

IN THE FEDERAL SHARIAT COURT
(ORIGINAL JURISDICTION)

PRESENT

MR. JUSTICE DR. SYED MUHAMMAD ANWER, ACTING CHIEF JUSTICE
MR. JUSTICE KHADIM HUSSAIN M. SHAIKH

SHARIAT PETITION NO. 03/I OF 2016

1. Professor Muhammad Ibrahim Khan (Advocate), Al Markaz Al Islami, Sardar Garhi, G.T. Road, Peshawar.
2. Saifullah Gondal (Advocate), Chamber No.68, First Floor, Khawaja Sharif Block, District Courts, Rawalpindi.

.....Petitioners

versus

Province of Punjab through its Secretary, Ministry of Law, Punjab Secretariat, Lahore.

.....Respondent

LINKED WITH

SHARIAT PETITION NO. 01/I OF 2016

Dr. Mohammad Aslam Khaki, Advocate Supreme Court of Pakistan, Office No.4, 1st Floor, Pak Plaza, F-10 Markaz, Islamabad.

.....Petitioner

versus

Province of Punjab through its Ministry of Law, Punjab through its Secretary, Punjab Secretariat, Lahore.

.....Respondent

LINKED WITH

SHARIAT PETITION NO. 02/I OF 2016

M/s Najaat Welfare Foundation through its Coordinator Hafiz Habibullah son of Muhammad Yousaf, Resident of House No.P-756/A, Kot Khan Muhammad, Satiana Road, Faisalabad.

.....Petitioner

versus

Province of Punjab through its Ministry of Law, Punjab through its Secretary, Punjab Secretariat, Lahore.

.....Respondent

AND

SHARIAT PETITION NO. 01/L OF 2016

Naheed Baig, Advocate High Court, Office No.12/5, 8-Fane Road, SAF Centre, Lahore.

.....Petitioner

versus

1. Government of the Punjab, through its Chief Secretary, Punjab, Lahore.
2. Ministry of Law & Justice Division Punjab through its Secretary, Civil Secretariat, Lahore.

.....Respondents

For the Petitioners:	Petitioners in-person in Sh.P. No.03/I/2016 Petitioner in-person in Sh.P. No.01/I/2016
For the respondents:	Raja Muhammad Jawad Arsalan, Assistant Attorney General Ms. Amna Ali, Assistant A.G. Punjab Mr. Tariq Ismail, Law Officer Social Welfare Department, Government of Punjab, Lahore. Ms. Muneeza Manzoor Butt, District Women Protection Officer / Manager VAWC, Multan.
Dates of Institution:	12.03.2016, 03.03.2016, 05.03.2016 and 08.03.2016, respectively
Date of Hearing:	14.11.2022
Date of Judgment:	29.11.2022

JUDGMENT

DR. SYED MUHAMMAD ANWER, ACJ.: Through this single judgment, we intend to decide the captioned Shariat Petitions as similar points of law and facts are involved therein, whereby the petitioners have challenged several provisions of the Punjab Protection of Women against Violence Act, 2016 (Act XVI of 2016) (*hereinafter referred to as "impugned Act/Law"*).

2. Petitioners Dr. Muhammad Aslam Khaki, Advocate and M/s Najaat Welfare Foundation in *Shariat Petition No.01/I/2016* and *Shariat Petition No.02/I/2016*, have taken the following main grounds in their petitions to challenge the Punjab Protection of Women against Violence Act, 2016:

- a) *That the Act is unilateral and itself is gender biased against gender justice. It is based upon the famous N.G.O. vision rather slogan that 'male is always guilty'. No mechanism for filing a complaint against the wife for causing mental and Psychological violence to the husband has been provided which in most of the case results in patriarchal violence, hence is against the Islamic principle of justice.*

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ وَإِيتَائِي ذِي الْقُرْبَىٰ وَيَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ
وَالْبَغْيِ يَعِظُكُمْ لَعَلَّكُمْ تَذَكَّرُونَ۔

Translation: Allah enjoins to do justice and to adopt good behavior and to give relatives (their due rights), and forbids shameful acts, evil deeds and oppressive attitude. He exhorts you, so that you may be mindful. (16/90)

"We should condemn actions before we condemn reactions."

- b) That in many cases it has been observed that in a conflict and debate between the spouses, the wife abuses the husband and his family which again results in violence by the husband because the male is master of physical violence as the female is master of oral violence.
- c) That the main approach for combating violence is through counseling and guidance of the wife as well as of the husband more than were providing the punishment and that too for the male and for the female.
- d) That the impugned Act will further create a gap and confrontation among families while the Islam and Constitution provided for their integration.

3. They relied upon the following verses of the Holy Quran to challenge the provisions of the impugned Act.

Surah An-Nahl (Verse 90)

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ وَإِيتَائِي ذِي الْقُرْبَىٰ وَيَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ وَالْبَغْيِ يَعِظُكُمْ لَعَلَّكُمْ تَذَكَّرُونَ -

خدا تم کو انصاف اور احسان کرنے اور رشتہ داروں کو (خرچ سے مدد) دینے کا حکم دیتا ہے اور بے حیائی اور نامعقول کاموں کا منع کرتا ہے (اور) تمہیں نصیحت کرتا ہے تاکہ تم یاد رکھو۔

Indeed, Allah orders justice and good conduct and giving to relatives and forbids immorality and bad conduct and oppression. He admonishes you that perhaps you will be reminded.

Surah Ar-Rum (Verse 21)

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ -

اور اسی کے نشانات (اور تصرفات) میں سے ہے اس نے تمہارے لئے تمہاری ہی جنس کی عورتیں پیدا کیں تاکہ ان کی طرف (مائل ہو کر) آرام حاصل کرو اور تم میں محبت اور مہربانی پیدا کر دی جو لوگ غور کرتے ہیں ان کے لئے ان باتوں میں (بہت سی) نشانیاں ہیں۔

And of His signs is that He created for you from yourselves mates that you may find tranquility in them; and He placed between you affection and mercy. Indeed in that are signs for a people who give thought.

Surah Al-Baqarah (Verse 228)

وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكُنَّ مِنْ أَزْوَاجِهِنَّ وَلَا حَامِهِنَّ إِنْ كُنَّ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَبَعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ وَاللَّهُ عَزِيزٌ حَكِيمٌ -

اور طلاق والی عورتیں تین حیض تک اپنے تئیں روکے رہیں اور اگر وہ خدا اور روز قیامت پر ایمان رکھتی ہیں تو ان کو جائز نہیں کہ خدا نے جو کچھ ان کے شکم میں پیدا کیا ہے اس کو چھپائیں اور ان کے خاوند اگر پھر موافقت چاہیں تو اس (مدت) میں وہ ان کو اپنی

زوجیت میں لے لینے کے زیادہ حقدار ہیں اور عورتوں کو حق (مردوں پر) ویسا ہی ہے جیسے دستور کے مطابق (مردوں کا حق) عورتوں پر البتہ مردوں کو عورتوں پر فضیلت ہے اور خدا غالب (اور) صاحب حکمت ہے۔

Divorced women remain in waiting for three periods, and it is not lawful for them to conceal what Allah has created in their wombs if they believe in Allah and the Last Day. And their husbands have more right to take them back in this [period] if they want reconciliation. And due to the wives is similar to what is expected of them, according to what is reasonable. But the men have a degree over them [in responsibility and authority]. And Allah is Exalted in Might and Wise.

Surah An-Nisa (Verse 35)

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَأَبْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا۔

اور اگر تم کو معلوم ہو کہ میاں بیوی میں ان بن ہے تو ایک منصف مرد کے خاندان سے اور ایک منصف عورت کے خاندان میں سے مقرر کرو وہ اگر صلح کر دینی چاہیں گے تو خدا ان میں موافقت پیدا کر دے گا کچھ شک نہیں کہ خدا سب کچھ جانتا اور سب باتوں سے خبردار ہے۔

And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Acquainted [with all things].

Surah Al-Isra (Verse 70)

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِّنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ مِّمَّنْ خَلَقْنَا تَفْضِيلًا۔

اور ہم نے بنی آدم کو عزت بخشی اور ان کو جنگل اور دریا میں سواری دی اور پاکیزہ روزی عطا کی اور اپنی بہت سی مخلوقات پر فضیلت دی۔

And We have certainly honored the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference.

Surah Al-Hujurat (Verse 12)

يَا أَيُّهَا الَّذِينَ آمَنُوا اجْتَنِبُوا كَثِيرًا مِّنَ الظَّنِّ إِنَّ بَعْضَ الظَّنِّ إِثْمٌ وَلَا تَجَسَّسُوا وَلَا يَغْتَبَ بَعْضُكُم بَعْضًا أَيُحِبُّ أَحَدُكُمْ أَنْ يَأْكُلَ لَحْمَ أَخِيهِ مَيْتًا فَكَرِهْتُمُوهُ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ تَوَّابٌ رَّحِيمٌ۔

اے اہل ایمان! بہت گمان کرنے سے احتراز کرو کہ بعض گمان گناہ ہیں اور ایک دوسرے کے حال کا تجسس نہ کیا کرو اور نہ کوئی کسی کی غیبت کرے کیا تم میں سے کوئی اس بات کو پسند کرے گا کہ اپنے مرے ہوئے بھائی کا گوشت کھائے اس سے تو تم ضرور نفرت کرو گے (تو غیبت نہ کرو) اور خدا کا ڈر رکھو بیشک خدا توبہ قبول کرنے والا مہربان ہے۔

O you who have believed, avoid much [negative] assumption. Indeed, some assumption is sin. And do not spy or backbite each other. Would one of you like to eat the flesh of his brother when dead? You would detest it. And fear Allah; indeed, Allah is Accepting of repentance and Merciful.

4. Petitioner Naheed Baig, Advocate in Shariat Petition No.01/L/2016, also relied upon some subjective apprehensions and contended that the impugned Act will be detrimental to our family system, contending that if the causes of domestic violence start to settle through courts of law, then it will destroy the concept of "چادر چار دیواری" i.e. the concept of the privacy of home. The petitioner also strongly relied upon the saying that the husband is supposed to be "مجازی خدا" of his wife. She also relied upon the following verses of Surah An-Nisa to challenge the provisions of the impugned Act.

(Verse 47)

يَا أَيُّهَا الَّذِينَ أُوتُوا الْكِتَابَ آمِنُوا بِمَا نَزَّلْنَا مُصَدِّقًا لِّمَا مَعَكُمْ مِّن قَبْلِ أَن نَّطْبِسَ وُجُوهًا فَنَرُدَّهَا عَلَيَّ آذِنًا رِّهًا
أَوْ نَلْعَنَهُمْ كَمَا لَعَنَّا أَصْحَابَ السَّبْتِ وَكَانَ أَمْرُ اللَّهِ مَفْعُولًا۔

اے اہل کتاب! قبل اس کے کہ ہم لوگوں کے مومنوں کو بگاڑ کر ان کو پیٹھ کی طرف پھیر دیں یا ان پر اس طرح لعنت کریں جس طرح ہفتے والوں پر کی تھی ہماری نازل کی ہوئی کتاب پر جو تمہیں کتاب کی بھی تصدیق کرتی ہے ایمان لاؤ اور خدا نے جو حکم فرمایا سو (سمجھ لو کہ) ہو چکا۔

O you who were given the Scripture, believe in what We have sent down [to Muhammad], confirming that which is with you, before We obliterate faces and turn them toward their backs or curse them as We cursed the sabbath-breakers. And ever is the decree of Allah accomplished.

(Verse 34)

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا آتَقَفُوا مِنْ أَمْوَالِهِمْ فَأَلْصَقَتْ فَوَاقِحُ حِفْظٌ لِلْغَيْبِ بِمَا حَفِظَ اللَّهُ وَالَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاصْرَبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا۔

مرد عورتوں کے حاکم اور نگران ہیں اس لیے کہ خدا نے بعض کو بعض سے افضل بنایا ہے اور اس لئے بھی کہ مرد اپنا مال خرچ کرتے ہیں تو جو نیک بیبیاں ہیں وہ مردوں کے حکم پر چلتی ہیں اور ان کے پیٹھ پیچھے خدا کی حفاظت میں (مال و آبرو کی) خبر داری کرتی ہے اور جن عورتوں کی نسبت تمہیں معلوم ہو کہ سرکشی اور (بد خوئی) کرنے لگی ہیں تو (پہلے) ان کو (زبانی) سمجھاؤ (اگر نہ سمجھیں تو) پھر ان کے ساتھ سونا ترک کر دو۔ اگر اس پر بھی باز نہ آئیں تو پھر ان کو مارو اور اگر فرمانبردار ہو جائیں تو پھر ان کو ایذا دینے کا کوئی بہانہ مت ڈھونڈو بیشک خدا سب سے اعلیٰ (اور) جلیل القدر رہے۔

Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth. So righteous women are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard. But those [wives] from whom you fear arrogance - [first] advise them; [then if they persist], forsake them

in bed; and [finally], strike them. But if they obey you [once more], seek no means against them. Indeed, Allah is ever Exalted and Grand.

