

## Rethinking Liberalism, Spirito-Constitutional Morality: A Case Of Multitudinal Vulnerability Of Women In Pakistan

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### Abstract:

*The domain of liberal political theory has aptly dealt the question of liberty in its negative and positive formulations. However, the vulnerability to violence cannot merely be reduced to the concept of negative liberty as 'absence of restraint or opportunity'. Moreover, the multitudinal vulnerability of women in Pakistan to violence cannot be merely understood within the framework of Liberalism specially Berlin's two concepts of freedom. The status of women in Pakistan is very complex due to historical, religious, cultural, social, economic, and political influences.*

*(Bhattacharya 2020) "The practices such as 'dowry deaths, honour killings, acid attacks, exchanging women in marriage with no consideration for their consent, forced marriages, forced religious conversions' etc. are rampant." (1)*

*On the other hand, educational disparities due to cultural norms and economic constraints in rural areas, wage disparities, unequal job opportunities, under-representation in decision making bodies stand additional forms of violence against women of Pakistan. In short, women in Pakistan are not only deprived of both negative and positive liberties but vulnerable to all sorts of violence that requires rethinking of the theoretical frame of freedom and liberty in the discipline of political theory. This paper endeavours to explore conceptual and theoretical analysis of freedom through multiple sites of vulnerability of women in Pakistan. The historical and comparative political theory is the methodological framework of this paper.*

**Keywords:** *Liberalism, Pakistan, Women, Constitutional Morality, Vulnerability, Violence.*

### Introduction

A broad range of socioeconomic, cultural, and religious barriers have severely reduced the status of women in Pakistani culture. They are not entitled to their due space and their choices about productive and reproductive labour are curtailed. Gender disparities between men and women have gotten so bad that it has caused women to lose their identity; their concerns are unheard and unrepresented in the national accounts and policies. Their labour in the market is underestimated, while their domestic labour goes unreported. Unacknowledged in their role in reproductive and productive endeavours, they are viewed as what Young (1997) refers to as "workhorses."

(Elson, D. 1995) "gender-blind development policies are to blame for women's plight since they are reducing human resources—which are essential to both reproductive and productive processes—rather

than boosting them. Due to the institutionalization of these biases, women now have a lower standing in society and are not entitled to the resources that are thought to be necessary for their journey of emancipation from the grip of the exploitative patriarchal system.” (2)

(Alavi 1991) “Man-centric society holds a dominant position in the network of social associations, and this is essentially used to oppress women at all levels of society”. (3)

(Mumtaz 2007) “It is argued that the male-centric social culture and norms are to blame for preventing women from gaining access to vital financial resources like credit, education, successful businesses, and other wage-generating activities that are important for their more grounded status and bartering power” (4)

Pakistani women face inequities and division, from household to state policies, due to the country's man-centric belief system. This leads to marginalization and subjugation in both homes and communities.

The existing studies have highlighted that gender inequality refers to differences between people based on their gender, influenced by social perceptions and biological factors. It is a result of sociological and pragmatism differences.

(Wilson Lee and Robert M. Hathaway 2004) “Culture and customs shape gender roles, with Islam's conservative impact on women's place in society hindering their advancement and restricting policies, reducing their economic chances.” (5)

The exclusion, discrimination, violence and subjugation of women in Pakistan is multifarious. The women in Pakistan, mainly the Muslim women are victim of three spheres of denial of freedom. The first denial- they are restrained by the state, Islam and social norms to enjoy their basic minimum human freedom which has been available to Hindu women since antiquity which is Berlin's argument the denial of negative liberty. The second denial- they do not have avenues to practice or exercise freedom. For example, there is acute absence of equality of opportunity and resources to develop their agency and live a dignified life. The third denial- this is the most dangerous denial that goes beyond the two dimensions of freedom as discussed by I. Berlin. Herein, the women of Pakistan are vulnerable to all kinds of violence such as forced marriage, divorce, acid attacks, women exchange, and various other forms of sexual violence. The present paper is an attempt to discuss some of these issues concerning the third dimension of freedom and to show how these practices are exclusive to women of Pakistan due to extreme perversion in the practices of Islam.

