

HONOUR KILLINGS IN PAKISTAN AND STATUS OF WOMEN IN ISLAMIC LAW

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There is no denying the fact that the women are vulnerable to arbitrary cultural values and traditional mindset across the world. Historically, the women were marginalised in different societies as they would assume a negligible role in decision making in public as well as private spheres of life. Unfortunately, the violence against women is, at times, erroneously characterised as symbol of masculine dominance. The women from various backgrounds were constrained to maintain silence on such invasive issues due to fear of torture and social pressures. The conduct of humans in a particular society is governed by law and their violation entails verdicts of punishment, however, the traditional sets of legal theories based on irrational socio-cultural values cannot withstand the increased knowledge and modern values particularly when theology itself does not lend countenance to such traditional practices. The divine commandments, in essence, are unequivocally opposite to the phenomenon of honour killings. The cultural changes integrated with enlightened religious interpretations defining status of women incompatible with the customary laws, are now being professed with genuine thrust and the mobilised awareness of perverted traditional outlook to inflict terrible physical and mental torture together with emotional pain. There are various forms and manifestations of domestic violence both in western and Muslim countries; but honour killing is worst amongst them. The honour killing is a murder of a woman who disrespected the status of family through involvement in immoral act¹ and also her marriage of choice is often not accepted by family members, who kill such woman by treating the right so exercised by her as unethical conduct.² The other reasons inter alia are extra marital affairs, opposing or refusing to act upon family decisions, or breaching the socio-cultural barriers of ethical standards. There are also cases of killing women who don't succumb to pressure of family for marriages based on the considerations of inheritance, and tribal rivalries. This dreadful process is Patronised by the head of family, tribe or the locality (village) under horrible customary laws with minimal or no involvement of law enforcing agencies.³

Honour killing was common among the Arabs before the advent of Islam. It is believed that honour killing in the sub-continent was introduced by Arab settlers with tradition of burying the girl child.⁴ There are also various forms of forced marriages, domestic violence, rape with murder, and acid burning in western countries.⁵ The reports of the United Nations unveils that the customary laws, rather than national or international laws, had contributed to increased honour killings and one of the examples quoted was that of Germany.⁶ Further study also proves honour killings in England and Turkey, rather high rate of accidents and suicide were also suspected to have links with honour killings. But the scourge is more common in Asian countries.⁷ The violence of rape and murder etc. are mostly reported in India, Pakistan and the Middle East. It is worth mentioning that honour killing is not confirmed by teachings of any religion as all religions deprecate this socio-cultural evil.⁸ The plight of women in pre-Islamic era provides pathetic historical evidence of this nefarious practice.⁹ The religion of Islam emancipated women from this tyranny and the Holy Prophet (peace be upon him) guided his followers to tread the course of rectitude by giving honour to the women in order to protect themselves from the fire of Hell.¹⁰

The "*Karo Kari*"¹¹ is one of the general terms used as a substitute of honour killing for adultery in Pakistan. It is a custom to kill those guilty as either "*Karo*" or "*Kari*" to safeguard honour of family and tribe.¹² The high incidence of killing one thousand women every year in this part of the world in terms of statistics collected by International Organisations is reflective of enormous male dominance as such.¹³ The Human Rights Commission of Pakistan estimated nine hundred ladies deprived of life for honour only in the year 2012. According to a study, women are killed over issues of marriage, extra-marital affairs and many other factors of like nature existing due to poor governance, historical

perspective, and cultural impact of dominant status of men.¹⁴ Such killings sprang from the tribal customs which pervade the rural areas of Pakistan, particularly the province of Sindh¹⁵ where family and tribal heads operate as a parallel system and control the right of honour involving loss of the lives of victims, in utter breach of the laws of state.

