The legal reality of women living in Pakistan

Written by Barbara Matera on 14 June 2017 in Opinion
Opinion

The legal system in Pakistan gives credence to institutionalised discrimination against women, writes Barbara Matera.

The legal system in Pakistan is a combination of civil law and Islamic law, giving credence to institutionalised discrimination against women. Although interpretations of Shari'a vary between Imams and schools of law, family disputes are almost exclusively tried in Islamic courts, which favour patriarchal norms. Under the current legal framework in Pakistan, women are disenfranchised or explicitly discriminated against in marriage, divorce, child custody battles and inheritance.

A number of independent sources have estimated that at least 21 per cent of Pakistani girls marry before reaching the age of majority. This phenomenon is more prevalent in rural and low-income areas where access to legal resources is limited, including the occupied territories of Gilgit-Baltistan.
and Balochistan. Human Rights Watch has also reported marriage being used as a means of forced conversion against non-Muslim girls - a violation that happens to approximately 1000 girls per year.

If a Pakistani woman wants to get a divorce, she must plead her case before an Islamic family court, proving her situation matches one of the approved reasons for divorce. These 'approval reasons' include the husband being absent for a significant amount of time or being 'unduly severe' in his disciplinary measures against his wife.

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Leaving aside the ethics of a husband 'disciplining' his wife - it is often challenging to prove punishment has been 'unduly severe', and even in situations of extreme abuse, survivors may find these issues difficult to discuss.

On the contrary, a man must only profess his desire for divorce to have it granted. Although he has certain legal and financial obligations towards his ex-wife, he is not required to prove he has a 'good reason' for requesting the divorce.

After being granted a divorce, Pakistani women face further discrimination. Islamic law states that mothers only gain physical, not legal custody of their children. Thus once the child reaches the 'age of custodial transfer' (seven for boys, puberty for girls) the mother will likely lose custody. If she remarries, she may also lose custody.

When it comes to inheritance rights, the law continues to be unjust. A woman is entitled to half that of a man with the same separation from the deceased. Thus, a woman will only receive half of what her brother receives.

If a widow remarries, she may lose the inheritance left to her by her late husband, or she may be asked to repay what she was already given. Since there are also significant gender barriers to the labour force, Pakistani women face many challenges in terms of acquiring financial independence.

Empirical studies have shown that there is a correlation between countries that have low gender equality in family law and violence against women. Laws create and reinforce cultural norms, thus it is imperative that they enshrine equality.

As Pakistan's second biggest trading partner, the EU has a tremendous amount of influence. Further, European foreign aid and the GSP+ programme provide financial benefits to the ruling elites in the country.

Legal experts have asserted that in order to comply with CEDAW (one of the 27 'core conventions' in GSP+, of which Pakistan is a party), religious arbitration in family courts should be non-binding and fundamentally secondary to civil law. The EU must encourage Pakistan to comply with this recommendation in order to stand for the rights of women and girls in the country.
About the author

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