

Honor Related Violence Against Women in Pakistan¹

Hannah Irfan

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Violence targeting women in Pakistan manifests itself in a variety of forms and is usually carried out together with a combination of other human and women's rights violations, all of which form part of the process of the physical and psychological abuse that a majority of women in this country suffer from.² Honor related crimes are one type of violence that primarily targets women. These crimes encompass a range of manifestations of violence from unlawful confinement, assault, acid burning, rape to, of course the most classic and extreme form, cold blooded murder on the pretext of 'honor' – Honor Killings.³

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² Approximately seventy-percent to ninety-percent of Pakistani women are subjected to domestic violence. "Crime or Custom? Violence Against Women in Pakistan," Human Rights Watch 1999, p. 1.

³ Honor Killings occur in all four provinces of Pakistan and the tribal areas adjoining Afghanistan. The practice is referred to by different names: *KalaKali* in Punjab, *Karkari* in Sind, *Siyakar* in Balochistan, *taurtoora* in N.W.F.P.

Crimes committed allegedly for honor are so defined because they occur in a social setting where the “ideal of masculinity is underpinned by a notion of ‘honor’ – of an individual man, or family, or community – and is fundamentally connected to policing female behaviour and sexuality.”⁴ Honor of the male members of the family is understood to reside in the bodies of the women of the family, and in protecting this honor the men aim to regulate and direct women’s sexuality and freedom to exercise any control over their own choices/lives.⁵ Any action or perceived transgression, therefore, on the part of the women to break out of this familial setting or to defy the authority of the male members of her family requires a response that not only punishes the transgressor but, in effect, also helps restore the ‘lost’ honor and reassert the masculinity of the male family members within the society or community. Unfortunately the only responses found adequate enough to achieve this multi purpose aim are those that reaffirm the physical and social dominance of the male members over the female members and manifests itself in acts of violence against the women; illegal confinement, forced marriages, cutting off of the nose, acid burning, stove burning, rape and cold blooded murder.

The term ‘crimes of honor’ is not without its complexities and critiques. Hosain and Welchman come closest to defining it in its colloquial context stating that ‘crimes of honor’ are those “where the publicly articulated justification [for the crime] is attributed to a social order claimed to require the preservation of a concept of honor which is vested in male control over women, particularly over women’s sexual conduct.”⁶ Instances of this type of violence against women are clubbed together under this terminology and are “characterized by the ‘motivation’ rather than by the perpetrator or form of manifestation” of the criminal act.⁷

Table 1. Reported cases of violence against women for the year 2007

<i>Sexual Harassment</i>	
Gang-rape	354
Rape	377
Stripping	21
Harassment and other	3
<i>Suicide</i>	
Suicide	692
Attempted suicide	608

⁴ COOMARASWAMY, Radhika, UN Special Rapporteur on violence against women. Preface: Violence against women and ‘crimes of honor’. In Lynn Welchman and Sara Hossain (Ed.) *Honor – Crimes, Paradigms, and Violence Against Women*, Oxford University Press 2005

⁵ In an interview Neelam Hussein Director Simorgh, Women’s Resource and Publication Centre and a woman rights activist states: In the fight between men over preservation of their ‘honor’ it is the woman’s body that becomes the battle ground. The woman who is simultaneously absent and present, without honor in her own right, her body, the archetypal symbol of honor itself, becomes the terrain across which the fight is to be fought. *Interview on/02/2008*

⁶ HOSSAIN, Sara. WELCHMAN, Lynn. Introduction: ‘Honor’, rights and wrongs. In Lynn Welchman and Sara Hossain (Ed.) *Honor – Crimes, Paradigms, and Violence Against Women*, Oxford University Press 2005

⁷ HOSSAIN, Sara. WELCHMAN, Lynn. Op. Cit.

<i>Killings</i>	
Honor killing	280
Karo kari	356
Murder	566
<i>Kidnapping</i>	
Kidnapping	736
<i>Domestic Violence</i>	
All categories	131
<i>Burnings</i>	
All categories	143
<i>Corporal Punishment</i>	
Torture	3
<i>Prisons</i>	
Injury	1
Torture	3
<i>Death Penalty</i>	
Awarded	2
<i>Sectarian Violence</i>	
Wounded or killed	1

Source: Human Rights Commission of Pakistan.

By defining the crime in its social setting and providing a motivation for it based on normative traditional and cultural dogmas, an otherwise wrongful and illegal act, that should fall under clearly defined criminal laws and in a majority of cases constitutes a statutory offence, is presented as a tolerable customary practice, albeit not a wholly desirable one. The victim in such cases is made a party to the crime itself, as she is seen to share the blame for the violence perpetrated against her because of her own transgression and rebellion against the existing social norms, while the guilt of the criminal is mitigated as he is deemed to operate within a socially justifiable code of conduct.⁸

The international focus on ‘crimes of honor’ sometimes tends to follow certain obstructive stereotypes by linking traditional and customary rationales for such crimes to issues of religion as well. It is generally portrayed as yet another instance of gender discrimination within Muslim societies. Honor related crimes, although not restricted to these countries, continue to exist in modern Muslim states like Pakistan, Jordan, Turkey, Egypt,

⁸ *Imam Baksh vs. The State* 1999 YLR 19 The accused killed his (much younger) wife found in a compromising position with his brother. The girl’s family joined in the attack and subsequently disowned the body. The court considered the family’s reaction as ‘proof of the disgrace brought by her (the victim) to the whole family by her conduct.’

Palestine and Syria, however, within these states as well ‘crimes of honor’ occur across religions and cultures and incidents of honor crimes are found within the non-Muslim population as well.⁹ Such crimes occur in various states and regions around the world including Western Europe, Latin America and Africa, as well as amongst the Hindu population in India and the Christian population in Pakistan.¹⁰

A sociological analysis of the proliferation of this practice in Muslim societies has been conducted by many anthropologists and scholars and it is established that there is no religious sanctioning for such crimes within the sources of Islamic law and the practice of its founder, in fact a number of renowned Muslim scholars and religious leaders have publicly condemned such acts as criminal offences liable to/for corporal punishment.¹¹

Arguments that support the view that Islam encourages this subservient role of women usually focus on Islamic injunctions that strictly regulate the sexuality of its members. An-Nai’m states that ‘the fact of the matter is that families and communities have played a role in regulating the sexual behavior of their members in every human society throughout history.’ He argues that the question to be determined is not whether a society ought to regulate the sexuality of its members at all or not, but, in the context of crimes of honor, it is the scope and manner of this regulation that manifests itself in violent forms is what needs to be addressed. In other words these crimes need to be tackled as violent and discriminatory methods of regulation of sexuality.¹² What would be counterproductive would be suggest that the family and community have no right to regulate sexuality at all. Therefore, when developing strategies to tackle the issue of honor crimes there is a need to maintain a distinction between challenges to the level of liberalization of a particular community and the challenges to a practice that is excessive and violent and discriminates against women. It is necessary to de-link such crimes from Islamic law and tradition, especially in societies where religion has become the domain of a clergy with diverse interests and motivations for maintaining the status quo and religious reform is a complicated, often taboo subject characterized by high strung religious fervor and deep seeded mistrust of universal values and morality.

Honor crimes are a form of violence against women, and should be recognized as a fundamental women’s rights issue that thrives due to a patriarchal social mind set that is supported and encouraged by a legal state structure that aims to control women behavior and conduct. By taking the human rights approach the state mechanism and state actors can be

⁹ Dianna Nami the founder of the London based International Campaign Against Honor Killings stated in a interview that although there are no correct statistics as to the number of incidents of Honor Killings all over the world in her estimation between 5000 to 10000 deaths may be attributed to Honor related violence each year, and they occur in more than 54 countries. RIGHTS: States fuel ‘Honor Killings’. Interview to Abderrahim El Ouali of Inter Press Service, May 09 2008

¹⁰ A 17 year old Kurdish girl, Dua Khalil, from Iraq who was beaten and stoned to death by a mob of her clan-men who alleged that Dua had married a boy from a different religious group. Dua belonged to the Yazidi religion and her alleged husband was Muslim Sunni. This incident highlights that such practices have no religious boundaries and are prevalent in certain cultures.
<http://www.cnn.com/2007/WORLD/meast/05/18/iraq.honorkilling/index.html>

¹¹ “The practice of Honor Killings is more prevalent although not limited to countries where the majority of the population is Muslim. In this regard it should be noted that a number of renowned Islamic leaders and scholars have publicly condemned this practice and clarified that it has no religious basis.” Asma Jehangir, Report of the Special Rapporteur on extra judicial, summary or arbitrary executions, UN Doc. E/CN.4/2000/3, 25 January 2000, para. 78.

