

BURN CASES UNDER SECTION 174-A Cr.P.C  
OUR SOCIAL AND LEGAL SYSTEM-AN ANALYSIS

BY

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So far as my experience and research goes that domestic violence is a structural and institutional problem in our society. Most serious form of violence faced by women in Pakistan is violence in home. The latest report Human Rights of Commission of Pakistan (HRCP) on state of Human rights shows that domestic violence is a pervasive phenomenon in Pakistan.

One of the ugliest and abhor able forms of violence against women is the “Burn Cases”. These are major human rights issues at national and International level .The Human rights organizations have frequently raised their voices and the issues of young woman dying of “Accidental burn”.

Up to three women a day die from “stove deaths” in Pakistan<sup>2</sup>, usually after a history of abuse for such reasons as the failure to give birth to a son, disobedience, allegations of adultery, fear of transfer of property after marriage and in enmity used as an alternative or escape goat for rivalry or revenge, inability to stop female birth or wife failing to have a large dowry, resistance against misuse of dowry (after marriage sale of jewelry or moveable assets without the consent of wife) marriage without the consent of parents (love marriage). Families and the police often label these murders as “accidents ‘that occur while cooking, when in fact these women are intentionally doused with kerosene and lit on fire. In the past eight years in Islamabad and Rawalpindi Division alone, four hundred women set on fire by their family members and less than 4 percent survived. The majority of the victims were between the ages of eighteen and thirty-five, and approximately 30 percent were pregnant<sup>3</sup>

Although women in Pakistan continue to be victims of this senseless violence .Theoretically, in Islamic injunctions, traditions and rights given by our religion to women the families and tribal traditions aggravate violence against the women, but practically the situation of women rights is entirely different. We may say that this is due to lack of knowledge, education and civic sense. But even then this is the ultimate responsibility of the state to protect the rights of the citizens and prosecute those who commit these horrible atrocities. Constitution of Pakistan under article 9 and 14 gives the rights of life and living to all citizens without any discrimination.

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<sup>2</sup> “Trial by fire” Report by Progressive Women Association, Islamabad ,1999

<sup>3</sup>“ Crime or Custom” report by Human Rights Watch ,New York 1999

It is a well established legal norm that first and foremost duty of a state is to afford protection to the lives of its citizens. Therefore, every legal system of the world provides for some sort of investigative mechanism to enquire into causes of any unnatural, suspicious or violent death. For example, the common Law system (Law of England and Wales) necessitates an 'inquest' (an enquiry conducted by a special magistrate called 'coroner') to determine the cause of any suspicious or unnatural death. The Pakistani legal system follows the same legal tradition as it is derived from the common law.

Under the constitution, the government of Pakistan is under constitutional obligation to provide protection to the women who are victim of the domestic violence and burns.

In this respect, government of Pakistan is also under an international obligation to protect the rights of women through different conventions and legislations. For Example:

**1) Convention on the Elimination of all form of Discrimination against Women (CEDAW)** in 1996, Pakistan became party to the Women's convention<sup>4</sup>. By adopting this convention; Pakistan agreed to incorporate the provisions that are set forth in order to eliminate discrimination against women. We have yet not succeeded to incorporate many of these provisions into our domestic law and procedures. One important issue identified in the Women's Convention is the need to eliminate cultural practices and customs that discriminate against women. Both Articles 2 (f) and 5(a) of CEDAW specially state that state parties agree to modify customs and practices that discriminate against women.

General recommendations of the convention provide that states are responsible for state-based violence and discrimination against women. A state can be held accountable for violence committed by an individual when the state fails to act "with due diligence" in prevention, investigation, punishment of perpetrators of violence.

**2) International Convention on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT)**<sup>5</sup> two additional widely ratified conventions, the ICCPR and CAT establish that torture and inhumane treatment violate international human rights law, Gender-based violence is a direct violation of a women's inherent right to life, liberty and security of person and to be free from torture or to cruel, inhuman or degrading treatment or punishment as provided in the Universal Declaration of Human Rights, the ICCPR and CAT. Pakistan is not a party to the international convention on civil and political rights but ratified the convention against torture.

