



Gap Analysis of Legislation Related to Ending Violence Against Women (EVAW)

Sindh

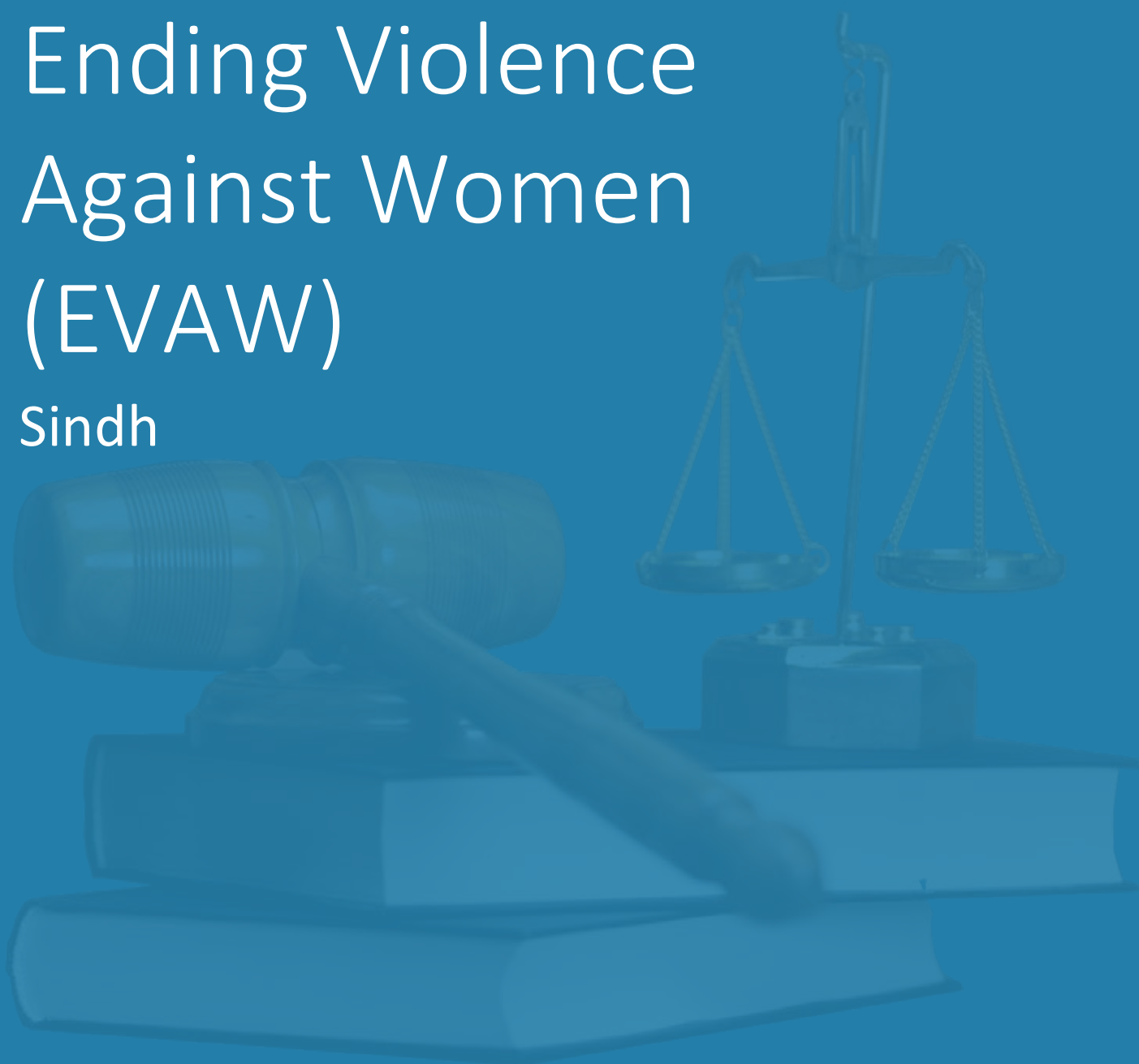


TABLE OF CONTENTS

CONTRIBUTORS	4
MESSAGE FROM SINDH COMMISSION ON THE STATUS OF WOMEN	5
MESSAGE FROM UN WOMEN PAKISTAN	6
ACKNOWLEDGEMENTS	7
ABBREVIATIONS	8
1. INTRODUCTION.....	10
2. EXECUTIVE SUMMARY.....	11
3. BACKGROUND	15
4. METHODOLOGY.....	18
5. PAKISTAN'S EVAW LAWS IN THE INTERNATIONAL CONTEXT	19
6. SINDH EVAW LAWS	25
6.1 ACID AND BURN CRIMES.....	25
6.2 RAPE (EVIDENCE AND PROCEDURE FOR SINDH)	26
6.3 CHILD MARRIAGE	26
6.4 DOMESTIC VIOLENCE.....	27
6.5 SEXUAL HARASSMENT AT THE WORKPLACE	28
6.6 DOWRY RELATED VIOLENCE.....	31
7. SINDH LAWS RELATED TO DISCRIMINATION & WOMEN'S RIGHTS	32
7.1 CHILD DOMESTIC WORKERS	32
7.2 HOME-BASED WORKERS	32
7.3 DOMESTIC WORKERS	33
7.4 MUSLIM FAMILY LAWS.....	34
7.5 CHRISTIAN MARRIAGE LAWS	34
7.6 HINDU MARRIAGE LAW.....	36
7.7 WOMEN WITH DIFFERENT CAPABILITIES.....	37
7.8 MATERNITY BENEFITS.....	38
7.9 GENDER PAY GAP.....	39
8. SINDH EVAW LAWS: MONITORING & INFORMATION GAPS	40
9. CONCLUSION	41
ANNEX 1: FEDERAL LEGISLATION APPLICABLE IN SINDH	44
SYNOPSIS.....	44
FEDERAL EVAW LAWS	46
HONOUR KILLING.....	46
FEMALE INFANTICIDE	47
ACID AND BURN CRIMES	47

HUMAN TRAFFICKING	49
RAPE	50
SEXUAL OFFENCES.....	54
SEXUAL HARASSMENT.....	57
HARMFUL CUSTOMARY PRACTICES AGAINST WOMEN	58
DOWRY RELATED VIOLENCE	59
NECROPHILIA	59
CYBER CRIMES AGAINST WOMEN.....	60
FEDERAL LAWS RELATED TO DISCRIMINATION & WOMEN’S RIGHTS.....	62
DISCRIMINATION IN THE LAW OF EVIDENCE.....	62
DISCRIMINATION IN THE LAW OF CITIZENSHIP	63
CONCLUDING SUMMARY	64
ANNEX 2: TECHNICAL CONSULTATIVE WORKSHOPS.....	66
ANNEX 3: REFERENCES	69

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and

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MESSAGE FROM SINDH COMMISSION ON THE STATUS OF WOMEN



The Sindh Commission on the Status of Women Bill 2015 having been passed by the Provincial Assembly of Sindh on 6th April 2015 and assented to by the Governor of Sindh on 12th May 2015 was published as an Act of the Legislature of Sindh. The Sindh Commission on the Status of Women” (SCSW), Government of Sindh, is established as an autonomous body under the Sindh Commission on the Status of Women Act 2015, working to promote gender equality and women’s empowerment in the province. It was set up for the promotion of social, economic, political and legal rights of women, as provided in the Constitution of the Islamic Republic of Pakistan 1973, and in accordance with international declarations, Conventions, treaties, Covenants and agreements relating to women, including Convention on the Elimination of all forms of Discrimination against Women (CEDAW).

The SCSW is proud to have collaborated with UN Women on this excellent initiative, reports such as this are the need of the day. While the government of Sindh has promulgated many progressive laws, their proper implementation is one of the biggest challenges still faced. It is extremely important in order to appropriately support and protect our women and girls who suffer from gender-based violence. The SCSW has been playing an important role in monitoring the implementation of women friendly legislation and has observed the need to put in place strong and effective mechanisms and address the gaps in the laws. The Commission has also reviewed eight laws to achieve gender equality before the law, as well as created Rules of Business for the laws, which have been forwarded to the respective departments. Institutions are unable to work effectively when gaps in pro-women legislature remain unidentified. This study is a great effort to counter and rectify such problems.

UN Women has been an important partner of the SCSW and supported us in many projects aimed at the promotion of women empowerment in Sindh. We sincerely appreciate their efforts and collaboration and hope to work together on many more fruitful endeavours.

Nuzhat Shirin
Chairperson

MESSAGE FROM UN WOMEN PAKISTAN

Enactment of pro-women laws in recent years is enhancing the development and strengthening the rights landscape in Pakistan. During our journey spanning over 13 years in Pakistan, we have witnessed immense progress in the sphere of women's empowerment.



We are proud of our strong collaboration with the Sindh Commission on the Status of Women (SCSW), an institution with a pivotal role in legislative oversight and implementation of women empowerment initiatives in the province. Through our strategic partnerships, we are striving to enhance the legislative framework and address gaps in the laws for advancing gender equality and ending violence against women and girls.

Keen to further improve the normative framework, having a direct impact on lives of women, we, jointly with the SCSW, have analysed the existing legislation related to ending violence and discrimination against women and girls, and suggested recommendations to bridge the gaps. This 'Gap Analysis Report' is an initiative to provide valuable insights for making Pakistan's legal framework more gender-responsive and help achieve gender equality as per the aspirations of Constitution of Pakistan and its international Obligations. Our joint initiative will also lay a strong foundation for our normative work including supporting the government partners for creating policies and laws and engagement with civil society for advocacy and awareness-raising.

We stand at a historic moment in time today! It has been 25 years since the Beijing Platform for Action, 10 years since the creation of UN Women, and 5 years since the adoption of the Sustainable Development Goals all aiming for a shared blueprint to meet the needs of women and girls while building a peaceful and prosperous world. It is time for us to accelerate our efforts by ensuring that all women and girls achieve their human rights and live a life free from violence and discrimination. We hope that this report will help us intensify our collective efforts to achieve this vision for our generation and the generations to come.

Sharmeela Rassool
Country Representative

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This study was designed and commissioned by UN Women Pakistan in partnership with the Sindh Commission on the Status of Women. It was carried out by Khadija Ali under the technical supervision of Saman Ahsan, Programme Lead, Ending Violence Against Women, Governance and Human Rights, UN Women Pakistan, with support from Kapil Dev and Rubina Chandio from the Sindh Sub-Office and Muhammad Younas Khalid, Yasir Khan, Ali Zafar, Umer Ehsan and Habib Asgher from the Country Office.

We would like to appreciate the significant contributions of the Sindh Commission on the Status of Women, under the overall leadership of Chairperson Nuzhat Shirin, which helped ground the report in the context of the province. The report also benefitted immensely from thorough reviews by our partners at the federal level and we would like to acknowledge the contribution and support of Dr. Shireen Mazari, Rabiya Javeri Agha and Muhammad Hassan Mangi, Ministry of Human Rights; Khawar Mumtaz, former Chairperson National Commission on the Status of Women; and Munaza Hassan, Women's Parliamentary Caucus (Federal). Their invaluable feedback strengthened the report, especially the analysis of federal laws that are applicable in Sindh.

Special acknowledgement must be given to the partners especially, Thomas Schmidt and Tracy Lochbryn from INL, and technical teams from UNICEF and UNFPA who contributed their expert inputs that helped develop and refine this legislative review document.

Finally, we would like to gratefully acknowledge the generous support of the U.S. Department of State for undertaking this analysis.

ABBREVIATIONS

CAT	Convention against Torture & other Cruel, Inhuman, Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CPC	Code of Civil Procedure, 1908
CRC	Convention on the Rights of the Child
Cr.PC	Code of Criminal Procedure, 1898
CRPD	Convention on the Rights of Persons with Disabilities
CSOs	Civil Society Organisations
CSW	Commission on the Status of Women
EU	European Union
EVAW	Ending Violence Against Women
EVAWG	Ending Violence Against Women and Girls
FATA	Federally Administered Tribal Areas
FIA	Federal Investigation Agency
FIR	First Information Report
GBV	Gender Based Violence
GSP+	General Scheme of Preference Plus
HBW	Home-Based Worker
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of all form of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICT	Islamabad Capital Territory
INGO	International Non-Governmental Organisation
LHW	Lady Health Worker
MIS	Management Information System
MLO	Medico-Legal Officer
MoHR	Ministry of Human Rights

NR3C	National Response Center for Cyber Crimes
NCSW	National Commission on the Status of Women
NGOs	Non-Governmental Organisations
PAHWA	Protection against Harassment of Women at the Workplace Act
PDHS	Pakistan Demographic and Health Survey
PECA	Prevention of Electronic Crimes Act 2016
PEMRA	Pakistan Electronic Media Regulatory Authority
PPC	Pakistan Penal Code, 1860
PSDP	Public Sector Development Program
SCSW	Sindh Commission on the Status of Women
SDGs	Sustainable Development Goals
SOPs	Standing Operating Procedures
TIC	Treaty Implementation Cells
UDHR	Universal Declaration of Human Rights
UN	United Nations
VAW	Violence Against Women
VAWG	Violence Against Women and Girls
WEE	Women's Economic Empowerment
WEF	World Economic Forum

1. INTRODUCTION

This document is part of a series of 5 reports on “Gap Analysis of Legislation Related to Ending Violence Against Women (EVAW)” at the Federal and Provincial levels. These reports document lacunae in the existing legal framework and implementation process over the years. The thorough analysis that underpins these critically reflective documents also subsumes the perspectives of the provinces as well as federal public functionaries and stakeholders. It premises on an in-depth legal review followed by Technical Consultative Workshops and participatory brainstorming sessions to ensure full participation of a diverse range of stakeholders, hence it reflects the ground realities from across the country.

It is important to mention that the starting point for this analysis has been contextualising EVAW laws within the framework of CEDAW and Pakistan’s other international commitments. By elaborating upon the Concluding Observations of UN Committees, the Gap Analysis also provides an indication of the progress made in harmonising domestic laws with the international rights framework.

Pakistan is a Federal Republic and the Constitution of 1973 lays out the powers and functions of both Federal and Provincial Governments. The Eighteenth Constitutional Amendment in 2010 has further empowered the provinces with devolution of various ministries and departments including the Women’s Development Ministry to departments in the provinces. This has increased the scope of legislative powers of provinces on one hand and responsibility of implementation on the other.

The past decade has seen the promulgation of many new laws as well as improvements in criminal laws, mainly to tackle the issues of violence against women and girls (VAWG). Some of these reforms have repealed discriminatory provisions, while others have introduced new sections to prevent VAWG. The present study has reviewed the legislation related to ending VAWG at Federal and Provincial levels which are either enacted before or after passing of the Eighteenth Constitutional amendment but enforced as law of land at provincial levels.

This Gap Analysis study also documents the Federal level laws which are extended and implemented in the provinces. It is essential, therefore, to recognise that the laws included in Annex 1 of this report also apply to the province of Sindh.