¹² AN-NA’IM, Abdullahi Ahmed, The role of community discourse in combating crimes of honor: preliminary assessment and prospects. In Lynn Welchman and Sara Hossain (Ed.) Op. cit.

made responsible for such violations even if they occur in the private domain of family and community. In Pakistan it is the state apparatus itself that is often responsible for protecting those who perpetrate these crimes and the various organs of the state have systemically allowed this practice to thrive, evolve and take root in Pakistani society. The individuals forming part of the state apparatus responsible for the protection of rights and for guaranteeing equality and justice to the citizens; the legislators, the police the judiciary, all belong to the same patriarchal social structure and have let their misogynistic attitudes influence the development of social and legal norms within Pakistan. It is, therefore, also necessary that any strategy that aims to tackle the traditional practice of honor crimes within Pakistan, in order to be sustainable and effectively implemented, will have to be devised with the consent and cooperation of the community. An-Na'im promotes the 'community discourse' "as a means of transforming family and community attitudes about these crimes as well as prompting and supporting state officials and institutions to combat them more effectively."¹³

Rights activists and feminists are opposed to the use of the term 'honor' in conjunction with criminal acts that target women particularly, especially in the context of 'honor killings', as this implies an acceptance of the notion that women embody the honor of males and thus promotes a concept of honor that endorses or indeed requires violence against women and at the least suppression of their rights, for it to remain unharmed and intact. It also connotes that men who commit crimes with the motivation of preserving control over female family members or to assert their masculinity over the women in their families are in some way 'principled' and 'rightly guided', and while their actions (murder, rape, assault) may be wrong/illegal, the impetus for these crimes is grounded in 'honorable' intentions.¹⁴

This concept of 'honor' and its preservation within a society is upheld by a strict code of conduct by the members of a community and shapes and forms the way women are regarded in a particular culture and dictates the rules that determine acceptable women behaviour and their sexual conduct.¹⁵ This system of rules need not be restricted to the customary, cultural realm alone and in some cases shape and influence the formal system of law making where these societal concepts create the consensus upon which the development and formulation of legal rules and procedures are based.¹⁶

The developments in the Pakistani criminal legal system from 1947, when the state gained its independence from British colonial rule, to date, in cases of honor related violence against women, are definitely a reflection of the societal attitudes of the population towards women and their approved role within this society. This societal attitude in turn has had a deep and debilitating impact on the rights of women suffering from such violence and their ability to seek and get justice. The denial of the right of women victims of violence to get

¹³ AN-NA'IM, Abdullahi Ahmed, Op. Cit.

¹⁴ The High court stated illicit relationship in a Muslim society were not acceptable and the actions of a 'ghairatmand' (honorable) father and brother were both natural and needed proper realisation by the court. *Akbar vs. The State* (1997 PCr.LJ 1887 Lahore)

¹⁵ "In fact, honor and shame are two parallel states, honor is masculine, shame is feminine. Just as men have honor, women have shame. A woman's shame summarizes her public reputation and social position in much the same manner as honor does for men... Those who kill are courageous guardians of the ultimate value (men) and those who get killed (women) are guilty of tarnishing the honor of the man, family, tribe and village." Nafisa Shah, Women in Revolt, In the *Weekly Review*, 4-10 March 1999, Dawn News.

¹⁶ KOLLAPEN, Jody. Chairperson of the South African Human Rights Commission, keynote address on "Access to Justice within the South African context", Round-table discussion hosted by the Human Rights and Governance Programme at the Open Society Foundation for South Africa on 22 July 2003, Johannesburg.

justice begins from their homes and families and this unjust treatment is reflected within the larger community to which they belong. The situation rarely improves for the few women who actually dare to approach the formal state institutions put in place to mete out justice to the citizens. With regard to violence against women, therefore, responsibility and accountability is a very complex issue. The family, the community and the state are all implicated in providing impunity to the perpetrator and viewing his criminal acts as normal and acceptable reactions and behaviour within society. They consider cases of violence against women as a private family matter that ought not be brought out in public courts, systematically denying that a serious human rights violation has been committed.¹⁷

The issue of access to justice with regards to the legal system should be defined both broadly and narrowly. As the term allows, when broadly defined the concept of access to justice covers the entire machinery involved in law making, interpretation and implementation. Whereas a narrow definition would refer to facilities available to the victims; like access to legal services and other state services, the quality of the service providers and the level of accessibility within the legal infrastructure. The Government of Pakistan (GOP) has launched an Access to Justice Program (AJP) with a loan from the Asian Development Bank (ADB) to implement legislative, judicial, police and administrative reforms in the country to strengthen the system of administration of justice. The main objective of the AJP was to increase access for the poor and to develop a basic legal and logistical infrastructure that could form the bases for further improvement.¹⁸ Work carried out under the AJP varied from technical support in the area of information technology for the courts to training of the judiciary. The program has completed its first phase, however, its success is difficult to measure, especially in view of the current judicial crisis in the country and regular boycotts of courts by the lawyers. One important aspect that the AJP overlooks and does not address adequately is the issue of women's rights and access to justice in this context, therefore, for the purposes of this paper, any achievements thus far of the AJP have had little or no impact on the plight of women seeking justice from the courts.

Furthermore, when assessing the access to justice for the women in Pakistan the discussion cannot remain confined to access to the courts or tribunals that adjudicate or mediate. According to the UNDP definition "Access to justice entails much more than improving an individual's access to courts or guaranteeing legal representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and equitable."¹⁹

Although the UNDP does expand the scope of the concept, it still remains too narrow an interpretation, although a very important component of access to justice. Access to justice has to be defined broadly to look beyond just the formal legal system and towards the non-state actors, those working outside the realm of the legal system that are also given the authority and called upon in most cases to be the bestowers of justice by the community,

¹⁷ "Impunity: A Definition: Impunity, literally the absence of punishment, is the failure to bring to justice perpetrators of human rights violations. Most acts of violence against women are never investigated, and perpetrators commit their crimes safe in the knowledge that they will never face arrest, prosecution or punishment. Impunity for violence against women contributes to a climate where such acts are seen as normal and acceptable rather than criminal, where women do not seek justice because they know they will not gain it, where the original pain and suffering are prolonged and aggravated by the denial that a serious violation of human rights has been committed. While investigation and prosecution are the responsibility of the state, individuals and communities have vital roles to play in overcoming impunity." *It's in our hand. Stop Violence Against Women*, Amnesty International Publication, 2004.

¹⁸ For details of the programme visit the Ministry of Law, Justice and Human Rights, GOP web page: http://www.pakistan.gov.pk/divisions/ContentInfo.jsp?DivID=19&cPath =175_179&ContentID=482

¹⁹ UNDP, *Access to Justice: Practice Note* (Draft 1), 8/3/2004, at 3

especially in the context of violence against women in Pakistan. The informal system of local tribunals guided by local and customary law are increasingly being approached by those disappointed by the formal system, to settle a variety of disputes, including women rights issues, and, therefore, cannot be ignored for the purposes of this paper.

The aim is to examine the various routes a victim of honor related violence might take to seek justice, so as to assess where the impediments within the available systems lie and what hurdles face women victims in particular. This study looks at the procedures, the formal laws, judicial pronouncements and the cultural rules that deal with such acts of violence, to highlight how the societal concept of women and their acceptable role in society has influenced the development of these institutions, both formal and informal, and the rules that govern them, particularly when dealing with honor related crimes.

I. The Pakistani Legal System

Honor Crimes flourish in a society where the patriarchal social structure, wherein the status of women is delegated to that of a passive object whose sexuality may be controlled, is protected by a legal system that aims to preserve this degenerate socio-economic and cultural backdrop within which women are expected to seek justice.²⁰

Table 2. Figures for ‘honor killings’ 1998 – 2003

Reported total killed	Male victims	Female victims	Cases registered	Compromised	Pending in courts
4,101	1,327	2,774	3,451	2,028	1,262

Source: The News, 10 July 2004, quoting the Federal Minister of the Interior.

The term ‘legal system’ with reference to ‘Honor Crimes’ in Pakistan is broadly divided into two parallel running systems that mete out their own form of ‘justice’ in disputes relating to honor related violence.²¹ The criminal legal system based on statutory laws includes the legislators, the judiciary and the law enforcement agencies, while on the informal side the tribal and local traditions and customs, tribal leaders and religious interpreters form the legal structure. The formal legal system that operates under statutory law is mostly implemented in urban and semi-urban areas, while more popularly in the rural and tribal areas local customary courts (*Jirgas* and *Panchayats*) pass decisions that are respected and implemented by the community.²²

²⁰ ABEYESEKERA, Sunila. On the Violence of Patriarchy, Women and Media Collective, Sri Lanka, *In the Court of Women*, Simorgh Publication 1994

²¹ KHAN, Tahira S., *Beyond Honor : A Historical Materialist Explanation of Honor Related Violence*, Oxford University Press, 2006.

