



UNDERSTANDING DOMESTIC

VIOLENCE

WITHIN THE LEGAL

FRAMEWORK OF PAKISTAN

Understanding Domestic Violence Within The Legal Framework Of Pakistan

Maliha Zia

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Understanding Domestic Violence within the Legal Framework of Pakistan

Maliha Zia¹

Abstract

An examination of the Legal Advisory Call Centre (established and run by Legal Aid Society) data reveals a significant number of cases that involve domestic violence, whether explicitly recognised as such or not. Domestic violence is always a challenging issue but in Pakistan, it is further complicated due to the embedded concepts of tradition, religious allowances, patriarchal set up and familial set up of joint families. This impacts not just the common challenges of recognition and taking action against perpetrators, but also conflates the manner of responding to such situations; i.e. to consider it a family and therefore private matter which should be resolved amicably and in private? Or to use legal method such as the domestic violence or other criminal law in Sindh and Pakistan for protection and justice?

This paper will unpack some of the major social and legal challenges that influence key justice sector actors' response to domestic violence, based on the presumption that this has a longer-term impact on society.

Introduction

In an advertisement for a washing machine developed for Kenwood, Pakistan which made its way onto the internet unofficially, a man sitting amongst his friends discuss how his wife "misbehaved" to which he responded: "*Mera haath utt gaya, uski dhulayi ki*" (I raised my hand and beat her up).² Exacerbating the matter, the statement released by Kenwood Pakistan admitted that until social media pointed it out, they had found the connotations of violence humorous.³ The fact that a high-profile company which is presumed to encompass many educated persons, thought mocking the beating of a woman as "humorous" indicates

¹ Associate Director, Legal Aid Society. The author would like to acknowledge the assistance of Naima Qamar and Hiba Zaheer in collecting and categorizing data and for conducting a comprehensive literature review

² Adrija Bose, 'Kenwood's 'Apology' for the Washing Machine Ad Starring Nawazuddin Siddiqui Reveals the Scary Truth About the World We Live In' (*Huffpost*, 15 May 2017)

<https://www.huffingtonpost.in/2017/05/15/kenwoods-apology-for-the-washing-machine-ad-starring-nawazudd_a_22086762/> accessed 5 June 2018

³ Ibid

the height of normalisation of violence against women, particularly domestic violence within Pakistan.

Domestic violence is recognised as a global issue, which cuts across all geographical boundaries, as well as boundaries of class, race, culture etc. In Pakistan, this is an aggravated issue, which is a direct consequence of the patriarchal norms that permeate through all of its social and state structures. Domestic violence is considered to have become such a commonality that has resulted in its acceptability and thereafter, rendering it largely invisible.⁴

The limited statistics available through various different studies evidence its prevalence across the country. As per a 2009 Human Rights Watch⁵ study, 70 to 90 per cent of women in Pakistan have suffered some form of abuse. An estimated 5,000 women are killed every year from domestic violence, with thousands of others maimed or disabled.⁶ The last Demographic and Health Surveys (DHS) for Pakistan revealed that 39% of women aged 15-49 who had never been married have reported being subjected to Intimate Partner Violence (IPV) at some time, while 33% had experienced it in the previous 12 months.⁷ Ali et al (2015) state the reported rate of physical IPV experienced by women during their lives is 32% and includes individual reports that have shown figures as high as 77% for sexual violence, 90% for psychological violence and 50% for physical violence.⁸

Although three of the four provinces⁹ in Pakistan have passed laws relating to domestic violence, albeit with different substantive responses, implementation of these laws has been slow and difficult. Thus, even 5 years after the first law was passed in Sindh in 2013, there is little progress made towards the elimination of domestic violence in the country. Using the example of Sindh, it was in fact in 2017 – 4 years after its promulgation - that a case was taken through the legally prescribed procedure. Here, the domestic commission mandated under the law was only notified this year but has yet to hold its first meeting. Protection officers

⁴ Unaiza Niaz, and others, 'Situational Analysis of Intimate Partner Violence Interventions in South Asian and Middle Eastern Countries' (2017) 8(1) Partner Abuse <https://www.domesticviolenceintervention.net/wp-content/uploads/2017/01/SouthAsia-MiddleEast.DV_Programs.pdf> accessed 3 June 2018

⁵ Human Rights Watch, 'World Report 2009' (Human Rights Watch, 2009) <https://www.hrw.org/sites/default/files/world_report_download/wr2009_web_1.pdf> accessed 2 June 2018

⁶ Denise K Gosselin, *Heavy Hands: An Introduction to the Crime of Intimate and Family Violence* (4th edn, Prentice Hall 2009) 13.

⁷ National Institute of Population Studies and ICF International, 'Pakistan Demographic and Health Survey 2012-13' (2013) 219 <<https://dhsprogram.com/pubs/pdf/fr290/fr290.pdf>> accessed 2 June 2018

⁸ Parveen Azam Ali and others, 'Intimate Partner Violence in Pakistan: A Systematic Review' (2015) 16(3) Trauma, Violence, & Abuse 299

⁹ Sindh Domestic Violence (Prevention and Protection) Act 2013

<<http://www.pas.gov.pk/uploads/acts/Sindh%20Act%20No.XX%20of%202013.pdf>>; Baluchistan Domestic Violence (Prevention and Protection) Act 2014

<<http://www.pabalochistan.gov.pk/uploads/acts/2014/Act072014.pdf>>; Punjab Protection of Women from Violence Act 2015 <<http://punjablaws.gov.pk/laws/2634.html>>; Khyber Pakhtunkhwa's draft bill was rejected by the Council of Islamic Ideology, deeming it to be "un-Islamic".

have been notified all of whom have already existing charge but with no actions, training etc. Protection committees at the district level have yet to be formed.

This is indicative of the fact that there is little awareness of the laws on domestic violence coupled with the reluctance to pursue criminal remedies due to social pressures. There is also a lack of understanding of what all domestic violence encompasses. Physical violence is the most recognisable form of violence and psychological violence is also accepted to a certain degree. However, little is understood or accepted about other forms of domestic violence. This is particularly true within the legal framework, which fails to recognise that certain behaviours liable under several laws are in fact forms of domestic violence, thus missing the crosscutting nature of domestic violence across the legal arena. In order to fully understand the law's engagement with responding to domestic violence, it is essential to have an understanding of this scenario.

This paper seeks to contribute to the discourse on domestic violence on women and girls in Pakistan by expanding the understanding of what constitutes domestic violence in Pakistani society i.e. by acknowledging certain culturally specific forms of violence, identifying specific actions and behaviours falling within its scope. Understanding what domestic violence allows for the development and implementation of a more focused strategy in raising awareness of what domestic violence includes, and thereafter, how to eliminate it.

The paper uses the data emerging from the Legal Advisory Call Centre (LACC) established and run by the Legal Aid Society (LAS) as a sample to demonstrate the intersectionality of different forms of violations of both criminal and civil legal rights under the umbrella of domestic violence. The paper is organised into 6 main sections as follows:

Section 1. This chapter examines the data emerging from the LACC. First, it will identify patterns relating to how the callers have themselves categorised an act of domestic violence, thereby being indicative of the different approaches society takes in responding to domestic violence.

Section 2. Expanding the scope of domestic violence. This chapter expands on the different issues relating to domestic violence within Pakistan, providing a more localised understanding of it.

Section 3. Expanding the definition of domestic violence. Through a scrutiny of the legal issues and claims emerging from the calls, they will be categorised and analysed within a domestic violence framework. This will allow for a discourse on how different legal claims also fall within the category of domestic violence, thereby widening the scope and understanding of the crosscutting nature of domestic violence.

Section 4. Case study: Kanwal's¹⁰ Case. This chapter will focus on a specific case study of domestic violence i.e. the very first case of domestic violence was pursued under the provisions of the Sindh Domestic Violence (Prevention and Protection) Act 2013, This case study explores the different levels and processes of the case through discussion with the survivor, her family, lawyer and independent key persons within the justice sector to try to identify the gaps within the system and potential recommendations.

Section 5. Recommendations. This chapter provides some concrete recommendations for greater understanding and engagement with the objective of eliminating of domestic violence.

Section 6. Conclusion. This chapter concludes the paper with some key points reflecting the findings and recommendations.

Methodology

This paper uses a mixed methodology research design, which does a qualitative analysis of the LACC quantitative data. The paper aims to respond to the following research questions.

1. What kinds of behavior and legal claims fall within the scope of domestic violence against women?
2. What options are there within the law to respond to domestic violence?
3. What are the legal and social obstacles for women in pursuing a case of domestic violence?

Data collection and analysis was conducted by a research team of 3 members and includes three sources of data.

(i) LACC's existing data: The existing LACC data from a period of 3 years (2015-2017) was the primary dataset to be used for the purposes of analysis. A three-level analysis process was employed for the purposes of identification of a final dataset for the purposes of this paper. The first and second rounds of analysis were pre-conceived by the research questions. In the first round, the data was filtered for calls where the caller was a woman; where a person was calling on behalf of a woman; or where the aggrieved party was a woman or girl. A second round of analysis used the definition of domestic violence to filter through cases falling within this definition.

It is important to note at this point, the analysis at these levels required a full textual reading and interpretation of the case report to identify if the case related to women or girls and if it fell within the scope of domestic violence as defined by this paper – whether the caller identified it as such or not. The final discussion and analysis in the paper is based on this

¹⁰ Name has been changed to protect the identity of the survivor

dataset. The issues identified in these calls and their corresponding legal claims are further categorised within the domestic violence framework. An analysis of the implications of this data of how we view domestic violence within the legal system has been conducted.