(Verse 35)

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَأَبْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِن يُرِيدَا إِصْلَاحًا يُّوفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا۔

اور اگر تم کو معلوم ہو کہ میاں بیوی میں ان بن ہے تو ایک منصف مرد کے خاندان سے اور ایک منصف عورت کے خاندان میں سے مقرر کرو وہ اگر صلح کر دینی چاہیں گے تو خدا ان میں موافقت پیدا کر دے گا کچھ شک نہیں کہ خدا سب کچھ جانتا اور سب باتوں سے خبردار ہے۔

And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Acquainted [with all things].

(Verse 15)

وَالَّتِي يَأْتِيَنَّ الْفَاحِشَةَ مِنْ نِّسَابِكُمْ فَاَسْتَشْهِدُوا عَلَيْهِنَّ اَرْبَعَةً مِّنْكُمْ فَإِنْ شَهِدُوا فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّى يَتَوَفَّيَهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلًا۔

مسلمانو! تمہاری عورتوں میں جو بدکاری کا ارتکاب کر بیٹھیں ان پر اپنے لوگوں میں سے چار شخصوں کی شہادت لو۔ اگر وہ (ان کی بدکاری کی) گواہی دیں تو ان عورتوں کو گھروں میں بند رکھو یہاں تک کہ موت ان کا کام تمام کر دے یا خدا ان کے لیے کوئی اور سبیل (پیدا کرے)۔

Those who commit unlawful sexual intercourse of your women - bring against them four [witnesses] from among you. And if they testify, confine the guilty women to houses until death takes them or Allah ordains for them [another] way.

5. Petitioners Professor Muhammad Ibrahim Khan, Advocate and Saifullah Gondal in Shariat Petition No.03/I/2016, have challenged the whole law i.e. The Punjab Protection of Women against Violence Act, 2016 by contending that it is discriminatory law and against the family system of our society and it will have destroying effect on our family system and in Para-6 of their petition they have stated that:

یہ کہ اس قانون کی متعدد دفعات بہت واضح طور پر خاندانی نظام کو تباہی اور خاندان میں بیرونی مداخلت کی واضح نشاندہی کر رہی ہیں۔ جس طرح کے دفعہ 2 شق (a) میں متاثرہ شخص کی تعریف میں صرف خاتون کا ذکر ہے، جس سے یہ قانون امتیازی حیثیت اختیار کر گیا ہے، اس طرح انصاف کے تقاضے پورے ہونے کی بجائے بری طرح مجروح ہونگے۔ جبکہ گھر میں کوئی بھی متاثرہ شخص ہو سکتا ہے۔ تشدد کا شکار والد، بیٹا اور بھائی بھی ہو سکتا ہے۔ لہذا صرف عورت کو متاثرہ شخص کی تعریف میں شامل کرنا اور اس حوالہ سے قانون بنانا، اور اسکے بیرونی میں ایک پورا نظام کھڑا کر دینے سے قانون کی بنیاد پر تفریق نظر آئے گی۔

They have also challenged the impugned Act while relying upon Verse-4 of Surah Al-Ahzab besides Verse-34 of Surah Nisa.

Surah Al-Ahzab (Verse 4)

مَا جَعَلَ اللَّهُ لِرَجُلٍ مِّن قَلْبَيْنِ فِي جَوْفِهِ ۚ وَمَا جَعَلَ أَزْوَاجَكُمْ الَّتِي تَظَاهَرُونَ مِنْهُنَّ أُمَّهَاتِكُمْ ۚ وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ۚ ذَٰلِكُمْ قَوْلُكُمْ بِأَفْوَاهِكُمْ ۚ وَاللَّهُ يَقُولُ الْحَقَّ وَهُوَ يَهْدِي السَّبِيلَ ۚ

خدا نے کسی آدمی کے پہلو میں دو دل نہیں بنائے اور نہ تمہاری عورتوں کو جن کو تم ماں کہہ بیٹھتے ہو تمہاری ماں بنایا اور نہ تمہارے لے پالکوں کو تمہارے بیٹے بنایا یہ سب تمہارے مومنوں کی باتیں ہیں اور خدا تو سچی بات فرماتا ہے اور وہی سیدھا راستہ دکھاتا ہے۔

Allah has not made for a man two hearts in his interior. And He has not made your wives whom you declare unlawful your mothers. And he has not made your adopted sons your [true] sons. That is [merely] your saying by your mouths, but Allah says the truth, and He guides to the [right] way.

6. In response to these petitions, the Social Welfare and Bait-ul-Maal Department along with the Law & Parliamentary Affairs Department, Government of Punjab through their respective Secretaries filed their para wise replies to the petitions and in addition they made the following submissions:

1. That the Article 25 of Constitution of Islamic Republic of Pakistan 1973, commands that all the citizens are equal before law, and there shall be no discrimination on the basis of sex. Further Article 25(3) empowers the state to make any special provisions for the protection of women and children. To curb the scourge of violence against women and to redress the grievances of this weaker limb of the society, the Government felt prompted to put in place the Punjab Protection of Women Against Violence Act of 2016 (Annex-A) for protection, rescue, shelter and rehabilitation of women, becoming victims of violence in all its forms and manifestations. The said Act was enacted, while remaining within the ambit of Article 25(3) of the Constitution of Islamic Republic of Pakistan.

2. That by virtue of "The Punjab Protection of Women against Violence Act 2016" a comprehensive service delivery system has been evolved which includes establishment of;

- i) A Protection Centre for provision of immediate protection service to victim of violence,
- ii) Shelter Homes for entire protection and rehabilitation of the deserted and aggrieved women
- iii) Special court to hear the complaints of the aggrieved women victim of violence,

- iv) *A mechanism to oversee the functioning of the protection system including establishment of a data-base and software for timely service delivery and monitoring and evaluation to achieving the objectives of the Act with easy accessibility of justice.*
- v) *The law is intended to provide an easy access to the aggrieved woman who can directly either herself or through anybody approach the District Women Protection Officer at the district level who will initiate an enquiry into allegation and if true lodge a report with the family Court which will hold a summary trial into the matter and punish the wrong-doer. For instant protection and relief to the aggrieved person "The Punjab Protection of Women against Violence Act 2016" can swiftly act without nitty gritty involved in civil or criminal action.*

3. *That the significant aspect of the Law is easy service delivery and justice at the door step of the victim and an aggrieved person. Under the Punjab Protection of Women against Violence Act 2016, first protection Centre i.e. Violence against Women Centre (VAWC) was established at Multan and the Act ibid was notified (**Annex-B**) for its implementation to the extent of Multan district.*

4. *It is pertinent to mention here, that after the promulgation of "The Punjab Protection of Women against Violence Act 2016" the women victims of violence have been provided a systematic state protection, security, mediation, counselling, rehabilitation and free legal assistance services under one roof of "Violence Against Women Centre (VAWC) Multan", which is the best possible implementation of Article 25(3) of the Constitution of Pakistan.*

5. *That since the establishment of the Violence against Women Centre (VAWC) Multan and enforcement of the "The Punjab Protection of Women against Violence Act 2016", in Multan District, a total of 6936 cases were received out of which **4979** cases involved domestic violence, **1957** cases were reported as different types of violence based complaints. Out of the reported cases, **4351** were successfully mediated/ reunited / resolved with the intervention of mediators of Violence against Women Centre (VAWC) Multan, which makes 87 % of total reported cases of domestic violence.*

6. *It is further apprised that several women approached the Violence against Women Centre (VAWC) Multan for provision of legal aid. In this category, 1348 cases were provided legal support to the women, who had no financial means to have recourse to legal remedy for their different family issues of legal nature. Additionally, 34 women approached the VAWC for*

legal assistance for dissolution of marriage cases. At VAWC Multan psychological support and counselling sessions were held to make reconciliation between the spouses, but regrettably the VAWC mediators remained unsuccessful in re-union of the spouses, as the parties had already made up their minds for separation. From the facts and statistics of the cases it is evident that the protection system set up under the auspices of "The Punjab Protection of Women against Violence Act 2016" is beneficial and can comprehensively provide protection, counselling and rehabilitative services through an in-built implementation mechanism to ensure speedy justice to women who are victims of violence or aggrieved of the domestic violence. (Report of Manager (VAWC) Multan is attached as (Annex-C).

7. *That the safe administration of the law has been ensured by providing judicial oversight, in the form of Sections 4-10 & 18-22 of the Act ibid, in order to rule out chance of injustice in any reported matter. Under the Punjab Protection of Women against Violence Act 2016, the established/designated Court has the power to pass a protection order to protect and provide for the safety of the aggrieved person. The Court may require the defendant or wrongdoer to execute a bond, for preventing the commission of violence or to wear wrist ankle, if the Court is satisfied and deems it appropriate to save the women from any potential threat of violence. The Court can also direct the police to assist the Women Protection Officer in the implementation of the protection or residence order or to provide protection to the aggrieved person, or to order the defendant to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person.*

8. *That "the Punjab Protection of Women against Violence Act 2016" also provides the Government to constitute a District Women Protection Committee for each District to supervise the working of the Protection Centre, Shelter Home and toll free helpline and take necessary steps to improve the services and to take further to suggest measures for better protection of women or improvement in the protection system.*

9. *That through the Punjab Protection of Women against Violence Act 2016, ultimate protection for women has been ensured which is a great step for empowerment of women, and the enactment would work as a deterrent against all forms of violence against women.*

The respondent departments also filed their reports regarding the working of Violence Against Women Center, Multan.

7. We have gone through the contents of the Shariat Petitions and replies of the respondents; as well as heard the arguments of the parties in detail and

observed that most of the contents in the petitions are based on the personal apprehensions of the petitioners regarding the impugned Act, hence they do not make the basis on which any provision of law can be challenged before this Court under Article 203D of the Constitution of the Islamic Republic of Pakistan, 1973.

8. The verses of the Holy Quran, upon which the petitioners relied, are mostly related to the guidance given by the Holy Quran for the settlement of matrimonial disputes in life, like verses 34 and 35 of Surah Nisa. Additionally, the other verses referred in the petitions explain different aspects of matrimonial life, whereas the scope of the impugned law is much wider and different in nature. It is related to 'domestic violence' which may occur between husband and wife and which may occur between other relations like between brother and sister, father and daughter, son and mother or even between some female relatives etc., which is the harsh reality of our society.

9. We have very thoroughly examined the arguments advanced by the petitioners, written as well as oral, and observed that the petitioners are unable to understand the very purpose of the impugned Act, which is mentioned in its preamble and states as follows:

*"An Act to establish an effective system of protection, relief and rehabilitation of women against violence.
Since the Constitution of the Islamic Republic of Pakistan, while guaranteeing gender equality, enables the State to make any special provision for the protection of women, it is necessary to protect women against violence including domestic violence, to establish a protection system for effective service delivery to women victims and to create an enabling environment to encourage and facilitate women freely to play their desired role in the society, and to provide for ancillary matters."*

It is clearly mentioned in the preamble of the impugned law that this is a special law. It is enacted to protect women from perpetrators of the crime of

‘domestic violence’. The expression ‘domestic violence’ as used in the impugned Act has wider and deeper meanings and implications in the context of our society.

Whereas, the presumption of the petitioners that the ‘defendant’ under this law will always be a male person is completely wrong perception of the petitioners. According to the impugned law the ‘defendant’ under this law can be any one, male or female, who is residing in the same house where the victim or the ‘aggrieved person’ resides. However, the ‘aggrieved person’ under the impugned law will always be a female because this law is for the protection of female persons. Generally, the arguments of the petitioners are:

Firstly, either based on some unfounded personal apprehensions of the petitioners regarding the impugned Act; or they are based on cultural understanding of the societal norms and certain specific behavior.

