

## Comparative Analysis of Honor Killing Phenomena in China and Pakistan

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### Abstract

This research sets out to examine the main excuses often mentioned in connection to the so-called honor killings in Pakistan and China. In this way, the aim is to discuss the idea of honor killings by looking at trends and patterns in this kind of homicides in Pakistan and China, this study also explores what legal and judicial obstacles stand in the way of putting an end to the abuse of killing women and daughters in the name of honor. Honor killings, the illegal decrees by caste/clan/community Panchayats to annul or prohibit marriages, social boycotts and even murder of couples have finally drawn the attention of the State, killing in the name of honor amounts to utter rejection of 'egalitarianism' - a corner stone of Pakistan's Constitution and testifies how the values of 'feudalism and 'patriarchy' are rooted in our social systems. According to the past research and study it is clear that the person who commit this homicidal act are generally blood related to the victim fathers, mothers, brothers, cousins, and sometimes other female relatives such as mothers have also been documented as being supporters. Most research and studies on honor killings have been conducted in Pakistan. This study is a Comparative study on honor killing between Pakistan and China. The study will examine the problems in the Criminal Law of Pakistan and solution to the problem, why there are so many cases of honor killing in Pakistan and how can it be reduced.

**Key terms:** Honor killing, gender discrimination, victim

### Introduction of Honor Killing

The honor Killing is a global phenomenon and is becoming widely reported in every part of the world. It is a practice whereby male members kill a female relative who is perceived as having damaged family honor.<sup>5</sup> Her death restores the honor of the family. Honor Killing can be triggered by a woman or girl talking with an unrelated male consenting to sexual relations outside marriage, being the victim of rape, or refusing to marry a man chosen by the family<sup>6</sup>. Even a suspicion of the woman's committing any of these transgressions can be sufficient to trigger this action. No further justification is required. Most often the woman is killed by her father, brother or uncle, though other women of the family are usually also complicit in the action.<sup>7</sup>

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5 The killing of a relative, especially a girl or woman, who is perceived to have brought dishonor on the family" secretary- general in address, to women 200" special session, says future of planet "secretary United Nations

6 Khan Ayesha (November 1999) Mobility of women and access to health and family planning services in Pakistan" Reproductive Health Matters Elsevier 7 (14): 39-48. doi:10.1016/S0968-8080(99)90005-8

7 so called honor killings are extreme symptom of discrimination and poverty is a factor The reality for most victims, including victims of honor killings, is that State institutions fail them and that most perpetrators of domestic violence can rely on a culture

The actual perpetrators of these crimes are often lauded for having restored the family honor and if brought to justice usually receive a reduced sentence on the grounds that honor is regarded as an extenuating circumstance. Very often to ensure judicial leniency an under-age male is selected to commit the crime. In some societies committing an honor killing may be regarded as a *rite de passage* indicating and guaranteeing social maturity. Honor killing against women and girls have taken place in the following countries on a big scale: India, Pakistan, UK, Germany, Turkey, Afghanistan, Saudi Arabia, Iran, Iraq, Palestine, Jordan, Algeria, Yemen and many more countries<sup>8</sup>. There are traces of honor killing practices in history of China, however presently the practice is kept under strong check under the Chinese criminal law<sup>9</sup>. The prime reasons for absence of honor killing in China are the efficiency of Criminal Judicial system, strict rules and penalties against act of violence against individuals, whereas in Pakistani customs, societies practice and beliefs overpower the judicial system. Pakistan and India both have more ratios of honor killings as compared to other parts of the world<sup>10</sup>.

### **What acts can be described as honor killing**

Honor crimes are assumed to be sanctioned by Islam, since it predominantly takes place in Muslim countries, but while perpetrators of honor crimes often cite religious justification for their acts, these crimes are not in any religious text. Honor crimes originated in customary law that pre-dates Islam and Christianity. They span communities, religions, and countries. The Criminal Law Amendment Act 2004, otherwise known as the Honor Killings Act, was promulgated after the murders of thousands of innocent women and girls and years of demands and struggle from different segments of society for a legislation to provide protection to citizens, especially women and girls; to make illegal and criminalize all murders committed under the name of honor and to punish the perpetrators, aiders, abettors and supporters of these crime<sup>11</sup>.

There are severe sanctions and penalties for such criminal acts under the Hudood Ordinance of 1979 as mentioned earlier which have been under discussion<sup>12</sup>.

of impunity for the acts they commit – acts which would often be considered as crimes and be punished as such, if they were committed against strangers. Honor killing is a practice whereby family member/s kill a female relative who is perceived as having damaged family honor. Her death restores the honor of the family. Honor killing can be triggered by a woman or girl talking with an unrelated male, consenting to sexual relations outside marriage, being the victim of rape, or refusing to marry a man chosen by the family. Honor killing is often mistakenly believed to be an Islamic practice or a practice condoned by Islam since it often occurs in Muslim-majority societies. In actual fact honor killing is forbidden in Islam and there is no mention of this practice in the Qur'an or in the Hadiths. by Global classrooms London model United Nation

8 Thousands of Woman killed for family honor by Hillary Mayell for national geographic news Feb 12,2002

9 This law is formulated in accordance with the Constitution and in light of the concrete experience of China launching a struggle against crime and the realities in the country, with a view to punishing crime and protecting the people. The tasks of the PRC Criminal Law are to use punishment struggle against all criminal acts to defend national security, the political power of the people's democratic dictatorship, and the socialist system; to protect state-owned property and property collectively owned by the laboring masses; to protect citizens' privately owned property; to protect citizens' right of the person, democratic rights, and other rights; to maintain social and economic order; and to safeguard the smooth progress of the cause of socialist construction.

