Elements Contributing to Violence Against Women in South Asia

by

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ABSTRACT

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With repressive regimes and the far right on the ascendant, fundamental rights continue to erode. The world has recently seen leaders like Donald Trump espouse misogynistic views, thereby, emboldening their supporters who hold similar views and enabling them to marginalize the women around them. As these supporters attempt to preserve the patriarchy, they often resort to the use of violence to maintain their hegemony and control over women.

These proclivities have also increased in South Asia where governments have both: perpetrated violence against women and in other instances enabling those who perpetrate such violence. Supported by a misogynistic and patriarchal culture, violence against women is not commonly seen as criminal conduct in the South Asian society especially if it is being committed in the name of honor. This paper traces the elements that have contributed to violence in Pakistan, India, Afghanistan, and Myanmar, examining the State's role in oppressing women when they challenge its entrenched political interests and also the State's abandonment of women at the altar of political expediency.

This paper then sheds light on such violence and attempts to arrest the growth thereof.

Key words: Violence Against Women, Human Rights Law, Gender Based Violence, Rape, Violence as a Tool of War, South Asia

ÖZETÇE

Yüksek Lisans Tez Başlığı

Maha Shafqat

Kamu Hukuku Yüksek Lisansı

May 23 , 2022

Baskıcı rejimler ve aşırı sağın yükselişiyle, temel haklar ihlal edilmeye devam ediyor. Son zamanlarda dünya, Donald Trump gibi liderlerin kadın düşmanı görüşleri benimseyerek, benzer görüşlere sahip destekçilerini cesaretlendirdiğini ve çevrelerindeki kadınları marjinalleştirmelerini sağladığını gördü. Bu taraftarlar ataerkilliği korumaya çalışırken, kadınlar üzerindeki hegemonyalarını ve kontrollerini sürdürmek için sıklıkla şiddete başvuruyorlar.

Bu eğilimleri, Güney Asya'daki hükümetlerde de gözlemleniyor: kadınlara şiddet uygulandığını ve şiddet uygulayanlara meşru bir ortam yaratıldığını görülmekte. Kadın düşmanı ve ataerkil bir kültür tarafından desteklenen kadına yönelik şiddet, özellikle namus adına işleniyorsa, Güney Asya toplumunda yaygın olarak suç davranışı olarak görülmemekte. Bu makale, Pakistan, Hindistan, Afganistan ve Myanmar'da şiddete katkıda bulunan unsurların izini sürmekte, devletin yerleşik siyasi çıkarlarına meydan okuduklarında, kadınlara baskı yapmadaki rolünü ve kadınların siyasi çıkar olarak nasıl kullandığını incelemektedir.

Bu makale, kadınlara yönelik bu şiddete ışık tutuyor ve bu şiddetin büyümesini durdurmaya çalışmaktadır.

Anahtar kelimeler: Kadına Yönelik Şiddet, İnsan Hakları Hukuku, Cinsiyete Dayalı Şiddet, Tecavüz, Bir Savaş Aracı Olarak Şiddet, Güney Asya

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I would like to dedicate this thesis to all the women in my country who have been a victim to gender based violence, who never got the opportunities I have been privileged to get, who have been tortured, oppressed, and even killed because of frivolous reasons, but mostly in the name of religion and honor. When I began writing this thesis, I was well aware of the condition of women in our region, but I had never seen it as closely as I did when I became a part of one of the most high profile murder cases in my city, the Noor Mukaddam murder case, wherein a girl of my age, from my circle was raped and later decapitated by her friend, a man also of our age and from our circle, in his room, at his residence, during the presence of 2 servants. I dedicate, this thesis to Noor, a light that the murderer tried to dim, but it shone even brighter after she left the world. Zahir, the convicted murderer was awarded a death sentence by the lower courts but one year later the case is still sub-judice in the appeals stage, the result of which will be either an important step either forward or backward in the fight against GBV. As a lawyer, I have had the opportunity to engage in several cases where women were subjected to rape, brutal torture and even murder at the hands of their loved ones, yet the justice system has failed to give them even an ounce of justice. Therefore, if my hands are tied as a lawyer, the least I can do as a researcher is write about it, highlight the plight of women in my region, acknowledge that they have been wronged and contribute to the very little pond of research regarding violence against these women.

As a young girl in Pakistan, I was subjected to severe gender discrimination at the hands of several people, some even loved ones, but I am proud of myself for having fought back to achieve everything that I have achieved today, including academic and career accomplishments, but most importantly, the freedom of choice, of being able to become the woman I always dreamt of being, to be able to travel, meet new people, study at an international university, work in a different country, live independently and experience life at its best without kneeling down to the pressure of getting married and having kids before the age of 25. Looking back at the journey I feel nothing but immense pride, pleasure, and gratitude of how far I've come and for not giving up on life when things got very difficult.

Lastly, I'd like to thank my father for not clipping my wings, my mother for supporting me despite her fears, my sister for pushing me ahead every time I felt like I

didn’t even have the energy to exist, my grandfather for always giving me the love and confidence that molded me into a strong independent woman, but most importantly to everyone at Koc, firstly for giving me the opportunity to study here, secondly for giving me support when I thought I couldn’t do this and lastly, to KUPTEM for extending help during the entire year of isolation, fear and crumbling mental health sparked by the pandemic. I’m grateful to all of you, for helping me achieve my biggest dream. Thank you!

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ABBREVIATIONS

PPC	Pakistan Penal Code
GBV	Gender Based Violence
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRPF	CRPF Central Reserve Police Force
BSF	Border Security Force
PHR	Asia Watch and Physicians for Human Rights
IIPS	International Institute for Population Sciences
NCW	National Commission for Women
IPC	Indian Penal Code
NFHS	National Family Health Survey
UNICEF	United Nations International Children's Emergency Fund
ICCPR	International Covenant of Civil and Political Rights
ICC	International Criminal Court

CHAPTER 1:
INTRODUCTION

In a recent report, the World Bank recognized Gender Based Violence as a serious impediment to women's agency as it "both reflects and reinforces underlying gender-based inequalities."[1] This thesis sheds light on the numerous causes that contribute to the perpetuation of violence against women in South Asia. For the purpose of this thesis, the analysis here is limited to India, Pakistan, Afghanistan, and Myanmar. The reason for choosing these countries is as follows: firstly, a number of these countries are post-colonial states. Their legal regime, therefore, continues to be influenced by their colonial past. Moreover, religion plays a critical role in shaping attitudes towards women in majority of these countries. As will be seen during in thesis, the laws relating to rape in Pakistan are influenced by the principles of Islamic law. Similarly, the Taliban government in Afghanistan which purports to bring an Islamic order to the country has been notorious for curtailing women's freedom and inflicting violence on women for perceived violations of religious norms. Thirdly, in most of these states, the State's efforts to address violence against women are impeded by the prevalence of dominant stereotypes and the religious right. The report prepared by the National Human Rights Commission of India to the 58th Session of the CEDAW Committee, July 2014 school curriculum might vary between States, all States should adopt a uniform message on gender equality, conducting a thorough review of textbooks, weeding out passages that perpetuate gender stereotypes, and instilling an enlightened and modern approach on gender issues in the minds of children. Given that violence against women is often a result of unequal gender relations and harmful manifestations of hegemonic masculinity governed by patriarchal beliefs, institutions and systems, this thesis also explores the patriarchal practices in these states that contribute towards violence against women.[2]

In accordance with the Fifth periodic report submitted by Pakistan under article 18 of the Convention, due in 2017, Federal and provincial Governments are reviewing

[1] https://www.worldbank.org/en/topic/socialsustainability/brief/violence-against-women-and-girls (last visited Feb 18, 2022).

[2] (UNDP, UNFPA, UN Women and UNV Bangkok, 2013), Why Do Some Men Use Violence Against Women and How Can We Prevent It?: Quantitative Findings from the United Nations Multi-Country Study on Men and Violence in Asia and the Pacific (2013).

existing curricula to address negative stereotyping of women and to ensure that negative assumptions do not limit women's choices and opportunities. School curricula of KP and Punjab have already been revised to portray true potential of girls and women in all spheres of life. Fourthly, a number of these states, while ratifying the CEDAW, have expressed similar declarations and reservations thereto. Myanmar, for instance, has expressed reservations to Article 29, stating that it does not consider itself bound by the provision set forth in the said article. Pakistan and India too have expressed reservations with paragraph 1 of Article 29, stating that they do not feel bound by the same. Moreover, Pakistan has declared that "The accession by [the] Government of the Islamic Republic of Pakistan to the [Convention] is subject to the provisions of the Constitution of the Islamic Republic of Pakistan." Similarly, India has declared that with regard to articles 5 (a) and 16, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, the Government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent. With regard to article 16, paragraph 2, of the Convention on the Elimination of All Forms of Discrimination against Women, the Government of the Republic of India declares that, though in principle it fully supports the principle of compulsory registration of marriages, it is not practical in a vast country like India with its variety of customs, religions and level of literacy." Fifthly, a number of these states have witnessed protracted conflict. The conflict in Kashmir, Myanmar's operation against Rohingya Muslims, and the takeover of the Taliban in Afghanistan have all contributed towards an escalation in violence against women, with women living in these states facing risks peculiar to women living in conflict zones.

As repressive regimes and the far right is emboldened in countries throughout the world, South Asian countries are no exception. As these regimes erode fundamental rights and curtail civil liberties, the rights of women suffer as well. At times like these, conventions like the Council of Europe Convention on preventing and combating violence against women and domestic violence facilitates our understanding of violence against women and provides activists, lawyers, and policy makers a useful framework within which they may understand and advocate for greater rights for women. The Convention defines violence against women as:

> *"A violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life"* (Council of Europe Convention on preventing and combating violence against women and domestic violence).

Similarly, it defines domestic violence as:

> *"All acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim*" (Council of Europe Convention on preventing and combating violence against women and domestic violence).

For the purposes of this Convention, "women" includes girls under the age of 18 (Council of Europe Convention on preventing and combating violence against women and domestic violence). The Convention states that it shall apply both, during peace time and during armed conflict (Council of Europe Convention on preventing and combating violence against women and domestic violence). This is particularly important given the flagrant violation of women's rights and the violence against women inflicted during armed conflict in Kashmir and Myanmar.

Additionally, as evident in Pakistan and India that greater punishments alone do not deter rape especially in view of problems in investigation in prosecution. In this regard, Article 25 of the Convention is particularly useful. It states:

> *"Support for victims of sexual violence Parties shall take the necessary legislative or other measures to provide for the setting up of appropriate, easily accessible rape crisis or sexual violence referral centres for victims in sufficient numbers to provide for medical and forensic examination, trauma support and counselling for victims"* (Council of Europe Convention on preventing and combating violence against women and domestic violence).

Article 25 may also be invoked by activists in countries like Bangladesh which have accepted refugees from Myanmar. Given that a number of these refugees belonging to the Rohingya Muslim community had been subjected to rape and sexual violence in

Myanmar, we would examine below how it would be critical to provide them with counselling so as to enable them to lead their lives with some semblance of normality.

Table 1.1 CEDAW status of the aforementioned countries

Country	Signature Date	Ratification Date
Pakistan	N/A	12 Mar 1996 (a)
India	30 Jul 1980	09 Jul 1993
Afghanistan	14 Aug 1980	05 Mar 2003
Myanmar	N/A	22 Jul 1997 (a)

The first part of this thesis discusses violence against women in Pakistan. It sheds light on the colonial origins of Pakistan's legal system and traces its evolution over time. It explains how dictatorial regimes have attempted to seek legitimacy for their unconstitutional usurpation of power by relying on religion. This has resulted in large scale changes in Pakistan's legal system especially its penal and personal laws. These changes have invariably inhibited women's freedom with the State becoming increasingly fixated with policing women's sexual and reproductive choices. At the same time, this paper discusses recent attempts by the State to address violence against women through progressive legislation. It examines the tensions between patriarchal practices and such legislation and argues that the efficacy of the latter would be minimal until the State takes concerted attempts to address the former.

The second part of this thesis highlights violence against women in India. It sheds light on both: violence perpetrated by the State and its functionaries and that perpetrated by private citizens. Given the Government of India's attempts to erode any semblance of autonomy it previously vested the State of Jammu and Kashmir with, the valley has become one of the most militarized regions in the world. This militarization has also been concomitant with flagrant violations of human rights. Amongst the many tools used by the State in the valley of Jammu and Kashmir, the use of rape to silence dissidents or those suspected of supporting the separatists remains rampant. This section, therefore, discusses how the lack of accountability of those perpetrating this implies the State's tacit approval of the said practice. Additionally, this section also sheds light on other forms of

violence including dowry related violence, domestic violence, and rape. While there has been a proliferation of legislation in this regard, this section highlights the State's inability to support such legislative reforms with improvement in investigation and prosecution.

The third section of this thesis provides an account of violence against women under Taliban's regime from 1996 to 2001. It discusses how Taliban's warped and myopic ideology created a repressive environment for the women in Afghanistan. Women in Afghanistan under the Taliban were, therefore, deprived of the most fundamental of their rights including the freedom of movement, right to education, and right to healthcare. So repressive were such policies that women were entirely excluded from public life and were rendered completely invisible. The Taliban's policies during its previous tenure are of particular importance with the group seizing power in recent weeks. While the Taliban purports to have learnt from its previous follies and while some are already waxing lyrical about the new and improved Taliban, this paper cautions the global community from celebrating prematurely.

The fourth section of this thesis highlights the harrowing tale of women belonging to the Rohingya Muslim community in Myanmar. It argues that the treatment of Rohingya women in Myanmar constitutes a flagrant violation of international humanitarian law and international human rights law. It opines that the global community must come together to forge a collective response to hold the State of Myanmar accountable and to ensure that host nations are equipped to support refugees who have fled to neighboring countries to escape Myanmar's oppression.