Secondly, some of the verses of the Holy Quran on the basis of which the law is challenged are either quoted by the petitioners out of context or they are not related to the core subject of the Impugned Law, which is “domestic violence’. For example: the verses of the Holy Quran, upon which the petitioners relied, are related to the guidance given by the Holy Quran for settlement of matrimonial disputes in life, like verses 34 and 35 of Surah an-Nisa; whereas, the other verses referred in the petitions explain different aspects of matrimonial life, like Verse 90 of Surah An-Nahl, Verse 21 of Surah al-Rum, Verse 228 of Surah al-Baqarah etc. In addition to that some verses as mentioned by the Petitioner are totally out of context, Verse 15 and Verse 47 of Surah an-Nisa and Verse 12 of Surah al-Hujurat. Likewise, the reference of some of the verses of the Holy Quran are misconstrued; like, the reliance on Verse 4 of Surah al-Ahzab by one of the petitioners is also misinterpreted as the whole subject which is under

discussion becomes clear if the very next verse i.e. Verse-5 of Surah al-Ahzab is read in conjunction with it. The Verse 228 of Surah al-Baqarah talks about the matrimonial dispute which reaches to the limit of divorce. The Holy Quran directs to settle the matrimonial disputes in a reasonable manner. The petitioners failed to understand that Islam does not allow any kind of violence even if a matrimonial dispute reaches an unpleasant end i.e. divorce. Therefore, the reference of this verse 228 of al-Baqarah by the petitioners does not support their arguments. The Verse 15 of Surah al-Nisa is also misconstrued and referred out of context by the petitioners as it must be read with Verses 4 to 10 of Surah An-Nur along with the Sections 7 containing the punishment of Qazf and Section 14 which contains the consequence of *Lian* in the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979. The petitioners also failed to understand that Islam is very particular to protect the honor and dignity of every woman in a society. In Islam one of the very strong ways to protect the honor and dignity of women in a society is through the strict enforcement of Qazf laws. Islam categorizes Qazf as one of the major crimes in its criminal justice system.

10. Most of the arguments of the petitioner and the contents in their petitions are either based on some unfounded apprehensions regarding the impugned Act; or they are based on cultural understanding of certain societal norms and certain specific behaviors by the petitioners, like:

- i) The women have no right to complain against their family members; by giving this right to women our family system will be further weakened.
- ii) A husband of a woman can commit domestic violence being “Qawwam’ as he is considered as *Majazi Khuda*.

- iii) The impugned law is discriminatory against males.
 - iv) The impugned law is against the concept of *Chadar Chardiwari* of our society.
 - v) The definition of term 'domestic violence' in the impugned law is un-Islamic.
 - vi) The procedure laid down in the impugned law is un-Islamic.
 - vii) Putting 'GPS bracelet' to a male person to protect any 'aggrieved person' from him under this law will affect the dignity of that male members of a family.
11. Out of divergent pleadings of the parties and after hearing the arguments of the parties in detail, we have formulated the following points of determinations:

Determination Point I

Whether the woman has right to Access to Justice according to the injunction of Islam against her family members, especially against her husband if she is a victim of 'domestic violence'?

Determination Point II

Whether the impugned law is discriminatory against males as it talks about the rights of females only, hence it is against the injunctions of Islam?

Determination Point III

Whether the impugned Act would devastate the family system of our country hence it is against the injunctions of Islam?

Determination IV

Whether a husband is permitted to commit 'domestic violence' upon his wife according to the injunctions of Islam?

Determination Point V

Whether the procedure laid down in the Impugned Act is against the Injunctions of Islam?

Determination Point VI

Whether making any male person wear a GPS tracker is against the injunctions of Islam?

We have given serious thoughts to the arguments of the parties and have gone through the material brought on record and our observations on the points of determinations are as follows:

Determination Point-I

Whether the woman has the right to Access to Justice according to the injunctions of Islam against her family members, especially against her husband if she is a victim of 'domestic violence'?

12. The petitioners vehemently argued that by empowering women through the impugned law, which allows them to complain against their husbands in a Court of law or before any legal authority against the alleged perpetration of domestic violence against them will devastate our family system and degrade the status assigned to the husband culturally by our society. This concept has deep roots in our culture and traditions. We have heard these arguments of the petitioners and reached the conclusion that these arguments of the Petitioners are not in conformity with the injunctions of Islam. Islam gives women the right of Access to Justice. The right to file a complaint against the husband by a woman before the competent authority does very clearly and strongly exist in Islam according to the injunctions of Islam. In Islam, a woman can force her husband by law to fulfill all types of his matrimonial obligations, including economic and social obligations. In this regard, the Holy Quran has dedicated a whole Surah i.e. Surah al-Mujadilah which is about a complaint made by a Sahabiya namely Hazrat Khawlah Bint Tha'labah (RA) to the Holy Prophet (SAW), wherein she vehemently agitated against her husband regarding an inconsiderate action taken by him against her. The epitome of the said incident is that a Sahabiyah, Hazrat Khawlah (RA) was aggrieved from an act of her husband Hazrat Ous bin Samit (RA), whereby he divorced her by way of Zehar (ظهار) which was one of the ways of giving divorce to wife in pre-Islamic Arabia in which husband would

say some words to his wife having connotation that 'she is like a mother to him'. It was a deep rooted tradition in Arabia and was considered a way of pronouncement of divorce. Although, this act carried out by the husband of Hazrat Khawlah (RA) was in accordance to the customs and traditions of the Arabian society of that time, Hazrat Khawlah (RA) felt aggrieved of being deprived of her rights under that act and that custom, so she went to the Prophet (PBUH) complaining against that custom and made a complaint about her grievance to him so intensely that it was heard by Allah (SWT) in the heavens. In response to her complaint and grievance, Allah (SWT) remedied her grievance immediately and revealed verses of Surah Mujadilah, which provide a clear and strong message to every Muslim regarding the rights given to women by Allah (SWT) and the importance of the status of women in Islam. Through these verses Allah has directed us:

Firstly, customs and traditions have no legal force if they are infringing the rights of any weaker segment of society.

Secondly, the said verses tell us that an aggrieved person, especially a woman is allowed to go to any forum to redress her grievance and to claim her rights. In this regard, Islam even accepts the right to protest and agitate by a woman before the authority to get her rights.

Thirdly, these verses specifically acknowledge that women have fundamental right to Access to Justice to redress their grievance.

Fourthly, the husbands are duty bound to fulfill their matrimonial obligations which Islam puts upon them. They cannot escape from fulfilling their obligations on the pretext of any custom or tradition and usage etc.

Verses 1 and 2 of Surah al-Mujadilah are reproduced herein below to elucidate the importance of women in Islam and also to the fact that according to the teachings of Islam, a wife cannot be abused by her husband in any form and manner. The concept of 'domestic violence' is unimaginable in Islam:

قَدْ سَمِعَ اللَّهُ قَوْلَ الَّتِي تُجَادِلُكَ فِي زَوْجِهَا وَتَشْتَكِي إِلَى اللَّهِ وَاللَّهُ يَسْمَعُ تَحَاوُرَكُمَا إِنَّ اللَّهَ سَمِيعٌ بَصِيرٌ (۱)
الَّذِينَ يُظَاهِرُونَ مِنْكُمْ مِنْ نِسَائِهِمْ مَا هُنَّ أُمَّهَاتُهُمْ إِنَّ أُمَّهَاتُهُمْ إِلَّا اللَّائِي وَلَدْنَهُمْ وَإِنَّهُمْ لَيَقُولُونَ مُنْكَرًا
مِنَ الْقَوْلِ وَزُورًا وَإِنَّ اللَّهَ لَعَفُوفٌ غَفُورٌ (۲)

(اے پیغمبر) جو عورت تم سے اپنے شوہر کے بارے میں بحث و جدال کرتی اور خدا سے شکایت (رنج و ملال) کرتی تھی خدا نے اس کی التجا سن لی۔ اور خدا تم دونوں کی گفتگو سن رہا تھا کچھ شک نہیں کہ خدا سنتا دیکھتا ہے (۱) جو لوگ تم میں سے اپنی عورتوں کو ماں کہہ دیتے ہیں وہ ان کی ماں نہیں ہو جاتیں۔ ان کی ماں تو وہی ہیں جن کے بطن سے وہ پیدا ہوئے ہیں بیشک وہ نامعقول اور جھوٹی بات کہتے ہیں۔
خدا بڑا معاف کرنے والا اور بخشنے والا ہے (۲)

Certainly Allah heard the speech of the one who argues with you, [O Muhammad], concerning her husband and directs her complaint to Allah. And Allah hears your dialogue; indeed, Allah is Hearing and Seeing (1). Those who pronounce thihar among you [to separate] from their wives - they are not [consequently] their mothers. Their mothers are none but those who gave birth to them. And indeed, they are saying an objectionable statement and a falsehood. But indeed, Allah is Pardoning and Forgiving (2).

13. The objections raised by the petitioners in this regard that a woman has no right to complain against her husband and that the right to file a complaint against the husband regarding the committing of 'domestic violence' will devastate the family system are absurd as this concept has nothing to do with Islam. The provisions of the impugned law, in which women are provided the right to Access to Justice when their rights are violated or they are subjected to domestic violence etc. are not against the injunctions of Islam as laid down in the Holy Quran and Sunnah of the Holy Prophet (SAW).

Determination Point-II

Whether the impugned law is discriminatory against males as it talks about the rights of females only, hence it is against the injunctions of Islam?

14. We have observed that the petitioners are unable to understand the very purpose of the impugned Act, which is mentioned in its preamble in the following manner:

An Act to establish an effective system of protection, relief and rehabilitation of women against violence.

Since the Constitution of the Islamic Republic of Pakistan, while guaranteeing gender equality, enables the State to make any special provision for the protection of women, it is necessary to protect women against violence including domestic violence, to establish a protection system for effective service delivery to women victims and to create an enabling environment to encourage and facilitate women freely to play their desired role in the society, and to provide for ancillary matters.

Manifestly, the purpose of enactment of the impugned law is in accordance with the injunctions of Islam as laid down in the Holy Quran and Sunnah of the Holy Prophet (SAW) as well as in accordance with the Constitution of the Islamic Republic of Pakistan 1973 for the following reasons:

- i) Islam is the first religion which gave women equal fundamental rights in the period of history when women had virtually no legal status in society. Women had no property rights or succession rights, rather they were treated as property or like cattle in the pre-Islamic tribal society of Arabia. A barbaric, inhuman and beastly custom of burying female infants alive in that society was common, which is mentioned in Verses 8 & 9 of Surah At-Takwir in the following manner:

وَإِذَا الْمَوْءِدَةُ سُئِلَتْ (۸) بِأَيِّ ذَنْبٍ قُتِلَتْ (۹)

اور جب اس لڑکی سے جو زندہ دفنادی گئی ہو پوچھا جائے گا (۸) کہ وہ کس گناہ پر ماری گئی؟ (۹)

And when the girl [who was] buried alive is asked (8). For what sin she was killed (9).

