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Between Law and Society: Exploring the Persistent Rape Problem in Pakistan

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ABSTRACT

This research article delves into the pervasive issue of sexual violence against women in Pakistan, shedding light on the intricate web of factors contributing to its alarming frequency and the abysmally low conviction rates. The study explores historical perspectives, societal norms, and the role of various stakeholders in perpetuating an environment where sexual violence persists. From an Islamic standpoint, the gravity of rape, known as Zina bil jabar, is emphasised by the required penalties in the Quran and historical traditions. The article critically analyzes the performance of stakeholders within the Criminal Justice System, identifying flaws in investigation procedures, victim-blaming, societal pressures, and the often-tedious trial processes. The authors argue that while laws exist, their implementation falls short, resulting in a negligible 3% conviction rate. The study explores the implications of out-of-court settlements and societal attitudes, emphasizing the need for a holistic approach beyond punitive measures. In conclusion, the research calls for a comprehensive understanding of the multifaceted nature of rape in Pakistan. To guarantee victims receive justice, it promotes progressive societal attitudes, new laws, and criminal justice system reform. The author stresses that to make Pakistan a safer place for women, there needs to be a concerted effort to tackle the underlying causes of sexual assault.



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1. Introduction

Historically, Sexual violence is seen as the embodiment of uneven power relations between men and women. This has led to the dominance of men over women, causing discrimination against women and also being regarded as an impediment to women's empowerment around the world (Yasmeen, 2014). According to the UN declaration on the eradication of Violence against women (1999), women are perceived to be insecure even in their homes which are considered their safest place. To understand the root causes of Sexual Violence against women, we must look at the process of socialization, where parents train their children by prevalent gender-based stereotypes that consider a female child 'Subordinate' to their 'Superior' male child (Akanle & Busari, 2015). In Pakistan and other developing countries, Sexual violence is considered to be a consequence of a variety of factors such as Lack of awareness, poverty, low literacy rate, misogyny etc. However, the increase in the cases of violence against women exposed the state's incapacity to safeguard its women (Sukhera, 2021).

The term Violence against women is defined in the UN Declaration on the Elimination of Violence against Women 1993 as; 'Any gender-based violence that results in, physical, psychological and sexual assault causing suffering to women, including pressures and threats of such acts, coercion or subjective deprivation of independence, whether occurring in public or private' (King, 2019).

The prevalence of Sexual abuse and sexual violence against women is an undeniable reality all around the world. The technological advancement and digitisation of the 21st century cannot cease these incidences. It intersects religion, class, caste and society, degrading the dignity of women everywhere in the world. Though rape is categorized as a crime yet in many parts of the world, cultural attitudes and societal pressure obscure the line of distinction between acceptable and unacceptable sexual behaviour against women often leaving the victim without effective redressal. According to World Health Organization, Rape is regarded as a worldwide problem because every third woman encounters sexual or physical abuse at some point in their life (Web Desk, 2020). The region of South-East Asia is considered more susceptible to it, with estimates indicating that 37.7% of incidences occur there (News Desk, 2020).

According to Statistics, up to 70% of women suffer from physical and sexual violence by men during their lifetime. Therefore, it is a global phenomenon. Sexual violence, sexual abuse and sexual assault in general and rape, in particular, are undeniable realities in Pakistan. The numbers of incidences are soaring yet the conviction rate in Pakistan is abysmally low at a mere 3%, raising questions about the efficacy of the Criminal Justice System in Pakistan.

The unabated hike in the number of rape and sodomy cases needs the consideration of the Government, which often go unnoticed. While some of the rape cases catch their due attention, for instance, the Lahore motorway case showed the optimum potential of all the stakeholders, from the commission of a crime to the conviction of the accused. The dedication in such high-profile cases is up to the mark, but other cases lack the due consideration of all officials. Sexual violence on children of Kasur also shattered the conscience of those holding the reins of government, the rape and subsequent murder of a 5-year-old in Sindh made headlines, as many as 14,456 women are subjected to rape during the last 4 years in the Islamic Republic of Pakistan. Punjab recorded the highest number of rape cases in Pakistan in 2021. 1584 rape cases were registered in Punjab as compared to 153 in Sindh, and 92 in Khyber Pakhtunkhwa.

