



## **Perspectives on Economic, Social and Cultural Rights of Women in Azad Jammu and Kashmir: A Legal Analysis**

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### **Abstract**

This article focuses on women's economic, social and cultural (ESC) rights in Azad Jammu and Kashmir (AJK). The Key human right issues concerning three ESC rights, namely education, employment and health, are targeted and discussed here. The article argues that towards fulfilment of its *state-like* national and international human rights obligations, AJK may progressively realize for its women population, its ESC rights through legal and policy measures. At the outset, the article discusses key human rights of women in the AJK, reflecting on both law and policy issues. While discussing the three rights mentioned above, the main focus remains on equality and non-discrimination. An analytical method is adopted to analyse relevant laws and policies. The article will, however, note deficiencies, if any, in the relevant laws and policies pertaining to the three targeted rights.

**Keywords:** Women's Rights, Economic Rights, Social Rights, Cultural Rights, Human Rights Issues, Discrimination.

### **1. Introduction**

The economic, social and cultural (ESC) rights of women are recognized by states across the world. The most important documents for recognition of such rights are the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which ensure protection of ESC rights worldwide. In case of women, the Committee on Elimination of Discrimination against Women (CEDAW) is the most important document at international level. However, this article focuses on ESC rights of women in Azad Jammu and Kashmir (AJK) which is not a state party to the international documents because of its unrecognized status as it is *state-like* entity.

According to report of Amnesty International, in different scenarios, inequality and discrimination is faced by women in Pakistan and AJK. In general, women are being denied working at suitable institutions, reputed professions and in the society as a whole. Women in AJK, in search of employment receive inhuman treatment from their masters (Report Amnesty

International, 1999). Female are not given equal opportunities and conveniences in education. It is a major challenge and needs to be addressed (Report HRC, 2008). The question is whether women enjoy their basic human rights particularly right to education, employment and health in AJK? What are the measures or policies of AJK government in this regard? Are women being discriminated in these areas?

This article mainly focuses on ESC rights of women in AJK. It highlights key human right issues of women in AJK and addresses protection of these three rights (education, health and employment). In this respect an analytical method is followed to find out lacunas and gaps in existing legal framework. The ultimate objective of this study is to assess situation related to protection of ESC rights of women in AJK by analysing laws and policies. Whether or not AJK has obligations to promote, protect and fulfil ESC rights of women and to that end whether protection of these rights is in conformity with international law? These questions are addressed by taking into account key human rights issues of women in AJK.

The research methodology applied in this paper is qualitative in nature. An analytical research method is adopted in order to analyse relevant laws. The data sources are mainly: library books, articles, international and national journals, reports, law journals, judgments of different courts, newspapers and internet. There is little written information and data available on situation of human rights and ESC rights of women in AJK. However, an attempt is going to be made to highlight these rights of women in AJK.

The outcome of the article would be a significant contribution to the analysis of ESC rights of women in AJK and role of AJK Government. In other words, assessment of these said rights is made and their legal position is clarified. The article is divided into four sections. Section one highlights key human rights issues of women in AJK. Section two analyses relevant laws and policy programmes in particular. The obligations of AJK Government are highlighted in section three. In practical terms, section four is devoted to argue that women's ESC rights must be promoted and protected.

## **2. Key Issues of Women's Rights in AJK**

AJK is a state-like entity which is administered by Pakistan. Population of AJK is part of that humanity which has submerged its identity in political scheming between Pakistan and India. People in AJK are, in fact, deprived of any economic developments lest such progress should give them a tongue (Standing, 1996). As compared to men, women in AJK are much less educated and illiterate. Literacy rate of males is around 50% (Khan, 2013). After earthquake in 2005, women have suffered a lot. Females are out-of-the-way and women education enrolment is greatly lesser. Privacy and isolation of women from men is usually practiced and followed in AJK. Women do not take part, to a large extent, as well-built character in community life. On urban side in AJK, there are higher levels of education. However, opportunities and facilities for females in rural areas are inadequate.