(ii) Case study of a case of domestic violence in the Sindh Courts: In 2017, to the best knowledge of the author, the first ever case was initiated under the Sindh Domestic Violence (Prevention and Protection) Act 2013. The case is currently on going and is sub-judice before the Sindh courts. Key Informant Interviews (KII) were conducted with the survivor/complainant and her mother to unpackage their process in making the unusual decision to take the case to court and their experience getting there. A KII was thereafter conducted with their lawyer who discussed the challenges she faced during the process of filing and passage of the case.

(iii) KIIs were conducted with a judge and a police officer to gain a larger insight into the challenges faced by these institutions in dealing with cases of domestic violence. The judge and police officer were selected on the basis of convenience sampling.

Caveats

The objectives of this paper resulted in a primary focus on women and girls, thereby excluding inclusion and analysis of calls made by men and analysis of whether their queries could enhance the depth of this paper. For example, there are several calls from men who wish to use legal means to bring their wives who have left them back to the marital home, or to renew sexual relations – both of which have legal backing. However, when analysed from a woman's perspective, this paper defines these as domestic violence (i.e. a woman being forced to go back to the marital home or have sex with her husband against her free and voluntary consent).

While successive attempts have been made over the years to improve categorisation and tagging of calls, it becomes necessary for all 50,000 plus queries to be manually cleaned, organised and then analysed to maximise validity of the data. Although desirable, this was not feasible for the research team due to time and resource constraints.

The domestic violence case study discussed in this study is currently in process before the Sindh courts and therefore proceedings and other details of the case cannot be discussed in greater detail.

Kanwal, the survivor in the case study is personally known to the author, who has supported and helped facilitate her case.

Ethics

Names and details of callers have not been referenced or shared in this paper to ensure the confidentiality of callers.

The real names of the survivor of domestic violence and her mother have not been provided to protect their confidentiality. The survivor and her mother were informed in the detail of this paper and its intentions. Express consent was taken from both of them to allow them to be interviewed and quoted in this paper.

1. Overview of Legal Advisory Call Centre Data

The Legal Advisory Call Centre (LACC) established by the Legal Aid Society (LAS) in 2014 operates on a nationwide basis for the provision of free of cost legal advice and information to citizens calling a toll free legal advisory number. The LACC was founded on the assumption that rights-based awareness is negligible amongst vulnerable and marginalized segments of society and access to affordable and effective legal information is almost unattainable.¹¹ LACC offers telephonic guidance by connecting callers directly with qualified and experienced lawyers, who are licensed to practice before High Courts; through a distinctive CRM system (based on a popularly deployed Avaya Telephony System) which has been customized to record metrics relating to socio-economic demographics in addition to the content of the query and the solution provided. Complete historical record of calls are logged and calls are time-stamped.¹² From 2015 until April 2018, LACC has registered over 50,000 calls from across Pakistan.

1.1 Un-packing the LACC Data

The LACC dataset analysed for this paper has provided a rich sample for analysis within the domestic violence framework. The dataset of LACC calls from 2015-2017 was filtered and a total of 2464 calls have been examined as the primary data set which includes calls made by women, on behalf of women or relating to women and those falling within the definition of domestic violence used for the purposes of this paper, whether or not they have been categorised as such by the caller. Assumptions have been made with a focus on the information provided by caller, the specific request for information made and the response provided by the lawyer.

The definition of domestic violence used for the purposes of this paper is:

“Domestic violence, also called family violence, intimate partner violence, relationship violence or inter-personal violence, is a pattern of intentionally violent or controlling behaviour

¹¹ Asha Bedar, ‘Vulnerability and Society: A qualitative analysis of the calls received by the Legal Advisory Call Centre’ (Legal Aid Society 2016) 4

¹² Ibid.

used by a person against a family member or intimate partner to gain and maintain power and control over that person, during and/or after the relationship.

It can be characterised as physical abuse, emotional abuse, financial/economic abuse. Psychological and emotional abuse, sexual abuse.”¹³

The LACC dataset has been analysed in two ways. It has first been analysed to uncover under what category do the callers themselves identify their issue. This provides some insight into the responses desired by the callers. Exploring the motivations and factors behind the reasoning why each caller has categorised an incident or situation in a certain way, will allow for analysis, which could result in indicative information for a social mindset, which can be useful to future programming.

The second analysis of the data identifies trends and patterns of behaviour, which will be discussed within the domestic violence framework with the intention of widening the discourse on domestic violence and legal needs of the people and survivors/victims of domestic violence and will be discussed under Section 3 of this paper.

1.2 Categorization by Callers

Based on the definition used for the purposes of this paper and under its second level of analysis, the dataset was identified by the author as falling within the scope of domestic violence. Many of the callers themselves do not identify these legal queries as “domestic violence.” Thus, for them – and many others – these would be simple legal issues that need to be resolved.

In order to enhance the engagement of law within the scope of domestic violence, it is important to be able to see how callers themselves have categorised these forms of violence, and albeit the different ways that the law responds to domestic violence, even if not directly. The table below shows the LACC dataset on domestic violence divided into legal sub-categories based on how the caller identified the issue.

¹³ Compass Centre for Women and Families, ‘What is Domestic/Family Violence?’ (*Compass Centre*, n.d) <<https://compassctr.org/get-help/domestic-violence/what-is-domesticfamily-violence/>> accessed 2 June 2018

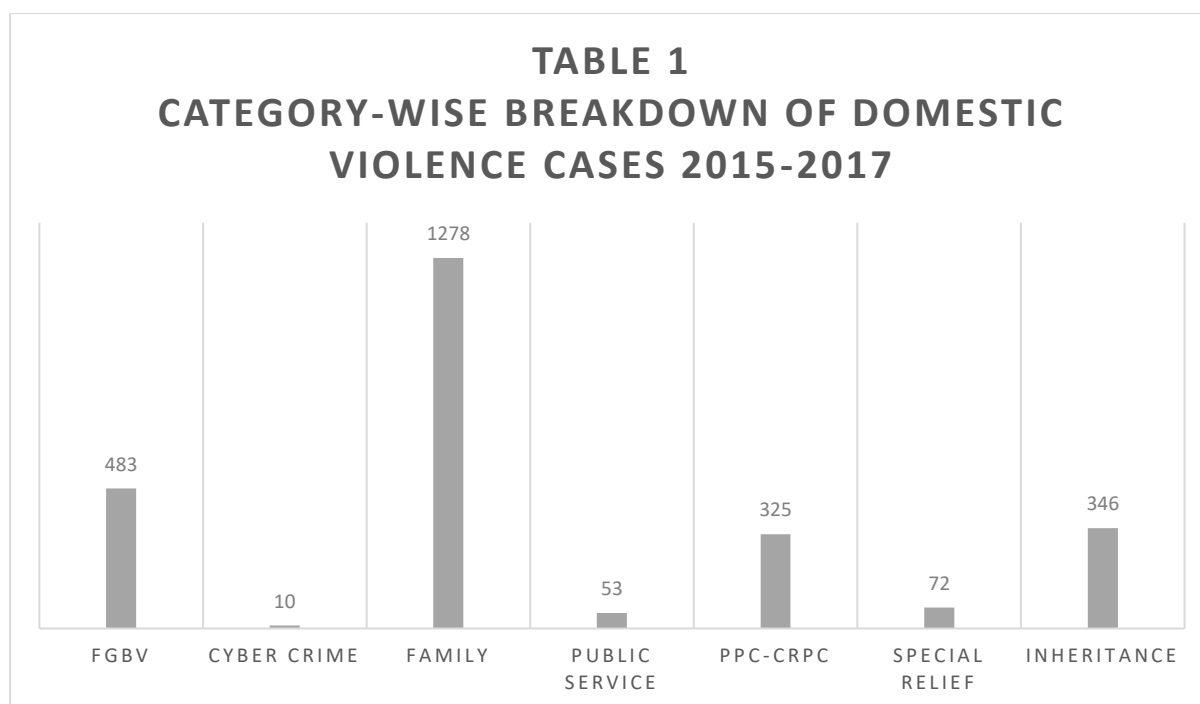


Table 1. Categories of calls from 2015 – 2017

An examination of Table 1 immediately identifies the top 3 legal queries that have been raised by women: family related issues; female and gender-based violence and inheritance. This gives an indication of the priorities within women's lives.

A brief summary of each legal category has been given below.

Family cases include cases of issues relating to maintenance, dower and dowry, women being kicked out of the house or abandoned at their parents' house, guardianship/custody, non-custodial parents snatching their children and keeping them away from their mother or court ordered guardianship; divorce (*talaq* or *khula*); second marriages of husband etc.

Female and Gender-based Violence (FGBV) includes cases of child marriage or forced marriage, threats of hurt, physical violence, psychological violence, confinement in the house and not allowed to meet family etc.

Inheritance cases include deprivation of rightful property, attaining share in rightful property and the division of inheritance according to Islamic law.

PPC¹⁴/CrPC¹⁵ cases include registration of First Information Report (FIR), criminal cases involved theft, threats of violence, wrongful confinement, harassment, attempted rape, abduction/ kidnapping, honour killing, harassment etc.

¹⁴ Pakistan Penal Code 1860 <<http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>>

¹⁵ Criminal Procedure Code 1898 <http://www.fmu.gov.pk/docs/laws/Code_of_criminal_procedure_1898.pdf>

Special relief cases include transfer of property, changing names or other adjustments on property papers/ownership, dispossession of land, illegal occupation etc.

Public service matters cases include those involving registration and getting a CNIC and associated issues e.g. changing of the name on the CNIC or fixing a mistake; administrative issues such lack of electricity; fixing of excess bills etc.