### **Women in Non-Hindu World:**

In ancient empires, women were considered minors under male authority, such as fathers or brothers. In Athens, women were often chosen by their parents without their consent. However, in the Islamic perspective, women were able to fulfil their parents' wishes by marrying their husband without their consent, demonstrating the importance of women's rights in restoring their status in ancient civilizations as mentioned in Allen, E. A. Similarly in ancient Roman, according to Allen, women were considered a babe, minor, or ward, incapable of acting independently. They were under the husband's tutelage and guardianship.

(Encyclopaedia Britannica 1993) “Women's legal rights varied depending on the state, as they were reliant on their male kin and controlled by their husband.” (6)

They were not allowed to hold civil or public office, sign wills or contracts, function as witnesses, surety, tutor, or curator, or adopt or be adopted. It further reveals that in Scandinavian

ances, women were either married or single, and could be disinherited from family property if they married without their guardian's approval, as per the Code of Christian V.

The above examples of having no human space in both Islamic and Christian world for the women have also infiltrated in other cultures such in Hindu religion due to their forced intervention and imperialism of these two religions. The influence and infiltration of patriarchal values from Islam and Christianity to Hindu domain may be discussed elsewhere, but for current paper its obvious that patriarchy emerged from the religious domains of Islam and Christianity and spread over across the world.

Most importantly, the above situation highlights three points very clearly which is of consideration for the dominant theoretical premise of liberalism in general and Berlin's theory of liberty in particular. The following section demonstrates more venues and issues concerning the vulnerability of women in Pakistan.

### **Women and World Status of Pakistan**

(Regmi, B. R., & Adhikari, A. (2007) "Pakistan's Gender Empowerment Measure (GEM) ranking is 82 out of 93 nations registered with the UN. The GEM assesses women's empowerment quantitatively per country." (7)

The above is the report of Human Development Report 2007. This index takes into account the degree of inequality in the ability to control earned economic resources, as well as involvement in both political and economic decision-making.

The ten worst countries on Earth, according to the Global Gender Gap (GGG) study, are Yemen, Chad, Pakistan, Nepal, Saudi Arabia, Benin, Morocco, Turkey, Egypt, and Oman. Nine of the 10 have a majority of Muslims. Conversely, the top nations on Earth for women to reside in are Sweden, Norway, Finland, Ireland, New Zealand, Philippines, Germany, Denmark, Ireland and Spain.

Status of women by country according to data collected by Lauren Streib in the issue of Newsweek Magazine on 26<sup>th</sup> September, 2011 states Pakistan's position at 158. Legal justice, healthcare and health, education, economic opportunity, and political power were the factors that were considered. Lauren Streib established the rankings using consistent standards and accessible data. The result may be correct but reason is cultural constraints, social norms, lack of awareness, lack of education and poverty, wherever the circumstances will be same the result will be almost same. It is not particularly affiliated with religion Islam. The survey found that Iceland, Sweden, Canada, Denmark, Finland, Switzerland with top rankings whereas Chad, Afghanistan, Yemen, Democratic Republic of Congo, Mali, Solomon Islands, Niger, Pakistan at the bottom.

Thus, the religiosity of the space indicates an important factor to understand the status of women. As per international indicators used by various research bodies, women's status in Pakistan is worse due to its religious standing. Therefore, the following section focuses on the contradiction between theoretical and actual treatment of women within Islam and Islamic system of social governance in Pakistan. This also foregrounds the spaces which have rarely been considered within the domain of two concepts of freedom in Berlin's theoretical premises.

### **Islam and Women in Pakistan**

The Quran affirms that men and women are equally poised and have inherent dignity. It states that God has made both genders trustees of God on earth, and that every human being is equal

before Allah and responsible for their own deed. The Quran also states that no person is superior or inferior based on gender, colour, or nationality, as the sole basis for superiority is piety and righteousness, not gender, colour, or nationality.

Professor William Montgomery has reflected about the Muhammad as follows.