**3) Universal Declaration of Human Rights (UDHR)**

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<sup>4</sup> As of May 15, 2000, 165 states had ratified CEDAW

<sup>5</sup> As of May 15, 2000, ICCPR has been ratified by 144 states and CAT has been ratified by 119 states  
Pakistan in August 2008

#### **4) The Declaration on Elimination of violence against women**

**(DEVAW)** In 2002, government of Pakistan took a land mark step in amending Criminal Procedure Code of Pakistan by legislating a new section, 174-A. the new legislation provides for an effective mechanism for the prosecution of person accused of burning Women and men also by fire ,acid etc. Section 174-A provides following mandatory provisions with other relevant laws of the land.

- 1) Officer In charge of a police station is bound to register a case of hurt, murder/attempt to murder, as the case may, immediately on receipt of information of the occurrence of a burn case.
- 2) The police Officer is also duty bound to send copies of FIR to the nearest Magistrate, District Police Officer and the District and sessions Judge.
- 3) Besides the Magistrate and the Police officer the Doctor who examines/treat the victim has also been made duty bound to record the statement of the victim ,which in case of her/his death becomes admissible in evidence as a” Dying Declaration”
- 4) Dying declaration and its important is Qanoon-e-shahadat Order1984, under the section 174-A Cr.P.C if the injured person is unable, for any reason to makes the statement, before the Magistrate his statement recorded by the medical Officer on duty may be accepted in evidence as dying declaration, made by a person who believe that death is imminent, relating to cause or circumstances of the person’s imminent death .The statement admissible in evidence as an exception to hearsay rule. The law governing the dying declaration is found in Article 46 of the Qanoon-e- Shahadat order 1984.
- 5) The principle on which the dying declaration are admitted in evidence is indicated in legal maxim “*Nemo moriturus praesumitur mentire*”i.e a man will not meet his Maker with a lie in his mouth” A dying declaration is to be recorded *Ipsissuima verba* i.e. exact words of the maker of the statement.
- 6) Under English Law, it is essential to the admissibility of the dying declaration that the declarant must have entertained a settled hopeless expectation of death being imminent or impending, but article 46 does not put such restrictions. In other words ,the statement made when death was not imminent ,but later on the maker dies, will also be admissible under Article 46 of Qanoon-e-shahadat 1984 and section 174-A

As I understand, the grievance in the main is that we have failed to implement and enforce many of the Women’s Convention provisions, even though, the government of Pakistan has ratified the conventions and we are bound to provide protection to the women who are victims of domestic violence ad burns, under an obligation that items not

only from international law, but also the domestic law, such as articles 25 and 27 of the constitution of Islamic Republic of Pakistan.

This is obviously so because ratification of the women's convention and commitment to enforce the provisions of convention do not go with the conviction and belief that domestic violence against women is a crime. The same is true about the provisions of articles 25 and 27 of the constitution regarding the gender equality and equal protection of the law, which I venture to say, in the absence of such conviction, amount only to a lip service. I believe that we will never be able to implement the law to curb domestic violence, so long as we do not bring about a social culture where this violence is regarded not only a crime but also a sin. We need to create an environment which abhors and denounces violence against women. This requires serious efforts and a constant struggle, which you might say, is a euphemism for crusade.

The Convention to combat domestic violence against women, treaty and Non treaty laws, as also the constitutional provisions are matters of recent occurrence. I would say that are in direct acknowledgement and consequences of what was ordained by the God in the Holy Quran quite a few centuries ago.

To support this claim, reference is made to verse No 75 of Sura Al-Nisa, which ordains: How should you not fight for the cause of Allah and of the feeble among men and of the women and the children who are crying: Our Lord! Bring us forth from out this town of which the people are oppressors! Oh, give us from your presence some protecting friend! Oh, give us from your presence some defender!.". We may call it as the first charter of human rights.

Therefore, I claim that we are religiously committed to annihilate this violence against women, to say nothing of the constitutional safeguards. We are morally bound to protect them from tyranny; and I firmly believe that nothing can be more unfortunate and condemnable than taking advantage of the situation of a weaker person, to whom the God almighty dislike the most. He Has so many times said in the Quran.

The point which provides us with another aspect of the matter is that all laws represent the collective wisdom of people and they must, therefore, be implemented in letter and spirit. What we do need is human source development to provide us with honest persons of character to administer those laws. We need to emphasize on character building and development of professional ethos and the values system, which is essential for fair administration of criminal justice. We can not form a society without good character. Character as defined, is consistency and permanent practice of good values by an individual. We must create general awareness to bring home the message that we are religiously committed to protect and fight for the cause of the women, children, public and the downtrodden.

