

Critical Analysis of Rape Laws in Pakistan: Still Long Road to Seek Justice

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ABSTRACT: Rape is among the most committed felonies in Pakistan and is counted among the dismal league of such countries which have a daunting number of reported and unreported incidents of sexual crimes. According to the Human Rights Commission of Pakistan (HRCP)'s recent report, a minimum of 11 rape cases are reported daily and more than 22,000 were reported in the last six years, i.e., 2015-2021. Hudood Ordinance, 1979 was the first law to recognize Rape as an offence and later, laws have kept evolving. Lately, the Government of Pakistan, considering the growing inadequacy of the prevalent laws to deal with the raging situation, has enacted The Anti-Rape (Investigation and Trial) Act 2021 (the Act) which consolidated the previously scattered rape laws in the country. Although being the best effort, so far, to redress the rape victims, unfortunately, this Act is not only riddled with myriad of substantive and procedural flaws but is also facing enormous difficulties in implementation process. Lack of training of already burdened Police & Prosecution departments, no traces of establishment of Anti-rape crisis cells (ARCCs) and formation of Special Investigation Officers and Joint Investigation Teams yet to aid the victim, serious dearth of resources required to implement the Act, creation of multiple forums rather than building on the existing legal infrastructure and no mention of sexual molestation in the Act are to name a few. This paper shall discuss the remedies to overcome the shortcomings in substantive and procedural laws as well as in the implementation process of the Act.

KEYWORDS: rape, rape law, sexual violence

Introduction

Rape is among the most prevalent crimes in the world and unfortunately, Pakistan is not an exception. Rather, the figures depict that the sexual crimes atop the list of the most committed felonies in Pakistan. According to a report published by the Human Rights Commission of Pakistan in 2021, 11 rape cases were reported daily and 22,000 cases were reported in the span of six years, from 2015 to 2021 (Desk 2020). In 2021 in Punjab only, there were 4329 rape cases out of which 269 were cases of gang rape and 193 were cases of rape of minor victims (Zia 2022, 31). The legal response of the governments have been varied in approach and infrastructure establishment yet all aimed at curbing the ever-rising number of sexual crimes in the country. Some of the laws passed were either unsuccessful or inadequate in addressing the said issue, where some, contrary to the purpose of their formulation, hugely harmed the fair sex. Initially, the *Pakistan Penal Code (Act XLV of 1860)* (the PPC), the *Code of Criminal Procedure, 1898 (Act V of 1898)* (Cr.PC), the *Dissolution of Muslim Marriages Act, 1939* provided general protection against various issues the women of that times were facing. The specific response to sexual crimes may,

however, be traced back to 1979, when General Zia-ul-Haq, the then chief executive and martial law administrator of the country, enforced the *Offence of Zina (Enforcement of Hudood) Ordinance, VII of 1979* and the *Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979)* (the ‘Hudood Ordinances’) which, on one hand, raised a loud clamour from almost all sections of society and on the other, instead of providing protection and redressal to women, became a nightmare for them by putting the victims behind bars, instead of the offender, for not proving the offence, living up to the extraordinarily high threshold of rendering evidence.

From this point, until now, ranging from *The Protection of Women Act (Criminal Laws Amendment), 2006* (The PWA), *The Protection against Harassment of Women at the Workplace Act, 2010*, *The Benazir Income Support Programme Act, 2010*, *The Women in Distress and Detention Fund (Amendment) Act, 2011*, *The Hindu Marriage Act, 2017*, and *The Punjab Women Protection Authority Act 2017* to *The Domestic Violence (Prevention and Prevention) Bill, 2021*, many legislations have been enacted and enforced to prevent the commission of crimes against women, yet the ghastly instances like *Zainab Rape and Murder Case (2018)* and *Motorway Gang Rape Case (2020)* stripped the government off the credibility in providing safety and redressal to victimized women and casted a serious doubt on the sufficiency of legislative efforts on the subject matter. Therefore, the *Anti-Rape (Investigation and Trial) Act, 2021* (The Act) was passed by the Parliament on 3rd December, 2021. Although, the Act being the special and only law to deal with rape cases is a significant milestone towards evolving legal infrastructure yet, to this day, it has been unsuccessful in stemming the stalking rage of cases of rape and sexual abuse in Pakistan.

