

Legislation and its Implementation to Protect Girl Children under 18 from Harmful Traditional Practices: Importance of the Holistic Approach

Abstract

In Pakistani context, it is a common observation that due to socio-cultural reasons as poverty, illiteracy and lack of overall child protection has led to the prevalence of harmful traditional practices against girls. This situation prevails, despite of the fact that Pakistan is party to both international conventions, on child rights and to overcome discrimination against women. This overall situation has led to prevalence of harmful traditional practices (HTP), and the worse sufferer is the girl child. In connection to which, this article aims at (i) identifying the gaps in international instruments, i.e., UN CRC, United Nation's Convention on the Rights of the Child, and Convention on Discrimination against Women (CEDAW), due to which they could not push the State to curb HTPs (ii) identifying the gaps at the level of State to curb HTPs, and (iii) to propose the suggestions on the basis of a general overview of the above mentioned issues. The method to reach the conclusion was a situational analysis on the basis of secondary review. Significance of understanding the contextual issues by the State is evident. First underlying reason for prevalence of HTP is the legislation and its weak implementation in bits and pieces. Thus, child protection issues are not catered holistically. Consequently, children particularly weak groups (e.g., the girl child) suffer. The second reason of prevalence of HTPs against girls is the deep rooted attitude of son preference leading to discrimination between girls and boys. One of the indicators is the increase of female infanticide. On the basis of review, suggestions to curb harmful traditional practices are made.

Introduction

Through UN CRC and CEDAW, Pakistan has made international-level commitments to protect rights of children and women. UN CRC focuses best interest of the child and non-discrimination (Article 2 & 3), protection of violence against children (Article 19), freedom of expression (Articles 12 & 13), and protection from sexual abuse (Article 34). Furthermore clearly states importance of effective and appropriate measures to abolishing traditional practices prejudicial to the health of children (Article 24). However, the convention focuses upon HTP under health issues rather than an exclusive focus on it. However, UN CRC is a comprehensive commitment on child protection, as it focuses upon various rights of the children, simultaneously.

On the other hand, CEDAW focuses upon taking all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women (Article 2), including issues related to marriage and family relations (Article 16). Both the conventions emphasize upon right of education for children and women. Again an exclusive focus on various types of HTP is a missing component. However, by emphasizing upon the importance of changing the traditional roles of men and women in family and society can be taken as a key to bring positive changes for the girl child. However, what are the traditional roles and how far they should be retained, is quite dependent upon the decisions of members of particular society.

Despite of these conventions, harmful traditional practices prevail for girls and women in Pakistani context despite of the ratifications of the Conventions. . At the present, there is no as such reservation from Pakistan on these conventions, which can interfere with their effective implementation. Thus questions arise regarding the factors due to which HTP prevail.

The alarming situation is evident because, Pakistan has been ranked in top five countries dangerous for women. One of the indicators for this was that 1,000 women and girls are victims of "honour killings" every year (Pakistan's Human Rights Commission).¹ Divya Bajpni (Health Adviser at International HIV/AIDs Alliance)

¹ Reuters. (2011).Pakistan ranks 3rd on list of most dangerous countries for women.

<http://tribune.com.pk/story/189294/pakistan-ranks-3rd-on-list-of-most-dangerous-countries-for-women/>

reported that “Pakistan has some of the highest rates of dowry murder, so-called honour killings and early child marriage”.² Data compiled by Society for the Protection of the Rights of the Child (SPARC, 2010) from 20 newspapers revealed that girl child suffers the most when compared to boys from harmful traditional practices. Statistics from various sources show that women in Pakistani context suffer from various harmful traditions as honor killings, swara, vani, early and forced marriage. Below given is the brief about prevalence of various types harmful traditional practices in Pakistani context. SPARC followed-up 8 cases of early child marriage in Punjab and 6 such cases in Sindh (2011).

