

## Pakistan

### 1. Discrimination in the family

#### a) Overarching legal framework for marriage

Only religious marriages are recognised in Pakistan and each religion has its own laws – e.g. the 1961 Muslim Family Laws Ordinance, the 1964 (Muslim) Family Courts Act, the 1936 Parsi Marriage and Divorce Act, the 1872 Christian Marriage Act and the 2017 Hindu Marriage Act.

In addition, some matrimonial laws apply to all religious groups in Pakistan, either at the federal level (e.g. the 1976 Dowry and Bridal Gifts Restriction Act) or at the territorial level (e.g. the 2013 Sindh Child Marriage Restraint Amendment Act and the 2015 Punjab Child Marriage Restraint Amendment Act).

These texts require marriages to be registered and celebrated with the relevant religious authorities, while also restricting the maximum value of dowry, presents and bridal gifts. Such formalities are intended to ensure that women and men freely enter into marriage, without consenting through force, coercion, fraud or misrepresentation, as specified in the 2016 Sindh Hindus Marriage Act, and in the 2017 Hindu Marriage Act.

Since 2011, forced marriage constitutes a crime and carries a penalty of 3-7 years' imprisonment, plus a fine of PKR 500 000 (Penal Code art. 498B). In 2013, Khyber Pakhtunkhwa province adopted a specific piece of legislation criminalising forced marriages in the same manner ('Khyber Pakhtunkhwa Elimination of the Custom of Ghag Act 2013'). The Penal Code was also amended in 2011 to criminalise the act of compelling a woman to marry in order to settle a civil dispute or criminal case (Penal Code art. 310A).

Forced marriages continue to be practised in the country, including through the abduction of girls from religious minorities (CEDAW, 2013). In response, the National Assembly of Pakistan adopted a resolution in October 2016 urging the government to "take immediate steps to stop forced conversion of minority women followed by forced marriages". According to the 2012 National Baseline Survey on Gender Perceptions, only 34% of female/male respondents indicated that females in their households chose their husband (ADB, 2016).

Polygamy is legally permissible for Muslim males (1961 Muslim Family Laws Ordinance, art. 6) and has been condemned by the United Nations (CEDAW, 2013).

#### b) Child marriage

The 1929 Child Marriage Restraint Act sets the legal minimum age of marriage at 16 years for girls, compared with 18 years for boys. Although this provision has been amended in Singh Province (where girls can only marry at 18 years of age) and repealed for all Hindu, Christian and Parsi marriages (which impose a minimum legal age of marriage of 18 or 21 years of age), Muslim girls outside of Singh province can still be married at 16 years of age. In addition, Christian and Parsi

statutes allow parents/guardians to consent to the underage marriage of their daughters as soon as they reach 13 and 14 years of age, respectively, compared with 16 years for boys.

Unlawful underage marriages are invalid, and the court has the power to issue an injunction prohibiting any underage marriage about to be solemnised. Child marriage offenders face tougher criminal penalties nationwide since February 2017, when art. 498B of Penal Code was amended to enforce a minimum jail sentence of 5 years (Girls Not Brides, 2017). This provision overrules lower penalties previously established at provincial level (e.g. 6 months' imprisonment in Punjab province; 2 years' imprisonment in Singh province). However, the 1872 Christian Marriage Act, which contains a harsher penalty of 7-10 years' imprisonment (art. 68), continues to apply.

Despite the progressive provisions of the 2013 Sindh Child Marriage Restraint Act, child marriages continue to occur in Sindh province, due to the absence of structures to implement the law (WUNRN, 2017). In particular, district and provincial level child marriage committees have not been fully formed, meaning that only a few cases of child marriages are reported and prevented. In addition, the law does not contain any provisions on the dissolution of child marriages once they occur (WUNRN, 2017).