This paper will look into the efficacy of the laws before the Act in addressing the rape offences as well as sexual abuse crimes while also discussing the factors that warranted the legislative effort such as done and expressed in form of promulgation of the Act. Moreover, a critique as to the shortcomings in the substantive and procedural portions of the Act in addition to discussing lags and hurdles in its implementation will also be included. Concluding, the paper will discuss the recommendations that can help overcome the shortcomings in the Act to live up to its *raison d'être*.

A Critique on Efficacy of Laws before the Anti- Rape (Investigation and Trial) Act, 2021 (The Act)

Since 1947, the *Pakistan Penal Code (Act XLV of 1860)* (the PPC), the *Code of Criminal Procedure, 1898 (Act V of 1898)* (Cr.PC), and the *Dissolution of Muslim Marriages Act, 1939* provided general protection against various, multi-faceted issues the women of those times were facing. The specific response to sexual crimes may, however, be traced back to 1979, when General Zia-ul-Haq, the then chief executive and martial law administrator of the country added new criminal offences of adultery and fornication in his famed *the Offence of Zina (Enforcement of Hudood) Ordinance, VII of 1979* and the *Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979)* (the ‘Hudood Ordinances’) for which new punishments of whipping, amputation, and stoning to death were introduced. Being a part of General Zia-ul-Haq's “Islamisation” spree, the Hudood Ordinances were intended to implement Shari'a law to not only replace parts of the British-era PPC but also bring Pakistani law into “conformity with the injunctions of Islam”, by enforcing punishments mentioned in the Quran and Sunnah for Zina (extramarital sex), Qazf (false accusation of zina), theft, and consumption of alcohol. These efforts faced much criticism when hundreds of incidents where women subjected to rapes, or even gang rapes, were accused of Qazf and incarcerated as the Hudood ordinances made it exceptionally difficult to prove an allegation of rape. According to the Hudood Ordinances, the victimized woman was

required to produce four adult and male eye witnesses to prove the offence of rape and in case of failure to do so, she was to be jailed for false accusation of rape. The Hudood Ordinances failed to draw a distinction between adultery and rape, and the women were dealt as “*guilty until proven innocent*” (Saboor 2014, 77).

The controversy and censure regarding the Hudood Ordinances resulted into parts of the law being extensively revised in 2006 by *The Protection of Women Act (Criminal Laws Amendment), 2006* (The PWA) after twenty-seven long years. The PWA reinstated the PPC – adding the crimes of ‘fornication’¹ and ‘false fornication’² - as a legal instrument to redress the crimes of sexual nature, and formed entirely new procedures to conduct judicial proceedings for adultery and rape. Moreover, clauses regarding whipping and amputation as punishments and incarceration of women on inability to prove the rape offence were also removed. In the words of Martin Lau, complaints of rape would not be seen as confession of adultery anymore (Lau 2007, 1297). PWA stands to this day despite potent criticism from religious factions on allegedly being against the injunctions of Islam. Later, furthering the reform process, in 2016, at both Federal and Provincial levels, important legislations were made. Punjab Assembly unanimously passed the *Punjab Protection of Women against Violence Act (PPWVA) 2016* which bears remedies for women being victims of violence. Presently, PPWA is pending for review in Federal Shariat Court (FSC). On the specific subject of rape and honour killings, meanwhile, two important legislations were made i.e., *the Anti-Rape Laws (Criminal Laws Amendment) Bill, 2014*, and *Anti-Honour Killings Laws (Criminal Laws Amendment) Bill, 2014*, and *Criminal Law (Amendment) (Offense of Rape) Act 2016 (CLA)*, introducing stringent punishments for perpetrators of rape and honour killing. The CLA introduced, inter alia, modern technology into investigation and trial processes, making DNA testing mandatory in rape cases and permitting the recording of statements of victims and witnesses via video links. Meanwhile, on the sidelines, many bills and acts, unrelated or remotely related to the topic, were passed by federal and provincial legislatures, addressing the extensive range of multi-coloured issues related to women. A few such significant legislations are just mentioned ahead: *The Protection against Harassment of Women at the Workplace Act, 2010*, *The Benazir Income Support Programme Act, 2010*, *The Women in Distress and Detention Fund (Amendment) Act, 2011*, *The Hindu Marriage Act, 2017*, *The Punjab Women Protection Authority Act 2017* and *The Domestic Violence (Prevention and Prevention) Bill, 2021*.

