

Honour Killing In Pakistan: The Law And Practice

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Abstract

Cultural crimes are basically the crimes that take place within the context of culture or under the head of it. As we all know, recently there has been a storm of honour killings which has shocked the country. Honour killing is one of the types of cultural crime present in Pakistan. Honour Killings against in our society is an endemic social issue both in urban and rural areas and increasing at an alarming rate. This study attempts to highlight issues of Honour Killings in KPK and its solutions from an Islamic perspective and law to resolve the menace of Honour Killing. The causes and factors leading to Honour Killings and the consequences upon women and society. The presented strategies are of paramount significance to prevent and control Honour Killings. This study also highlights that Honour Killings is deeply rooted to cultural and social norms that could not be linked to any Islamic teachings. It is hoped that understanding of this issue will be beneficial for Muslim families in KPK.

Key Words: Honour Killing, Islamic Law, Culture, Law, Code,

(I) Introduction

Honour killing means killing a family or relatives, especially a girl or women who is perceived to have brought dishonour on the family’’

Honour killing is a leading social problem in Pakistan. Pakistan is a male dominated society. Control over women is considered a noble act. In Pakistan most of the People live with large

extended families. The eldest male in a family is a head and takes all decisions. The man who kills a woman to protect family honour is called an honourable man. The Pakistani society is based on its customs, culture and traditions mostly inherited from diverse surrounding cultures and ethnic groups. This research explaining the concept of honour killing in the perspective of Islamic law and to explain its laws, their position and purpose in an Islamic society. Focus is that how Islamic law treats honour killing, what position does the Quran and the Sunnah take on this issue and what are the opinions of the Islamic scholars on it.

In Pakistan, violence against women is widely perceived as acceptable. It is inflicted upon women by the state officials or by the citizens acting under a dispensation granted by law, and sometimes by persons whose violent act is deemed acceptable [1]. Women are viewed inferior to be "reined in" by men for the better or, in most cases for the worse. They cannot raise their voice against violence by men, i.e., fathers, brothers and, after marriage, husbands, and their male relatives, who are in control of their physical being. The most common form of violence against women is domestic. However, barring certain exceptions (such as high-profile incidents), domestic violence cases are virtually never reported and therefore, never investigated or prosecuted. The Pakistani legal system fails to criminalize a quite common but highly serious form of domestic violence: marital rape [2] Even complaints against acts of domestic violence that fall under the criminal law, such as assault [3], battery, acid throwing or attempted murder, are routinely ignored or condoned by the state officials and often go unreported by police.

In Pakistan, honour killings are decided by two legal forums, i.e., formal judicial institutions and informal legal system called the tribal justice system. The formal legal system comprises a body of law which combines influences of the English common law, prevailing customary law, and Islamic law. It has a hierarchical court system established by the Constitution. The informal legal system is based on tribal rules, commonly called the "honour code", and is administered by quasi-judicial tribunals, generally called 'jirgas', which are highly biased against women.

Under the formal legal system, honour killing is defined as a murder committed in the name or on the pretext of honour. Murder is adjudicated according to the criminal law of Qisas and Diyat which holds that the offence against a person (including hurt, bodily injury and murder) gives complete right of conviction to the victim and his/her legal heirs, i.e., the victim or his/her legal heirs retain control over the matter including the crime and the criminal. They may choose not to report the crime or not to prosecute the criminal. This law provides the legal heirs with the right to agree to a compromise according to the law. Certain other provisions of criminal law used in an honour killing result in lenient punishments. This discrimination amounts to infringement of constitutional rights of women under which the state is obliged to protect its citizens equally without gender discrimination. Pakistan also must respect international treaties (it is a party to) and customary international law to ensure respect for women's human rights and fundamental freedoms.