Benaboud, M. (1986). "Muhammad can be seen as a figure who testified on behalf of women's rights when seen in such historical context" (8)

Islam addressed human rights for Muslims and non-Muslims alike, as well as for relationships. In the Quran, there is no gender difference in human beings, and when a girl is buried alive, she is asked for her sin. Society reacts differently to the birth of a girl, suppressing grief and deciding whether to keep it in humiliation or bury it in the ground, as it is determined by evil. In Islam, marriage is based on mutual voluntary consent for peace, care, love, and companionship, rather than just satisfying human sexual desire. The Quran states that God created mates for tranquillity and placed affection and mercy between them. Divorce is permitted as a last resort, with both parties having some rights.

The Quran encourages mothers to express gratitude for their care during their childhood. The Prophet Muhammad taught kindness, care, and respect for women in all roles, including in his final message at 'Hujat-u-Wida'. Muslim women follow divinely based dress code and proper behaviour, not imposed by men. The Bible encourages women to cover their heads, as it is considered a disgrace to have hair cut or shaved off. This teaching emphasizes the importance of respect and kindness towards women in general.

Despite the theoretical equality in Islam as proposed in Quran women in Pakistani society face a variety of challenges that have not only diminished their standing in the community but also their ability to contribute positively to socio-economic progress and rethinking of the theoretical premises of liberalism and western thought.

(Mumtaz 2007) "The Muslim women of Pakistan suffers at all levels. Mumtaz has rightly demonstrated that religion reinforces patriarchy in a country like Pakistan." (9)

Islam has a greater influence on women's behaviour and aspirations in Pakistan. Islam is explicit about how men and women should divide labour and obligations and, in a way, it even celebrates masculine dominance. Islam maintains that there are distinct areas of action for men and women, in addition to a system of functional division predicated on their fundamental physical and physiological traits. The laws governing inheritance and the practice of purdah, or female seclusion, are two further aspects of Islam as it is practised in Pakistan that have a direct impact on women as instruments of patriarchal control. Nonetheless, a daughter is entitled to half of a son's portion under Muslim inheritance laws. In actuality, a woman typically receives less than she deserves.

Apart from the religious and civilisation aspect, there have been religion induced several other domains which centrally targets to degrade the status of women in Pakistan. Some of those aspects and practices are discussed below.

### **Biraderi and Family System:**

(Niaz 2003) "The family structure and the Biraderi system are the main obstacles in a patriarchal society. Possibly the most important factor limiting women's influence in households is the patriarchal nature of the family structure." (9)

A newly married woman is kept apart from her biological family and integrated into her husband's home through the patrilocal marriage custom, which is a sort of marriage in which

the wife moves in with the husband's family. Preference for village exogamy and Biraderi lowers a woman's ties to her birth family and reduces the possibility that her parents may step in to support her after marriage. In addition, physical separation and exogamy increase the likelihood that a woman's brothers will inherit the property rather than her.

In other words, the Biraderi system ensure the exclusion of women from the family of her birth to get excluded from the property right and village exogamy ensures her detachment from the same. On the other hand, her transfer to in laws house, puts her into extreme danger of all form of physical, emotional, psychological and sexual violence. Such system of marriage has been prominent in Islam from long and it infected the other religion such as Hinduism through the invasions of Mughals, Turks, Mongols etc. during the medieval era. Due to systems such as Biraderi, violence against women has become a justifiable social norm in Pakistan.

(Niaz 2003) “The patriarchal family structure keeps most women alone in their homes, and most of the time, beatings of wives are considered personal affairs for which no outside help is wanted.” (10)

More than half of the countries in South Asia have laws against domestic violence (UNDP 2010). But very recently, a measure in the southern province of Pakistan was just unanimously enacted by the provincial legislature of Sindh.

(CEDAW South Asia 2023) “The Sindh Assembly unanimously adopted the Domestic Violence (Prevention and Protection) Bill, 2013. The passage of this Act came after 5 years of struggle by the Aurat Foundation, in collaboration with activists, jurists, lawyers and women legislators. The Act defines domestic violence as inclusive of but not limited to, all acts of gender-based, and other physical or psychological, abuse committed by a respondent against women, children or other vulnerable persons, with whom the respondent is or has been in a domestic relationship.” (11)

In short, this act is very recent and has not much impact on the old religiously sanctioned traumatised treatments of women of Pakistan. The cultural, religious and socially sanctioned affairs against women have led to various contemporary practices that not only strengthen the patriarchal values but also make them common sensical and justifiable by various orthodoxy sects within contemporary Pakistani Islamic lifeworld.