10 India and Pakistan both have recorded rates of 'honor' killings of around 1000 per year although as ever figures remain unreliable. The levels of such crimes are less known in Bangladesh, but there have been cases in diasporic Bangladeshi communities so there is a potential risk there. In both India and Pakistan, the informal court systems present problems to women. Where the central criminal justice system is weak or unaffordable to people living in rural communities, tribal jirga or caste panchayat may order HBV in cases of intra-familial disputes. Such informal legal systems may demand the deaths of women, or in some cases compensation marriages where young girls and women are forced to marry to restore equilibrium in family disputes. It was one such jirga that ordered the notorious gang-rape of Mukhtaran Mai.

11 The Criminal Law (Amendment) Act 2004 made a number of changes to the existing legislation to include the offence of honor killing and deal with issues which are ancillary matters, such as stating that the murderer cannot be the wali making illegal the exchange of women as badal-i-sulh making changes to police procedures as to investigation etc.

12 Pakistan's Hudood (Islamic criminal) laws have been a source of controversy since their promulgation by the military regime of General Muhammad Zia-ul-Haq in 1979. For their supporters, these laws are a welcome step towards the enforcement of shari'ah (Islamic law) and, as such, represent a logical and inevitable progression of those historic processes that had led to the creation of the Islamic Republic of Pakistan. To their opponents, these laws represent gross violations of fundamental human rights and constitutional norms designed to uphold democratic participation in lawmaking and the equality of citizens irrespective of their religion or gender. However, despite the protests at home and the notoriety generated in the international media, these laws continue to exist on the statute books and are enforced in the courts of law. Cases and controversies, pregnancy as proof of Guilt under Pakistan's Hudood laws published by Moeen H. Cheema 2006 Assistant Professor of Law & Policy at the Lahore

Two persons (man/woman without nikah (Marriage) living together as husband/wife are considered to be in an illegal sexual relation under Article 4 of The Offence of Zina Enforcement of Hudood Ordinance, 1979, despite mutual consent<sup>13</sup>. Therefore, freedom of mate selection exists within the limitations of Islamic law, which is the supreme law of the country. A couple must publicly declare their marriage for it to be legal and has to sign the Nikah-Nama (marriage contract) in front of eyewitnesses, according to the Muslim Family Laws Ordinance of 1961. It is the responsibility of the parents/guardians to look after and manage the marriages of children under 18 as wali (guardians)<sup>14</sup>.

It also guarantees protection of marriage, family, mothers and children besides ensuring full participation of women in spheres of national life. However, women are discriminated against violating their constitutional rights. In honor killing cases the provisions of Qisas and Diyat law are used to discriminate against women<sup>15</sup>. In the tribal judicial system, honor killings are legalized suppressing women's constitutional rights<sup>16</sup>. The impunity with which the perpetrator commits the crime of honor killing and the systematic failure of the state to exercise effective control on such acts makes the state responsible under national and international law<sup>17</sup>.

### Prevalence of phenomena in China and Pakistan

A spokesman for Muslim women explained; "Stoning is a hideous and cruel punishment. He further said that stoning is a way to kill someone with extreme torture<sup>18</sup>.

It is a brutal way to violate women to punish and keep their sexuality in control which is their basic right. It's not only about honor killings but it is difficult in Pakistan to seek justice for anything<sup>19</sup>. There are huge loopholes that allow the killers to escape from punishment.

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13 Extramarital affairs are considered unlawful and illegal relations defined in separate legislation. For Instance, The Offence of Zina (Enforcement Of Hudood) Ordinance, 1979 Article 4 states: "A man and a woman are said to commit 'Zina' if they willfully have sexual intercourse without being married to each other." The Muslim citizens are supposed to adopt Islamic norms regarding mate selection in Pakistan. There is a specific legislation with reference to family and marriage under the Islamic principles which are obligatory in Pakistan. according to the article 227 (1) of the Constitution of Pakistan 1973, the Quran and the Sunnah (the way of the Prophet Muhammad) are the prime sources of legislation in Muslim family laws in Pakistan. Other sources of laws including ijma (consensus of opinion among the religious Muslim scholars), ijthad (independent interpretations of Muslim scholars based on the Quran and Sunnah), taqlid (adherence to established legal principles) are the basic guiding principles of Muslim family laws in Pakistan (Coulson 1957 and Raja 2003). These sources are called the Shari'a. The Muslim Family Laws Ordinance, 1961 are under the jurisdiction of the Shari'a. The constitution of Pakistan further guarantees the protection of basic rights, for instance marriage and family formation in Pakistan as mentioned earlier. It protects the rights of inheritance of heirs (son, daughter and wife), and gives due share of inheritance to the family in accordance with the Islamic laws. Nevertheless, the family laws do not protect cohabitation, illicit and illegal sexual relations, which are declared as crime. There are severe sanctions and penalties for such criminal acts under the Hudood Ordinance of 1979 (as mentioned earlier), which have been under discussion. Two persons (man/woman without nikah) living together as husband/wife are consider to be in an illegal sexual relation under Article of 4 of The Offence of Zina (Enforcement Of Hudood) Ordinance, 1979, despite of the fact of mutual consent. <https://www.lawteacher.net/free-law-essays/family-law/family-marriage-laws-in-pakistan-law-essays.php>

14 N. J. Coulson, Reform of Family Law in Pakistan, *Studia Islamic*, Vol. 7 (1957), 135-55. See also, Salman Akram Raja, Islamisation of Laws in Pakistan, *South Asian Journal*, Vol 2 (2003).[http://www.southasianmedia.net /Magazine/ Journal/ islamisation\\_laws.h tm](http://www.southasianmedia.net /Magazine/ Journal/ islamisation_laws.htm).