The Holy Quran criticizes and warns the people who have discriminatory mental and societal attitude towards females. In this regard, Allah (SWT) says that such an attitude is surely an evil one and

those persons will be judged accordingly. Following are the relevant verses of the Holy Quran of Surah An-Nahl (Verses-58-59):

وَإِذَا بُشِّرَ أَحَدُهُم بِالْأُنْثَىٰ ظَلَّ وَجْهُهُ مُسْوَدًّا وَهُوَ كَظِيمٌ (۵۸) يَتَوَارَىٰ مِنَ الْقَوْمِ مِنْ سُوءِ مَا بُشِّرَ بِهِ
أَيُّسِرُكُمْ عَلَيَّ هَؤُلَاءِ أَمْ يَدُسُّهُ فِي التُّرَابِ أَلَا سَاءَ مَا يَحْكُمُونَ (۵۹)

حالانکہ جب ان میں سے کسی کو بیٹی (کے پیدا ہونے) کی خبر ملتی ہے تو اس کا منہ (غم کے سبب) کالا پڑ جاتا ہے اور اس کے دل کو دیکھو تو وہ اندوز ناک ہو جاتا ہے (۵۸) اور اس خبر بد سے (جو وہ سنتا ہے) لوگوں سے چھپتا پھرتا ہے (اور سوچتا ہے) کہ آیا ذلت برداشت کر کے لڑکی کو زندہ رہنے دے یا زمین میں گاڑ دے۔ دیکھو یہ جو تجویز کرتے ہیں بہت بری ہے (۵۹)

And when one of them is informed of [the birth of] a female, his face becomes dark, and he suppresses grief (58). He hides himself from the people because of the ill of which he has been informed. Should he keep it in humiliation or bury it in the ground? Unquestionably, evil is what they decide. (59)

- ii) Unfortunately, we witness this behavior even today in our society in the name of culture or on the basis of a false sense of male chauvinism and unjustified sense of male patriarchy etc. Islam took all the positive steps to eliminate such a misogynist attitude of men as a policy from society more than fourteen centuries ago. Hence, if such inhuman activity like 'domestic violence' occurs, then it has no place according to the teachings of Islam in an Islamic society of Muslims and it should not only be discouraged but should be stopped through a law by the State.
- iii) To make such type of laws which help in ending or curtailing discrimination against women, Article 25(3) of the Constitution of the Islamic Republic of Pakistan, 1973 rightly provides the constitutional guarantee to any 'positive action' or even 'affirmative action', which shall be taken by the State for the protection of women and children in the Islamic Republic of Pakistan. This provision of the Constitution is undoubtedly based on the very essence of Islam. To eliminate the deep

rooted societal menaces, against women and girls is a continuous process, anti-women biases and predispositions which at times lead to violence and even femicide. Violence against women does exist in our society in different forms and on different pretext, and 'domestic violence' is one of them. Islam does not protect any custom or societal norm under any pretext which is against the fundamental teachings of the Holy Quran and Sunnah of the Holy Prophet (SAW).

- iv) According to the contents of the impugned law, the act of 'domestic aggression' committed by the defendant is enough to provide the basis which can set the impugned law in motion. The committing of 'domestic violence' by any male or female member of a family upon any female member of that family is not at all condoned by the injunctions of Islam, according to the principles laid down in the Holy Quran and Sunnah regarding the protection of life, property and dignity of women.
- v) The crime of 'domestic violence' becomes more severe in Islam because it is by definition of the impugned law normally perpetrated against a wife, a sister, a daughter or even a mother. Islam does not give any right to anyone and does not accept any justification of any man or woman of a family to commit violence against a female family member. Hence, this law is not against males and has been wrongly portrayed by the petitioners, rather it is against the perpetrator of domestic violence, be it male or female. We are of the view that the purpose and the scope of the impugned law, as stated in its preamble, is in accordance to the injunctions of Islam as laid down in the Holy Quran and Sunnah of the Holy Prophet (SAW).

Determination Point-III

Whether the impugned Act would devastate the family system of our country hence it is against the injunctions of Islam?

15. The purpose of the impugned law is to protect women from 'domestic violence' as it is stated in its preamble. The petitioners Prof. Muhammad Ibrahim Khan, Advocate and Saifullah Gondal have failed to appreciate this aspect of the impugned Act, which is evident from the contents of their petition, as the petitioners in Para-6 of their petition stated that:

یہ کہ اس قانون کی متعدد دفعات بہت واضح طور پر خاندانی نظام کو تباہی اور خاندان میں بیرونی مداخلت کی واضح نشاندہی کر رہی ہیں۔ جس طرح کے دفعہ 2 شق (a) میں متاثرہ شخص کی تعریف میں صرف خاتون کا ذکر ہے، جس سے یہ قانون امتیازی حیثیت اختیار کر گیا ہے، اس طرح انصاف کے تقاضے پورے ہونے کی بجائے بری طرح مجروح ہونگے۔ جبکہ گھر میں کوئی بھی متاثرہ شخص ہو سکتا ہے۔ تشدد کا شکار والد، بیٹا اور بھائی بھی ہو سکتا ہے۔ لہذا صرف عورت کو متاثرہ شخص کی تعریف میں شامل کرنا اور اس حوالہ سے قانون بنانا، اور اسکے پیروی میں ایک پورا نظام کھڑا کر دینے سے قانون کی بنیاد پر تفریق نظر آئے گی۔

16. Petitioner Naheed Baig, Advocate relied upon some subjective apprehensions and portrayed the impugned Act as a detrimental law to the family system in Pakistan; for example, the Petitioner stated in her petition that if the grievance of 'domestic violence' began to be settled through the court of law, then it will destroy the concept of "چادر-چاردیواری" i.e. the concept of privacy of home.

17. We have already dilated upon the fact that since it is a special law, therefore, it duly provides a special procedure. It does not contain any provision which gives any arbitrary power to the Court or any other department of the Government constituted under this Act like 'District Women Protection Committee'. All the powers conferred upon any officer under this law to protect women from violence are subject to the due process of law. All the power given under this law are specifically for the protection of a woman, who is aggrieved from an act of 'domestic violence', which is the duty of a Muslim State i.e. to

take positive actions in a society to protect women from violence and discrimination.

18. The petitioners while arguing the case made the matrimonial dispute between the husband and wife as one of the main points in support of their arguments, whereas the scope of the impugned Act is much wider as it encompasses all or any sorts of domestic violence perpetrated by any person, male or female, who is a relative of the victim and also a resident of the same house where she lives. The expression “*domestic violence*” is defined in Section 2(h) of the impugned Act in the following manner:

“Domestic violence” means the violence committed by the defendant with whom the aggrieved is living or has lived in a house when they are related to each other by consanguinity, marriage or adoption.”

According to the petitioners, Islam gives the male a higher status in society over the females to such an extent that a husband can beat his wife. We are of the view that these arguments are not only out of context, but also misconceived and misconstrued. In Islam, male and female are equal before the law and this Islamic concept of equality of male and female is duly enshrined in the Constitution of the Islamic Republic of Pakistan 1973. According to Islamic injunctions men and women are equal in the eyes of law.

19. There are a number of verses of the Holy Quran stating that male and females are equal and they will be judged according to their own deeds by Allah *Subhanahu Wa Ta'ala*. For Example, Surrah: al-Hujrat:13, an-Nahl:97 and Surah Ghafir: 40, etc. contain the topic of equality of men and women, the Holy Quran says:

Surah al-Hujurat:13

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا ۚ إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ ۚ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ -

اے لوگو! ہم نے تمہیں مرد اور عورت سے پیدا فرمایا اور ہم نے تمہیں قوموں اور قبیلوں میں تقسیم کیا تاکہ تم ایک دوسرے کو پہچان سکو۔ بیشک اللہ کے نزدیک تم میں زیادہ باعزت وہ ہے جو تم میں زیادہ پرہیزگار ہو، بیشک اللہ خوب جاننے والا خوب خبر رکھنے والا ہے۔

O people! We created you from a male and a female, and (divided) you into (large) peoples and tribes, so that you might recognize one another. Surely, the most honourable amongst you in the sight of Allah is he who fears Allah the most. Certainly, Allah is All-Knowing, All-Aware.

Surah an-Nahl:97

مَنْ عَمِلَ صَالِحًا مِّنْ ذَكَرٍ أَوْ اُنْثَىٰ وَهُوَ مُؤْمِنٌ فَلَنُحْيِيَنَّهٗ حَيٰوةً طَيِّبَةً�ۙ وَلَنَجْزِيَنَّهُمْۙ اَجْرَهُمْ بِاَحْسَنِ مَا كَانُوْا يَعْمَلُوْنَ۔

جو کوئی نیک عمل کرے (خواہ) مرد ہو یا عورت جبکہ وہ مومن ہو تو ہم اسے ضرور پاکیزہ زندگی کے ساتھ زندہ رکھیں گے، اور انہیں ضرور ان کا اجر عطا فرمائیں گے ان اچھے اعمال کے عوض جو وہ انجام دیتے تھے۔

Whoever performs pious works, man or woman, provided he or she is a believer, We will surely keep him alive with a life of purity, and will indeed reward them (as well) their wage of the righteous works which they used to do.

Surah Ghāfir:40

مَنْ عَمِلَ سَيِّئَةً�ۙ فَلَا يُجْزَىٰ اِلَّا مِثْلَهَاۙ وَمَنْ عَمِلَ صَالِحًا مِّنْ ذَكَرٍ أَوْ اُنْثَىٰ وَهُوَ مُؤْمِنٌۙ فَلِلّٰهِ يَدْخُلُوْنَ الْجَنَّةَ يُرْزَقُوْنَ فِيْهَا بِغَيْرِ حِسَابٍ۔

جس نے برائی کی تو اسے بدلہ نہیں دیا جائے گا مگر صرف اسی قدر، اور جس نے نیکی کی، خواہ مرد ہو یا عورت اور مومن بھی ہو تو وہی لوگ جنت میں داخل ہوں گے انہیں وہاں بے حساب رزق دیا جائے گا۔

He who commits evil will not be rewarded but with the same measure. And whoever behaves piously, whether male or female, and is a believer as well, it is they who will enter Paradise. There they will be given sustenance without measure.

Hence, according to the Injunctions of Islam men and women, although different in sex [Ref: Aal i Imran : 36], are equal before the law being human [ref: Hujurat:13, Nehal:97 and Ghafir:40, etc]. In some instances one person has preference over the other according to his or her role in life like, for example, in a family setup the mother has preference over the father. Hence, according to Islam in some instances women have preference over men and in other instances men have preferences over women, but they are equal before the law and will be

judged by Allah (SWT) according to their deeds. Allah (SWT) in the Holy Quran says:

وَلَا تَتَمَنَّوْا مَا فَضَّلَ اللَّهُ بِهِ بَعْضَكُمْ عَلَى بَعْضٍ لِلرِّجَالِ نَصِيبٌ مِمَّا اكْتَسَبُوا وَلِلنِّسَاءِ نَصِيبٌ مِمَّا اكْتَسَبْنَ
وَأَسْأَلُوا اللَّهَ مِنْ فَضْلِهِ إِنَّ اللَّهَ كَانَ بِكُلِّ شَيْءٍ عَلِيمًا [النساء: 32]

اور اس کی آرزو نہ کرو جس کے باعث اللہ تعالیٰ نے تم سے بعض کو بعض پر فضیلت دی ہے، مردوں کا اس میں سے حصہ ہے جو انہوں نے کمایا اور عورتوں کے لئے ان میں سے حصہ ہے جو انہوں نے کمایا اور اللہ تعالیٰ سے اس کا فضل مانگو یقیناً اللہ ہر چیز کا جاننے والا ہے۔

And do not wish for that by which Allah has made some of you exceed others. For men is a share of what they have earned, and for women is a share of what they have earned. And ask Allah of his bounty. Indeed Allah is ever, of all things, Knowing. (Surah An-Nisa, Verse-32)

20. In the family life, in some cases the women have preference over the men, like the status of the mother is three times higher than that of the father of a person, following Ahadith contain this direction as:

عَنْ أَبِي هُرَيْرَةَ - رَضِيَ اللَّهُ عَنْهُ - قَالَ جَاءَ رَجُلٌ إِلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ يَا رَسُولَ اللَّهِ مَنْ أَحَقُّ بِحُسْنِ صَحَابَتِي؟ قَالَ «أُمُّكَ». قَالَ ثُمَّ مَنْ؟ قَالَ «أُمُّكَ». قَالَ ثُمَّ مَنْ؟ قَالَ: «أُمُّكَ». قَالَ ثُمَّ مَنْ؟ قَالَ: «ثُمَّ أَبُوكَ»

ابو ہریرہ رضی اللہ عنہ نے بیان کیا کہ ایک صحابی رسول اللہ صلی اللہ علیہ وسلم کی خدمت میں حاضر ہوئے اور عرض کیا کہ یا رسول اللہ! میرے اچھے سلوک کا سب سے زیادہ حقدار کون ہے؟ فرمایا کہ تمہاری ماں ہے۔ پوچھا اس کے بعد کون ہے؟ فرمایا کہ تمہاری ماں ہے۔ انہوں نے پھر پوچھا اس کے بعد کون؟ نبی کریم صلی اللہ علیہ وسلم نے فرمایا کہ تمہاری ماں ہے۔ انہوں نے پوچھا اس کے بعد کون ہے؟ نبی کریم صلی اللہ علیہ وسلم نے فرمایا کہ پھر تمہارا باپ ہے۔ ابن شبرمہ اور یحییٰ بن ایوب نے بیان کیا، کہا ہم سے ابو زرہ نے اسی کے مطابق بیان کیا۔

Narrated Abu Huraira: A man came to Allah's Messenger (ﷺ) and said, "O Allah's Messenger (ﷺ)! Who is more entitled to be treated with the best companionship by me?" The Prophet (ﷺ) said, "Your mother." The man said, "Who is next?" The Prophet said, "Your mother." The man further said, "Who is next?" The Prophet (ﷺ) said, "Your mother." The man asked for the fourth time, "Who is next?" The Prophet (ﷺ) said, "Your father." Sahih al-Bukhari 5971.