It appears that as compared to women men are on superior community standing and are attributed with better understanding in the area of monetary dealings. While legally women can own property; this fact does not by itself make certain that women may be independent decision-makers regarding their property. They can work together in order to conclude economic transactions (Farah, 2000). The most significant problem faced by women in AJK is unemployment. Majority of the women are unemployed. Unemployment occurs as 66% of total

population which is most significant problem. Moreover, in AJK other main problems include: 22% corruption in government, 42% pitiable monetary development and 19% human rights abuses (Asia Programme Project, 2010).

In education sector, the rate of primary enrolment is 65%. The figures quoted by AJK government differ and enrolment rate is worse than that. AJK lacks to deliver proper and quality education to everyone as indicated by independent studies. The focus of the government is to improve access to education which is appreciable. However, it does not mean that quality education may be ignored at school, college and university level. Improving quality education at all levels is need of the hour in AJK. According to the Annual Status of Education Report (2012), “two in five students of class five are unable to read a simple story in Urdu, whereas sixty percent of students are unable to do simple mathematics” (The Tribune, 2013).

Women in AJK, particularly in villages, do a lot of the work like collecting fuel, getting water for family use and doing all the farming. There are no proper health facilities available in villages. Women have no proper access to health facilities. With respect to education, only one and half percent of the national budget is spent on female education. Especially villages in AJK have no excessive primary schools, and if there is one, the boys would be the first to go to schools. Only about four percent of female are favoured. Likewise, if there is lack of food, the food will go first to boys (Syed, 1995). Health facilities need to be given to women in AJK irrespective of their sex. In rural and mountainous areas services and health facilities should be provided in order to facilitate women. It is necessary to increase budget for female education. More schools for women should be established. Moreover, opportunities for women need to be created and their rights be promoted through domestic legislation in AJK.

As a result of earthquake in 2005 people of AJK suffered a lot. 75,000 people were died and approximately, 10,000 people got injured. Millions of people were displaced and effected. Several people faced problems due to non-availability of basic needs and necessities, notably, lack of shelters, service facilities, education and health facilities. Many homes, households and villages were destroyed. Environmental pollution was one of the major factors in affecting their health. AJK’s infrastructure suffered immeasurable material damage especially in hospitals, schools, government buildings and communication channels. People working in institutions and services got disturbed. Already minimum available basic rights enjoyed by women in AJK earlier than the earthquake were decimated more.

It created a sensitive situation for survival of repressive and undue laws, particularly which are appropriate for women. Ruling of act in AJK has left females in a distressed and distracted place later than the earthquake (Rapporteur Baroness Nicholson, 2005). The earthquake affected women mentally, physically and socially. Widows and those who were caring wounded relatives faced noteworthy detriments for getting aid, help and necessary belongings. It is so, because in AJK, there is a family system and people get together in order to institute and protect family. In this regard, female play significant role and place in order to strengthen family name and family unit (Project Humanitarian Exchange, 2006).

It is indeed necessary to realize and promote basic ESC rights of women in AJK so that socio-economic and cultural empowerment can take place and their rights get promoted. The standards of women in AJK and conditions of employment, health, education and culture should be promoted and protected. Women’s empowerment in the AJK must be initiated in the background and perspective of a county’s culture.

People living in Pakistan and AJK have problems in relation to enjoyment of their fundamental rights. In these societies inequalities exist among people. Human rights issues of women are not properly addressed, while individuals' eyes are on state to make possible solution of availability of such rights. State is bound to protect rights of its citizens however; structural unfairness and lack of developmental policies still exist. Distinctions based on gender are overwhelming. In terms of development and resource allocation, state has reflected differences over it, though it has functioned as the catalyst of social advancement and growth, according to international indicators.