Attempts have been made to outlaw child marriages at the federal level by amending the 1929 Child Marriage Restraint Age, through a proposal to increase the legal age of marriage to 18 years nationwide. However, the National Assembly rejected the proposal in January 2014 and again in May 2017, claiming that it was 'un-Islamic' (Global Legal Monitor, 2016; Girls Not Brides, 2017). The stalling of the bill comes only a few months after the United Nations specifically asked Pakistan to set a nationwide minimum legal age of marriage at 18 years, for both sexes, and to harmonise its legislation on the definition of a child, so that all children under 18 years of age are recognised as such (CRC, 2016). It is worth noting, though, that Pakistan was among the first Member States to propose a target to end child marriage by 2030 during the intergovernmental negotiations on the Sustainable Development Goals (Bride Not Girls, 2017).

Factors driving child marriage include debt settlements and the sanctioning of 'daughter exchanges' by community elders (Girls Not Brides, 2017).

### **c) Household responsibilities**

Under Sharia law the wife owes obedience to her husband, in exchange for maintenance. Maintenance rights are lost if the wife disobeys her husband – for instance if she leaves the home without consent (Courting the Law, website). According to Muslim jurisprudence, the father is the natural guardian (wali) of the children and is thus responsible for their education and spiritual guidance, while the mother is tasked with raising them and performing house duties (Kalanauri, 2012).

The father is also considered to be the head of the household, with final authority for decisions relating to the children and to the family as a whole (Kalanauri, 2012). By contrast, Muslim jurisprudence gives preference to mothers in rulings on the custody of children under 7 years of age (Kalanauri, 2012).

There is limited information available on Parsi, Hindu and Christian jurisprudence regarding parental obligations and relations between spouses.

With regards to the rights of unmarried women, the Constitution stipulates that every citizen has the right to reside and settle in any part of Pakistan (art. 15), and that the State shall protect the family, the mother and the child (art. 35). There are reports of government restrictions on travel to certain parts of Balochistan and Khyber Pakhtunkhwa provinces, and to certain areas of the Federally Administered Tribal Areas, due to security concerns, but these are not specific to women (United States Department of State, 2017). Likewise, there are reports on the uncertain residency status for Afghan refugees, although again, these challenges are not specific to women (Human Rights Watch, 2017).

#### d) Divorce

Sharia law discriminates against women by allowing men to divorce at their will, simply by pronouncing the word '*talaq*' and sending a written notice of divorce to their wife and to a representative of the local government (1961 Muslim Family Laws Ordinance, art. 7). By contrast, Muslim women can only divorce through court (*khul'a* divorce) under limited circumstances (e.g. abusive husband, desertion, husband suffering from leprosy or a virulent venereal disease) (art. 2 of the 1939 Dissolution of Muslim Marriages Act). An attempt is made to reconcile both parties in both cases, but if reconciliation fails the wife may be instructed by the Court to repay part of her dowry to her husband (1964 Family Courts Act, art 9). The United Nations has asked the government to revise the 1939 Dissolution of Muslim Marriages Act to repeal the discriminatory provisions against women (CEDAW, 2013).

Case doctrine shows that despite these discriminatory provisions, judges have been using the '*khul'a*' to expand women's right to divorce (Yilmaz, 2011). For instance, judges have ruled that the wife is not required to give 'objective or cogent reasons' for the divorce, nor is she required to justify her aversion to her husband (Yilmaz, 2011).

In other religions, Parsi status law allows either spouse to file for divorce on several grounds set out in art. 32 of the 1936 Parsi Marriage and Divorce Act (e.g. adultery, desertion, religious reconversion). By contrast, Christians can only divorce on grounds of adultery (1869 Christian Divorce Act, art. 10), which is why the government is trying to table a bill to revise this restriction and other out-dated provisions (Pakistan Today, website). Since 2017, Hindus have a right to divorce (on grounds such as desertion, cruelty, religious reconversion), and women benefit from additional grounds (e.g. neglect or failure by the husband to provide maintenance for two years, polygamy) (2017 Hindu Marriage Act, art. 12).