2. EXECUTIVE SUMMARY

The commitment of the Government of Sindh to the cause of women's rights is evidenced by the initiatives undertaken by government departments to implement Pakistan's international commitments at the provincial level. In this regard, at the institutional and policy levels, the Government of Sindh constituted the Sindh Commission on the Status of Women in consonance with the Sindh Commission on the Status of Women Act 2015 to monitor and facilitate implementation of women-related legislation. The Commission is a vibrant institution that has, in collaboration with UN Women Pakistan, launched a three-year strategic plan for women empowerment based on the following strategic priorities: i) review of Sindh's laws, rules, regulations, policies and programmes from gender perspective; ii) actions to end violence against women and girls; iii) and institutional capacity building of the Commission. The Women Development Department has also launched the Women Economic Empowerment (WEE) Council to promote women's economic empowerment at all levels of government interventions. Sindh is also on the road to chalking out a comprehensive human rights strategy to protect marginalised groups from violence and promote civil and political rights.

The Government of Sindh has also promulgated various laws for the protection and promotion of women's rights in the province. These laws include the Sindh Child Marriages Restraint Act 2013, Sindh Domestic Violence (Prevention and Protection) Act 2013, Sindh Payment of Wages Act 2015, Sindh Hindus Marriage Act 2016, Sindh Home Based Workers Act 2018, Sindh Empowerment of Persons with Disabilities Act 2018 and Sindh Maternity Benefits Act 2018. Furthermore, the 18th constitutional amendment and devolution of legislative and fiscal powers to the provinces also provides strategic avenues for federal and provincial governments to legislate and institutionalise mechanisms for enhancement of women rights. In view of these legislative developments, the Gap Analysis of Legislation Related to Ending Violence Against Women (EVAW) documents gaps existing in the legal framework and implementation process of women-related laws over the years.

Contextualising EVAW laws within the international law framework of CEDAW and SDG Goal 5 has been the starting point for this analysis. By elaborating upon the Concluding Observations of UN Committees, the Gap Analysis provides an indication of the progress made in harmonising domestic laws with international rights framework. Important milestones in this regard include the promulgation by the Federal Parliament of the Prevention of Trafficking in Persons Act 2018 and Hindu Marriage Act 2017; deterrence against forced disenfranchisement of women during elections in the Election Act 2017; provincial legislation for autonomous Commissions on the Status of Women; and the landmark judgement of the Supreme Court in National Commission on the Status of Women

and Others Versus Government of Pakistan (dated January 1st, 2019) declaring jirgas to be unconstitutional.

For the sake of brevity and comprehensiveness, the Gap Analysis is structured into:

1. Sindh EAW Laws,
2. Sindh Laws relating to Discrimination and Women Rights,
3. Sindh EAW Laws: Monitoring and Information Gaps.

Relevant Federal Laws applicable to the province of Sindh are also given in an annexure in order to provide a complete picture.

The approach of the Gap Analysis is premised on three gaps: normative gaps, implementation gaps and monitoring and information gaps.

Normative Gaps: A normative gap refers to the absence, gap or non-existence of certain forms of gender-based violence (GBV) within the legal framework of Pakistan. Normative gaps mean the absence or inadequacy in defining, criminalising and providing redress to women and girls regarding persistent acts and circumstances depriving them of their rights.

Implementation Gaps: An implementation gap exists when the actions and circumstances constituting GBV are defined, criminalised and redressed within law but are not translated into practice. This failure may be due to lack of political will; a conscious or unconscious de-prioritisation of the issue, sometimes through diversion of funds or alleged lack of resources; lack of visibility of the issue in national discourse; or a lack of technical understanding necessary to ensure implementation.

Monitoring and Information Gaps: A monitoring gap exists where no autonomous body is mandated to ensure compliance with the law, thus depriving women and girls of the State's accountability to implement the law. An information gap exists where substantive discussions on the rights of women and girls are hindered by absence of disaggregated data and statistics.

Based on the tripartite approach above, major findings of the Gap Analysis include:

Sindh EAW Laws:

With regard to EAW related laws in Sindh, lack of a comprehensive legislation to provide medical attention, rehabilitation and reintegration of acid and burn survivors in the province is a major normative gap. Furthermore, Sindh has promulgated an amendment in the Code of Criminal Procedure 1898 mandating DNA to be collected from a raped victim within 72 hours and preserving the sample to ensure proper forensics. While the amendment is an important step for evidence in rape cases, Standard Operating Procedure for Police and

Medico-Legal Officers incorporating the amendment would strengthen implementation. Sindh is the only province that has a law punishing marriages of children below the age of 18 years. Rules have also been notified under the law to strengthen implementation.

Sindh is also the only province that has a special legislation criminalising domestic violence in the province. By appointing Protection Officers and constituting Protection Committees as per the Act, implementation of the law to curb domestic violence can be ensured. Sindh's Ombudsman for Protection against Harassment of Women at Workplace has been receiving and deliberating upon complaints of sexual harassment but another gap highlighted in implementation has been the absence of Rules to further elaborate upon the procedure for filing complaints of sexual harassment. A major normative gap for the province of Sindh is the absence of an effective law to counter dowry related violence in the province.

Sindh Laws related to Discrimination and Women's Rights:

In relation to laws that discriminate against women and girls, absence of law to protect all child domestic workers below the age of 18 years and domestic workers is a normative gap highlighted in the Gap Analysis. It is pertinent to note that Sindh is also the only province that has a comprehensive labour law for home-based workers. Normative gaps also existed for women's rights in marriages. The Gap Analysis revealed anachronistic laws for Christian marriages impinging upon dignity of couples seeking divorce. Furthermore, amendments in the Muslim Family Laws, similar to those made in Punjab, could enhance the rights of women within Muslim marriages as well. However, unlike other provinces, Sindh has its own Hindu marriage law promulgated in 2016 to register marriages contracted by persons of Hindu, Sikh and Jain faiths. Sindh Hindu Marriage Registration Rules 2017, notified under the law, further elaborate upon the register of marriages to be maintained by local government for record purposes. Subsequent amendments made by the Sindh Hindus Marriages (Amendment) Act 2018 have added further provisions for termination of Hindu marriages and financial security of family.

The Sindh Empowerment of Persons with Disabilities Act 2018 provides a comprehensive framework for ensuring the rights of persons with disabilities in line with the UN Convention on the Rights of Persons with Disabilities. While the law is a major improvement considering the Disabled Persons (Employment and Rehabilitation) Ordinance 1981, it can be further improved by adding provision for gender disaggregated employment quota for women with disabilities. As is the case with other women related legislation, Sindh also has the most progressive legislation for maternity benefits in the province as per Sindh Maternity Benefits Act, 2018. However, the law's implementation can be improved by notifying Rules under the Act to elaborate further on the grievance redressal mechanism in case of violation of

maternity benefits. Sindh has also promulgated the Sindh Payment of Wages Act 2015 to address issues of gender pay gap in the province.

Sindh EAW Laws - Monitoring and Information Gaps:

The monitoring and information gaps explore existing monitoring mechanisms for implementation of women-related laws such as the Sindh Commission on the Status of Women followed by the development and improvement of data portals that can be utilised for evidence-based legal and policy advocacy. Existing data portals to fill information gaps in Sindh include 2017 Census, Labour Force Survey, Pakistan Demographic and Health Survey, Pakistan Economic Survey, Election Commission of Pakistan etc.

The tripartite approach adopted for this Gap Analysis seeks to provide a holistic view when researching and analysing women-related laws at provincial level. The analysis not only builds upon existing literature but documents new findings and perspectives of stakeholders to critically reflect and review the evolution of women-related laws in the last decade. The Gap Analysis of Legislation Related to Ending Violence Against Women (EAW) therefore provides a point for critical reflection to document the features of law that have been successful as well as the features of law that require reform. The identified gaps also bring forth the interesting shift in changing demands of Pakistani society in general and women in particular in light of the emerging social challenges and juristic opinions.

3. BACKGROUND

According to the Provisional Summary Results of 6th Population and Housing Census of 2017, Pakistan has a total population of 207,774,520 with an average annual growth rate of 2.40%.¹ Of the total population, 101,314,780 include female and 10,418 include transgender persons.² Also important to note is the urban-rural nexus of the female population of the country with an overwhelming majority – 64,886,593 residing in rural areas and 36,428,187 residing in urban areas.³

In Sindh, 47,886,051 people reside in the province with an annual growth rate of 2.41%.⁴ 22,956,478 of the total population in Sindh include women while the population of transgender persons in Sindh has been recorded at 2527.⁵ Also important to note with regards to Sindh is the rural population of women which has been recorded at 11,056,183 whereas the urban population of women is 11,900,295.⁶

With regard to gender equality, Pakistan ranked 151 out of 153 countries in the ‘Global Gender Gap Index 2020’ released by the World Economic Forum (WEF) in 2020.⁷ Against the backdrop of these statistics, it is clear that women represent a marginalised group in Pakistan. Measures taken to close existing gender gaps will not only empower Pakistani women, but will benefit the society as a whole.

While various legislative interventions have sought to ameliorate the legal protections offered to women and girls in Pakistan, various forms of gender-based violence continue to violate the human rights of women and girls. According to UNICEF, 3% of girls in Pakistan are married by the age of 15 and 21% of girls are married by the age of 18.⁸ Compounding the issue of child marriage, is the impact of this violence on the health and bodies of victim girls. According to the 2017-2018 Pakistan Demographic and Health Survey, *“children born to very young mothers are at increased risk of sickness and death. Teenage mothers are more likely to experience adverse pregnancy outcomes and to be constrained in their ability to pursue educational opportunities than young women who delay childbearing.”*⁹ Furthermore, in the 2012-2013 survey, it was revealed that educated women are less likely to lose their first pregnancy as compared to uneducated women.¹⁰ The situation seems bleak when in a representative data of 13558 ever-married women aged 15 – 49, 57% of the women had no education and 8% of adolescent girls aged 15 – 19 were already mothers or pregnant with their first child.¹¹

Violence Against Women continues to prevail in public and private spheres of girls and women. One third of ever married women and girls had experienced physical violence since the age of 15.¹² In the absence of national level prevalence data on VAW, administrative data

can inform the on the prevailing situation as has been done by the Punjab Commission on the Status of Women with the support of their GMIS.

In addition, the deeply entrenched perceptions regarding VAW perpetuate the existing gender disparities and discrimination within society and normalise violence. In a study using sub-sample of the above PDHS (2012 – 2013) Study, including 3641¹³ currently married women, perceptions on spousal violence were recorded. Out of a survey questionnaire of six daily life situations, 562 (15%) of the women respondents justified beating in three or less than three situations and 929 (26%) justified beating wife in more than three situations.¹⁴ According to the Human Rights Commission of Pakistan's State of Human Rights Report 2017 – 2018: *'the Women, Peace and Security Index 2017-18 said 27 percent of women in Pakistan experienced intimate partner or domestic violence in their lifetime, and only 51 percent believed they were safe in their communities.'*¹⁵

Economic dependency on male counterparts and lack of agency also play a major role in hampering the empowerment of women in Pakistan. For the year 2013, labour force participation of women and girls in Pakistan was recorded to be 21.5% as opposed to 68.9% labour force participation by men and boys.¹⁶ Only 11% of women owned a house either individually or jointly and only 4% owned land.¹⁷

Representation of women in politics and governance as well as political participation remains an issue. Women account for only 21% membership of the National Assembly.¹⁸ Furthermore, the gap between men and women in voter registration still remained at 6.7 million in 2017.¹⁹

Against the backdrop of these statistics and indicators, Pakistan's legal context, post-devolution also needs to be outlined. Post 18th Constitutional Amendment of 2010, the Federal Parliament retains the legislative competence to legislate on matters enumerated in the Federal Legislative List. However, while major subjects have been devolved to the provinces, the federal still retains the legislative competence to concurrently legislate on matters related to *'criminal law, criminal procedure and evidence.'*²⁰ Hence, federal laws promulgated before 2010, federal laws enumerated in the federal legislative lists; and federal laws amending the Pakistan Penal Code 1860, Code of Criminal Procedure 1898 and Qanun-e-Shahadat Order of 1984 are applicable all over Pakistan. This provides a strategic entry point to organisations to advocate for EAW law reforms at the federal level by proposing amendments in the Pakistan Penal Code 1860, Code of Criminal Procedure 1898 and Qanun-e-Shahadat 1984.

Promulgation of the Prevention of Trafficking in Persons Act 2018 and Hindu Marriage Act 2017; deterrence against forced disenfranchisement of women during elections in the Election Act 2017; and provincial legislation for autonomous Commissions on the Status of Women are also commendable steps by the federation of Pakistan. The landmark judgement

of the Supreme Court in the case: National Commission on the Status of Women and Others Versus Government of Pakistan (dated: January 1st, 2019) declaring jirgas to be unconstitutional is phenomenal.

The Ministry of Human Rights developed the first ever National Action Plan on Human Rights in 2016 which stipulates concrete actions for improving access to justice for women and ending violence against women and girls whereas the National Commission on the Status of Women synergises efforts between stakeholders to end violence against women.

Along with the Federal Government, Sindh played, and continues to play, an important role in the formulation and implementation of new laws as well as for realisation of women's rights. The Sindh Commission on the Status of Women is becoming a vibrant institution that facilitates and monitors implementation of ERAW laws through collection of data for evidence-based legal and policy advocacy to advance the rights of women and girls.

4. METHODOLOGY

The formulation of the Gap Analysis of Legislation Related to Ending Violence Against Women (EVAW) for Sindh has been based on a consultative and participatory approach by UN Women Pakistan. The first draft of the Gap Analysis was premised on an intense literature review of relevant statutes, secondary legislation, judicial precedents, research reports, statistics and data. The findings of the literature review were then condensed into a power-point presentation to be discussed with the relevant stakeholders.

In this regard, a “Technical Consultative Workshop on EVAW Legislation” was organised in Karachi on 26th March, 2019 where relevant stakeholders from civil society organisations, government, media, legal fraternity, researchers and academia (Annex 2) participated to put forward their opinions, perspectives and experiences regarding the current state of women related legislation in the province. The workshop was facilitated with a participatory approach in order to allow space for the experiences of stakeholders to be recorded and made part of the final document. The workshop provided a unique opportunity to document, with regards to implementation of women related laws, the practices that have been successful as well as the practices that need revision. The critical inputs provided by the participating stakeholders have been essential to produce an analytical document that is reflective of the ground realities and context of each particular province.

The gaps and recommendations highlighted by all stakeholders have been analysed for the purposes of this gap analysis to produce a comprehensive document which not only substantiates and builds upon previous body of work but also adopts a holistic approach in identifying gaps and proposing recommendations for women related legislation. A multi-sectoral approach has been the foundation of this gap analysis to weave diverse perspectives in this document in a comprehensive manner.

5. PAKISTAN'S EVAW LAWS IN THE INTERNATIONAL CONTEXT

While Pakistan has made considerable strides in its legislative interventions for women and girls in the country, the goal to implement Pakistan's international commitments in letter and spirit requires concerted efforts from state institutions as well as all stakeholders.

