

**Honor Killing: Cultural Defense to Regain Honor: Cultural, Religious, and Legal
Perspective**

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Abstract

The concept of culture has been used countless times as justification for various wrongdoings, misunderstandings, and unbridgeable gaps. Honor killing has been a tradition and custom in Pakistan and worldwide for many centuries. This article highlights the various socio-cultural values related to honor killings in Pakistan. There is no religious justification for this heinous crime. The study concluded that adherence to customary practices and belief in women's chastity and virginity results in the killing of women. The article emphasizes the provocation of the law on honor killings. It highlights the role of the judiciary in perpetuating crimes through ambiguous interpretation of law and acceptance of a plea of sudden provocation in such cases. It educates about the importance of human life and interpretation of honor by reviewing the cultural and physical milieu and marking some policy recommendations based on research.

Keywords: Honor Killing, Honor Based Violence (HBV), Sudden and Grave Provocation, Customary Law, Islamic Law

Introduction

In the past two decades, Pakistan has seen significant development with economic growth, rising wages, improvements in the health and nutrition of women and girls over time,

and their primary and secondary school enrollment rate (World Bank, 2019). Other economic and social structures are also changing. When these changes are mapped to demographic changes that benefit women and youth, they contribute to an environment that improves women's autonomy and weakens gender-inegalitarian norms. The country has undergone recent changes, such as women's legal rights to inherit land or choose marriage partners (Chowdhry, 2010). However, patriarchal gender norms still exist amid these rapid changes. These norms support gender-based violence against women and girls (Parveen, 2010). Criminal defendants convicted of such crimes defend themselves to reduce or mitigate criminal charges or advocate more lenient penalties by asserting the so-called cultural defense. Under this defense, which any country has not codified, the defendant seeks to prove that his alleged conduct was the usual way of handling similar situations in his home country. In other words, the conduct is reasonable given the defendant's cultural background (Hussain, 2006).

Honor killings are one such type of gender-based violence. The research concluded that honor-based violence (HBV) against women is a worldwide phenomenon, mainly in the Middle East and Asian countries, including Pakistan, Turkey, Afghanistan, India, and Jordan. According to the United Nations Population Fund (UNFPA), up to 5,000 women and girls were murdered in the name of honor worldwide (Amnesty International Fact Sheet, 2012). However, some non-governmental organizations (NGOs) estimate as many as 20,000 per year worldwide (Kiener, 2011).

Previous research has shown that the prevailing cultural traits of honor killings are deeply rooted in all parts and ethnicities of Pakistani society. These customs and traditions are recognized and inscribed in cultural patterns (Amnesty International Report, 2008; Dyer, 2015). Such honor killings are not limited to specific groups; they are primarily observed in rural areas (Shah, 1998; Ullah, 2010). The article focuses on the cultural defense in the

context of honor killings, in which family members kill women or girls because of provocative behavior that dishonors their families. It further underlines the legal and religious connotations of this gender-based crime. Finally, it investigates the development and lucans in the legal structure to pave a way forward to curtail such heinous incidents in the future.

Honor Killings: Pakistani Culture in Perspective

The concept of honor crimes includes all types of violence against individuals in the name of honor. The definition of the term honor killing takes many forms, but it is envisaged that honor is an essential component. Generally, honor killings can be defined as the killing of members of a family or social group by other members because they believe that the victim brings shame to the family or community. The death of the victim is seen as a way to restore the family's reputation and honor (Gill, 2008). This killing of a member or relative (mainly woman) is considered retribution for the humiliation of certain families, which is thought to be regulated or approved by certain cultures and religions. However, research shows that honor crimes have nothing to do with any religion, but it has more cultural significance (Gill,2008). Although statistics are limited, research shows that honor murders occur among women of different ages, religions, social status, wealth, education level, and geographic location (UNGA, 2012). Some media reports pointed out that since 2016, there has been a surge in honor killings in countries such as India (AL Jazeera, 2016).

In Pakistan, the term "karo-kari" (Urdu: کاروکاری) is used locally for honor killing. Most honor killings in Pakistan include women and, in some cases, men. Honor killings are usually considered for sanctioning victims for immoral behavior, which may consist of marital infidelity, refusing to submit to an arranged marriage, demanding a divorce, exercising the right to marriage, perceived flirtatious behavior, and being raped (*Daimuddin and others v. the State*, 2010). In some cases, they are killed to obtain economic and property gains, like killing

the widow to prevent her from remarrying and transferring her property to another family. Moreover, the man may kill his wife in the name of honor and marry another woman who may bring a new dowry (Bangash, 2017).

In Pakistani society, honor killing is a product of social and cultural values. As Jafri (2008) said, the custom of killing women in Pakistan is usually associated with restoring honor, usually carried out on the demand of cultural and historical reasons. Smartt (2006) and Agosin (2002) pointed out that honor killing is a legal and culturally recognized phenomenon in Pakistan; hence cannot be subjected to or examined from a human rights perspective. On the other hand, human rights defenders claim that these customs and traditions are the accepted discourse in Pakistan instead of common laws (Smartt,2006). Based on these conclusions, the Asian Human Rights Commission (2011) emphasized that honor killing is part of Pakistan's cultural tradition. The concept of women's honor and property is deeply ingrained in society's socio-political and economic patterns.