Divorce by mutual consent is only allowed under Muslim and Hindu law (art. 8 of the 1961 Muslim Family Laws Ordinance and art. 15 of the 2017 Hindu Marriage Act).

There is high social stigma associated with divorce, which is why most women opt to remain with a violent husband rather than filing for divorce (Australian Government, 2011). In addition, women who seek a divorce risk being punished by their own family members for bringing dishonour onto them (Australian Government, 2011).

Under Sharia jurisprudence, child custody is awarded to the mother until the child reaches 7 years of age (or puberty in the case of a girl), at which point the child chooses which parent he/she wants to live with. In awarding child custody the Sharia court prioritises the welfare of the child. Even while the mother has child custody the father remains the guardian of the child in order to provide financial support, unless the mother is financially independent (Kalanauri, 2012). The 1936 Parsi Marriage and Divorce Act, the 1869 Christian Divorce Act and the 2017 Hindu Marriage Act do not contain any provisions on the rights and responsibilities of parents towards their children during and after marriage, although under Christian and Parsi law the court can issue interim orders on the children's custody and education.

### e) Inheritance

Religious personal laws govern inheritance rights and discriminate against women. Under Sharia law for instance, female heirs receive half the share of male heirs (Ahmad, 2010), while Christian intestate law provides that the deceased's father shall be the heir if the deceased does not have any lineal descendants (1925 Succession Act, ch. II). Under Parsi intestate law, widows and daughters are discriminated against as sons receive double the share of daughters, and widows are altogether excluded from inheriting property if they remarry during the lifetime of the intestate (1925 Succession Act, ch. III). Moreover, customary laws validated by courts to decide issues of land inheritance also discriminate against women (Ahmad, 2010). The results of the 2012 National Baseline Survey on Gender Perceptions indicate that only 54% of women reported having a share in inheritance, compared with 71% of men (ADB, 2016).

Since 2011, the act of depriving a woman of property inheritance through deceitful or illegal means is punished with 5-10 years' imprisonment, or a fine of PKR 1 million, or both (Penal Code art. 498A). Women's land inheritance rights have been further strengthened in Punjab Province through the 2012 Punjab Land Revenue Amendment Act, which mandates Revenue Officers to operate land division proceedings after the death of a land co-owner, instead of requiring a party to file civil suit, thereby ensuring that no legal heir is deprived of his/her right to the land (Government of Punjab, website).

## 2. Restricted Physical integrity

### a) Violence against women

Violence against women is frequent and multifaceted in Pakistan, with the United Nations condemning the prevalence of *karo-kari* (honour killings), acid attacks, and stove burning of women (CEDAW, 2013), despite the criminalisation of these acts. Legislation condemning honour killings was reinforced in 2016, to ensure that perpetrators of violence do not escape punishment and instead face mandatory life imprisonment. A law criminalising cyber attacks was also passed in 2016 in order to curb online violence against women. Several administrative divisions have also adopted specific laws on domestic violence, whilst Punjab province adopted an Act on violence against women in 2016, the first legislation of its kind in Pakistan.

The United Nations has expressed concern that women and girls are the prime target of threats and attacks by non-State actors and military counter-operations in Federally Administered Tribal Areas and in the provinces of Balochistan and Khyber Pakhtunkhwa (CEDAW, 2013).

## **b) Domestic violence**

Legislation on domestic violence was successively passed in Islamabad Capital Territory (2012), in Sindh province (2013), in Balochistan province (2014), and in Punjab province (2016). Khyber Pakhtunkhwa is the only province without such legislation, after the Council of Islamic Ideology rejected a bill on the issue in 2016.

The legislation for Islamabad, Sindh province and Balochistan province define domestic violence in identical terms, referring to acts of physical, sexual, economic or psychological abuse committed by one person against another in the context of a domestic relationship. The Punjab Violence Against Women Act goes further by including cybercrimes and stalking. All texts extend domestic violence to acts committed against persons currently or previously living together, when related by consanguinity, marriage or adoption.

