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Rape Under the Blanket of Legality: A Review of Pakistan's Legal Code on Rape Laws

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Abstract

One of the most common but unreported crimes is rape. A recent report by the Pakistan Human Rights Commission found that 11 rape cases are reported daily, with over 22,000 cases reported over the past six years from 2015 to 2021. Rape was recognized as a crime by the Hadod Ordinance law in 1979 and since then it kept evolving. Marital rape is an issue that has been identified as a social problem by various states of the world. Some countries have passed legislation against this form of spousal abuse but in Pakistan, the term 'marital rape' is hardly known by the masses. The present research paper aims to present a comprehensive content analysis of the historical development of Pakistan's rape laws, specifically the country's law on marital rape qualitatively. This research paper has considered the role of Islamic Ideology and the journey of feminist movements in constitutional development, and amendments, and how it impacts the perception of marital rape in Pakistan. The primary focus is on the loopholes in rape laws and sexual harassment laws of Pakistan and how it plays the role of normalizing the act of sexual abuse by spouses in society. The paper also assesses the functioning of Pakistan's formal institutions, in addressing marital rape.

Keywords: Marital Rape, Pakistan, Laws, Marriage laws, Sexual Harassment

Introduction

Marital rape remains a deeply contested and largely overlooked issue in Pakistan's legal and social landscape. While rape is criminalized under Pakistan's legal framework, the notion of non-consensual sex within marriage remains absent from statutory definitions, leaving survivors without legal recourse. The influence of cultural, religious, and patriarchal norms has played a significant role in shaping legal perceptions, often prioritizing marital rights over individual bodily autonomy. This

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content analysis critically examines Pakistan's legal code on rape, with a particular focus on the absence of marital rape laws, the historical and contemporary legal framework, and the social barriers to reform.

The study explores the Hudood Ordinance of 1979, which blurred the distinction between rape and adultery, creating legal hurdles for survivors seeking justice. It also assesses the controversies surrounding the 2006 Women's Protection Bill, which attempted to reform rape laws but fell short of recognizing marital rape as a criminal offense. Furthermore, the role of feminist movements and human rights organizations in advocating for policy change is analyzed in light of deep-seated cultural and religious narratives that shape public discourse.

Pakistan has passed several laws to shield women from abuse and violence over the years. The Protection of Women Act (Criminal Laws Amendment) of 2006 the Protection against Harassment of Women at Workplace Act of 2010 the Benazir Income Support Programme Act of 2010 the Women in Distress and Detention Fund (Amendment) Act of 2011 the Hindu Marriage Act of 2017 the Punjab Women Protection Authority Act of 2017 and most recently the Domestic Violence (Prevention and Protection) Bill of 2021 are some examples of these types of laws. Notwithstanding these legislative initiatives, horrifying events such as the Motorway Gang Rape Case in 2020 and the Zainab Rape and Murder Case in 2018 have revealed serious weaknesses in the government's capacity to protect the safety and justice of abused women. The efficacy of current legislation has been seriously questioned in light of these tragedies. The Anti-Rape (Investigation and Trial) Act of 2021 was passed by Parliament on December 3 2021 in response to mounting public outcry and calls for more robust action. It is an essential step in bolstering legal protections as the first and only specialized law addressing rape cases. Even the law has not had a significant effect on reducing the nations continuing spike in rape and sexual abuse cases. After the public hype, it was then officially forced the government to formulate proper laws which was known as the Zainab Alert Response and Recovery Act of 2019. Pakistan's first national child safety law was created by this historic law (BBC News, 2018).

Theoretical Framework

Resource Theory

According to this theory acceptance and intimidation of violence is dependent on all social relationships (Kenny, Fotaki & Scriver, 2019). This theory represents that the availability of resources at the individual level can be a threat to violence, but this is not a must condition to exercise violence (Walters, Basile, & Hall, 2013). It does not imply that threatening tactics cannot be used to have control but to avoid physical violence. Under such conditions generally, women face emotional violence rather than physical and people having control over resources resort to their control over

relationships (Walters, Basile & Hall, 2013). To eliminate violence against women effective legal strategies should be designed as emotional violence is not yet considered a crime against women. A barrier in this regard is that women are highly emotional and they suffer from gender violence. Therefore, programs and laws should be designed to support women who are victimized.

