

The Gap between Law and Practice in Pakistan's Gender Reform

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Abstract

In the three-quarters of a century since Pakistan’s independence, parliament has adopted various laws in a bid to improve women’s legal rights. Many of these laws are a result of the efforts of women-led organizations, which have mobilized voters across the country to lobby for their passage. These changes often challenge existing norms. The pre-eminence of customary law has meant that legal progress has not translated to gender equality in practice, as matters on property, inheritance, and marriage are largely governed by customary rules which do not recognise women as being equal to men.

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Introduction

Pakistan ranks 145th out of 146 countries in terms of gender parity according to the *Global Gender Gap Index 2022*, trailed only by Afghanistan (World Economic Forum 2022). Despite a long struggle for equal legal rights for women, the country remains in an unenviable position. At the same time, Pakistan is home to renowned feminists such as Benazir Bhutto, the first female head of state in a Muslim country, and Malala Yousafzai, the world's youngest Nobel Prize laureate.

Hyland, Djankov, and Goldberg (2020) introduce the World Bank's *Women, Business and the Law* index as a global measure of legal equality between men and women. The index covers the period 1970 to 2023 and charts the inequality in legislation that a woman faces as she navigates her working life, from the time she can enter the labour force through retirement. Index scores range from 0 to 100, where a score of 100 implies that there are no legal inequalities between men and women in the areas covered by the index. In 2023, Pakistan has a score of 58.1, and sits between Tonga and Algeria among the countries with the least women's rights by law.

In this paper, we document the initiatives that have led to some progress towards legal gender equality in Pakistan, while also describing some failed attempts to reduce existing inequalities. Many of these initiatives were spearheaded by women's organizations. The National Commission on the Status of Women is the main such organization, established in 2000 with the purpose of promoting women's rights. The functions of this Commission include examining policy on women's development and gender equality, reviewing legislation on women's rights, monitoring procedures to redress violations of women's rights, encouraging research on women's issues, and interacting with other stakeholders interested in promoting equality between women and men. Based on the recommendations of this organization, the Ministry of Human Rights has drafted legislation, including the Maternity and Paternity Leave Act 2020, Domestic Violence (Prevention and Protection) Bill 2021, and Protection Against Harassment of Women at the Workplace (Amendment) Act 2022. These laws constitute progress towards more social rights for women.