All texts criminalise domestic violence by referring to relevant articles of the Penal Code (e.g. assault, organ dismembering, amputation, bodily harm), with variable penalties depending on the severity of the act. Monetary compensation of the victim can also be imposed on the perpetrator to cover economic abuse and other costs. Given the high prevalence of honour killings committed by family members (e.g. 183 cases recorded in Punjab Province alone in 2015) (PCSW, 2016), the Criminal Code was amended in 2016 to impose mandatory life imprisonment on murderers, even those pardoned by relatives, as Islamic law previously allowed killers to walk free after compensating the victim's family with *diyat* (blood money). However, the perpetuation of honour killings in 2016 shows that the implementation of the new law is weak (PHRC, 2016).

All texts provide for numerous measures to assist survivors and prevent further violence, namely protection orders, residency orders, temporary shelter, medical and psychological assistance and legal aid. In Punjab province, a 24/7 free hotline is coordinated by the District Women Protection Committee, and additional services are available in Protection Centres and shelters (e.g. guidance for government-related enquiries, rehabilitation services, technical and vocational services), although facilities are reportedly insufficient to meet the needs of the 17 000 women residing in social service institutions (PCSW, 2016). Moreover in Sindh Province, implementation of the domestic violence law remains weak because district level protection committees have not been established, protection officers have not been appointed, and protection centres remain under-resourced (WUNRN, 2017). Free hotlines are being inaugurated in several districts of Khyber-Pakhtunkhwa province, despite the lack of legislation on domestic violence (The Express Tribune, 2017).

Relevant provincial/territorial governments are tasked with vulgarising the legislation in Urdu and in local languages. They are also tasked with ensuring regular training of police, judicial and government authorities, and with formulating protocols for professionals dealing with domestic violence.

### c) Rape

Rape is criminalised under art. 376-377 of the Penal Code. Penetration suffices to constitute the crime if the sexual intercourse occurs without the woman's consent, or through forced/violated consent. However, lack of consent is not required if the woman is under 16 years of age. Rape carries a penalty of 10-25 years' imprisonment and a fine, or an extended penalty of life imprisonment or the death penalty in the event of aggravating circumstances.

Pakistan toughened its law on rape in 2016 by introducing new forms of aggravating circumstances, in addition to gang rape: rape committed with organ/limb dismembering/amputation or bodily 'destruction'; rape of a minor; rape committed by taking advantage of a public position (e.g. committed by a police officer, medical officer, jailor). The new law also criminalises the act of disclosing information on the identity of rape victims, through a penalty of up to three years' imprisonment and a fine (new art. 376A of the Criminal Code). The 2016 anti-rape law also allows the collection and use of DNA evidence to prove rape (new art. 146B of the Code of Criminal Procedure).

While marital rape is not explicitly recognised by the Penal Code, the 2016 law specifies women's right to file a complaint under art. 154 and 161 of the Criminal Procedure Code, as well as their right to obtain free legal aid. However, due to the low number of female judges, victims are reportedly reluctant to file complaints. Other challenges hindering the implementation of the anti-rape law include the lack of gender-sensitive methods used by medical practitioners, and prejudices against rape victims, including claims of false allegations (Sattar, 2015).

According to the Pakistan Human Rights Commission, prosecution rates for rape remain very low, while rape cases are on the rise (2940 cases were reported in 2016, compared with 2740 cases in 2015) (PHRC, 2016). Child rape has also been reported, especially in Khyber Pakhtunkwa and Punjab provinces, and in the Federally Administered Tribal Areas (HRC, 2016).

