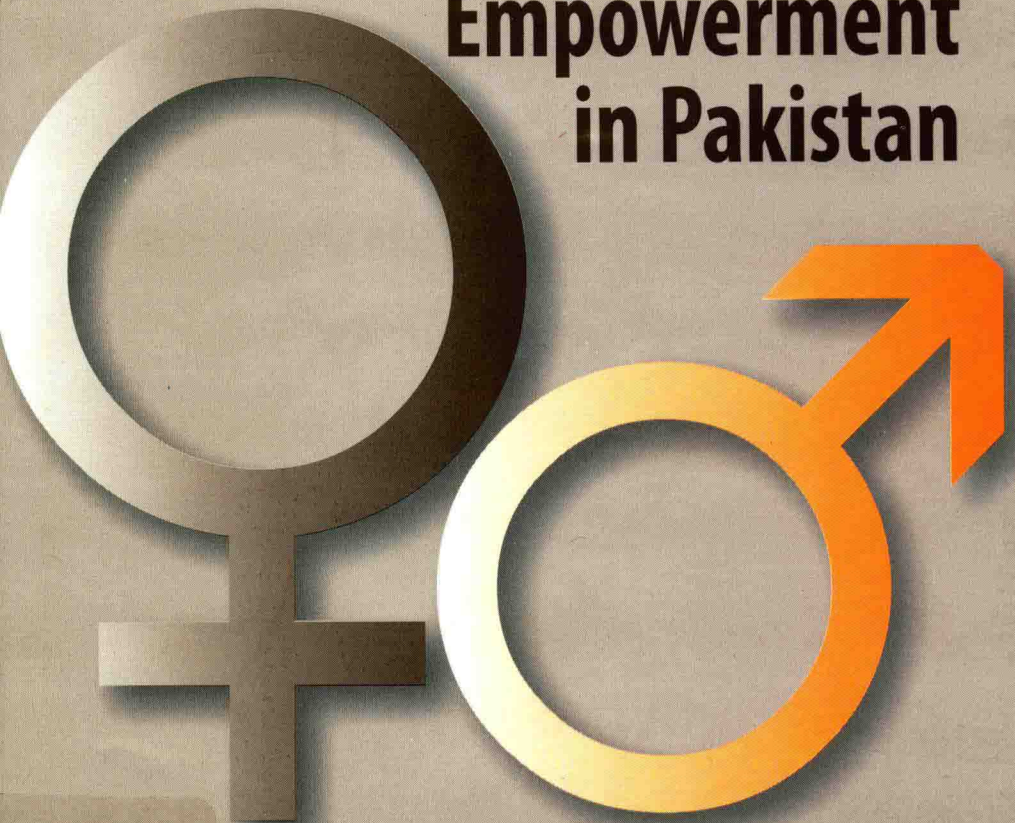


OXFORD

Gender Equality and Women's Empowerment in Pakistan



RASHIDA PATEL

Gender Equality and Women's Empowerment in Pakistan

RASHIDA PATEL

OXFORD
UNIVERSITY PRESS

OXFORD

UNIVERSITY PRESS

Great Clarendon Street, Oxford OX2 6DP

Oxford University Press is a department of the University of Oxford.
It furthers the University's objective of excellence in research, scholarship,
and education by publishing worldwide in

Oxford New York

Auckland Cape Town Dar es Salaam Hong Kong Karachi

Kuala Lumpur Madrid Melbourne Mexico City Nairobi

New Delhi Shanghai Taipei Toronto

with offices in

Argentina Austria Brazil Chile Czech Republic France Greece

Guatemala Hungary Italy Japan Poland Portugal Singapore

South Korea Switzerland Turkey Ukraine Vietnam

Oxford is a registered trade mark of Oxford University Press
in the UK and in certain other countries

© Oxford University Press 2010

The moral rights of the author have been asserted

First published under the title *Woman versus Man: Socio-legal Gender
Inequality in Pakistan* 2003

Second Edition published with a new title *Gender Equality and Women's
Empowerment in Pakistan* 2010

All rights reserved. No part of this publication may be reproduced, translated,
stored in a retrieval system, or transmitted, in any form or by any means,
without the prior permission in writing of Oxford University Press.