²² Mukhtar Mai a victim herself of tribal sentencing, explains the way the local tribunals or *jirgas* operate in the rural areas in Pakistan, *In the name of Honor: A Memoir*, Virago Press, 2007

Hence for a complete analysis of what impedes or aids a woman's access to justice in cases where she is a victim of honor related violence, all the factors mentioned above, which together make up the 'legal system' that aims to deal with such crimes, need to be evaluated.

Statutory developments and the current legislation

I 1. The Pakistan Penal Code

Upon independence in 1947, Pakistan inherited the legal system in place in the Indian sub-continent during the British colonial rule. The common law system was inherited by the new state and its criminal justice system modelled after the English legal system. The Pakistan Penal Code (PPC) (previously the British Penal Code 1860) is the main legislation regulating criminal acts in the country. Over the years since independence several amendments have been made to the PPC and many religious provisions have been incorporated within it, particularly following the incorporation of the Constitutional requirement (1973) that all laws of the land be brought into conformity with the *Quran* and *Sunnah*.²³

Before the 'religious' amendments though, which were brought about in the 1970s by the then autocratic government's 'Islamisation' policy, the British penal code itself incorporated a concept of female 'modesty' and 'chastity' and that of the protection of 'honor' of those male members who held legal control over *their* women. Thus under this archaic law women were not considered individuals that needed protection of the law directly, but in fact were put in the charge of a legal ward or guardian. Removal from this circle of *male* trust was then seen as a crime ('enticement' of married women, kidnapping and abduction from legal guardian) even in cases where she exercised her own choice to associate with males outside the prohibited degree.²⁴

The Pakistan Penal Code, in its original form, also contained provisions whereby causing the death of a person due to grave and sudden provocation was defined as culpable homicide not amounting to murder.²⁵ This provided ample discretion to courts and judges to liberally interpret the provisions of these sections, letting their own social and class biases dictate their judgements in cases relating to offences against women. The bias and the trend of gender discrimination by the judiciary are easily traced in the judgements relating to cases of violence against women (these are discussed in greater detail in the section dealing with the judiciary).

I 2. Law Of Qisas and Diyat

Under the military dictatorship of Zia-ul-Haq (late 1970s and 80s) began the process of political *Islamisation* in Pakistan. It was during this time that the infamous and

²³ <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html> The Pakistan Penal Code (Act XLV of 1860)

²⁴ WARRAICH, Sohail, A. Op. cit.

²⁵ Exception 1 to Section 300 PPC stated: "Culpable homicide is not murder if the offender, while deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident."

controversial Hudood Ordinances (relating to sexual offences) became part of the criminal laws of Pakistan.²⁶ This process brought about certain important constitutional amendments, which resulted in the incorporation of the Objectives Resolution through Article 2-A into the parent law of the country and hence made it justiciable²⁷ where all laws could now be examined up by the Federal Shariat Court (created under Article 203C(I) as part of the process) to determine whether they were in conformity with the injunctions of Islam.

Thus, in 1989 the Supreme Court Shariat Appellate Bench through its judgement declared the prevalent laws on murder and bodily hurt under the PPC as repugnant to Islamic law and issued directions to the federal government to amend these provisions within a stipulated deadline.

The result was the introduction in 1991 of the Criminal Law (Fourth Amendment) (Qisas and Diyat) Ordinance (the Qisas and Diyat Law). On the one hand the Qisas and Diyat Law did away with the provisions relating to 'grave and sudden provocation' and declared that every unnatural death of a person by another person would be considered murder, thereby doing away with all categories of manslaughter and non-culpable homicide.

Under the 1991 law the offence of murder is to be made punishable by a death sentence (Qisas - Retaliation) where either the accused confesses to the crime to the satisfaction of the court or where there are a requisite number of credible eyewitnesses of the offence.²⁸ Where these evidentiary requirements are not fulfilled the court has the discretion to pass a sentence of imprisonment up to life imprisonment (25 years) or death (Tazir).²⁹ There are certain instants in which the offender may be exempted from punishment under either qisas or tazir. In cases where the victim is either the child or grandchild of the offender or where the offender is the spouse of the victim and there are children from the marriage, the courts have the discretion to impose up to a maximum sentence of 14 years of imprisonment only (diyat).³⁰

Even though the new law did away with the defence of 'grave and sudden provocation', the provisions enacted there under had a profound impact on cases of 'honor killings'. According to the figures issued by the Human Rights Commission of Pakistan in the year 1999, out of the 303 women reported by national dailies as having been killed on the pretext of 'honor', 269 were known to their killers. A majority out of these women were either killed by their brother, husband, father or son. The law, therefore, automatically exempts certain offenders who are related to their victims, from a maximum sentence of death or life imprisonment.

Under Section 302 (c) the court also has the discretion as to the minimum sentence imposed, depending on the circumstances of the case. As will be seen in the section on judicial attitudes later, the courts have usually exploited this discretion to reflect their own social and traditional biases. The judiciary allows its misogynistic view of the role of women in Pakistani and Muslim society to influence their judgements by mitigating sentences of

²⁶ Hudood Ordinances promulgated in 1979, includes Zina Ordinance, the law governing theft, consumption of alcohol, Qazf (perjury) etc.

²⁷ The Objectives Resolution previous to this had been a preambular part of all constitutions and operated as a set of informal guidelines to lawmakers to ensure that all laws enacted were in conformity with the laws of the Quran and Sunnah.

²⁸ PPC SECTION 304

²⁹ PPC SECTION 302 (b)

³⁰ PPC SECTION 308

offenders in cases where the female victim has transgressed these ‘so-called’ traditions and norms.

The ‘Islamisation’ of the criminal procedures also resulted in the introduction of provisions of Section 309 and 310 of the PPC that allow the heirs of a murder victim the right to ‘forgive’ the accused completely or to reach a compromise whereby the accused is set free upon payment of compensation to the victim’s heirs, known as ‘compounding the offence’. A Supreme Court Judge explained the Islamic laws on compromise between the victim’s family and the accused in the following manner:

“In Islam, the individual victim or his heirs retain from the beginning to the end entire control over the matter including the crime and the criminal. They may not report it; they may not prosecute the offender. They may abandon prosecution of their free will. They may pardon the criminal at any stage before the execution of the sentence. They may accept monetary or other compensation to purge the crime and the criminal. They may compromise. They may accept *qisas* [punishment equal to the offence] from the criminal. The state cannot impede but must do its best to assist them in achieving their object and in appropriately exercising their rights.”³¹

In cases of honor killings this ‘privatisation’ of murder cases result in legal absurdity where in most cases the victim’s heirs and the accused are one and the same and it is seen that very often in cases of honor violence the accused gets away without any punishment.³² As is apparent from the statement of the Supreme Court Judge, the state takes a back seat in cases where the family ‘takes over’ the proceedings and the court does not deem it necessary to monitor the process of negotiations between the two parties (it is in fact most often an out of court matter).

Prior to this change, the state was a party to murder cases, which were non-compoundable. As noted by a criminal lawyer Hassam Q. Shah, there are a lot of economic fallouts of such provisions where the poor “may be cornered into compromising even for the most heinous crimes in lieu of a hefty payoff, for instance. This promotes the practice of settling murder cases, and especially cases of *karo kari* through a compromise or *razinama*”.³³ The crime of murder thus becomes an offence against the victim’s family rather than against the state and subject to social economic and cultural norms as opposed to legally enforceable rules.

I. 3. The Criminal Law (Amendment) Act 2004, adopted on the 26th of October 2004

As the courts struggled with demarcating the legal boundaries when laying down the law in cases dealing with honor crimes, in particular murder cases, civil society was witnessing a simultaneous rise in incidents of honor killings and perhaps becoming more aware of the types and the kinds of violence women had to face on the pretext of honor. Hence the court’s ability to tackle this rising problem was becoming the focus of much

³¹ Federation of Pakistan through Secr. Min. of Law vs. S. Gul Hassan Khan, PLD 1989 SC 633

³² According to the Human Rights Commission of Pakistan, the persons accused of honor killings between 1998 and 2002 involved 462 persons who were brothers, 395 persons who were husbands, 217 persons who were relatives, 103 persons who were fathers, 60 persons who were involved, 58 persons who were sons and 44 unknown persons.

³³ SHAH, Hassam Qadir ‘Don’t let them get away with murder’ Shirkat Gah Women’s Resource Centre, 2002

criticism. Despite a few (and far between) judgements that condemned such crimes the erratic stance and the erroneous development of precedence gave rise to concerns that perhaps it was time not to rely anymore on judicial discretion and associated biases, but have a legislative decree once and for all dealing with the issue and, at least at the formal level, ending the official condoning of the practice.³⁴

The then government was also intent on promoting an 'enlightened' and 'moderate' image in line with its role as the 'front line state' fighting Islamic terrorism together with the additional feather in its cap for a 17% percent increase in women participation in the national and provincial legislature, there was a need to show some movement on the women's rights front. Hence the government moved the Criminal Law (Amendment) Bill of 2004 (the Bill).