Females are unusually troubled by means of this condition because distinction is prominent in all above mentioned inequities. The attainment of women's rights is correlated to the diminution of sexual characteristics dissimilarity in enjoying their ESC rights. Regardless of emergent consideration of such situations amongst policymakers and progress planners, tremendous loopholes still exist with respect to implementation and enforcement of rights. State has turned delicate and not much capable to convey provisions of its constitution, over the preceding years (Khan, 2009).

Feminists deny universal concern which is accorded to civil and political rights (CP rights) and subsequent grade rate of ESC rights. They object by sorting the male as superiors in political sphere and women as vulnerable and inferior in socio- economic sphere. It is in the middle of women's progression and advancement. They hold that such universal concerns, notably, fundamental necessities including health, employment, education, foodstuff and outfits be in the right place to second class (Friedman, 1995). To a great extent, exploitation and neglect of women is element of socio- economic and cultural trap. The insertion in so called socio-monetary human rights of foodstuff, protection, and labour is very important to address women's issues wholly (Bunch, 1995).

### **3. Analysis of Policy Programmes of AJK Government**

It is important to note that the ICA, 1947 guarantees and recognizes equality of all citizens with no inequity on the source of colour, gender, or race (article 15). The women in AJK comprise 49% of overall population. The Government of AJK is trying to make necessary efforts in order to empower women in education sector. However, a lot of work needs to be done in this regard. Few programmes and projects are in progress to strengthen female education. AJK and Pakistan have suffered a lot during earthquake in 2005 and infrastructure was destroyed largely. Also, some other incidents took place which weakened the progress and development processes. Pakistan is trying best to overcome such challenges. The women's convention was signed by Pakistan in 1996 with reservations. AJK couldn't ratify women's convention because the status of AJK as a state is yet to be established. The policy programmes in AJK are less in number. It is necessary to introduce further programmes in order to secure education of women in AJK. The government of AJK should at least legislate at domestic level and act according to the wishes of the people and make all efforts for improvement in women related issues.

#### **3.1. Institutional Measures and Mechanisms**

In Pakistan, The Federal Ministry for Women Development and provincial Women's Development Departments (WDD) deal specifically with women. The purpose of such ministry and department is to improve conditions of women within country. In Pakistan, after ratification of CEDAW, certain policy programmes, institutional measures and mechanisms

are introduced by commission in 2000 for gender inequality and women development. Also, the women protection act was legislated and passed in 2007. While in AJK, no such commission is established however, department of ‘Social Welfare and Women Development’ (SWWD) is working and dealing with women’s affairs.

### **3.1.1. Role of SWWD: Economic and Social Potential**

The vision of SWWD is striving to achieve definitive goal of wellbeing of state as per communal shared and moral aspirations of people liberated from abuse, deficit and deprivation. It includes women as well. Communal wellbeing is crucial segment of nationwide growth. It works for betterment of the most deprived part i.e., poor and deprived, poor and ignored people. The policy of SWWD is to provide facilities and vigorous livelihood opportunities to all. Special focus is given to helpless groups, including needy women and people of old age. SWWD works to make weak groups financially autonomous and practical for the general public. The objective is benefits of poor female through institution, preservation and perpetuation of sanctuary homes. Moreover, in this connection it aims to strengthen and upgrade existing social service chain.

Establishment of Women Development Centres is necessary in AJK. It is required to improve capability of women for their financially viable boost up through preparation of different kinds of goods. At domestic level, organization of unique learning centres for awareness and knowledge distribution and preparation of extraordinary persons to make them valuable section of humanity is necessary. Moreover, it is necessary to establish institutions and organize guidance programmes therein. Such programmes should be launched and implemented by AJK government at domestic level to secure ESC rights of women. Jail Reforms are also necessary in AJK to protect rights of women. The purpose is to protect women’s rights by providing them a separate and clean environment. For instance, reforms may be carried out to facilitate women by improving physical standards and environment. There should be appointed female staff in women jails. Such reforms are necessary to avoid any kind of abuse against women. International law emphasises *humane treatment* to everyone. It is argued that necessary and useful projects should be launched in order to empower women in AJK.