The Human Rights Watch set out definition of honour crime as "act of violence usually murder, committed by a male family member against female members who are perceived to have brought dishonour upon the family".¹⁶ The instance of Saima Sarwar shot dead by her own parents in her Attorney's office for seeking divorce on account of abusive behaviour of her husband, is manifestation of wrath emanating from cultural brunt. It was alleged that the victim tarnished honour of family, although her parents knew that she was violently abused by her husband during the subsistence of her marriage.¹⁷ The mother of Sarwar feigned to agree with her daughter and came to the Attorney's office to deliver the documents required for divorce, where she got her daughter killed on the spot with active assistance of the car driver.¹⁸ Similarly, Mukhtaran Mai, a school teacher, was allegedly gang-raped in the presence of many villagers and forced, in naked condition, to walk home.¹⁹ The episode took place as a result of a verdict by the council of Mastoi tribe to avenge the alleged sexual relation of her brother with a female member of their so-called higher tribe. Later on, the accusation by the complainant side against her brother turned out to be fabricated in order to harbour their own solemnization of the boy.²⁰ Against this socio-cultural backdrop where so many other incidents of alike grave nature have been reported, the gender construct smacks of immunity for men of the same tribe for their involvement in sexual activities; and women only representing honour of the family. This overview and general background will help to comprehend the of late legislations in Pakistan to curb the horrific practices as such. It will also bring home not only cultural effects rather financial outlook of the criminals against women for making independent decision of marriage of their choice and suppressed by male members of the family by brutal torture. A man is often considered as effeminate by his peers if he fails to take authoritative decision to restore his authority over the woman who transgressed their moral cultural code of conduct and only ensuing act of extreme violence involving honour killing towards women folk is deemed necessary to establish his masculinity.²¹ Many innocent girls became a victim of ruthless customs for rumours which clearly manifest the way the honour of a family or tribe is socially constructed.²² Also, the financial interest and property considerations of male family members prevent women to exercise the right of independent choice of marriage, as was rightly pointed out by Dr. Tahira Khan, a professor of Agha Khan University in Pakistan.²³ The family behaviour, in land owning tribes, is often well calculated in terms of inheritance prospects and refusal of a daughter to marry a person chosen under such consideration, at times, even deprives her from their right to marriage for good. Such culture also inhibits the widow or divorcee from contracting another marriage due to intense pressure from male members and her remarriage is either subjected to the transfer of property to her male decedents or she is meted out a violent treatment to prevent her from such a marriage, which may even extend to the risk of her life.²⁴ By and large, a son exercises the right of marriage of his choice, as a successor in the family lineage but females are regarded as her husband's property regardless of their education, ethnicity, social status, or religious identity. Once she is married, she at times loses the right and value of her dowry as there are instances that a Husband killed his wife under the guise of honour for marrying another woman who would also bring new dowry,²⁵ or killed a woman for bringing less dowry.

HONOUR KILLINGS AND ISLAM

As an ill-luck would have it, the women are denied equality to enjoy their fundamental rights which prompted them to struggle for acquisition of these rights eluding them in Pakistan so far. However, the western nation's concept of weak status of a Muslim woman is misconceived. Islam ensured equal status of women in both family and society, as is enunciated by the teachings of Holy Book i.e. The Quran.²⁶ The teachings of Islam prohibit ill-attitude towards women in all spheres of life. For instance, the practice of killing female infants in pre-Islamic era was strictly forbidden by Islam (Quraan 81:8-9).²⁷ The Divine commands in the Quran even condemn those who show overt or covert displeasure on the birth of a female child (Quraan 16:58- 59).²⁸ During the time of Prophet Muhammad (PBUH), the women were engaged in occupations of agriculture, animal farming, sewing clothes as home industry, and trade etc. Islam also holds man and woman equal for