### **Suffering in Conflict Zones**

#### **Federally Administered Tribal Areas of Pakistan (FATA)**

FATA is exempt from even a few regulations that provide protection for women. Seventy-Nine Fundamental rights guaranteed by the Constitution are denied to the residents of FATA by an administrative and legal framework defined in the 1901 colonial Frontier Crimes Regulations (FCR), along with the right to impartial justice. The collective responsibility clause in the FCR does not allow the detention of women and children under sixteen. This change was made in response to President Zardari's August 2011 reform package. However, when spouses and elder sons are jailed under collective and preventative detention clauses, women continue to suffer indirectly. Additionally, FCR denies FATA individuals the same political rights as other citizens. Only in 1996 did the government of Benazir Bhutto award adult franchises. Up until August 2011, when her widower, President Zardari, extended the Political Parties Order (2002) to the area, political party activity was restricted. Even Nevertheless, since their direct election to the National Assembly in 1997, FATA lawmakers have been unable to pass legislation pertaining to the organization.

FATA women would only experience political empowerment by voting and running for public office if much more is done by the ECP to support female voters and by the state to safeguard them, as well as female candidates and polling places. Every instance where women have been denied the right to vote should be looked into by the ECP. Badam Zari, an independent candidate and the first female FATA member, in the Bajaur agency 89 received just 142 out of 185,040 votes to run in the national elections. There were rumours that local clerics and strongmen had discouraged communities from supporting women candidates and from allowing them to cast ballots. Out of the 120,230 women listed on the agency's electoral roll, just 2,890 took part.

### **Khyber Pakhtunkhwa (KPK)**

Though there are occasional exceptions, women in KPK, as opposed to FATA, enjoy legal protections and constitutional freedoms. This is especially true in the Provincially Administered Tribal Areas (PATA). PATA is governed by the fundamental criminal and civil law framework of Pakistan and is subject to the authority of the Peshawar High and Supreme Courts, the provincial legislatures of KPK, and the National Assembly. But according to Article 247 of the constitution, laws are only applicable there if they are expressly extended by the governor, who is the federation's representative, and only with the approval of the president. Violent radicals target women in PATA and throughout KPK; Islamist parties are also attacking women's rights. The majority of mainstream parties don't do much to promote political empowerment, especially in the voting booth. There were twenty-six female candidates for the KPK provincial assembly in 2013, up from eleven in 2008. However, sixteen stood as independents, receiving neither financial nor logistical support from their parties. 92 out of the 18 female candidates running for general assembly seats in KPK, just five had the support of their party. Even a woman like Nusrat Begum, the district vice president of the PTI—the party that won the majority of votes in the KPK—and the first candidate from the Lower Dir district to run for a National Assembly seat, was an independent.

Social and cultural barriers often hinder women from receiving free legal counsel. Activists like Tabassum Adnan have attempted to restructure local systems like jirgas to better serve women's needs. In 2014, Adnan invited a girl to a regular jirga to help feuding families find alternative solutions. Women created a group called "jigra" in order to be respected and included in men's jirgas. The PCSW of KPK is testing a women's jirga as an alternative conflict resolution mechanism. Shirkat Gah, a women's rights organization, aims to engage with state institutions to address gender-based violence, strengthening the link between citizens and the state and contributing to community reconstruction and rehabilitation in conflict zones.

### **Women, Peace and Security**

The military's opaque counter-insurgency strategy has changed since 2004, resulting in lack of transparency in relief supplies for internally displaced people. Women are not allowed to participate in talks led by the military, despite being targets of insurgents' attempts to impose strict Islam. State measures to fight violent extremism lack a gender perspective and often lack a broader scope. A paradigm change is needed to acknowledge the people most impacted by the conflict as the main stakeholders. Rights activists argue that the move not to include women is intentional, as they may raise issues like rights violations. South Asians for Human Rights (SAHR), a coalition of women's leaders and activists from Afghanistan, India, Bhutan, Maldives, Bangladesh, Nepal, Sri Lanka, and Pakistan, aims to organize peace missions and develop a women's regional peace agenda. The Women's Regional Network, established in 2011, aims to enhance women's security and encourage conflict prevention and resolution. Asma Jahangir, a former UN Special Rapporteur on extrajudicial killings, believes women should be included in the process due to their competence.