In the conclusion of this paper, I argue that while significant progress has been made, the journey ahead remains long and arduous. Nonetheless, with courage of action and with conventions like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (colloquially referred to as the "Istanbul Convention') as our guiding light, the future remains bright and sanguine. I also highlight the similarities and differences in attitudes towards women and the sources of violence against women in each of the countries I identified so as to recommend measures that policy makers in each country may undertake to arrest violence against women in all its forms and manifestations.

The interaction of Buddhist, Hindu, Confucian, Christian and Islamic traditions in South Asia has shaped women's identity in the region and has had an enormous impact of their status in the society. The widespread occurrence of violence against women is linked to the patriarchal attitude, misogynistic practices and rigid culture which has decreased the value of women in the region. The South Asian family structure is based on the supremacy of the patriarch of the house, and everything that happens within the four walls of the house between family is seen as a private matter, which allows violence to occur at home and is most commonly seen in domestic violence cases wherein police refuse to interfere or take any action with the excuse of the activity or incident being a family matter. Women in this region are subjected to several traditional forms of violence such as marital rape, wife-battering and sexual assault as well as bride burning, kidnapping, prostitution, acid attacks and honour killings. Several laws have enabled discrimination against women and has led to minimal reporting of violent acts. While some progressive legislation has emerged in recent years, implementation remains lax given that societal attitudes remain the same and many of these initiatives do not receive the funding and support that is required for them to be effective.

Conclusively, the aim of this thesis is to shed light on the cultural practices that shape patriarchal attitudes towards women and contribute towards the violence perpetrated against them. Additionally, it would examine legislation as both: a tool that allows individuals and institutions to violently suppress women and an ineffective means to arrest violence against women when enacted in isolation. This would lend credence to the central idea propounded herein, which is that, to address violence against women, states need to understand the systemic causes under which violence exists and then prepare a broad-based approach to combat the same. The law should, therefore, be only one of the numerous tools that the State adopts under this broad-based approach.

CHAPTER 2:
VIOLENCE AGAINST WOMEN IN PAKISTAN

2.1 Historical Background

After the partition of the subcontinent, the newly created state of Pakistan inherited a colonial legal system. Mohammad Ali Jinnah, the founder of Pakistan and a barrister himself, envisaged a state where citizens would enjoy the equal protection of the law regardless of religion, caste, or creed.[3] Nonetheless, shortly after his death, the Constituent Assembly passed the Objectives Resolution in 1949, in an attempt to unite the disparate groups that now comprised Pakistan (Objectives Resolution). The resolution, among other things, declared that Pakistan was an Islamic country, and that the future Constitution would embody the principles of Islam, as enunciated in the Quran and Sunnah. To this end, the Constitution of 1962 created the Council of Islamic Ideology, an advisory body which would advise the government on whether the laws it passed were in conformity with the principles of Islam (Constitution of Pakistan). The provision creating the Council of Islamic Ideology was maintained in the Constitution of 1973 which continues to remain in force.[4]

Similarly, the Objectives Resolution of 1949 serves as a Preamble to the Constitution of 1973 and is now also a substantive part of thereof through the Eighth Constitutional Amendment. Martial Law was imposed in Pakistan 1977.[5] Having toppled an elected government, the dictatorial regime of General Zia Ul Haq sought legitimacy for its actions and, therefore, employed Islam as a tool to justify the military's decision to seize power. Zia instituted a number of reforms, Islamizing various existing laws. Additionally, he created a Federal Shariah Court where clerics could strike down any existing law on grounds that the said law was inconsistent with the requirements of Islam. A number of these laws, particularly the Criminal Law Amendments of 1979 (often referred to as the Hudood Ordinance) adversely affected the rights of women.

[3] National Assembly of Pakistan, Na.gov.pk (2022), https://na.gov.pk/en/content.php?id=74 (last visited Feb 18, 2022).

[4] Constitution of Islamic Republic of Pakistan, 1973

[5] Eighth Amendment to the Constitution of Islamic Republic of Pakistan 1973, 1985

Even as democracy returned to Pakistan in 1988, successive governments have had to contend with the country's powerful clergy. Resultantly, even when governments have attempted to introduce progressive reforms, their attempts have bene thwarted by the clergy and the religious right. Subsequent sections of this thesis, for instance, highlight how attempts to reform laws relating to rape and domestic violence have borne little fruit given the stiff resistance they faced by the religious right. Given that religious parties have been emboldened since General Zia's martial law, mainstream parties often have to forge alliances with them to come into power. Having to choose between safeguarding women and their rights on the one hand and a coalition partner on the other, governments happily capitulate at the altar of political expediency. Moreover, given that members of the clergy and the religious right are given access to popular media, they are afforded opportunities to perpetuate stereotypes and patriarchal views about women's rights and their place in society, thus, affecting the implementation and efficacy of any reforms that the State may undertake.

Statistics coming out of Pakistan regarding violence against women don't even show the full picture because most cases aren't even reported due to the pressure of society and their own families on the victims, women who do manage to report are often met with resistance at the hands of police officers who oftentimes refuse to even register cases of domestic violence labelling it as a 'family matter' that should be solved at home. According to Pakistan Demographic and Health Survey 2012-2013, 40% of Pakistani women were subjected to domestic violence yet 43% women and one-third of men agreed that domestic violence at the hands of a husband was justified.[6] In 2019, as per the WEF's Gender Gap report 2018, the country was ranked at 151 out of 153 and additionally in the Women, Peace & Security Index of 2019, it ranked 164 out of 167. [7]

This Chapter, therefore, sheds light on how the State's interpretation of Islam interacts with patriarchal structures and weak governance to perpetuate violence against women particularly rape, honor killings, and domestic violence. Moreover, it discusses

[6] Pakistan Demographic and Health Survey 2012-13., 14 (2013), https://dhsprogram.com/pubs/pdf/SR208/SR208.pdf (last visited Aug 10, 2021).

[7] Prevention And Protection Of Women From Violence Through Access To Justice, Services And Safe Spaces, Asiapacific.unwomen.org (2021), https://asiapacific.unwomen.org/sites/default/files/Field%20Office%20ESEAsia/Docs/Publications/2021/10/pk-INL-Factsheet-v9_15Dec2020.pdf (last visited Sep 10, 2021).

the State's endeavors to curb such violence and gauges the success or a lack thereof of such measures.

2.2 Rape: Definition and Legal Basis

Pakistan, like many other countries, continues to view rape with an Anglo-Saxon lens, focusing primarily on peno-vaginal penetration. Under this conception, rape constitutes peno-vaginal penetration with another without their consent or where the person subjected to such penetration lacks the capacity to consent. In this regard, section 375 of the Pakistan Penal Code, 1860 ('PPC') defines rape in the following terms:

"375. A man is said to commit rape who has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:

(i) Against her will.

(ii) Without her consent

(iii) With her consent, when the consent has been obtained by putting her in fear of death or of hurt,

(iv)With her consent, when the man knows that he is not married to her and that the consent is given because she believes that the man is another person to whom she is or believes herself to be married; or

(v) With or without her consent when she is under sixteen years of age.

Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape" (Pakistan Penal Code, 1860)[8]

Feminist scholars like MacKinnon have critiqued this definition for its focus on peno-vaginal penetration at the risk of excluding other forms and manifestations of sexual violence from constituting rape. These forms of sexual violence, while excluded from the formal and penal definitions of rape, may be analogous to penetration in both, its heinousness and in its physical and psychological impact on the victim.[9]Others like Susan Brownmiller have stated that, the notion that forcible penile penetration of the vagina is the worst type of sexual assault which deserves the most severe punishment, while all

[8] Pakistan Penal Code, 1860

[9] Catherine A MacKinnon, Toward a feminist theory of the state (1989).

other sexual assaults are lesser offences, "can only be seen as an outdated masculine concept that no longer applies to modern crime".[10]

It is perhaps this realization which has catapulted countries like India to amend their laws pertaining to rape and bring them in conformity with the views expressed by feminist scholars like Catherine MacKinnon. The Criminal Law Amendment Act, 2013 amended section 375 of the Indian Penal Code so as to change the conceptualization of rape, bringing a wider array of offense within the ambit of rape. Oral rape and penetration of body cavities other than the vagina too, thus, came under the rubric of rape (The Indian Penal Code).

International Criminal law too has endorsed such an expansive definition of rape. The International Criminal Tribunal of Rwanda for instance defines rape as "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive" (The Prosecutor v. Jean Paul Akayesu, [2001]). These amendments effectively depart from a peno-vaginal centric definition of rape and expand the said definition so as to include within its rubric, the penetration of other bodily orifices among other things. The departure in the definition of rape may, therefore, be seen as a vindication of feminist critiques that highlighted the fact that rape is an act of sexual objectification. It demonstrates a contempt for the victim's personhood, regardless of whether it is penile or non-penile.

Nonetheless, laws pertaining to rape in Pakistan continues to focus on peno-vaginal penetration alone, as evident from a perusal of section 375 of the Penal Code. This is, however, not to suggest that there have been no amendments in the laws pertaining to rape. As the subsequent paragraphs shall depict, a number of these severely and adversely affected women's ability to seek redressal from the justice system in the event of rape. While recent amendments have attempted to right some of these wrongs, the following sections of this paper shall also endeavor to show how these attempts to right the wrongs of the past were often half-hearted and, thus, failed to bear fruit.

[10] Susan Brownmille r, Against Our Will: Men, Women and Rape (1975).

2.2.1 Criminal Law Amendment (Hudood Ordinance) of 1979

As stated earlier, after imposing Martial Law in 1977 and stifling democratic expression throughout the country, General Zia Ul Haq's regime sought to use religion to lend legitimacy to their political project. To this end, the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (The Offence of Zina (Enforcement of Hudood) Ordinance, 1979 was promulgated and the laws relating to rape were amended so as to purportedly bring them in conformity with the requirements laid down under the Islamic Shariah Law (The Offence of Zina (Enforcement of Hudood) Ordinance, 1979).

Under Islamic law, Zina refers to the consensual sexual relations between two unmarried individuals and the same constitutes a *hadd* offense. Like most monotheistic faiths, Islam disapproves sexual relations outside marriage and carries punishments for those who engage in such conduct. Nonetheless, Islam also unequivocally condemns false accusations and, therefore, requires four male witnesses who had witnessed the act of penetration to testify before someone could be punished for *Zina*.[11] The rationale for this was to ostensibly respect the individual's right to privacy and only penalize acts which were committed publicly and offended against the society's moral values.[12] Moreover, this requirement was also intended to discourage false and frivolous allegations since those who accused others of committing Zina without producing four credible male witnesses could be prosecuted for qadhaf (false accusation of adultery). Islamic law, therefore, intended to strike a balance between individual's interest and privacy and dignity on one hand and the society's interest in preserving its morals on the other).[13]

Nonetheless, the Ordinance of 1979 conflated Zina (consensual sexual relations outside marriage) with *Zina-bil-jabr* (rape). The Ordinance provided the same punishment for both adultery and rape. Moreover, given that the law conflated *Zina* and *Zina-bil-jabr*, women who reported rape now had to prove the same in accordance with the Islamic evidentiary standards thus, requiring a woman reporting rape to produce four male witnesses who had witnessed the act of penetration (The Offence of Zina

[11] Asifa Qureshi, Her Honour: An Islamic Critique of the Rape Provisions In Pakistan Ordinance of Zina, 38 Islamic Research Institute, International Islamic University (1999).
[12] Ibid
[13] Ibid

(Enforcement of Hudood) Ordinance, 1979). The said witnesses were required to be honest and of good character, with the courts determining their credibility. Where a woman failed to produce four witnesses or where the court declared such witnesses to lack credibility, however, the accused was acquitted. Moreover, exacerbating women's plight under the law, a woman who failed to produce four credible eyewitnesses to the rape faced the risk of being tried for Zina.

This was because a victim who claimed to have been raped conceded the fact that there was sexual intercourse between her and the accused. Where victims could not, however, establish that the sexual intercourse was forced upon them, the law treated their complaint as an admission of having sexual intercourse and presumed that such intercourse was consensual, thus, trying the victim for Zina. Given that the vast majority of complainants in cases involving rape, this law had a disproportionate impact on women with women who failed to establish that they were raped often languishing in jail on charges of Zina. The Hudood Ordinance, thus, soon became a tool for the oppression of women and silenced them from reporting incidents of rape. The law, along with poor policing, weak prosecution, and other factors contributed towards the perpetuation of rape and sexual violence against women. In a society where patriarchal attitudes were already rampant, the State and its vision of religion too now sided with those who oppressed women.

These evidentiary standards have been assailed, with some scholars stating that the decision to extend the four male witnesses' requirement to cases of rape was unjustifiable.[14] These critiques also question how a woman's allegation of rape could be deemed a confession of having committed *Zina* or consensual sexual relations outside marriage. It may, therefore, be stated that the Hudood Ordinance significantly affected the rights of women and served to impede their ability to seek redressal against sexual violence. These concerns came to life in the case of Safia Bibi v The State, where a blind young girl became pregnant and accused her employers of raping her.[15] When she reported the rape, the case was pursued, and a charge sheet was presented to court. Nonetheless, given the lack of evidence against the accused, her complaint failed, and

[14] Martin Lau, Twenty-Five Years of Hudood Ordinances- A Review, 64 Washington and Lee Law Review (2007).

[15] PLD 1985 FSC 120

another charge sheet was brought before court. A trial was subsequently initiated against Safia for having committed *zina* on the basis of her 'confession' of 'having' sexual intercourse with the accused. While the accused had been acquitted due to lack of evidence against them, the court found that Safia's testimony as self-implicatory. As a result of the conviction, Safia was awarded punishment of three years rigorous imprisonment, fifteen lashes, and a fine of Rupees. 1,000. Although, Safia was later acquitted on appeal by the Federal Shariat Court, the stigma of being prosecuted for zina in itself is so severe for women to be able to regain respect in such a society.