Table 1: Rights Framework in CEDAW

Article 1	• Freedom from Discrimination
Article 2	• Obligation on State Parties to Eliminate Discrimination against Women
Article 3	• Women's Right to Exercise and Enjoyment of Human Rights and Fundamental Freedoms
Article 4	• Affirmative Actions for Women
Article 5	• Modifying Social and Cultural Patterns perpetuating Sex-Role Stereotyping and Prejudice
Article 6	• Suppressing all forms of Trafficking in Women and Exploitation of Prostitution
Article 7	• Elimination of Discrimination against Women in Political and Public Life
Article 8	• Elimination of Discrimination against Women in Opportunities to Represent their Governments
Article 9	• Equal Rights to Women with regards to Nationality
Article 10	• Equal Rights to Women with regards to Education
Article 11 (1)	• Elimination of Discrimination against Women in the Field of Employment including Equal Remuneration
Article 11 (2)	• Maternity Benefits and Rights
Article 12	• Elimination of Discrimination against Women in the Field of Health Care and Access to Health Care
Article 13	• Elimination of Discrimination against Women in other areas of Economic and Social Life
Article 14	• Obligation on State Parties to Ensure Application of the Convention to Rural Women
Article 15	• Elimination of Discriminatory Laws against Women
Article 16	• Elimination of Discrimination against Women in matters related to Marriage and Family

The United Nations Concluding Observations on the core Human Rights Treaties ratified by Pakistan present an overall theme of Pakistan's ERAW related laws in the international context. Some of the notable Concluding Observations put forward by the CEDAW Committee to the State of Pakistan include the following:

1. *"To include in its Constitution and/ or in other relevant legislation provisions prohibiting all forms of direct and indirect discrimination against women, including sanctions, in line with article 1 of the Convention (and in line with article 25 of the Constitution), and repeal all discriminatory laws;*
2. *To adopt without delay pending bills, such as the Domestic Violence Bill and the Prevention and Control of Women Trafficking Bill; and design strategies to overcome obstacles to their adoption, including through the sensitization of parliamentarians and members of the Council of Islamic Ideology on women's rights;*
3. *To ensure the effective enforcement of existing legislation aimed at protecting women and at eliminating discrimination against them, such as the Prevention of Anti-Women Practices Act (2011);*
4. *To take measures to establish a unified judicial system, to eliminate all parallel legal systems and informal dispute resolution mechanisms which discriminate against women and to sensitize the public on the importance of addressing violations of women's rights through judicial remedies rather than parallel justice systems;*
5. *To provide systematic training to judges, prosecutors and lawyers on women's rights, including on the Convention, the Optional Protocol thereto and all relevant domestic legislation for women; ensure the provision of free legal aid services; implement legal literacy programmes; and increase the awareness of women and girls of all legal remedies available to them;*
6. *To ensure that the National Commission on the Status of Women has adequate human, technical and financial resources to fulfil its mandate, including by establishing provincial commissions on the status of women and by ensuring that its recommendations on legislation, policies and programmes are considered without delay by the relevant governmental body;*
7. *To ensure consistency in the allocation and implementation of quotas aimed at accelerating equality between women and men across the provinces, in particular the civil service employment quotas, and use other temporary special measures as part of a necessary strategy to achieve women's substantive equality in fields such as political participation, health, education and employment, with a focus on women belonging to minority communities;*

8. *To strengthen support services for victims of violence, such as counselling and rehabilitation services, both medical and psychological; increase the number of shelters to ensure the implementation of the standard operating procedures for the treatment of victims in all provinces;*
9. *To take appropriate measures to ensure the collection of disaggregated data on all forms of violence against women, including domestic violence, by the Gender Crime Cell;*
10. *To conduct research on the prevalence of internal and international trafficking, including its scope, extent, causes, consequences and purposes, as well as its potential link with bonded labour, domestic servitude and child marriage;*
11. *To strengthen mechanisms for the investigation, prosecution and punishment of trafficking offenders and support services for victims;*
12. *To adopt measures for the rehabilitation and social integration of victims of forced prostitution;*
13. *To establish a procedure for filing complaints in cases of forced disenfranchisement of women and adopt the draft bill submitted by the Election Commission of Pakistan, advocating re-polling where less than 10 per cent of women's votes were polled;*
14. *To adopt the Hindu Marriage Bill, the Christian Marriage (Amendment) Bill and the Christian Divorce Amendment Bill;*
15. *To revise the Dissolution of Muslim Marriages Act (1939) with the aim to repeal discriminatory provisions against women; and to amend the relevant legislation to raise the minimum age of marriage for girls to 18.”²¹*

The salient United Nations Concluding Observations to the State of Pakistan put forward by the Human Rights Committee include the following:

1. *“Expedite the adoption of laws relating to violence against women that are under consideration at the federal and provincial levels and ensure they comply with international human rights standards;*
2. *Effectively enforce the anti-honour killings and anti-rape laws and other relevant laws criminalizing violence against women and domestic violence, and monitor their enforcement throughout the territory;*
3. *Enforce the prohibition of the application of Qisas and Diyat laws to so- called honour-related crimes and continue to regulate and supervise the tribal councils;*

4. *Encourage the reporting of violence against women, inter alia by informing women of their rights as well as the legal and other services that exist through which they can receive protection and compensation;*
5. *Ensure that cases of violence against women and domestic violence are promptly and thoroughly investigated and that perpetrators prosecuted and, if convicted, punished with penalties commensurate with the gravity of the offences;*
6. *Ensure that victims receive the necessary legal, medical, financial and psychological support and have access to effective remedies and means of protection;*
7. *Ensure that judges, prosecutors and law enforcement authorities continue to receive appropriate training that equips them to deal with cases of violence against women and domestic violence effectively and in a gender-sensitive manner; and increase the number of female police officers and specialized units dealing with such cases to an adequate level.”²²*

The UN Committee on the Rights of the Child has reiterated the need to eliminate harmful practices against women and children as well as protect them from honour crimes.²³

While implementation on Pakistan’s international commitments is an ongoing process, the need to implement these rights within Pakistan’s domestic laws has been a constant recommendation. It is also important to note that many of these recommendations are either in the process of implementation or have already been implemented. For example, as per the recommendations of the CEDAW Committee, the Prevention and Control of Women Trafficking Act 2018 and Hindu Marriage Act 2017 have been promulgated. Furthermore, the Sindh Commission on the Status of Women has been established whereas the Balochistan Government is, at the time of this report, in the process of constituting the province’s Commission as per the Balochistan Commission on the Status of Women Act 2017.

With regard to women’s political participation, according to the Election Act 2017 *‘if the turnout of women voters is less than ten percent of the total votes polled in a constituency, the Commission may presume that the women voters have been restrained through an agreement from casting their votes and may declare, polling at one or more polling stations or election in the whole constituency, void,’²⁴* thereby implementing CEDAW Committee recommendation regarding political participation of women.

Another major achievement in implementation of CEDAW Committee’s recommendation is the judgment of the Supreme Court of Pakistan in National Commission on the Status of

Women and Others Versus Government of Pakistan and Others dated: 31.12.2018 in which it has been held:

“the operation of jirgas/ panchayats etc. violates Pakistan’s international commitments under the UDHR, ICCPR and CEDAW which place a responsibility on the State of Pakistan to ensure that everyone has access to courts or tribunals, are treated equally before the law and in all stages of procedure in courts and tribunals... the manner in which jirgas/ panchayats etc. function is violative of Articles 4, 8, 10-A, 25 and 175(3) of the Constitution.”²⁵

The current context of Pakistan’s ERAW legislation within international context is best summed by the European Union GSP Plus Report to the European Parliament and Council:

“There have been positive developments in strengthening the human rights framework and legislative actions on the rights of women, children, minorities and labour rights, with legislation on, inter alia, torture, juvenile justice and transgender rights in the pipeline. However, these areas, as well as the use of torture, application of the death penalty, high prevalence of child labour and freedom of expression pose serious concerns. The overall human rights situation is therefore mixed and Pakistan must step-up its efforts to ensure enforcement and implementation of legislation.”²⁶

In light of the above international framework and recommendations, this Gap Analysis builds upon the themes of women rights and protection against violence presented in the Convention on Elimination of All Forms of Discrimination against Women (Table 1) as well as Goal 5: ‘Achieve Gender Equality and Empower all Women and Girls’ of the Sustainable Development Goals (Table 2) and other relevant international human rights instruments.

Table 2: SDG Goal 5 – Gender Equality

5.1: End all forms of discrimination against all women and girls everywhere

5.2: Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation

5.3: Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation

5.4: Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate

5.5: Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life

5.6: Ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences

5.a: Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws

5.b: Enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women

5.c: Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels

6. SINDH EVAW LAWS

This section analyses the normative and implementation gaps in the current legal framework of Sindh in relation to EVAW laws and other gender-based crimes. This analysis will allow greater clarity and enunciation in understanding the gender dynamics of VAW/ GBV crimes and the gaps that still exist both in terms of definition of laws as well as the implementation status.

6.1 ACID AND BURN CRIMES

While the criminal law legislation stipulating harsher punishments for acid and burn crimes was promulgated in 2011, a comprehensive special legislation to address medical attention, rehabilitation and reintegration of acid and burn survivors back into society is much needed. The comprehensive special legislation corresponding with relevant provisions of the Code of Criminal Procedure, 1898 and Pakistan Penal Code, 1860 is necessary to provide urgent medical care to acid and burn survivors; counsel and rehabilitate acid and burn survivors in light of their renewed reality; and reintegrate survivors back into society through counselling, skill development and empowerment.

Another caveat of a special comprehensive legislation would require regulation of the sale and distribution of acid and other corrosive substances in an effort to curb acid and burn violence.

Sr. No.	Gaps	Recommendations
Normative Gap		
1.	Absence of a comprehensive special legislation to mandate medical attention, rehabilitation and reintegration of acid and burn survivors	Promulgation of a special comprehensive legislation to mandate medical attention, rehabilitation and reintegration of acid and burn survivors
Implementation Gaps		
1.	Lack of strict punishment for unauthorised and illegal possession and sale of acid and corrosive substances	Amendment in section 6 of the Poisons Act 1919 to stipulate harsher punishments for possession and sale of acid and corrosive substances
2.	Absence of notified Rules under the Poisons Act 1919 to regulate the	Notification of Rules under the Poisons Act 1919 by the Government to regulate

	possession and sale of acid and other corrosive substances	possession and sale of acid and other corrosive substances
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6.2 RAPE (EVIDENCE AND PROCEDURE FOR SINDH)

The Code of Criminal Procedure (Sindh Amendment) Act, 2017 amends the Code of Criminal Procedure, 1898 to include the following:

- Mandatory DNA testing of rape victims to be conducted by a Police Officer through laboratories recognised by the Government of Sindh;²⁷
- DNA sample to be collected from the raped victim within 72 hours from the incident;²⁸
- DNA sample to be preserved in privacy in the hospital or Forensic Lab;²⁹
- Record of all DNA sample and DNA testing results to be maintained in Central Police Office in confidentiality and under the control of an officer not below the rank of an BS-19.³⁰

The following gaps have been highlighted with regards to implementation of this criminal amendment:

Sr. No.	Gaps	Recommendations
Implementation Gaps		
1.	Absence of Standard Operating Procedures (SOPs) to ensure cohesiveness between justice sector actors (Police, MLOs etc) in order to implement the law	Formulation and notification of Standard Operating Procedures (SOPs) for Police, Investigating Officers, MLOs, Forensic Lab Technicians etc to ensure coordination and implementation of the law
2.	Lack of sensitisation and capacity of justice sector actors (Police, MLOs etc) to implement the new provisions	Capacity building and sensitisation of justice sector actors including, but not limited to, Police, Investigating Officers, MLOs, Forensic Lab Technicians etc, to ensure implementation of the law

6.3 CHILD MARRIAGE

The Sindh Assembly on 28th April 2014 promulgated the Sindh Child Marriage Restraint Act, 2013 whereby declaring marriage below the age of eighteen years punishable.³¹ The law also punishes parents and guardians purporting to get their children married before attaining the age of eighteen years. The punishment for child marriage under the law is rigorous

punishment, which may extend to three years but shall not be less than two years and a fine.³² An offence punishable under this Act is now cognisable, non-bailable and non-compoundable.³³ The jurisdiction to try the case is with the Judicial Magistrate. The court also has power to issue an injunction to prevent a child marriage.³⁴

The Sindh Child Marriages Restraint Rules 2016 have also been notified under section 10 of the Act. The Rules elaborate upon mechanisms to: verify age of parties to a marriage; file complaint in case of child marriage; rescue, custody and special procedures for victims of child marriages; monitor cases of child marriages through district and provincial committees. However, by addressing the following gaps, implementation can be strengthened.

Sr. No.	Gaps	Recommendations
Implementation Gaps		
1.	Child marriages are punishable but not void	The law should be amended to provide mechanisms for dissolution of child marriages
2.	Lack of implementation of Sindh Child Marriages Restraint Rules 2016 to set up referral and protection mechanisms for victims of child marriages	Sindh Child Marriages Restraint Rules 2016 to be implemented to ensure a cohesive referral and protection mechanism for victims of child marriages

6.4 DOMESTIC VIOLENCE

The Sindh Domestic Violence (Prevention and Protection) Act, 2013 is a comprehensive law that provides a grievance redressal mechanism to women and sets up institutions to protect the rights of women in the private and public sphere. The salient features of the law include:

1. The new law criminalises violence including domestic violence and has adopted a wide definition to include “assault”, “criminal force”, “criminal intimidation”, “economic abuse”, “harassment”, “hurt”, “mischief”, “physical abuse”, “stalking”, “sexual abuse”, “verbal and emotional abuse”, “wilful or negligent abandonment” and “wrongful confinement.”³⁵
2. The aggrieved person includes any “woman, child, man or any vulnerable person who is or has been in a domestic relationship with the accused and who alleges to have been subjected to any act of domestic violence by the accused.”³⁶

3. Any person aggrieved of violence can approach the Court for an interim order, protection order, monetary order and/ or residence order to be passed in their favour.³⁷
4. Breach of court order by the accused shall constitutes an offence. Breaching a Court order can be punished with “imprisonment which may extend to one year or with fine which may not be less than twenty thousand rupees.”³⁸

The law also requires certain institutions, like Protection Committees and Protection Officers, to be established and notified in order to implement the law. Domestic Violence (Prevention and Protection) Rules 2016 have also been notified to elaborate upon the mechanisms and institutions in the primary law for effective redressal in complaints of domestic violence.