Cybercrime includes cases of threats from ex-husband over the telephone, threats from ex-boyfriend over social media, blackmailing, creation of fake Facebook profiles using women's photos and spreading false impressions, photos of them etc., hacking of Facebook accounts, taunting messages on the mobile phone.

2. Expanding the Scope of Domestic Violence

It must be understood why the data in Table 1 falls within the scope of domestic violence and the connection with the legal system's response domestic violence. In order to get a holistic understanding of this discourse, it is important to understand how domestic violence operates within Pakistan.

Domestic violence in Pakistan exists within a patriarchal culture rife with socially embedded concepts of tradition, culture, religion and unequal status of women, all of which create significant barriers in attempting to challenge and eliminate it. Furthermore, the cultural specificity of domestic violence within Pakistan must also be understood. Some of the major aspects relating to domestic violence have been discussed below to develop a contextual framework.

2.1 In-equality and Vulnerability of Women

The patriarchal set up in Pakistan is rooted in both public and private domains and perpetuates a clear hierarchy of power, designating specific roles for all genders, with power and privilege firmly placed with men, thus resulting in unequal gender power relations.¹⁶ Women are seen as "commodities" of the men and are recognised by their relationship to them e.g. mother, sister, wife, and daughter.¹⁷ Men, resultantly have control over all aspects of a woman's life, developing and maintaining a framework within which a woman is expected to function. This includes restrictions on movement, social constraints related to occupying public spaces, lack of control over resources, lack of decision-making power (including over their own self and rights), and limited access to educational and employment opportunities,

¹⁶ Rizwan Saeed, 'Patriarchy and Masculinity in the Culture and Language of Pakistan & India' (*Rozaan*, 16 October 2015) < <http://rozan.org/?q=article/patriarchy-and-masculinity-culture-and-language-pakistan-india> > accessed 3 June 2018

¹⁷ Maliha Zia Lari, "'Honour Killing" and the Compliance with Law' (Aurat Foundation, 2010)

resulting in a lower social, economic and political status in comparison to men.¹⁸ This has the direct impact of lower socio-economic indicators for women and girls in Pakistan.

The poverty of woman and the economic dependence on the male members of the family is a direct consequence of all of these policies. Lack of education, lack of mobility, lack of access to employment opportunities places women at the economic mercy of the earning men in their lives. Those who do work often have little or no control over the monies they earn.¹⁹

Violence against women (VAW) and Gender Based Violence (GBV) are often used against transgressors of this framework²⁰ and as a measure of control, which women are conditioned to see as normal.²¹ In Pakistan, these have been escalating with impunity due to social tolerance, with many forms of violence against women not even being widely recognised as crimes or violations of women's rights. Culture (often dating to pre-Islamic times) and religion are often used as justifications of violence. Child marriage, honour killings are both forms of violence associated with cultural practices. Certain groups use Quranic verses to justify "disciplinary acts" against women. For example, The Council of Islamic Ideology, a constitutional body, has publicly stated that beating women "lightly" is justified.²² It has also declared the setting of a minimum age of marriage as "un-Islamic."²³

This scenario has a major impact on women's access to justice with several over-lapping issues. These include lack of independent financial power and resources to take up cases; an ineffective legal aid system; illiteracy and legal illiteracy resulting in little awareness of rights, protections and protection mechanisms; lack of mobility to reach courts; social norms which create a stigma and shame and ostracise victims of any sort of gender-based violence or violence against women; disapproval of women who report cases of violence i.e. breaking the sanctity of the home; lack of gender sensitised judges, court staff and public prosecutors to be able to respond to women's cases in a gender-appropriate manner; lack of adequate training of justice sector officers on how to apply the new laws and the necessary shift of attitude and perspective; lack of cohesion amongst state institutions to form a protection framework for victims; lack of knowledge of the law within the community; unchecked personal bias among justice actors, particularly the police, who continue to act according to

¹⁸ Ibid; Zaheer Udin Babur, 'Violence Against Women in Pakistan: Current realities and strategies for change' (MA thesis, European University Center for Peace Studies 2007)

¹⁹ (n 17)

²⁰ Ibid

²¹ Tazeen S Ali, 'Intimate partner violence in urban Pakistan: prevalence, frequency, and risk factors.' (2011) 3 International Journal of Women's Health, 105-115

<<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3089428/#idm140121900761952title>> accessed 2 June 2018;

Rubeena Zakar and others, 'Coping strategies adopted by pregnant women in Pakistan to resist spousal violence' (2011) 116 International Journal of Gynaecology & Obstetrics, 77-78

<<https://doi.org/10.1016/j.ijgo.2011.08.006>> accessed 5 June 2018

²² Raza Khan, "Lightly beating" wife is permissible, says CII's proposed women protection bill' Dawn (Islamabad, 26 May 2016) <<https://www.dawn.com/news/1260803>> accessed 2 June 2018

²³ Kalbe Ali, 'Marriage age laws un-Islamic: CII' Dawn (Islamabad, 12 March 2014) <<https://www.dawn.com/news/109257>> accessed 1 June 2018

this bias as opposed to the law, putting pressure on victims to compromise in a case, blaming the victim, refusing to register cases or carrying out inadequate investigations.²⁴

2.2 Domestic relationships within Pakistani culture

Domestic violence is often used interchangeably with Intimate Partner Violence (IPV). It is internationally and commonly identified as physical, sexual and emotional abuse of a woman by a current or former intimate male partner, whether cohabiting or not.²⁵ However, “the multiple faces of domestic violence are sometimes obscured in the name of culture and custom.”²⁶ Resultantly, the interchangeable IPV and DV is not believed by the author to be truly representative of the scenario in countries such as Pakistan where domestic relationships extend well beyond a romantic or intimate partner.

This was recognised in 1996 by the United Nations Special Rapporteur on Violence against Women in her model legislation on domestic violence, which advocated for a wider legal definition of domestic violence and relationships²⁷ in order to capture the reality of modern families, or in the case of Pakistan (and several other countries), traditional joint family setups. This widening of the definition of “relationships” also allows for the recognition of others vulnerable to domestic violence, including children and the elderly,²⁸ as well as other perpetrators.

Furthermore, as is evidenced by Aurat Foundation in its reports on Violence against Women,²⁹ most of those who perpetrate any form of violence against women are intimate partners or

²⁴ Humera Masihuddin, ‘Training and Curriculum’ in Pakistan Police Reform (ed), *Stablizing Pakistan Through Police Reform*” (Asia Society 2012) < https://asiasociety.org/files/pdf/as_pakistan_police_reform.pdf > accessed 5 June 2018; Sarah Zaman and Maliha Zia, ‘How Much Rape is Rape? Understanding Normative Assumptions within Rape Victimology in Pakistan’ in Neelam Hussain (ed) *Disputed Legacies: The Pakistan Papers* (Zubaan publication, forthcoming) < https://www.researchgate.net/profile/Sarah_Zaman4/publication/326735417_How_Much_Rape_is_Rape_Understanding_Normative_Assumptions_within_Rape_Victimology_in_Pakistan/links/5b61742a458515c4b2571b74/How-Much-Rape-is-Rape-Understanding-Normative-Assumptions-within-Rape-Victimology-in-Pakistan.pdf > accessed 3 June 2018

²⁵ Claudia Garcia-Moreno and others, ‘WHO Multi-country Study on Women’s Health and Domestic Violence against Women’ (World Health Organisation, 2005) 13 <http://www.who.int/gender/violence/who_multicountry_study/Introduction-Chapter1-Chapter2.pdf> ; Etienne G Krug and others (eds), ‘World report on violence and health’ (World Health Organization, 2002) <http://apps.who.int/iris/bitstream/handle/10665/42495/9241545615_eng.pdf;jsessionid=9E5CDFE6CA53C5C8B36A933A1F13879E?sequence=1 > accessed 5 June 2018

²⁶ Rangita de Silva de Alwis, ‘Domestic Violence Lawmaking in Asia: Some Innovative Trends in Feminist Lawmaking (2012). Faculty Scholarship Paper 1683 <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=2684&context=faculty_scholarship> accessed 2 June 2018

²⁷ The Lawyer’s Collective, ‘Domestic Violence Legislation and its Implementation: An Analysis For ASEAN Countries Based On International Standards And Good Practices’ (UNWOMEN 2011) <<http://www.aidsdatahub.org/sites/default/files/documents/DomesticViolenceLegislation.pdf>> accessed 1 June 2018

²⁸ (n 26)

²⁹ Aurat Foundation, ‘VAW Reports’ (Aurat Foundation, n.d) <<http://af.org.pk/vaw-reports.php>> accessed 1 June 2018

relatives, such as husbands, brothers, cousins, fathers, uncles, fathers- and mothers-in-law, brothers-in-law, sons or step sons. Thus, a restricted interpretation of domestic violence as only between intimate partners would not do justice to the scope of the problem in Pakistan.

This is the approach that has in fact been taken by the legislation in Pakistan. All three of the laws widen the scope of domestic violence by stating that it can be committed by a person who is living or has lived in a house when they are related to each other by consanguinity, marriage or adoption; and Sindh and Baluchistan specifically mentioning joint families.

Punjab has limited the scope of the victim to be only females, whilst Sindh expands it to include children and vulnerable persons, and Baluchistan widens it even further to include domestic help and employees who live in the same household.

All three of the laws have expanded on the definition of the household. In Pakistani culture, a wife's residence is with the in-laws and their extended families within their family home.³⁰ Thus, the question relating to the right for her to stay in the house or to remove the husband from it can become contentious. All three of the laws have declared protection of the woman's right to reside in the household whether owned or possessed by the aggrieved person, defendant or their joint family.