Despite these agonizing stories, Safia was not the only victim who met this fate. In the case of Zafran Bibi v The State, the victim was a married woman who became pregnant as a consequence of a rape. When she tried to lodge a complaint to the police, she was instead charged with zina and taken into custody. Zafran was convicted and awarded punishment of stoning to death (rajm). After spending time in prison, Zafran was acquitted by the Federal Shariat Court when her husband come forward to accept the paternity of the child.[16]

2.2.2 Protection of Women (Criminal Laws Amendment) Act 2006

Keeping in view the problems faced by women who wanted to report instances of rape, the Parliament passed the Protection of Women (Criminal Laws Amendment) Act in 2006 (hereinafter '2006 Act'). The 2006 Act reinstated the erstwhile section 375 of the Pakistan Penal Code, thus, reintroducing the offense of rape once again and removing *Zina bil jabar* (Protection of Women (Criminal Laws Amendment) Act, 2006). This meant that a person accused of rape would be tried under the Penal Code and not the Hudood Ordinance. Moreover, the Act also increased the minimum age at which one could consent to sexual intercourse. When the Indian Penal Code was promulgated in 1860, the minimum age to consent to sexual intercourse was 10 years. This was later increased to 14 years while the Hudood Ordinance of 1979 was silent in this regard. The 2006 Act, however, increased the age at which one could consent to sexual intercourse to 16 (Protection of Women (Criminal Laws Amendment) Act, 2006). The law was,

[16] PLD 2002 FSC 1

therefore, a much-needed departure from the Hudood Ordinance of 1979. Nonetheless, the Government's efforts were met with stiff resistance from the religious right whose pressure successfully thwarted any attempt to introduce meaningful reforms. Resultantly, while the law or the appendix thereof acknowledged that the concept of Zina bil jabar was alien to Islamic law which only recognized *qazf* and *zina*, the law did not go as far as dispensing with the requirement to produce four ocular male witnesses in cases of rape. While a number of women and human rights organizations demanded that the law allow DNA evidence as opposed to the antiquated four witness's requirement, the Government failed to concede. Consequently, while courts allow investigators to conduct DNA tests in certain cases, the absence of a legal framework means that the evidentiary value of DNA results remains ambiguous. Courts, therefore, often treat DNA merely as a secondary form of evidence.[17]

Far from being the progressive law that it was initially expected to be, the 2006 Act left a lot to be desired. It highlighted the State's weakness in protecting the rights of women and highlighted the unfortunate reality that most women in Pakistan regularly witness, which is, that far from being a custodian of their rights, the State would rather side with those who oppress them. The State's capitulation, thus, marked an opportunity lost. What could have been a watershed moment for the rights of women in the country further emboldened the religious right whose misogynistic interpretations of religion had resulted in the oppression and subjugation of women. The law, therefore, delivered significantly less than what it promised and failed to truly improve the status of women in the country.

Table 2.1 Changes since penal code came into existence

Period	Actus Reus	Age of lawful consent	Penalty
1860	Sexual Intercourse	10 years	Life Imprisonment
Post-Independence	Sexual Intercourse	14 years	Life Imprisonment
1979 Ordinance	Sexual Intercourse	Not Stated	Death
2006 Act	Sexual Intercourse	16 years	Death

[17] Shahbaz Ahmad Cheema, *Trial of DNA Evidence in Pakistani Courts: An Analysis*, SSRN Electronic Journal (2015).

2.2.3 Procedural Issues

Procedural issues that surround the criminal justice in Pakistan are not directly linked to Islamic law, but in the particular instance of rape the culture of silencing victims is perpetuated by it.

It is also pertinent to note that since consensual sexual intercourse is a crime under Islam and Pakistani law, there is taboo surrounding the topic. Women who are subjected to rape are looked down upon by their own families because they have engaged in illicit sexual relations. Sometimes families do not take into consideration the victims' plight, and they make her feel as if she is the one who has committed the crime. In Pakistan, a woman's chastity is associated with the family's honour. And this mindset is present within the very core of Pakistani culture. Many view a woman complainant as a "loose woman" who is accusing a man of rape to find a way out accepting she had consensual sexual intercourse (Qureshi, 1999). This is a double jeopardy situation again for the woman complaining because even where a woman can successfully prove rape, the fact that she concedes having sex outside marriage is deemed to bring dishonour upon her family notwithstanding the manner in which the act was carried out. In 1999, a mentally challenged teenage girl was raped by a male clerk ("Honour killings" After Rape). When the police looked into the matter and informed the family, the family killed her to restore the family's honour ("Honour killings" After Rape).

Academics, human rights activists, and lawyers opine that criminal procedures and rules also contribute towards the low levels of reporting and high attrition rates. A number of complainants recant or enter into a compromise or financial settlement with their rapists even before the courts of law have determined their case. An Additional Sub-Inspector in Lahore while speaking to a human rights lawyer based in Lahore said:

> *"Many such women approach the police station. But the emphasis is on compromise. Often times the officers at the police station themselves negotiate such an arrangement. It is a majboori [helplessness] to negotiate a settlement. We just have a musalat nama [informal agreement] written on paper"* (Bandial, 2019).

A perusal of the criminal records in Lahore reveals that over the last six years, only 15 cases of rape have been reported to the police (Bandial, 2019). A major obstacle

towards reporting cases of rape is the fact that the police department only has a handful of female officers. Given that women who are subjected to rape may be more comfortable in sharing their account with female officers, the lack of female officers actively discourages women from coming forward (Bandial, 2019). This phenomenon became evident when after an incident where a woman was raped in front of her children, the police chief issued a statement blaming the victim for leaving her house late into the night. Another example of this was a recent statement by the Prime Minister of Pakistan where he said that the increase in gender- based violence was due to women wearing provocative clothes. Moreover, the Prime Minister added that men would inevitably harass women who dressed immodestly and only 'robots' could be expected to not be titillated ('Women wearing few clothes impact men, unless robots': Pak PM on rising sexual violence, 2021). Statements like these highlight the manner in which the State enables perpetrators of sexual violence. Moreover, by stating that gender-based violence is linked to women's clothing, the State implicitly places on women, the responsibility of guaranteeing their security, thereby, abdicating all responsibility of ensuring that women are safe from violence. This concern also resonated with the Verma Committee in India which was formed to make recommendations regarding criminal law reforms to protect women from sexual violence. It stated, "the number of female police personnel on patrol and on duty in police stations is increased so that females feel comfortable in complaining of sexual harassment or threats of a sexual nature to any member of the police" (Justice Verma Committee Report Summary, 2013). Increasing the participation of women in police, gender sensitive training, training prosecutors and judges, and promulgating special rules and procedures in cases concerning rape are, thus, all imperative. There has been some progress in this regard with the Supreme Court of Pakistan holding in *Salman Akram Raja vs. Government of Punjab* that in-camera trials and screens may be used to protect the identity of victims of rape or safeguard vulnerable witnesses or complainants from facing the accused. Nevertheless, insensitivity on the part of the police and weak prosecution continues to hurt women (Salman Akram Raja vs Government of Punjab, [2013]). Additionally, a number of disputes concerning rape continue to be decided by informal tribal courts like jirgas and panchayats. Most prominent amongst the cases decided by these jirgas and panchayats is the Mukhtaran Mai case where the panchayat ordered that Mai be raped by men of a rival faction after the faction accused that one of their women had been raped by Mai's brother (Pakistan's Jirgas and Women's Rights). To address this, all stakeholders must come together to formulate a broad-based response that ensures

effective investigation, competent prosecution, and timely and gender sensitive adjudication.

2.3 Honour Killings

The practice of killing women in the name of honor persists in Pakistan especially in rural areas where patriarchal practices along with feudalism, weak law enforcement, and illiteracy and limited labor participation amongst women makes them particularly susceptible to violence. In patriarchal societies, the women and their activities are closely monitored. Male relatives, therefore, assume the responsibility of guarding women's virginity, stopping them from engaging in any relations with males outside the family. Women who are suspected of having illicit relations with other men ranging from simply talking to a man outside their family to having sex outside of marriage are, therefore, deemed to have attacked their family's honour which can only be restored by taking the said woman's life. Moreover, in a number of cases, the mere suspicion that a woman has acted in a manner that could damage her family's name may trigger an attack; these assumptions are generally based on doubts fueled by misogynistic thoughts of the family's patriarchs rather than on the objective truth.

To understand what constitutes honour killings, one may look at UNICEF's definition of the term, which defines the practice as "An ancient practice in which men kill female relatives in the name of family 'honour' for forced or suspected sexual activity outside marriage, even when they are the victims of rape" (n.d.). Pakistan's Penal Code, however, takes a broader view of the practice insofar as it does not view the crime from a gendered lens and includes offences irrespective of the victim's gender. Section 299 of the Penal Code defines honour killings as:

> *"Offence committed in the name or on the pretext of honour means an offence committed in the name or on the pretext of karo kari, siyah kari or similar other customs or practices*" (Pakistan Penal Code, 1860).

It may be argued that the practice was in part legitimized by the 'grave and sudden provocation' defense that the penal code had earlier recognized. At partition, section

304(I) of the Penal Code allowed a partial defense of "grave and sudden provocation" to an accused, thus, converting the charge of murder into manslaughter. Section 304 provided as follows:

> *"Exception: 'Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by' grave and sudden provocation, causes the death of the person who gave the provocation or Causes the death of and other person by mistake or accident"* (Pakistan Penal Code, 1860)

Resultantly, the courts too adopted a lenient approach towards the practice of honour killings. In *Muhammad Saleh versus The State*, for instance, the accused was charged of murder after killing her sister and her lover. In this case, the accused woke up one night and upon not finding his sister in her bed, went out with his hatchet to look for her. As he reached the wheat fields outside his house, he saw his sister engaged in sexual intercourse with another man. Enraged, the accused killed both her sister and her partner with his hatchet. Converting the charge of murder to manslaughter, the Court held:

> *"The taking of a hatchet can be explained by the fact that it was still dark, that is, for self-protection, and it may be the accused expected to have to chastise his sister for misbehavior if that was found. But upon the admissible evidence in this case, there is no ground for thinking that the appellant expected to find his sister in an act of intimacy with a stranger. He must be allowed, on the evidence, the benefit of a shock, on making the discovery, such as is fully recognized in law as furnishing grave and sudden provocation within the meaning of section 304"* (Muhammad Saleh versus The State, [1965])

Keeping in view the legal provisions that enabled honour killings to continue with impunity and given the prevalence of the practice, the Parliament in 2006 enacted the Criminal Law Amendment Act of 2006 which, among other things, added clause (c) to section 302 of the Penal Code (Protection of Women (Criminal Laws Amendment) Act, 2006). Section 302(c) provided that the benefit of section 304 shall not be available to anyone who committed a murder in the name of honour. Similarly, section 305(a) of the Penal Code was amended to provide that:

> *"Wali shall be heirs of victim, according to his personal law "[but shall not include the accused or the convict in case of qatli-amd if committed in the name or on the pretext of honour]"* (Protection of Women (Criminal Laws Amendment) Act, 2006)..

Likewise, in Section 311 of PPC, a provision has been added which states:

"Provided that if the offence has been committed in the name or on the pretext of honour, the imprisonment shall not be less than ten years" (Protection of Women (Criminal Laws Amendment) Act, 2006).

While these amendments indicate the gravity of the situation and the importance the Parliament accorded to eliminating this practice, courts have been slow to review their jurisprudence. In Zulfiqar Ali Vs. State (2006 MLD 1676), for instance, the accused had killed another man who had entered his house to have sexual intercourse with his sister. Commuting the accused's death sentence to life imprisonment, the Court held as follows:

> *"Family honour killings were to be discouraged, but it did not mean that the benefits of mitigation were not to be given at all to the accused in whose house someone had trespassed and invaded privacy to fulfil his lust" (*Zulfiqar Ali Vs. State (2006 MLD 1676), [2006]).

Patriarchal practices, poor law enforcement, and an enabling legislative framework have all contributed towards the perpetuation of honour killings in Pakistan. Resultantly, any attempt to address the same must be multifaceted. This explains why amending the law alone has proved to be inefficacious and why the State needs to formulate a broad-based response. A recent high profile killing in the name of honor was that of Qandeel Baloch, a social media star who often challenged societal norms and expressed herself by singing, dancing, and wearing clothes she pleased.

She was subsequently killed in 2016 by her brother after the latter was incited by a cleric (Qandeel Baloch: Brother of murdered social media star jailed, 2019). This highlights the need to focus on education particularly by revamping the curriculum and introducing mandatory gender-based training amongst law enforcement officers and the judiciary. Collectively, this may ensure that we have a generation that does not hold the patriarchal views that the present one holds and that the police and the judiciary side with victims as opposed to shielding the perpetrators of violence and honor killings.

2.4 Domestic Violence

The United Nations defines domestic violence as "a pattern of behavior in any relationship that is used to gain or maintain power and control over an intimate partner. Abuse is physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that frighten, intimidate, terrorize, manipulate, hurt, humiliate, blame, injure, or wound someone" (What Is Domestic Abuse? | United Nations, n.d.).