Enactment of The Anti-Rape (Investigation and Trial) Act, 2021

However, all these laws proved to be ineffective not only in providing women with the required security, protection and stake but also in preventing or redressing the offences against them especially of Rape and other sexual crimes. Instead on filling the lacunae in the Criminal Justice System of Pakistan and ensuring the deserved punishment regimes for the offenders, unfilled gaps in the system caused acquittals in huge numbers (Hasan 2020, 16). *Figure 1 figuratively elaborates the situation.

In this wake, the *Anti-Rape (Investigation and Trial) Ordinance, 2020* (the Rape Ordinance) was promulgated amidst the chaos and public pressure for reforms when the earlier laws failed to provide protection to women and the horrendous cases of sexual assaults against women and children continued to increase. On the top of the list were *Zainab Rape and Murder Case (2018)* and *Motorway Gang Rape Case (2020)* which

¹ The Protection of Women Act, in section 496(b) defines fornication as “a man and a woman not married to each other are said to commit fornication if they willfully have sexual intercourse with one another.”

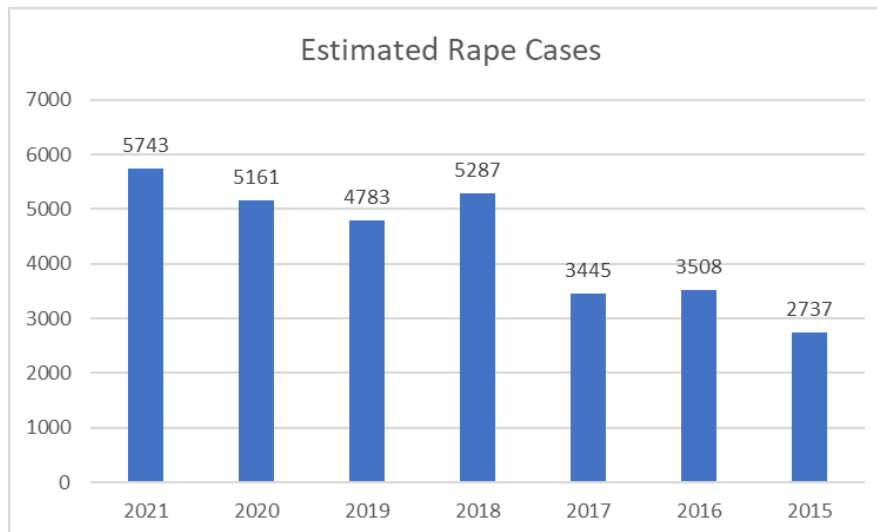
² The Protection of Women Act, in section 496(c) defines false fornication as “whoever brings or levels or gives evidence of false charge of fornication against any person.”

shook the whole nation and inspired a struggle in varied cross-sections of society for reformation in the legal infrastructure to deal with such crimes (BBC News 2018).