Enquiries concerning reproduction should be sent to
Oxford University Press at the address below.

This book is sold subject to the condition that it shall not, by way
of trade or otherwise, be lent, re-sold, hired out or otherwise circulated
without the publisher's prior consent in any form of binding or cover
other than that in which it is published and without a similar condition
including this condition being imposed on the subsequent purchaser.

ISBN 978-0-19-547881-5

Typeset in Adobe Caslon Pro

Printed in Pakistan by

Mehran Printers, Karachi.

Published by

Ameena Saiyid, Oxford University Press

No. 38, Sector 15, Korangi Industrial Area, PO Box 8214

Karachi-74900, Pakistan.

Gender Equality and Women's Empowerment in Pakistan

RABINDRA PATEL

BACKGROUND

Pakistan emerged as a sovereign state on 14 August 1947, after remaining under British colonial rule for nearly a century.

Pakistan is a large country with a land area of 778,720 sq km. The terrain is diverse and comprises large tracts of agricultural land, deserts, mountains, and rivers in territory that extends from the Hindukush Mountains in the north down to the Arabian Sea in the south. It has land borders with Iran in the west, Afghanistan in the north-west, and India in the east and south-east; the Arabian Sea marks the southern border of the country. There is also a border with China alongside Gilgit and Baltistan in the north. Pakistan's geographical location gives it much strategic importance but at the same time makes it vulnerable.

The population of Pakistan is approximately 165 million people and is rapidly increasing. The country faces many serious problems because of over-population. According to official sources, the population is increasing at the rate of 1.82 per cent, though other sources place it at 2 per cent or more. Four million people are added every year while there is a constant depletion in the country's resources. At present the country is beset with many serious political and social problems as it tries to curb religious extremism and militancy. The situation is further compounded by a weakening economy, an acute shortfall in energy resources, a food crisis, unemployment, poverty, over-population and subjugation of women.

The present government was elected to office in February 2008 and announced a 100-day programme that appeared to be over-ambitious. The minimum monthly wages were increased from Rs4,000 to Rs6,000 which was termed by labour and experts as a step in the right direction. But at current prices this is still insufficient to sustain a family of a typical unskilled

worker. The real inflation is said to be twice the official rate, eroding the buying power of the currency like never before. At present both agriculture and industry are underperforming, thereby depressing economic growth by over 1 per cent; the prospects of making an economic recovery appear difficult in the near term. In the week ending 23 April 2008, the Sensitive Price Index (SPI) surged to an all-time high of 19.83 per cent.¹ It may be noted that there was no special relief offered to the suffering women of Pakistan in the 100-day programme announced by the prime minister.

Pakistan has more females than males—that is, 51 per cent females and 49 per cent males. The rural population is around 67 per cent but the 33 per cent urban population has been steadily increasing. Literacy is low with vast differences in the literacy rates of urban/rural and male/female population. The overall literacy rate in Pakistan in 2005 was estimated to be only 53 per cent; for men it was estimated to be 64 per cent while it was just 39 per cent for women.

Pakistan is a patriarchal society and has a diverse socio-cultural environment. The economy is predominantly based on agriculture while industrial activity is still relatively limited even though it is showing signs of gradual expansion. In rural areas large land holdings are concentrated in the hands of a few, while the majority of the people are merely tenants under the influence and control of their landlords. Feudalism and feudal attitudes, anti-women practices, and the societal environment compel women to remain subjugated and live a life of misery.

Development has been slow and faltering though it had started to show signs of improving. The GDP in 2006 was 6.6 per cent and was estimated at 7 per cent in July 2007 but more recent reports forecast that this will likely decline in the coming years. The social sector has remained neglected and services like provision of electricity, disposal of sewage and availability of potable water have not been delivered in most areas causing much hardship to a mass of people.