administering punishment against a crime. They have same rights to have life partners of their choice and no marriage contract is valid without free consent of man or woman as the case may be. When a girl came to Prophet Muhammad (PBUH) with a complaint that she was forced by her father for marriage with a man, he gave the verdict to either accept or reject the contract of marriage by her free and full consent. The girl replied that "actually I had already accepted the marriage but wanted to let my parents know that they had no right to impose a husband on me".²⁹ The concept of marriage in Islam introduces harmony and cordial relation between the spouses which is not possible if their free consent of marriage is not considered; leading to the irresistible conclusion that forceful marriage is not valid in Islam.³⁰ Alongside the mandatory free will of woman for marriage, the woman also has right to terminate the marriage at their will by seeking "*Khula*"³¹. There is no public or private division on the basis of gender for independent economic or political activities inasmuch as Omar, the second caliph, appointed a female for surveillance of market prices.³² The religion of Islam lays thrust on good treatment towards women. The words of Prophet Muhammad (PBUH) that "fear God and respect woman" and "the best among you is the one who has best attitude to the women"³³ depict the true picture of Islam that a woman is not to be treated as a commodity. Islam gives her the right to enjoy life by choosing a life partner and profession of her free choice and women are not confined to household chores rather they can actively participate in political, economic and professional affairs without any patriarchal intervention by males. As a matter of fact, the pre-Islamic practice of patriarchal control was rather significantly curbed but unfortunately such pre-Islamic customs contradicting with Quranic version of equal moral and social relationship of mutual respect have gained ground in an Islamic society like Pakistan. It is also not in conformity with Divine commandment for "affectionate behaviour for dwelling the couple in tranquillity" (Quran 30:21). The Prophet Muhammad (PBUH) stated that "whosoever has a daughter and does not bury her alive, does not insult her, does not favour his son over her, Allah will enter him into Paradise".³⁴ The Quranic version expounds the relationship of spouses to be imbued with affection, intimacy and love. Islam, as a religion, is abhorrent to violence, killing or hierarchical patriarchal relationship. Actually, such tribes although accepted Islam but preserved their traditional patriarchal control by misinterpreting some versus and labelled it as Islam.³⁵ The concept of superiority of male over female is alien to Islam. The feminists assert that revolutionary concept of Islam introducing and fortifying basic rights of women like owning and inheriting property, participating in politics and marriages of their choice; actually eradicated self serving culture of male dominated society.³⁶

Islam has envisaged stringent penalty for malicious allegation of adultery against a woman and require at least four witnesses of pious character to testify for alleged adultery.³⁷ Those witnesses of unimpeachable character must testify that they personally viewed the act of penetration in the course of sexual activity, without violating the right of privacy of the accused. The nature of evidentiary value enjoined upon the complainant, manifestly make the character of offence abundantly clear. The true underlying intention of Quranic version prescribes the punishment for public indecency rather than private sexual conduct.³⁸ Islam has unequivocally condemned those who level false allegations against the chastity of a woman.³⁹ There are instances when the Holy Prophet (PBUH) tried to avoid punishment even on the basis of voluntary confessions and it was only persistent confessions by an adulterer which made him order punishment.⁴⁰ It is also appalling that the prescribed punishment for public indecency of adultery applies to both male and female accused but the women are singled out under cultural norms, in utter breach of the teachings of Islam because their pregnancy becomes proof of a sexual affair.⁴¹ The state is under an obligation to make sure that such pronouncement of any verdict in this regard, must be result of fair and transparent judicial process on the basis of prescribed standard of evidence instead of extra-judicial act of honour killing. There is no concept of honour killing in Islam; as such a notion is liable to be treated as cold blooded murder under its teachings. Even there is no room for condoning false accusation of adultery or honour killing. The wrong interpretations of Islam qua male domination are a manifestation of feudalistic ideas imbued with historical cultural values of the region which have no nexus with Islamic injunction about the status and dignity of women, as enunciated in Islam.

