

## **The Punjab Protection of Women against Violence Act 2016: A Legislative Review**

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*The core of sadism, common to all its manifestations, is the passion to have absolute and unrestricted control over a living being... It is the transformation of impotence into omnipotence.*

Erich Fromm, *The Anatomy of Human Destructiveness* (1973)

Violence against women has long been a core human rights issue in Pakistan, and attempts to protect and empower women in this regard have often faced stern opposition. The recent promulgation of the Punjab Protection of Women against Violence Act 2016 ('the PPWVA') was no exception. This legislative review seeks to understand and engage with the main grounds of opposition to the PPWVA, and argue that they largely lack substance. It highlights some of the reasons that made it imperative to have a law to protect women, critically examines the key provisions of the PPWVA and identifies some of the major loopholes in them, and makes recommendations to rectify the shortcomings. The review concludes with an assessment of the future of the PPWVA, and on the note that though this Act is a commendable piece of legislation, several complementary measures need to be taken to ensure its success.

### **Introduction**

Legislation in pursuance of the protection and empowerment of women in Pakistan has often caused discomfort amongst various circles inclined to preserve gender inequality in the country. In particular, a large section of the religious right has often vociferously opposed reform on the pretext of defending the ideology of the country. Voices supporting the status quo have usually been louder than those calling for reform, and thus various governments have historically yielded to them. Unsurprisingly, the passage of the PPWVA has also courted much controversy, but the Punjab Government ('the Government') has thus far appeared resolute in not submitting to it. The PPWVA is not strictly a penal statute; rather it aims to counter violence by establishing a protection and rehabilitation system for women trapped in abusive relationships. It covers a broad range of violence including sexual, psychological, economic, stalking and cybercrime. The PPWVA hinges on various non-traditional measures to extend protection to women being abused, such as cuffing the abuser with a GPS tracker for monitoring movement, and these measures have arguably played a key role in driving the criticism of the Act. This legislative review critically examines the principal arguments against the PPWVA, and then proceeds to analyze the need to promulgate this Act in the current circumstances. Following this, the review critically examines various provisions of the PPWVA to gauge its potential effectiveness, and where possible, makes recommendations to overcome some of the existing loopholes in it. Lastly, given the above discussion, the review highlights some of the measures necessary to secure the future of the PPWVA.

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## Arguments against the PPWVA

Most of the criticism of the PPWVA is leveled against the modern notions of protection and empowerment of women in the context of marriage for allegedly being against Islamic principles. The Council of Islamic Ideology ('the CII'), a body tasked with making recommendations to the legislature for ensuring that laws conform with the Islamic principles, took the lead in declaring the PPWVA to be un-Islamic on the grounds of it being contrary to the teachings of Islam.<sup>1</sup> The Act was seen as an attempt to impair *Shariah* and secularize the Islamic State.<sup>2</sup> Several leading religious scholars and representatives of top religious political parties also expressed their resentment along similar lines over the passage of the PPWVA. In expressing such views, reliance has impliedly been placed on Verse 4:34 of the Qur'an, which states:

Men are *qawwamun* (in authority) over women, because God has preferred some over others, and because they spend of their wealth (to maintain them). Righteous women are obedient and guard in (their husbands') absence what God would have them guard. Concerning those women from whom you fear *nushuz* (disobedience/rebellion), admonish them, and/or abandon them in bed, and/or *wa-dribuhunna* (hit them). If they obey you, do not seek a means against them, God is most high, great.

This verse has since long been in the limelight in the context of domestic violence against women. On the one hand lies the traditionalist interpretation of this verse, according to which the imperative 'hit them' means that the use of force is permitted in case of necessity and as a last resort to save marriage.<sup>3</sup> On the other hand lies the reformist interpretation, according to which the aforementioned imperative merely implies parting ways in case of an irreconcilable dispute between the spouses.<sup>4</sup> Given the contemporary realities, the reformists are against the use of force by husbands.<sup>5</sup> However, most individuals condemning the PPWVA appear to be following the traditionalist interpretation as they take the imperative 'hit them' in its literal sense, and refuse to interpret it in the context of verses and *ahadith* that advocate protection and empowerment of women. For instance, Verse 2:228 of the Qur'an states, 'Women shall have rights similar to the rights against them, according to what is equitable'.<sup>6</sup> Besides, according to a *hadith*, Prophet Muhammad (PBUH) rebuked those men who hit their wives and said that those who do so are not the best of men.<sup>7</sup> The apparent

<sup>1</sup> Shyema Sajjad, 'When Will Pakistan's Clergy Celebrate Our Women?' *Dawn* (7 March 2016) <<http://www.dawn.com/news/1244113/when-will-pakistans-clergy-celebrate-our-women>> accessed 20 March 2016; Reuters, 'CII Rules Women's Protection Law 'un-Islamic'' *The Express Tribune* (3 March 2016) <<http://tribune.com.pk/story/1058773/top-pakistani-religious-body-rules-womens-protection-law-un-islamic/>> accessed 20 March 2016.

<sup>2</sup> Newspaper's Staff Correspondent, 'Religious Parties Can Derail Govt, Fazl tells Sana' *Dawn* (2 March 2016) <<http://www.dawn.com/news/1243017/religious-parties-can-derail-govt-fazl-tells-sana>> accessed 18 March 2016; Kalbe Ali, 'Religious Parties Reject Women Protection Bill' *Dawn* (6 March 2016) <<http://www.dawn.com/news/1243896/religious-parties-reject-women-protection-bill>> accessed 19 March 2016.

<sup>3</sup> Ayesha S. Chaudhry, *Domestic Violence and the Islamic Tradition* (first published 2013, Oxford University Press 2015) 154.

<sup>4</sup> *Ibid* 189.

<sup>5</sup> *Ibid*.

<sup>6</sup> *Saleem Ahmad v Government of Pakistan* PLD 2014 FSC 43; Saneya Saleh, 'Women in Islam: Their Status in Religious and Traditional Culture' (1972) 2 *IJSF* 35, 37.

<sup>7</sup> (n 3) 211.

obliviousness of individuals opposing the PPWVA in its entirety to such Qur'anic verses and *ahadith* reveals a bias on their part, which can be seen as an attempt to maintain the gender status quo in the society.

Various individuals have also been contending that the PPWVA is against the ideology of Pakistan. A prime illustration of this is the formal rejection of the Act by the CII on the ground that it 'doesn't fit in with the ideology of Pakistan' and thus the 'whole law is wrong'.<sup>8</sup> There is no doubt, given the fact that Islam is Pakistan's state religion (Article 2) and the Objectives Resolution is a substantive part of the Constitution (Article 2A), that the ideology of the country is Islamic in nature.<sup>9</sup> The argument being raised by the likes of the CII, however, is problematic in at least three respects. Firstly, the Supreme Court has held that the Objectives Resolution, which deals with Islamic precepts and the ideology of Pakistan, is not supra-constitutional<sup>10</sup> – it does not control the substantive provisions of the Constitution. Secondly, Article 25(3) of the Constitution, which deals with equality of citizens, states, 'Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.'<sup>11</sup> Given that the intended purpose of the PPWVA is to protect women from violence, it certainly falls within the ambit of this Article. Thirdly, even if it were assumed that there is absolute agreement over the scope of the ideology of Pakistan, is violence against women not against Islam and thus against the ideology of the country? The argument being that one may object to certain provisions of the Act, but from an objective standpoint, one cannot validly claim that it is in its entirety against the ideology of the country.