A brief elaboration of the two cases afore-mentioned is hereby given. Zainab Amin Ansari - a seven-year-old Pakistani girl - who was abducted in her hometown of Kasur, Punjab while she was on her way to Quran recitation classes on January 4th, 2018. Her body was found discarded five days later within a garbage disposal site near the city of Lahore on 9 January 2018; an autopsy report disclosed that she had been extensively raped and tortured before being strangled to death. Her rapist and murderer, 24-year-old Imran Ali, was arrested and identified as a serial killer responsible for at least seven previous rapes and murders of prepubescent girls in the region. Ansari's murder incited widespread protests and outrage throughout Pakistan, and ultimately led to the passage of Pakistan's first national child safety law, known as the *Zainab Alert Bill* also called *Zainab Alert, Response and Recovery Act 2019*. This Act defines the system of one window operations to notify the public and recover kidnapped children in Pakistan. The bill originated in Pakistan and defines its own comprehensive indigenous version of Amber Alert in United States. The bill creates a new federal agency called ZARRA, which shall be responsible to reduce child kidnapping, improve recovery and increase awareness against sexual abuse of children across Pakistan. Zainab Alert Act provides ease of use to the missing child's parents/guardians to notify the Police. The Act also provides a process for the local police department to issue an emergency alert using emergency broadcasting system on mobile phones within a 20 km region where the child was last seen. A major key feature of the Act is to establish a national database of missing and recovered children applicable across Pakistan and makes ZARRA agency accountable to submit quarterly reports to the National Assembly of Pakistan. It also directs that any individual found guilty of child abuse faces a minimum mandatory sentence of life imprisonment and also stipulates instigating legal action against law enforcement official who causes any unnecessary delay in investigating such cases within two hours of a child being reported as missing.

On 9 September 2020, a Pakistani-French woman was travelling along with her children and near Gujjarpura, her car ran out of fuel. She called her relative for help and upon him arriving, she was found awfully panicky and bore blood stains upon her apparel. Two armed men, broke her vehicle's windowpanes and took her and children out of the car to a nearby forest where she was gang-raped by those two-men in front of her children and later, she was robbed of her valuables. These terrible incidents initiated a debate on media and in policy making circles regarding rise of the cases of sexual violence in the country as well as the inability of the law enforcement mechanism to provide security to citizens as even a street outside home or a drive on a motorway can prove to be perilous for women as young as 7 years old. No women felt safe.

On 1st December, 2021, the Rape Ordinance was passed by the Parliament with the classic objective of protecting the general body of women and redressing the wronged, more precisely raped, but despite the series of the efforts done since long culminating into promulgation of the Act, statistics of rape cases in Pakistan, as referred in Figure 1, show, is on the continuous rise. The complete data for the year 2022 is not made available yet, however, according to the official websites of the Punjab Police and Sindh Police, 2461 rape and gang rape cases in Punjab and 238 rape and gang rape cases in Sindh are registered from January 01st 2022, till July 31st 2022, and it is an unfortunate trend in Pakistan that due to victim blaming and community shame, a large number of cases are never reported.



*Figure 1. Estimated Rape Cases in Pakistan

*Values taken from the annual reports by Human Rights Commission of Pakistan.

**Numbers include rapes/gangrapes of women and minor.

Critical Analysis of The Anti-Rape (Investigation and Trial) Act, 2021

The Act has not lived up to the expectations of the makers and public at large because of the shortcomings in procedural and substantive flaws and lack of vigor and other such halts in its implementation process.

Substantive Law Shortcomings

The Act lacks intellectual clarity which is obvious from its bare perusal. An example is indeterminate status of ‘unnatural offences’ in the Act, which include sodomy and other such offences committed against the males. It is dealt under section 377 of the Pakistan Penal Code, 1860. In this Act, the ambiguity is created by inconsistency between sections 2 (h)³ and 2 (k)⁴ wherein the former defining ‘sex offender’ mentioned the accused committing unnatural offences, but latter excluded adult male while defining the term ‘victim.’ Further, the transgender community which constitutes a fairly considerable number of the total population of Pakistan and which according to a recent press release conducted by the Williams Institute at UCLA School of Law is over four times more prone to be victims of sexual offences, aren’t the subject matter of the Act at all (2021). This not only exhibits lack of comprehensive understanding of offences related to violation of sexual privacy but also hints at the regressive approach with regards to gender awareness and the problems they encounter in Pakistan.