The misconception in the minds of some Muslims and the West that honour killing is part of Islam, is highly misconceived. It emanates from the perverted versions like father

(Abdel-Qader), after killing his daughter for a relationship with a boy, put forth his version of no regrets for atrocious act on the premise that he did it for the glory of Islam. Such a statement by the accused was his lack of knowledge about Islam. He had not read the Quran which categorically forbids such an act of violence.⁴² The commission of a crime can only be punished by the state itself after all the ingredients of offence have been made out in terms of prescribed standard of evidence in Islam. A false accusation falling short of required testimony entails punishment for false accusation so as to sanctify the chastity of women. When the offence stood established, the Islamic teachings hold both female and male equally responsible for punishment of alike nature; but unfortunately only women are often made to suffer in extra judicial manner under perverted tribal customs, in utter breach of Islamic injunctions. The above Divine commandments and teachings of Prophet Muhammad (PBUH) emphatically prohibit instigation of violence or killing of women. However, the un-Islamic traditions and cultural values prevailing in the peculiar Muslim tribes have been erroneously labelled as Islamic ones, although those customs have no relevance with the tenets of Islam.

THE LEGAL PERSPECTIVE OF HONOUR KILLINGS IN PAKISTAN

The British regime helped traditional hierarchical structure based on well-entrenched customary norms through the defence of sudden and grave provocation provided in Section 304(1) of Indian Penal Code. This legal provision operated as tool to mitigate sentence for act of horrendous character depriving a woman of her life on the basis of alleged adultery.⁴³ Similarly, after the creation of Pakistan in 1947, section 302 of Pakistan Penal Code, 1860 contemplated that death of a person caused by the offender under grave and sudden provocation was not a murder. Such a plea was successfully pleaded in many reported cases as far back as the year 1965. The judgement passed in the case of Federation of Pakistan v. Gul Hassan Khan, firstly declared such a provision as un-Islamic.⁴⁴ The plea of sudden grave provocation was given abiding patronage by the courts till the said judgement was handed down.⁴⁵ Consequent upon the ruling of Gul Hassan's case, Hudood Ordinance was introduced which unfortunately rather created a more congenial environment for honour killings,⁴⁶ in that, the judgement so passed was not followed in letter and spirit in regard to legislation for offences against human body in the Pakistan Penal Code. The offence of murder was characterised as compoundable one. As a result, if the murder of a woman was caused by her husband, son, or brother; the other family members would forgive him. Similarly, such enabling provision also benefitted rich people who could get away with criminal liability by paying compensation to the family of the deceased. Again, section 306 of the Penal Code contains a provision that *Qatl-e-Amd* shall not be liable to Qisas⁴⁷ when any "Wali"⁴⁸ of the victim is a direct descendent of the offender. In such cases the court is competent to award only "*diyat*"⁴⁹ and a sentence of imprisonment which extends to fourteen years.

The far-reaching consequences of Hudood Ordinance turned a murder of a woman as purely a private matter to be settled by the family members involved, thus adding fuel to the fire and gave rise to greater death toll of the honour killings, with more women falling prey to domestic violence. A historically cultural background of killing women on mere suspicion, in juxta-position with *Qisas* and *Diyet* provisions in the law has significantly enlarged the scope of impunity for a genuine culprit. As a result, the women, who are often forced to abstain from their choice of marriage, seeking divorce, or claiming inheritance, can be easily made victim; and also a man or woman under suspicion or accused of adultery may be killed without any fear of penalty prescribed for the offence of murder.

The Criminal Law (Amendment) Act, 2004 amended section 305 barred the accused or convict to act as wali in murder committed under any kind of honour crime on the pretext of karo kari, siyah kare⁵⁰ or similar other customs or practices. The provision of compoundability i.e. section 345 of the Code of Criminal Procedure, was also amended and a proviso in section 338-E was added to empower the court to impose conditions as deemed fit with the consent of the parties. The amendment in Section 311 further empowered the court to base conviction of the offender of honour killing on the doctrine of "*fisad-fil-arz*"⁵¹ even if the parties compound the offence or waive "*qisas*". Nevertheless, the Act *ibid* did not cater all the eventualities of honour killing, particularly the role of state as Wali in honour crime was not ensured with a view to retain its commanding prosecutorial role. Similarly, no

reforms have been put in place to make sure that independent witnesses testify before court, instead of those closely related to the victim and accused who invariably retract from their earlier inadmissible version before investigating forums as to identity and role of the accused particularly in the cases where compounding of the offence is not permitted by the court.