Theory of Social Exchange

This theory argues that people seek the best rewards without putting their best efforts into sustaining balanced relationships (Kreager, Felson, Warner & Wenger, 2013). Violence against women can be controlled by implementing proper laws (Resko, 2010). There are laws to control crimes against women but are not effective enough to help violence victims (Vidales, 2010). Ineffective laws not only make women suffer more but also promote more violence, thus giving perpetrators the courage to be more authoritative (Sage Publications, 2012). Many criminals are released even after being charged (Johnson, 2005). For many people prison sentence is a very low-level punishment, therefore along with punishment, heavy penalties should also be introduced to control the high violence ratio.

Other Theories

Social interaction theory and resource theory are basic frameworks, so many other theories should be equally practiced to control violence intensity and its other aspects as well. Violence against women is a very complex issue that has toxicities for the whole society (McDonough, 2010). This study focuses on these theories to inspect how the intensity of violence can be reduced in an appropriate manner

Review of the Literature

Until the 17th century, marital rape was not recognized as a crime, and it was socially acceptable for husbands to sexually abuse their wives without legal repercussions (Yllo & Torres, 2016). In 1736, England's Chief Justice Sir Matthew Hale stated: 'But the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract' (Russell, 1990, p. 17).

In their work, Yllo and Torres (2016) explained the three main justifications for Hale's ruling:

1. The Property Theory: Women were legally viewed as their husbands' property, lacking personal rights or choices. Assaults on married women were considered as damage to a husband's property.

2. The Unity Theory: A woman's legal identity was dissolved upon marriage, merging her identity with her husband's. Thus, the law considered the husband and wife a single entity.

3. The Consent Theory: Marriage was seen as a contract in which a wife surrendered all personal autonomy to her husband, granting irrevocable consent.

These perspectives gave husbands the unchecked right to inflict physical and psychological harm on their wives. Domestic violence victims had no legal resort, as authorities viewed such matters as private family concerns (Caringella-MacDonald, 1988). Legislators also hesitated to criminalize marital rape, considering sexual relations between spouses to be private matters (Russell, 1990). As public awareness grew, however, the justification for marital rape immunity began to be questioned.

In 1889, the Married Women's Property Act marked a step forward, granting women the right to own property and work without their husbands' consent, shifting perspectives on women's autonomy. Nonetheless, marital rape remained legal in the United States for nearly another century (Small & Tetreault, 1990). During the 1970s, amidst the rise of second-wave feminism, society began recognizing rape within marriage. The debate on criminalizing marital rape gained momentum when John Rideout became the first man to be prosecuted for marital rape in 1978. Although Rideout was ultimately acquitted, the case raised public awareness about sexual violence in marriage (Bazhaw, 2008; Greenfeld et al., 1998). *WHO multi-country study on women's health and domestic violence against women: Initial results on prevalence, health outcomes and women's responses*. World Health Organization (Garcia-Moreno et al., 2005). By 1995, the U.N. Women's Conference had declared that wives have the right to refuse sexual demands from their husbands (X, 1999). This shift of general view is referred to as an ideology that is a system of beliefs that shapes individuals' perspectives (Filippini, 2016). Eagleton (2013) notes that ideology often rests on preconceived notions, aiming to influence people's thoughts and behaviours. Dominant groups propagate ideologies using societal structures like economics, politics, and culture to reinforce their power over subordinate groups. Ideologies are normative, delineating "correct" beliefs and justifying the power of dominant groups, but they often face resistance due to complex human relationships and communication patterns (Fuchs, 2020).

The National Clearinghouse on Intimate Partner Rape

Founded in 1978 by the Women's History Research Center in the United States of America, the National Clearinghouse on Marital and Date Rape was the first institution dedicated to compiling information on marital and date rape cases. This centre aimed to spotlight cases where the perpetrators were intimate partners, drawing attention to the unique dynamics of trust violated in such assaults. It provided extensive data, including media publications, that became instrumental in legislative

advocacy. The National Clearinghouse also published insights on landmark cases, like Rideout's, to advance equality in intimate relationships (Coker et al., 2000).

The Hudood Ordinance, 1979

General Zia-ul-Haq, Pakistan's sixth president, enacted significant constitutional reforms during his rule from 1977 to 1988, promoting Islamization, which included laws impacting women's rights. In 1983, he emphasized women's protection within the household under the "chadar and char diwari" doctrine. However, initiatives like women's courts, intended to handle cases involving women, were never implemented (Weiss, 1985). Among these laws, the Hudood Ordinance of 1979 was particularly controversial, aligning rape and adultery punishments with Islamic principles. To prove rape, the law required four male witnesses, and lacking sufficient witnesses, the victim could be accused of adultery, punishable by stoning or flogging (Quraishi, 1999). The Hudood Ordinance contained clauses on *Zina* (unlawful sexual relations), including *zina-bil-jabr* (rape) and *qazf* (false accusation). These conditions made it difficult to prosecute cases, especially within marriage, as the Ordinance excluded marital sexual abuse from its definition of rape. This legal framework discouraged women from reporting abuse, and accusations against women surged (Lau, 2007).