Religious misunderstandings have played a role in developing a patriarchal culture that has reduced women to their reproductive potential and, in the process, deprives women of their rights as human beings. Women are considered to have monetary value and are the property of male family members. Therefore, men control most women's lives, including social relations (Cohan, 2010). Women's illegal relationships violate social and cultural frameworks, damaging family honor. A man's ability to maintain family honor is judged by society. As a result, he must show his power to preserve the honor of the family by killing those who damage it (Cohan, 2010). Despite being prohibited by law, the social and cultural patterns and feudal attitudes have not changed. Hence, many people continue to believe that it is justified to kill people for honor and use the defense of cultural norms and principles to protect them from punishment. The perpetrators are rarely brought to justice. The rationale

behind the cultural defense thus rests essentially on the basic principle of the criminal law, that is, that a defendant should not be held responsible for acts he committed without the requisite (without the guilty mind) *actus reus* or *mens rea* (Sing, 1999). The defendant often provides evidence that such killing, under the circumstances, is customary in his culture (Brown, 2016; Recep, 2011)

Honor Killings: Provocation and the Law

Previously, there was no law declaring those honor killings were legally wrong. In contrast, through Parliamentary acts, for example, the 1997 Criminal Code codified the mechanism of *Qisas* and *Diyat* (under Islamic Law) in the form of the Qisas and Diyat Act, 1997 (The Criminal Law Amendment Act, 1997). This Act originated the concept of *qisas*; retribution, *diyat*; compromise, or total forgiveness in a murder case through the victim or their heirs, thus placing the choice of prosecution in the hands of the victim or his heirs, not the government. As a result, the crime goes unpunished by means of compounding or waiving the right of *Qisas* under Articles 309 and 310 of the Pakistan Penal Code (PPC). Another reason why many families of victims choose the procedure of *Qisas* and *Diyat* is due to financial benefits. Similarly, Article 302 of PPC provides exceptions to murder cases, including exceptions for the loss of self-control due to a serious and sudden provocation, which leads to the victim's death. As early as 1965, in many reported cases, such exception was then used as a successful plea in cases of honor killing (*Mohammed Saleh v. The State*, 1965).

Interestingly, the Shariah Court decision in *Federal Government of Pakistan v. Gul Hasan Khan* paved the way for the Qisas and Diyat Ordinance, 1990, and declared the “provocation plea” un-Islamic. However, it continues to receive long-term support from judges in cases of honor killings. Further, it elevated it to the status of absolute defense by

declaring that a murder committed in the name of honor does not constitute a crime and acquitting the accused or receiving a lesser punishment (*Ali Muhammad v. Ali Muhammad*, 1993). However, the stricter penalties for honor killings were canceled out by the defense strategy of provoking a plea of “grave and sudden provocation” (*Muhammad Imran v. The State*, 2008), and the courts continued to issue conflicting judgments.

The 2004 Criminal Law (Amendment) Act was passed to curb honor killing. It amended the PPC and the Criminal Procedure Law (CrPC). Through this act, for the first time in Pakistan’s history, the “honor crime” committed “on the pretext of *karo kari*, *siyah kari* or similar other customs or practices” was added in the Pakistan Penal Code (PPC), 1860. Moreover, the said Act amended section 305 of the PPC by barring the accused or the convict to act as *wali* if the murder is committed in the name of honor. Furthermore, about waiver or compounding of crimes committed in the name of honor, a proviso was added to Section 338-E, thus leaving the crime as compoundable and open for waiving.

The Act was a significant step towards eradicating the crime of honor killing. However, it was largely criticized for retaining the waiver or compoundability provision. Similarly, the law fell short of providing that the State act as *wali* in all honor killing cases, thereby retaining control over prosecution decisions. However, after the passage of this Act, the lower courts passed judgments considering the crime of honor killing as a grave violation of Human Right as in (*Daimuddin and others v. The State*, 2010).

Moreover, under section 311 of PPC, a mandatory imprisonment minimum of ten years was added when the offence is committed in the name of honor. Suppose the crime invokes *fasad-fil-arz*, meaning *corruption on earth*, including honor killing. In that case, this offence is punishable with death, life imprisonment, or imprisonment of either description for

a term of which may extend to fourteen years even if the offence has been waived by the heirs of the victim under sections 309 and 310 of PPC.

Some hurdles still exist which require eradicating social and cultural wrongs of honor killing.

Conclusion

Issues related to the plea of sudden provocation still exist and can be legally resolved by raising a statutory exception, excluding this defense where a person murders in the name of honor. Guidance can be sought from the “Coroners and Justice Act of 2009” introduced in England and Wales, eliminating the defense of sudden provocation. There is an urgent need for rational policymaking regarding the implementation of the law. The crime of honor killing is underreported because there is mostly collusion between the accused and the police in exchange for bribes. The police usually pose a threat to women's equality and fair treatment. If the victim is still alive, she will be turned away or harassed. Even in court, women can be victimized by the legal outcomes because of laws on *Qisas* and *Diyat*.

Police officers mostly force the victim's family or anyone seeking justice out of court settlement related to the faulty investigation. Therefore, the police should bear greater responsibility for their misrepresentation and unfair investigations. Also, to cure this issue amendment has been made in the Criminal Law (Amendment) (offence Relating to Rape) Act, 2016, which inserted a whole new provision envisaging the punishment for civil servants upon failure to carry out a fair and just investigation.

Along with the police and legal system, tribal councils in different rural areas can also play a vital role. These areas often maintain their autonomy because of poor communication; the tribes are isolated and are not well informed or updated about the law and policy of Pakistan. As a result, the government fails to exercise its authority over them. As a

result, the federal court system is entirely neglected in favor of the tribal council arbitration. They are staunch in their customs and norms. So, along with legal reforms, there must be social reforms.

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