

**POLICY RECOMMENDATIONS
FOR WOMEN'S STATUS IN
PAKISTAN**

A Parliamentary Charter for 2002/3

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FOUNDATIONAL PRINCIPLES

The **fundamental principles** on which this charter is based are threefold:

1. That women's rights are the same as human rights.
2. That women's rights in Pakistan cannot and should not be divorced from many accepted international standards and guarantees that safeguard these rights.
3. That the articulation and enforcement of these rights be accepted as a basic right enshrined in the Constitution.

The existing **Constitutional Provisions** on which this charter is predicated are threefold:

1. All citizens are equal before the law and are entitled to equal protection of law. [Article 25]
2. There shall be no discrimination on the basis of sex alone. [Article 25]
3. Steps shall be taken to ensure full participation of women in all spheres of national life. [Article 34]

OBJECTIVE AND PARAMETERS

While the scope of this paper's recommendations is by no means exhaustive or even sufficient to address the incalculable obstacles and problems that afflict the women of Pakistan, it is intended as a macro-level road-map for legislators as well as civil society for coming to grips with some of the pressing issues that need continuous public debate and a higher priority on the national agenda. It goes without saying that much more work and attention needs to be focused on half of the nations' citizens who will need significantly more than just commitments and expressions of intent for their daily reality to register any lasting change. The grid of broad-brush recommendations in this charter is culled from several advocacy group findings, like the HRCP's reports and the 1976 and 1985 Reports on the Status of Women, but the bulk of its suggestions are from the seminal work done by the Report of The Commission of Inquiry for Women which was instituted in 1994 by the PPP government under the chairmanship of Justice Saad Saood Jan and published its report in 1997 under Justice Nasir Aslam Zahid .

BACKGROUND

Pakistan was created as a home for Indian Muslims, where they could live in peace and economic security. Whereas it was never conceived as a theocracy, the state was broadly committed to the Islamic principles of justice and equality for all citizens including women, minorities and all disadvantaged groups. In the struggle leading up to the creation of Pakistan, in fact, Quaid-i-Azam Mohammad Ali Jinnah, the founder of Pakistan, had unequivocally stated: "It is a crime against humanity that our women are confined within four wall of their homes like prisoners. They should [stand] side by side with men as their companions in all spheres of life."

Today this egalitarian vision of MA Jinnah stands largely unrealised. Not only are Pakistani women disadvantaged and unempowered by social and economic factors, they are actively discriminated against by changes made to the 1973 Constitution without public debate in 1985 through military-sponsored interventions such as the Eighth Amendment.

In other areas, where the Constitution actually safeguards their rights, they are victimised by a combination of factors. First among these are the reactionary forces that use violence against women as a tool for reinforcing their exploitative socio-economic hegemony in the less developed areas of the country, which includes the rural, quasi-rural and tribal belts of Pakistan. The other factor that allows widespread abuse of women across the country, including its more educated, urban pockets is women's low literacy and education levels. Even for reasonably educated women, a startling lack of awareness about their rights unites with social pressures to keep them in a permanent state of victim-hood, where they are unable to see themselves as adults with rights equal to those of men. Examples about inheritance laws and divorce rights are legion, where several existing laws designed to protect women's interests are abused by authority figures in social or family units either by lapse or active disregard.

Examples of discrimination at work, in the home and in access to resources paint an overall picture of women's status as remaining both low and precarious across many levels of society. In the labour force, women's uncounted and low-paid work continues to put them at a disadvantage with men. Although Pakistan has ratified the ILO Convention 100 on equal pay for men and women for equal work, the implementation of the Convention was noticeable in its lapses. Numerous studies point that women remain the worst victims of poverty, which has been on the rise so that 34 % of the population lives under the poverty line. A World Bank study found that poverty within one family in South Asia meant that girl children were the most deprived of education, healthcare and even food. As it stands, only 13% of women in the country have access to basic health facilities for the delivery of their children, and low nutritional access combines to give Pakistan one of the highest maternal and infant mortality rates in the world.

Unsurprisingly, the statistics on women's education tell a grim story. Of the 8.2 million primary-school children out of schools in the country, 6 million of these are girls. Pakistan's female enrolment figure of roughly 40%, is alarmingly behind the figure of 78 % for Bangladesh, 76% for India, 100 % for Sri Lanka and the Maldives. By the secondary school stage, only 13% of women remain in schools, a fact that has more to do with economic rather than social pressures. Wherever free schooling has been available even in the most conservative communities in the NWFP for instance, girls have been sent out to school, depending on the proximity of the facility.