Domestic violence remains rampant in Pakistan with statistics indicating that intimate partner violence is frequently reported in the range of 30-79% (Fikree and Bhatti, 1999). In Karachi, Pakistan's largest city, 34% married women reported that they had suffered some form of physical abuse including slapping, pushing, and pulling hair (Fikree and Bhatti, 1999). Of the women who had been subjected to physical abuse, 60% reported that financial constraints had been a major cause of such abuse while 15.3% of such women reported that their in laws had been the cause of physical abuse (Fikree and Bhatti, 1999). Perhaps most disconcerting is the fact that a report published by the Aurat Foundation reveals that violence against women does not follow any proportional or non-proportional relationship to the degree of modernity, level of literacy, accessibility to basic civil amenities, influence of media, role of religion and binding of the conventional morality. Violence against women, thus, remains prevalent across all social segments.[18]

While physical abuse remains rampant, other forms of abuse may also fall within the rubric of domestic violence, as evidenced by UN's definition of the term. Moreover, conversations that focus on other forms of domestic violence is important particularly given the long-lasting impact of such forms of violence. Scholars have argued that even low severity violence can affect a woman's physical and psychological health (Khan, Ali and Khwuja, 2009). Moreover, they state that the scars caused by emotional abuse can be more significant than those caused by physical violence. In an attempt to show the gravity of domestic violence, researchers show that victims of domestic violence are four times as likely to commit suicide as compared to others. Additionally, they argue that victims

[18] Aurat Foundation, Violence against women in Pakistan A qualitative review of reported incidents (2014).

of domestic violence are likely to suffer from depression, alcoholism, drug dependency, and post-traumatic stress syndromes (Khan, Ali and Khwuja, 2009). Gynecologists reported that a number of their patients had suffered from intimate partner violence, with a number of them seeking treatment for third-degree burns, acid burns, and other common injuries observed including bruises, lacerations and vaginal trauma. Moreover, another study has reported that over two-thirds of the men had engaged in non-consensual sex with their wives (Khan, Ali and Khwuja, 2009).

Dilating on the factors that contribute to domestic violence, it has been argued poverty is a major factor. In patriarchal societies like Pakistan, men often control the finances with conflicts over finances resulting in women being subjected to violence. Additionally, poverty and financial issues often leads to men vent their anger on their wives or other women in the family (Khan, Ali and Khwuja, 2009). This is aggravated by the fact that every third woman in Pakistan is illiterate and, therefore, frequently lacks awareness regarding her rights. It is, therefore, imperative that policymakers focus on education and expanding opportunities of women so as to make them financially independent.

Notwithstanding the incident of domestic violence, however, there has been little progress in this regard with attempt to improve the status of women being pushed back by conservative elements in society. In 2021, for instance, the Domestic Violence Bill was tabled in the Parliament. Nonetheless, following pressure from conservatives and those belonging to the radical right, the Government capitulated and referred the Bill to the Council of Islamic Ideology, the constitutional body tasked with recommending whether a law is consistent with the provisions of Islam (Govt recommends referring domestic violence bill to Council of Islamic Ideology, 2021). It is pertinent to add that the Council has a history of issuing misogynistic recommendations, previously stating that it was permissible for men to inflict light beating on their wives. Similarly, while the provinces of Sindh and Baluchistan have passed the Domestic Violence (Prevention and Protection) Acts in 2013 and 2014 respectively, implementation of these laws remain weak. In *Mst Hina vs Province of Sindh*, for instance, the Sindh High Court held that notwithstanding the passage of the domestic violence act of 2013, the provincial government had failed to implement the law and guarantee the protection of women from instances of domestic violence (Mst Hina vs Province of Sindh, [2019]). Similarly, in

another case while acknowledging that the accused had committed domestic violence after her wife demanded a separate home given differences with the former's family, the court granted bail to the accused. The manner in which the court adjudicated over the dispute manifested a desire to not interfere in the domestic realm notwithstanding the threat such non-interference may pose to women (Asad vs the State, [2017]).

Keeping in view that women who suffered from domestic violence witnessed mental health problems including anxiety and depression, it is imperative that the State builds a narrative in support of measures such as the Domestic Violence Bill and resist the pressure mounted by the religious right. In the absence of such gumption, the State would be unable to tap into the potential of women and develop an egalitarian and inclusive society.

2.5 Concluding Remarks

Violence against women persists in Pakistan. As this chapter suggests, the State has often sided with those oppressing women and has seldom shied away from compromising women's rights in the interest of pursuing its larger political interests. Even when the State has attempted to rectify its mistakes and safeguard the rights of women, its efforts have been one step forward and two steps backward.

The law pertaining to rape in Pakistan is very limited in its ambit, even India amended section 375, but Pakistan has failed to do so and in order to tighten its noose around rapists, the country needs to reexamine its laws and not only widen its ambit of what is considered to be rape but also include DNA testing as primary evidence, which for now is still seen as secondary evidence.

Moreover, as witnessed in honour killing cases, the State does not become party in those cases, the perpetrators which are mostly immediate family members wherein take advantage of qisas and diyat to sort it among themselves. Poor law enforcement, unprofessional investigations, patriarchal society and an enabling legislative framework have all advanced the perpetuation of honour killings in Pakistan as seen in Qandeel

Baloch's case. Until the state takes these cases seriously and becomes a party in these cases, honour killings will continue to plague the country.

As mentioned above, the normalization, acceptance and tolerance by state and society when it comes to violence against women has played a crucial role in the burgeoning rise of such cases. Victim blaming at the hands of police such as in the Motorway rape case, PM Imran Khan's constant victim blaming filled statements on TV and misogynistic statements during public appearances by other influential lawmakers and politicians itself is a cause for concern.

Another leading issue witnessed in Pakistan is the incompetence of police and investigation officers during the investigation which leads to lower convictions due to lack of evidence collected or damaged forensic material due to irresponsible forensic collection or insufficient collection of evidence altogether.

As far as domestic violence is concerned, the refusal of authorities to intervene or to take action/lodge FIR if violence is committed inside the house, especially if perpetrators are family members and labelling it as a "private matter" is seen to be the biggest reason why men are not even scared when threatened with police action due to the knowledge that even if their victim calls the police, they wouldn't do much about it. This itself is one of the main reasons behind incorrect statistics since victims don't even end up reporting the violence being committed against them.

Women, therefore, continue to suffer. Moreover, as COVID-19 wrecks economies throughout the world, the Pakistani State needs to question whether it wants to protect its women and fully include them in national life or would it continue to exclude and marginalize them. Pakistan today steps on the precipice. The fate of women in Pakistan and Pakistan's own fate depends on what it does today. Will it make the changes that are needed to protect women? Will it support women, or will it continue to support and get blackmailed by its radical right? Until then, the fate of millions of women in the country continues to hang in the balance.

CHAPTER 3:
VIOLENCE AGAINST WOMEN IN INDIA

3.1 Historical Background

Like Pakistan, India too gained independence in 1947 as British rule over the Indian subcontinent came to end. After ratifying its Constitution in 1949, India was avowedly a secular country. Moreover, Article 15 of the Constitution prohibited discrimination on the basis of race, caste, sex, or place of birth. Moreover, Article 39 guarantees that both, men and women have the right to an adequate means to livelihood. Nonetheless, notwithstanding its commitment to a secular dispensation and its guarantee of non-discrimination, religious prejudices, entrenched patriarchal views, and geo-political considerations have often shaped the State's attitude towards women.

The haste with which the British withdrew from the subcontinent and the haphazard manner in which it drew the borders between India and Pakistan meant that the two states were embroiled in border disputes since their inception. Most prominent amongst these was the dispute in Kashmir where the State's Muslim majority chose to accede to Pakistan. Nonetheless, the State's Hindu ruler agreed to accede to India in wanton disregard of the will of the Kashmiri population. Since then, the dispute in Kashmir has resulted in wars between the two nations and continues to bring the two nuclear states on the brink of war. India in turn has committed gross human rights violations in Kashmir. This section shows how the conflict has often been couched in religious terms with Muslims in Kashmir often been subjected to violence by the State simply on suspicion of being supporters of the separatists. Moreover, it shows that women in Kashmir have particularly been on the receiving end of the conflict, with many being subjected to rape due to their actual or perceived links to separatists. Moreover, like Pakistan, patriarchal norms have often resulted in domestic violence while also impeding the State's attempts to protect women from rape and other forms of sexual violence. This section will also delve into dowry related violence which may be a form of violence unique to India and also analyze the impact of COVID-19 on violence against women.

3.2 Violence During Armed Conflict

While violence against women remains prevalent across India, the State's geo-political interests in the valley of Jammu and Kashmir leaves the valley's women particularly susceptible to violence given that the State not only uses violence against women as a tool in its arsenal but also shows little interest in protecting women from violence perpetrated by private citizens.

Since January 1990, India has been embroiled in a protracted armed conflict in the Kashmir Valley where separatists seek their right to self-determination. The State's response has ranged from arresting separatists to enforced disappearances, using locals as human shields, using pellet guns, and enforcing lockdowns for extended periods (n.d.). Throughout this insurgency, security forces including the army and paramilitary forces like the Border Security Force (BSF) and the Central Reserve Police Force (CRPF) have been accused of committing grave and flagrant human rights violations. These violations include, among other repressive tools, the rape of civilians suspected to be sympathetic towards the separatists. Representatives from Asia Watch and Physicians for Human Rights (PHR) visited the Valley in October 1992 to document rape human rights violations by Indian security forces, deploring incidents of rape committed by security forces (n.d.). Incidents of rape have reportedly become more common, becoming particularly frequent as security personnel carry out crackdowns, and conduct cordon-and-search operations during which men are held for identification in parks or schoolyards while security forces search their homes (n.d.). Moreover, in attempts to crush the separatist movement, security forces often resort to handing out capricious and collective punishments. In South Asian societies, where honor is often tied to women's bodies, security forces seek to humiliate entire neighborhoods and communities by raping women in areas and communities where the State loses its writ to separatists. In some instances, women are subjected to such brutal and horrific attacks simply because they are suspected of providing food or shelter to separatists while in others, a woman is punished merely for being at the wrong place at the wrong time (n.d.).

While such incidents may come across as sporadic at first, these are symptomatic of the State's ignominious attempts to assert its writ by violating women. Women's bodies,

therefore, frequently become a site where many battles between the State and dissidents are contested. A local outlet recently reported that security forces have sexually assaulted and gang-raped over 11,000 women in Jammu and Kashmir during the past three decades (Indian forces have raped, molested more than 11,000 Kashmiri women in 3 decades: report, 2020). These include women believed to be romantically involved with activists and leaders of the struggle against the State's occupation of the Valley. Additionally, the report highlighted that violence committed by security forces have left nearly 23,000 women widowed (Indian forces have raped, molested more than 11,000 Kashmiri women in 3 decades: report, 2020). Additionally, security forces conducting counter-insurgency operations not only in Kashmir but also in Northeastern India particularly in the State of Assam often rely on rape to coerce, intimidate, humiliate, and dehumanize entire populations. While the availability of reliable statistics is often difficult given the State's attempts to impede any transparent inquiry by third-party observers, it is well settled that not only is rape by security forces commonplace but the same also continues with impunity. The Indian Government has rarely acted against those perpetrating such brutal attacks, with the only known prosecution of a security official for the rape of not a Kashmiri, but a Canadian woman visiting Kashmir in 1990 (n.d.).

Notwithstanding the Government's claims of acting against those involved in these crimes, there have been no reports of any convictions in this regard. The fact that there have been no public inquiries or sanctions against security personnel perpetrating rape, has created a perception that the Indian State tolerates the rape of its own citizens at best and uses rape as a tool to muzzle dissent at best. Such apathy also signals that security personnel may commit flagrant violations of human rights without being held accountable for such transgressions, thus, allowing such practices to continue unfettered. Contemporaneously, while there was no evidence of rape being used by militants against the civilian population, the State's practices have now permeated throughout the society with some reports now indicating that armed separatists too are beginning to use rape against women whose family members were suspected of opposing separatists or acting as police informants (n.d.).

Violence against women in the Jammu and Kashmir Valley continues not only due to the State's use of violence as a tool to intimidate and humiliate a hostile population but also as the protection of women from violence perpetrated by private civilians is

compromised at the altar of the State's other seemingly more important geo-political interests in the Valley. This practice has become particularly pronounced since 2019.

In August 2019, the Indian Government revoked the special status afforded to Jammu and Kashmir through Article 370 of the country's Constitution. The region was divided into two federally administered territories (India revokes Kashmir's special status, 2019). Anticipating widespread protests and a severe backlash, the Central Government imposed a lockdown in the Valley and cut off all communication links to and from Jammu and Kashmir (Imran, 2021). As some restrictions were set to ease in the Spring of 2020, the Government decided to impose another lockdown as the COVID-19 pandemic made its way to the Valley (Imran, 2021). Given that lockdowns have been linked to an increase in violence against women especially since abusive patriarchs who have a history of abusing the women in their homes have more opportunities to commit such acts during such periods (Majid, 2021). This is also supported by the Indian Health Ministry's National Family Health Survey (NFHS) which revealed an increase in domestic violence in Kashmir. The survey brought to light the fact that between 2019 and 20, 9.6% of all Kashmiri women aged 18-49 had experienced domestic violence (Majid, 2021). Some experts have argued that the actual statistics may be much higher, given that a number of incidents remain unreported keeping in view families' proclivity against disclosing incidents of domestic abuse (Majid, 2021).

On October 31, 2020, at around 10 am, a twenty-one-year-old student had left her house to collect a bridal dress for one of her relatives. On her way back, she was abducted by two men who took her to a dense orchard where they brutally raped her (Zargar, 2020). According to the girl's family, "Her tongue was slit. We cannot even imagine the pain she was subjected to" (Bhat, 2021). While the accused were spotted by locals and handed over to the police, confidence in the criminal justice system remains low (Bhat, 2021).

Official data from the crime branch, Srinagar, highlights the agony rape survivors experience while attempting to secure convictions against their rapists. Cases often go on for years with data for the six years preceding March 2019 revealing that of the 1,046 pending cases of rape in Jammu and Kashmir, 831 remained pending since 2014 (Majid, 2021). Moreover, the same data revealed that in only 5% cases were the accused

convicted, thus, suggesting that women not only face an uphill battle but also end on the losing side of the said battle on an overwhelming majority of occasions (Bhat, 2021).

