, low level of awareness about these laws, a lack of women staff investigating GBV cases, and the lack of facilities of forensic services and ultimately the patriarchal mindset of the police.
- The Prosecution has been restricted because of various issues which includes, but are not limited to, lack of awareness about pro-women laws, low priority given to the prosecution of gender based violence cases related to pro-women laws, weak monitoring and consolidation of such

cases, lack of coordination between the police and prosecution, and insufficient human resources in the Prosecution Department.

## 6. Recommendations to Strengthen Implementation of Pro-Women Laws in Sindh

- Women and communities at the local level, especially women need to have at least basic awareness about pro-women laws to safeguard their rights and report abuse against it. Extensive awareness campaigns should be launched by Civil Society Organizations (CSOs), relevant line departments, Local Government, Women's Development Department (WDD), Social Welfare Department (SWD), Human Rights Department, and National Human Rights Institutions (Sindh Human Rights Commission, Sindh Child Protection Authority, Provincial Commission on the Status of Women, National Commission for Human Rights, and the National Commission on the Status of Women (NCSW).
- Women in Sindh should be empowered socially and economically, by increasing their access to social protection and safety net programs, vocational trainings and livelihood opportunities so that they develop the ability to access redressal mechanisms.
- The duty bearers especially police, prosecutors, judges and officials from the relevant line departments such as WDD, SWD, Local and District Administration, should be trained on content and application of pro-women laws of Sindh. Furthermore, the Sindh Judicial Academy, Police Training Institutes and other training institutions like the Provincial Civil Services Academy, Local Government Academy also need to have their capacity developed to build their understanding about pro-women laws in Sindh.
- Preventive mechanisms on child marriages such as District, and Provincial Monitoring Committees provided by SCMRA-2013, and its RoBs need to be established on priority basis.
- The Provincial and District level Commission, and the Committees provided by DV (P&P) Act 2013 need to be established. The appointment of Protection Officers provided by the law should also be ensured in every district of Sindh.
- The formation of the Provincial Commission on the Status of Women should be made functional and activated on priority basis. Sindh Commission on Status of Women (SCSW) has been notified under the Act SCSW 2015, yet it has not been empowered and strengthened as envisaged by the government of Sindh. Its Rules of Business (ROBs) has not been finalized and consented by the Women Development Department and the Chairperson (SCSW). Thus the actual scope of work of the Commission has not been defined to-date.
- The intra and interdepartmental coordination among major line departments responsible for implementation of pro-women laws viz., Social Welfare Department, Women Development Department and Police needs to be strengthened. Formal coordination mechanisms should be formed by developing Standard Operating Procedures or Protocols, or by others means as envisaged by the relevant laws.
- Separate women police desks need to be established at local police stations, *Thanas* for gender sensitive women staff to provide appropriate medico-legal support and psychological first aid for victim to feel secure to lodge a complaint. Police Stations *Thanas* also need to be linked with special services in the police department such as women police stations, Human Rights and Women Protections cells.

- Police should be trained in use of modern investigation techniques to deal with victims of domestic violence, and to preserve the evidence through forensic kits, equipment and services provided at the local police stations, *Thanas*. More forensic science laboratories need to be established in Sindh.
- The role of the Prosecution should be formalized before the police submits the report commonly known as a *Challan* under Cr.P.C 173, for prosecutors to help the investigators in sifting the evidence and presenting it in court. Further, the existing number of prosecutors at the district level needs to be increased so that they could focus on the cases lodged under pro-women laws.
- Proper budget allocations need to be made to relevant departments so that protection officers can be appointed at district level, provincial and district level monitoring bodies and protection mechanism could be established and coordination mechanisms can be mobilized.
- Pro-bono legal aid services should be provided by lawyers through District Bar Associations (DBA), and the Legal Aid Committee (LAC), envisaged under Section 13(1-a) of the Legal Practitioners and Bar Council Act 1973 and Free Legal Aid Committees Rules 1999 that need to be formalized and activated. Performance and effectiveness of District Legal Empowerment Committees (DLECs) under the 2011 Rule of Law and Justice Commission of Pakistan, should be monitored properly and procedures documented.

### **Recommendations for Lawmakers**

- The Sindh Child Marriages Restraint Act 2013 (SCMRA-2013) should be amended to address the gaps and lacunas in implementation of laws, such as, invalidation (dissolution) of child marriages and penalization of consummation under 16 years of age in line with Section 375(V) of PPC. Section 10 (5) of Rules of the SCMRA-2013 should be revised and the word 'husband' may be deleted from the clause.
- An amendment should be made in Section 5 of DV (P&P) Act 2013 to make offences cognizable and non-bailable for police. In Schedule II of the Cr.PC, amendments should be made to clarify the either the relevant Protection Officer of WDD or a Police Station will first take cognizance of the offences.
- Amendments also need to be made in Anti-Women Practices Act, 2011 (AWPA-2011) to make offenses addressed by the law cognizable under Schedule II of Cr.PC., decide upon invalidation (dissolution) of forced marriages and apply the law on perpetrators of forcing women and girls in marriages on the pretext of patriarchal and inhumane customary practice.



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## 7. Endnotes

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- <sup>xi</sup> Butt, Rifat, "Lacunas in Pro-Women Legislation in Pakistan", Norwegian Church Aid, 2013
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- <sup>xviii</sup> Aurat Foundation "Legislative Watch", Issue No 44, June 2014- May 2015.
- <sup>xix</sup> Junejo, Jamil, " Access to justice and women rights", Daily Times, 23rd August 2017, available at <http://dailytimes.com.pk/opinion/23-Aug-17/access-to-justice-and-women-right>
- <sup>xix</sup> Aurat Foundation " Legislative Watch" , Issue No 44, June 2014- May 2015, @ <https://www.af.org.pk/news/1438155338.pdf>

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