In recent years the incidence of both domestic and public violence against women has assumed tragic and alarming proportions. The heinous and extrajudicial act of honour killings has also spread to areas where it had not been practised in the past, while those responsible have often been allowed to slip through the net. The Regional Directorate of Human Rights, the Ministry of Law, Justice and Human Rights reported from Peshawar in April that in 90 % of the cases involving violence against women, the culprits have not been penalised. At the same time, the HRCP report for 2001 said that despite low reportage figures, a woman was raped every two hours in Pakistan.

To add to the catalogue of woman's miseries, in Pakistan, unfortunately Islam has been widely abused by political opportunists in the military, state and religious right establishments to isolate, subjugate and disempower women for different reasons. The first steps regarding women's status that the Ziaul Haq regime took for instance, was subverting the 1973 Constitution, so as to target women through the discriminatory Hudood Ordinances. Under the infamous Zina law, for instance, which has not been subject to ijtehad or consensual review since the seventh century, a woman who was a victim of rape could not report the case because she automatically became accused of adultery since she clearly could not produce two witnesses to the crime to give testimony in her favour.

Although no woman has been sentenced to death under this draconian law, several who cannot afford the cost of an expert defence languish in jails due to its existence on the statute books. A sample survey of Central Jail, Lahore, 1980-87 shows that roughly one-third of all female prisoners are accused of zina. According to the 1988 figures, 47 % of the imprisoned women in Punjab were either convicted of zina or were facing trial for this offence. Data from the Women Police Station Karachi South shows that around 80 % of the cases registered are under this law. Details from other jails also bear out same or higher percentages. Obviously, the brunt of this law falls mostly on women from the poor and disadvantaged sections of the population. It has done damage not just to the cause of women, justice and Islam, but also to the image of Pakistan as a country where women are mistreated in collaboration with the state. This charter's position on Women and Islam is best articulated by the 1997 Report of The Commission of Inquiry for Women, which says:

"Islam is the most enlightened of religions. It seeks to emancipate, rather than to isolate or subjugate women. Its clear intention was and is to free women from all forms of oppression and discrimination. It is the only religion to recognise women's individual rights and status, and to empower them as a matter of their own right. As a progressive religion exemplifying justice and equality, it forbids discrimination on the basis of sex, colour, caste or creed."

As it stands, the women of Pakistan are still waiting for the day when they will get the justice and equality promised to them by both Islam as well as the founder of the nation.

RECOMMENDATIONS:

RATIONALISATION OF LAWS

- Parliament should openly and exhaustively debate the impact of several sections of the Eighth Amendment and repeal all such of its provisions, which are against the letter and spirit of the 1973 Constitution, or those, which adversely affect the rights of women. Specifically, the Hudood Laws need to be repealed since in practical terms they have demonstrably failed to serve their purpose of deterring crimes and to the contrary, have caused women severe hardship in terms of mostly false and unjustified complaints, and are not in conformity with the injunctions of Islam.

- The Council of Islamic Ideology should include members from various walks of life which includes the Presidents of the bar councils, judiciary and at least 33 % of women members to ensure that it is more representative in character.
- Chapter 3 A to Part VII of the Constitution be repealed since the Federal Shariat Courts replicates an already existing judicial system as well as a supra-constitutional body and its functioning does not require it to debate laws, including gender-sensitive issues, in parliament before it replaces existing legislation.
- The 1984 Qanun-i-Shahadat law [articles 7 and 17] regarding competence and number of witnesses be changed. The provisions of the old law should be revived since under this law it is the court's discretion to equate the evidence of one man to two women in matters of qisas.