The country's social structure has three distinct sub-sets comprising of urban societies, rural communities and tribes. The tribal chiefs rule their people by employing the system of *jirgas* and applying their own laws. There are several semi-autonomous tribal regions in the northern part of Pakistan populated by Pakhtuns who live on both sides of the Pakistan-Afghanistan border. The region is generally lawless as was demonstrated by the recent (2008) kidnapping of Pakistan's ambassador to Kabul along with his driver and bodyguard while they were travelling by car from Peshawar to Kabul. The kidnappers were believed to be the local Taliban who demanded the release of one of their key leaders and some other Pakistani and Afghan militants in return for the release of the ambassador and his staff. The Taliban and Al-Qaeda preach and spread extremism in the garb of Islam and aim to impose their own creed of distorted Sharia law in Pakistan. There have been cases of women and men being stoned to death after they were accused of adultery and convicted as *karo kari* by a tribal *jirga*.² The practice of *vani* and *swara*, that is handing over girls to rival parties for settling disputes, still continues even though it is an offence under the recently-added section 310-A of the Pakistan Penal Code. Thousands of young girls continue to suffer every year.³

In February 2008, forty-six women were killed in Sindh alone of which seventeen were victims of the brutal custom of *karo kari*.⁴ The law and order situation is poor while the judicial system is dilatory and suffers from long delays. Poverty is rampant and rising with a huge disparity in income of the very rich and the very poor.

In this milieu, women are the poorest of the poor and the most oppressed of the oppressed. The majority of women are subjugated and dependent, performing their duties as a daughter, wife, mother or sister under severe family restrictions. Most women bear and raise several children for whom there is not enough to eat. Women work constantly both within and outside the home without monetary recompense, but their labour is not considered economically productive. Very few women are

gainfully employed; the percentage of female participation in the labour force in Pakistan is amongst the lowest in the world.

In contrast to the majority of women who are poor, illiterate and dependent, there are several Pakistani women who are educated, independent and professionals; these women work in important positions and support themselves and their families. Recently women have been elected councillors and members of parliament, and have been assigned major responsibilities even though limited resources seriously challenge their ability to deliver.

In these difficult conditions of life, the men and women of Pakistan continue to strive for progress and prosperity. On a more positive note, women pilots have been recently inducted into the Pakistan Air Force and have successfully completed conversion training on the F-7 fighter aircraft at PAF Base, Mianwali.

NOTES

1. Afshan Subohi, 'Virtuous Intentions', *Dawn*, 7 April 2008.
2. 'Militants tie kidnapped envoy's fate to Taliban leaders', *Dawn*, 20 April 2008.
3. 'Implementation of women protection laws demanded', *Business Recorder*, 5 April 2008.
4. '46 women killed in Sindh since January', *Dawn*, 8 March 2008.

PREFACE

IDEOLOGY

Pakistan was created to safeguard the rights of the Muslims which would have been denied to them by an overwhelming Hindu majority if India had remained undivided. But in the sixty-two years since independence, the country has evolved as an ideological state with Islam as the state religion and Muslims comprising approximately 98 per cent of its population. Religion is now strongly embedded in the psyche of the nation and religiosity is on the rise.

The Objectives Resolution, considered the guiding principle of Pakistan's constitutional set-up, was the preamble to the Constitutions of 1956, 1962, and 1973. As part of the policy for the 'Islamization' of Pakistan, the martial law regime of General Ziaul Haq, by the Presidential Order 14 of 1985, added Article 2A to the Constitution making the Objectives Resolution a substantive part of the Constitution. The Resolution declares, amongst other things, that sovereignty over the entire universe belongs to Allah Almighty alone and is to be exercised by the people within the limits prescribed by God. It envisages that the principles of democracy, freedom, equality and social justice as enunciated by Islam shall be fully observed. It provides that Muslims shall be enabled to order their lives in the individual and collective sphere in accordance with the teachings and requirements of Islam as set out in the Quran and Sunnah. It also protects the rights of minorities and guarantees fundamental rights, including equality of status, of opportunity and equality before the law; social, economic and political justice and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality.¹

The Objectives Resolution, along with other Islamic provisions of the Constitution, namely the Islamic Ideology Council and the Federal Shariat Courts (FSC) with powers to determine and strike down any law or provision of law which is repugnant to Islam, has made Islam the basis for all laws. This implies that the correct interpretation of the Quran and Sunnah, the primary source of Islamic law, is the key to progress and change. However, a growing number of retrogressive elements misinterpret Islam, especially in relation to women, and propagate pseudo-Islamic precepts that they wish to impose on people.