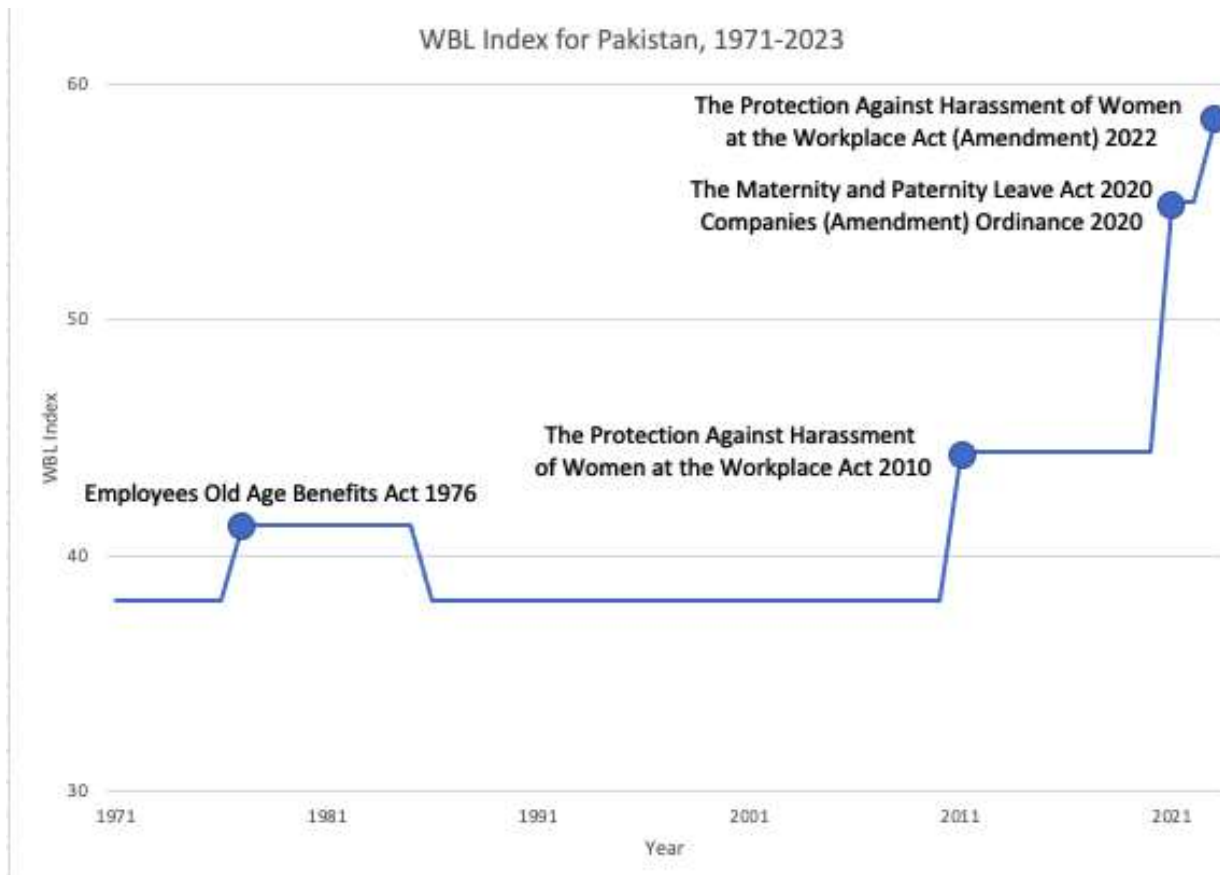
Such progress has not been monotone, however. From 1977 to 1988, Pakistan went through a period of Islamization under the rule of General Zia-ul-Haq. During this time, the government attempted to convert Pakistan into an Islamic state by introducing *hadd* offenses, "those offenses for which the Qur'an prescribed fixed punishments," into criminal law (Lau 2007). For example, the Hudood Ordinances of 1979 made it more difficult for rape cases to be convicted. By creating the new offenses of adultery and fornication, these ordinances caught women who had suffered rape in a legal trap: a rape victim who pressed charges risked prosecution for extra-marital sex. Although the ordinances were amended by the Protection of Women (Criminal Laws Amendment) Act in 2006, their legacy remains. In 2022, only 3,901 rape cases were registered in Pakistan, with a conviction rate of a paltry 0.3 percent (Human Rights Commission of Pakistan 2023).

Five years after Zia-ul-Haq's assassination, Benazir Bhutto became Pakistan's first female Prime Minister. Although she promised to rescind the Hudood Ordinances during her election campaign, this promise did not come to fruition (Griffin 1993; Khan 2010). From 1971 to 2010, Pakistan's score in the World Bank's *Women, Business and the Law* index remained stagnant. During this period, no national legislation was introduced to promote women's economic or social rights. In 2010, the first piece of legislation - the Protection Against Harassment of Women at the Workplace

Act - increased the country’s score from 38.1 to 44.4 (Figure 1), as it prohibited sexual harassment in the workplace.

In 2020, Pakistan’s *Women, Business and the Law* score witnessed another uptick following legislation introducing paid parental leave and permitting women to register businesses the same way as men. Two years later, the Protection Against Harassment of Women at the Workplace Act was amended to prohibit gender-based workplace discrimination, increasing the index score to 58.1 (Figure 1).

Figure 1: Formal Legal Changes in the Status of Women in Pakistan



Source: World Bank (2023).

Many issues with women’s rights remain unresolved. Pakistan has one of the highest rates of “honour killings” in the world, with human rights activists estimating that there are a thousand honour killings every year (Ijaz 2019). Spousal violence is prevalent, with a third of married women experiencing some form of violence by a husband (National Institute of Population Studies 2019). Despite this high incidence, there is no national legislation addressing domestic violence. There are, however, provincial-level laws against acts of gender-based violence. This is the case in Punjab and Sindh, where spousal violence rates have decreased by around 7% and 5%, respectively, between 2013 and 2018 following the introduction of domestic violence legislation (National Institute of Population Studies 2019).