Section 5 of the Act (*Power, duties and functions etc. of the Anti-Rape Crisis Cell*), has enumerated certain tasks which the crisis cells are to undertake ‘*expeditiously*’. There is no time frame given in which the listed tasks are to be performed or completed. This loophole granting discretion to the people at the helm of affairs – be it staff at the Anti-Rape Crisis Cell or Police personnel, is bound to engender administrative anomalies and consequently loss of precious, time-sensitive evidence as time is of the essence in the performing medico-legal examination and collection of evidence in cases related to sexual offences. Section 8 of the Act faces a

³ "sex offender" means and includes any person convicted under sections 292 A, 292 B, 292 C, 371 A, 371 B, 375, 375 A, 376, 377, 377 A, 377 B of the Pakistan Penal Code, 1860 (XLV of I860) or sections 21 and 22 of the Prevention of Electronic Crimes Act, 2016 (Act XL of 2016).

⁴ "victim" means a ‘woman’ or ‘child’ who has been subjected to scheduled offences.

similar issue. Section 8, dealing with “*Victim and witness protection*” in sub-section (i) mentions “*special security arrangements for witnesses and victims*” but fails to expand on what constitutes the “special security arrangements” and which body, already established or to be established, will be providing the said special security. Police department is dealing with multitudes of registered cases - more than their capacity and capability to deal due to lack of sufficient number of personnel and lack of training and upgradation courses. The already burdened Police department with limited resources – human and financial - must not be expected to yield results if designated the aforementioned task as well. If any special force is to be established for the task, it will not only be a huge burden on national exchequer but will need extensive trainings to undertake the task. In addition to this, section 8 (iv) refers to “*re-location of victims and witnesses*” and section 8 (vii) refers to “*safe-houses, dar-ul-amans, etc.*” These two sub-clauses, practically, elaborate upon the same idea hence inflicting the Act with confusion and repetition. Apart from this, there is insufficiency of safe houses or dar-ul-amans etc. to house the victims. Provinces of Punjab (the population-wise largest province) and Khyber Pakhtunkhwa have 36 (Social Welfare Department 2022) and 7 (KPITB 2022) Dar ul Amaans respectively. Official data for other three provinces Sindh, Baluchistan and Gilgit Baltistan are not found, yet it can be safely assumed that inadequacy is prevailing there as well. Security situation of such safe houses is also a considerable concern. Other than this, the “*provision of reasonable financial assistance*” (section 8 (v)) and “*financial assistance*” promised in section 6 (2) of the Act is repetitive either intentionally or unintentionally. In first scenario, it must have been further elaborated.

Section 24 “*Register of sex offenders*” of the Act refers to preparing and maintaining a database of the offenders by the NADRA (National Database and Registration Authority). The section meddles with Article 14 of the Constitution of Pakistan 1973, ‘*Inviolability of dignity of man, etc.*’ wherein without an exception, the fundamental right of privacy and inviolability of dignity is, unconditionally, granted to all the citizens of Pakistan. Section 24 (2), however, reads that the register of sex offenders prepared and maintained by NADRA may be given “*to any person, agency, authority, court of law or segment of the society*”. This clause covers almost all the cross sections of society to seek, acquire and have this information of sex offenders. This punitive measure will shut the doors of reformation on the offender, making him an object of eternal shame in the society. It will also make his comeback to normal behavior impossible.

Furthermore, the Act lacks in providing the definition of ‘rape’ and specifically refers to the Pakistan Penal Code, 1860 and Code of Criminal Procedure, 1898 for its definition. However, both the acts also fail to provide for a comprehensive definition, missing to encompass various aspects and modes of rape like marital and custodial rapes despite custodial rape being recognized by the *Torture, Custodial Death, and Custodial Rape (Prevention & Punishment) Act, 2014* as a prevalent form of rape. In addition to this, the Act fails to encompass or even mention sexual offences lesser in degree but mostly leading to commission of rape i.e., sexual molestation, unwanted sexual touching, sexual harassment and child pornography etc. In addition to the definitional crisis, the Act also lacks in determining the theory of punishment under which the punitive regime of the Act shall operate. The perusal of the Act gives an impression that law makers are more bent to punish the sex offender and less inclined towards his reformation. The sadism is bad for health and prosperity of Pakistani society in the longer run.