15 Domestic violence is not explicitly prohibited in Pakistani domestic law. Due to this lack of formal recognition, the judicial system, from police officials to Pakistani courts, tends to view domestic violence as a private affair and not open to legal scrutiny. Instances of domestic violence are usually dealt with under the Qisas and Diyat Ordinance of 1990. This ordinance is applicable to crimes that involve physical harm to another including murder, attempted murder and intentionally or unintentionally hurting another individual. Qisas, or retribution, authorizes punishment equal to the crime and has strict evidentiary requirements. If these evidentiary requirements are not met, the court itself can decide the punishment. On the other hand, the punishment of Diyat, or compensation, results in the perpetrator financially compensating the victim or the victim's family for the crime. by the voice society about women Aug 28 2015

16 The Quran", supra note 35 Surah Al Nur XXIV verses 4-9 at 243

17 Muhammad Shehzad, "Honor Killings Continue", in Dawn January, 2003 online <http://www.dawn.com>

18 man stones his own daughter to death in new Islamic state by the jonrnal.ie read, share and share the news Oct, 21, 2014

According to Pakistani laws<sup>20</sup>, culprits can be pardoned by victim's family which makes them free from any capital punishment. In Pakistan's rural areas tribal elders are responsible for deciding the punishments of various crimes this is often referred to as the informal justice system of the country<sup>21</sup>.

However, not every case of disgrace is punished with death or stoning. Some punishments are slow, more torturous and more painful with effects lasting for years or even for the rest of the life of the accused. For example, in some cases, males accused of adultery can escape punishment by giving away the hand of their sister daughter or other female members of the family in marriage to a male of the accusing party. In some cases, tribal leaders decide punishments like gang rape for the accused or member of the accused's family). The most shameful example that brought global shaming was of Mukhtaraan Mai and several others like her.

Chinese woman abort their child in womb is a legitimate honor killing for sake of getting boy. Nobody can find a proper excuse other medical conditions that necessitate the abortion for any abortion<sup>22</sup>. As in this case too, one life is destroyed. Kind of same logic is also given by some parents in Pakistan that they raised their daughter and they have ultimate right over her that's when the state machinery comes into play and let them know with its judicial organ that what is the limits of their rights. One child policy has increased the instances of abortion of female fetus to million fold<sup>23</sup>.

Chinese society has traditionally valued boys over girls. Gender-selective abortions spiked after the introduction of the one-child policy (what family wouldn't want that single child to be male, right?) in the late 1970s, and again following the introduction of ultrasound technology. China outlawed sex determination in the late 1980s to stop prospective parents from finding out the gender of their child and potentially abort or abandon girls. Doctors are forbidden by the state from exposing the sex of unborn babies. But the practice still goes on. And deeply entrenched traditional ideas about female inferiority prevail, especially in rural provinces.

### **Honor killing in China**

The instances of honor killing in contemporary Chinese practice are rare, if we consider the old traditional instance of killing someone due to his bad or immoral character. But it is in some way present these days. With the advancement of technology and the development of technology has changed the phenomena and the current aims and expectations of people has also made a great change in the course of action in this aspect and under mentioned some ancient and current practical instances of honor killings in china. Even the concept of honor has also been changed with development and globalization. Before society was a substantive factor in all matters but now society is not that important but the dignity of the person. This gives person motivation to kill other to give honor to his dignity that was violated by the mischievous, disloyal or any other act of others.

As in an honor culture, codes of ideal female behavior in imperial China especially in Tang Dynasty, tended to emphasize loyalty and obedience to male kin, particularly fathers, husbands, and fathers-in-law. Ethical discourse regarding women also stressed sexual fidelity<sup>24</sup>.

19 Vishakha and others V. State of Rajasthan and others, AIR 1997 SC 3011 at 3012, 3013. 1997. [Last accessed on 2014 Oct 21]. <http://www.indiankanoon.org/doc/1031794/>

20 Pakistan closes legal loophole that allowed honor killings to go unpunished Until now, Pakistani law has allowed the families of victims to waive punishment, which can include the death sentence, by "forgiving" the murderer. But because more than 80 per cent of honor killings in Pakistan are carried out by a relation, in most cases it meant the family was effectively forgiving itself by Andrew Marszal, delhi 6 OCTOBER 2016

21 Trading justice for money: Prisoners on Pakistan's death row can pay off their victims' families in exchange for freedom Introduced in 1990, the Qisas and Diyat Ordinances enshrined in law the practice of blood money. This includes the right for the victim's next of kin to pardon those on death row 'for the sake of God' and for financial compensation in lieu of eye-for-an-eye punishment by independent news 10 january 2015

22 Good kind, Daniel (1999). "Should Prenatal Sex Selection be Restrict Ethical Questions and Their Implications for Research and Policy". *Population Studies*. 53 (1): 49 10.1080/00324720308069. JSTOR 2584811.

23 336 million abortions under China's one-child policy More than half a billion birth control procedures, including at least 336 million abortions, have been performed in the name of the one-child policy, China's Health ministry revealed y Malcolm Moore, Beijing 15 Mar 2013 <http://www.telegraph.co.uk/news/worldnews/asia/china/9933468/336-million-abortions-under-Chinas-one-child-policy.html>

24 Hinsch, B. (2013). *Masculinities in Chinese history*. Rowman & Littlefield Publishers.pg 71

Once restrictive codes of female conduct were in place, the community could criticize and shame any woman who failed to uphold these standards. Men thus gained a powerful tool to control their womenfolk and thereby protect their own reputations<sup>25</sup>.