The Protection of Women Act, 2006

In the aftermath of General Zia-ul-Haq's era, Pakistan experienced another military coup led by General Pervez Musharraf in 1999. During Musharraf's rule, significant reforms were introduced to improve women's social status. Women were allocated more seats in Parliament, marking a substantial increase in their political involvement. For the first time, women were permitted to serve as fighter pilots in the air force, and they also began participating more freely in other areas, including civil services, entrepreneurship, media, and social work. One of the key milestones in this era was the enactment of the Protection of Women (Criminal Laws Amendment) Act in 2006. This act allowed DNA testing and other forensic methods to be used in prosecuting rape cases (Bajwa, 2017).

Some of the notable amendments to the Pakistan Penal Code's Section XLV of 1860 concerning *Zina* (adultery) and rape are as follows:

Rape is defined as when a man has sexual intercourse with a woman under the following conditions:

1. Against her will.

2. Without her consent.

3. With her consent, but obtained through fear of death or harm.

4. With her consent but by deception, making her believe he was her lawful husband.

5. With or without consent if she is under sixteen.

Punishment for Rape

1. Individuals convicted of rape may be sentenced to death or imprisonment for 10 to 25 years, and may also face fines.

2. If two or more individuals commit rape collectively, each participant is liable to life imprisonment or death.

   The Protection of Women Act, of 2006 reduced several obstacles for women reporting sexual abuse, offering practical solutions to increase support for victims (Lau, 2007).

Controversies Surrounding the 2006 Women's Protection Bill

The Women Protection Bill of 2006 generated widespread debate, splitting opinions across the country. Some lauded the amendments as progressive, while others argued they contradicted Islamic principles. A faction of religious scholars and clerics criticized certain clauses as being contrary to Sharia law, arguing they would make it challenging to penalize adulterers and might even promote. The amendments to Hudood laws on rape, false accusations, and adultery were viewed by some as contradicting the Quranic law and Sunnah (Lakhvi, 2010).

Empirical Data

Statistics on Sexual Violence in Pakistan

Violence against women remains a widespread issue in Pakistan, with cultural norms perpetuating an environment where male dominance and physical aggression are normalized (Lederer, 1968). While the legal framework has made progress with new laws, their enforcement remains inconsistent, leaving women vulnerable (Aurat Foundation, 2016). The state's lack of substantial efforts to address institutional attitudes toward women's protection further exacerbates the issue. Although there is no comprehensive government data on spousal sexual abuse, small-scale studies indicate that non-consensual sex is among the many forms of violence women experience (HRCP, 2000). The NGO War Against Rape (WAR), founded in 1989, has documented statistics that reveal a troubling prevalence of unreported sexual violence cases. Between July 2016 and September 2018, WAR conducted 838 medico-legal exams of sexual violence victims, with many cases not recorded in police stations (WAR, 2018). From 2008 to 2016, Karachi alone registered 832 First

Information Reports (FIRs) related to sexual abuse (Ali et al., 2011), despite 2,993 medico-legal exams being conducted at just three hospitals—Abbasi Shaheed, Jinnah Postgraduate Medical Centre, and Civil Hospital—over the same period. This disparity highlights significant underreporting. WAR also recognizes that while marital rape cases occur, factors such as patriarchy, societal shame, and stigmatization deter victims from reporting these incidents (WAR, 2018). Patriarchal norms and the taboo surrounding marital rape contribute to a lack of formal data on the issue, though it remains a common form of domestic violence (Bahl, 2007). Research indicates that many Pakistani women face sexual violence, often by family members, with refusal to engage in sexual relations potentially leading to severe consequences such as anger, mistrust, and violence (Hussain & Khan, 2008).