2.3 Domestic violence: Justified by Religion

Domestic violence is a contentious issue in Pakistan, as many believe that religion allows for beating of the wife. The Quran is used as justification of men's authority over women and allowing him to "discipline" her.³¹ As per certain conservative and right-wing interpretations, a husband's and wife's roles are defined clearly i.e. a man is given the charge to protect and provide maintenance to their wives and children while wives are "*under obligation to protect her chastity and be obedient to her husband in his absence.*"³² This school of thought, which includes men and boys of all ages,³³ has interpreted a verse in the Quran³⁴ to allow for "light beating" as a last resort if a woman is found to be "disloyal" and "misconduct shown on her part"³⁵ in order to make her "obey" and "behave."

The Quran has also been interpreted by conservative right Islamic groups, led by the Council of Islamic Ideology to justify other forms of domestic violence e.g. child marriages where

³⁰ Mufiza Zia Kapadia and others, 'The hidden figure: Sexual intimate partner violence among Pakistani women' (2010) 20(2) European Journal of Public Health <<https://academic.oup.com/eurpub/article/20/2/164/534295>> accessed 3 June 2018

³¹ Shahzadi Pakeeza, 'Domestic Violence Laws and Practices in Pakistan' (2015) 6(1) VFAST Transactions on Education and Social Sciences <<https://www.vfast.org/journals/index.php/VTESS/article/viewFile/205/296>> accessed 4 June 2018

³² Ibid

³³ Rozina Karmaliani and others, 'Understanding intimate partner violence in Pakistan through a male lens' (Overseas Development Institute, March 2017) <<https://www.odi.org/sites/odi.org.uk/files/resource-documents/11398.pdf>> accessed 4 June 2018

³⁴ 4:34, Holy Quran

³⁵ (n 31)

puberty being considered age of marriage³⁶ or the belief that men are entitled to sex with their wives upon their demand and mandatory consent of their wives.³⁷

Pakistani culture and society has been fused with right conservative religious ideologies over the last few decades largely as a result of Zia's Islamisation process and the political use of Islam by democratic and military governments in Pakistan's history.³⁸ This situation was exacerbated by low education levels and high rates of poverty of the population, resulting in permeation and reinforcement of this ideology within the culture and traditions, and thus impunity for these religiously "sanctioned" acts within society.³⁹

2.4 Domestic violence – a family, not a public matter

Pakistani society emphasises a strict public/private divide⁴⁰, which is reinforced in the Constitution of the Islamic Republic of Pakistan 1973 under Article 14, which states the dignity of man, and privacy of home shall be "inviolable".

Due to the use of religion in relegating women to the private spaces, men are expected to play their roles as fathers, brothers, husbands and sons to 'control' their women, which may include the use of violence. Domestic violence thus becomes a private matter and a "justifiable response to behaviour on part of the wife."⁴¹ A research conducted by Gallup Pakistan revealed that 65% Pakistanis believe domestic violence is a family's personal problem.⁴²

Thus, much like the situation identified by MacKinnon in 1989, while private law is meant to allow individuals to greater person freedom, for women the divide is to the detriment to the women with increased exposure to IPV, abuse and domestic violence.⁴³ Culturally, in Pakistan, women belong to the private realm and there is shame associated with sharing personal

³⁶ Imran Ahsan Nyazee, 'The Council of Islamic Ideology (CII) and Child Marriage' (2014) <<https://ssrn.com/abstract=2519471>> accessed 4 June 2018

³⁷ Jawaria Kashif, 'An Overview Of Conjugal Rights And Obligations In Islam' (*Courting the Law*, 21 October 2017) <<http://courtingthelaw.com/2017/10/21/commentary/an-overview-of-conjugal-rights-and-obligations-in-islam/>> accessed 5 June 2018

³⁸ Rubina Saigal, 'Feminism and the Women's Movement in Pakistan Actors, Debates and Strategies' (Friedrich-Ebert-Stiftung 2016) <<http://library.fes.de/pdf-files/bueros/pakistan/12453.pdf>> accessed 3 June 2018

³⁹ Ayesha Qaisrani and others, 'Socio-economic and Cultural Factors of Violence against Women in Pakistan' (Working paper # 158, Sustainable Development Policy Institute 2016) <[https://www.sdpi.org/publications/files/Socio-economic&Cultural-Factors-of-Violence-against-Women-in-Pakistan\(W-158\).pdf](https://www.sdpi.org/publications/files/Socio-economic&Cultural-Factors-of-Violence-against-Women-in-Pakistan(W-158).pdf)> accessed 3 June 2018

⁴⁰ Legal tradition sees the world as two spheres" the public, where law may regulate actors, and the private, where the law does not apply. Because women have long been associated with the private sphere, this division has historically excluded women from the protection of law.

⁴¹ Ali T. S and others, 'Intimate partner violence in urban Pakistan: prevalence, frequency, and risk factors.' (2011) 3 International Journal of Women's Health, 105-115 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3089428/#idm140121900761952title>> accessed 2 June 2018

⁴² Gilani Research Foundation Survey, 'Opinion Poll: Social Behaviour and others' (*Gallup Pakistan*, 2 March 2017) <<http://gallup.com.pk/wp-content/uploads/2017/03/2-March-2017-English-1.pdf>> accessed 2 June 2018

⁴³ Catherine McKinnon, *Towards a Feminist Theory of State* (Harvard University Press 1989)

issues in public, including marriage issues, violence etc. Complaining to outsiders, including the justice sector, is considered as breaking the sanctity of the home.

Studies have shown that the pressure is on women to try to solve the matter internally, first approaching the family to assist towards a resolution, then elders or other community members, in some cases the community panchayats or *jirgas*, or informal religious courts.⁴⁴ The effort is to keep the matter as hidden as possible. However, while these informal mechanisms may have some positive effects where mediation may be successful in catering to the specific needs of the couple, others complain that decisions made are not always based on any proper justification, advocate for reconciliation despite the wishes of the woman and continue the cycle of violence.⁴⁵ Formal systems, including services such as shelter and legal aid are only approached when there is real danger to the lives of the women or when they have no other choice.⁴⁶

3. Expanding the Definition of Domestic Violence

Domestic violence in Pakistan has multiple dimensions emerging from the underlying patriarchal roots and in the name of culture and custom.⁴⁷ Expanded categories of violence were advocated for by the first UN Rapporteur on Violence Against Women in her model framework for domestic violence⁴⁸. As a result, several forms of violence committed within a domestic relationship between the victim/survivor and perpetrator fall within the wider scope of domestic violence which includes child and forced marriages, honour killings, dowry related violence, female infanticide, anti-women customary practices, trafficking etc.

The specific socio-cultural dynamics of Pakistan discussed above, where male dominance over women and the lower socio-economic status and positionality of women result in the need to expand the categories of domestic violence to provide an accurate reflection of the on-ground situation. Thus, the Rapporteur recommended identifying overarching categories of domestic violence to include physical abuse, sexual abuse, psychologic, verbal and emotional abuse and economic abuse⁴⁹. Acts and behaviour falling within the scope of domestic violence are then identified as falling into one of these over-arching categories. This perspective has in fact been incorporated into all three of the domestic violence laws in Pakistan and define domestic violence to include physical abuse, psychological and emotional abuse, sexual abuse and economic abuse.

It is necessary to unpackage these categories to be able to understand the classification of behaviour and acts fall within each distinct sub-category. The LACC dataset will be used to as

⁴⁴ (n 33)

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ (n 26)

⁴⁸ Ibid

⁴⁹ Ibid

an exercise to comprehend each category of domestic violence by sorting the legal queries into a specific sub-category. The sub-categories will be defined, with reference to the Pakistani laws on domestic violence and explanation of why certain LACC data belong within this category.

This will allow for the viewing of the LACC data in an informed manner and understand the emerging patterns of behaviour and legal claims under other categories of law, yet inter-sect and may be used in conjunction with domestic violence.

3.1 Physical abuse⁵⁰

The Sindh and Baluchistan laws primarily rely upon the Pakistan Penal Code 1860 for defining what is included in physical abuse including assault, criminal force, criminal intimidation, wrongful confinement etc. The Punjab law has made a more general provision i.e. and “offence committed against the human body of the aggrieved person”.

Physical abuse is the most easily recognisable, identifiable and accepted form of domestic violence. It may range with regards to the severity, action or measures undertaken e.g. it may range from a slap to death. Due to the normalisation of domestic violence in Pakistan as discussed in Chapter 2, light beating is a commonality in Pakistan and not considered domestic violence.⁵¹ It is only when there the violence is severe that women and their families reach out for external help and support. It is also important to note that abusive relationships can move through a cycle of violence, which may alternate through periods of tension and calm.

While not always recognised as such, child marriage (which was a relatively common legal query), forced marriage, exchange marriages, even though having their own distinct laws, can all be recognised as domestic violence. All of these marriages are based on a domestic relationship, which is exploited, and children or women are forced into marriage against their will and without their true and voluntary consent. In many situations, they do not even realise they have the option to NOT consent.