Procedural Law Shortcomings

The Act is also not without procedural law shortcomings. In section 3 of the Act (*Establishment of Special Courts, etc.*) special courts are to be setup ‘*throughout the country*’ to deal with the offences under this Act, whereas, the serious financial incapacity is a harsh reminder of reality. There is a difference between designation and establishment of courts: the former doesn’t require new tribunals or special courts but, in that case, grossly inadequate number of judges and daunting number of pending cases lying with each judge, will be the greatest hurdle in accomplishing the objectives of the Act (Zia 2022, 13). In the latter case, establishment of special courts need huge financial promise from the government which due to political instability, corruption and natural disasters hitting Pakistan hard, among other factors, is not only unable to pay for this assignment but is strictly observing the stringent austerity measures. 18th Amendment in Constitution, delegating financial autonomy to provinces, has made it even more difficult for the center to fund such enormous projects throughout the country. Moreover, the recent policy of finance division of Government of Pakistan to release funds on quarterly installments and not in toto will create frequent bureaucratic hitches in continuity and completion of the project.

Section 9 (*Investigation in respect of scheduled offences*) of the Act states that the Special Sexual Offences Investigation Units (SSOUIs) are to be set up in all districts around five provinces comprising police officers who have gained trainings to deal with sensitive cases like rape. However, important details ancillary to the section as to where such trainings shall be conducted, and the duration of the training etc. are not mentioned or left for any authority or body to map out and implement contrary to section 19 of the Act where the Special Committee formed under section 15 of the Act can prescribe rules for the training of the police, judges, medico-legal staff, and other stakeholders in addition to other tasks assigned to it. However, the Special Committee doesn’t exist with clear powers, mandate, capacity or time-frame to operate. General mandate of the Special Committee under section 15 of the Act is to overlook the provisions of the Act, yet there is no clarity as to how such supervisory role shall be performed. Implementation of the Act includes establishment of special courts, Anti-rape crisis cells, SSOUIs, register of sex offenders at NADRA etc. which is not a stated business of Federal Ministry of Law and Justice.⁵ Thus, in absence of the Act defining or per se granting powers to Special Committee to enforce the Act when Federal Ministry of Law and Justice also can’t help it in this regard, renders the question of implementation of the Act moot. The Special Committee can, at best, agitate the matter at relevant fora or with concerned authorities without assurance of an action therefrom. Other problems associated with this framework is no determined frequency or mandatory meetings, no accountability in case the Special Committee doesn’t live up to its *raison d’etre* and no security of tenure hence empowering the ruling party to reconstitute the Special Committee as per their whims. Its instance is formation of new Special Committee on 22 July, 2022 by PML (N) who is currently ruling the country and dissolution of the first Special Committee formed by PTI, the then ruling party, on December 28th, 2021, without any reason.

Shortcomings in the Implementation Process of the Act

The progress of the implementation process of the Act is also dismal and unfortunate. No official statistics are available to exhibit the indicators of implementation process of the Act. However, it can be assumed with safe certainty that there is still no progress in

⁵ Rules of business 1973, Annexure 2 – ‘Distribution of Business’

formulation of the Special Courts or Anti-Rape Crisis Cells or the Special Sexual Offences Investigation Units (SSOIs) etc. Throwing light on the execution and implementation of the Rape Ordinance, the Honorable Lahore High Court in *Yasir v The State & Another (2021 LHC 3918)* noted that even after seven months of the promulgation of the Rape Ordinance, section 9 relating to the investigation procedure, was not implemented. The Judgment notes that according to the statistics provided by the Central Police Office (C.P.O), around 13307 of the criminal cases mentioned in the Schedule-I of the Rape Ordinance and 20942 cases pertaining to the crimes mentioned in the Schedule-II of the Rape Ordinance were registered from 36 Districts of Punjab from January 01st, 2021, to July 31st, 2021, only and the provisions of the Rape Ordinance were not applied in even a single case. It further reads that for the formation of Anti-Rape Investigation Units, which are necessary for the execution of the Rape Ordinance, Rs. 4.9 billion initially and Rs 2.58 billion annually were required. The said amounts were not allocated to carry out the task, as stated by the C.P.O, and the lack of funds was the reason behind the non-implementation of the Rape Ordinance. It was vital to include the Finance Ministry of Pakistan in the entire process, from drafting the Act to the completion of its implementation so that the financial constraints could be avoided. Furthermore, the honorable High Court continued to mention that neither “*joint investigation teams were constituted nor gazetted officers were appointed as investigation officers*” which is in violation of section 10 of the Rape Ordinance. It was also added that “*public functionaries should coordinate with each other for its effective implementation, which unfortunately is missing in the present case.*”