As the ACHR aptly states, the Government 'bulldozed' the amendment bill through Parliament and towards adoption and the process, or rather lack thereof, of consultations with various interest groups or stakeholders, over the draft bill remained conspicuously absent.³⁵ The Bill became law amidst an opposition walkout, however, this did not necessarily only include those who wanted to tighten the laws relating to Honor Killings, but also those right-wing parties who thought the Bill unnecessary and preferred to maintain status quo.

Although termed the 'Honor Killing Bill' by the Government, critics state that the recent amendment and first ever move by any Government to officially address the issue of honor killings, is nothing more than a farce.³⁶ This latest legislative move does nothing to effect the application of the earlier mentioned laws of Qisas and Diyat that have resulted in the 'privatisation' of honor crimes and put them out of the realm of state responsibility. This undermines the fundamental right to life as enshrined in Article 9 of the Constitution, where the state ensures the protection of this right.³⁷

Apart from its very limited legal impact there is criticism that such legislative moves do not change the prevailing mindsets and the social acceptance of such crimes remains intact, and this is worsened due to the fact that the law in most cases aims to gloss over the real issues and does so in a manner that fails to address the most obvious social realities of such crimes.

The 2004 Bill attempts to address the issue of 'Honor Crimes' (*karo-kari* or *siyah kari*) and such customary practices that have been of concern to human rights organisations and civil society and have gained in significance over the last few years.³⁸ The term 'Honor Crimes' includes 'honor killings', however, this mitigated terminology has been deliberately inserted instead to make it more palatable to various sections of society.³⁹ The Bill sought an

³⁴ Recommendation by Amnesty International: Adopt legislation which makes domestic violence in all its manifestations a criminal offence. Provide women victims of violence with access to mechanisms of justice and to just and effective remedies for harm they have suffered." In Amnesty International Report: Pakistan: Honor Killings of Girls and Women, Amnesty International Publication, 1999

³⁵ Asian Centre for Human Rights Report, Confronting Honor Killings, <http://www.countercurrents.org/hr-achr291004.htm>, Oct 29 2004

³⁶ SARWAR, Beena, No Compromise on Murder, The News, Sunday Oct 17 2004

³⁷ WARRAICH, Sohail Akbar, HOSSAIN, Sara. WELCHMAN, Lynn. (eds) 2005, Op. Cit

³⁸ The statement of objects and reasons of the Bill states that the "issue of honor-killing and other honor crimes committed in the name of 'karo-kari, siyah-kari and similar other customs has always been a matter of concern of human rights organizations and the public which has assumed more significance in the recent years".

³⁹ Under amended Section 299, Act XLY of 1860 PPC, 'honor crime' will mean an offence committed in the name of 'Ghairat' or honor or for "vindication of Ghairat or honor and includes honor killing and the offence committed on the pretext of karo-kari, siyah-kari or similar other customs".

amendment to the PPC by introducing higher punishments for 'Crimes of Honor', prohibiting the practice of giving of girls in marriage as a gesture of truce in a dispute and included 'hurt to a victim' as falling under the definition of 'honor crimes' as well.⁴⁰

One of the achievements of the Honor Bill 2004 was that it introduced a proviso to Section 302 (c) of the PPC, which ensured that crimes committed on the pretext of honor would be liable for maximum punishment under the provisions of qisas or tazir and not subject to judicial discretion under the said Section 302(c). Previously, the provision of Section 302(c) left a wide discretion for the courts to determine that according to 'the injunctions of Islam' in certain incidents of murder maximum punishment (qisas) was not applicable. The determination of whether such circumstances existed in a particular case was subject only to the courts discretion. Most Honor Crimes were dealt with under this provision with only light sentences awarded to the offenders.⁴¹ Under the now amended Section 302 PPC honor crimes carry a maximum imprisonment of 25 years and not less than 10 years for the offence.

The Bill, however, did not address the real issue of waiver or compounding in which the perpetrators were given the advantage of seeking forgiveness from the heir of the victim. The major flaw in the Qisas and Diyat Law is that it makes such offences open to compromise as a private matter between two parties. The heirs of the victim can forgive the murderer in the name of God without receiving any compensation or diyat (Section 309), or compromise after receiving diyat (Section 310). In cases of Honor related violence the victims who are mostly women are the most vulnerable members of the family and community. Under the current Qisas and Diyat Law, as applied in cases of honor crimes, if and when the case reaches a court of law, the victim's family may 'pardon' the murderer (who most often is one of them), or be pressurised to accept diyat ('blood-money') as compensation. The murderer then goes free. Impunity has been the single most important factor encouraging honor killings in Pakistan. The Criminal Law Amendment Bill, 2004 does not address the issue of waiving and compounding, and hence offers little by way of providing justice to the victims as it is most likely that the perpetrators will continue to be able to escape punishment.

II. Judicial attitudes and current trends

Another major challenge faced by women victims of honor related violence is that even where the law tries to regulate the classification of crimes as 'honor crimes' or reduce the impunity granted to perpetrators of such crimes (as seen in the latest legislation of 2004 or previously in the abolishment of the defense of provocation by the 1990 Qisas and Diyat Law), social institutions and political structures in the country sustain and maintain the cultural norms, making the law a dead letter. A very important contributor to maintaining the status quo with regard to the treatment of honor related crimes within the criminal legal system in Pakistan has been the judiciary. The judicial attitude is symptomatic of the attitudes

⁴⁰ Under amended section 302, Act XLY of 1860, honor crimes carry a maximum imprisonment of 25 years and not less than 10 years for the offence. Amended Sections 310 and 331 of the PPC prohibit giving a girl in marriage as 'badla-i-sullah' and any offence under these sections carries maximum punishment of 14 years imprisonment and a minimum of not less than seven years of imprisonment.

⁴¹ WARRAICH, Sohail Akbar, HOSSAIN, Sara. WELCHMAN, Lynn. (eds) 2005, Op. Cit

held by all actors that women encounter when seeking justice within the legal system. As observed by Amnesty International, “Discriminatory attitudes within the criminal justice system can undermine law reforms and lead to perverse outcomes, where women’s rights, rather than being enhanced, are further restricted – women are under-policed but over-criminalized.”⁴²

Tahira S. Khan, writes in her book that although the development of legal rules and criminal laws in Pakistan leaves much to be desired, the unjustified spaces contained in these laws “cannot be invoked and applied in a misogynistic manner in particular situations unless the lawyers and the judges make use of them behind the lense of their own socio-religious prejudices and cultural beliefs.”⁴³ This has been the case in Pakistan in almost all areas of law, but most starkly in the way ‘honor crimes’ are dealt with.

The judiciary has over the years has created its own brand of legal rules to deal with cases of ‘honor crimes’ particularly ‘honor killings.’ The judicial trends have adjusted their justifications rather than their views to the changing socio-political environment within Pakistan, and individual judges have allowed their social biases and personal perceptions of women and their role in society to guide their treatment of perpetrators of honor crimes. Such developments at the higher levels of the judiciary have ramifications for the entire criminal legal system, since within the common law legal tradition judicial precedents form part of substantive law and operate as a mandatory guide for the lower courts and influence future decisions of the superior courts as well.

III. The ‘Grave and Sudden Provocation’ Defense – Pre-1990

The Pakistan Penal Code, as mentioned earlier, allowed for the defense of ‘grave and sudden provocation’ in murder cases.⁴⁴ Husbands who had killed their allegedly adulterous wives invoked this defense successfully before the courts, to seek leniency and mitigation in their sentencing from murder to manslaughter. This exception was also invoked in cases of ‘honor killings’ to seek lesser sentencing. Judicial treatment of this defense in such cases granted a wider license to perpetrators of honor crimes against women, by extending legal impunity under section 300(1) not only to husbands but also to other family members and, in some cases, to strangers who happened to be members of a community to which the woman victim belonged.⁴⁵

Judicial treatment of crimes of honor before 1990 (when the defense of grave and sudden provocation was abolished) indicates clearly that such acts were considered the “natural reaction for good Muslim men, calling not just for leniency, but also for respect.”⁴⁶ Case law in Pakistan is full of examples where the (dead) women victims of Honor Killings

⁴² Amnesty International report, 2004, Op. Cit.

⁴³ KHAN, Tahira S. 2006. Op. Cit.

⁴⁴ PPC Section 304/300(1)

⁴⁵ *Mohd. Rafiq and others vs. The State* (PLD 1993 Lahore 848) The High Court stated “Consequently, when a man who is otherwise a stranger to a woman, sees her in the arms of another and loses control over the situation would be entitled to get benefit of this exception in a particular society where social norms are observed strictly everywhere with no exception.”