CRIMINAL AND FAMILY LAW REFORM

- To counter the growing trend of violence against women, the procedure for investigation by the police should be clearly laid down and closely monitored. Police officers who are reluctant or slow to lodge victim's complaints should be severely penalised. Laws should not only be enacted but also implemented against such gross and malevolent negligence of public duties. Punishments meted out to negligent police officers be publicised, both to serve as a deterrent as well as to restore the confidence of the public in the law-enforcement agencies.
- Specific legislation on domestic violence by husband or in-laws be enacted, clearly annunciating cruelty as a criminal offence.
- Perpetrators of extra-judicial crimes against women, such as Karo-Kari, honour killings, revenge dishonourings and rape, be awarded strict and exemplary punishments irrespective of who the perpetrators are and where they are from. Sentences should under no circumstances be mitigated. Honour killings should be punishable as 'qatl-i-amd'. All parties who wilfully withhold information or mislead the course of justice in such cases be declared accessories to the crime.
- Policies for the provision of legal support and financial responsibility of the state in stove-burning cases must be clearly articulated and monitored. More burn units should be set up and the existing facilities be upgraded and expanded.
- The punishment of rape on a minor female must prescribe a minimum of at least seven years of rigorous imprisonment. Rape victims must be provided counselling and help at state expense.
- Women and children be allowed to access bail and surety liberally. Surety should not be made conditional on other factors since constraints can often deny this facility completely to women and children.
- The law be amended to provide adequate penalty for the display of dowry or the ostentatious display of wealth during wedding ceremonies in any manner.
- The Pakistan Penal Code, 1860, be amended to add a new section providing for cruelty on a wife. The law should say 'whoever being a husband or relative of the husband of a woman, subjects such a woman to cruelty which may be mental or physical, shall be punished with imprisonment which may extend to three years and shall also be liable to a fine.'
- The West Pakistan Family Courts Act, 1964 should also be extended to the Tribal Areas.

- The law to be amended to require the consolidation of all issues—for example, custody, maintenance, dower, ma'ta, and jactitation of marriage-arising out of the same divorce proceeding.
- Family courts be set up in necessary number, which should deal exclusively with issues concerning family laws.
- The process of registering nikahs should be completely overhauled. Clauses in the nikahnamah form should be rationalised to inform women of their rights in terms of divorce, polygamy and other contractual details. Nikah registrars should be educated persons, while penalties for misuse of powers should be strict and enforceable.
- A law be enacted to punish those who coerce non-consenting parties into a marriage, and at the same time to declare that the consent of the wali in the marriage of an adult female is not required under the law.
- Section 15 of the Guardian and Wards Act 1890, be amended to include that the mother of a minor should always be considered for the guardianship of the property and person of the minor at par with any other person. Section 17 be amended so that the only consideration for the court to determine guardianship should be the welfare of the minor.
- Forced marriages of minors should be made a punishable offence under the Pakistan Penal Code 1860. They violate both fundamental human rights and the tenets of Islam. The prescribed minimum of 16 years of age for the marriage of girls should be strictly enforced. The offence against this should be non-cognisable and anyone should have the right of complaint. The parents/guardians and groom if adult, and the person solemnising the marriage should all be liable to punishment.

INSTITUTIONAL SUPPORT

- Separate jail facilities be built for female prisoners without overcrowding, where basic facilities such as food, portable drinking water, medical care and toilets be adequately provided for. Access to competent counsels for inmates be facilitated. Women prisoners should be taken to court premises, not police stations; appropriate childcare and educational facilities should be secured for the innocent children of inmates who live with their imprisoned mothers
- Women who are the victims of domestic or social violence should be given shelter by the government in centres, which collaborate with NGOs in the legal aid, social welfare and vocational training support sectors. These shelters must only provide protective, and not custodial or reformatory cover. Such institutions are critical to the support of battered and abused women, and must be provided adequate security by the government [to prevent management being harassed by families]. They must be registered, with notified addresses, and equipped with adequate resources to ensure adequate hygienic accommodation and basic amenities
- A law should be enacted for punishment against the handing over of a female as 'badl-e-sulh' or part of it.
- A conscious effort be made towards achieving gender equality at all tiers of the judiciary.

- More women's police stations need to be established in all districts and provinces, plus an increased number of women should be recruited in the police force.