In early China, female behavioral norms emerged that reduced the potential for social conflict, stabilized an unequal gender system, and maintained male honor and privilege. Society expected absolute fidelity to their spouses from married women, and ideally the unmarried and widowed would practice abstinence. Other key female virtues include self-sacrifice for the sake of family harmony, obedience to kinsmen, fidelity, and other male kinship. The early Chinese referred to this constellation of related virtues as chastity (*zhenjie*)<sup>26</sup>.

China has always been a traditional society, practicing customs that date back to the Shang Dynasty (circa 1500 B.C.). Medieval China is no different. It dates back to before Confucianism, but became solidified and pervasive by the fifth century B.C.? Confucianism inculcated in society that women were by nature quarrelsome, jealous, petty-minded, and vastly inferior to men. In the Song Dynasty, neo-Confucianism was often blamed for the declining status of women. Cheng Yi, the best known neo-Confucian teacher once told followers that it would be better for a widow to die of starvation than to lose her virtue by remarrying. It shows a different concept of honor at different times.

In Imperial China, women assumed a relatively subordinate position to men. Women did possess some power; within the family content, for example, they would often assume a role of leadership. However, this power did not generally extend beyond the home and familial affairs. In the period between the end of the Qing dynasty in 1911 and the founding of the People's Republic of China in 1949, the role of women in Chinese society began to change dramatically.

Honor could be defined as a set of norms recognized by society. To give an example of this definition, an instance of honor killing in early Eastern Zhou and Tang era was the spousal burial to give honor to the permanent loyalty to a deceased husband. Though illogical in the present time practice and norms, but was widely accepted and a source of honor for the family. The honor of women always connected with her sexual relationships. It is in fact the chastity of women that is regarded important rather than their lives in the male conscience. In this regard every relationship outside of legitimate degree is considered ruining the chastity. The narratives about chaste women could found in Han and Ming Dynasties that end with heroine's death and miserable death if proved unchaste<sup>27</sup>. The major act leading to the killing of person for sake of honor in ancient china as enumerated by history was the adultery.

### **Honor killing in Pakistan**

This part provides and examines a number of real cases of honor killings happened in Pakistan. Farther more it gives some cases of honor killings decided by the higher courts of Pakistan in order to show the judicial attitude towards the cases of honor killing more over this figures out the main causes of honor killing and at the end, it details the developments in Pakistani laws for the eradication of honor killing<sup>28</sup>

A 25-year-old woman was stoned to death by her family outside the Lahore High Court in an incident of honor killing for marrying the man she loved, police said. Farzana Iqbal was waiting for the High Court in Lahore to open when a group of around dozen men began attacking her with bricks, said Umar Cheema, a senior police officer. And her father, two brothers and former fiance were among the attackers, he said. Farzana Iqbal suffered severe head injuries and was pronounced dead in hospital, police said. All the suspects except her father escaped. He admitted killing his daughter, Cheema said, and explained it was a matter of honor. Cheema said Farzana had been engaged to her cousin but married another man. Her family registered a kidnapping case against him but Farzana had come to court to argue that she had married of her own free will, he said. Arranged marriages are the norm among conservative Pakistanis, who view marriage for love as a transgression<sup>29</sup>. Amina broke down again when Assistant US Attorney Amanda Hector asked if she could identify her father in the courtroom for the jury. She replied, yes, he's sitting there. Amina cried and she told jurors that she came to Brooklyn at the age of 9 for the purpose of attending Public School 192, all-girls Bishop Kearney High School and then Brooklyn College.

25 Hinsch, B. (2013). *Masculinities in Chinese history*. Rowman & Littlefield Publishers. Pg72

26 *ibid*

27 Hinsch, B. (2013). *Masculinities in Chinese history*. Rowman & Littlefield Publishers. Pg 79

28 *Bashir v. The State*, 2011 PCRLG 1945

29 *Woman stoned to death for 'honor' outside LHC*

<http://www.dailytimes.com.pk/punjab/28-May-2014/woman-stoned-to-death-for-honor-outside-lhc>, accessed 2015-

Her hand in marriage was promised to a young man in their rural village of Chiryawala, but Amina was smitten with Shujat who she had met at her sister's wedding in Pakistan. She and Shujat secretly communicated by Facebook and emails. When her father and uncle learned of the budding relationship in 2009, she was barred from returning to the US. (My father) told me I'm too influenced by American culture. I need to learn my culture, she said. Choudhry was outraged over the discovery of a secret cell phone his daughter was using to call Shujat and he said, I don't want to hear any more complaints about you. I will kill you if you will do anything wrong, she testified<sup>30</sup>.

Lahore High Court (LHC) announced death penalty to four indicted family members of Farzana Iqbal reported by a private news channel. In the month of May this year, 25 year-old and three-month pregnant Farzana Iqbal was murdered by her angry family members on a busy street outside LHC. And she is said to have been bludgeoned to death with bricks by her family members because of marrying a man without the consent of family. One of the attackers claimed to be Perveen's husband, saying the woman married another man without divorcing him. Judge Haroon Latif announced death penalty for Farzana's father who had admitted of killing his daughter in the name of honor. His words killed my daughter as she had insulted all of our family by marrying a man without our consent, and I have no regret over it. The father was quoted as saying by police. The death penalty was given under three different laws, the Anti-Terrorism Act, Section 302 of the criminal code which outlaws murder and third under Section 338C which outlaws murder of a pregnant woman<sup>31</sup>. Defence lawyer Mansoor Afridi said that other accused persons, her brother, a cousin and another relative are also sentenced to death and a fine of Rs.100, 000 is also imposed. The second brother Ghulam Ali, who was also a suspect, has been sentenced to ten years in prison with a fine of Rs. 100,000. Family members of penalized persons protested the hearing outside the court and claimed that the false charges have been framed against them. Afridi said that the family planned to appeal. He stated that the verdict was "a decision based on sensationalism. The unfortunate incident, due to its brutal nature, had sparked the rage of international community<sup>32</sup>. The United Nations condemned the incident and the United States called it heinous<sup>33</sup>.