The Criminal Justice System of Pakistan acknowledges the critical role of Police, Judges, Prosecutors, Medical Officers, and Forensic Experts to conduct a successful criminal trial. The input of all the stakeholders is significant for the conclusion of rape cases. Other indirect factors also contribute to the process (Monroe et al., 2005).

The gap between law-in-legislation and law-in-practice causes impediments to the smooth functioning of a trial system, and the true spirit of the law is not yielded (Ghosal, 2013). The unfortunate upsurge of rape cases in Pakistan is evidence of the poor performance of all the stakeholders in the criminal justice system of Pakistan. Owing to the reasons like flawed investigation, victim blaming, societal pressure, tiresome

and embarrassing trial procedures, negligent handling of pieces of evidence, and apathy of defence counsel are some of the factors leading to court settlement by the victim of rape cases.

Although stringent laws are available on the subject, they significantly lack implementation, causing many hurdles in the trial and conviction of the accused. After the tragic rape incident on the Motorway, the President of Pakistan promulgated an Anti-rape ordinance in 2020 in which the provision of permanent castration for habitual offenders is legislated (Asad, 2020). According to social scientists and policymakers, enacting further laws cannot resolve the problem, because the problem lies in conviction, not punishment. Due to deep-rooted structural and systematic flaws, 97% of rape cases in Pakistan never result in convictions (Ahmed, 2020). Thus, the legislators and office-holders are not following a holistic approach to reducing sexual violence but acting on populism (Chaudhry, 2020).

The high rate of acquittal and out-of-court settlement raises questions about the legislative framework and other procedures about rape cases. The laws relating to sex crimes, sexual harassment, and rape were amended between 2006-2020 to ensure water-tight conclusions and increased punishments of cases. Some segments welcome these changes, but many criticised them because the standards of proof are raised, making it challenging to convict offenders.

The offence of rape has evolved along with the prevalent sexual narrative for women in Pakistan. Unfortunately, the most controversial classification of Rape in Pakistan was introduced in the Hudood Ordinances of 1979 to align the offence of rape with Islamic Laws. The Ordinance added complexity to the law by categorising rape alongside adultery and fornication, which is different from how other Nations classify the crime rape. In 2006, the Protection of Women (Criminal Law Amendment) Act was adopted, which amended the sections of rape in the Pakistan Penal Code and reclassified rape from adultery and fornication.

The number of incidences are soaring, yet the conviction rate in Pakistan is abysmally low at a mere 3% (Usman, 2018), raising questions about the effectiveness of the Criminal Justice System in Pakistan. While exact counts are unknown due to the substantial underreporting of occurrences and the lack of a national resource centre for tracking incidence data, there is no denying the great frequency of such incidents. The unfortunate upsurge of rape cases in Pakistan is evidence of the poor performance of all the stakeholders in the criminal justice system of Pakistan. Owing to the reasons like flawed investigation, victim blaming, societal pressure, tiresome and embarrassing trial procedures, negligent handling of evidence, and apathy of defence counsels are some of the factors leading to out-of-court settlements by the victims of rape cases.

According to the Human Rights Commission of Pakistan, gang rape occurs every four to eight days, while rape is committed against a woman every two hours in Pakistan. These figures are alarming as justice is not applied in most cases. This research strives to find out the procedural gaps between the investigation and prosecution of Rape cases. The high rate of acquittal and out-of-court settlement raises questions about the legislative framework and other procedures about rape cases. The point of view of eminent lawyers is considered in this study to find out the lacunas amounting to a negligible conviction rate.

Notwithstanding stringent laws, the conviction rate of Sexual abuse and rape is depressing which is reported to be under 3% (Jilani, 2021). This research article strives to find out the procedural gaps between the investigation and prosecution of Rape cases. And the author aims to bridge the gap in the past literature on the subject. It will help to thoroughly understand the causes of Low conviction rates through the prism of pertinent stakeholders i.e., Lawyers. It will also examine the loopholes in the existing legal and procedural framework.

2. Literature Review

The issue of rape is not restricted to Pakistan, but it's an alarming global issue. Developed countries also face these incidents, but their judicial system is believed to be efficient and provides speedy and inexpensive justice to victims. Different studies are present on the subject in Pakistan and worldwide. Our primary concern lies around the studies of Pakistan, and by reviewing the past literature, it can be

ascertained that this kind of empirical study in the area of Bahawalpur has not been conducted, nor had the lawyers been made respondents.

