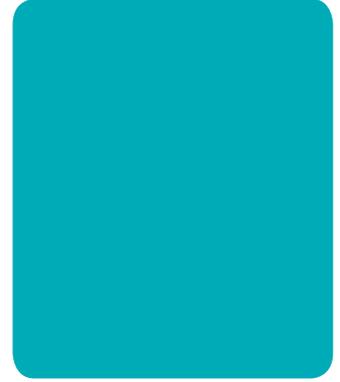
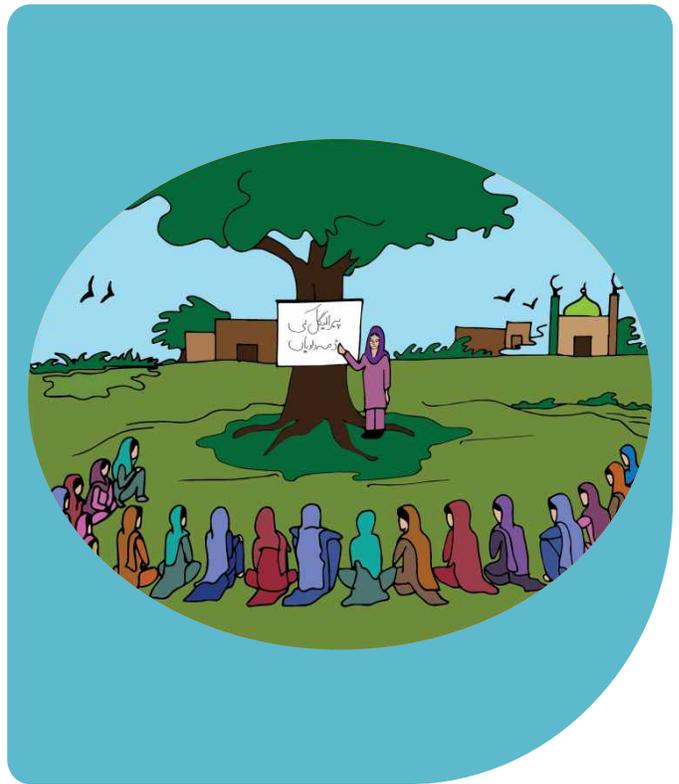
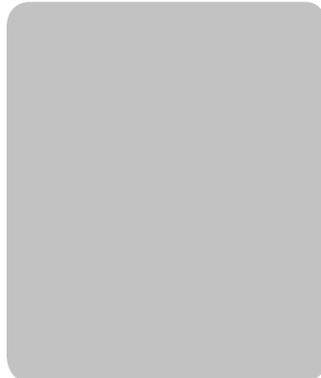


PAKISTAN'S NATIONAL



Community Paralegal Training Manual



BOOK 2



Acknowledgements

This is Pakistan's first National Training Manual for Community Paralegals. It represents the joint work of multiple donors and implementing partners working together for enhanced legal empowerment of the poor in the country through the Community Legal Services Forum (CLSF).

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No changes may be made to this manual without authorization from CLSF. This manual may be used freely, in whole or in part, with the following citation:
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Letter of Endorsement from Law & Justice Commission of Pakistan (LJCP)



LAW & JUSTICE COMMISSION of PAKISTAN GOVERNMENT of PAKISTAN

The Secretariat of the Law & Justice Commission of Pakistan (LJCP) was pleased to review the first National Community Paralegal Training Manual, which has been developed collectively by the member organisations of the Community Legal Services Forum (CLSF).

Given the levels of legal exclusion and poverty, the many barriers that the poor and vulnerable face in accessing the formal justice system, innovative and accessible initiatives are required to ensure that citizens have effective justice that is, as promised by the Constitution, “inexpensive and expeditious” (article 37(d)).

Discussing the magnitude and impact of legal exclusion in the address to the Senate of Pakistan, on 3 November 2015, the Honourable Mr. Justice Anwar Zaheer Jamali, Chief Justice of Pakistan, declared that “legal inclusion” must be a national target.

Globally, citizen-based para-legal initiatives have become a key feature of the strategy to combat legal exclusion. Para-legals are supporting citizens and communities who are usually unable to access the formal justice system due to lack of information, resources and other barriers. As such, para-legals are actively addressing the challenges arising from legal exclusion to enhance access to justice and ensure that the rule of law protects all effectively.

The Manual fills a critical knowledge gap. It compiles and presents technical information in a manner that it is accessible to those with little and no formal legal knowledge and training. As a legal empowerment strategy, it is designed to inform those with minimal education, enabling them to support their communities and families to assert their rights and claim their entitlements, directly impacting their survival and livelihoods. The Manual can be used to inform para-legal training materials, develop curricula, trainings and promotional materials. It will serve to promote legal awareness and hopefully prove to be a significant reference for strengthening legal empowerment and promoting the para-legal movement in Pakistan.

To meet the challenge of legal inclusion, we are hopeful and look forward to CLSF taking the Manual to the next stage, encouraging and supporting its use by partnering with relevant stakeholders to implement innovative solutions. At the same, we trust that stakeholders will adapt and use the content through creative empowerment and outreach techniques and methods to promote access to justice for all.

22 October 2016

STRIVING FOR A RULE OF LAW BASED PAKISTAN
www.ljcp.gov.pk

Abbreviations

ADR	Alternative Dispute Resolution
CLSF	Community Legal Services Forum
CNIC	Computerized National Identity Card
CPC	Civil Procedure Code
CrPC	Criminal Procedure Code
FIR	First Information Report
GBV	Gender-Based Violence
LJCP	Law & Justice Commission of Pakistan
NADRA	National Database and Registration Authority
NGO	Non-Governmental Organization
PPC	Pakistan Penal Code
SDG	Sustainable Development Goal
UDHR	Universal Declaration of Human Rights
VAW	Violence against Women

Table of Contents Book 1

(See Book 1 printed separately)

ACKNOWLEDGEMENTS	i
LETTER OF ENDORSEMENT FROM LJCP	ii
ABBREVIATIONS	iii
INTRODUCTION AND HOW TO USE THIS MANUAL	1
PART 1: PARALEGAL VALUES	
MODULE 1 – WHAT IS LEGAL EMPOWERMENT?	11
MODULE 2 – PARALEGAL ROLES AND RESPONSIBILITIES	25
MODULE 3 – PARALEGAL ETHICS AND CODE OF CONDUCT	41
PART 2: PARALEGAL SKILLS	
MODULE 4 – SOCIAL MAPPING	55
MODULE 5 – CONDUCTING LEGAL EMPOWERMENT SESSIONS	67
MODULE 6 – RECORD MANAGEMENT SYSTEMS AND SUPERVISION	87
MODULE 7 – INTERVIEWING A CLIENT	103
MODULE 8 – REFERRALS AND NAVIGATING AUTHORITIES	117
MODULE 9 – COUNSELLING	125
MODULE 10 – MEDIATION AND NEGOTIATION	137
MODULE 11 – WRITTEN SKILLS AND TIME MANAGEMENT	175
ANNEXURES:	
ANNEX 1 – SAMPLE PARTICIPANT KNOWLEDGE ASSESSMENT FORM	191
ANNEX 2 – SAMPLE TRAINING EVALUATION FORM	195
ANNEX 3 – ENGLISH AND URDU VOCABULARY LIST	197
ANNEX 4 – PERSONAL DATA PRIVACY & PROTECTION POLICY	201

Table of Contents Book 2

ACKNOWLEDGEMENTS	i
LETTER OF ENDORSEMENT FROM LJCP	ii
ABBREVIATIONS	iii
INTRODUCTION AND HOW TO USE THIS MANUAL	205
PART 3: PARALEGAL KNOWLEDGE	
MODULE 12 – FUNDAMENTAL RIGHTS	211
MODULE 13 – ADMINISTRATIVE JUSTICE	227
MODULE 14 – FAMILY LAW	243
MODULE 15 – CRIMINAL LAW	261
MODULE 16 – GENDER-BASED VIOLENCE	279
MODULE 17 – CHILD PROTECTION	295
MODULE 18 – PROPERTY LAWS	309
MODULE 19 – WORKERS' RIGHTS	325
MODULE 20 – CONSUMER PROTECTION	345
MODULE 21 – INTERNATIONAL HUMAN RIGHTS LAW	357
MODULE 22 – PAKISTAN CONSTITUTION AND GOVERNMENT	371
ANNEXURES:	
ANNEX 1 – SAMPLE PARTICIPANT KNOWLEDGE ASSESSMENT FORM	389
ANNEX 2 – SAMPLE TRAINING EVALUATION FORM	393
ANNEX 3 – ENGLISH AND URDU VOCABULARY LIST	395
ANNEX 4 – PERSONAL DATA PRIVACY & PROTECTION POLICY	399



**INTRODUCTION AND
HOW TO USE THIS MANUAL**

INTRODUCTION AND HOW TO USE THIS MANUAL

Purpose of this Manual

This course is intended for use by people training community paralegals across Pakistan. The course will enhance both community paralegals' skills and legal knowledge, thereby providing a better quality and uniform standard of service to poor and vulnerable communities.



This course has been designed to include a number of themes, which have been broken down into training modules. The entire course could be taught over five or six sessions of four to five days each. The authors envision, however, that trainers will select particular parts of the course depending on the legal problems most frequently occurring in a particular community, as well as the skills needed by the paralegals they are training.

The authors envision that the manual itself will also be useful for community based paralegals, as well as their mentors and supervisors, to keep and use as a reference.

What are Paralegals?

Paralegals, as defined by Vivek Maru, Chief Executive Officer of Namati, are non-lawyers working directly with the poor or otherwise disadvantaged to address issues of justice and human rights. Paralegals work in different capacities around the world -- in the Americas, Africa and Asia -- and paralegal programs can take many forms. Paralegals are responsive, flexible, adopt problem-solving approaches, and perhaps most importantly, provide solutions that are rooted in local context. The success of the paralegal approach as a component of a holistic effort at improving access to justice for the poor is well-documented and has proven to be particularly potent in bridging various gaps that exist in the delivery of justice. Paralegals bridge gaps between formal and informal justice, between law and tradition, and between the individual and the state.

Structure of the Manual

The manual is divided into various modules organized into three themes: Paralegal Values, Paralegal Skills and Paralegal Knowledge. The modules on Paralegal Values cover Legal Empowerment, Paralegal Roles and Responsibilities, and Paralegal Ethics and Code of Conduct. These modules provide context and foundation for the work of paralegals. The Paralegal Skills modules include Conducting Legal Empowerment Sessions, Social Mapping, Record Management Systems, Interviewing Clients, Referrals and Navigating Authorities, Counselling, Mediation and negotiation, and Written Skills and Time Management. These modules are intended to help equip paralegals with the skills required to provide effective legal empowerment services for citizens in their communities.

The modules about Paralegal Knowledge focus on legal topics such as Fundamental Rights, Administrative Justice, Family Law, Criminal Law, Gender-Based Violence, Child Protection, Property Law, Workers' Rights, Consumer Protection, International Human Rights, Pakistan Constitution and Government, and Provincial Laws. Each theme is discussed in detail, along with the legal remedies and scope for paralegal services. Paralegal training programs can select the appropriate Paralegal Knowledge modules for inclusion in their trainings based on the needs identified in their local communities. Additional areas of law, such as persons with disabilities, commercial law, etc., can be added as required. The legal information provided in the chapters is viewed from a national perspective. Different provincial governments may enact different laws in different parts of Pakistan, and paralegals and supporting organizations should ensure they make use of laws relevant to them. Finally, it is important to keep in mind that the law keeps developing with new laws and new amendments being introduced periodically. This manual is meant to be a starting point and will require updating with the passage of time.

Interactive Teaching Techniques

A key feature of this manual is the inclusion of interactive teaching techniques. The manual is meant to be used as a training tool for new paralegals as well as a resource for paralegals to use when they conduct legal awareness sessions in their communities. Interactive or participatory teaching is recognized as a more effective and enjoyable way to facilitate learning and techniques such as games, role plays, debates, brainstorming and case studies have been included in every section of the manual. These exercises are recommended for use in training paralegals as well as available for use in community awareness sessions. A separate module has been included on conducting legal empowerment sessions, which includes lesson planning and using appropriate interactive teaching techniques and is recommended as a starting point for any paralegal training.

GUIDELINES FOR TRAINERS

This section sets out some key guidelines for trainers when preparing for a training session with paralegals, and some initial exercises to include at the start of the course.

A) Advanced Preparations

Prior to the training, the trainer must ensure:

1. That he/ she is completely familiar with all the steps detailed in the Training Manual.
2. That the training room is set-up so that it is possible to put the participants in small groups.
3. Such set-up is mandatory since the Module is experiential and highly participatory.
4. The following material is available at the training venue in the required numbers:
 - Participant Hand-outs
 - Pre-training and post-training Assessment Forms
 - Feedback Forms/ cards
 - Stationery
 - Banner



- Pens for the participants
 - Writing pads
 - Multimedia
 - Set up a registration table. As the participants come in, have them fill out the Registration Form, making sure that they sign it too. Give each participant relevant material for training.
5. The trainer should provide the following information at the beginning of training:
- Time schedule
 - Individual responsibilities in the trainer's team
 - Administrative and financial procedures
 - Logistics, and possible social events

B) Start of the Training

Start the training in a proper manner by taking the following steps:

Participant Introductions

Begin the workshop by introducing yourself and the organization and welcome the participants. Conduct some type of introduction activity which may serve as an icebreaker as well.



Sample Icebreaker - Introducing each other: 30 minutes

Participants are asked to break up into pairs to learn about each other in order to briefly introduce the other person to the group.

1. **Purpose:** To serve both as an icebreaker and a way for participants to learn more about one another
2. After welcoming participants to the training program, tell them that they are going to introduce one another to the group.
3. Break participants into pairs by asking each person to work with the person sitting next to him or her/ or opposite. To alleviate confusion, you could assign these pairs and, if there is an odd number, break the last group into a triad.
4. Instruct participants to spend a few moments learning about the other individual in order to introduce that person to the rest of the group. Suggest that each person learn something about the other person such as the person's hobbies, qualification, special skills or training, etc.
5. After each pair has had enough time to learn about each other (monitor each pair's discussions by walking around to check if they are still interviewing each other), ask each person to introduce the other to the entire group. Explain that these introductions should be brief—only a minute or two.
6. **Debrief:** Thank participants for their introductions of one another and begin the training
7. **Variations:** Give specific questions that each person should ask of the other, such as favourite part of his or her job, a funny experience he or she may have had in his or her career, etc.

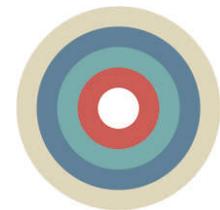
C) Suggested Ground Rules**10 minutes**

At the start of training, set some ground rules.

1. Explain that in order for the training to go smoothly without any hindrances; participants will have to follow certain rules.
2. Let participants generate a list of do's and don'ts. Write on the flipchart the list of rules generated and explain each as you write it. Examples of ground rules may be as follows:
 - Switch off cell phones or put them on silent/vibrate
 - Do not receive calls during the training
 - Punctuality
 - Be respectful of the opinions of other participants and the facilitators
 - When contributing, talk loud enough for all to hear
 - Talk one at a time
 - No side talks, corner meetings etc.
3. Discuss and agree on the rules that will guide the training. Write these on another flipchart.
4. Ask participants if they agree to abide by these ground rules.
5. Post the ground rules list on the wall in the training room.
6. To make it binding and interesting, ask the participants to suggest a fine in case of breach of any rule usually in the form of song, poetry, joke etc

**D) Objectives of the Workshop****10 minutes**

1. Discuss the objectives with the group and answer any questions.
2. Ask the participants what they think they are going to learn in this course? List the responses on the flip chart
3. Should anyone mention expectations that you know will not be met in the course, this is the time to explain that and why.
4. The facilitator can either write out the objectives on flip chart or print it out and hand each participant a copy.
5. Ensure that participants understand the workshop purposes, objectives, and intended outcomes. Facilitate a question and answer session to clarify any questions or concerns.



E) Pre-Training Assessment**15 minutes**

1. Inform the participants that before you formally begin the training that you would like them to fill out a Pre-Training Assessment Form. Put them at ease by telling them that this is NOT a TEST.
2. Hand out the Pre-Training Assessment Forms, and tell participants the time they have to fill in the forms. Sample Assessment Forms can be found in Annex 1 of this manual.
3. After the designated time, collect the forms, ensure they are all names, and put them in an envelope marked 'PRE-TRAINING ASSESSMENT FORMS'. The results of these forms should be compiled into a spreadsheet so that you can track progress as participants gain experience in paralegal work. After you have collected all the forms, tell the participants that they will have the opportunity to fill out this form again at the end of the training.

**F) Post-Training Assessment****15 minutes**

1. The post-training assessment will enable trainers' and organizers to measure the difference in knowledge and skills before and after the training. This information will help in reviewing the training materials and training delivery for further improvement in future trainings.
2. Give participants the Post-Training Assessment Forms, and tell participants how much time they have to fill them out.
3. After the allocated time, collect the forms, count them, and put them in an envelope marked 'POST-TRAINING ASSESSMENT FORMS'. These results should likewise be entered into a spreadsheet to enable comparison before and after the training. This comparison will enable tracking whether and to what extent the training and experience-building has succeeded and what additional areas need more focus.





**MODULE 12:
FUNDAMENTAL RIGHTS**

MODULE 12: FUNDAMENTAL RIGHTS

Objectives:

By the end of this module, learners will understand the importance of fundamental rights to the daily lives of citizens. They will have an introduction to fundamental rights protected under international law and the Constitution of the Islamic Republic of Pakistan. Learners also will understand how paralegals can help citizens when fundamental rights have been violated.

Time: 60 minutes

Sections in this module:

1. What are fundamental rights?
2. What fundamental rights are protected in Pakistan?
3. How can a paralegal help citizens when fundamental rights are violated?

Using this module: Below is reading material that is important preparation to understand the topic of this module thoroughly. Throughout the module there are a series of activities that can be used to train others. The module concludes with a written assessment that all learners should be able to fill out successfully after the training.

1. What are Fundamental Rights?

Fundamental rights are those basic rights that are essential for human life and development. These rights belong to every human being and cannot be taken away or violated by any law or Government or any other person or institution. Often, rights must be balanced against one another, but some rights are inalienable, such as freedom from torture.

Governments have obligations to protect fundamental rights. Fundamental rights provide protection against excesses committed by the Government and also require Government to take action when fundamental rights are being violated by anyone.

Fundamental rights were articulated and agreed by the global community of citizens in 1948 in the Universal Declaration of Human Rights (UDHR). Fundamental rights also are guaranteed to every citizen in Pakistan under the Constitution. They are also protected all world religions, including Islam.

Every law, Government policy and State institution in Pakistan must promote and protect the fundamental rights of citizens included in the Constitution. Paralegals can play an important role in helping citizens protect their fundamental rights and address violations of those rights.

Activity 1 - Brainstorming

Ask the participants to name all the things that an individual needs in order to lead a good life.

Ask if each of these things is really a need, or if any of them are simply desirable (such as a car or a big house).

Make two flip chart lists – one list of needs and one of wants.

2. What Fundamental Rights are protected in Pakistan?

Fundamental rights are listed in Chapter 1 of The Constitution of the Islamic Republic of Pakistan, 1973 with amendments up to 2015. See <https://pakistanconstitutionlaw.com/> for more details. The Constitution lists 21 fundamental rights, as follows:

1. The right to life and liberty

All citizens have to right to life and liberty. The right to life includes the right to be alive and to lead a good, healthy life.



2. Safeguards as to arrest and detention

Every person who is arrested must be informed about the reason for his or her arrest and must be given the right to consult with and be defended by a lawyer. Every person arrested must be brought in front of a magistrate within 24 hours of arrest. This section also contains protections in cases of preventive detention.

3. Right to a fair trial

A fair trial includes all the rights and guarantees provided in the Code of Criminal Procedure and the Code of Civil Procedure as well as other laws. Broadly these include: The right to a fair and impartial judge. The right to be represented by a lawyer of your choice. The right to be informed of the charge against you and to prepare and present your defence. The right to be present in all proceedings, examine any evidence presented against you, and present any evidence or witnesses to support your case. The right to an appeal.

4. Prohibition of slavery and forced labour

All forms of forced labour – paid or unpaid – are prohibited in Pakistan. No child below the age of 14 years is permitted to work in a factory, mine or any other hazardous employment.



5. Protection against retrospective punishment

No person can be punished for committing an act which was not a crime at the time. Similarly, no person can be given a punishment that is more severe than the punishment provided at the time of the act.

6. Protection against double punishment and self-incrimination

No person can be punished for the same offence more than once. No person can be compelled to be a witness in his or her own case.

7. The right to dignity, the privacy of home, and protection against torture

Every person has the right to dignity and privacy of the home. No person can be subjected to any kind of torture for the purpose of extracting evidence.

8. Freedom of movement

Freedom of movement includes the right of all citizens to stay in a place and, subject to reasonable restrictions (e.g. for security), move freely and live in any part of Pakistan.

9. Freedom of assembly

All citizens of Pakistan have the right to peacefully assemble and protest. Such assemblies must remain peaceful and no member of the gathering should be armed.

**10. Freedom of association**

Every person has the right to form an association or a union (e.g. labour unions, traders associations, etc.). Every person has the right to form or be a member of any lawful political party.

11. Freedom of trade, business and or profession

Every citizen has the right to join any legal profession or conduct any legal business. The Government may regulate such profession or business through a licensing system (e.g. commercial driving license, regulation of pharmacies, etc.)

12. Freedom of speech

Every person has the freedom of speech. However, the Government can restrict this freedom for the following reasons: the interest of the glory of Islam, the integrity, security or defence of Pakistan, friendly relations with foreign States, public order, decency or morality, contempt of court, or incitement to an offence.

**13. Right to information**

Every citizen has the right to any information related to a matter of public importance (e.g. the spending of development funds). In order to get this information, citizens have to file a Right to Information request to the concerned department under the relevant provincial laws. Pakistan was the first country in South Asia to protect the right to information through the Freedom of Information Ordinance, 2002, at the federal level.

**14. Freedom of religion**

Every citizen has the right to profess, practice and propagate their religion. All religious groups are allowed to establish, maintain and manage their religious institutions.

**15. Protection against religious tax**

No person is required to pay any special tax that is used to propagate or maintain any religion other than his own.

16. Protection against forced teaching of religion

No person can be forced to attend religious classes or participate in religious functions of another religion in any educational institution. There must be no discrimination in admission to any institution that receives public funds.

17. Right to property

Every citizen has the right to buy, keep or sell property subject to regulations and the following conditions:

- No person shall be deprived of their property except in accordance with law
- Property can be taken by the state, but only when it is required for public use and compensation is provided to the owner of the property (e.g. construction of new highway, power plant, etc.)

18. Equality of all citizens

All citizens are equal before the law. There can be no discrimination on the basis of gender.



19. Right to education

The State must provide free and compulsory education to all children aged 5-16 years.

20. Protection against discrimination in services

There can be no discrimination in Government employment on the basis of race, religion, caste, gender, residence, or place of birth. The Government can reserve posts in order to provide adequate representation to a particular community.



21. Preservation of language

Any group of citizens that has a different language or written script or culture has the right to preserve and promote them and establish institutions for the purpose.

The **Universal Declaration of Human Rights (UDHR)** includes a similar, but slightly different, list of fundamental rights that apply to all people everywhere. The UDHR is at the end of this module and on the Internet in Urdu at http://unicode.org/udhr/d/udhr_urd.html. For example, the Pakistan Constitution protects the right of criminal defendants to have “a fair trial and due process.” In addition, the UDHR says that defendants must be “presumed innocent until proved guilty” and protects “right to an effective remedy” through the courts.

The fundamental rights in the UDHR are further protected by many international laws, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Child Rights Convention (CRC), and many others. These international law protections of fundamental rights are discussed in detail in a later module.

Activity 2 - Comparison

Ask the participants to compare the fundamental rights in the Pakistan Constitution with those in the UDHR.

Are the fundamental rights in the two documents exactly the same?

Are any rights included in the Constitution, but not in the UDHR?

Are any rights protected by UDHR, but not protected by the Constitution?

3. What can a paralegal do to assist a citizen whose rights have been violated?

There are various ways that a paralegal can help citizens to address violations of fundamental rights. A paralegal can help citizens take any or all of the following actions:

1. **Help a citizen to write a letter or make an application to the concerned government department** stating clearly how the citizen's right is being violated and what the government department should do to stop the violation (For example, if a citizen is facing discrimination in their employment or qualifies for a particular employment quota, the citizen can submit an application to the relevant authority.) Always get a stamp and signature on a photocopy of your application that acknowledges receipt by the Government Department. This can be used as evidence in later proceedings.
2. Facilitate a citizen to **get help from a local government councilor or other local influential person.** A local government councilor or other influential person might be able to help a citizen resolve a violation of fundamental rights by identifying the appropriate authorities, connecting a citizen to other members of their community facing the same problem, or actively getting involved in resolving the problem. Other potential resources in the local community include *Jirga*, *panchayat* and other mediation forums.
3. A paralegal can provide a **referral to a free legal aid lawyer** to file a case or petition to the relevant court, which is usually a High Court or the Supreme Court. A citizen does not need to have a lawyer and may file a case or petition as an individual. However, a lawyer will improve the chances of success. Note that in cases other than illegal detention, filing a fundamental rights petition or any kind of court case can be a lengthy process and can be expensive unless a free legal aid lawyer is involved.
4. Citizens can also use their freedom of speech and freedom of assembly to **voice concerns through advocacy or peaceful protest** against a government action, inaction or decision. Advocacy has the best chance for success if it is collective action of many citizens, which a paralegal could help facilitate. Community members can identify and document rights violations and then use various strategies to create pressure for the law to be implemented and enforced. For example, citizens can use the media to get their voices heard, they can organize a street protest, or they can write to or visit the offices of district government officials or elected representatives in the Provincial Assembly.
5. Paralegals also can refer and facilitate citizens to **discuss the problem with representatives of NGOs or private institutions.** There are thousands of NGOs in every province of Pakistan that work on almost all kinds of issues. For example, some NGOs provide basic necessities such as food, shelter, healthcare, or education. Other NGOs help people learn new work skills or find employment. Other NGOs can help with a legal case, such as Legal Aid Society in Karachi and AGHS Legal Aid Cell in Lahore, as well as institutions such as Human Rights Commission of Pakistan (HRCP).

Activity 3: The Alien Game

The alien game is a great way to review the fundamental rights to ensure that learners remember them accurately. It is also a great way to get learners to think critically about each right, categorize and prioritize them, and appreciate how rights are inter-connected.

Materials required

Flash cards with pictures of a total of 14 rights or a list of 14 rights found in the Constitution of Pakistan. A flip chart or white board, markers and a timer.

Facilitation steps (20 minutes to conduct the exercise)

- Divide the participants into groups of 6 people or fewer to ensure equal participation.
- Give all groups the same set of rights (14 in total).
- Tell the groups each group is a country and these are the rights they have.
- Tell the groups that aliens (or an enemy) have attacked their country. The aliens are not interested in governing. They are only interested in the country's natural resources. The aliens would like to let the people govern themselves. However, the aliens feel that the people have too many rights.

Round 1

- Ask the groups to discuss and decide any 4 rights they will voluntarily give up. The aliens will arbitrarily take away rights if we do not give up some rights voluntarily. Therefore, groups need to prioritize and decide which 4 rights are least important.
- Give the groups 5 minutes to decide. All group decisions must be unanimous.
- Write down the rights given up by each group in round 1.
- Now each group has 10 rights remaining.

Round 2

- After one year, the aliens say that they feel the people still have too many rights.
- Ask the groups to discuss and determine 4 more rights they will voluntarily give up from the remaining set of rights.
- Give the groups 5 minutes to discuss. All group decisions must be unanimous.
- Write down the rights given up by each group in round 2.
- Now each group has 6 rights remaining.

Final Round

- After another year, the aliens say that they feel the people still have too many rights. The aliens say that people should only have 3 rights. The aliens give the people the choice of which rights to keep.
- Ask the groups to discuss and decide which 3 rights they want to keep from the remaining set of rights.
- Give the groups 3 minutes to discuss. All group decisions should be unanimous.
- Write down the rights kept by each group in the final round.

The activity can be recorded in the following manner on a flip chart.

Round	Group 1	Group 2	Group 3	Group 4
1	<ul style="list-style-type: none"> • Right given up • Right given up • Right given up • Right given up 	<ul style="list-style-type: none"> • Right given up • Right given up • Right given up • Right given up 	<ul style="list-style-type: none"> • Right given up • Right given up • Right given up • Right given up 	<ul style="list-style-type: none"> • Right given up • Right given up • Right given up • Right given up
2	<ul style="list-style-type: none"> • Right given up • Right given up • Right given up • Right given up 	<ul style="list-style-type: none"> • Right given up • Right given up • Right given up • Right given up 	<ul style="list-style-type: none"> • Right given up • Right given up • Right given up • Right given up 	<ul style="list-style-type: none"> • Right given up • Right given up • Right given up • Right given up
3	<ul style="list-style-type: none"> • Right kept • Right kept • Right kept 	<ul style="list-style-type: none"> • Right kept • Right kept • Right kept 	<ul style="list-style-type: none"> • Right kept • Right kept • Right kept 	<ul style="list-style-type: none"> • Right kept • Right kept • Right kept

Activity debrief

1. Lead a discussion about the similarities and differences of the rights that the groups gave up and kept. For example, Group 1 and Group 3 may have given up civil and political rights and kept economic and social rights. Ask why each group gave up particular rights in each round and chose the final 3 rights as their priorities.
2. If you have time, give the groups a rights-based case study that they will have to address with the rights they have remaining. For example, “How would your society deal with a situation in which a minor girl was kidnapped, forcefully converted to another religion and married to a stranger and was not allowed to return to her parents. What protection could you provide to a victim with the rights you have remaining?”
3. Further discussion can include:
 - a. How various rights are related to each other?
 - b. Are some rights more important and fundamental than others?
 - c. Can you think of a situation in the world in which people's rights are being violated? What rights exactly? How are these rights being violated exactly?

Module 12 Assessment

Fundamental Rights

Q1. Indicate whether the following statements are true or false

1. Fundamental Rights are listed in a special law called The Fundamental Rights (Protection and Enforcement) Act, 1973
2. Citizens are entitled to fundamental rights at the age of 18
3. The only way to enforce a right is through the courts
4. Freedom of religion is a right of people of all religions
5. The Pakistan Constitution and the Universal Declaration of Human Rights protect exactly the same fundamental rights
6. Only a lawyer can help citizens protect fundamental rights
7. Laws are necessary to give people fundamental rights
8. People have fundamental rights simply because they are human beings
9. Governments may restrict some fundamental rights
10. Paralegals have an important role in protecting fundamental rights

Q2. List 7 fundamental rights provided in the Constitution of Pakistan.

Q3. Name 2 specific rights provided in the UDHR, but not in the Constitution of Pakistan.

Q4. Name 2 ways that paralegals can help citizens protect their fundamental rights.

Answers: Module 12 Assessment

Fundamental Rights

Q1. Indicate whether the following statements are true or false

1. Fundamental Rights are listed in a special law called The Fundamental Rights (Protection and Enforcement) Act, 1973 - FALSE
2. Citizens are entitled to fundamental rights at the age of 18 - FALSE
3. The only way to enforce a right is through the courts - FALSE
4. Freedom of religion is a right of people of all religions- TRUE
5. The Pakistan Constitution and the Universal Declaration of Human Rights protect exactly the same fundamental rights - FALSE
6. Only a lawyer can help citizens protect fundamental rights - FALSE
7. Laws are necessary to give people fundamental rights - FALSE
8. People have fundamental rights simply because they are human beings – TRUE
9. Governments may restrict some fundamental rights – TRUE
10. Paralegals have an important role in protecting fundamental rights – TRUE

Q2. List 7 fundamental rights provided in the Constitution of Pakistan.

Right to life, right to liberty, right against forced labor, right to education, right to practice their religion and not be forced to change their religion, right of fair trial and due process, etc.

Q3. Name 2 specific rights provided in the UDHR, but not in the Constitution of Pakistan.

Right to be presumed innocent until proved guilty and the right to an effective remedy through a competent tribunal

Q4. Name 2 ways that paralegals can help citizens protect their fundamental rights.

Help a citizen to write a letter, communicate with local government officials or other influential people, join with other citizens to protest a violation of rights, etc.

Universal Declaration of Human Rights (UDHR)
United Nations General Assembly Resolution 217A (III) (1948)

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote

understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Source: <http://hrlibrary.umn.edu/instree/b1udhr.htm>



**MODULE 13:
ADMINISTRATIVE JUSTICE**

MODULE 13: ADMINISTRATIVE JUSTICE

Objectives:

By the end of this module, learners will understand the meaning of the phrase “Administrative Justice” and how paralegals can help with such issues. Learners will be able to explain the importance and the procedures for obtaining basic civil documentation, such as a birth certificate or Computerized National Identity Card (CNIC), and registering key life events, such as a birth, death, marriage, or divorce. Learners also will be able to identify mal-administration by government or service providers, and will know how to empower citizens to seek redress by applying to the appropriate authorities and filing an effective complaint.

Time: 60 minutes

Sections in this module:

1. “Administrative Justice” and Paralegals
2. Civil documentation
3. Government mal-administration and the *Mohtasib* (Ombudsperson)

Using this module: Below is reading material that is important preparation to understand the topic of this module thoroughly. At the end of the module there are a series of activities that can be used to train others. The module concludes with a written assessment that all learners should be able to fill out successfully after the training.

1. “Administrative Justice” and Paralegals

“Administrative justice” regulates interactions between the state and individual citizens. These are some of the most important issues for ordinary citizens because they affect citizens' daily lives and because they involve major life events (such as birth and death) and access to basic government services. Paralegals can play a significant role in helping citizens with these issues because the issues usually do not involve the law or require a lawyer, and because paralegals live in the local communities where these issues are very common. Therefore, it is especially important for paralegals to have the knowledge and skills to help citizens with Administrative Justice issues.

Every citizen has the right to official documentation of their identity and civil status (such as marriage), as well as many other rights in relationship to the state. Every government official and department has certain powers and authority to make decisions about civil documentation. For example, local and district government officials have the power to register a birth and issue a CNIC, and to charge fees for these services. Government entities and companies that provide public services also are regulated by administrative justice principles. For example, an electricity service can charge a fee for establishing a utility service and can decide when to terminate an electricity, gas, water, or telephone connection due to non-payment.

In each of these decisions, a government official or company representative has some discretion and must decide based on their understanding of the situation and the limits of their authority. Administrative justice deals with the principles that these officials must follow when they make these types of decisions. It also provides a remedy for citizens in case the government or company officials fail to fulfil their duties.

2. Civil Documentation

Registration of birth

A birth registration in Pakistan is legal proof of a person's date of birth, parentage and place of birth. A birth certificate is evidence from the hospital or person who delivered the baby that documents the birth of a child. Birth registration can refer to either a document issued by a Union Council or a computerized certificate (B-Form), called a Child Registration Certificate, issued by the National Database and Registration Authority (NADRA).

Birth Registration is a fundamental right of a child recognized by Convention on the Rights of the Child (CRC), the first legally binding international instrument to incorporate the full range of human rights. Every child has the right to a name, nationality and family ties. A birth certificate registers these details. Parents should acquire the birth certificate of their newly born child and should legally register the child's birth. Birth registration at the local Union Council office is free of charge.

There are specific laws and policies in Pakistan that require and encourage the registration of a child at birth. A birth certificate or registration is essential in order to ensure the child can get admission in a school and will be able to obtain a CNIC and a passport later in life.

How to register a birth and obtain a certificate

The procedure to register a birth is simple and is not expensive. The applicant should have a document that certifies the date and place the baby was born, the sex of the child, the child's name if one has been selected, any identifying marks, and the names of both parents. This document will be issued by the hospital, maternity home, doctor or midwife that delivered the child or where the child was born. You can then proceed to any office of NADRA, the local Union Council or the Cantonment Board with the document and the CNIC of both parents in order to register the birth. The fee is minimal to obtain a NADRA Child Registration Certificate and the procedure takes five days.

Birth certificates for older children

The Child Registration Certificate (B-Form) issued by NADRA requires no additional documentation for children below the age of 10. A B-Form will be issued by NADRA if both parents provide their CNICs. If a birth certificate was not obtained for a child and the child is older than 10 years of age, a B-Form can still be issued as long as the parents can provide any other proof of the age of the child. This proof can be documentation from a hospital or maternity home, documentation from the child's school, or any educational certificates such as a Matric certificate.



CNIC Registration

A CNIC is a Computerized National Identity Card, which is an identity document issued by NADRA. The CNIC has all the information required to identify a person and is considered proof of identity and nationality.

Every Pakistani citizen over the age of 18 years is entitled to obtain a CNIC. Citizens must get a CNIC from NADRA to confirm their identity and to prove that they are a resident of Pakistan. It is necessary for all citizens to carry their CNIC at all times. The police and security authorities have the right to ask any citizen to show their CNIC to prove their identity.



An identity card also has become increasingly important because it is the primary document required to access government and other services. CNIC's are required by telecommunication companies to contract for phone services, by banks to open or manage an account, by airlines for travelling, and by utility companies for electricity or gas connections. CNICs also are required for many job applications, to vote in elections, to buy or sell a motorbike or land, to get a passport, to file tax returns and for every day instances such as gaining access to government buildings and crossing security checkpoints.

Every CNIC has a unique 13-digit number and contains the following information:

1. Full name of the person
2. Sex
3. Father's name or Husband's name
4. Identification marks
5. Date of birth
6. Family number
7. Present address and permanent address
8. Date of issue and date of expiry

Activity 1: Brainstorm!

Ask participants to list all the instances in which they will need a CNIC.

The purpose is to explain the importance of getting a CNIC.

Procedure to get CNIC issued by NADRA

1. An applicant must go to a NADRA office or a Swift Registration Center to apply for a CNIC.
2. An official will write down the applicant's information, and take a photograph and fingerprints, for further processing. The applicant will receive a token, which they must keep.
3. The applicant must ensure that all the information -- name, father's name, date of birth etc. -- is correctly recorded and ask for a correction if there is a mistake. Correcting information after a CNIC is issued can be very inconvenient.
4. The NADRA official will provide a printed copy of the application form. This form now can be attested by any person who has a valid CNIC.
5. The applicant must submit the attested form to NADRA for verification and further processing.
6. NADRA will ordinarily issue a CNIC within 30 days. An urgent application can be processed in 15 days for an increased fee.