One prime reason of the prevalence of harmful traditional practices against girls in Pakistani context is that such practices are deep rooted in mind sets and socio-cultural values of our context. These practices are not new in our society, and occur within close setting in which immediate duty bearers and community agree and accept such practices. One emerging type of such traditional practice is infanticide of the girl child, which has been reported to be increased. As out of 1,200 reported cases of new born, 90% were of the girls.³ CNN (2011) also reported increased trend of murder and abandoning of the girl child especially in South Pakistan.⁴

For rigid communities in our context, child rights can be violated when customary practice required to maintain harmony in their context. When viewed from this angle, none of the international convention can be influential to bring changes in our context, as communities own these traditional practices. Whereas, the human rights activists oppose such traditions, and consider them as a parallel system to law enforcement, leading to disharmony in society. Thus, two opposite groups of thoughts operate herein. The conventions play their role in suggesting the states for protection. But these conventions pose limitations to address issues in our context (UN CRC and CEDAW) because they generally discuss the harmful traditional practice, which does not highlight these practices for the State. Similarly, UN Study on Violence against Children (2006) covers female genital Mutilation in detail to highlight HTP. Thus, our cultural traditional issues have not and cannot be tackled with the full detail, through internationally both binding and non-binding commitments. Therefore, the State can only play active role in eradicating such practices. Key to which lies, change of internal practices not only by legislation but also awareness raising on child right issues. A culturally specific set of milestones is required. It can be modification or adaptation of **Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children** presented in regional seminar of Sri Lanka (1994) might be effective, in this regard. Review of which, shows the need and importance of comprehensive and multi-leveled strategy beyond legislation. When the efforts of the State evaluated against the recommendations by General Assembly of UN (2001) to curb HTP, our State fails to meet almost all of the benchmarks. However, the State’s own benchmark for line of action is required to increase the commitment.

A brief on prevalence of harmful traditional practices has been given below:

Watta Satta: A case of watta satta (exchange marriage) in which 5 years old girl was about to be sacrificed is not a single case or a story.⁵ The World Bank (2007) released a study indicating that approximately one-third of marriages in rural areas were watta satta. Niaz reported that *watta satta* makes women object of revenge.⁶ A girl child as a victim of vani is not a new story and highlighted by every day print media. Girl child especially in rural community of Pakistan may also become the victim of vani easily. In vani/swara the girl/women is married to opponent group to settle the dispute. State of Pakistan’s Children (2010) reported 29 cases of vani and 26 cases of child marriage.⁷
Swara: Aurat Foundation reported almost 1,977 cases of violence included cases of various types, which included vani/swara cases in year 2009.⁸

² Pakistan ranked third in survey on violence against women. 16, June 2011. Daily Times.

³ Infanticide in Pakistan on rise. <http://www.womensviewsonnews.org/2011/07/infanticide-in-pakistan-on-the-rise/>

⁴ Video : Female infanticide in Pakistan. <http://europenews.dk/en/node/45494>

⁵ Islam, S. (2011). <http://www.siasat.pk/forum/showthread.php?74780-Watta-satta-Father-weds-off-5-year-old-daughter-to-get-a-bride-!!>

⁶ Niaz, U. (2004). Women's mental health in Pakistan. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1414670/>

⁷ 2010: A tough year for children in Pakistan. <http://www.pakistantoday.com.pk/2011/04/2010-a-tough-year-for-children-in-pakistan/>

⁸ Society for the Protection of the Rights of the Child. <http://www.sparcpk.org/violence/voilence8.php>

Early child marriage: Estimates generally show that 30% of the marriages are child marriages, in Pakistani context.⁹ SPARC intervened in 50 cases of child marriage only in Sindh in 2010, to provide support regarding legal aid or to provide protection by bringing in notice of the government authorities.

Honour Killing: Honour killing in Pakistan has been reported in Pakistan as a shocking practice.¹⁰ Aurat Foundation Reported 557 cases of honour killings of women in year 2010.¹¹

Jirgah: Finally, jirgah/punchayat (traditional way of justice) is also one of the sources leading to child right and women right violation. A latest report (2011) revealed that majority of the study responses indicated that jirgah under Frontier Crimes Regulation (sponsored by the Government) is somewhat unfair.¹² Two cases of vani and swara in which even four-years old young girl was a victim, was reported in national-level newspaper.