Ayesha Usman (2018), conducted a study to find out the challenges women face in Pakistan and their solutions. The study emphasised the role of women in developing Human capital which is receding in Pakistan in this era of globalisation. Economic growth is impossible without the participation of women in human resource development. Owing to unfortunate events of Violence, Sexual abuse and Gender-based violence against women, their marginalisation and oppression are affecting every indicator of society. The study is mixed research, employing both qualitative and quantitative research and data is collected through open-ended questionnaires and desk reviews. It concluded that the implementation of international obligations and reflection of such in domestic legislation could result in the containment of the menace of Rape and sexual abuse. The researcher recommended providing free legal aid to rape victims at the district level, and women's protection units shall be made functional. The awareness of women's rights in schools, religious seminaries, and sermons can help change the patriarchal mindset of our society. Lastly, providing social, economic, and political opportunities along with the implementation of constitutional protections, will minimise the violence against women.

In a study conducted by Khushbakht Shah Jilani (2021), “the lack of implementation of laws and failure to guarantee punishment by the state is considered to be one of the core reasons why such incidences of rape occur.” The researcher has concluded that rape is not merely an act of Lust but also a crime of power and violence. The centuries-old social norms honing the male instinct to assert authority over women lead to the incidences of rape. The state is the flag-bearer of the patriarchal structure, and making Sex education a taboo makes the process of Justice for rape victims difficult. As per the recommendations of the researcher, the problem can be solved by tackling the roots of patriarchy, which are deeply entrenched in our social fabric. In this study, some solutions are also proposed by Dr Madhumati Pandey (2019), “to combat this menace of rape effectively by introducing sex education in the curriculum, introducing the concept of *Shifting Pedagogy* to identify and comprehend the root causes and their solutions to gender-based violence, to change the patriarchal mindset at the grassroots level, instilling the concept of consent from an early age and gender equality.”

Orubah Sattar Ahmed (2021), strived to analyse the changing discourse regarding rape in the Supreme Court of Pakistan. The researcher observed the evolution of common law, and the rape cases decided by the Supreme Court since 2001 are also scrutinised. The comparison is made between the case of Jehan Mina, who was sentenced to one hundred lashes when she failed to establish the case of Rape against her and the latest case of Zainab Ansari 2018, the Supreme Court upheld the death sentence of the rapist. Several court decisions are referred to in the research in which the Supreme Court of Pakistan observed the Jurisprudence regarding rape in the light of international norms. Medical procedures have also changed since the 1990s, and more appropriate procedures are now adopted to lax the burden on the victims. The study concluded that the Judiciary, particularly the Supreme Court of Pakistan has come a long way while developing the Jurisprudence on Rape. This evolution has led to a better conviction rate in Rape cases and archaic laws and procedures of colonial and Zia regimes are now no longer in use.

Ayesha Khan and Sarah Zaman (2022), from the platform of “War against Rape and Collective for Social Science Research”, conducted an attitudinal study on rape in Karachi. The personnel from Judiciary, Medico-legal, and Police were interviewed as they are stakeholders in a rape case. The Case study of rape cases that occurred in Karachi is also done in this study. Although the study is restricted to Karachi, the attitudes and prejudices are similar across Pakistan. Through a comprehensive analysis of rape cases, the cases of low conviction rates are also highlighted. The role of the Police and Judiciary is also criticised, and recommendations are made to standardise DNA tests, implement ethical guidelines in court and while questioning victims, ensure the protection of victims and witnesses, and make women police stations more effective and accessible so that the conviction rate of rape cases can be increased.

A mixed research method approach was adopted by Maliha Zia, Shallum Oscar David and Soha Randhawa in the Study named “Gap Analysis on Investigation and Prosecution of Rape and Sodomy

Cases” (Zia, et al., 2022). The researchers analysed the judgments and case files of 50 rape cases attained from the District Courts of Karachi. The quantitative analysis revealed that it takes an average of 16.8 months for the conclusion of the trial and 7.2 months to submit the Police report while the statute legally provides for 3 months (Section 344A, Code of Criminal Procedure 1898) and 15 days (Section 167, Code of Criminal Procedure 1898) respectively. The gaps in investigation and prosecution are also observed based on analysis done on case files, but the study is only restricted to Sindh. The researchers have concluded that reducing the delays in investigation and framing of charges can lead to the conclusion of a trial on time and the conviction of the accused can be ensured.