Sr. No.	Gaps	Recommendations
Implementation Gaps		
1.	Absence of Protection Officers in across Sindh to facilitate implementation of the law	Appointment of Protection Officers as per section 21 of the Act of 2013
2.	Absence of Protection Committees across Sindh to monitor and facilitate implementation of the Act of 2013	Constitution and notification of Protection Committees as per section 17 of the Act of 2013
3.	Lack of awareness and sensitisation of law enforcement agencies, legal fraternity and the judiciary to implement the Act of 2013 in letter and spirit	Awareness and sensitisation of law enforcement agencies, legal fraternity and the judiciary to implement the Act of 2013

6.5 SEXUAL HARASSMENT AT THE WORKPLACE

The Protection against Harassment of Women at the Workplace Act 2010 (PAHWA) was promulgated as a special law to address complaints of sexual harassment at the workplace. The law provides a comprehensive framework for protection from sexual harassment at the workplace with some unique features:

1. The legislation adopts a three-pronged definition of sexual harassment, which includes abuse of authority; creating a hostile environment; and retaliation. Acts of retaliation subsequent to refusal to comply with sexual favours also constitutes sexual harassment under the law.³⁹ Therefore, all facets of the issue of sexual harassment are covered in the law.

2. Women as well as men can file complaints of sexual harassment under the law.⁴⁰
3. The legislation provides a framework for deliberating complaints of sexual harassment within the organisations. It provides a code of conduct to be visibly displayed in all places of employment and stipulates that a three-member committee should be set up to deal with complaints. These mechanisms should incentivise employers and organisations to internally respond to complaints of sexual harassment in order to protect their workplace reputation from outside scrutiny.⁴¹
4. The law calls for the establishment of the Offices of the Ombudsman as the original and appellate forum for cases of sexual harassment. In workplace environments where huge power disparity exists between the complainants and the accused (for example where the accused is part of the management); complaints of sexual harassment can be directly submitted to the Office of the Ombudsman.⁴²
5. The last forum for cases of sexual harassment is the President at the federal level and Governor at the provincial level.⁴³ Therefore, the legislative framework in the Act provides mechanisms to deal with complaints at forums independent of the mainstream judiciary.

Civil Society has also played an active role in the implementation of this law. Mehergarh, previously Secretariat of AASHA (Alliance Against Sexual Harassment), has been leading the implementation of the anti-sexual harassment laws and has advised and facilitated in almost 4,000 cases of sexual harassment across Pakistan. It has also conducted scores of trainings and awareness sessions across Pakistan and facilitated hundreds of organisations (public, private and civil society) to effectively comply with the law.

With the efforts of committed civil society organisations, deterrence against sexual harassment has become part of the evolving jurisprudence of Pakistan as well. In a recent judgment by the Lahore High Court, the jurisdiction of the Federal Ombudsman has also been widened to accommodate the post 18th amendment context. In *Imran Maqbool versus Federal of Pakistan* W.P No. 71556 of 2017 dated 28-09-2018, the Honourable Justice Ayesha A. Malik held that:

*'Under the circumstances, we hold that if the employer or organisation and its workplace falls strictly within the territorial boundaries of the Provincial Ombudsman, then jurisdiction vests with the Provincial Ombudsman and where the employer or organisation transcends provincial boundaries such as in this case then jurisdiction vests with the Federal Ombudsman. To clarify we add that for reasons stated herein we disagree with the findings in the Salim Javed case that the Federal Ombudsman jurisdiction is limited to the federal capital area as the Federal Ombudsman is competent to hear complaints related to trans-provincial organisations, institutions, employers and workplace.'*⁴⁴

Therefore, the landmark judgment of the Lahore High Court has clearly stipulated the jurisdictional boundaries of the Federal Ombudsman which includes trans-provincial organisations other than organisations operating in the federal capital.

Furthermore, Justice Jawad Hassan of the Lahore High Court in Asif Saleem versus Chairman BOG University of Lahore, Writ Petition No: 28791 of 2019, clarified that the applicability of the law is not confined to employer/ employee relationship in the following words:

“Moreover, this Act is not confined only to the relationship of an employer and employee; but it extends to all acts of sexual harassment committed by employer or employee with any women (at the workplace) by misusing/ exploiting his/ her official position/ capacity. As in the instant case, the Petitioner/ teacher/ employee used his official position to sexually exploit his female student. The intention of the legislature for enacting the Act to protect all employees from being harassed or exploited during employment which can be at the workplace or any environment as specified in their terms and conditions of the employment.

... The preamble of the Act clearly states that it has been made for the protection against harassment of women at the workplace. It also reflects that the Constitution recognizes the fundamental right of citizens to dignity of person. It is the right of every woman in Pakistan to be recognized and has equal protection of law.”

Sr. No.	Gaps	Recommendations
Normative Gaps		
1.	Complainant is defined in PAHWA to include both men and women which is restrictive as it does not include transgender or inter-sex persons	Amendment in section 2(e) of PAHWA to delete ‘man’ and ‘woman’ and replace the terms with ‘persons’ to include all genders
2.	Ambiguity regarding application of the law to former employees	Amendment in PAHWA to clearly stipulate application of the law to former employees seeking to file their grievances of harassment
Implementation Gap		
1.	Absence of Rules to elaborate upon functions of the law	Drafting and notification of Rules to elaborate functions of the law for effective implementation

6.6 DOWRY RELATED VIOLENCE

Dowry is a social norm in most South Asian countries, and by way of custom, has become constitutive of most marriage contracts in Pakistan. Dowry in Pakistan's context is defined as transfer of parental property, gifts or money at the time of marriage of their daughter. However, it has caused severe social and economic burdens on the bride and her family.

*'What began as a custom to protect and provide for women has grown into being a burden on poorer families as they could not afford to give what a suitable husband or his family might demand, and now compromises the treatment of women.'*⁴⁵

Whereas, dowry-related violence is defined as 'any act of violence or harassment associated with the giving or receiving of dowry at any time before, during or after the marriage,'⁴⁶ dowry is a multi-faceted, deep-rooted gender issue with social, economic and health consequences.⁴⁷ Dowry-related violence is often neglected in the classist society of Pakistan where elite positioned as decision makers fail to comprehend the ramifications of this violence, particularly on poor and vulnerable families.

The Dowry and Bridal Gifts (Restriction) Act 1976 seeks to regulate the practice of dowry and imposes penalties of six-month imprisonment and ten thousand rupees fine in case of violation.⁴⁸ The law, however, is not a criminal one and therefore does not criminalise the offence nor does it recognise the violence that may stem from the giving and taking of dowry. Furthermore, the current legal provisions in the Act fail to take into account the power disparity between the groom's and bride's families in Pakistani society and how this impacts dowry related decisions during marriages.

Sr. No.	Gap	Recommendation
Implementation Gap		
1.	Lack of strict punishments in law to curb practice of dowry	Amendment in the Dowry and Bridal Gifts (Restriction) Act 1976 to stipulate harsher punishments for excessive dowry demands and the violence resulting from it

7. SINDH LAWS RELATED TO DISCRIMINATION & WOMEN'S RIGHTS

The analysis of provincial laws related to discrimination and women rights outlines the legal position of certain women rights in the current overall federal legal framework of Sindh. In this regard, normative and implementation legal gaps related to women's rights have been explored in detail below.

7.1 CHILD DOMESTIC WORKERS

The Sindh Prohibition of Employment of Children Act 2017 prohibits employment of children below the age of 14 years⁴⁹ but allows light work for children above the age of 14 years and below the age of eighteen years.⁵⁰ However, it has been argued that involving children below the age of eighteen years in domestic work, even for light work, is hazardous and that domestic work should be classified as hazardous work for children. This is because when a child is employed within the private domestic sphere, it increases his or her vulnerability and susceptibility to violence. It is also very difficult to monitor domestic settings to establish potential exploitation, maltreatment, neglect and violence against a child worker.⁵¹

Sr. No.	Gap	Recommendation
Normative Gap		
1.	Absence of a law that prohibits involvement of children below the age of eighteen years in domestic work	Amendment in the Sindh Prohibition of Employment of Children Act 2017 to prohibit involvement of children below the age of eighteen years in domestic work Notification under section 2(viii) of the Sindh Prohibition of Employment of Children Act 2017 to declare domestic work as 'hazardous'

7.2 HOME-BASED WORKERS

Sindh is the first province to promulgate the Sindh Home Based Workers Act, 2018. The law seeks to extend labour rights like social benefits and grants to home based workers who fall outside of the traditional definition of 'worker' as per labour laws. The Act defines 'home based workers' as:

“Home Bases Worker” means any person indulge in production and manufacturing of goods and rendering of services in relation ancillary thereto in the home premises or nearby premises, garage or any other place near the home while working in connection

*with the work of any Industry, establishment, undertaking or commercial establishment or any place of his choice for hire or reward or remuneration either directly or through a contractor or sub-contractor or intermediary whether the terms of employment be express or implied;*⁵²

The law also vests original jurisdiction in Arbitration Committees⁵³ with regards to disputes and vests appellate jurisdiction in the Labour Courts constituted as per the Sindh Industrial Relations Act 2013 to cover the provisions of this law.⁵⁴ By extending such labour rights to home based workers, the law ensures that home based workers are able to avail all the rights given to formal labour.

Sr. No.	Gaps	Recommendations
Implementation Gaps		
1.	Absence of Rules as per section 14 of the Act	Drafting and notification of Rules as per section 14 of the Act
2.	Absence of Arbitration Committees to adjudicate upon disputes of home-based workers	Constitution and notification of Arbitration Committee as per section 10 of the Act

7.3 DOMESTIC WORKERS

Currently, there is no law in place in Sindh to govern the rights of domestic workers as they are part of the informal economy. These workers do not therefore fall within the formal definition of labour. In this regard, firstly, the definition of labour or worker needs to be expanded to include domestic workers. Secondly, institutions need to be set up to register domestic workers and extend the rights provided in labour laws to include Employees Old Age Benefits, Workers Welfare Fund, Social Security to domestic workers as well. In this regard, the following gaps have been highlighted:

Sr. No.	Gaps	Recommendations
Normative Gap		
1.	Absence of a comprehensive law to recognise and govern the labour rights of domestic workers	Drafting and promulgation of a labour law for domestic workers

7.4 MUSLIM FAMILY LAWS

The Muslim Family Law Ordinance, 1961 and Family Courts Act, 1964 grants substantial rights to women in Sindh; however, the same need to be amended in order to further enhance, protect and promote the rights of women within family law. In this regard, the following gaps have been highlighted:

Sr. No.	Gaps	Recommendations
Normative Gaps		
1.	Inadequate law to deter and regulate polygamy	Amendment in section 6 of the Muslim Family Law Ordinance, 1961 to stipulate harsher punishments for polygamy without due process
2.	Inadequate law to mandate registration of marriages	Amendment in section 5 of the Muslim Family Law Ordinance, 1961, stipulating harsher punishments to mandate registration of marriages
3.	Lack of law protecting a woman's entitlement to dower if she seeks khula	Amendment in Family Courts Act, 1964 to grant women the right to retain full or partial dower in case of khula ⁵⁵

7.5 CHRISTIAN MARRIAGE LAWS

Christian marriages are governed by the Christian Marriage Act 1872 and Divorce Act 1869; these laws govern the marriage rights of 1.59% of the population in the country.⁵⁶ From the perspective of women rights, the laws reveal major loopholes and gaps with regards to equality in marriage for men and women. The law defines minor as 'a person who has not completed the age of twenty-one years;'⁵⁷ while also defining the process of marrying a minor under the law, which requires consent of parents or guardian.⁵⁸ This proves problematic as any girl below the age of twenty-one is considered a minor and can be married off with the consent of her parents. Furthermore, the Divorce Act 1869 provides limited grounds for dissolution of marriage between the parties. In the case of husbands, the grounds for dissolution of marriage include adultery on the part of wife.⁵⁹ Whereas in case of the wife, the grounds for dissolution of marriage include conversion of husband to another religion, incestuous adultery, bigamy, adultery, rape, sodomy, bestiality, adultery coupled with cruelty and adultery coupled with desertion.⁶⁰ Furthermore, the law requires the husband seeking

dissolution of marriage to make the alleged adulterer a co-respondent to the petition subject to only very limited exceptions.⁶¹

Important to note is the recent development in Ameen Masih versus Federation of Pakistan & Others, Writ Petition No. 623/ 2016 where the petitioner, a Christian citizen of Pakistan sought to divorce his wife due to irretrievable breakdown of his marriage rather than adultery. The Petitioner argued that the repealed section 7 of the Divorce Act 1869, additional grounds were available to him, but the section was repealed by Federal Laws (Revision & Declaration) Ordinance, 1981 during the time of General Zia-ul-Haq. The petitioner prayed for the repealing provision of Federal Laws (Revision & Declaration) Ordinance, 1981 to be declared unconstitutional as it violated his fundamental rights under the Constitution of Pakistan. In this regard, Chief Justice Syed Mansoor Ali Shah held:

“...Item 7(2) of the Second Schedule to Federal Laws (Revision & Declaration) Ordinance, 1981 (XXVII of 1981) promulgated on 08-7-1981 is declared to be unconstitutional and illegal being in violation of the minority rights guaranteed under the constitution to the petitioner and the Christians in Pakistan. As a result, section 7 of Divorce Act, 1869 is restored, in the manner it stood in the year 1981, making available to the Christians of Pakistan the relief based on the principles and rules of divorce under UK Matrimonial Causes Act, 1973.

“Restored section 7 is to be read harmoniously with Section 10 of the Act. This means that grounds of divorce on the basis of adultery are available and anyone who wishes to invoke them is free to do so, but for those who wish to seek divorce on the ground of irretrievable breakdown of marriage, they can rely on section 7 of the Act and avail of the additional grounds of divorce available under the Matrimonial Causes Act, 1973 (UK), which will be available to the Christians in Pakistan and will be enforceable in Pakistan.”

The judgment of the Lahore High Court is a landmark judgment enhancing marriage rights of the Christian community. However, with regards to the marriage laws of the Christian community, the following gaps have been highlighted:

Sr. No.	Gaps	Recommendations
Normative Gaps		
1.	Absence of a clear definition of minor and marriageable age in the law	Amendment in the Christian Marriage Act 1872 to properly define a “minor” and “marriageable age” for Christian marriages whilst also ensuring

		that children below the age of eighteen years are not married off by parents or guardians
2.	Absence of a contemporary law that would simplify dissolution of marriage processes for Christians	Amendment in the Divorce Act 1869 to allow Christian couples, both the husband and wife, to petition for dissolution of marriage in a manner that does not place on either party the requirement of a list of allegations and an arduous burden of proof against the other party
3.	Absence of a statutory provision to restore section 7 of the Divorce Act 1869	Statutory amendment to restore section 7 of the Divorce Act 1869 to give force to the Lahore High Court Judgement

7.6 HINDU MARRIAGE LAW

The object of the Sindh Hindu Marriage Act 2016 is to register and regulate Hindu marriages. This Act is applicable to *'any person who practices the Hindu, Jain or Sikh religions in any of the forms or developments.'*⁶² The law stipulates the conditions for Hindu marriage which include:

- Parties to the marriage are of 18 years of age or above;
- Parties to the marriage are able to give consent;
- Parties to the marriage give free consent;
- Parties are not within the prohibited degree of relationship;
- Neither of the parties to the marriage has a spouse living at the time of marriage; and
- At least two witnesses are present at the time of the solemnisation and registration of marriage.⁶³

The law provides for registration⁶⁴ and manner of registration⁶⁵ for Hindu marriages. Furthermore, Sindh Hindu Marriage Registration Rules 2017, elaborate upon the register of marriages to be maintained by local government for record purposes.