### **3.1.2. Contribution of NRSP in AJK**

NRSP is the largest rural programme for development within Pakistan and AJK. It was established in 1991. It works in different parts of the country. Its mandate is to “alleviate poverty by harnessing people's potential and undertake development activities in Pakistan. It has a presence in 56 districts in all the four provinces including AJK through regional offices and field offices. NRSP is currently working with more than 2.3 million poor households organized into a network of more than 155,427 community organizations. With sustained incremental growth, it is emerging as Pakistan's and AJK’S leading engine for poverty reduction and rural development”. NRSP focuses on rural women. Different activities are conducted in order to aware people especially in rural areas. Promoting rights of women is primary concern. Important projects carried out by NRSP and AJK government are as follows:

- a) Relief and Rehabilitation Project for earthquake affected areas, by NRSP and PPAF.
- b) Post Disaster Livelihoods Reconstruction for extremely vulnerable households in AJK conducted by NRSP and Oxfam Novib (Netherlands).
- c) Revitalising, innovating and strengthening education, School Council Capacity Building

- d) Project (SCCBP) funded by USAID, in AJK. This project is conducted by NRSP in association with Directorate of education, AJK. Major activities plan includes: “strengthening and assessment of School Management Committees (SMCs) and training of teachers. Additional grants were allocated for high performing SMCs”.
- e) Increasing Community Participation in Education, Funded by DFID and Government of AJK. The purpose of this project was to improve education and strengthen school management. Over 2009- 10, “SMCs were policy notified by the government for adoption across all schools in AJK. The finance department also committed to allocate funds on an annual basis for the SMCs for operational and rehabilitation requirements”.
- f) Prime healthcare, revival, incorporation and devolution were funded by UNICEF in the areas effected by earthquake. It aims to improve health conditions of women in AJK. Under this project, capacity of officials and resource management is strengthened in health departments at district level. It was carried out by NRSP. For improving levels of health, committees were formed at district levels, such as, Health Management Committees (HMCs). The HMCs “successfully identified number of viable schemes subsequently completed including a link road and water supply scheme” (Report NRSP, 2009-2010).

### **3.1.3 Strategy and Goal of AJKRSP**

Azad Jammu and Kashmir Rural Support Program (AJKRSP) was set up and registered under section 42 of the Companies Ordinance 1984 on October 29, 2007 as a prime grassroots development arm of the Government of AJK. The strategy of AJKRSP is to “undertake community development projects by establishing and empowering grassroots institutions throughout the state. AJKRSP focuses on under-developed areas and vulnerable groups. It forges effective linkages and functional networking between relevant stakeholders. The overall goal of AJKRSP and other organizations working for socio economic development of AJK is poverty alleviation and improved standard of living. Within that overall goal, AJKRSP has its own specific objectives. The objective of AJKRSP is to foster institutions of people to unleash their potential in AJK, build capacity and linkages for effective social and economic development, with particular focus on poor and vulnerable” (AJKRSP, 2014).

## **4. Further Challenges to Strengthen Fundamental Rights of Women in AJK**

The major challenges in relation to women include: (i) Encouragement and safeguard of women’s basic ESC rights; (ii) non-discrimination in health, education and employment; (iii) equality of women’s participation; (iv) security of women; (v) violence and extremism against women; (vi) reforms for women in rural areas; (vii) access to justice; (viii) lack of basic entitlements and facilities; (ix) patriarchal, prejudicial and biased practices against women; (x) female participation in legislation; (xi) equal employment opportunities for women; (xii) clean environment and health standards for women; and protection of their rights in general. These challenges are significant for women empowerment in AJK. For overcoming these challenges, it is responsibility of the government of AJK to legislate and implement effectively for protection of basic human rights of women.

### **4.1. Obligations on AJK to Implement ESC Rights**

The UN doesn’t recognized AJK as a state. Thus, AJK is not a party to UN. AJK has not signed UDHR and ICESCR. AJK is administered by Pakistan. It has been widely argued that the

'Universal Bill of human rights' including the UDHR, the ICCPR and the ICESCR are conventional and possibly will be acknowledged by states as providing solid direction. The UDHR is commonly termed as part of the "law of the UN" (Report Human rights Watch, 1993). ICCPR and ICESCR are binding on state parties.