Another issue affecting women in Pakistan is violence resulting from dowry disputes. Dowry-related killings are defined as “the deaths of young brides who are murdered, or driven to suicide by continuous harassment and torture perpetrated by the groom’s family in an effort to extort dowry payment or an increased dowry of cash or goods” (United Nations Human Rights Office of the High Commissioner 2016). Pakistan has the highest number of dowry deaths in the world, with over 2,000 dowry-related death per year. Sathar et al. (2003) found that “over 95 percent of marriages included a dowry, with very little variation across province, socioeconomic status, education, or urban/rural residence.” In 1976, the Dowry and Bridal Gifts (Restriction) Act placed numerous restrictions on dowry and bridal gifts. This Act was amended in 2016, increasing the amount that could be exchanged to 50,000 rupees (\$485) in urban areas and 20,000 rupees (\$195) in rural areas. However, the adherence to these restrictions is low, as demonstrated in a study on rural Punjab (Makino 2019).

These are just some examples to show the gap between law and practice in Pakistan as regards women’s economic and social rights. These examples are similar to what previous studies find to be deficiencies in protections for women in countries with customary justice (see, for example, Sinha and Djankov (2023) on Burundi).

The paper is organized as follows. Section 1 details the attempts at gender reform during the pre-independence period. Section 2 outlines post-independence legal progress in women’s rights. Section 3 focuses on the rights for minority (Christian and Hindu) women in Pakistan. Section 4 analyses the impact of customary law in the country. Section 5 concludes.

1. Attempts at Gender Legal Reform Pre-Independence

Prior to independence, there were approximately 44 million Muslim women in India. One piece of legislation from this era that still affects Pakistani women today is the Married Women’s Property Act of 1874, which grants women administrative authority over their assets during marriage. In the early twentieth century, there was an attempt by prominent Muslim women, such as the Begum of Bhopal and the Maharani of Travancore, to rally political support for women’s education, divorce rights, and inheritance rights (Kazi 1999). This era witnessed the establishment of Muslim women’s fora, including the All India Muslim Ladies Conference in 1907 and *Anjuman-e-Khawateen-Deccan* (women’s association) in 1919. In 1932, for example, the All India Women’s Conference passed a resolution favouring education for Muslim women, as well as a resolution against men’s unilateral right to a divorce (Lateef 1990).

These fora were among the early platforms of the political party Muslim League, which re-emerged in the 1930s by appealing to the female vote (Jalal 1992). In 1946, three women from the League were elected to the Constituent Assembly of India: Begum Aizaz Rasul, Begum Jahanara Shahnawaz, and Begum Shaista Ikramullah. Begum Aizaz Rasul went on to become the only Muslim woman to participate in drafting the Constitution of India. Although the League’s vision for Pakistan did not primarily focus on women’s rights, its female constituents believed that “women would receive a fair share in the new society which they were helping to bring into existence” (Shaheed 1998).

There was also a regression in women's rights during this period. As an example, the Muslim Personal Law (Shariat) Application Act of 1937 made *shariat*, or Muslim personal law, applicable to Muslims in India. According to *shariat*, female children are entitled to half the inheritance of male children, while widows receive one-eighth of their husband's estate (Food and Agriculture Organization n.d.). This Act remains in effect under the amended West Pakistan Muslim Personal Law Shariat Application Act of 1962. As another example, the Mines Act of 1923 prohibited women from working in mines.² A third example is the Factories Act of 1934, which prohibits women from working in a factory outside the hours of 6 am to 7 pm. As a result, female labour participation in manufacturing is around 3 percent in 2021 (Pakistan Bureau of Statistics 2022a).³

Additionally, some of the advances in women's legal rights during this period have been reversed. For example, the Dissolution of Muslim Marriages Act of 1939 restricted the grounds by which Muslim women could dissolve a marriage. In 1961, the Act was superseded by the Muslim Family Laws Ordinance, which restricted the right to get a divorce to men only. Waseem et al. (2020) find that domestic violence and abuse are a major cause of divorce in Pakistan. Nonetheless, the National Institute of Population Studies (2019) estimates that less than 2% of ever-married women in Pakistan are divorced or separated.