⁴⁶ ZIA, Shahla, *Violence Against Women and their quest for justice*, Simorgh Women’s Resource and Publication Centre, 2002

have been condemned by the courts as immoral, not sufficiently obedient or docile or not cognizant of the social norms that should dictate women behavior. Thus in a number of cases courts have held that the conduct of men who commit murder to safeguard their honor “would still be mitigated and he would not be guilty of murder, because it is the gravity of the provocation which is the criterion to determine the conduct of the accused who loses self control...”⁴⁷

The alacrity of the court in accepting any justification in cases of grave and sudden provocation is a clear indication of their own gender biases.

III. 1. *Ghulam Mustafa and another vs. The State* (1983 PCr.LJ 1712, Lahore)

The High Court reduced the sentence of a Javed, who had murdered his stepfather, from life imprisonment to 5 years. The court felt that it was quite natural for him to be furious and lose control because his mother had married for a second time. The use of the term ‘mother’s lover’ instead of ‘mother’s husband’ by the courts was indicative of their own bias about women who enter into second marriages.

III. 2. *Mohd. Yaqub alias Ayyub vs. The State* (PLD 1984 Lahore 358)

The High Court reduced the sentence of a brother who had killed a man and attempted to kill his sister when he had seen both of them coming out of a sugar cane field separately and from different sides. The court stated that the “circumstances were sufficient to raise a genuine suspicion” in the mind of the accused and was enough to cause grave and sudden provocation.

III. 3. *Mohd. Sharif vs. The State* (PLD 1987 Lahore 312)

The High Court reduced the sentence to one already served of a man who had killed his wife. He claimed that in the middle of the night he had got up to relieve himself and upon his return to bed he had caught his wife embracing her paramour (who escaped by scaling the wall). The accused had admonished his wife who had abused him and threatened to continue the illicit relationship. The court felt that the presence and subsequent escape of the paramour was enough to mitigate the conduct of the accused and he would not be guilty of murder, but in this case the conduct of the wife immediately after the departure of the paramour where she “shamelessly threatened to carry on with her lover... added fuel to the fire”. This was the greatest provocation offered to the appellant who lost control and killed her.

The statement of the accused was not subjected to cross-examination and the court did not question the absurdity of the factual circumstances alleged by the defense. By placing the guilt of the crime squarely on the shoulders of the victim (woman), the court exempted the accused (man) from any sort of accountability.

⁴⁷ *Mohd Sharif vs. The State* (PLD 1987 Lahore 312)

The eagerness of the court to condemn the dead woman and mitigate the conduct of the husband, merely on the allegation of immorality or bad character exposes the institutional mind set that systemically dismisses and violates women's rights. The treatment of actual victims of honor crimes and the attitudes of the courts breeds very little confidence in women who are threatened by and are in fear of violence, honor killings or mutilation from their male relatives, to approach the legal system in the hope for protection and justice.⁴⁸

IV. Case Law After Promulgation of the Qisas and Diyat Law

While the Qisas and Diyat Law abolished the statutory defense of 'grave and sudden provocation' it introduced through section 302 of the PPC a wide discretion by which the courts could mitigate sentences in murder cases 'where according to the injunctions of Islam the punishment of qisas (death or life imprisonment) is not applicable.' The law does not precisely clarify what these circumstances would be and these discretionary powers are further expanded, but certainly not clarified, by section 338-F of the PPC that guides courts to follow the injunctions of Islam while interpreting the Qisas and Diyat Law.

The courts through this discretionary loophole left in the law came up with their own 'particularly conservative and patriarchal interpretation' of Islamic injunctions while considering whether murder committed under the pretext of 'honor' fell within section 302(c) and hence deserved certain concessions.⁴⁹

IV. 1. *Ghulam Yasin vs. The State* (PLD 1994 Lahore 392)

The case involved the murder of a man and injury to a woman by her brother and paternal uncles, who claimed that they had caught the woman in a compromising position with the deceased. The defense argued that this was a crime of 'honor'.

The High Court stated that while the new law made no provisions for 'honor killings', the court was compelled to decide the case in light of the injunctions of Islam where it was obvious that 'honor crimes' may not be regarded the same as 'deliberate murder, pure and simple' and those who commit crimes of honor do deserve certain concessions which must be given to them. The death sentences were reduced to five year imprisonment.

Similar cases have arisen where the courts have consistently allowed their own misogynistic and patriarchal views to influence the interpretation and application of law. The courts have also presented a distorted and false picture of Islamic law and by invoking unsubstantiated religious injunctions and dubious interpretations of certain provisions with the aim of justifying such criminal acts and to mitigate punishment.

⁴⁸ The large majority (76%) of women victims of violence interviewed by Simorgh, who had taken their cases to court, when asked whether they would approach the courts again if the need arose, categorically stated that whatever the circumstances they would never approach the court again. One interviewee stated 'No, death is better.' ZIA, Shahla, 2002, Op. Cit.

⁴⁹ WARRAICH, Sohail Akbar, HOSSAIN, Sara. WELCHMAN, Lynn. (eds) 2005, Op. Cit.

IV. 2. *The State vs. Muhammad Hanif* (1992 SCMR 2047)

Another ingenious way in which the Supreme Court treated ‘honor killings’ was by bringing it within the context of self-defence as an exception to Qisas (maximum punishment), where the court invoked the Quranic description of men as ‘qawam’ (one who is responsible for running the affairs of a person or an institution or system in correct manner, to safeguard and provide for necessities of life) over his wife, and hence the murder of another man who disgraced (had an illicit relationship with) the wife of the accused was considered deserving of impunity under the law.

IV. 3. *Akbar vs. The State* (1997 PCr.LJ 22 Lahore)

According to the High Court, illicit relationships in a Muslim society were not acceptable and the actions of a ‘honorable’ father or brother were but natural and needed proper realization by the courts.

IV. 4. *Muhammad Ayub vs. The State* (1997 PCr.LJ 2056)

The High Court observed that the accused who had killed his wife for ‘honor’ was an ‘uneducated young man belonging to a tribe and an area where no loose conduct of a female was tolerated and family honor was jealously guarded’. Therefore, his sentence was reduced to that of five years.

Through the exercise of these discretionary powers in an arbitrary and discriminatory manner the courts have continued to grant impunity to those who kill men and women and claim an ‘honor’ motive. *Simorgh* in reviewing judicial decisions on ‘Honor Crimes’ for their research titled ‘Violence Against Women and their quest for justice’ comment, that the provision of grave and sudden provocation “whether written or read in the law, allows for free expression of gender bias particularly prevalent in tribal and feudal societies, and has lead to a practice where women themselves are murdered... on the declared or proven suspicion of illicit relations... and these murders are increasingly viewed by courts as ‘honor’ killings.”⁵⁰

Courts have played their role in upholding this concept of ‘*ghairat*’ or ‘honor’ and have condoned and exonerated the men who have committed these crimes and encouraged the customary practice of men taking the law into their own hands. This endorsement by the superior judiciary of ‘crimes of honor’ has had a very negative and damaging impact on the rights and, in fact, the very existence of women in Pakistani society by encouraging violence against them and providing a secure environment where such loathsome customary practices thrive and are considered respectable. Within such a legal system, women’s quest for just and equitable outcomes seems rather elusive.

⁵⁰ ZIA, Shahla, 2002, Op. Cit.

V. Recent Judgments

Though the judiciary continues to provide impunity to those committing murder in the name of honor, Warraich observes that since 1999 there has been a trend to challenge such claims of ‘honor’ motivated crimes.⁵¹

V. 1. Muhammad Akram Khan vs. The State (PLD 2001 SC 96)

The Supreme Court for the first time ever approached the issue of ‘honor killings’ from the victim’s rights perspective. The Court stated that no one had the right, nor should they be allowed to take law into their own hands to take the life of anybody in the name of ‘ghairat’.

The Court held that ‘neither the land nor the religion permits so-called honor killing, which amounts to murder simpliciter.’ The Court went further to add that such a murder was a violation of the Fundamental right to life of the victim as enshrined in Article 9 of the Constitution, which states that no person would be deprived of life and liberty except in accordance with law and any custom or usage in that respect is void under Article 8(I) of the Constitution.

V. 2. Muhammad Siddique vs. The State (PLD 2002 Lahore 444)

The High Court in its judgment was very proactive in using its discretionary powers under Section 338-F of the PPC to confirm the death sentence in this case against the father who had killed his daughter, her husband and child in the name of ‘honor’ following the daughter’s marriage by choice. The confirmation of the death sentence was upheld despite the fact that a compromise had been reached between the accused and the descendants of the victims.