The social dynamics in Pakistan display characteristic patriarchal norms whereby women and girls within a family must obey their father or male head of the household. Child marriages are a common customary practice in many part of Pakistan, despite it being illegal and punishable, with Sindh and Punjab having recently passed laws extending the punishment for

⁵⁰ This section is based on the following resources. Domestic Violence Intervention Program, ‘Am I Being Abused?’ (*Domestic Violence Intervention Program*, n.d) < <https://dvpiowa.org/resources/am-i-being-abused/> > accessed 2 June 2018; ‘Domestic Violence – It Can Happen to Anyone’ (*Department of Trade and Investment, Regional Infrastructure and Services, State of New South Wales, Australia*, 2014) <https://www.dpi.nsw.gov.au/__data/assets/pdf_file/0003/521985/Domestic-Violence-Booklet.pdf> accessed 2 June 2018; White Ribbon Australia, ‘Physical abuse’ (*White Ribbon Australia*, n.d) <<https://www.whiteribbon.org.au/understand-domestic-violence/types-of-abuse/physical-abuse/>> accessed 2 June 2018;(n 26) ; (n 9)

⁵¹ (n 21); Fauziah Rabbani and others, ‘Perspectives on domestic violence: Case study from Karachi, Pakistan’ (2008) 14(2) *Eastern Mediterranean Health Journal*, 415-426 <<http://www.ncbi.nlm.nih.gov/pubmed/18561735>> accessed 5 June 2018

such marriages.⁵² Due to the domestic relationship and the fact that it is universally recognised a child cannot give consent to marriage, the parents exercise their control over the child to get married. This would fall not just under physical abuse (i.e. power is used to force a child to do something), but also has physical and sexual implications for the child, which would be considered sexual abuse within the definition of domestic violence, as well as rape under Section 375, Pakistan Penal Code 1860. Any complaint of sexual abuse will automatically result in the removal of the child from the guardianship of the accused parent under the domestic violence laws.

Examination of the cases of women applying for *khula* evidences a large numbers of cases being brought forward due to “maltreatment” or “torture”. Women and families tend not to seek criminal penalties for these acts unless the hurt caused is severe but choose to merely divorce the abuser. Women facing violence, pressures and threats during the *khula* process have the option of taking forward a case of domestic violence if they wish for criminal justice. However, women can also file for civil petitions of protection order, monetary order etc. Under the domestic violence laws.

The lack of proper identification of the issues within cases of *khula* results in the inaccurate categorisation of the case. By not recording that the woman is divorcing the man due to “maltreatment” or “torture” and instead merely documenting the *khula*, there is a loss of data, which could be utilised to identify the prevalence of domestic violence in the country.

Another common issue raised within family law is where a woman is kicked out of her house. As discussed earlier, women and children in Pakistan tend to be dependent on the male in their family, including for shelter, provision of basic necessities and maintenance. Locking a woman and child/children out of the house means effectively depriving them of shelter and necessities, which due to the created dependency has a direct physical impact on them, thereby falling within the category of physical abuse as well as psychological and economic abuse.

Looking at both the national law, indigenous issues and international laws and definitions, physical abuse under domestic violence may include:

- Direct assault on the body (strangulation or choking, shaking, eye injuries, biting, slapping, pushing, spitting, punching or kicking)
- Use of weapons including objects
- Assault of children
- Locking the victim in or out of the house

⁵² Sindh Child Marriages Restraint Act 2013

<<http://www.pas.gov.pk/uploads/acts/Sindh%20Act%20No.XV%20of%202014.pdf>>; Punjab Marriage Restraint (Amendment) Act 2015

<<https://punjabpolice.gov.pk/system/files/PunjabMarriageRestraint%28amd%292015.pdf>>

- Forcing the victim to take drugs, withholding medication, food or medical care
- Sleep deprivation
- Threats to hurt the person, children or family members
- Threats to take away the children or harm them
- Taking away the children
- Abandonment in dangerous places
- Physical restraint
- Child marriage
- Forced marriage
- Isolating
- Honour killing and other anti-women customary practices

3.2 Psychological, verbal and emotional abuse⁵³

Emotional or psychological abuse is recognised as being both verbal and non-verbal. It is used as a tool to reduce the confidence and autonomy of the victim. This type of abuse is identified by victims as even more profound than physical violence having severe short term and long-term effects.⁵⁴ Several studies evidence the severe impact it has on victims is due to the internalization of feelings of self-doubt and fear.⁵⁵ It is also extremely hard to prove in the courts due to the lack of physical evidence, particularly if the judge is not gender sensitive.

The Punjab law has defined psychological violence with regards to the impact it has on the victim i.e. resulting in anorexia, suicide attempts or clinically proven depression resulting from defendant's behaviour. Sindh and Baluchistan have defined this as a "pattern of degrading and humiliating conduct" and include:

- Obsessive possessiveness or jealousy constituting serious invasion of the victim 's privacy, liberty, integrity and security;
- Insults or ridicule;
- Threat to cause physical pain;
- Threat of malicious prosecution;
- Blaming a spouse of immorality;
- Threats of divorce;
- Baselessly blaming or imputing insanity, or citing barrenness of a spouse with the intention to marry again;
- Bringing false allegation upon the character of a female member by any member of the shared household; and

⁵³ This section is based on the following resources: Domestic Violence Intervention Program (n 50); 'Domestic Violence – It can happen to anyone' (n 50); National Health Service, 'What is Domestic Violence/Forms of Domestic Violence' (NHS, n.d) < <http://www.domesticviolencelondon.nhs.uk/1-what-is-domestic-violence-/2-forms-of-domestic-violence.html>> accessed 2 June 2018;(n 26) ; (n 9)

⁵⁴ Claudia Garcia-Moreno (n 25)

⁵⁵ (n 9); Tazeen S Ali (n 21)

- Wilful or negligent abandonment of the aggrieved person.

The LACC data reveals particularly within family law, many cases involving psychological, verbal and emotional abuse. One of the most common examples is threats of divorce or pronouncing divorce and then taking it back before it becomes final.⁵⁶ This has a massive impact on the psychological state of women who remain uneasy, not knowing the state of their marriage. Divorce is considered a shameful thing, and if a woman is economically not independent, her survival if she chooses to leave her husband is a cause for concern. The matter is of course exacerbated if there are children involved. Other common abusive behaviours include verbal abuse of putting another person down; insulting them, making them doubt themselves, displays of anger in public and private; isolating the victim from her family and friends; and threats of violence directed to her, the children or anyone else, including threat to take away the children from her.

Children also suffer psychological and emotional abuse as indirect victims of direct violence against mothers. These children often suffer emotional and psychological trauma, developing fear and anxiety and isolate themselves. Many later have difficulties with intimate relationships and often become abusers themselves.⁵⁷ In most of the cases reported to the LACC, there were children who may not have been direct victims, but were indirect victims as described here.

Other behaviours that may be included under this definition include:

- Ignoring feelings
- Shouting, screaming, name calling etc.
- Insult or drive away friends/family
- Lied or withheld important information
- Blaming the victim for all problems in the relationship
- Constantly comparing the victim with others to undermine self-esteem and self-worth
- Sporadic sulking
- Withdrawing all interest and engagement (for example weeks of silence)
- Emotional blackmail and suicidal threats
- Gaslighting (i.e. making a victim to question their own feelings, instincts, and sanity)
- Minimalization, denial and blame of violence i.e. making light of, denying responsibility for, or blaming the victim for their actions

⁵⁶ Under Islamic law, a man must pronounce *talaq* (divorce) on his wife on 3 different occasions and after her *iddat* (3-month time period post pronouncement of *talaq*) period is complete, the divorce is final. Any time before that, the man can rescind the *talaq*.

⁵⁷ UNICEF, 'Behind Closed Doors: The Impact of Domestic Violence on Children' (UNICEF, 2006) < <https://www.unicef.org/media/files/BehindClosedDoors.pdf> > accessed 1 June 2018

3.3 Sexual abuse⁵⁸

Sexual abuse can have severe and long-lasting impacts on the victim. Sexual abuse may vary in severity from inappropriate touching, harassment to violent sexual acts, forced sexual acts and rape. Within the wider definition of domestic relationship in Pakistan to encompass all members of joint families, this results in children being specifically recognised as vulnerable to sexual abuse.

Sexual abuse has been included in all three laws, although the Punjab law does not define sexual violence. Sindh and Baluchistan define it to include “any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of the aggrieved person” and specifically include “compelling the wife to cohabit with anybody other than the husband” and “any kind of sexual abuse including sexual harassment of a member of the family.”

It is important to note that in Pakistan marital rape is a criminally liable offence under Section 375 Pakistan Penal Code 1860. Further, this section also mandates sexual intercourse with any girl before the age of 16 is rape whether committed with or without her consent. Sexual abuse of children is also covered by Pakistani law under Section 377-A of the Pakistan Penal Code 1860.