The Sindh Hindus Marriage (Amendment) Act 2018 amends the 2016 Act to grant greater rights to parties to a Hindu marriage. The amending Act of 2018 provides for grounds for petitioning termination of a Hindu marriage; financial security of wife and children; termination of Hindu marriage by mutual consent; right to remarry of Hindu widows; and legitimacy of children born out of void Hindu marriages. The amending Act of 2018 is a further

improvement which substantiates a comprehensive framework for Hindu marriages in the province.

Sr. No.	Gap	Recommendation
Implementation Gap		
1.	Lack of sensitisation and awareness amongst law enforcement agencies, legal fraternity, judiciary and local government representatives regarding the Act	Sensitisation and awareness of law enforcement agencies, legal fraternity, judiciary and local government representatives regarding the Act

7.7 WOMEN WITH DIFFERENT CAPABILITIES

The Sindh Assembly promulgated the Sindh Empowerment of Persons with Disabilities Act 2018 to enhance the rights of persons with disabilities in the province. The law is a comprehensive and detailed framework for the rights of persons with disabilities. Salient rights and issues addressed in the law include:

- Mandating the government to ensure equality and non-discrimination for persons with disabilities;⁶⁶
- Ensuring right to privacy of persons with disabilities and protecting them from arbitrary or unlawful interference;⁶⁷
- Obliging government to adopt special measures for women, children and elderly persons of disabilities owing to the multiple discrimination and marginalisation faced by them;⁶⁸
- Improving access to public buildings by implementing the Accessibility Code of Pakistan 2006 in the province;⁶⁹
- Protection from torture,⁷⁰ exploitation, violence and abuse;⁷¹
- Ensuring access to education,⁷² health, rehabilitation services,⁷³ skills development and employment (including 5% employment quota in public and private institutions);⁷⁴
- Right to political participation⁷⁵ and access to justice⁷⁶ for persons with disabilities;
- Constitution of a Provincial Advisory Council on Rights of Persons with Disabilities⁷⁷ as well as an Authority for Empowerment of Persons with Disabilities.⁷⁸

The legislation provides a comprehensive framework for ensuring the rights of persons with disabilities in line with the UN Convention on the Rights of Persons with Disabilities. However, the following gaps and recommendations can be addressed to strengthen implementation:

Sr. No.	Gaps	Recommendations
Normative Gap		
1.	Absence of gender disaggregated employment quota to mainstream women with disabilities	Amendment in section 11 of the Sindh Empowerment of Persons with Disabilities Act 2018 to provide for gender disaggregated quota for women with disabilities
Implementations Gaps		
1.	Absence of the Authority for Empowerment of Persons with Disabilities	Constitution and notification of the Authority for Empowerment of Persons with Disabilities
2.	Absence of Rules under the Act to facilitate implementation	Drafting and notification of Rules under the Act for effective implementation

7.8 MATERNITY BENEFITS

The Sindh Maternity Benefits Act, 2018 provides for mandatory maternity leave to a working woman during pregnancy including four weeks before the expected date of delivery and twelve weeks after the delivery.⁷⁹ The law also provides that in case of a miscarriage, the woman is entitled to one week of paid leave; in case of still birth, the woman is entitled to four weeks of paid leave; and in case of premature delivery, the woman is entitled to sixteen weeks of paid leave.⁸⁰ Other rights granted to working women in the law include:

- Right to same amount of salary during the period of maternity leave;⁸¹
- In case of death, payment of maternal benefit, including 10% of the woman's monthly salary for the number of years she has worked for the organisation, to the legal heirs of the working woman;⁸²
- Nursing breaks;⁸³
- Day care facilities.⁸⁴

Sr. No.	Gaps	Recommendations
Implementation Gaps		
1.	The law fails to spell out a proper punishment for non-compliance	Amendment in section 11 of the Act to stipulate punishment in case of non-compliance
2.	Absence of Rules to carry out the purpose of the Act	Drafting and notification of Rules as per section 13 of the Act

7.9 GENDER PAY GAP

The Sindh Payment of Wages Act 2015 'seeks to regulate the payment of wages to certain classes of persons employed in factories, industrial and commercial establishments in the province of Sindh.'⁸⁵ The law addresses the issue of gender pay gap by interweaving non-discrimination in the following words:

'No discrimination shall be made on the basis of sex, religion, descent, tribe, political affiliation, sect, colour, caste, creed, ethnic background in considering and disposing off issues relating to the enforcement of this Act.'⁸⁶

Therefore, effective implementation of the law with the spirit of the above-mentioned provision can provide some relief to women workers facing issues of gender pay gap. However, lacunae noted with regards to gender pay gap include:

Sr. No.	Gap	Recommendation
Implementation Gaps		
1.	Absence of Rules to facilitate implementation of the law	Drafting and notification of Rules as per section 26 to facilitate implementation of the law
2.	Lack of awareness of the law for redressal by women workers facing discrimination in payment of wages	Awareness sessions with CBAs, labour unions, federations and confederations about the law to facilitate women workers for payment of wages

8. SINDH EVAW LAWS: MONITORING & INFORMATION GAPS

The Sindh Commission on the Status of Women Act 2015 has been promulgated by the Sindh Assembly and the Commission has been constituted and notified. The Commission operates as a monitoring body with one of its core functions to ‘examine the policy, programs and other measures taken by the Government to materialise gender equality, empowerment of women and their representation and political participation, assess implementation and make suitable recommendations to the concerned authorities’⁸⁷ as well as ‘monitor the mechanism and institutional procedure for redressal of violation of women’s rights.’⁸⁸ The Commission has been working actively in pursuance of its functions after its establishment in 2017.

Pakistan conducted its census after a gap of nineteen years which has also filled in wide gaps with regard to information. However, the census form was argued to be non-inclusive and various religions, genders and ethnicities was not disaggregated in the census form data.⁸⁹ Although the provisional result has been released, objections have been raised on the veracity of the data.

Certain governmental data portals exist which can be utilised to fill information gaps:

1. 2017 Census Results;⁹⁰
2. Labour Force Survey;⁹¹
3. Pakistan Demographic and Health Survey;⁹²
4. Pakistan Economic Survey;⁹³
5. Election Commission of Pakistan;⁹⁴
6. Sindh Police, Government of Sindh⁹⁵
7. Multiple Indicator Cluster Surveys, Sindh⁹⁶
8. Sindh Education Management Information System⁹⁷
9. Bureau of Statistics, Government of Sindh⁹⁸
10. Human Rights Commission of Pakistan⁹⁹

Most importantly, all the data portals listed above do not publish gender, age, ethnicity, religious etc disaggregated data for analysis. For example, the Sindh Police Crime Statistics do not extrapolate the number of murders committed against men, women or children, it only gives data regarding the number of murders committed. However, data from efficient portals like SEMIS can be analysed for evidence-based policy and legal advocacy.

9. CONCLUSION

The current gap analysis has presented a tripartite approach to analyse gaps at normative, implementation, monitoring and information levels. The purpose of the exercise has been to examine the issue of gender-based violence within the legal framework of Sindh. Furthermore, the Gap Analysis has been structured to analyse both laws related to Ending Violence against Women (EVAW) and some pertinent laws related to Discrimination and Women Rights followed by the monitoring and information gaps within these laws.

Analysis regarding normative gaps have included forms of gender-based violence which have not been criminalised or redressed in our legal system with particular attention to the definitions and interpretations apportioned by superior courts. Forms of GBV that have been inadequately defined in the law as well as discriminatory legal provisions depriving women and girls from the true enjoyment of their rights comprise a significant part of this analysis. The discussions and narratives in light of the evolving jurisprudence have been condensed into specific and concrete gaps followed by recommendations for making the legal system of Pakistan more responsive to the needs and rights of women by infusing a gender perspective in their access to justice.

For the implementation gaps regarding various EVAW related legislation, data has been sought from governmental and non-governmental partners working on the specific laws to highlight the extent of implementation as well as the challenges being faced. By referencing researches and obtaining information from key experts, gaps have been highlighted by the experts and organisations who are working on the implementation of EVAW laws and facilitating government agencies through the provision of technical and legal expertise. The aim has been to consolidate all available data to produce this comprehensive analysis. The Technical Consultative Workshop on EVAW Laws organised in Karachi with a participatory and facilitative approach further enriched this document with insights into the ground realities and status of implementation. Separate consultations and meetings with key stakeholders and experts also provided valuable inputs into the finalisation of this report. Subsuming these voices from Sindh in this analysis is a distinctive feature of the report, as compared to the various other analyses and researches produced on this topic.

The monitoring and information gaps highlight the mechanisms available to ensure implementation by a statutory body like the Sindh Commission on the Status of Women. The functions of the Commission to monitor and facilitate implementation have been highlighted as well as its mandate to harmonise Pakistan's domestic law with international commitments. The information gaps presented in the report hinge on the nineteen years lapse between censuses and the absence of collecting disaggregated data, resulting in a gaping hole in information available. Furthermore, the Sindh Commission on the Status of Women's Strategic Plan has been lauded as a cogent document guiding the Commission's interventions for the next three years. Credible governmental and non-governmental data portals are being

identified, and the data collected will feed into the next phases of the gap analysis: formulation of indicators for monitoring implementation of EAW laws.

Based on the tripartite approach above, major recommendations of the Gap Analysis include:

Sindh EAW Laws:

1. Notification of Rules under the Poisons Act 1919 by the Government to regulate possession and sale of acid and other corrosive substances;
2. Formulation and notification of Standard Operating Procedures (SOPs) for Police, Investigating Officers, MLOs, Forensic Lab Technicians etc to ensure coordination and implementation of the Code of Criminal Procedure (Sindh Amendment) Act, 2017;
3. Sindh Child Marriages Restraint Rules 2016 to be implemented to ensure a cohesive referral and protection mechanism for victims of child marriages;
4. Appointment of Protection Officers; constitution and notification of Protection Committees as per Sindh Domestic Violence (Prevention and Protection) Act, 2013;
5. Amendment in section 2(e) of PAHWA to delete 'man' and 'woman' and replace the terms with 'persons' to include all genders. Amendment in PAHWA to also clearly stipulate application of the law to former employees seeking to file their grievances of harassment;
6. Amendment in the Dowry and Bridal Gifts (Restriction) Act 1976 to stipulate harsher punishments for excessive dowry demands and the violence resulting from it.

Sindh Laws related to Discrimination and Women's Rights:

1. Amendment in the Sindh Prohibition of Employment of Children Act 2017 to prohibit involvement of children below the age of eighteen years in domestic work;
2. Drafting and notification of Rules as per section 14 of the Sindh Home Based Workers Act 2018;
3. Drafting and promulgation of a labour law for domestic workers;
4. Amendment in section 6 of the Muslim Family Law Ordinance, 1961 to stipulate harsher punishments for polygamy. Amendment in section 5 of the Muslim Family Law Ordinance, 1961, stipulating harsher punishments to mandate registration of marriages;
5. Amendment in Family Courts Act, 1964 to grant women the right to retain full or partial dower in case of khula;
6. Amendment in the Divorce Act 1869 to allow Christian couples, both the husband and wife, to petition for dissolution of marriage in a manner that does not place on either party the requirement of a list of allegations and an arduous burden of proof against the other party;
7. Sensitisation and awareness of law enforcement agencies, legal fraternity, judiciary and local government representatives regarding the Sindh Hindu Marriage Act 2016 and the rights given thereunder;

8. Amendment in section 11 of the Sindh Empowerment of Persons with Disabilities Act 2018 to provide for gender disaggregated quota for women with disabilities; and drafting and notification of Rules under the Act for effective implementation;
9. Amendment in section 11 of the Sindh Maternity Benefits Act 2018 to stipulate punishment in case of non-compliance;
10. Drafting and notification of Rules as per section 13 of the Sindh Maternity Benefits Act 2018;
11. Drafting and notification of Rules as per section 26 of Sindh Payment of Wages Act 2015 to facilitate implementation of the law.

Sindh EAW Laws - Monitoring and Information Gaps:

1. Formulation of indicators to track implementation of EAW laws by SCSW;
2. Development of a Gender Management Information System (GMIS) to track progress made on a yearly basis with regards to protection of women from violence;
3. Capacity building of SCSW on mechanisms to promote evidence based legal and policy advocacy.

The Gap Analysis on Laws related to Ending Violence against Women (EAW) is an analysis conducted with a holistic approach to map out gaps followed by concrete recommendations for legislators, government officials, civil society organisations and legal fraternity to not only ensure a legal framework that is responsive to issues of gender based violence but also strengthen existing institutional mechanisms to end violence against women.

ANNEX 1: FEDERAL LEGISLATION APPLICABLE IN SINDH

The Federal laws in this Annex are applicable in the provinces, and therefore also apply to the province of Sindh.

SYNOPSIS

Federal EAW Laws:

Various laws have been promulgated at federal level to criminalise acts of gender-based violence across Pakistan. In relation to the federal EAW laws, Honour Killing and the Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act 2016 reforms the legal concept of ‘fasad-fil-arz’ to include cases of honour killing. An implementation gap has been identified in this regard regarding discretion afforded to judges who not only need to be sensitised about the manifestations of honour killing but also ensure that perpetrators of honour killings do not go unpunished under the law. Female infanticide is a grave reality in Pakistan, however, normative gaps were exposed highlighting how the current legal provisions in Pakistan Penal Code 1860 fail reporting and prosecuting cases of female infanticide. With regards to acid and burn crimes, the Criminal Law (Second Amendment) Act 2011 has resulted in a decrease in acid and burn crimes in Pakistan, however, sensitisation of law enforcement agencies is still required to ensure that the correct provisions of Pakistan Penal Code 1860 are inserted in FIRs for effective prosecution. The Prevention of Trafficking in Persons Act 2018 is a milestone legislation that exonerates any criminal liability of victims of trafficking in Pakistan. A major implementation gap existed with regards to the lack of sensitisation of law enforcement agencies to understand absence of consent on part of victims of trafficking and to facilitate victims for effective prosecution of human traffickers.

Normative gaps regarding the definition rape in Pakistani law reveal that there is an assumption under the law that only girls and women can be victims of rape and the same provisions cannot be applied to transwomen, boys and men who are raped. The legal definition of rape in Pakistan also excludes anal, oral or object rape with the law only applying to vaginal penetration as per judicial precedents. While the Criminal Law (Amendment) (Offences Relating to Rape) Act 2016 has sought to reform procedural and evidentiary aspects of sexual offences, major implementation gaps include lack of standard operating protocols as per the 2016 amendments for Medical Legal Officers as well as law enforcement agencies to facilitate investigation and collection of forensic evidence for rape cases. Anachronistic definitions exist with regards to sexual violence in law with majority of the provisions excluding transwomen, boys and men as victims of sexual violence. These normative gaps call for a reform of jurisprudence and criminal law in respect of rape and sexual violence in Pakistan.