This small share can be attributed to the legal obstacles faced by women seeking to dissolve their marriage. For instance, under the Muslim Family Ordinance, men can employ a restriction of conjugal rights, forcing women to return to the marital home despite being separated (Javaid 2019). Additionally, divorced Pakistani women report being discriminated against in the workplace (Saeed, Kehkishan, and Sameer 2022).

2. Post-Independence Attempts at Gender Legal Reform

Important legal reforms occurred in the years after Pakistan's independence. In 1958, the West Pakistan Maternity Benefits Ordinance made employers liable for a maternity benefit during the period of six weeks immediately preceding, the days on which a woman delivers her child, and for six weeks succeeding that day. This maternity benefit was conditional, however, on a woman being employed in an establishment for not less than four months immediately preceding the day on which she delivers the child.

In 2020, the Ordinance was superseded by the Maternity and Paternity Leave Act, which granted female employees paid maternity leave of 180 days on the first birth, 120 days on the second birth, and 90 days on the third birth. Paid maternity leave, however, cannot be granted more than three times during the entire service of the female employee under the Act. Similarly, the Act mandated paid paternity leave of 30 days each for three births during the entire service of the male employee. Masood and Nizar (2020), however, find that "cultural configurations of motherhood, norms of the medical profession and the administrative burden of applying for leave, shaped by the trans-

² Women are permitted, however, to work in other roles in mining. For example, since 2018, women in Thar have been trained to drive heavy dump trucks to transport coal (Engro Energy 2018). Despite this legal opportunity, labour statistics report zero female employment in the mining and quarrying sectors (Pakistan Bureau of Statistics 2022a).

³ This is not the case in the Sindh province, however, where women are allowed to work in a factory beyond 7 pm subject to employers arranging safe transportation to and from work.

institutional logic of patriarchy, limit the effectiveness and utilization of maternity policies” in Pakistan.

Prior to 1984, there was no legislation specifying differences by which men and women could register a business. The Companies Ordinance of 1984 changed this equality of opportunity by requiring that married women and widows disclose information regarding their husbands when signing company memorandum. Notably, as of 2013, only one percent of all entrepreneurs in Pakistan were estimated to be women (Kelley et al. 2013). This can be attributed largely to social and cultural norms preventing women from obtaining equal opportunities in entrepreneurship (Roomi and Parrott 2010; Rehman and Roomi 2012). In 2020, an amendment of the Ordinance lifted any restrictions on women.

Since the Penal Code was first introduced in 1860, it has been amended several times to increase women’s protection under the law. In 2006, for example, the Protection of Women Act introduced more comprehensive rules on kidnapping, human trafficking, and rape. In 2010, the Acid Control and Acid Crime Prevention Act was introduced to increase protection against acid crimes and provide rehabilitation and compensation to victims. Prior to 2013, between 150 and 400 women became victim to acid attacks every year in Pakistan, with 70 percent of victims being under 18 years of age (Saeed 2020). In 2017, however, Acid Survivors Foundation Pakistan (2017) reported that acid attacks had reduced by 50% since the Act was passed.

Additionally, a new law extends protections to domestic workers, who may be at greater risk of workplace violence and harassment (Ijaz 2022). Between 2011 and 2020, the number of registered workplace harassment cases have increased almost nine-fold (Federal Ombudsman Secretariat for Protection Against Harassment 2022). These higher registration rates can be attributed to the efforts of Federal Ombudsman Secretariat for Protection Against Harassment, established in 2010 to increase awareness with violence against women.

3. Increasing Legal Rights for Minority Women

Women from minority communities are in need of increased legal rights given their vulnerable status in Pakistani society. Christian and Hindu women comprise roughly three percent of Pakistan’s female population (Pakistan Bureau of Statistics 2017). These minorities are geographically dense: while Pakistan’s Christian population is concentrated in Punjab, its Hindu population is concentrated in Sindh. The Movement for Solidarity and Peace (2014) estimates that approximately 1,000 Christian and Hindu girls are forcibly converted every year in Pakistan. The Coalition for Religious Equality and Inclusive Development (2020) found that 87 percent of Hindu female participants described forced conversions as one of the greatest threats facing poor Hindu women.