The notion of the dignity of man has also been used as a basis to oppose the PPWVA. Perhaps the best illustration of such kind of concerns is the reasoning of Dr. Mohammad Aslam Khaki, who has challenged the Act in the Federal Shariat Court for being 'against the dignity of man and hence against Islam and the [C]onstitution.'<sup>12</sup> He has supported his petition by citing the following verse from the Qur'an, 'We bestowed dignity on the children of Adam and provided them with rides on the land and in the sea and provided them with a variety of good things and made them much superior to many of those whom we have created.'<sup>13</sup> When a question regarding this petition was raised while interviewing Additional District and Sessions Judge, Mr. Mehmood Haroon, he satirically asked, 'So the phrase "the children of Adam" doesn't include women? Don't women also have dignity? If a woman is physically tortured, isn't this against the dignity of the children of Adam?'<sup>14</sup> The answer to these questions is quite evident. The notion of dignity is gender-neutral in Islam.<sup>15</sup> This has also been reflected in Articles 14(1) and 263 of the Constitution, which state respectively, 'The dignity of man... shall be inviolable' and 'In the Constitution... words importing the masculine gender shall be taken to include females'.<sup>16</sup> Thereby, restricting the notion of dignity to men only and using this as a basis to oppose the PPWVA is unjustified.

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<sup>8</sup> Sajjad (n 1).

<sup>9</sup> The Constitution of the Islamic Republic of Pakistan 1973.

<sup>10</sup> *The State v Zia-ur-Rahman* PLD 1973 SC 49.

<sup>11</sup> (n 9).

<sup>12</sup> Nasir Iqbal, 'Women's Protection Act Challenged in Federal Shariat Court' *Dawn* (4 March 2016) <<http://www.dawn.com/news/1243466/womens-protection-act-challenged-in-federal-shariat-court>> accessed 18 March 2016.

<sup>13</sup> *Ibid.*

<sup>14</sup> Interview, Mehmood Haroon, Additional District and Sessions Judge (Jaranwala), 5 March 2016.

<sup>15</sup> (n 3) 9; Izzud-Din Pal, '*Women and Islam in Pakistan*' (1990) 26 MES 449, 455.

<sup>16</sup> (n 9).

Another concern that has frequently been voiced regarding the PPWVA by various individuals is that it will weaken Pakistan's strong family structure, a notion allegedly lacking in the West.<sup>17</sup> The CII went so far as to claim that the passage of this Act is an attempt to curtail the powers of husbands and a tool to oppress them.<sup>18</sup> These arguments are problematic because they implicitly assume that men are superior to women in Islam when it comes to management of the family, and thus the status quo needs to be preserved by ensuring the subjugation of women, which may even be at the expense of their freedom. From a simple reading of Verse 2:228 of the Qur'an, it becomes apparent that men are one degree superior to women in financial matters of the family, as an obligation has been placed on them to maintain their wives.<sup>19</sup> Regarding all other family matters, men and women stand on an equal footing because they have reciprocal rights and obligations.<sup>20</sup> Therefore, this reciprocity can by no means be construed as validating the subjugation of women, and thus the argument regarding the Act being a threat to Pakistan's family structure is misplaced.

### **Was the PPWVA Needed?**

It is pivotal at this point to ascertain the importance of the PPWVA by looking into whether such a law was needed in the first place. Women in Pakistan are undoubtedly susceptible to discrimination, abuse and marginalization. One of the key reasons for this is that in most cases, the financial control of the household lies in the hands of men and women are usually dependent on them for their maintenance.<sup>21</sup> Therefore, in the words of Judge Mr. Mehmood Haroon, 'Whenever a law for the protection of a gender would be made, it would naturally be for the protection of the feminine gender, not masculine.'<sup>22</sup> Arguing that men have become insecure as a result of this Act unjustifiably discounts the need to have such a law. The passage of this Act, at the very least, carries a symbolic value, and there is no doubt that it has once again stimulated the debate regarding the protection of women in prominent spheres.<sup>23</sup>

The figures on reported cases of violence against women reaffirm the abysmal state of affairs in this context in Pakistan. In 2014, a total of 10,070 cases of violence against women were reported across the country, of which a staggering 7,548 cases were reported in Punjab alone.<sup>24</sup> There was a 29.8% increase in the cases reported in Punjab in 2014 as compared to those reported in 2013.<sup>25</sup> A somewhat similar trend has prevailed over the past decade as well.<sup>26</sup> Moreover, Punjab has historically surpassed all the other provinces in not only the

<sup>17</sup> Mohammad Hussain Khan, 'Punjab's Pro-women Law against Constitution, Shariah: Fazl' *Dawn* (29 February 2016) <<http://www.dawn.com/news/1242295/punjabs-pro-women-law-against-constitution-shariah-fazl>> accessed 10 March 2016.

<sup>18</sup> Dr. Inamullah, Chief Research Officer (The Council of Islamic Ideology), Press Release, 5 April 2016 <<http://cii.gov.pk/pressreleases/PressRelease050416.pdf>> accessed 22 June 2016.

<sup>19</sup> Fazlur Rahman, 'A Survey of Modernization of Muslim Family Law' (1980) 11 ICMES 452-453; Lisa Hajjar, 'Religion, State Power, and Domestic Violence in Muslim Societies: A Framework for Comparative Analysis' (2004) 29 LSI 1, 10; Jane I. Smith, 'Women in Islam: Equity, Equality, and the Search for the Natural Order' (1979) 47 JAAR 518.

<sup>20</sup> Rahman (n 19).

<sup>21</sup> Donald G. Dutton, *The Domestic Assault of Women* (Allyn and Bacon 1988) 11-12.

<sup>22</sup> (n 14).

<sup>23</sup> Waqqas Mir, 'Another Law for Women' *The News* (6 March 2016) <<http://tns.thenews.com.pk/another-law-women-punjab-protection-bill/#.V9ZuZ7Te5SV>> accessed 8 March 2016.

<sup>24</sup> Aurat Foundation, *Violence Against Women in Pakistan* (Annual Report, 2014) 4.

<sup>25</sup> *Ibid* (Annual Reports, 2013-2014).

<sup>26</sup> *Ibid* (Annual Reports, 2008-2014).

number of cases reported in a year but also the percentage increase in cases each year.<sup>27</sup> The increasing trend in the number of cases reported can be attributed to various factors such as lack of awareness amongst women regarding their rights as well as failure on the part of the State to implement the existing laws effectively. However, perhaps the most important factor has been the absence of a legislation specifically dealing with violence against women. Undoubtedly, the PPWVA will not improve the current situation all of a sudden, nor will it be successful without a sincere effort by the Government. Nevertheless, what is important is that this Act has formally recognized the issue of violence against women, and this is an admirable first step towards tackling it.