INHERITANCE/PROPERTY ISSUES

- Inheritance cases of widows and orphans should be taken up on a priority basis by courts and settled within six months.
- Property in the name of women be recognised as their property and the law relating to 'benami' transactions, which usually affects women adversely, be abolished through statute.
- In the case of transfer of property by whichever means, a woman's personal presence before any registration office or revenue authority be made mandatory. Witnesses must be locally well-known and intimation of all such transactions be lodged with a central district authority as well.
- Women's share in all property and assets acquired after marriage in the name of either spouse, based on her paid or unpaid contributions, be legally recognised and secured for her in case of divorce or husband's death.
- Women's access to ownership and control of assets, particularly government distributed land and property, be increased through the registration of title-deeds of all state lands allotted for lease or home sites, jointly in the name of husband and wife. In the case of female-headed households all such registries should be made in the name of the primary-earner, not a male dependant.
- A special commission to be set up by the government to explore ways of improving women's economic status on the basis of earlier government reports and inquiries and by studying what other countries have done in this regard.

POLITICAL PARTICIPATION

- Although no perfect system for mainstreaming women into the political system exists, the option of reserving seats for women in the national legislatures is still seen as the optimal solution. The 17 % instituted by the government should be increased to a minimum of 33 % in all representative bodies. Necessary amendments should be initiated to provide for women's reserved seats in all the elective bodies including the National and Provincial Assemblies, The Senate and the Local Bodies.
- Political parties be asked to allocate a significant proportion of their general seats for women, with a caveat to ensure against the 'losing' seats being parcelled out to women candidates.
- Political parties be asked to include women in their Executive and decision making bodies.
- Prompt action to be taken under the existing penal provisions against candidates, parties, pseudo-religious and other categories of individuals or bodies acting to restrain women from voting or creating obstructions in any way in their voting.
- Where evidence of any such large –scale non participation of women through deliberate obstruction is found, the Election Commission should declare that election null and void.

- Electoral rolls should be updated to ensure that not only all eligible women are included, but also that their names are exactly the same as the names on their identity cards.
- The process of issuing identity cards be simplified, cheaper and more accessible, especially for women living in remote and rural areas. Photographs of women on identity cards should be made compulsory, as it already is on passports.

SOCIAL POLICIES AND LABOUR LAWS

- Parliament should give clear voice to a strong mandate for affirmative action in order to provide women a fair chance to participate in all facets of national socio-political and economic life.
- In drafting legislation, special care should be taken to ensure that laws that genuinely increase the opportunities available to women and ‘operate favourably’ toward them are enacted; laws, which claim to ‘protect’ women while in fact, depriving them of opportunities be struck down.
- Additional workplace security, strict penalties for sexual harassment, as well as other crimes against women, and unrelenting enforcement must be put in place.
- Women should be represented on the executive bodies of the trade unions of the establishments in which they work. In all female-work forces, the employer/management’s attempts to disband or de-unionise them must be made into a punishable offence.
- Strong legislation mandating substantive affirmative action programmes, including quotas if necessary, for women should be introduced. Employers who comply with stringent affirmative action targets for female workplace membership should be rewarded, possibly with reduced corporate taxes or other incentives. Employers who discriminate should be strongly penalised.
- Labour inspectors should check on gender discrimination regarding pay and sexual harassment and to ensure extension of statutory benefits to women such as childcare and maternity benefits.
- The government must ensure adequate participation of women in, and on the boards of, semi-autonomous bodies, advisory boards, committees, banks, PIA, zakat and ushr committees etc.
- Public transport facilities should be immediately improved through increasing and improving existing transport facilities to ensure sufficient space for women. Private and public carriers discriminating against women or not ensuring their seats should be fined severely.
- The Women’s Division/Ministry be made a permanent member of important policy-making forums like the National Economic Council, Executive Committee of the NEC, Agricultural Credit Advisory Committee, the University Grants Commission/ University Board etc.
- Women’s issues be integrated into the each successive Financial Plan and Annual Budget, with clear allocations, targets and effective implementation and monitoring strategies.
- The CEDAW document be widely publicised and intensively discussed, particularly at all decision-making levels.

- Mechanisms to be developed to enforce compulsory primary education.
- The financial allocations for education should be enhanced to 4% from the existing 2.3%. At least 50% of the entire education budget at all levels be reserved for girls.
- Allocations to the health and population sectors should be gradually increased to 6% of GDP, in keeping with WHO recommendations.
- Outreach of all health, nutrition, hygiene and sanitation programmes should be extended, with a particular focus on rural women, urban slums, squatter settlements and disabled women.
- Serious attention be given towards providing reproductive and maternal health care facilities, according to several recommendations made earlier, along with sufficient financial allocations.