



CASE STUDY

THE EXPERT ADVISORS

Abduction, forced conversion and forced marriage in Pakistan

BACKGROUND

Women face systematic challenges in Pakistan, including high prevalence of different forms of sexual and gender-based violence (SGBV). Women and girls from religious minority backgrounds – Christians, Hindus, Hazara and Ahmadi – are disproportionately targeted with specific forms of SGBV and gender-based discrimination such as ideologically motivated sexual grooming, abductions, forced conversions and forced marriages. According to the Human Rights Commission of Pakistan, around 1000 cases of forced marriages and abductions of religious minority girls were reported in the province of Sindh alone in 2018. Most of the victims come from economically marginalized backgrounds. The cases of abduction, forced marriage and forced conversion illustrate how gender, class, socio-economic status and religious affiliation are deeply entangled.

Convictions of perpetrators of these crimes are rare. The police regularly fail to act in response to complaints from parents, even if the girls are under-age. The police might claim that the girl has chosen to elope of her own free accord, and therefore it is not something for the police to investigate. This emboldens the perpetrators to threaten the families of the girls with more violence if they do not refrain from searching for their daughters. The marginalised position of the families of the girls might also make them unable to challenge the case in court. If the case is taken to the court, perpetrators sometimes provide falsified marriage certificates and confirmation of the conversions from imams. The perpetrators often have support from religious groups who are well-connected to those with political power. Girls may also be forced to confirm that the marriage and conversion was voluntary from her side and lie about her age. This makes the judge unable and/or unwilling to challenge the forced conversion and marriage. Even if the marriage is dissolved, it is still difficult to legally reverse a conversion to Islam.

Evidence gathered by the Coalition for Religious Equality and Inclusive Development (CREID) shows that there is a pattern of girls and women being targeted for sexual grooming, not only out of sexual predation but as a wider political project to hurt the religious minority and create a religiously homogenous society. The act of 'acquiring' of women from the religious minority is intended to symbolise the superiority of the religion of the majority. At the same time, it is also intended to humiliate the religious minority by bringing about shame. The loss of women is equated with the loss of honour, since women's bodies are in many ways perceived as representing the community's honour.

The right to freedom of religion or belief is set out in Article 20 of the Constitution of Pakistan. A Supreme Court judgement from 2014 broadened the scope of this article and directed the Government to take concrete actions to address the discrimination, including developing school curricula that promotes religious harmony and setting up a taskforce to address religious intolerance. Article 25 of the Constitution further states that all citizens are equal before the law and are entitled to equal protection of law, and Article 35 of the Constitution assumes responsibility to protect the marriage, the family, the mother and the child. The Pakistan Penal Code in its Section 364 (A) criminalises kidnapping and abduction of girls and women as well as forced marriages in Section 365 (B). There is no specific federal law prohibiting domestic violence.

Pakistan has adopted several international instruments to eliminate child, early and forced marriage. It ratified the Convention on the Rights of the Child (CRC) in 1990 which sets the minimum age of marriage at 18 and it has also ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which guarantees free and full consent to marriage.

Former Prime Minister Imran Khan has made repeated commitments to protect religious minorities in the country. In February 2020, he said: "I want to warn our people that anyone in Pakistan targeting our non-Muslim citizens, or their places of worship will be dealt with strictly. Our minorities are equal citizens of the country." Yet, there are allegations of him in 2019 hosting at his residence one of the main clerics behind the campaign of forced conversions in Sindh. Furthermore, the respect for the right to freedom of religion or belief was promised to Pakistan's religious minorities by the country's founder, Muhammad Ali Jinnah in 1947: "You may belong to any religion or caste or creed – that has nothing to do with the business of the state."

Religious minorities in Pakistan continue to be marginalised in multiple ways and they face hate speech, violent attacks and persistent discrimination. Blasphemy laws continue to be used to target religious minorities who are disproportionately accused under these laws. In 2020, despite criticism from human rights organisations, Pakistan was elected as a member of the UN Human Rights Council, the most important intergovernmental body within the UN system responsible for the promotion and protection of all human rights around the globe. The members of the Human Rights Council are expected to uphold the highest standards of human rights.