Reporting and proving sexual abuse has been difficult on a social and legal level. Socially there is shame and dishonour associated with reporting sexual abuse of any kind. The culture of silence results in a breeding ground for sexual predators and abusers.⁵⁹ When reported, the courts tend to be more sympathetic to children but have often are reluctant to believe or punish cases of incest.⁶⁰

For women, marital rape within the marriage despite it being in the law is often difficult to prove. Further, research informs us that while women admit marital rape does occur; men on the other hand do not believe that it can happen due to the conservative religious interpretations.⁶¹

⁵⁸ This section is based on the following resources. Domestic Violence Intervention Program (n 50); ‘Domestic Violence – It can happen to anyone’ (n 50); National Health Service (n 53); (n 26) ; (n 9)

⁵⁹ Sarah Zaman and Maliha Zia, ‘Women’s Access to Justice in Pakistan’ (54th CEDAW Session, Geneva, February-March 2013) <http://www.ohchr.org/Documents/HRBodies/CEDAW/AccessToJustice/AuratFoundationAndWarAgainstRape_Pakistan.pdf> Accessed 3 June 2018

⁶⁰ Sarah Zaman and Sanaa Rasheed, ‘With an End in Sight. Incest in Pakistan: A Legal & Socio-cultural Analysis’ (War Against Rape 2012) <<http://war.org.pk/WAR%20Webfiles/PDF's/With-an-End-in-Sight-Incest-in-Pakistan-A-Legal-Socio-cultural-Analysis-2012.pdf>> accessed 1 June 2018; Sarah Zaman and Ayesha Khan, ‘The Criminal Justice System & Rape: An Attitudinal Study of the Public Sector’s Response to Rape in Karachi’ (War Against Rape and Collective for Social Science Research 2012) <http://www.researchcollective.org/Documents/The_Criminal_Justice_System_and_Rape_NEWFINAL.pdf> accessed 1 June 2018

⁶¹ (n 33)

Keeping in line with the social taboos of reporting sex, there have not been many complaints relating to sexual abuse within domestic violence. However, cases that have emerged include plans to sell girls or trafficking young girls who would be used for sex; child and forced marriage both have sexual elements in them as the children and women will be expected/forced to have sex with their “husband”. Further, under Muslim family law, there remains the legal right to demand for restitution of conjugal rights i.e. legally mandate another to share your bed again based on the Islamic interpretation of religion that a woman cannot deny sex to her husband.⁶² Many cases have arisen where women have left their husbands and such cases are filed. A gender sensitive judge may understand the concepts of consent and the right of woman to leave their house if unhappy, others may deem her ‘disobedient’ and a ‘bad wife’ and force her to return to her marital home by granting this application. Any unwanted sexual contact could thus be considered sexual abuse.

Other types of sexual abuse recognised internationally include:

- Any form of pressured/unwanted sex or sexual degradation by an intimate partner or ex-partner, such as sexual activity without consent
- Causing pain during sex
- Assaulting genitals
- Coercive sex without protection against pregnancy or sexually transmitted disease
- Making the victim perform sexual acts unwillingly (including taking or distributing explicit photos without their consent)
- Criticising or using sexually degrading insults.
- Forcing or coercion in pregnancy or soon after birth
- Forced sex with the perpetrator and others
- Trafficking or prostitution
- Child marriage

3.4 Economic abuse⁶³

Economic abuse is perhaps one of the most under-appreciated but pervasive forms of abuse. This is when an abuser takes control or limits access of the victim to finances including limits the current or future earning potential of the victim.⁶⁴ This results in increased power and control of the abuser as the victim is no longer has access to independent resources, thereby

⁶² (n 37)

⁶³ This section is based on the following resources. (n 58); National Coalition against Domestic Violence, ‘Facts about Domestic Violence and Economic Abuse - What is Economic Abuse?’ (*National Coalition against Domestic Violence* 2016)
<https://www.speakcdn.com/assets/2497/domestic_violence_and_economic_abuse_ncadv.pdf> accessed 3 June 2018

⁶⁴ Office of the Manhattan Borough President, ‘Economic Abuse: The Untold Cost of Domestic Violence’ (Office of the Manhattan Borough President, SAKHI and The Worker Institute, Cornell University October 2012)
<<https://www.ilr.cornell.edu/sites/ilr.cornell.edu/files/Economic-Abuse-Untold-Cost-of-DV.pdf>> accessed 3 June 2018

limiting their rights and choices and making the victim and other family members financially dependent on the abuser.⁶⁵ Thus, many victims continue to suffer in the abusive relationship due to lack of means of subsistence if they leave.

Interestingly, research has proven that males and females have different perspectives on economic abuse. In a 2012⁶⁶ study based in Lahore, it was revealed, “most of the men did not consider keeping their wives short of money, forcing them to act against their will, depriving them of property rights, or limiting their access to education and medical assistance as abusive acts. These acts were considered as violent by female participants.”⁶⁷

Economic abuse has been recognised as domestic violence under all three laws in Pakistan. Punjab defines it as “denial of food, clothing and shelter...in accordance with the defendant’s income” or “taking away the income of the aggrieved person without her consent.” Sindh and Baluchistan define it as “deprivation of economic or financial resources or prohibition or restriction to continue access to such resources which the aggrieved person is ordinarily entitled to.”

In other jurisdictions, it has been hard to prove economic abuse, particularly if the judge is not gender sensitive and unable to recognise the gender and power dimensions and the abusive control exercised by abusers through finances. It is hard to conflate, for example, being forced to leave a job, or leaving with consent, or calculating what is reasonable allowance/maintenance.

Economic abuse emerged as one of the top forms of domestic violence in the LACC data. There are scores of cases where the man refuses to provide adequate maintenance or any maintenance at all under family law, leaving women destitute and only dependent on her family to support her if they are willing. Under family law, a woman is only applicable for maintenance during the marriage and for 3 months after the divorce. Children, however, are applicable for maintenance until their adult years.

In Pakistan with the low socio-economic status of women, women often have lesser education, fewer job opportunities and lower salaries than men. Many women remain illiterate and are unemployed. Several women participate in unrecognised piecemeal or home-based work or are farmers on the landlord or family farmland. It is not uncommon for a woman to stop working to look after children. This is largely due to the lack of child services and support in employment, but also due to the social pressures and expectations on women

⁶⁵ Ibid

⁶⁶ Simi Kamal, ‘Domestic Violence: A primary Data Research Study’ (Aurat Foundation and Information Service Foundation 2012) < [http://af.org.pk/gep/images/Research%20Studies%20\(Gender%20Based%20Violence\)/GEP%20Summaries%20final.pdf](http://af.org.pk/gep/images/Research%20Studies%20(Gender%20Based%20Violence)/GEP%20Summaries%20final.pdf) > accessed 3 June 2018

⁶⁷ Ibid; (n 4)

to focus on family and child rearing. In addition to this, the restrictions on mobility and movement on women exacerbate the matter.

Thus, women are mostly dependent on the men in their family for the financial subsistence. Therefore, if a man refuses to provide sufficient financial allowances to his wife, mother or children, it would be considered economic abuse within the definitions of all of the domestic violence laws in Pakistan due to the fact that the man is exerting his power and control and not fulfilling his obligations to look after his family.

This principle can also be applied to cases of dower and inheritance, which is the right of a Muslim woman upon marriage. Dower may be given immediately or deferred, but it is the right of the woman to receive it. The only way the right is rescinded is if she applies for *Khula* (divorce initiated by the wife) in the court. Furthermore, if a woman who has left the house or is not allowed to use her dowry or is deprived of her inheritance—, which are properties, vested exclusively in her; it could also be considered economic abuse.

Other queries related to deprivation of inheritance and relating to specific relief relating to dispossessed property etc. also fall into the category of economic abuse, as noted above, as it involves using power to take away property or monies from a woman that is vested entirely in her.

Another issue that emerged from the LACC calls is where a woman is not allowed to get a CNIC, thereby being deprived of advantages of citizenship and leaving her in a more vulnerable position. She would need a CNIC to own movable or immovable property, get formal employment, rent a house, inherit property, be applicable for the Benazir Income Support Programme, which provides loans to women and the ability to vote. Not being allowed to get a CNIC has a massive impact on the autonomy and financial independence of a woman, resulting in economic abuse.

Other behaviour recognised as economic abuse includes:

- Preventing victim from working
- Harassing the victim at work
- Sabotaging the victim's employment
- preventing a victim from accessing existing funds
- Withholding money;
- Making the victim someone unreasonably account for money spent
- Withholding basic necessities
- Forcing someone to work against their will
- Providing only an inadequate 'allowance'/maintenance
- Using all wages earned by the victim for household expenses
- Denying that the victim has an entitlement to joint property

- Controlling household money
- Control over victim’s belongings

3.5 Analysis of LACC calls within Domestic Violence Framework

The exercise above demonstrated how completely different types of legal claims and cases all can fall within the scope of domestic violence. As identified earlier in this paper, the necessary ingredients include a domestic relationship and exploitation of this role to commit any of the abuses mentioned above.

The re-categorisation of these cases within the definition of domestic violence has the following results as seen in Table 2 below: 855 cases of physical violence; 737 cases of psychological, verbal and emotional abuse; 935 cases of economic abuse and 54 cases of sexual abuse.

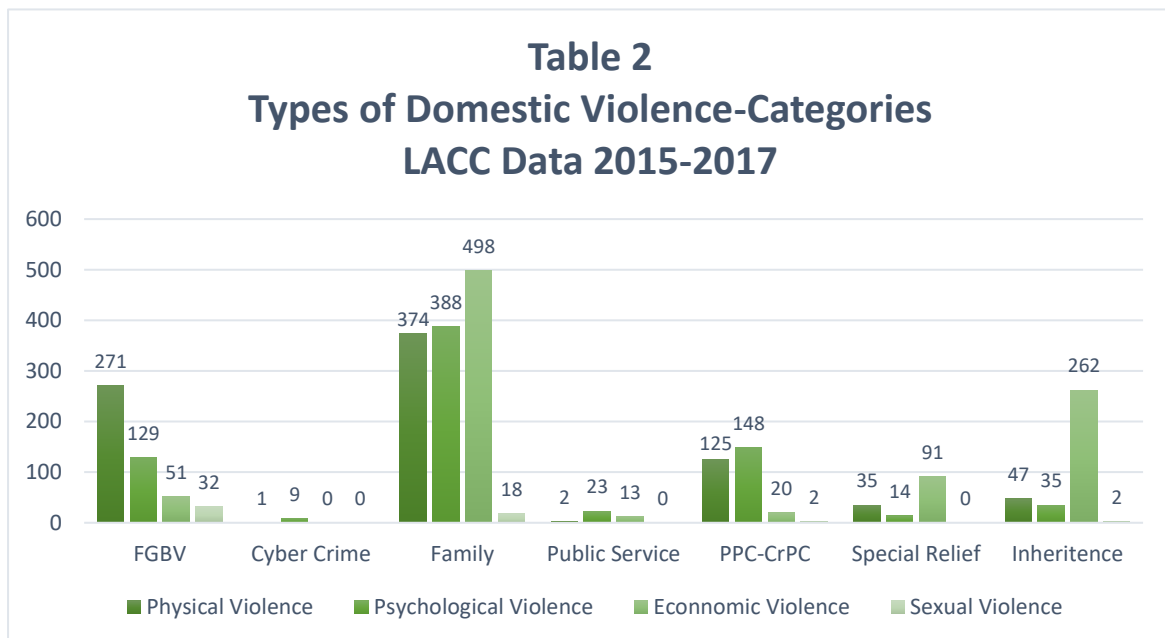


Table 2. Types of Domestic Violence-Categories LACC Data 2015 – 2017

This re-categorisation of legal queries/cases identified Section 1.2. (Table 1), has three main outcomes. First of all, with widening of the scope of domestic violence allows for the collection of accurate data on the prevalence of domestic violence and be better equipped to get a real and actual idea of the statistics of domestic violence in Pakistan.