The court elaborated upon the circumstances in which such discretionary powers under section 338-F should be exercised, including “criminal acts which are heinous on account of the number of people those are physically harmed or killed; or *acts which are symbolic of a certain bias or prejudice against a section of society*; or which are committed in the name of a creed or committed in reaction to the exercise of a fundamental right by the victim; or which cause general alarm and shock public conscience and *acts which have the effect of striking at the fundamentals of a civil society.*” (emphasis added)

The court further substantiated its proactive approach by stating that Honor Crimes require a strong judicial reaction, as they are acts that are “at a socio political plane a blow to the concept of a free dynamic and an egalitarian society.” Honor killings, the court felt, represent a certain mental outlook which seeks to deprive equal rights to women, those rights which are recognized not only in Islamic law but have been protected in the law of the land and enshrined in the Constitution.

These few recent judgments show somewhat of an encouraging trend on the part of the superior judiciary in dealing with murder in the name of honor. It is hoped that in time

⁵¹ WARRAICH, Sohail Akbar, HOSSAIN, Sara. WELCHMAN, Lynn. (eds) 2005, Op. Cit

this change in perception and attitudes would flow down to the lower courts and the other state institutions responsible for administering justice. Such developments need to be monitored and encouraged through extraneous means as well. As long as the perpetrators of violence can commit their crimes without fear of punishment and with impunity the cycle of violence will never be broken. The explicit removal of crimes that are committed on the pretext of 'honor' from the discretionary powers of the court under Section 302 (c) of the PPC as well as the new elaboration of the discretionary powers under Section 338-F of the PPC in the 2002 judgment by the High Court, certainly creates a hope for a future where justice and equity is accessible to women.

V. 3. Procedural impediments of the formal legal system⁵²

As discussed earlier, access to justice has a wider meaning than just the physical infrastructure that the legal system offers in terms of functioning courts and legal aid provisions etc. Another aspect of the concept of access to justice includes the social environment in which women victims of violence have to operate in order to pursue justice. In dealing with women victims of violence an ideal environment would be one where they were considered the sufferers of an organised form of human rights violation rather than individuals who had broken cultural norms and therefore deserving of the treatment they received.

A legal environment that is conducive for women victims of violence to confidently approach the courts and freely and openly express themselves without fear and feelings of guilt and shame, is essential to guaranteeing freedom of access to justice to these women. It requires that all the actors that form part of the legal system, the law officers and related personnel, treat these women with dignity and offer them a secure environment where they can hope to achieve justice against the wrongs done against them. Rather it is seen that the environment that is created by court officials, police officers and the judiciary encourages that these women are viewed as sharing the guilt for the violence meted out against them since they are usually perceived to have provided the 'provocation' for the offence. This negative attitude is further instigated by a view that women who assert their rights in a court of law do so by 'shaming' their families by bringing private family matters into the public. Such a non-supportive and insensitive system has a drastic impact on the women who have been traumatised by the violence and humiliation they have undergone in their personal lives and require a secure and just environment for such fears to be voiced.

In the context of Pakistan, Shahla Zia conducted a detailed survey of women victims of violence some of whom had approached the courts to seek redress for the crimes committed against them, and some who had sought justice through other means (family or community orchestrated reconciliation with the perpetrator, usually a husband and his family) but did not take the matter to court.⁵³ From the survey it became clear that 78% of the women

⁵² This section is written based on the information and research compiled by Simorgh women's resource & publication centre Lahore, Pakistan published in its Report: ZIA, Shahla, *Violence Against Women & their quest for justice*, 2002.

⁵³ ZIA, Shahla, *Violence Against Women and their quest for Justice*, Simorgh Publication 2002. 60 women were interviewed, 32 had approached the courts for redress while 28 had not. Almost all women had experienced violence from their husbands.

interviewed had suffered from physical violence within the home, although no overall statistics relating to women in Pakistan exist.⁵⁴

VI. The decision to take action

Even before experiencing the courts and the legal system first hand there was reluctance on the part of the women interviewed to approach the court system for redress. Seeking legal redress met with a social disapproval even from the women's own families for making public a matter perceived as private. It was felt that domestic violence was normal and that women had to learn to deal and live with it. The social stigma of taking your court to case makes women experience feelings of guilt, shame and embarrassment for seeking legal redress even where they are the ones against whom violence is being committed, and delays their decision to take action.⁵⁵ 70% of the women preferred to allow family and intermediaries affect a compromise between them and the offender and settle the matter out of court, rather than even end the marriage.

Those women who do end up taking cases of violence against them to court have to face numerous humiliations and hurdles before a conclusion is reached in their dispute. There is no satisfactory relief offered at the end of the day for women who go through the system and it was felt by 44% of the women who had gone to court that they did not get their rights and justice in their case and 30% felt that they had suffered more humiliation and loss of respect for undertaking the action. When asked whether those women who had approached the courts would do so again if the need arose, 43.5% said that they regretted having done so in the first place and would not repeat the experience.⁵⁶

Do you regret that you took your case to court?	
Yes:	43.5%
No:	34.5%
Confused/Sometimes:	15.5%
Other:	6.5%

Source: Simorgh women's resource and publication centre Lahore

⁵⁴ ZIA, Shahla, Simorgh 2004

⁵⁵ Some answers from women interviewed as to what happens to women who go to court: Fear of dishonor before the world, stigma loss of respect, No justice.

⁵⁶ Comment of an interviewee: The violence wasn't as severe as going to court.

VII. The court experience

As deduced through the interviews carried out by Simorgh, one of the major reasons that women victims are reluctant to take action against violence through the courts is that they fear the system of which they have no knowledge. The inadequacy of knowledge and information about the legal processes made the thought of even going to court frightening.

Another major factor that intimidated the women in the court environment was the number of men and their attitudes at seeing a woman in court. Women coming from environments where they were unused to direct interaction with strange men found that the 'relentless and unashamed staring took away whatever remnants of courage and self-respect they had left.'⁵⁷ A number of women complained of sexual innuendos and offensive remarks that came from lawyers, court clerks and the judiciary itself that made them feel self-conscious, confused and alone.

An overwhelming number of women (80%) felt disadvantaged as litigants because they were women. This feeling stemmed from the court environment as much as from the fact that the women felt disadvantaged due to lack of financial resources and support which sometimes meant that they did not even have lawyers to assist them in their claims. Other reasons that these women gave why they felt disadvantaged within the legal system stemmed from the fact that the laws, the processes and the attitudes victimise women and are unfair to them and women felt 'weak and helpless' against social attitudes.

Did women feel disadvantaged as Litigants	
Yes	80%
No	14%
Not Sure	6%

Source: Simorgh women's resource & publication centre

Asked to list what they would change about the court process for women the overwhelming demand for less delays and quicker disposal of cases was made. Secondly, women felt that they would be at an advantage if there were more female judges in the courtrooms.⁵⁸ There were also suggestions for training of judges and inducting more sensitive judges who are aware and conscious of women's rights and issues.

Another demand was for the improvement of the court environment, suggestions varying from separate courtrooms for women where no men were allowed to more physical protection for women, free legal aid, counselling facilities and someone to explain the law and procedures to them. All the women felt that 'true justice' was one thing that they would like to see in the courts when they deal with cases relating to violence against women.

⁵⁷ Zia, Shahla, simorgh 2002.

⁵⁸ Surprisingly though when questioned about whether the women felt the male judges were fair to women, 61% of the women who went to court answered yes, however, when listing things to change in the court environment there was an overwhelming demand for more female judges.

Changes suggested in the litigation process	
No delays:	44%
Female Judges:	36%
Better environment:	24%
Judges training/changes:	24%
Counselling/female lawyers:	8%
Legal aid/lawyers:	8%
Lawyers/police training:	6%

Source: Simorgh women's resource & publication centre Lahore

VII. 1. Local Tribunals operating as parallel authorities

Like in many other countries, in the rural areas of Pakistan a parallel system of justice operates alongside the formal system and village elders, tribal chiefs or local religious leaders dominate this system. Tribunals set up within this informal system have no legal recognition under statutory law and operate as quasi-judicial structures that have strong social legitimacy.⁵⁹ These tribunals are very influential within their communities; in fact most of the times they are more powerful than the local state administration, and exert informal control over women's lives and bear responsibility for violations of women's human rights. Sometimes they commit acts of violence against women; sometimes they encourage or permit such acts.⁶⁰

Tribal *Jirgas*, *Faislo*, *Panchayats*,⁶¹ are all forms of local informal adjudicative bodies that operate at the village, clan or tribe level. They take various forms depending on the particular area of Pakistan where they are found; comprising of village or clan elders, religious leaders, a group of local tribesman headed by the head of that tribe, but one thing remains common all the participants in these tribunals are exclusively male and women in a majority of cases are not allowed to even appear before the tribunals (regardless of whether the subject matter of the case affects or involves them in any way).⁶² The tribunal members

⁵⁹ System of Sardari (Abolition) Act 1976 – The system of sardari prevalent in certain parts of Pakistan is the worst remnant of the oppressive feudal and tribal system which, being derogatory to human dignity and freedom, is repugnant to the spirit of democracy and equality enunciated by Islam and enshrined in the Constitution of the Islamic Republic of Pakistan and opposed to the economic advancement of the people.