Scenario

In March 2021, Kavita Oad, a 13-year-old Hindu girl was abducted, forcibly converted and married in Sindh province. On 8th of March, five men, some carrying pistols, entered Kavita's family house and dragged her into a vehicle before driving away. The next day, a video was released of Kavita sitting on the floor, surrounded by hundreds of men singing maulood (praise for the Prophet in Sindhi language). When the family attempted to seek justice through filing a case, they were faced with pressures from the abductors to withdraw their case and their house was set on fire by thugs, her younger brother injured, and their valuables were stolen. The family already belonged to a financially marginalized class. The perpetrators are still free even though their identity is well-known.

Your team works for the UN Office of the High Commissioner for Human Rights in Geneva, and you are on an official visit to Pakistan. You have been alerted to the issue of forced conversion and abductions of religious minority girls in Pakistan during a meeting with a local women's rights NGO. The case of Kavita Oad has received some coverage in the international newspapers as well and you have discussed the case with your colleagues. You all agree that your delegation should talk to your contacts within the Government to raise the concerning case of Kavita Oad within the wider context of abductions, forced conversions and forced marriages of religious minority girls. You have approached your contacts at the Ministry for Foreign Affairs of Pakistan and a meeting with their team has been secured for next week.

Source

FORB and gender equality: Enemies or Allies

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Religious personal status laws in Egypt

BACKGROUND

Personal status laws (PSL), also called family laws, are a complex matter and regulate rights and responsibilities within the family, like marriage, divorce, inheritance, and child custody. In many parts of the world these laws are based on religion, cultural practices and traditional values. Different religious communities, (and sometimes different denominations within the same religious group), have their own legal systems and courts administrating these laws. The impact of personal status laws extends well beyond the private sphere, and often they have considerable influence over matters concerning for instance women's economic empowerment, such as their ability to open a bank account as well as land and property rights. Religious PSL are often problematic both from a gender equality perspective and a FORB perspective for the following reasons:

- Laws often reinforce discrimination based on religion or belief, since they grant women different rights and degrees of legal protection depending on their religious affiliation.
- Women outside recognized religious groups fall outside any legal system in these matters.
- Laws often pose restrictions on women's right to marry freely and raise their children in accordance with their religion or belief.
- Laws can coerce women to convert, e.g., in order to obtain a divorce more easily, or to refrain from conversion, in order to not lose custody over their children.
- Laws often reinforce discrimination against women by giving men more rights in family related issues.

PERSONAL STATUS LAWS IN EGYPT

In Egypt, Baha'is are not an officially recognised religious group and do not have an own personal status law. Their marriages are therefore not legally recognised, causing a lot of obstacles for Baha'i couples as well as their children. There is no civil marriage in the country and most religious authorities are strongly opposed to the concept. In relation to key aspects of their lives, Egyptian citizens are treated differently based on their perceived religious identity – often in ways that fail to guarantee equality in family issues and personal matters.

Laws that govern matters relating to marriage and family relations of the majority Muslims population provide a marital framework based on 'reciprocal' or 'complementary' rights rather than equal rights between spouses. The Muslim family laws are a key domain of law where women face inequalities. Yet, as these laws govern the majority of the population in Egypt, they have received more public attention than family laws providing for religious minorities in the country – whose laws are often based on colonial rulings from the 19th century.

A Muslim woman is not allowed to marry a non-Muslim man. In an interreligious marriage, where the man is Muslim and the wife is a Christian or a Jew, Muslim family law governs the relationship. Personal status laws for Christians only apply to Christian couples if they both belong to the same denomination. If spouses belong to different Christian denominations, they are subject to the personal status law for Muslims. For instance, if a Catholic woman marries a Coptic Orthodox Christian man, Islamic personal status law automatically applies to their marriage unless she converts to the Coptic Orthodox Christian denomination.

