

Enforcement of Protective Legislation for Women

By

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There has been enacted some pro-women legislation by the Federal/Provincial governments in the recent past. Such legislation is of two types: one, penal in nature by prescribing penalties to eradicate harmful anti-women practices in society; and two, empowering women to get their rightful share in inheritance. One such legislation is the amendments made in the Pakistan Penal Code (PPC) and Code of Criminal Procedure (CrPC) through the enactment of Criminal Law (Third Amendment) Act 2011. The law prohibits certain form of forced marriages and prescribes sentence/fine for those who deprive women of their right to inheritance. The law came in quick succession to the adoption of The Protection of Women (Criminal Laws Amendment) Act 2006, which amended certain provisions of the Hudood laws. Notwithstanding the glut of laws, their implementation remains extremely weak, thereby preventing women from attaining their rightful place in society. In this regard, a recent Study titled, 'Forced Marriages and Inheritance Deprivation in Pakistan' by Ms Sarah Zaman, is a commendable effort and useful addition to the legal literature on oppression of/violence against women. The Study points out the continuing abuse of women and violation of their rights, despite the constitutional safeguards as well as sanctions under penal laws and protective legislation for the purpose. The

Study had limited scope/object viz exploring the implementation of recent criminal legislation on forced marriages,¹ depriving women of their right to inheritance through illegal/deceitful means² and restricting the powers of provincial governments to remit or commute any sentence, awarded for rape³. Its ambit is also limited to 6 cities, namely Karachi, Hyderabad, Peshawar, Islamabad, Swat and Mardan. However, the areas covered form a fairly representative sample of the urban/rural divide of population in the country. Data is obtained through interviews and group discussions with the relevant stakeholders i.e. lawyers, prosecutors, investigators, medico-legal experts, women, etc. The findings are, indeed, quite startling: revealing the apathy of law-enforcement agencies towards the serious crime of violence against women, toleration of cruel practices and inhumane treatment of women, and ignorance of all and sundry about the existence of preventive and protective legislation pertaining to women. The Author deserves accolades for the seminal work, laying foundation for further studies in understanding the nature and extent of harmful practices, prevalent in society and perpetuated in the name of "hounour", traditions and (misconceived) religious notions.

That abuse, injustice and discrimination against women abound in society, and calls for mercy, relief or legal remedy, fall on deaf ears, is a tragic account of the firm hold of patriarchy/tribalism in our country. Further, that the preventive/protective legislation is honoured more in its breach than compliance, portrays an extremely negative image of our country, as member of the comity of nations. We are signatory to several international conventions like CEDAW, CRC, UDHR, ICCPR, ICSECR, Convention against Torture and

other Cruel, Inhumane or Degrading Treatment or Punishment,⁴ etc, which forbid injustice, unfair treatment or discrimination on any ground whatsoever, and obligate the State to take effective legislative, administrative and judicial measures to enforce the human rights of all persons and especially of the oppressed/vulnerable groups, such as women and children.

The Constitution of Pakistan also guarantees fundamental rights/freedoms including the right to life, liberty, dignity, equality, property and freedom of thought, expression belief and association,⁵ etc. It ordains the State to undo the centuries-old oppressive/discriminatory practices and establish equality of status, of opportunity and before law, through “affirmative action”, by making “special provisions” for the protection of women and children.⁶ The Constitution goes on to dictate that the “State shall protect the marriage, the family, the mother and the child”, and take steps to “ensure full participation of women in all spheres of national life”.⁷

Through successive enactments of pro-women legislation, the international/constitutional safeguards have been enforced. The safeguards are generally of two types: one, prohibiting through penal clauses the abuse, discrimination and exploitation of women; and two, protective legislation for the recognition and enforcement of their legal rights/entitlements. Besides the old protective laws, some more pro-women laws were enacted in the recent past, however still more needs to be done. The mere enactment of laws would not help improve the status of women and their condition in life. The State responsibility does not end with the passage of law. It goes much beyond. It is required to enforce/implement the same through the use of its coercive

apparatus and by taking welfare measures, including the allocation of resources for enhancing the capacity of all stakeholders in the justice sector viz judges, prosecutors, investigators, to enforce the same. Weak enforcement of laws in general, and official apathy towards protecting the rights of women and children, is a perennial problem of our nation. There is a tendency in the Government to enact legislation and celebrate such achievement and think that it has done its job. This is where it falls in a false sense of complacency. The enforcement of laws and fair dispensation of justice to the aggrieved, is the indubitable duty/responsibility of Government. The test of good governance is not in merely making laws but also their full and effective implementation.