⁶⁰ Tribunals encourage the traditional practice of *Sawra* or *Vani* or offering of women (often young girls) as compensation to end disputes. Sentencing women rapes, sanctioning Honor Killings and inhuman punishments like walking on hot coals or administering of stripes are normally handed out by local tribunals. Documented in Amnesty International's Report "Pakistan: The Tribal Justice System." Amnesty International Publication, 2002

⁶¹ The terms 'Tribunals' and 'Jirgas' will be used interchangeably throughout the paper and mean the informal local adjudicative bodies that operate at the village or community level and handle and decide disputes based on customary law and traditions.

⁶² "The big problem for women is that no one informs them about anything. Women do not take part in any deliberations because a village council is only formed of men. Whether a woman is the object of the conflict or the compensation for the offence, she is, on principle, sidelined. She is told from one day to the next that she has been 'given' to such-and-such a family. Or, in my case, that she must beg forgiveness from this or that family... the dramas and conflicts in a village are true knots untangled by councils without respect for our official laws,

have no formal adjudicative training and usually implement the local customary laws influenced largely by their own individual interests, perceptions and understanding of the social norms with regards to the particular issue before them. A *jirga* has sweeping powers to impose penalties in criminal cases. It can award sentences of fines, whipping and life imprisonment, demolition of a convict's house and the blockade of a hostile or unfriendly tribe. There is no appeal allowed against the decisions taken by a tribunal and the majority of these decisions are followed and enforced through local thugs and social boycotts, allowing for very little dissent on part of the people effected by these often cruel authoritarian decisions.

Traditionally tribunals deal with a variety of issues and conflicts that arise at the local level including land and water disputes, inheritance disputes, breaches of the 'honor' code, arbitration between two warring parties etc.

Women rights are increasingly made the subject of tribal conflicts that come up before these local *jirgas*. Broadly speaking, from a gender rights perspective, women are made subjects of conflicts before *jirgas* in two main ways; firstly, either as transgressors of social norms, where women's infidelity and immorality (marriage by choice, illicit relations, seeking of divorce and being raped) are the direct subject matter of the dispute and the aggrieved party - the family of the woman, is seeking a decree against her and her abettor (usually a paramour or husband of choice etc.). Secondly, women are considered a commodity by the members of the *jirga* to be traded at the time of sentencing as compensation, regardless of the nature of the dispute.

An incident that gained much international media coverage was that of Mukhtar Mai, a 30 year old woman from the province of Punjab. Mukhtar Mai's 12 year old brother was found guilty by a local tribunal of having illicit relations with an older woman belonging to the Mastoi tribe, a more influential tribe in the village. The tribunal ordered that as compensation for the alleged illicit relationship and as punishment for the boy's family, members of the Mastoi tribe would gang-rape a woman from the boy's family and the tribunal picked Mukhtar Mai. This sentence was passed in the presence of several hundred local residents as well as some members of the local police, and no one intervened to stop the heinous crime, which was carried out there and then by four men, including a member of the tribunal.⁶³

Mukhtar, in her biography tells of her ordeal, that she says she shares with millions of other women in Pakistan. In her case the story became public after a journalist visiting the village heard of the incident from the local *maulvi* at the mosque.

VII. 2. Breaches of 'honor'

'Honor' related incidents are also brought before tribunals for adjudication. The handling of such incidents by the tribunals highlights the treatment of women by these adjudicative bodies in light of both aspects of rights violation as defined above.

especially those regarding human rights." Mukhtar Mai, In the name of Honor: A Memoir. Virago Press Great Britain, 2007

⁶³ Mukhtar Mai, 2007. Op. Cit.

The concept of 'honor' has broadened to cover not only women's alleged illegal sexual relations, but also their exercise of fundamental rights or any act considered as disobedience to the male members of the family. Assertion of a woman's independence or any act that is perceived to go against acceptable social norms is considered a misdemeanor that effects family 'honor' and results in the 'shaming' of the family and hence becomes an offence liable for severe punishment.

Research on the subject has revealed numerous incidents that have been reported of gross violations of women rights in the name of 'honor' by these tribunals. However, a systematic data collection or empirical evidence of the number of incidents and frequency of decision-making in such cases by local tribunals is not available. Multiple sources do indicate an increase in the incident of Honor Killings while convictions by courts remain nominal.⁶⁴ Many researchers claim that a majority of honor related crimes occur in the rural areas and are dealt with at that level by these tribunals. Yet the exact number of such occurrences is hard to come by as in many cases the incidents don't get reported and the community is hesitant to go to the authorities and prefers to let the local feudal or village/tribal elders decide the matter. The local civil administration in most cases prefers this situation and is happy not to put such crimes on its record, it is with its blessings that the tribal courts flourish. Tahira S. Khan asserts, by providing examples, that feudal lords, politicians, police officers, the bureaucracy all join hands to keep the tribal system flourishing, because they all collectively and individually benefit from such a system.⁶⁵

Reports of numerous incidents of local tribunals passing death sentences against women who marry without the consent of their fathers and families are found in the 2002 Amnesty International Report on the Tribal Justice System in Pakistan. Family or clan members carry out these sentences in order that they may restore their honor by ending the lives of the women who have defied tribal customary laws. Amnesty International in its report quotes a father who had secured a tribal death sentence against his daughter who had run away and married a man of her own choice as saying that, "this is a matter of honor. We don't allow our women to be taken away or to go away. Whether she has eloped or was kidnapped, we will kill her."

Even in cases where the dispute before the Panel deals with the criminal act of a male member of society, at the time of sentencing and punishment it is the women in his family that have to pay the price for the man's misdemeanors. In one particular case, where the accused was found guilty of raping another man's wife, the tribunal ordered that as punishment the victim's husband was to be allowed to rape the wife of the offender. This sentence was carried out while the tribunal elders watched.⁶⁶ The point to note is that even initially, the accused was not charged for the physical violence against the woman he raped, in fact the tribunal compensated the woman's husband for the loss of 'honor' caused to him by his wife's rape. Then again, by allowing the rape of the offender's wife the tribunal did not keep the woman's rights as any consideration in their decision, her interest or rights were immaterial to the balance of 'male honor' that the tribunal was trying to correct and maintain. "Justice is understood not in terms of punishment of the guilty leading to a process of

⁶⁴ Tribal decisions relating to cases involving women's rights are becoming increasingly common according to the news magazine NewsLine, "Divorce at gunpoint." NewsLine August 2000

⁶⁵ KHAN, Tahira, 2006. Op. Cit.

⁶⁶ Incident quoted in Amnesty International Report on the Tribal Justice System in Pakistan, 2002.

remorse and eventual rehabilitation but strictly in terms of conciliation brought about by restoring a balance disturbed by an offence.”⁶⁷

VIII. The Future of Tribal Laws and Practices

Jirgas survive in Pakistan for a number of reasons, primarily of course it is due to the significant support this traditional practice of local tribunals in rural Pakistan get from the state, albeit unofficially. Despite the Constitutional sanctioning against extra-legal judicial structures⁶⁸ these tribunals not only operate under the patronage of the tribes and their influential feudal leaders, but also the local political leaders and the public administration as well.⁶⁹ Hence it can be seen that there has been no serious effort on the part of the state to take any adequate steps to curtail the *jirga* system. In fact state actors are most often party to tribal proceedings and active supporters of the *jirga* system.⁷⁰ Quite often *jirgas* are held at official premises and attended by district officials including police officers.⁷¹

Rehman, articulates another reason for the *jirga* systems survival in his article in NewsLine magazine, where he states that the acceptance of the *jirga* system, that has awarded some of the most heinous punishments, like gang-rape in the case of Mukhtar Mai, exposes a lacunae in the country’s judicial system. The formal legal system proves less efficient and less accessible in terms of infrastructure, language and facilities as well as actual delivery of justice to the citizens, and hence there has been an increased reliance on this alternative and traditional form of dispute resolution in Pakistan. It is argued that local tribunals because of their proximity substantially reduce the cost of dispute settlement for the poor, and are decided on the basis of customary law, which the villagers can comprehend. Most importantly, however, the contrast drawn between the formal system and the informal tribal system is that the decisions of the tribal system enjoy the ‘sanction of tradition and are more readily and willingly acceptable’ by the parties. State laws are rarely understood by the uneducated masses and “court decisions do not inspire confidence either in merit or impartiality.”⁷² It is argued that the state should formally recognize and make such institutions a part of the legal infrastructure so as to allow the state to control and monitor their functioning.