Documents required to obtain a CNIC

NADRA will require documents in order to verify a person's identity before issuing a CNIC. It is helpful if an applicant takes along as many identification documents as they have, in order to avoid inconvenience. The documents NADRA may ask for include:

- Birth Certificate
- Old National Identity Card
- Matriculation Certificate
- CNICs of immediate blood relatives (father, mother, brothers or sisters)
- Citizenship certificate issued by Ministry of Interior

Special Circumstances

- No documents are demanded from illiterate applicants for age verification for the first time.
- Residents of FATA/PATA must apply for CNICs at the NADRA offices located in their home towns. Their forms must be attested by the relevant Political Agent.

Other services offered by NADRA

- Issuance of new CNIC
- Modification (change) on CNIC
- Duplicate CNIC
- Correction of official mistake in CNIC
- Cancellation of CNIC (in case of death)

NADRA CNIC verification

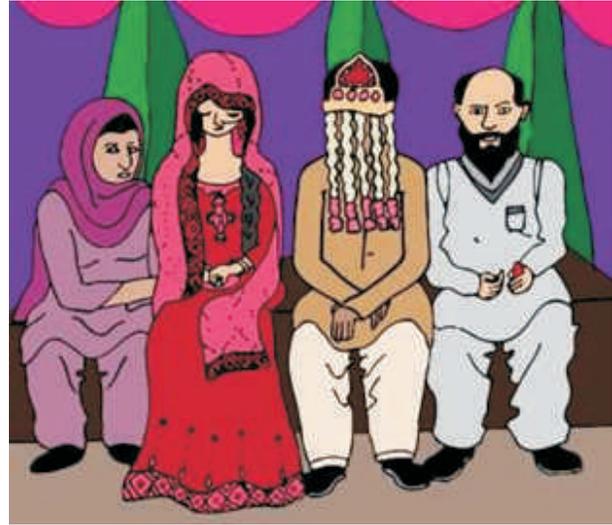
It is now very easy for to verify the identity of any citizen through a NADRA SMS system. It is recommended that people verify identity before engaging in any important transaction with another person, such as an employer hiring someone new for a position or renting your house to someone. You can verify a person's identity by sending an SMS with their CNIC number to 7000. In response you will get the person's name and father's name in Urdu. For more information, visit the NADRA website (www.nadra.gov.pk) or call 111-786-100.



Marriage Registration

A *nikah* is a Muslim marriage contract between husband and wife and is the legal document required for a valid marriage. More details about a valid marriage and the *nikah* document (*nikah nama*), are in Module 14 on Family Law.

Every marriage must be recorded on an official *nikah nama*, signed by the bride, the groom, their guardians, witnesses and the person who solemnizes their marriage (*nikahkhwan*). The *nikah nama* must be registered in order to complete the process. Under the Muslim Family Laws Ordinance 1961, it is the legal duty of the *Nikahkhwan* to register the marriage in the office of the *Nikah* registrar.



A *nikahnama* is usually filled out in triplicate or may even have four copies. One copy is for the bride, another for the groom, one is kept by the *nikahkhwan* or the person who performs the *nikah*, and one copy is submitted to the local Union Council or municipal authority for registration by the *Nikah* Registrar. The Union Council maintains all records related to marriage and divorce in their offices, and every *nikah* should be registered in the correct office in order to secure the legal rights of the bride and groom.

Marriage certificates for religious minorities (Christians, Hindus, etc.) are issued by religious leaders. Marriages of religious minorities also can be registered by local authorities. For instance, an authorized representative of the Human Rights and Minorities Affairs Department, Government of Punjab, is empowered to register the marriage of non-Muslims in the Union Council within 30 days of such marriage. Until 2016, no law in Pakistan required compulsory registration of marriages for members of religions other than Islam. This gap has led to difficulties in proving marriage or

obtaining divorce and ensuring the rights of the bride or groom. To address this issue, the Hindu Marriage Bill, 2016, was approved by the Sindh Provincial Assembly and was being considered by the National Assembly (as of August 2016).

Activity 2: Administrative Justice Gallery Walk

Hang four images related to Administrative Justice around the room before the training session. Divide participants into four groups. Give each group a copy of the empty table below. Tell the groups to spend 5-7 minutes at each poster, and write notes of the required information in each box in the table. After all groups have time to look at all posters, ask everyone to sit down. Invite each group to present the information for one topic. A table with the answers is at the end of this module.

Administrative Justice – Civil Registration of Key Life Events			
Birth Registration	Death Registration	Marriage Registration	Divorce Registration
Why is it Important?			
What are the Required Documents?			
What is the Process?			

3. Government mal-administration and the Mohtasib (Ombudsperson)

Maladministration occurs whenever the decision of an official is incorrect according to the principles of administrative justice. A decision can be incorrect when it is:

1. Contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is for valid reasons
2. Perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory
3. Based on irrelevant grounds
4. Involves the exercise of power, or the failure or refusal to do so, for corrupt or improper motives, such as, bribery, favoritism, nepotism and administrative excesses
5. Or when there is neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities

If a government official has made an incorrect decision, a citizen can file an application asking the official to reconsider. The application should be made in writing and should contain all the information that the government official will need in order to reconsider the issue. Remember to keep a copy of any application and get the relevant department to issue a receipt for the application. This receipt is usually in the form of a stamp and a signature on a copy of the application you submitted. The receipt can be used as evidence in later proceedings.

The office of the *Mohtasib* (Ombudsperson)

The office of the *Mohtasib* was created to provide speedy and inexpensive relief to citizens who have suffered any type of mal-administration. There are various types of *Mohtasibs* at Federal and Provincial levels. There are also specialized officials for issues such as banking, taxation and insurance.



According to the *Mohtasib* Sindh, a *Mohtasib* is meant to resolve complaints and provide relief to the public by carrying out independent investigations into complaints about 'mal-administration' in any Government of Sindh department. “We work to put things right and share lessons learned and help improve public services as a result. Our independent complaints handling service is free and open to everyone.”

The *Mohtasib* can investigate any and all decisions by government officials except:

- Matters that are *sub-judice* (i.e., already under consideration of any court of law)
- Service matters related to a government employee
- External affairs
- Defense matters

The *Mohtasib* can intervene in any other kind of situation by conducting an inquiry. If the inquiry shows that mal-administration has occurred, the *Mohtasib* will recommend that the government department provide you with the relief you seek and treat you fairly and as required by the law.

Complaint Mechanism of the *Mohtasib* (Ombudsperson)

Approaching the Ombudsperson is meant to be a speedy and cost-effective mechanism for redress of grievances. Any aggrieved person can file a complaint and does not need a lawyer to do so. Filing a complaint is also free and can be done in any manner that is convenient for the complainant. An application can be submitted in person at the office of the provincial or federal ombudsperson, on the Internet, or by post, courier, or fax. Most complaints must be filed with the *Mohtasib* within three months of the occurrence, although this time limitation can be waived.

Anyone can file a complaint as follows:

1. Submit a written application in Urdu or English.
2. Attach a copy of the original application you made to the relevant government department, requesting that they take action or correct a mistake.
3. Attach a copy of all relevant documents, including a copy of your CNIC.
4. If you submit the application directly in any *Mohtasib* office, you will receive a receipt.
5. If you submit the application in any other manner, you will receive a receipt within 72 hours.

Contents of the complaint

It is always best to keep the application (complaint) simple and stick to the facts. An applicant should be as specific as possible about dates, names and other important details. Include enough information for the *Mohtasib* to understand the circumstances of the complaint and decide how to deal with it.

What happens next?

- If the *Mohtasib* admits the complaint, he or she will initiate an investigation. The complainant and the department or office complained against will both be given equal opportunity to present their sides of the story.
- After this investigation is completed, the *Mohtasib* will give his or her decision on the complaint. If they find the department has been fair and acted in accordance with law, the complaint will be rejected.
- If the inquiry finds the department guilty of mal-administration, the *Mohtasib* sends recommendations to the department, specifying action that must be taken within a defined time period.
- The *Mohtasib* is supposed to follow up with the agency on implementation of the recommendations. If the *Mohtasib* concludes that the agency is acting in defiance of the recommendations and willfully not implementing them, he or she may file a formal reference to the Governor, who may at his discretion give further directions to the department or office directly.

Questions for drafting a complaint

- What happened?
- Where and when did the events take place?
- Who was involved? Names, designations of officers or staff
- Do you have any documents that might be relevant? If so, you may want to supply copies with your complaint.
- Have you taken any action already in relation to your complaint? What happened?
- What action or outcome would you like to see as a result of your complaint?

Complaints are usually resolved between 3 to 6 months. Detailed information, such as required forms and types of complaints, are available on the website of each type of Ombudsperson.

Activity 3 Case Study:

Ali Rahim is a resident of a small village near Thatta, Sindh. He was a hardworking, loyal and honest employee of Pakistan Railways for almost 30 years. He is now retired and he and his wife live off their modest savings and a small pension that he is entitled to due to his government service.

Ali has to travel for over an hour to visit the National Bank in order to collect his pension. His pension has not been paid for the last eight months. Ali and his wife have almost used up all of their savings. The manager at the National Bank informs Ali that his pension has stopped coming to this branch and he cannot do anything about it. Ali comes to you for help.

Draft a complaint to the Provincial Ombudsman on behalf of Ali. Use the complaint template on the next page

FORM "A"
(FOR USE BY THE COMPLAINANT)
BEFORE THE HONOURABLE PROVINCIAL OMBUDSMAN, SINDH

1. Name & Address of the complainant : _____

VERSUS

2. Name of the Agency : _____

3. PRAYER : _____

4. MAIN GRIEVANCES REQUIRING REDRESSAL:

- (a) _____
- (b) _____
- (c) _____
- (d) _____

(DETAILED COMPLAINT IS ANNEXED)

AFFIDAVIT

I, _____ S/o, D/o, W/o, Wd/o _____

do hereby solemnly affirm:

- i) That the facts mentioned in this complaint are correct to the best of my knowledge and belief.
- ii) That no complaint on this subject has previously been lodged with the provincial Ombudsman by me, or on my behalf

OR

- That a complaint No. _____ dated _____ has previously been lodged with the Provincial Ombudsman on this subject.
- iii) That no suit, appeal, petition or other judicial proceeding in connection with the subject matter of this complaint is pending in any Court or Tribunal.

OR

- That a suit, appeal, petition or other judicial proceeding in this connection is pending before the _____ under Case No. _____

OR

- That the subject matter of this complaint has never been adjudicated upon by any Court of Law.
- iv) I made a representation to the Senior officers of the Agency in this connection but have failed to elicit a reply.

OR

- My representation has been unjustly turned down.
 (Copies of correspondence are attached)

NOTE: * Delete if not applicable.

Signature / Thumb Impression of the complainant: _____

ATTESTED BY: _____

Other complaint mechanisms

Other regulatory authorities that were established to act as a check on the decision-making of government officials include the National Accountability Bureau. NAB has a specific mandate to combat corruption and it was set up in 1999. It is responsible to take cognizance of all cases of corruption or when a decision is made on the basis of any factor other than merit.



NAB has offices in Islamabad, Karachi, Lahore, Quetta, Peshawar and Rawalpindi.

Anyone can file a complaint in any of these offices. You can also call NAB on 111-622-622 for more information. Any information provided to NAB must follow the general principles described in the complaint mechanism for the *Mohtasib*. Make sure to provide all the relevant information about the incident as well as any evidence so your complaint has a higher chance of success.

Each province has their own anti-corruption department, which also deals with matters related to corruption. Similar regulatory authorities are there for specialized subjects such as the Oil and Gas Regulatory Authority (OGRA), National Electric Power Authority (NEPRA), NADRA, etc.

Activity 2 Answers: Administrative Justice Gallery Walk

Administrative Justice – Civil Registration of Key Life Events			
Birth Registration	Death Registration	Marriage Registration	Divorce Registration
Importance			
<ul style="list-style-type: none"> Enables school enrollment Required to get a CNIC Proves age and parentage 	<ul style="list-style-type: none"> Enable inheritance Transfer of pension to widow's name Succession certificate Cancels CNIC to stop misuse 	<ul style="list-style-type: none"> Required by law Legal recognition of marriage Protects rights in <i>Nikah Nama</i> Change on CNIC 	<ul style="list-style-type: none"> Shows legal status Second marriage Change on CNIC
Required Documents			
<ul style="list-style-type: none"> Birth Certificate Parents' CNICs 	<ul style="list-style-type: none"> Hospital death certificate or graveyard slip Copy of deceased's CNIC 	<ul style="list-style-type: none"> Copy of husband's and wife's CNICs Copy of <i>Nikah Nama</i> 	<ul style="list-style-type: none"> Affidavit of divorce or copy of <i>Khula</i> court order
<ul style="list-style-type: none"> If no birth certificate, school certification, etc. 		<ul style="list-style-type: none"> Copy of both fathers' CNICs 	
Process			
<ol style="list-style-type: none"> Fill application form Attach documents Pay Rs.100/- Submit to Union Council office 			

Module 13 Assessment

Administrative Justice

Q1. Indicate whether the following statements are true or false:

1. Administrative justice refers to the exercise of power by the judiciary
2. Administrative justice refers to the exercise of power by any government officer
3. A government official's decision cannot be challenged
4. A *Mohtasib* cannot review issues related to government service or defense
5. A citizen can file a complaint to the *Mohtasib* through email or a letter
6. A CNIC is required only if a citizen wants to vote in elections
7. It is not possible to register a child's birth after age 10
8. A marriage is valid even if the *nikahnama* is not registered
9. A divorce cannot be registered at the Union Council office
10. To get inheritance through a court, a death certificate is essential

Q2. On what grounds can you challenge a decision by a government official?

Q3. What documents are required to register a birth?

Q4. What documents are required to get a CNIC?

Q5. How can a paralegal help community members with Administrative Justice issues?

Answers: Module 13 Assessment

Administrative Justice

Q1. Indicate whether the following statements are true or false:

1. Administrative justice refers to the exercise of power by the judiciary - FALSE
2. It refers to the exercise of power by any government officer - TRUE
3. A government official's decision cannot be challenged - FALSE
4. A *Mohtasib* cannot review issues related to government service or defense - TRUE
5. A citizen can file a complaint to the *Mohtasib* through email or a letter - TRUE
6. A CNIC is required only if a citizen wants to vote in elections - FALSE
7. It is not possible to register a child's birth after age 10 - FALSE
8. A marriage is valid even if the *nikahnama* is not registered - TRUE
9. A divorce cannot be registered at the Union Council office - FALSE
10. To get inheritance through a court, a death certificate is essential - TRUE

Q2. On what grounds can you challenge a decision by a government officer?

1. Contrary to law, rules or regulations or departure from established practice or procedure, unless it is for valid reasons
2. Perverse, arbitrary or unreasonable, unjust, biased oppressive, or discriminatory
3. Based on irrelevant grounds
4. Involves the exercise of power, or the failure or refusal to do so, for corrupt or improper motives, such as, bribery, favoritism, nepotism
5. Neglect, inattention, delay, incompetence, inefficiency and ineptitude

Q3. What documents are required to register a birth?

Birth certificate from a hospital or other birth attendant, and parents' CNICs. If there is no birth certificate, any other document to prove the age of the child, such as a school certification.

Q4. What documents are required to get a CNIC?

As many identification documents as possible, including Birth Certificate (or B-Form), old National Identity Card, matriculation certificate, CNICs of immediate blood relatives (father, mother, brothers or sisters), citizenship certificate issued by Ministry of Interior, etc.

Q5. How can a paralegal help community members with Administrative Justice issues?

- Providing information about the importance of civil documentation (such as registering a birth or getting a CNIC) and the procedures for obtaining these documents.
- Facilitate and accompany citizens to help them get such documentation.
- Help citizens solve problems related to utilities and other basic services by clarifying the details and writing letters to the relevant authorities or visiting their offices.
- In case of mal-administration by government, paralegals can help citizens file effective complaints with the Ombudsperson.



**MODULE 14:
FAMILY LAW**

MODULE 14: FAMILY LAW

Objectives:

By the end of this module, learners will understand the different types of families and marriages recognized in Pakistan. Learners will know the requirements of entering into a valid marriage and which kinds of marriages are invalid. In addition, learners will understand some of the reasons marriages end, and will know the laws relating to dissolution of marriage. They will be able to explain the steps in the law for a woman or a man to end a marriage, the factors that courts consider in awarding guardianship of children, and the law related to maintenance.

Time: 180 minutes

Sections in this module:

1. Family and Marriage
2. Dissolution of Marriage, Guardianship, and Maintenance

Using this module: Below is reading material that is important preparation to understand the topic of this module thoroughly. Throughout the module, there are a series of activities that can be used to train others. The module concludes with a written assessment that all learners should be able to fill out successfully after the training.

1. Family and Marriage

What is a family?

Activity 1: Ask participants to consider these questions:

- What are the characteristics of a family?
- Is a family a certain number of people?
- Who are the members of a family?
- Are their relationships based on blood, marriage, or some other factor?
- Does the law give special protection to members of a family?
- What are the different types of family arrangements?
- Can families be by birth, marriage, adoption, or living together?
- What other factors could bind people together as “family”?



Nuclear family and extended family

- A nuclear family is one in which only the parents and their children live together without other relatives.
- An extended family can include children, their parents, and sometimes grandparents, uncles, aunts and cousins all living together in one home or in a compound or near each other in a village.

Ask participants “What benefit to society do families provide?” Answers could include:

- An orderly setting for sexual conduct
- Child birth in a stable and economically secure environment
- Socialization and moral and physical development
- Companionship and psychological support in times of need
- Economic security and potential for dividing responsibilities for obtaining income, looking after the home and child rearing
- A form of insurance because members of a family can help each other in sickness, accidents, old age, poverty etc.

Marriage

Marriage is a legal contract between a man and a woman creating civil rights and obligations between them. Marriage has many aspects: personal, social, economic and legal. The legal aspects of marriage are discussed below.

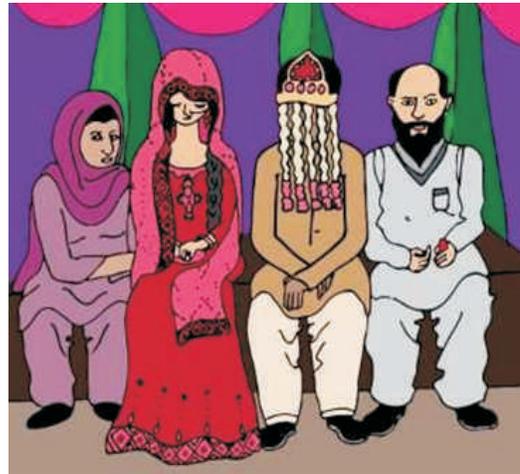
Requirements of a valid marriage:

Offer and acceptance: The marriage proposal is the offer made by the intending spouse. It must be accepted by the other intending spouse.

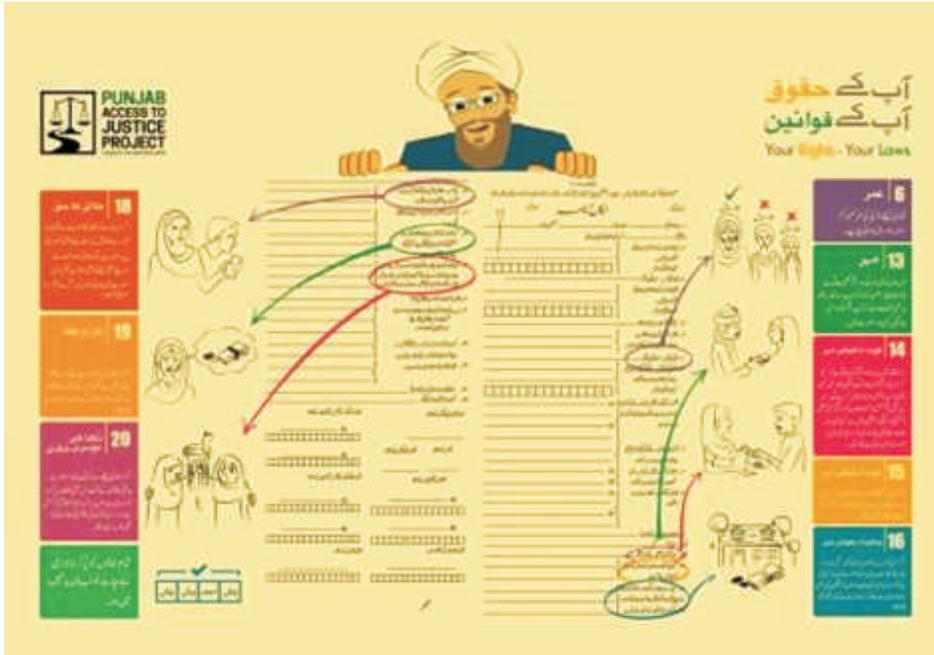
Dower (*Haq Mahar*): The husband must undertake to pay dower to the wife, which may be in cash and/ or kind (e.g., property). Dower may be prompt (paid immediately) and /or deferred (to be paid when any condition for payment is reached, such as husband's death or divorce).

Legal age of the intending spouses: The bridegroom and bride must have attained the age of 18 and 16, respectively, except in Sindh, where both the bride and groom must have both attained 18 years of age as per the Sindh Child Marriage Restraint Act, 2013.

Solemnization of nikah: The nikah can be solemnized by any person, including a *nikah* registrar, who must report the nikah to the Union Council *nikah* registrar.



Nikahnama



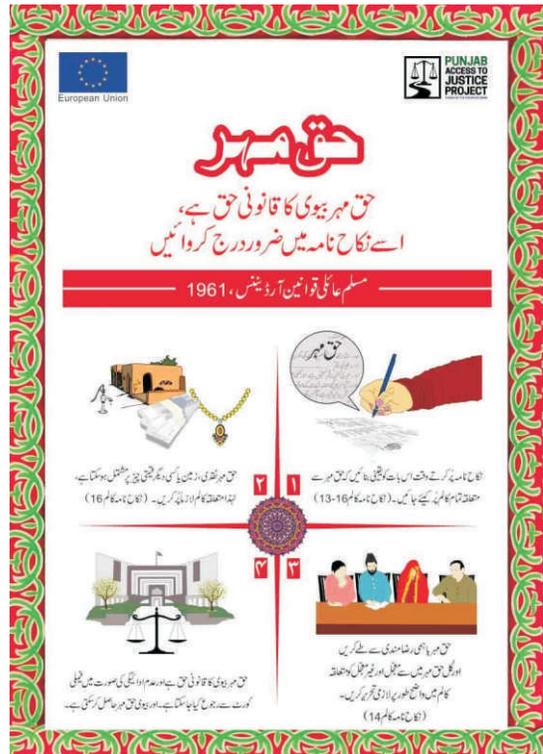
**Activity 2:
Audience Poll**

How many of the participants are married? Of those who are married, how many decided the terms in their nikahnama? What details of the nikahnama are highlighted in the image? Why are they highlighted?

When completing the nikahnama, it must be ensured that:

- 1) The nikah Registrar or the person who solemnizes a nikah shall accurately fill all the columns of the nikah nama form with specific answers of the bride and the groom.
- 2) The nikahnama must include whether the husband has given the right of *talaq-e-tafeez*, the delegated right of divorce, to the wife. This is an important protection for women, and it is strongly advisable to include this clause.
- 3) There should be two witnesses at the time of the nikah.
- 4) The nikahnama should be registered by the Nikahkhwa at the Union Council or Town Committee.
- 5) There should be four original copies of registered nikahnama - two original copies of the registered nikahnama must be kept with the spouses, one is kept in the Union Council office, and one is kept by the nikah registrar

If the marriage is solemnized by an unregistered or unlicensed nikah registrar, and such person fails to inform the nikah registrar, he can be punished with imprisonment up to three months or a fine up to Rs.1,000, or both. In Punjab if the nikahnama is not completed as required under the law, the person completing the nikahnama can be imprisoned and given a fine of Rs.25,000/, according to the Punjab Muslim Family Laws (Amendment) Act 2015.



Invalid Marriages

Child marriage

The marriage of a boy and a girl below the minimum marriage age of 18 and 16 respectively is called “early marriage” and it is a crime. (In Sindh, both bride and groom must be 18 years of age.)



Stopping a child marriage

- Inform police of location where the child marriage is taking place.
- Make a complaint to the UC about an early marriage being arranged or solemnized.
- The UC will forward the complaint to a Magistrate First Class or Family Court in Punjab.
- The Magistrate will invite the accused for a hearing. If the Magistrate is satisfied with the evidence, s/he will issue an order (injunction) against the marriage.

Any person who violates the order of the Magistrate/Family Court in case of a child marriage can be punished with imprisonment up to three months, or a fine of up to Rs.1,000, or both. In Sindh, this punishment can be one year or fine or both. No woman will be punished with imprisonment for this offense, except in Sindh, where a woman can be imprisoned also.

Remedy after child marriage has taken place

An application relating to a child marriage must be made within one year of the marriage. (In Punjab and Sindh there is no time limitation). The application may be made to be UC or any other authority prescribed by the provincial government. The application will be forwarded to a Magistrate First Class or Family Court. The Magistrate will issue notice to the accused for hearing, and will then decide the case.

Child marriage is punishable with up to one month in prison and/or a fine up to Rs.1,000. In Punjab, the punishment is six months imprisonment and/or fine up to Rs.50,000/ (Punjab Child Marriage Restraint (Amendment) Act, 2015). The law in Sindh provides for imprisonment for 2-3 years and a fine. (Sindh Child Marriage Restraint Act, 2013).

The law provides for punishment of every adult that is a part of a child marriage, including the groom, the nikahkhwa, and the parents of the bride and/or groom. The parents of a child have a duty to report a child marriage and failure to do so is also punishable.



Forced marriage

A forced marriage is when a person is compelled to marry against their will. Forced marriage in general and forced marriage by way of *badal-i-sulh*, *wanni*, *swara*, marriage with Holy Qur'an, and other such cultural practices are prohibited by law, irrespective of religion, cast and creed of the parties concerned.



The Prevention of Anti-Women Practices (Criminal Law Amendment) Act, 2011 deals with the offence of forced marriages. It is non-cognizable (i.e. an offence in which the police officer may not arrest the accused without a warrant), non-bailable, and non-compoundable, which means the parties cannot compromise. Under the law, if a woman is forced into marriage against her will, or given in marriage by way of *badl-e-sulh* or married to the Holy Qur'an, she may initiate criminal proceedings.

Forced marriage in any form is a punishable crime. Any person who has:

- Forced a female in marriage against her will, shall be punished with imprisonment for three to seven years and with a fine of 500,000 thousand rupees.
- Marriage as *badal-i-sulh*, shall be punished with imprisonment for three to seven years and a fine of five hundred thousand rupees.
- Marrying a girl to the Holy Quran shall be punished with imprisonment for three to seven years, in addition to a fine of five hundred thousand rupees.

Second Marriage

Another important aspect of marriage that often becomes a cause of dispute is the issue of a second marriage. Islam and the law in Pakistan allow Muslim men to be married to as many as four women at the same time. However, this right is limited to protect the rights of the previous wife or wives.

An example of the conditions imposed on a second or subsequent marriage are provided in the Punjab Muslim Family Laws (Amendment) Act of 2015. A man desiring to contract a second marriage must apply to the Chairman of the Arbitration Council stating the reason for the second marriage. He must include in the application a statement about whether he has sought the permission of his existing wife or wives, as required by law. The Chairman will then call the husband and the wives (or their representatives). If the Chairman is satisfied that all the conditions have been met, he will allow a second marriage.



If the husband marries again without completing these formalities, he can be punished with imprisonment for up to one year and a fine of Rs.5,000. In Punjab the fine is 500,000 rupees, and the husband must pay to his previous wives any dower that is still outstanding.

2. Dissolution of Marriage, Guardianship, and Maintenance

Separation: If a marriage breaks down and the parties do not wish to obtain a divorce they could decide to enter into a 'separation agreement'. This agreement could then be confirmed by the court. An order for separation does not end the marriage, but temporarily suspends some of the spouses' marital obligations, particularly that of living together.

Divorce: If a marriage breaks down, a husband and wife may legally end their relationship by obtaining a divorce/khula from the court.

Some of the most common causes of divorce or separation are:

- Violence against women or children
- Arguments with in-laws or relatives
- Money problems
- Problems and stress at work
- Affairs with other people
- Arguments about children
- Sexual problems
- Alcohol or drug abuse
- Spouses failing to like each other
- Boredom with marriage
- Loss of shared interest

Modes for the dissolution of marriage

- **Talaq** is the right of a husband.
- **Khula/dissolution of marriage** is the right of a wife.
- **Mubarat** is the dissolution of marriage by mutual consent of husband and wife.
- Further instances of dissolution of marriage provided by the law.



A woman married under Muslim Law may obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely:

- (a) the whereabouts of the husband have not been known for a period of four years;
- (b) the husband has neglected or has failed to provide for her maintenance for two years;
- (c) the husband has taken an additional wife in contravention of the provisions of the Muslim Family Laws Ordinance, 1961;
- (d) the husband has been sentenced to imprisonment for a period of seven years or more;
- (e) the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;

- (f) the husband was impotent at the time of the marriage and continues to be so;
- (g) the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease;
- (h) that she, having been given in marriage by her father or other guardian before she attained the age of sixteen years, repudiated the marriage before attaining the age of eighteen years, provided that the marriage has not been consummated;
- (i) the husband treats her with cruelty, that is to say, (a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or (b) associates with women of evil repute or leads an infamous life, or (c) attempts to force her to lead an immoral life, or (d) disposes of her property or prevents her exercising her legal rights over it, or (e) obstructs her in the observance of her religious profession or practice, or (f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Quran;
- (j) any other ground recognized as valid under Muslim Law.

Procedure for a man to obtain Talaq

Talaq involves the following steps: [Section 7, Muslim Family Laws Ordinance, 1961]

- Any man who wishes to divorce his wife shall, as soon as possible after the pronouncement of talaq, give the Chairman of the Union Council a notice in writing of his having done so, and shall supply a copy to the wife.
- Within 30 days of the receipt of this notice, the Chairman must constitute an Arbitration Council for reconciliation between the parties. The Arbitration Council must take all steps necessary to bring about such reconciliation.
- Talaq, unless revoked earlier, expressly or otherwise, is not effective until the 90 days from day on which the notice is delivered to the Chairman.
- If the wife is pregnant at the time talaq is pronounced, talaq shall not be effective until 90 days or the end of the pregnancy, whichever is later.

Procedure for a woman to obtain Khula

The following steps are involved in Khula:

- (1) **Filing plaint:** A woman who wishes to seek dissolution of marriage by way of khula has to file a suit for khula in the Family Court by filing a plaint.
- (2) **Procedure followed by a Family Court:**
 - The Court may fix a date ordinarily of not more than 30 days for the appearance of the defendant (15 days in Punjab).
 - Shall issue summons to the defendant to appear on a date specified therein;
 - Within three days (two days in Punjab) of the presentation of the plaint, send to each defendant by registered post, acknowledgment due, a notice of the suit with a copy of the plaint, and copies of the documents and a list of documents referred to in plaint;
 - The postal charges for the service of above summons shall be deposited by the plaintiff at the time of filing the plaint.

(3) Reply to plaint (written statement):

On the date fixed by the Court, the wife (plaintiff) and the husband (defendant) shall appear before the Family Court and the defendant shall file his written statement, and attach therewith a list of his witnesses along with a precise of the evidence that each witness is expected to give. If the husband (defendant) fails to appear on the date fixed by the Family Court for his appearance, then—

- if it is proved that the summons or notice was duly served on the defendant, the Family Court may proceed *ex parte* (decide the case on the basis of plaint filed);
- if it is not proved that the defendant was duly served, the Family Court shall issue fresh summons and notices to the defendant and cause the same to be served in a prescribed¹.

(4) Pre-trial proceedings:

If the written statement is filed, the Court shall examine the documents and hear both the parties and make an attempt to reconcile between the parties. If the reconciliation fails, the Court frames the issues and fixes the date for recording of evidence².

In case of suit for dissolution of marriage not on the basis of any of the legally specified ground in this regard and if reconciliation fails, the Court shall pass the decree for dissolution of marriage by way of Khula and will restore to the husband the dower that he paid to the wife as consideration of marriage at the time of marriage. In case the husband hasn't paid the dower, she will have to relinquish her right to dower.

(5) Procedure after finalization of suit:

After the decree has passed, the Chairman of the Arbitration Council / Union Council with original decree of Khula must be informed in writing. The Chairman will follow the same procedure as in case of notice relating talaq given by the husband³.

¹In Punjab, if the husband (defendant) does not provide a written statement on the date of hearing then the court can allow him to submit the written statement and other documents within 15 days. If he fails to submit the written statement, his defence will be struck off and the Family Court will decide the case.

²In Punjab, if reconciliation fails, the Family Court will pass a decree for dissolution of marriage. In the case of khula, the court can direct the wife to surrender up to 50% of deferred dower or up to 25% of prompt dower.

³In Punjab, the Family Court must send certified copy of the decree to the Chairman of the Arbitration Council by registered post. The Chairman then proceeds as if he had received notice of talaq under Muslim Family Laws Ordinance, 1961.

Guardianship of Children

The Guardian and Wards Act, 1890 deals with matters relating the guardianship of children. Under shariah law, the father is considered as the natural guardian. However, the mother is given preference for the custody of a child during hizanat period, which is 7 years for a boy and puberty for a girl.

In addition to these preferences related to age, the “welfare of the minor” is the basis courts use for granting custody of a child. If a mother has guardianship of children, the father has the right of visitation.

The following persons may seek guardianship of a minor:

- Any relative or friend of minor
- Collector of the District where the minor resides or his/her property is located
- Collector having authority with respect to the class to which the minor belongs



The person applying for custody must be an adult of sound mind, capable of taking his or her own decision, a person of good character, being a Muslim if the child concerned is a Muslim, and being able to fulfill all obligations towards the child. If one of these conditions is not fulfilled and there is an impediment such as insanity or having remarried, etc., the woman forfeits the right to custody, but if that impediment is removed, then the right to custody is restored. But in deciding custody, it is best to pay attention to the interests of the child, because his or her interests come first.

The Court may consider granting the interim custody of a child during the pendency of suit for permanent custody of a child, however, the Court cannot appoint the guardian, if it has no jurisdiction to appoint the guardian of a minor under the following circumstances:

- A minor whose property is under superintendence of the Court of Ward; or
- A female married minor whose husband is fit to be her guardian; or
- A minor whose father is living and is fit to be that minor's guardian.



Spousal Maintenance and Maintenance of Children

A divorced woman is entitled to maintenance for the period of her iddat. A breast feeding mother is entitled to maintenance for the suckling baby for two years even after the period of iddat.

The father of a minor is under an obligation to maintain his minor children living with their mother (after divorce) with or without his consent. The father must provide maintenance to his daughter until she gets married. The father is not bound to maintain adult sons, unless they are disabled by infirmity or disease.

The financial status of the parties is the key factor involved in determining the amount of maintenance. A father's obligation to maintain minor children is subject to the financial status of the father.

A divorced woman can go to court to claim maintenance or she can make an application to the UC Chairman, who must constitute an Arbitration Council to determine the matter. The Arbitration Council can issue a certificate specifying the amount that must be paid as maintenance by the husband.

More Suggested Activities for Training on Family Law

- 1. Gallery Walk (see Module 13)** – Use the images from the European Union Punjab Access to Justice Project in this module to create a Gallery Walk exercise about Dower, Child Marriage, Second Marriage, Dissolution of Marriage, Guardianship, and Maintenance.
- 2. Ambassadors Game (or Travelers Game)** – Print the information in this module about Talaq, Khula, Guardianship and Maintenance on four separate pages. Divide participants into four groups (each is a country). Give each group copies of the page on one topic. Allow groups 5-10 minutes to read about their topic. Ask groups to nominate an Ambassador who will travel to the other countries to teach about the topic. Ask the Ambassadors to go clockwise to visit the next country. Give Ambassadors 5 minutes to teach the country the key points about his/her topic, and to learn the key points of the topic of the country he/she is visiting. Ask Ambassadors to move again to the next country for 5, and again, until they return home. Now assign each group to present to one topic (not their original topic) for 3-5 minutes to the full training session.
- 3. Case Studies** – Use the case studies and questions on the next pages to facilitate active discussion on Family Law themes.

Case Study #1 – Second Marriage

Naila's husband Shakeel informs her that he will be contracting a second marriage. She is not happy about this and pleads with to him not to, but he ignores her plea. You are a paralegal helping Naila, who is your client.

1. What additional questions do you want to ask Naila? What information do you need to do your job effectively as a paralegal?
2. What relevant information about the law can you share with Naila? Specifically, what procedure does Shakeel need to follow in order to contract a legal second marriage?
3. What are Naila's options? What steps could she take to follow each option?

Guidance for the trainer

- The paralegal should first listen to her client, Naila, and gather all the relevant facts. Relevant facts include Shakeel's reason for remarrying, financial status, whether they have children, and Shakeel's treatment of Naila. The paralegal should write down all of this information carefully.
- The paralegal should:
 - Try to counsel Naila with empathy and respect.
 - Consider the safety and security of the client.
 - Inform Naila that Shakeel is required by law to get permission from the Arbitration Council before contracting a second marriage.
 - Either answer any questions Naila has or note them down to research later.
 - Ask Naila if she wants someone to try to mediate between her and Shakeel.
 - Ask a lawyer to give Naila more information about her legal options. If available, the paralegal could refer Naila to the lawyer as a client.
 - Comply with Naila's wishes about how to handle her situation.
- Naila's options include informing the Chairman of the Arbitration Council that she has not given her permission for the second marriage. She might be entitled to receive any dower still due to her. Naila also has the choice to file a case in court for separation or dissolution of marriage, and seek guardianship of her children as well as maintenance.

Case Study #2 – Child Marriage

Sajid is planning the marriage of his 14 years daughter, Kiran with a rich 50 year old man, against Kiran's wishes. The rich man has given a piece of land as consideration to Kiran's father upon his commitment of marrying his minor daughter. Kiran's father, grandfather and brothers are all very happy with this marriage. The nikah ceremony took place despite resistance by Kiran and her mother. The rukhsati of the bride was scheduled for the day after the nikah.

After the nikah ceremony, Kiran and her mother asked for your help as a paralegal.

1. What can you tell Kiran and her mother about the law related to her marriage?
2. Who can be held responsible legally for Kiran's under-age marriage?
3. What legal options do Kiran and her mother have? To whom should they speak or file a complaint?
4. In what ways can you help as a paralegal?