Section 174-A hardly makes any material difference, in that section 157 of the code has already provided that on receipt of information for the commission of a cognizable offence, the officer in charge of a police station is bound to send a report of the same to a

Magistrate empowered to take cognizance of such report and then proceed to investigate the facts and circumstances of the case.

The difference brought about by this section is that the Medical officer on duty has been placed under a legal obligation to record the statement of the injured person immediately on arrival so as to ascertain the circumstance and cause of the burn injuries, the section further provides that the statement shall also be recorded by the Magistrate, in case the injured person is still in a position to makes the statement. These statements apart, there may be a case where the incident is reported to the officer-in-charge of a police station, either in writing or is reduced in writing by him. These provisions have been made to ensure that cases of grievous injury by burns must go on record and the statement so recorded are eventually pressed into service as a piece of evidence to sustain a conviction in case the injured person expires, or he is otherwise not available as a witness.

There can be no denial of the fact that the philosophical perspectives of this new legislation are provided by the ultimate goal that the culprits are brought to book and the incidents of violence against women are reduced to the minimum. However, sincerity of purpose apart, the system set up by this legislation is not free from certain weakness and flaws and it is not possible to say that it leaves nothing to be desired. This is because the statements recorded by the Medical Officer on duty, the Magistrate concerned and the officer-in-charge of the police station may be different in material particulars. Experience has it that we cannot rule out the possibility of such inconsistencies and contradictions. This in my humble opinion is bound to cause inherent weaknesses in prosecution's cases, resulting in judgments of acquittal.

Sub section 2 provides that the Medical Officer on duty, or as the case may be the Magistrate before recording the statement under sub-section(1), shall satisfy himself that the injured person is not under any threat or duress. No such precaution has been laid down in the case of an officer-in-charge of the police station, although we have it from the case law that the statement of the deceased recorded by him can also be treated as a dying declaration which, by itself, under the circumstances of a case can be good enough for sustaining conviction on a capital charge<sup>6</sup>

This apart, the importance of this statement is evident from sub-section 3 which provides that if the injured person is unable, for any reason to make a statement before the Magistrate, his statement recorded by the Medical Officer on duty under sub-section (1) may be accepted in evidence as a dying declaration<sup>7</sup> if the injured person expires. The question arises as to why not the one recorded by the Magistrate should not be relied upon as a dying declaration, considering that they are supposed to be adequately trained and equipped with necessary legal skills to record such statements.

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<sup>6</sup> 1997 SCMR 449

<sup>7</sup> Emperor v Abdullah (FB) 7 All 385., Ranga v. Crown ILR 1924 (5) Lah.305., Muhammad Aslam v. State (PLD 1978 SC 298), Ziauddin v. State (DB) NLR 1982 Cr.143).

Case law is abundance on what precautions should be take in recording the statement of an injured person, which is because dying declaration is an important piece of evidence and it can be the basis of conviction even without any corroboration<sup>8</sup>.

The Medical office and the Magistrate must be sensitized and made conversant, with reference to the case law on the subject as to the precaution required to be taken and the manner of recording the statement as also laid down by the Supreme Court of Pakistan<sup>9</sup>

I have another suggestion. Although sections 332 to 337 cover all kinds of hurt cases, we may consider the desirability of amendment in these sections to make a specific mention of cases of hurt by burns. I feel that any of these sections should specifically deal, not only with such cases but all cases of domestic violence, whatever the nature of injury and no ambiguity is allowed to remain in the provisions, to require an interpretation by the court. Special reference is made to the provisions of sections 337, 337-A and 337-B which deal with cases of hurt, either on the head or face of any person or any other part of the body.

We may also consider the desirability of making necessary amendment in schedules II of the Code of Criminal Procedure, to provide that the case of injuries by burns and of domestic violence of any kind are cognizable only by a court of Sessions. I say so because the element of culpability and criminality lies, not necessarily in the nature and gravity of injuries, but in the fact that the culprits take advantages of the weakness of women. Nothing can be more offensive and immoral.