Furthermore, implementation of the Criminal Law (Third Amendment) Act 2011 criminalising customary practices against women and girls has been weak due to lack of sensitisation of law enforcement agencies. Dowry is a common social practice in Pakistan which may manifest into the worst kinds of violence against women, yet criminal provisions are non-existent to prosecute cases of dowry-related violence. Despite cases of necrophilia in Pakistan, no criminal legislation exists to prosecute and punish such practices desecrating graves and dead bodies. Prevention of Electronic Crimes Act (PECA) 2016 is a comprehensive law to address digital and electronic crimes against women and girls, however, implementation gaps of the law include lack of technical human resource and lack of sensitisation on the part of FIA.

Federal Laws related to Discrimination and Women's Rights:

In respect of discrimination and women's rights, at federal level, a discriminatory provision exists under Article 17 of the Qanun-e-Shahadat Order, 1984 which requires witnessing and attestation by two women against one man in matters related to future and financial obligations. Furthermore, the Citizenship Act 1951 also discriminates against women by not including any provisions for a female citizen of Pakistan to transfer her nationality to her foreigner husband.

FEDERAL EVAW LAWS

HONOUR KILLING

The Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act 2016 seeks to restrict the option of compoundability in cases of honour killing. Firstly, the amendment reforms the concept of '*fasad-fil-arz*' to include offences committed in the name and pretext of honour¹⁰⁰. The amendment gives powers to the court to punish an offender of honour killing with death or imprisonment where the concept of *fasad-fil-arz* is applicable.¹⁰¹ *Fasad-fil-arz*, otherwise known as aggravated circumstances, is described in the Penal Code as "the past conduct of the offender, or whether he has any previous convictions, or the brutal or shocking manner in which the offence has been committed which is outrageous to the public conscience, or if the offender is considered a potential danger to the community of if the offence has been committed in the name or on the pretext of honour."¹⁰² Therefore, courts been given greater powers to look into the facts and circumstances of a murder when committed in the name of honour and have more discretion to attract the provision of *fasad-fil-arz*. The 2016 amendments to the law state that if the provision of *fasad-fil-arz* has been attracted then the judge will have no choice but to sentence the accused to death or imprisonment for life.

Furthermore, the Federal Shariat Court has reiterated the above and stated:

*"Said section [311] started with the word "notwithstanding anything contained in section 309 or 310" pertaining to waiver of Qisas in Qatl-e-amd and compounding of Qisas in qatl-e-amd and by authorising the court to award, inter alia, even death sentence to such a culprit [of honour killing] despite the waiver of or compounding the right to Qisas by adult sane Wali"*¹⁰³

Sr. No.	Gaps	Recommendations
Implementation Gaps		
1.	Lack of awareness amongst legal fraternity and judiciary regarding the new criminal amendment in order to implement it	Awareness-raising of legal fraternity and judiciary regarding the 2016 criminal amendment to ensure implementation of the ' <i>fasad-fil-arz</i> ' provision to be applied in cases of honour killing
2.	Jurisdiction of honour crimes vested with ordinary courts ¹⁰⁴ whereas they were formerly entertained by anti-terrorism courts ¹⁰⁵	Jurisdiction of honour crimes to be vested with anti-terrorism courts owing to the nature of the crime thereby making the

		offence non-bailable, cognisable and non-compoundable
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FEMALE INFANTICIDE

Female infanticide is a reality in Pakistan which has often been highlighted through the social work of Edhi Foundation. According to estimates, in the year 2010, 1210 dead infants were found by the Edhi Foundation most of which were girls.¹⁰⁶ For the first four months of 2018, 72 bodies of female infants were discovered in Karachi alone.¹⁰⁷ The statistics paint a bleak picture regarding the state of girl infants in Pakistan. Despite these figures, there is a lack of specific legal provisions on this subject revealing a failure to take into account the reality of female infanticide.¹⁰⁸ Where the protectors, guardians, care-givers and parents themselves follow the practice of killing female infants, the responsibility should reside with the State to protect female infants in this regard.

Pakistan Penal Code, 1860 extrapolates the offences of '*exposure and abandonment of child under twelve years by parent or person having care of it*'¹⁰⁹ and '*concealment of birth by secret disposal of dead body*';¹¹⁰ which carry sentences from two¹¹¹ to seven¹¹² years for the offences. However, regarding cases of female infanticide, the provisions laid out under section 302, murder, Pakistan Penal Code, 1860 also fail to ensure prosecution where the parents or carers are the ones responsible for female infanticide.¹¹³

Sr. No.	Gaps	Recommendations
Normative Gap		
1.	Ambiguous loopholes in criminal law sections 302, 328 and 329 of the Pakistan Penal Code, 1860 which fail to define the offence of female infanticide	Criminal Law Amendment in the Pakistan Penal Code, 1860 to define the offence of infanticide and criminalise such acts of violence
2.	Section 302 (Qatl-e-Amd or Murder) of the Pakistan Penal Code, 1860 is compoundable in nature which creates legal loopholes for perpetrators	Criminal Law Amendment in the Code of Criminal Procedure, 1898 to ensure that acts of female infanticide are non-compoundable, non-bailable and cognisable

ACID AND BURN CRIMES

The Criminal Law (Second Amendment) Act 2011 was promulgated by the Federal Parliament of Pakistan in December 2011. The 2011 Act elaborated upon the definition of acid and burn crimes and stipulated stricter punishments for the crime, which now include fourteen years

to life imprisonment along with a fine of one million rupees. The Act has amended section 332 'Hurt' of the Pakistan Penal Code to insert the words "disfigures and defaces". Two new sections namely, section 336-A and 336-B have also been added and these make the acts of throwing acid or any other corrosive substance on any person's body a criminal offence.

Also interesting to note is the jurisprudential evolution of the crime of acid and burn violence. It has been cited by the Lahore High Court that *'the ingredients of the offence under section 336-A PPC, punishable under section 336-B PPC, are fully attracted in the case which is exclusively triable by the Anti-Terrorism Court' as per section 12 of the Anti-Terrorism Act 1997.*¹¹⁴ Therefore, cases for acid and burn crimes are tried by the Anti-Terrorism Courts as the *'very commission of said offences creates terror, panic and sense of insecurity amongst the general public.'*¹¹⁵

Furthermore, as per section 174-A of the Code of Criminal Procedure 1898, a Medico-Legal Officer is obligated to intimate the case to the nearest police station to record the statement of the acid or burn crime survivor. Therefore, the legal mechanism permits that cases of acid and burn crimes may directly be referred to the police when approached for medical attention.

According to Acid Survivor Foundation (ASF)'s database, for the year 2017, there have been a total of 71 victims of acid and burn attacks across Pakistan out of which 48 are victims of acid attacks, 14 are victims of fire burns, 1 is a victim of chemical burn, 1 is a victim of hot water or contact burn and 3 cases where the cause of burn is unknown.

In 2017, the European Institute of Democracy and Human Rights nominated Pakistan's ASF as a global success story, because of the 50% decrease in acid violence since 2011.¹¹⁶

'The following major achievements have been recorded by ASF with regards to implementation of the Acid and Burn Criminal Amendment for contributing significantly towards the total number of reported cases dropping by roughly 50% in 2015 and 2016; the percentage of attack survivors reaching a hospital within 24 hours of an attack reaching 100% in 2016; and the increase in conviction rate from 17.3% in 2013 to 30.43% in 2016 This can be seen as a major success story for acid violence in Pakistan.'¹¹⁷

Sr. No.	Gap	Recommendation
Implementation Gap		
1.	Lack of awareness and sensitisation amongst law enforcement agencies who are reported to have filed cases of acid and burn crimes against incorrect provisions of the Pakistan Penal Code, 1860	Awareness and sensitisation of law enforcement agencies regarding the correct provisions of Pakistan Penal Code, 1860 for acid and burn crimes

HUMAN TRAFFICKING

The Prevention of Trafficking in Persons Act 2018 has the following salient features:

- Defines child as any person below the age of eighteen years;¹¹⁸
- Defines ‘trafficking’ to include compelled labour as well as sex work to guarantee protection to domestic workers/ labourers supplied through trafficking;¹¹⁹
- Stipulates a punishment which may extend to seven years and a fine which may extend for one million rupees;¹²⁰
- Stipulates a stricter punishment which may extend to ten years and a fine of one million rupees where the trafficking is against a woman or child;¹²¹
- Exonerates criminal liability of victims of trafficking;¹²²
- Vitiates any consent given by the child, the child’s parents or the child’s guardians in cases of trafficking where the victim is a child;¹²³
- Mandates police to investigate into cases of trafficking within Pakistan and mandates the Federal Investigation Authority (FIA) to investigate into cases of trafficking where the victim is transported into and out of Pakistan;¹²⁴
- Allows compensation to be paid to victims in cases where the offender is convicted.¹²⁵

While the new legislation is an important legislative development to protect victims of human trafficking, the evolving jurisprudence of the law and future research would define the impact of the law in curbing human trafficking. However, it must be noted, that the implementation of the law requires a major paradigm shift on part of the law enforcing agencies to view victims of human trafficking as ‘victims’ rather than ‘perpetrators’, especially where the victims have been trafficked for sex work.

Sr. No.	Gaps	Recommendations
Implementation Gaps		
1.	Extreme lack of sensitisation on the part of law enforcement agencies to understand the power differential between victims and traffickers and subsequent involvement of victims into activities which may be criminal in nature	Sensitisation and awareness amongst law enforcement agencies to understand the protections afforded to victims in the law and ensure that victims of trafficking are not charged as perpetrators where they have been involved in criminal activities.
2.	Lack of clarity regarding responsible agency for trans-provincial trafficking of persons	Amendment in the Prevention of Trafficking in Persons Act 2018 to explicitly state

		responsible agency for trans-provincial trafficking in persons
3.	Lack of sensitisation of law enforcement agencies, legal fraternity and judiciary regarding the wide definition of 'trafficking' to include child domestic servitude as well	Sensitisation of law enforcement agencies, legal fraternity and judiciary to implement the law as per legislative intention to provide relief to all victims of trafficking

RAPE

The Protection of Women (Criminal Laws Amendment) Act 2006 was a major achievement for the legislative rights of women. The Act inserted the definition of rape¹²⁶ and its punishment¹²⁷ under the Pakistan Penal Code, 1860 and subjected these sections to the same evidentiary burden as given under the law of evidence. Previous to this, rape was not defined under the Pakistan Penal Code but rather under the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 as 'zina-bil-jabr'. However, marital rape is still not recognised as an offence under the Pakistan Penal Code, 1860.

The Pakistan Penal Code defines the offence of rape as:

'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.'*¹²⁸

The law therefore adopts a comprehensive definition of the offence of rape and seeks to purport all facets of the offence. However, six normative gaps exist with regard to this definition:

1. The definition of rape in this regard is male-centric where only a man can be accused of rape. While using the term 'sexual intercourse' in the traditional sense meaning penetration through the penis, the section currently enunciates that only men can be perpetrators of rape whereas women and transgender persons cannot be rapists as per this definition;
2. The current jurisprudence reflects the position that 'penetration' in the offence of rape does not include anal penetration which falls within the ambit of unnatural offences defined in section 377.¹²⁹ Therefore, the offence of rape only applies to cases of vaginal penetration of women by men.
3. The definition of rape also does not take into account 'object rape' or rape perpetrated through tools and object.¹³⁰ In some cases, object rape has led to extreme internal organ damage which should be categorised and recognised as a form of rape.
4. While the legal jurisprudence of other countries like the United Kingdom, include penetration of the mouth as an offence of rape,¹³¹ the current law in Pakistan does not include oral penetration as a constitutive element of the offence of rape. Therefore, acts of sexual violence which include oral penetration are exempted from the current ambit of the offence of rape.
5. Stipulation of harsher punishments for cases of incestuous rape is another major gap in the current rape legislation.
6. Furthermore, section 375(v) has been interpreted by the superior courts to exclude cases where a girl has attained puberty and has contracted Nikah with a man. In such cases, the performance of conjugal rights by the girl would not attract section 375(v) and would not be considered as rape.¹³²

Sr. No.	Gaps	Recommendations
Normative Gaps		
1.	Restrictive definition of rape which excludes men and transgender women (who have not undergone surgery) from the law's protection	Reform of the current definition of rape through Criminal Law Amendment to reflect gender neutrality and provide protection to all genders against rape
2.	Restrictive definition of rape which excludes certain sexual acts of penetration	Reform of the current definition of rape through Criminal Law Amendment to include all types of sexual acts of

		penetration as constituting the offence of rape
3.	Restrictive definition of rape which excludes object rape as a form of rape	Reform of the current definition of rape through Criminal Law Amendment to include a definition of object rape
4.	Absence of provisions stipulating harsher punishments in cases of incestuous rape	Criminal Law Amendment in section 376 of the Pakistan Penal Code, 1860 stipulating life imprisonment in cases of incestuous rape
5.	Judicial interpretations by higher courts restricting application of the offence of rape in cases where the child has been married after attaining puberty but before turning sixteen years of age	Criminal law amendment in section 375(v) expressly protecting girls under the age of sixteen from rape and child marriage or public interest litigation widening the scope of section 375(v) to protect girls under the age of sixteen years from sexual violence

While the definitional issues in light of the evolving jurisprudence have revealed various gaps, the Criminal Law (Amendment) (Offences Relating to Rape) Act 2016 is a milestone legislation that seeks to reform procedural aspects of the law in an effort to strengthen investigations and evidence in cases of rape. The law stipulates strict punishments for public servants entrusted with investigation of rape cases who fail to investigate the case properly or diligently¹³³ as well as punishments for jeopardising or hampering investigations in cases of rape.¹³⁴ Under the Act, there is punishment of death or imprisonment for life and a fine for rape of a person with a physical or mental disability. The same punishment applies if rape is committed by a public servant taking advantage of his official position.¹³⁵

Furthermore, there is a provision for imprisonment extending up to three years for disclosure of the identity of a victim of rape without proper authorisation¹³⁶ to deter media personnel from violating the dignity and privacy of rape survivors. The amendment makes it obligatory to collect DNA samples for evidence¹³⁷ and also mandates examination of the accused by a medical practitioner for collecting evidence.¹³⁸ The amendments also require rape trials to be conducted in camera and for trials to conclude within three months at the trial stage. Lastly, records and statements by a victim of rape can be taken at her residence in case she is distressed, and must be made in the presence of a female police officer or female relative.¹³⁹ Furthermore, judgment of the Supreme Court in *Salman Akram Raja and another versus Government of Punjab and others*,¹⁴⁰ has also given a set of directions to the Government for better response to cases of rape (Table 3).