### d) Sexual harassment

Sexual harassment is criminalised and prohibited in the workplace since the passing of two laws in 2010: the Criminal Law Amendment Act, and the Protection Against Harassment of Women in the Workplace Act. Perpetrators face up to three years' imprisonment, a fine of up to PKR 5 000 or both (Penal Code art. 509), for "conducting sexual advances, demanding sexual favours, or using verbal / non-verbal communication or physical conduct of a sexual nature to annoy insult, intimidate or threaten another person in the workplace, or by making such conduct a term or condition of employment". Employers are required to display a code of conduct against sexual harassment, and any employee victim of sexual harassment is entitled to civil remedies. A National Implementation Watch Committee is in place to ensure rigorous implementation of the law, under the auspices of the National Commission on the Status of Women.

Since the passing of the Protection Against Harassment of Women in the Workplace Act, provincial implementation watch committees have been set up in Sindh and Punjab provinces, and a website has been launched to enable organisations to register once they have implemented the provisions of the law. However, many organisations have not established harassment committees, nor posted the anti-harassment code of conduct (ADB, 2016). In Punjab province for instance, 32% of organisations

had not implemented the code nor formed harassment committees in 2015 (Punjab Commission on the Status of Women, 2016).

Sexual harassment of women is particularly a concern in public transport (ADB, 2016), and against activists taking place in political rallies (PHRC, 2016).

#### **e) Female genital mutilation**

While no laws address female genital mutilation, the practice is reported within the Dawoodi Bohra Muslim community, with midwives, doctors and *mullanis* performing the procedure in private settings (Sahiyo NGO, 2017; US Department of State, 2016). The practice is seen by the Dawoodi Bohras as a ritual for social inclusion and a deep-rooted element of their identity (Sahiyo, NGO). Most men only find out about the practice after marriage, as the practice is taboo and hidden (Orchid Project, 2013)

#### **f) Abortion**

Pakistan's law on abortion operates a distinction based on the stage of development of the foetus. Under art. 338 and 338-B of the Penal Code, abortion is allowed before the foetal organs develop to provide 'necessary treatment' to the woman. After that point abortion is only permitted to save the woman's life.

Penalties for causing an abortion escalate up to 10 years, depending on whether the woman consented and whether the procedure took place before the foetal organs/limbs started to form.

The United Nations has asked the government to expand the grounds under which abortion is permitted, for instance in cases of rape and incest, and to improve women's access to health-care facilities and medical assistance by trained personnel, especially in rural and remote areas (CEDAW, 2013). Sex-selective abortions are reported (Punjab Commission on the Status of Women, 2016).

### **3. Restricted Access to productive and financial resources**

#### **a) Secure access to land and assets**

Women in Pakistan have the same constitutional right as men to acquire, hold and dispose of property (land and non-land assets) (art. 23). Under applicable civil law (1872 Contract Act, 1882 Transfer of Property Act, 1908 Registration Act), women also have the same right as men to transfer, sell, mortgage and contract any terms on their property.

However, courts have validated customary laws that restrict women's land ownership rights, namely by limiting women's right to gift and alienate land (Ahmad, 2010), and by providing for land titling in the name of the male head of household, or in the name of the eldest male family member of the extended family (USAID, 2010). Given that joint land titling is very uncommon (USAID, 2010), women have low prospects of obtaining a land title. In addition, Pakistani law does not recognise marital property, meaning that in the event of a divorce, a woman cannot claim a share in her ex-husband's property nor access common land or continue working on it (Ahmad, 2010).

In a move to increase women's access to land and other property, the province of Khyber Pakhtunkhwa adopted an act in 2012 to enforce women's ownership rights. Accordingly, anyone

who curtails or obstructs women's possession and ownership rights, or unlawfully dispossesses a woman of her property, is liable to five years' imprisonment (art. 3-4). In Punjab province, the local government issued joint land titles to spouses, including in rural areas, and distributed cattle and poultry to rural women to increase their production of livestock and meat (2012 Punjab Women's Empowerment Package; 2014 Punjab Women Empowerment Initiatives).