Global Prevalence of Marital Rape

Marital rape is a serious yet under-recognized form of human rights abuse worldwide (Saltzman, 1999). Also known as spousal rape, it is defined as non-consensual sex where the perpetrator is the victim's spouse or partner. Historically, marital rape was underestimated compared to stranger rape, though research reveals that it often involves sustained abuse (Troshynski & Dirks, 2016). Feminist theorist, Susan Brownmiller, broadly defines rape as any coerced sexual intimacy, while legal definitions of marital rape vary across jurisdictions. The United Nations classifies violence against women, including marital rape, as gender-based violence that inflicts physical, sexual, or psychological harm. In San Francisco, a study revealed that 12% of married women had experienced forced sex in their marriages, underscoring the severity of this issue (Russell, 1980). Researchers Hilberman and Munson found that many women experienced both physical and sexual abuse, sometimes in the presence of their children (Hilberman & Munson, 1977). Other studies indicate that 10% to 14% of women in the United States experience marital rape annually, and similar findings are reported in Asia and India (Bergen, 1998; Yllo & Torres, 2016).

Conceptual and Social Perspectives

The Influence of Belief Systems

Religious and cultural beliefs in Pakistan have a significant influence on women's lives, often restricting their development. These beliefs uphold customs that contribute to gender inequality, supporting a patriarchal system where men control women's lives (Niaz, 2003, 2004; Pande, 2002). Gender-based violence persists partly because of the widely held belief in male superiority and authority over women (Saigol, 2016; Mumtaz, 2005). Some cultural and religious beliefs reinforce practices that many individuals privately oppose but still follow due to tradition. For example, the notion that women must comply with marital duties, including sexual submission, is rooted in religious interpretations that cast sexual compliance as a marital obligation. Many religious doctrines emphasize a wife's duty to fulfill her husband's

desires, leading some women to endure marital rape out of fear of being labelled sinful. Certain religious texts reinforce the concept of sexual obedience, which is often cited in Pakistani culture.

The Role of the Feminist Movement in Pakistan

The feminist movement in Pakistan gained momentum primarily after General Zia-ul-Haq's Islamization policies in the 1980s. During this period, women faced setbacks due to restrictive Hudood laws, which limited women's rights and increased incidents of harassment. Female literacy, which had improved in the 1970s, began to decline (Weiss, 1985). Organizations such as the Women's Action Forum, Democratic Women's Association, Sindhiani Tehrik, Women's Front, and the All-Pakistan Women's Association emerged to challenge this system.

Initially, these organizations employed a progressive interpretation of Islamic laws to gain public support. However, the Women's Action Forum took a decisive step in 1991 by declaring its secular stance, which polarized the movement and led to unresolved debates.

Over time, feminist movements became associated primarily with urban culture, often failing to address issues faced by women across social classes. The commercialization of these movements, driven by donor priorities, led to an increased focus on political affairs at the expense of grassroots issues (Zia, 2009). Consequently, local women developed a disconnect from the movement, perceiving it as distant from their needs and concerns.

Research Methodology

This study employs qualitative content analysis to critically examine Pakistan's legal code of rape laws, with a focus on identifying legal ambiguities and their impact on justice delivery. The analysis is based on primary legal documents, including the Pakistan Penal Code (PPC), Hudood Ordinances, and relevant amendments, alongside secondary sources such as judicial interpretations, scholarly articles, and human rights reports. Legal statutes, judicial precedents, and parliamentary debates were retrieved from official government sources, legal databases, and published research. News reports and NGO publications were also analyzed to assess how these laws are implemented in practice.

Conclusion

The prevalence of marital rape in Pakistan is a deeply rooted issue that requires a comprehensive and culturally sensitive approach to address. Due to its socio-economic structure and deeply ingrained practices, Pakistan can be characterized as a

patriarchal society. This label stems from the systematic dominance of men in almost all spheres of life, ranging from the household to the broader political and economic landscape. Patriarchy in Pakistan is not just a cultural phenomenon but also deeply intertwined with its historical and structural frameworks. The situation was aggravated by the Islamization policies introduced during General Zia-ul-Haq's regime in the 1980s, which profoundly impacted the societal roles of Pakistani women. These policies led to the reinforcement of conservative norms and stricter interpretations of Islamic laws, significantly altering the rights, freedoms, and status of women in the country. The subsequent constitutional amendments, particularly those related to assault laws, made circumstances more challenging for women. One of the most significant consequences of the Islamization policy was the introduction of the Hudood Ordinances. These laws blurred the lines between rape and adultery, making it extremely difficult for women to prove cases of sexual assault without the risk of being accused of *Zina* (adultery). The evidentiary requirements under these laws were so rigorous that they effectively silenced many victims and discouraged them from seeking justice. This created an environment where domestic abuse and violence, including marital rape, were normalized and often went unreported. However, the enactment of the Women Protection Act 2006 marked a turning point in the struggle for women's rights in Pakistan. This legislation aimed to address some of the injustices perpetuated by the Hudood Ordinances by providing greater legal protection to women, particularly in cases of sexual assault and domestic violence. While the act was a step in the right direction, its implementation has been uneven, and societal discriminated attitudes continue to pose significant barriers (Ashraf, Abrar-ul-haq & Ashraf, 2017). Nevertheless, it represented a crucial acknowledgment by the state of the need to safeguard women's rights and address gender-based violence. Domestic abuse, in its many forms, is often normalized within the cultural fabric, with women being expected to endure it as part of their marital duties. The lack of legal recognition of marital rape as a crime further perpetuates this injustice, leaving victims without recourse and reinforcing the notion that such behavior is acceptable within the confines of marriage.