Similarly, in certain cases the women are provided special status by law, which is not available to men in the normal course of life. According to Islamic Injunctions, it is not the duty of a woman to fulfill the economic needs of a family, but the maintenance of family and fulfilling the economic needs of a

family and provision of food and shelter according to one's capacity is the primary responsibility of men according to the teachings of Islam. For example, according to the following verses of the Holy Quran, Allah (SWT) makes a father duty bound to maintain the mother of his child i.e his wife along with the child according to his means. The maintenance of the wife is binding upon the husband according to the Injunctions of Islam as Allah (SWT) says in Verse-233 of Surah Al-Baqarah that:

وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ ۚ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا ۚ

(اور دودھ پلانے والی ماؤں کا کھانا اور کپڑا دستور کے مطابق باپ کے ذمے ہو گا۔ کسی شخص کو اس کی طاقت سے زیادہ تکلیف نہیں دی جاتی) (بقرہ: 233)

Upon the father is the mothers' provision and their clothing according to what is acceptable. No person is charged with more than his capacity. (Surah Al-Baqarah, Verse-233)

Similarly in another Verse Allah (SWT) says:

لِيُنْفِقْ ذُو سَعَةٍ مِّنْ سَعَتِهِ وَمَن قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَّا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا - [الطلاق: 7]

صاحب وسعت کو اپنی وسعت کے مطابق خرچ کرنا چاہیئے۔ اور جس کے رزق میں تنگی ہو وہ جتنا خدا نے اس کو دیا ہے اس کے موافق خرچ کرے۔ خدا کسی کو تکلیف نہیں دیتا مگر اسی کے مطابق جو اس کو دیا ہے۔ اور خدا عنقریب تنگی کے بعد کشائش بخشنے گا۔ (طلاق: 7)

Let a man of wealth spend from his wealth, and he whose provision is restricted - let him spend from what Allah has given him. Allah does not charge a soul except [according to] what He has given it. Allah will bring about, after hardship, ease. (Surah At-Talaq, Verse-7)

21. In the context of the family, the father, husband, brother and son have greater social and economic duties viz-a-viz their family relatives like mother, wife, sister or daughter, but this does not by any way confer upon men a right to abuse the females of their family in any manner, what to say about the

physical abuse. The Holy Prophet (SAW) made this point clear in an unequivocal manner that:

عن معاوية القشيري قال: أتيت رسول الله صلى الله عليه وسلم قال: فقلت: ما تقول في نسائنا؟ قال: "أطعموهن مما تأكلون، واكسوهن مما تكسونه، ولا تضربوهن، ولا تقبحوهن" سنن أبي داود، حديث نمبر: 2144 (باب حق المرأة على زوجها)

معاویہ قشیری (رضی اللہ عنہ) سے روایت ہے کہ میں رسول (صلی اللہ علیہ وآلہ وسلم) کی خدمت میں حاضر ہوا اور پوچھا کہ ہم پر عورتوں کے کیا حقوق ہیں؟ آپ صلی اللہ علیہ وآلہ وسلم نے فرمایا جو تم خود کھاؤ وہی ان کو بھی کھلاؤ اور جیسا تم پہنوا ان کو بھی وہی پہناؤ اور نہ ان کو مارو اور نہ ان کو برا بھلا کہو۔

In another Hadith, the Prophet (SAW) directed:

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «مَنْ كَانَتْ لَهُ أَنْثَى فَلَمْ يَغْدِهَا وَلَمْ يُهْنِهَا وَلَمْ يُؤْتِرْ وَلَدَهُ عَلَيْهَا قَالَ يَغْنِي الذُّكُورَ أَدْخَلَهُ اللَّهُ الْجَنَّةَ».

رسول اللہ صلی اللہ علیہ وسلم نے فرمایا: "جس کے پاس کوئی لڑکی ہو اور وہ اسے زندہ درگور نہ کرے، نہ اسے کمتر جانے، نہ لڑکے کو اس پر فوقیت دے تو اللہ تعالیٰ اسے جنت میں داخل کرے گا۔"

The Prophet (ﷺ) said: If anyone has a female child, and does not bury her alive, or slight her, or prefer his children (i.e. the male ones) to her, Allah will bring him into Paradise. **Sunan Abu Dawud 5146.**

عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو، قَالَ قَالَ رَسُولُ اللَّهِ -صلى الله عليه وسلم- "خَيْرُكُمْ خَيْرُكُمْ لِنِسَائِهِمْ".

عبد اللہ بن عمرو رضی اللہ عنہما کہتے ہیں کہ رسول اللہ صلی اللہ علیہ وسلم نے فرمایا: "سب سے بہتر وہ لوگ ہیں جو اپنی عورتوں کے لیے بہتر ہوں۔" (ابن ماجہ، باب حسن معاشرہ النساء)

It was narrated from 'Abdullah bin 'Amr that: the Messenger of Allah said: "The best of you are those who are best to their womenfolk."

Sunan Ibn Majah 1978.

عَنْ أَبِي هُرَيْرَةَ، قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ "أَكْمَلُ الْمُؤْمِنِينَ إِيمَانًا أَحْسَنُهُمْ خُلُقًا وَخَيْرُكُمْ خَيْرُكُمْ لِنِسَائِهِمْ خُلُقًا".

ابو ہریرہ رضی اللہ عنہ کہتے ہیں کہ رسول اللہ صلی اللہ علیہ وسلم نے فرمایا: "ایمان میں سب سے کامل مومن وہ ہے جو سب سے بہتر اخلاق والا ہو، اور تم میں سب سے بہتر وہ ہے جو اخلاق میں اپنی عورتوں کے حق میں سب سے بہتر ہو۔" (الترمذی کتاب الایمان)

Abu Hurairah narrated that The Messenger of Allah said: "The most complete of the believers in faith, is the one with the best character among them. And the best of you are those who are best to your women."

Jami` at-Tirmidhi.

In light of all the above mentioned Ahadith and Sunnah of the Holy Prophet (SAW), there remains no ambiguity that domestic violence is forbidden in Islam. A man cannot abuse his female relative under any pretext in any form. This law will not devastate the family values and family system of our country, rather it will further strengthen the family system of our country in accordance to the Injunctions of Islam due to which females will not feel unsafe in their own houses, but they will feel protected. The home environment is to serve as a protective citadel for women and not a place of abuse and cruelty according to the Injunctions of Islam as laid down in the Holy Quran and Sunnah of the Holy Prophet (SAW).

Determination Point-IV

Whether a husband is permitted to commit 'domestic violence' upon his wife according to the injunctions of Islam?

22. Verse-34 of Surah An-Nisa, in which the word "Qawwam" (قوام) is used in the Holy Quran has repeatedly been relied upon by the petitioners in their arguments. This verse is very relevant to the impugned Act. First of all, the basic principle of the understanding of the Holy Quran is that the sentences and verses of the Holy Quran should not be read out of context, therefore, we would like to quote both the verses of the Holy Quran i.e. Verse-34 and Verse-35 of Surah An-Nisa to highlight the full context of each sentence of these two verses, which are reproduced as under:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ وَالَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ فَإِنِ اطَّعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا (۳۴) وَإِنِ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِن يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا (۳۵)

مرد عورتوں پر حاکم و نگران ہیں اس لیے کہ خدا نے بعض کو بعض سے افضل بنایا ہے اور اس لئے بھی کہ مرد اپنا مال خرچ کرتے ہیں تو جو نیک بیبیاں ہیں وہ مردوں کے حکم پر چلتی ہیں اور ان کے پیٹھ پیچھے خدا کی حفاظت میں (مال و آبرو کی) خبر داری کرتی ہے اور

جن عورتوں کی نسبت تمہیں معلوم ہو کہ سرکشی اور (بد خوئی) کرنے لگی ہیں تو (پہلے) ان کو (زبانی) سمجھاؤ (اگر نہ سمجھیں تو) پھر ان کے ساتھ سونا ترک کر دو۔ اگر اس پر بھی باز نہ آئیں تو پھر ان کو مارو اور اگر فرمانبردار ہو جائیں تو پھر ان کو ایذا دینے کا کوئی بہانہ مت ڈھونڈو۔ بیشک خدا سب سے اعلیٰ (اور) جلیل القدر رہے (۳۳) اور اگر تم کو معلوم ہو کہ میاں بیوی میں ان بن ہے تو ایک منصف مرد کے خاندان سے اور ایک منصف عورت کے خاندان میں سے مقرر کرو وہ اگر صلح کر دینی چاہیں گے تو خدا ان میں موافقت پیدا کر دے گا کچھ شک نہیں کہ خدا سب کچھ جانتا اور سب باتوں سے خبردار ہے (۳۵)

Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth. So righteous women are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard. But those [wives] from whom you fear arrogance - [first] advise them; [then if they persist], forsake them in bed; and [finally], strike them. But if they obey you [once more], seek no means against them. Indeed, Allah is ever Exalted and Grand (34). And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Acquainted [with all things] (35).

Firstly, these two verses of Surah An-Nisa talk about the manner in which the Holy Quran wants its believers to settle their very serious matrimonial disputes. The Holy Quran provides a manner in which a long, ongoing serious matrimonial dispute should be settled in which the wife is accused of committing *Nashuz* (نشوز) continuously. The word *Nashuz* is translated in English as animosity, hostility; antipathy; dissonance, discord; recalcitrance of women toward her husband [Hans Wehr, A Dictionary of Modern Written Arabic, Arabic-English by: J Milton Cowan, 1980, Libairie du Liban, Beirut] to rebel against or refractoriness, aversion of husband and wife to each other [Abdullah Abbas al-Nadwim Qamoos al-Alfaz al-Quran al-Kareem, Dar al Asha'at Karachi]. It appears from the directions given by Allah (SWT) that Muslims are required to keep the matrimonial relation intact as much as possible and this relation should not be broken due to any matrimonial dispute, which can be settled by making efforts in different ways. The Shafa'i and Hanbali Jurists are of the view that if for the sake of *Tadeeb* (تادیب) i.e reprimand, it is permissible for

the husband in exceptional case of Nashuz to hit her symbolically even then not raising hand is better, rather preferable. [Ref: Roza al-Taalibeen p.368, Vol.7, Nihayat al-Mohtaj p.383, Vol.6; Hashia al-Sharqawi ala Sharh al-Tahreer p.282, Vol.2; Kashaf al-Qina Vol.5 p.210; Mausua'h Fiqhuyah (Fiqh Encyclopedia) pp.324-331 Vol.40]. Therefore, the reliance of the petitioners on one word of one sentence of the whole verse, i.e. Verse-34 of Surah An-Nisa, should not be read independently and out of context, it is not to be used to form a generalized principle. Here we would also like to highlight the very next sentence of the same Verse-34 of Surah An-Nisa, in which Allah (SWT) has given the reason of appointing a male in a matrimonial relation as *Qawwam* (قَوَّام) of women in a family. This word *Qawwam* (قَوَّام) is translated in English as “manager, director, superintendent, caretaker, keeper, custodian, guardian. [Hans Wehr, A Dictionary of Modern Written Arabic, Arabic-English by: J Milton Cowan, 1980, Libairie du Liban, Beirut]. The reason for appointing the male as *Qawwam* is that they are duty bound to maintain the women of their family properly and spend his wealth for that purpose, it does not mean that a man being a ‘*Qawwam*’ is allowed to inflict ‘domestic violence’ or tashadood (تشدد), this point becomes clear from the following Ahadith of the Holy Prophet (SAW):

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «مَنْ كَانَتْ لَهُ أَنْثَى فَلَمْ يَحْدِهَا وَلَمْ يُهْنِهَا وَلَمْ يُؤْتِرْ وَلَدَهُ عَلَيْهَا قَالَ يَغْنِي الذُّكُورَ أَذْخَلَهُ اللَّهُ الْجَنَّةَ».