Needless to emphasise that the state must perform its duty of ensuring investigation and prosecution of the cases of violence against women with genuine transparency and sincerity of purpose as imminent challenge for structural reforms to provide easily available protection to the women who sense risk of violence against them. The courts must scrutinize incriminating evidence of those cases to point out and make sure that no culprit of honour killing go scot-free as a result of collusion of investigating agency with the offenders for considerations of bribe or political pressures and must take appropriate measures to do away with such a blatant violation of basic human rights by them. Otherwise, the role of state to discriminate women shall seriously be compromised and abdicated as a result of its failure to protect their right to life.

CONCLUSION

Although the enormity of issue of honour killings has been acknowledged by the legislature, nonetheless deep rooted traditional and cultural concept of patriarchy in family institution of Pakistani society enables male members of the family to call shots on the destiny of their sisters and daughters in the form of their forced marriages; and the honour killing is resorted to when there is perception in males of the family of having lost control over women; or some degree of prospective resistance on the part of women confront them as such. The room for systematic honour killings also becomes available on account of a rampant belief in public that they can get away with their nefarious action of such killings because of the absence of effective implementing mechanism of law as the law enforcing agencies often collude with perpetrators of crime, in that, the women are often killed by their brothers, fathers, sons and other male members of close degree of family relationship, thirsty of their blood; and no other member in society sympathises with the victim or raises voice due to ensuing threats by the tribes for any such venture as such. The vicious practice emanates primarily due to financial control of men who keep their women confined to the house chores, grab lands by depriving them from right of inheritance, deny them opportunities of education and employment, and make the women virtually puppets in their clutches.

The public authorities often don't intervene in family matters of identical nature and local tribal councils are mostly composed of male heads of families or tribes, with no representation of women. They take serious exceptions to indulgence by public authorities on the pretext that women rights are mythical norms of western countries which would mar and tarnish their cultural values. The state must take long awaited measures to do away with lapses in our legal system, assume role of prosecutor and also act as *wali* of the victims of honour killing by declaring commission of such offence as *fisad-fil-arz* through amendments in the law. The government must also evolve an effective mechanism for transparent investigation to collect testimony of non-retractable character so as to make sure that no actual culprit goes with impunity. It is call of the hour for the government, legislature, and judiciary to contribute their key roles in this regard, with a view to eliminate un-Islamic custom of honour killings in Pakistan. It is also equally essential for the state to educate its people the rights of women in Islam, and repeal those laws which are repugnant to these rights of women in Islam.

The honour killing is grave violation of the commands of Holy Book of Quran and sermons of the Holy Prophet (PBUH). Those involved in the heinous acts of barbarian character in utter departure from teachings of Islam cannot claim even a slight indulgence under notions of Islam. The western perception about misogynist outlook of Islam is altogether unfounded and unjustified. The Quranic as well as Prophetic sayings are reflective of true Islam; explicitly prohibit the practice of honour killings, and call for immediate abandonment of this custom of desert tribes of Arabs where the divine message was received by Holy Prophet (PBUH). The religion of Islam has given human rights to women and depriving her of life was regarded as major sin of highest degree. The teachings of Islam about equal status of women in domestic, economic, and political affairs are so easily available in both the sources of law i.e. the Quran and Hadith i.e. the sayings and practices of

Holy Prophet (PBUH). Both the men and women are free to choose their spouses and professions; and none of them can be divested of the right of inheritance. The true Islam had evolved parity in all the spheres of legal rights and obligations; and also there is no discrimination in terms of their criminal liability for any of their wrongdoings. The women can actively part in public affairs and there is no notion of any patriarchy in Islam.

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