It is also important to examine the PPWVA from the perspective of Pakistan's international obligations as a party to various treaties. The Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW') is of particular significance in this context.<sup>28</sup> In March 2013, the Committee on the Elimination of Discrimination against Women urged the Government of Pakistan to encourage the National Assembly and the Provincial Assemblies to take various recommended measures for creating gender equality in the society.<sup>29</sup> The recommended measures included passing pending bills such as the Domestic Violence Bill 2008, repealing discriminatory laws such as the Hudood Ordinances 1979, creating awareness amongst the Parliamentarians and members of the CII regarding the rights of women, and systematizing the training of judges and lawyers on CEDAW and domestic legislation concerning women.<sup>30</sup> The Committee also urged the domestication of CEDAW by harmonizing the different systems of law in the country, namely, 'State law, Islamic law and customary law, with international human rights standards, in particular with the provisions of the Convention.'<sup>31</sup> In addition, the Committee asked for a follow-up report to be submitted by March 2017.<sup>32</sup> Though the Committee's recommendations are not strictly binding in nature, Pakistan will risk its reputation and image in the international community in case of non-compliance with its terms. Similar obligations also exist under various other international covenants and conventions, placing further pressure on the Government to prevent human rights violations.<sup>33</sup>

### **Analysis of Provisions of the PPWVA**

The Act defines domestic violence in Section 2(h) as 'the violence committed by the defendant with whom the aggrieved is living or has lived in a house when they are related to

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<sup>27</sup> Ibid.

<sup>28</sup> Ratified by Pakistan on 12 March 1996. United Nations, 'Ratification Status for Pakistan' (OHCHR) <[http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=131&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=131&Lang=EN)> accessed 9 March 2016.

<sup>29</sup> Committee on the Elimination of Discrimination against Women, *Concluding Observations on the Fourth Periodic Report of Pakistan Adopted by the Committee at its Fifty-fourth Session* (CEDAW/C/PAK/CO/4, 2013) 2.

<sup>30</sup> Ibid 4.

<sup>31</sup> Committee on the Elimination of Discrimination against Women, *List of issues and questions with regard to the consideration of periodic reports* (CEDAW/C/PAK/Q/4, 2012) 1.

<sup>32</sup> (n 29) 12.

<sup>33</sup> Some of the prominent international covenants and conventions include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). All of these have been signed as well as ratified by Pakistan. United Nations (n 28); Human Rights Commission of Pakistan, *State of Human Rights in 2014* (Annual Report, March 2015) 101.

each other by consanguinity, marriage or adoption'.<sup>34</sup> This definition is problematic because it restricts domestic violence to relations existing by virtue of consanguinity, marriage, or adoption only. As a result, one might ask what remedy will be available if a relative of the husband engages in domestic violence against the wife? Though the Act provides a separate and more inclusive definition of violence in Section 2(r), it would have been wiser to provide a relatively holistic definition of domestic violence as well. The reason being that a legislation of this kind should also aim at easing the process of litigation for the aggrieved by minimizing complexities to achieve optimal results. Had the definition of domestic violence not been restricted to the relations mentioned above, it would have taken away the room from an individual to abuse a woman, and later claim that his act does not fall within the ambit of domestic violence due to his association with that woman otherwise than as envisaged in the Act. Though it can be argued that such an individual could still be penalized under Section 2(r), the importance of the available means of achieving desired outcomes should not be undermined. Thereby, given the current state of the judicial system in which litigation is expensive and time-consuming, it would have been farsighted to define domestic violence relatively broadly.

Another problematic aspect is the fact that the PPWVA does not criminalize the act of committing domestic violence in itself. It merely specifies penalties for obstructing a Protection Officer (Section 18), filing a false complaint (Section 19), or violating a Court Order (Section 20). So basically, the Act aims to penalize the abuser *after* he has committed an act of domestic violence. Though it can be argued that the Act provides considerable leeway to courts in Sections 6 and 7 (regarding passing an interim order and protection order respectively) to pre-empt an act of domestic violence, this is not enough to actively prevent the occurrence of such violence. Specifically imposing strict penalties, perhaps in the form of varying fines and terms of imprisonment according to the gravity of the domestic violence committed, would have been a stronger deterrent for those intending to commit such violence. Besides, given the extent to which domestic violence is ingrained in our social fabric, such an approach is imperative. The apparent reluctance of the Government to criminalize the act of domestic violence in itself reflects a lack of will on its part to actively combat the mentality driving such violence, and the extent to which it is unaware of the ground realities.

The dispute resolution framework envisaged under the PPWVA also has a few problematic facets. To begin with, as pointed out by Muhammad Afeef, Chairman UC-85 (Lahore), in an interview, the Act discounts the role of a Chairman in mediating between the spouses/parties having differences.<sup>35</sup> Instead, as evident from Sections 12(d) and 13(m), the Act relies on the District Women Protection Committees and the Protection Centers respectively for mediating between the spouses/parties. Speaking from his personal experience, Afeef added:

A Chairman is better situated to mediate between the disputant spouses/parties because he usually personally knows them, and if needed, can mediate between them even in several sittings. However, the bodies through which the Government intends to effect mediation would most probably not be

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<sup>34</sup> The Punjab Protection of Women against Violence Act 2016 ('the PPWVA').

<sup>35</sup> Interview, Muhammad Afeef, Chairman UC-85 (Lahore), 4 March 2016.

acquainted with the spouses/parties beforehand, and might even be overburdened and thus be unable to spare sufficient time for mediation.<sup>36</sup>

These observations, having been made by a person who has more than a decade of experience in resolving disputes between spouses and other parties, seem quite reasonable. The Government should have therefore either extended the membership of the concerned District Women Protection Committee to include the Chairman of the town in which the spouses/parties having a dispute reside, or at least established a mechanism for interaction between the concerned Committee and the Chairman while resolving a dispute. The inclusion of the concerned Chairman in the Committee would have assisted in knowing about the background of the disputant spouses/parties as well as settling their dispute. Moreover, as per Section 11(4) of the Act, the members of the abovementioned Committee ‘shall not be entitled to any remuneration or fee or any other charges or facilities for services rendered under the Act.’<sup>37</sup> This raises the question that in the absence of any incentive, why will any member of the Committee be whole-heartedly interested in dispensing a long list of duties assigned under the Act? Though some members might still be interested for the sake of public welfare, remuneration needs to be given to ensure a high level of commitment towards the obligations under the Act and thus achieving optimal results.

There are also some provisions in the PPWVA that seem unrealistic and/or culturally insensitive given the current state of affairs in the country. Section 7(d) refers to the possibility of cuffing the abuser with a GPS ankle or wrist tracker for monitoring movement round the clock. Though this might prove to be an efficient way of tracking a person’s movement, it will certainly require a lot of effort and resources to make it effective. Amongst other considerations, the Government will need to invest in the requisite equipment and technology, establish centers for tracking movement, and take steps to ensure compliance by the abuser. These measures will require substantial investment and most probably prove to be time-consuming. Besides, the effect of cuffing the abuser on his relationship with the victim remains to be seen. For instance, a husband being cuffed with a GPS tracker may take it as an insult, and thus be provoked to react against his wife in an even more violent manner. This might be the case particularly in rural areas, where honor killings and acid attacks are not uncommon. Therefore, various factors would have to be taken into account to see if using a GPS tracker would be a viable option in the long run. Moreover, Section 7(e), which gives the power to the court to move the abuser out of his house while extending relief to the victim, also seems a bit unrealistic. For instance, what if the ownership of the house in which the abuser and the victim are residing lies with the former? In such an instance, how feasible would it be to enforce the order of the court to evict the abuser? Therefore, as in the case of Section 7(d), various considerations would have to be balanced before passing an order under this section. Furthermore, Section 9(4) regarding the passage of a monetary order in favor of the aggrieved person states, ‘If the defendant fails to make payment within the period mentioned in the order, the Court shall direct the employer or debtor of the defendant, directly to pay the aggrieved person or to deposit with the Court a portion of the wages or debt due to or accrued to the credit of the defendant.’<sup>38</sup> Though this alternative might seem to be an efficient way of extracting money from the abuser, various complexities are likely to arise while implementing this section. For instance, what if the employer or debtor refuses to

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<sup>36</sup> Ibid.