As tensions between separatists and the State continues unabated, violence against women shows no signs of mitigation. Apart from the physical invasion of their bodies, women continue to bear the psychological burdens of living in a conflict-ridden region. Moreover, as arrests, disappearances, and extra judicial killings of men increase, lives for the half widows of Kashmir (women whose husbands have disappeared or have been abducted by security forces or militants) show no respite.

Being a patriarchal society where women's lives are often intertwined with their husbands and where women often play a subordinate role in the house, half widows with little to no economic freedom are often left to fend for themselves and their children after their husbands are abducted or arrested (Hamid, Jahangir and Khan, 2021). These women who are often left to visit male-dominated police stations and offices to seek information about their husbands are not only susceptible to harassment at the hands of an apathetic civil-military bureaucracy but also suffer at the hands of separatists who suspect them of being informants (Batul, 2020).

A crime against humanity becomes banal when it is committed in a routine and systematic way, the banality of evil makes people accept as well as justify the use of oppressive policies. As disparate groups to attempt to wrest control of the Valley, the identity of the winner of this conflict may never be known. The identity of the loser, however, remains clear. It is the Kashmiri women who continue to suffer from the evil inflicted by both the State and those it violently opposes.

3.3 Domestic Violence

Notwithstanding advancement in its economy and its claims of being the largest democracy in the world, violence against women in India continues to agonize women across the country. The National Family Health Survey 2015-2016, for instance, reveals that 31.1% of all married women between the ages of 15 and 49 have experience some

form of spousal violence (International Institute for Population Sciences (IIPS and ICF 2017). Moreover, the National Crime Records Bureau's records similarly reveal that domestic violence remains the most common form of violence against women, with nearly 900,000 cases registered in 2018 alone (Outlook 2020). Additionally, domestic violence is not only perpetrated by a woman's husband but may also be perpetrated against a woman in her natal home. VA report by the International Center for Research on Women states that violence against women in India is complex and deeply embedded. Given that a woman's more critical role in a patriarchal setting is to get married with her marriage symbolizing a transfer of control and ownership over her body, women's sexuality is heavily policed with her father or other male relatives frequently inflicting violence to police her actions and guard her chastity (Domestic Violence in India A Summary Report of a Multi-Site Household Survey, 2000).

A number of studies and surveys around world indicate that domestic violence often increases during and following natural disasters. A study examining domestic violence in India following the Tsunami in 2004, for instance, revealed that between 2005 and 2015, there was a 48% increase in such violence amongst communities affected by the Tsunami (Rao 2020). Similar trends have emerged elsewhere. Australia, for instance, saw an escalation in domestic violence in the aftermath of the 2009 Black Saturday bushfires. The escalation of domestic violence during and in the aftermath of a disaster may be attributable to the following: Firstly, disasters are often concomitant with economic difficulties. As men confront economic challenges, they often let out these frustrations on the women in their families, subjecting the latter to both, physical and psychological violence; Secondly, as men lose their jobs, they often spend more time at home, thus, allowing those who have a history of subjecting the women in their homes to violence a greater opportunity to inflict such violence. Given the similarities between the conditions which ensue in the aftermath of a disaster and those which have arisen due to COVID-19, it is worth examining whether incidents of domestic violence have increased during the pandemic, factors which allow such violence to thrive, and measures that may help mitigate the same. For the purpose of this Chapter, we use the definition of 'domestic violence' stipulated in the Protection of Women from Domestic Violence Act, 2005 defines which provides that such violence includes physical, sexual, verbal, emotional, and financial abuse against a woman by her partner or family members residing in a joint family (Kalokhe et al. 2016).

3.3.1 COVID-19 and Domestic Violence

As the world continues to fight against the COVID-19 virus, there's been a little bit of research on the relationship between the pandemic and domestic violence. Nonetheless, keeping in view the fact that the outbreak of the Corona Virus is a recent phenomenon, scholars are continuing to conduct imperial studies to shed greater light on this relationship. Nevertheless, there is some evidence to conclude that the pandemic particularly the ensuing lockdowns have resulted in an increase in domestic violence. In Australia, for instance, it was reported that lockdowns had resulted in an increase in both, the frequency and severity of violence inflicted on women by their intimate partners (Fitz-Gibbon et al. 2020). In the same vein, there was a 60% increase in emergency calls women made to report violence at the hands of their intimate partners (Mahase 2020). Records of the Dallas Police Department likewise reveal that the first two weeks following the imposition of the lockdown saw an uptake in the cases of domestic violence (Piquero et al. 2020). The situation in India has been similar where the imposition of different forms of lockdowns since March 2022 have made women more vulnerable to domestic violence.

The National Commission for Women's (NCW) records reveal that complaints of domestic violence in India increased two-fold after the imposition of the lockdown, complaints doubled (Vora et al. 2020). In the State of Tamil Nadu alone, the police purported to have registered at least 40 cases of domestic violence every day during the lockdown (Kannan 2020). Additionally, the records of the Bangalore Police revealed that the daily complaints of domestic violence saw an increase from 10 to 25 calls each day (Peter 2020).

3.3.2 Factors Contributing to Domestic Violence During COVID-19

Unemployment and uncertainty about employment prospects constitutes a major factor in the escalation of violence perpetrated against women. According to a number of studies, employment or the threat of losing a job is likely to engender feelings of anxiety, insecurity, and frustration. Women, thus, often bear the brunt of such frustrations, being subjected to physical, sexual, and psychological violence (Lal 2020). Additionally, in

some cases, losing a job or prolonged unemployment may result in a man seeking refuge in alcohol and drugs. Reliance on alcohol or drugs often results in greater marital discord and make the patriarch prone to frequent emotional outburst. Marital discord and disputes then are often settled by inflicting violence on the woman, thereby, highlighting how unemployment, insecurity, and drugs often intersect to put women at greater risk (Gatty and Rathee 2020).

The imposition of lockdowns has resulted in spouses spending more time together at home, thus, giving men including those who had a prior history of committing acts of violence more face time with their spouse. The greater visibility and accessibility of women leaves them more vulnerable to being subjected to acts of violence (Deshpande 2020). In one particular case, for instance, a woman revealed that while she would run into the narrow lanes of the slum she inhabited every time her husband subjected her to violence and, thus, evade his wrath, the imposition of COVID-19 meant that these lanes were barricaded by the police. The woman was, thus, left at her husband's mercy who routinely inflicted violence upon her during the lockdown (S, R. 2020). Similarly, women whose families or friends live in cities other than theirs have been unable to escape and return given the presence of travel restrictions.

Another important factor contributing to an increase in violence against women inside their homes during COVID-19 was that law enforcement officials who may have previously acted against those committing acts of domestic violence were overstretched with responsibilities pertaining to the enforcement of lockdowns. With the law enforcement officials overstretched and with courts functioning on limited capacity, perpetrators of domestic violence were emboldened since they were cognizant of the impunity with which they now operated (Ratnam 2020).

Similarly, relief organizations like NGOs, shelter homes, and legal aid clinics which previously supported victims of domestic violence too were focus on assisting those whose lives were ravaged after the outbreak of Corona Virus. With these organizations focusing their relief efforts on those who had lost their jobs or their homes or those who needed urgent access to healthcare, domestic violence often took less priority, thus, impeding the ability of women who suffer from such violence to seek help from various support groups. Women who suffered from domestic violence, thus, often capitulated

before their circumstances, cognizant of the futility of approaching law enforcement organizations such as the police or even support groups that had previously helped them. Emboldened by the lack of avenues for women suffering from domestic violence, men have thus been enabled to commit greater acts of violence.

3.4 Rape and Sexual Violence in India

While India inherited a colonial penal system, it has endeavored to bring amendments in the law relating to rape from time to time. While these amendments may have made laws more stringent, thus, manifesting the state's desire to address the issue of rape and other forms of sexual violence, subsequent sections of this thesis would show why the state's efforts have only been marginally effective.

3.4.1 Legal Framework

The offence of rape in India is defined in Section 375 of the Indian Penal Code, 1860 ('IPC'). Section 376 of the IPC additionally sheds light on the punishment for rape. Originally, the offence of rape carried a punishment ranging between seven years and life imprisonment. Recently, however, an escalation in cases of rape and other forms of sexual violence have prompted the State to pass more stringent laws (Indian Penal Code).

The Criminal Law (Amendment) Act of 2013 ('2013 Amendment'), for instance, amended Section 375 of the IPC to expand the definition of rape to include offences such as voyeurism and stalking. Moreover, the 2013 Amendment also amends the Code of Criminal Procedure, making it mandatory for police officials to register sexual assault complaints. Officers who fail to comply may face imprisonment which may extend for a period up to two years (Criminal Law (Amendment) Act of 2013).

Subsequently, in 2018 the Criminal Law (Amendment) act of 2018 ('2018 Amendment') was passed by the Parliament. The 2018 Amendment, among other things, amends Article 376 of the IPC to increase the minimum sentence for rape to be 10 years.

Additionally, Section 376AB has been inserted into the IPC whereby the rape of a minor (defined as a person under the age of 12) carries a minimum punishment of 20 years imprisonment whereas the maximum punishment for such offence is death penalty. Similarly, section 376DA and 376DB addresses the gang rape of girls under the age of 16 and 12 respectively. Section 376DA carries a mandatory punishment of life imprisonment whereas the latter carries a minimum punishment of life imprisonment and a maximum punishment of death sentence (Criminal Law (Amendment) Act of 2013).

In addition to these legislative changes, the Legislature has passed other laws including but not limited to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act which deal with the rape of women belonging to the Dalit (formerly "untouchable") or tribal community. While there has been some progress in light of these changes, as evidenced by the fact that there was a 39% increase in the number of cases reported between 2012 and 2015, thus, signaling an increased confidence in the State's ability to dispense justice to survivors of rape, progress remains limited due to a variety of factors.

This section shall, therefore, shed light on these factors and explain what other measures the State may undertake to address the issue of rape and sexual violence. This will in turn lend credence to the view that legislative reforms alone would be inadequate to untangle the convoluted web of factors that contribute to the perpetuation of rape and other forms of sexual violence.

3.4.2 Factors Precluding Victims from Reporting Rape

As discussed earlier, the 2013 Amendment criminalizes the non-registration of a complaint in cases of rape. Nonetheless, a report prepared by the Human Rights Watch revealed that the police seldom comply with this provision. The Report stated that this is particularly true in cases where the victim lacks social and economic capital, with the police frequently coercing such victims into settling with their abusers who often belong to politically and socially influential families. The police's proclivity to protect abusers and intimidate victims is perfectly encapsulated by the ordeal faced by Barkha, a 22-year-

old resident of the Lalitpur district in Uttar Pradesh. In January 2016, three men broke into her house and attacked Barkha and her husband. Two of the men took away her husband while the third proceeded to rape her, screaming derogatory expletives about Barkha's caste. Notwithstanding the harrowing nature of the incident, the police refused to register a complaint due to the main accused being a local leader of the ruling party. Barkha later sought the Court's intervention and despite the Court ordering the police to register her complaint, the police took an additional 8 months to do so. At the same time, the victim and her husband were forced to flee their village in the face of multiple threats and harassment at the hands of the accused. Compelled to live away from her family, Barkha maintained that she had lost faith in the justice system ("Everyone blames me", 2017). While this may appear to be the story of one woman, this is symptomatic of a more systemic issue where women who come forward to report rape face an uphill battle where the State often sides with, not the victim but the very perpetrator who the State purports to punish through its laws. This view is also supported by a study conducted by the Commonwealth Human Rights Initiative which concluded that the police seldom carry out adequate investigations and that parents often dissuade their daughters from reporting instances of rape since the accused often get bail and are, thus, emboldened to harass and intimidate their victims (Human Rights Initiative, 2015).

Similarly, the State's inability to provide victims access to health services further exacerbates the difficulties concomitant with coming forward to report cases of rape. Federal law obliges doctors in India to provide free and adequate medical treatment to women who approach them and disclose the fact that they have been subjected to rape. This is critical in view of the fact that such treatment is important, not only for the purpose of ensuring the victim's well-being but also for the purpose of securing forensic evidence which may facilitate the conviction of the perpetrator. Resultantly, the Federal Ministry of Health and Family Welfare, in 2014, issued guidelines to medical practitioners attending to survivors of rape and sexual violence so as to standardize the standard of care such survivors received (Ministry of Health and Family Welfare, Government of India, 2014). Nonetheless, given the Federal structure of India's Constitution and the fact that health is a provincial subject, State governments may refuse to enforce the 2014 guidelines without facing any repercussions from the Federal Government. Given the polarization that has characterized Indian politics especially during the tenure of its current Prime Minister Modi, fissures between the Federal and State/Provincial

governments are commonplace, thus, giving rise to concerns about the efficacy of the 2014 guidelines. Inevitably, therefore, only 9 states have thus far adopted the guidelines. Nevertheless, a study conducted by the Human Rights Watch revealed that even in states that had adopted the 2014 guidelines, medical practitioners attending to survivors of sexual violence often lacked sensitivity and failed to apprise their patients about the procedures they were carrying out on them ("Everyone blames me", 2017). This means that not only do those who approach medical professionals for first aid after being subjected to rape or sexual violence, but also important forensic evidence is compromised, thus, rendering it more difficult to secure convictions of those perpetrating such crimes.

Lastly, a trial where a victim who has been subjected to rape or any other form of sexual violence has to recount the details of her ordeal can be extremely daunting. The agony women face as they attempt to hold their perpetrators accountable is made worse given the unavailability of affordable legal assistance. Victims of sexual violence are often unable to secure the conviction of perpetrators who belong to powerful families and communities and enjoy access to competent expensive lawyers. Legal fee and other costs associated with a trial act, therefore, often dissuades women from pursuing their own cases. While the Federal government has endeavored to address this by creating fast track courts to adjudicate cases concerning crimes against women and children, such efforts have borne little fruit as evidenced by the fact that the conviction rate in crimes against women remains an abysmal 19% compared to a conviction rate of 47% for all other crimes (Bandyopadhyay, 2018). These endeavors may, however, be more fruitful when accompanied by state funded programs which provide legal assistance to survivors.