Through media we are quite clear about prevalence of harmful traditional practices in Pakistan, but we cannot give a clear figure about the total number of girl children suffering through HTP, each year. However, crude estimate shows that quarter of children aged 0-14, 42% of the total population (187 million) is likely to suffer.¹³ The scale of the sufferance of the girl child due to HTP has also not been investigated through national study. However, few studies have highlighted that underlying issues of health and nutritional issues of women include early marriage and son preference other poverty.¹⁴

Question arises that what are the reasons other than pertaining to attitude, responsible for maintaining these harmful practices against girl children in Pakistan? Foremost important indicator of the government's commitment to eradicate HTP is the relevant legislation and its implementation. Review of which shows the basic problems and gaps in implementations and weak systems placed so far. If the government fails to exercise legislative implementation effectively, it can be expected that the State falls short on other parameters to overcome this issue as national level campaigns; which involve various departments, media, implementing training programmes especially on gender sensitization, reviewing curricula to overcome discrimination and so on. Finally, as Pakistan has high out-of-school children (7 million) from schools, out of which 60 percent constitute the girls. This factor has inverse impacts leading to a vicious cycle for prevalence of HTP. Firstly, being out-of-school, girl child becomes vulnerable to early marriage. This continuous illiteracy of female especially from rural areas, thus attitudinal and power change does not take place. These factors together become push factors for HTP against the girl child.

National Laws

The true spirit of implementation of existing laws to protect women from discrimination seems missing simply. The Constitution of Pakistan 1973 does not contain a definition or description of discrimination against women. Furthermore, there is no definition available in the PPC of *swara* or similar traditions prevailing in like vani.¹⁵ PPC covers it briefly by stating word Badl-i-Sulha (exchange for settlement) not fully defined as violation of rights but just reflects upon giving something or accepting something in compensation" (p.310).¹⁶ The imprisonment of ten years under section 310-A has not been witnessed for number of cases and highlighted consequently, which shows a weak implementation of PPC. Furthermore, though Constitution of Pakistan emphasizes upon Badl-i-Sulha to protect children and women from harmful traditional practices but strict laws on early and forced marriage is still

⁹ Ibrahim, Z. (2009). <http://ipsnews.net/news.asp?idnews=46022>

¹⁰ Harmful traditional practices in three countries of South Asia: Culture, human rights and violence against women. <http://www.gsdr.org/go/display&type=Document&id=3607>

¹¹ Violence against women in Pakistan: A qualitative review of statistics (2010). Annual Report, January-December. Aurat Foundation.

¹² Shinwari, A.N (2011). Understanding jirgah: Legality and legitimacy in Pakistan's federally administered tribal areas. Community Appraisal & Motivation Programme.

¹³ Demographics of Pakistan. http://en.wikipedia.org/wiki/Demographics_of_Pakistan

¹⁴ Situational analysis of women in Pakistan: An overview.

http://www.adb.org/Documents/Books/Country_Briefing_Papers/Women_in_Pakistan/chap01.pdf

¹⁵ Amin, A. Legal experts for separate laws against swara, vani.

http://www.dailytimes.com.pk/print.asp?page=2011\01\17\story_17-1-2011_pg7_17

¹⁶ Butt, S.P. (1860). The Pakistan Penal Code.

a missing component. Thus, Pakistan Penal Code addresses force marriages, *vani* and *swara*, but broadly and generally.

Recently, the Law and Justice Commission Pakistan (LJCP) directed the secretariat to propose amendments in the law so that strict actions shall be taken against the perpetrators of *vani* and *swara*.¹⁷ However, such cases still prevail.

Various interpretations of a single code of PPC is also a concern. For-example, it is internationally stated that certain sections of Pakistan Penal Code relating to *Qisas* and *Diyat* are discriminatory to women such as Section 310 (1) dealing with the subject of *Badal-i-Sulh* which means “mutually agreed compensation” to be paid by the murderer to the next of kin of the victim to gain a pardon. Para 2 of Section 310 (1) reads as “Provided that only giving a female in marriage shall not be a valid *Badal-i-Sulh*”. Thus, such a vague statement has been hindrance in effective implementation, as people interpret it in their own way. However, the government body seems to be quite sensitized about the issue. As in March 2004, the Law and Justice Commission amended draft to the Pakistan Penal Code (PPC) seeking to penalize the act of offering or accepting a woman against her free will, or any child in marriage by way of compensation.