The cultural and religious dynamics of Pakistan add another layer of complexity to the issue. Any attempt to alter societal norms or introduce reforms that challenge the status quo is often met with resistance. Changes that are perceived as being against the prevalent Pakistani culture are frequently labeled as un-Islamic, leading to public backlash and political opposition. This resistance is evident in the debates surrounding women's rights, where conservative voices often dominate, framing the discourse in terms of morality and religious propriety rather than human rights and equality. The topic of marital rape, in particular, faces silence and stigma, as it challenges deeply held beliefs about marriage, gender roles, and the private sphere of the family. Local feminist movements have played a crucial role in highlighting issues of gender-based violence and advocating for women's rights. However, these movements often face criticism for being disconnected from the cultural and religious

realities of Pakistan. To be more effective, feminist movements in Pakistan need to align their aims and objectives with the dominant cultural values of the country. This does not mean compromising on the fundamental principles of equality and justice but rather framing their advocacy in ways that resonate with the broader population. For example, emphasizing the Islamic principles of justice and compassion can help counter the narrative that women's rights are a Western imposition. By rooting their arguments in local contexts and values, feminist movements can build greater public support and challenge entrenched norms more effectively. Addressing the issue of marital rape in Pakistan requires a multi-faceted approach. First and foremost, there is a need for mass awareness campaigns to educate the public about the nature and consequences of marital rape. These campaigns should be designed to reach diverse audiences, including men, women, religious leaders, and policymakers. Highlighting the physical, emotional, and psychological harm caused by marital rape can help challenge the misconceptions and myths surrounding it.

In addition to awareness campaigns, legal reforms are essential to address the issue of marital rape effectively. The current legal framework in Pakistan does not recognize marital rape as a distinct crime, leaving victims without adequate protection or recourse. Advocacy efforts should focus on amending the relevant laws to explicitly criminalize marital rape and ensure that victims have access to justice. This requires not only legislative action but also the strengthening of institutions responsible for implementing these laws, such as the police and judiciary. Training programs for law enforcement officials and judicial personnel can help them better understand the dynamics of marital rape and handle such cases with sensitivity and fairness.

Another critical aspect of addressing marital rape is providing support services for victims. Shelters, counseling centers, and legal aid services are essential components of a comprehensive response to domestic abuse. These services should be accessible, culturally sensitive, and equipped to address the unique needs of victims of marital rape. Collaboration between government agencies, non-governmental organizations, and community groups can help ensure that these services are available and effective.

The role of education cannot be overstated in this context. Incorporating discussions about gender equality, consent, and healthy relationships into school curricula can help challenge harmful stereotypes and promote a culture of respect and empathy. Education campaigns targeting adults, particularly in rural areas where patriarchal norms are often more deeply entrenched, can also play a crucial role in changing attitudes and behaviors. The media has a powerful role to play in shaping public perceptions and attitudes toward sensitive issues like marital rape. Responsible representation of these issues in films, television dramas, and news programs can help break the silence and foster constructive dialogue. Media campaigns that highlight the stories of survivors, while respecting their privacy and dignity, can humanize the issue and inspire others to speak out.

While the socio-economic structure and cultural norms of the country pose significant challenges, history has shown that progress is possible with persistent advocacy, education, and awareness. Local feminist movements, by aligning their strategies with the dominant cultural values of Pakistan, can play a pivotal role in this process. Legal reforms, support services for victims, and public awareness campaigns are essential components of a broader strategy to address marital rape and other forms of domestic abuse. With collective efforts and the right approach, it is possible to challenge the normalization of marital rape and recognize it as a grave social problem that demands urgent attention.

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