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Pro-Women Laws and Government Masquerading: A Description of Pre-independence and Post-independence Women Legislative Framework in Pakistan

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ABSTRACT

This paper presents the historical account of women welfare laws in Pakistan in the light of the political-historical events. It is based on conventional content analysis focusing the women welfare in Pakistan under the different governments. The purpose of this research is to describe the situations behind pro-women laws in Pakistan. It is comprised of two sections; dealing with pre-independence and post-independence women legislative frame work in Pakistan from 1947 to 2010. Under the new born state, first effort was made by promulgating MFLO, 1961 by the state but it could not uplift the status of women in the country. Even women could not get welfare under the banner of "Islamization of laws" in 1979. Again an effort was made by promulgating laws under "Women Protection Bill" but despite this promulgation of a number of laws in the present century, much remains to be done for such oppressed group. Observing from the historical account, discriminatory welfare measures deny women constitutionally guaranteed parity and protections. Hence; seems to be suppressing women status through anti-welfare steps in Pakistan. Pakistan should repeal all such laws, including the discriminatory legislation, to end the state-certified gender disparity that has destabilized women's welfare in the country.

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1. Introduction

With the evolution of two nation theory in Sub-continent, Pakistan emerged on world map on August 14, 1947 as a newly born state which inherited Britain Laws at the time of its creation. While discussing the women status, Muslim Personal Laws were the only legislative measure that was received as family laws which regulated the nuptial concerns and dealt with the issue of child

guardianship and inheritance (Rehmatullah, 2002), but this only piece of legislation did not deal directly with Muslim women status. By peeping into the history, the two-way migration of 1947 brought conspicuous changes in Muslim women's status. Migration brought them out of their domestic domain and now they were migrants and the refugees who needed extensive welfare. One of the largest migrations of the world between the Hindus and Muslims of the Subcontinent in 1947 was witnessed as an attainment of independence but the flip side of the page also possessed women abduction narratives and rehabilitation of families' at large scale as people had to acclimatize the realities of independence. The prevailing women issues of the hour were women dislocation, they were either widows, have lost their families or have been kidnapped. As an estimate, 75000 women were raped and abducted (Virdee, 2018) across the both divided borders.

There is a historical record of nine million Muslims who arrived in Pakistan (Roy, 2013) without assets. At this crucial time, capital resources of the state were insufficient for the migrants and women were in the most pathetic position. Government of Pakistan arranged refugee's camps with the help of district management. Further Abducted Person's Act, 1949 was promulgated by the Indian Government so that women could be sent back to their home towns. Pakistani government collaborated with the Indian government but showed no interest in taking legislative measures. However, at local level, great citizen participation was witnessed for the refugee camps based on volunteerism but having no official record.

2. Pre-independence Women Legislative Framework in Pakistan

It is commonly supposed that Pakistan has inherited social welfare structure from the Britain colonial system but the reality is not so. Colonialism benefited Hindus of the Sub-continent and strengthen them rather it had less welfare impacts on Muslims of the Sub-continent. Now it is accepted that Britons did not ruled combine India for the welfare of the local masses but to conquer them and plunder the wealth of this zone being famous for its resources.

The new law reforms in Sub-continent were more beneficial for the Hindus than by Muslims. The focus of the British Empire was the economic and political strength of their empire. Some reformative acts were introduced by the British crown when it took the country under its administration in 1834, including some reformative acts to restrict malicious religious practices among Hindu community, including *Satti* (a custom which allowed and promoted burning of a widow with her husband in Hindus only). This practice was completely restricted by the Britain Governor General William Bentinck, who legally prohibited this cruel custom under the Chartered Act of 1833. The only beneficiaries of the said law were Hindu women only and Muslim community had nothing to do with it.