In quantitative research done by Rabia Manzoor, Muhammad Abdul Rehman, and Mehreen Bano, the data was collected through questionnaires. A total of 2880 women responded on the issues relating to violence against women in various districts of Punjab. In light of the data collected, the researchers indicated that psychological abuse of women is more prevalent than physical abuse. Women and girls of all ages are vulnerable to violence in society and at home. The role of informal arbitration or conflict resolution frameworks such as *panchayats*, or *jirgas* are also the reason for increased violence in rural areas. Moreover, men belonging to powerful and influential societal groups tend to commit sexual abuse and rape against women of poor households in urban areas of Punjab.

Rana Muhammad Mateen (2019), in his study, criticises the societal and family norms of some ethnic groups that blame the rape victim as she brings dishonour to the family and tries to hide the incident, which is the main reason for underreporting of offences of Rape and sexual abuse. Another detrimental factor that contributes to the increase in the number of rape cases is the unawareness of the after-effects of rape cases on the community. Moreover, sex education and awareness of the legal rights of women are the need of the hour to ensure the registration of cases and convictions. The article outlines the causes of the increase in rape cases all over Pakistan and recommends effective remedial measures to curb this menace.

3. Rape, Its Causes and Legislative Framework

Traditionally, rape is defined as non-consensual sexual intercourse between a man and a woman (Siegel, 2011). The word rape is derived from the Latin word ‘rapere’ which means ‘to seize’. So rape means ‘forced seizure’ (Green, 1988). Rape is considered a heinous crime against the body of the person after the murder as it has severe emotional, physical and social implications on the victim. Wendy McElroy pointed out that the term ‘Raptus’ has been used for seizure and theft combined with violence against the person and property for a very long time. However, if a woman was sexually assaulted and abducted, even in a violent manner, the crime was not deemed to be against her mind or body, instead, it was simply the theft of women or violation without the permission of a guardian or such men who had legal or social responsibility over her. In simple words, the rape of a woman was not only an injury to her mind and body but also to her spouse, brother, father, family and community (McElroy).

The offence of rape is swamped with certain myths associated due to illiteracy and patriarchy prevailing in society (Fatima, Ashraf, & Imam, 2021). In societies like Pakistan, rape victims face mental distress all along because of these myths about rape. Rape victimology is a separate area of research that deals with victim blaming, its causes and its impacts on the social well-being of the survivor. Rape myths pose a negative effect on the quality of care that is extended to victims and on the responsiveness of the criminal justice system. The researcher has observed, that the victim is often blamed for lying about the incident. To take the discussion further, the author has discussed the types of rapes below:

4. Types of Rape:

4.1. Statutory rape

With the increase in incidents of Child sexual abuse, the importance of understanding statutory rape has also risen significantly. When a rape is committed with a minor woman, i.e., who is underage to give consent and unmarried, such commission of sexual intercourse is called Statutory rape. The figure shows

that at least eight children per day and up to 1489 children in the first half of 2020 experienced sexual abuse in Pakistan. The victims include 704 boys and 785 girls (The Newspaper's Staff Reporter, 2020). It should be noted that in most cases of statutory rape, the alleged accused was familiar or known to the victim.

4.2. Marital rape

Furthermore, rape was considered a tool to threaten, control and intimidate women. The same is evident in marital relations, in which the male spouse enjoys unending consent for intercourse. He believes that he has an 'automatic consent to have sexual intercourse just because of marriage. The marriage does not relieve the consent of women, yet the male asserts his dominance through these acts. Such rape is known as Marital Rape. Although not explicitly, Pakistan has amended and legislated the law to safeguard women from marital rape (Munim, 2020). Marital rape is further divided into three types.