In AJK, at domestic level government has executive and legislative authority to formulate laws for women. For example, the Chairman exercises executive authority through Kashmir Council (KC) under section 21(7) of the ICA, 1974. The Chairman of KC is prime minister of Pakistan. He might act himself or through KC. Under section 31(1) of the ICA, the AJK assembly and council have powers to draft laws:

- i) For the territories of AJK.
- ii) In accordance with section 31(2) (a), "the Council shall have exclusive power to make laws with respect to any matter in the Council Legislative list set out in the Third Schedule".
- iii) In accordance with section 31(2) (b), "the Assembly shall, and the Council shall not, have power to make laws with respect to any matter not enumerated in the Council Legislative List".

Under Section 31(3) neither the Council nor the Assembly has powers to make laws on:

- (i) Matters relating to UNCIP resolutions
- (ii) Defence and Security
- (iii) Currency
- (iv) External affairs including foreign trade and foreign aid.

Therefore, it is an obligation of government of AJK to promote basic rights of women. Parliament should make laws and take extraordinary course for improving standards of health, education and employment of women. Although, AJK is not signatory to covenants, however, the provisions are guidelines and must be followed and implemented. As regards other instruments, AJK legislative assembly is duty bound to consider provisions of such instruments as directives and principles of policy. As regards ICESCR, it is obligation of AJK assembly to observe provisions enshrined therein and implement them at domestic level through legislation so that the women in AJK are empowered and their ESC rights are protected.

#### **4.2. Women Empowerment through Promotion and Advancement of ESC Rights**

The empowerment of women in AJK is possible if their basic rights are protected and ensured at all levels. "A woman is said to be empowered if she is provided free access to; (a) material resources, (b) decent employment, (c) political decision making, (e) enjoy her legal rights, (f) health facilities, and (g) quality education (Saigol, 2011)". The report of the WHO indicates that "585,000 women die every year, over 1,600 every day, from causes related to pregnancy and childbirth" (Report WHO, 1996). Protection and availability of health facilities is obligation of state. In AJK legislative assembly should take steps for establishing hospitals, providing better services and strengthening women's health as it is their social right. It is necessary to protect ESC rights of women in AJK.

Awareness of self-worth and basic ESC rights on the part of women is a pre-requisite of women empowerment in AJK. It is argued that, when they begin to feel they can hold authority and influence others they will become empowered and operate in leadership roles on the same terms

as men do. Knowledge of all ESC rights is essential to meaningful decision making in all relevant fields. Self-reliance, initiative, ambition, awareness, promotion as promotion of ESC rights may enable women to attain equality and attain extra-ordinary success subject to provision of international and Islamic law in AJ K.

## 5. Conclusion

Based on foregone discussion, the article has established that interim constitution of AJK (1974) prohibits discrimination against women in any field. Article 4 (17) of the ICA specifically highlights that women should not be discriminated in the services. The provision further notes that special treatment is to be meted out to women. Many laws either promulgated by AJK assembly or adopted from Pakistan, as per constitutional mandate, stipulate that no discrimination should exist against women. While state has formulated relevant policies, even then the status of women's ESC rights has made no significant improvement.

The article reveals that the policies are not properly formulated and implemented. It is argued that policies need to be more vigorously implemented in rural areas especially. For example, in rural areas, female's enrolment in schools is very low, basic health facilities are seriously lacking and job stress for women is a big challenge. These and many other challenges need to be addressed through political will and an effective implementation of law and policies. The Government of AJK has an obligations to promote, protect and fulfil basic rights and ESC rights of women. The Government of AJK is required to take special and extraordinary measures/steps for protection of ESC rights of women. The implementation of such rights in the light of provisions of international law is need of the hour.

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