<sup>37</sup> (n 34).

<sup>38</sup> Ibid.

pay directly to the aggrieved person? Can they be compelled to do so? Besides, even if they agree to do so, what protection(s) will they have to be shielded from litigation against them in future by the abuser? Such intricacies can potentially problematize the implementation of this section.

With respect to the phrasing and terminology of the PPWVA, it seems that some provisions have been deliberately kept vague to provide more room for interpretation, but this may also lead to further confusion and abuse of the Act. For example, Section 2(2) states, ‘A word or expression not defined in this Act shall have the same meaning as assigned to it in the Code [the Code of Criminal Procedure, 1898 (V of 1898)] or the Pakistan Penal Code, 1860 (XLV of 1860).’<sup>39</sup> The words ‘cybercrime’ and ‘stalking’ as stated in the Act constitute acts of violence, but they have neither been explained in the Act, nor in the Pakistan Penal Code. Therefore, the courts will have to elaborate on the manner to interpret this Section to prevent frivolous litigation, or devise a kind of test to determine whether these acts of violence have taken place.<sup>40</sup> Otherwise, the approach of dispensing justice in cases involving such expressions will be arbitrary. Similarly, a part of Section 13(2) states that a Protection Center shall ‘maintain audio-visual record of all actions carried out under the Act’, which is very vague in its wording.<sup>41</sup> It does not specify the mechanism of such recording, nor the activities that shall be recorded. The latter is particularly problematic because the Protection Centers shall be a converging point for a host of essential activities under the Act, and thus it will most probably not be feasible to record all such activities. In Section 27, again there is a vague obligation of the Government to arrange training of the employees of the protection system at ‘regular intervals’.<sup>42</sup> An argument can be made that under Section 29(2), a part of which states that the Government shall make rules within one hundred and twenty days of the commencement of the Act on ‘[the] regulation of affairs of the Protection Centres and shelter homes’, the Government would be able to specify what ‘regular’ means.<sup>43</sup> Still, the way Section 27 has been phrased, it will give an opportunity to the Government to evade its obligation and thus decreases the enforceability of this section. Of course, purposefully vague phrases and terminology can mean that there is greater room for interpreting the law in a manner most convenient for the courts, but this will not be feasible at a time when there is already little litigation on the subject.

Nevertheless, the purpose of highlighting loopholes in the abovementioned provisions of the PPWVA is not to give the impression that it is an unworthy piece of legislation. The Act contains various well-crafted and much-needed provisions as well, which reflect that it is a step in the right direction. For instance, Section 4 allows a person authorized by the aggrieved person to submit a complaint on her behalf, which takes into account the fact that the aggrieved person may not be in a position to file a complaint herself. Moreover, Section 4(3), which imposes a seven-day time limit on the defendant to present a defense against the charges levied, and Section 4(4), which obligates the court to decide the complaint within ninety days from the date of its receipt, are of considerable significance. These two provisions can be seen as an attempt to provide swift justice to victims in a system where years of litigation on fairly simple family matters is not uncommon. Furthermore, Section 19 states the penalty for filing a false complaint in the form of imprisonment which may extend

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<sup>39</sup> Ibid.

<sup>40</sup> (n 14).

<sup>41</sup> (n 34).

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

to three months or fine which may be between fifty thousand and one hundred thousand rupees or both. The fine stated is quite high as compared to those generally prescribed under other laws, and this is likely to help in curtailing frivolous litigation as well as countering the argument that women will misuse the Act. Similarly, under Section 20, the penalty stated for breaching an order of the court or illegally interfering with the working of the GPS tracker is also quite high (imprisonment up to one year or fine up to two hundred thousand rupees or both), which is likely to result in greater compliance by the defendant.

### **The Future of the PPWVA**

Several issues can be identified regarding the potential effectiveness of the PPWVA. To begin with, the Statement of Objects and Reasons that accompanied the bill of this Act states, ‘The instances of violence against women have been on the increase primarily because the existing legal system does not adequately address the menace and violence by some is perpetrated with impunity.’<sup>44</sup> This phrase is instructive in a manner in which the Government perhaps did not intend it to be and reveals a lot about the state of the existing legal system.<sup>45</sup> This phrase is in effect reference to the failures of the implementation mechanisms to protect women. Various similar laws were introduced in the past as well, such as the Prevention of Anti-Women Practices (Criminal Law Amendment) Act 2011. However, they largely failed to deliver the intended protection, not because the codified law was not strong enough to curb violence, but because successive governments did not focus enough on mechanisms to implement the law. The laws had been introduced primarily to appease human rights activists and pressure groups that had been advocating for the protection of women and thus centered more on generating fanfare rather than being productive. Even if it were assumed that the Government introduced the PPWVA in a sincere effort to protect women, its fate may be no different from that of previous similar laws if the Government does not focus on the various aspects of its implementation. To list a few, the Government would need to actively monitor the cases being brought under the Act; address the loopholes in it that are being exploited; and ensure that the officials responsible for its implementation act responsibly and extend the necessary relief without delay.<sup>46</sup>

Moreover, for any law to be successful in achieving its intended goals, it is necessary for it to be socially acceptable. Judge Mr. Mehmood Haroon supported this view and remarked, ‘The society-at-large will not readily accept the PPWVA because our society is male-dominated and this law, at least on paper, is an attempt to challenge male chauvinism.’<sup>47</sup> In support of his argument, he gave an example from his home city of Jaranwala, where when a wife told her husband that she would bring a claim against him under this Act if he continued to abuse her, the husband got infuriated and threatened to burn her alive if she did so.<sup>48</sup> This reflects the patriarchal mindset prevailing in the Pakistani society and shows the need to create an atmosphere in which women can safely bring claims under this Act. Besides, awareness of the law also needs to be created amongst women, especially in rural areas. Having said this, one also needs to be mindful of the role of cultural

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<sup>44</sup> The Punjab Protection of Women against Violence Bill 2015.

<sup>45</sup> (n 23).

<sup>46</sup> Survey Conducted, The Punjab Protection of Women against Violence Act 2016, 14-16 March 2016; Kanwal Qayyum, *Domestic Violence Against Women: Prevalence and Men’s Perception in PGRN Districts of Pakistan* (Rutgers WPF Pakistan, 2013) 54-55.

<sup>47</sup> (n 14).