The National Commission on the Rights of Child (2021) describe the typical practice of forced conversions in Pakistan as follows: “Once girls are abducted, they are forced to marry their captors and are usually exploited sexually, raped and subjected to coercive measures with restriction on outside contacts. In case the abductors/captors are apprehended and produced in court after investigation, lack of evidence in the case results in their ultimate acquittal and is of no consequences for them. this lack of evidence is mostly the result of the fact that the girl and their

families are threatened, which forces the victim girl to state in the court that she got fully converted to Islam of her free will and without coercion and/or got married.”

There have been some attempts to reduce these practices. The Christian Marriage Act of 1872 was the first piece of legislation concerning minority marriages. Similarly, the Christian Divorce Act of 1869 amended the law relating to Christian divorces. Although section 7 of the original Act further allowed divorce on the grounds of “irretrievable breakdown of marriage,” in 1981 Zia-ul-Haq issued an ordinance repealing this provision (Farhat 2020). This repeal restricted the dissolution of Christian marriages to certain conditions, including, adultery, polygamy, or religious conversion. In response, thousands of Christian women have converted to Islam in order to secure their right to divorce (Aqeel 2016). In 2016, however, the Lahore High Court restored section 7 of the Divorce Act in Punjab, the province with the largest Christian population. In 2019, the Ministry of Human Rights drafted the Christian Marriage and Divorce Bill, with the aim of updating Christian personal laws, which is yet to be passed (Ali 2019).

Sindh became the first province to introduce legislation on Hindu marriage registration in 2016. The Sindh Hindu Marriage Act was amended with provisions relating to divorce, financial security of women and children, and widows’ right to remarriage. In 2017, the Hindu Marriage Act was passed in the rest of the country with similar provisions. According to the National Commission on the Rights of Child (2021), prior to these laws, Hindu communities were vulnerable to forced conversions as it was impossible to prove their marital status. In 2020, the Protection of the Rights of Religious Minorities Act prohibited forced conversions and inter-faith forced marriages.

4. The Prevalence of Customary Law in Pakistan

Customary justice, largely based on Islamic law, is an artifact of pre-independence institutions in some regions of present-day Pakistan, especially regarding inheritance, succession, adoption, and alienation (Buxbaum 1968; Roff 2010). According to Shaheed (1986): “[C]ustomary and religious laws currently employed indicates acceptance of Muslim practices promoting superiority of men and rejection of Islamic teachings promoting women’s rights.... Customs contradicting Islamic teachings and leading to inequalities for women include denial of a woman’s access to economic resources, the annulment of the marriage settlement, and the relative ease of Muslim men to divorce their wives. Under customary law, private actors conduct hono[u]r killings as a means of achieving “traditional” or “tribal” justice.”

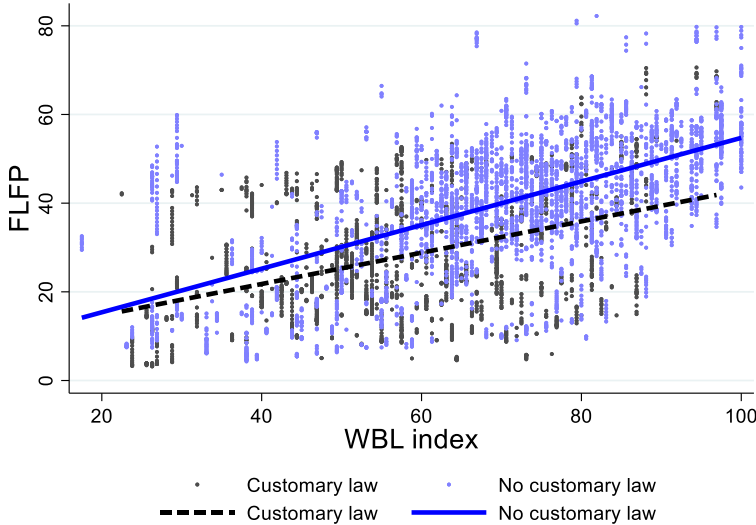
We measure the effect of customary justice globally by first estimating the relation between gender legal rights and women’s labor force participation, and then calculating the widened gap between law and practice in countries with customary judicial systems. This analysis is based on Djankov and Sever (2023).