3.5 Dowry Related Violence

One form of violence against women that may be unique to women in India is dowry related violence which causes a number of deaths throughout the country. Dowry death refers to a practice where married women who are unable to meet the financial demands of their husbands and in-laws are subjected to violence.

"[A]fter my husband once more tried to kill me with his bare hands, I wrestled myself free and ran . . . but was soon fetched by a contingent from my husband's house and locked up. They had distinct plans to burn me to death . . . The old aunt had fetched the kerosene tin from the kitchen and ordered the servant to pour it [on me] and throw a lighted match in." (Oldenburg, 2002)

The practice of giving dowry to a woman at the time of her marriage dates back to 2500 BCE where a bride's family would give her gifts for her own use (Dowry Deaths: Proposing A Standard for Implementation of Domestic Legislation in Accordance with Human Rights Obligation, 2000). Moreover, given the fact that women were expected to be confined within the realm of the household and seldom worked in the public sphere, dowry also represented a voluntary transfer of property to the newly married bride so as to offer her a degree of economic protection (Oldenburg, 2002. Historically, therefore, the practice of giving a woman dowry afforded women greater autonomy. Nonetheless, in contemporary practice, dowry no longer remains a voluntary gift to the woman in order to secure her financial autonomy but has rather metamorphized into a "unilateral transfer of resources from the bride's family to the groom's family for inviting her to their home permanently and is, therefore, a compensatory payment to the family which agrees to shelter her hypothetically for the rest of her life" (Ahmad, 2008). Dowry, in its contemporary form, thus reinforces patriarchal notions about women being a burden and a groom's family must be compensated for bearing the said burden. It is this notion and this context in which violence related to the payment of dowry persist.

Patriarchal stereotypes often mean that the groom's family dominates the process. Men who come from an endowed socio-economic background, have attained higher levels of education, and have stable incomes are then able to extract more in the name of dowry given their ability to provide a more stable and prosperous life to the bride. The bride, on most occasions, has little control over the process and her education and upbringing are only relevant insofar as determining her worth as a wife and mother.[19] While the groom's family may demand dowry prior to the wedding on some occasions, such demands are made after the wedding festivities on most occasions.[20] This is primarily due to the fact that the groom's family enjoys greater power once the bride is

[19] Anshu Nangia, *The Tragedy of Bride Burning in India: How Should the Law Address*, 22 Brooklyn Journal of International Law (1997).

[20] Anshu Nangia, *The Tragedy of Bride Burning in India: How Should the Law Address*, 22 Brooklyn Journal of International Law (1997).

married and living with them and are, thus, easily able to coerce the bride's family into succumbing to their demands using a variety of tools including but not limited to threats of divorce. A report on the prevalence of dowry in India found that mothers in law who had been subjected to the pressure of dowry are 14 times more likely to subject their daughters in law to similar pressures, thus, causing psychological pressures amongst the latter.[21] Given that divorce is still a taboo in many parts of India, a bride's family often capitulates to such exploitative demands. Women have limited means to escape abusive households due to patriarchal practices especially because of a lack of support from their own families including their parents.

Keeping in view the power dynamics at play, dowry related violence and deaths continue unabated. Five women in India become victims to dowry related torture and cruelty every hour. One study conducted in 2010 revealed that a woman in India is burned to death every 90 minutes because of violence due to dowry disputes. In 2010 alone, there were 8,391 reported incidents of dowry related murders in India (Varma, 2021). In the State of Kerala alone, 66 instances of dowry related deaths and more than 15,000 cases of cases of women facing harassment from their husbands or in laws due to dowry have been reported (Varma, 2021). There are also concerns that the number of cases of dowry related violence are significantly more since a number of cases remain unreported due to families refusing to report these cases. The fact that dowry today represents a means for the groom's family to amass wealth instantly means that a woman's husband and in laws use all means at their disposal to exploit the woman even if it means inflicting serious emotional and physical violence on her.

Notwithstanding the persistence of dowry related violence, the practice has been prohibited since the 1950s where certain states enacted laws addressing violence perpetrated due to disputes relating to dowry.[22] Moreover, while a Bill addressing dowry related crimes was tabled in 1953, the same could not be passed since the Parliament thought that addressing such crimes did not require the enactment of a special law. Nonetheless, The Dowry Prohibition Act was passed in May 1961. The Act, among other things, provides the criteria under which a death may constitute a dowry death. A

[21] Visalakshi Jeyaseelan Et Al., *Dowry Demand And Harassment: Prevalence And Risk Factors In India*, 47 Journal Of Biosocial Science 727-745 (2015).

[22] India Code 40E

woman's murder by her husband and in laws constitutes dowry death if it meets the following five elements: (1) the death is caused by burns or bodily injuries, (2) or occurs under abnormal circumstances (3) and the death occurs within 7 years of her marriage (4) and she was harassed or subjected to cruelty by her husband or her in-laws (5) and the underlying cause of the death is connected to demands made by the husband or his relatives for dowry.[23] While the enactment of the law was a welcome step, it is worth examining the factors that have precluded the law from being particularly effective, as evidenced by the fact that dowry deaths and violence due to dowry continues unabated.

Scholars have argued that this practice in large part continues due to the lacunas in The Dowry Prohibitions Act, 1961. Firstly, for a murder to constitute a "dowry murder", it must be committed "within the first 7 years of the girl's marriage." This criterion presumes that a murder due to a dowry dispute would take place within the first seven years of marriage. Nonetheless, there may be instances where a girl's husbands or her in laws continue to exploit her family for seven years and thereafter murder the girl without being held accountable under the Act of 1961. Moreover, the requirement that a murder must be committed "soon" after a threat remains ambiguous given the lack of a statutory definition of what constitutes" soon" and given that courts have often inconsistently interpreted this requirement.

In *Kans Raj v State of Punjab*, for instance, the Supreme Court held that a murder committed a month after a dowry related threat fulfilled the "soon" requirement. Nonetheless, in another case, the Court held that a two-week time lapse between the threat and the murder fell short of the "soon" requirement. This interpretation appears to be divorced from societal norms where elders of members of the girl's family may attempt to mediate dowry disputes in order to save their daughter's marriage and avoid the stigma associated with divorce (Musa, 2021). It is, therefore, only once these negotiations or attempts at reconciliation fail that a husband or his family commit a dowry murder (Musa, 2021). The soon requirement, thus, often acts as an obstacle as far as prosecuting perpetrators of dowry murders is concerned. Additionally, the law states that to establish that a murder falls within the category of dowry murder, it must be shown that the husband or his family subjected the woman to cruelty on prior occasions. Keeping in view how

[23] Kamakshya Prasad & Jawaid Ahmad Khan, Dowry death (2003).

domestic violence is seldom reported because of patriarchal notions of shame and honour and given that most domestic violence occurs at home in the absence of any credible witnesses, it is often difficult to meet this burden, thus, allowing those who commit dowry murders to evade all accountability.

To address the issue of violence due to disputes relating to dowry, it is therefore imperative that these legal lacunas are addressed forthwith. More importantly, however, it is also critical to address the patriarchal culture that portrays women as a burden on her family and later on her husband or in laws, thus, justifying medieval practices such as dowry. For this to occur, the government must, among other things, focus on reforming the educational curriculum in schools, funding information campaigns, and etc. Moreover, improving female literacy may also contribute towards addressing such violence since women with greater education may also have more economic opportunities, thus, having more opportunities to escaping abusive homes. Other more radical suggestions have included the government publishing a list with names of men who have subjected their wives to violence due to disputes relating to dowry. It is argued that since Indian families place a lot of importance of family honor, such a list may be an effective tool to combat violence given that men would want to avoid the shame concomitant with having their names placed on such a list (Musa, 2021).

As violence in the name of dowry continues, women throughout India look towards the State. Would the State act against those who oppress women, or would it remain indifferent as more and more women succumb to such violence. The State's choice then may not just determine the future of women in India but also the State's claim of being the world's largest democracy.

3.6 Concluding Remarks

This section highlights how legislative reforms, however well meaning, are rarely effective when introduced in isolation. To protect women from sexual violence, the Government must formulate a holistic response which focuses not merely on legislation but ensures that government functionaries and officials who deal with survivors of sexual

violence embody the Government's commitment to protect them. This entails introducing gender sensitive training for police officials, ensuring more provinces/states comply with the 2014 guidelines to provide victims with adequate medical treatment, and to ensure that the police promptly act against perpetrators threatening their victims so as to create an environment conducive to reporting such crimes. The Government may also use conventional and social media to challenge taboos which preclude women from coming forward. Through these holistic reforms, the Government may not only prevent such crimes but may also ensure perpetrators are held accountable where such crimes do occur.

3.6.1 Looking Ahead

Having examined the factors that cause an escalation in cases of domestic violence, these factors also provide a road map of how domestic violence particularly during COVID-19 may be addressed. Given the prevalence of domestic violence in India, the Government may consider creating separate desks for such crimes inside police stations so as to ensure that police officers are exclusively dedicated to such crimes and are not diverted towards catering to other pressing needs. Moreover, creating courts that specifically adjudicate gender-based crimes would ensure the redressal of complaints of domestic violence even when courts operate at limited capacity.

With endeavors like these, the Government may not only indicate its seriousness in addressing domestic violence but may also heal the wounds of the millions of women who have hitherto suffered at the hands of their partners in silence, thereby, taking a giant leap towards arresting the scourge of domestic violence in India.

Chapter 4:
VIOLENCE AGAINST WOMEN IN AFGHANISTAN AND MYANMAR

4.1 Women and the Taliban's Return

While studies on violence against women in South Asia often focus on the treatment of women in countries like Pakistan and India, the treatment of women in Afghanistan has received little attention over the last few years. Nonetheless, the fall of Kabul and the resurgence of the Afghan Taliban have once again raised the frightening prospect of women in Afghanistan being relegated to second class citizens. This section, therefore, sheds light on the treatment of women under the Taliban during its previous regimes. It examines the Taliban's recent claims of affording fair treatment and equal protection to women under its current rule. Further, it highlights how Taliban's ideology is inconsistent with the notion of women's rights, thus, arguing that its recent claims remain hollow, and women are likely to suffer again under the current Afghan dispensation.

Contrary to popular perception, women in Afghanistan were far from oppressed or subjugated before the rise of the Taliban. Women, for instance, were afforded the right to vote in the 1920s. Similarly, in 1977, before the Soviet invasion of Afghanistan, women comprised more than 15% of the country's highest legislative body (Bureau of Democracy, Human Rights and Labor, 2001). Women also actively participated in the employment with 50% of all university students and 70% of all schoolteachers too were women before the Taliban's takeover in 1996 (Bureau of Democracy, Human Rights and Labor, 2001). Nonetheless, shortly after the Taliban took over Kabul, they began introducing significant changes in Afghan society in the name of Islam. Implementing their warped notion of religion entailed severely curtailing women's liberty. Women were, thus, subjugated with their freedom of movement, right to education, employment, and access to healthcare was suddenly inhibited**.** Nonetheless, there was some progress as regards the rights and liberties enjoyed by women after the Taliban's ouster in 2001. Since the fall of Taliban regime in 2001, the government of Afghanistan, in a bid to promote human rights and specifically women's rights, undertook various legislative and

institutional advances. These included the establishment of the Afghanistan Independent Human Rights Commission (AIHRC) as a national human rights institution, Ministry of Women's Affairs, Departments of Women's Affairs and Gender, Human Rights Units in various ministries and the passing of the Law on Elimination of Violence against Women (EVAW Law) through a Presidential Decree in 2009. Nevertheless, these measures have yielded little result with the World Health Organization reporting that 'almost 90% of women in Afghanistan have experienced at least one form of domestic violence, 17% have experienced sexual violence and 52% have experienced physical violence'.[24] The prevalence of violence against women in Afghanistan can attributed to legal and institutional challenges and ambiguities created by the State and is deeply rooted in Afghanistan's weak and nebulous regulatory frameworks towards women. Moreover, the return of the Taliban has raised questions about the fate of any progress made during the previous regime. If history is any indicator, it appears that the women in Afghanistan are likely to suffer a setback with their freedom of movement, education, and healthcare, all likely to suffer.

4.2 Freedom of Movement

During its first government, the Taliban made it compulsory for women to wear a burqa, a one-piece veil that hides a woman's entire body including her face, allowing only their eyes to be visible through a see-through mesh screen (Marsden, 2002). So oppressive was the dress code under the Taliban that even while paying for food and groceries in the market, a woman's hand could not be visible while handing over money or receiving her purchase (Bureau of Democracy, Human Rights and Labor, 2001). While wearing a burqa was a part of Afghanistan's culture before the Taliban's ascent to power, women were free to choose what to wear until the Taliban took control of the country in 1996 (Physicians for Human Rights, 1998). Women under the Taliban were no longer free to dress as they pleased. To the contrary, failure to comply with the Taliban's dress code resulted in penalties including fines and on occasions, on the spot beatings (Physicians for Human Rights, 1998).

[24] World Health Organization, Addressing Violence against Women in Afghanistan: The Health System Response (2015).

Such restrictions appeared to be borne out of a desire to render women entirely invisible. So ubiquitous were the restrictions on women's freedom that women were even prohibited from wearing shoes that make noise and were directed to walk silently. This is also evident from the fact that not only was women's clothing policed but women were also prohibited to leave their homes alone and could only do so when accompanied by a male relative. Taxi drivers found driving around with an unescorted woman risked getting their driving license canceled while women could only use special buses which had curtains preventing those on the outside to look inside and vice versa (Bureau of Democracy, Human Rights and Labor, 2001).