There are very few government schools, far less than the need, and even these are mostly in poor condition; low and very-low income families therefore opt to send their children to *madrasahs* which offer free-of-cost religious education inclusive of boarding and lodging. Over the last three decades *madrasahs* have proliferated and flourished in Pakistan, especially during the rule of General Ziaul Haq. But some of these *madrasahs* have been known to preach extremism and violence. In tribal areas, *madrasahs* are often used as a cover to train the so-called jihadis to commit acts of violence around the world. There are several clerics in these areas that coerce the administration to close down schools for girls. Recently, a residential school in the Northern Areas which had been imparting education to girls for decades had to close down because of threats from such elements. The Taliban and Al-Qaeda have medieval attitudes and destroy or burn schools especially those for girls; along with their sponsors and supporters these primitive people are destroying peace and security in the northern and tribal areas of Pakistan and are determined to prevent progress and development in the country.

Not much has been achieved for the people, especially the women of Pakistan. Obscurantist attitudes, feudalism and adherence to archaic and incorrect interpretations of religion handed down by jurists of mediaeval times continue to hold sway. Held back by pedantic scholars and dogmatic clerics, Islamic law has not been allowed to mature to meet present-day needs.

The increasing misinterpretation and misapplication of the pristine principles of Islam are taking a heavy toll on the lives of women. The so-called Islamization process implemented during the martial law regime of General Ziaul Haq brought in the Zina (adultery) Ordinance in 1979 and the Qanpon-e-Shahdat Ordinance (law of evidence) in 1984, both of which are detrimental and derogatory to women; the Zina Ordinance was amended in 2006 by the government of President Pervez Musharraf. Women continue to suffer because of customs, traditions and laws that confine their freedom and ensure that they remain weak and subservient. Education, professional training, health care and family planning services remain largely undelivered while the incidence of rape, *karo kari* and domestic violence continues with unchecked frequency.

REFORM

The Muslim Family Laws Ordinance 1961 and the Family Law Courts Act 1964 have proved ineffective yet persistent calls for reforms continue to be ignored. Based on the findings of various studies conducted in co-operation with the Pakistan Women Lawyers' Association (PAWLA), recommendations for reforms were formulated by PAWLA and sent to each successive government. In the year 2000-1, the Pakistan Law Commission, the National Commission on Women and several NGOs recommended amendments to the Act. The ministry of women development and the ministry of law and justice brought forth a comprehensive draft for amendments which were approved by the cabinet. In consequence, important changes to the Family Law Courts Act 1964 were introduced through an Ordinance notified on 1 October 2002 by the military government of President General Pervez Musharraf.

POLITICAL PARTICIPATION

Women in undivided India were given the right to vote by the British. The Quaid-i-Azam Mohammad Ali Jinnah was determined to introduce Muslim women into politics and encouraged them to come forward; his sister, Fatima Jinnah, was a constant companion at every stage of his political life.

In fact, it was Fatima Jinnah who became the first Pakistani woman to enter public life, and was alongside the Quaid-i-Azam at all political rallies and functions. Lovingly given the epithet of *Madar-e-Millat* (mother of the nation) Fatima Jinnah contested the presidential elections in 1964 under the Basic Democracy system against General Ayub Khan, the then military ruler of Pakistan. Though she lost the elections, she provided the first impetus to women's participation in the country's politics.