As a proxy for women’s economic activity in practice, we use the female labor force participation rate in the nonagricultural sector. We prefer the nonagricultural sector as employment in agriculture in developing economies is informal and therefore not affected by the law. The variable is calculated based on national estimates and modeled ILO estimates. It is also available in the World Bank’s *World Development Indicators* database.

Note that we take a conservative measure of the gap between law and practice in gender rights. Various studies document that women constitute a dominant share of agricultural workers (for example, Djurfeldt 2020). As customary justice is particularly present in rural communities, these women are likely to be disenfranchised of their legal rights. Thus, an even larger share of women than what our measure captures cannot benefit from legal progress.

The raw data are presented in Figure 2, which plots the relation between the law (as proxied by the *Women, Business and the Law* index) and practice (as proxied by the female labor force participation rate in the nonagricultural sector). There is a clear widening of the gap between law and practice in jurisdictions with customary law.

Figure 2: The Correlation between Law and Practice in Gender Legal Rights



Note: The variable FLFP is female labor force participation rate in the nonagricultural sector between 1970 and 2022. We prefer the nonagricultural sector as employment in agriculture in developing economies is informal and therefore not affected by the law. FLFP is calculated based on national estimates and modeled ILO estimates. It is also available in the World Bank’s *World Development Indicators* database. The WBL 2023 index is the overall legal score from the World Bank’s *Women, Business and the Law* database.

Source: Djankov and Sever (2023).

This global analysis exemplifies the large gap between law and practice in Pakistan. Khan, Khalid, and Rehman (2022) find that women in Pakistan are still not receiving the share of inheritance to which they are legally entitled. According to the National Institute of Population Studies (2019), over 97% of women in Pakistan do not inherit land or a house. The National Commission on the Status of Women (2008) finds that women are often denied the right to inheritance due to a “deep-rooted patriarchal system, biased interpretation of divine directives, laws of the land and above all inefficient mechanism for the implementation and enforcement of laws.” This is especially an issue in Balochistan, where LEAD Pakistan (2018) estimates that all women are denied their right to inheritance.

Customary marriages are frequent in Pakistan, especially in cases where girls are given in marriage as compensation for ending disputes between feuding families. According to Rehan and Qayyum (2017), twelve percent of marriages in rural Punjab were intended to settle such feuds. In 1929, the Child Marriage Restraint Act prohibited the marriage of male children below 18 years and female children below 16 years. In 2016, the Act was amended with harsher punishments for solemnizing a child marriage. Despite this legislation, child marriage remains prevalent in Pakistan. The National Institute of Population Studies (2019) finds that 7.5 percent of women aged 25-49 were married by the age of 15. Nasrullah et al. (2014a) and Abubakar (2019) claim that child marriages are reinforced by customary law. This is particularly an issue in Balochistan, where a quarter of girls aged 10-14 are married (Pakistan Bureau of Statistics 2022b). This is a serious women's rights issue, as Nasrullah, Zakar, and Zakar (2014) and Nasrullah et al. (2014b) find that child marriage is associated with poorer physical and emotional health outcomes for women.

5. Conclusion

Pakistan has put forth numerous legal reforms in an effort to improve women's legal rights. Following the introduction of these changes, which have focused primarily on promoting women in the workplace, the country has witnessed a modest improvement in the number of reported workplace harassment incidents. Although Pakistan's parental leave policies have also improved, the evidence on their enforcement is limited. Lack of impact evaluation is a large issue in Pakistan, whereby the effectiveness of specific social policies and programs cannot be judged (Siddique 2021).

Where government policy remains unenforced, customary law takes place as a means of restricting women's legal rights. Pakistan's customary justice, coupled with low female literacy and regional autonomy, perpetuates a system of women's legal oppression. This status quo dampens economic development, through the untapped economic potential of women (World Bank 2020).

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