### **b) Secure access to formal financial resources**

Although there are no laws preventing women in Pakistan from opening a bank account (UNHCR, Refworld), women's access to formal accounts is restricted by regulations requiring two unrelated male guarantors (West A., Lahren S., 2016), and by social barriers limiting women's ability to leave the home and engage with men (CGAP, 2016). Women also face difficulties in obtaining loans as they rarely have access to land or other forms of collateral, and are commonly required to obtain their husband's permission, signature and credit history (West and Lahren, 2016; World Bank, 2013). In addition, many women suffer from financial illiteracy (West and Lahren, 2016).

A mobile banking system has been set up to facilitate women's access to credit, by providing financial services through non-formal delivery channels, such as mobile phones and retail agents. However, only 36% of women own phones, compared with 80% of Pakistani men (West A., Lahren S., 2016), and there are reports that women have been killed simply for owning phones, due to the social stigma around interaction with unrelated males (CGAP, 2016).

### **c) Workplace rights**

The Constitution prohibits discrimination based on sex in employment (art. 27) and proclaims a State responsibility to provide maternity benefits and to secure just and humane work conditions to ensure that women are not employed in unsuitable jobs (art. 37). The Constitution also protects the right of all citizens to enter into any lawful profession and to register a lawful business (art. 18). Despite the constitutional right to choose a profession and register a business, women are barred from several jobs, including mining and factory work (World Bank, 2015).

However, there is no legislation outlining how the principle of gender equality in employment is to be implemented, in terms of recruitment, promotion, training, wages etc., despite Pakistan's ratification of ILO Conventions 100 and 111 on equal remuneration and non-discrimination in employment and occupation. In addition, parental leave does not exist, and paternity leave is only available in Punjab province, where it is restricted to civil servants and limited to one week.

Female employees working in both the public and private sectors are entitled to 12 weeks of fully paid maternity leave (100% of wages), according to the provisions of the 1958 West Pakistan Maternity Benefit Ordinance, the 1941 Mines Maternity Benefit Act and the Revised Leave Rules 1981. In order to receive these benefits women must have been working for their employer for a period of at least four months prior to giving birth, or six months if they work in a mine. An employer cannot terminate the contract of a female employee during her maternity leave, nor employ her in the six weeks following the birth.

The United Nations has raised concerns about the low participation of women in the formal sector, the widening gender pay gap, the concentration of women in low-paid and low-skilled jobs, and the



lack of legal protection for women working in the informal sector (agriculture, domestic and home-based work) to whom the federal and provincial labour laws and regulations do not apply (CEDAW, 2013). The government has been asked to implement temporary measures to increase female participation in the labour market, and to prepare a plan of action to protect women working in the informal sector (CEDAW, 2013).

Women are generally discouraged from working outside of the home by their husbands, as men are expected to provide for their family (Raja, 2016). In addition, married women face challenges in registering businesses, as they need to do so in the presence of a witness and must include their husband's name in the register (World Bank, 2015).

## 4. Restricted Civil liberties

### a) Citizenship rights

The 1971 Citizenship Act grants Pakistani citizenship to anyone born in Pakistan after 1971, except if that person's father is an enemy of the state or has immunity from legal process (s. 4). Pakistani citizenship is also granted to those born outside the country to a Pakistani parent (father or mother), provided that the Pakistani parent was born in Pakistan or registered in a Pakistan consulate/mission while his/her parents worked abroad for the Pakistani government (s. 5).

Pakistani citizenship is also granted to migrants who arrived from India before 1 January 1952 with the intention of permanent settlement (s.6 para. 1). However, only male migrants fulfilling these conditions can confer Pakistani nationality to their wife and children (s.6 para. 2). Another discriminatory provision towards women is found in s.10, whereby only Pakistani men can confer citizenship through marriage. A bill was introduced in the Senate on 13 March 2017 to amend this section and provide women with the right to confer Pakistani citizenship to their foreign husband, although additional conditions (residency, probation period) restricting this right are included in the draft text. Prior to the bill, the FSC ruled in 2006 that s.10 violates international law and is contrary to Islamic injunctions on the equality between women and men (Yilmaz, 2011).