In the first category, the husband exerts considerable force to compel his wife into sexual intercourse. This marital rape is termed a '*force-only*' rape. In the Second category, the wife is slapped, beaten, shoved and pushed while having intercourse, termed '*battering rape*'. The women are subjected to both sexual and physical violence in this type of rape. Lastly, marital rape which involves perverse sexual acts and torture of women is called '*Sadistic or Obsessive Rape*'

It is essential to understand that causes of rape cannot be judged from an objective and general prism, as there are different motivations of offenders behind each incident of rape. Some offenders commit assault alone, while some are prone to save it in groups; some commit rape once, while some can be habitual offenders (Warr, 1988).

4.3. Mass rape

A group of offenders commits mass rape on a large number of women. Mass rape is usually committed as a part of cultural genocide, ethnic cleansing or dishonouring an entire community. For example, the rape of tens of thousands of women in erstwhile East Pakistan during the War of 1971 was mass. While a group of men commits gang rape on a single woman. The case of Mukhtara Mai (Tirmzi, 2011) is notable in this regard.

4.4. Custodial Rape

It is a type of rape committed by a person with a woman in his custody or care. Custodial rape can take three different forms, sexual intercourse; (i) A Doctor, or any staff member of the hospital when a victim is in the hospital. (ii) A police officer, when a victim is in Police Custody. (iii) The charge or staff of facilities like an orphanage, *Darul Aman*, and jail.

5. Causes of Rape:

Criminologists have tried to define and classify the diverse variety of rape scenarios because there is not a single type of rapist and rape. It is essential to understand that the offence of rape must be perceived from a subjective lens. Depending upon the nature and complexity of the crime, each perpetrator has a distinct motive based on different reasons. In the same manner, the reaction and response of one victim at the time of occurrence of the incident differs from that of any other. Nicholas Groth, a specialist in characterising and treating sex offenders, states that Every rape incident has at least one of the three elements in it, i.e., power, anger and sadism.

In anger rape, Sexuality is used to unleash suppressed wrath, rage, and anger. The rapist uses excessive force than required to commit sexual intercourse with the victim. The objective of such an enraged person is to physically torture and hurt the victim as much as he can, while sexual pleasure is not the prime motive.

In power rape, the ultimate motive of the offender is to possess the victim sexually and commit sex with her, rather than causing physical harm and torture. He only applies the required amount of force to accomplish his objective of sexual predation.

Last but not least, sadistic rape combines aggression and sexuality both. The act of sexually assaulting another person is highly thrilling to a sadist, who also finds gratification and pleasure in humiliating,

abusing or degrading his captive (Groth & Birnbaum, 2013).

Given the types mentioned above and theories of rape, it can be deduced that the offence of rape is not only a sexual crime but also a crime of violence. In the cases above, rape refers to a violent crime in which the offender wants to attack and cause physical harm to a victim, perhaps even without the intention of having sexual intercourse (Knight, 1999).

5.1.Past traumatic Experiences:

The sexual inclination of adults has been linked with early childhood circumstances, which used to be emotionally and psychologically unsupportive, physically violent and harsh, added to the scarcity of resources. For instance, the sexual aggressiveness of young adults can escalate by witnessing violence at the family level, and the behaviour of emotionally distant and unsympathetic fathers. Furthermore, the availability of pornographic content is developing violent, unreal and sexual fantasies in the mindsets of youth (Krug et al.). According to the research, based on an evolutionary hypothesis of rape, men from lower social classes are more prone to commit rape (Thornhill, 1990).

To successfully handle this issue, the policymaker must make an effort to comprehend that due to the complexity of the nature of the offence of rape, it cannot be grouped into a single and simple definition. It must be seen from the perspectives of both the offender and the victim. To eradicate this menace from Pakistan, the government must realise the causes behind the commission of such offences, the social and economic factors, and consider it as a crime of violence and power. By expanding the viewpoint of the nature of the offence, the issue can be dealt with effectively.

5.2. Role of Patriarch

In this context, we have to understand the historical perspective which connects the commission of rape with the prevalent norms of patriarchy in society. Susan Brownmiller claims that in ancient times, rape was only considered a mode to cement control over women and not a crime. Power, Gender and Relations are critical aspects of Gender-based violence according to Social Structure theory (Okenwa, Lawoko & Jansson, 2016). This belief was strengthened due to the patriarchal norms which were prevalent at that time when women were treated as objects or possessions and not independent individuals. In such an antiquated society, rape is used as a tool to keep women in a constant state of fear and terror (Jamshed, 2021). Rape has thus played a crucial role in the evolution and development of society and is primarily a patriarchal phenomenon (Brownmiller, 1993). Patriarchy generally refers to the planned and systematic domination of men in social institutions of society. VAW has always been attracted by feminists i.e. radical Marxist and socialist feminist approaches (Dim et al., 2021).