<sup>48</sup> Ibid.

values and norms. Judge Mr. Mehmood Haroon, who has also served as a Family Court Judge, said that in our society, parents are extremely reluctant to legally proceed against their son-in-law regarding any issue concerning their daughter.<sup>49</sup> The reason being that they are least interested in further straining the relationship between the two, which might culminate in a divorce, and the stigma associated with the latter is not unknown.<sup>50</sup> Therefore, from a pragmatic standpoint, several issues need to be addressed for making the PPWVA successful in the real sense. This will undoubtedly take time, and require considerable commitment from successive governments as well as reshaping of discourse in the society through education and awareness.<sup>51</sup>

## **Conclusion**

In a nutshell, the PPWVA has the potential to be a stepping-stone in eradicating violence against women. Irrespective of the political considerations that may have driven the passage of the Act, its spirit is indeed commendable. Though the Act does contain several provisions that are problematic *per se* or the implementation of which may prove to be problematic, this does not make it an unworthy piece of legislation. Besides, a close analysis of most of the criticism of the PPWVA reveals that it is largely unjustified, and reflects the extent to which the patriarchal mindset is ingrained in the fabric of the society. The latter is the biggest challenge that needs to be tackled for promoting gender equality, and the PPWVA alone cannot sufficiently combat the prevailing mindset even if the Government were to implement it in its true letter and spirit. As Waqqas Mir has rightly said, ‘[The] real change will occur when a woman will not have to think twice about what society, her parents or the cops will think if she makes a complaint of violence against her person – just the way a man can.’<sup>52</sup> For this to happen, besides great commitment on the part of the Government, the public needs to actively engage with narratives that condemn violence – narratives that regard violence as violence irrespective of the gender that is subjected to it.<sup>53</sup> Until this happens, women will continue to suffer, and gender equality will remain an elusive goal.

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<sup>49</sup> Ibid.

<sup>50</sup> (n 35).

<sup>51</sup> Rinki Bhattacharya, *Behind Closed Doors* (Sage Publications 2004) 227.

<sup>52</sup> (n 23).

<sup>53</sup> Ibid.

## **Domestic Violence and the Islamic Tradition: A Book Review**

Mariam Noor\*

### **Introduction**

Ayesha S. Chaudhry is a professor of Islamic Studies and Gender Studies at the University of British Columbia. She completed her Ph.D. in Middle East and Islamic studies from New York University, and holds a Masters degree in Near Eastern Civilizations and Women's Studies from the University of Toronto.<sup>1</sup> Her text *Domestic Violence and the Islamic Tradition* showcases the complexity and diversity of the Muslim intellectual tradition on the topic of marital violence.<sup>2</sup> Domestic Violence can easily be categorized as one of the most comprehensive works dealing with the interpretation of the Qur'anic verse 4:34, an often-cited verse that allegedly sanctions domestic violence.<sup>3</sup> The book investigates the ways Muslims engage with Qur'anic text, the patriarchal Islamic tradition, and how a community of believers who value gender-egalitarianism addresses a concrete ethical problem – domestic violence.<sup>4</sup> In this review, I will provide an overview of the book by briefly describing the contents of each chapter. After having outlined Chaudhry's major arguments and contentions, I will critically analyze the work by testing Chaudhry's observations and hypotheses through an examination of the politics surrounding the passage of the Punjab Protection of Women against Violence Act 2016 ('the PPWVA').

### **Overview of Domestic Violence**

Chaudhry begins the book with the acknowledgement that no aspect of Islam is gender-neutral; everything is gendered, from sacred texts, theology, ethics, legal theory, jurisprudence to mystical expressions and the embodied experiences of believers.<sup>5</sup> She expresses her discomfort with the verse Q. 4:34, which is used to justify violence against women. This uneasiness led her to conduct a detailed survey of exegetical and legal writings offering varied interpretations by Muslim scholars, spread over several centuries, starting from the earliest centuries of Islam to the seventeenth century, the twentieth and twenty-first centuries. The work is divided into two parts. The first part examines the interpretations offered by Muslim scholars and jurists in the pre-colonial era, and the second part deals with the interpretations provided in the post-colonial era. She explains that the reason for this division is the change in the Muslim discourse, especially with regard to gender, which came with the advent of colonialism. Chaudhry claims that the pre-colonial age represents the pinnacle of Islamic thought and the formation of a pristine and spiritually ascendant Islamic tradition. She further claims that one of the challenges faced by the post-colonial Muslim

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<sup>1</sup> Dr. Ayesha S. Chaudhry, The University of British Columbia <<http://grsj.arts.ubc.ca/persons/ayesha-chaudhry/>>.

<sup>2</sup> Ayesha S. Chaudhry, *Domestic Violence and the Islamic Tradition* (1st edn, Oxford University Press 2013) 19.

<sup>3</sup> Men are *qawwamun* (in authority) over women, because God has preferred some over others, and because they spend of their wealth (to maintain them). Righteous women are obedient and guard in (their husbands') absence what God would have them guard. Concerning those women from whom you fear *nushuz* (disobedience/rebellion), admonish them, and/or abandon them in bed, and/or *wa-dribuhunna* (hit them). If they obey you, do not seek a means against them, God is most high, great.

<sup>4</sup> (n 2) 19-20.

<sup>5</sup> Ibid 1.

scholars is that they must anchor their positions in the Islamic tradition, as breaking away from the tradition results in loss of authority in the eyes of the community.<sup>6</sup>

The foundational argument of *Domestic Violence* rests on the notion of ‘idealized cosmology’, which is explained as the representation of a perfect world, the vision of the world as it should be rather than what it is. In the case of the Muslim scholars under study, idealized cosmologies are visions of the universe as it would exist if all humans submitted themselves entirely to God’s laws.<sup>7</sup> The book suggests that the scholars from the pre-colonial and the post-colonial periods adhere to competing idealized cosmologies that are fundamentally irreconcilable. Scholars from the pre-colonial era promote patriarchal visions of Islam while those from the post-colonial era support an egalitarian vision of Islam, making it difficult for contemporary Muslim scholars to promote a gender-egalitarian interpretation of the Qur’an without losing authority. Chaudhry argues that the idealized cosmologies shape the scholars’ expectations from the Qur’an and hence determine the meanings they derive from the verse Q. 4:34.

The first three chapters of *Domestic Violence* are devoted to explaining how the verse Q. 4:34 has been interpreted and expounded upon by the Muslim exegetes and jurists of the pre-colonial era. The first chapter in particular provides the textual, historical, and cosmological contexts of the verse, which Chaudhry argues, have profoundly influenced its meaning. Her approach towards the textual context can be explained through the various interpretations of Q. 4:34 when read with Q. 4:35.<sup>8</sup> Together, the verses can be interpreted to mean that if a marital conflict cannot be solved through admonishment, abandonment and hitting, then a process of adjudication should be initiated.<sup>9</sup> However, it can also be understood to mean that when faced with a conflict, rather than attempting to address the issue internally through punitive means, it is best to seek external adjudication.<sup>10</sup> Chaudhry provides details of the occasions of the revelation of the verse. A woman named Habiba was reportedly hit by her husband, and she took her case to Prophet (SAW), who ruled in her favor and provided her retribution.<sup>11</sup> It is said that the verse Q. 4:34 was revealed at this time, forcing the Prophet to revoke his verdict.<sup>12</sup> Chaudhry holds that the discussion of Habiba’s story in the commentaries reveals that the pre-colonial exegetes spent their interpretive energies reconciling the discrepancy between the Prophet Muhammad’s (SAW) response and the divine decree in Q. 4:34, rather than on any ethical concern for Habiba’s welfare or protection. Chaudhry claims that despite variance on some technical points, the pre-colonial exegetes have consistently offered patriarchal interpretations of the verse. They have interpreted the terms like ‘*qawwamun*’ and ‘*faddala*’ which can have various meanings, to uphold the hierarchy of men over women, and the reason for this lies in their idealized cosmologies.