رسول اللہ صلی اللہ علیہ وسلم نے فرمایا: ”جس کے پاس کوئی لڑکی ہو اور وہ اسے زندہ درگور نہ کرے، نہ اسے کمتر جانے، نہ لڑکے کو اس پر فوقیت دے تو اللہ تعالیٰ اسے جنت میں داخل کرے گا۔“

The Prophet (ﷺ) said: If anyone has a female child, and does not bury her alive, or slight her, or prefer his children (i.e. the male ones) to her, Allah will bring him into Paradise. **Sunan Abu Dawud 5146.**

عَنْ حَكِيمِ بْنِ مُعَاوِيَةَ الْقُشَيْرِيِّ، عَنْ أَبِيهِ، قَالَ قُلْتُ يَا رَسُولَ اللَّهِ مَا حَقُّ زَوْجَةٍ أَحَدِنَا عَلَيْهِ قَالَ " أَنْ تُطْعَمَهَا إِذَا طَعِمْتَ وَتَكْسُوَهَا إِذَا اكْتَسَيْتَ أَوْ اكْتَسَبْتَ وَلَا تَضْرِبَ الْوَجْهَ وَلَا تُفْقِحَ وَلَا تَهْجُرَ إِلَّا فِي الْبَيْتِ " . قَالَ أَبُو دَاوُدَ " وَلَا تُفْقِحَ " . أَنْ تَقُولَ قَبْحًا لِلَّهِ .

سیدنا حکیم بن معاویہ نے اپنے باپ سے بیان کیا وہ کہتے ہیں کہ میں نے عرض کیا یا رسول اللہ! ہماری بیویوں کا ہم پر کیا حق ہے؟ ارشاد ہوا کہ جب تو کھائے تو اسے بھی کھلائے اور جب تو پہنے تو اسے بھی پہنائے اور اس کے منہ پر نہ مارے اور نہ اسے گالی گلوچ دے اور گھر کے علاوہ اس سے الگ نہ رہ۔ ابو داؤد کہتے ہیں «وَلَا تُفْقِحُ» کا مطلب یہ ہے کہ تم اسے قبح اللہ نہ کہو۔

[اسے احمد، ابو داؤد، نسائی اور ابن ماجہ نے روایت کیا ہے۔ ابن حبان اور حاکم نے اسے صحیح قرار دیا ہے۔]

Narrated Hakim bin Mu'awiyah on the authority of his father (RA): I asked, "O Messenger of Allah, what are the rights of a wife of one of us on her husband?" He replied, "You should give her food when you eat, clothe her when you clothe yourself, not strike her on the face, and do not revile her or desert her except within the house." Abu Dawud said: The meaning of "do not revile her" is, as you say: "May Allah revile you." Sunan Abi Dawud 2142 [Reported by Ahmad, Abu Dawud 2142, an-Nasa'i and Ibn Majah, Ibn Hibban and al-Hakim graded it Sahih (authentic)]

23. Secondly, the above referred verses as relied upon by the petitioners are out of context for the reasons stated in the forgoing paragraphs. These verses of Surah An-Nisa (Verses 34-35) deal with matrimonial disputes and the word "Darab" (ضرب) used in verse 34 of surah an-Nisa does not allow the husband by any means to hit the wife in any manner that falls within the definition of "domestic violence" as described by the impugned Act. The simple reading of the verses of Surah An-Nisa tells us that the Holy Quran talks about a specific instance which is regarding a very serious and grave situation of a matrimonial dispute between a husband and wife. This is obviously not a normal situation in a matrimonial relationship, it is an exceptional situation. Disputes do occur between a husband and wife but they normally do not go that far. Islam at times gives us specific guidelines to deal with our worldly problems and this is one such instance so it must not be understood as a routine situation, which is being discussed here in these verses. These verses are not explaining a general rule; in fact they are delineating the conduct required in an exceptional situation which

is not mandatory. An exception cannot be taken as a rule because the basic principle is that 'exception proves the rule. Hence, according to these verses the rule is that no one, male or female, can beat or raise his/her hand on any of the females, especially a mother, daughter, sister and wife. However, in very exceptional situations if any dispute between a husband and wife goes on and on, which may end up in a situation where the husband raises his hand in the heat of the moment on his wife after exhausting all the steps required and directed by the Holy Quran to settle the dispute. From the wording of Holy Quran it becomes clear that this is not a preferred act. Further, in the light of Ahadith this act should be avoided and in the worst case scenario if it happens, then it should be in a manner that it will not leave any mark on her body. In the words of Ahadith it should be *Ghair Mubarrih* (غير مبرح) [which does not cause pain] or *Ghair Muasir* (غير مؤثر) [which does not leave any mark on the body]. Some of the greatest Muslim scholars, for example Imam Shafi, are of the opinion that it is just barely permissible, and should preferably be avoided. [Ref: The Message of The Quran, Translated and explained by Allama Muhammad Asad, explanation of verse 34 of Surah An-Nisa and Maulana Abdul Majid Daryabadi's tafseer Tafseer i Majidi, Tafseer Ahkam al-Quran Imam Abu Bakar al-Jasas], Imam Shaf'i has dedicated a chapter to this topic in his book Kitab al-Um in which he concluded that it is just barely permissible and should preferable be avoided. [Kitab al-Um, Imam As-Shaf'i p.194 vol.5; Mosu'ah Fiqheyah (Fiqh Encyclopedia) vol.10 p.51].

24. Therefore, this situation should be treated as an exception and even in that situation a husband is not allowed to beat his wife black and blue, if someone does that then he can be held culpable for committing 'domestic violence' under the provisions of the Impugned Act. This calling him to account for his violent behavior will not be against Islamic Injunctions in the light of Quran and

Sunnah. According to the Mufasssireen (مفسرين) of the Holy Quran, the above referred two verses talk about the following steps to resolve the serious disputes and disagreement between a husband and wife. [Ref: *Tafseer of Verses 34 and 35 of Surah An-Nisa in Tafheem al-Quran Maulana Mawdudi; Maarif al-Quran, Maulana Muhammed Shafi'; Zia ul-Quran Pir Muhammad Karam Shah al-Azhari; Tafseer al Kabir Fakhr uddin al-Razi, Tafseer-i-Majidi Abdul Majid Daryabadi; Tafseer Ahkam al-Quran Abu Baka al-Jasas; Tafseer Ibni Kasir; Tafseer Qurtabi; Tafseer Tibri; Tafseer Rooh al-Ma'ani etc.*]

Firstly, admonish them, which means the husband is to verbally admonish his wife;

Secondly, if the matter is not resolved between them then they are to stop sharing the bed, if the matter is not resolved even after that step then the husband is allowed to;

Thirdly, strike them, which means if both the above measures fail and the situation takes a turn that the husband strikes his wife then this means that it is by no means a compulsory step to be taken. Even in this unusual situation the husband is directed to keep in mind the directions of the Holy Prophet (SAW) in this regard that strike should be *Ghair Mubarrih*, meaning that it does not cause pain and it should not be on face. Otherwise it will become within the definition of *Tashadud* (تشدد), which constitutes domestic violence and is forbidden in Islam. There are a number of Ahadith, which forbid raising the hand over one's wife.

Fourthly, even after taking all the aforementioned logical steps, if the dispute is not resolved then it may be referred to mediation or reconciliation. The Impugned Act contains the provisions of settling the domestic or even matrimonial dispute through mediation and

reconciliation which are based on the injunctions of Islam as laid down in these verses and a number of other verses of the Holy Quran.

Lastly, the situation and the manner in which the above mentioned steps should be taken have been made clearer by the Holy Prophet (SAW) in the following Ahadith which is to be remembered and kept in mind by all Muslims that in the disputes between a husband and wife, even on some serious and grave nature, the male (husband) is not allowed to cause serious hurt to the wife or to commit domestic violence. The guidance was given by the Holy Prophet (SAW), regarding how one must act in a critical situation of marital life when he passes through an unpleasant situation of some serious and prolonged dispute with his wife, which is not normal, rather rare in normal marital lives. At the last sermon, the Holy Prophet (SAW) not only gave us a general principle regarding how a Muslim should treat his wife, but the Prophet (SAW) also explained the *Tafseer* of the Verses 34 and 35 of Surah an-Nisa in the following words:

وعن عمرو بن الأحوص الجشبي رضي الله عنه أنه سمع النبي صلى الله عليه وسلم في حجة الوداع يقول بعد أن حمد الله تعالى، وأثنى عليه وذكر ووعظ، ثم قال: "ألا واستوصوا بالنساء خيراً فإنما هن عوانٍ عندكم ليس تملكون منهن شيئاً غير ذلك إلا أن يأتين بفاحشة مبينة، فإن فعلن فاهجروهن في المضاجع، واضربوهن ضرباً غير مبرح، فإن أطعنكم فلا تبغوا عليهن سبيلاً، ألا إن لكم على نسائكم حقاً، ولنسائكم عليكم حقاً، فحقكم عليهن أن لا يؤطئن فرشكم من تكرهون، ولا يأذن في بيوتكم لمن تكرهون، ألا وحقهن عليكم أن تحسنوا إليهن في كسوتهن وطعامهن" ((رواه الترمذي وقال: حديث حسن صحيح)).

عمرو بن احوص رضی اللہ عنہ بیان کرتے ہیں کہ وہ حجۃ الوداع میں رسول اللہ صلی اللہ علیہ وسلم کے ساتھ تھے، آپ صلی اللہ علیہ وسلم نے اللہ تعالیٰ کی حمد و ثنائیاں کی اور لوگوں کو وعظ و نصیحت کی، پھر فرمایا: "عورتوں کے ساتھ حسن سلوک کرنے کی میری وصیت قبول کرو، اس لیے کہ عورتیں تمہاری ماتحت ہیں، لہذا تم ان سے اس (جماع) کے علاوہ کسی اور چیز کے مالک نہیں ہو، الا یہ کہ وہ کھلی بدکاری کریں، اگر وہ ایسا کریں تو ان کو خواب گاہ سے جدا کر دو، ان کو مارو لیکن سخت مار نہ مارو، اگر وہ تمہاری بات مان لیں تو پھر ان پر زیادتی کے لیے کوئی بہانہ نہ ڈھونڈو، تمہارا عورتوں پر حق ہے، اور ان کا حق تم پر ہے، عورتوں پر تمہارا حق یہ ہے کہ وہ تمہارا بستر کسی شخص کو روندنے نہ دیں اور وہ کسی ایسے شخص کو تمہارے گھروں میں آنے کی اجازت نہ دیں، جسے تم ناپسند کرتے ہو، سنو! اور ان کا حق تم پر یہ ہے کہ تم اچھی طرح ان کو کھانا اور کپڑا دو۔

'Amr bin Al-Ahwas Al-Jushami (May Allah be pleased with him) reported that he had heard the Prophet (ﷺ) saying on his Farewell Pilgrimage, after praising and glorifying Allah and admonishing people, "Treat women kindly, they are like captives in your hands; you do not owe anything else from them. In case they are guilty of open indecency, then do not share their beds and beat them lightly but if they return to obedience, do not have recourse to anything else against them. You have rights over your wives and they have their rights over you. Your right is that they shall not permit anyone you dislike to enter your home, and their right is that you should treat them well in the matter of food and clothing". [At- Tirmidhi, who categorized it as Hadith Hasan Sahih]. Riyad as-Salihin 276.

Following Hadith explains that even in this exceptional situation in a matrimonial dispute, if suddenly a situation occurs where the husband raises hand, then it should be Ghair Mubarrih (غیر مبرح), means it must not cause pain.

فَاتَّقُوا اللَّهَ فِي النِّسَاءِ فَإِنَّكُمْ أَخَذْتُمُوهُنَّ بِأَمَانٍ مِنَ اللَّهِ وَاسْتَحْلَلْتُمُ فُرُوجَهُنَّ بِكَلِمَةِ اللَّهِ وَلَكُمْ عَلَيْهِنَّ أَنْ لَا يُوطِئَنَّ فُرُوشَكُمْ أَحَدًا تَكْرَهُونَهُ فَإِنْ فَعَلْنَ ذَلِكَ فَاصْرِبُوهُنَّ ضَرْبًا غَيْرَ مُبْرِحٍ وَلَهُنَّ عَلَيْكُمْ رِزْقُهُنَّ وَكِسْوَتُهُنَّ.