The Committee on the Elimination of Discrimination against Women (2007) recommended for Pakistan “... a definition of discrimination against women in line with article 1 of the Convention, which encompasses both direct and indirect discrimination, and provisions on the equality of women with men in line with article 2 (a) of the Convention, be included in the Constitution or in other appropriate legislation”. What are equal rights for Constitution in Pakistan? Is it providing equal rights to women as of men or protecting rights given in Islam? It might be one of the reasons that many activists raise voice to increase minimum marriageable age of the girl child, which is not appropriate for other groups. Thus, inconsistencies in advocacies remain as a result. However, The Constitution of Pakistan has to determine with clarity the line of action to bring this equality, but in child rights and human rights frame of reference.

Gaps in laws are usually highlighted at various levels but implementation of existing laws requires a more focus. The existing “Child Marriage Restraint Act”, (CMRA), 1929, has never been implemented properly in terms of imprisonment and penalties immediately for those conducting this crime. Though the police arrest has been increased on child marriage cases, but again this might be the role of media to highlight the issue.

The consequences of child marriage are meager for the accused, this practice prevails. The fear of negative outcomes before conducting this crime does not prevail, consequently. According to estimates, 30 per cent of all marriages in Pakistan fall into the category of child marriage. Feudalism has been observed as another major reason leading to this practice.¹⁸

A Section of CMRA emphasizes that “whoever, being a male above eighteen years of age, contracts child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both.” Likewise, Section 5 provides the punishment for solemnizing child marriage and lays down that “whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage.” The penalty is too weak to bring real change in the community. Furthermore, no progress has been witnessed in raising minimum age of girl child marriage as mentioned by the State of Pakistan.¹⁹

In March (2004), the Law and Justice Commission drafted amendment to Article 366-C of the Pakistan Penal Code, seeking to penalize the act of offering and accepting by way of compensation any child, or woman against her free will. However, the amendment has not yet been passed, despite the fact that Pakistan ratified the UN Convention on the Rights of the Child in 1990. Muslim Family Law also states that in a marriage, a girl must be at least 16 and must give her consent. Thus, marrying a girl child below 16 is also a result of the fact that women hold

¹⁷ Changes in law advocated for punishing *vani* perpetrators. 5, June, 2011. Express Tribune.

¹⁸ Panhwer, G. (2010). Curbing child marriage. <http://archives.dawn.com/archives/63640>

¹⁹ Written replies by the Government of Pakistan To the list of issues (CRC/PAK/Q/3-4). <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/376/08/PDF/N0737608.pdf?OpenElement>

weak position in the society. Hence they cannot protect their girl child. The vicious cycle remains, because a weak child becomes a weak mother and violation of rights of the girl child continues.

After 18th constitutional amendment child rights has become a provincial subject and few steps on protection of children has been taken. The provincial assembly, passed Khyber Pakhtunkhwa Child Protection and Welfare Act (2010) lacks any proper provision for banning the inhuman custom. However, Section 38 of the said act deals with harmful practices against children. It states “Whosoever coerces or induces any child to indulge in or to undertake any activity or vocation for the purposes of complying with a tradition or a custom, which is or might be dangerous, harmful, hazardous or otherwise improper for any child, shall be guilty of the offence of harmful practice.” This offence carries sentence up to three years imprisonment or fine up to Rs100,000. However, strong structure for implementation is still required at grass roots level for its effectiveness.

Jirgah /Punchayat is also one of the reasons which lead to harmful traditional practices. Some time ago, Sindh High Court abolished the old jirgah system; however the duty of administration and police remained weak²⁰ to ensure its implementation. One of the reasons for lack of proper implementation is that the jirgah members are usually influential people²¹ and, therefore, they escape from legal punishments.

Finally lack of comprehensive Child Protection legislation and lingering state of Child Protection Bill indicates that child right is not a priority agenda. Girl child remains a focus of discussion and debates only. Moreover, to address her issues in isolation is not possible. Consequently, many of the girls are not only suffering from harmful traditional practices but are facing various types of violence and abuse associated with these practices as well.