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<sup>6</sup> (n 2) 11.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid 24. Translation as provided in *Domestic Violence* of Q. 4:35, ‘If ye fear a breach between them twain, appoint (two) arbiters, one from his family, and the other one from hers; if they wish for peace, Allah will cause their reconciliation: for Allah hath full knowledge, and is acquainted with all things.’

<sup>9</sup> Ibid 28. This interpretation was adopted by the pre-colonial Muslim scholars.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid 32.

<sup>12</sup> Ibid.

The second chapter explores the ethical discussion on the procedures for disciplining the wives.<sup>13</sup> The ethical discourse is centered around the terms ‘*khawf*’ (literally, fear), ‘*nushuz*’ (literally, to rise), ‘*fa-izhunna*’ (admonish them), ‘*wa-hjuruhunna fi al-madaji*’ (abandon them in beds) and ‘*wadribuhunna*’ (hit them).<sup>14</sup> The interpretation of each of these terms has the potential to restrict or expand the privileges of a husband. Chaudhry points out that the term *nushuz* has also appeared in Q. 4:128 concerning *nushuz* by husbands. The pre-colonial exegetes, however, have interpreted wifely *nushuz* to mean four things: general disobedience, sexual refusal, rising out of one’s place, and hatred for one’s husband. In contrast, husbandly *nushuz* has been interpreted restrictively as ‘rising out of bed’, hatred for one’s wife or sexual withdrawal. The most common interpretation of *nushuz* in the pre-colonial era was a wife’s disobedience towards her husband. The majority of scholars understood it to be unqualified disobedience, expanding the range of behaviors for which a wife could be disciplined, while some limited it to sexual disobedience (described as a wife sexually refusing herself to her husband). Chaudhry illustrates the various meanings of admonishment and abandonment in bed as derived by scholars. Some understood admonishment as a strict warning or a threat, while others construed it as taking a loving approach with the aim of persuading the wife. Similarly, a range of explanations existed regarding abandonment in bed, varying from turning back on one’s wife to sexual abandonment, and to allowing the husband to have sex with the wife while shunning her in other ways. Chaudhry conducts a detailed examination of the term *wadribuhunna* which has been predominantly used in the debate on domestic violence. The pre-colonial scholars have unanimously interpreted *wadribuhunna* as hitting, striking or beating.<sup>15</sup> The only disagreement among the scholars of that era was on the procedure and the extent of permissible hitting. The scholars held that the hitting should not be extreme. However, their definition of non-extreme varied drastically, ranging from hitting with a handkerchief to lashing the wife hundred or more times with a whip.<sup>16</sup> The scholars only considered the prosecution of the husband in cases of excessive violence resulting in the wife’s death. Chaudhry concludes this chapter by pointing out that in spite of varied interpretations illustrating the interpretive flexibility available to the exegetes, they uniformly interpreted *wadribuhunna* to mean ‘hit them’.

The third chapter of *Domestic Violence* addresses the treatment of wife beating in the pre-colonial jurisprudence and explains the positions of the four major Sunni legal schools of thought: Hanafis, Malikis, Shafi’is, and Hanbalis. The discussion highlights that the Hanafi school instituted a husband’s disciplinary power over his wife with minimal legal accountability, while the Maliki position of making the husband liable for monetary compensation where the disciplining action results in damage or injury to the wife shows some concern towards regulating a husband’s power.<sup>17</sup> The Shafi’is took the imperative as meaning that Q. 4:34 was permissive rather than injunctive and thus designated disciplinary action as a discouraged (*makruh*) act.<sup>18</sup> Chaudhry’s study of the aforementioned positions reveals that the Sunni jurists were in agreement that husbands had the right to hit their wives if they committed *nushuz*. The beating should be non-extreme, and what constituted extreme

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<sup>13</sup> Ibid 57.

<sup>14</sup> Ibid 58.

<sup>15</sup> Ibid 80.

<sup>16</sup> Ibid 83.

<sup>17</sup> Ibid 108, 116.

<sup>18</sup> Ibid 124.

or non-extreme was legally ambiguous.<sup>19</sup> Chaudhry highlights that there was no discussion by these jurists on the legal recourse available to wives in cases where the severe beating did not result in broken bones or wounds. The majority of them held that a husband was only liable for retribution (*qisas*) in the case of his wife's death.<sup>20</sup>

The fourth chapter deals with what Chaudhry claims to be a transformed discourse on wife beating in the post-colonial era. This is the longest chapter of her book where she illustrates how a refashioned idealized cosmology has led the Muslim scholars of this era to understand the mere permission to hit wives as increasingly controversial, and has divulged the disparate approaches these scholars have taken to resolve this issue.<sup>21</sup> Chaudhry has divided this chapter into four parts, discussing the approaches of four different groups: traditionalists, neo-traditionalists, progressives, and reformists.

The traditionalists hold onto the patriarchal idealized cosmology of the pre-colonial times but add a modern spin to their arguments. They justify the husband's rank above the wife in a marriage due to his greater physical strength and intellectual capacity.<sup>22</sup> They expand the definition of *nushuz* to include carelessness, dishonesty, obstinacy, rudeness, disrespectful behavior, disregard for marital obligations, sexual lewdness, rejection of reasonable requests, sexual disobedience, going outside the house without the husband's permission, refusal to purify herself after sex/menstruation, and the abandonment of religious obligations.<sup>23</sup> The traditionalists restrict the kind of beating available to the husbands, and interpret the imperative 'hit them' as permissive in case of necessity and as a last effort to save marriage.<sup>24</sup>

The chapter then goes on to examine the position of the neo-traditionalists and claims that they are in the unenviable position of trying to balance the authority of the patriarchal tradition with gender-egalitarian values.<sup>25</sup> It is further claimed that the interpretation of *wadribuhunna* as 'hit them' is emblematic of the position of the neo-traditionalists who, while heavily supporting egalitarian cosmology, have managed to create an ethical space for husbands to hit their wives.<sup>26</sup> The neo-traditionalists hold that the hitting is meant to be symbolic rather than punitive. They restrict the definition of *nushuz* to either manifest indecency or the ill will of the wife. The neo-traditionalists distinguish between physical disciplining and violence, and condemn domestic violence. Chaudhry aptly points out their failure to provide grounds for this delineation.

Chaudhry then moves on to discuss the position adopted by the progressive scholars. She asserts that to claim authority, the progressive scholars desire to maintain a relationship with the pre-colonial tradition. They achieve this by representing minority opinions in traditional sources as dominant, and presenting them in such a light that they support their gender-egalitarian understanding of Islam. Moreover, they interpret *nushuz* to mean 'sexual

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<sup>19</sup> Ibid 131.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid 135.

<sup>22</sup> Ibid 145.

<sup>23</sup> Ibid 149.

<sup>24</sup> Ibid 154.

<sup>25</sup> Ibid 157.

<sup>26</sup> Ibid 158.

infidelity and disloyalty' and hold that this applies to both, the husband and the wife.<sup>27</sup> The progressive scholars offer alternative meanings of *wadribuhunna*, arguing that it might mean 'and have sex with them' after a period of separation or 'turn away from them.'<sup>28</sup> They firmly believe that there is no room for husbands to hit their wives.