### **Women, Business and Law:**

Pakistan has made improvements to its strategic and developmental initiatives in the past few years. One of the nation's priorities is still the economic inclusion of women. Equal chances for men and women encourage women to enter and stay in the labour field, which boosts economies and promotes development. Better development outcomes, like a decrease in the percentage of vulnerable employment and extreme poverty among female workers, are also linked to gender equality.

However, Pakistan is placed among the lowest performers in the South Asia region, with a 2022 Women, Business and the Law index score of 55.6 out of 100. Across the eight economies in South Asia, the average WBL index score is 63.7 out of 100. Within the region, the maximum score observed is 80.6 (Nepal). Afghanistan has the lowest score, preceded by Bangladesh and Pakistan. In recent years, Pakistan has improved upon strategic and developmental Initiatives. One of the nation's priorities is still the economic inclusion of women. Equal chances for men and women encourage women to enter and stay in the labour field, which boosts economies and promotes development. Better development outcomes, such as a decrease in the percentage of female workers in vulnerable employment and extreme poverty, are also linked to gender equality.

### **Flabbergast Issues:**

#### **Ghag or Forced Marriage:**

Forcible marriages are widespread in a nation where the majority of people follow strict interpretations of local norms. It is surprising to learn that forced marriage does not exist in Islam.

(Badawi 1980) “Islamic law states that women cannot be coerced into marriages against their will.” (12)

(Osman 1990) “‘Ghag’ is a horrible custom that goes against Islam's core principles. According to hadith, a woman must consent to a marriage; her parents or other family members cannot force her to marry someone she does not want to marry.” (13)

As was previously indicated, the horrible custom is to be opposed by the Khyber Pakhtunkhwa Elimination of Custom of Ghag Act 2013. It thus states, that "Ghag" refers to a custom, usage, tradition, or practice in which a man forcibly demands or claims a woman's hand without the woman's or her parents' consent by making an open declaration through spoken or written words, or by making a visible representation. In these situations,

(Osman 1990) “no other man is expected to propose to the woman or get married.” (14)

Unfortunately, Ghag bestows negative levels on women in a society dominated by the cruel trend of rationalizing male brutality and atrocities.

#### **Selling of Bride:**

Girls are customarily sold as "brides" in the tribal parts of Khyber Pakhtunkhwa (KP) and Balochistan, as part of the Walwar custom. In certain places, the custom—which is a mutually accepted kind of marriage—materializes the view of women as commodities with a cost.

(Noor, 2004) “Regardless of the buyer's age or reputation, the girl is sold to the highest bidder, and the transaction is justified under the guise of tradition.” (15)

The ways that society still discards women's bodies are a reflection of the truth that they are objects of property, commodities. She may be made available as payment for harm done to people or property. She can therefore be offered as *khooon-baha*, or blood money, as compensation for murder (known as *swara* among the Pashtuns).

(Jacoby, H. G., & Mansuri, G. (2010) "marriage transaction known as 'wattasatta' allows a man to obtain a wife by promising a woman he owns a daughter or a sister in return." (16)

### **Haq Bakshish:**

(Pianta 2013) "Matrimony to Haq Bakshish or Quraan This un-Islamic behaviour, which literally translates as "renouncing the right to marry," is primarily popular in Sindh and southern Punjab in Pakistan. This custom carries a seven-year prison penalty under Pakistani law." (17)

Giving female family members their portion of the land is not the evil's intended outcome. Some females are married off to the Quraan for life, even when they are just newborns. According to the Quraan, marriage is a ceremonial ritual that requires the married woman to live a life of chastity.

### **Acid Attack:**

(Zia, 2013) "a woman's value is correlated with her looks and, consequently, with her capacity for marriage and social standing, attacks typically target her face." (18)

Because of a culture that is fixated on a 'certain kind of woman' who must be attractive, these vicious assaults permanently harm women's confidence and mental health. As a result, it is nearly hard for them to become commodities, and they are reduced to being inconsequential parts of a society dominated by men.