Guidance for the trainer:

1. You can tell Kiran and her mother:
 - Legal age of marriage for boy and girl
 - Marrying a child is a crime
 - Every person involved in marriage can be punished
 - They can go to police station or Union Council
 - Who can be held responsible
2. The following people can be held responsible:
 - Adult groom
 - The parents of the bride
 - The parents of the groom
 - The nikah registrar or the person solemnizing the wedding
 - The witnesses to the wedding
3. Legal options include:
 - They can inform the police to stop the rukhsati
 - Report the marriage to Union Council and Union Council can file a case in Court
4. The paralegal should:
 - Consider the safety and security of the client.
 - Try to counsel Kiran and her mother with empathy and respect.
 - Inform them about the legal age of marriage and possible punishment for people involved in child marriage.
 - Guide them towards relevant police station and/or Union Council as per their wish.
 - Ask a lawyer to give Kiran and her mother more information about her legal options.

Case Study #3 – Dissolution of Marriage and Guardianship of Children

Mr. and Mrs. Saeed want a divorce. Both claim the custody of their two children, an 8 year old boy and a 14 year old girl. Mr. Saeed often neglects the children. He once left his wife and the children and went to live with another woman for a year. During this period his wife looked after the children and Mr. Saeed never once visited or inquired about their health. While at home Mr. Saeed drank heavily and often beat the children without good reason.

You are a paralegal helping Mrs. Saeed, who is your client.

1. Does Mrs. Saeed have the right to dissolve her marriage? On what legal basis?
2. What information can you give Mrs. Saeed about the factors the judge will consider in this case with regard to child custody?
3. Mrs. Saeed asks you: If the judge awards guardianship of both children to her, what rights and responsibilities will Mr. Saeed have with regard to her and the children?
4. What other questions might Mrs. Saeed ask you as her paralegal? What will you answer?

Guidance for the trainer:

1. Mrs. Saeed has right to dissolve her marriage by filing a case in Family Court for dissolution of marriage on the ground of non-maintenance of family, living with another woman without marriage, heavy drinking, and abuse of the children.
2. The judge will consider Mrs. Saeed's willingness to take care of her children and the conduct of Mr. Saeed over the years with his family.
3. In case guardianship is awarded to Mrs. Saeed, Mr. Saeed will have to maintain both of the children living with their mother. The boy must be maintained by his father until he reaches the age of majority of 18 years. The girl must be maintained until she gets married. Mr. Saeed will have a right to meet his children at least once a month.
4. Mrs. Saeed might ask:
 - How long will the court cases last? (The court has to decide the dissolution of marriage and maintenance case in six months and guardianship case will be decided around the same time.)
 - Will Mrs. Saeed get any maintenance during the pendency of the cases? (Yes, the Court will determine interim maintenance until the final decision of the cases.)
 - How much maintenance will the court grant? (It depends on the financial status of the father. The mother should give the court all evidence related to expenses incurred for each child such as school fees, clothing expenses, food expenses, etc.)
 - Can Mrs. Saeed leave the city and live somewhere else? (Yes Mrs. Saeed can live anywhere she wants with her children. However, she has to take permission from the court to take the children out of the jurisdiction of the court.)

Module 14 Assessment

Family Law

Q1. Indicate whether the following statements are true or false

1. The consent of the bride is essential for a valid marriage
2. Children can be married after they reach puberty
3. A man is entitled to a second marriage any time he wishes
4. Both a woman and a man have the right to end their marriage
5. Custody of children is always given to the mother
6. A father has a legal obligation to provide maintenance of children

Q2. List the requirements of a valid marriage:

Q3. Who can be punished in case of an underage marriage? (check all that apply)

- a. An underage bride
- b. An underage groom
- c. An adult groom
- d. The parents of the bride
- e. The parents of the groom
- f. The nikahkwan or the person solemnizing the wedding
- g. The witnesses to the wedding

Q4. What is required for a man to legally marry a second (or subsequent) wife?

Q5. List the 3 main types of divorce recognized by the law in Pakistan

Q6. Name 5 possible grounds for a Khula application

Q7. What are a father's rights and obligations with regard to minor children after divorce?

Answers: Module 14 Assessment

Family Law

Q1. Indicate whether the following statements are true or false

1. The consent of the bride is essential for a valid marriage - TRUE
2. Children can be married after they reach puberty - FALSE
3. A man is entitled to a second marriage any time he wishes - FALSE
4. Both a woman and a man have the right to end their marriage - TRUE
5. Custody of children is always given to the mother - FALSE
6. A father has legal obligation to provide maintenance of minor children - TRUE

Q2. List the requirements of a valid marriage:

Offer and acceptance of proposal. Dower (*Haq Mahar*). Legal age of the intending spouses. Solemnization of nikah.

Q3. Who can be punished in case of an underage marriage? (check all that apply)

- a. An underage bride
- b. An underage groom
- c. An adult groom - YES
- d. The parents of the bride - YES
- e. The parents of the groom - YES
- f. The nikahkwan or the person solemnizing the wedding - YES
- g. The witnesses to the wedding

Q4. What is required for a man to legally marry a second (or subsequent) wife?

Permission of the local Arbitration Council.

Q5. List the 3 main types of divorce recognized by the law in Pakistan

Talaq, Khula and Mubarat

Q6. Name 5 possible grounds for a Khula application

Abandonment, neglect, insanity, cruelty, impotence, etc.

Q7. What are a father's rights and obligations with regard to minor children after divorce?

Obligation of maintenance and right of visitation



**MODULE 15:
CRIMINAL LAW**

MODULE 15: CRIMINAL LAW

Objectives:

By the end of this module, learners will know how the criminal justice system functions in Pakistan and how paralegals can assist citizens who are victims of crime or accused of crimes. Learners will know about the different types of crime and the rights of both victims and accused persons. Learners also will appreciate key values of the criminal justice system, including importance of assuming a person is innocent until she or he has been proven guilty as well as the balance required to protect the interests of society and the rights of individuals.

Time: 120 minutes

Sections in this module:

1. Crime
2. Criminal laws and the criminal justice system in Pakistan
3. FIR
4. Bail
5. Crimes against property and persons
6. Islamic concepts of punishment

Using this module: Below is reading material that is important preparation to understand the topic of this module thoroughly. Throughout this module there are a series of activities that can be used to train others. The module concludes with a written assessment that all learners should be able to fill out successfully after the training.

Criminal Law is a vast area of law in Pakistan and around the world. There are hundreds of different crimes, each having different requirements of proof, classifications, and punishment. Unlike civil law cases, all crimes are considered to be committed against the State. This is because crimes violate the law of the State, and the State represents all of society that has been harmed by the crime. Therefore, it is always the State that will prosecute the accused person. However, it is also common in Pakistan for the victim of a crime to assist the prosecution in its case and for the victim to have her/his own legal representative.

1. Crime

A crime is any activity that the State classifies as being against the law and against society's interests. The State represents the collective will of the people of a country and can declare any activity to be a crime through a law. Activities can be declared crimes if they violate society's moral or social values or are detrimental to the public good. Crimes can be classified in many ways and punishment for a crime generally depends on the severity of its impact.

Activity 1: Is it a Crime?

1. Ali refuses to pay back a loan he took from his friend. (No, it is a civil liability)
2. Kashif refuses to give his sister her share in their inheritance. (Yes, PPC Section 498-A)
3. Imran is selling an unlicensed copy of a textbook. (Yes, misappropriation of property)
4. Ayesha is not paying rent to his landlord Majid. (No, it is a civil liability)
5. Wajid secretly takes motor parts from Faisal's auto spare parts shop without Faisal's knowledge. (Yes, theft)
6. Altaf and Raheel get in to a fight. Raheel breaks Altaf's arm. (Yes, the crime of hurt)
7. A policeman sees a robbery and continues to eat his lunch. (Yes, crime of omission under Police Order and Police Rules)
8. Zahid helps his brother hide from the police after his brother stole a car. (Yes, harboring a criminal)
9. Kulsum finds a wallet on the street and keeps the money for herself. (Yes, misappropriation of property)
10. A child sees a toy in a shop and takes it without paying. (Yes, theft)

Types of crimes

There are two broad categories of crimes: **Crimes of Commission** and **Crimes of Omission**. Crimes of Commission are those crimes in which a person acts in a way that is prohibited by law. These include theft, dacoity, hurt or assault, murder etc. For each of these crimes to be proved, the State must show that the accused committed a prohibited act.

Crimes of Omission are somewhat different. A person can be said to have committed a crime of omission if they fail to act when they have a legal duty to do so. Examples of a crime of omission include when a policeman fails to perform his duty, or a factory owner fails to maintain a safe working environment or a doctor refuses to assist a patient. In each of these examples, the accused person has not performed any action, but it is their failure to perform an action required by law that is deemed a crime of omission.

Preparation crimes, attempt and crime by association

There are three additional special categories of crime that require particular attention.

Society sometimes does not wait for a crime to happen and can punish even **preparation** for a crime. A good example of this is the prohibition against conspiracy. Conspiracy is when two or more people discuss a definite plan to commit a crime. They do not have to gather supplies or even begin to move to commit the crime. Conspiracy occurs when the plan is discussed and agreed.



Similarly, the successful completion of a criminal act is not necessary for punishment to be given. **Attempt to commit a crime** can be enough for a court to award punishment. Attempting to commit a crime carries serious penalties and these are provided for separately in the Pakistan Penal Code (PPC). Common examples of attempt include attempt to commit murder, robbery or cause injury.

The final special category to consider is crimes by **association**. A person can be found guilty of a crime if they are closely associated with the commission of the crime even though they did not commit the crime themselves. In Pakistan this is often referred to as Common Intention. Consider the example of a bank robbery in which two people enter and rob a bank and their third partner waits in a car outside to drive them away. Even though the driver did not commit the robbery, he or she will be found guilty of committing the robbery because they were part of the same plan.

This category of crime also includes **Aiding and Abetting** i.e. providing assistance to a criminal before or after he has committed a crime. Aiding and Abetting can include providing help such as information or materials such as weapons or a vehicle etc. for the commission of an offence. This can also include providing a hiding place or escape route to a criminal after they have committed an offence. In either case, criminal penalties can be incurred through association with a person who has committed a crime even though you may not have participated yourself directly.

Activity 2: The bank robbery gone wrong

Brothers Sami, Rameez and Chikoo make a plan to rob a bank in order to get rich quick. Their friend Yousuf is a guard at a bank and tells them that the branch has a lot of cash around 2 p.m. Sami and Rameez are the tough guys in the group and it's decided that they will enter and rob the bank. Chikoo, the youngest, will keep watch outside and drive them away.

Sami and Rameez enter the bank and say that the bank is being robbed. Sami points a weapon at the bank teller and orders him to hand over the money. The gun accidentally goes off. Sami and Rameez panic – they didn't want to hurt anyone – and run out of the bank. Chikoo drives them away, but they get caught by the police car that is chasing them.

Questions: Have each of the four men – Sami, Rameez, Chikoo and/or Yousuf – committed any crime? Should they each be punished equally?

Answers: The men have committed “robbery” (Pakistan Penal Code (PPC) sections 390/392/394) and “abetment” of robbery (PPC 109). All four men are equally responsible, but the court will decide punishment based on the role of each accused person. Although Yousaf did not participate in the execution of the robbery, he “abetted” (encouraged, supported, or aided) the crime and therefore he is equally responsible. Similarly, even though Chikoo did not enter the bank, he is responsible like the others. Each man is liable to a minimum of 3 years and maximum of 10 years rigorous imprisonment, as well as a fine.

**Elements of a crime**

There are two elements to consider in the commission of a crime and these are almost always included in the definition provided in the law. In order for a crime to be committed, and the accused to be found guilty, the State must prove, beyond a reasonable doubt, both “actus reus” and “mens rea” or the guilty act and the guilty mind. This means that the State must prove that the accused committed the act that is prohibited by law and that the accused did so with the intention to commit the crime.

Let's consider a situation in which a person causes the death of another person by firing a rifle in their direction. The Pakistan Penal Code provides different punishments depending on the intention of the person firing the weapon. If the accused had the intention of killing the victim when he fired the weapon, then the PPC defines this as Murder (Qatl-e-Amd) under Section 300 and provides punishment under Section 302 of either the death penalty or life imprisonment. However, if the accused was cleaning his weapon or thought the weapon was empty and pulled the trigger without the intention to kill the victim, then the accused will not be found guilty of Murder and might be given a lesser penalty under Accidental Murder (Qatl-e-Khata). In both situations the victim suffered the same harm under different circumstances. However, the punishment of the accused depends on his intention at the time of committing the criminal act.

Causes of crime

There are numerous reasons why people commit crimes.

- Poverty
- Growing population and struggle for resources
- Ineffective police protection
- Influence of films and television
- Racial discrimination
- Disrespect for rule of law
- Breakdown in family structures, limited parental guidance
- Breakdown in moral structure and the normalization of illegalities such as stealing, violation of traffic rules, corruption etc.

Activity 3: Brainstorm

Ask participants why they think people commit crimes? Do only bad people commit crimes?

2. Criminal laws and the criminal justice system in Pakistan

Every country has a criminal justice system that has the power to impose punishments in the form of imprisonment, fines and in some cases, the death penalty. The criminal justice system of Pakistan is a combination of Islamic injunctions and parliamentary legislation.

In Pakistan courts and other criminal justice institutions follow the procedure laid down in the Code of Criminal Procedure, 1898 (Cr.P.C.), a special law that contains the rules that have to be implemented in the prosecution of an accused person. The Cr.P.C. defines the procedure to be adopted when the State prevents, investigates or prosecutes a crime.

Additionally, crimes of offences are defined, and the punishments are contained in the Pakistan Penal Code (PPC), 1860. There are also special laws that provide separate procedures and define different crimes that relate to a specialized area such as National Accountability Ordinance 1999, Prevention and Control of Human Trafficking Ordinance, 2002, Control of Narcotic Substances Act, 1997, etc. Other specialised laws, for example, regulate the possession and use of weapons, violence against women, and special provisions for terrorist activities.

Usually, criminal proceedings are initiated either by a report filed at a Police Station (called a First Information Report, FIR) or a complaint addressed to the local Magistrate. These two modes are different in nature but serve the same purpose. If the crime is a “cognizable offense,” the police can make an arrest without a warrant or proceed in some situations even without a formal complaint.

Basic concepts

Offence: An act or omission punishable under any law for the time being in force is called an offence. [Section 4(o) Cr.P.C]. The definition of offence is also given in Section 40 PPC.

Cognizable offence: Any offence in which the police can make an arrest without a warrant and sometimes can begin proceedings without a complainant. These are usually more serious crimes such as dacoity, murder, narcotics crimes, terrorism, etc.

Non-Cognizable offence: These offences require that a complaint be filed to the police and a warrant must be issued by a court in order for the police to arrest any person.

Compoundable and non-compoundable offences

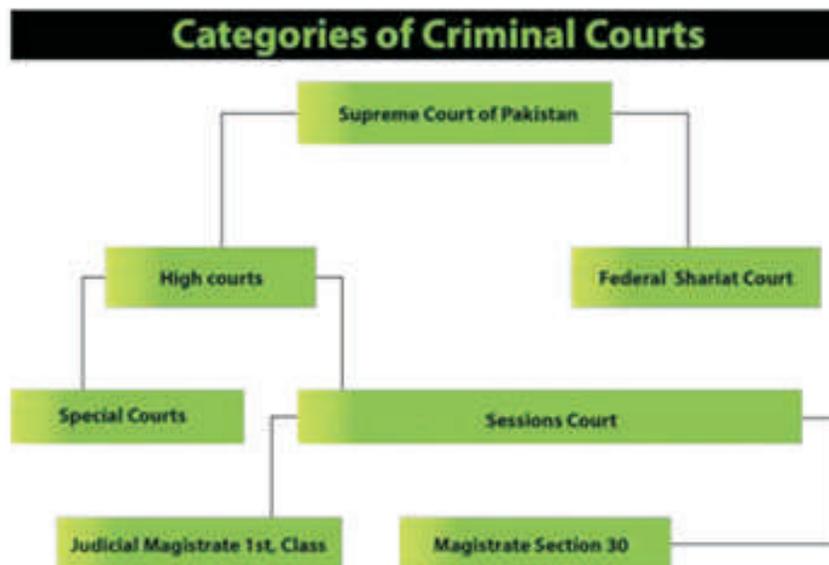
There are many offences in which the complainant, victim, or his/her legal heirs has a right to compound – or forgive – the offence. Compoundable offences are usually against a person and do not affect society as a whole. More serious offences such as terrorism, or offences in which society is affected, such as drug trafficking, cannot be compounded. The list of compoundable and non-compoundable offences can be found in Schedule-II of the Cr.P.C.

Examples of compoundable and non-compoundable offences

- Safeer supplied some goods to Ansar. Ansar made payment through cheque, which Safeer presented in his bank for encashment, but it was dishonored due to insufficient funds. Safeer registered a criminal case against Safeer. Later, Safeer and Ansar can settle the issue and enter into compromise without taking each other into litigation.
- Iftikhar quarreled with Tariq, and Tariq threatened Iftikhar with dire consequences. Later, Iftikhar filed an application for registration of an FIR against Tariq. Due to the intervention of local elders, Iftikhar later compromised and forgave Tariq for his threat.
- Sabir was going home when an unknown person with a gun in his hand robbed him by threatening him with serious injury. Sabir recognized the armed robber as Asif and lodged an FIR against him. Later on, Sabir wanted to forgive Asif and did not want to pursue the case. However, the offence of robbery is not compoundable (forgivable) under the law and the State will continue to prosecute Asif even if the victim is ready to forgive him.

Criminal Courts

There are different levels and types of criminal courts in Pakistan. A Judicial Magistrate 1st Class is the lowest level of criminal judge, along with a Magistrate Section 30. Next are the Sessions Courts and Special Courts. High Courts are the highest level court in a province. The Federal Shariat Court and the Supreme Court of Pakistan are at the apex of this system.



The Criminal Trial and Sentencing Process



3. F.I.R.

Most people in Pakistan have heard of an FIR, which is usually the first step in any criminal case. As such, the FIR carries great significance and is often one of the weakest links in a case.

A paralegal can assist a person accused of a crime (or their family) by obtaining a copy of the FIR registered against them and helping them understand the nature of the accusation. Depending on the rules of your paralegal programme, a paralegal also may be able to play an important role by assisting victims of a crime in registering an FIR, amending or correcting an application for an FIR, and following up with police about progress in a case.

One concern, however, is that it is common in Pakistan to register false or frivolous FIRs. Sometimes people register FIRs against people with whom they are having a civil dispute, in order to pressurize them or gain leverage. It is difficult or impossible to know people's true motives. Therefore, paralegals should be very cautious in getting involved with filing FIRs.

What is an FIR?

An FIR is a legal document prepared by the police which records information about the commission of an offence. An FIR is lodged when any information, oral or in writing, regarding the commission of an offence is transmitted to the police.

The police have to maintain a book of FIRs in each police station according to the law. This initial document sets the law into motion and requires the police to investigate and proceed with a complaint. Once an FIR is registered against any person, it cannot be cancelled without following another procedure set down in the law.

An FIR usually contains the following types of information:

- Date and time of occurrence
- Place of occurrence
- Description of accused or suspected persons
- Role of each nominated person
- Details of weapons used, if any
- Details of injury caused, if any
- Details of property lost or damaged, if any
- Detail about any document used in commission of a crime against property
- Detail of witnesses, if any
- Motive of crime, if known

Activity 4: Discussion

Ask the participants if they have ever had to register an FIR and what their experience was like.

Has anyone known someone who had an FIR registered against them? What was their experience?

Checklist for paralegal assistance in responding to or filing an FIR

- ✓ Ensure the privacy of the client
- ✓ Make a new file for each client
- ✓ Record the complete name and address of the client
- ✓ Start the conversation with some words of support
- ✓ Communicate complete confidentiality and establish trust
- ✓ Pay proper attention to the client
- ✓ Patiently listen to the problem
- ✓ Record details of the whole incident
- ✓ Explain the concept of an FIR
- ✓ Explain the process of filing an FIR application and how you can help
- ✓ Guide how to interact with police
- ✓ Schedule a follow up meeting to discuss further options, if necessary
- ✓ Set realistic expectations of how you can help

Who can file a FIR?

The aggrieved person, or someone acting on behalf of an aggrieved person, is usually the complainant in an FIR. However, the law does not make this compulsory. An FIR can also be registered based on information provided by an informant who is not the aggrieved person.

Activity 5: Case study

Take 10 minutes to discuss the 3 questions in small groups. Ask each group to present their views.

A child is working as a domestic laborer in the house of your neighbor. One day, you witness your neighbor physically abusing the child. The child tells you his employer beats him every day.

1. **Can you file a complaint to the police even though you are not the victim?**
Yes, since you have information about the commission of a crime.
2. **What information should you tell the police to help them proceed?**
 - Location/address of the crime (and address of accused person)
 - Your contact details as the informant
 - Details of the child (age, description, address)
 - Detail of harm done to the child (kind of harm, use of any weapon, etc.)
3. **What if your neighbor is a politician and the police refuse to register your FIR?**
 - Contact higher officials of the Police Department
 - Contact a legal aid lawyer to get Justice of Peace to order the registration of FIR

It is a duty of the police to register an FIR without any delay, excuses and especially without any charges. Non-registration of a FIR is an offence and can be grounds for disciplinary action against the concerned police officer. The Police Order 2002 and Police Rules of 1934 primarily provide the procedure in case of any misconduct by the police in registering a FIR.

It is also important to know that an FIR is a public document and anyone can obtain a copy of any FIR. An FIR is registered at the police station with territorial jurisdiction of the location where the crime was committed, which might not be the closest police station.

If the police refuse to register an FIR, the person trying to lodge the FIR has multiple options. First, the person can remind the police that registration of an FIR is compulsory and failure to do so can result in disciplinary action against them. Second, the person can go to the superior police officer concerned and demand the registration of an FIR. As a final resort, a person can file a petition before the Justice of Peace (JOP) under section 22-A Cr.P.C explaining that the police at a particular police station have refused to register an FIR. The JOP can pass an order that the relevant police station in-charge must register the FIR.



4. The right to bail

Another important issue in criminal cases is bail. Bail means that an accused person is allowed to leave the jail and go home while awaiting trial. To guarantee that the accused person will come to court when required, he/she gives either a personal surety or pledge of some property to the court as surety. Surety can be only in the form of bonds or property documents.

This topic is particularly important for a paralegal because you might need to help a person accused of a crime. Bail is also important to consider if your client is a witness who might feel threatened if the person they are testifying against might be released on bail. This problem is common in Pakistan, where bail is usually given, even in non-bailable offences, and there is very little witness protection.

The Cr.P.C. defines every offence as either a bailable or non-bailable offence. These are described in Schedule-II of the Cr.P.C. Actions that are not defined in Schedule-II of the Cr.P.C. and are declared an offence by a special law can also be either bailable or non-bailable.

In the case of a bailable offence, bail is the right of the accused person, who can seek bail at any stage of the criminal justice process. The law presumes that every accused person is innocent until proven guilty. Therefore, bail is intended to guarantee the rights and freedoms of an accused person until the charge is proven against him or her. In case of a bailable offence, a person can claim bail as a matter of right after his/her arrest as well as during the course of the trial.

In the case of non-bailable offences, bail may also be granted if the trial has been proceeding for a long time and the delay in the case is not caused by any action on the part of the accused person. These conditions are often relaxed for women and juvenile offenders, who are given special leniency. Children are particularly vulnerable in jail, and the conditions for bail for juveniles have been specifically defined in the Juvenile Justice System Ordinance 2000 (see Module 17 of this manual on Child Protection).

Activity 6: Debate!

Use one of the following topics:

“Bail should be allowed in all cases until an accused is proven guilty.”

“Bail should not be allowed because it makes it easier for the accused to escape conviction.”

Basic Concepts

Bailable offences are crimes for which bail can be granted as a matter of right. **Non-bailable offences** are the crimes for which bail normally cannot be granted as a matter of right. Bail for these offenses is at the discretion of the Court. (Section- 4(b) Cr.P.C.)

Bail: Bail is a right of every person accused of a bailable offence. Bail is also the right of a person accused of a non-bailable offence in cases where they are under trial and the trial is taking too long. Depending on the type of crime, an accused person can ask for bail from the police or the court at any time after arrest.

Pre-Arrest Bail: If a person thinks the police or any lawful authority are about to arrest them in a criminal case, the person may surrender to a Sessions Court and ask for bail before arrest. A request for pre-arrest bail can only be filed if an FIR is registered against the accused, he/she has apprehension of arrest, and he/she wants to remain available to the police during the

investigation without being arrested. Pre-arrest bail can be cancelled if the police produce sufficient evidence to arrest the accused person.

Protective Bail: This final category of bail is used in rare circumstances when a person fears that they will be arrested on their way to court to seek pre-arrest bail. In such cases, they can apply to a High Court, which can grant bail for the time it takes for them to surrender to a Sessions Court. Protective bail is usually granted for a limited time.

Bail can also be denied, but this is only done on particular grounds that are recorded in writing. Bail can be rejected if there is a risk that the accused will flee the court's jurisdiction, or tamper with evidence, intimidate witnesses or otherwise compromise the prosecution. Bail can also be denied if the manner in which the crime was committed was particularly heinous, or if there is a risk to the wellbeing or security of the accused person. Lastly, the court can also consider the probability of conviction. If there is overwhelming evidence against an accused person, bail could be denied. In any case of rejection of a bail application, the rejecting authority will record reasons why bail was denied and any such decision can be appealed.

5. Crimes against property and persons

There are four distinct types of offences under the law. This manual will look at the two main types. The Pakistan Penal Code has 23 chapters about different offences, and the most common are related to crimes against either a person or property. The two other categories are crimes against morality (such as drinking or narcotics issues) and crimes against the state (such as terrorism, sedition, treason etc.). The tables below shows crime statistics from the Punjab Police website (<http://punjabpolice.gov.pk/>) for the year 2015 as an example.

Punjab Crime Profile		
	2015 (to Sept.)	2014 (to Sept.)
All Reported	299,290	296,266
Against Person	38,251	43,969
Against Property	65,512	73,123
Local & Special Laws	117,157	100,731
Miscellaneous	78,370	78,443

Crimes Against Persons in 2015	
Offence	Registered
Murder	3,484
Attempted Murder	4,013
Hurt	12,216
Kidnapping/Abduction	10,266
Kidnapping/Ransom	70
Rape	2,107
Gang Rape	171
Other	5,924
Total	38,251

Crimes Against Property in 2015	
Offence	Registered
Dacoity	1,182
Robber y	12,787
Burglary	9,881
Theft U/S 382 PPC	1,292
Motor Vehicle Theft	13,504
Motor Vehicle Snatching	3,856
Cattle Theft	4,628
Others	18,382
Total	65,512

Activity 7: Data Questions

What do you notice in the tables of data? Were there more crimes against persons or property in Punjab in 2015? What four sub-categories of crimes were most common? Were crimes against persons higher in 2015 compared to 2014? What about crimes against property? What category of crime had the highest number of instances in both 2015 and 2014?

Basic concepts

Person: The word “**Person**” as defined in Section 11 of the PPC includes individual human beings, associations, firms or companies.

Property: The words "movable property" as defined in PPC Section 22 includes corporeal (tangible) things of every description, except land and things attached to the earth, or permanently fastened to anything attached to the earth.

Activity 8: Case Study

Majid lives in mohala Ahmad Nagar, Multan. On 12 July 2015, Ahmad a friend of Majid's younger brother Mohsin, along with some friends, drove to Majid's house called out Mohsin and started firing at the house. Mohsin received serious injuries and the house was also damaged with broken windows and a damaged front gate. Majid took his brother to the hospital where police recorded his statement and filed a complaint against Ahmad and his accomplices.

Questions: Mohsin comes to you for advice. What do you think he should do? What types of crime have been committed? Against whom would you file a complaint?

Other types of crimes against persons

- Ajmal comes to you as a paralegal and says his minor child was beaten up by neighbors and he wants to prosecute them. How can you help?
- Kashif comes to you as a paralegal and says that his cousin has been murdered by his friend. He is going to police station for giving application. How can you help?
- Najam comes to you as a paralegal and says that an FIR has been lodged against him accusing him of the abduction of a minor girl. He is innocent. How can you help?
- Bilal comes to you as a paralegal and says that his niece was sexually assaulted by a local shopkeeper. He wants to register a criminal case. How can you help?

Activity 9: Role play the situations on the left to practice paralegal skills

Use flip chart to record the following:

- What offences have been committed?
- How can the paralegal assist the client?

Paralegal assistance in cases of crimes against a person

An FIR should be registered in all cases in which a crime has been committed. A paralegal should insist that an FIR be lodged at the police station with territorial jurisdiction as soon as possible.

- ✓ Ask about the complete name and address of client.
- ✓ Ask about the time, date and place of occurrence.
- ✓ Note down the complete names and addresses of accused persons, or their descriptions, if known.

- ✓ If an application has already been filed, check whether it contains the above information.
- ✓ Ask for a copy of any previous application.
- ✓ Ask if a medical examination has been conducted. If not, recommend one as soon as possible.
- ✓ Note down the details of any injury.
- ✓ Note down the specific allegations against each of the accused persons.
- ✓ Ask the client how they would like to proceed.
- ✓ Provide client with all possible options. These can include:
 - o Filing a complaint or withdrawing it.
 - o Actively pursuing the case or letting the state prosecute.
 - o Engaging a lawyer to pursue the case privately.
 - o Seeking protection from the police or the community or both.
 - o Seeking a mediated settlement for compoundable offenses under Diyat laws.
- ✓ Refer the client to a lawyer if they wish to pursue the case or need a lawyer to represent them as an accused person.

Trainer's guide

What assistance can a paralegal provide in the role play situations?

1. Provide legal information.
2. Record the situation in writing.
3. Accompany the victim to the Police Station.
4. Assist the complainant in lodging an FIR.
5. Refer the client to a lawyer.
6. Assist the victim in case of a compromise or settlement.
7. Assist the complainant in following up with police.

Crimes against property

Chapter XVII & XVIII of Pakistan Penal Code specifically deal with offences against property. Offences against property include cases of theft, extortion, robbery, dacoity, hijacking, criminal misappropriation of property, criminal breach of trust, receiving of stolen property, cheating, mischief, criminal trespass, fraudulent deeds and dispossession of property and offences relating to documents and to trade or property mark.

As with all criminal offences, the accused's intention plays a large role in determining the amount of punishment that can be given. The best example of this is the difference between theft, robbery and dacoity.



Theft, robbery and dacoity are essentially the same crime with some difference in their conduct. Theft, is when a

person intentionally takes someone else's movable property out of the owner's possession without their consent. The punishment for theft in Pakistan is imprisonment for up to 3 years or a fine or both.

Theft becomes robbery if the offender puts any person in fear of imminent death, hurt or wrongful restraint during the commission of the theft. Let's look at the example of a mobile phone. If Ali is walking past a table where he sees Basit's phone, and Ali intentionally picks up the phone and walks away, Ali would be guilty of committing theft. However, if Basit is holding the mobile phone and Ali comes up to Basit and threatens him with death or hurt and then takes Basit's phone, Ali has committed robbery. Despite the damage being the same in both cases (the loss of a mobile phone), the crime is different because Basit feared for his life in the second case.

The punishment for robbery is rigorous imprisonment for a minimum of 3 years and a maximum of 10 years as well as a fine. Additionally, if Ali injures Basit in the course of the robbery, Ali could face imprisonment for life or rigorous imprisonment of not less than 4 years. A robbery becomes a dacoity if five or more persons jointly commit the robbery. Dacoity carries a more severe punishment of imprisonment for a minimum of 4 years and a maximum of 10 years as well as a fine.

Paralegal assistance in cases of crimes against property

- ✓ Ask the complete name and address of client.
- ✓ Ask about the time, date and place of occurrence.
- ✓ Ask about the complete details of the relevant property or properties.
- ✓ Ask the client to provide a copy of all the documents related to the property.
- ✓ If an application has already been filed, check whether it contains the above information.
- ✓ Ask for a copy of any previous application.
- ✓ Ask the client if they know who committed the crime or if they have any suspicions.
- ✓ If accused is unknown, ask client for a description of accused.
- ✓ Ask the client how they would like to proceed.
- ✓ Provide client with all possible options. These can include:
 - o Filing a complaint or withdrawing it.
 - o Actively pursuing the case or letting the state prosecute.
 - o Engaging a lawyer to pursue the case privately.
 - o Seeking protection from the police or the community or both.
 - o Negotiating a settlement in case the accused is known to the client.
- ✓ Refer the client to a lawyer if they wish to pursue the case or need a lawyer for defending themselves.



What should a person do if he/she is a victim of a crime?

Crimes affect everyone, the victims as well as bystanders and society as a whole. If you are ever the victim of a crime or are a witness to a crime, you should:

- Ensure your own safety first and make sure you seek shelter.
- Do not try to resist or intervene.
- Inform the police as soon as you can by either calling the Madadgar Helpline on 15 or informing the nearest police station.
- Make a note of as many details as possible in order to help the police in investigation and tracking the criminals. Make a note of the criminal's physical appearance (height, weight, hair etc.), clothing, the direction of escape and the vehicle and its number plate.
- You may have to go to the police station to make a complaint and record your statement or give evidence in court. If you do not help the police, the criminal may harm someone else.

Activity 10: Case studies - Group work

Divide participants into groups of not more than 5 people. Assign each group one of the following situations. For each situation, the group should decide what questions they need to ask their client in order to understand the case, provide legal information, and formulate options that they can recommend. Each group should also make recommendations.

- 1) Sajid tells a paralegal that he spent his life savings in buying a shop from Bilal, who claimed to be the owner of a small shop in Bahawalpur. Sajid paid Bilal Rs.200,000 for the shop. Sajid finds out later that Bilal is not the owner of the shop and now wants his money back. Unfortunately, Bilal is nowhere to be found.
- 2) Ahmad tells a paralegal that he parked his motorbike outside his shop. It was stolen and he wants to lodge FIR against the thief, but he does not know the procedure.
- 3) Bilal took a small loan from a friend and has not been able to pay it back for over a year. His friend now wants his money back but Bilal cannot pay. Bilal's friend comes to his house when Bilal is not there and takes away his television set in order to settle the loan. The loan was for Rs.2000 and the TV set cost Rs.20,000. Bilal wants his TV back.
- 4) Zeeshan and his coworker Ali get into a fight over who's work is better. Ali decides to file a false FIR against Zeeshan alleging that Zeeshan stole his laptop from Ali's desk. The police are now harassing Zeeshan and he comes to you for assistance.
- 5) Khwaja had a guest visiting him from out of town and wanted to take the guest around the city for sightseeing. He asked Nasir if he could borrow his motorcycle. Nasir agreed and lent his new motorcycle to Khwaja, but he said he needed the motorcycle back in a couple of days. It has now been 3 months and Khwaja refuses to return the motorcycle. Nasir has tried everything and now comes to a paralegal for advice.

6. Islamic concepts of punishment

According to the Islamic concept, Qisas and Diyat are forms of punishment. Qisas can be explained as inflicting similar injury or hurt on a person as he has caused to the victim. For example, if a person causes the death of the victim, then he is punished with death. If he causes injury that results in the loss of a leg, then he should suffer the same. Qisas is recognized as the right of the victim or the victim's heir – wali.

However, Qisas can only be given as a punishment when the crime has been proven to a high degree of certainty. Ordinarily, this standard of proof is difficult to achieve. When the case does not fulfill the requirement of Qisas for conviction then the court may give punishment as Ta'azir.. The death penalty and imprisonment can be awarded under Taazir.

Diyat is defined in Section 323 and is a form of compensation that is to be paid to the legal heirs of the deceased. The value of Diyat is recalculated every year and it is not less than the value of 30,630 grams of silver. This applies to cases such as accidentally causing someone's death. Arsh and Daman are also forms of financial compensation in cases of injury.

Module 15 Assessment

Criminal Law

Q1. Indicate whether the following statements are true or false

1. A crime is any action that violates the moral code of society
2. There are two types of crimes – Omission and Commission
3. Attempt to commit a crime can also be punished
4. An action can be crime even if no harm was caused
5. The intention of the accused is not relevant in most cases
6. An FIR is essential in all criminal cases
7. Only a victim can file an FIR
8. Bail is a right of any accused person
9. There can be no punishment if the victim forgives the accused
10. A paralegal should never assist an accused in criminal cases

Q2. What are the elements of every crime?

Q3. What information should be included in an FIR?

Q4. When is bail denied in criminal cases?

Q5. How can a paralegal help someone who is accused of a crime?

Answers: Module 15 Assessment

Criminal Law

Q1. Indicate whether the following statements are true or false

1. A crime is any action that violates the moral code of society - FALSE
2. There are two types of crimes – Omission and Commission - TRUE
3. Attempt to commit a crime can also be punished - TRUE
4. An action can be crime even if no harm was caused - TRUE
5. The intention of the accused is not relevant in most cases - FALSE
6. An FIR is essential in all criminal cases - FALSE
7. Only a victim can file an FIR - FALSE
8. Bail is a right of any accused person - FALSE
9. There can be no punishment if the victim forgives the accused - FALSE
10. A paralegal should never assist an accused in criminal cases -FALSE

Q2. What are the elements of every crime?

- “actus reus” (guilty act) and
- “mens rea” (guilty mind or intent)

Q3. What information should be included in an FIR?

Date and time of occurrence of the alleged crime, Place of occurrence, Description of accused or suspected persons, Role of each accused person, Details of weapons used, Details of injury caused, Details of property lost or damaged, Detail about any document used in commission of a crime against property, Detail of witnesses

Q4. When is bail denied in criminal cases?

- If there is a risk that the accused will flee the court's jurisdiction, or tamper with evidence, intimidate witnesses/complainant/victim or otherwise compromise the prosecution.
- If the crime was particularly heinous.
- If there is a risk to the wellbeing or security of the accused person.
- If there is overwhelming evidence against an accused person.

Q5. How can a paralegal help someone who is accused of a crime?

- By obtaining a copy of the FIR registered against them.
- By helping them understand the nature of the accusation.
- By referring the case to a free legal aid lawyer if the accused needs legal representation to get bail at any stage in the proceedings or more generally.



**MODULE 16:
GENDER-BASED VIOLENCE**

MODULE 16: GENDER-BASED VIOLENCE

Objective:

By the end of this chapter participants will be able to explain concepts of “sex” and “gender” as well as “gender-based violence” and “violence against women.” Learners will know about different kinds of gender-based violence, including physical and psychological abuse. Learners also will understand and ways in which women's access to justice is obstructed, and will have information and skills to assist women and girls who are victims of gender-based violence.