All over Pakistan hundreds of women of all ages are killed for a variety of reasons connected to the varying interpretations of honor. The causes include the education, poverty, jirga system religious mind set, Culture, customs, and tribal laws, taunting by community members, marriage or divorce against the will of family, settling debts, family enmity, camouflaging murder as honor killings to get lenient punishment under statutory law and failing judicial system. These are not meaning the only instances where honor crimes are justified in Pakistan and this uncontrolled increase in the practice of this tradition is a mockery of law and humanity. The victims of honor Killings are 3-90 year old females, both married and unmarried. An important reason behind the perpetration of an increase in this heinous crime is the impunity a perpetrator enjoys. Even if the crime is reported and the perpetrator appears before a court of law (which is quite rare) Pakistan's male dominated judicial system protects him or her instead of giving exemplary punishment and honor Killings are also used to camouflage a murder to get away with the come altogether or receive a lighter punishment.

The murder could be for personal reasons or to seek revenge as well. Many cases published in newspapers are not formally reported by police or other law enforcing agencies. A newspaper published an unreported case of honor where a girl named Shams was stoned to death by her uncle and a mob of villagers in front of her parents in the name of honor. Her crime was to dance at her cousin's marriage; a normal occurrence at Pakistani weddings but not considered moral by her uncle<sup>34</sup>. Some honor Killings are committed for monetary gains, property and inheritance and the lesser the number of inheritors the smaller the prospects of sharing the ancestral property. Sometimes women are killed as alleged Kari 97 with some rich man of the tribe to receive the monetary compensation for pardoning the alleged Karo.

30 Pakistani faces life sentence for orchestrating honor killing published <http://www.dawn.com/news/1115620>

31 Lahore court sentences brothers to death over 'honor' killing

32 Washington (USA): ICRW; 2001. The International Centre for Research on Women. Domestic Violence in India II: Exploring Strategies, Promising Dialogue. ICRW Information Bulletin; pp. 1-8.

33 Farzana 'Honor killing' case: four family members sentenced to death November 19, 2014 <http://www.pakistantoday.com.pk/2014/11/19/national/farzana-honor-killing-case-four-family-members-sentenced-to-death/>

34 Muhammad Shehzad, "Honor Killings Continue", in Dawn January, 2003 online: <http://www.dawn.com>

Kari is killed by her family and then karo has to pay the fine under the tradition to spare his life, no matter the charge is true or false<sup>35</sup>. In Pakistan in most of the cases marriage is arranged by the families but sometimes girls do not accept arranged marriages. When daughters challenge their decision and refuse to follow their dictates, family members feel insulted and humiliated and kill their daughters. Another reason is when young women start dating young men and want to choose their own partners. Such an act is perceived as rebellion from family traditions. They want their daughters to break up their romantic relationships and agree to forced marriages and when they do not, they are murdered

No codified law in Pakistan provides an exemption from punishment for murder or injury in the cases of honor killing, as is the case in Jordanian law, which expressly spares the perpetrator. Honor Killing is dealt as a murder crime under the criminal law of Pakistan, *inter alia* Qisas (punishment equal to the offence) and Diyat compensation law based on the Islamic injunctions. Recently special legal provisions have been promulgated amending the criminal law vide Criminal Amendment Act, 2004 to define and enforce punishment for an offence committed in the name or on the pretext of honor. However, the Qisas and Diyat law protects the perpetrator in honor Killing cases. Under Qisas and Diyat law, the victims or his/her legal heirs retain control over the matter including the crime and the criminal. The legal heirs can also pardon the murderer or reach some settlement as compensation in lieu of punishment<sup>36</sup>. Since honor killings are often committed by family member or in connivance with the family, the perpetrator having a relation with the victim and his/her legal heirs also takes advantage of Qisas and Diyat law. There is no substantive provision in the criminal law of Pakistan which legalizes or provides exemption in the cases of honor Killing.

### How China controlling honor killing

During the Ming Dynasty the "guilty" of the crime of rape was considered a social evil, deserving of physical pain and guilt of having stained the spirit of disgrace and honor of society collectively. The men convicted of rape could also be sentenced to death. In the Qing Dynasty frivolous and flirty women risked torture and death because of severe torture<sup>37</sup>. The origin of honor killings and the control of women are evidenced throughout history in the culture and tradition of many regions. The Roman law of pater family has given complete control to the men of the family over both their children and wives. Under these laws, the lives of children and wives were at the discretion of the men in their family. Ancient Roman law also justified honor killings by stating that women found guilty of adultery could be killed by their husbands. Among the Qing dynasty in China, fathers and husbands had the right to kill females deemed to have dishonored them<sup>38</sup>.

In adultery cases, however, should follow the principle of legality, which means if a person's action is characterized as a crime, there has to be related specific legal provisions to convict him/her. But according to Chinese laws, China does not have any legal provision to punish a person for adultery. China, however, has specific provisions for convicting a person for committing rape, which Article 236 of the Criminal Law in China defines as the criminal offence of compelling a woman/girl through physical force or duress to have sexual intercourse. Although the key to such a crime is whether the offence is committed against the victim's will - and it seems that extramarital affairs are voluntary actions on the part of both parties - there are several exceptions that could constitute a crime.

If one has violated Article 258 of the Criminal Law by marrying a woman who is legally wedded to another man, he could be convicted for bigamy according to the law. And fourth, if it is established that one has had sexual intercourse with an intellectually challenged woman, a judge can convict him for rape even if the woman consented to the act. According to Article 150 of the Discipline Regulations of the Communist Party of China, the most lenient punishment an official could get for committing adultery is severe warning, but if the case is serious he/she could be expelled from the Party and removed from his/her official post<sup>39</sup>.