Despite all this, the Rape Ordinance “*was not monitored for almost eight months since its original promulgation*”, and it was passed into an Act without amending the flaws – retaining the same subject matter except the change of names of “*joint investigation teams*” into “*special sexual offences investigation units*” - the following year, 2022 (Islam 2021).

Recommendations

In order to have a substantively and procedurally sound Act, it is vital to introduce at least, but not limited to, the following amendments therein. First and foremost, effort must be done to comprehensively and sufficiently define the term ‘rape’ to cover the offence and appurtenances thereto. Then, the punishment regime should express, clearly, the intent of the legislature which must aim at reformation and not retribution or sadism. The sex offender must be given a chance to regret and re-enter the society after completion of his due punishment. Therefore, protection of his identity must be considered as crucial as the protection of identity of the victim (*ensured under section 26 of the Act*). The register of sex offenders at NADRA should be accessible to narrowed cross-section of the society i.e., certain authorities or agencies only instead of being easily available to a fairly huge chunk of population. The secrecy of the record should also be ensured by erecting the punishment regime for violators. Upon repeated committals, identity of that sex offender may be revealed in the larger public interest, but it must not be general practice.

Furthermore, according to the *War Against Rape (WAR)*, an NGO in Pakistan, the conviction rate in rape cases is currently under 3% (Zia, Oscar, and Randhawa 2021, 2). This is one of the reasons behind the increase in rape cases in the country. It is vital to introduce amendments to streamline the Criminal Justice System, set up proper training infrastructure for the Special Courts, Anti-Rape Crisis Cells, the Special Sexual Offences Investigation Units (SSOIs) and Police department to keep them abreast and up-to-date for speedy and effective implementation of the Act. A special wing in the Police department instead of a special security force – well-trained to deal with sensitive

cases like rape, gang rape, and sexual abuse - may be established for the security of the witness, victims, and offenders. Enhancement of number of special courts and judges already established to deal with the sexual crimes instead of establishing new special courts must be considered as it will not only save the cost of establishment of new judicial units but will also speed up the implementation of the Act by making the judicial and executive apparatuses readily available to victims. In a few areas of Pakistan, Jirgas are operating as courts. They should be included for the purposes of this Act to give it a nation-wide approach and outreach. Special Committee must be a crucial part of reform package: its accountability, empowering it with substantial authority, setting up its hierarchy and securing its tenure are a few important steps, inter alia, which must be taken to enable it to work effectively on its Brobdingnagian mandate. Moreover, the role of the Finance Ministry of Pakistan is crucial in the implementation of the Act thus, it must be made part of its implementation process. A proper evaluation of the implementation cost of the Act is to be carried out, and accordingly, funds should be allocated thereto. A Special Fund should be allocated specifically for the implementation of the Act. Besides Federal government, provincial governments as well as IGOs and NGOs from across the world should be reached out for contributions.

There is an urgent need for creating sophisticated data banks in the country to gauge the performance of the Act on the one hand and to ease the process of reform and upgradation, when needed, on the other. The extent of data collection must be deep enough to note even the number of cases in which no punishments could be given and accused managed to secure acquittals upon legal and procedural technicalities. Moreover, better drafting and drafters must be ensured to lessen the chances of ambiguity and contradiction within the Act. Time bound response and disposal must be ensured by the Special Courts, Anti-Rape Crisis Cells, the Special Sexual Offences Investigation Units (SSOUIs) and Police department to effectuate the redressal scheme for the victims which will not only encourage more reporting of sexual crimes but will also cause timely-collection and preservation of time-sensitive evidence. Special safe houses should be built in adequate number all across the country for better safety of victims and witnesses.