At the initial stages of British Empire, the Muslim ruling elites were not in the favor of their strategies and facilities e.g. education. Their propaganda about these strategies and facilities could not allow Muslims to acknowledge them. But history witnessed that they shifted at 90 degree angle and accepted all those facilities but common Muslims could not judge all these circumstances even at the end of British Empire. Actually, independence was differently perceived by the two groups. Firstly the Muslim ruling elites, who took personal advantages of British policies. Secondly the local leaders, who campaigned to exile British from the Sub-continent. The common man was of the view that everything would be well and good when Britain will quit Sub-continent but was a mere dream. Subsequently, other issues associated with the welfare of women were not taken seriously. Basing on such facts; women are still a sufferer in Pakistan having such background of welfare measures. On factual basis, the British focused the feudal system of the rustic areas and enhanced their authority by

providing them land ownership. This supported and strengthened the pre-existing local culture, and decreased women status.

Consequently, British legal system provided conspicuous detriments for the Muslims of the Sub-continent. The newly introduced legal system was promulgated with the purpose of exercising their powers on minorities. Being a minority in Subcontinent, Muslims could not acquire advantages by the British Empire and henceforth the Muslim women were, certainly not under the umbrella of the legal privileges.

Under the Moghal Empire, Islamic law had been recognized in India by the 17th century (Nussbaum, 2000). But British Empire completely abolished those laws and the new legal system focused the strengthening of British Empire rather than the welfare of the local masses. British colonial rule promulgated customary laws over Islamic laws which were converted into Anglo-Muhammadan law. The promulgation of customary laws (having contradictions with Islamic Law) for the Muslim women started a new phase of discrimination against women in nuptial and property rights issues.

As a matter of fact, every sect among the Muslims interprets the Islamic law differently. Further, they never allowed women to go to courts for initiating and proceeding divorce matters by their own as it was authorized under Dissolution of Muslim Marriage act, 1939; hence created controversies. Another Colonial law was The Child Marriage Restraint act, 1929, which restricted minimum marriageable age as 16 years. The said law could not be implemented in the rural areas of the Sub-continent (not even in Pakistan) because the values and interests of the local masses are never considered by the law making authorities. Under cultural context, it was quite difficult for a common family to protect their daughter's honor and to keep her safe from aristocrat's sexual exploitation. So the possible solution for the said issue by the local masses was to marry their daughters when she reaches puberty and her responsibility will lie on the husband for the rest of life.

Muslim women arrived to Pakistan with this insufficient legal status in 1947. This revolution of the sub-continent resulted in major migration and provided homelessness, orphan children and deprived women. Pakistan faced extensive economic crisis in 1947 and the years ahead. Women did not observe legal security in the new born state in the initial years and family system was their only source of welfare. In case of deprivation of family, women were amongst the helpless destitute of the country.

3. Post-independence Women Legislative Framework in Pakistan

The family laws inherited from the colonial rule (named as Muhammadan laws) governing marriage, divorce, custody of children, etc. were proved to be non-beneficial for Muslim women in the past. After independence, government of Pakistan promulgated a new law in the country namely, The Muslim Family Law Ordinance, 1961 with a purpose of elevating women's status in the country. It promulgated registered marriage, divorce and restricted polygamy under some special conditions. It is noticeable that what were the objectives of the martial law ruler to stipulate women welfare law in the country?

Concubine practice is a common characteristic of aristocratic culture across the world and it was also common in Indian subcontinent. Customarily, elites used to keep concubines as a status symbol and usually had children from them. The red light areas like *Heera Mandi* in Lahore are quite famous for such acts. But men leave such women when they cross young life, are unattractive for them, ask for financial security for them and their children, or when first wife used to know about it. Concubines are

refused to get any security or economic incentives in the long run. This alarming situation was voiced by non-government organizations working for women welfare. Consequently, took interest in promulgating MFLO, 1961 which could not prove to be effective for women in Pakistan. The said law was greatly disapproved by the religious groups. As a matter of fact, they disliked the change in authority and their exile from the nuptial concerns and women issues, while on the other hand they did not had any authority to interrupt the said law except the disapproval of such laws in their discourse (Yilmaz, 2005).