Pakistan, being a state party to the Convention on the Elimination of all Forms of Discrimination against Women, is required to take positive steps towards eliminating discrimination, inter alia, violence against women. State officials, rather than responding actively to the violations of

women's right to life, to security, and to being free of discrimination, act through police and judicial system to block access to redress and justice for women victims of violence. The informal judicial system, operating through the jirga, works parallel to the formal judicial institutions. The members of jirga do not respect the laws and principles enshrined in the Constitution, statutes, the Holy Quran, and the Sunnah. They make decisions according to tribal law, which is not codified. Yet these all-male jirgas, where women have no say, have been provided by the state with carte blanche to render whatever verdict they wish entirely at their whims and caprice. Jirga is the highest informal tribunal. There is no revision or appeal to a jirga decision. Constitutional law recognizes the tribal judicial system only in specific areas (including FATA and PATA called special areas) but it is found all over Pakistan. In the special areas formal judicial tribunals have no jurisdiction over a Jirga decision and so there are cases where fundamental rights protected under the Constitutional law are infringed. These jirgas are convened and supported by feudal (landlords) and the state is unable to control them in settled areas of Pakistan. These jirgas work against the interest of women and their decisions are mostly based on stark bias and prejudice against women according to their cultural and religious stereotypes of women's status. Pakistani court system presents its own set of impediments and hurdles for women. The formal judicial institutions of Pakistan have deteriorated over the years, leading to a decline in the quality of judicial services and to a plethora of related problems. Women who make it to a court of law for redress in mostly cases face Pakistan's pre-dominantly conservative judges. The judges often have discriminatory and sexist assumptions about women that prejudice the few cases that reach the court. Magistrates and judges allow defence counsel to introduce inflammatory evidence [4] and launch a character assassination of the victim including questions relating to the victim's sexual history even when it is patently irrelevant. These are some endemic issues in Pakistan. How has the crime of honour killing risen in number and swollen in scope in the presence of Constitutional law which protects the life of all citizens equally? How do honour killings committed in Pakistan make up 25% of the honour killing in the world in the absence of any explicit legal protection under law? What are the loopholes in the criminal law and newly implemented amendments related to the offence of honour killing? What are the flaws in the state administration of justice? What role judiciary is playing and can play to curb this crime? An analysis of the myriad of judicial precedents on the subject reflects personal bias of most judges in cases of honour crimes. Offenders are often condoned, or their sentences are lowered on one pretext or another. Plain murders are referred to, and shamelessly glorified as acts of honour reduced penalties are awarded on the pretext that the alleged offence was committed on 'grave and sudden provocation, permitted or condoned as honour killings "by the community and the law in certain places.

(II) Laws Related to Honor Killing in Pakistan

No codified law in Pakistan provides an exemption from punishment for murder or injury in the cases of honour killing. Honour killing is dealt as a murder crime under the criminal law of Pakistan, inter alia Qisas (punishment equal to the offence) and Diyat (compensation) law based

on the Islamic injunctions. Recently special legal provisions have been promulgated amending the criminal law vide Criminal Amendment Act, 2004 to define and enforce punishment for an offence committed in the name or on the pretext of honour. However, the Qisas and Diyat law protects the perpetrator in honour killing cases. Under Qisas and Diyat law, the victims or his/her legal heirs retain control over the matter including the crime and the criminal. The legal heirs can also pardon the murderer or reach some settlement as a compensation in lieu of punishment. In honour killings, which are often committed by a family member or in connivance with the family, the perpetrator having a relation with the victim and his/her legal heirs also takes advantage of Qisas and Diyat law. There is no substitutive provision in the criminal law of Pakistan which legalizes or provides exemption in the cases of honour killing. However, the right provided to the legal heirs of the victims under Qisas and Diyat law has privatized the crime of honour killing. On the contrary; in tribal areas, honour killings are justified, and honour crimes are sanctioned by the traditions and the tribal rules. In Pakistan, two judicial systems formal and the informal (tribal justice system), working parallel to each other, deal with honour killings. The formal judicial system administers constitutional law, criminal law, Islamic law (shariah) including Qisas and Diyat law with a hierarchical court system presided over by qualified judges in all the four provinces of Pakistan (except for the Federal Shariat Court which has three religious scholars appointed as Judges). The formal judicial system is constitutionally an independent body but General Zia brought in constitutional changes which made the judiciary and legislature effectively subservient to the executive and now "what seems on paper to be a tripartite government of executive, legislative, and judiciary powers turns out to be a long executive arm enveloping and so curtailing both the legislature and the Courts. However, according to Article 247(7) of the Constitution, the Federally Administered Tribal Areas (FATA) and Provincially Administered Tribal Areas (PATA) do not fall under these courts. These tribal areas have their own legal and judicial system largely based on tribal adjudication. This informal judicial system has an informal honour code and a quasi-judicial tribunal generally called jirga either headed by Sardar (colloquial name of feudal) of the tribe or by a body of council appointed by the influential people of the tribe. Against the backdrop of this legally pluralistic adjudication of honour killings criminal laws are used to discriminate against women. Pakistan's constitutional law guarantees equal protection to its citizens. It also guarantees protection of marriage, family, mothers and children besides ensuring full participation of women in a spheres of national life. However, women are discriminated against violating their constitutional rights. Women face a systemic subordination to men determined by the forces of patriarchy across classes, regions, and the rural urban divide? In honour killing cases the provisions of Qisas and Diyat law are used to discriminate against women. In the tribal judicial system, honour killings are legalized suppressing women's constitutional rights.