Time: 120 minutes

Sections in this module:

1. “Sex” and “Gender”
2. Pakistan law and gender justice
3. Domestic violence
4. Rape and *Qazf*
5. “Honor” crimes
6. Sexual harassment



Using this module: Below is reading material that is important preparation to understand the topic of this module thoroughly. Throughout this module there are a series of activities that can be used to train others. The module concludes with a written assessment that all learners should be able to fill out successfully after the training.

Gender-Based Violence (GBV) is violence that is directed against a person on the basis of their gender. GBV usually refers to violence against women specifically because they are women (i.e., not random violence against any person), and the phrase GBV is often used interchangeably with the phrase Violence against Women (VAW). This module focuses primarily on VAW. However, GBV also refers to violence against people because of their sexual identity and/or gender identity, including gay and bisexual men and women, transsexuals, and “third gender” individuals (also known as *hijra*). These individuals also commonly experience various forms of violence specifically because of their gender.

Both VAW and more generally GBV are prevalent across the world. For example, the United Nations estimates that one in every three women in the world suffers physical or sexual abuse in her lifetime. Issues include female infanticide, rape, domestic violence, sexual harassment, forced prostitution, trafficking, so-called “honor” killing, marriage to the Quran, giving away girls in marriage for the purpose of settling disputes (*badl-e-sulah*, *vani*, *sawara*), false accusations of adultery and fornication against women, forced and child marriages, acid crimes, and female genital mutilation.

The Constitution of Islamic Republic of Pakistan protects equality as part of fundamental rights (see Module 12), and several laws in Pakistan address gender-based violence. Pakistan has also joined a number of international conventions relevant to GBV and VAW, including the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) (see Module 21). Therefore, eliminating VAW and GBV is not only a national obligation but also Pakistan's obligation under international law.

1. “Sex” and “Gender”

The term “sex” refers to the biological differences between men and women. By biological differences we mean physical differences that people are born with. These differences include women's reproductive systems, including the ability to give birth to a child, and men's reproductive systems and other physical features such as the ability to grow a beard. Almost all females and almost all males share these biological differences.

The term “gender,” on the other hand, refers to culturally and socially constructed differences between men and women. These differences include the social roles that men and women are expected to fulfil, such as the way a woman or a man is expected to dress and act. Other examples include the expectations that women will be the primary homemakers and care-givers to children, and that men will be the primary workers outside the home and wage-earners in a family.

Activity 1: Difference between Sex and Gender

On two flip charts, put a flash card at the top of one that says Males, and a flash card at the top of the other that says Females. Ask participants to brainstorm what males can do and write the responses down. Ask participants what females can do. Write the answers.

Responses for males may include: Attend school, grow a beard, work outside the home, pray at the Mosque, serve in the Military, become a pilot, drive, smoke, play sports, earn money, travel, marry a woman, and protect the family. Responses for females may include: Cook, clean the house, marry a man, give birth to children, breastfeed infants, take care of children, take care of elderly family members, prepare for family gatherings, etc.

Now reverse the flash cards at the top of the flip charts – put Females in place of Males, and Males in place of Females. Ask participants to go through the list and find the things females are not physically able to do and the things males are not physically able to do.

Notice that males and females can both do almost everything that that other sex can do. The things that females and males are not physically able to do are differences in their sex. These things cannot be changed. The other things are differences in gender only. These things can be changed, depending on personal choices and societal freedoms.

Sexual and gender identity

There are gay men, lesbians, bisexuals, transgenders (Khuwaja Sira, or *hijra*, or Third Gender), and self-identifying straight men who have sex with other men in Pakistan, as there are around the world. All of these communities face significant discrimination and GBV. These issues are reported regularly in the media, but action is rarely taken by law enforcement or other authorities. In a historic move in 2009, the Government and Supreme Court of Pakistan recognized the civil rights of transsexual citizens, including the right to vote. Surprisingly, a group of 50 Islamic clerics issued a fatwa (religious decree) in 2016 declaring that marriage with a transgender person is lawful, and that inheritance and funeral rites of transgenders must be protected. Nevertheless, discrimination and violence continue, and addressing these issues is sensitive and usually considered “taboo”.

Gender Based Violence and Violence against Women

Relevant issues include, but are not limited to, the following:

- Physical, sexual and psychological violence occurring in the family, including battery, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence, and violence related to exploitation.
- Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.
- Physical, sexual and psychological violence perpetrated or condoned by the State.
- The casual treatment or indifference to the issue of violence under existing laws by law enforcement agents, judicial authorities and society at large.
- The forbidden nature of discussing the issue of GBV/VAW by terming it a “private matter,” as in the case of domestic violence.
- Economic violence, including and depriving a woman of her share in inheritance.
- Existing customs, traditional practice and norms that further reinforce inequalities and violence, including in Pakistan “honor” killing, marriage to the Quran, giving away girls in marriage for the purpose of settling disputes (*badl-e-sulah*, *vani*, *sawara*), false accusations of adultery and fornication against women, forced and child marriages, and acid crimes.

Activity 2: GBV and other violence in the life cycle

Divide participants in to 4 groups. Give each group a flip chart paper with Males and Females written across the top, and 5 age groups along the side: 0-12, 13-18, 19-35, 36-50, and 50+. Ask the groups to write down all the forms of violence that males and females are vulnerable to suffer in each different age groups. Give participants 10 minutes to complete the task. Put up the flip chart papers on display and discuss the outcomes. Some themes to discuss include:

- Males and females in the youngest age group are vulnerable to many of the same types of violence – neglect, physical abuse, sexual abuse. These are general forms of violence.
- The nature of violence begins to change after puberty. Females are more vulnerable to sexual abuse, harassment at home and in public, early marriage, and domestic abuse. This is GBV.
- The location of violence also begins to change. For adult men, violence is mostly outside the house. For girls and women, it is usually GBV in confined places, including the home.
- Another theme that emerges is the relationship between economic / physical power and vulnerability to abuse. Males and females are more vulnerable to abuse, neglect or abandonment as they get older and lose economic and physical power.
- Notice that there is no violence that is suffered by males because they are male. However, there are many kinds of violence suffered by females because they are female.

2. Pakistan law and gender justice

Domestic violence issues are not specifically covered in Pakistan Penal Code (PPC), 1860, but there are several sections covering issues such as causing miscarriage, causing hurt, wrongful confinement and restraint. Laws on sexual violence come under the umbrella of the Hudood Ordinances, 1979, but women are victimized rather than being provided relief by these laws. In December 2006, the Protection of Women (Criminal Laws Amendment) Act was passed. It amends several clauses in the PPC and Criminal Procedure Code (CrPC) in connection with sexual assaults on women and some modifications were made to Zina Offense as well.

Section 174-A was added to the CrPC in 2001 in an attempt to curb dowry-related violence. In addition, the Dowry and Bridal Gifts (Restriction) Act, 1976 limits the amount of dowry and bridal gifts which can be given in marriage, in an attempt to limit economic exploitation. The Acid Control and Acid Crime Prevention Act 2011 criminalizes the use of acid to deface or hurt women. The Child Marriage Restraint Act 1929 criminalized child marriages. The Prevention of Anti-Women Practices (Criminal Law Amendment) Act 2011 criminalizes forced marriages. In addition, forcing a woman to marry in order to settle a dispute and forcing a woman to “marry” the Holy Quran, a practice which is more common in rural areas to safeguard family property, have been criminalized. Although many laws have been formulated to protect women and amendments made to present laws, serious violations of these laws continue in Pakistan.

The Domestic Violence Prevention and Protection Act was passed by the lower house of parliament in 2009 but lapsed. The Council of Islamic Ideology and some parliamentarians labelled the legislation as anti-Islamic, saying that it could promote immorality and destroy the family structure. The legislation was approved by the Senate in 2012, but it applies only in Islamabad, because many of the law's provisions became provincial matters after the 18th Amendment to the Constitution.

Provincial laws on domestic violence include the Sindh Domestic Violence (Prevention and Protection) Act, 2013, the Balochistan Domestic Violence (Prevention and Protection) Act, 2014, and the Punjab Protection of Women against Violence Act 2016.

Establishment of the National Commission on the Status of Women (NCSW) in the year 2000 has helped in setting up a framework for women's development and gender equality. The Commission reviews proposed policies and laws and makes recommendations. Provincial Commissions also have been established.

Despite these affirmative actions in conformity with Pakistan's constitutional and international obligations, the country has a Gender Inequality Index (GII) value of 0.567, and a ranking of 123 out of 148 countries in GII for 2012. Pakistan ranks 82 out of 93 countries in Gender Empowerment Measures. In sum, the status of women in Pakistan is dismal.

It is essential that women should be aware of laws protecting their rights in order to empower them to help themselves. Women should know the law and the ways in which the legal system can protect them. Both women and men should demand that laws are enforced to prevent injustice and improve girls' and women's security. Women and men also should engage in discussions to enhance their legal understanding of issues that often lead to violence against girls and women, including laws related to marriage, divorce, child custody, maintenance, inheritance and the control of assets. With increased awareness of the law and legal remedies, women will have more options to enhance their decision-making power and take action on behalf of themselves and their families.

Gender justice

Women may be at a disadvantage when it comes to accessing justice. A woman may not be able to seek protection from GBV because of the implications on her and her family. Traditional power structures in society also help maintain the status quo. Some of the major hurdles for women in accessing justice in cases of gender based violence include:

- Male desire for supremacy, control, and power
- Power imbalances between men and women
- Women's lack of economic independence
- Harmful cultural and traditional practices
- Lack of respect towards women and their rights
- Assumptions about appropriate male and female behavior
- Tolerance of society towards violence
- Questionable religious beliefs
- Poverty
- Alcohol or other drug abuse
- Lack of access to counseling
- Sparse availability of shelters

Activity 3: Discussion What are the hurdles that women face in accessing justice?

Discuss the issues that participants mention. Add more issues to the list, with discussion.

Encourage participants to discuss these issues in their communities, and how these issues are related to GBV.

Specific issues relating to the justice system include:

- Authorities and society blame the victim instead of the perpetrator
- Bias of law enforcement agencies, including police
- Victim will not testify because of fear of reprisal or of loss of economic support or custody of children
- Inadequate laws against GBV and VAW
- Impunity for perpetrators of sexual violence
- Justice system silently condones violence against women and girls
- Legal priority of testimony of males over testimony of females
- Lack of Restraining Orders, not taking husbands into custody, and not monitoring or enforcing these orders
- Lenient sentencing for perpetrators
- Justice system focus on physical evidence to the exclusion of other types of evidence



3. Domestic Violence

Domestic violence means violence in a family or a household. Studies show that domestic violence is a very serious problem in Pakistan. It occurs in families across the country, regardless of economic class or ethnicity or religion. Domestic violence can result in serious injury or death. It can escalate over time or it can be sudden. There are a limited number of cases in which women cause violence to men. However, in the vast majority of cases, men commit domestic violence against women.

Activity 4: Brainstorming

Domestic violence does not always mean physical violence. Ask participants to brainstorm the various forms of domestic violence, and write all suggestions on a flipchart. Domestic violence also does not mean only violence of a husband against a wife. Ask participants to brainstorm all of the people who can be involved in domestic violence.

Domestic violence can be in many forms:

1. Physical violence:
 - Punching, kicking, slapping, scratching, biting, choking, beating, pulling hair, pushing, throttling, pinching, throwing, etc.
 - Using a weapon, including household items, such as chairs, cups, glass, bottles, belts, shoes, cooking utensils, broom handles, or instruments such as spades, shovels, hammers, screwdrivers, wire, etc.
 - Causing burns using alcohol, kerosene, acid oil, hot water, etc.
 - Forcing women to take unnecessary medicines, alcoholic beverages, drugs, etc.
 - Sexual abuse, including rape
2. Verbal abuse
3. Other psychological abuse, including silence
4. Emotional abuse, such as threatening to take her children
5. Economic abuse, such as withholding financial support
6. Intimidation, including causing fear
7. Harassment
8. Stalking (following another person)
9. Damage to property, including entry into a woman's property without her consent
10. Any other controlling behavior against a woman that can cause harm to her safety, physical or emotional health or well-being.



Domestic violence can involve these people:

- Domestic violence victims are often wives, but they can also be mothers, sisters, etc.
- Domestic violence can be committed by husbands, but it can also be committed by fathers, mothers, brothers, fathers-in-law, mothers-in-law, brothers-in-law, sisters-in-law, etc.

Activity 5: Case Study on Domestic Violence

Ayesha and Zahid, wife and husband, are engaged in an ordinary conversation relating to their income and the expenditures at home. As the discussion progresses, Zahid gets angry with Ayesha for spending too much money. Zahid raises his voice. Ayesha also responds in the same tone. The discussion turns into an argument and Zahid starts to verbally abuse Ayesha, calling her “lazy” and “stupid” repeatedly. The argument escalates, and Zahid pushes and hits Ayesha. Ayesha falls down and breaks her arm. Ayesha is in pain and cries aloud.

Muhammad, the neighbor next door, hears Ayesha's cry and decides to try to stop the fight. Muhammad has heard similar fights and crying and loud crashes in the house hundreds of times before. Muhammad rings the door bell, which interrupts the momentum of the fight. Zahid opens the door and Muhammad asks for some milk. Zahid gives the milk and walks out of his house, leaving Ayesha alone.

Activity 5A - Questions for discussion:

- Is a case of domestic violence? Would it change the situation if Ayesha also tried to hit Zahid to defend herself from Zahid's attack? What if Ayesha hit Zahid first?
- Some participants might argue that Zahid was right in using force because Ayesha was overspending and then arguing with her husband in a raised voice. Others may say that a husband never has the right to hit his wife. What does the law say?
- What do you think of Muhammad's action? Did the neighbor have the right to intervene in a private matter? Did he have the obligation to do so?

Activity 5B - Role play

Role play Ayesha's visit to the paralegal in her community.
What should the paralegal do and say?

4. Rape and *Qazf*

Rape, as defined in the law in Pakistan is when a man has sexual intercourse with a woman without her consent or against her will. Rape may involve the use of physical force or the threat of force. It may also be committed against someone who is unable to give consent, for example, a child or an insane person. Many other countries also recognize the crime of rape in marriage.

The offences of rape and gang rape are punishable with *taz'ir* under Pakistan Penal Code and Criminal Procedure Code. The punishment for rape is death or imprisonment of 10-25 years and a fine. The punishment of rape by two or more persons is punishable with death or life imprisonment.

Services needed by a rape victim

- A victim of rape is almost always in need of multiple services due to physical, psychological and emotional trauma associated with the assault.
- The first priority should be medical assistance as it will help the victim in gaining control over the situation and also facilitate the gathering of important evidence which can be used for prosecution in a court of law. A paralegal should provide information of the relevant government hospital that deals with victims of rape in the area.
- The victim might also need counseling services because, beyond from the physical injuries, the biggest impact of the assault is psychological trauma. Due to fear, the victim might not want to share the details of the incident with anyone. This trauma can have very serious long-term effects. The paralegal should provide information related to counseling services available for victims of rape in the area.
- Interaction with the police is generally difficult, and more so in cases of rape since gender-sensitive policing is not common. It is important to involve the police in cases of rape as soon as possible to have a realistic chance of conviction of the offender. Paralegals should offer information about legal aid services from the court, NGOs or private lawyers.
- Children are particularly susceptible to sexual violence due to their age and innocence. Dealing with a child victim of rape is a complex situation and needs special consideration and additional care. Paralegals should be aware of child protection standards and mechanism available in the area.

Paralegal assistance in a case of rape

What a paralegal can do:

In addition to all of the guidelines described above the context of domestic violence, in the case of rape a paralegal should:

- Explain the process of registering an F.I.R. against the offender as soon as possible
- Guide the victim to a government hospital as soon as possible to complete a forensic examination and for appropriate medical treatment
- Guide the victim on how to preserve evidence before a forensic examination is conducted (evidence includes clothes, hair, semen, the place of the attack etc.) A victim should be advised not to shower, change or use the washroom before evidence can be collected
- With the consent of the victim, contact a lawyer or a support helpline [for example, the helpline established by the Women's Development Department/Punjab Commission on Status of Women (1043) or the Legal Aid Society (0800-708-06)] for more information, protection and reporting an incident
- Refer the victim to a counseling service
- Guide and assist the victim to take measures to ensure her safety, since the offender might hurt her again or stop her going to police or appearing in court
- Follow up with the victim, since she might be too scared to approach the paralegal again

What a paralegal should avoid doing in a rape case:

In addition to all of the guidelines described above the context of domestic violence, in the case of rape a paralegal should:

- Never blame or judge the victim
- Never mediate between a victim and a rapist
- Never suggest a shower or washing hands before forensic examination as this will destroy evidence
- Never suggest a change of clothes as this will destroy evidence
- Never suggest urination or using the washroom before forensic examination as this will destroy evidence
- Never suggest to clean the area where the rape took place as this will destroy evidence

False accusation of adultery against a woman (Qazf)

Qazf is the false allegation of Zina (sex outside of marriage) against any person, alive or deceased with the intention to harm the reputation of the other person. Qazf can be committed by written or spoken words, or by signs or visible representations.

The allegation must be proved, otherwise the person making the claim is liable to punishment. For example, Amir tells his wife that the child she has given birth to is not his. Amir must have evidence to support his claim. If he is unable to prove that the child is not his and his wife's, then Amir will face punishment for the offence of Qazf.

Prior to the Protection of Women (Criminal Laws Amendment) Act, 2006, a woman had to lodge a complaint in court against a false allegation of adultery or fornication. After the amendment, the complainant must file a complaint to a district or session judge along with the statement of the two witnesses. The complaint is only accepted if the judge finds that the complaint is genuine on the face of it and can issue summons for the arrest of the woman.

Failure to prove the offence of Zina will automatically result in a simultaneous conviction of Qazf against the accused. It is in the discretion of the judge to immediately charge and convict the complainant for the offence of Qazf. New legal proceedings do not have to be initiated. The punishment of Qazf is whipping numbering 80 lashes.

The Amendment is meant to ensure that a women cannot be arrested and kept in custody until a case comes to court. The conversion of a failed prosecution for Zina in to a charge of Qazf against the accuser is intended to discourage men from filing cases to harass women.

5. "Honor" Crimes

So-called "honor" crimes, including killing, are one of history's oldest forms of gender-based violence. "Honor" crimes are committed on the assumption that a woman's behavior harms the reputation of the family and/or the community. "Honor" killings are almost always committed against women, despite the fact that the actions of the accused require both a man and a woman.

Perceived violations of "honor" can include if women falls in love with someone who has not been chosen by her family, seeks a divorce, enters into a relationship outside her marriage, or behaves in other ways considered to be inappropriate. In some cases, a family will murder a daughter if the family is unable to provide a suitable dowry, which could shame and dishonor the family in the eyes of the local community. Traditional justice systems such as jirgas and panchayats have also ordered "honor" killings. Karo Kari is a Sindhi term for declaring a man and a woman liable to murder for bringing dishonor to their family or tribe. Other motives, such as controlling property, enabling another marriage, or usurping inheritance also have been the motives for "honor" killing.

"Honor" killing is the most intimate of all crimes since it is those who are tied to the woman through love or family who commit the crime. "Honor" crimes are usually committed by male family members, including a woman's husband, brothers, cousin, uncles or father. In some cases, women of the family are also involved. Family members sometimes publically take pride in a murder committed in order to preserve the "honor" of the family. In some cases, local officials side with the family and take no action to punish the murderers or deter similar crimes in the future.

The crime of "honor killing" (karo kari and sivah kari) has been termed as fasad fil arz (causing mischief on earth). Causing either injury or death in the name of honor are a crime. The investigation of "Honor" crimes must be investigated by a police officer not below the rank of Superintendent of Police. The punishments for the commission of intentional murder (qatle-e-amd), including in the name of "honor," are death penalty or life imprisonment, with a . The minimum imprisonment of ten years and the Government does not have power to suspend or cancel or reduce any punishment in the case of "honor" crimes. The punishment for causing hurt in the name of "honor" is one-third of the maximum imprisonment for this crime, which can be from 3 to 10 years. However, "honor" killing is a non-compoundable offence, meaning that the family of the victim can forgive the accused, and punishment can be waived. Qisas cannot be waived and punishment cannot be compromised or forgiven by any means of consideration. This forgiveness is the normal practice, since "honor" crimes are typically committed by family members. As of August 2016, the promised "Anti-Honour Killings Laws (Criminal Laws Amendment) Bill, 2016," which would make these crimes non-compoundable, is still pending.

How can a paralegal help if he or she fears that an honor crime may occur?

- If there is an ongoing threat to a woman's life, the paralegal should direct them to the police, or a relevant NGO or shelter home for security.
- Report the matter to the District Superintendent of Police. The police are required to gather evidence, which may result in proving a pre-meditated killing.
- Find out if any jirga is reported to have declared anyone as a Kari or Karo.
- Provide information about the law to a person fearing an "honor" killing.
- Provide guidance to a panchayat or jirga that is considering honor killing as a punishment

6. Sexual Harassment

Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal, written communication or physical harassment of a sexual nature in any setting. Sexual harassment can occur on the street, in the market, in an office or factory, in a school, etc. The offender can be a supervisor, a co-worker, a person passing by on the street, shopkeeper, teacher, peer, etc.

Harassment is a common issue faced by women everywhere, including Pakistan. Women face intimidation in the market place, in buses, at bus stops and at the work place. Sexual harassment inhibits women from moving freely, getting an education, availing medical facilities and earning a livelihood. Parents may be hesitant to send their daughters out of the home alone because they fear it is not safe. In Pakistan, harassment is a crime according to both federal and provincial laws.

Forms of Sexual harassment:

- Verbal harassment of a sexual nature
- Unwanted touching / physical contact / sexual advances
- Causing interference with work performance by intimidation
- Creating hostile or offensive work environment, including:
 - Verbal, written or physical expression of sexual or humiliating nature
 - Telling "dirty" jokes or stories
 - Tolerating employees who make sexually suggestive remarks about other employees
 - Allowing or using derogatory terms with a sexual connotation to describe co-workers
- Requests for sexual favors by someone in authority
- Making conditions of employment dependent on sexual favors
- Official disciplinary action for refusal to comply with such a request
- Threat to terminate the employment for refusal to comply to such a request
- Physical acts of sexual assault

Protection Against Harassment of Women at the Workplace Act, 2010

A complaint requires the following conditions:

- If a woman is harassed at the work place she may make an application to the Mohtasib (Ombudsman) or to an Inquiry Committee of the organization where she is working. Every organization must constitute an Inquiry Committee under this law.
- The committee must communicate the allegations to the accused person within three days of the complaint. The accused person must submit a written defense within seven days.
- If the accused does not comply with the directions of the Committee, the Committee shall proceed with the case without involving him.
- The Committee may examine the oral or documentary evidence in support of the charge or in defense of the accused. Each party is entitled to cross-examine the witnesses against them.
- The Inquiry Committee is required to ensure the following:
 - (a) The entire process of inquiry, statement, record and evidences shall be kept confidential.
 - (b) Provide advice and assistance to each party.
 - (c) Each party is entitled to be represented or accompanied by a Collective Bargaining Agent representative, a friend or a colleague.
 - (d) Neutrality of proceeding, so no adverse action is taken against the complainant or the witnesses for filing a complaint.

- (e) The inquiry Committee shall ensure that no one creates a hostile environment for the complainant to prevent her from freely pursuing her complaint.
- (f) The Inquiry Committee shall give its findings and reasons in writing.
 - The Inquiry Committee shall submit its findings and recommendations to the Competent Authority within thirty days of the initiation of the inquiry. If the Inquiry Committee finds the accused to be guilty it shall also recommend penalties to be imposed on the accused.
 - Minor penalties under this law include censure i.e., official disapproval and condemnation of the act of the accused, withholding promotion or increment of the accused for a specific period, and compensation to the victim. Major penalties include demotion or downgrading the accused, compulsory retirement, removal from service, dismissal from service and a fine. A portion of the fine can be used as compensation for the victim.
 - The law provides the following relief to the victim in cases of trauma:
 - Psycho-social counseling or medical treatment
 - Additional medical leave
 - Compensation in case of loss of salary or other damages
 - An appeal against the decision of the Inquiry Committee may be made by any party to the Ombudsman. The time limitation for making an appeal is 30 days.

Activity 6: Case Study on Sexual Harassment

Asif supervises 12 people in the stitching department of a garment factory. Madiha is one of the workers reporting to Asif. One day she finds a note from Asif which says, "I would like to have more than a professional relationship with you. Will you become my friend? We can go out for a drive." Madiha has no interest and ignores the note from Asif.

Asif subsequently ceases all communication with Madiha. He directs verbal communication through co-workers and begins to critique her work even when nothing is wrong. He calls staff meetings when she is away from her seat so that she does not keep up with design changes in the stitching department. This results in errors, for which she receives official written reprimands. The situation continues to deteriorate and eventually, Madiha develops migraine headaches and is given 30 days probation because of insufficient attendance and poor performance. Madiha is afraid of losing her job and comes to a paralegal for advice.

Questions for discussion:

- What can Madiha do in the given situation?
- Is this sexual harassment? Why or why not?
- What are Madiha's options?
- How can a paralegal help Madiha in this situation?

Module 16 Assessment

Gender-Based Violence

Q1. Indicate which of the following statements are true

1. Gender-based violence is all cases in which a woman is the victim
2. “Gender” means the biological sex of male or female
3. Women and men have the same access to justice
4. Domestic violence is violence committed within the household
5. Domestic violence against women is only committed by men
6. Rape can be considered a crime, even within a marriage
7. Sexual harassment is committed only at the workplace
8. Employers have responsibility with regard to sexual harassment
9. Every accusation of adultery against a woman can be converted to a false accusation case if it is not proved in court
10. “Honor” crimes are treated the same by the courts as other crimes

Q2. Name 3 issues women face in access to justice in Pakistan.

Q3. Name 5 ways a paralegal can help in cases of rape.

Q4. Name 2 duties of an employer with regard to sexual harassment.

Q5. Name 2 differences between crimes of “honor” and regular cases of hurt or murder.

Answers: Module 16 Assessment

Gender-Based Violence

Q1. Indicate which of the following statements are true or false

1. Gender-based violence is all cases in which a woman is the victim - FALSE
2. “Gender” means the biological sex of male or female - FALSE
3. Women and men have the same access to justice - FALSE
4. Domestic violence is violence committed within the household - TRUE
5. Domestic violence against women is only committed by men - FALSE
6. Rape can be considered a crime, even within a marriage - TRUE
7. Sexual harassment is committed only at the workplace - FALSE
8. Employers have responsibility with regard to sexual harassment - TRUE
9. Every accusation of adultery against a woman can be converted to a false accusation case if it is not proved in court - TRUE
10. “Honor” crimes are treated the same by the courts as other crimes - FALSE

Q2. Name 3 issues women face in access to justice in Pakistan.

Violence in the household is often considered a private matter for families to solve. The testimony of men has more weight than the testimony of women. Women don't know the law and how it should protect them. Etc.

Q3. Name 5 ways a paralegal can help in cases of rape.

Identify resources for medical assistance, counselling, and legal aid. Help the victim preserve evidence by not cleaning herself or the location of the rape until the police can gather evidence. Accompanying her to the police station and ensuring police perform their duties. Etc.

Q4. Name 2 duties of an employer with regard to sexual harassment.

Employers must provide a safe working environment free of sexual harassment or hostility. They must establish a committee to address any accusations of sexual harassment.

Q5. Name 2 differences between crimes of “honor” and regular cases of hurt or murder.

Crimes of “honor” are almost always committed by close family members against women. They are always justified as a way to protect the “honor” of the family in the community. “Honor” killing cannot be compromised or forgiven by any means of consideration.



**MODULE 17:
CHILD PROTECTION**

MODULE 17: CHILD PROTECTION

Objectives:

At the end of this module, learners will have an introduction to child abuse, which is one reason that children might need the help of a paralegal. Learners will understand the concept of child protection and protective mechanisms for children in need of care. In addition, learners will understand why children might commit crimes and about juvenile justice, including how a paralegal can assist a child accused of a crime and the child's family.

Time: 60 minutes

Sections in this module:

1. Child abuse - Children as victims
2. Laws in Pakistan for the protection of children
3. Protection of children in conflict with the law

Using this module: Below is reading material that is important preparation to understand the topic of this module thoroughly. Throughout the module there are a series of activities that can be used to train others. The module concludes with a written assessment that all learners should be able to fill out successfully after the training.

Children can be both the victims and the perpetrators of crimes, and children deserve special treatment in both situations. When a child is a victim of crime, often it is child abuse by someone in their family or someone else the child knows, such as a teacher. In addition to legal assistance, they might need many different kinds of medical and psychological services. When a child is the perpetrator of a crime, a specific law called the Juvenile Justice System Ordinance, 2000, governs how they are treated by the Pakistan criminal justice system. This module addresses both children as victims and children as perpetrators of crime, and how a paralegal can be helpful. Also see Module 7 on Interviewing a Client, which includes a separate section on interviewing children.

1. Child abuse

Child abuse is when a parent or care giver or other adult with any responsibility related to a child, whether through action or failing to act, causes injury, death, emotional harm or risk of serious harm to a child. There are four major categories of child abuse:

1. Physical Abuse
2. Emotional Abuse
3. Sexual Abuse
4. Neglect

Other kinds of child abuse could include corporal punishment, child marriage, child labour, child abduction and trafficking in children.



Physical abuse

Physical abuse can include hitting or slapping, shaking, throwing, poisoning, burning or scalding, drowning, suffocating, or otherwise causing bodily harm to a child. Both infants and older children can be the victims of physical abuse.



Emotional abuse

Some level of emotional abuse is involved in all types of maltreatment of a child, and emotional maltreatment of a child can cause severe and persistent adverse effects on the child's emotional development. Emotional abuse may involve conveying to children that they are worthless, unloved, inadequate, or valued only when they meet the needs of another person. It might include silencing a child or 'making fun' of what they say or how they communicate. Emotional abuse could involve inappropriate expectations or demands being imposed on a child, or preventing a child from participating in normal social interactions. Child abuse could take the form of serious bullying, causing a child frequently to feel frightened or in danger, or the exploitation or corruption of a child. When a child is forced to see or hear the ill-treatment of another person, such as the child's mother being beaten, this can also be child abuse.



Sexual abuse

Sexual abuse involves forcing or enticing a child to take part in sexual activities, not necessarily involving a high level of violence, whether or not the child is aware of what is happening or seems to consent. The activities can include physical contact, including kissing, rubbing and touching outside of clothing, masturbation, or assault by penetration (for example, rape or oral sex). Sexual assault can also include non-contact activities, such as involving children in looking at or producing sexual images, watching sexual activities, encouraging children to behave in sexually inappropriate ways, or grooming a child in preparation for abuse (including via the Internet). Sexual abuse is not solely perpetrated by adult males. Women can also commit acts of sexual abuse, as can other children.



Neglect

The persistent failure to meet a child's basic physical and/or psychological needs is called neglect, and is likely to result in serious impairment of the child's health and development. Neglect can occur during pregnancy as a result of maternal substance abuse. Once a child is born, neglect can involve a parent or other caregiver abandoning a child or failing to:

- provide adequate food, clothing, shelter (including exclusion from the home)
- protect a child from physical and emotional harm or danger
- ensure adequate supervision (including the use of inadequate care-givers)
- ensure access to appropriate medical care or treatment

Effects of Abuse on Children

Some of the many physical and psychological effects on victims of child abuse are listed in the boxes on this page. These slides were compiled by SAHIL (<http://sahil.org/>), an organization in Pakistan that has worked for 20 years exclusively on the issues of child sexual abuse and exploitation.

Child victims of abuse might behave in some anti-social ways that do not seem “normal” for a child. Paralegals should be aware of these behaviors as possible signs of abuse, and should treat children with sensitivity, rather than blame or judgment.

Physical and Psychological Effects on Child Victims

- Trusting relatives excessively or not at all
- Phobia/irrational fears
- Age-inappropriate sexual awareness or interest
- Self injurious behavior/suicidal attempts or thoughts
- Mood swings
- Poor body image and low self-esteem
- Persistent disobedience

Effects of Abuse on Child Victims

Isolation

Because “something is wrong with me”
Because they feel alone in their experience
Because they have trouble talking about the abuse
Because they do not want to cause trouble

Guilt / Self-blame

For not being able to stop the abuse
For believing they consented to the abuse
For being bad or dirty
For being accused for telling about the abuse
For keeping the abuse a secret

Interacting with Children

- Ensure privacy for the conversation; speak to the child separately from family members, if possible and appropriate
- Speak directly to the child, not through adults
- Assure child of confidentiality
- Listen to the child carefully, and demonstrate to the child that she/he is being heard
- Trust what the child is saying

Activity 1: Role Play

Discuss some of the points in the boxes. Then ask three participants to play the roles of [1] a paralegal, [2] a teacher trying to help her student, and [3] a child demonstrating some of the attitudes and behaviors in the first box.

- How can the paralegal respect the child's confidentiality (and possible feelings of shame), but also show respect to the adult who brought the child to the paralegal?
- How can the paralegal encourage the child to talk about very sensitive topics, such as abuse?
- How can the paralegal earn the trust of the child in order to help them with their legal problems, such as possibly filing an FIR against the person who caused the abuse?
- Is it always in the best interest of the child to pursue a legal case? How else could the paralegal assist the child? What kinds of referrals might be appropriate?

2. Laws in Pakistan for the Protection of Children

Guardian and Wards Act, 1890 - During a suit for the custody of a child, the Guardian Court may make an order for the production of the child and interim protection of his or her person and property.

Protection of the Rights of a Minor in Court

Every suit by a minor must be instituted through his/her “next friend,” which means an individual who acts on behalf of another individual who does not have the legal capacity to act on his/her own behalf, such as a child¹. If a suit is instituted without the “next friend,” the Court may make such order in the matter as it thinks fit. The “next friend” cannot receive any money or other property on behalf of a minor, enter into any agreement or compromise on behalf of a minor.



If the person against whom the case is filed is a minor defendant, the Court shall appoint a proper person to be guardian for the suit for such minor. Such guardian shall have no interest in the matters in controversy in the suit adverse to that of the minor. Where there is no other person fit and willing to act as guardian, the Court may appoint any of its officers. The guardian is charged with the custody of the ward and must care for his support, health and education and such other matters as required under the relevant law (Section 24).

Civil Procedure Code (CPC), Order XXXII - A minor, on attaining majority, may apply that a suit instituted in his name by his “next friend” be dismissed on the ground that it was unreasonable or improper because of failure or incapacity to perform the duties of his trust or ill-treatment, or neglect to take proper care of his ward.

Pakistan Bait-ul-Maal Act, 1991 - The money in the Bait-ul-Maal shall be utilized for the residential accommodation and necessary facilities to persons, including orphans. There must be accommodation for 100 orphan children (4-6 years of ages) in each institution. (Section 4(a) read with (b))

Pakistan Penal Code, 1860 (PPC)

- **Abandonment** - Exposure and abandonment of a child under 12 years of age by a parent or person responsible for the care of the child is an offence. (PPC section 328)
- **Prohibition of Corporal Punishment** - PPC section 89 prohibits corporal punishment of children in all settings, except where parents, teachers and other guardians use corporal punishment as a means to discipline and correct the behavior of children under 12 years of age, and the punishment is moderate and reasonable. However, the Khyber Pakhtunkhwa legislature repealed section 89 PPC, and any form of corporal punishment by any person is an offence under section 34 of the KP Child Protection and Welfare Act, 2010.

¹The term “next friend” is a translation from the French legal term “*prochein ami*.” In English-language legal systems, the more common term is “Guardian Ad Litem,” which means a guardian appointed by the court.

- **Exposure to seduction** - Exposing a child to sexual activity or obscene sexual material (document, film, video or computer generated image) is a crime. (Section 292-A PPC)
- **Child pornography** - Child pornography is a crime, including taking photographs, film, video, portrait or computer generated images of an obscene or sexual nature. (Section 292-B PPC)
- **Cruelty to a child** - Any kind of willful assault, ill-treatment, neglect, abandonment, or any act of omission or commission that results in or has potential to cause physical or psychological injury to a child is defined as “cruelty” and is against the law. (Section 328-A PPC)
- **Sexual abuse** - Sexual abuse in its all forms, including fondling, stroking, caressing, exhibitionism, voyeurism, obscene or sexual conduct or simulation, are against the law. (Section 377-A PPC)
- **Protection of infant whose mother faces execution** - The execution of a pregnant woman in *Qisas* is deferred up to a period of two years after the birth of the child. (Section 314(3) PPC)
- **Intentional miscarriage** - The acts of *Isqat-i-Hamal* (causing woman to miscarry fetus with organs that have not been formed) and *Isqat-i-Janin* (causing woman to miscarry fetus with some limbs or organs that have been formed) are criminalized under PPC sections 338-A and 338-C, respectively.
- **Concealment of a child's birth** - The law also criminalizes the concealment of birth by secret disposal of dead body of an infant. (Section 329 PPC)

3. Protection of children in conflict with law

Family risk factors can increase the tendency of children to commit crimes. Some family risk factors, along with other influencing factors, are listed in the boxes below.

Family Risk Factors	Reasons Children Commit Crimes
<ul style="list-style-type: none"> • Abusive environment • Parental experience of abuse, passed on to the next generation • Economic distress due to poverty and unemployment • Unstable home life • Criminal history within the family 	<ul style="list-style-type: none"> • Economic distress of family • Lack of understanding of the consequences of their actions on other people • Negative influence of peers • Neglect at home; to get attention • Lack of physical and social activity • Hormonal changes • Unable to understand their own feelings • Limited teaching methodology

Activity 2: Guided Discussion

Do you agree that the factors in the box have the potential to lead children into crime? What other risk factors do you think contribute to the potential for any child to become involved in crime? Can paralegals help communities address any of these problems?

Pakistan has several specific legal protections for children in conflict with the law, including but not limited to the Juvenile Justice System Ordinance (JJSO), 2000.

Pakistan Penal Code, 1860

Age of criminal liability - The minimum age for criminal responsibility is ten years of age (section 82 PPC). However, children between 10 and 14 years of age can only be held criminally responsible if the court determines they were mature enough to understand the consequences of their actions.

Pakistan Prison Rules, 1978

Special measures for the protection and reforms of under trial and convicted juvenile and youthful offender (Rule 280):

- Medical examination at the time of admission
- Borstal Institution and Juvenile Prison (Rules 282–304) must have appropriate residential, educational and vocational training facilities; Supply of blanket in severe cold weather (Rule 132(ii)); Accommodation of male juveniles separate from adult males (Rule 184); Women (and girl) prisoners are kept completely apart from male prisoners; Prohibition on wearing restraints (Rule 301(v)); Confinement of juvenile inmates in cells both by day and night, in preference to any other class of prisoners (Rules 236(a))
- The notice of the date of release of every juvenile prisoner is given one month before such date, and is sent to his relatives to receive him at prison on release (Rule 138(i))

Juvenile Justice System Ordinance, 2000

A child cannot be charged with or tried for an offence together with an adult. In addition, a child arrested for an offence must be produced before the juvenile court within 24 hours of arrest.