Pakistan has dual nationality agreements with 18 countries (mostly former British colonies) (website of the government of Pakistan), and allows its citizens to relinquish their nationality (s.14A). A change of nationality does not affect the wife's but does affect the children's. Accordingly, children maintain Pakistani citizenship if they reside in Pakistan; however, if they reside overseas they can only regain Pakistani citizenship by applying in the 12 months following their 21<sup>st</sup> birthday (s. 14A).

All children born in Pakistan must be registered within one month of their birth (2000 National Database and Registration Authority (NADRA) Ordinance, art. 9). This requirement is reinstated in art. 5 para. 1 of the 2009 Charter of Child Rights Act. However, only 30% of children are registered at birth, with strong disparities between urban and rural areas (60% and 23% registration rate, respectively), linked to the prevalence of early marriage (government submission to the CRC, 2016). The United Nations has asked the government to remove all fees related to birth registration, to simplify the procedures, to introduce mobile registration units, to take immediate measures to ensure retroactive birth registration of unregistered children, and to ensure that children lacking identification documents are not refused access to education, health and public services (CRC, 2016).

Punjab province is in the process of waiving late registration fees, according to the provincial government's website.

All registered citizens must apply for a national identity card within 90 days of turning 18 (2000 NADRA Ordinance, art. 30 para. 1e). All Pakistani citizens are entitled to a passport, no matter their age. Applicants under 18 years of age must be accompanied by a parent and must produce their birth registration certificate, copies of their parents' national identity card and a deposit. Applicants over 18 years of age must also pay a fee and present their national identity card (website of the government of Pakistan, Directorate General of Immigration and Passports).

### **b) Voting**

The Constitution grants women the same right as men to vote in national and local elections upon reaching 18 years of age, regardless of their marital status (art. 56 para. 2 and art. 106 para. 2). However, women are reportedly discouraged from voting due to strong gender-based stereotypes (CEDAW, 2013).

Positive steps have been taken to address this issue through the passing of the Representation of the People (Amendment) Act in May 2017, whose 'statement of objects and reasons' specifies the need for gender-disaggregated data on voter turnout data and for re-polling in constituencies where women's turnout is less than 10%. These two provisions have been formalised in the 2017 Draft Elections Bill (art. 9 and 47), under the extended mandate of the Election Commission.

### **c) Political voice**

Women have the same right as men to stand for presidency (Constitution art. 41 para. 2) and to work for the federal and provincial governments (Constitution, Part III ch. 3 and Part IV ch. 3). A bill fixing a 17% quota for women in the federal cabinet was tabled but ultimately rejected by the National Assembly in October 2016 (Geo TV, 2016). However, positive discrimination measures are in place to enhance female participation in local governance, for instance in the province of Punjab through the 2014 Punjab Fair Representation of Women's Act.

There are no restrictions either on women's right to become parliamentarians (Constitution, art. 62), with quotas in place to support female representation: 60 out of 342 seats (17%) in the National Assembly are reserved for women (Constitution art. 51 para. 3), 17 out of 104 Senate seats (17%) are reserved for women (Constitution, art. 59 para. 1), and seats are reserved for women in all four Provincial Assemblies - Punjab (66 seats), Sindh (29 seats), Khyber Pakhtunkhwa (22 seats), Balochistan (11 seats) (Constitution, art. 106 para. 1). Moreover, the Constitution provides that special attention should be given to women, workers and peasants in the representation of local government institutions (art. 32).

The Federal Cabinet approved the Draft Elections Bill in February 2017, which requires political party lists to contain at least 5% of female candidates (art. 205), and any vacant seat reserved for women to be filled by the next female candidate on the party list (art. 103). The permanent Election Commission is tasked with monitoring and enforcing these provisions on female representation (Constitution art. 219).