(a) Fundamental Rights in the Constitutional Law

The Constitution of Pakistan guarantees certain fundamental rights to all its citizens equally without gender discrimination. Article 25 protects those laws made especially for the protection of women and children. Women are given special attention for safeguarding their interests and safety.

Article 8 of the Constitution protects against any law or custom or usage having force of law which is inconsistent with the fundamental rights conferred by the Constitution, stating that such law or custom "shall be void to the extent of its inconsistency". Article 9 of the Constitution guarantees the security of every citizen by stating that "No person shall be deprived of life or liberty, save in accordance with law." Article 35 of the Constitution provides that "the State shall protect the marriage, the family, mother and the child". Such "protection" has so far been counter-productive at the hands of Pakistan's performantly conservative judges, all too eager to confine women within the traditional and discriminatory notions of inequality against the constitutional guarantees. The discriminatory interpretations could easily rely on customs and personal morality. Orthodox interpretations of Islam also provide ready tools for advancing discriminatory judgments? There are laws in Pakistan, including customary laws, which negate the equality provided by the Constitution. To quote a few examples, constitutional law provides fundamental guarantees and special protection to women but customary practices, especially in cases of right of marriage negate them. Special protection to women is provided under Article 25 of the Constitution. But the Qanoon-e-Shadat Order of 1984 says the evidentiary value of a woman's testimony is not equal to that of a man in financial transactions. Under the Zina Ordinance²²¹, women are considered equal partners in offence of Zina, whereas the Frontier Crimes Regulation, 1901 (FCR) defines adultery as a crime committed only by a woman.²²³ In Zina cases a woman's testimony as a victim is not accepted if evidence to prove the allegation is insufficient; it is rather taken as a confession for having committed Zina. Section 14 of the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979, breaches the constitutional equality guaranteed to women in cases of conviction of adultery in a matrimonial relationship. Only the husband can invoke the provision of Li'an provided in this section, not the wife? This provision again brings women to a subordinate level as compared to men. Under Article 151(4) of the Qanun-e-Shahadat Order, 1984 only a woman's character can be impeached in Zina cases. According to the Hudood laws the definition of an adult eligible for the punishment of Hadd²²⁶ discriminates against women: while a male is considered adult when he reaches the age of 18 years, female is considered adult when she reaches the age of 16 or attains puberty, whichever comes first (reaching puberty may vary, starting as early as the age of 11 or 12 years).

(b) Relating Criminal Law to Murder

Laws applicable to the cases of bodily hurt, injury and murder are laid down in Chapter 16 of Pakistan Penal Code (P.P.C.). Before the introduction of Islamic concept of Qisas (punishment equal to the offence) and Diyat (compensation), the principle of grave and sudden provocation was a part of criminal law since its promulgation as an exception to the law of defining culpable homicide as murder under Section 300. However, this exception provided in P.p.C.²³⁰ was reversed by the Shariat Appellate Bench of the Supreme Court in the year 1989, thereby introducing the Islamic concept of Qisas and Diyat. This exception of grave and sudden provocation had invariably been used by the courts while deciding cases of honour crimes.