Laws must be kept under constant review to reform them. There might be gaps in legislation and a law may become irrelevant or counterproductive, due to vicissitude of time, changed circumstances or new/emerging realities, hence reform and modernisation of laws is required. However, the purpose could also be achieved through innovative approaches. One way to move forward is through the interpretation of laws. Laws are scribbled in words but also possess a spirit, hence, are open to literal interpretation of the words (the "letter") of the law and also discovering the spirit of law by exploring the intent of the law-makers. Such interpretation takes care of technicalities/ambiguities in law, if any, and is aimed at achieving the desired object/goals. It can be done only by qualified and competent professionals i.e. adjudicators and legal practitioners. An efficient justice system, not only requires trained judges/practitioners but also other skilled professionals like prosecutors,

medico-legal experts and investigators. Besides, an educated/enlightened population and aware/vigilant civil society and human rights activists, are also needed for initiating action to enforce laws, thereby ensuring that the benefits of laws reach the common people, and especially, the poor, downtrodden, oppressed and vulnerable sections of society.

For effective implementation of law, coordination is required amongst all the justice sector professionals. Such mechanism exists under the Police Order 2002, wherein a Criminal Justice Coordination Committee is constituted for the purpose. It is headed by the District & Sessions Judge, with District Police Officer, District Public Prosecutor, District Superintendent, Jail, District Probation Officer and District Parole Officer, its members. The Committee reviews the operation of criminal justice system with a view to improve its functioning through mutual cooperation/coordination.⁸

A most beneficial piece of legislation for women, is the Muslim Personal Law (Shariat) Application Act 1962, which provides for automatic devolution of the prescribed shares of all heirs (male and female) in inheritance⁹. This law, regrettably, is honoured more in its violation/breach than compliance; it happens despite the statutory recognition of female right to inheritance, as enshrined in the Quranic injunctions. The superior courts have validated the “affirmative action”, prescribed in Article 25 of the Constitution,¹⁰ and laid stress on the implementation of law relating to female share of inheritance and observed that legal hitches/technicalities and procedural lacuna, including the settled principles of “res-judicata”, “estoppel” and “adverse possession”, may not deprive a female claimant of her right to inheritance.¹¹ A recent amendment to

the PPC further strengthened the enforcement of the law by stating that the denial of inheritance through illegal/deceitful means is an offence, punishable with imprisonment for upto 10 years with minimum 5 years or with fine of one million rupees or with both.¹² The law, however, will come into action only, when it is invoked by the aggrieved person. In reality, it may not happen due to the prevalent taboos and traditions/practices in society. However, there is a way out: the enforcement of the law can be ensured through the following measures:

1. Through an amendment to the Land Revenue Act 1962, the revenue authorities be obligated to transfer share to all legal heirs including women through necessary mutation in the Record of Rights.
2. In the same way, the authorities in the Excise and Taxation Department be obligated to effect succession through distribution of the urban property amongst male/female heirs. Further, the devolution of inheritance be made compulsorily registerable under the Registration Act 1908.
3. The civil courts be empowered to act suo-moto or on an application of aggrieved party in taking cognizance of the claims of female right to inheritance and decide such disputes through ADR or by regular trial and issue a decree in a short period of 3 months.

An efficient system of administration of justice is a *sine qua non* for effective enforcement of laws and dispensation of free and fair justice to all. Fully

qualified, experienced and duly trained professionals can discharge such function. The Federal Judicial Academy is engaged, for more than quarter of a century, in the task of imparting training to judges, court personnel, lawyers, law officers and prosecutors. They are given orientation and advanced/specialised courses and apprised of latest developments in law, made through legislative changes/amendments and/or through interpretation of law by the superior courts, thereby enunciating new principles of law. They are also taught the latest trial techniques and use of IT for better court/case management, to expedite the trial proceedings and clear the backlog of cases pending in courts. And in recognition of its role and achievements, through an amendment in the Federal Judicial Academy Act 1997, the Academy has recently been upgraded/converted into Centre of Excellence for Law and Judicial Education. It has acquired the status of degree-awarding institution to confer graduate and higher degrees in law and judicial education. The Centre will become operational and offer admissions in the next academic year.

References:

¹ Amendment of S 310A and addition of S 498B & 498C to the PPC

² Addition of S 498A to the PPC

³ Addition of S 402D to the CrPC

⁴ Such conventions, duly ratified by Pakistan – some with caveats viz by inserting declaration/reservation in the instrument of ratification/accession, thereby excluding or modifying certain provisions thereof in its application to Pakistan.

⁵ Chapter 1 – Fundamental Rights

⁶ Art 25, 26 & 27

⁷ Chapter – Principles of Policy, Art 34 & 35

⁸ S 109, 110 & 111

⁹ S 2

¹⁰ Shirin Munir case, PLD 1990 SC 295

¹¹ Mst Ghulam Sarwar Naqvi Case, PLD 1990 SC 12 & Inayat Bibi case, PLD 1992 SC 385

¹² Addition of S 498A to the PPC