A child arrested for a bailable offence must be released on bail, with or without surety, unless there are reasonable grounds for believing that a release would bring him into association with any criminal or expose the child to any danger. The child must be handed over to a probation officer or any other officer designated for this purpose by the government under the law. Under no circumstances can the child be kept in a police station or jail.

To protect the privacy of accused children, the Court does not allow anyone to be present during proceedings of the case except the



members and officers of the juvenile court, parties to the case and persons directly concerned with the proceedings, and the child's guardian.

A juvenile can be given neither the death penalty nor rigorous imprisonment. A child cannot be handcuffed and/or put in restraints, except when there is a danger of the child escaping (Section 12). Corporal punishment cannot be used at any time in custody.

An accused child has the right to be represented at the state's expense by a lawyer with at least five years' experience in the relevant provincial bar (Section 3). Punjab and KPK have notified five and seven panels of lawyers respectively for the purpose. However, no province has passed a budgetary allocation in this regard as yet.

Activity 3: Brainstorm

What should a juvenile do if he or she is arrested?

Discussion might include some of the following ideas:

1. Juveniles should ask the police to contact their parents or another adult immediately.
2. If the juveniles are going to be asked questions or charged, especially if the allegations might be serious, they should insist that their parents / guardian and lawyer are present.
3. Juveniles should refuse to make any statements to the police unless their parents are present.
4. Juveniles should not fight with or shout at the police because this may result in legal complications and their behavior could be used against them. They may also spend more time being held by the police.
5. If juveniles or their families cannot afford a lawyer, they should insist that the Court appoint a lawyer or consult the District Bar Association or a legal aid office.
6. After being arrested, a juvenile should ask to be released into the custody of their parents, a guardian, an official (probation officer), or be put in a place of safety to await their trial. If the police refuse, the juvenile must await their court appearance and then ask the Magistrate to release them so that they can wait for trial in one of the ways described above.
7. Juveniles who are mistreated or abused by the police or jail officials should inform their parents, their lawyer, or the Magistrate if they appear in court. If they are not brought to court but visited by a district doctor, they should inform the doctor.
8. It is important for a juvenile accused of a crime to obtain help from a lawyer as soon as possible.

More Activities related to Child Protection

Activity 4: Debate

Read the description of this activity in the Introduction section of this manual. Another way to conduct a debate as a learning exercise is to divide participants into pairs. Ask each pair to spend 10 minutes preparing to debate both sides of this topic (yes and no): “Children should be held accountable for crimes the same as adults because the actions of children have the same impact on the victims and on society.” Call any two teams to the front of the room. Ask one pair to argue the “yes” position for 3 minutes, and the other pair to argue the “no” position for 3 minutes. Then call the next two teams to debate each other. Make sure both participants in each pair have a chance to contribute to the debate. Keep strict time limits so that as many participants can debate as possible.

Activity 5: Case Studies

In advance of the training sessions, write short case studies about children committing various crimes, such as stealing a motorbike or hurting another child seriously. Ask participants to divide into groups of four people. Give each group a case study. Encourage the groups to imagine the details of the stories and the motivations for the children's actions. Ask each group to spend 10 minutes writing on flip chart paper [1] what questions they want to ask the child who is their client and [2] all of the ways they can help their client. Give each group 5 minutes to make a presentation. Invite other participants to give feedback and additional ideas.

Activity 6: Ambassadors Game or Gallery Walk

Make handouts with the information in this module about **Laws in Pakistan for the Protection of Children** and the other information about **Protection of Children in Conflict with Law**. Follow the instructions in earlier modules to play the Ambassadors Game or to set up a Gallery Walk. These exercises enable participants to teach each other about complex information, such as the laws.

Activity 7: Demonstration / Simulation

Divide participants into groups of 4-5 people. Tell the groups that they will be conducting a Legal Empowerment Session with young teenagers attending a vocational school. (Encourage participants to look again at Module 5 of this manual on Conducting Legal Empowerment Sessions.) The topic of the Legal Empowerment Session can be anything included in this module on Child Protection. Give groups 10 minutes to prepare a presentation or activity that will take not more than 10 minutes. Ask each group to demonstrate their learning from this module as well as their skills in leading the Legal Empowerment Session.

Module 17 Assessment

Child Protection

Q1. Indicate whether the following statements are true or false

1. Children younger than 12 cannot be punished for a crime
2. Only physical child abuse has serious consequences
3. Only parents can be guilty of child abuse
4. Children cannot be given the death penalty
5. Children cannot be handcuffed
6. Children cannot file a case against another person
7. The Pakistan Penal Code describes how to treat children in criminal cases
8. All forms of child abuse have an emotional component
9. Only the criminal law is relevant to child protection
10. The law says every juvenile accused person must have a lawyer

Q2. List the 4 major categories of child abuse.

Q3. Name one law and explain how it protects children from abuse.

Q4. List 4 ways the law protects juveniles accused of crime.

Q5. How can a paralegal assist a child victim of abuse?

Answers: Module 17 Assessment

Child Protection

Q1. Indicate whether the following statements are true or false

1. Children younger than 12 cannot be punished for a crime - FALSE
2. Only physical child abuse has serious consequences - FALSE
3. Only parents can be guilty of child abuse - FALSE
4. Children cannot be given the death penalty - TRUE
5. Children cannot be handcuffed - TRUE
6. Children cannot file a case against another person - FALSE
7. The Pakistan Penal Code describes how to treat children in criminal cases - FALSE
8. All forms of child abuse have an emotional component - TRUE
9. Only the criminal law is relevant to child protection - FALSE
10. The law says every juvenile accused person must have a lawyer - TRUE

Q2. List the 4 major categories of child abuse.

Physical, emotional, sexual, and neglect

Q3. Name one law and explain how it protects children from abuse.

Pakistan Penal Code criminalizes abandonment of a child, for example

Q4. List 4 ways the law protects juveniles accused of crime.

The State must provide a lawyer for every unrepresented juvenile
 A child arrested must be given bail, with or without surety
 No restraints (such as handcuffs) unless the child might escape
 No death penalty or rigorous imprisonment as punishment

Q5. How can a paralegal assist a child victim of abuse?

Provide a confidential place to talk; listen with sensitivity and respect
 Inform the child that the law prohibits child abuse and that he/she can get help
 Refer the child to resources that provide psychological counseling and medical care
 Identify a free legal aid lawyer, if appropriate



**MODULE 18:
PROPERTY LAWS**

MODULE 18: PROPERTY LAWS

Objectives:

By the end of this module, learners will know about laws related to inheritance (wills and succession), and how the property of a deceased person is distributed after death. Learners also will know about laws regulating rent, including rental agreements, grounds for eviction, and the rights and duties of landlords and tenants. The module also explains about gifting, buying or selling immovable property, such as a house or land.

Time: 120 minutes

Sections in this module:

1. Succession of property (inheritance)
2. Renting property
3. Gifting property
4. Buying and selling property

Using this module: Below is reading material that is important preparation to understand the topic of this module thoroughly. Throughout the module there are a series of activities that can be used to train others. The module concludes with a written assessment that all learners should be able to fill out successfully after the training.

What is property?

Property is any item that belongs to a person or an entity such as a company. Property can be owned by an individual, a group of people, a large corporation or a village community. Property can be movable or immovable. Property also can be tangible or intangible, but this Module only discusses tangible property.

- **Movable property** can change location, such as a car or jewelry.
- **Immovable property** cannot change location, such as land or a house or other building.
- **Tangible property** is something you can touch, such as all of the examples above.
- **Intangible property** is something you cannot touch, such as ideas or creative products like music.



1. Succession of property (inheritance)

When people die their belongings and property are distributed (given) to people known as “heirs” who are usually members of the family. The way in which this distribution of property is done depends upon whether the dead person leaves a “will” (*wasiyat nama*), which is usually a written document. Inheritance of property is defined by Muslim law and the rules set out in the Succession Act, 1925.

When a person dies, his or her death must be reported to the Union Council as soon as the family has received a death certificate. This certificate should be obtained from the doctor or another authorized person who has examined the body after the person's death. (See Module 13 on Administrative Justice, including death certificates.) When a Muslim dies his or her debts and funeral expenses have to be paid before the distribution of property.



Making a will (*wasiyat nama*)

- Every Muslim who is of the age of majority and of sane mind is entitled to make a will. The will must not be procured by undue influence, coercion or fraud.
- A will should preferably be in writing. The intention of the donor has to be reasonably clear. For example, a letter written by a “testator” (the person making the will) shortly before his death and containing directions of how to distribute the property is a valid will.
- Under Muslim law, a person can make a will for one-third (1/3) of his/her property. The remaining two-thirds (2/3) will be inherited by the deceased's legal heirs.
- If the value of the willed property is more than the prescribed limit, it will be voidable at the option of the heirs or the heirs can contest the will.
- The property given by will must belong to the donor (giver) at the time of his death.
- A gift by a will is called a “bequest”.
- A bequest can be made to any person capable of owing property. For a bequest to an unborn child, the child must be alive at the time of death of the person making the will.
- A bequest can be made to an institution for religious or charitable purpose.
- A bequest of a house is revoked (cancelled) if, after making a will, the owner sells it or gifts it to someone else.
- When one will is followed by another, the subsequent will that gives the same property to someone else is valid, and the prior will is revoked. If in the same will the same property is given to two different persons, the property will be shared equally by both.

Activity 1: Have you made a will?

Divide participants into small groups. Ask each group to discuss four questions for 10 minutes. Bring everyone back together and discuss for another 10 minutes, using the guidance below.

Questions for discussion:

- Q1. If you die today, what will happen to the property you own?
- Q2. Do you think people should make wills? Why or why not?
- Q3. At what stage in your life do you think you should make a will?
- Q4. Is it important to seek legal advice when making a will?

Guidance for the trainer / facilitator:

1. If a person dies without a will, the law will decide who will receive the person's property.
2. A will informs everyone what the deceased wished to do with his/her property. A will helps ensure that property is distributed to the people he/she wanted to receive the property.
3. It is important for a person to make a will as soon as he/she has any property so that he/she is in control of what happens to the property.
4. (delete the phrase ", especially if the will might be complicated or controversial among family members") -- Paralegals can help people clarify to whom they would like to give their property after their death, and how much of their property will constitute the one-third (1/3) that can be given through will. However, it is generally safer to obtain legal advice from a lawyer when making a will. Lawyers can foresee potential problems and include solutions in the will.

Succession Certificate (for movable property)

A Succession Certificate is required in order to transfer the movable property of a deceased person to their legal heirs. Such property can include, for example, money in a bank account, livestock, vehicles, jewelry, insurance claims, stocks and bonds. A Succession Certificate is issued by a civil court. The procedure can be complicated if there are competing claimants of the same property.

There are two different ways to file an application for a Succession Certificate:

- 1) All the legal heirs may file a joint application in the court giving authority to one legal heir. In this situation, the court decides the application in favor of the nominated heir, who afterwards distributes the property among other people (successors).
- 2) Legal heirs may apply individually for succession certificates. In this situation, the court issues separate succession certificates to each person according to their share in the property.

Suit for Declaration (for immovable property)

The procedure is more complicated for immovable property such as plots of land, houses, shops or buildings. In the case of immovable property, a Suit for Declaration must be filed. The court will pass an order to include the names of the heirs of the deceased in the title (ownership) documents of all immovable property owned by the deceased. A Suit for Declaration requires clients to hire a lawyer. It is recommended that people engage the services of a lawyer in such situations in order to speed up the process and ensure that the rights of all the heirs are protected.

2. Renting property

A “tenant” is a person who rents a dwelling and pays a “landlord” (property owner or manager) a certain amount of “rent” (money). In return for this money, the landlord gives the tenant the right to occupy the dwelling for an agreed period of time. The landlord and the tenant enter into a contract called a Rent Agreement (or Lease Agreement or Tenancy Agreement). The agreement sets out the amount of rent that must be paid and the length of time the property may be rented. It also mentions the rights and duties of the landlord and the tenant.

Renting property is a provincial subject. Therefore, there are different laws in every province. The following laws apply in different parts of Pakistan:

- The Islamabad Rented Premises Ordinance, 2001
- The Punjab Rented Premises Act, 2009
- The Sindh Rental Premises Ordinance, 1979
- The West Pakistan Urban Rent Restriction Ordinance, 1959
- The Baluchistan Urban Rent Restriction Ordinance, 1959

The Rented Premises laws govern the renting of both commercial and residential property. However, these laws are not applicable to agricultural land or rented property in cantonment areas. Rental agreements in cantonment areas are regulated by the Cantonment Rent Restriction Act, 1963.

Tenancy Agreement

A tenancy agreement is a contract, either verbal or in writing, through which a property owner rents his/her property for use by another person. A verbal agreement is adequate in some jurisdictions (locations), but in other locations the landlord must put it in writing. A landlord should not rent property to a tenant without a tenancy agreement.

- o Tenancy agreements should be in writing, attested by witnesses, and registered by the Rent Registrar. A tenancy agreement registered in the office of a Rent Registrar is proof of the relationship between landlord and tenant and can be used as evidence in a dispute.
- o There is no prescribed format for a tenancy agreement. The contents of the tenancy agreement may be determined by the landlord and the tenant. However, tenancy agreements must comply with the provisions of the relevant provincial law.
- o A tenancy agreement can be made for any period of time agreed between the parties. If a tenancy agreement is for one year or more, then the agreement must be registered under the Registration Act, 1908, depending on the law in the province.
- o It is the landlord's responsibility to submit the tenancy agreement to the Rent Registrar, but a tenant can also apply for the registration. If an agreement is not registered with the Rent Registrar, then the Rent Tribunal will not consider any application (complaint) from the landlord until he/she pays a fine. (For example, in Punjab, the fine is equivalent to 10% of the value of the annual rent. If the tenant seeks legal remedy, he/she has to deposit a fine equivalent to 5% of the annual rent.)
- o A tenancy can be terminated by the consent of both the parties, according to the specific terms in a written agreement, or by an order of the Rent Tribunal.
- o The tenant must pay rent to the landlord in the way and by the date mentioned in the tenancy

agreement. If the date is not mentioned, then the tenant must pay by the 10th day of the following month. If the method of payment is not mentioned in the tenancy agreement, then the tenant can pay the rent to the landlord in cash, through money order, or by deposit into the bank account of the landlord.

- o The parties may agree to any amount of rent and rate of increase by mutual consent.
- o If the tenant wants to make any improvements or additions to the property, it must be by agreement with the landlord. The tenant can ask the landlord for reimbursement, if the agreement provides for it. If the tenant makes some necessary improvements, e.g. repaired broken pipes or electrical faults, she/he can get the repairs done and get reimbursed later, unless the agreement clearly specifies that the tenant will incur the costs for all maintenance.
- o The landlord must pay taxes, fees or charges on the property. If a landlord fails to pay taxes, the tenant can pay the taxes and is entitled to reimbursement from the landlord.
- o The tenant does not have the right to “sublet” (lease out property to a third party) without the consent of the landlord or unless a written agreement permits subletting

Activity 2: Writing a tenancy agreement

Divide participants in to small groups. Each group must draft a tenancy agreement that protects the rights of both the landlord and the tenant described in the situation below.

Shahram is the owner of a shop that Niaz wants to rent. They decide that Niaz can rent to shop for his tailoring business at a rate of Rs. 6,000 per month for a period of 2 years.

Each group must draft an agreement (on flip chart paper) with all information that they feel should be included. Invite each group to present their draft tenancy agreements. After all presentations, summarize and explain the best agreement terms.

What to look out for when renting a property

If there is anything wrong with a rental property, the tenant should make a list of all the faults and ask the landlord to have them fixed before entering into an agreement. A checklist of what to consider and what to look out for before agreeing on the lease:

1. Inspect the condition of the property in detail.
2. Who will be responsible for repairs to the property?
3. Are the taps, toilets, and drains in good working order?
4. Do the lights, plugs and electrical equipment work properly?
5. Is the kitchen stove in good working order?
6. Do all of the toilets, sinks, and showers work and is the water pressure adequate?
7. Is there evidence of leaks (e.g. water stains, peeling paint or damp patches)?
8. Do the windows and doors open and close easily?



9. Are there any broken window panes, window latches or door locks?
10. Are there keys for all the doors?
11. Is the property suitable for the intended purpose?
12. What is the condition of the paintwork?
13. Is the security deposit refundable and on what conditions?

Activity 3: Case examples on rights of landlord and tenant

Examine the following cases and determine who has the duty to address the problem. The purpose of the activity is to examine a set of facts and decide whether the landlord or the tenant has the duty to fix what has happened.

Procedure: Total time: 20 min.

Introduction: 5 min

Divide class into small groups. Give each group one situation (1-4 below) to discuss: 5 min

Report back from each group with discussion: 10 min

1. The tenant's child breaks a window and dirties the walls of a home. Who should be responsible for fixing the windows and painting the walls?
2. During a heavy thunderstorm the roof of a rented house leaks. The leak causes damage to the paint on the walls. Who should fix the leak and repaint the walls?
3. The paint on the walls of a flat (apartment) is peeling off and the kitchen cabinets are broken. Who should repaint the walls and replace the cabinets?
4. Yousuf rents a room in Ali's house and pays Rs.3,000 a month. The next day, Ali's brother Faizi says the room is his and throws Yousuf out of the room. Who is responsible for Yousuf's dispossession (being thrown out) and his financial loss?

The answers to the above questions may include the following discussion:

1. In general, a tenant has a duty to look after the premises and give them back to the landlord at the end of the lease in the same condition as when the lease began. In this case, since the tenant's child caused the damage, it is the duty of the tenant to repair the window and clean or paint the walls.
2. In this case, the thunderstorm damage is not the fault of the tenant. Therefore, the landlord has the duty to repair the leaks in the roof and damage to the paint. Sometimes, a rent agreement might contain a condition that places the duty of such repairs on the tenant, especially in exchange for the tenant paying a reduced rental fee.
3. If the peeling paint on the walls is due to normal and reasonable "wear and tear" the tenant has no duty to repaint the walls. The landlord would be responsible for repainting. Ordinarily, landlords are required to repaint rented premises once every two years.
4. Ali has a duty either to regain possession of the room for Yousuf, or to give Yousuf his Rs.3,000. In addition, if a landlord does not protect a tenant from being dispossessed, the landlord may be liable for any damages suffered by the tenant, including the extra expense of renting another more expensive room.

Grounds for eviction

A landlord may seek eviction of a tenant if:

- o The tenant has failed to pay rent
- o The tenant has violated (committed a “breach”) of the tenancy agreement
- o The tenant has used the premises for a purpose which is different from the purpose for which it was rented out
- o The tenant has sublet the premises without permission of landlord
- o The rent agreement has expired and the tenant refuses to vacate the premises

No one can be evicted from their home or have their property demolished without a court order, which has been made after all relevant circumstances have been considered. A court may order eviction of a tenant if the tenant has violated the tenancy agreement or done something wrong. The court may also order eviction if in the court believes it is just and fair to grant an eviction order under the circumstances. (No petition for eviction of tenant is valid under the Punjab Rented Premises Act, 2009, unless the tenancy agreement is in writing.)

To determine what is just and equitable (from each side) the court will consider:

- How long the tenant has lived on the land / in the premises
- Whether the agreement between the parties was fair
- Whether the tenant can get suitable alternative accommodation
- The reason for the request for eviction
- The interests of the owner or person in charge, the tenant, and any other tenants on the land (or in the house/flat)

Activity 4: Eviction arguments simulation

The aim of this exercise is to allow learners to debate whether the people in the story below would be or should be evicted.

A landlord threatens to evict a family living on his land. The family has been living on this land with the consent of the landlord since February 1998. They pay a reasonable and fair rent to the landlord every month. The landlord files suit seeking eviction of the family. The family meet with a legal aid lawyer who agrees to represent them in court.

Procedure: Total time: 40 minutes

1. Divide the class into three groups representing: (1) the landlord, (2) lawyer for the family, and (3) judges in the court.
2. Presentation of arguments (15 minutes)
3. While judges prepare their judgment, conduct a discussion on likely verdicts based on strengths and weaknesses of the arguments (10 minutes)
4. Presentation of judgments (5 minutes)
5. Debrief and discussion about grounds for eviction (10 minutes)

3. Gifting property

Normally for a contract to be legally binding, there must be an exchange of “consideration” (money or something else of value). A gift is an exception to this rule. A gift is a voluntary transfer of some property from one person to another, without “consideration” (without taking money or anything else of value in exchange). The “consideration” in a gift is love or some similar feeling. The parties to a gift include the “donor” and the “donee.” The donor is the person who makes (gives) the gift. The donee is the person in whose favor the gift is made (the person who receives the gift).

A gift can be made in any of the following ways:

1. Absolute: With no conditions or pre-requisites
2. Conditional gift: Contains a condition for its completion
3. Gift made during a death-bed illness
4. Onerous: A single transaction of several gifts, one of which has a debt or obligation attached and the other does not. The recipient can choose to either accept the whole transaction or reject the whole transaction. (For example, if two houses are gifted to you and one of the houses has a loan attached, you can either accept both the houses or reject both.)

The essential conditions of a valid gift transaction are: [1] Offer by the donor, [2] Acceptance by the donee, and [3] Delivery of possession to the donee. For a gift to be valid, the ownership of property must be transferred and the possession of the property must be delivered to the donee. A gift can be revoked or cancelled, if it was conditional and the condition has not been fulfilled. Acceptance must be made within the lifetime of the donor.

A gift may be given in oral or in written form. However, it is better if the transaction is in writing in order to avoid any misunderstanding. The document for making a gift is known as a “gift deed”.

- o For **immovable property**, a gift must be made through a registered document (gift deed) signed by both parties and attested by at least two witnesses.
- o For **moveable property**, a gift may be made either by registered document or by simple delivery of the property to the donee.

Other points to consider about gifts:

- Any type of property can be gifted.
- The person gifting must be the owner of the property at the time of making the gift.
- The acceptance of gift by the donee may be “express” (explicit, in writing), “implied” (by an action that shows the donee has accepted the gift), or by someone on behalf of the donee.
- There must be free consent between the parties in the gift transaction.
- The parties must be competent to offer and accept the gift. That means they must be of the age of majority (18 years) and of sound mind. However, in case of a minor child their parents or guardian may give consent on their behalf and can act as a trustee until the child reaches the age of majority.

Activity 5: Case examples related to gifts

- Q1. Zubair has two sons. He wants to gift his entire property to his friend after his death. Is this possible? (Zubair can only will up to 1/3rd of his property to his friend. The remaining 2/3rd will be inherited by his sons).
- Q2. Ahmed gifts a flat to his wife Saira as dower (instead of dower money) when they get married. He gives the flat keys to her and she happily accepts them. However, there is no gift deed made. Is this gift valid? (As long as Saira accepts the gift and she has been given possession of the flat (she has received the keys), the gift is valid and a gift deed is not required).
- Q3. Adil gifts a car to his son Ali on the condition that Ali gets admission in a medical college. Ali agrees but then fails to get admission. Can Adil take the car back from Ali? (Adil can take the car back and revoke the gift. The condition Adil had laid down in an agreement with Ali was not fulfilled because Ali failed to get admission to a medical college).
- Q4. Aliya gifts a gold ring to her niece Mona who is 5 years old. Mona is too young to accept the gift. Is the gift valid? (Mona is a minor, but her parent or guardian can accept the gift on her behalf. However, Mona has the option to return the gift to Aliya when she is 18 years old).

4. Buying and selling property

Buying land or a house is one of the most important decisions people make in their lives. “Sale” is the transfer of ownership in exchange for a price paid or promised to be paid in the future or partly paid and partly promised to pay in the future. This means that the full price of the property or house need not be paid at one time and it can be paid at a future time also. The sale deed should state the mode of payment clearly so that there are no complications.

“Deeds of transfer,” or “title deeds,” are legal documents that record the names of the owners of immovable property. Buyers of property only become owners when the deed of transfer shows that the property has been transferred to them. A transfer takes place when the deed of transfer or title deed of the property include the buyer's name and is registered with the concerned registrar.

A Conveyance Deed or a Sale Deed is a document by which the title of property is conveyed by the seller to the purchaser. “Conveyance” is the act of transferring ownership of the property from a seller to the buyer. Deed document will help you ascertain whether the property which you are buying is on land belonging to any development authority, builder or society in which the property is located. A registered Sale Deed (Registry /Baye-Nama) is a document that creates a title in the immovable property. Every Sale Deed must be in writing and signed by the buyer and seller, or their authorized representatives. The Sale or Conveyance Deed will not be legally binding until it is signed by both parties and two witnesses.

Protecting the interests of the seller and the buyer

Certain clauses are added in most Sale Deeds that are meant to protect the interests of the seller. These usually include:

- (a) The taxes on the property have to be paid by the buyer from the time the buyer takes possession

- (b) The property is sold with all its faults. The seller will not be liable if there are any hidden defects.
- (c) The seller may claim specified damages if the buyer does not carry out the conditions specified in the agreement.

Similarly, there are provisions in most Sale Deeds that protect the buyer. These normally include:

- (a) The seller promises that they are the owner of the specified property.
- (b) The seller promises to transfer clean and clear title and will resolve any claims on the property that originate from the time that he/she was in possession.
- (c) The seller guarantees that all utility bills and taxes have been paid.
- (d) The seller promises to transfer vacant and peaceful possession and title of the property either after receiving payment or on a certain date.
- (e) The buyer may claim specified damages if the seller does not carry out the conditions specified in the agreement.

As soon as the buyer and seller have signed the deed of sale, the risk will pass to the buyer. Usually, however, the deed of the sale states that the risk will only pass to the buyer after he or she takes possession of the property. Note also that the buyer usually pays the transfer costs in a deed of sale. This is often specifically mentioned in the agreement.

Conditions that might make land or a building less valuable include those that allow other people to build a road on the property, or allow them to use the driveway. Other conditions include bank loans or other claims on the property, disputes about ownership, and environmental pollution. Buyers can find out about these kinds of conditions by asking the seller to show them a copy of the title deed or deed of transfer. Buyers should read carefully title deeds and deeds of sale before any agreement of sale are signed. Other ways to find out about conditions on a property include advertising in the newspaper asking for any other claimants to the property to come forward, visiting the property and examining the neighborhood, speaking to neighbors and other people in the area, and examining the property during the day and night time.

Sale of immovable property in Pakistan

Sale of immovable property in Pakistan normally takes place through a title document known as a sale deed. In certain exceptions, such as purchase of property in Defence Housing Authority (DHA) or in a housing society, an allotment letter/transfer letter from the authority or the society is deemed to be the title document.

Some people, before writing the sale deed, may choose to write an agreement to sell. However, such agreement to sell does not transfer title in favor of the buyer. It does create a right in favor of the buyer, in case the seller refuses to honor the terms and conditions of the agreement, to seek specific performance of the agreement to sell.

Title in an immovable property is only deemed to transfer once such sale deed or title document has been executed (signed by both the parties in the presence of two witnesses). A sale deed must be affixed with requisite stamp duty and it must be registered with the relevant sub-registrar. After registration of the Sale Deed with the sub-registrar it must be ensured that a mutation of such sale is entered in the register of mutations kept and maintained by the *patwari*.

Precautions before buying property in Pakistan

Before buying property, a person should conduct a complete and thorough investigation in respect of title of the seller to the property. A general practice is to investigate title of the current seller and any previous owner. Original title documents in favor of the seller must be obtained along with other relevant documents including mutation in favor of the buyer, a fresh copy of *fard*, *aks shajra*, and non-objection certificate or non-encumbrance certificate, as the case may be. Also get verification for all of these documents from the concerned departments.

If the seller is selling the property in the capacity of a legal representative of the owner then it must be ensured that the power of attorney is duly registered with the relevant sub-registrar. A holder of a forged and fabricated power of attorney is not at all able to transfer a valid title in an immovable property to a third party.

Documents to inspect if the property is registered in name of a company

Before purchasing property from a company, the intending buyer should verify from the Registrar of Companies at Securities & Exchange Commission of Pakistan that the property is not mortgaged or being used as a security against a loan, otherwise it will not be considered as a freehold property. In addition, the memorandum of association will state who is authorized to act on behalf of the company to sell the property, and if a resolution is required then the same must be passed and verified. The original title documents from the selling company must also be inspected.

Activity 6 – Buying property role play

Mrs. Ali, who cannot read, is approached by Mr. Abid, a property owner. Mr. Abid offers to sell her a house for Rs. 300,000 if she pays a Rs. 20,000 deposit and signs an agreement. Mr. Abid is insisting that Mrs. Ali sign the agreement and pay the deposit today. What questions should Mrs. Ali ask? What should Mrs. Ali do? Role play a conversation between Mrs. Ali and Mr. Abid.

Procedure: Total time: 30 minutes

1. Introduction: 5 min
2. Preparations: 5 min (Select volunteers to play the role of Mrs. Ali and Mr. Abid)
3. Role play discussion between Mrs. Ali and Mr. Abid: 5-10 min
4. Debrief and discussion: 10 min

Guidance for the trainer / facilitator:

As Mrs. Ali cannot read, she will not know what is in the agreement. Therefore, she should ask somebody to read it and explain the terms to her. The person who reads and explains the contract to her should not be Mr. Abid or anybody connected with him. The best thing Mrs. Ali can do is to ask Mr. Abid if she may keep the agreement for a couple of days so that she can get an independent person to explain it to her. It will also give her a chance to consider if she can afford to buy a house for Rs. 300,000. If Mr. Abid refuses to allow Mrs. Ali to keep the agreement for a couple of days, she should refuse to do business with him. The role play and the discussion during debrief should bring out these considerations, the risks for Mrs. Ali, and the reasons.

Module 18 Assessment

Property Law

Q1. Indicate whether the following statements are true or false

1. Property is any item that belongs to a person or an entity such as a company
2. "Property" refers only to things that are tangible
3. All exchanges of property must be written
4. All exchanges of property must involve payment in cash or kind
5. A succession certificate is essential to determine the legal heirs of a deceased
6. When a person dies, his or her property belongs to whoever is in possession of it
7. A person can make a will for their entire estate (all property)
8. A landlord can evict a tenant at any time or for any reason

Q2. When is a conveyance deed made? Tick next to each appropriate answer:

- When a person contracts to provide transportation services
- When a person buys a car
- When a person buys a plot of land
- When the heirs of a deceased person wish to distribute his or her property
- When you wish to construct a house on a plot of land

Q3. Name 3 things a person buying property should look out for.

Q4. Name 4 usual terms (details) in a rental agreement between a landlord and a tenant.

Q5. Name 3 grounds for eviction of a tenant.

Q6. What is the difference between a gift and a bequest?

Answers: Module 18 Assessment

Property Law

Q1. Indicate whether the following statements are true or false

1. Property is any item that belongs to a person or an entity such as a company - TRUE
2. "Property" refers only to things that are tangible - FALSE
3. All exchanges of property must be written - FALSE
4. All exchanges of property must involve payment in cash or kind - FALSE
5. A succession certificate is essential to determine the legal heirs of a deceased - TRUE
6. When a person dies, his or her property belongs to whoever is in possession of it - FALSE
7. A person can make a will for their entire estate (all property) - FALSE
8. A landlord can evict a tenant at any time or for any reason - FALSE

Q2. When is a conveyance deed made? Tick next to each appropriate answer:

- When a person contracts to provide transportation services
- When a person buys a car
- When a person buys a plot of land - YES
- When the heirs of a deceased person wish to distribute his or her property
- When you wish to construct a house on a plot of land

Q3. Name 3 things a person buying property should look out for.

Seller must have title to the property

Seller's representative must have duly registered power of attorney

Whether there are conditions on the property title, such as right of other people to build a road

Bank loans or other claims on the property; disputes about ownership; environmental pollution

Q4. Name 4 usual terms (details) in a rental agreement between a landlord and a tenant.

Length of time of tenancy, how much money tenant will pay, the mode and timing of payments, whether sub-letting is permitted, who is responsible to pay for different kinds of maintenance, how the tenancy agreement can be cancelled

Q5. Name 3 grounds for eviction of a tenant.

- o The tenant has failed to pay rent
- o The tenant has violated (committed a "breach") of the tenancy agreement
- o The tenant has used the premises for a purpose that was not agreed
- o The tenant has sublet the premises without permission of landlord
- o The rent agreement has expired and the tenant refuses to vacate the premises

Q6. What is the difference between a gift and a bequest?

A gift can be given at any time during the donor's life. A bequest can only be given after death.

A gift can be all of a donor's property to anyone. A bequest can only be 1/3rd to someone who is not a legal heir, unless other legal heirs give authorization.



**MODULE 19:
WORKERS' RIGHTS**

MODULE 19: WORKERS' RIGHTS

Objectives:

By the end of this module, learners will be understand the rights and responsibilities of both employers and employees, including employment contracts and workplace health and safety. In addition, learners will know about trade unions and collective bargaining, as well as the rights of domestic workers. Learners also will understand laws related to bonded labor and child labor, and be able to offer assistance in many kinds of cases related to workers' rights.

Note: The authors of this manual are thankful to the International Labor Organization (ILO) for permission to utilize the content available on their website for the development of this module.

Time: 120 minutes

Sections in this module:

1. Rights and responsibilities of employers and employees
2. Trade unions
3. Domestic workers
4. Bonded labor
5. Child labor

Using this module: Below is reading material that is important preparation to understand the topic of this module thoroughly. Throughout the module there are activities that can be used to train others. The module concludes with a written assessment that all learners should be able to fill out successfully after the training.

1. Rights and responsibilities of employers and employees

Duties of employers:

Employers have these primary responsibilities:

1. To remunerate (pay) the employee for his/her services
2. To ensure safe and healthy working conditions
3. To follow legal rules related to working hours and paid leave from work
4. To avoid hiring children in certain industries and occupations

Duties of an employee:

- Enter and remain in service - Employees have to place their professional services at the disposal of the employer. If they do not do so this they are not entitled to be paid (for example, an employee who is absent from work).
- Maintain reasonable efficiency - Employees are expected to be competent and will be bound by the information they give an employer. For example, if an



employee says that he is trained to operate a computer, but this is untrue, he will be in breach of this duty and can be dismissed.

- Further the employer's business interest - Employees have a duty to use all their working hours to further the employer's business interest. In other words they cannot compete with the employer's business or take on a second job or waste time during business hours – unless with the permission of the employer.
- Be respectful and obedient - It is necessary for an employee to show the employer respect and obedience. A failure to do so would undermine the employment relationship.
- Refrain from misconduct generally - Misconduct that renders the continuation of the employment relationship intolerable (not workable) is sufficient to justify dismissal. Examples of misconduct that can justify dismissal are dishonesty, intoxication, gross negligence, insolence, fighting and absenteeism.



Activity 1: Discussion questions on employment disciplinary action

What do you think would be appropriate discipline for the following employees? Give reasons.

1. An employee is late for work once.
2. An employee assaults a fellow employee.
3. An employee talks too much and works too slowly as a result.
4. An employee is drunk at work. This is the second time this has happened in 4 months.
5. An employee is sick and does not come to work.
6. An employee is rude to a supervisor.
7. An employee crashes a company car. This is the first time the employee has done anything wrong in seven years.

Possible Answers

1. This is not very serious. A verbal or first written warning would be appropriate.
2. This is a serious offence. Dismissal or a final written warning is appropriate.
3. This is not very serious. A verbal or first written warning would be appropriate.
4. As this is a repeated offence, it must be treated more seriously. Dismissal is appropriate.
5. This is not misconduct, so no discipline is appropriate.
6. This is insubordination and is a serious offence, but it would depend upon how rude the employee was. A final written warning or a suspension may be appropriate.
7. This might have been an accident and not misconduct at all. The employee has a clean track record for 7 years and should be treated leniently. A warning could be appropriate.

Working hours

Under the Factories Act, 1934, no adult employee (18 years or older) can be required or permitted to work in excess of nine hours a day and 48 hours a week. Similarly, no young person (under the age of 18) can be required or permitted to work in excess of seven hours a day and 42 hours a week. The Factories Act, which governs the conditions of work of industrial labor, applies to factories employing ten or more workers. Provincial governments are empowered to extend the provisions of the Act to factories with as few as five workers.

A seasonal factory is one exclusively engaged in, for example, cotton ginning, cotton or cotton jute pressing, the manufacture of coffee, indigo, rubber, sugar or tea (section 4, Factories Act). If the factory is seasonal, an adult workers may work no more than 50 hours in any week and no more than 10 hours in any day. However, if such work for technical reasons must be continuous throughout the day, adult workers may work no more than 56 hours in any week.

In factories, the hours of work for all kinds of workers must be posted in a prominent place in the main language of the factory. No worker shall be required to work continuously for more than six hours, unless he/she has had at least one hour for rest or meals. During Ramadan, special reduced working hours are observed in manufacturing, commercial and service organizations.

Maternity leave and maternity protection

Article 37 of the Constitution refers to maternity benefits for women in employment. The Maternity Benefit Ordinance, 1958, says that after four months employment or qualifying period, a worker may have up to six weeks prenatal and postnatal leave during which she is paid a salary on the basis of her last pay. The Ordinance is applicable to all industrial and commercial establishments employing women. It also restricts the dismissal of any woman during her maternity leave. Similarly, the Mines Maternity Benefit Act, 1941, is applicable to women employed in mines in Pakistan.

Other leave entitlements

In addition to 14 days of annual leave with pay, the Factories Act, 1934, provides that every worker is entitled to 10 days casual leave with full pay and further 16 days sick or medical leave on half pay. Casual leave is granted for situations such as sudden illness or any other urgent purpose. A worker should apply for permission to take leave, unless urgency makes it impossible to submit an application. As a customary practice, casual leave is approved in most cases. Sick leave, on the other hand, usually requires a medical certificate or letter. Management should not refuse the leave asked for if it is supported by a medical certificate.

In addition to these leave entitlements, Section 49 of the Factories Act, 1934, states that workers should be given leave with pay on all festival holidays, which are declared by the Federal Government in the Official Gazette (approximately 13 days) and notified by the Provincial Government. If a worker is required to work on any festival holiday, one day's compensatory holiday with full pay as a substitute holiday must be given. In addition, employees who go on pilgrimage (*Hajj, Umra, Ziarat*) are granted special leave up to 60 days.