Provocation was evaluated according to the facts presented and it was at the discretion of the courts to accept the plea of grave and sudden provocation or not. This led to a situation where crimes of passion (involving honour) were taken as the lesser crime of manslaughter instead of cold-blooded murders. The Commission of Inquiry for Women²³⁴ has rejected "honour" as a mitigating circumstance in murder cases and recommended that such killings be treated as simple murders.

(c) Law of Qisas & Diyat (Islamic Law)

Among other statutory laws, the law of Qisas and Diyat covers offences relating to physical injury, manslaughter, and murder. This law has changed the concept of criminal accountability in justice system²³⁶ re-conceptualising the offences in such a way as are not directed against the legal order of the State but against the victim. This has rendered murders of family members a family affair and prosecution and judicial redress negotiable. Murder is defined as an offence of Qatl-i-amd (intended murder) under Section 300 of P.P.C. (Pakistan Penal Code, 1860) with punishment provided in its Section 302 thereof. Under Section 302 of P.P.C. whoever commits the offence of murder shall be subject to (a) punishment by death as Qisas²³⁸ or (b) punishment by death or life imprisonment as ta'zir (punishment other than Qisas) "having regard to the facts and circumstances of the case, if proof in either of the forms specified in section 304 P.P.C. is not available" or (c) punished by imprisonment of either description for a term which may extend to 25 years, where punishment of Qisas is not applicable. Under these provisions, if the murderer voluntarily confesses that he/she has committed the murder, he is liable for the punishment of Qisas. But in case where the evidentiary requirement is not fulfilled as prescribed in Section 304 P.P.C. he can still be punished under Taz'ir (which includes the death sentence and life imprisonment) but this is subject to the facts and circumstances of the case. This section is invoked in cases where the judge considering the 'mitigating circumstances of grave and sudden provocation' lets the perpetrator escape the punishment of Qisas under Section 302 (b) P.P.C. Sections 306 and 307 of P.P.C. have some loopholes which people use in the cases of honour killing to get away with the punishment of Qisas. According to Section 306, the punishment of Qisas shall not be applicable where murder is committed by a minor or insane person or in cases where the victim is a child or grandchild of the offender. This clause saves fathers or grandfathers, who kill their daughters in the name of honour from the punishment of Qisas. The last clause of Section 306 protects the offender from the punishment of Qisas if any legal heir of the victim is a direct descendant of the offender. This clause saves the man from Qisas in cases where his wife (victim) has left a child who, besides being her legal heir, is also a direct descendant of the offender. Moreover, the perpetrator may escape the punishment of Qisas through the application of Section 307 P.P.C. according to which Qisas is not enforceable in cases of murder where any legal heir voluntarily waives his right of Qisas as prescribed in Section 309 or compounds his right of Qisas under Section 310 P.P.C.²⁴⁴ In the criminal law of Pakistan certain offences are compoundable. Section 345 of the Criminal Procedure Code (Cr.P.C.) provides a schedule of such offences and the persons by whom the offence may be compounded. The compounding of an offence signifies that the victim or his legal

heirs can obtain compensation from the perpetrator and in return can agree that the perpetrator will not be punished?⁴⁵ Originally, murder was not a compoundable offence. However, at the time of the introduction of the Qisas & Diyat law in the P.P.C., a corresponding amendment was made in Section 345 (2) Cr.P.C. whereby, inter alia, the offence of murder was made a compoundable offence by the legal heirs of the victim. According to the Qisas & Diyat law, Section 338-E P.P.C. states that all offences under Chapter 16 of P.P.C. (i.e. offences affecting the human body) can be waived or compounded in the manner provided in Sections 309 (i.e. a sane adult legal heir can waive his right of Qisas in murder without compensation) & 310 P.P.C. (which provides compounding of Qisas on accepting badl-i-sulh ²⁴⁶ (i.e. compensation), subject to the provisions of Section 345 Cr.P.C. i.e. with the permission of the court and only by the persons mentioned in the schedule. The Section also empowers the court to either acquit the accused or to award punishment under ta'zir even after waiver or compounding of offence. According to Section 311 P.P.C. an offender, against whom the right of Qisas has been waived or compounded, can be punished with imprisonment under ta'zir²⁴⁷ for a maximum term of 14 years. According to Section 307 P.P.C. Qisas for murder cannot be enforced where it has been waived or compounded, inter alia, under Sections 309 and 310 P.P.C. The provisions of Sections 309 and 310 P.P.C. are applicable only in the cases where the punishment is under Qisas and are in applicable, when the conviction is under ta'zir. In such cases, Section 345 (2) of Cr.P.C. is invoked to reach a compromise. These provisions in the criminal law make the capital offence of "murder" compoundable and exempt certain persons from being punished with Qisas [5]. These provisions have in effect privatised murder. Under the present legal regime anybody can simply get away with the crime (of murder) by paying off money as compensation to the legal heirs of the victim. In most of the cases of holy our killings it is the family, the legal heirs of the victim, who forgive the offender, also their relation.