⁶⁷ Amnesty International Report on the Tribal Justice System in Pakistan, 2002

⁶⁸ Article 175(1) and (2): There shall be a Supreme Court of Pakistan, a High Court for each Province and such other courts as may be established by law. No court shall have any jurisdiction save as is or may be conferred on it by the constitution or by or under any law.

⁶⁹ Newspapers are replete with pieces on tribunals taking up certain matters on the request of the local and Provincial governments to settle long standing disputes within communities (Large Punjab-Balochistan *Jirga* set up by the area Nazim local district representative) or to tackle law and order situations in particular areas (Sindh Government relied on *jirgas* to launch its campaign against dacoits).

⁷⁰ A recent controversial involvement of Mr Bajrani an Member of the National Assembly (and member of the ruling Pakistan People’s Party) in a tribunal that sentenced an 8 year old girl to be given as compensation was caught on video and exposed on local media. However, no action has been taken against him despite a Supreme Court order to the effect.

⁷¹ REHMAN, I. A. Dark Justice, NewsLine, August 2002

⁷² REHMAN, I. A. August 2002. Op. Cit.

These arguments stem from a lack of understanding of the tribal justice system in Pakistan. There are different rules and traditions that are followed by the various tribunals set up all over the four Provinces of the country. No uniformity of laws or structure exists and an acceptance cross the board of this system is not only impracticable but would amount a gross departure from the state's responsibility of guaranteeing fundamental rights protection through its institutions. Despite the arguments for the system it is understood that there are stronger arguments against the system, especially from a women's rights perspective. Tribunals operate on customary codes rooted in patriarchy and ignore even Islamic codes of law, particularly with regard to women. A woman can neither be a member of a *jirga* nor a counsel, she is treated as commodity that can be traded to reach a settlement.

Acceptance of *jirgas* based on tribal tradition would also entail acceptance of tribunals formed on ideological basis (where would the state draw the line). This would have serious consequences especially with the new brand of private Islamic tribunals sprouting up in the northern province each professing its own brand of rules.⁷³ An acceptance would result in the proliferation of tribunals and attaching any form of sanctity to the *jirga* system would tantamount to allowing disputing parties to dispense justice themselves. The rules upon which these tribunals operate in the case of women's rights are in direct conflict with the concepts of democracy and the gender equality, at the very least, and hence are unacceptable at any level.

IX. The Way Forward

For the state to ensure that women rights are governed by a uniform, national and humane judicial order, they have a multidimensional task on their hands. *Jirga* law is only one aspect of tribal and feudal society that aims to disenfranchise women and alienate them from any hope of gaining justice. So although ridding the country of this practice might be one major step in the right direction, it is the patriarchal social structure and social norms that discriminate against women and seep into the formal legal structure as well that need to be challenged. These societal attitudes continue to reassert a notion of 'honor' and violence related with it that places women in a vulnerable position with no rights, little protection and no hope for redress and access to justice. Those steeped in these values have to be freed of its shackles by a multi-pronged system of mass education, independent economic opportunity and the promotion of women's identity and independence. At the same time a judicial reform package needs to be introduced to restore the confidence of the women victims of honor related violence, in the formal judicial system and the justice it dispenses. Bad laws and accompanying patriarchal and misogynistic attitudes have turned the formal judicial system into shambles. A renovation and redesigning is needed to rid the legal system of cruel laws, and abandon the decadent approaches to women's rights issues and to finally accept women as equal citizens that have a right to expect and get expeditious justice from the entire legal mechanism set up for this purpose within the state.

⁷³ Amnesty International, Document: Pakistan - Unlawful Execution in Tribal Areas, 2006, quotes two incidents reported in local newspapers in Pakistan of executions ordered and carried out by tribunals in criminal cases brought before them. <http://www.amnesty.org/en/library/asset/ASA33/013/2006/en/dom-ASA330132006en.html>

Glossary

Diyat – Compensation payable by the murderer to the heirs of the deceased in lieu of punishment

Ghairat – Honor

Ghairatmand – One who is honorable

Hudood – The limits prescribed by Islamic Law, particularly with regards to acts considered criminal offences (sexual conduct, bodily harm etc.)

Jirga/Panchayat/Faislo – Local tribunals

Karo-Kari/Kala-Kali/Siyakari – Traditional practice of Honor Killing

Qisas - punishment by causing similar hurt at the same part of the body of the convict as he has caused to the victim or by causing his death if he has committed intentional murder. This sentence is carried out in exercise of the right of the victim or his heirs/guardians as retaliation for the crime.

Quran – Muslim Holy book

Shariat – Muslim Law comprising both the Injunctions of the Quran and Sunnah

Sunnah – Examples from the Prophet Muhammad's life that form part of the law of Islam

Tazir – Punishment for criminal acts other than Qisas, usually involves prescribed imprisonment.

Zina – Adultery, a crime punishable under Pakistani Law

Websites

Amnesty International Library: <http://www.amnesty.org/en/library>

Ansar Burney Trust: http://www.ansarburney.org/womens_rights-karo_kari.html

Asian Centre for Human Rights: <http://www.countercurrents.org/hr-achr291004.htm>

CNN : <http://www.cnn.com/2007/WORLD/meast/05/18/iraq.honorkilling/index.html>

Dawn News: <http://www.dawn.com>

Ethnomedia & Development: <http://www.ethnomedia.pk/>

Government of Pakistan, Ministry of Law, Justice and Human Rights:
http://www.pakistan.gov.pk/divisions/ContentInfo.jsp?DivID=19&cPath=175_179&ContentID=482

Human Rights Commission of Pakistan: <http://www.hrcp-web.org/>

International Campaign Against Honor Killings: <http://www.stophonorkillings.com/>

Inter Press Services: <http://ipsnews.net/news.asp?idnews=41028>

Interights, the International Centre for the Protection of Human Rights:
<http://www.interights.org/>

NewsLine Magazine: <http://www.newslines.com.pk>

Pakistani Legislation, Pakistan Penal Code:
<http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html> The Pakistan Penal Code (Act XLV of 1860)

References

Reports

- Crime or Custom? Violence Against Women in Pakistan*, Human Rights Watch 1999
- Pakistan: Honor Killings of Girls and Women*, Amnesty International Publication, 1999
- Pakistan: The Tribal Justice System*, amnesty International Publication, 2002
- It's in our hand. Stop Violence Against Women*, Amnesty International Publication, 2004
- Pakistan: Unlawful Executions in Tribal Areas*, Amnesty International Document, 2006
- Access to Justice: Practice Note (Draft 1)*, UNDP 2004
- Don't let them get away with murder*, Shirkat Gah Women's Resource Centre, 2002
- Violence Against Women and their quest for justice*, Simorgh Women's Resource and Publication Centre, 2002
- Report of the Special Rapporteur on extra judicial, summary or arbitrary executions*, UN Doc. E/CN.4/2000/3, 2000
- Confronting Honor Killings*, Asian Centre for Human Rights, 2004

Books

- HUSSEIN, Neelam, MUMTAZ, Samia and SAIGOL, Rubina, *Egendering the Nation-State*, Simorgh Publication, 2000
- KHAN, Shahnaz, *Zina – Transnational Feminism and the Moral Regulation of Pakistani Women*, Oxford University Press, 2006
- KHAN, Tahira, *Beyond Honor: A Historical Materialist Explanation of honor Related Violence*, Oxford University Press, 2006
- MAI, Mukhtar, *In the name of Honor: A Memoir*, Virago Press Great Britain, 2007
- WELCHMAN, Lynn and HOSSAIN, Sara (Ed.) *Honor – Crimes, Paradigms, and Violence Against Women*, Oxford University Press 2005

Articles

- OUALIHTTP, Abderrahim El, *RIGHTS: States Fuel 'Honor Killings'*, Inter Press Services, May 09, 2008
- REHMAN, I. A. *Dark Justice*, NewsLine, August 2002
- SARWAR, Beena *No Compromise on Murder*, The News, Sunday Oct 17 2004
- SHAH, Nafisa *Women in Revolt*, In the Weekly Review, Dawn News, 4-10 March 1999
- Divorce at Gunpoint*, NewsLine, August 2000

Speeches & Interviews

ABEYESEKERA , Sunila. *On the Violence of Patriarchy*, Women and Media Collective, Sri Lanka, *In the Court of Women*, Simorgh Publication 1994

HUSSEIN, Neelam, Director Simorgh women's resource & publication centre Lahore, Pakistan, Interview in Dec 2007.

KOLLAPEN, Jody. Chairperson of the South African Human Rights Commission, keynote address *Access to Justice within the South African context*. Round-table discussion Human Rights and Governance Programme at the Open Society Foundation for South Africa, 22 July 2003

NAMI, Dianna, Founder International Campaign Against Honor Killings, London, Interview in May 2008.