#### d) Access to justice

Pakistan's judiciary is built on a hierarchical system of superior and lower courts. The superior judiciary is composed of the Supreme Court, the Federal Shariat Court and five High Courts, and the lower judiciary is composed of civil and criminal district courts, as well as specialised courts. Women have the same right as men to be appointed to superior courts (Constitution art. 177 para. 2, art. 193 para.2, art. 203C para. 2, 3 and 3A) and to district courts, with the 1964 Family Courts Act further stipulating that at least one Family Court in each district shall be presided over by a woman, and that female judges may be appointed to several district courts (art. 3). In 2016, the Senate rejected a bill calling for a 33% quota for female Supreme Court judges, basing its decision on the non-discriminatory provisions of the Constitution regarding the appointment of judges. At the district level, female judges are often excluded from positions of influence by their male colleagues – i.e. they are assigned small family and civil court matters and are not given a prominent role in the criminal justice system (HRC, 2013).

The Constitution grants all women and men the same right to sue and be sued, as all citizens are equal before the law and entitled to equal protection by law (art. 25 para. 1). Moreover, since the Law Reform (Husband and Wife) Act 1962, a husband and wife can file suit against one another. Women's testimonies also carry the same weight as that of men, regardless of their marital status, in civil, criminal and family courts. The law also includes elements to ensure that women are able to sue – e.g. by providing a fee waiver in civil proceedings upon successful application as an '*indigent person*' (Civil Procedure Code, order XLIV), and free translation of documents (written evidence, judgment) in criminal cases (Criminal Procedure Code, art. 356(2), 371 and 721).

In practice, however, access to justice is very problematic for women in Pakistan. According to a 2013 report of the United Nations Special Rapporteur on the independence of judges and lawyers, women suffer from high rates of illiteracy and from very poor knowledge of the law and of their rights. In addition, a male relative must accompany them to undertake procedures with the police and the courts, and no formal mechanism is in place to protect them (HRC, 2013). Moreover, *Hudood* Ordinances (for crimes such as armed robbery and theft) and blasphemy laws are misused to target women and strip them of their rights (HRC, 2013).

The high number of cases resolved at grass-roots level through informal justice mechanisms further hampers women's access to justice by pressuring them to settle for reconciliation. These mechanisms are reportedly "rooted in conservative interpretations of tradition and/or religion, [leading] to conflict resolution and punishments which are in contradiction with laws in Pakistan, fundamental rights recognized in the Constitution, and international human rights standards" (HRC, 2013). These informal legal systems are particularly used in tribal cultures and are male-dominated, with no representation of women (Courting the Law, 2016).

Women's access to justice is further hindered by broader challenges to the justice sector as a whole. In particular, the Constitution does not apply to the whole territory (e.g. to the FATAs – the Federally Administered Tribal Areas) and can be overridden by Islamic law applied by the Federal Shariat Court. Moreover, two members of the Shariat Appellate Bench are appointed on the basis of personal affinities and/or popularity, rather than on merit. Less than 1% of the total federal budget is allocated to the judiciary and judicial actors lack basic facilities, including electricity, water and

sanitation, computers and filing systems. Judges have 200-300 cases to resolve per day and regularly come under pressure, with reports of threats, attacks and killings of judges and lawyers by extremist religious groups, insurgents and terrorists. There is also no institutionalised legal aid programme (HRC. 2013).

The National Commission on the Status of Women (NCSW) is the State body tasked with monitoring gender equality. Established in 2000, its responsibilities include examining State policies and programmes for women's development and gender equality, monitoring the compliance of law, rules and regulations with international human rights standards, promoting research and information on women and gender issues, and monitoring mechanisms and institutional procedures for the individual grievances and redress of violations of women's rights (website of the NCSW).

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