Conclusion

Honour killings in Pakistan have a long-standing cultural background of upholding patriarchal norms. This cultural practice evolved with the passage of time regressing women's rights, security, and dignity. This cultural tradition, upheld by those who do not want to give women equal rights, is now used as a tool to control women and as a justification for violence inflicted on them. They keep women subordinate violating their legal and religious, Islamic in the case of Muslim women, rights. Islam condemns honour killing and has protected women. Since custom is the inner core and most influential of the norms regulating and influencing the viewpoint of millions of illiterate Muslim men and women, Islamic teachings which provide women equal rights and protect Them should be used to save them from being misinformed and establishing wrong beliefs.

If promote the real Islamic rights of women and propagate the provisions of Islam that protect women especially against allegation on their chastity and character⁵²⁴, the problem will be easier to cope with. The crime is more prevalent in KPK province and the rural areas of the country where people follow their customs and toe Islamic clerics rather than the law.

If Islamic institutions help spread the Interpretation of Quranic verses which protect and respect women's rights and make people aware of Honor killing, and of the punishment of false accusation, the crime can be controlled to a great extent.

Maintaining a statistical data is very important to know the number of and reasons for honour killings for making strategies to curb the crime. The Government of Pakistan has made no effort to establish a data base of victims of honour killing. It is only the NGOs compile the information and statistical data based on the Gases reported in newspapers. However, many cases do not even get reported in remote areas of KPK Pakistan where this crime is practiced very frequently and openly as a custom and tradition. The government should make efforts to set up a structure in districts to collect information for compiling a statistical data. Statistics on the cases in which legal heirs of a victim compounded the murder under the criminal law could be used as evidence to highlight the lacuna in the criminal law and to establish how they are used against women in getting away with the crime, especially the honour killing.

References

1. Austin Sarat, "Situating Law Between the Realities of Violence and the Claims of Justice: An Introduction" in Austin Sarat, ed., *Law, Violence, and The Possibility of Justice* (Princeton: Princeton University Press, 2001) 3 at 3
2. s. 375 of The Pakistan Penal Code, 1860 (Act No. XLV of 1860) [PPC] exempts a man's sexual intercourse with his wife (provided she is more than 13 years of age) from the definition of rape. This section has been amended by s. 19 of The Offences of Zina (Enforcement of Hadd) Ordinance, 1979 [Zina Ordinance] which now defines rape under s. 4 of Zina Ordinance as "A man and a woman are said to have committed 'Zina' if they wilfully have sexual intercourse without being validly married to each other". There is no provision now in criminal law for the offence of marital rape no matter what is the age of wife.
3. S. 351 of PPC defines assault as "whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault."
4. Article 151(4) of Qanun-e-Shahadat Order, 1984, (Islamic law of evidence) reads as follows "when a man is prosecuted for rape or an attempt to ravish, it may be shown that prosecutrix was of generally immoral character." Under this provision lawyers take leeway to attack the character of women. Relevant case law upholds as "In prosecution for rape, general immoral character of prosecutrix may be shown. SubArticle (4) of Article 151 refers to such evidence as that her general reputation was that of a prostitute or that she had the general reputation of going about and committing immoral acts with a number of men.
5. Rashida Patel, *Woman versus Man: Socio Legal Gender Inequality in Pakistan*, 2003