Finally, the chapter discusses the approach adopted by the reformists. The approaches of the reformists and the traditionalists lie on the opposite ends of the spectrum. The reformists claim not to be bound by tradition as it was created by men who were but subjects of their historical and social contexts. They interpret *nushuz* in the same manner as the progressives. They also offer unprecedented and non-violent interpretation of *wadribuhunna* to mean 'separation'. Chaudhry concludes this chapter by observing that the struggle in the modern discussions is not so much with the Qur'anic text as with the tradition of interpretation that attributed patriarchal meanings to the Qur'an.<sup>29</sup> She argues that this diversity in the contemporary thought in many ways parallels the pre-colonial scholarship on topics unrelated to gender.

In the final chapter of her book, Chaudhry illustrates the selective use and different interpretations of the Qur'anic texts and the Prophetic reports by Muslim scholars to justify their interpretations of the Qur'anic texts. She provides various examples, most notably, the verse Q. 30:21. This verse states, 'And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquility with them, and He has put love and mercy between your (hearts); verily in that are Signs for those who reflect.'<sup>30</sup> The progressives and the reformists use this verse to establish the basis of an ideal relationship and as a challenge to physical disciplining, whereas the pre-colonial scholars have never mentioned Q. 30:21 in their exegetical and legal reflection on Q. 4:34.<sup>31</sup> Similarly, Chaudhry argues that according to a *hadith*, the Prophet (SAW) prohibited men from hitting their wives like slaves and then sleeping with them on the same evening.<sup>32</sup> The pre-colonial scholars interpreted this *hadith* as distinguishing the beating of wives from the beating of slaves since husbands might desire intimacy with their wives. Meanwhile, the progressives and the reformists understood it to mean that there was an outright prohibition against hitting one's wives, holding that Prophet (SAW) instructs Muslims not to beat their wives as they would beat a slave.<sup>33</sup> Finally, Chaudhry concludes her book by reiterating that the readers and their expectations determine the meaning of any given piece of the Qur'anic text.

### Analysis

*Domestic Violence* is an accessible piece of work, making it easier to grasp the nuanced reality of the interpretations of Q. 4:34 offered by various scholars. Chaudhry's extensive examination of the position of traditional and contemporary scholars with respect to the other Qur'anic verses and Prophetic reports shows the thoroughness of her research. The

<sup>27</sup> Ibid 179.

<sup>28</sup> Ibid 182.

<sup>29</sup> Ibid 195.

<sup>30</sup> Ibid 202.

<sup>31</sup> Ibid.

<sup>32</sup> Mansur ibn Yunus Al-Buhuti, *Irshad uli al-nuha li-daqa iq al-Muntaha: hashiya ala Muntah al-iradat* (vol 2, Dae Khidr 2000) 1133; *Muwaffaq al-Din 'Abd Allah ibn Ahmad Ibn Qudama, al-Mughni li-Ibn Qudama* (vol 10, Hajr, 1982) 1261-62; Mari ibn Yusuf Al Karmi, *Ghayat al-muntaha fi al-jam' banya al-Iqna wa-al-Muntaha* (vol 2, al- Mu'assasa al-Sa'idiyya, 1981) 92; (n 1) 218.

<sup>33</sup> (n 2) 218.

incorporation of interpretations offered by female Muslim scholars is another commendable feature of her work. Her discussion of the influence of one's idealized cosmology on one's interpretation of primary sources is particularly insightful. It lays bare the extent of maneuvering by scholars, while interpreting the sources, in reaching their desired conclusions. The book is well-structured and the arguments are clear and well-presented. Even if the readers, without knowing her thesis, were to read some extracts of her book dealing with diverse interpretations offered by scholars, they would probably arrive at the same conclusion.

Chaudhry's work has special relevance for Pakistan, particularly with reference to the recent passage of the PPWVA by the Punjab Government that has sparked debate on the link between domestic violence and Islam. As the name suggests, the PPWVA was meant to provide protection to the women of Pakistan, which has been ranked as the third most dangerous country for the women to live in.<sup>34</sup> Section 2(r) of the PPWVA describes violence as 'any offence committed against the human body of the aggrieved person including abetment of an offence, domestic violence, sexual violence, psychological abuse, economic abuse, stalking or a cybercrime.'<sup>35</sup> The fact that the Act attempts to criminalize domestic violence has caused much controversy. While the legislation was welcomed and celebrated in some quarters of the country for being a step in the right direction, others, particularly the right wing religious parties and the Council of Islamic Ideology (CII), vehemently opposed it and declared it un-Islamic.<sup>36</sup> They opined that the law is a threat to the family as a social institution and is contrary to the teachings of Islam and Sharia, and hence to the Constitution of Pakistan.<sup>37</sup> The CII also claimed that the law decreased the powers of husbands in a marriage and oppressed them.

Following this, the CII has recently proposed an alternative Women Protection Bill. Among the various propositions, the most relevant for the purposes of this review is the advisory body's proposal that 'a husband should be allowed to lightly beat his wife if she defies his commands and refuses to dress up as per his desires; turns down demand of intercourse without any religious excuse or does not take bath after intercourse or menstrual periods.'<sup>38</sup> It has suggested that beating is also permissible if a woman does not wear *hijab*, interacts with strangers, speaks loud enough that she can easily be heard by strangers, and provides monetary support to people without her spouse's permission.<sup>39</sup> In a press release, the CII sought to clarify what it meant by 'lightly beating', suggesting that a husband 'hit her with light things like [a] handkerchief, a hat or a turban, but do not hit her on the face or private parts. And the beating should not cause any kind of physical damage or even scratches. Resort to light stuff, nothing serious.'<sup>40</sup> This proposition by the CII has brought to

<sup>34</sup> Asian Human Rights Commission, 'PAKISTAN: World's third most dangerous country for women, A statement on the International Day for the Elimination of Violence against Women' *AHRC News* (24<sup>th</sup> November, 2015).

<sup>35</sup> Protection of Women against Violence Act 2016, s 2 (r).

<sup>36</sup> Dr. Inam Ullah, Chief Research Officer CII, Press Release, 5<sup>th</sup> April 2016 <<http://cii.gov.pk/pressreleases/PressRelease050416.pdf>> accessed 14 June 2016.

<sup>37</sup> *Ibid.*

<sup>38</sup> Obaid Abbasi, 'Women Protection: CII Tells Members to Finalise Bill' *The Express Tribune* (26<sup>th</sup> May, 2016) <<http://tribune.com.pk/story/1110571/name-protection-cii-bill-proposes-curbs-women/>> accessed 13 June 2016.

<sup>39</sup> *Ibid.*

<sup>40</sup> Sardar Sikander and Aroosa Shaukat, "'Gentle Beating' of Wife is No Violence, says CII Chief" *The Express Tribune* (27<sup>th</sup> May, 2016) <<http://tribune.com.pk/story/1111222/nothing-serious-gentle-beating-wife-no-violence-says-cii-chief/>> accessed 13 June 2016.

the forefront a highly debated issue – does Islam condone domestic violence? Is Islam not a religion of peace? What does it mean to say that men have authority over women? Does Islam not promote egalitarian principles? What exactly do the terms *nushuz* and *wadribuhunna* in the verse Q. 4:34 denote?