5.3.Lack of Sex Education

In societies like Pakistan, sex education is taboo to date. It is almost prohibited to say the word 'sex' in our society, which leads to the crimes of rape and sexual assault. Speaking about sex, even in an educational context, carries a lot of shame and stigma. Many rape victims are unaware of the sexual abuse and intricacies of their minds and body. They even lack the knowledge of rape, its ingredients and relevant legal provisions.

In underdeveloped societies, the offender grows up with patriarchal norms and primitive beliefs against women. They rationalise the ill concept that it is natural for a woman to resist during sexual intercourse. Thus, they force themselves over the body of a woman without bothering to take her consent. As a result, their refusal and unwillingness to be part of such sexual activity are not taken seriously. The proprietorial control over women also serves as the foundation for honour rape and war rape, which occurs when a woman is sexually presented to punish her 'owner' a man (Roy, 2020).

Meanwhile, the religious and cultural constraints in Pakistan prevent the discourse on sex education at all levels of public exposure. However, there is a widespread agreement among health specialists, educationists, civil society and activists to include sex education in the school curriculum. It is believed

that this initiative can help in reducing the incidents of sexual abuse and can avoid teenage pregnancies.

5.4. National and Sub-cultural values

Marvin Wolfgang and Franco Ferracuti, well-known criminologists developed a theory that a distinctive subculture of violence distinguishes certain geographic regions. In violent subcultures, gangs are ubiquitous, and in some communities, people settle disputes among themselves amicably- without involving the police. In Pakistan, a sub-culture is evident in the questionable practice of '*panchayat*' or Village council. It was seen in the gang rape of Mukhtar Mai when a Panchayat allowed the commission of gang rape as a punishment for her brother's alleged offence.

After the tragic incident of the rape of a woman in front of her children on Lahore Motorway, the public was outraged by the remarks of a senior police official that it was the woman's mistake to travel alone in dark. This is an example of how the people in Pakistan use their authority and positions to encourage the offenders. Similarly, the former President of Pakistan made an irresponsible remark in an interview with *The Washington Post* that women in Pakistan make exaggerated, frivolous and false claims of sexual assault to get foreign aid and visas (Masood, 2005). Such narratives are damaging to society as a whole because they nurture the conscience of illiterate and ignorant masses who blame the victim for the offence committed. The above instances indicate that a collective national culture must be developed by its responsible Politicians and stakeholders, or it will encourage offenders rather than discourage them.

6. The Legal Framework of Rape in Pakistan

Pakistan, as a signatory to various international covenants and agreements on gender-based violence, upholds equal rights for women in its constitution. According to Article 25, all citizens are equal before the law, prohibiting discrimination based on sex. The state is allowed to make special provisions to protect women and children. Additionally, Article 34 emphasises the need for full participation of women in all spheres of national life, solidifying constitutional guarantees of equality between men and women.

In the last two decades, Pakistan has implemented measures to reflect human rights principles, including repealing discriminatory laws, enacting pro-women laws, and establishing institutions to enhance women's status. However, despite these efforts, the country needs help bridging the gap between policies, constitutional provisions, and the well-being of women, as reflected in its ranking of 154th out of 189 countries on the United Nations Human Development Index 2020.

7. Laws Relating to Rape in Pakistan

The Pakistan Penal Code, originating in 1860, underwent amendments post-partition, but it lacks express provisions for specific forms of rape. Gender-specific laws have been enacted to address this gap, such as the Protection of Women (Criminal Laws Amendment) Act, 2006, and the Criminal Law (Amendment) Ordinance 2020.

Key provisions related to rape in the Pakistan Penal Code include Section 375, which defines rape and outlines circumstances constituting the offence. Section 376 provides punishment for rape, including the death penalty or life imprisonment, depending on the circumstances. Section 511 deals with the sentence for attempted rape, while Sections 166 and 186 impose penalties for ineffective investigation by public servants.