The practical applications of the law could not hide its lacunas in the society. As it promulgated registered marriages but practically *Nikahnama* (marriage form) is filled by the male head of the family of the marrying woman and her authority is just to sign it. Furthermore, *Nikahnama* delegate women to avail the right to divorce her spouse but it are deliberately crossed while filled up by male head of the family. The marital practices in Pakistan could not be improved through the MFLO's *Nikahnama* (World Bank, 2005). Another objectionable clause i.e. permission for husband's second marriage from the first wife also faced great opposition; practically it was not in practice. Moreover, silence is observed on a woman's consent for the marriage but the ordinance is requiring the permission for polygamy from her; hence could not remove controversies (Shah, 2006). Consequently, said law being weak in nature, could not prove to be so beneficial for the status uplifting of Pakistani women as it claimed to be.

In 1970s, the citizens had hopes towards the Constitution of 1973 that it will safeguard their basic rights but it failed to prove its significance in the society. The 1973 Constitution of Pakistan is an incompatible instrument (Asian Development Bank, 2000). Article 25 ensures the equality of rights without race, sex and class discrimination. But there are various discriminatory laws observed under the umbrella of the constitution.

One of such laws is The Dowry and Bridal Gift (Restriction Act), 1976 made under the constitution. The sole objective of the said law is to implement restrictions on dowry and other extra expenses of marriage, although it seems difficult to implement such laws (World Bank, 2005) but such social traditions and interests having economic implications cannot be transformed immediately after legislation. Promulgating restrictions regarding the said social problem rather to eradicate it from the society, presents weak nature of the law. It is customary that families give dowry for the status of elevation of their daughters but it is a major cause of disputes at the time of divorce between the families (NCSW, 2007).

With the promulgation of Hudood Ordinance 1979, a new chapter of women status started in Pakistan but it delegated a step back status to women. Though the claim about Hudood Ordinance, 1979 (adultery and fornication) revealed that it was promulgated under the banner of Islamization by another army ruler, but it could not be proved beneficial for women status. It started an injustice atmosphere between the two sexes of the country as it did not differentiate rape and adultery (Qureshi, 1997).

Hence, when talking about women's sexuality in an Asian patriarchal society without authentic testimony, it destroyed her whole social life and also the other women of her family. In cases of pregnancy, Hudood Ordinance charged women under rape because the law could not draw a clear line between rape and fornication. Further it did not accept a woman's testimony in case of rape. Women were punished publicly with lashes and became a source of dishonoring them. Even the legal experts of Pakistan and the Shariat Court were silent about the abolishment of the law. Though Muslims have clear interpretations of the said issue and crime in Quran but it could not be observed under the banner of

“Islamization of laws”. Policies under Islamization were distinct and control over women became the key marker of the state's adherence to religious norms (Khan, 2019). To the feminists groups of the country, the said law was promulgated by the General's own will.

Women status was used as a card by the General to justify the slogan of Islamization of Laws and proved himself as “a wily social tactician” (Jalal, 1991). There were aggrieved feelings of the masses towards this manipulation of religion for political cause. The society values were attacked by his stance and demonstrated that mostly people seem to be very religious, but actually they are not observed as publicly religious (Weiss, 1994). Consequently, women had this exploited legal status which grew out of the political shifts at that time and showed prominent contention between liberal feminists groups, local simpleton followers of religion and the political conducts. Regarding women welfare, the only credit of the said government was establishment of Women Division, and the commission on the status of women. It also initiated curriculum regarding ‘women in development’ and introduced 10% women sets in parliament in 1985.

It was assumed that the accidental death of the General in 1988 will bring prominent changes in the political environment of the country and subsequently the women welfare will be seen in a new form. But history witnessed that the next decade (1989-99) showed highly political instability in the country. Under the two-party system scenario, the two popular parties of the Pakistan occupied the government one after the other; subsequently women welfare issues went far behind.

Under the PPP government, though under a women prime minister, no improved women welfare measures were observed at legal level. It seems the political pressures could not allow her to amend or promulgate new women welfare laws in the country. However, ratification of the CEDAW was observed in her second tenure. Moreover, under the PML(N) governments, it was also claimed to adopt the Islamic laws in the country as written in the constitution but such claims could not be observed beneficial in case of women welfare laws. The present government passed Qisas and Diyat Ordinance, 1997 which supported the legal justifications of murder crime involving women honor. When women murder proceedings were presented with this plea, court took the decisions on the ‘*plea of grave and sudden provocation*’. Consequently honor crimes were increased in the country with legal approval and women status was again at a back step.