Secondly, the recognition of the crosscutting and inter-sectoral nature domestic violence allows for the development of better and more holistic legal strategies. Women could use the civil protections allowed in the domestic violence bills or protection order or residence order. Also, for example, if the defendant in a maintenance case is refusing to provide maintenance,

the petitioner in any of the provinces where the domestic violence law exists, may also file a case of economic abuse against the defendant under the domestic violence laws.

Thirdly, a more thorough understanding of how domestic violence unfolds itself within the legal framework allows for a more in-depth understanding of domestic violence. Thus, by creating awareness of the different streams of law falling within the scope of domestic violence, there is better comprehension of the issue, allowing for the development of a better strategy to eliminate it.

4. Kanwal's Case Study⁶⁸

In 2017, four years after the passage of the Sindh Domestic Violence (Prevention and Protection) Act 2013 was passed, the first known case was initiated through the proper and complete procedures under the law and rules. This case study, documenting the on-going process of the case is essential to not just unpack the obstacles and challenges faced by the survivor and her family in accessing the justice sector, but also highlights what positive factors and successes were involved in the process.

4.1 Case Summary

Kanwal was married off to a relative, despite being approximately 16-17 years of age, which is in contravention of the 18-year requirement of the Sindh Child Marriage Restraint Act 2013. On the very first night of the marriage, she was beaten due to the lack of dowry. She left her marital home to go back to her parent's home but with the involvement of elders in the family, the couple reconciled. This pattern of beating, leaving home and reconciliation continued. On several occasions, he raped her, against doctor's orders of avoiding sexual contact and despite her begging him not to. One night, when Kanwal questioned him about finances, her husband throttled her, leaving finger marks on her neck, slammed her head against the wall, breaking her teeth, beat her badly and threw her out of the house. Kanwal immediately called her mother Azra⁶⁹, who came to get her and thereafter went to the police station to register a case against the husband. Ultimately, Kanwal filed a case of domestic violence against her husband and the case is currently is proceeding before the court.

This case study examines several aspects of the process of accessing justice for Kanwal. These have been discussed in a step-by-step process.

4.2 Decision to File and Continue the Case in the Justice Sector

The decision to file a case against the husband was an immediate decision by Azra. Azra states: *"When I saw Kanwal bleeding with finger marks around her neck, I did not hesitate to consider whether we should or should not file a case against him. He needed to be punished – not just*

⁶⁸ Names of the survivor and her mother have been changed to protect their identities.

⁶⁹ Names of the survivor and her mother have been changed to protect their identities.

*through one beating – but through a proper court process.*⁷⁰ This supports research, which indicates that only when violence is severe, do families or the survivor take the case to formal justice sector.

When faced with delays in the registration of a complaint, Azra's husband raised the suggestion of a compromise and not filing of the case since they were all relatives. However, Kanwal told him that if he sent her back, the next time he beat her, she would probably be killed. She emphasised that despite previous attempts to compromise and fix the situation, the beatings had continued.⁷¹ Azra however admitted that with the delays they faced with the police and the medico-legal department, they might have let it go.

Another additional factor played a major role in this decision to take forward the case was Azra's employer. Azra's employer is a psychologist with a specialisation in violence against women. As soon as she heard of the case, she worked with Azra, Kanwal and their father in supporting their decision to take the case forward. Through her sister (the author), a human rights lawyer, she was able to provide them a pro bono lawyer, Sara Malkani, who took up their case entirely free of cost.

Malkani worked closely with the family, educating them about the different legal options they had including in detail about the domestic violence law. Finally, they made the decision to file a case of domestic violence, charging him with physical abuse, sexual abuse, psychological, verbal and emotional abuse and economic abuse since she had to leave her job as a result of moving away from his house.

It is important to note that Kanwal was simultaneously working in a school and studying for her bachelor's degree with aspirations to do a master's degree during the time of her marriage. Thus, she was educated and had limited economic independence. Her mother Azra is also working as a domestic servant and is the primary earner in the family, thereby having has some level of decision-making power in the family. While illiterate herself, Azra has emphasised the importance of education to all her children.

Research indicates survivors and families who are educated and have economic autonomy are more likely to remove themselves from abusive relationships and take such cases to court. Kanwal and Azra's status fits in with this hypothesis.

Kanwal had to leave her job due to moving away from her marital house, but soon started a job as a nanny with Azra's employer. Thus, she had the constant support and counselling from a trained counsellor with an expertise in domestic violence.

Regular appearance in a long, protracted court trial is often a contentious issue with employers, which may result in loss of earnings and difficulty in time away from work etc.

⁷⁰ Interview with Azra, mother of petitioner and survivor (Karachi, Pakistan, 4 June 2018)

⁷¹ Interview with Kanwal, petitioner and survivor (Karachi, Pakistan, 4 June 2018)

However, due to a supportive and flexible employer, both mother and daughter were regularly able appear in court without stress and loss of wages or employment.

Both Kanwal and Azra have especially attributed the lawyer for supporting them. Malkani picked and dropped them from court and remained regularly accessible to guide them through the case details and court processes.

4.3 Experience with the Police

Azra and Kanwal had gone straight to the police on the night of her severest beating. The police, whilst sympathetic, informed them that they cannot register a First Information Report (FIR) until the medico-legal report comes in. They sent them to the government hospital to get Kanwal's medical done.

Shahla Qureshi, Senior Superintendent of Police shared that one of her biggest frustrations with the police force remained the fact that they force the survivor to run around from institution to institution and department to department before taking the case forward.⁷² She stated the medico-legal department was another nightmare for survivors, who would have to be physically examined. In situations where the medical was not an emergency, the survivor might have to wait for hours before being examined and weeks before receiving the medical report.⁷³

The police are often criticised for not being victim-centric and with an under-lying gender bias. The reluctance to register cases of violence against women is a well-documented fact⁷⁴.

Qureshi recommended that a facility should be opened up such as in Multan, Punjab, which provides a one-stop shop for victims of violence with the police, emergency medical care, medico-legal all under one roof, making it easier for the survivor.⁷⁵ Even then, she stated, the attitudes of the police at that level is often reluctant to register cases of domestic violence.

The police did behave in such a manner. They refused to register a FIR or investigate the matter without a medico-legal report, which took weeks to come. Instead of registering the case, they called the accused and his family for a discussion and tried to affect a compromise. They reiterated time and again to Azra that her daughter's honour was at risk and that people would consider it shameful that such a young girl was divorced and that it would ruin Kanwal's life.⁷⁶ Azra stated this in fact had the opposite effect on her, strengthening her resolve to take

⁷² Interview with Shahla Qureshi, Senior Superintendent Police, Pakistan Railways Police, Karachi Division, (Karachi, Pakistan, 5 June 2018)

⁷³ Ibid

⁷⁴ Sarah Zaman, 'Forced Marriages and Inheritance Deprivation in Pakistan: A Research Study Exploring the Substantive Structural Gaps in the Implementation of Anti-Women Practices (Criminal Law Amendment) Act 2011' (Aurat Foundation 2014) https://www.af.org.pk/pub_files/1416847483.pdf accessed 2 June 2018

⁷⁵ (n 72)

⁷⁶ (n 70)

the case forward since others had such little regard for her daughter's suffering.⁷⁷ Additionally, Kanwal refused to return to her husband and that she would be happy being shameful rather than having to live a life of violence.⁷⁸

The police have notoriously been accused of trying to effect compromise at the police station level instead of registering a case and indirectly shaming the women and girls for taking the case forward and violating the sanctity of the home by publicising the violence.

Qureshi comments that in some cases due to the realities of Pakistan, compromise does work best. She stated that there is in many cases the women have no alternatives. They are uneducated, with no family support and quite literally, they have nowhere to go. In such cases, the police play a role in effecting terms of a compromise and continued support to the woman afterwards. In some cases, she states, the woman WANTS the police to effect terms of a compromise. Qureshi feels that the police is sometimes an alternative to the *jirga* system, *jammāt* or family elders.⁷⁹

This reality places a burden on the State to develop a workable mechanism to support such girls and women when they strive to leave abusive relationships.