Despite these legal measures, the policies, practices, and legislation in Pakistan are deemed insufficient to address the needs of marginalised women. The focus of this research is to shed light on the obstacles faced by women seeking justice in cases of rape or sexual abuse and propose practical solutions.

Section 376-A(1) aims to protect the identity of victims of rape and sodomy, penalizing the publication of their names or any identifying matter. Unfortunately, this section is frequently violated by media outlets and social media, exacerbating the challenges victims face.

However, although Pakistan has made strides in enacting legislation and constitutional guarantees for

women, there is still a substantial gap between these legal frameworks and the lived realities of women in the country (Jamshed, 2018). Addressing this gap requires continued efforts to implement and enforce these laws effectively, ensuring justice and protection for victims of sexual violence.

8. Islamic Viewpoint on Rape:

In Islamic Law, rape is treated similarly to the general law of Zina. It is deemed a subclass of generally known terms *Al-watt bil ikrah* or *Zina-bil-jabr*. This understating of rape is developed by the fact that the Quran does not explicitly address the crime of forced sexual intercourse. Still, it contains penalties and punishments for consensual sexual intercourse without a valid marriage. As a result, the decrees concerning rape are based on legal reasoning and analogy. The eminent Muslim scholars drew their interpretation of rape on the tradition of the Prophet (PBUH), which says;

“Allah has pardoned, for me, my Ummah: (Their) mistakes, (their) forgetfulness, and what they have done under duress.”

The majority of Islamic scholars agree that a person, whether male or female, who is coerced into having illicit sexual intercourse shall not be subjected to punishment (Hamilton, 1982). This consensus has been from the Quranic verse (Chapter II, verse 174), which states;

“... But he who is driven by necessity, being neither disobedient nor exceeding the limit, shall be no sin for him. Surely, Allah is Most Forgiving, Merciful.”

Other examples from our history show that the state did not punish any woman who claimed to have been sexually assaulted. In one instance, when a lady claimed to have been raped during the times of the Holy Prophet (PBUH), the Prophet (PBUH) did not charge her with any offence but imposed the *hadd of rajm* on the perpetrator. In another incident during Caliph Omar’s reign, the enslaved women were sexually assaulted by their male counterparts; the Caliph relieved them from the charge, but enslaved men were ordered to be flogged.

All schools of thought agree on a point that, in forced sexual intercourse, women should be waived from criminal liability and must not be punished, while the situation is different when the victim is a male.

9. Conclusion:

In conclusion, the disturbingly high occurrence of rape in Pakistan requires a thorough comprehension of its complex and diverse characteristics. The categorisation of rape into statutory, marital, custodial, and mass rape highlights the various ways in which this appalling offence occurs. Unfortunately, the issue of marital rape has not been adequately dealt with in the legal system, primarily because of prevailing societal standards. This underscores the urgency of developing progressive social attitudes and implementing legislative changes. The causes of rape stem from the inherent aggressive tendencies of the perpetrators, elevating it from an essential expression of sexual desire to a criminal act that inflicts significant suffering and psychological distress on the victim. The absence of comprehensive sex education and the persistent patriarchal structure of society are contributing elements that create an environment susceptible to the occurrence of such offences. Although Article 25 of the constitution guarantees equality before the law, the enforcement of laws designed to safeguard women from gender-based violence is inadequate.

The justice system in Pakistan encounters a substantial obstacle as a result of the inadequate enforcement of laws, resulting in an alarmingly low incidence of successful convictions. The inactive condition of the court system intensifies the difficulties faced by victims and prompts inquiries on the efficacy of legal processes in dispensing justice. Islam recognises the severity of the crime of rape, referred to as *Zina bil jabar*, and the Quran provides punishments for such offences. The traditions and occurrences related to Prophet Muhammad (PBUH) underscore the gravity of this offence, with specified penalties such as flogging. Given these challenges, it is imperative that a thorough and synchronised endeavour be undertaken at society and governmental levels to tackle the underlying factors of rape, establish and enhance legislation, and guarantee that justice is not only mandated in-laws but also correctly administered. Significant progress in addressing the widespread problem of rape in Pakistan can only be

achieved by collectively committing to altering societal attitudes, strengthening legal systems, and prioritising the well-being of victims.

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