We are in need of establishing a system, at the grass root level, to gather necessary information in respect of:

- a) The number of burn cases or those of domestic violence of any kind;
- b) Number of cases where the injured person was taken to the hospital;
- c) Cases where a report was made to the officer-in-charge of a police station;
- d) Number of cases where the injured persons were not taken to the hospital and only a report was made to the police;
- e) Number of cases where neither the injured persons were taken to the hospital nor a report was made to the Officer-In-charge of the police station and finally,
- f) Number of cases where the officers concerned failed to perform their legal functions

I am of the view that collection of this data and the earlier suggestions in this paper and the judgments of the apex court regarding burn cases, procedure for recording dying declaration, conditions of victims, if there is more than one dying declaration (different dying declaration), duty of magistrate or police officer and Medical officers, statement of victims or other principles and considerations in accepting a dying declaration laid down

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<sup>8</sup> PLD 2003 Lah 270., 2001 P.Cr.LJ 336., 1999 P.Cr.LJ 707., @002 PLR (PESH) 305., Contra PLD 1977 SC 612., Khushal Rao v. State of Bombay., Harbans Singh v. State of Punjab., Gopalsingh v. State of MP.,

<sup>9</sup> PLJ 2001 SC 722., PLJ 1996 Shariat Court (AJK) 299., Pcr LJ 1164., Zabta Khan v. State PLD 1963 Pesh 66., PLJ 1997 Cr.c (Pesh) 592 (DB), Kamia v. State of Punjab (1993(1) SCC p.1), Hakuntal v. State of Punjab, 1994 SCC 1781., Farmanullah v. Qadeem Khan ( PLD 2001 SC 722 )

by the supreme court of Pakistan or other countries<sup>10</sup>, will be of a lot of help to the Association in organizing and engineering the Mass Awareness Campaign. Crimes of burning or throwing acid on the victims challenge the sanity and health of our society. It requires multi-level strategies to combat the anachronistic streaks in our individual and institutional thinking that brutalizes our society. Section 174-A despite its limitations, is indeed a step in the right direction.

Further more the Pontiffs and religious scholars should highlight these issues in front of members of the society. The Muslims especially in Jumma's /Sermon (Friday Prayer).As we all know that every religion how graciously teaches us to behave, respect and love to women as a mother, sister, daughter and wife and foremost as a member of the society.

We should remember that in such cases if a victim is survived, the rest of her /his life remains so miserable; especially women can't live as a productive person in our society after this incident. Our society by nature discards and treats them slavishly being a non productive and think that they are now parasites and burden on the shoulder of their families and State as well. I think Government should allocate special funds for the victim of burn cases. These funds should be utilized for their mental, physical and intellectual rehabilitation. In this way we can make them a very useful, active and respectable member of the society apart from their personal appearances.

We can make a difference by appreciating their inner beauty, skills and expertise in term of their contributions with love and affection. I think no society or state can afford to loss their citizens being non productive permanently, because non productiveness leads to frustration and violence in the society. Legislation, due care and proper planning from NGO's and Government can make a better living place for these victims .This environment is an essential and certainly help them to prove their abilities and talents. These arrangements will give them more confidence and **self respect**...a tool of survival.

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<sup>10</sup> Eyer C.V v. Woodcock,(1789) I-Leach 500),Sant Goyal v.State of UP,1995 Cri LJ 312.320.321 (All),Surinder Kumar v.State of Haryana,A 1992 SC 2037., Surajmal v.State of Punjab A,1992 SC 559.,Lallubhai v.S,A 1972 SC 1776;K Ram Chandra V.PP,A.,Ganjan Singh v.State of Mahaarashtra,1996 Cri LJ 2921,2926 ( Bom),Kishori Das v.state of W B,1997 Cri LJ 315,320 (Cal),Main v.state of Bihar,1993 LJ 1756,1770-1772(Pat),State of Punjab v.Gian Kaur ,1998 Cri LJ 2061 (SC),Raj Bahadur v.state of UP ,1993 Cri LJ 86,93 (ALL),ram Abi v.state of Madhya Pradesh,1990 Cri LJ (NOC) 107 (Madh Pra),Charipalli Shankaraao v.Public Prosecutor A.P.H.c.,A1995 SC 777,781),kale Main v.state of Bihar,1997 Cri LJ 1848,1850 (Pat),R v.sellers,Carr Cr LJ 233., 2000 SC Case No 000S1070,Kahdim Hussain ,the state., 1998,Kar-HC-Sind Case No 998K3021 Anthony Gonsalves v. the state.,