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35 Sunder Khan Sundurani, the chief Sardar of Jacobabad (a city in Sindh Province), admitted that most of Thekarokari cases were false accusations. Karo kari cases are registered either to extort payment of the fine or to get rid of a loan. The tradition is also used to occupy one's land or property. Manzoor, Economics of karo kari, *supra* note 65.

36 Azeem Advocate, Honor Killings under The rule of Law in Pakistan; Available at <http://hmazeem.blogspot.com/2015/02/honor-killings-under-rule-of-law-in.html>

37 <http://www.china-underground.com/magazine/torture-punishments-inflicted-on-adulteresses-in-ancient-china-26-images>

38 <http://hbv-awareness.com/history/>

39 By Liu Minghui (China Daily) Updated: 2014-07-03

China is one of the world's developing countries in which demands for the emancipation of women and the struggle for equality between the sexes are both among the most longstanding of political concerns – the first movements in favor of women date back to the mid-nineteenth century<sup>40</sup>, and the most in evidence today. As early as the 1950s, concrete action was organized in favor of the development of women's work outside the home and for the equality of spouses within the family<sup>41</sup>. China was also one of the first countries to ratify, in 1980, the United Nations International Convention on the elimination of all forms of discrimination against women (CEDAW). The relatively early mobilization of the state and civil society partly explains why China now possesses a solid body of legislation for the defense of the rights and interests of women. It is the 1954 Constitution, followed by that of 1982, the law gives men and women equal rights: "Women have the same rights as men in all spheres of political, economic, cultural, and social life, including family life"<sup>42</sup>.

### **How Pakistan is controlling honor killing**

The formal judicial system is constitutionally an independent institution, but General Zia brought in constitutional changes which made the judiciary and legislature effectively subservient to the executive and now what seems on paper to be a tripartite government of executive, legislative, and judiciary powers turns out to be a long executive arm enveloping and so curtailing both the legislature and the Courts. However, according to Article 247 of the Constitution<sup>43</sup>, the Federally Administered Tribal Areas (FATA) and Provincially Administered Tribal Areas (PATA) do not fall under these courts. These tribal areas have their own legal and judicial system largely based on tribal adjudication. Against the backdrop of this legacy pluralistic adjudication of honor killings criminal laws are used to discriminate against women. Pakistan's constitutional law guarantees equal protection to its citizens.

It also guarantees protection of marriage, family, mothers and children besides ensuring full participation of women in spheres of national life. However, women are discriminated against violating their constitutional rights. In honor killing cases the provisions of Qisas and Diyat law are used to discriminate against women. In the tribal judicial system, honor Killings are legalized suppressing women's constitutional rights. The impunity with which the perpetrator commits the crime of honor Killing and the systematic failure of the state to exercise effective control on such acts makes the state responsible under national and international law. These murders in the garb of cultural practices have not only been ritualized but also legitimized by Jirga's in Pakistan. It is a version of the implicitly accepted violence on women in everyday life. This violence against women is a violation of fundamental rights protected under the constitutional law of Pakistan as well as international law under which state parties are obliged to exercise due diligence to ensure prevention, investigation and punishment of the perpetrators of such crimes.

Pakistan, as a state party to Women's Convention and the Convention of Rights of Child, is also responsible for its failure to exercise due diligence<sup>44</sup>.

### **Which system is better protecting women's rights**

It is recommended to the international community to require the national governments to provide support strategies to address honor Killings as part of a holistic approach to the promotion of gender equality. It is also recommended to devise a support mechanism for Parliaments of third countries in their work as legislators to ratify and accede to key international declarations and conventions, particularly the CEDAW and its Optional Protocol. Equally importantly States Parties need to realize those commitments through legislative reform and by ensuring reform of the penal codes which condone honor killing of either form. Discriminatory provisions relating to justifications excuses or defenses on grounds of honor or passion must be removed. The most important in this regard is to support comprehensive programmes of public education through all media including conventional mass media, the Internet, the school system, NGOs and community groups in order to destroy the culture of silence surrounding honor Killing and to help to change social attitudes towards its acceptability by women and men.

40 Danièle Elisseeff, *La femme au temps des Empereurs de Chine* (Women in the time of the Chinese Emperors), Paris, Stock, 1988.

41 See Tania Angeloff and Marylène Lieber, "Equality, Did You Say? Chinese feminism after 30 years of reforms," in this issue; Kay Ann Johnson, *Women, the Family and Peasant Revolution in China*, Chicago, University of Chicago Press, 1983.

42 Extract from Article 48 of the Constitution of the People's Republic of China, 1982.

43 Tribal areas and Constitution of Pakistan/ available <https://drksy.wordpress.com/tag/article-247/>

44 Muhammad Zaheer Abbas & Shamreeza Riaz, *Legal Protections Provided Under Pakistani Law against Anti-Women Practices: Implementation Gaps between Theory and Practice* pg176



NGOs, civil society, media, religious groups, men's and women's groups and other forces for socialization have an important role to play in creating a climate of opinion where honor Killing and other forms of gender-based violence are not acceptable. Special attention must be given to including men in the debate, and to discussion of alternative masculinities i.e. alternative ways of defining what it is to be a man.