Using Chaudhry's analytical framework to examine the Women Protection Bill proposed by the CII, it appears that the CII's proposal to make lightly beating one's wife permissible has more to do with an interpretation of the verse Q. 4:34, which is influenced by their patriarchal world view, rather than by what Islam or the Qur'an represents. The opponents of the PPWVA claimed that it was an attempt to make men insecure. As a result, it was unsurprisingly to protect the privileges and powers of men that the CII responded with its own version of the Act, allowing husbands to lightly beat their wives for the commission of *nushuz*.<sup>41</sup> Viewing the CII's position through the lens of Chaudhry's idealized cosmologies helps one place the CII on the spectrum of the pre-colonial and the post-colonial scholars. The CII seems to fall in the category of the traditionalists among the post-colonial scholars with its expansive definition of *nushuz* and restrictions on permissible beating available to husbands. It also helps one understand the basis of the CII's arguments and the selective picking and choosing by it of the Qur'anic verses and the Prophetic reports. This gives one a tool to engage in constructive evaluation of the position adopted by the CII rather than blatantly discarding its position without grounds to support one's stance.

Chaudhry believes that it was the experience of colonization by the West that brought about changes in the traditional Muslim discourse. She refuses to provide a specific date for colonization since different regions experienced it at different times. It can be argued that Chaudhry fails to take into account the periods during which colonization actually occurred and to provide how and on what grounds the discourse was changed, as she only ends up discussing the earliest centuries of Islam till the seventeenth century, and then fast forwards her discussion to the twentieth and twenty first centuries. She also fails to address other pertinent questions: Would there have been no change in the discourse if not for colonization? Is it correct to assume that the West espoused egalitarian values during colonization when it was itself struggling with issues like the women's suffrage movement? What about the position of the Muslim scholars who were in the regions that were not colonized? Her stance fails to provide reasons for evolution in the Muslim discourse. She needed to address these questions to provide a better understanding of the actual reasons for the change in the Muslim discourse which she claims resulted from colonization. Moreover, the influence of the West on Islamic thought in particular has to be examined critically because of the attitude of the majority of the Muslim scholars, especially in our part of the world, who see the West as a threat. There are scholars who are not ready to engage with any thought that has been influenced by the West. Some opposition to the PPWVA was rooted in the belief that the Act was a conspiracy by the West to undermine Islam and dominate the Muslim culture. Fazl-ur-Rehman, a cleric and leader of the party Jamiat Ulema-e-Islam (F), said, '[T]his law is an attempt to make Pakistan a Western colony again.'<sup>42</sup> This is one of the reasons for which the Islamic tradition is defended vehemently, and in order to derive

<sup>41</sup> 'CII Rules Women's Protection Law 'un-Islamic'' *The Express Tribune* (3<sup>rd</sup> March, 2016) <<http://tribune.com.pk/story/1058773/top-pakistani-religious-body-rules-womens-protection-law-un-islamic/>> accessed 14 June 2016.

<sup>42</sup> 'Pakistan Religious Leaders Slam Women's Protection Act' *Al Jazeera* (4<sup>th</sup> March, 2016) <<http://www.aljazeera.com/news/2016/03/religious-leaders-slam-women-protection-act-pakistan-160303160705361.html>> accessed 12 June 2016.

authority, Muslim scholars have to provide a basis for their position in the tradition. Chaudhry's claim that it was the influence of the West that brought about change in the discourse just feeds into the fears and insecurities of the Muslim scholars and strengthens their monopoly over what constitutes a tradition.

As pointed out earlier, the book starts with Chaudhry's acceptance that every aspect of Islam is gendered. She moves on to question Islam's stance on gender equality. The book attempts to address this question by surveying how different scholars interpreted the Qur'an and at the same time shedding light on how those scholars handpicked the verses and the Prophetic reports that favored their interpretations. Chaudhry's approach leaves the question open-ended and invites the reader to challenge the credentials of an 'egalitarian' approach of the contemporary Muslim scholars, especially in the final chapter where she sheds light on the failure of these scholars to address verses or the Prophetic reports that blatantly disfavor their stance. An instance of this is the Prophetic report where the Prophet (SAW) prohibited men from hitting their wives saying, 'Do not hit the maidservants of God' but he later retracted his ban on hitting wives in the following words: 'hit them.' However, when married women complained to Prophet Muhammad (SAW), he censured those who had hit their wives, saying, '[T]hey were not best of the men.'<sup>43</sup> The post-colonial scholars ignore the part of this *hadith* that gives permission; they draw on the first and the last portions of the *hadith*.<sup>44</sup> Similarly, Chaudhry gives an example from the Prophet's farewell sermon when the Prophet gave important instructions for moral, ethical and upright behavior while summing up his prophetic message. He enjoined believers to hit their wives in a non-extreme manner only if they allowed those whom their husbands disliked into their beds or if they openly committed lewd acts.<sup>45</sup> However, the post-colonial scholars who claim that physical violence is prohibited, regardless of whether the nature of beating is extreme or non-extreme, simply discredit the authenticity of this *hadith*.<sup>46</sup> Hence the debate whether or not Islam promotes equality, which was initiated rather enthusiastically by Chaudhry with her personal account, is left unattended. This raises two questions (or confusions) in the reader's mind. Does Chaudhry believe that there can never be a clear answer to the issue and hence obscures the discussion in her conclusion by pointing out that Q. 4:34 will always have multiple meanings?<sup>47</sup> Or is Chaudhry, who believes in gender-egalitarianism, shying away from acknowledging that Islam itself is inherently patriarchal? It would have been interesting to have a clear answer from Chaudhry on the issue, given that she was aware of the gaps in the arguments presented by the scholars and their maneuvering to reach the conclusions they wanted to derive based on their idealized cosmologies.

## **Conclusion**

Despite its shortcomings, *Domestic Violence* offers readers a means to constructively engage with the explanations provided by various Muslim scholars concerning controversial social subjects. It effectively illustrates the influence of the idealized cosmology-driven expectations on the selection and interpretation of primary resources through an extensive

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<sup>43</sup> (n 2) 211.

<sup>44</sup> Ibid.

<sup>45</sup> Al Khazin al Baghdadi, *Tafsir al-Khazin: al musamma Lubab al ta'wil fi ma'ani al tanzil* (Maktaba al-Muthanna 1975) 375; Abd al Rahman al-Tha'alibi, *Tafsir al-Tha'alibi, al-musamma bi-l-Jawahir al-hisan fi tafsir al-Qur'an* (vol 2, Dar Ihya al-Turath 1997) 230-1; (n 1) 213.

<sup>46</sup> (n 2) 214.

<sup>47</sup> Ibid 224.

study of the diverse interpretations of the verse Q. 4:34.<sup>48</sup> The traditional Muslim scholars, from a period of uncontested reign of patriarchy, interpreted *wadribuhunna* as meaning that husbands could hit their wives. None of them believed it to be unacceptable or forbidden for husbands to hit their wives.<sup>49</sup> It goes on to show that the modern Muslim scholars, belonging to an age where patriarchy is being challenged by gender-egalitarianism, provide multiple interpretations of *wadribuhunna*, with some scholars interpreting it to mean that husbands may not hit their wives at all.<sup>50</sup> By engaging with the criticism of both the traditional Muslim scholars and the modern Muslim scholars, the book allows readers the creative space to challenge those scholars sitting in various councils and asserting religious authority, by surpassing the boundaries of the framework set by those scholars.

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<sup>48</sup> Ibid 220.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid 221.