DIVORCE

Religious family laws in Egypt contain various very different regulations and restrictions when it comes to divorce. Under Muslim family laws, men have the unilateral right to divorce without legal proceedings. Muslim women have to apply for divorce through court action. If she does not provide evidence for harm or the incapability of the husband to provide for her, she will have to return her dowry and won't receive any alimony. Each Christian denomination has different regulations for divorce. Catholic personal status laws in Egypt forbid divorce entirely whilst Protestant and Coptic Orthodox personal status laws only allow divorce on certain grounds, like adultery or conversion of a spouse to another religion. In 2012 the Coptic Orthodox Christian churches added physical abuse and absence as acceptable grounds. Yet, due to lengthy legal proceedings and high fees, Christian women may be trapped in abusive marriages. As the process of seeking a divorce can take several years, it has often deterred women from seeking divorce. Sometimes women convert to Islam to obtain divorce more easily – but then face problems to re-convert back to Christianity.

CHILD CUSTODY

The legal provisions for custody in personal status laws are problematic and do not take into consideration the best interest of the child. For instance, in Muslim family law, physical custody of children is automatically transferred to the father at the age of 10 for boys and 12 for girls. For Coptic Orthodox Christians, the spouse responsible for the divorce cannot get custody of the children. Also, if a divorced Coptic mother gets remarried, she is deprived of the custody of her children. A divorced woman's entitlement to reside in marital home or receive support to live

elsewhere is solely dependent on her custody of the children and the current Coptic law can render divorced women homeless.

REFORMING PERSONAL STATUS LAWS

Reforming these personal status laws in Egypt has been challenging as they reflect customs and beliefs in society that are reinforced by traditional and religious authorities. Given a discriminatory wider context in which Sharia is seen as the main source of law (including civil law), the Coptic Orthodox church considers personal status laws to be a crucial part of the Church's right to institutional autonomy, guaranteeing minority rights. None the less the State always has a duty to ensure that any legislation enforced on its territory respects human rights, meaning this autonomy cannot be total.

The Coptic Orthodox, Evangelical and Catholic churches have recently worked together to draft a new unified personal status law for all Christians. The draft new personal status law would for instance create gender-equal inheritance rules and extend the justified grounds for divorce. It is currently (2022) pending approval at the Cabinet.

LEGAL FRAMEWORK IN EGYPT

The Constitution of Egypt includes numerous articles protecting the rights of women, preventing discrimination and providing equal opportunities. For instance, Article 53 of the Constitution states that all citizens are equal before the law and prohibits discrimination on the basis of sex (amongst other factors). Egypt has also ratified CEDAW but maintains reservations to Article 16 (equality in marriage and family life) based on the provisions of Islamic and Egyptian law under which husband and wife have different rights and duties.

Scenario

Your team works for the UN Office of the High Commissioner for Human Rights based at the regional office in Beirut and you are on an official visit to Cairo. You have recently met women's rights activists who raised concerns about the discriminatory nature of religious personal status laws in Egypt. One of the activists, Miriam, told her own story to highlight the multiple challenges with the personal status law.

Both Miriam and her husband are Coptic Orthodox Christians. They have been married for 10 years and have two daughters. Miriam's husband is abusive and after years of enduring in a difficult marriage, she feels like the only safe option for her is to seek divorce. Yet, she is facing a challenging situation. As a spouse seeking for a divorce, she would likely lose the custody of her daughters. Also, if she lost the custody of her children, she would also lose her entitlement to stay in the family home or receive support to live elsewhere - which would add a real risk of rendering her homeless as she has been financially dependent on her husband. Seeking to remarry would also not be an option as this would

deprive her of the custody of her children as well. She could convert to Islam since it is slightly easier to gain divorce under Islam but is hesitant to do so since she knows it is really difficult to reconvert back to her Christian faith. Furthermore, the legal process for divorce is lengthy, often expensive as well which is also making Miriam unsure about the feasibility of this option. Yet, she fears to stay in the marriage which is draining her emotionally and physically.

You are aware of the current reform process to create a unified personal status law for Christians and after meeting Miriam and other activists, your team wants to take action. You have approached your contacts at the Ministry for Foreign Affairs of Egypt and a meeting between your delegation and their team has been secured for next week to discuss the religious personal status laws in the country.

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