Suggestions

Highlighting of the issue required

- CEDAW can be more effective to protect women and particularly girl child from HTP by clearly highlighting protection from all types of “violence” against women. A comprehensive national-level data base is required to determine the prevalence of harmful traditional practices.
- The State should take lead in national level campaigns to bring positive change for the girl child and to support the legislation for the girl child protection

Prioritization of issues

- Allocating appropriate budget is the one of the key indicators of prioritizing the issues. Budget allocation for education shows the interest of State to protect children from violence, by increasing enrollment and literacy rate. However, a set back was observed with the allocation of 1.4 % of GDP for education for fiscal year 2011-2012. This shows that State has not taken any concrete step for the development and protecting one of the rights of children. In 2000-2001 Pakistan has spent 2.06 % of GDP on education. Thus, the situation has not improved rather it has constantly deteriorated in past ten years.

Comprehensive legislation

- A focus of Conventions should focus on types of harmful traditional practices, separately with full details, can the State for separate and comprehensive legislations to eliminate Swara, Vani and violation of child/human rights through jirgah.
- With reference to 18th amendment, SPARC suggests that federal government should take lead in setting policy direction and minimum standards, which can then be followed by the provinces.²²
- Article 247-7 (Administration of Tribal Areas) of the Constitution should be amended and Frontier Crime Regulation (FCR) should be resolved. This will ensure human rights and will support the elimination of harmful traditional practices as the result of jirgah, early child marriage and swara. Furthermore, this will

²⁰ Illegal Jirgas still active. 28, June, 2011. The Dawn.

²¹ The dangers of jirgas. 8 May, 2011. Express tribune.

²² State of Pakistan’s Children. (2010). Society for the Protection of the Rights of the Child.

also give power to national law to take immediate notice and action in cases of swara, forced and early child marriage, in tribal areas.

- After 18th amendment, legislation on women rights has also become a provincial subject. Provinces should focus upon comprehensive legislations to protect women from harmful traditional practices.
- The State should involve religious bodies and people in policy making and emphasizing the importance of education for girl child through nationwide campaigns, with the coverage at grass-roots level.

Implementation

- For effective implementation, the fine from accused and duration of imprisonment should be raised.
- The coverage and effectiveness of existing crisis centers for women should be increased. They should be established at national level having out-reach in all districts. Their effectiveness need to be increased for effective implementation.
- State focus upon quick recovery, rehabilitation and reintegration services by strengthening the structure and powers of the concerned authorities.
- Cases of early child marriage are mostly registered under PPC rather than Child Marriage Restraint Act, because police can take timely action only under PPC, but not directly under Child Marriage Restraint Act. Thus, relevant laws are not being implemented appropriately to protect children from marriage. Mostly F.I.R is lodged under Offence of Zina-bil-Jabr (p.370, PPC), to allow police the power to investigate the case. Again, in such a situation, the child's family doesn't cooperate, due to which justice for the child lingers for long
- Making secondary education compulsory for the girl child; and free on condition if the girl child not married before the age what law covers can support.
- Culturally appropriate measures as sensitizing molvi (religious leaders) and nikah khwan (marriage contractors) about the legal age of marriage in the case of the girl child, can be effective
- Implementation of Criminal Law Amendment Act (2004) and Protection of Women (Criminal Laws Amendment) Act 2006 is important.

Holistic Approach

- Harmful traditions against the girl child can not only be eliminated through legislating. The implementation is equally important. However, uni-directional approach is cannot support. It requires the strengthening of developmental side as well. In Pakistani context, implementation of the Article 25(A), by providing compulsory and free education can support elimination of harmful traditional practices.

Conclusion

Finding of the joint study by USAID and Aurat Foundation (2011) that "...Even though girls perform well at primary levels, as they reach puberty, they are removed from the schools due to early marriage..."²³ highlights the importance of a broader, multi-dimensional approach. Under such an approach the implementation of comprehensive legislation on child protection requires sensitizing both the government bodies and the communities as grass-roots level. Exclusive focus upon the girl child education is requires at all the levels. It has been highlighted that States have obligation to modify the social and cultural attitudes²⁴. This reflects *that only the State of Pakistan can take up these issues by understanding the context, factors, types and solutions for such practices in Pakistani context.*

²³ Women's Empowerment: A scoping study. (2011). USAID and Aurat Foundation.

²⁴ Harmful traditional practices affecting the health of women and children. (1979).