The second woman to gain prominence in Pakistan's public life was Begum Ra'ana Liaquat Ali Khan, the wife (and later widow) of assassinated Prime Minister Liaquat Ali Khan. She was instrumental in setting up the Women's National Guard and the All Pakistan Women's Association, and urged women to participate in all spheres of national life, especially in the field of social welfare. She encouraged women to enter professions such as nursing and law, more so because these were looked upon with a certain degree of disdain. Several women activists and leaders are indebted to her, including the author, for the support and leadership she provided to women in public life.

Perhaps the most prominent woman in Pakistani politics was Benazir Bhutto, the daughter of Prime Minister Zulfikar Ali Bhutto. She was the first woman prime minister of Pakistan, elected initially in 1988 and then re-elected in 1993. She was tragically assassinated on 27 December 2007 during her campaign for the 2008 elections but left a legacy for other women to emulate.

Today, as a result of the 2008 elections there are a record number of women legislators, with seventy-four women amongst 342 members of the National Assembly. This gives women 21.6 per cent representation in the National Assembly, that is one

female for every five male members of the Assembly. Sixty of these women legislators have been elected on seats reserved for women, and fourteen directly elected on general seats. Fehmida Mirza has been elected the first lady Speaker of the National Assembly. In practice, however, women elected to the parliament on reserved seats have no right to independently initiate legislation.

RESERVED SEATS FOR WOMEN

Apart from women's right to vote and contest elections, reserved parliamentary seats for women were provided for under Article 51 (2A) of the 1973 Constitution. This provision was applicable for a period of ten years from the date the constitution was adopted or till the second general elections were held; it lapsed in 1990 due to long periods of military rule and the non-party elections of 1985. It was the pro-women policies of President Pervez Musharraf which once again introduced reserved seats for women through the Legal Framework Order (LFO) of 2002. The LFO provided reserved seats for women in all legislative bodies, i.e. the Senate, National Assembly and the four provincial assemblies, taking the overall representation of women in these bodies to about 17.5 per cent. This is the highest percentage of reserved seats for women ever made in the country's history.

Women activists have been demanding that 33 per cent seats in parliament should be reserved for them and that candidates should be elected directly by women voters. Instead, the government legislated a system of proportionate representation—a system that is not conducive to the participation of women in political life. The formula assigns every party a number of seats for women that are in proportion to the number of general seats the party wins. Each political party is therefore required to file a list of women candidates for the reserved seats assigned to the party. This also means that women candidates do not carry out public electioneering but only need to lobby support within their own party. The absolute authority to nominate women candidates

for legislative seats is exercised by the leadership of each political party.

Because women elected on reserved seats owe their position to the largesse of the party leadership, they have no option but to toe the party line and have little to say on issues discussed in parliament. They are unable to unite across party lines in support of issues and laws that are specifically for the welfare and benefit of women unless that has prior sanction of their political masters.

The ability of women members of parliament to impact policy formulation and decision-making is dependent on the degree of influence they exercise within their own party. When a party formulates its political, social or economic policies, women legislators elected on reserved seats have no option but to abide by the decision of the party. Thus, while the constitutional change introduced through the LFO of 2002 did induct a larger number of women in the country's parliament, their influence in the legislative process has remained negligible because they are elected indirectly and remain beholden to their party.

Although issues of women have been the subject of much debate in parliament, meaningful legislation to address a few of these issues was possible only when this could garner support from the leadership of the political parties.

The record shows that in earlier parliaments which had sixty women members on reserved seats and twelve elected directly, most resolution and bills introduced by women were ignored. The first important change in law in recent times was the Criminal Law Amendment Act 2004 which amended some sections of the Pakistan Penal Code on crimes against women. This was piloted in the National Assembly by Nilofar Bakhtiar with strong backing from President Pervez Musharraf.

The second recent legislation for the welfare of women was the Protection of Women Act 2006. This too was sponsored by President Pervez Musharraf and had strong support from the Muttahida Qaumi Movement (MQM) and the Pakistan Peoples Party Parliamentary (PPPP) through Sherry Rehman;

Attorney-General Makhdoom Ali Khan devoted much time and effort in drafting the bill that was tabled in the parliament. The issues addressed in these laws had been continuously pressed for by the women's movement in Pakistan and had wide international support.