Health and safety

Employees are entitled to safe and healthy working conditions. Employers must ensure that:

- (a) Machinery and equipment is safe
- (b) Employees are provided with protective equipment (e.g. safety hats) where necessary
- (c) Employees are not exposed to dangerous substances

In any workplace with at least 20 employees, employers are required to appoint health and safety representatives. They are required to identify potential hazards, investigate the causes of accidents, and investigate complaints by employees. Employees are required to take reasonable care of

themselves, obey the employer's health and safety rules, and report unsafe working conditions. Employees must report any accident at the workplace to their employers or the health and safety representatives at the workplace.

Other employment benefits

An employer may provide – but is not required to provide – additional benefits to an employee, over and above the employee's salary. Examples of these benefits are medical aid schemes, pension funds, education funds, insurance, and housing benefits. Whether these benefits are given depends upon the contract of employment agreed between the employer and the employee.

Activity 2: Group discussion on conditions of employment

The aim of this exercise is to make learners aware that, in the absence of the basic conditions of employment, employees can be exploited, since they are in a relatively more vulnerable position compared to employers.

Ask participants: Do you think it is necessary to have basic conditions of employment? What basic working conditions should be enforced by law? What about a situation where an employee would like to work more than the maximum hours permitted by law, for example?



Basic working conditions are necessary to protect vulnerable workers from exploitation. An employer is typically in a much stronger bargaining position than employees. Employees are often vulnerable because they need a job and will agree to any conditions imposed upon them, no matter how unfair. Even if employees want to work more than the maximum hours permitted by law, they are prevented from doing so. While some people think that this is unfair, because it should be up to the individual to decide their working hours, restrictions on working hours are necessary to prevent exploitation by employers. Ask participants to think about carpet weaving or rock-breaking in Pakistan, in which employees often work up to 16-hours a day in unhealthy conditions for very low wages.

Employment contracts

Article 18 of the Pakistan Constitution affords every citizen the right to enter any lawful profession or occupation and to conduct any lawful trade or business. The Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, addresses the relationship between employers and employees, including employment contracts. The Ordinance applies to all industrial and commercial establishments employing 20 or more workers. For workers in other establishments, such as domestic workers, farm workers or casual laborers, their labor contracts are generally unwritten and can be enforced through the courts on the basis of oral evidence or past practice.

Every employer in an industrial or commercial establishment must issue a formal appointment letter at the time of employment of a worker. Every labor contract should be written and must state the main terms and conditions of employment, including the job description, length of time of the contract, pay allowances, and other fringe benefits. The contract has to be signed by both parties. Once the contract is signed, it cannot be changed except with the consent of both parties.

Activity 3: Writing an employment contract

The aim of this exercise is to allow learners to think about all the information that should be included in an employment contract.

Procedure

1. Introduce the exercise. Divide participants into pairs (groups of two people).
2. Ask participants to brainstorm all the information they think should be included in an employment contract for the protection of both employers and employees. 10 minutes.
3. Bring everyone back together. Ask each pair to name one important point for an employment contract. Ensure that all pairs have a chance to contribute to the list. Write everything on a flipchart. Fill in any gaps and discuss.

The following information should be included:

1. Employer's name and address
2. Employee's name and address
3. Occupation / title of job
4. Description of work to be done
5. Place of work
6. Date of commencement of work
7. End date of contract, if any
8. Ordinary work hours and work days
9. Salary, and frequency and mode of payment
10. Overtime rate, if any
11. Any other benefits or payments
12. Details of any deductions from salary
13. Amount of leave that can be taken
14. Notice period for ending contract
15. Reasons and method contract can be terminated



Termination of employment contract

The services of a permanent worker cannot be terminated for any reason other than misconduct unless the employer gives one month's notice or one month's wages, or if the worker chooses to leave the employment. One month's wages should be calculated on the basis of the average wage earned during the last three months of service. Non-permanent workers are not entitled to notice or pay in lieu of notice.

All terminations of service must be documented in writing, stating the reasons. If a worker has a complaint about his/her termination, he or she may proceed under Section 46 of the Industrial Relations Ordinance 2002, which regulates labor-management relations. Within three months of the termination, the worker may bring the grievance to the attention of his or her employer in writing either individually, through the shop steward, or through the relevant trade union. To safeguard against any unusual exercise of power, victimization or unfair labor practices, the Labor Courts have been given powers to examine and intervene to find out whether any action by the employer was fair or unjust.

The meaning of dismissal

This section examines the different types of dismissal. Labor laws protect employees against unfair dismissal. This does not mean that an employee may never be dismissed, but rather that the dismissal must be both for a fair reason (substantively fair) and in accordance with a fair procedure (procedurally fair). Unfair dismissal can take many different forms:

1. The termination of an employment contact, with or without notice, where the contract is terminated without a fair reason and without following a fair procedure.
2. The non-renewal of a fixed term contract where the employee had reasonable expectation of renewal. A “fixed term contract” is a contract for a limited period of time. When the time of the contract comes to an end, so does the employment relationship. If, however, the employee is given a reasonable expectation that the contract will be renewed (for example, if the employer promises verbally) and it is not renewed, this is also a dismissal.
3. The refusal to allow an employee to come back to work after maternity leave.
4. Selective re-employment of employees, when all employees are fairly dismissed and the employer then chooses to re-employ some of the employees. If the employees are chosen on unfair grounds, e.g. if only the male employees are re-employed, this will be unfair dismissal.
5. Constructive dismissal is where an employee resigns from employment because he/she cannot continue with an unreasonable or illegal working relationship. If an employee cannot be expected to tolerate the employer's conduct, he/she is in effect “forced” to resign. For example, if an employee is sexually harassed by an employer and resigns as a result, this will be constructive dismissal.

Basic concepts

Misconduct is intentional wrongdoing. An employee can be disciplined or fired for such actions.

Incapacity is not due to fault, but rather an inability by the employee to do the job, either as a result of ill health or poor work performance.

Probation is a testing period for an employer to assess an employee's suitability for the job, without committing to employing the person permanently. Probation also gives the employee an opportunity to prove their skills.

Activity 4: Group discussion on dismissal for incapacity

The aim of this exercise is to enable learners to understand that incapacity for poor work performance is a specific problem, and certain procedures apply.

Procedure

1. Introduce exercise. Divide class into small groups.
2. Allocate one question to each group. Give groups 10 minutes to consider the question.
3. Ask each group to report back briefly. Facilitate a general discussion.

Should dismissals for incapacity be treated differently from dismissals for misconduct? What is the reason for placing an employee on probation?

1. Saima is employed as a secretary to the Managing Director of a large company. Her job is to answer the phone of her employer, take messages, general typing and administration duties. She has worked at the company for only 3 weeks and her employer is very dissatisfied with her work. He does not receive some important messages and finds many mistakes in Saima's typing. What steps does the employer have to take if he wants to dismiss Saima fairly?
2. Jawad has worked at a company for 10 years. He injures his back while moving heavy boxes at work and as a result he has to have surgery. He is off work for 6 months recovering from the surgery. His employer wants to dismiss him and hire someone else for the job. Can the employer do this? Why or why not?
3. Maira is a machinist at a clothing factory. After working there for 25 years, she gets arthritis in her hands and cannot operate the sewing machine. She is dismissed. Is this fair? Why or why not?

Possible answers and discussion points

1. Employees have to be given a chance to improve their performance before being dismissed for incapacity. Since Saima has only been employed for three weeks, it is unlikely she has been given feedback and an opportunity to improve. If the Managing Director is dissatisfied with her work, he must inform her of his concerns. He should ask her whether there are any problems, whether she needs any further clarification or assistance, and then give her specific instructions and a reasonable opportunity to improve her work. If her work does not improve after this feedback, she can be dismissed for incapacity.
2. An employer must take all reasonable steps to accommodate a person who has suffered a work-related injury. Jawad's employer must accommodate him (e.g., by hiring a temporary replacement until he recovers). As this is a temporary injury and he will recover in six months, it is not unreasonable to expect the employer to make a temporary arrangement until his return. It would be very unfair to dismiss Jawad.
3. An employee can be dismissed if they have a permanent injury that makes them unable to do their job as required. Maria has a permanent injury. The only question is whether the employer can adapt Maira's duties or find her a new job at the clothing factory. If this is not possible, the employer can dismiss Maria, even though it might seem unfair.

2. Trade unions and employers associations

When someone starts a job, it is important to find out if the company has a union. A union is an association of workers that seeks to resolve disputes between the employer and employees, negotiates wage increases for the employees, and seeks to improve working conditions. There are many unions and professional associations in Pakistan for various industries and job types.

Freedom of association

The right to association is guaranteed by Article 17 of the Constitution of Pakistan giving every citizen the right to form associations or unions (subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality). The Industrial Relations Ordinance (IRO), 2002, gives workers and employers in any establishment or industry the right to establish and to join associations of their own choosing, subject to respect of the law. Both workers' and employers' organizations have the right to establish and join federations and confederations, and any such organization has the right to affiliate with international organizations and confederations of workers and employers. Trade unions must be registered and are allowed to draw up their own rules of operations, and elect members to act as representatives.

Collective Bargaining

Unions engage in collective bargaining, which is the process of settling labor disputes through negotiations between the employer and representatives of the employees. In other words, the union negotiates with the employer as a group rather than the workers each trying to negotiate separately. This collective action gives employees more power in the negotiation.



For example, if the employees want a wage increase, the union will enter into collective bargaining with the employer on behalf of all employees. If the employer refuses to give a wage increase, the union can call for the workers to “go-slow”, protest, or go on strike. In this way, unions can be very effective in putting pressure on employer. Employees who belong to unions often earn higher wages, have better working conditions, and have more protection in the workplace. However, union actions such as going on strike are regulated by law and have potential for negative consequences. If a union takes unilateral (one-sided) action, the employer might consider the action to be considered illegal, leading to termination of contracts and dismissal.

Settlement of labor disputes

A worker can raise a grievance about any right guaranteed by a law or his employment contract by sending the complaint in writing either to the employer or through the workers' union. All such written complaints should be submitted within one month of the grievance arising. The employer is bound to respond to the notice within 15 days. If the employer fails to communicate a decision within the specified period, or if the worker is dissatisfied with the decision, he/she can take the matter to the Labor Court within two months.

Section 33 of the Industrial Relations Ordinance, 2002, permits any collective bargaining agent (like a union) or any employer to apply to the Labor Court for the enforcement of any right guaranteed or secured by law or any award or settlement. If any party is not satisfied with the decision of the Labor Court, they may submit an appeal to the High Courts.

Unions try to negotiate better wages and working conditions for employees. Negotiation is a process whereby the parties involved in a dispute talk to each other and try to reach an agreement. (See Module 10 in this manual on Mediation and Negotiation.) Union representatives are often very experienced negotiators. An unsuccessful negotiation can result in a strike, which is damaging to both employers and employees.

Activity 5: Discussion questions on the role of unions

- 1) What are the advantages and disadvantages of having a union at a workplace?

Possible Answers

Advantages:

- o Employers are likely to take unions more seriously than non-unionized employees. Therefore, union workers usually have better working conditions and wage increases.
- o Unions can represent employees in disciplinary hearings and for other grievances.
- o Unions usually have skilled negotiators who are knowledgeable about labor laws.
- o Collective action is more powerful than individual action. For example, the threat of a labor strike is more serious than the threat of one employee refusing to work.

Disadvantages:

- o Unions cause animosity between employers and employees.
- o Unions sometimes have their own political agendas.
- o In a workplace with a union, there is a higher incidence (likelihood) of strikes.
- o Unions replace direct communication between employers and employees.

- 2) Examine the following examples and decide whether the conduct is lawful:

- (a) Employees decide to work slowly to show their dissatisfaction about working conditions. (This is a “go-slow”, which is only lawful if the proper strike procedure is first followed.)
- (b) Employees are picketing outside their factory. They throw stones at cars driving past. (Throwing stones is unlawful behavior and it is misconduct.)
- (c) Employees follow proper strike procedure yet the employer decides to dismiss them. (This is an unlawful dismissal. Lawfully striking employees, who have followed the proper strike procedure, are protected against dismissal.)
- (d) The employer does not pay the employees while they are on strike. (This is lawful because the principle of “no work-no pay” applies. An employer does not have to pay workers on strike.)
- (e) The nurses in the maternity ward of a hospital go on strike. (If the nurses are classified as an “essential service” then this will be an unlawful strike.)
- (f) All the employees of a company leave work early to attend a funeral without the permission of their employer. (The employees are committing misconduct by absenting themselves without the employer's permission. They can be dismissed or disciplined.)

Activity 6: Wage negotiation

The aim of this exercise is to make learners aware of the increased power of employees when they act collectively. Learners should also be made aware of the consequences of failed strike action, which can be costly and damaging for all parties and for the economy.

Khan Mining Company employs 300 employees. The Khyber Mine Workers Union represents them. During the annual wage negotiations the employees demand the following:

1. A wage increase of 20% bringing the minimum wage up to Rs. 25,000 per month.
2. A transport allowance of Rs 1,500 per month.
3. Maternity leave of 5 months.
4. Paternity leave of 2 weeks.
5. Tea and coffee to be provided by the employer.
6. New uniforms.
7. An employer contribution towards a pension scheme for employees.

The employer has had a very difficult year financially and offers the following:

1. A wage increase 7% with a minimum wage of Rs. 21,000 per month.
2. No monthly transport allowance as this has never been offered before. An annual transport award of Rs. 2,000.
3. Maternity leave of 4 months.
4. No paternity leave.
5. No tea and coffee.
6. New uniforms only when the old ones are worn out.
7. No pension contributions.

Participants will work in groups to negotiate a settlement between the union and the employer. If a settlement is not reached, the employees will go on strike and this will be damaging to both the employer's business (which will not be able to operate) and to the employees (who will not be paid). Each group will try to draw up a collective agreement that is a compromise between the employer and the employees.

Procedure

1. Divide participants into groups of 5-6 people. In each group, 2-3 people represent the employer, and 2-3 people represent the employees. In each group, a trainer/facilitator should observe the discussion and take notes.
2. Tell the groups to negotiate using their powers of persuasion and any other tactics they would like to use. Each group should reach a settlement between the employer's offers and the employees' demands, and draft a written agreement that reflects their compromise. Each group should write the terms of the agreement on a flip chart.
3. Bring all groups back together. Invite each group to present their flipchart and explain the compromise that they reached. Trainers/facilitators provide feedback to each group on:
 - Their negotiations, particularly about how they managed to get the other side to concede on issues and what tactics they used to convince the other party (e.g., whether they traded positions, used forceful arguments, lied to the other side, etc.)
 - Their compromise, whether it seems fair and whether employers or employees got the best deal in each group

3. Domestic work

Domestic work is an unregulated and undervalued activity because, in most countries, labor laws are not applicable to domestic workers. The International Labour Organisation (ILO) Domestic Workers Convention, 2011 (No.189) defines domestic work as “work performed in or for a household or households.” It includes:

1. Cleaning
2. Washing, ironing
3. Cooking
4. Gardening
5. Driving
6. Child care/babysitting
7. Elder care
8. Care of ill persons or persons with disabilities
9. Care of animals/pets etc.
10. Assistance in other household daily chores

A domestic worker is anyone who works in or for another person's home, usually performed within the boundaries of a house or compound. Workers employed for any of the activities above in public and privately-owned office buildings are not domestic workers. For a person to qualify as a domestic worker, they must be engaged in this work within an employment relationship. The term “employment relationship” excludes persons from domestic work who:

1. Perform their work only occasionally or sporadically (such as part-time baby sitters)
2. Perform the domestic work as a family responsibility (child care, elder care, etc.)

Domestic workers can be broadly divided into two categories i.e., live-in and live-out domestic workers. Live-in domestic workers are those who reside in the house where they perform their work, while live-out workers live outside their place of work. The other categories are full-time, part-time, child domestic workers, bonded/forced labor, and migrant workers.

ILO Convention 189 protects the basic rights of domestic workers as equivalent to all other workers. It requires that:

- o Domestic workers must be informed of their conditions of employment in an understandable manner through a written contract.
- o Domestic workers may be made to work only normal hours (48 hours per week in Pakistan).
- o Other provisions like overtime compensation, periods of daily and weekly rest, and annual paid leave also must be implemented.
- o Minimum age and minimum wage regulations (the norm in a country) must be enforced.
- o Wages must be paid in cash, and only a limited portion of wages may be in-kind (non-cash).

4. Bonded / forced labor

According to the ILO, forced labor is any type of work or kind of service in which someone engages involuntarily and under implied coercion or a threat of a penalty or oppressive measure. In this type of labor practice, there is often a financial deal in which the debtor is unable to pay, and as a result he/she has to serve the creditor for some specified or unspecified period. Often, a bonded labor system is used to exploit the needs of poor people who borrow money from their landlord / employer, and in return have to forgo their fundamental rights.

Bonded labor is common in the agriculture sector, at brick kilns, among unskilled laborers such as rock-breakers in the construction industry. It is also common among domestic workers, in the beggars' community, and among trafficked persons within a country or internationally for the sex industry (prostitution and pornography) or any other work (i.e., camel jockey, domestic labor).

Activity 7: Brainstorm

What types of bonded labor can you think of?

Bonded labor can exist in the following forms in different situations:

- Bonded labor in exchange for a cash advance (an amount of money given before services are rendered) (*peshgi*), received by a person or his family
- Bonded labor as a consequence of some social or customary obligation

Whether work is forced or bonded labor depends on the working conditions and whether they are similar to that of other workers in the country. The factors to consider include:

- Whether wages are equal to minimum wage or normal wages paid to other workers.
- Whether wages are directly paid to the worker or some other person.
- Whether daily working hours are in accordance with the law (i.e., 8 hours per day, 48 hours per week) and whether the worker has the right to choose overtime work.
- Freedom of employment or movement. Whether a person can leave work (after giving notice) and move to some other place to start new work.
- Freedom of business. Whether the person can sell their produce in the market.
- Whether the person is working under “peshgi” or “bonded loan” (“peshgi” itself is not a problem unless it creates bondage). Workers often take advances from their employers, but not all advances lead to bonded labor.
- Whether the worker keeps his/her identity documents or his/her employer keeps these (i.e., passport, identity card, educational certificates, etc.).

Law in Pakistan on bonded labor

Keeping a person bonded in labor means depriving them of fundamental freedoms protected by the Pakistan Constitution, such as freedom of movement (Article 15), freedom of assembly (Article 16), freedom of association (Article 17), freedom of profession (Article 18), freedom of speech (Article 19) and the right to be equal citizenship (Article 25-A).

Article 11 of the Constitution deals specifically with forced labor: “(1) Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form. (2) All forms of forced labor and traffic in human beings are prohibited.” In addition, Pakistan has enacted special laws for eradication and abolition of bonded labor in the country:

- o Bonded Labor System (Abolition) Act, 1992
- o Bonded Labor System (Abolition) Rules, 1995

In accordance with the above laws, any bonded labor system is illegal in the country and all bonded laborers must be set free from their debts. Moreover, all agreements or tradition, custom or practice of bonded labor is void and any liability to pay debt is void. No suit can be filed for recovery of this debt and every order issued before passage of the law (in 1992) for recovery of bonded debt is void. The law also requires the restoration of property of a bonded laborer, which may have been forcibly taken by the creditor for recovery of debt. This law requires the creditor not to accept any payment against any bonded debt.

The provincial governments can empower and impose duties on District Magistrates to ensure smooth implementation of this law. The Act also requires provincial governments to set up Vigilance Committees at the district level. A Vigilance Committee is comprised of:

A Vigilance Committee is comprised of elected representatives of the area and representatives of district administration, judiciary, police, bar associations, press, social partners (employers, unions, NGOs), and social services.

Workers in Punjab can call the Punjab Labor Department on their toll-free help line 0800-33888 or send an application to the Secretary Labor, Punjab along with their CNIC.

Under this act, the function of the Vigilance Committee is:

- o Advising the District Administration on effective implementation of the Act
- o Help in the rehabilitation of released and freed bonded laborers
- o Monitoring the enforcement of the law
- o Providing bonded laborers assistance to achieve the objective of the law
- o Establishment of a complaint office (described below)
- o Requiring employers to provide information or any documents needed

The Government has also created a Bonded Labor System (Abolition) Fund, which finances projects meant for training of released bonded laborers. The fund provides legal and financial assistance to bonded laborers and their family members. The Governments of Punjab and Khyber Pakhtunkhwa have also established Legal Aid Service Units (LASU) using the fund to provide legal assistance.

Punishment for bonded / forced labor

According to Bonded Labor System (Abolition) Act, 1992, whoever compels another person for bonded/forced labor can be punished with imprisonment for at least 2 and maximum of 5 years, or a fine of at least Rs 50,000, or both. Of the received fine, payment to the bonded labor has to be made at the minimum wage rate for each day of bonded labor.

The Pakistan Penal Code (PPC) has also provisions regarding forced or bonded labor or slavery. PPC Section 370 prohibits anyone from buying or using any person as a slave. A person who imports, exports, buys, sells or uses a person as a slave, or receives or detains someone as a slave, can be punished for imprisonment of at most 7 years and a fine. For a person who habitually deals with slaves (a “slave-trader” by occupation), PPC Section 371 recommends the punishment of imprisonment for at most 10 years and a fine.

Similar provisions are included in Prevention and Control of Human Trafficking Ordinance, 2002. Under this law, if a person knowingly plans or conducts human trafficking in and out of Pakistan to get any benefit or for the purpose of exploitative entertainment, slavery, forced labor, or adoption can be punished with 7 years' imprisonment and a fine.

5. Child Labor

The Employment of Children Act, 1991, defines a “child” as anyone under the age of 14. An “adolescent” is anyone above 14 years but below 18 years of age.

The Factories Act, 1934, allows for employment of adolescents with these conditions:

- o Each adolescent must have a certificate of fitness from a certifying doctor.
- o The number of hours a child may work is limited, but may be extended by the provincial government.
- o No child can work in a factory during the night.
- o Factories are also required to display working hours for children and maintain a register of child workers.

The Employment of Children Rules, 1995, defines labor conditions for the protection of minors, including:

- o Cleanliness in workplaces
- o Proper ventilation in workplaces
- o Workplaces must be lighted so that safety is fully secured.
- o Drinking water for children and adolescent workers free of charge
- o All dangerous equipment must be securely fenced and out of reach of a child worker.



The Constitution of Pakistan (Article 11 (3)) expressly prohibits employment of children below the age of 14 years in any factory, mine or other hazardous employment. Under the Employment of Children Rules, 1995, anyone who employs a child or permits a child to work against the Constitution can be punished by imprisonment for up to one year or a fine up to Rs. 20,000, or both. Repetition of the offense is punishable by imprisonment for a term of at least six months and up to two years.

According to The Employment of Children Act, 1991, a child or adolescent cannot work more than 7 hours a day (including one hour of rest, for a total of 6 hours of work). After every 3 hours of continuous work, the young worker has to have a break of at least one hour. A child cannot be permitted or required to work between 07:00 p.m. to 08:00 a.m. or to work overtime.

In addition, according to the Shops and Establishments Ordinance, 1969, no child shall be allowed or required to work in any “establishment”. No young person (children and adolescents between 14-18 years) shall be employed in any establishment other than between the hours of 09:00 a.m. and 07:00 p.m. and no young person can be permitted or required to work more than 7 hours a day (including one hour of rest) and 42 hours a week.

The Children (Pledging of Labor) Act, 1933, says that any agreement that promises the services or labor of a child for any payment or benefit is null and void. However, it provides an exception for an agreement that is made without any detriment to the child and if the child's services are provided for reasonable wages and if that agreement can be terminated with a week's notice.

Activity 8: Debate – 18 years should be the minimum age for employment

The aim of this debate is to encourage learners to think about the positive and negative aspects of children being allowed to work, considering their mental, physical and social well-being.

Instructions: Divide participants into groups of four people. Ask all groups to prepare to debate both sides of the argument. Invite two participants at random to come to the front of the room and give one argument each. Then invite two more participants, etc., until everyone has a chance to contribute. Ask everyone to rank the best arguments in favor and against.

Activity 9: Brainstorm and discuss

What kinds of jobs can children safely do? What jobs should they not do? Does anything in the list below surprise you? Is anything missing from the list?

Under the Employment of Children Act, 1991, the Federal Government may notify any occupations and process where children's employment is prohibited. This includes the following:

- Work involving movement into or out of a moving train
- Construction of a railway station
- In underground mines and above ground quarries including blasting
- Work with power cutting machinery like saws, agricultural machines, thrashers
- Work with live electrical wires over 50 volts
- Leather tanning process e.g., soaking, de-hairing, liming, chrome tanning, etc.
- Mixing and manufacture of pesticides and insecticides, and fumigation
- Sandblasting and other work involving exposure to free silica
- Work with exposure to all toxic, explosive and carcinogenic chemicals
- Work with exposure to cement dust in cement industry
- Work with exposure to coal dust
- Manufacture and sale of fireworks and explosives
- Work where liquefied petroleum gas or compressed natural gas is put in cylinders
- Work on glass and metal furnaces; and glass bangles manufacturing
- Work in the cloth weaving, printing, dyeing and finishing sections
- Work inside sewer pipelines, pits and storage tanks
- Stone-crushing
- Lifting and carrying of heavy weight, especially in transport industry
- Carpet-weaving
- Working two meters or more above the floor
- All scavenging including hospital waste
- Tobacco processing and manufacturing including niswar and bidi making
- Deep-sea fishing, commercial fishing and processing of fish and seafood
- Sheep-casing and wool industry
- Ship-breaking
- Spice-grinding
- Soap manufacture
- Wool cleaning
- Building and construction industry
- Manufacture of slate pencils, including packing

Module 19 Assessment

Workers' Rights

Q1. Indicate whether the following statements are true or false

1. Every worker in a large company is entitled to a formal employment contract
2. It is the duty of an employee to maintain reasonable efficiency
3. It is against the law to employ a child in hazardous work
4. An adult cannot be asked to work for more than 6 hours a day
5. A worker can be dismissed if she is pregnant and cannot do her job
6. A worker can be fired by a private business for any reason
7. Employees are allowed to form unions
8. A union has the legal right go on strike if it's demands are not met
9. Bonded labor is permitted if the employer has paid an advance to the laborer
10. If a person is being paid, it cannot be called bonded labor

Q2. Name 4 grounds for which a worker can be rightfully dismissed from service.

Q3. What are 3 duties of an employer to an employee?

Q4. What are 2 advantages of forming a workers' union?

Q5. Name 2 factors that determine whether work done constitutes bonded labor.

Q6. Name 2 legal protections provided to children who are legally employed.

Answers: Module 19 Assessment

Workers' Rights

Q1. Indicate whether the following statements are true or false

1. Every worker in a large company is entitled to a formal employment contract - TRUE
2. It is the duty of an employee to maintain reasonable efficiency - TRUE
3. It is against the law to employ a child in hazardous work - TRUE
4. An adult cannot be asked to work for more than 6 hours a day - FALSE
5. A worker can be dismissed if she is pregnant and cannot do her job - FALSE
6. A worker can be fired by a private business for any reason - FALSE
7. Employees are allowed to form unions - TRUE
8. A union has the legal right to go on strike if its demands are not met - TRUE
9. Bonded labor is permitted if the employer has paid an advance to the laborer - FALSE
10. If a person is being paid, it cannot be called bonded labor - FALSE

Q2. Name 4 grounds for which a worker can be rightfully dismissed from service.

Misconduct, disobedience, absenteeism, impairment, lack of capacity to do the required tasks.
After feedback and an opportunity to correct the problem, and following fair procedures.

Q3. What are 3 duties of an employer to an employee?

Give clear terms and conditions of work. Pay wage for work. Ensure safe and healthy workplace.
Provide leave and holidays according to law. No harassment in the workplace.

Q4. What are 2 advantages of forming a workers' union?

Power of collective bargaining for higher wages, healthy and safe working environment, etc..
Protection from abuse or exploitation from employer. Complaint procedures and support.

Q5. Name 2 factors that determine whether work done constitutes bonded labor.

- Whether wages are equal to minimum wage or normal wages paid to other workers.
- Whether wages are directly paid to the worker or some other person.
- Freedom of employment or movement. Whether a person can leave work (after giving notice) and move to some other place to start new work.
- Whether the worker keeps his/her identity documents or his/her employer keeps these (i.e., passport, identity card, educational certificates, etc.)

Q6. Name 2 legal protections provided to children who are legally employed.

- Cannot work in hazardous environment; must have water, ventilation and light
- Cannot work more than 7 hours a day (including 1 hour of rest)
- After every 3 hours of continuous work, must have a break of at least one hour
- Cannot work between 07:00 p.m. to 08:00 a.m. or to work overtime



**MODULE 20:
CONSUMER PROTECTION**

MODULE 20: CONSUMER PROTECTION

Objectives:

After completion of this module, learners will understand the purpose and importance of consumer protection laws. Learners will know how to use consumer protection laws in Pakistan and will be able to assist clients to resolve consumer problems.

Time: 60 minutes

Sections in this module:

1. Who is a consumer?
2. What is consumer protection?
3. Consumer protection mechanisms

Using this module: Below is reading material that is important preparation to understand the topic of this module thoroughly. Throughout the module there are a series of activities that can be used to train others. The module concludes with a written assessment that all learners should be able to fill out successfully after the training.

1. Who is a consumer?

A person might buy sweets or cold drinks at a shop, ride a bus to school, or pay to attend a singing performance. A person who does any of these is a “consumer” of food, drink, transport or entertainment. A consumer is a person who pays for goods or services from another person. We are all consumers because at some time every person buys goods and/or services.



According to most consumer protection laws, a “consumer” means a person or entity (for example, a business) who (i) buys or leases any product or (ii) hires any services for a “consideration” (fee or payment).

When a seller agrees to sell and the consumer agrees to pay for goods and services, they have entered into a **contract** (a legally binding agreement). Every time a person buys something, he or she agrees to pay for it. The seller in return agrees to sell the item in a particular condition. For example, if sweets or drinks are sold they must be fit to eat or drink. If a service or product is sold, it should not cause harm to the person who pays for it. The law provides guidance about resolving any dispute between a seller and a buyer of products or services.

Key points for entering into a selling/buying contract:

- The buyer should be aware and cautious (must be on the lookout when buying in case there is something wrong with the product or service)
- The seller must be honest (should not cheat or sell goods that do not work or services that are useless or do not accomplish the promised goal)

- The consumer must be informed (about the goods and services they are buying)
- The consumer should check for any express warranty or guarantee at the time of sale (in case the product is defective and needs to be replaced)

2. What is consumer protection?

Today, almost all developed countries have enacted legislation that establishes a consumer protection framework. Such laws and policies show a government's commitment to protect consumers' rights and interests. Consumer protection laws are to protect consumers from fraud, unfair and mal-practices, substandard manufacturing, inadequate services, and damage or harm from faulty products or services. These laws also provide citizens a mechanism to address any problems.

Consumer protection is essential for the economic and social development of a country. Every consumer spends money with the belief that he/she will be provided a product without defects or services without faults. Manufacturers and service providers should be held responsible when they sell a defective product or faulty service. Consumer protection laws help establish a sense of responsibility on the part of manufacturers and service providers. They also give consumers confidence and protection.

Activity 1: Discussion on Contracts

Notes on Contracts

- The law says that minors under 18 years of age need a parent or guardian to enter into legal relationships (like contracts). **Does this rule discriminate against or protect minors?**
- The law provides only limited protection for buyers whose goods have been repossessed (taken back because of non-payment). **Is this rule fair or unfair?**

Activity 2: Being a wise consumer

The aim of this activity is to make learners aware of themselves as consumers and to introduce them to the forces that influence consumer decision making (e.g., advertising, peer pressure, etc.). Ask participants to think of one faulty product or service they have bought or rented. Ask them to think about why they decided to buy or rent that particular product or service.

Discussion questions:

1. Do you think you were a wise consumer? Why or why not?
2. What could you have done differently to avoid the problem with the product or service?

Guidance for discussion

- Encourage learners to think critically about how they select things.
- Brainstorm some characteristics of a wise consumer (e.g., don't buy on impulse, obtain information about products before making a large purchase, look at prices in other shops before buying; check the quality of other products; check warranties, etc.)
- In choosing the best product, a consumer should consider: quality, dependability, value and problems with getting repairs.
- Consumers often choose competing brands they recognize from advertisements. One of the best ways of finding out about branded products is to ask friends, relatives, employers or someone else who may have bought reliable brands of the product previously.

Consumer protection mechanisms

UN General Assembly Resolution 39/248 provides Guidelines related to Consumer Protection. The purposes of consumer protection legislation, according to the UN Guidelines, should include:

- ✓ Protection of consumers from hazards to their health and safety;
- ✓ Promotion and protection of the economic interests of consumers;
- ✓ Access of consumers to adequate information to enable them to make informed choices;
- ✓ Consumer education;
- ✓ Availability of effective consumer redress (dispute resolution mechanisms);
- ✓ Freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-making processes affecting them.

Pakistan has honored the UN Resolution by introducing legal frameworks on this topic. Consumer protection is a provincial subject, so steps have been taken by provincial governments for the protection of the rights of the consumers as well as those of the manufacturers and service providers. Legislation includes the Islamabad Consumer Protection Act, 1995, the Khyber Pakhtunkhwa (formerly NWFP) Consumer Protection Act, 1997, and the Sindh Consumer Protection Act, 2014.

The Punjab Consumer Protection Act, 2005, (PCPA) establishes forums for consumer grievances, and the Rules of 2009 strengthen the system. There are two main forums available for consumers:

- Non-judicial forums - Consumer Protection Authority and Consumer Protection Councils
- Judicial forum - Consumer Courts

The PCPA empowers every District Coordination Officer (DCO) to serve as **Consumer Protection Authority** in his/her district to enforce the PCPA and to provide a remedy to citizens against defective products and faulty services. If any manufacturer or service provider does not comply with the PCPA, the Authority has the power to take up the incident and fine up to Rs.50,000.

The **District Consumer Protection Council** works under the Authority (the DCO). The council can take steps to increase awareness among consumers. It also gives advisory services to the Authority. The council follows the guidelines set by the PCPA and takes steps accordingly. The council includes members who are not government officials and who represent public participation on the council. Any consumer can contact any District Consumer Protection Council or Provincial Consumer Protection Council for guidance and assistance in consumer related matters.

Consumer Protection Court: The provincial government established consumer protection courts in various districts. A judge with the rank of session judge or equivalent presides over the court. Any aggrieved person can file a claim before the court. The appellate forum is the High Court.

Provincial Consumer Protection Council: This is a provincial level council for the redress of complaints. The council includes non-official members belonging to private institutions. It is empowered to pass recommendations to remove defective products and services from the market. This council also set guidelines and standards for manufacturers managed, recognized or registered by the council.

¹ <http://www.un.org/documents/ga/res/39/a39r248.htm>

Activity 3: Case Study

Maria is a poor widow and home-based tailor. She stitches clothes as her livelihood and in support of her family. She purchased a stitching machine on 28 June 2015. The purchased machine did not function properly. She complained to the shop manager, but he did not respond to her concerns. She desperately pleaded that stitching was her only source of income and she wanted to replace the machine. The shop manager refused. He accused Maria of damaging the machine during use. He also threatened her, saying that his brother worked in the office of the DCO (District Coordination Officer) and could cause her trouble. Maria went to the office of local NGO to ask for help.



Brainstorm how a paralegal could help Maria

Ideas for discussion - A paralegal could take the following steps:

- Write down
 - the complete name and address of the consumer (the client, Maria)
 - the complete name and address of the shop and the manager
 - all details about the product (model number, year of manufacture, etc.)
 - all relevant dates and amounts of payment, etc.
 - all details about the problem with the product
- Take photocopies of a written receipt or any other evidence of the consumer transaction
- Explain all possible options to the client. Respect the client's decisions about next steps.
 - One option is to contact the shop manager again, perhaps with facilitation and mediation by the paralegal. Provide the shop manager with all the relevant information (sales receipt, date of purchase, and the description of what is wrong with the goods). Keep the original documents and give the shop owner photocopies.
 - If the shop manager still refuses to help, the paralegal could help Maria get the contact information for the shop owner and send him a letter or call him. State the facts clearly and send copies of important documents, describing what is wrong with the item and what you want done. Be polite but firm. Keep the originals of all letters and documents.
 - If the shop owner refuses to help, and if the stitching machine was made in Pakistan, the paralegal could help Maria send a letter to the manufacturer of the product.
 - If the problem still is not resolved, the paralegal could assist Maria to seek help from the Consumer Protection Authority (the DCO), keeping in mind the fact that the shop manager's brother works in the DCO office. If this effort is not successful, the paralegal can gather all relevant documents and information and refer the client to a legal aid lawyer to take the case to the Consumer Protection Council or Court.

Imagine how the legal aid lawyer could help Maria

The legal aid lawyer working at the NGO could serve legal notices to the manufacturer and shop owner. If neither replies to the legal notices, the lawyer could file a claim to the district consumer court requesting compensation for Maria of Rs.25,000/- for lost income, along with replacement of the stitching machine. The Court would conduct a hearing. The court could direct the manufacturer to replace the machine. The court could further direct the manufacturer and the shop owner to pay Rs.15,000 as compensation for Maria's lost business and Rs.7,000 as costs of the litigation.

Activity 4: Debates about consumers and contracts

Step 1: Ask participants to read each of the seven statements below and decide whether they (a) strongly agree, (b) agree, (c) are undecided (d) disagree or (e) strongly disagree with each statement. Tell participants that there are no right or wrong answers. Ask participants to be prepared to explain their reasons.

Ask participants to write on a paper their name, the numbers 1-7, and a letter as above (a)-(e) next to each number. A co-trainer can collect these papers and add all the votes on a flip chart like this:

Question Number	Strongly Agree		Agree		Undecided		Disagree		Strongly Disagree	
	Before	After	Before	After	Before	After	Before	After	Before	After
1										
2	10		5		2		2		2	
3	5		4		2		4		5	
4										

1. Minors (people under 18 years of age) should not be able to make contracts without the approval of their parents or guardians.
2. Contracts should always be in writing.
3. Consumers should never buy items (except a house or car) unless they can pay the full price at the time of buying.
4. Sellers who trick consumers at the time of buying should be sent to prison.
5. Most consumers are not affected by radio and television advertising.
6. A car dealer who gives a loan to buy a car should be able to take the car back if the buyer misses a payment.
7. The government should prohibit the sale of any item harmful to the consumers.



Step 2: Ask participants who strongly agree with statement 1 to stand in one corner of the room. Participants who agree, disagree, and strongly disagree with statement 1 should stand in the other three corners the room. Participants who are uncertain should stand in the middle of the room.

Step 3: Ask two people who strongly agree and two people who strongly disagree to give their main reason in 30 seconds or less. (If no one feels strongly, ask two people who agree, and two people who disagree.) After all four arguments, ask if any participant would like to move to another location (corner or middle) of the room. Was anyone persuaded to change their position? Write down the new totals in the table. Do the same for each of the seven statements.