After a democratic political instable decade, the country observed an army ruler again. In the 21st century Pakistan had been a signatory of certain international commitments. So due to such commitments and NGOs pressures, government took some new steps to elevate legal status of women to empower them at national and international level. In this regard, a set of laws was observed under women protection bill by the army ruler and by the democratic government in 2008. Government promulgated The Criminal Law (Amendment) Act, 2004 (dealing with honour crimes), Protection of Women (Criminal Laws Amendment) Act, 2006 which repealed Hudood Ordinance, 1979, The Protection against Harassment of Women at the Workplace Act, 2010 and The Acid Control and Acid Crime Prevention Act, 2010. The Criminal Law (Amendment) Act, 2004 which deals with honour crimes seems to repeal the Qisas and Diyat law. It was for the first time in the History that the problem of honor crimes was legitimized by the government, but still the criminals have not been punished publicly which proves the ineffectiveness of the said law.

Protection of Women (Criminal Laws Amendment) Act, 2006 repealing Hudood Ordinance, 1979, drew a clear line between the crime of adultery and fornication. But on close examination it can judged that some clauses of Hudood Ordinance are removed in this law and have been reinstated back

to the PPC which were the fraction of Pakistan Penal Code before 1979 (Mehdi, 2010). It illustrates that this law appears to be a tussle between the two groups i.e. the conservative and the liberal groups of Pakistan who tried to find a solution for women problems at the legal platform in their own way.

The other two laws namely, The Protection against Harassment of Women at the Workplace Act, 2010 and The Acid Control and Acid Crime Prevention Act, 2010 also seemed to be the mere piece of paper and could not benefit the common women in the country. In the cultural context women work in the private and public sector is restricted by the family and clan's social control. So passing the law on harassment issue seems to be ridiculous. Further the law seems to be misused by some people to destroy the honor of men in the society which may disrupt the family structure of the Pakistani society; disturbing the family settlements of a woman. The second law also could not control accidents caused by Vitriolage/acid throwing attack and this issue is still observed in different parts of the country. Consequently, polygamy is even now in practice, concubine culture still prevails, honor crimes and Vitriolage is still reported, in short, the purpose the above said laws could not be achieved yet. Therefore, women are having poor social status in the country and the laws are still unable to elevate status of Pakistani women

4. Conclusion & Suggestions

At a glance, the prevailing women welfare laws in Pakistan declaring empowerment, presents an impressive expression at national and international level. But on the factual grounds, most of the laws are influenced by the Martial laws governments under different decades. Several biased laws promulgated under different banners of "customary laws", "pre-independence laws", "Islamization of laws", and "women empowerment laws" have failed to provide women an equitable status in Pakistan. Women welfare laws are full of lacunas and discrimination, in an Islamic ideological country. Different women working groups are always interested in passing the laws by the assembly rather to analyze its effectiveness for women empowerment.

Embezzlements and misconducts of the political figures and bureaucracy are the popular culture of the country since decades. Budget for the certain implementation mechanisms goes in their pockets. It presents a clear picture in which government declares to empower women but it is only a "Government Masquerading" not the reality. Due to such ground realities, women welfare is merely a dream even after seven decades.

On factual basis, Pakistan, still after 73 years, is in a transitional stage to develop a nexus between the Islamic ideology and modernization. Islam presents a well-defined socio-economic status of the woman whereas modernization demands the equality of the rights. The declaration of improved women status has been observed under Islamization of laws and under modern constitutional provisions since last 7 decades but both seems to be unsuccessful in elevating women status in Pakistan. At least a dozen laws have been promulgated to safeguard women rights but to no avail.

It is suggested that government might address the poor status of women issue by effective implementation of the legislative framework. A collaborative effort of academicians, legal bodies and administration can be an effective approach to attain the welfare of women in the country.

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