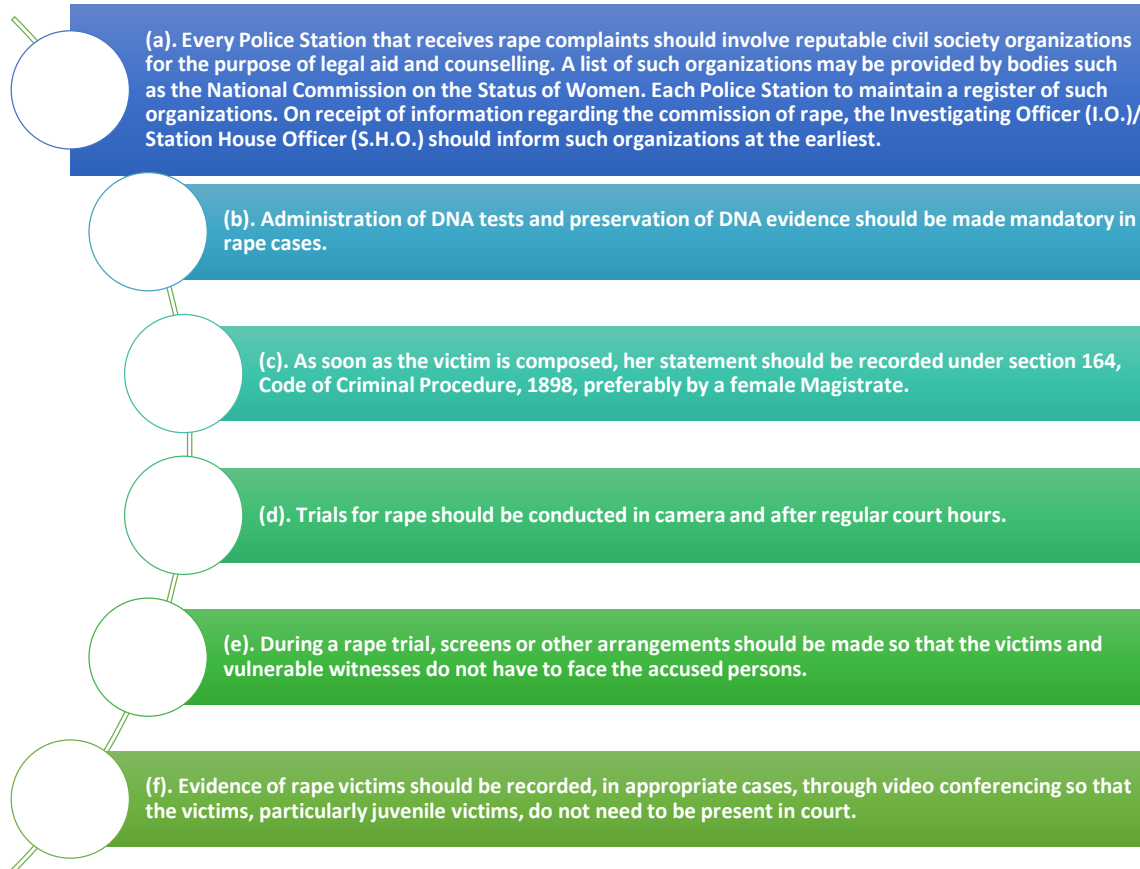


Table 3: Guidelines laid down by the Supreme Court of Pakistan in *Salman Akram Raja versus Government of Punjab*

Sr. No.	Gaps	Recommendations
Implementation Gaps		
1.	Absence of a revised Code of Conduct for public servants (medico-legal officers, police, forensic technicians employed by the government and otherwise), which stipulate sections 166(2) and 186 Pakistan Penal Code, 1860 attracting a punishment of up to three years for failing to diligently investigate cases	Formulation of a revised Code of Conduct for public servants appraising them of their liabilities and possible punishments under the 2016 amendments
2.	Absence of a Standard Protocol as per section 376-A Pakistan Penal Code, 1860 regarding disclosure of identity of the rape victim to be followed by police, lawyers, judiciary, media personnel etc.	Formulation of Standard Protocol delineating authorisation process when identity of a rape victim can be revealed and the punishment for disclosing identity of rape victim without proper

		authorisation as per section 376-A Pakistan Penal Code, 1860
3.	Absence of revised Standard Operating Procedures for Medico-Legal Officers as per sections 53-A and 164-A Code of Criminal Procedure, 1898	Formulation of Standard Operating Procedures for Medico-Legal Officers to reflect the requirements and particulars enunciated in sections 53-A and 164-A Code of Criminal Procedure, 1898
4.	Lack of awareness and sensitisation of law enforcement agencies regarding relaxations given to rape victims as per sections 154 and 161 Code of Criminal Procedure, 1898	Sensitisation of law enforcement agencies, in particular the Police, to facilitate rape victims by invoking sections 154 and 161 Code of Criminal Procedure, 1898
5.	Lack of implementation of Supreme Court Directive requiring police stations to maintain a register of reputable civil society organisations to request facilitation in cases of rape	Development of database of credible civil society organisations for police stations to contact in cases of rape
6.	Lack of awareness and implementation of three-month time frame for rape trials	Sensitisation of judiciary, legal fraternity and law enforcement agencies to conclude rape trials within the three-month time frame
7.	Lack of implementation of Supreme Court Directive requiring screens or other arrangements to be made for rape victims and witnesses so that they do not have to face the accused	Sensitisation of judiciary, legal fraternity and law enforcement agencies to implement the Supreme Court Directive requiring screens or other arrangements to be made for rape victims and witnesses so that they do not have to face the accused

SEXUAL OFFENCES

The current legal framework does not provide adequate protection to boys, men and transgender persons who may suffer sexual violence. The law also fails to protect women in cases of sexual violence where the violence is meted out in manners different from the traditional interpretation of intercourse and penetration. Comprehensive definitions of various forms of sexual offences need to be provided.

While the punishment for the offence of rape ranges from ten years to life imprisonment, even death penalty,¹⁴¹ for some other forms of sexual violence which fail to fulfil the criteria

of the offence of rape, the penalty ranges from two years to ten years to even life imprisonment.¹⁴² This undermines the trauma and severity of cases of sexual violence involving anal¹⁴³ or oral penetration through any other part of the perpetrator's body or any other tools.

The Pakistan Penal Code covers a certain range of sexual offences with varying punishments. These include:

Sr. No.	Sexual Offences	Punishment
1.	Section 354 of the Pakistan Penal Code 1860: Assault or criminal force to woman with intent to outrage her modesty	Imprisonment for a term which may extend to 2 years or with fine or both
2.	Section 354-A of the Pakistan Penal Code 1860: Assault or use of criminal force to woman and stripping her of her clothes	Death penalty or imprisonment for life and shall also be liable to a fine
3.	Section 375 of the Pakistan Penal Code 1860: Rape	Death penalty or imprisonment for a term not less than 10 years or more than 25 years and shall also be liable to a fine
4.	Section 376(2) of the Pakistan Penal Code 1860: Punishment for Gang Rape	Death penalty or imprisonment for life
5.	Section 376(3) of the Pakistan Penal Code 1860: Punishment for Raping a Minor or a Person with Mental or Physical Disability	Death penalty or imprisonment for life and shall also be liable to a fine
6.	Section 376(4) of the Pakistan Penal Code 1860: Punishment for Custodial Rape	Death penalty or imprisonment for life and shall also be liable to a fine
7.	Section 377 of the Pakistan Penal Code, 1860: Unnatural Offences	Imprisonment of a term not less than 2 years and may extend up to 10 years. Penalty could also include life imprisonment and a fine
8.	Section 377A of the Pakistan Penal Code 1860: Sexual Abuse	Imprisonment for a term not less than 14 years and may extend up to 20 years and with fine which shall not be less than 1,000,000 rupees

9.	Section 509 of the Pakistan Penal Code 1860: Insulting modesty or causing sexual harassment	Imprisonment for a term which may extend to 3 years or with fine up to 500,000 rupees or both
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It can be clearly seen that there is inconsistency between the punishments of different sexual offences, and in some cases the punishment is less grave even though the trauma and physical harm to the survivor could be as severe (or more severe) as another offence. Further, the current legal framework requires an elaborate and comprehensive definition of sexual offences that would cater to all genders and all forms of sexual violence.

Pertinent to mention here are sections 377A and 377B of the Pakistan Penal Code 1860 inserted by the Criminal Law (Second Amendment) Act 2016 which criminalises acts of a sexual nature with any person below the age of 18 years as an offence of sexual abuse. Section 377B inserted by the Criminal Law Amendment initially stipulated a punishment of 7 years' imprisonment and 500,000 rupees. However, the Criminal Laws (Amendment) Act 2018 increased punishment for the offence of sexual abuse to imprisonment of minimum 14 years and maximum 20 years and a fine of not less than 1,000,000 rupees. Furthermore, the offence of sexual abuse is cognisable in nature authorising the police to arrest alleged perpetrators without warrant. The provisions of sections of 377A and 377B therefore act as important provisions to protect children under the age of 18 years from sexual violence and ensure stricter punishments for offences of sexual violence where children are involved. Furthermore, despite legislative developments, adult male victims of sexual violence do not have the same protections in law against sexual violence as compared to women and children.

Sr. No.	Gaps	Recommendations
Normative Gaps		
1.	Absence of law criminalising acts of sexual penetration that fall short of 'rape'	Criminal Law Amendment in section 375 to define and criminalise acts of sexual violence by penetration (through tools, weapons, other body parts, etc.)
2.	Absence of a gender-neutral law that would protect all genders from sexual assault which falls short of rape and sexual penetration but is more grievous than sexual harassment	Criminal Law Amendment in section 345 to define and criminalise acts of sexual assault that do not result in or fall short of sexual penetration
3.	Lack of consistency and proportionality in punishments related to sexual violence	Criminal Law Amendments in the Pakistan Penal Code, 1860 to amend punishments for acts of sexual violence by taking into account

		the nature of the crime and impact it would have on a victim/ survivor
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SEXUAL HARASSMENT

The Criminal Law (Amendment) Act 2010 amended section 509 of the Pakistan Penal Code and included causing “sexual harassment” in the provision of “insulting the modesty of a woman.”. The amended section reads as following:

“(2) conducts sexual advances, or demands sexual favors or uses verbal or non-verbal communication or physical conduct of a sexual nature which intends to annoy, insult, intimidate or threaten the other person or commits such acts at the premises of workplace, or makes submission to such conduct either explicitly or implicitly a term or condition of an individual's employment, or makes submission to or rejection of such conduct by an individual a basis for employment decision affecting such individual, or retaliates because of rejection of such behaviour, or conducts such behaviour with the intention of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment;

shall be punished with imprisonment which may extend to three years or with fine up to five hundred thousand rupees or with both.

Explanation 1: Such behaviour might occur in public place, including, but not limited to, markets, public transport, streets or parks, or it might occur in private places including, but not limited to workplaces, private gatherings, or homes.

Explanation 2: Workplace means, the place of work or the premises where an organization or employer operates, this may be a specific building, factory, open area or a larger geographical area where the activities of the organization are carried out. Sexual advances may occur after working hours and outside workplace. It is the access that a perpetrator has to the person being harassed by virtue of a job situation or job related functions and activities.”¹⁴⁴

The amendment in 2010 has made the provision for sexual harassment gender neutral to include men, women, intersex and transgender persons as complainants of sexual harassment and purports to serve as a deterrent.

Sr. No.	Gap	Recommendation
Implementation Gap		
1.	Inefficacy of the provision to ensure criminal prosecution of sexual harassment	Amendment in Schedule II of the Code of Criminal Procedure 1898 to make the offence cognizable

HARMFUL CUSTOMARY PRACTICES AGAINST WOMEN

The Criminal Law (Third Amendment) Act 2011 declares the following cultural or traditional practices as crimes in Pakistan for the first time:

- Giving a female in marriage or otherwise in *badla-e-sulha, vani* or *swara*;
- Depriving women from inheriting property;
- Forced marriages;
- Marriage with the Holy Quran.

Thereby, anyone who gives a woman or girl in *badla-e-sulha, vani* or *swara* can be punished under the law with imprisonment of three to seven years and with a fine of 500,000 rupees.¹⁴⁵

In a reported judgment under section 310-A, the Peshawar High Court has opined:

‘Practice of such tradition was mere disobedience and derogation of the law. Handing over a lady without consent in such humiliating manner was not only against fundamental rights and liberty of human beings enshrined in the Constitution, but also against the importance and value of human beings by Allah Almighty to the most imminent of created things.’¹⁴⁶

If anyone deprives a woman from inheriting property, he or she is punishable with imprisonment of five to ten years and a fine of 1,000,000 rupees. Furthermore, any person guilty of forcing a woman into marriage is punishable by imprisonment of three to seven years and a fine of 500,000 rupees. Lastly, anyone who marries a woman with the Holy Quran is punishable by imprisonment of three to seven years and a fine of 500,000 rupees. Furthermore, the harmful customary practices against women and girls defined in the law are non-compoundable in nature, therefore, cannot be compromised upon between the parties. Non-compoundable offences are offences against society and not offences against individuals, therefore, the offences cannot be privately pardoned or settled,¹⁴⁷ thereby, restricting families and law enforcement agencies from out of court settlements in cases of harmful customary practices against women and girls.

Sr. No.	Gaps	Recommendations
Implementation Gaps		
1.	Criminal offences defined and amended in the Criminal Law (Third Amendment) Act 2011 are non-cognizable	Amendment to stipulate harmful customary practices against women and girls as ‘cognizable’ offences by the Federal Parliament
2.	Law enforcement agencies and legal fraternity still treat practices such as	Sensitization of law enforcement agencies and legal fraternity to report and prosecute

	forced marriage, depriving women from inheriting property, <i>swara/ vani</i> and marriage with the Holy Quran as private matters rather than offences against women	harmful customary practices against women and girls under 2011 Amendment Act as non-compoundable offences where the parties cannot enter into a compromise
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DOWRY RELATED VIOLENCE

Dowry-related offences range on a spectrum from demands of dowry, which is a form of violence in its own right, to murdering of women who fail to arrange for sizeable amount of dowry for their in-laws. While the recent advocacy campaign by UN Women regarding dowry demands has been well received by all quarters, what is also required is stringent legislation at the federal level, criminalising dowry-related violence.

Sr. No.	Gap	Recommendation
Normative Gap		
1.	Absence of a law criminalising acts of dowry-related violence. Current law is anachronistic in nature and regulates only dowry expenditure	Criminal Law Amendment in the Pakistan Penal Code, 1860 to define and criminalise acts of dowry related violence

NECROPHILIA

Necrophilia is defined as sexual attraction to corpses or engaging in sexual activity with corpses.¹⁴⁸ Pakistan has in recent years come across some much publicised and harrowing incidents of necrophilia involving corpses of women and girls.¹⁴⁹ While cases of necrophilia are dealt with under other provisions of the Pakistan Penal Code, for example, trespassing on burial places,¹⁵⁰ the law currently does not have any legal definition or criminalisation for such acts.¹⁵¹

Sr. No.	Gap	Recommendation
Normative Gap		
1.	Absence of a law criminalising acts of necrophilia	Criminal Law Amendment in section 377 'Unnatural Offences' of the Pakistan Penal Code, 1860 to define and criminalise acts of necrophilia all over Pakistan

CYBER CRIMES AGAINST WOMEN

The Prevention of Electronic Crimes Act (PECA) 2016 is a comprehensive law addressing digital and electronic crimes. It includes the services of Federal Investigation Agency to investigate crimes and also involves the Pakistan Telecommunication Authority in providing relief to complainants. Any person guilty of offence against dignity of a natural person as per section 20 can be punished with imprisonment for up to 3 years and a fine extending to 1 million rupees. Punishment for offences against the modesty of a natural person as per section 21 includes imprisonment, which may extend to 5 years and a fine, which may extend to five million rupees. However, if the offence under section 21 is perpetrated against a minor, the imprisonment can extend to 7 years instead of 5 years. For a person found guilty under section 22, child pornography, the punishment can include imprisonment, which may extend to 7 years or a fine, which may extend to 5 million rupees.