عورتوں کے بارے میں اللہ سے ڈرتے رہو، تم نے انہیں اللہ کی امان و عہد کے ساتھ حاصل کیا ہے، اور اللہ کے کلمے کے ذریعے انہیں حلال کیا ہے، ان پر تمہارا حق یہ ہے کہ وہ تمہارے بستر (مسکن) پر کسی ایسے شخص کو نہ آنے دیں، جسے تم ناپسند کرتے ہو، لیکن اگر وہ ایسے کریں تو پھر تم انہیں ہلکی سی ضرب مار سکتے ہو اور آپ پر ان کیلئے خوراک اور پوشاک کی ذمہ داری ہے۔ رواہ مسلم۔ (مشکوٰۃ المصابیح/کتاب النسا/حدیث: 2555)

"... Show fear towards God regarding women, for you have got them under Allah's security, and have the right to intercourse with them by Allah's word. They must not bring into your houses anyone whom you dislike, but if they do that beat them, though not severely. You are responsible for providing them with their food and clothing in a fitting manner..." Muslim transmitted it. Mishkat al-Masabih 2555,

In the following Hadith of the Prophet (SAW) it further limits and confines this act of reprimand to the extent that it is rendered as symbolic rather than an act which inflicts physical harm as:

عَنْ حَكِيمِ بْنِ مُعَاوِيَةَ الْقُشَيْرِيِّ، عَنْ أَبِيهِ، قَالَ قُلْتُ يَا رَسُولَ اللَّهِ مَا حَقُّ زَوْجَةٍ أَحَدِنَا عَلَيْهِ قَالَ " أَنْ تَطْعِمَهَا إِذَا طَعِمْتَ وَتَكْسُوَهَا إِذَا كُنْسَيْتَ أَوْ اكْتَسَبْتَ وَلَا تَضْرِبَ الْوَجْهَ وَلَا تَقْبِحَ وَلَا تَهْجُرَ إِلَّا فِي الْبَيْتِ ". قَالَ أَبُو دَاوُدَ " وَلَا تَقْبِحَ ". أَنْ تَقُولَ قَبْحَكَ اللَّهُ .

سیدنا حکیم بن معاویہ نے اپنے باپ سے بیان کیا وہ کہتے ہیں کہ میں نے عرض کیا یا رسول اللہ! ہماری بیویوں کا ہم پر کیا حق ہے؟ ارشاد ہوا کہ جب تو کھائے تو اسے بھی کھلائے اور جب تو پہنے تو اسے بھی پہنائے اور اس کے منہ پر نہ مارے اور نہ اسے گالی گلوچ دے اور گھر کے علاوہ اس سے الگ نہ رہ۔ ابو داؤد کہتے ہیں «وَلَا تَفْجَحْ» کا مطلب یہ ہے کہ تم اسے قبح اللہ نہ کہو۔ [اسے احمد، ابو داؤد، نسائی اور ابن ماجہ نے روایت کیا ہے۔ ابن حبان اور حاکم نے اسے صحیح قرار دیا ہے۔]

Narrated Hakim bin Mu'awiyah on the authority of his father (RA): I asked, "O Messenger of Allah, what are the rights of a wife of one of us on her husband?" He replied, "You should give her food when you eat, clothe her when you clothe yourself, not strike her on the face, and do not revile her or desert her except within the house." Abu Dawud said: The meaning of "do not revile her" is, as you say: "May Allah revile you." Sunan Abi Dawud 2142 [Reported by Ahmad, Abu Dawud 2142, an-Nasa'i and Ibn Majah, Ibn Hibban and al-Hakim graded it Sahih (authentic)]

Following are some Hadith of the Holy Prophet (SAW) containing directions regarding how a Muslim man should treat women.

عَنْ أَبِي هُرَيْرَةَ، قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ "أَكْمَلُ الْمُؤْمِنِينَ إِيمَانًا أَحْسَنُهُمْ خُلُقًا وَخَيْرُكُمْ خَيْرُكُمْ لِنِسَائِهِمْ خُلُقًا"۔

ابو ہریرہ رضی اللہ عنہ کہتے ہیں کہ رسول اللہ صلی اللہ علیہ وسلم نے فرمایا: ایمان میں سب سے کامل مومن وہ ہے جو سب سے بہتر اخلاق والا ہو، اور تم میں سب سے بہتر وہ ہے جو اخلاق میں اپنی عورتوں کے حق میں سب سے بہتر ہو۔

Abu Hurairah narrated that The Messenger of Allah said: "The most complete of the believers in faith, is the one with the best character among them. And the best of you are those who are best to your women." Jami` at-Tirmidhi.

25. The guiding principle of Islam regarding how a Muslim man is duty bound to live with his wife in accordance with the direction given by the Holy Quran and the Holy Prophet (SAW) are contained in the above mentioned Ahadith along with number of other Ahadith of similar nature and of course the greatest source is available from the Seerat and Sunnah of the Holy Prophet (SAW). According to the Sunnah and the Ahadith of the Prophet (SAW) domestic violence is not permissible in Islam. Hence, the term 'domestic violence' as defined in the Impugned Act is in accordance with the injunctions of Islam, therefore, the husband of a woman is not allowed to commit the crime of domestic violence against his wife in any form and manner.

Determination Point-V**Whether the procedure laid down in the Impugned Act is against the Injunctions of Islam?**

26. We have reviewed the procedure laid down in the impugned Act and have not found any provision against the injunctions of Islam as laid down in the Holy Quran and Sunnah, rather the very central provisions enunciated in this Act regarding settlement of disputes are in accordance with the injunctions of Islam, one of which is mentioned in Section 12(1)(d) in the following manner:

12. Functions of the Committee– (1) The Committee shall:

(d) Try mediation and reconciliation between the parties for resolution of disputes under this Act.

Similarly, the provision contained in Section 13(2)(g) of the impugned Act regarding the working of the “District Women Protection Committee” and the “Protection Centers” for referring of the matter to mediation and reconciliation centers in order to resolve the disputes between the parties. It is very much relevant here that the Holy Quran guides us to settle disputes amicably through different verses, the importance of reconciliation in family disputes is stated in Verse 128 of surah An-Nisa, in another Verse-10 of Surah Al-Hujurat the Holy Quran states the importance of reconciliation and amicable settlement of dispute in general as:

إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ فَأَصْلَحُوا بَيْنَ أَخَوَيْكُمْ ۚ وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُرْحَمُونَ۔

مومن تو آپس میں بھائی بھائی ہیں تو اپنے دو بھائیوں میں صلح کرادیا کرو اور خدا سے ڈرتے رہو تاکہ تم پر رحمت کی جائے۔

*The believers are but brothers, so make settlement between your brothers.
And fear Allah that you may receive mercy.*

Hence, any attempt of resolving the dispute through mediation and reconciliation as provided by the Impugned Act is in accordance with the injunctions of Islam.

27. Section 19 of the impugned Act provides a guarantee to protect this law from any misuse and abuse on any false pretext. Section 19 of the impugned Act reads as under:

19. Penalty for filing false complaint.– *A person, who gives false information about the commission of violence which that person knows or has reason to believe to be false, shall be liable to punishment of imprisonment for a term which may extend to three months or fine which may extend to one hundred thousand rupees but which shall not be less than fifty thousand rupees or both.*

The above referred section of the impugned Act is sufficient to dispel any misapprehension as argued by the petitioners. The presence of such provision in this kind of law ensures that this law should not be misused.

28. In addition to the provisions referred hereinabove, there are other checks and balances in the impugned law to protect the impugned law from any misuse or abuse as apprehended by the petitioners, like Sections 21 and 22, which state as follows:

21. Cognizance and summary trial.– (1) *The Court shall not take cognizance of an offence under this Act except on a complaint of the District Women Protection Officer or a Woman Protection Officer acting on behalf of the District Women Protection Officer.*

(2) *The Court shall conduct the trial of an offence under this Act in accordance with the provisions of Chapter XXII of the Code relating to the summary trials.*

22. Appeal.– (1) *A person aggrieved from an interim order, protection order, residence order, monetary order or sentence of the Court may, within thirty days of the communication of the order or sentence, prefer an appeal to the court of sessions which shall decide the appeal within sixty days from the date of receipt of the appeal.*

(2) *The decision of the court of sessions on an appeal under sub-section (1) shall be final and shall not be called in question in any other court or forum except as provided under this Act.*

In addition to that in one of the petitions, the petitioner also relied upon Verse-4 of Surah Al-Ahzab in support of his arguments while challenging the word used in Section 2(e) of the impugned Act, in which the expression “adopted, step or foster child” is used, and the petitioner has taken the stance that Islam does not have the concept of adoption at all. For ready reference, Verse-4 of Surah Al-Ahzab is reproduced as under upon which the petitioners Prof. Muhammad Ibrahim Khan (Advocate) and Saifullah Gondal (Advocate) based their arguments:

Surah Al-Ahzab (Verse 4)

مَا جَعَلَ اللَّهُ لِرَجُلٍ مِّن قَلْبَيْنِ فِي جَوْفِهِ ۖ وَمَا جَعَلَ أَزْوَاجَكُمْ أَلْفَىٰ تُظَاهِرُونَ مِنْهُنَّ أُمَّهَاتِكُمْ ۚ وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ۚ ذَٰلِكُمْ قَوْلُكُمْ بِأَفْوَاهِكُمْ ۖ وَاللَّهُ يَقُولُ الْحَقَّ وَهُوَ يَهْدِي السَّبِيلَ ۖ

خدا نے کسی آدمی کے پہلو میں دو دل نہیں بنائے اور نہ تمہاری عورتوں کو جن کو تم ماں کہہ بیٹھتے ہو تمہاری ماں بنایا اور نہ تمہارے لے پالکوں کو تمہارے بیٹے بنایا یہ سب تمہارے مومنوں کی باتیں ہیں اور خدا تو سچی بات فرماتا ہے اور وہی سیدھا راستہ دکھاتا ہے۔

Allah has not made for a man two hearts in his interior. And He has not made your wives whom you declare unlawful your mothers. And he has not made your adopted sons your [true] sons. That is [merely] your saying by your mouths, but Allah says the truth, and He guides to the [right] way.

A simple reading of the abovementioned verse tells us the context and the subject which is discussed in this verse. In this verse Allah (SWT) has directed that one may adopt a child, but according to Islam one cannot change his parentage. The adopted child must be addressed with the name of his real father and if somebody does not know the name of the father of the adopted child, then Allah (SWT) said that they should be treated as brethren in Islam and friend, which is narrated in Verse-5 of Surah Al-Ahzab in the following manner:

Surah Al-Ahzab (Verse 5)

أَدْعُوهُمْ لِأَبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ فَإِخْوَانُكُمْ فِي الدِّينِ وَمَوَالِيكُمْ وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ وَكَانَ اللَّهُ غَفُورًا رَحِيمًا۔

(مومنو!) لے پالکوں کو ان کے (اصلی) باپوں کے نام سے پکارا کرو کہ خدا کے نزدیک یہی بات درست ہے اگر تم کو ان کے باپوں کے نام معلوم نہ ہوں تو دین میں تمہارے بھائی اور دوست ہیں اور جو بات تم سے غلطی سے ہو گئی ہو اس میں تم پر کچھ گناہ نہیں لیکن جو قصد دلی سے کرو (اس پر مواخذہ ہے) اور خدا بخشنے والا مہربان ہے۔

Call them by [the names of] their fathers; it is more just in the sight of Allah. But if you do not know their fathers - then they are [still] your brothers in religion and those entrusted to you. And there is no blame upon you for that in which you have erred but [only for] what your hearts intended. And ever is Allah Forgiving and Merciful.

29. The impugned law contains provisions of checks and balances also in the implementation mechanism of the Impugned Act to avoid any misuse of this law, for and against anybody, who is involved in any dispute, which comes under the umbrella of this law. All the matters will be duly heard by the court of law from both the sides of a dispute before announcing any final judgment or making any interim order.