Conclusion

Even though the Act was a much-needed reform at the time of its promulgation, it could not satisfy the makers and public at large due to myriad of flaws therein. After the promulgation of the Rape Ordinance and the Act, there were 4329 rape cases, 269 gang rape cases, and 193 minor rape cases reported in the country in 2021 alone (Zia 2022, 40). This shows the failure of the Act in curbing sexual crime. With measures including amendments in substantive and procedural aspects of the Act and removing the hurdles in its implementation, this Act has the potential to live up to its objectives. Otherwise, the plight of the victims of sexual crimes will never cease to exist.

References

- ANI News. 2021. "Sexual assault cases continue to rise in Pakistan as another motorway rape case emerges". Ani. Accessed September 30, 2022. <https://www.aninews.in/news/world/asia/sexual-assault-cases-continue-to-rise-in-pakistan-as-another-motorway-rape-case-emerges20211018233929/>.
- BBC News. 2018. "Zainab murder: Riots in Pakistan's Kasur after child rape and killing". BBC News. Accessed September 30, 2022. <https://www.bbc.com/news/world-asia-42637027>.
- Desk, Web. 2020. "11 rape incidents reported in Pakistan every day, official statistics reveal". The News. Accessed September 29, 2022. <https://www.thenews.com.pk/latest/743328-about-11-rape-cases-reported-in-pakistan-every-day-official-statistics-reveal>.

- Farooq, Mohammad Omar. 2006. "Rape and Hudood Ordinance: Perversions of Justice in the Name of Islam". Accessed September 30, 2022. <http://dx.doi.org/10.2139/ssrn.1525412>.
- Hasan, Maryam. 2020. "State of Human Rights 2019". Lahore: Human Rights Commission of Pakistan. Accessed September 29, 2022. <https://hrqp-web.org/hrqpweb/wp-content/uploads/2020/09/2020-State-of-human-rights-in-2019-EN.pdf>.
- Islam, Semra. 2021. "Implementation of Anti Rape (Investigation and Trial) Ordinance 2020". Research Society of International Law. Accessed September 29, 2022. <https://rsilpak.org/2021/implementation-of-anti-rape-investigation-and-trial-ordinance-ito-2020/>.
- Khyber Pakhtunkhwa Information Technology Board (KPITB). 2022. *KP Women Crises Centres - Dar-ul Aman*. https://kp.gov.pk/page/kp_women_crises_centres_dar_ul_aman.
- Lau, Martin. 2007. "Twenty-Five Years of Hudood Ordinances- A Review". Washington and Lee Review. 64(4):1292. Retrieved 18 November 2014.
- Saboor, Ruba. 2014. "Rape Laws in Pakistan: Will We Learn from Our Mistakes?" Islamabad: Islamabad Law Review. Accessed September 30, 2022. <https://www.proquest.com/docview/1716689335>.
- Social Welfare Department, 2022. *Women Shelter Homes (Dar-ul-Aman)*. Government of the Punjab. https://swd.punjab.gov.pk/women_shelter_homes.
- The Williams Institute. 2021. "Transgender people over four times more likely than cisgender people to be victims of violent crime". Los Angeles: The Williams Institute. Accessed September 30, 2022. <https://williamsinstitute.law.ucla.edu/press/ncvs-trans-press-release/>.
- Yasir v The State & Another. 2021. Lahore High Court. 2021 LHC 3918.
- Zia, Farah. 2022. "State of Human Rights 2021". Lahore: Human Rights Commission of Pakistan. Accessed September 29, 2022. <https://hrqp-web.org/hrqpweb/wp-content/uploads/2020/09/2022-State-of-human-rights-in-2021.pdf>.
- Zia, Maliha, Shallum Oscar and Soha Randhawa. 2021. "Gap Analysis on Investigation and Prosecution of Rape and Sodomy Cases". Karachi: Legal Aid Society. Accessed September 29, 2022. <https://www.las.org.pk/wp-content/uploads/2021/04/Gap-Analysis-on-Investigation-and-Prosecution-of-Rape-and-Sodomy-Cases-R.pdf>.