According to Digital Rights Foundation (DRF)'s Cyber Harassment Helpline Bi-Annual Report December 2016 – May 2018, 1908 calls were received on DRF's Toll Free Number which included 420 follow-up calls. On an average 83 calls related to matters of cyber-crimes were received on the Toll Free Number each month.¹⁵² 63% of the total calls were made by women whereas 37% were made by men.¹⁵³ Highest number of complaints related to non-consensual usage of information (326); defamation (314); and blackmail (302).¹⁵⁴ The National Response Center for Cyber Crimes (NR3C) of the Federal Investigating Agency deals with complaints of cyber-crimes. As of December 2017, the cybercrime wing of FIA has received 12,339 complaints of which 26% have been filed by women.¹⁵⁵ Out of the total number of complaints, 1,626 were converted into inquiries and 232 cases were under investigation before the Cyber Crime Wing of FIA.¹⁵⁶ Issues highlighted regarding the implementation of Prevention of Electronic Crimes Act 2016 have included lack of resources; lack of technical expertise especially on digital forensics; low recruitment of women in FIA's Cyber Crime Wing; regressive attitude of FIA officials and prosecutors in dealing with complaints of cyber-crimes linked to ordinary citizens; lack of training and capacity building of judges 'on matters such as computer science, cyber forensics, electronic transactions and data protection' etc.¹⁵⁷

In light of the available researches and consultative workshops, the following gaps and recommendations have been highlighted:

Sr. No.	Gaps	Recommendations
Implementation Gaps		
1.	Lack of gender sensitisation of FIA officials in dealing with cases of modesty of natural persons where the complainants are mostly women	Sensitisation and capacity building of FIA officials in registering and investigating cases involving modesty of women in online spaces

2.	Lack of trained and technical staff NR3C offices resulting in delayed investigation procedures	Allocation of technical human resources at NR3C offices for efficient operations
3.	Lack of implementation in cases where the defendants are not in Pakistan	Signing Mutual Legal Assistance Treaties (MLATs) with countries basing social media companies to effectively deal with digital crimes, especially online abuse
4.	Complex legalities involving cases of digital crimes	Abolishment of Telegraph Act 1885 and incorporation of all facets of digital crimes within PECA
5.	Lack of a data protection legislation to safeguard consumer rights with increasing digital based entrepreneurship	Legislative drafting and promulgation of a data protection legislation to protect online and consumer data in Pakistan
6.	Lack of technical capacity of law enforcement agencies, legal fraternity and judiciary in dealing with digital crimes	Technical capacity building of law enforcement agencies, legal fraternity and judiciary regarding digital crimes
7.	Lack of women prosecutors and investigators in the Federal Investigation Agency	Affirmative action for employment of women prosecutors and investigators in the Federal Investigation Agency

FEDERAL LAWS RELATED TO DISCRIMINATION & WOMEN'S RIGHTS

DISCRIMINATION IN THE LAW OF EVIDENCE

The Qanun-e-Shahadat Order, 1984 repealed the Evidence Act, 1872 during the time of General Zia-ul-Haq. The Order is a 'compendium of rules, procedures and practices'¹⁵⁸ according to which the court is to record evidence of the parties. However, the discrimination entrenched in the Qanun-e-Shahadat Order 1984 has been highlighted as a violation of Pakistan's international commitments. The UN Committee on Economic, Social and Cultural Rights in its Concluding Observations to the State of Pakistan recommended: *"Review its legislation, including the Qanun-e-Shahadat Order (Law of Evidence) 1984, with a view to removing all provisions that discriminate on the basis of gender."*¹⁵⁹

In this regard, Article 17 of the Qanun-e-Shahadat Order, 1984 states:

"17. Competence and number of witnesses: (1) The competence of a person to testify, and the number of witnesses required in any case shall be determined in accordance with the injunctions of Islam as laid down in the Holy Qur'an and Sunnah:"

(2) Unless otherwise provided in any law relating to the enforcement of Hudood or any other special law:

(a) in matters pertaining to financial or future obligations, if reduced to writing, the instrument shall be attested by two men or one man and two women, so that one may remind the other, if necessary, and evidence shall be led accordingly; and

(b) in all other matters, the Court may accept, or act on the testimony of one man or one woman or such other evidence as the circumstances of the case may warrant."

In legal matters pertaining to financial or future obligations, preference has been given to men whereby two women are required to replace one man in attestation of documents. The Federal Shariat Court has held in this regard: *"Choosing women to be witnesses, would not only be least desirable for women themselves, but also in all probability be disadvantageous for the person who had to make a choice for her to be her witness, as his case would suffer because of her oft non-availability, and even for longer period."*¹⁶⁰

Therefore, a normative gap exists within the Qanun-e-Shahadat Order 1984 which discriminates against women in attestation of legal matters pertaining to financial and future obligations.

Sr. No.	Gap	Recommendation
Normative Gap		
1.	Discrimination on the basis of gender in Qanun-e-Shahadat Order 1984	Amendment in Article 17 of the Qanun-e-Shahadat Order, 1984 to provide equal evidentiary value to men and women in attestation of financial and future obligations

DISCRIMINATION IN THE LAW OF CITIZENSHIP

Discrimination on the basis of gender in nationality laws has been widely documented by international organisations and stakeholders. According to Equality Now, there are 48 countries in the world where a married woman cannot pass nationality to a foreign spouse on an equal basis with a married man.¹⁶¹ Pakistan is one of the 48 countries where discriminatory provisions exist in its nationality laws.¹⁶² The CEDAW Committee in its Concluding Observations recommended: *“To include in its Constitution and/ or in other relevant legislation provisions prohibiting all forms of direct and indirect discrimination against women, including sanctions, in line with Article 1 of the Convention (and in line with article 25 of the Constitution), and repeal all discriminatory laws, including the Hudood Ordinances, the Law of Evidence and the Citizenship Act (1951).”*¹⁶³

While section 10 of the Citizenship Act 1951 provides for a married man to obtain citizenship for his foreigner wife, no parallel provision exists for a female citizen of Pakistan to transfer her nationality to her foreigner husband.¹⁶⁴ Therefore, a major normative gap is revealed within the nationality laws of Pakistan where women citizens are denied the right to transfer their citizenship to foreign husbands.

Sr. No.	Gap	Recommendation
Normative Gap		
1.	Discrimination on the basis of gender in the Citizenship Act, 1951	Amendment in the Citizenship Act, 1951 to include provisions for a Pakistani woman to transfer her nationality to her foreign husband

CONCLUDING SUMMARY

Based on the research above, major recommendations of the Federal Gap Analysis include:

Federal EVAW Laws:

1. Awareness-raising of legal fraternity and judiciary regarding the 2016 criminal amendment to ensure implementation of the 'fasad-fil-arz' provision to be applied in cases of honour killing and amendment in the law to reflect that in 'honour' related crimes there should be no compromise or blood money compensation permitted between the parties;
2. Criminal Law Amendment in the Pakistan Penal Code, 1860 to define the offence of infanticide and criminalise such acts of female infanticide in Pakistan and Criminal Law Amendment in the Code of Criminal Procedure, 1898 to ensure that acts of female infanticide are non-compoundable, non-bailable and cognisable;
3. Awareness and sensitisation of law enforcement agencies regarding the correct provisions of Pakistan Penal Code, 1860 for acid and burn crimes;
4. Sensitisation and awareness amongst law enforcement agencies to understand the protections afforded to victims of trafficking in the Prevention of Trafficking in Persons Act 2018 and ensure that victims of trafficking are not charged as perpetrators where they have been involved in criminal activities;
5. Reform of the current definition of rape through Criminal Law Amendment to reflect gender neutrality and provide protection to all genders against rape and to include all types of sexual acts of penetration as constituting the offence of rape;
6. Formulation of a revised Code of Conduct for public servants appraising them of their liabilities and possible punishments under the 2016 amendments
7. Formulation of Standard Protocol delineating authorisation process when identity of a rape victim can be revealed and the punishment for disclosing identity of rape victim without proper authorisation as per section 376-A Pakistan Penal Code, 1860 inserted by Criminal Law (Amendment) (Offences Relating to Rape) Act 2016;
8. Formulation of Standard Operating Procedures for Medico-Legal Officers to reflect the requirements and particulars enunciated in sections 53-A and 164-A Code of Criminal Procedure, 1898 inserted by Criminal Law (Amendment) (Offences Relating to Rape) Act 2016;

9. Sensitisation of law enforcement agencies, in particular the Police, to assist rape victims by invoking sections 154 and 161 Code of Criminal Procedure, 1898 amended by inserted by Criminal Law (Amendment) (Offences Relating to Rape) Act 2016;
10. Criminal Law Amendment in section 375 to define and criminalise acts of sexual violence by penetration (through tools, weapons, other body parts, etc.);
11. Criminal Law Amendment in section 345 to define and criminalise acts of sexual assault that do not result in or fall short of sexual penetration;
12. Amendment in Schedule II of the Code of Criminal Procedure 1898 to make the section 509 offence of sexual harassment cognisable;
13. Amendment in the Code of Criminal Procedure 1898 to stipulate harmful customary practices against women and girls as 'cognisable' offences by the federal Parliament;
14. Sensitisation of law enforcement agencies and legal fraternity to report and prosecute harmful customary practices against women and girls under 2011 Amendment Act as non-compoundable offences where the parties cannot enter into a compromise;
15. Criminal Law Amendment in the Pakistan Penal Code, 1860 to define and criminalise acts of dowry related violence;
16. Criminal Law Amendment in section 377 'Unnatural Offences' of the Pakistan Penal Code, 1860 to define and criminalise acts of necrophilia all over Pakistan;
17. Sensitisation and capacity building of FIA officials in registering and investigating cases involving modesty of women in online spaces under Prevention of Electronic Crimes Act 2016;
18. Allocation of technical human resources at NR3C offices for efficient operations to investigate and prosecute cases under Prevention of Electronic Crimes Act 2016.

Federal Laws related to Discrimination and Women's Rights:

1. Amendment in Article 17 of the Qanun-e-Shahadat Order, 1984 to provide equal evidentiary value to men and women in attestation of financial and future obligations;
2. Amendment in the Citizenship Act, 1951 to include provisions for a Pakistani woman to transfer her nationality to her foreign husband.

ANNEX 2: TECHNICAL CONSULTATIVE WORKSHOPS

LIST OF PARTICIPANTS – KARACHI CONSULTATION			
#	Name	Designation	Organisation
1.	Hashmet Lal	Activist	
2.	Mehnaz Rehman	Regional Director	Aurat Foundation
3.	Nisha Rao	Lawyer, Transgender Activist	Bridge Foundation
4.	Naghma Sheikh	Project Coordinator	DRI
5.	Nizar Ahmed	Communication Manager	FESF
6.	Mukesh Meghwar	CEO/ Hum Rights Activist	Laar Education Campaign
7.	Dr. Rana Khan	Legal Consultant	Lawyer
8.	Fatima Nasir	Lawyer	Lawyer
9.	Jamil Junejo	Program Manager	Legal Aid Society
10.	Tayba Khalid	Sr. Program Officer	Legal Aid Society
11.	Naima Qamar	Research Associate	Legal Aid Society
12.	Naheed Haider	Legal Aid Coordinator	LRF
13.	Tanseem Yousuf	Coordinator	LRF
14.	Tahir Malik	Executive Director	LRF
15.	Fauzia Tariq	COO	MCTS
16.	Farhat Parveen	Executive Director	Now Communities
17.	Kalpana Devi	Asst. Advocate General	Office of Advocate General
18.	Zulfiqar Shah	Joint Director	Piler
19.	Niaz A Siddiki	Former IG Sindh	Police
20.	Madiha Latif	Program Coordinator	Shirkat Gah
21.	Raheema Panhwar	Regional Coordinator	SPO
22.	Asiya Munir	Lawyer	WAR
23.	Kapil Dev	Head of Sub Office, Sindh	UN Women

LIST OF PARTICIPANTS – ISLAMABAD CONSULTATION			
#	Name	Designation	Organisation
1.	Valerie Khan	President	Acid Survivors Foundation
2.	Zunaira Fayyaz	Lawyer	Aitzaz Ahsan & Associates Law Firm
3.	Natasha Rathore	Manager Programs	Aurat Foundation
4.	Farrah Taufeeq	Consultant	Center of Gender & Policy Studies
5.	Imran Haider	Dep. Director Cyber Crime	Federal Investigation Agency
6.	Khadija Ali	Lawyer	Legal Expert
7.	Benazir Jatoi	Lawyer	Legal Expert
8.	Maliha Hussain	Executive Director	MeherGarh
9.	Khurram Shakair	DIG	National Police Bureau
10.	Farkhanda Aurangzeb	Senior Social Activist	National Commission on Human Rights
11.	Khawar Mumtaz	Chairperson	National Commission on the Status of Women
12.	Khalid Imran	Project Officer	National Commission on the Status of Women
13.	Hifza Bokhari	Asst. Attorney General	Office of the Attorney General of Pakistan
14.	Farah Naaz Awan	Asst. Attorney General	Office of the Attorney General of Pakistan
15.	Hadia Nusrat	Manager Gender	Oxfam
16.	Sameena Nazir	Founding President	Potohar Organization for Development Advocacy
17.	Khawaja Zahid	Legal Advisor	Potohar Organization for Development Advocacy
18.	Muhammad Zubair	Senior Manager	Potohar Organization for Development Advocacy
19.	Sana Mahmud	Project Officer	Right to Play
20.	Arifa Mazhar	Director	ROZAN
21.	Sidra Humayun	Senior Program Officer	SAAHIL
22.	Rubab Syed	Project Assistant	SDPI
23.	Tauseef Malik	Program Manager	UNODC

24.	Sadia Iqbal	Focal Person	WHO
25.	Munazza Hassan	Secretary	Women's Parliamentary Caucus
26.	Zeeshan Hussain	Legal Advisor	Women's Parliamentary Caucus
27.	Haneen Khalid	Associate	Women's Parliamentary Caucus
28.	Jamshed Kazi	Country Representative	UN Women
29.	Saman Ahsan	Program Specialist	UN Women
30.	Yasir Khan	Program Officer	UN Women
31.	Umer Ehsan	Program Associate	UN Women

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