30. We have noticed that, inter alia, the impugned Act contains some provisions to promote the awareness regarding the crime of domestic violence to promote the activities that will be helpful to eradicate domestic violence against women from society and to ensure the proper implementation of the impugned law in society. Islam does not permit any kind of violence, *Tashadud* (تشدد) upon women, including domestic violence (گھریلو تشدد), and any provision of law that makes it mandatory to promote activities that are conforming to the teachings of Islam to prevent violence against women is not only permissible but desirable according to the teachings of Islam and such steps fall within the concept of '*amar bil maroof*' (امر بالمعروف) according to the teachings of Islam i.e. it is a duty of an Islamic State to promote good deeds in society. In this regard, the impugned

Act provides certain provisions, one of them is “Right to Information” mentioned in its Section 23; which says :

“23. Right to information.-

(1) Subject to subsection (2), the Government shall, within seven days of acquiring any information pertaining to violence against the aggrieved person shall publish the details of the case and the steps taken for the protection of the aggrieved person, on its website accessible to the public free of cost.

(2) The Government may, for reasons to be recorded in writing, not publish any information, wholly or partially:

- (a) to ensure the safety, security, privacy and dignity of a woman or an aggrieved person;*
- (b) to protect national security or to maintain public order;*
- (c) to prevent any prejudice to the investigation of a case; or*
- (d) to protect the identity of an officer or official where such protection is necessary for the safety and security of such officer or official.”*

The provision for ‘Performance Audit’ in its Section 25, it gives a concept of continuous mandatory audit to check the quality of services provided under this law, it states that:

“25. Performance audit.- *(1) The Government shall conduct or cause to be conducted the performance audit of the protection system of a district on periodic basis under the Act.*

(2) The performance audit shall include the details of quality of services provided by the protection system, the targets to achieve the purposes of the Act and the identification of weaknesses and recommendations for future improvements.”

The Impugned law contains provision for giving a mandatory ‘Training’ continuously to the officers and employees who are involved in providing the protection facilities to the women under this law in Section 27 as:

“27. Training.- *The Government shall, at regular intervals, arrange training of the District Women Protection Officers, Women Protection Officers and other employees of the protection system for achieving the purpose of the Act.”*

Likewise, it is mandatory upon the Government to publish “Annual Report” under Section 28 of the impugned law, which will help the Government to maintain the efficiency of the protection system working under this law. Section 28 of the Impugned law states:

“28. Annual report.— (1) The Government shall, within three months of the close of a financial year, submit to Provincial Assembly of the Punjab an annual report relating to the affairs and efficacy of the protection system.

(2) The annual report shall consist of:

- a) details of the services provided by the protection system along with a comprehensive statement of the rescue operations of the protection system during the preceding financial year;*
- b) reasons for delay, if any, in reaching the aggrieved person in need of help of the protection system and proposed solutions;*
- c) performance audit report, if any, of one or more protection system;*
- d) suggestions and recommendations for further reforms of the protection system for purposes of improving the service delivery; and*
- e) other matters considered appropriate by the Government or as may be prescribed.”*

Hence, we are of the view that there is nothing related to definitions and measures to be taken for the implementation of the Impugned Act to say that same are against the injunctions of Islam. In view of the above, the procedure as laid down in the impugned Act is not against the injunctions of Islam.

Determination Point-VI

Whether making any male person to wear a GPS tracker is against the injunctions of Islam?

31. We have already clarified in the beginning of this judgment that this is a special law, which is enacted for the protection of women. Hence, the ‘aggrieved person’ under this law will always be a female, but the perpetrator or the

‘defendant’ under this law can be anyone, either male or female. During the course of arguments, this aspect of the impugned law was completely ignored by the petitioners and most of the time they based their arguments that this law is enacted only against male members of a family. These arguments of the petitioners being untenable are rejected.

32. All the petitioners discussed and criticized Section 7(1)(d) and (e) of the impugned Act, which state as follows:

7. Protection order.– (1) *If the Court is satisfied that any violence has been committed or is likely to be committed, the Court may pass a protection order in favour of the aggrieved person and direct the defendant:*

- (d) *wear ankle or wrist bracelet GPS tracker for any act of grave violence or likely grave violence which may endanger the life, dignity or reputation of the aggrieved person;*
- (e) *move out of the house in case of an act of grave violence if the life, dignity or reputation of the aggrieved person is in danger;*

Based on the above referred clauses, the petitioners argued that under this law making a ‘defendant’ wear ankles or wrist bracelet GPS Tracker will be against the dignity of man in society.

33. Manifestly, these argument of the petitioners are completely baseless and unfounded; because under the impugned law such action will only be taken against the person (defendant), who not only fails in fulfilling his duties, which Islam puts upon him towards the female members of his family and worse than that, instead of fulfilling his duties, would act violently, causing hurt to the ‘aggrieved person’ which act is also against the teaching of Islam in the light of the teaching of the Holy Prophet (SAW). Therefore, such steps like putting bracelet on that person are like any other administrative actions of similar nature

taken by the State through the courts of law to restrict the movement of a volatile person, after satisfaction of the court that any violence has been committed or is likely to be committed in the light of Section 7 of the impugned Act, in order to protect an 'aggrieved person' from any illegal or criminal act. In addition to that, according to the procedure laid down in the impugned Act, such steps will only be taken by the authority in exceptional and extreme situations where the life of any person will be under jeopardy or under threat of serious hurt from the "defendant". Hence, we are of the view that there is nothing un-Islamic in using the wrist bracelets GPS Tracker to keep an alleged perpetrator away from whom the aggrieved person who is under eminent and grave threat to her body and also to keep such a person under surveillance in order to protect the life and dignity of an aggrieved woman. The use of new and latest technology to protect the life of any person is very much in accordance with the Shariah, rather it is the preferable course to adopt, because giving protection to life of any person is one of the primary goals of Shariah, hence adopting any means possible and available are permissible according to the injunctions of Islam. According to the principle of Maqasid al-Sharia (مقاصد شريعة) i.e. goals of sharia, the protection of life, Hifz ul-Nafs has priority over any other right including the likelihood or risk of causing indignity to any alleged criminal person.

34. We have heard the arguments of the parties at length and have also minutely reviewed the detailed report submitted by the respondent department regarding the working of the Violence Against Women Center (VAWC), Multan since 2016. It is alarming, as it shows that the frequency of occurrence of domestic violence of different sorts in our country is quite high. The numbers provided by the respondent department in the petition are on the one hand quite alarming, whereas on the other hand if we look into the overall number of

disputes which had been settled at VAWC through the mechanism provided by the impugned law is quite satisfactory. The gist of their report is as follows:

That since the establishment of the Violence against Women Centre (VAWC) Multan and enforcement of the "The Punjab Protection of Women against Violence Act 2016", in Multan District, a total of 6936 cases were received out of which 4979 cases involved domestic violence, 1957 cases were reported as different types of violence based complaints. Out of the reported cases, 4351 were successfully mediated/ reunited / resolved with the intervention of mediators of Violence against Women Centre (VAWC) Multan, which makes 87% of total reported cases of domestic violence.

It is further apprised that several women approached the Violence against Women Centre (VAWC) Multan for provision of legal aid. In this category, 1348 cases were provided legal support to the women, who had no financial means to have recourse to legal remedy for their different family issues of legal nature. Additionally, 34 women approached the VAWC for legal assistance for dissolution of marriage cases. At VAWC Multan psychological support and counselling sessions were held to make reconciliation between the spouses, but regrettably the VAWC mediators remained unsuccessful in re-union of the spouses, as the parties had already made up their minds for separation. From the facts and statistics of the cases it is evident that the protection system set up under the auspices of "The Punjab Protection of Women against Violence Act 2016" is beneficial and can comprehensively provide protection, counselling and rehabilitative services through an in-built implementation mechanism to ensure speedy justice to women who are victims of violence or aggrieved of the domestic violence.

The data provided by the respondent is satisfactory to dispel the misperception and apprehensions of the petitioners regarding misuse or abuse of the impugned law. In addition to that the petitioners have not produced the evidence of any instance where the impugned law has allegedly been misused as apprehended by them despite the fact that the impugned law was enacted in 2016 and has since been in force. The report accentuates the need of full implementation of the impugned law in the entire province of Punjab in letter and spirit.

Moreover, as per law steps to protect any woman can only be taken by the administration under the impugned Act in case where the life, dignity or

reputation of a female person is in danger by any act of violence committed by a 'defendant' person. Therefore, in accordance with the impugned law the State has to take such steps which are necessary to protect the life, dignity and reputation of a female victim irrespective of the fact as to who is the perpetrator of such a serious crime, male or female.

35. اسلام بیوی، بہن، بیٹی یا ماں پر کسی قسم کے گھریلو تشدد کو جائز قرار نہیں دیتا ہے۔ اسلام وہ مذہب ہے جس نے عورت کو سب سے پہلے حقوق دیئے اور تحفظ عطا کیا، اسلام میں کسی قسم کے گھریلو تشدد کی گنجائش نہیں۔ لہذا ایک اسلامی ریاست کی یہ ذمہ داری بنتی ہے کہ وہ خواتین کے خلاف ہر قسم کے گھریلو تشدد کے خلاف قانون سازی کرے۔ خواتین کے خلاف گھریلو تشدد ایک ظالمانہ رویہ ہے جس کی اسلام میں کسی طور گنجائش نہیں ہے۔ ہم پر نبی رحمت ﷺ کے احکامات کی پابندی لازم ہے اور اس ضمن میں حضور نبی کریم ﷺ کی سیرت طیبہ ہمارے لیے راہنما اصول متعین کرتی ہے۔ اہل خانہ اور خصوصاً اپنی خواتین کے ساتھ حسن سلوک کرنے کا حکم نبی رحمت ﷺ نے فرمایا ہے۔ حضور نبی کریم ﷺ کا فرمان ہے:

خَيْرَكُمْ خَيْرُكُمْ لِنِسَائِهِمْ

تم میں سے سب سے بہتر وہ لوگ ہیں جو اپنی عورتوں کے ساتھ بہتر ہیں۔

نبی کریم ﷺ کی ایک اور حدیث میں مزید وضاحت سے یہ بات یوں بیان فرمائی ہے کہ:

أَكْمَلُ الْمُؤْمِنِينَ إِيمَانًا أَحْسَنُهُمْ خُلُقًا وَخَيْرُكُمْ خَيْرُكُمْ لِنِسَائِهِمْ خُلُقًا

ایمان میں سب سے کامل مومن وہ ہے جو بہتر اخلاق والا ہو اور بہتر اخلاق والا وہ ہے جو عورتوں کے حق میں سب سے بہتر ہو۔

اسی طرح ایک اور حدیث میں نبی کریم ﷺ نے ارشاد فرمایا کہ:

خَيْرُكُمْ خَيْرُكُمْ لِأَهْلِيهِ وَأَنَا خَيْرُكُمْ لِأَهْلِي

تم میں سے سب سے بہتر وہ ہے جو اپنے گھر والوں کے لیے بہتر ہے اور میں تم سب سے زیادہ اپنے گھر والوں کے لیے بہتر ہوں۔

احادیث مبارکہ اور قرآن و سنت کے احکامات کو مد نظر رکھتے ہوئے معاشرہ میں گھریلو تشدد کے تدارک کے لئے یہ قانون ایک مثبت اقدام ہے۔ جو اس ضمن میں اسلامی اصولوں کے تحت حکومت کی طرف سے نبی عن المنکر کے لئے اٹھائے گئے اقدام میں آتا ہے۔

36. In view of above stated position, we are of the considered view that the titled petitions have no force in them. No provision of the impugned Act is against the injunctions of Islam as laid down in the Holy Quran and Sunnah of the Holy Prophet (SAW), hence the captioned petitions are hereby **DISMISSED**.

37. Before parting with this judgment, we would concede that the reports which are submitted by the respondents regarding the working and results of the Violence Against Women Center (VAWC) established under the impugned Act in Multan are quite encouraging and positive. Therefore, we direct the Provincial Government of the Punjab to ensure the proper implementation of this law and to further roll out this law in each and every district of the Punjab as its implementation should not remain limited to one district only, which in the present case is Multan and the compliance report of the implementation and roll out of the Punjab Protection of Women against Violence Act, 2016 (Act XVI of 2016) in the entire Province be submitted to this Court.

MR. JUSTICE DR. SYED MUHAMMAD ANWER
ACTING CHIEF JUSTICE

MR. JUSTICE KHADIM HUSSAIN M. SHAIKH

*Announced in Open Court
on 29.11.2022, at Islamabad.*

*Khalid/**

APPROVED FOR REPORTING.

MR. JUSTICE DR. SYED MUHAMMAD ANWER
ACTING CHIEF JUSTICE