Step 4: Look at the table on the flip chart. Note the topics that had the most changes in one direction or the other (agreeing or disagreeing). Congratulate participants on their persuasive arguments!

Possible arguments and discussion based on the above statements:

1. Minors should not be able to make contracts without their parent or guardian.
 - Agree because: (a) minors are immature and easily exploited; (b) minors should be protected; (c) parents and guardians are there to protect minors; and (d) minors usually do not have their own money and have to rely on their parents or guardians for support.
 - Disagree because: (a) minors who know what they are doing should be allowed to enter into contracts; (b) it is impractical to require approval for every contract (e.g. buying ice-cream or bus tickets); (c) some minors are able to earn their own money (e.g. selling or delivering newspapers or working in a supermarket) and should be allowed to spend it how they like; and (d) not all minors are immature, especially those over 14 years old.

 2. Contracts should always be in writing.
 - Agree because: (a) written contracts are easier to prove than verbal statements; (b) people will be more careful if contracts are in writing; and (c) people will know what is agreed if it is in writing.
 - Disagree because: (a) people still cheat with written contracts by using fine print or making added verbal promises that are not carried out; (b) people are often in a hurry and do not read the contracts they sign, so they do not know the terms of the contract they signed; and (c) many transactions are too small and writing a contract is too much trouble.
- 
3. Consumers should never buy items unless they can pay the full price at the time of buying.
 - Agree because: (a) people get ownership or use of the thing before they have fully paid for it; (b) people who cannot usually afford to buy something are able to do so; and (c) people may pay a small amount each month and can plan their budgets accordingly.
 - Disagree because: (a) people pay more for the thing because they must pay interest charges; (b) people often buy things they do not really need; (c) people are tempted to over-commit themselves and end up with financial problems and may lose everything they have paid (and the thing bought) and may still have to pay the balance of the purchase price.

 4. Sellers who trick consumers at the time of buying should be sent to prison.
 - Agree because: (a) it will stop them from cheating consumers; (b) if a seller intentionally cheats, the seller has committed the crime of fraud and should go to prison; (c) dishonest sellers might cheat thousands of customers out of a few rupees each, but this may add up to a lot of money; and (d) if consumers are sent to prison for shoplifting, dishonest sellers should also be sent to prison for stealing from customers.

- Disagree because: (a) it would be better to make them repay the people they have cheated; (b) it is difficult to generalize- may be only those who commit a serious fraud should be sent to prison; (c) giving them a heavy fine would be better than sending them to prison and; (d) maybe people who do not use violence to steal from a consumer should not be sent to prison.
5. Most consumers are not affected by radio and television advertising.
- Agree because: (a) sellers would not advertise on television and radio if it did not work; (b) studies show that many people believe what they see on television and hear on radio; and (c) advertisements on television or radio usually appear more than once a day and for several days or weeks so that some people become “brainwashed” by them.
 - Disagree because: (a) people often ignore the advertisements and focus on the programs; (b) irritating interruptions by advertisements will make people consciously avoid buying the thing advertised; (c) consumers only buy what they need and not what the advertisements say they will need; and (d) viewers and listeners can take a break during the advertisements.
6. A car dealer should be able to take the car back if the buyer misses a payment.
- Agree because: (a) sellers are able to reduce the finance charges because they can repossess the goods; (b) sellers may save some of their losses if the buyer cannot afford to pay; (c) buyers can give the things back if they cannot afford to keep it; and (d) if the seller repossess the thing sometimes the buyer may not have to pay any more money.
 - Disagree because: (a) repossession procedures are often abused by sellers (e.g., breaking into people's houses or waking them up early in the morning; (b) sellers often repossess without the consent of the buyer or without a court order; (c) usually the buyer still has to pay the balance of the purchase price after the goods have been repossessed; and (d) finance charges are not usually less for goods that can be repossessed (e.g., furniture and cars), than for those that cannot be repossessed (e.g., building alterations).
7. The government should prohibit the sale of any item harmful to the consumers.
- Agree because: (a) the government should protect the health of the public; (b) people who are injured by harmful goods will become a burden on the society; (c) sellers and manufacturers should not be allowed to make money by selling goods that harm the public; and (d) many people are unable to protect themselves, so government must take steps to do it for them.
 - Disagree because: (a) people should have the right to choose if they wish to harm themselves; (b) people should be allowed to make and sell what they like, as long as they take responsibility (e.g., by compensating injured people); (c) sellers and manufacturers should be required to put warnings on their products (e.g., on cigarettes) rather than be prohibited from selling them; and (d) people disagree about what is harmful (e.g., coffee, salt, sugar, etc.).

Module 20 Assessment

Consumer Protection

Q1. Indicate whether the following statements are true or false

1. A consumer is anyone who purchases or leases a product or service
2. Consumers should protect themselves from bad products and services
3. Consumers have no protection when the product does not have a warranty
4. Minors can make any contract they want for goods and services
5. A seller does not have to tell the buyer about a defect if the buyer does not ask
6. A seller is permitted to sell a defective product if the buyer is aware of the defect
7. A buyer is entitled to get a product replaced or money back for a defective product
8. A buyer is entitled to other compensation (e.g. lost earnings) for a defective product

Q2. What are some of the steps a consumer should take before purchasing a product or service?

Q3. What can a consumer do if they have a problem with a product?

Q4. How can a paralegal help a client protect their consumer rights?

Answers: Module 20 Assessment

Consumer Protection

Q1. Indicate whether the following statements are true or false

1. A consumer is anyone who purchases or leases a product or service - TRUE
2. Consumers should protect themselves from bad products and services - TRUE
3. Consumers have no protection when the product does not have a warranty - FALSE
4. Minors can make any contract they want for goods and services - FALSE
5. A seller does not have to tell the buyer about a defect if the buyer does not ask - FALSE
6. A seller is permitted to sell a defective product if the buyer is aware of the defect - TRUE
7. A buyer is entitled to get a product replaced or money back for a defective product - TRUE
8. A buyer is entitled to other compensation (e.g. lost earnings) for a defective product - TRUE

Q2. What are some of the steps a consumer should take before purchasing a product or service?

Don't buy on impulse; obtain information about products before making a large purchase; look at prices in other shops before buying; check the quality of other products; check warranties; consider quality, dependability, value and problems with getting repairs; ask friends, relatives, employers or someone else who may have bought reliable brands of the product previously.

Q3. What can a consumer do if they have a problem with a product?

Try to convince the seller or manufacturer to replace the product; seek help from the Consumer Protection Authority in the district (in Punjab, the DCO); submit a complaint to the Consumer Protection Council in the district and province; submit a case to the Consumer Protection Court

Q4. How can a paralegal help a client protect their consumer rights?

- Write down all relevant details about the product/service and buyer and seller carefully.
- Take photocopies of any written receipt or other evidence of the consumer transaction.
- Explain all possible options to the client. Respect the client's decisions about next steps.
- If the client agrees, meet with the seller or service provider to mediate.
- If the client agrees, write a letter to the seller or service provider to seek a solution.
- If the client agrees, write a letter to the manufacturer of the product.
- Assist the client to find a legal aid lawyer to seek help from the Consumer Protection Authority, the Consumer Protection Council, or the Consumer Protection Court.



**MODULE 21:
INTERNATIONAL HUMAN
RIGHTS**

MODULE 21: INTERNATIONAL HUMAN RIGHTS

Objective:

By the end of this session readers will know about the different types of human rights, how the concept of human rights emerged throughout history, the current global infrastructure on human rights, and major treaties Pakistan has signed up to.

Time: 60 minutes

Sections in this module:

1. What are human rights?
2. History of human rights
3. Human rights duties and obligations
4. Sources of international human rights law
5. Treaties ratified by Pakistan
6. Human Rights monitoring
7. International enforcement of human rights
8. Global human rights infrastructure, including treaties Pakistan has accepted

Using this module: Below is reading material that is important preparation to understand the topic of this module thoroughly. Trainers should use interactive methods found in other modules of this course. The module concludes with a written assessment that all learners should be able to fill out successfully after the training.

1. What are human rights?

The term “human rights” has two parts. The first part – the word “human” – means that all people are entitled to these rights. The second part – the word “rights” – means that these are entitlements that can be enforced by law.

Human rights reflect underlying values in societies. Although the codification of the rights into legal standards is relatively recent, the values have far deeper roots. The set of rights currently embodied in international human rights law reflects what was agreed by governments at a particular moment in human history. However, human rights are not static. Rather they are constantly changing and developing. Human rights usually emerge as a result of popular struggles against injustice. Hence the struggles against slavery, for woman's rights and against colonialism succeeded in creating new rights that are almost universally acknowledged today. But they did so against fierce resistance from entrenched and powerful interests.

Implicit in the idea of rights is that they are accompanied by certain responsibilities. Both individuals and governments have certain duties and obligations to respect, protect and promote the rights of others. Human rights are not absolute and may often come into conflict with each other. Some of the most complicated issues in human rights are to do with resolving disputes between conflicting rights. However, although some rights may take priority over others in certain situations, the entire set of internationally respected rights is indivisible. Although many people and institutions try to promote some rights at the expense of others (often civil and political rights rather than economic or social rights), this entire body of rights should be seen as a whole.

Human rights are universal and inalienable:

Human rights are founded on respect for the dignity and worth of each and every person. They are the rights of all people. Human rights should not be taken away, except in specific situations such as when someone breaks the law, and only then according to due process.

Human rights are equal and non-discriminatory:

Human rights prohibit discrimination on the basis of any human characteristic. The principle of non-discrimination applies to everyone in relation to all human rights and freedoms. It is complemented by the principle of equality, meaning that all human beings are born free and equal in dignity and rights.

Human rights are both rights and obligations: Human rights belong to everyone and are the responsibility of everyone. Every person in relation to another and every group in relation to another, has a relationship of rights and obligations. States assume particular obligations and duties under international law to respect, to protect and to promote human rights.

From this core of **existential human rights** stem various rights to freedom and equality, political rights, economic rights, social and cultural rights, collective rights, procedural rights and specific rights for disadvantaged and vulnerable groups. Here are some examples:

Civil rights and liberties:

Right to privacy, freedom of movement, opinion, conscience, religious worship, of association and assembly; right to life, personal integrity

Rights of equality:

Equality before and under the law, protection against discrimination on grounds of sex, age, race, skin colour, religion, ethnic and social origin or genetic features, political opinion, disability or sexual orientation

Political rights:

Right to vote, equal access to authorities, freedom of political parties, right of petition

Economic rights:

Right to property, freedom to conduct business, freedom of establishment, freedom to provide services or trade-union freedom, right to work, right to free choice of employment and to just and favourable conditions of work

Social and cultural rights:

Right to an adequate standard of living, food, water, housing, clothing, health, education, social security

Collective rights:

Right of self-determination of peoples, right to development and a healthy environment

Procedural rights:

Right of equal access to justice and a fair trial, particularly in criminal proceedings

Specific rights for disadvantaged groups:

Children, the elderly, persons with disabilities, foreigners, refugees, minorities, indigenous peoples and other disadvantaged groups

2. History of Human Rights

Most of the world's major philosophies, religions and cultures have recognized human rights concepts in one form or another for centuries. These are what make up our human rights story. Some of the formal agreements that were forged among peoples are listed below. These examples are not a complete list. There will be others that relate specifically to the countries and communities within which human rights educators work.

c. 1750 BC: The Code of Hammurabi, Babylonia, drafted by the first king of the Babylonian Empire, is one of the first known written codes of law in recorded history. It included the idea of the presumption of innocence and suggested that the accused and accuser should be given the opportunity to provide evidence.

c. 1200–100 BC: The Old Testament, also called the Hebrew Bible or Tanakh, is an account of God's dealings with the Hebrews. Along with the Ten Commandments, Old Testament laws include respect for life and property rights (for example, the obligation not to kill), the asylum tradition of synagogues and the principle of the presumption of innocence.

c. 551–479 BC: The teachings of Confucius include the twin principles of “[wh]at one does not wish for oneself, one ought not to do to anyone else; what one recognizes as desirable for oneself, one ought to be willing to grant to others”.

c. 40–100 AD: The New Testament provides an account of the life and teachings of Jesus and his apostles. Central principles include forgiveness, equality before God and compassion.

c. 644–645 AD: The Qur'an is the Muslim holy book and is considered to be the word of God as revealed to the prophet Muhammad by the Angel Gabriel over a 23-year period. It shares many stories with the Bible, including Noah's Ark and Moses leading the Israelites out of Egypt. It includes the principles of privacy, freedom, dignity and equality.

1215: The Magna Carta is the “charter of liberties” signed by John I of England after pressure from his nobles and the clergy. It introduced the concepts of *habeas corpus* (due process of law) and “no taxation without representation”, which became a central component of the Constitution of the United States.

1400s: The Code of Nezahualcoyotl, a respected and influential king of Texcoco (now Mexico), brought the rule of law, scholarship and artistry to his kingdom. He established a code of law, based on a division of power and administered through councils of finance, war, justice and culture.

1648: The Treaty of Westphalia was the agreement that ended the Thirty and Eighty Years Wars between Protestants and Catholics. It gave rise to the modern notion of national sovereignty by allowing rulers to determine the religion of their realms. It also gave some freedom of worship to religious minorities.

1689: The English Bill of Rights was passed by the Parliament following the overthrow of the monarchist, James II. It prevented royalty from suspending laws or levying taxes without parliamentary consent and from interfering with elections. It also guaranteed the right to freedom of speech within the Parliament.

1776: The United States Declaration of Independence was adopted after the beginning of the American Revolution. The Declaration became a central statement of human rights to “life, liberty and the pursuit of happiness”.

1789: The French Declaration of the Rights of Man and Citizen was part of the transition from an absolute monarchy to a more democratic form of government. It listed the natural rights of “liberty, property, security and the rights to resist oppression”. It also replaced aristocratic privilege with the principle of equality before the law.

1863: The Emancipation Proclamation was issued by the President of the United States, Abraham Lincoln, declaring the freedom of slaves.

1893: New Zealand became the first nation to grant women the right to vote.

1919: The League of Nations Covenant, drawn up in the aftermath of World War I, sought to prevent conflicts and to promote international cooperation. League members agreed not to go to war until all possible means of peaceful settlement had been explored. This was weakened by the absence of the United States and the withdrawal of Japan, Italy and Germany.

The Socialist view of human rights embodied in the constitutions of Socialist people's democracies of the 20th century was diametrically opposed to the civil-political human rights philosophy and stressed the real equality of all people as well as their **economic, social and cultural** rights to work, education, health, social security and an adequate standard of living. The cold war era was also dominated by an irreconcilable ideological controversy between these two so-called first and second generations of rights or negative and positive rights.

At the same time, a 'third generation' of **collective human rights** took shape in the course of decolonisation in Africa and Asia, centred on the right of the peoples of the South to political and economic self-determination, equality and development.

With the cessation of the Cold War, the ideological debate about different 'generations' of human rights was also formally ended. Despite the mounting North-South conflict, the heads of state and government of more than 170 states reached agreement at the **World Conference on Human Rights** in Vienna in 1993 on the principles of the universality, indivisibility, interdependence and equality of all human rights.

Universality means that human rights apply equally for all people particularly in the North and South, while nevertheless taking account of certain cultural differences. The **equality, interdependence and indivisibility** of human rights mean that the right of a people to self-determination as well as economic, social and cultural rights are just as important as civil and political rights and that all human rights are mutually dependent. Without the right to housing, i.e. a decent 'roof over one's head', the right to privacy or the protection of domiciliary rights against random police searches mean little. Effectively guaranteeing the right to education is essential for the meaningful exercise of the right to vote and to freedom of opinion and information and many other human rights. If people are starving and living in dire poverty, they are also largely barred from enjoying other human rights.

3. Human rights duties and obligations

The obligation to protect, promote and ensure the enjoyment of human rights is the prime responsibility of States, thereby conferring on States responsibility for the human rights of *individuals*. Many human rights are owed by States to *all* people within their territories, while certain human rights are owed by a State to particular groups of people: for example, the right to vote in elections is only owed to citizens of a State. State responsibilities include the obligation to take pro-active measures to ensure that human rights are protected by providing effective remedies for persons whose rights are violated, as well as measures against violating the rights of persons within its territory.

Under international law, the enjoyment of certain rights can be restricted in specific circumstances. For example, if an individual is found guilty of a crime after a fair trial, the State may lawfully restrict a person's freedom of movement by imprisonment. Restrictions on civil and political rights may only be imposed if the limitation is determined by law but only for the purposes of securing due recognition of the rights of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. Economic, social and cultural rights may be limited by law, but only insofar as the limitation is compatible with the nature of the rights and solely to promote the general welfare in a democratic society.

In a legitimate and declared state of emergency, States can take measures which limit or suspend (or “*derogate*” from) the enjoyment of certain rights. Such derogations are permitted only to the extent necessary for the situation and may never involve discrimination based on race, colour, sex, language, religion or social origin. Any derogation must be reported to the Secretary- General of the United Nations. However, in accordance with article 4, paragraph 3 of the International Covenant on Civil and Political Rights (ICCPR), certain human rights – non-derogable rights – may never be suspended or restricted even in situations of war and armed conflict. These include the right to life, freedom from torture, freedom from enslavement or servitude and freedom of thought, conscience and religion. In addition, in times of armed conflict where humanitarian law applies, human rights law continues to afford protection.

4. Sources of international human rights law

The United Nations was founded in San Francisco in 1945 in response to the Second World War and the Nazi Holocaust. It currently has 193 member states. **Pakistan** became a member of the **United Nations** on 30 September 1947. The three most important tasks and aims of the United Nations are peace and international security, development and human rights.

The formal expression of inherent human rights is through *international human rights law*. A series of international human rights treaties and other instruments have emerged since 1945 conferring legal form on inherent human rights. The creation of the United Nations provided an ideal forum for the development and adoption of international human rights instruments. Other instruments have been adopted at a regional level reflecting the particular human rights concerns of the region. Most States have also adopted constitutions and other laws which formally protect basic human rights. Often the language used by States is drawn directly from the international human rights instruments. International human rights law consists mainly of treaties and customs as well as declarations, guidelines and principles.

Treaties

A treaty is an agreement by States to be bound by particular rules. International treaties have different designations such as *covenants, charters, protocols, conventions, accords* and *agreements*. A treaty is legally binding on those States which have consented to be bound by the provisions of the treaty – in other words are *party* to the treaty.

A State can become a *party* to a treaty by *ratification, accession* or *succession*. *Ratification* is a State's formal expression of consent to be bound by a treaty. Only a State that has previously signed the treaty (during the period when the treaty was open for signature) can ratify it. Ratification consists of two procedural acts: on the domestic level, it requires approval by the appropriate constitutional organ (usually the head of State or parliament). On the international level, pursuant to the relevant provision of the treaty in question, the instrument of ratification shall be formally transmitted to the depositary which may be a State or an international organization such as the United Nations.

Accession entails the consent to be bound by a State that has not previously signed the instrument. States ratify treaties both before and after the treaty has entered into force. The same applies to accession. A State may also become party to a treaty by *succession*, which takes place by virtue of a specific treaty provision or by declaration.

Most treaties are not self-executing. In some States treaties are superior to domestic law, whereas in other States treaties are given Constitutional status, and in yet others only certain provisions of a treaty are incorporated into domestic law.

A State may, in ratifying a treaty, enter reservations to that treaty, indicating that, while it consents to be bound by most of the provisions, it does not agree to be bound by certain specific provisions. However, a reservation may not defeat the object and purpose of the treaty. Further, even if a State is not a party to a treaty or if it has entered reservations thereto, that State may still be bound by those treaty provisions which have become part of customary international law or constitute peremptory rules of international law, such as the prohibition against torture.

Custom

Customary international law (or simply “custom”) is the term used to describe a general and consistent practice followed by States deriving from a sense of legal obligation. Thus, for example, while the Universal Declaration of Human Rights is not in itself a binding treaty, some of its provisions have the character of customary international law.

Declarations, resolutions etc. adopted by UN organs

General norms of international law principles and practices that most States would agree are often stated in *declarations, proclamations, standard rules, guidelines, recommendations* and *principles*. While no binding legal effect on States ensures they nevertheless represent a broad consensus on the part of the international community and, therefore, have a strong and undeniable moral force on the practice of States in their conduct of international relations. The value of such instruments rests on their recognition and acceptance by a large number of States, and, even without binding legal effect, they may be seen as declaratory of broadly accepted principles within the international community.

International Charter of Human Rights:

- Universal Declaration of Human Rights (UDHR), 1948. The Charter of the United Nations does not define human rights in detail. This was done initially in a legally non-binding form in the **Universal Declaration of Human Rights (UDHR)** of 1948. The Universal Declaration of Human Rights consists of a Preamble and 30 articles, setting out the human rights and fundamental freedoms to which all men and women are entitled, without distinction of any kind. Instead of a universal human rights convention, embodying the interdependence and indivisibility of all human rights, the UN General Assembly agreed in 1966 on the adoption of two international covenants with different duties for the states and different monitoring mechanisms.
- **International Covenant on Civil and Political Rights (ICCPR), 1966**, embodies the Western, civil and political vision of human rights and after its entry into force in 1976 led to the appointment of the Human Rights Committee as a supervisory body made up of independent experts.
- **International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966**, reflects the Socialist concept of human rights and initially entrusted supervision to one of the main political bodies of the United Nations, the Economic and Social Council (ECOSOC), made up of government representatives. Since 1985, supervision has been entrusted to an independent Committee on Economic, Social and Cultural Rights. The Universal Declaration and the two international covenants together make up the International Charter of Human Rights.

Other major UN Conventions are included in the table below.

5. Treaties ratified by Pakistan

Treaty Name	Treaty Name	Signature Date	Date of Ratification (r), Accession (a), or Succession (s)
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	CAT	17 Apr 2008	23 Jun 2010 (r)
Optional Protocol of the Convention against Torture	CAT-OP		
International Covenant on Civil and Political Rights	ICCPR	17 Apr 2008	23 Jun 2010 (r)
Second Optional Protocol to ICCPR on the abolition of the death penalty	ICCPR-OP2-DP		
Convention on the Elimination of All Forms of Discrimination against Women	CEDAW		12 Mar 1996 (a)
International Convention on the Elimination of All Forms of Racial Discrimination	CERD	19 Sep 1966	21 Sep 1966 (r)
International Covenant on Economic, Social and Cultural Rights	ICESCR	03 Nov 2004	17 Apr 2008 (r)
Convention on the Rights of the Child	CRC	20 Sep 1990	12 Nov 1990 (r)
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	CRC-OP-SC	26 Sep 2001	05 Jul 2011 (r)
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	CRC-OP-AC	26 Sep 2001	
Convention on the Rights of Persons with Disabilities	CRPD	25 Sep 2008	05 Jul 2011 (r)
Convention for the Protection of All Persons from Enforced Disappearance	CED		
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	CMW		

6. Human Rights Monitoring

States' responsibilities

As a rule, treaties under international law are concluded among states and contain mutual rights and duties that are binding under international law and are overseen by the states parties themselves as a matter of principle. This generally also holds true for human rights treaties, although the beneficiaries, i.e. the rights holders are in this case not states but individuals. Governments are not only responsible for ensuring that human rights are respected and ensured on their sovereign territory but that other states parties do this as well through appropriate monitoring measures. However, this monitoring by certain states is not enough. Many countries do not welcome such criticism by other States, and consider it inadmissible interference in internal affairs.

International monitoring

Governments consequently mandate international bodies to supervise human rights such as political bodies. These are made up of government representatives. The most well-known is the **United Nations Human Rights Council**, which replaced the former Commission on Human Rights in 2006. It consists of 47 states elected by the General Assembly, convenes several times a year in Geneva and assesses the human rights situation in all nations of the world. The most important method it has at its disposal is the **Universal Periodic Review (UPR)**, which entails all states being subjected to a periodic review by their peers, that is, other government representatives. Not surprisingly, these monitoring procedures are not free of political motives.

To minimise the politicisation of human rights, the political bodies partly assign independent experts who contribute to an objective appraisal of human rights through fact-finding and similar monitoring measures. The Human Rights Council of the United Nations, for example, appoints special procedures for specific countries or themes, that is, special rapporteurs, special representatives, working groups, other independent experts and an advisory board.

Country-specific special rapporteurs to several countries (such as North Korea, Burma/Myanmar, Burundi, Sudan and Israel) are tasked with reviewing the overall situation in these countries and reporting to the Human Rights Council.

Thematic special rapporteurs and working groups are assigned to assess and report on compliance with individual human rights (such as freedom of opinion, religious freedom, the rights to food, education or health) or specific violations of human rights (such as torture, enforced disappearance, poverty, summary executions, violence against women or arbitrary detention) in all countries in the world. Their reports are discussed in the Human Rights Council with the governments concerned and provide the basis for the Universal Periodic Review.

Reports by non-governmental organisations, such as Amnesty International, Human Rights Watch, the International Commission of Jurists (ICJ) or the International League of Human Rights also play an important role for the monitoring and assessment of human rights.

Regional organisations also entrust independent supervisory bodies with suitable fact-finding competencies, such as the Inter-American Commission on Human Rights, the European Commission against Racism and Intolerance (ECRI), the Organisation for Security and Cooperation

in Europe (OSCE) Representative on Freedom of the Media or the OSCE High Commissioner on National Minorities. The Council of Europe Commissioner for Human Rights and the UN High Commissioner for Human Rights also can be considered as independent experts, although they are part of the secretariat of the respective inter- governmental organisations.

International monitoring by human rights treaty bodies

While the expert bodies cited so far are assigned on the basis of the statutes of the respective international organisations by the responsible political bodies and are generally in charge of all member states of these organisations, there are also expert bodies that have been set up under human rights treaties by the respective signatory states to supervise compliance with specific treaty duties. Such treaty bodies have been set up for the nine core conventions of the United Nations, for example.

The most well-known treaty bodies are the Human Rights Committee entrusted to monitor the International Covenant on Civil and Political Rights, and the Committee on Economic, Social and Cultural Rights set up by ECOSOC in 1985 to supervise the Covenants. The other core UN treaties are monitored by similar independent expert bodies, such as the Racial Discrimination Committee, the Committee on Discrimination against women or the Committee on the Rights of the Child. Various monitoring procedures are available, such as examining state reports, inter-State complaints and individual complaints. The committees against torture, enforced disappearance and discrimination against women can also conduct inquiries.

Although these treaty bodies have **quasi- judicial status**, their decisions and recommendations are **not binding under international law**.

7. International enforcement of Human Rights

Regional human rights courts

Binding decisions under international law, particularly on complaints by victims of human rights violations against the states in question, can only be taken by regional **human rights courts**. To date, these courts have only been set up in pursuance of the three main regional human rights conventions in Europe, America and Africa.

International Criminal Court

The United Nations has, however, set up a number of ad-hoc criminal tribunals (for the former Yugoslavia, Rwanda, Sierra Leone or Cambodia) as well as a permanent **International Criminal Court (ICC)** in The Hague. These also consist of independent, permanently appointed judges and their task is to call to account and pass judgement on those who have committed the most serious crimes under international law, such as war crimes, genocide and crimes against humanity. Crimes against humanity are the most grievous and systematic violations of human rights.

Module 21 Assessment

International Human Rights

Q1. Define “human rights”.

Q2. Name 3 of the sources of human rights.

Q3. List 4 of the international treaties under which Pakistan has accepted legal obligations.

Q4. How are international human rights monitored? How are they enforced?

Q5. What argument can you make to show that international human rights are not forced on Pakistan by the “Western” world?

Q6. How are international human rights relevant to paralegals in Pakistan?

Answers: Module 21 Assessment

International Human Rights

Q1. Define “human rights”.

The term “human rights” has two parts. The first part – the word “human” – means that all people are entitled to these rights. The second part – the word “rights” – means that these are entitlements that can be enforced by law.

Q2. Name 3 sources of human rights.

Treaties, custom, Universal Declaration of Human Rights, other *Declarations, Resolutions etc. adopted by UN entities (institutions, or “organs”)*

Q3. List 4 of the international treaties under which Pakistan has accepted legal obligations.

CAT, CERD, CRC, CEDAW, ICCPR, ICESCR, etc.

Q4. How are international human rights monitored? How are they enforced?

Monitoring: United Nations Human Rights Council, Universal Periodic Review, country-specific Special Rapporteurs, thematic Special Rapporteurs, Treaty Bodies, non-governmental organization reports, regional organizations, etc.

Enforcement: International Criminal Court, Regional Human Rights Courts, etc.

Q5. What argument can you make to show that international human rights are not forced on Pakistan by the “Western” world?

Most of the world's major philosophies, religions and cultures have recognized human rights concepts in one form or another for centuries, including Islam in the Qur'an.

Q6. How are international human rights relevant to paralegals in Pakistan?

States (and Governments) have the primary responsibility to protect, promote and ensure the enjoyment of human rights of *individuals*. Paralegals should understand the rights of individuals and the duties of the State (and Government) so that paralegals can help empower individuals and help ensure their rights are protected. Many “administrative justice” issues and legal rights discussed in this training manual related to basic human rights.



**MODULE 22:
PAKISTAN CONSTITUTION
AND STRUCTURES OF
GOVERNMENT**

MODULE 22: PAKISTAN CONSTITUTION AND STRUCTURES OF GOVERNMENT

Objectives:

By the end of this module, learners will know about the Constitution of Pakistan and how the law affects citizens' daily lives. Learners also will learn about the structures and functions of the State and Government, and what role individual citizens can play in Government and with the law.

Time: 60 minutes

Sections in this module:

1. What is law?
2. Democracy
3. How does government work? Legislature, Executive and Judiciary

Using this module: Below is reading material that is important preparation to understand the topic of this module thoroughly. At the end of the module to throughout the module there are a series of activities that can be used to train others. The module concludes with a written assessment that all learners should be able to fill out successfully after the training.

1. What is law?

How does the law affect our daily lives?

Every aspect of our daily lives – in fact, every activity we do -- is regulated or affected by some law. There are laws to regulate everything from the simplest things such as taking a shower, eating food, talking on the telephone or reading the newspaper to the most complex – banking transactions, elections etc. Therefore, knowing the law is important for everyone.

Activity 1: Discussion - What is governed by law?

Ask participants what is the first thing they did in the morning. Typical answers include: Brushed teeth, went to the toilet, took a bath, got dressed, had breakfast, checked the news, checked mobile telephone, and went to work. Ask the participants if their activity was affected by the law. Generate a discussion.

All activities are affected by the law. Brushed teeth – Toothpaste, drugs etc. are all regulated by the law to maintain public health. Went to the toilet or took a bath – Public sanitation laws, laws regulating provision of clean water. Got dressed – Laws related to public decency. Had breakfast – laws regulating quality and price of food items. Checked the news – Law related to media and broadcast/publishing regulations. Checked mobile telephone – laws related to consumer protection, telecommunications. Went to work – Traffic rules, laws related to the workplace etc.

Why do we need laws and what qualities should laws have?

Large societies need rules to regulate their conduct and make society function fairly for everyone. There is a risk that there would be confusion and anarchy if there were no rules or if everyone didn't know the rules or chose not to follow them. If a simple game, like the one above, could not be played without rules, imagine how a society would function if we did not have laws. Laws should be known to everyone, fair, consistent, democratic, and not arbitrary. Laws that follow these principles provide for a society that benefits and protects all its members.

Activity 2: Pen Game

Use the Pen Game to discuss the important qualities of any law. For instructions, see Module 5 on Conducting Legal Empowerment Sessions.

What is the Constitution of Pakistan?

Pakistan has thousands of laws, including many discussed in this manual. All these laws are created under a basic law called a Constitution. Most countries in the world have a Constitution that defines how a new law can be made and what basic principles it must follow. The Constitution also defines other important aspects of laws and the Government.

The current Constitution of Pakistan was created in 1973. This is the third Constitution that Pakistan has had since independence. The previous Constitutions were created in 1956 and 1962, but were voided by military dictatorships.

The Constitution of the Islamic Republic of Pakistan 1973 broadly covers the following topics:

1. Fundamental Rights and Principles of Policy
2. The structure of Government and the powers of each branch: Legislature, Executive and Judiciary
3. Relationship between Federation and Provinces
4. Conduct of Elections
5. Islamic Provisions



The Constitution also has 22 amendments (as of August 2016). The Constitution can only be amended when there is a “super majority” of 2/3rd of the members of Parliament who vote for an amendment. It is difficult to amend the Constitution, and therefore amendments are usual made in special circumstances, e.g., the 21st Amendment provides for military courts in cases of terrorism.

How are other laws made in Pakistan?

All laws have to be made by either the Parliament at the Federal Level or the Provincial Assembly at the provincial level. The Parliament is made up of the National Assembly and the Senate. The members of Parliament and the Provincial Assembly are representatives of the people of Pakistan and are elected every 5 years. Since all laws are made by our representatives, it is in fact the people of Pakistan that make laws.



Any member of the Parliament can propose a new law. Each law is discussed and debated in the parliament and eventually all the representatives vote. If more than half of the members agree, the law is passed and sent to the President for his signature. The proposed bill then becomes a law.

The Constitution sets out the procedure to be followed for promulgating a statute. Broadly, this requires a Bill to be passed by both Houses of Parliament – the National Assembly and the Senate. Upon a Bill's passage through both Houses, it is presented to the President of Pakistan for assent and becomes an Act of Parliament upon receiving such assent. In the absence of the National Assembly, statutes are promulgated by the President pursuant to Article 89(1) of the Constitution. Under this Article, the President may, if satisfied that circumstances exist which render it necessary to take immediate action, make and promulgate an Ordinance. Such Ordinances have the same force and effect as an Act of Parliament. A similar power is bestowed upon Provincial Governors by Article 128(1) of the Constitution in respect of matters falling within provincial legislative authority.

Activity 3: Let's make a new law!

Divide the participants in to 4 equal groups, with each group representing a political party (or coalition of parties) in the National Assembly. Propose a new law, for example "All women have exactly the same rights as men regarding divorce" or "All women accused of any crime must be given bail (must be allowed to be with their family) while awaiting trial." Assign two groups to argue in favor of the law and two groups to argue against the law. Ask each group to select 2 speakers to represent them. Invite the speakers from the first group to come to the front of the room and speak for a total of 4 minutes or less. Then ask each of the next groups to send their representatives to the front of the room to make their arguments. At the end, ask everyone to vote for or against the proposed law by raising their hands. Announce whether or not the law has been approved and will be sent to the Senate for another vote.

2. Democracy

When we vote for representatives in elections (for government and any other institutions) we are voting for them to make laws and policies on our behalf and to ensure that these are carried out. This is one of the most important principles of democracy but it goes further than this. Democracy also means that the people who have been elected are accountable in various ways to the people who voted for them. As citizens we have a role to play in participating on an ongoing basis to ensure that the people we vote for carry out their duties and obligations. You have a constitutional right to be involved in these processes in all spheres of government: national, provincial and local.

In order to participate effectively in the decision-making and implementation processes, it is important to know:

- the structures of all spheres of government and who the key role-players are
- how laws and policies are made in all spheres of government
- what the best opportunities are for public participation in all spheres of government
- different methods of participating

The most common definition of democracy is rule by the people. This means the people consent to the government running the country. People are given an opportunity to choose, through their right to vote, people to represent them in government. They do this in regular, free and fair elections. However, democracy is much more than voting for a representative? in parliament or for a local

councillor. Public participation in the decision-making processes will help to ensure that the people who have been elected are accountable in various ways to the people who voted for them. They have to act and deliver on the promises they made during elections and they have to be open (transparent) in their actions.

When we vote we give the government a mandate to pass and enforce laws on our behalf. In making laws the government has to follow what is written in the constitution and it uses the courts as well as the police and military to enforce the laws. If the government becomes unpopular or doesn't do what it promised to do then people can vote for another party in the next election and vote the present government out of power. This is essentially how democracy works and why it is effective as a system of government.

The Principles of Democracy

Democratic principles are ideas which most people believe are essential for a democracy. The most important principles are:

- **Public participation:** People have a right and a duty to participate in government and in civil society.
- **Equality:** All people should be treated equally and without discrimination and be given equal opportunities.
- **Tolerance:** Everyone, including minority groups, should be allowed to express their opinions and join the political, religious or civil groups of their choice.
- **Accountability:** Government must be accountable to the people for its actions, including the laws that are passed and how these laws are implemented.
- **Transparency:** Government must be open to the public about its actions.
- **Regular, free and fair elections:** Elections must happen in a free and fair way, without intimidation, corruption and threats to the public.
- **Accepting the results of elections:** When a political party loses an election, its supporters must accept this result.
- **Economic freedom:** People in a democracy should be allowed to have some kind of private ownership of property and business and they should be allowed to choose their own type of work and join labour unions. The government should not totally control the economy.
- **Controlling abuse of power:** There should be ways to prevent government officials from abusing their powers. The courts should be independent and they should have the power to act against government officials or bodies that commit an illegal or corrupt act.
- **Human rights:** The human rights of individuals and groups should be protected, preferably in a Bill of Rights.
- **Multi-party system:** More than one political party must be allowed to participate in elections and play a role in government.
- **Rule of law:** The rule of law means that no one is above the law, including the leader of the country.

Citizens participate in Democracy by voting for their representatives. Citizens should vote for the candidate that best represents their interests. Candidates in Pakistan usually belong to a particular political party although there are also independent candidates.



Before voting, citizens should consider the party or candidate's manifesto and their past record or performance. Your elected representative will represent you for the next five years so vote wisely!

All Pakistani citizens of 18 years of age or above have the right to vote. You must have a Computerized National Identity Card (CNIC) and must be registered to vote in your constituency. If you do not have an identity card you can visit the nearest NADRA office and get one made after providing the necessary documents.

3. How does the government work? Legislature, Executive and Judiciary

In Pakistan the Government is made up of: the Legislature, Executive and Judiciary. The Legislature consists of the National Assembly (or Provincial Assembly) and is responsible for making or changing laws. The Executive (e.g. the Police, tax or immigration departments etc.) is responsible for enforcing the law. The Judiciary is responsible for settling disputes that arise out of the law.



All three branches of government are independent of each other and the separation of powers ensures that each branch of government acts as a check against the excesses of the other.

Federal Parliamentary System: The Constitution of the Islamic Republic of Pakistan provides for a Federal Parliamentary System of government, with the President as the Head of State and the popularly elected Prime Minister as Head of government. The Federal Legislature is a bicameral *Majlis-e-Shoora* (Parliament), composed of the National Assembly and the Senate.