Women under the Taliban were, thus, completely excluded from public life. Their mobility was severely inhibited as they were compelled to rely on male relatives to simply step outside their house. Additionally, the enforcement of strict dress codes not only deprived them of their agency and the right to choose how to dress, but also denied them of the opportunity to assert their uniqueness and fashion their own identity. Women under Taliban's oppressive regime, thus, lived in perpetual fear and anxiety in addition to suffering from the psychological pressures of having to conform and be someone that you are not.

4.3 Right to Education

Women under the Taliban were deprived of the right to education, owing to the latter's warped and misogynistic interpretation of Islam. Even as some officials accepted that the Quran provides for the education of everyone, regardless of sex, the Taliban maintained that schools must be segregated so as to avoid corruption and moral degeneration (Middleton, 2001). In practice, this meant that girls over the age of eight were no longer allowed to attend schools since the Taliban failed to build schools for girls under the pretext of insufficient funds and security challenges. Moreover, while the Taliban allowed private schools, these schools could only operate after obtaining a license. To obtain a license, a school had to guarantee that it would teach the Quran and not admit girls over the age of eight (Ghasemi, 1999). Girls over that age were, thus, left to be educated at home or through the radio. Moreover, opportunities to pursue higher

education were non-existent as women were prohibited from studying at Kabul University.

The complete deprivation of the right to education meant that even after the Taliban's ouster following the American invasion of Afghanistan, an entire generation of women were unable to participate in public life or in the economy in the manner they may have, had they been afforded the right to education. This was also due to the fact that a number of women had previously been unable to acquire vocational training given the Taliban's complete ban on women's employment. While the Taliban had initially promised that women would be allowed to work after working conditions had been altered to allow segregation and that women would be given their salaries while they stayed at home, these promises were soon reneged and women protesting the ban on employment were punished with public beatings (Bureau of Democracy, Human Rights and Labor, 2001.

4.4 Access to Health Care

As Taliban encroached upon women's fundamental rights by policing all aspects of their life under the pretext of establishing an Islamic order, women's health too suffered. Women under the Taliban had restricted access to healthcare, thus, putting their lives at a greater risk. Keeping in view that the Taliban only allowed male doctors to examine female patients if the latter were fully clothed, doctors were often unable to properly examine their patients. This was especially true during pregnancies. Given these repressive policies, Afghanistan suffered the second highest maternal death rate during childbirth with sixteen out of hundred women dying while giving birth. Moreover, limited access to healthcare for women meant that infants too suffered from various complications. This was also corroborated by the United Nations International Children's Emergency Fund (UNICEF) which claimed that 165 of every 1000 babies in Afghanistan die before their first birthday (Middleton, 2001).

Challenges to women's health were aggravated by the fact that women no longer had access to education. In the absence of opportunities to pursue higher education, women are likely to marry early and give birth to more children. A higher reproduction rate along

with limited access to education means that women often lack adequate knowledge about sexual and reproductive health, thus, increasing the risks posed to their well-being. Additionally, the general disregard that the Taliban showed towards improving access to healthcare further exacerbated these concerns. In 2001, for instance, Taliban closed a hospital because male and female members of the staff allegedly mingled in the hospital's dining room (Bureau of Democracy, Human Rights and Labor, 2001. This closure came at a time when 70% of the country's health services were being run by international relief organizations, thus, showing that improving access to healthcare generally and women's health in particular fell low on the Taliban's list of priorities (Bureau of Democracy, Human Rights and Labor, 2001).

Along with these challenges, the fact that all aspects of women's lives were policed, and they lost the freedom to carry out the simplest of tasks without the State's ubiquitous gaze following them, women also suffered from multiple mental health issues including depression and anxiety as women were compelled to make themselves small enough to escape the State's prying eye.

4.5 Taliban's Treatment of Women and International Human Rights Law

Taliban's treatment of women was in flagrant disregard of various international conventions and principles, including but not limited to those enumerated in the Convention on the Elimination of All Forms of Discrimination (CEDAW) and the International Covenant of Civil and Political Rights (ICCPR). This is particularly true for the Taliban's draconian policies regarding women's education, employment, and healthcare.

Article 10 of the CEDAW, for instance, addresses women's right to education. It states:

> *"States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:*

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training.

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality.

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods.

(d) The same opportunities to benefit from scholarships and other study grants.

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particulary those aimed at reducing, at the earliest possible time, any gap in education existing between men and women.

(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely.

(g) The same Opportunities to participate actively in sports and physical education.

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning" (The Convention on the Elimination of All Forms of Discrimination against Women).

Additionally, the CEDAW also implores state parties to safeguard women's right to employment. Article 11 of the Convention states:

"1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings.

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment.

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training.

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave.

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status.

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances.

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities.

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary" (The Convention on the Elimination of All Forms of Discrimination against Women).

Moreover, Taliban's disregard of women's right to health is also inconsistent with Article 12 of the CEDAW which provides**:**

> *"1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.*
>
> *2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement, and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation"* (The Convention on the Elimination of All Forms of Discrimination against Women).

Similarly, the Taliban's policies whereby women could only leave their house with a male relative, thereby, restricting their freedom of movement also fell afoul of international human rights principles. Article 12(1) of the ICCPR, for instance, provides:

> *"Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence"* (The International Covenant on Civil and Political Rights).

Taliban's repressive regime in Afghanistan was a threat to women's rights and safety. Its abysmal human rights record reveals a fundamental disrespect for not only various human rights conventions and principles but also norms that most civilized democracies uphold. A recent report by the Human Rights Watch revealed that while secondary schools have reopened, only male students have been instructed to rejoin while women are also being excluded from employment (From Taliban to Taliban: Cycle of Hope, Despair on Women's Rights, 2021). Given Taliban's recent resurgence and the ouster of President Ashraf Ghani, there have been concerns about the future of women's rights in Afghanistan. It was, thus, imperative to examine the Taliban's earlier track record and assess if its policies have changed or whether it continues to subscribe to a warped and myopic interpretation of religion, the cornerstone whereof was the oppression and subjugation of women. While the Taliban government has only been in control for a few months, optimism about a change in their approach appears to be naïve given that group purports to have struggled for the imposition of Shariah law in Afghanistan or rather their own version of Shariah law. Moreover, with the withdrawal of the US and with the Taliban firmly in control of the country, they have little motivation to grant any concessions to the Afghan women. As will be shown in the paragraphs that follow, any

optimism that may have existed when the Taliban took over has quickly dissipated given that the group's policies have shown no signs of improvement and that promises of upholding women's rights lacked sincerity.

4.6 Taliban's Recent Rise: What to Expect?

While the international community continues to claim that the Taliban have reformed, having learned the follies of pursuing a policy of isolation and obscurantism during its years in wilderness, people in Afghanistan continue to fear the worst. Those who had opposed the Taliban especially women remain skeptical of such claims, as evidenced by the scores of people flocking the Kabul airport in an attempt to flee. Given the global community's decision to abandon these people and the alacrity with which it has accepted the Taliban's claim, it is worth determining if the Taliban's views have really reformed.

After taking over Kabul, there were signs that there had been some changes in the Taliban's outlook. A Taliban official, for instance, appeared in a rare interview with a female news anchor. Moreover, the Taliban spokesperson announced that they would respect and uphold women's rights within the framework of Islamic Law. Similarly, the Taliban have even encouraged young girls to return to school even as they were seen handing out headscarves outside these schools (Seir, Faiez, Gannon and Krauss, 2021).

Contemporaneously, the Taliban's spokesperson has stated that it does not intend to compel women to wear the burqa as it did in the 1990s. Instead, women would now only be required to wear a hijab or a head scarf (Taliban say hijab compulsory for women, not full burqa, 2021). Nonetheless, critics argue that the Taliban continues to hold and espouse the same values as did in the 1990s. The only change, they argue, is in its messaging not its ideology or policies (Evidence contradicts Taliban's claim to respect women's rights, 2021). While some may argue that such critiques are based on anxiety and that the Taliban deserves a second chance, there is some evidence that lends credence to such fears.

Women in Herat, for instance, have claimed that they have been stripped of their jobs. In Kandahar, there have been reports of Taliban gunmen ordering bank tellers out

of their jobs (Evidence contradicts Taliban's claim to respect women's rights, 2021). Moreover, the Taliban has also asked women to stay at home, claiming that they would be allowed to return to work once the security situation improves. Nonetheless, the Taliban used similar arguments when it first seized power in 1996. Temporary bans on women's employment owing to security challenges previously served as a harbinger for a more permanent ban, thus, giving rise to concerns about Taliban temporarily stopping women from work. This sentiment was also echoed by Heather Barr, associate director of the women's rights division at Human Rights Watch who said:

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> *"We heard some of these explanations in 1996 to 2001, when the Taliban said that the reason girls couldn't study and women couldn't work was because the security situation wasn't good, and once the security situation was better, they could go back. Of course, that moment never arrived"* (Evidence contradicts Taliban's claim to respect women's rights, 2021).

Recently, it was reported that the Taliban resorted to using tear gas and pepper spray to put an end to a peaceful demonstration by women in Kabul, protesting to safeguard their rights after the Taliban takeover (Afghanistan: Taliban break up women's rights protest in Kabul, 2021). At the same time, there have been reports that certain repressive policies from its first tenure have resurfaced, albeit unofficially. Perhaps most disconcerting amongst these are reports of women being prohibited from leaving their house without being accompanied by a male relative (Afghanistan: Taliban break up women's rights protest in Kabul, 2021). Recently in November, the Ministry for the Promotion of Virtue and Prevention of Vice issued religious guidelines to broadcasters, instructing them to not air dramas and soaps featuring women. Moreover, there have been concerns that journalists reporting against such measures would be targeted by the regime with the Human Rights Watch stating: "The new media regulations and threats against journalists reflect broader efforts to silence all criticism of Taliban rule" ('Women wearing few clothes impact men, unless robots': Pak PM on rising sexual violence, 2021). Many fear that these regulations may pave the way for a complete ban on television in Afghanistan, thereby, chipping any liberties that had been secured in the Taliban's absence.

4.7 Concluding Remarks (Afghanistan)

At the heart of Taliban's ideology lies a misogynistic and myopic interpretation of Islam. The Taliban's ideology is, thus, inconsistent with women's rights. Notwithstanding the global community's newfound confidence in the Taliban, it appears that while the Taliban's public relations may have improved since its last stint in power, its views on women remain the same given the fundamental conflict between its ideology and women's liberties. This gives rise to concerns about an escalation of violence against women especially women who challenge the regime's repressive policies. It is, therefore, imperative that human rights activists and organizations keep a close watch on Afghanistan and the evolving situation there as the future of peace and the future of women's rights in Afghanistan both hang in the balance. It is also important that countries within and beyond the region only engage with the Taliban after they commit to respecting the rights of the people of Afghanistan particularly its women. Without such requirements, not only will the women in Afghanistan suffer but the continued suppression of women would also affect the credibility of western democracies who accepted the Taliban's claim of reforming and improving without any scrutiny.

4.8 Violence Against Rohingya Women

The Rohingya Muslim community is one of Myanmar's ethnic minorities. Rohingya Muslims constitute the largest percentage of Muslims in Myanmar, the majority of whom live in the Rakhine state. Rohingya Muslims have a distinct language, culture, and identity and claim that they are descendants of Arab traders and have inhabited the region for generations. Nonetheless, the nearly one million Rohingya Muslims remain subjected to the State's persecution with Antonio Guterres, the United Nations' Secretary General describing them as: "one of, if not the, most discriminated people in the world" (Myanmar Rohingya: What you need to know about the crisis, 2021). In an attempt to completely marginalize the Rohingya Muslims, the Government of Myanmar refuses to recognize them as citizens and even excluded them from the country's 2014 census, arguing that Rohingya Muslims are illegal immigrants from Bangladesh.

Resultantly, Rohingya Muslims have been compelled to escape the regime's oppression and migrate to bordering states. This phenomenon has exacerbated since 2017 after Myanmar's military began a crackdown against Rohingya Muslims. In August 2017, certain militants belonging to the Rohingya community attacked more than 30 police posts. In response, the military launched an offensive against Rohingya Muslims, killing more than 6,700 Rohingya including 730 children under the age of 5. As villages were burnt and homes were destroyed, there have also been allegations of women belonging to the Rohingya Muslim community being raped and abused by Myanmar's military. In this section, we therefore investigate the claims of rape and sexual violence committed against Rohingya women by Myanmar's military. Further, we examine the international community's response and highlight what measures may be undertaken to alleviate the Rohingya's suffering.