When the medico-legal reports arrived, the police recommended to Azra and Kanwal that they should make a case of attempted murder as the husband would immediately be picked up and placed in jail. However, Malkani explained to Kanwal that this would only result in injustice as her husband had beaten her and not tried to murder her. Furthermore, she said the case would fail without adequate evidence for attempted murder, since it was not attempted murder and the husband would go scot-free and not be adequately punished for his actual crimes.⁸⁰ She encouraged Kanwal to look at the long-term picture as opposed to short and unsustainable gains.

4.4 The Court System's Response to Domestic Violence

The Sindh law allows the petitioner to directly approach the court through the Magistrate First Class as opposed to going to the police. The purpose of this was the exact reasons identified above where the police is difficult.

Malkani shared that as the law was extremely new, there was no case law or precedent in filing such a case before. She examined international law, particularly Indian law, and did a close reading of the local law and rules to ensure she followed the proper process.⁸¹

The law was new to the judge as well. Malkani shared that it took her time to convince him that he had the jurisdiction to hear this case. Through the course of the trial, she stated, the

⁷⁷ Ibid

⁷⁸ (n 71)

⁷⁹ (n 72)

⁸⁰ (n 71)

⁸¹ Interview with Sara Malkani, Advocate High Court, (Karachi, Pakistan 2 June 2018)

judge made the effort to learn and follow the law, even though he had not conducted such a trial before.⁸²

Kanwal was also pleased with the judge. She stated that on his violation where he felt necessary and upon her request, he took measures to maintain her confidentiality and reduce her exposure to the open court. Thus, several hearings were conducted in his chambers as opposed to open court.⁸³

Malkani noted two points where she felt the judge had faltered. In the first instance, when requested for a protection order, despite the clear instructions provided in the law, the judge refused to pass a protection law completely banning Kanwal's husband from approaching her as he felt he has no right to stop a husband from getting close to his wife. Instead, the protection order mandated no that the respondent must not commit violence, issue threats or harass the victim.

The other issue that arose was the longevity of the trial. Under the law, the case was supposed to have been finished within 90 days. That was unfortunately not the case. Despite Malkani's attempts to speed up the trial, the old and new (current) judge did not heed the law but stated that the laws 3-month deadline is more indicative and unrealistic. Currently, the accused has a new lawyer who time and again asks for an extension which the judge is allowing.

Justice Shahid Shafique⁸⁴ states that the judge should not give so much allowance to one side. The law clearly states that the court may continue ex-parte or impose damages on the party that does not appear. However, he states judges are sometimes hesitant to do so without an application from the other party lest they be accused of bias.

Justice Shahid also discussed the limitations facing a judge.⁸⁵ He stated that judges can only give judgment on the cases before them and cannot read other sections or evidence into it since he has to remain impartial. He agreed that judges are not always aware of new laws and are not adequately gender sensitised. He stated that the Sindh Judicial Academy along with LAS has taken the mandate to create a gender sensitisation course with a focus on domestic violence, which caters to the needs of the judge, this providing awareness and sensitisation alongside skills-based training to be able to understand how to apply principles of gender equality into their daily work.⁸⁶

⁸² Ibid

⁸³ Interview with Kanwal, petitioner/survivor, conducted on 04-06-2018

⁸⁴ Interview with Justice Shahid Shafique, District and Sessions Judge, Sindh Judicial Academy (Karachi, Pakistan, 6 June 2018

⁸⁵ Ibid

⁸⁶ Ibid

The development of a judge-centric curriculum to be implemented by the Sindh Judicial Academy is positive, but there is need for improved monitoring of judges in such cases must also be incorporated with demerits if a judge behaves contrary to this.

4.5 The Survivor's Experience with the Justice Sector

Kanwal has responded positively to the justice sector and she credits Malkani for her continued facilitation and support. She does feel that the judge and some of the other court staff have been sensitive to her and her needs and supporting her. Many spoke positively to her after she recorded her witness statement and complimented her clarity and steadfastness on the stand. Behaviour like this continues to encourage her.

She does admit frustration with the longevity of the crime. However, at the same time she rather enjoys it because while she goes to court as the petitioner, her (now) ex-husband has to come every time knowing that this might result in him going to jail. *“Even if he doesn't spend a day in jail – I am satisfied. He comes and goes from court every single time without knowing that maybe today he might go to jail. He comes to court, everyone there hears what he has done to me, and he feels ashamed. He should be ashamed.”*⁸⁷

4.6 Analysis of the case

Access to justice has always been a massive barrier, particularly to women in cases of violence committed against them. The social and cultural barriers, which have a direct impact on women's access to justice, have been discussed under Section 2 of this paper. To reiterate, some of the massive issues creating obstacles for women's access to justice include:

- Lack of economic independence;
- Lack of family or community support;
- Social and cultural barriers impacting women's mobility and linking reporting, particularly of domestic violence to concepts of shame and stigma;
- Lack of legal literacy of women, resulting in ignorance of their rights;
- Long protracted trials and delays;
- Lack of adequate knowledge of the law of key criminal justice actors;
- Internal bias of key criminal justice actors impacting the registration, investigation and hearing of the case;
- Lack of understanding of the law and internal bias of prosecution lawyers;
- Victim blaming and shaming; and
- Tacit acceptance of domestic violence as a norm.

In Kanwal's case, there are several factors, which have countered these obstacles, thus resulting in a far more positive outcome.

⁸⁷ (n 71)

- The relative economic independence of both Kanwal and Azra has allowed them a voice in decision-making within their own family.
- The support, flexibility with regards to work hours during the trial and push from Azra and Kanwal's employer has been extremely positive. In particular, her informal counselling with Kanwal has helped her recovery from her ordeal.
- The constant availability and support of the lawyer Malkani has been immensely helpful. In particular, going and coming to the court with Kanwal and her mother and facilitating Kanwal and her family where and when necessary allowed them to feel supported by the lawyer on a personal and professional level. Often in cases of violence, the victim/survivor need more support than just legal representation, which was provided here by the lawyer.
- The education level and ambition of Kanwal kept her strong throughout the process.

5. Recommendations

The LACC must play a crucial role in continuing to suggest, monitor and analyse the use of the domestic violence laws in Pakistan and create awareness of the wider definition of domestic violence and the corresponding legal approach in using those.

It can do this through first of all ensuring the entire LACC staff has been sensitised to women's issues and ensure no advice contrary to women and girl's empowerment is given. All cases relating to domestic violence should be examined to ensure the correct advice was provided. All those who have been given advice to use the Sindh Domestic Violence (Prevention and Protection) Act 2013 should be reached out to see whether they did indeed use the law and its success.

The LACC database must be adjusted to be able to properly capture such data. For example, through the introduction of tags for domestic violence and other crosscutting issues. LAS must continue to publish smaller reports for the public's consumption to delve further into the concept of domestic violence and its continued applicability within the Pakistani framework. LACC and LAS must also develop a plan of action in cases of violence, which require immediate help and support.

The Government must also take notice of the basic needs identified. First and foremost, it must ignite the implementation team of the Sindh Domestic Violence (Prevention and Protection) Act 2013 i.e. the Domestic Violence Commission (notified but has not met); Protection Committees at this district level; and prescribing assignments to notified Protection Officers. The Government must ensure all of the members of the Protection Committees and Protections officers are provided excellent, relevant training to be able to successfully resolve cases or support the women in attaining justice.

The police must take a critical look at itself and develop a practical strategy to eliminate bias at the police station level. Training the entire force to respond sensitively to women's issues is next to impossible. Therefore, a smaller task force should be established with representation from every district. This task force should be given training on different skills and values on a regular basis. For any training to be successful, a stringent monitoring plan must be developed and followed to confirm that the task force is performing as has been trained.

The Sindh Judicial Academy (SJA) must be supported in the creation of a judge-centric curriculum on gender sensitisation and domestic violence. In addition to the curriculum, the Courts and perhaps the SJA can take the lead in developing an effective MIT system, which analyses the judges based on their quality of performance as opposed to numbers. All Court staff, MIT and data collection research teams should go through gender sensitization to be able to better capture gender dimensions in their work and life.

Kanwal's case study evidences the importance of counselling for the survivor, a support system familiar with the law to help facilitate the legal system. This type of facilitation and support is necessary throughout the court process.

Pro bono lawyers and legal aid is key to successful cases of people who cannot afford such care for themselves. The Government must re-examine existing legal aid strategies and programmes to be able to make them practical, easily accessible by survivors and provide quality care. Protection mechanisms must also be examined and developed where necessary. The one stop shop in Multan should be replicated in Sindh. Most importantly, a long-term plan and strategy must be developed for women and girls who have broken away from their families and have no other alternative than to go back to their abusive environment.

6. Conclusion

This paper sought to demonstrate the crosscutting and intersectoral nature of domestic violence within the legal framework of Pakistan. Unpackaging the theory of domestic violence with an indigenous lens allows for the recognition of several behaviour and legal claims that fall within the ambit of domestic violence.

This paper has tried to demonstrate that through a more localised understanding of domestic violence, which recognises the nuances of Pakistani society, we are better able to identify the different legal claims and issues arising across the board, improve data collection, and measure its prevalence. This widening of the boundaries allows for acknowledgement of how domestic violence cuts across different spheres and spaces of life and has a drastic impact on women and girls at every step of their lives. Through this widening lens, we are better able to capture the data on domestic violence, particularly through law.

Through the case study, a success story can be seen on navigating the justice sector, with identification of impediments and challenges along the way. This allows us to identify several good practices have emerged which may be replicated for other increased successful results.

This paper demonstrates through the LACC data that it is often to hide domestic violence within other offences, crimes and issues. It is essential that work be continued to isolate this issue and highlight it appropriately so that it is given the adequate and satisfactory response that it requires.

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