It is lastly recommended to international community to high light this issue on the global stage with respect to honor killing to support the work of the related UN bodies (UN Commission on the Status of Women, UN Commission on Human Rights, UNIFEM, etc). Endorse and publicize the work of the UN Special Rapporteur on Violence Against Women in the work of gathering information on violence against women (including honor Killing), and providing recommendations for strategies to treat this phenomenon.<sup>45</sup>

### **What Pakistan can learn from China?**

New ideas from Chinese Criminal law 1997 of PRC, Chinese Criminal Law Article 257<sup>46</sup> provides that those using force to interfere in others freedom of marriage are to be sentenced to two years or fewer in prison or put under criminal detention. Those committing crimes stipulated in the above paragraph and causing others to die are to be sentenced to two to seven years in prison. Those committing crimes stipulated in the first paragraph of this article are to be investigated only if they are sued and The Chinese provision regarding freedom of marriage has kept check on the practice of honor Killing. The person, who suffers the harassment and interference from the people or family members, can complain and seek redress from the appropriate authority.

### **Statistics**

Despite the increase of official attention regarding honor Killings in the year of 2009, one cannot find good and healthy outcomes regarding the issue of honor killing in Pakistan. There was an obvious increase of honor Killings of females, who face this threat by choosing their life partner by their own free will. Statistics collected by human rights commission of Pakistan describe the increase of honor Killings, which hit the total of 560 approximately in the year of 2009. Same was the case with the year of 2010, when there was no evidence of a decrease in violence against women. By the name of honor more than 446 lost their lives to restore the family or community honor. There was an increase in 2011, when more than 943 honor Killings reported across the country. 263 HRCP in (2012) honor killed and report says about traditional feudal custom, Karo Kari which continues whereby couples found in, or more often merely suspected of, adulterous relationship are summarily done to death by the family members themselves.

The Jirga (a tribal justice system based on old customs) banned to register the honor Killing cases at the police station and declared that whoever did this would be killed. The Jirga also mentioned that it is the part of people's culture and also declared. Same Jirga had delivered a verdict stating the killing of a couple who had married of their own free will was permissible. It shows that in a tribal patriarchal society, women are not allowed to use their own will for their own marriages<sup>47</sup>.

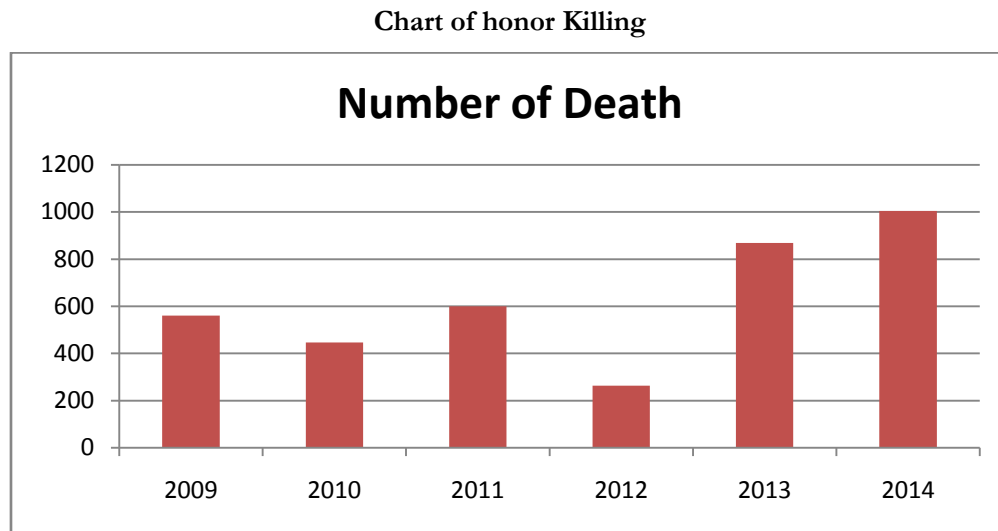
Human rights commission of Pakistan's report says 1005 honor Killings were reported in Pakistan in 2014, with the victims including 923 women and 82 minor girls, compared to the 869 cases in 2013 cited in the commission's report. Under the database of HRCP, violence against women registered a sharp increase during 2015, despite low registration of gender-related crimes because of societal pressure and a biased and obstructive police force dominated by men. A total of 647 women were brutally killed in the name of honor. (Including the cases of karo Kari) and more than 757 were killed for some other reasons. The figure is showing the actual trends of honor Killings from 2009 till 2014<sup>48</sup>.

45 <http://www.pedz.uni-mannheim.de/daten/edz-ma/ep/07/EST18859.pdf>

46 Criminal Law of the People's Republic of China (1997), Chapter IV: crimes of Infringing upon the Rights of the Person and the democratic rights of citizen <http://www.fmprc.gov.cn/ce/cgvienna/eng/dbtyw/jdwt/crimelaw/t209043.htm>

47 from HRCP (Reports and Statistics) (<http://www.hrcp-web.org/>)

48 HRCP Report. (2014). State of Human Rights in 2014

**Source<sup>49</sup>**

The number of honor killings in Pakistan was 560 in 2009 which showed a little decrease in 2010 but again increased to 600 in 2011. From the chart a sudden decrease in honor killings can be seen in 2012 but again rose suddenly in 2013 and reached to 1000 in 2014

**Human Rights Analysis**

Honor killing self-evidently violates the right to life of the individual victim, a right which is regarded as the most fundamental of all rights and which is enshrined in all major human rights instruments, not least in the Universal Declaration of Human Rights (UDHR) (1948). It has often been noted, however, that the UDHR and other key human rights instruments are “gender neutral” in that they are based on an assumption that the “human condition is gender free”. They concern primarily the rights of the individual vis-à-vis the state, and concern the conduct of the state or its agencies relative to all individuals. In this legal context only a state or its agents can commit a human rights violation, and generally speaking non-state actors are not accountable under international human rights law. In this perspective whilst violence perpetrated against any individual by the state such as acts of torture are addressed, individual acts of violence against another individual in the domestic or private sphere are not. A major landmark in redressing the recognized gender bias in human rights legislation was the approval in 1979 of the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) which is often called the international bill of rights for women. CEDAW differs in a number of ways from preceding instruments which are also based upon the principle of non-discrimination in recognizing that equal treatment of persons in unequal situations perpetuates rather than challenges discrimination.