(Zia, 2013) "The victims suffer from judicial and administrative avoidance in the majority of cases. Additional causes of a dearth of justice include widespread corruption, a lack of professionalism, ignorance, a lack of training, and a disregard for gender equality." (19)

As a result, it is clear when talking about women's status in Pakistan that the country is balancing oppressive traditions with borrowed modernity. Due to ignorance, the religion has adopted the 'non-Islamic' customs of the region and is defending their continuation. However, it might be argued that Pakistan has been forced to modernize, just like any other post-colonial society, and as a result, the society has not entirely transformed from the inside out. Consequently, the population of women is suffering as a result of the ongoing struggle between the two.

### **Denial of Constitutional Measures**

It's interesting to note that Pakistan has created laws to provide security and protection for women ever since gaining independence.

(Weiss 2012) "There was not much of a legal distinction made at the time of founding between the rights held by men and women." (20)

(Pakistan: VIII of 1961) "the Pakistani Constitution states: 'The state shall protect the marriage, the family, the mother, and the child;' 'No discrimination on the basis of sex along: Steps shall be taken to ensure full participation of women in all spheres of national life.' The 2010 Constitution's 18th amendment gave provinces more authority over problems pertaining to women's advancement as well as other matters at the provincial level." (21)



But, like other social sectors of Pakistan, the perennial problem of policy implementation has also plagued. This sector. At official level, the following Laws have been adopted in Pakistan to safeguard women:

(Pakistan: VIII of 1961)

- “Muslim family Laws Ordinance (MFLO) of 1961.
- The West Pakistan Family Courts Act of 1964.
- Dowry and Bridal Gifts Restriction Act, 1976.
- Criminal Law (Amendment) Act, 2004.19
- Protection of Women Act (2006)2”, revised the Hudood Ordinance.
- Criminal Law (Amendment) Act, 2010 (on sexual harassment).
- Protection against Harassment of Women at the Workplace, 2010.
- Prevention of Anti-Women Practices (Criminal Law Amendment) Act, 2011.21
- Criminal Law Act (Second Amendment, 2011), referred as Acid Control and Acid Crime Prevention Act.
- Criminal Law Act (Third Amendment, 2011), referred to as Prevention of Anti-Women Practices.
- The Women in Distress and Detention Fund (Amendment) Act, 2011
- Domestic Violence (Prevention and Protection), Act 2012.
- National Commission on the Status of Women Act, 2012.
- Enforcement of Women Ownership Rights Act 2012.
- The Khyber Pakhtunkhwa Elimination of Custom of Ghag Act 2013.22” (22)

Pakistan has ratified several regional and international agreements promoting women's equal status and protection. It is a member of the Beijing Plan of Action, the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the International Conference on Population and Development (ICPD). However, Pakistan has expressed reservations about Article 29, Paragraph 1 of the Convention, stating that its accession is subject to its Constitution. Pakistan has also pledged to

(Pakistan: VIII of 1961) "pursue a policy of eliminating discrimination against women by all appropriate means and without delay." (23)

However, all the above constitutional norms are violated due to its religious and social governance. The violators take recourse of religious doctrines and repress the agencies of women frequently. Such evidences necessitate to rethink the theoretical foundation of liberalism in general and Berlin's two concepts of freedom in particular.

### **Conclusion:**

The liberal lens has demonstrated two sides of freedom i.e. negative and positive liberties. These domains actually focuss on the constrain or restrain parts in the one hand and on the other the availability of resources. However, the religion induced violence do not sufficiently seem to be covered under the theoretical premise of negative liberty specially in the context of women in Pakistan.

The status of women in Pakistan is a complex issue that requires a multifaceted approach. It involves not merely addressing societal norms, improving educational opportunities, enhancing economic empowerment, and implementing legal frameworks but a religious and constitutional morality what Ambedkar would urge. Because, the women of Pakistan have witnessed the disregard and distortion of religious and Quranic principles in an Islamic community of

Pakistan which has justified punishing and excluding women as normal and usual. The habit of using Islam as an excuse for murder and other acts of cruelty can only be revived by reforming the existing Islamic principles its spiritual morality in tuned with constitutional morality.

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