4.8.1 Sexual Violence and Rape Against Rohingya Women

> *"I was held down by six men and raped by five of them. First, they [shot and] killed my brother … then they threw me to the side and one man tore my lungi [sarong], grabbed me by the mouth and held me still. He stuck a knife into my side and kept it there while the men were raping me. That was how they kept me in place. … I was trying to move and [the wound] was bleeding more. They were threatening to shoot me."*

- Fatama Begum, Balukali refugee camp, Bangladesh, October 2017 (Wheeler, 2021)

Since launching a military offensive against the Rohingya Muslims, there has been a sharp increase in violence against Rohingya women, with rape and sexual violence being used as a tool of war and ethnic cleansing. Consequently, more than 600,000 Rohingya Muslims have fled to neighboring Bangladesh, with many arriving with bruised bodies as a result of being shot, tortured, and raped (Wheeler, 2021). The Human Rights Watch too observed that Myanmar's security forces have been involved in widespread rape and sexual violence. In many cases, it was reported that the security forces would harass Rohingya women and girls for weeks before subjecting them to rape. Interviews conducted by survivors revealed that a majority of these rapes would be conducted by men in uniform (Wheeler, 2021). While the extent and frequency of such violence may

not be known given that a number of women are killed after being subjected to rape whereas some are hesitant to report rape due to a variety of factors, humanitarian organizations working in refugee camps in Bangladesh have reported receiving hundreds of cases. The fact that the two-third of the survivors interviewed by Human Rights Watch revealed that they had not reported their rape to the government authorities or to any human rights organization highlights the severity of the violence perpetrated against Rohingya women. In a majority of these cases, the survivors reported being raped by two or more individuals (Wheeler, 2021). This view was also corroborated by the Human Rights Council in a report titled Sexual and Gender-Based Violence in Myanmar and the Gendered Impact of Its Ethnic Conflict which stated:

> *"Security forces, particularly the Tatmadaw, targeted Rohingya in Buthidaung, and Maungdaw Townships with a series of "clearance operations". They sought assistance from members of neighbouring ethnic Rakhine communities to surround Rohingya villages, separate men from women, and kill, gang rape and commit other acts of sexual violence. Entire Rohingya villages were burnt down in the process. Verified and corroborated narratives of survivors and witnesses of the "clearance operations" are unanimous in their descriptions of the nature and extent of the violence that the security forces unleashed. The virtually identical patterns, methods and tactics used throughout the three regions lead to only one conclusion: the violence, including the sexual and gender-based dimensions, was part of a deliberate, well-planned strategy to intimidate, terrorise and punish a civilian population and force them to flee. The Mission concluded on reasonable grounds that the acts constituted crimes against humanity, war crimes, and underlying acts of genocide accompanied by inferences of genocidal intent. Additionally, the Mission determined that rape and other forms of sexual violence was at such a level of normalisation in the "clearance operations" that such violence was only possible in a climate of long-standing tolerance and impunity, where military personnel had no reasonable fear of punishment or disciplinary action. Rape and sexual violence had been used in a methodical and systematic manner during this period"* (Human Rights Council, 2019).

Moreover, their ordeal was not merely limited to rape. Survivors also reported being humiliated and beaten, with some survivors revealing that their rapists continued to laugh at their ordeal while subjecting them to rape. In other instances, women revealed that the security forces would beat their children and loved ones (Wheeler, 2021). Some women also experienced security forces killing their husbands, parents, or children before subjecting them to rape. Even those who fled to neighboring countries like Bangladesh did so at the peril of their lives. Women who had been subjected to gang rape revealed

walking for hundreds of miles with swollen and torn genitals through a dense jungle. Similarly, women who were pregnant revealed that they were compelled to take the long and arduous journey with little food and water and often ended up giving birth during the journey, notwithstanding the absence of medical supplies and health care (Wheeler, 2021). Moreover, survivors revealed that given that their rapists were members of the State's security forces, they received no medical attention following their rape. The Government restricting access to the State of Rakhine for humanitarian organizations further exacerbates the agony of these women who are left to mend for themselves after being subjected to the worst forms of violence by functionaries of their own State.

4.8.2 Rape and International Law

The treatment of Rohingya women by Myanmar's security forces and the State's failure to act against them creates an environment where armed personnel are emboldened due to the impunity with which they act. The Government of Myanmar's conduct, thus, falls foul of the principle enumerated under both: international human rights law and international humanitarian law.

Common Article 3(1)(c) of the four Geneva Conventions (1949) states that "outrages upon personal dignity" are prohibited at any time and in any place whatsoever with respect to persons hors de combat (The Geneva Conventions and their Additional Protocols). Moreover, Article 27 of the fourth Geneva Convention states that "Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault" (The Geneva Convention relative to the Protection of Civilian Persons in Time of War). Similarly, Article 76(1) of the 1977 Additional Protocol I to the Geneva Conventions provides that women "shall be protected in particular against rape, forced prostitution and any other form of indecent assault (Protocol Additional to the Geneva Conventions of 12 August 1949, And Relating to the Protection of Victims of International Armed Conflicts (PROTOCOL I), of 8 June 1977). Article 27 of the 1990 African Charter on the Rights and Welfare of the Child provides:

> *"States Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent: (a) the*

inducement, coercion or encouragement of a child to engage in any sexual activity; (b) the use of children in prostitution or other sexual practices; (c) the use of children in pornographic activities, performances and materials" (African Charter on the Rights and Welfare of the Child).

The International Criminal Court's Statute too addresses this issue. Article 7(1)(g) if the ICC Statute of 1998 provides:

"Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity" constitutes a crime against humanity "when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack" (The International Covenant on Civil and Political Rights).

Additionally, the International Criminal Tribunal for former Yugoslavia's Statute also criminalized the use of rape in armed conflict. Article 5(g) of the 1993 Statute stated that the commission of rape during an armed conflict, regardless of whether the conflict was international and non-international and perpetrated on a civilian population constituted a crime against humanity (Statute of the International Tribunal for the Former Yugoslavia). Similarly, the International Criminal Tribunal for Rwanda's 1993 Statute, in Article 3(g) thereof provided that, rape, when committed as part of a widespread and systematic attack against any civilian population on national, political, ethnic, racial or religious grounds, constitutes a crime against humanity (Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994).

The issue of rape as a tool of war during armed conflicts has not only been addressed under international humanitarian law but the same has also been provided for in various declarations and covenants under international human rights. CEDAW General recommendation No. 30 on women in conflict prevention, conflict, and post-conflict situations, for instance, provides:

> *"Under the Convention, States parties' obligations to prevent, investigate and punish trafficking and sexual and gender-based violence are reinforced by international criminal law, including jurisprudence of the international and mixed criminal tribunals and the Rome Statute of the International Criminal Court, pursuant to which enslavement in the course of trafficking in women and girls, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity may constitute a war crime, a crime against humanity or an act of torture, or constitute an act of genocide. International criminal law, including, in particular, the definitions of gender-based violence, in particular sexual violence must also be interpreted consistently with the Convention and other internationally recognized human rights instruments without adverse distinction as to gender"* (UN Committee on the Elimination of Discrimination Against Women (CEDAW), 2013).

4.9 Concluding Remarks (Myanmar)

While the International Court of Justice is yet to determine the existence and scope of the crimes and genocide committed by Myanmar against the Rohingya in the case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide between Gambia v. Myanmar, the humanitarian crisis created by the violence inflicted on the Rohingya women merits urgent attention.

It is imperative that international organizations and the global community comes together to assist countries dealing with an influx of refugees belonging to the Rohingya Muslim community. Given that countries like Bangladesh have faced a significant influx of refugees, it is likely that they would be unable to cater to them alone, thus, necessitating a joint response so as to ensure that Rohingya refugees can start their lives afresh. This includes providing Rohingya women who have been subjected to rape, sexual, or any other form of violence with adequate healthcare. Additionally, women who have escaped a war would need psychological help. Donor agencies, countries, and humanitarian organizations must, thus, come together to fund programs that offer psychological support to such women.

Moreover, it is imperative to design skill development programs for Rohingya refugees. Given the fact that these refugees are unlikely to return to Myanmar, these skill

development programs would allow them to seek employment in Bangladesh or other countries they have migrated to. In the absence of such opportunities, refugees would be compelled to lead a life of difficulty and agony in the countries they have migrated to, thus, placing a strain on these countries' resources. There is already evidence of host countries being unable to cater to the refugees' needs with some refugees stating that they have been kept in 'jail like' conditions and have been confined to 50-square feet rooms with five or more people in the same room. There have also been allegations of inadequate food and contaminated water being given to them.

Most significantly, however, there have been allegations of refugees being raped by security forces and other government officials in Bangladesh. This is particularly harrowing given all that these women have endured before fleeing from Myanmar (Ellis-Petersen and Azizur Rahman, 2020). It is, therefore, important that the global community devises a concerted plan to address this and safeguard the interests of these refugees and support the countries who have agreed to host them. At the same time, it is critical that the United Nations and other countries work together to hold the Government of Myanmar accountable for its action so as provide redressal for those aggrieved by the State and to create a deterrence for other oppressive regimes throughout the world.

CHAPTER 5:
CONCLUSION

Violence against women exists in these regions regardless of age, class, ethnicity, and social status. The patriarchal society, along with internalized misogyny, severe loopholes in legislation, incompetence of the police, state's failure to implement policies and the normalization of violence through media and its acceptance supported by rigid archaic traditions has led to the sustenance of this violence. The following recommendations are set out for the state of Pakistan, India, Afghanistan, and Myanmar if they truly want to protect their women and put an end to the rampant violence against them.

With regard to the offence of Rape, Pakistan needs to expand the scope of Section 375 PPC to include penetration in any orifice through any object such as set out by ICTR in The Prosecutor v.Jean Paul Akayesu 2001, as done by India through their amendment of Section 375 IPC. It is also recommended that Pakistan amends the Qanoon-e-Shahadat, its Law of Evidence to lay out DNA testing as a primary form of evidence in Rape and sexual assault cases. The State is encouraged to build a narrative in support of the Domestic Violence Bill that was tabled in 2021, stay firm in implementing any measures needed to protect women and resist the pressure mounted by the religious right.

The need of hour is to introduce mandatory gender sensitivity trainings for Investigation Officers, Rangers, Police Officers and Medicolegal staff and penalize the authorities involved in refusal of registration of complaint against perpetrators of domestic violence. Furthermore, female Investigation Officers should be included in cases of violence against women and overall increase the number of female police officers and create more gender protection units like the one launched in Islamabad in 2021. The induction of female IOs and police officers along with special police stations specifically dealing with violence against women especially in areas with high rates of GBV would encourage more women to report the violence that they are experiencing.

Solely amending the law has proved to be inefficacious and so the State needs to formulate a broad-based response to tackle gender-based violence. Supported by Ijma and Qiyas, the IIC should pass a ruling declaring honour killings to be unislamic and encourage religious clerics to include the ruling in their Friday sermons. The State also needs to become the legal guardian of victims of honour killings, so the perpetrators do not have the luxury of walking scott free due to qisas and diyat.

Additionally, the state must focus on their educational curriculum so as to address the patriarchal attitudes that impede progressive reforms. The government may also expend resources towards mass information campaigns that challenge stereotypes that continue to consign woman to the domestic realm. While implementing the provisions of CEDAW and realizing the spirit of various human rights commitments seems an arduous task, perseverance and sincerity of purpose may allow us to meet these goals.

The Indian state has failed to protect its Kashmiri women from systematic violence taking place against them. Serious action needs to be taken against grave human rights violations taking place in the region and if the State fails to protect its women, international organizations are recommended to take action and not just highlight the plight of these women but also ensure that these women are provided with justice and protection.

The government of India is encouraged to formulate a plan encompassing not just legislation but also the implementation in a sensitive manner through trainings of government officials, police, medicolegal personnel and even the media especially in cases involving rape of sexual assault survivors. This gender sensitivity trainings are imperative to ensure that victims come forward and feel safe to do so, moreover the compliance of the 2014 guidelines needs to be ensured by all the provinces in the country in order to provide sufficient medical treatment, creation of a safe space for reporting crimes and to take prompt action against perpetrators.

Since Bollywood is a highly influential medium in the country, the state needs to ensure that all the movies being released are in line with government policies regarding violence against women and are not glorifying rape and lack of consent. The Indian media especially cinema and TV has played a significant role in normalizing violence against

women especially stalking, not respecting consent and sexual assault along with severe victim blaming. This needs to be turned around and now used as a tool to educate the masses about consent, challenge taboos and encourage women to receive education and become financially independent and leave abusive marriages and relationships.

The government is recommended to publish a list with names of men who have subjected their wives to violence due to disputes relating to dowry. To address the issue of violence due to disputes relating to dowry, it is imperative that legal lacunas regarding The Dowry Prohibition Act are addressed forthwith.

The state also needs to address the patriarchal culture that portrays women as a burden on her family and later on her husband or in laws, by focusing on reforming the educational curriculum in schools, funding information campaigns and improve female literacy to contribute towards addressing violence since women with greater education may also have more economic opportunities, thus, having more opportunities to escaping abusive homes.

The creation of separate desks for crimes such as domestic violence, inside police stations is heavily recommended to ensure that police officers are exclusively dedicated to such crimes and are not diverted towards catering to other pressing needs. Moreover, the creation of courts that specifically adjudicate gender-based crimes to ensure the redressal of complaints of domestic violence even when courts operate at limited capacity is highly encouraged.

Afghan women have been facing severe violence due to the conflict in the region. The takeover of Taliban has sparked outrage amongst the locals, many of which tried to escape and continue to cross borders illegally in hope of finding refuge in a safer place. Human rights activists and organizations are recommended to keep a close watch on the country and the evolving situation there as the future of peace and the future of women's rights in Afghanistan both hang in the balance.

With all eyes set on the departure of US forces from Afghanistan, Rohingya women have been aided a blind eye by the international arena. International organizations and the global community are urged to unite to assist countries dealing with an influx of refugees

belonging to the Rohingya Muslim community. International organizations need to ensure the provision of physical and mental healthcare to Rohingya women who are victims of rape, sexual, or any other form of violence. Action needs to be taken against Myanmar and Bangladeshi government officials involved in assaulting Rohingya women physically and sexually. The UN needs to formulate a plan with the help of other international organizations to hold Myanmar accountable for this systematic violence and to ensure that Rohingya refugees are provided with necessities especially healthcare and secure shelter.

Women have faced extreme forms of violence at the hands of loved ones, strangers and even the state, it is time to put an end to this violence and create a world that is a safe place for women to survive and thrive and the only way this utopian dream can be turned into a reality is through consistent efforts and collaboration between state, civil society, police and lawmakers to ensure the presence of awareness amongst masses, complete female literacy, adequate laws in place and that perpetrators are penalized and a precedent is set so future generations take violence against women as a serious crime and think twice before lifting their hand on a woman. This world is incomplete without women, it is a woman who turns your house into a home, who brings new life into this world, who despite all odds, tries to turn dust into gold and continues to smile in the face of adversity. I am proud of the women that came before me, of the woman that I am and of the women that will come after me.

In the words of Rupi Kaur:

"I stand on the sacrifices of a million women before me thinking what can i do to make this mountain taller so the women after me can see farther – legacy"

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