Provinces: Pakistan is divided into four provinces. These are, Balochistan, the North-West Frontier Province (NWFP), Punjab, and Sindh. Governors are appointed by the President to head each Province. Each Province has a directly elected Provincial Assembly headed by a Chief Minister. The Provincial Governments may legislate in certain areas for example health, education, agriculture, municipal planning and roads.

National Assembly: Members of the National Assembly are elected by universal adult suffrage (at least 18 years of age in Pakistan). Seats are allocated to each of the four provinces, the Federally Administered Tribal Areas, and Islamabad Capital Territory on the basis of population.

Members of the National Assembly serve for the parliamentary term, which is five years, unless they die or resign sooner, or unless the National Assembly is dissolved. Although the vast majority of the members are Muslim, about 5 percent of the seats are reserved for minorities, including Christians, Hindus, and Sikhs. Elections for minority seats are held on the basis of separate electorates during the general elections.

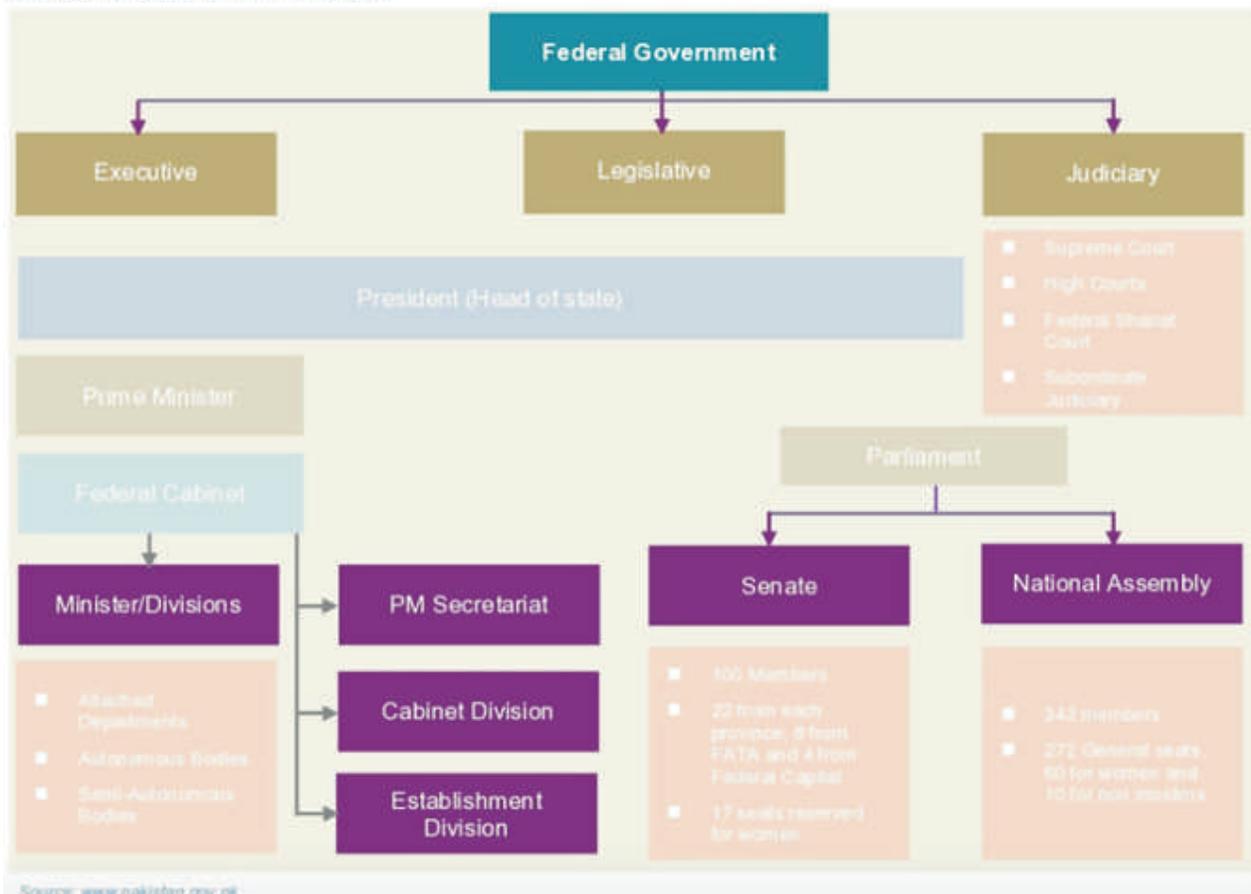
Senate: The Senate is a permanent legislative body with equal representation from each of the four Provinces, elected by the members of their respective Provincial Assemblies. There are representatives from the Federally Administered Tribal Areas and from Islamabad Capital Territory. The Chairman of the Senate, under the Constitution, is next in line to act as President if the office becomes vacant and until as a new President can be formally elected.

Prime Minister and Cabinet: The majority of members in the National Assembly nominate a member as Prime Minister from amongst themselves. That individual is then appointed as Prime Minister by the President from among the members of the National Assembly. The Prime Minister is assisted by the Federal Cabinet, a council of ministers whose members are appointed by the President on the advice of the Prime Minister.

President of Pakistan: The President of Pakistan is Pakistan's Head of State. It is the majority party in the National Assembly which usually is instrumental in nominating and electing a person as the President. At various times in history, changes in the Constitution of Pakistan have altered the powers and privileges associated with the office of the President. At present, Pakistan has a semi-presidential system of government. (The semi-presidential system is a system of government that features both a prime minister and a president who are active participants in the day to day functioning of government.)

The Structure of Government in Pakistan

Pakistan's Government Structure



Administration of Law and Justice

The Law and Justice Division is an advisory and consultative body to the Federal Government. There is a Law Department operating under the supervision and control of the Law and Justice Division in each province.

The Law and Justice Division is generally called upon, from time to time, to tender advice on various important and controversial constitutional and legal issues.

Legislative Drafting: Drafting of Ordinances and Bills is a major function and responsibility of the Law and Justice Division which is looked after by the Drafting Wing.

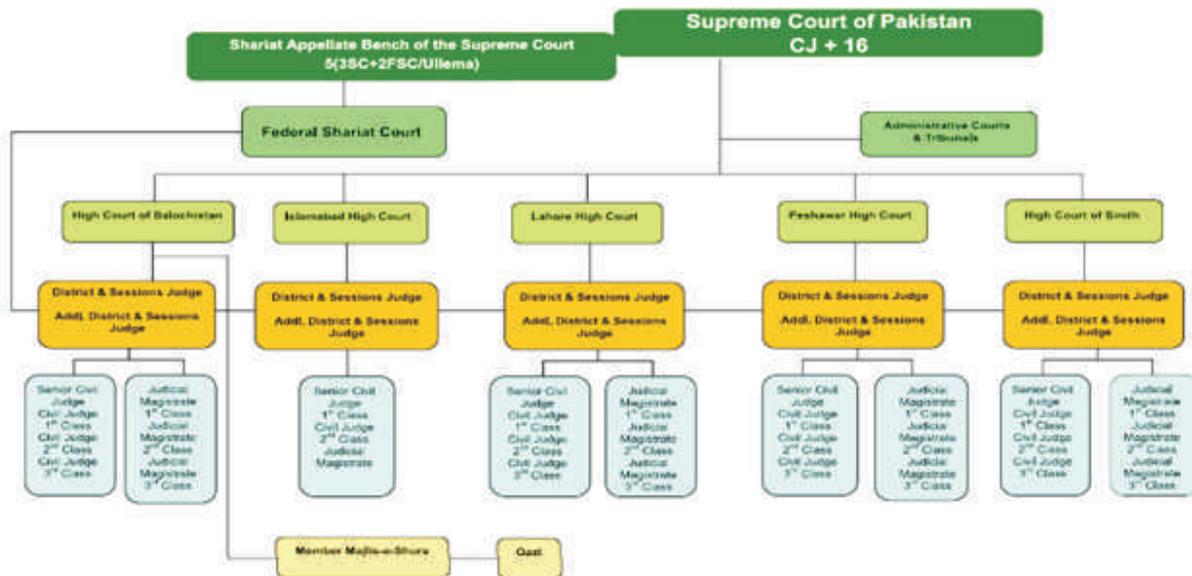
Litigation: The other major function and responsibility of the Division is to look after the litigation on behalf of the Government of Pakistan.

Administration of the Federal Courts/ Tribunals: The Law and Justice Division is also involved in the appointment of Law Officers including Attorney General, Deputy Attorney General and Standing Counsel. It also approves the appointment of legal advisers for which purpose there is a committee comprising the Attorney General, Law and Justice Minister and the Law and Justice Secretary.

Judicial Academy: The Federal Judicial Academy was set up by the Law and Justice Ministry in September, 1988 for the adequate training of Judges, Government law officers, police officers and doctors dealing with medical legal cases.

The Hierarchy of the Courts in Pakistan

Organization of Judicial Hierarchy



The Court System

There is a Supreme Court in Pakistan and a High Court in each province, and other courts exercising civil and criminal jurisdiction. The word "jurisdiction" means the kinds of cases for which each court has the authority to make decisions (or "judgments").

The Supreme Court and High Courts have been established under the Constitution and other Courts have been established by or under the Acts of Parliament or Acts of Provincial Assemblies.

Supreme Court of Pakistan

Structure: The Supreme Court is at the apex of the judicial systems of Pakistan. It consists of a Chief Justice known as Chief Justice of Pakistan and such number of other judges as may be determined by the Act of Parliament. The Chief Justice of Pakistan is appointed by the President. Other Judges are also appointed by the President after consultation with the Chief Justice.

Jurisdiction: The Supreme Court has original, appellate and advisory jurisdiction.

Original Jurisdiction: The Supreme Court, to the exclusion of every other Court in Pakistan, has the jurisdiction to pronounce declaratory judgments in any dispute between the Federal Government or a provincial government or between any two or more provincial governments. The Supreme Court, if it considers that a question of public importance, with reference to the enforcement of any of the Fundamental Rights ensured by the Constitution of Pakistan is involved, it has the power to make any appropriate order for the enforcement of fundamental rights.

Appellate Jurisdiction: The Supreme Court has jurisdiction to hear and determine appeals from judgments, decrees, final orders or sentences passed by a High Court, the Federal Shariat Court and the Services Appellate Tribunals. An appeal to the Supreme Court can be made as a matter of right for certain cases while for the rest the Court hears an appeal with its prior permission.

Advisory Jurisdiction: It, at any time, the President considers that it is desirable to obtain the opinion of the Supreme Court on any question of law which he considers of public importance, he may refer the question to the Supreme Court for consideration. The Supreme Court considers the question so referred and reports its opinion on the question to the President.

Seat of the Supreme Court: The permanent seat of the Supreme Court is at Islamabad, but it also runs circuits at Lahore, Karachi, Peshawar and Quetta.

Transfer of Cases: The Supreme Court may, if it considers expedient to do so in the interest of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court.

General: The practice and procedure of the Court is regulated by the rules made by the Court. All executive and judicial authorities throughout Pakistan are required to act in aid of the Supreme Court. Any decision of the Supreme Court to the extent it decides a question of law or is based upon or enunciates a principle of law is binding on all courts in Pakistan. The Supreme Court has the power to review any of its judgments or orders.

High Courts of Pakistan

There is a High Court in each of the four provinces of Pakistan. The Islamabad Capital Territory falls within the jurisdiction of the Lahore High Court of the Punjab. A High Court consists of a Chief Justice and as many other Judges as may be determined by law or as may be fixed by the President.

Jurisdiction: A High Court has original and appellate jurisdiction.

Original Jurisdiction: A High Court has, under the Constitution, original jurisdiction to make an order:

- directing a person within the territorial jurisdiction of the Court to refrain from doing anything he is not permitted by law or to do anything he is required by law;
- declaring that any act done by a person without lawful authority is of no legal effect;
- directing that a person in custody be brought before it, so that the court may satisfy itself that he is not being held unlawfully;
- giving such directions to any person or authority, for the enforcement of any of the fundamental rights conferred by the Constitution. Besides the original jurisdiction conferred by the Constitution, a High Court has original jurisdiction in many other matters conferred by or under various laws.

Appellate Jurisdiction: A High Court has extensive appellate jurisdiction against the judgments, decisions, decrees and sentences passed by the civil and criminal courts.

General: A High Court has the power to make rules regulating its practice and procedure and of courts subordinate to it. Each High Court supervises and controls all courts subordinate to it and any decision of a High Court binds all courts subordinate to it.

Shariat Court

Federal Shariat Court comprises eight Muslim Judges including the Chief Justice to be appointed by the President. Of the Judges, four are the persons qualified to be the Judges of the High Courts, while three are Ulema (scholars well-versed in Islamic Law).

Jurisdiction: Federal Shariat Court has original and appellate jurisdiction.

Original Jurisdiction: The Court may examine and decide the question whether or not any law or provision of law is repugnant to the injunctions of Islam as laid down in the Holy Quran and Sunnah of the Holy Prophet. If the Court decides that any law or provision of law is repugnant to the injunctions of Islam, it sets out the extent to which such law or provision of law is so repugnant, and specifies the day on which the decision shall take effect. Where any law is held to be repugnant to the injunctions of Islam, the President in the case of Federal law or the Governor in the case of a Provincial law is required to take steps to amend the law so as to bring it in conformity with the injunctions of Islam, and such law ceases to have effect from the specified day.

Appellate Jurisdiction: The Court has exclusive jurisdiction to hear appeals from the decision of criminal courts under any law relating to enforcement of Hudood Law i.e. laws pertaining to offences to intoxication, theft, Zina (unlawful sexual intercourse) and Qazf (false imputation of Zina).

Civil Courts

In every district of a Province, there is a Court of District Judge which is the principal court of original jurisdiction in civil matters.

Besides the Court of District Judge, there are courts of Civil Judges. Civil Judges function under the supervision and control of District Judge and all matters of civil nature originate in the courts of Judges. The District Judge may, however, withdraw any case from any Civil Judge and try it himself. Appeals against the judgments and decrees passed by the Civil Judges in cases where the value of the suit does not exceed the specified amount lie to the District Judge.

Criminal Courts

In every district, there is a Court of Sessions Judge and Courts of Magistrates.

Criminal cases punishable with death and cases arising out of the enforcement of laws relating to Hudood are tried by Sessions Judges. The Court of a Sessions Judge is competent to pass any sentence authorised by law. Offences not punishable with death are tried by Magistrates. Among the Magistrates there are Magistrates of 1st Class, 2nd Class and 3rd Class. An appeal against the sentence passed by a Sessions Judge lies to the High Court and against the sentence passed by a Magistrate to the Sessions Judge if the term of sentence is up to four years, otherwise to the High Court.

Special Courts and Tribunals

To deal with specific types of cases, Special Courts and Tribunals are constituted. These are: Special Courts for Trial of Offences in Banks, Special Courts for Recovery of Bank Loans, Special Courts under the Customs Act, Special Traffic Courts, Courts of Special Judges Anti-Corruption, Commercial Courts, Drug Courts, Labour Courts, Insurance Appellate Tribunal, Income Tax Appellate Tribunal, Accountability Courts, Anti-Terrorism Courts and Services Tribunals. Appeals from the Special Courts lie to the High Courts, except in case of Labour Courts and Special Traffic Courts, which have separate forums of appeal.

The Ombudsman (Wafaqi Mohtasib)

(Please see also Module 13 on Administrative Justice.)

The Concept Mohtasib (Ombudsman) is an ancient Islamic concept and many Islamic States have established the office of Mohtasib to ensure that no wrong or injustice is done to the citizens. In the 18th century, when King Charles XII of Sweden was in exile in Turkey, he observed the working and efficacy of this institution in the Ottoman Caliphate. On regaining his throne, the King established a similar institution in Sweden. Gradually, other developed western countries also adopted this institution.

Establishment in Pakistan: In Pakistan, the establishment of the institution of Ombudsman was advocated on several occasions. It was Article 276 of the Interim constitution of 1972, which provided for the appointment of a Federal Ombudsman as well as Provincial Ombudsmen for the first time. Subsequently, the Constitution of 1973 included the Federal Ombudsman at item 13 of the Federal Legislative List in the Fourth Schedule.

The institution of Ombudsman was, however, actually brought into being through the establishment of the office of Wafaqi Mohtasib (Ombudsman) Order, 1983. The Wafaqi Mohtasib is appointed by the President of Pakistan and holds office for a period of four years. He is assured of security of tenure and cannot be removed from office except on ground of misconduct or of physical or mental incapacity.

Jurisdiction: The chief purpose of the Wafaqi Mohtasib is to diagnose, investigate, redress and rectify any injustice done to a person through maladministration on the part of a Federal Agency or a Federal Government official. The primary objective of the office is to institutionalise a system for enforcing administrative accountability.

The term "maladministration" has been defined in the law governing the office of Mohtasib, to cover a very wide spectrum, encompassing every conceivable form of administrative practice. It includes a decision, process, recommendation, an act of omission or commission, which:

- is contrary to law, rules or regulations or is a departure from established practice or procedure;
- is perverse, arbitrary or unreasonable, unjust, biased, oppressive or discriminatory or is based on irrelevant grounds;
- involves the exercise of powers, or the failure, or refusal to do so, for corrupt or improper motives.

It also includes neglect, inattention, delay, incompetence, inefficiency, ineptitude in the administration, or in the discharge of duties and responsibilities. The term "Agency" has been defined as a Ministry, Division, Department, commission, or Office of the Federal Government, or a Statutory corporation, or any other institution established or controlled by the Federal Government.

Powers: If the Mohtasib finds an element of bad administration in a matter, he can, after investigating the matter, ask the Agency concerned to consider the matter further, to modify or cancel its decision, to take disciplinary action against any public servant, to dispose of the cases within a specified time, or to improve the working of the Agency, or to take any other specified steps. Failure on the part of an Agency to comply with the Ombudsman's recommendation is treated as "Defiance of Recommendations" which may lead to reference of the matter to the President of Pakistan, who, in his discretion may direct the Agency to implement the recommendations.

The Mohtasib is empowered to award compensation to an aggrieved person for any loss or damage suffered by that person on account of maladministration. But if the complaint is found to be false, or frivolous, he can also award compensation to the Agency or the functionary against whom the complaint was made.

Jirga

Jirga, a Persian word, means a gathering, or a consultation. Tribes had recourse to jirga to solve their multifarious problems and hence it is now common known as the tribal justice system. These problems covered a broad spectrum of subjects from an informal, community-based body that was meant to settle small claims, the 'jirga', or council of tribal elders.

Module 22 Assessment

The Pakistan Constitution and Structures of Government

Q1. Indicate whether the following statements are true or false

1. The law is only for lawyers, judges and the police
2. Laws only govern the interaction between the citizens and the State
3. The Constitution of Pakistan was enacted in 1973
4. The Constitution is like any other law
5. Citizens can only participate in a democracy by voting
6. The State has 5 institutions: Legislature, Executive, Media, Army and Judiciary
7. Fundamental Rights are listed in a special law called the The Fundamental Rights (Protection and Enforcement) Act, 1973

Q2. Why does the State have more than 1 institution?

Q3. Who is a part of the law making process? (Check all those that apply)

1. Citizens
2. Parliament
3. Judiciary
4. Executive
5. Media
6. Army
7. President of Pakistan
8. Provincial Assembly
9. Police
10. International institutions e.g. the UN or SAARC

Q4. How do citizens participate in the law making process?

Answers: Module 22 Assessment

The Pakistan Constitution and Structures of Government

Q1. Indicate whether the following statements are true or false

1. The law is only for lawyers, judges and the police - FALSE
2. Laws only govern the interaction between the citizens and the State - FALSE
3. The Constitution of Pakistan was enacted in 1973 - TRUE
4. The Constitution is like any other law - FALSE
5. Citizens can only participate in a democracy by voting - FALSE
6. The State has 5 institutions: Legislature, Executive, Media, Army and Judiciary - FALSE

Q2. Why does the State have more than 1 institution?

The branches or parts of government have separate functions and provide checks and balances on each other for greater accountability and transparency.

Q3. Who is a part of the law making process? (Check all those that apply)

1. Citizens - YES
2. Parliament - YES
3. Judiciary
4. Executive - YES
5. Media - YES
6. Army
7. President of Pakistan
8. Provincial Assembly - YES
9. Police
10. International institutions e.g. the UN or SAARC

Q4. How do citizens participate in the law making process?

By staying well-informed about things that impact citizens locally and nationally.

By contributing to public discussions about policies and laws.

By holding elected representatives accountable while they are in office.

By voting for representatives in the Assembly, who make laws.

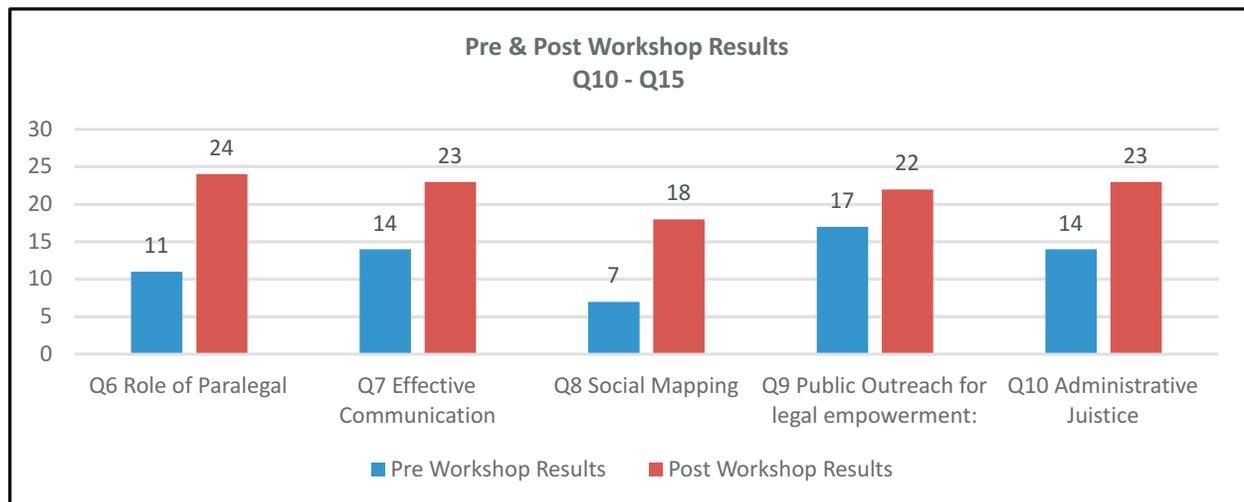


Annexures

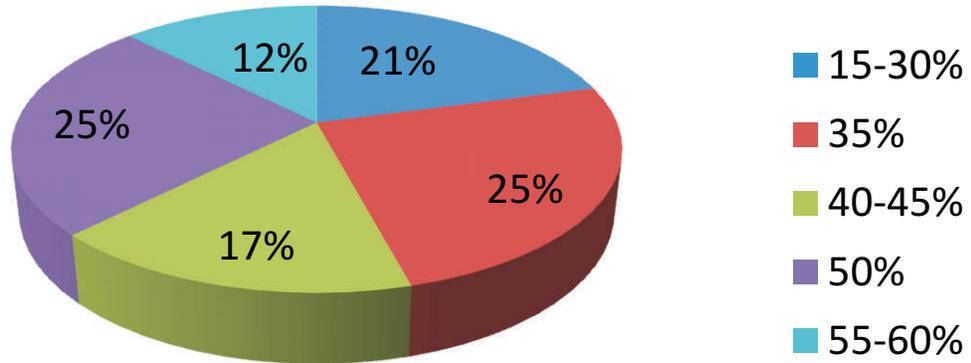
Annex 1: Sample Paralegal Training Participant Knowledge Assessment Form

Ideally, paralegal training Participant Knowledge Assessment Forms:

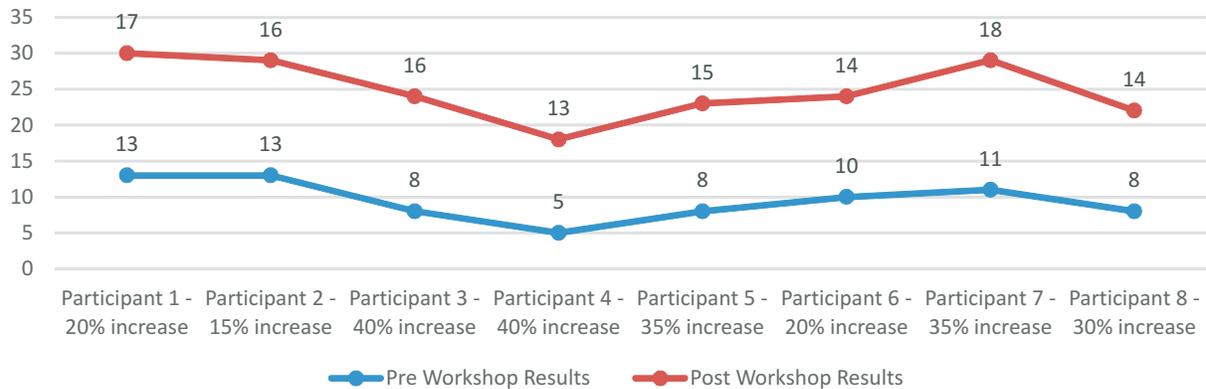
- Should be filled by training participants both before and after the training session in order to measure participants' increase in understanding and knowledge as a result of the training session
- Should include primarily objective questions with a clear answer so that participants' increase in understanding and knowledge can be measured most accurately
- Should include primarily multiple-choice and true/false questions so that they can be graded quickly and easily and without subjective bias
- Should include some potentially confusing or tricky questions in order to test paralegals' attention to detail and critical thinking skills as well as their detailed understanding and knowledge
- Should be graded immediately and entered into a spreadsheet designed to enable easy comparison of before-and-after scores that can be presented graphically, such as in the examples on the following page.



Number of Participants per % Increase in Correct Answers



Increase in Number of Correct Answers Participants 1-8



Sample Pre- and Post-Workshop Participant Knowledge Assessment Form

To be filled by Project Staff

Total Score: _____

Participant Name: _____ Date: _____

Participant District: _____ Participant NGO: _____

Each question has only one best correct answer. Please choose only one best option as your answer and write the letter (A, B, C, etc.) in the *Answer* column.

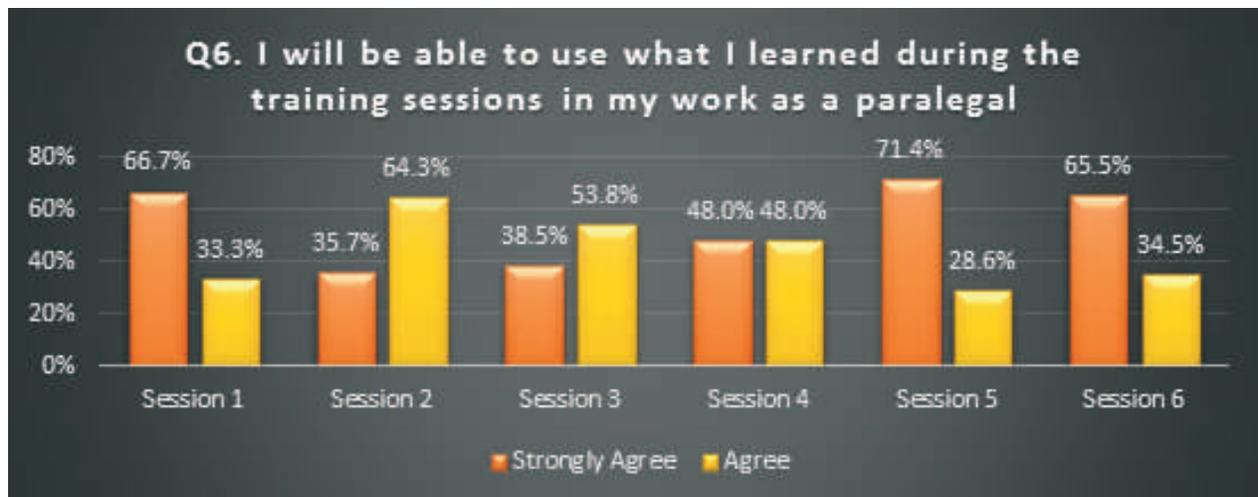
Number	Questions	Answer	Score
1.	The phrase “legal empowerment” means: A. Holding public awareness and information sessions B. When a paralegal tells the client how she should solve her legal problem and does everything for the client C. Providing information and guidance so that clients can make their own decisions about how to solve their legal problems D. When a lawyer decides how the client should solve her legal problem and gives the client instructions	C	
2.	Which of the following is <u>NOT</u> a required quality for a paralegal? A. Active listening B. Empathy C. Expertise in human rights D. Confidentiality	C	
3.	Who may give legal advice: A. Lawyer B. Paralegal C. Both (A) and (B) D. Neither (A) nor (B)	A	
4.	“Confidentiality” means that a paralegal should <u>never</u> share the following information with government authorities: A. Information about the purpose of the project B. Information about any individual client C. Information about the number of clients helped by the project D. Information about the donor	B	
5.	A paralegal should do the following: A. Tell client to solve the dispute through discussion B. Tell client to file an FIR C. Tell client about all possible options to resolve the dispute D. Tell client to hire a lawyer	C	
6.	Which of the following is <u>NOT</u> required or appropriate for a Paralegal for effective communication: A. Use simple words in Urdu or local language B. Repeat and emphasize key points C. Make eye contact with all participants D. Speak clearly and loudly E. Speak only to the people in front row	E	
7.	“Social mapping” involves: A. Identifying government authorities and service providers B. Introducing the project to authorities and service providers C. Mediating disputes with government authorities D. Identifying poor and vulnerable groups in the local area E. A, B and C F. A, B and D	F	

1.	<p>“Public outreach” for legal empowerment means:</p> <p>A. Meetings in poor communities to tell people about legal rights and how to access relevant services</p> <p>B. A seminar in a hotel about rights protected by the Constitution</p> <p>C. Holding a press conference</p> <p>D. Printing a lot of posters explaining about legal rights</p> <p>E. All of the above</p>	A	
2.	<p>“Administrative justice” is:</p> <p>A. Getting help from Ombudsperson</p> <p>B. Facilitating citizens to access government services</p> <p>C. Conducting a protest in favor of public interest</p> <p>D. Providing services on first come first serve basis</p>	B	
3.	<p>What is <u>NOT</u> required to register a marriage?</p> <p>A. Bride’s mother’s signature</p> <p>B. Bride’s birth certificate</p> <p>C. Bride’s right to divorce</p> <p>D. None of these are required</p>	D	
4.	<p>The most common disputes for ordinary citizens are related to:</p> <p>A. Family and Property</p> <p>B. Business and Family</p> <p>C. Constitutional and Family</p> <p>D. Criminal and Property</p>	A	
5.	<p>“Active listening” means:</p> <p>A. Asking the same questions repeatedly to make sure that you understood the information correctly</p> <p>B. Repeating everything that the client says</p> <p>C. Finishing the client’s sentences so they know you understand</p> <p>D. Saying “Yes” to everything the client says</p> <p>E. None of above</p>	E	
6.	<p>A paralegal or lawyer should write down what information during the first meeting with a potential client:</p> <p>A. Information about the person’s financial status</p> <p>B. Information about the person’s problem or issue</p> <p>C. Person’s contact details, including address and phone number</p> <p>D. All of above</p>	D	
<p>How can a Paralegal contribute to the legal empowerment of poor and vulnerable citizens? Please answer this question in your own words using an additional piece of paper.</p>			

Annex 2: Sample Paralegal Training Evaluation / Feedback Form

Ideally, paralegal training Evaluation / Feedback Forms:

- Should be filled by training participants at the end of each day of the training session while participants' memory of each section of the training is still clear
- Should include primarily subjective questions so that participants' can give their personal opinions and views
- Should include primarily questions with yes/no answers or answers on a scale so that they can be tabulated quickly and easily
- Should be tabulated immediately and entered into a spreadsheet designed to enable easy assessment that can be presented graphically, such as in the example below.
- Should be used to improve future trainings, including materials, methodologies, trainer skills, logistics, and other factors.



Sample Paralegal Training Evaluation / Feedback Form

Date: _____

Instructions: Please use the 4-point rating scale to indicate how much you agree or disagree with each statement below. Please tick the appropriate box for each statement.

S. No.	Training related Statements	Strongly Agree	Agree	Disagree	Strongly Disagree
1.	Workshop objectives were stated clearly and met.				
2.	The workshop was well-organized.				
3.	The information presented was relevant and useful.				
4.	This workshop increased my job-related skills.				
5.	This workshop increased my job-related knowledge.				
6.	The materials provided were appropriate and useful.				
7.	The trainers were knowledgeable and effective.				
8.	The trainers facilitated active involvement of all participants.				
9.	The training methodologies were effective.				
10.	The time allocation and content covered for each of the following topics was appropriate.				
	a) Legal Empowerment				
	b) Paralegal Code of Conduct				
	c) Paralegal Roles and Responsibilities				
	d) Social Mapping				
	e) Interviewing Clients				
	f) Referrals				
	g) Record-Keeping				
11.	How would you rate this workshop overall? (please check one box)	<input type="checkbox"/> Excellent <input type="checkbox"/> Very Good		<input type="checkbox"/> Good <input type="checkbox"/> Not Good	
12.	Suggestions for improving this workshop in the future:				

Annex 3: English-Urdu Vocabulary List



RELEVANT VOCABULARY IN ENGLISH, WITH THEIR URDU EQUIVALENTS

Facilitate	سہولت - معاونت
Facilitation	سہولت - معاونت
Documentation	دستاویزات بنانا
Administrative	انتظامی
Legal	قانونی
Service Provider	خدمات مہیا کرنے والا
Services	خدمات
CNIC	کمپیوٹرائزڈ قومی شناختی کارڈ
Birth Certificate	جنم پرچی - پیدائش کا تصدیق نامہ
Death Certificate	اموات کا تصدیق نامہ
Divorce Certificate	طلاق کا تصدیق نامہ
Vaccination Card	حفاظتی ٹیکہ جات کا کارڈ
Process	عمل - مراحل
Procedure	طریقہ کار
LSC	قانونی امداد کا مرکز
Legal Advice	قانونی مشورہ
Referral	کسی کی طرف منتقل کرنا - بھیجنا
Complications	پہچیدگیاں - مشکلات - الجھناؤ
Community Issues	سماجی مسائل
Succession Certificate	جانشینی کا تصدیق نامہ
Mapping	نقشہ سازی
Linkages	تعلقات
NGOs	غیر سرکاری تنظیمیں
Public Interest	مفاد عامہ
Communication	رابطہ کاری
Coordination	پائمی رابطہ کاری
Vulnerable	لاچار - بے سہارا - بے یار و مددگار
Poor	غریب
Social Mobilization	سماجی رابطہ کاری
Project	منصوبہ
Registration	اندراج

Application	درخواست
Justice	انصاف
Access to Justice	انصاف تک رسائی
Topics	موضوعات۔ عنوانات
Divide	تقسیم
Objectives	مقاصد
Problems	مسائل
Feedback	بعد کی رائے۔ کسی بات یا عمل کو سننے یا دیکھنے کے بعد کی رائے
Strategy	حکمت عملی
Importance	اہمیت
LHW	لیڈی ہیلتھ ورکرز
LHV	لیڈی ہیلتھ وزیٹر
Vaccinator	حفاظتی ٹیکہ جات لگانے والا
BHU	بنیادی مرکز صحت
Steps	اقدام
Training	تربیت
Data	مواد
Information	معلومات
Organize	منظم
Participants	شرکاء
Arrange	منعقد
Awareness	شعور۔ آگاہی
Eye-contact	آنکھوں کا رابطہ۔ چشمی رابطہ
Support	مدد/ امداد
Community Participation	سماجی شرکت۔ شمولیت
Misunderstanding	غلط فہمی
Court	عدالت
Lawyer	قانون دان
Advocate	وکیل
B-Form	ب فارم
Legal Aid	قانونی امداد
Inheritance	وراثتی/ وراثت

Property Cases	جائیداد سے متعلقہ مقدمات
Matters	معاملات
Equality	برابری۔ مساوات
Priority	ترجیح
Influential	بااثر
Empowerment	خود مختاری
Client	موکل / مسائل
Guidance	رہنمائی
Code of Conduct	ضابطہ اخلاق
Free of Cost	بلا معاوضہ
Free of Cost Services	بلا معاوضہ خدمات
Law	قانون
Jurisdiction	دائرہ اختیار
Conflict of Interest	مفادات کا ٹکراؤ
Professional Values	پیشہ ورانہ اقدار
Harassment	خوف زدہ کرنا
Criteria	معیار
Criminal Cases	فوجداری مقدمات
Civil Cases	دیوانی مقدمات
Hearing	سماعت
Proper Information	باقاعدہ انفارمیشن
Explanation	وضاحت
Appropriate	مناسب

Annex 4: Personal Data Privacy & Protection Policy



Providing legal guidance, legal aid and awareness to vulnerable communities requires the exchange of sensitive and classified information that must be collected and stored according to the privacy and protection policy outlined in this document. Community Paralegals / Persons working on [project name] funded by [donor agency] and implemented by [local partner organization] need to exercise special caution when handling beneficiary personal data and legal information. Community Paralegal / Employees of [local partner organization] are responsible for ensuring that their conduct is in conformance with this policy, which includes but may not be limited to the following:

- Data shall include, inter alia, any and all information pertaining to a person including the national identity card number, personal address, information of a personal nature in any way, shape or form and any other information designated as Data by [name of organization and/or donor] or the person whose data is being collected; this will strictly exclude data regarding political affiliations and sexual preferences (Unless of course, these are voluntarily recorded in cases where any of these are a factor, in which case these may be retained strictly for the purposes of facilitation and project).
- Data may only be collected with written or verbal consent explicitly given by the party providing the data.
- Data may be collected in any form but shall be retained in a secure location whether in hard copy format or in password protected files in the [name of organization] database, accessible only by a designated supervisor.
- Once the data is added to the database, it will remain on the database only so long as the person whose data has been retained consents, provided that the consent shall not be

withdrawn unreasonably. A person who wishes to have his or her data removed from the database will state in writing the reasons for withdrawal of data and address the same to the aforesaid supervisor.

- The data so collected shall not be transmitted or sold to any person or organization of any kind, except with the consent of the person/organization in question whose data has been collected.
- The data may, with the consent of the person / organization, be shared with a lawyer engaged in litigation for [name of organization] for purposes of legal aid.
- Notwithstanding anything else contained hereinabove, the following exemptions will apply to the principles contained herein:
 - For compliance with a legal obligation to which [name of organization] is subject or;
 - In order to protect the vital interests of the person whose data has been collected, or;
 - For the performance of a task carried out in the public interest or;
 - For the purposes of the project record verification and authentication.



Pakistan's National Community Paralegal Training Manual