**Present day situation of honor killing in China**

In the contemporary china, the practice of honor killing has been eradicated from the society. There is rule of law and supremacy of justice for everyone. The courts maintain the legality principle to prosecute and punish perpetrator without considering any lame excuse of culture, honor or domestic violence. China has established a great example for the developing world in the field of securing and ensuring human rights of women. Women are free and independent with equal opportunities in all sectors of social and economic life of china. The legal system in china especially the criminal law and family law are of great significance. It is a good example to learn for other countries in designing and amending their laws to ensure women’ rights protection and avoid any instance of honor killing.

**New ideas from Chinese Criminal law 1997 of PRC**

Chinese Criminal Law Article 25750 provides that those using force to interfere in others freedom of marriage are to be sentenced to two years or fewer in prison or put under criminal detention.

<sup>49</sup>Figures is compiled from HRCP (Reports and Statistics) (<http://www.hrcp-web.org/>)

<sup>50</sup> Criminal Law of the People’s Republic of China (1997), Chapter IV: crimes of Infringing upon the Rights of the Person and the democratic rights of citizen.,

Those committing crimes stipulated in the above paragraph and causing others to die are to be sentenced to two to seven years in prison. Those committing crimes stipulated in the first paragraph of this article are to be investigated only if they are sued and The Chinese provision regarding freedom of marriage has kept check on the practice of honor Killing. The person, who suffers the harassment and interference from the people or family members, can complain and seek redress from the appropriate authority.

### **Honor Killing and Human Rights Approach towards redress**

It is recommended to the international community to require the national governments to provide support strategies to address honor Killings as part of a holistic approach to the promotion of gender equality. It is also recommended to devise a support mechanism for Parliaments of third countries in their work as legislators to ratify and accede to key international declarations and conventions, particularly the CEDAW and its Optional Protocol. Equally importantly States Parties need to realize those commitments through legislative reform and by ensuring reform of the penal codes which condone honor killing of either form.

Discriminatory provisions relating to justifications excuses or defenses on grounds of honor or passion must be removed. The most important in this regard is to support comprehensive programmes of public education through all media including conventional mass media, the Internet, the school system, NGOs and community groups in order to destroy the culture of silence surrounding honor Killing and to help to change social attitudes towards its acceptability by women and men.

NGOs, civil society, media, religious groups, men's and women's groups and other forces for socialization have an important role to play in creating a climate of opinion where honor Killing and other forms of gender-based violence are not acceptable. Special attention must be given to including men in the debate, and to discussion of alternative masculinities i.e. alternative ways of defining what it is to be a man.

It is lastly recommended to international community to high light this issue on the global stage with respect to honor Killing to support the work of the related UN bodies (UN Commission on the Status of Women, UN Commission on Human Rights, UNIFEM, etc).Endorse and publicize the work of the UN Special Rapporteur on Violence Against Women in the work of gathering information on violence against women (including honor Killing), and providing recommendations for strategies to treat this phenomenon.<sup>51</sup>

### **Conclusion**

Honor crimes fester in the dark privacy of the home and, too often, the home is where the use of violence becomes normalized. It is where the citizen gets conditioned to believe that violence is an acceptable, particularly to excuse violence that is carried out to protect perceived social standing, national honor, or religious sentiments. The education system is also a key battleground, because it is one of the rare public spaces where young minds can be empowered to challenge gender stereotypes and made aware that violence in the home is unacceptable. Public figures, and especially men, must openly speak out: not only to condemn honor Killings, theoretical stances and empirical assessments revealed that the spaces left open by the state justice system facilitated tribal councils strengthening their power structures. Furthermore, the lack of legal mechanism and complicated judicial processes reinforced the power of tribal courts being legitimized culturally instead of legally.

I analyzed that the female victims were disadvantaged of their fundamental rights and justice in Pakistan. In majority cases, killing of women is perceived only mode to reinstate family honor where accusation is mere enough declaring a woman Kari. A few exceptional cases pursued to legal courts and got justice where media and NGOs were involved. The structure of Jirga is illegal and masculine constructed where women victims are being consistently violated.

Traditional mindsets in the legislation, judiciary, police and especially the community pushed women victims towards violence and injustice. The laws formulated so far regarding honor Killing practice were biased and discriminatory in nature.

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<http://www.fmprc.gov.cn/ce/cgvienna/eng/dbtyw/jdwt/crimelaw/t209043.htm>

51 Criminal Law of the People's Republic of China (1997), Chapter IV: crimes of Infringing upon the Rights of the Person and the democratic rights of citizen.,

<http://www.fmprc.gov.cn/ce/cgvienna/eng/dbtyw/jdwt/crimelaw/t209043.htm>

Even the bill presented on honor Killing in 2004, did not seem to be effective reducing honor Killing occurrences and scarcely seen in implementation process. The presence of feudalists in state assemblies and their intervention in policy-making greatly influenced the effective legislation on honor Killing

Combating the multitude of factors leading to honor Killing practice needs comprehensive and transparent policies which target the loopholes in the state justice system, promoting education and mass awareness, compel governments to be accountable and formulate effective laws on women rights. Regions with high incidences of honor Killing remains largely inaccessible for research. Therefore, the conclusions drawn in my study are of course only tentative and but to acknowledge that these abuses are not random or sporadic incidents but a much wider problem. Addressing these issues, whether in Pakistan, or anywhere else in the world, is challenging because the causes are complex. But like so many other social problems, positive change is ultimate if dealt with proper wisdom and care.

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