Thirty-three per cent seats are reserved for women in all three tiers of the local government, i.e. the district, *tehsil* and union councils. In 2005, over 55,000 women contested elections for local government out of which 28,500 were elected.

But it must be noted that women on reserved seats in the parliament are neither elected from nor represent any geographical constituency. Also worth noting is the fact that there are fewer women registered as voters than men. In a culture where politics is generally perceived to be the domain of men, registration of women as voters is often considered neither necessary nor appropriate. This translates into active resistance to women's registration or banning them from doing so, especially in areas where patriarchal tribal values and customary practices hold sway, or where semi-literate clerics issue edicts that prohibit women from participating in the electoral process. Women's own lack of knowledge about the electoral system and its procedures, and the lack of literacy are also factors that contribute to their under-registration.²

The condition imposed by President Pervez Musharraf in 2002 that candidates contesting parliamentary elections must have a minimum educational qualification of graduation was recently challenged in the Supreme Court as being discriminatory because it created a class within society and disenfranchised 97 per cent of the people. Democracy comes with votes but if voters are to elect only 3 per cent of their population, it would be discriminatory. In 2002, through Article 8(A) of the Chief Executive Order No. 17, Section 99 (1) (CC) was inserted into the Representation of Peoples Act 1976, requiring a contesting candidate to be at least a graduate in any discipline or holder of a degree recognized by the Higher Education Commission of Pakistan. While presenting data on the number of graduates in

the country, the attorney-general said that only 9.4 per cent people (over 2.5 million) of the total population of 160 million were graduates, although they constituted a little over 3.2 per cent of the total number of registered voters (68.1 million). The province-wise break-down suggests that Punjab had the highest number of graduates with over 9.2 million, while the NWFP had over 200,000, Federally Administered Tribal Areas (FATA) 10,000, Sindh 800,000, Balochistan 58,000, Islamabad over 73,000, and Azad Jammu Kashmir 52,000.³

The Supreme Court scrapped the condition for legislators to be graduates, declaring it a negation of fundamental rights as enshrined in the Constitution.⁴

Pakistan is committed to ensuring the full realization of the economic, social and cultural rights of the people, and to eradicating economic injustice and poverty from the country. Pakistan ratified the International Covenant of Economic, Social and Cultural Rights (ICESR) and also signed the International Covenant on Civil and Political Rights (ICCPR) including the Convention against Torture in April 2008. Pakistan is already an active party to the International Convention on the Elimination of Racial Discrimination (CERD), International Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC), and to the core ILO Conventions 29, 87, 98, 100, 105, 111, 138 and 182.⁵

In spite of being a signatory to these conventions, the condition of life of the people, especially of women, continues to deteriorate. The justice system has failed; poverty and crime have increased. I once again felt that there was an urgent need to analyse the contemporary socio-legal issues facing women and define ways and means of improving their lives. This book is an effort to create a better understanding of issues that confront women in Pakistan, and to bring a positive change by continuing to canvass for the introduction of laws that protect their rights; this is my life's mission. Because I felt it necessary to have this book in print as early as possible, I omitted discussion on a few

subjects that otherwise should have been part of this narrative. Besides, I have only dealt with Muslim laws and have not been able to include personal laws as applicable to Hindus, Christians and Parsis. I expect to cover the remaining topics in a subsequent book.

Rashida Mohammad Hussain Patel

NOTES

1. *The Constitution of the Islamic Republic of Pakistan*, Ideal Publishers, Karachi, 2007.
2. *Political and Legislative Participation of Women in Pakistan: Issues and Perspective*, United Nations Development Programme in Pakistan Publication, 2005.
3. 'Graduation condition termed hostile discrimination', *Dawn*, 19 April 2008.
4. 'Supreme Court scraps graduation condition', *Dawn*, 22 April 2008.
5. 'Pakistan committed to remove economic injustice, poverty', *Business Recorder*, 19 April 2008.